The Law Society of British Columbia

Agenda

Benchers

Date: Friday, December 6, 2013

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

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)	SPEAKER	MATERIALS	ACTION
1	Consent Agenda	1	President		
	• Minutes of November 7, 2013 meeting (regular session)			Tab 1.1	Approval
	• Minutes of November 7, 2013 meeting (*in camera* session)			Tab 1.2	Approval
	• Law Society Appointment to the LSS Board of Directors			Tab 1.3	Decision
	• Law Society Nomination to the LTSA Board of Directors			Tab 1.4	Decision
	• Amendments to Rules 2-49, 2-49.3 and Others: Implementing the National Mobility Agreement			Tab 1.5	Approval
	• New Rules 2-63.01, 2-63.02 and 4-26.2: Procedure for Orders for Production of Documents under Section 44(4) [Witnesses] of the *Legal Profession Act*			Tab 1.6	Approval

The Law Society of British Columbia

Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
DISCUSSION/DECISION					
2	Final Report and Recommendations of the Legal Service Providers Task Force	60	Brue LeRose, QC	Tab 2	Approval
3	Proposal for Improving Access to Justice Funding in BC: Pro Bono Cost Awards and Cy Pres Awards	10	Mr. Maclagan	Tab 3	Decision
4	Governance Committee Year-end Report and Recommendations	15	Ms. Lindsay	Tab 4	Approval
5	Election of an Appointed Bencher to the 2014 Executive Committee	5	Appointed Benchers		Decision
6	Law Society Feedback to Federation Consultation Report: National Suitability to Practise Standard	10	Mr. Petrisor / Mr. Walker	Tab 6	Introductory Discussion
PRESENTATIONS					
7	BC's Legal Profession: Now and Then	15	Mr. Whitcombe		Presentation
8	University of Victoria Faculty of Law Update	15	Dr. Jeremy Webber		Presentation
REPORTS					
9	Year-end Reports from the 2013 Advisory Committees	20	Mr. Maclagan Ms. Merrill Ms. Morellato Mr. Richmond	Tab 9	Briefing
10	Briefing by the Law Society's Member of the Federation Council	5	Gavin Hume, QC		Briefing
11	CEO's Report	15	CEO	*To be circulated electronically before the meeting*	Briefing
12	President's Report	15	President	Oral update on key issues	Briefing

The Law Society of British Columbia

Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
13	2012-2014 Strategic Plan Implementation Update	5	President/CEO	Tab 13	Briefing
14	Report on Outstanding Hearing & Review Reports	4	President	*To be circulated at the meeting*	Briefing
FOR INFORMATION ONLY					
15	• Memorandum from Mr. McIntosh: Procedure for Handling Bencher Mail • Federation President's Report to Law Societies (November 2013) • Access Probono Letter of Appreciation to the Law Society / Mr. Maclaren to Mr. McGee • Uniform Law Conference of Canada Letter of Appreciation to the Law Society / Ms. Bordeleau to Ms. Merrill • Memorandum from the 2013 Complainants' Review Committee			Tab 15.1 Tab 15.2 Tab 15.3 Tab 15.4 Tab 15.5	Information Information Information Information Information
IN CAMERA					
16	*In camera* • Other business • Bencher concerns	20	President/CEO Benchers		Discussion/ Decision

If current timing projections apply, this meeting will adjourn at 12:30 pm.

The Law Society of British Columbia

Minutes

Benchers

Date: Thursday, November 07, 2013

Present:

Art Vertlieb, QC, President
Jan Lindsay, QC 1st Vice-President
Ken Walker, QC 2nd Vice-President
Haydn Acheson
Kathryn Berge, QC
David Crossin, QC
Lynal Doerksen
Thomas Fellhauer
Leon Getz, QC
Miriam Kresivo, QC
Stacy Kuiack
Peter Lloyd, FCA
Bill Maclagan
Ben Meisner
Nancy Merrill
David Mossop, QC
Lee Ongman
Greg Petrisor
David Renwick, QC
Claude Richmond
Phil Riddell
Richard Stewart, QC
Herman Van Ommen, QC
Tony Wilson
Barry Zacharias

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

Excused:

Rita Andreone, QC
Satwinder Bains
Maria Morellato, QC
Thelma O'Grady
Vincent Orchard, QC

Staff Present:

Tim McGee
Deborah Armour
Barbara Buchanan
Lance Cooke
Robyn Crisanti
Margrett George
Ben Hadaway
Jeffrey Hoskins, QC
Andrea Hilland
Michael Lucas
Bill McIntosh
Jeanette McPhee
Doug Munro
Jack Olsen
Alan Treleaven
Adam Whitcombe

Guests:
Dom Bautista, Executive Director, Law Courts Centre
Johanne Blenkin, Chief Executive Officer, Courthouse Libraries BC
Grant Borbridge, QC, Chairman, Canadian Corporate Counsel Association
Kari Boyle, Executive Director, Mediate BC Society
Dr. Melina Buckely, Chair of the Canadian Bar Association's Envisioning Equal Justice Initiative and Access to Justice Committee
Maureen Cameron, Senior Director, Canadian Bar Association, BC Branch
Dean Crawford, President, Canadian Bar Association, BC Branch
Ron Friesen, CEO, Continuing Legal Education Society of BC
Gavin Hume, QC, Law Society Member of the Council of the Federation of Law Societies of Canada
Wendy King, BC Section Representative, Canadian Corporate Counsel Association
Derek LaCroix, QC, Executive Director, Lawyers Assistance Program
Jamie Maclaren, Executive Director, Access Pro Bono
MaryAnn Reinhardt, BC Paralegal Association
Wayne Robertson, QC, Executive Director, Law Foundation of BC
Alex Shorten, Vice-President, Canadian Bar Association, BC Branch
Dr. Jeremy Schmidt, Dean of Law, University of British Columbia
Heather Raven, Associate Dean of Academic and Student Relations, University of Victoria
Debra Whelan, BC Paralegal Association

CONSENT AGENDA

1. Minutes

a. Minutes

The minutes of the meeting held on September 27, 2013 were approved as circulated.

The *in camera* minutes of the meeting held on September 27, 2013 were approved as circulated.

b. Resolutions

The following resolutions were passed unanimously and by consent:

- 2014 Fee Schedules

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

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".

- Schedule 4 Tariff of Costs and Rule 4-20.1 Notice to Admit

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

- Rule 1-3(8), President Unable to Act

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.

- BC Code Rule 3.4-26.1

BE IT RESOLVED to amend the Rule 3.4-26.1 of the BC Code of Professional Conduct as follows:

3.4 Conflicts

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~~ 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.

REGULAR AGENDA – for Discussion and Decision

2. Enhancing Access to Legal Services and Justice

Mr. Vertlieb introduced Dr. Melina Buckley as Chair of the CBA Access to Justice Committee. Dr. Buckley addressed the Benchers, providing highlights of the Committee's summary report, *Reaching Equal Justice*: *an Invitation to Envision and Act* (page 81 of the agenda package). Dr. Buckley referred to page 14 of the report (page 99 of the agenda package) for a statement of the Committee's "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.

Dr. Buckley referred to a PowerPoint presentation during her remarks (attached as Appendix 1 to these minutes). She encouraged the Benchers to consider broadening the Law Society's approach to access to justice issues, while continuing the excellent work that is ongoing.

Mr. Maclagan addressed the Benchers as Chair of the Access to Legal Services Advisory Committee. Mr. Maclagan noted the strong overlap of the focus and priorities of the two Committees.

A Benchers' discussion followed.

Mr. Vertlieb thanked Dr. Buckley, Mr. Maclagan for their thoughtful remarks and discussion.

3. Ethics Committee Recommendation for Commentary to BC Code Rule 3.6-3

Mr. Crossin briefed the Benchers as Chair of the Ethics Committee. He outlined the review and consultation process undertaken by the Committee regarding the former-Commentary to BC

Code Rule 3.6-3, at the direction of the Benchers following their rescission of that commentary at the May 13 meeting. BC Code Rule 3.6-3 states:

> **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.

The rescinded Commentary provided:

> **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.

Mr. Crossin outlined six principles considered by the Ethics Committee to be desirable elements of a commentary (see the Committee's memorandum to the Benchers at page 190 of the agenda package). He then moved (seconded by Mr. Getz) the adoption of the Ethics Committee's recommended language for commentary [1] to BC Code Rule 3.6-3:

> **[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 inhouse 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.

Mr. Van Ommen proposed as a friendly amendment the replacement of the sentence "Such charges must be shown on the bill as "Other Charges."" with the following:

> Lawyers must make clear to a client the difference between third party disbursements and "Other Charges."

In the ensuing discussion concerns were expressed regarding the language of both the proposed commentary and the friendly amendment.

The Benchers agreed to refer the proposed commentary [1] to BC Code Rule 3.6-3 back to the Ethics Committee for further consideration.

GUEST PRESENTATIONS

4. Canadian Corporate Counsel Association Briefing

Mr. Vertlieb introduced Grant Borbridge, QC as Chair and Wendy King as a director and BC Section Representive of the Canadian Corporate Counsel Association (CCCA). Mr. Borbridge and Ms. King briefed the Benchers, referring to a PowerPoint presentation (Appendix 2) and a document (Appendix 3) outlining elements of a three-phase accreditation program, the completion of which will provide graduates with the designation of *Certified In-House Counsel.Canada (CIC.C)*. Mr. Borbridge described the purpose of the CCCA's training and certification program as enhancing the skill set of an already competent legal advisor to that of a strategic business advisor. He noted the CCAA's appreciation for the support provided by the Law Society of BC and other law societies.

Alex Shorten, QC provided additional comments as Vice-President of the Canadian Bar Association, BC Branch. He advised that about 1,000 BC lawyers currently work in an in-house counsel environment, and that about 600 of those lawyers are members of the CCCA.

Mr. Vertlieb requested the Lawyer Education Advisory Committee to consider the Continuing Professional Development concerns raised by Mr. Borbridge when the Committee next reviews CPD requirements.

REPORTS

5. Briefing by the Law Society's Member of the Federation Council

> Mr. Vertlieb invited Gavin Hume, QC to report, noting that at their September meeting, the Benchers elected Mr. Hume to serve a second three-term as the Law Society's Member of the Federation Council, effective November 15, 2013.

Mr. Hume briefed the Benchers on the Federation's recent Council meeting and Conference (October 17 – 19 in St. John's Newfoundland). He reported that the broad Conference theme was the fast-changing nature of the global legal profession, and consideration of related impacts on the regulation of lawyers and law firms.

Mr. Hume noted that the Conference opened with Mr. Whitcombe's presentation on the changing demographics of the legal profession – highlighting the dramatic rise of the large firm over the past 25 years. Discussion of regulatory implications of those changing demographics followed.

CBA National President Fred Headon and Mr. Vertlieb delivered presentations addressing the need for changes in legal regulation to respond to changing nature of the legal profession. University of Ottawa Law Professor Adam Dodek presented on the topic of the regulation of law firms and not just lawyers.

Highlights of the Council meeting were:

- Mid-term review of the Federation's current strategic plan
    - Confirmation of commitment to maintain focus on enhancing access to legal services, and to completion of current major initiatives
        - National Admissions Standards
        - National Discipline Standards
        - Model Code of Professional Conduct
- National Committee on Accreditation Update

Mr. Hume also reported on his recent attendance at a conference of the Canadian Association of Legal Ethics, noting that body's increasing focus on the teaching of ethics at law schools.

6. President's Report

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

a) Letter to the Honourable Suzanne Anton, QC, Minister of Justice and Attorney General of BC (Legal Aid Funding)

Mr. Vertlieb has written to the BC Minister of Justice and Attorney General: recognizing the provincial government's recent success in securing additional legal aid funding for the

balance of 2013; and confirming the Law Society's commitment to legal aid as a key element of its mandate to protect and promote the public interest in the administration of justice.

b) Kootenay Bar Association Meeting

Mr. Vertlieb and Mr. McGee attended the September 27 meeting of the Kootenay Bar Association, at which Kootenay Bencher Lynal Doerksen presented a Law Society update.

c) Thompson Rivers University Faculty of Law: Welcome to the First-Year Class

On October 31 Mr. Vertlieb delivered welcoming remarks on behalf of the Law Society to the first-year law students at Thompson Rivers University.

d) Federation of Law Societies of Canada Conference and Council Meeting

Mr. Vertlieb reported on highlights of the recent Federation Conference and Council meeting in St. John's, Newfound (October 17-19).

e) 2013 Life Benchers Dinner

Mr. Vertlieb thanked the Benchers who attended the November 6, 2013 Life Benchers Dinner. He noted that the Life Benchers greatly appreciate the effort made by current Benchers to attend annual events as the Commemorative Certificate Luncheon and the Life Benchers Dinner.

7. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (attached as Appendix 4 to these minutes) including the following matters:

- Introduction
- Third Quarter Financial Results
- Events and Conferences
  - 2013 International Institute of Law Association Chiefs (IILACE) Annual Conference
  - Fall Justice Summit
  - National Action Committee on Access to Justice Event

- Operational Updates
  - RRex Day – October 3, 2013
  - Inspired Lion Award
  - RRex Award
  - Employee Survey
  - Performance Reviews
  - United Way Campaign

8. Law Society Financial Report (September 30, 2013)

2013 Finance Committee Vice-Chair Ken Walker, QC provided highlights of the Law Society's finances for the first nine months of 2013, referring to page 195 of the meeting materials:

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. Practising 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%.

Ms. McPhee provided clarification regarding factors contributing to the projected positive variance of 2% for the General Fund for the balance of 2013.

9. 2012-2014 Strategic Plan Implementation Update

This update was put over to the next meeting.

10. Report on the Outstanding Hearing & Review Reports

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

11. Other Business

Communications Training for Benchers – Mr. Wilson inquired about the availability of communications training for Benchers. Mr. Whitcombe confirmed that one-on-one communications support and training is available for any Bencher upon request.

WKM

2013-11-22

reaching
equal justice

summaryreport

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

Our Approach: Identify Barriers to Progress

- Shortfalls in information
- Lack of political profile
- Too little coordination and collaboration on efforts
- No mechanisms to measure progress

Three Strategies

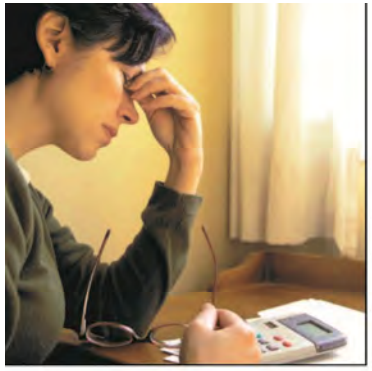
- Research and consultation
- New conversation about equal justice
- Enhanced national strategic coordination

Unequal Justice

What we know

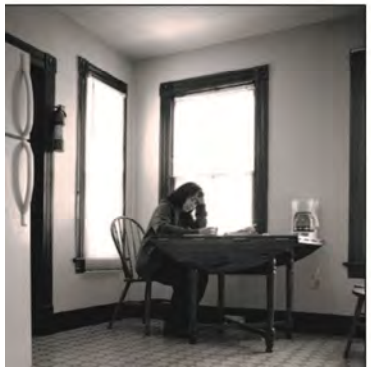
- Law thick world
- Unresolved problems multiply
- Unresolved problems spread to other areas
- Vulnerable groups hit hardest : 22% - 85 %
- Vulnerable groups may not seek help, distrust the system, see justice as for the rich
- Legal help leads to better outcomes

Everyone is Entitled to Justice










The Case for Change

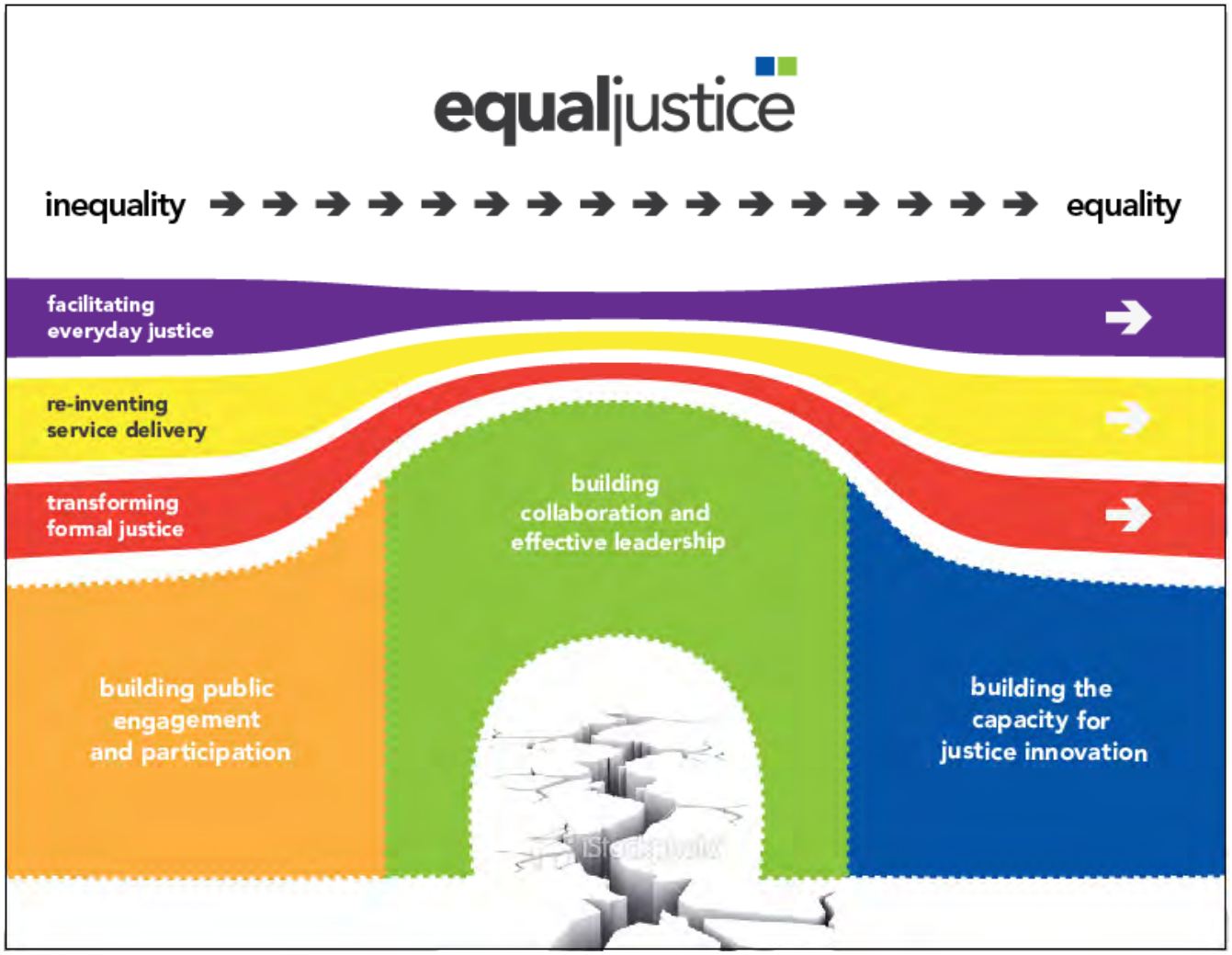
- Everyone has legal problems
- Relationship between courts and democracy
- Growth in poverty and social exclusion
- Costs of inaccessible justice
- Return on investment for legal aid spending
- Why tinkering isn't enough

Envisioning 2030

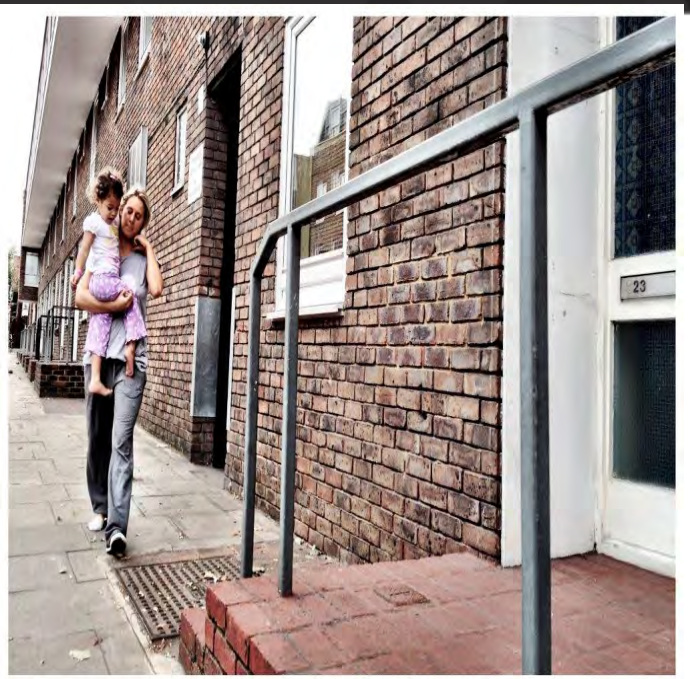
The Vision: Ambitious, but Possible

- People
- Participation
- Prevention
- Paths to justice
- Personalized
- Practices are evidence-based

A Bridge to Equal Justice



Strategy 3: Re-engineering legal services



- Limited scope retainers
- People-centred law practices
- Team delivery
- Legal expense insurance
- Regenerating legal aid
- Bridging public/private divide
- Law schools, legal education, law students

The simple truth: Justice has been devalued

An invitation to: think systemically, act locally

What will you do to contribute to equal justice?

CCCA and the Law Society of British Columbia

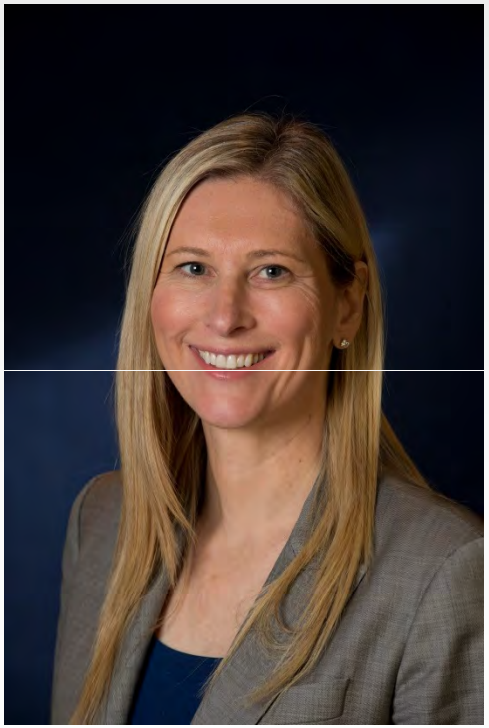
November 7, 2013

CCCA
ACCJE
Canadian Corporate Counsel Association
Association canadienne des conseillers (ères) juridiques d'entreprises

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

Presenters

Grant Borbridge, Q.C.



Wendy King

Membership

CCCA Regular Members are:

CBA Members who are engaged by, or providing legal services to, any business enterprise, association or institution, crown corporation, government board or agency, municipal corporation, not-for-profit organization, or regulatory board or agency.

CCCA ACCJE
Canadian Corporate Counsel Association
Association canadienne des conseillers (ères) juridiques d'entreprises

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

Demographics

- 4500 + members in every province and territory
  - Ontario is the largest with 1900
  - Alberta is the second largest and the fastest growing with 1025
  - British Columbia has 625 primarily in Vancouver
- 96 of the Top 100 Companies by Revenue as defined by the Globe and Mail are members of the CCCA
- Regular CCCA members are 51% women / 49% men
- 30% of our members come from the Public and MUSH sectors

CCCA ACCJE
Canadian Corporate Counsel Association
Association canadienne des conseillers (ères) juridiques d'entreprises

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

Key differences between In-house and Private Practice

- **There is only one client – the employer**
- **Core Competencies required differ from external counsel – based on research, clients expect in-house counsel to:**
  - **understand tactical business fundamentals and incorporate them into decision making (e.g., manages a budget well, builds a business case for decisions / actions, takes a market perspective, conducts risk / benefit analysis, etc.),**
  - **understand the environment in which they are providing services,**
  - **have the ability to think in strategic terms, and**
  - **take action which fits business strategy and environment**

Accreditation

- **Accreditation – the current accreditation criteria favours skills and knowledge required of private practitioners and excludes core competencies required and expected of in-house counsel**
  - **Example:**

PRACTICE MANAGEMENT

- **Content focusing on administration of a lawyer's workload and office, and on client-based administration, including how to start up and operate a law practice in a manner that applies sound and efficient law practice management methodology.**
- **(b) trust accounting requirements, including:**
- **(i) trust reporting;**
- **(ii) financial reporting for a law practice;**
- **(iii) interest income on trust accounts;**
- **(iv) working with a bookkeeper;**

LAWYERING SKILLS

but not

- **(a) general business leadership;**
- **(e) skills and knowledge primarily within the practice scope of other professions and disciplines.**

CCCA ACCJE
Canadian Corporate Counsel Association
Association canadienne des conseillers (ères) juridiques d'entreprises

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

Accreditation

- **Diversity: In-house counsel are often working within a very diverse environment, and as well, many are implementing policies to encourage diversity within the law firms they retain**
- **Current accreditation requirement does not reflect this as a skill in-house must have:**
  - **The following topics do not satisfy the practice management definition for CPD accreditation:**
    - **(h) business case for retention of lawyers and staff, including retention relating to gender, Aboriginal identity, cultural diversity, disability, or sexual orientation and gender identity**
    - **(i) handling interpersonal differences within your law firm**
    - **(j) cultural sensitivity in working with your law firm staff**

CCCA ACCJE
Canadian Corporate Counsel Association
Association canadienne des conseillers (ères) juridiques d'entreprises

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

Certified In-house Counsel.Canada

- Accelerate the career or enhance the skillset of someone who is already a competent legal advisor, to that of strategic business advisor
- Syllabus not based on substantive law
- 6 steps
    - 3 in person weekends at Rotman
    - 1 online course
    - 3 years minimum in-house experience
    - 1 in-person assessment (management meeting)

CICC Certified In-House Counsel • Canada

Rotman School of Management UNIVERSITY OF TORONTO

Thank You!

CCCA ACCJE
Canadian Corporate Counsel Association
Association canadienne des conseillers (ères) juridiques d'entreprises

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

› Learn today.
Lead tomorrow.

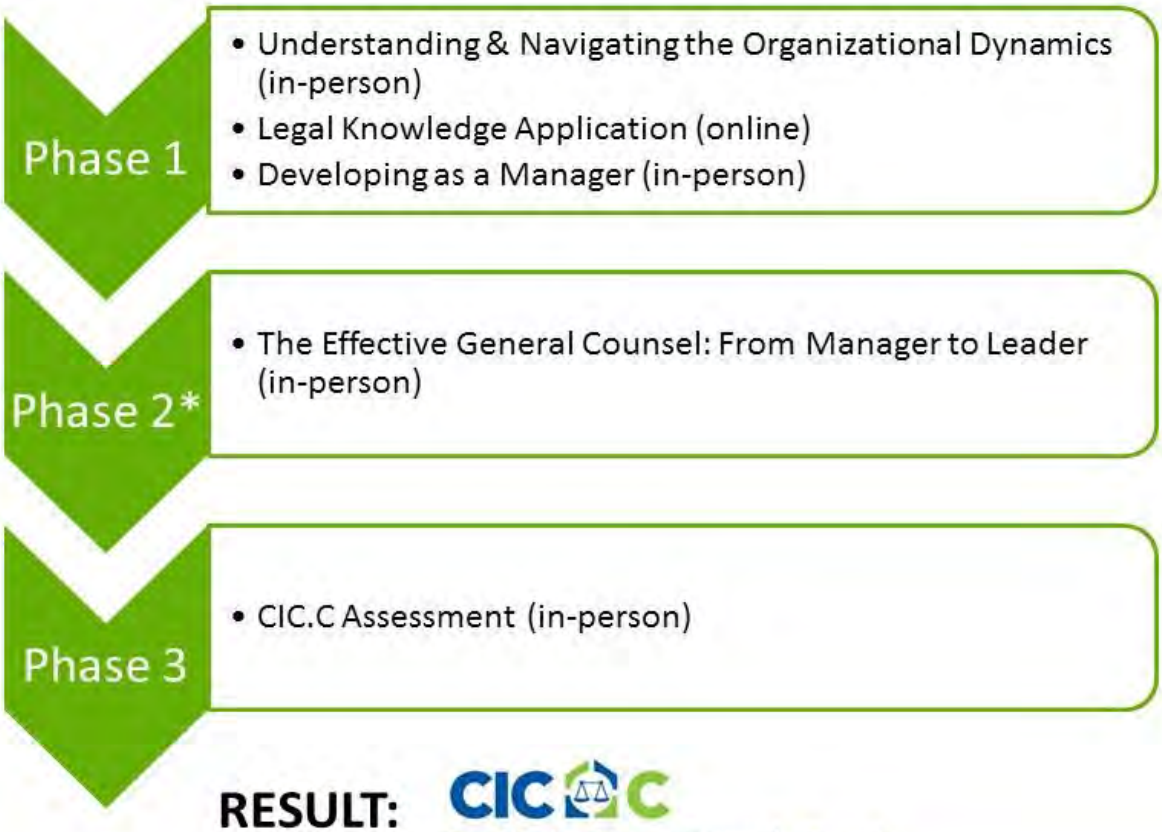
CIC C
Certified In-House Counsel • Canada

"Think like a lawyer, perform like an executive."

The **Canadian Corporate Counsel Association** (CCCA) and the **Rotman School of Management** have partnered to create the *Business Leadership Program for In-House Counsel*. The first program of its kind, successful completion of all three phases will provide graduates with the designation of *Certified In-House Counsel.Canada (CIC.C)*.

This program will develop and assess the skills, knowledge and attributes essential to be regarded as both strategic business partner *and* trusted legal advisor. Fulfilling the learning and competency needs required by in-house counsel who are looking to advance in their careers to a General Counsel position or to the executive level, this program provides graduates with a competitive edge.

Curriculum Design



* Experiential Requirement: 3 years in-house counsel experience
** Program applicants must be in good standing with a provincial Law Society and be a CBA/CCCA member in good standing in order to enroll in the program and to maintain the certification.

CCCA ACCJE
Canadian Corporate Counsel Association
Association canadienne des conseillers (ères) juridiques d'entreprises

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

Rotman School of Management
UNIVERSITY OF TORONTO

Learn today. Lead tomorrow.

CICC
Certified In-House Counsel • Canada

Who Should Apply?

- Mid-level in-house counsel who want to move to the next career level and require broader management and leadership development
- New to in-house counsel working in a small or large legal department and requiring external training and development
- Only Legal Officers (OLOs) who want to grow their management / leadership skills and enhance their executive team contribution
- In-house counsel serving as specialists within large legal departments, who desire broader and more varied skills development in management and leadership
- Senior Counsel who would like to move to the executive level
- External law firm lawyers who would like to move to an in-house role

Program Dates

Module 1: February 28 - March 2, 2014
Module 2: Self-paced (online)
Module 3: September 5 - 7, 2014
Module 4: January 30 - February 1, 2015

Cost

$9100.00 + applicable taxes split into 3 payments:

- $3640.00 + applicable taxes - due upon acceptance of application
- $3640.00 + applicable taxes - due on September 1st, 2014
- $1820.00 + applicable taxes - due on January 15th, 2015

Questions?

Contact certification@ccca-cba.org or learn more at www.ccca-accje.org.

Academic Partner

Learn more about our Academic Partner, the Rotman School of Management, at *www.rotmanexecutive.com*

Rotman School of Management
UNIVERSITY OF TORONTO

Application Process

To apply to be a part of the next *Certified In-House Counsel.Canada* cohort, please complete and submit the application form at **www.ccca-accje.org**. Enrollment is limited, so early application is strongly encouraged.

Learn today. Lead tomorrow.

CCCA ACCJE
Canadian Corporate Counsel Association
Association canadienne des conseillers (ères) juridiques d'entreprises

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

The Law Society of British Columbia

CEO's Report to Benchers

November 7, 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 any time.

Third Quarter Financial Results

The financial results for the third quarter ending September 30, 2013 have been provided to you as part of your Bencher agenda package. Jeanette McPhee, Chief Financial Officer, will be reviewing the highlights of those results with you at the Bencher meeting. Together with members of the Executive Team, I will be pleased to respond to any questions or comments which you may have.

Events and Conferences

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

Attached to this report as Appendix "A" is my report on the highlights of the 2013 IILACE Annual Conference which I recently attended in Berlin. I would be pleased to provide additional information or answer any questions you might have about the conference at any time.

Fall Justice Summit

The second Justice Summit will be held from November 8 – 9, 2013 at Allard Hall, University of British Columbia and will bring together approximately 80 participants from stakeholders in the justice system. The Summit will focus on goals and objectives for the criminal justice system, and in particular, the goals of fairness, protection, sustainability, and public confidence. The participants will examine each of those goals and objectives against the desired vision for the justice system, and will examine what needs to be done in each area to move from where we are to where we want to be. The Law Society will be represented at the Summit by First Vice-President Jan Lindsay, QC, Second-Vice President, Ken Walker, QC, who will be on the panel discussing "public confidence" and Michael Lucas. Once again, I will be acting as the Moderator of the Summit for both days.

National Action Committee on Access to Justice Event

The Ministry of Justice and the Law Society will be co-hosting an event at the Law Society on November 19, 2013, at which Mr. Justice Cromwell of the Supreme Court of Canada will speak to key stakeholders in the justice community about the recent report of the National Action Committee on Access to Justice in Civil and Family Matters. Participants will also reflect on British Columbia-specific considerations concerning access to justice in light of the presentations and findings in the Action Committee's report. The event will also be used as a starting point for considerations about issues relating to the justice system to be discussed at the third Justice Summit scheduled for Spring 2014, which will focus on administrative, civil, and family justice systems. President Art Vertlieb, QC, First Vice-President Jan Lindsay, QC, Second Vice-President Ken Walker, QC, David Crossin, QC, Bill Maclagan, Michael Lucas and I will be attending the November 19 event on behalf of the Law Society.

Operational Updates

RRex Day – October 3, 2013

Our first annual RRex (Rewards and Recognition Program) Day to recognize and celebrate the accomplishments and contributions of Law Society staff was a great success. The highlight of the day was the RRex Day Luncheon and Awards ceremony held at Sutton Place Hotel, where more than 150 employees turned out to celebrate our 2013 RRex Award winners. We had a very strong pool of nominations for each of the awards categories and the nine member Selection Committee made up of staff from across the organization had a difficult task.

This year's award winners were:

Inspired Lion Award
This award, recognizing an individual or team who significantly improved operational or financial efficiency, was awarded to the 22 members of the Trust Regulation Group, for successful completion of the first six-year cycle of the trust assurance program.

RRex Award
This award recognizes a non-management team or individual who has demonstrated a commitment to excellence. The 2013 Selection Committee decided to award two RRex awards this year in recognition of the large number of excellent nominations received:

- Kurt Wedel, Staff Lawyer, Investigations, Monitoring & Enforcement, for his work on developing policies for regulatory changes implemented by the Law Society over the past two years.

- Pam Scheller and Geoff Howes, Credentials Officers, shared the second award, which recognized their exemplary teamwork, ensuring that applicants are handled with efficiency, fairness and empathy.

Thank you to the Selection Committee and our Human Resources team for making RRex Day such a great success.

Employee Survey

Our annual employee survey is currently underway. The survey is a key tool to measure employee engagement and to help management identify areas for improvement. As in past years, the survey results will be made available to the Benchers once compiled. Ryan Williams, President of TWI Surveys Inc., the survey administrators, will be at the January Bencher meeting to provide an overview of the results, and to respond to any questions or comments which you may have.

Performance Reviews

In keeping with our annual plan for staff review and assessment, I am pleased to report that the majority of our staff have now completed a detailed 2013 year end performance review with their managers. The reviews are an opportunity to discuss performance, personal development, future goals and working relationships, and are intended to compliment continuous, timely and meaningful feedback offered throughout the year.

United Way Campaign

This year's United Way Campaign (lead by Leanne Brown, Paralegal, Investigations and Discipline, and a dedicated team of staff volunteers) was a tremendous success. The campaign included a number of fundraising activities including a pancake breakfast, coin-drive, online bingo, silent auction and balloon pop. Thanks to the organizing efforts of the campaign team and the enthusiastic participation of staff, we exceeded our campaign goal by more than $5,000. The United Way regularly recognizes the Law Society for its outstanding commitment to the annual giving campaign.

Appendix "A"

International Institute of Law Association Chief Executives - 2013 Annual Conference – Berlin

Conference Highlights

Delegates and Program

This year's conference held in Berlin from September 16 – 19, 2013 brought together the Chief Executive Officers of law regulatory and representative bodies from over 20 countries including Canada, USA, England, Ireland, Scotland, Australia, New Zealand, Germany, Norway, Sweden, Denmark, Africa, Hong Kong, Korea and Japan. In all there were over 45 delegates to the conference who collectively regulate and/or represent approximately 1.6 million lawyers around the world.

The stated purpose of IILACE is 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 operational and governance matters. Once again the conference program delivered on this goal. I have set out below highlights from four of the topics covered in the program. I would be pleased to expand on these topics or discuss the remainder of the program at your convenience.

Who and What Should Regulators Regulate?

This was the lead off topic for the conference and was introduced as follows:

> ***Until recently, the world for regulators looked clearly arranged: They regulated, supervised and disciplined lawyers. With the appearance of new participants in the profession, with a development towards more professionally led and bigger law firms, and towards a variety of multi-disciplinary partnerships, one has to wonder if this traditional system is still up to date. Shouldn't regulators also take care of limited license legal practitioners? Shouldn't they supervise law firms rather than individual lawyers? (How) Can they regulate ABSs? What are the consequences for representative organizations?***

To set up the discussion we heard from the CEOs of the Washington State Bar, the Law Society of Upper Canada and the Law Society of England and Wales. In Washington State the Supreme Court has established a regime for non-lawyer legal service providers called "limited license legal technicians" or "3LTs". As we know well, Ontario

has a full accreditation, regulatory and governance regime established for paralegals. In England and Wales there are now over 196 licensed ABSs among which are organizations combining legal services with accountancy, financial planning, home care, and even home renovation and construction.

What I found most interesting about the ensuing discussion was that each of these developments (i.e. 3LTs in Washington, paralegal regulation in Ontario, and ABSs in England and Wales) shared one thing in common – each of them was introduced, at least in part, to enhance access to more affordable legal services. While there were additional rationales for each one, the basic public policy foundation for each was enhanced access.

In comparing and contrasting how each of Washington State, Ontario and England and Wales arrived at these developments, Des Hudson, CEO of the Law Society of England and Wales, used a fishing analogy. He said: ***"Paula (CEO of the Washington State Bar) tested her line, chose the right weight and carefully cast off the dock to find a specific type of fish. Rob (CEO of Law Society of Upper Canada) went trolling with multiple lines, flashers and baited hooks. The Solicitor's Regulatory Authority in England and Wales threw dynamite off the shore and waited for the dead fish to float to the surface."***

His point was that local circumstances will most likely determine the nature and extent of the regulatory response to the access to justice issue. He emphasized what many in the audience confirmed and that is that there is no silver bullet and there is no standard response. The consensus seemed to be that it was best for regulators to do what they can within their sphere of influence and authority but also to challenge current assumptions regarding those boundaries and to be proactive.

It was acknowledged that Washington State and Ontario were involved in testing assumptions and approaching enhanced access through expanding the supply and scope of practice of non-lawyers. England and Wales, on the other hand, was involved in a more fundamental business proposition based on the assumption that ABSs ***"…can create radically different cost structures and through that change make a transformational jump in the pricing of legal services."***

There was a strong sense at the end of the discussions that regulators should be pursuing three priorities in the public interest; facilitating and encouraging the entrance of new legal service providers together with a appropriate new regulatory framework, establishing entity based regulation which recognizes the public interest issues without unnecessarily constraining new business models, and consulting and talking more with the profession about these priorities.

Is The First Day in Law School the First Day in the Profession? – International Trends in Training and Admission

This topic was introduced at the conference as follows.

> ***What knowledge and skills does a new member of the bar need to have when starting the profession? What roles do bar associations and law societies play in onboarding new members of the profession?***

This was a highly relevant topic for the Canadian contingent given our ongoing work through the Federation of establishing a national admissions standard. What soon became apparent was that many jurisdictions are making this a priority as well. The single biggest issue for everyone and the focus of major initiatives in many countries is the lack of practical skills training at entry level. This point was reiterated almost as frequently as the need for but lack of effective "ongoing" quality and competency assurance for lawyers as they progress through their careers. This latter point was referred to by some as the lawyers' "flight simulator" in reference to the requirement for commercial pilots to regularly refresh aspects of their accreditation.

Perhaps most striking was the presentation and commentary offered by Joe Dunn, CEO of the California State Bar. There are more than 240,000 licensed lawyers in California. Beginning in the early seventies California introduced a mandatory state bar exam in response to widespread negative publicity concerning lawyers and their involvement in the Watergate scandals. Today California administers an exam taken by over 15,000 candidates every year. The exam lasts 3 days and covers 13 topics, although not all topics are tested on each exam. There is one practical skills question. The California State Bar is the hardest of all state entrance exams both because of the extent of the content and because the pass rate is set higher than any other state. After outlining this approach Joe concluded: "After four years of college, three years of law school and the toughest bar exam in America, there is no question that most entry level lawyers in California are not ready to practice law".

The reason for this was the widespread view that law graduates had virtually no practical skills competency. Because the ABA was not moving to require its approved law schools to address the skills training deficiency the regulator stepped in. A task force studied the issue for a year and a half and reached agreement that the regulators would require graduating students to have 250 hours of experiential learning, which must be done in the second and third year of law school. In addition graduates must do 50 hours of pro bono work during their law school years. An implementation strategy will be worked out in 2014 and the new regime will become effective in 2015. Existing law students will be grandfathered.

A good discussion ensued regarding the reluctance of law schools to move away from an academic focus to incorporate an emphasis on practical training. Joe Dunn was clear about the situation in California, namely if the regulators hadn't insisted upon it the legal academy would not have done it. One expected benefit of this new regime is that clinical/adjunct professors will no longer be treated as second class members of the teaching faculty.

As for other jurisdictions, we learned, for example, that Zimbabwe requires law students to do extensive practical training in second year, including working with court officials and attending in court with lawyers under the auspices of the law school. The students must receive teaching and training in accounting, office management and other technical skills, which are taught by the Law Society, and are required to get insurance. In contrast, the German law regulators have no practical skill requirements for law grads and this gap is being filled in part by the bar associations, which offer voluntary practical training curricula.

If it's Legal – is it Ethical – and Should Lawyers be Doing It?

This topic was introduced at the conference as follows:

> ***Tax planning, financial services: where do we draw the line if we are to retain or improve our image in the public perception and the press?***

I moderated a panel discussion on this topic and a very lively plenary discussion which ensued. We considered two famous international case studies involving ethical and professional responsibility for lawyers.

The first was the largest tax evasion case in Norwegian history, which is expected to conclude in 2014. The essence of the case is that tax advisors (including two of Norway's preeminent tax counsel) for Houston- based oil rig firm Transocean must have known they were misleading tax authorities. The facts, greatly simplified, are that Transocean manoeuvred an oil rig just outside Norwegian waters, completed the steps for its sale, and returned the rig to Norwegian waters all without informing Norwegian tax authorities about the sale. As a result of these steps, authorities allege Transocean avoided paying approximately USD$2B in Norwegian tax. Norway's white collar crime unit has charged Transocean, two of their Norwegian lawyers and a tax adviser claiming they knew what they were doing in neglecting to inform the Norwegian authorities of the plan in advance.

The second case involved a USD$200M lawsuit filed in England against a Dutch-based oil and commodity shipping company called Trafigura and its lawyers for causing death

and injuries to thousands of residents of the Ivory Coast. The very simplified facts were that a freighter under contract to Trafigura arrived in Amsterdam to unload waste cargo. The Dutch authorities advised that due to the toxicity of the cargo, under Dutch law Trafigura would have to remediate the cargo before it could be offloaded. Instead of doing that, Trafigura redirected the ship to Abidjan, a port in the Ivory Coast where no such toxicity regulations existed. In the weeks following the unloading of the cargo in Abidjan 17 locals died, dozens fell severely ill and tens of thousands required medical treatment. This was all linked to the toxic cargo which had been rerouted from its original destination.

This was a great topic to facilitate and moderate because these two cases raised so many critical ethical and professional responsibility issues for lawyers. The fact that in each case lawyers and law firms were specifically sued for their actions and involvement at various levels made the fact patterns that much more powerful. The discussion was wide ranging and touched on the key issues of a lawyer's duty to his client, to the state and to the public as well as the concept of implied liability of advisers for the dishonest, criminal or fraudulent actions of their clients.

In the context of the Transocean case we also heard about the (then) upcoming report of the International Bar Association's Human Rights Institute entitled ***Tax Abuses, Poverty and Human Rights***. This report highlights the rising importance of tax planning as matter of corporate responsibility and business ethics, and the reputational risks that have now become associated with alleged tax abuses. The role of the lawyer and in particular the tax lawyer in this arena is very much front and center in the discussion. Our own Bill Maclagan has recently highlighted for me the difficult and complex issues arising for corporate tax practitioners as covered in the IBA's recent report.

This session was scheduled for 45 minutes on the conference program and by unanimous agreement we extended it to almost 2 hours. I would be happy to expand my report on these discussions at any time

Coping with Stress – Individual Resilience and Resilient Organizations

This is a standing topic for IILACE annual conferences and typically engages many in the conversation. One of the reasons for this is that statistics around the world reveal that lawyers are one of the least "resilient" of all categories of professionals. Resilient in this context means having the natural or innate ability to deal with the level of stress and demands imposed by their work. As a result, both for the benefit of IILACE delegates personally and for a better understanding of lawyers generally we continually refresh our awareness of the issues on this topic.

The main take away for me from this year's discussion were the factors which we heard make for a highly resilient person. Top of the list was having a sense of self awareness and self acceptance, knowing your strengths and weaknesses and taking those into account every day. Having a sense of perspective on what is happening to you and around you were also an important feature of resiliency. Not pursuing a command and control approach but encouraging consensus will strengthen personal resiliency. Finally, finding time for yourself and learning from your failures and the ability to "move on" from your setbacks is a significant stress reliever.

The session also included two stories, one amusing and one tragic, that gave us food for thought. The amusing story goes like this: "Two lawyers bring sandwiches into a restaurant. The waitress says you can't eat your sandwiches here. The lawyers look at each other...and they swap their sandwiches." The point was that lawyers are often linear thinkers and this doesn't always fit well into a world which we can't always influence or control and this can cause stress for many.

The tragic story was that of lawyer David Latham, a world renowned trademark lawyer and partner at a top law firm in London, England. Latham had trouble sleeping for weeks and he seemed inconsolable as he worried about the fate of a big case. His client had taken the stand and introduced evidence that wasn't in the main affidavit and Latham had to subsequently rewrite the affidavit and resubmit it to court. This apparently greatly upset him. After having dinner with his wife at Claridges Hotel on Valentine's Day he said he was returning to the office to work and instead stepped in front of a tube train killing himself.

The tragic case revealed a number of things on which we reflected including that Latham had told a fellow partner he was going to kill himself the day before but his action had been dismissed as a "flippant comment" because lawyers "often have to tough things out". In fact, Latham was very stressed out because as best as can be determined he wasn't able to keep a proper perspective on the amended affidavit incident or rely on his self confidence to pull him through and "move on".

We were referred to several publications and books which are all designed to help executives and lawyers cope with stress. I would be happy to provide those titles at any time.

IILACE Executive

IILACE operates under an organizational charter which restricts membership to those who are the chief executives of law regulatory or law association organizations around the world. The executive of IILACE is comprised of an Executive Committee of seven

elected from the membership. The officer positions of IILACE are President, Vice President and Secretary Treasurer; these positions are also elected by the membership and constitute a “ladder”. The President serves a two year term. I am currently the Vice President of IILACE and the 2013 AGM confirmed that I will assume the position of President in November of 2014.

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

The Law Society of British Columbia

Memo

To: Benchers
From: Appointments Subcommittee and Executive Committee
Date: November 27, 2013
Subject: Law Society Appointment to Legal Services Society Board of Directors

Legal Services Society Board of Directors

Body	**Governing Statute/Other Authority**	**Law Society Appointing Authority**	**Law Society Appointee/ Nominee Profiles**
Legal Services Society ("LSS") Board of Directors	*Legal Services Society Act* (the Act) S. 4(3) of the Act	Law Society Benchers, after consultation with CBABC Executive Committee	4 individuals, as directors
Current Appointees	**Term of Office**	**Date First Appointed**	**Appointment Expiry Date**
Thomas Christensen	2 years, maximum of 3 terms	9/7/2009	9/6/2015
David Crossin, QC	2 years, maximum of 3 terms	9/7/2007	9/6/2013
Deanna Ludowicz	3 years, maximum of 2 terms	1/1/2009	12/31/2014
Suzette Narbonne	3 years, maximum of 2 terms	5/1/2011	4/30/2014

a. Background

Mr. Crossin's current (and final) term as a LSS director was extended by the Executive Committee at their September 12 meeting, at the request of the Legal Services Society. The purpose of the extension was to permit the recruitment of a number of strong and suitable candidates, from whom the Benchers were to be asked to choose Mr. Crossin's

replacement on the LSS Board of Directors later in the year (upon consultation with the executive of the CBABC).

For information on Law Society appointments to the LSS Board of Directors, see pages 66 - 72 of the Law Society Appointments Guidebook (download from www.lawsociety.bc.ca/Volunteers and Appointments/Appointments.

For reasons explained below, the Appointments Subcommittee and the Executive Committee recommend that, upon consultation with the CBABC Executive Committee, the Benchers appoint Alison MacPhail to the Board of Directors of the Legal Services Society for a three-year term effective January 1, 2014.

b. Candidates

The Appointments Subcommittee considered four candidates, all of whom have confirmed their readiness to serve as LSS directors for a three-year term, if appointed.[1]:

- Claire Hatcher (Curriculum Vitae attached)
- Alison MacPhail (Resume attached)
- Donna Turko (Resume attached)
- Robyn Wishart (Curriculum Vitae attached)

c. Assessment Considerations

i. LSS's Competency Matrix and Identified Directorship Needs

LSS Chief Executive Officer Mark Benton, QC's letter to Mr. McGee dated November 14, 2013 refers to the competency matrix used by LSS to address board vacancies, and describes the qualities sought by LSS for Mr. Crossin's replacement on their board:

> [I]n this case we are looking for a seasoned member of the bar to replace Mr. Crossin, ideally with a similar network and leadership stature in the justice system as Mr. Crossin and whose practice does not include so much legal aid work that it would create a material conflict of interest at the board table.

[1] Claire Ducluzeau, Camran Monsef and Anne Giardini, QC were considered by the Subcommittee in August 2013. Ms. Giardini was selected as the Subcommittee's recommendation, but she subsequently withdrew her candidacy, citing 2014 workload issues and board meeting scheduling conflicts.

Mr. Benton's November 14 letter also outlines LSS Board Chair Tom Christensen's view of Ms. MacPhail as a board prospect:

> Mr. Christensen feels that this prospect would be a substantial asset to the LSS board. She was called to the bar in Ontario and has more than 30 years' experience with justice issues. Her background includes teaching at the university level, policy development within the federal government, senior leadership roles in both the Ministry of the Attorney General and the Ministry of Children and Families in BC, senior roles in criminal justice reform both inside and outside government, and direct involvement in both the Cowper Report and the National Action Committee working group report on access to legal services.

ii. Conflicts of Interest Issues

LSS's Conflict of Interest By-Law includes the following provision:

> 8.5.1 Up to three directors who, individually as lawyers or through their firms, receive significant financial remuneration from the society may participate in the discussion and vote on all issues before the board, ***except those that directly and materially affect that remuneration***. (emphasis added)

Ms. MacPhail and Ms. Wishart have confirmed that they and their firms do not do legal aid tariff work. Ms. Turko has confirmed that about 50% of her current practice is legal aid tariff work. Ms. Hatcher practises as a sole practitioner and has confirmed that between 10 and 20% of her practice in the past year was legal aid tariff work.

LSS management expects legal aid tariff and funding issues to arise at all or nearly all LSS Board of Directors meetings in 2014.

iii. *Legal Services Society Act* Criteria for Law Society Appointments

The Law Society's authority and responsibility for making appointments to the LSS Board of Directors are framed by ss. 4(3) and ss. 4(5) of the *Legal Services Society Act* (the LSS Act):

> LSS Act, ss. 4(3): Four directors are to be appointed by the Law Society of BC after consultation with the executive of the British Columbia branch of the Canadian Bar Association.

LSS Act, ss. 4(5): For the purposes of subsections (2) and (3), the Attorney General and the law society must make the recommendations or appointments, as the case may be, that they consider will provide to the board as a whole knowledge, skills and experience in the following areas:

(a) business, management and financial matters of public and private sector organizations;

(b) law and the operation of courts, tribunals and alternate dispute resolution processes;

(c) the provision of legal aid;

(d) the cultural and geographic diversity of British Columbia;

(e) the social and economic circumstances associated with the special legal needs of low income individuals.

v. Recommendation

While all four candidates are worthy, the Appointments Subcommittee and the Executive Committee agree that Alison MacPhail is a truly exceptional prospective LSS director. Her wide-ranging qualifications and experience encompass all five considerations set out in ss. 4(5) of the LSS Act.

We recommend that, upon consultation with the CBABC Executive Committee, the Benchers appoint Alison MacPhail to the Board of Directors of the Legal Services Society for a three-year term effective January 1, 2014.

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

Legal Services Society

Providing legal aid in British Columbia since 1979

Suite 400
510 Burrard Street
Vancouver, BC V6C 3A8

Tel: (604) 601-6000
Fax: (604) 682-0914
www.lss.bc.ca

Office of the Chief Executive Officer

November 14, 2013

Mr. Tim McGee
Chief Executive Officer
THE LAW SOCIETY OF BRITISH COLUMBIA
845 Cambie Street
Vancouver, BC V6B 4Z9

Dear Mr. McGee,

Re: Appointment to the Legal Services Society ("LSS") board of directors to succeed David Crossin, QC

I write further to our several conversations about possible Law Society of BC appointments to succeed David Crossin, QC, on the LSS Board of Directors. As you know LSS is continuing to seek out candidates for the Law Society's consideration. In that process the support and assistance of Law Society staff and the encouragement of the President have been particularly valuable.

As you may recall LSS uses a competency matrix approach to address Board vacancies. In this case we are looking for a seasoned member of the bar to replace Mr. Crossin, ideally someone with a similar network and leadership stature in the justice system as Mr. Crossin and whose practice does not include so much legal aid work that it would create a material conflict of interest at the board table.

Following our last conversation I met with LSS board Chair Tom Christensen and reviewed our most recent prospect. Mr. Christensen feels that this prospect would be a substantial asset to the LSS board. She was called to the bar in Ontario and has more than 30 years' experience with justice issues. Her background includes teaching at the university level, policy development within the federal government, senior leadership roles in both the Ministry of the Attorney General and the Ministry of Children and Families in BC, senior roles in criminal justice reform both inside and outside government, and direct involvement in both the Cowper Report and the National Action Committee working group report on access to legal services.

Our own process involves the LSS Board Executive members reviewing applications before a recommendation is made to you. We can typically address this within a few days. In the interim we are waiting to hear further from this prospective candidate to answer any final question she might have about the role of an LSS board member. In any event, our Board Executive members will be meeting on Friday, November 29 to discuss our board succession planning in some detail and may be considering further prospects at that time. Further recommendations would not be available until early December.

LSS recognizes that the decision on appointments to the LSS board rests with the Law Society in consultation with the Canadian Bar Association of BC. If there is further detail that we could provide at this time that would be of assistance to your decision I trust that you will let me know. We continue to be grateful for the on-going support of the Law Society.

Yours truly,

Mark Benton, QC
Chief Executive Officer

Cc: Tom Christensen, Chair – LSS Board of Directors
Bill McIntosh, Manager, Executive Support, The Law Society of BC

COMPETENCY CRITERIA

Board Members	B. Brink	T. Christensen	D. Crossin	S. Lee	D. Ludowicz	A. McPhee	S. Narbonne	P. Sandhar	D. Wickstrom
(end of term)	(Aug 2015)	(Sep 2013)	(Sep 2013)	(Sep 2015)	(Dec 2014)	(June 2015)	(April 2014)	(July 2015)	(Aug 2015)
Knowledge of the social and economic circumstances associated with the special legal needs of low income individuals (e.g. work/life experience that has exposed board members to the special needs of low-income individuals)									
Organizational Leadership expertise (e.g. Work experience as CEO/Senior Manager)									
Financial expertise (e.g. hold a financial designation preferably with CFO experience)									
Respected member of the legal profession (e.g. recognized as a leader or prominent member of the legal profession)									
Knowledge of government decision-making process (e.g. significant work experience with senior government decision-makers)									
Knowledge of justice system operations (e.g. in-depth knowledge of one or more areas of the justice system; exposure to or knowledge of conflict resolution alternative)									
Leadership experience in Aboriginal communities (e.g. significant experience in leading an Aboriginal organization or agency)									
Experience with provision of legal aid (e.g. delivery of legal aid services)									
Work/Life experience involving exposure to cultural diversity of BC (e.g. knowledge of how the Aboriginal, cultural and geographic diversity of BC affects delivery of legal aid)									

Please note Tom Christensen, David Crossin, Deanna Ludowicz and Suzette Narbonne are Law Society (in consultation with the CBA) appointment

By-Laws of the Legal Services Society

Being the Board Governance By-Laws of the Legal Services Society

General By-Laws

1.0 Definitions and Interpretation

1.1 In these by-laws:

(a) "society" means the Legal Services Society;

(b) "act" means the *Legal Services Society Act*, as enacted and amended from time to time;

(c) "directors," "board," or "board of directors" means those persons appointed directors in accordance with the act who have not ceased to be directors;

(d) "Executive Director" means the person appointed by the Board of Directors as the Chief Executive Officer ("CEO") of the society pursuant to section 6 of the *Legal Services Society Act*, wherever "Chief Executive Officer" or ""CEO" is used in these by-laws, it refers to the Executive Director.

(e) "extraordinary resolution" means a resolution of which at least fourteen days notice has been given to the directors and that requires a two-thirds majority of the directors present to pass;

(f) "fiscal year" means the period from April 1 to March 31;

(g) "independent director" means a board member who is independent of management and is free from any interest that could, or could reasonably be perceived to, materially interfere with the director acting in the best interest of the society; and

(h) "MOU" means the agreement entered into pursuant to s. 21 of the act.

1.2 All words or expressions in these by-laws that are defined in the act on the date these by-laws became effective shall have the meaning given to them in the act.

1.3 Words importing the singular include the plural and vice versa; words importing the male person include the female person (or a firm or other association) and vice versa.

1.4 Where these by-laws require written or other notice to be given, such notice may be delivered to a director by electronic mail to the electronic mail address last provided by the director to the society.

8.0 Conflict of Interest By-Law

Being the conflict of interest policy for directors of
Legal Services Society

8.1 Principles

The Legal Services Society ("the society") has a policy for avoiding a conflict of interest or the appearance of a conflict of interest on the part of the society's directors in the fulfillment of their duties.

A director owes a fundamental duty of loyalty to the society. This duty requires directors at all times to act honestly, in good faith, and in the society's best interests. Directors must uphold the highest ethical standards in order to maintain and enhance public confidence and trust in the society's integrity, objectivity, and impartiality.

The society also recognizes that it is to the great benefit of the society and the low-income individuals it is mandated to serve to have as directors, lawyers who make legal aid a part of their practice, and who consequently have particular knowledge and experience in the provision of legal aid. For this reason, the society does not want to preclude lawyers from being directors just because they, or their firms, do a significant amount of legal aid work. At the same time, the society recognizes that if too many directors are receiving remuneration from the society, the board may not have, or may be perceived not to have, the necessary focus on the clients' interests.

Balancing these concerns, the society has a policy that tolerates a conflict of interest in restricted circumstances, to the extent of allowing participation in board decision-making of up to two directors who, as individual lawyers, or through their firms, receive significant financial remuneration from the society. Any question as to the meaning of "significant financial remuneration" will be decided by the society's board.

8.2 Conflict of Interest Defined

8.2.1 A director of the society is in a conflict of interest when the existence of a personal interest, or the interest of a close friend, family member, business associate, employer, or person to whom the director owes an obligation could influence his decisions and impair his ability to act in the society's best interests, or interfere with the director's ability to discharge fairly, impartially, and without bias those duties owed to the society and to the public. These conflicts include financial or other interests, and are not limited to situations where a director could personally benefit as a result of a decision by the board.

8.2.2 Conflict of interest includes a perceived conflict of interest. A director has a perceived conflict of interest when a person could have a reasonable perception that the director is making decisions on behalf of the society that promote his personal interests or those of a person listed in paragraph 8.2.1, above.

8.2.3 For the purposes of this policy, the term "family member" includes a director's spouse (including common-law and same-sex spouses), parent, grandparent, child, or sibling, or the spouse of any of these relatives.

8.3 Disclosure

If a director becomes aware that he has or might be perceived to have a conflict of interest with respect to a matter to be considered by the board, the director must provide notice to the chair of the conflict or possible conflict and must announce it to the board whenever the matter giving rise to the conflict is to be considered.

8.4 Process

8.4.1 When a director discloses a conflict of interest or a possible conflict of interest with respect to a matter before the board, the director disclosing the conflict may request the board to determine whether a conflict exists and whether the director should withdraw from the meeting room while the matter is discussed or voted on. The director who has disclosed the conflict of interest must withdraw from the meeting room while the board makes this determination.

8.4.2 Except as provided for in paragraph 8.5.1, or when authorized to participate by the board, a director who announces a conflict of interest with respect to a matter before the board, or is determined by the board to have a conflict of interest under paragraph 8.4.1, must withdraw from the meeting room while the discussion and vote on the matter take place.

8.4.3 A withdrawal from the meeting room as contemplated by this policy is deemed not to affect the presence of a quorum at that meeting.

8.5 Tolerating a Conflict of Interest

8.5.1 Up to three directors who, individually as lawyers or through their firms, receive significant financial remuneration from the society may participate in the discussion and vote on all issues before the board, except those that directly and materially affect that remuneration.

8.5.2 Except as provided for in paragraph 8.5.1, the board will only authorize a director who has a conflict of interest to participate in the discussion and vote in the following circumstances:

(a) when the conflict provides minimal or no benefit to the director; or

(b) when the benefit to the society is such that the conflict should be tolerated.

8.6 Recording Conflicts of Interest

The minutes of the meeting will record:

(a) the notice given by a director of the existence of a conflict of interest or possible conflict of interest;

(b) the withdrawal from the meeting room of a director during the discussion or vote on a matter;

(c) the board's determination if one is made under Article 8.5; and

(d) the reasons for tolerating the conflict of interest if the board decides to authorize participation in the discussion or vote on a matter in relation to which a director has a conflict of interest.

Law Society of BC Appointments Policy

(approved by the Benchers on October 21, 2011)

Objective

The objective of the Law Society in making appointments or nominations to boards, councils or committees of outside bodies is to ensure that well-qualified persons with the requisite character, knowledge, expertise, willingness and ability to undertake the responsibilities of the position are appointed. The Law Society recognizes that each of its appointees has a duty to serve the best interests of the body to which he or she is appointed, keeping in mind the protection of the public interest in the administration of justice.

Term of office

A Law Society appointment to any position will normally be for a term not exceeding three years, and a total period not exceeding six years, provided that other considerations relating to the particular appointment may result in a shortening or lengthening of this period. An initial appointment to a position does not carry with it an expectation of automatic reappointment.

Benchers or non-Benchers

A Bencher should be appointed to an outside body only if that body's legislation or by-laws require that the Law Society appointee be a Bencher. In all other cases there should be a presumption against appointing Benchers to outside bodies. An example of a circumstance that might rebut that presumption is a Law Society appointment to a newly created body, where it might be desirable to appoint a Bencher for the first one or two terms, or until the body's procedures are well established.

Consultation

Canadian Bar Association

- It is generally desirable that a consensus be reached in cases where a body's governing legislation, by-laws or governance policy call for a Law Society appointment in consultation with the Canadian Bar Association.
- A consensus should be attempted in all cases, recognizing that there may be rare instances where the Law Society will appoint someone not approved or acceptable to the Canadian Bar Association.

Outside Body

- It is generally desirable that, before making an appointment or nomination to an outside body, the Law Society consult the body's chair and senior management regarding applicable appointment parameters
    - appointment parameters include
        - the body's requirements, needs or interests to be addressed by the appointment, including
            - skills, experience and background desired in an appointee
        - prospective appointees who have expressed interest in the appointment to the body, including
            - names, current contact information and resumes
            - the body's receptiveness to their appointment
        - appointment timing preferences and requirements, including
            - term of office, commencement date and date of appointment
        - re-appointment factors, including
            - the incumbent's eligibility and readiness to continue to serve
            - the body's receptiveness to re-appointment of the incumbent

Geographic considerations

The Law Society should consider geographical representation when making appointments to organizations which have a province-wide scope.

Equity

The Law Society promotes diversity in its internal and external appointments and should ensure adequate representation based on gender, Aboriginal identity, cultural diversity, disability, sexual orientation and gender identity.

Appointment of judges

Where the legislation or by-laws of the body permit, judges are eligible to be appointed to positions by the Law Society.

Communication Expectations

All Law Society appointees or nominees to other bodies are expected to provide timely notice to the Law Society of any plans, policies or events that

- materially change the body's objects or operations, or
- could reasonably be considered inconsistent with the Society's mandate to uphold and protect the public interest in the administration of justice

    - unless to provide such notice would be contrary to their duty to act in the best interests of those bodies

In addition, Law Society appointees or nominees to bodies whose objects are related to the Society's public interest mandate should expect to be requested

- to provide periodic updates on those bodies' affairs to the Executive Committee or the Appointments Subcommittee

    - including any plans, policies or events that

        - materially change the bodies' objects or operations, or
        - could reasonably be considered to be inconsistent with the public interest in the administration of justice

    - unless to do so would be contrary to their duty to act in the best interests of those bodies

- to complete a voluntary, online assessment of their appointment experience at the conclusion of each term

These periodic updates and post-appointment assessments by Law Society appointees to bodies whose objects are related to the Society's public interest mandate

- reflect and enhance the mutual commitment of the Law Society and those bodies

    - to protecting and promoting the public interest in the administration of justice
    - to supporting good governance practice by the Law Society and those bodies

- to supporting continuous improvement of the Law Society's processes for making appointments and nominations to outside bodies

The Law Society will maintain a listing of Law Society appointments, both current and pending, on the Law Society website, including

- description of the organization
- outline of the appointee's responsibilities
- contact information for inquiries
- directions for submitting expressions of interest and resumes

The Law Society will provide appropriate orientation and guidance regarding its expectations of those appointees to outside bodies whose responsibilities include representing and communicating the interests of the Law Society to such bodies.

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

The Law Society of British Columbia

Memo

To: Benchers

From: Appointments Subcommittee and Executive Committee

Date: November 27, 2013

Subject: Land Title and Survey Authority of BC (LTSA) / Request for Law Society Nominees to the LTSA Board of Directors

The purpose of this memorandum and supporting material is to brief the Benchers on the LTSA board of directors' request for the nomination of Geoff Plant, QC by the Law Society, to be appointed for a third three-year term as an LTSA director, consistent with the term limit provision in the *Land Title and Survey Authority Act* (the Act). [1] The threshold issue is whether the "other considerations" provision in the Law Society Appointments Policy should be applied to permit Mr. Plant to serve as an LTSA director for a total period exceeding six years.

The Appointments Subcommittee and the Executive Committee recommend that the policy's "other considerations" provision be applied, and that the Benchers direct the presentation of Geoff Plant, QC as the Law Society's nominee to the LTSA board of directors, to be appointed by the LTSA board as a director for a three-year term commencing April 1, 2014.

Background[2]

Body	**Governing Statute/ Other Authority**	**Law Society Nominating Authority**	**Law Society Appointee/ Nominee Profiles**
LTSA Board of Directors	*Land Title and Survey Authority Act*	Law Society Benchers (nomination)	2 Law Society members, as directors
Current Appointments	**Term of Office**	**Date First Appointed**	**Expiry Date**
Geoff Plant, QC	3-year term, maximum of 3 terms	4/1/2008	3/31/2014
William Cottick	3-year term, maximum of 3 terms	4/1/2012	3/31/2015

[1] Section 6(3), *Land Title and Survey Authority Act*

[2] For more background on the LTSA Board of Directors and the Law Society's nomination authority, see the Law Society Appointments Guidebook, pages 74 – 79. Download the Guidebook from here (under "Guidebooks / handbooks")

LTSA's Nomination Request

LTSA CEO Godfrey Archbold's October 2, 2013 letter to Tim McGee is at Tab 1. Attached to Mr. Archbold's letter are a listing of the current LTSA board and their nominating entities (Tab 1a), a skills and experience profile for LTSA directors (Schedule A) (Tab 1b) and a LTSA backgrounder (Tab 1c). Mr Archbold notes:

> It is our understanding that Geoff Plant is interested in serving an additional term as a Director of [LTSA]. Geoff continues to make a valuable contribution to the Board and the Board would welcome Geoff as a nominee for a third term.

In recent discussions with Mr. Vertlieb and Mr. McGee, Mr. Archbold confirmed that Mr. Plant has made significant contributions to LTSA governance and leadership throughout his directorship tenure – particularly in his current role as board chair. Mr. Archbold also stressed the importance of Mr. Plant's leadership experience and judgment, in two contexts:

- Current issues requiring strong grasp of strategic issues and credibility with stakeholders

- the LTSA board's current renewal process
    - two directors (Michael Waberski and Robert Wallance) will complete their third three-year terms on March 31, 2014 and are not eligible for re-appointment.

Geoff Plant, QC's extensive experience in public administration over a broad range of substantive topics is documented in his Heenan Blaikie bio (Tab 2a) and Lexpert profile (Tab 2b). Section 9 of the Act sets out the qualifications of a LTSA director (Tab 2c); LTSA is satisfied that Mr. Plant has the qualifications, attributes and competencies referred to in section 9 and schedule A.

Term of Office

The term of office of a director of the LTSA is 3 years (ss. 6(2) of the Act) and a director may be appointed for not more than 3 consecutive terms. (ss. 6(3)).

The Law Society Appointments Policy provides that a "Law Society appointment to any position will normally be for a term not exceeding three years, and a total period not exceeding six years, **provided that other considerations relating to the particular appointment may result in a shortening or lengthening of this period**."

In a follow-up letter dated November 12, 2013 (Tab 3), Mr. Archbold provides a list of four considerations "in the particular circumstances," as support for Mr. Plant's nomination by the

Law Society to the LTSA board, to be re-appointed as an LTSA director for a third three-year term:

1. Geoff has served for 6 years on the LTSA Board and the LTSA has greatly benefitted during this time as a result of the highly-relevant blend of professional experiences he brings to the position. He continually brings exceptional perspective to discussions, strategies and negotiations and he has been particularly effective in leading Board discussions around the unique hybrid nature of a regulatory authority, the public interest served through it, and its role in supporting the Province's legal and economic infrastructure.

2. Geoff has served as Board Chair since 2011; he is appointed to this role by the Board and he continues to have the strong confidence of the Board and management and of the LTSA's stakeholders. In the role of Board Chair, Geoff has consistently supported strong and effective relationships with the Provincial Government both at the bureaucratic and political levels; this approach and the resulting positive professional relationships have supported critical dialogue with respect to maintenance of the operational and financial independence and to ensure the Authority is viewed as operating in the public interest.

3. Geoff is one of the longest-serving Directors currently on the LTSA Board; a number of longer-serving directors will be leaving in April 2014 and Geoff's continued involvement would support succession and guidance for new directors. If the LTSA is successful in securing Geoff's nomination, this will represent Geoff's final term on the LTSA Board as there is a limitation of three terms in the LTSA legislation.

4. The Land Title and Survey Authority faces an important strategic decision over the next year in terms of its future role; in particular, within the next few years LTSA will have completed its significant capital investments in modernizing the technology and human capacity of the organization. Geoff's continued leadership in shaping the future strategic direction for the Authority would ensure the direction of the Authority continues to complement the public interest.

We are satisfied that given the nature of the current circumstances, the importance of the situation to LTSA, and the unique strength of Mr. Plant's qualifications and experience, it is appropriate to apply the "other considerations" provision in our appointments policy to permit Mr. Plant's re-nomination by the Law Society for a third and final three-year term as an LTSA director.

Recommending Geoff Plant, QC as the Law Society's Sole Nominee

At least three months before the expiry of a director's current term, that director's nominating body (defined as "stakeholder entity" in the Act) is obliged by the Act to provide the LTSA board of directors with a list of at least three and not more than five qualified nominees (ss. 7(1) of the Act). However, LTSA accepts that in situations where one nominee is strongly favoured by the nominator (and/or LTSA), the nominator's list of nominees may comprise only a single name—that of the favoured nominee—notwithstanding ss. 7(1). The LTSA board may then exercise its statutory authority (provided by section 12 of the Act) to appoint a replacement director (who usually turns out to be that sole and favoured nominee), who "... is deemed to be appointed from the nominees of that stakeholder entity."[3] In three previous re-appointment situations, the Law Society has presented LTSA with the name of a single nominee.

The Appointments Subcommittee and the Executive Committee recommend that the Benchers direct the presentation of Geoff Plant, QC as the Law Society's sole nominee to the LTSA board of directors, to be appointed as an LTSA director for a three-year term commencing April 1, 2014.

[3] Section 12 of the Act provides: ...
(2) If a departing director was appointed from the nominees of a stakeholder entity, the stakeholder entity must promptly provide a list of nominees in compliance with section 7 *[at least 3 and not more than 7 qualified nominees]* ...
(4) If a stakeholder entity does not comply with subsection (2), the directors must ... appoint an individual as the replacement director, and that director is deemed to be appointed from the nominees of that stakeholder entity.

bc Land
Title & Survey

October 2, 2013

Tim McGee
Chief Executive Officer
The Law Society of British Columbia
845 Cambie St
Vancouver BC V6B 4Z9

Dear Tim McGee:

Re: Land Title and Survey Authority of British Columbia - Board of Directors

I am writing to request the Law Society of British Columbia's participation in the 2013-14 nomination process for appointment to the Board of Directors of the Land Title and Survey Authority of British Columbia (the "LTSA"). The Law Society of British Columbia's responsibilities in supporting this round of LTSA Board renewal are in respect of the upcoming expiry of the Director term for Geoff Plant, QC.

The LTSA is established pursuant to the *Land Title and Survey Authority Act* and its' self-generated 11 member Board of Directors is selected from nominations of the LTSA's stakeholders. For the 2013/14 renewal process, LTSA is seeking between 3 and 5 nominations from the Law Society of BC with respect to a Director term that is expiring on March 31, 2014. A listing of the current Board and their nominating entities is attached.

To be selected and to serve as a Director, individuals must meet the qualifications set out in part 9 of the Act and are expected to demonstrate personal attributes and competencies outlined in Schedule A (skills and experience profile) of the bylaws of the LTSA (see attached backgrounder for additional information).

It is our understanding that Geoff Plant is interested in serving an additional term as a Director of the Authority. Geoff continues to make a valuable contribution to the Board and the Board would welcome Geoff as a nominee for a third term.

In support of each nomination, we would ask that a nomination form (enclosed) be completed and signed by each candidate, and be submitted together with each candidate's resume. Please provide this information to Kelly Orr, Director of Corporate Strategies.

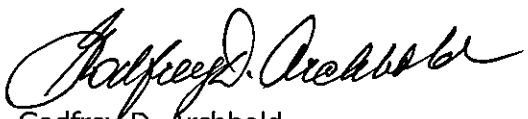
Nominee submissions from the Law Society of British Columbia must be **received by December 31, 2013** with the resulting Board selection process to result in an appointment to take effect as of April 1, 2014. Please note that if the LTSA does not receive nominations of qualified individuals from a stakeholder entity within the specified time, the Board must proceed to make an appointment and that individual will be deemed to be appointed from the stakeholder entity.

.../2

I look forward to the scheduled meeting with you to discuss this topic further on October 7, 2013. Should you have any questions respecting the nomination submission process and materials, please do not hesitate to contact Kelly Orr at (250) 410-0575 or via email at Kelly.Orr@ltsa.ca.

Thank you for your assistance.

Yours truly,



Godfrey D. Archbold
President and Chief Executive Officer

Attachments (3)

pc: Geoff Plant, QC, LTSA Board Director
Leslie Hildebrandt, Vice President and Corporate Counsel

LAND TITLE AND SURVEY AUTHORITY OF BRITISH COLUMBIA

BOARD OF DIRECTORS
CURRENT REGISTER OF DIRECTORS

Province of British Columbia

Janice Comeau

Current:	Appointed:	September 1, 2011
	1st Term:	September 1, 2011 – March 31, 2014
	Geographic Location:	Vancouver, BC

Ellen Morfitt

Current:	Appointed:	February 1, 2012
	Replacement Term:	February 1, 2012 – March 31, 2013
	1st Term:	April 1, 2013 – March 31, 2016
	Geographic Location:	Vancouver, BC

Law Society of British Columbia

Geoff Plant, Q.C., Chair

Current:	Appointed:	April 1, 2008
	1st Term:	April 1, 2008 – March 31, 2011
	2nd Term:	April 1, 2011 – March 31, 2014
	Geographic Location:	Vancouver, BC

William (Bill) Cottick

Current:	Appointed:	April 1, 2012
	1st Term:	April 1, 2012 – March 31, 2015
	Geographic Location:	Victoria, BC

Association of British Columbia Land Surveyors

Michael Waberski

Current:	Appointed:	November 19, 2004
	1st Term:	November 19, 2004 – March 31, 2008
	2nd Term:	April 1, 2008 – March 31, 2011
	3rd Term:	April 1, 2011 – March 31, 2014
	Geographic Location:	Coldstream, BC

Gordon (Bert) Hol

Current:	Appointed:	April 1, 2010
	1st Term:	April 1, 2010 – March 31, 2013
	2nd Term:	April 1, 2013 – March 31, 2016
	Geographic Location:	Surrey, BC

BOARD OF DIRECTORS
CURRENT REGISTER OF DIRECTORS

British Columbia Real Estate Association

Robert Wallace, Vice-Chair

Current:	Appointed:	November 19, 2004
	1st Term:	November 19, 2004 – March 31, 2008
	2nd Term:	April 1, 2008 – March 31, 2011
	3rd Term:	April 1, 2011 – March 31, 2014
	Geographic Location:	Vancouver, BC

British Columbia Association of Professional Registry Agents

Diane Friedman

Current:	Appointed:	August 25, 2010
	Replacement Term:	August 25, 2010 – March 31, 2013
	2nd Term:	April 1, 2013 – March 31, 2016
	Geographic Location:	Vancouver, BC

First Nations Summit

Roderick Naknakim

Current:	Appointed:	April 1, 2012
	1st Term:	April 1, 2012 – March 31, 2015
	Geographic Location:	Campbell River, BC

Society of Notaries Public of British Columbia

Brent Atkinson

Current:	Appointed:	September 18, 2009
	1st Term:	September 18, 2009 – March 31, 2012
	2nd Term:	April 1, 2012 – March 31, 2015
	Geographic Location:	Surrey, BC

Union of British Columbia Municipalities

Victoria Kuhl

Current:	Appointed:	April 1, 2010
	1st Term:	April 1, 2010 – March 31, 2013
	2nd Term:	April 1, 2013 – March 31, 2016
	Geographic Location:	Victoria, BC

SCHEDULE A

SKILLS AND EXPERIENCE PROFILE

The directors of the Authority are required under section 19 of the Act to prepare a profile setting out the skills and experience that must be represented on the board and to include the skills and experience profile in the by-laws of the Authority.

The skills and experience profile will guide the appointments to the board.

Statutory Qualifications

1. Persons appointed to the board must be qualified to be a director under section 9 of the Act. Specifically, in order to be qualified to become or act as a director, an individual must be:

   (a) 18 years of age or older;

   (b) a Canadian citizen; and,

   (c) a resident of British Columbia;

   and, must not be:

   (d) an Officer of the Authority;

   (e) an elected official or employee of the government of British Columbia, the government of Canada, a local government, a regional district or an aboriginal organization exercising governmental functions;

   (f) an officer, director or employee of a stakeholder entity, defined as: government, the Law Society of British Columbia, the Association of British Columbia Land Surveyors, the British Columbia Real Estate Association, the British Columbia Association of Professional Registry Agents; the First Nations Summit; the Society of Notaries Public of British Columbia; and, the Union of British Columbia Municipalities;

   (g) found by a court, in Canada or elsewhere, to be incapable of managing their own affairs;

   (h) an undischarged bankrupt; or

   (i) convicted inside or outside of British Columbia of an offence in connection with the promotion, formation or management of a corporation or an unincorporated business, or of an offence involving fraud, unless

      i. the court orders otherwise,

ii. 5 years have elapsed since the last to occur of

A. the expiration of the period set for suspension of the passing of sentence without a sentence having been passed,

B. the imposition of a fine,

C. the conclusion of the term of any imprisonment

D. the conclusion of the term of any probation imposed, or

iii. a pardon was granted or issued under the *Criminal Records Act (Canada).*

Personal Attributes

2. All directors should possess the following personal attributes:

(a) High ethical standards and integrity in professional and personal dealings;

(b) Ability and willingness to raise potentially controversial issues in a manner that encourages constructive dialogue;

(c) Flexibility, responsiveness and willingness to consider change;

(d) Ability and willingness to listen to others;

(e) Capability for a wide perspective on issues; and

(f) Ability to work as a team member.

Core Competencies

3. All directors should possess the following core competencies:

(a) Strategic Thinking – Understands the level of strategic management needed to achieve results and mitigate risk and demonstrates an appreciation of the unique role of the Authority as the entity responsible for managing, operating and maintaining the land title and survey systems of British Columbia;

(b) Analytical and Technical Skills – Well-developed faculty for critical analysis; Financial literacy, including an ability to read financial statements and ability to understand the use of financial ratios and other indices to measure performance; the capacity to articulate penetrating questions respecting strategic issues, while maintaining positive support for Board decision-making processes and management;

(c) Knowledge – Understands basic responsibilities, accountabilities and liabilities as a Director and Board member; ability to distinguish corporate governance from management;

(d) Personal Style – Can tolerate ambiguity; has the ability to balance the need to acquire information with the cost of acquiring it; trustworthy and conscientious and can be relied upon to act and speak with consistency and honesty;

(e) Social Style – values diverse opinions and builds innovation on the foundation of other people's views; experienced level of acumen/"saviness" at Board/stakeholder/company levels; personal business profiles that include demonstrated networks at the national and international level;

Representation

4. The board should attempt, in its composition, to reflect the geographic representation and diversity of the people and interests served by the land title and survey systems of British Columbia.

Key Skills and Experience

5. The board, as a whole, should possess all of the following skills and experience, while individual directors must possess more than one of the skills or experience.

(a) Leadership – experience at a senior level in managing the operations of a large or complex commercial or non-profit entity.

(b) Business Acumen – experience in operating a business in British Columbia.

(c) Board Experience – previous experience as a member of a board of directors of a commercial or non-profit entity.

(d) Accounting and Finance – an accounting or financial advisor designation or senior level experience as a financial officer in a large or complex commercial or non-profit entity.

(e) Legal – a law degree or experience in managing legal issues of a complex commercial nature.

(f) Marketing – experience in developing and/or leading marketing or customer service initiatives.

(g) Labour Management - knowledge of and experience in human resources and labour relations practices in British Columbia.

(h) Executive HR Strategies – knowledge and experience in strategic human resources policies related to senior executive recruitment, succession planning and compensation.

(i) Regulatory – experience working in or significant knowledge of the issues associated with, a commercial entity regulated by statute.

(j) Land Information – knowledge of and experience working with land information products and services.

(k) Information Technology – experience working in the information technology field with a demonstrated understanding of how information technology is applied to business processes.

(l) Land Survey – a British Columbia Land Surveyor or experience in managing legal survey issues of a complex nature.

(m) Communications – experience in public communications

(n) Government Relations - experience in government relations at various levels with specific emphasis on provincial government relations.

(o) Real Estate Lending and Banking – knowledge and experience in lending and banking industries.

(p) Insurance – knowledge and experience in the insurance industry.

bc Land
Title & Survey

Background Information
LTSA's Request for Board Director Nominations

What is the Land Title and Survey Authority?

The Land Title and Survey Authority of British Columbia (the "LTSA") is a publicly accountable, statutory corporation which operates and administers British Columbia's land title and survey systems. These systems, established through a comprehensive set of legislative requirements, have been in place since the 1860's and are today reliant on modern technology.

The LTSA maintains secure land title and survey systems through the timely, efficient registration of land title interests and survey records. These services are an essential underpinning to British Columbia's private property market and the civil justice system, and to BC's civic governance, taxation and Crown land management frameworks.

The LTSA collaborates with the Province on administration of the systems, and reports on achievement of performance requirements established by the Province. As a corporate entity, the LTSA operates within mandatory financial and governance reporting requirements, regulated fee structure, and is subject to British Columbia's Freedom of Information and Protection of Privacy Act and Ombudsperson Act.

The LTSA earns its income from the services fees it charges customers (other than government, which is fee exempt). Its net earnings, achieved through prudent financial management, continue to be re-invested to achieve land title and survey public policy objectives and sustainable, cost-effective operations.

The LTSA has a reputation for accountable, reliable and trusted public administration. It is a progressive, responsive organization that enjoys excellent customer satisfaction.

For further information, please visit: www.ltsa.ca.

How is the Board of Directors structured?

The LTSA is governed by an eleven-member Board of Directors. The Board's role, composition, and the processes for Board member appointment, are all established by the Act. The Board is responsible for overseeing the strategic direction and governance of the LTSA.

The board is composed of members selected from nominees submitted by the following stakeholder entities:

- The Province of British Columbia
- The Law Society of British Columbia
- The Association of British Columbia Land Surveyors
- The First Nations Summit
- The Society of Notaries Public of British Columbia
- The British Columbia Real Estate Association
- The British Columbia Association of Professional Registry Agents
- The Union of British Columbia Municipalities

bc Land
Title & Survey

Appointments to the Board are made by the Board of Directors of the LTSA for terms of three years, with three to four new Board appointments required on April 1st of each year. The Act provides for Directors to serve up to three consecutive terms.

Who are the current Directors of the LTSA?

A list of the current Board Directors for the LTSA and brief biographies for each are available at the LTSA website at:

http://www.ltsa.ca/cms/board-of-directors

What will be the obligations of members appointed to the Board?

Directors owe a fiduciary duty to the LTSA itself, which means that they must make decisions in the best interest of the LTSA. They are not appointed to the Board in order to be delegates to the LTSA or advocates of a particular stakeholder or constituent group and do not represent any other entity when they are acting as board members.

Every Director must uphold the objectives of the LTSA and comply with its bylaws. Members of the Board are also required to comply with LTSA's Code of Business Conduct and Ethics. Directors are required to review the LTSA's Code of Business Conduct and Ethics (the "Code") and acknowledge their support and understanding of the Code by signing annual Declaration Statements. As well, each Director will sign a form consenting to act as Director, in which the qualifications for being a director as specified in the *Land Title and Survey Authority Act* are confirmed by the individual as being satisfied.

How often does the Board of Directors meet?

The Directors meet together at such time and place as necessary for the conduct of business, subject always to the bylaws of the LTSA. (A copy of the bylaws is available for viewing on the LTSA's website: http://www.ltsa.ca/cms/corporate-governance)

The Directors meet at least once each quarter to conduct regular business and hold other meetings as necessary. Meetings are generally held in Victoria, British Columbia, but meetings may be held at other locations throughout the province. The LTSA also holds an Annual General Meeting in British Columbia, open to the public.

What is the remuneration for Directors?

Compensation levels for Directors are reviewed annually. Currently, Directors are entitled to an annual fee of $10,000, while Directors who serve as Committee Chairs and/or Vice Chair of the Board are entitled to an addition annual fee of $9,000 (for a total annual fee of $19,000). The Chair of the Board receives an annual fee of $52,000.

Directors, other than the Chair of the Board, are also entitled to a daily meeting fee of $700 for Board meetings attended ($350 for meetings held by teleconference). All Directors are reimbursed for reasonable travel-related expenses incurred on LTSA business.

The LTSA indemnifies Directors consistent with section 23 of the *Land Title and Survey Authority Act.*

bc Land
Title & Survey

How will nominees be identified?

Each year, the stakeholder entities whose nominees to the Board of Directors of the LTSA have terms expiring March 31 (fiscal year end) are asked to submit between three to five nominations of qualified individuals by December 31 to serve on the Board of Directors the LTSA commencing April 1 (fiscal year start).

Each stakeholder entity will determine their own processes for identifying their nominees to the Board.

How are Directors selected?

Directors of the LTSA must meet the basic requirements established in the *Land Title and Survey Authority Act*. Specifically this means an individual who:

- Satisfies the requirements under section 124 of the *Business Corporations Act (British Columbia)*;
- Is not an elected official or employee of any government; and
- Is not a member of the Board of Directors, an officer or an employee of any of the stakeholder entities which nominate individuals to serve as Directors of the LTSA (i.e. Law Society of British Columbia, Association of British Columbia Land Surveyors, British Columbia Real Estate Association, British Columbia Association of Professional Registry Agents, First Nations Summit, Society of Notaries Public of British Columbia, Union of British Columbia Municipalities).

The Board of Directors of the LTSA select the individuals to be appointed as Directors from the nominations submitted by the stakeholder entities. The Governance Committee, comprised of members of the Board of Directors, oversees the selection process.

The objective of the selection process is two fold. Firstly, it ensures that the Board of the LTSA meets the composition requirements as set out in the *Land Title and Survey Authority Act*. Secondly, it ensures that collectively, the Board contains the skills and experience necessary to enhance the sound performance of the LTSA, and the effective interaction and operation of the Board.

The Governance Committee conducts a review of all nominees against the approved Skills and Experience Profile (Schedule A of the bylaws of the LTSA – see attached) in order make a recommendation to the full Board for appointment. When appointing Directors, the LTSA Board must be in compliance with section 13 of the LTSA Act such that "as a group, the Directors hold all of the skills, and all of the experience, indentified in the skills and experience profile set out in the bylaws."

What information will be required to support each nomination?

Each of the nominating stakeholder entities is asked to submit a list of three to five nominees. For each nominee, a completed Nomination Form (attached) must be signed by the nominee and submitted to the LTSA, together with the nominee's current resume. The information provided on the nomination form should be as fulsome as possible.

bc Land
Title & Survey

Once nominees have been short-listed by the LTSA for appointment to the Board, a due diligence process will be conducted that will include an interview and professional reference checks. As well, short-listed candidates may be required to undergo a criminal record and credit check.

All parties involved in the selection process are obligated to respect the privacy interests of any individual who may be identified as a potential nominee. Information about potential nominees is confidential and may not be disclosed for purposes outside the nomination process.

What is the deadline for submitting nominations?

Nominations from stakeholder entities must be received by the LTSA by December 31.

When will a decision be made?

The LTSA will advise the nominating entities, as well as the successful nominees, of the appointments to the Board by no later than March 31. Nominating entities will be requested to inform their respective individual nominees whose names were submitted to the LTSA for consideration.

Additional information on the Land Title and Survey Authority of British Columbia is available at www.ltsa.ca

Our Team

Add to Binder

Geoff Plant, Q.C.

Partner

Vancouver

604 891.1186

gplant@heenan.ca

LinkedIn profile

Follow on Twitter

Biographical Profile | Publications & Conferences | Related News | Awards & Recognition

Geoff Plant was the Attorney General of British Columbia and Minister Responsible for Treaty Negotiations from 2001 to 2005. He was first elected to the British Columbia Legislature in 1996 and from 1996 to 2001 was Opposition Justice Critic, as well as serving on a number of legislative and caucus committees. As Attorney General, Mr. Plant was the Chair of the Legislative Review Committee and the Minister responsible for the creation and oversight of the Citizens' Assembly on Electoral Reform.

Prior to his election to the Legislature, Mr. Plant was a partner in another Vancouver law firm, where he practised as a litigation lawyer with particular emphasis on aboriginal and public law. He was counsel in a number of leading aboriginal rights and title cases, including the landmark case of *Delgamuukw v. British Columbia*. He has lectured and written extensively on aboriginal law and law reform.

Early in his career, he was law clerk to Mr. Justice Roland Ritchie of the Supreme Court of Canada.

Since joining Heenan Blaikie in 2005, Mr. Plant has been appointed senior advisor to the Government of British Columbia in land and resource negotiations with the Council of Haida Nation, has undertaken more than two dozen successful mediations in a dispute between investors and a major Canadian mutual fund company, and has provided strategic advice to BC Hydro in relation to the design and implementation of its power acquisition processes. Mr. Plant has also provided advice to a number of private sector businesses on establishing effective relations with First Nations.

In 2006, Mr. Plant was appointed as a Special Advisor to the Premier and Minister of Advanced Education to lead a project called "Campus 2020: Thinking Ahead", the first comprehensive

Download vCard

Call to the Bar

British Columbia, 1982

Areas of Expertise

- Aboriginal Relations
- Arbitration and Dispute Resolution
- Education
- Renewable Energy
- Energy
- Government Relations
- Administrative and Constitutional Law
- Litigation

review of post-secondary education in British Columbia in over 40 years. His report, entitled *Access and Excellence: The Campus 2020 Plan for British Columbia's Post-Secondary Education System,* was released in April 2007.

From May 2007 until February 2009, Mr. Plant served as Vancouver's Civil City Commissioner. In 2010, he was appointed Chair of the Board of Directors of Providence Health Care, one of the largest faith-based health care organizations in Canada, operating 14 sites in Vancouver.

Mr. Plant has been recognized as a leading practitioner in the area of aboriginal law in the 2013 *Canadian Legal Lexpert Directory* and in the 2013 and 2014 editions of *The Best Lawyers in Canada* (Woodward/White).

Education

- LL.M., University of Cambridge, 1989
- LL.B., Dalhousie University, 1981
- LL.B., University of Southampton, 1980
- A.B., Harvard University, 1978

Professional Affiliations

- Business Council of British Columbia
- Canadian Bar Association
- Law Society of British Columbia

LEXPERT®
CANADIAN LEGAL LEXPERT DIRECTORY

Find a Leading Lawyer or Law Firm
Feature Articles
Recent Developments of Importance
Canada's Largest Law Firms
Practice Overview
Firm Professional Cards
Update Listing
Abbreviations & Acronyms
Advertise
Order a Directory

Geoff Plant, QC

Heenan Blaikie LLP - Vancouver

Phone: (604) 891-1186
Fax: (866) 770-5374
E-mail: gplant@heenan.ca

Area Listed

Repeatedly recommended
Aboriginal Law

Year called to the Bar: 1982
Partner in the Vancouver office, whose practice emphasis is providing strategic advice and counsel to private and public sector clients on public policy and government relations, including Aboriginal relations, as well as dispute resolution services such as mediation and arbitration. Has been involved in Aboriginal legal and policy issues since 1980s, and was counsel in a number of major Aboriginal rights and title cases, including *Delgamuukw v. The Queen*. From 1996 to 2005, served as a member of the BC Legislative Assembly and, from 2001 to 2005, was BC's Attorney General and Minister Responsible for Treaty Negotiations, and in that capacity was the minister responsible for the development in 2005 of the New Relationship between the BC government and the province's major Aboriginal political organizations. Has written and lectured extensively on Aboriginal and public law issues and has been an adjunct faculty member at UBC law school. Called to the British Columbia Bar in 1982.

This Act is Current to October 23, 2013

LAND TITLE AND SURVEY AUTHORITY ACT

[SBC 2004] CHAPTER 66

...

Persons qualified to be directors

9 (1) A person must not become or act as a director unless that person is an individual who is qualified to do so.

(2) An individual is not qualified to become or to act as a director if that individual is

(a) under the age of 18 years,

(b) not a Canadian citizen,

(c) not a resident of British Columbia,

(d) an officer of the Authority, other than the chair or vice chair of the board of directors,

(e) an elected official or employee of the government of British Columbia, the government of Canada, a local government, a regional district or an aboriginal organization exercising governmental functions,

(f) an officer, director or employee of a stakeholder entity,

(g) found by a court, in Canada or elsewhere, to be incapable of managing the individual's own affairs,

(h) an undischarged bankrupt, or

(i) convicted inside or outside of British Columbia of an offence in connection with the promotion, formation or management of a corporation or an unincorporated business, or of an offence involving fraud, unless

(i) the court orders otherwise,

(ii) 5 years have elapsed since the last to occur of

(A) the expiration of the period set for suspension of the passing of sentence without a sentence having been passed,

(B) the imposition of a fine,

(C) the conclusion of the term of any imprisonment, and

(D) the conclusion of the term of any probation imposed, or

(iii) a pardon was granted or issued under the *Criminal Records Act* (Canada).

(3) A director who ceases to be qualified to act as a director must promptly resign.

...

November 12, 2013

Mr. Art Vertlieb, QC
President
Law Society of BC
845 Cambie St
Vancouver BC V6B 4Z9

Dear Mr. Vertlieb:

Re: Land Title and Survey Authority of BC Board Nominee

This letter is further to the LTSA's request (see attached) to the Law Society of BC for submission of nominees to the 2014 Board Director appointment, with respect to the upcoming expiry of Geoff Plant QC's second 3-year term on March 31, 2014. Specifically, I wish to advise you of particular considerations which would suggest that the standard maximum of 6 years for the appointees under the Law Society of BC's Appointment Guidelines be dis-applied for this round of nominations.

We note that your Guidelines specify that:

> Law Society appointments to any position will normally be up to a total period of six years, provided that other considerations relating to the particular appointment may result in a shortening or lengthening of this period.

Considerations in the particular circumstances, which would support re-nomination of Geoff Plant QC for a third 3-year term for LTSA Board appointment may be summarized as:

1. Geoff has served for 6 years on the LTSA Board and the LTSA has greatly benefitted during this time as a result of the highly-relevant blend of professional experiences he brings to the position. He continually brings exceptional perspective to discussions, strategies and negotiations and he has been particularly effective in leading Board discussions around the unique hybrid nature of a regulatory authority, the public interest served through it, and its role in supporting the Province's legal and economic infrastructure.

.../2

Land Title & Survey Authority of British Columbia
Suite 200 - 1321 Blanshard St, Victoria BC V8W 9J3
Phone: 1 877 577 5872 www.ltsa.ca

2. Geoff has served as Board Chair since 2011; he is appointed to this role by the Board and he continues to have the strong confidence of the Board and management and of the LTSA's stakeholders. In the role of Board Chair, Geoff has consistently supported strong and effective relationships with the Provincial Government both at the bureaucratic and political levels; this approach and the resulting positive professional relationships have supported critical dialogue with respect to maintenance of the operational and financial independence and to ensure the Authority is viewed as operating in the public interest.

3. Geoff is one of the longest-serving Directors currently on the LTSA Board; a number of longer-serving directors will be leaving in April 2014 and Geoff's continued involvement would support succession and guidance for new directors. If the LTSA is successful in securing Geoff's nomination, this will represent Geoff's final term on the LTSA Board as there is a limitation of three terms in the LTSA legislation.

4. The Land Title and Survey Authority faces an important strategic decision over the next year in terms of its future role; in particular, within the next few years LTSA will have completed its significant capital investments in modernizing the technology and human capacity of the organization. Geoff's continued leadership in shaping the future strategic direction for the Authority would ensure the direction of the Authority continues to complement the public interest.

I very much appreciate your willingness to consider these matters with respect to the Law Society's nomination policy and please do not hesitate to contact me if you require any additional information to support your deliberations.

Yours sincerely,

Godfrey D. Archbold
President and Chief Executive Officer

GDA:lw

Attachment

pc: Mr. Robert Wallace, Board Director and Governance Committee Chair, Land Title and Survey Authority of BC

Mr. Tim McGee, CEO and Executive Director, Law Society of British Columbia

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: November 12, 2013
Subject: **Implementation of National Mobility Agreement, 2013**

---

1. The National Mobility Agreement, 2013 (NMA) was signed on behalf of all of the provincial law societies of Canada on October 17. I attach a copy of the document as signed for your reference. This new agreement is intended to incorporate and replace all previous mobility agreements, with the exception of the Territorial Mobility Agreement.

2. The main change that is to be effected by the new agreement is the treatment of members of the Barreau du Québec (the Barreau) the same as members of other provincial law societies for the purposes of transfer of membership. Until now, most members of the Barreau could only become members of the Law Society in British Columbia and other common law provinces as Canadian Legal Advisors (CLAs) with restricted areas in which they could practise law.

3. The significant changes that the new NMA brings about are the recognition of a Canadian civil law degree as sufficient academic qualification for a member of the Barreau to transfer to full membership in the BC Law Society and the end of CLA status for members of the Barreau. CLA status will continue only with respect to members of the Chambre des notaires du Québec (Chambre).

4. Some drafting notes:

    a. In order to simplify several of the Rules, the Committee proposes to define the terms "Barreau" and "Chambre" in order to avoid repeating the more complicated full titles of the two Québec organizations.

    b. Rule 2-49(1)(e)(ii) is added to permit the recognition of a civil law degree for the purpose of transfer from the Barreau du Québec.

c. Rule 3-25(4)(a) is amended to give effect to clause 38 of the NMA 2013, which deems a member of the Barreau to be resident in a common law jurisdiction in some cases for the purpose of determining exemption from insurance requirements.

5. The Act and Rules Committee recommends the changes indicated in the attached draft to the Benchers for adoption. There is a suggested resolution to give effect to the changes.

Attachments: NMA 2013
drafts

JGH

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

APPENDIX A

National Mobility Agreement 2013

Constitution Square • 1700 – 360, rue Albert Street • Ottawa • Ontario • Canada • K1R 7X7
Tel./Tél. : (613) 236-7272 • Fax/Téléc. : (613) 236-7233
www.flsc.ca

Federation of Law Societies of Canada

XX XX, 2013
City

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

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

The signatories recognize that

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

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

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

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

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

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

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

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

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

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

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

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

THE SIGNATORIES AGREE AS FOLLOWS:

Definitions

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

"Barreau" means le Barreau du Québec;

"Chambre" means la Chambre des notaires du Québec;

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

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

(a) professional misconduct;

(b) incompetence;

(c) conduct unbecoming a lawyer;

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

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

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

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

(b) disbarment;

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

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

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

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

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

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

jurisdiction" has a corresponding meaning;

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

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

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

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

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

"notary" means a member of the Chambre;

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

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

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

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

General

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

3. The signatory governing bodies will

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

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

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

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

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

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

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

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

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

Temporary Mobility Among Common Law Jurisdictions

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

Mobility without permit

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

(a) meets the criteria in clause 11; and

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

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

10. It will be the responsibility of a lawyer to

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

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

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

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

    (b) carry liability insurance that:

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

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

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

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

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

    (f) have no disciplinary record in any jurisdiction.

12. For the purposes of clause 8:

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

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

        (i) the Supreme Court of Canada;

        (ii) the Federal Court of Canada;

        (iii) the Tax Court of Canada;

        (iv) a federal administrative tribunal.

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

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

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

Mobility permit required

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

    (a) on application;

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

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

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

Temporary mobility not allowed

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

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

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

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

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

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

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

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

    (c) becoming resident;

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

National Registry of Practising Lawyers

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

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

Liability Insurance and Defalcation Compensation Funds

20. Each signatory governing body will ensure that the ongoing liability insurance in its jurisdiction

    (a) extends to its members for the provision of legal services on a temporary basis in or with respect to the law of host signatory jurisdictions; and

    (b) provides occurrence or claim limits of $1,000,000 and $2,000,000 annual per member aggregate.

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

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

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

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

Enforcement

25. A host governing body that has reasonable grounds to believe that a member of another governing body has provided legal services in the host jurisdiction will be entitled to require that lawyer to:

    (a) account for and verify the number of days spent providing legal services in the host jurisdiction; and

    (b) verify that he or she has not done anything inconsistent with the provision of legal services on a temporary basis.

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

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

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

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

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

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

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

Permanent Mobility of Lawyers

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

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

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

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

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

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

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

Public Information

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

Liability Insurance

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

    (a) is resident;

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

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

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

Temporary Mobility between Quebec and Common Law Jurisdictions

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

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

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

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

Permanent Mobility of Quebec Notaries

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

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

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

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

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

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

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

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

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

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

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

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

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

Inter-Jurisdictional Practice Protocol

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

Transition Provisions

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

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

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

Withdrawal

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

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

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

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

SIGNED as indicated in respect of each signatory below

LAW SOCIETY OF BRITISH COLUMBIA

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF ALBERTA

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF SASKATCHEWAN

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF MANITOBA

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF UPPER CANADA

Per: _____ _____

Authorized Signatory Date

BARREAU DU QUÉBEC

Per: _____ _____

Authorized Signatory Date

CHAMBRE DES NOTAIRES DU QUÉBEC

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF NEW BRUNSWICK

Per: _____ _____

Authorized Signatory Date

NOVA SCOTIA BARRISTERS' SOCIETY

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF PRINCE EDWARD ISLAND

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY OF NEWFOUNDLAND AND LABRADOR

Per: _____ _____

Authorized Signatory Date

LAW SOCIETY RULES

Definitions

1 In these Rules, unless the context indicates otherwise:

"Barreau" means the Barreau du Québec;

"Chambre" means the Chambre des notaires du Québec;

"National Mobility Agreement" means the ~~2002~~ National Mobility Agreement, 2013, of the Federation of Law Societies of Canada, as amended from time to time;

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Inter-jurisdictional practice

Trust funds and compensation fund

2-16 (2) [rescinded]~~The provisions of the Protocol concerning claims for compensation for misappropriation apply to a claim under Rule 3-30 involving inter-jurisdictional practice.~~

Canadian legal advisors

Scope of practice

2-22.1 (1) [rescinded]~~A Canadian legal advisor who is a member of the Barreau du Québec may~~

~~(a) give legal advice on~~

~~(i) the law of Québec and matters involving the law of Québec,~~

~~(ii) matters under federal jurisdiction, or~~

~~(iii) matters involving public international law,~~

~~(b) draw, revise or settle a document for use in a proceeding concerning matters under federal jurisdiction, or~~

~~(c) appear as counsel or advocate before any tribunal with respect to matters under federal jurisdiction.~~

LAW SOCIETY RULES

(1.1) A Canadian legal advisor ~~who is a member of the Chambre des notaires du Québec~~ may

(a) give legal advice on

(i) the law of Québec and matters involving the law of Québec,

(ii) matters under federal jurisdiction, or

(iii) matters involving public international law, or

(b) where expressly permitted by federal statute or regulation

(i) draw, revise or settle a document for use in a proceeding concerning matters under federal jurisdiction, or

(ii) appear as counsel or advocate before any tribunal with respect to matters under federal jurisdiction.

(2) A Canadian legal advisor must not engage in the practice of law except as permitted under subrule ~~(1) or~~ (1.1).

Requirements

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

(2) A Canadian legal advisor must

(a) be a member in good standing of the ~~Barreau du Québec or the~~ Chambre ~~des notaires du Québec~~ authorized to practise law in ~~that Province~~Québec,

Call and admission

Transfer from another Canadian jurisdiction

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

(e) proof of academic qualification

(i) as required of applicants for enrolment under Rule 2-27(4), or

(ii) for a member of the Barreau, proof that he or she has earned

(A) a bachelor's degree in civil law in Canada, or

(B) a foreign degree and a certificate of equivalency from the Barreau;

LAW SOCIETY RULES

Transfer under National Mobility Agreement and Territorial Mobility Agreement

2-49.2 (1) This Rule applies to an applicant for transfer from another Canadian jurisdiction, provided that the applicant is entitled to practise law in the jurisdiction of a reciprocating governing body of which the applicant is a member.

(2) An applicant under this Rule must fulfil all of the requirements in Rule 2-49 for call and admission on transfer from another Canadian jurisdiction, except that he or she need not pass any transfer examination.

(3) To qualify for call and admission, an applicant under this Rule must certify in a prescribed form that he or she has reviewed and understands all of the materials reasonably required by the Executive Director.

(4) A lawyer called and admitted under this Rule has no greater rights as a member of the Society than

(a) the lawyer has as a member of the governing body of his or her home jurisdiction, or

(b) any other member of the Society in similar circumstances.

Transfer as Canadian legal advisor

2-49.3 (1) Subject to subrule (3), a member of the ~~Barreau du Québec or of the~~ Chambre ~~des notaires du Québec~~ may apply for call and admission on transfer as a Canadian legal advisor by delivering to the Executive Director the following:

(c) a certificate of standing from the ~~Barreau du Québec or from the~~ Chambre ~~des notaires du Québec~~ and each other body regulating the legal profession, in any jurisdiction, in which the applicant is or has been a member of the legal profession;

(2) Subject to subrule (1), Rules 2-49 to 2-51 apply, with any necessary changes, to an application for call and admission on transfer as a Canadian legal advisor.

(3) This Rule does not apply to a member of the ~~Barreau du Québec or of the~~ Chambre ~~des notaires du Québec~~ unless he or she has earned a bachelor's degree in civil law in Canada or a foreign degree and a certificate of equivalency from the ~~Barreau or from the~~ Chambre~~, as the case may be~~.

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 4 – Professional Liability Insurance

Exemption from liability insurance

3-25 (4) A lawyer may apply to the Executive Director for exemption from the requirement to maintain professional liability insurance and pay the insurance fee, if, in another Canadian jurisdiction in which the governing body allows a similar exemption for members of the Society, the lawyer

(a) is resident or is deemed resident under the National Mobility Agreement, and

(b) maintains the full mandatory professional liability insurance coverage required in the other jurisdiction that is reasonably comparable in coverage and limits to that required of lawyers in British Columbia and extends to the lawyer's practice in British Columbia.

(5) A Canadian legal advisor may apply to the Executive Director for exemption from the requirement to maintain professional liability insurance and pay the insurance fee.

(6) On an application under subrule (5), the Executive Director must grant the exemption, provided the Canadian legal advisor maintains the full mandatory professional liability insurance coverage required by ~~the Barreau du Québec or by~~ the Chambre ~~des notaires du Québec~~ that extends to the Canadian legal advisor's practice in British Columbia.

LAW SOCIETY RULES

Definitions

1 In these Rules, unless the context indicates otherwise:

"Barreau" means the Barreau du Québec;

"Chambre" means the Chambre des notaires du Québec;

"National Mobility Agreement" means the National Mobility Agreement, 2013, of the Federation of Law Societies of Canada, as amended from time to time;

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Inter-jurisdictional practice

Trust funds and compensation fund

2-16 (2) [rescinded]

Dispute resolution

2-17 If a dispute arises with a governing body concerning any matter under the Protocol, the Credentials Committee may do one or both of the following:

(a) agree with a governing body to refer the matter to a single mediator;

(b) submit the dispute to arbitration under Appendix 5 of the Protocol.

Canadian legal advisors

Scope of practice

2-22.1 (1) [rescinded]

(1.1) A Canadian legal advisor may

(a) give legal advice on

(i) the law of Québec and matters involving the law of Québec,

(ii) matters under federal jurisdiction, or

(iii) matters involving public international law, or

(b) where expressly permitted by federal statute or regulation

(i) draw, revise or settle a document for use in a proceeding concerning matters under federal jurisdiction, or

LAW SOCIETY RULES

(ii) appear as counsel or advocate before any tribunal with respect to matters under federal jurisdiction.

(2) A Canadian legal advisor must not engage in the practice of law except as permitted under subrule (1.1).

Requirements

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

(2) A Canadian legal advisor must

(a) be a member in good standing of the Chambre authorized to practise law in Québec,

Call and admission

Transfer from another Canadian jurisdiction

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

(e) proof of academic qualification

(i) as required of applicants for enrolment under Rule 2-27(4), or

(ii) for a member of the Barreau, proof that he or she has earned

(A) a bachelor's degree in civil law in Canada, or

(B) a foreign degree and a certificate of equivalency from the Barreau;

Transfer under National Mobility Agreement and Territorial Mobility Agreement

2-49.2 (1) This Rule applies to an applicant for transfer from another Canadian jurisdiction, provided that the applicant is entitled to practise law in the jurisdiction of a reciprocating governing body of which the applicant is a member.

(2) An applicant under this Rule must fulfil all of the requirements in Rule 2-49 for call and admission on transfer from another Canadian jurisdiction, except that he or she need not pass any transfer examination.

(3) To qualify for call and admission, an applicant under this Rule must certify in a prescribed form that he or she has reviewed and understands all of the materials reasonably required by the Executive Director.

(4) A lawyer called and admitted under this Rule has no greater rights as a member of the Society than

(a) the lawyer has as a member of the governing body of his or her home jurisdiction, or

(b) any other member of the Society in similar circumstances.

Transfer as Canadian legal advisor

2-49.3 (1) Subject to subrule (3), a member of the Chambre may apply for call and admission on transfer as a Canadian legal advisor by delivering to the Executive Director the following:

(c) a certificate of standing from the Chambre and each other body regulating the legal profession, in any jurisdiction, in which the applicant is or has been a member of the legal profession;

(2) Subject to subrule (1), Rules 2-49 to 2-51 apply, with any necessary changes, to an application for call and admission on transfer as a Canadian legal advisor.

(3) This Rule does not apply to a member of the Chambre unless he or she has earned a bachelor's degree in civil law in Canada or a foreign degree and a certificate of equivalency from the Chambre.

PART 3 – PROTECTION OF THE PUBLIC

Division 4 – Professional Liability Insurance

Exemption from liability insurance

3-25 (4) A lawyer may apply to the Executive Director for exemption from the requirement to maintain professional liability insurance and pay the insurance fee, if, in another Canadian jurisdiction in which the governing body allows a similar exemption for members of the Society, the lawyer

(a) is resident or is deemed resident under the National Mobility Agreement, and

(b) maintains the full mandatory professional liability insurance coverage required in the other jurisdiction that is reasonably comparable in coverage and limits to that required of lawyers in British Columbia and extends to the lawyer's practice in British Columbia.

(5) A Canadian legal advisor may apply to the Executive Director for exemption from the requirement to maintain professional liability insurance and pay the insurance fee.

LAW SOCIETY RULES

(6) On an application under subrule (5), the Executive Director must grant the exemption, provided the Canadian legal advisor maintains the full mandatory professional liability insurance coverage required by the Chambre that extends to the Canadian legal advisor's practice in British Columbia.

IMPLEMENTATION OF NATIONAL MOBILITY AGREEMENT 2013

SUGGESTED RESOLUTION:

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

1. In Rule 1

(a) by adding the following definitions:

"Barreau" means the Barreau du Québec;

"Chambre" means the Chambre des notaires du Québec;***;***

(b) by rescinding the definition of* "National Mobility Agreement"** ***and substituting the following:

"National Mobility Agreement" means the National Mobility Agreement, 2013, of the Federation of Law Societies of Canada, as amended from time to time; ***;***

2. By rescinding Rule 2-16(2);

3. In Rule 2-22.1

(a) by rescinding subrule (1);

(b) by rescinding the preamble to subrule (1.1) and substituting the following:

(1.1) A Canadian legal advisor may***;***

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

(2) A Canadian legal advisor must not engage in the practice of law except as permitted under subrule (1.1).***;***

4. By rescinding Rule 2-22.2(2)(a) and substituting the following:

(a) be a member in good standing of the Chambre authorized to practise law in Québec,;

5. By rescinding Rule 2-49(1)(e) and substituting the following:

(e) proof of academic qualification

(i) as required of applicants for enrolment under Rule 2-27(4), or

(ii) for a member of the Barreau, proof that he or she has earned

(A) a bachelor's degree in civil law in Canada, or

(B) a foreign degree and a certificate of equivalency from the Barreau;***; and***

6. By rescinding Rule 2-49.3(1)(c) and (3) and substituting the following:

(1) Subject to subrule (3), a member of the Chambre may apply for call and admission on transfer as a Canadian legal advisor by delivering to the Executive Director the following:

(c) a certificate of standing from the Chambre and each other body regulating the legal profession, in any jurisdiction, in which the applicant is or has been a member of the legal profession;

(3) This Rule does not apply to a member of the Chambre unless he or she has earned a bachelor's degree in civil law in Canada or a foreign degree and a certificate of equivalency from the Chambre..

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 Committee
Date: November 12, 2013
Subject: **Orders for production of documents and attendance of witness**

---

1. Under section 44 of the *Legal Profession Act,* as recently amended, a Law Society tribunal can make an order requiring any person (including individuals who are not lawyers or articled students or otherwise subject to regulation by the Law Society) to attend a hearing as a witness or to produce documents or other evidence. To enforce the order, the tribunal may apply to the Supreme Court for an enforcement order.

2. The Act and Rules Committee proposes rule amendments that would provide for a procedure to be followed for a party to apply to a tribunal to issue an order permitted under section 44(4). The attached amendments and suggested resolution are recommended to the Benchers for adoption.

3. These are the relevant parts of that section:

Witnesses

44 (1) In this section:

"party" means an applicant, a respondent or the society;

"tribunal" means the benchers, a review board or a panel, or a member of the benchers, a review board or a panel, as the context requires.

(4) For the purposes of a proceeding under Part 2, 3, 4 or 5 of this Act, a tribunal may make an order requiring a person

(a) to attend an oral or electronic hearing to give evidence, on oath or affirmation or in any other manner, that is admissible and relevant to an issue in the proceeding, or

(b) to produce for the tribunal or a party a document or other thing in the person's possession or control, as specified by the tribunal, that is admissible and relevant to an issue in the proceeding.

(5) A tribunal may apply to the Supreme Court for an order directing

(a) a person to comply with an order made by the tribunal under subsection (4),

(b) any directors and officers of a person to cause the person to comply with an order made by the tribunal under subsection (4), or

(c) the custodian of a penal institution or another person who has custody of a person who is the subject of an order made by the tribunal under subsection (4) to ensure the person in custody attends the hearing.

(6) On an application under subsection (3) or (5), the Supreme Court may make the order requested or another order it considers appropriate.

4. While Law Society tribunals are generally in control of their own processes, subject only to the Act and Rules, it has been suggested that the parties and members of the tribunal could use more guidance as to the procedures for bringing these applications a before the tribunal.

5. Rule 5-4 allows a hearing panel to order production of files and records by an applicant or respondent in language based on section 41(2) of the *Legal Profession Act*. It does not apply, however, to third parties. It would be useful to make reference in this rule to the availability of an order under section 44(4) for the purpose of compelling evidence from individuals who are not parties to the proceedings. The Act and Rules Committee proposes that Rule 5-4 be amended so that the hearing panel can make the orders indicated, plus an order under section 44, during the course of the hearing.

6. Rule 5-4(2)(b) purports to allow the hearing panel to make such an order "at any time before or during a hearing," but as a practical matter, a hearing panel does not ordinarily exist prior to the hearing itself for more than a few days or weeks. The procedure for obtaining an order under section 44 should not depend on the happenstance of whether a hearing panel has been formally appointed or not.

7. The Committee recommends that, before the hearing, orders under section 44(4) follow a procedure similar to that for other preliminary questions before a discipline hearing, as set out in Rule 4-26.1. Since that rule applies only to discipline hearings and there is no equivalent provision applying to credentials hearings, the Committee recommends inserting a rule based on 4-26.1 with the necessary changes in the rules governing credentials hearings after appointment of counsel and before prehearing conferences as Rule 2-63.01.

8. In both credentials and discipline hearing rules the draft adds a rule applying a process similar to Rule 4-26.1 for orders under section 44. Specifically, it would add Rule 2-63.02 with respect to credentials hearings and Rule 4-26.2 with respect to discipline hearings.

9. It does not appear to be necessary to appoint an entire panel to approve an order under section 44. The President or designate is suggested as the adjudicator on these applications. One would expect that that would allow the Chambers Bencher system to apply so that orders can be made relatively efficiently and on short notice where that is necessary.

10. A Bencher conducting a pre-hearing conference may find it necessary or desirable to make an order under section 44. Amendments to the relevant rules are suggested to give the Bencher that authority.

11. The Committee recommends the attached amendments to the Benchers for adoption.

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Credentials hearings

Preliminary questions

2-63.01 (1) Before a hearing begins, the applicant or Law Society counsel may apply for the determination of a question relevant to the hearing by delivering to the Executive Director and to the other party written notice setting out the substance of the application and the grounds for it.

(2) The Executive Director must promptly notify the President of an application under subrule (1).

(3) When an application is made under subrule (1), the President must do one of the following as appears to the President to be appropriate:

(a) appoint a panel to determine the question;

(b) refer the question to a prehearing conference;

(c) refer the question to the panel at the hearing of the application.

(4) The President may designate another Bencher to exercise the discretion under subrule (3).

(5) A panel appointed under subrule (3)(a) is not seized of the application or any question pertaining to the application other than that referred under that provision.

Compelling witnesses and production of documents

2-63.02 (1) Before a hearing begins, the applicant or Law Society counsel may apply for the an order under section 44(4) of the Act by delivering to the Executive Director and to the other party written notice setting out the substance of the application and the grounds for it.

(2) The Executive Director must promptly notify the President of an application under subrule (1).

(3) When an application is made under subrule (1), after considering any submissions of counsel, the President must

(a) make the order requested or another order consistent with section 44(4) of the Act, or

LAW SOCIETY RULES

(b) refuse the application.

(4) The President may designate another Bencher to make a decision under subrule (3).

(5) On the motion of the applicant or Law Society counsel, the President or another Bencher designated by the President may apply to the Supreme Court under section 44(5) of the Act to enforce an order made under subrule (3).

Pre-hearing conference

2-63.1 (6) The Bencher presiding at a pre-hearing conference may

(b) order discovery and production of documents, including an order under section 44(4) of the Act,

PART 4 – DISCIPLINE

Compelling witnesses and production of documents

4-26.2 (1) Before a hearing begins, the respondent or discipline counsel may apply for an order under section 44(4) of the Act by delivering to the Executive Director and to the other party written notice setting out the substance of the application and the grounds for it.

(2) The Executive Director must promptly notify the President of an application under subrule (1).

(3) When an application is made under subrule (1), after considering any submissions, the President must

(a) make the order requested or another order consistent with section 44(4) of the Act, or

(b) refuse the application.

(4) The President may designate another Bencher to make a decision under subrule (3).

(5) On the motion of the respondent or discipline counsel, the President or another Bencher designated by the President may apply to the Supreme Court under section 44(5) of the Act to enforce an order made under subrule (3).

Pre-hearing conference

4-27(5.1) The respondent or discipline counsel may apply to the Bencher presiding at the conference for an order

(a) for discovery and production of documents, including an order under section 44(4) of the Act,

LAW SOCIETY RULES

PART 5 – HEARINGS AND APPEALS

Compelling witnesses and production of documents

5-4 (2) At any time during a hearing, ~~A~~ a panel may

(a) compel the applicant or respondent to give evidence under oath, ~~and~~

(b) ~~at any time before or during a hearing,~~ order the applicant or respondent to produce all files and records that are in the applicant's or respondent's possession or control that may be relevant to the matters raised by the application or in the citation, or

(c) make an order under section 44(4) or an application under section 44(5) of the Act.

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Credentials hearings

Preliminary questions

2-63.01 (1) Before a hearing begins, the applicant or Law Society counsel may apply for the determination of a question relevant to the hearing by delivering to the Executive Director and to the other party written notice setting out the substance of the application and the grounds for it.

(2) The Executive Director must promptly notify the President of an application under subrule (1).

(3) When an application is made under subrule (1), the President must do one of the following as appears to the President to be appropriate:

(a) appoint a panel to determine the question;

(b) refer the question to a prehearing conference;

(c) refer the question to the panel at the hearing of the application.

(4) The President may designate another Bencher to exercise the discretion under subrule (3).

(5) A panel appointed under subrule (3)(a) is not seized of the application or any question pertaining to the application other than that referred under that provision.

Compelling witnesses and production of documents

2-63.02 (1) Before a hearing begins, the applicant or Law Society counsel may apply for the an order under section 44(4) of the Act by delivering to the Executive Director and to the other party written notice setting out the substance of the application and the grounds for it.

(2) The Executive Director must promptly notify the President of an application under subrule (1).

(3) When an application is made under subrule (1), after considering any submissions of counsel, the President must

(a) make the order requested or another order consistent with section 44(4) of the Act, or

LAW SOCIETY RULES

(b) refuse the application.

(4) The President may designate another Bencher to make a decision under subrule (3).

(5) On the motion of the applicant or Law Society counsel, the President or another Bencher designated by the President may apply to the Supreme Court under section 44(5) of the Act to enforce an order made under subrule (3).

Pre-hearing conference

2-63.1 (6) The Bencher presiding at a pre-hearing conference may

(b) order discovery and production of documents, including an order under section 44(4) of the Act,

PART 4 – DISCIPLINE

Compelling witnesses and production of documents

4-26.2 (1) Before a hearing begins, the respondent or discipline counsel may apply for an order under section 44(4) of the Act by delivering to the Executive Director and to the other party written notice setting out the substance of the application and the grounds for it.

(2) The Executive Director must promptly notify the President of an application under subrule (1).

(3) When an application is made under subrule (1), after considering any submissions, the President must

(a) make the order requested or another order consistent with section 44(4) of the Act, or

(b) refuse the application.

(4) The President may designate another Bencher to make a decision under subrule (3).

(5) On the motion of the respondent or discipline counsel, the President or another Bencher designated by the President may apply to the Supreme Court under section 44(5) of the Act to enforce an order made under subrule (3).

Pre-hearing conference

4-27(5.1) The respondent or discipline counsel may apply to the Bencher presiding at the conference for an order

(a) for discovery and production of documents, including an order under section 44(4) of the Act,

LAW SOCIETY RULES

PART 5 – HEARINGS AND APPEALS

Compelling witnesses and production of documents

5-4 (2) At any time during a hearing, a panel may

(a) compel the applicant or respondent to give evidence under oath,

(b) order the applicant or respondent to produce all files and records that are in the applicant's or respondent's possession or control that may be relevant to the matters raised by the application or in the citation, or

(c) make an order under section 44(4) or an application under section 44(5) of the Act.

ORDER FOR PRODUCTION OF DOCUMENTS OR WITNESS ATTENDANCE

SUGGESTED RESOLUTION:

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

1. By adding the following Rules:

Preliminary questions

2-63.01 (1) Before a hearing begins, the applicant or Law Society counsel may apply for the determination of a question relevant to the hearing by delivering to the Executive Director and to the other party written notice setting out the substance of the application and the grounds for it.

(2) The Executive Director must promptly notify the President of an application under subrule (1).

(3) When an application is made under subrule (1), the President must do one of the following as appears to the President to be appropriate:

(a) appoint a panel to determine the question;

(b) refer the question to a prehearing conference;

(c) refer the question to the panel at the hearing of the application.

(4) The President may designate another Bencher to exercise the discretion under subrule (3).

(5) A panel appointed under subrule (3)(a) is not seized of the application or any question pertaining to the application other than that referred under that provision.

Compelling witnesses and production of documents

2-63.02 (1) Before a hearing begins, the applicant or Law Society counsel may apply for the an order under section 44(4) of the Act by delivering to the Executive Director and to the other party written notice setting out the substance of the application and the grounds for it.

(2) The Executive Director must promptly notify the President of an application under subrule (1).

(3) When an application is made under subrule (1), after considering any submissions of counsel, the President must

(a) make the order requested or another order consistent with section 44(4) of the Act, or

(b) refuse the application.

(4) The President may designate another Bencher to make a decision under subrule (3).

(5) On the motion of the applicant or Law Society counsel, the President or another Bencher designated by the President may apply to the Supreme Court under section 44(5) of the Act to enforce an order made under subrule (3).***;***

2. By rescinding Rule 2-63.1(6)(b) and substituting the following:

(b) order discovery and production of documents, including an order under section 44(4) of the Act,***;***

3. By adding the following Rule:

Compelling witnesses and production of documents

4-26.2 (1) Before a hearing begins, the respondent or discipline counsel may apply for an order under section 44(4) of the Act by delivering to the Executive Director and to the other party written notice setting out the substance of the application and the grounds for it.

(2) The Executive Director must promptly notify the President of an application under subrule (1).

(3) When an application is made under subrule (1), after considering any submissions, the President must

(a) make the order requested or another order consistent with section 44(4) of the Act, or

(b) refuse the application.

(4) The President may designate another Bencher to make a decision under subrule (3).

(5) On the motion of the respondent or discipline counsel, the President or another Bencher designated by the President may apply to the Supreme Court under section 44(5) of the Act to enforce an order made under subrule (3).***;***

4. By rescinding Rule 4-27(5.1)(a) and substituting the following:

(a) for discovery and production of documents, including an order under section 44(4) of the Act,***; and***

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

(2) At any time during a hearing, a panel may

(a) compel the applicant or respondent to give evidence under oath,

(b) order the applicant or respondent to produce all files and records that are in the applicant's or respondent's possession or control that may be relevant to the matters raised by the application or in the citation, or

(c) make an order under section 44(4) or an application under section 44(5) of the Act**.**

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Final Report of the Legal Service Providers Task Force

Legal Service Providers Task Force

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

December 6, 2013

Prepared for: Benchers

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

Purpose: Decision

Table of Contents

Executive Summary

1. The Legal Service Providers Task Force was created in the late fall of 2012 to examine issues arising from Strategic Plan Initiative 1-1(c), which is to examine whether the Law Society should regulate just lawyers or whether it should regulate all legal service providers.

2. The topic of Law Society credentialing or regulating other groups of legal service providers – and in particular paralegals – is not new. It has been discussed several times over the past 25 years.

3. In the past decade, however, new developments have taken place. Primary amongst these is the regulation of paralegals that has been successfully undertaken by the Law Society of Upper Canada.

4. Other jurisdictions have also taken, or are taking, steps to permit the provision of regulated legal services by groups other than lawyers. This has taken place in England, where groups such as conveyancers and "legal executives" provide authorised legal services alongside barristers and solicitors. Each group is separately regulated, although, since 2007, a government appointed body, the Legal Services Board, oversees each of the "front-line regulators." Washington State has also recently created "limited licence legal practitioners" under the authority of the Washington State Supreme Court.

5. Notaries public provide a limited scope of regulated legal services in British Columbia in addition to lawyers. Relevant to the Task Force's work was an expression of desire by the Attorney General that the Society of Notaries Public and the Law Society work through issues concerning appropriate scope of practice and regulatory models for legal service providers that best protect the public while improving access to legal services.

6. In addition, the Law Society itself has expanded the scope of legal service that can be provided by "designated paralegals" under the supervision of a lawyer. At the time decisions were made to this end, the topic of paralegal credentialing and regulation were left open for future discussion.

7. The Task Force as created by the Benchers to address these issues reflects various viewpoints external to the Law Society in the hope that a consensus could be reached on various points under discussion and thus includes Benchers as well as members of the Canadian Bar Association, Society of Notaries Public, and BC Paralegals Association.

8. The Task Force was given a specific mandate to consider various previous work undertaken by the Law Society, to examine processes in other jurisdictions, to examine public interest considerations concerning the regulation of non-lawyer legal service providers and whether, if they were permitted, the Law Society should undertake that regulation (as well as what implications that may have on Law Society operations), and to consider whether regulation of

non-lawyer legal service providers would improve access to law-related services for the public. After completing these tasks, the Task Force was asked to make a recommendation to the Benchers about whether the Law Society should continue to regulate lawyers in British Columbia, or whether it should take steps to implement the regulation of other legal service providers.

9. The Task Force, in undertaking its work, reached a number of conclusions:

   a. It is in the public interest that legal service providers other than lawyers and notaries should be regulated unless operating under the supervision of a lawyer or other regulated legal service provider such as a notary public;

   b. A single regulator of legal services is the preferable model (rather than distinct regulators for different groups of legal service providers);

   c. If there is to be a single regulator of legal service providers, the Law Society is the logical regulator body;

   d. Creating some method to provide "paralegals" who have met prescribed educational and practical standards with a certification would assist greatly in giving definition to that function when working under the supervision of a lawyer. Further, the regulation of non-lawyer, non-notary legal service providers of limited scope legal services should be included in the purview of a single regulator of legal services and that the Law Society should move to create a process by which that can take place. Other groups should not be regulated by such a body at this time.

   e. There is no certainty that a single-model regulator of a number of different groups of legal service providers will improve access to justice, and it is uncertain that one would be able to create empirical evidence to prove this end. There is no way to find the answer without trying it, and the Task Force therefore concludes that it should be tried.

10. On the basis of its conclusions, the Task Force formulated three recommendations:

   (1) That the Law Society seek to merge regulatory operations with the Society of Notaries Public of British Columbia with the result that the Law Society would become the regulator of both lawyers and notaries in the province, and that the Law Society otherwise continue to maintain the same object and duties as set out in section 3 of the ***Legal Profession Act***, modified as necessary to achieve the recommended end;

   (2) That a program be created by which the regulator of legal services could provide paralegals who have met specific, prescribed education and/or training standards with a certificate that would allow such persons to be held out by regulated legal service providers for whom they work as "certified paralegals." A regulated legal service

provider would not be permitted to hold out as a "certified paralegal" any person who had not obtained a certificate.

(3) That the Law Society develop a regulatory framework by which other existing providers of legal services, or new stand-alone groups who are neither lawyers nor notaries, could provide credentialed and regulated legal services in the public interest.

11. Each of these recommendations is a first step toward an end result, and, if approved by the Benchers, each will require further work, analysis, collaboration and consultation with other interested parties. The Task Force recognizes the possibility that such further analysis could disclose reasons to discontinue efforts to implement one or more of its "in principle" recommendations if the consequences identified are assessed to outweigh the benefits as proposed and explained in this Report.

12. Amongst other considerations, the impact on the public right of lawyer independence, the effect on Law Society operations, and how the Agreement on Internal Trade may be engaged by the recommendations all need to be addressed.

13. Quite apart from the considerations above, negotiations with various groups such as the Society of Notaries Public, paralegal groups, and post-secondary institutions that provide education for legal service providers would need to take place and work will need to be undertaken to develop a framework for the scope of practice of other legal service providers.

14. The Task Force outlines what next steps it envisages are needed to follow through on its recommendations at the end of this Report

Recommendations

15. The Task Force makes three recommendations.

(1) That the Law Society seek to merge regulatory operations with the Society of Notaries Public of British Columbia with the result that the Law Society would become the regulator of both lawyers and notaries in the province, and that the Law Society otherwise continue to maintain the same object and duties as set out in section 3 of the *Legal Profession Act*, modified as necessary to achieve the recommended end;

(2) That a program be created by which the regulator of legal services could provide paralegals who have met specific, prescribed education and/or training standards with a certificate that would allow such persons to be held out by regulated legal service providers for whom they work as "certified paralegals." A regulated legal service provider would not be permitted to hold out as a "certified paralegal" any person who had not obtained a certificate.

(3) That the Law Society develop a regulatory framework by which other existing providers of legal services, or new stand-alone groups who are neither lawyers nor notaries, could provide credentialed and regulated legal services in the public interest.

16. Each recommendation is in effect a decision in principle. Much further work, consultation and negotiation would be required should the recommendations be adopted by the Benchers.

Introduction

The Issue Under Consideration

17. The Law Society has since its inception in 1869 regulated barristers and solicitors, the two branches of the legal profession that are commonly referred to as "lawyers." In British Columbia, there is no longer a separation between these branches. All lawyers in British Columbia are both barristers and solicitors. All lawyers in British Columbia also have and may exercise all the powers, rights, duties and privileges of the office of notary public.[1]

18. Generally speaking, the practice of law (as that term is defined in s. 1 of the *Legal Profession Act* S.B.C. 1998 c. 9) is restricted to practising lawyers. But section 15 of that Act does permit some exceptions, such as employees supervised by a practising lawyer, lawyers from other provinces, and practitioners of foreign law who hold a permit or who are in BC practising only temporarily.

19. In addition to the exceptions in the *Legal Profession Act*, various other statutes permit others to engage in some of what constitutes the practice of law. Members of the Society of Notaries Public of British Columbia (the Notaries Society) are permitted to provide certain services by virtue of s. 18 of the *Notaries Act* R.S.B.C. 1996 c. 334 and the "lawful practice of a notary public" is in fact excluded from the definition of "practice of law" In the *Legal Profession Act.* Section 94(4) of the *Workers Compensation Act* R.S.B.C. 1996 c. 492 provides for workers' and employers' advisers to provide advice about claims, and specifically states that they need not be members of the Law Society to do so, and s. 94.1 permits the use of lay advocates, who are specifically exempted by that section from the provisions of s. 15 of the *Legal Profession Act.* Some other legislative regimes, particularly in administrative law areas, permit *non-lawyer*s to provide some legal services.[2]

20. Others who are not lawyers, or who would not otherwise be exempted from the s. 15 prohibition on practising law, also provide legal services for a fee. While the provision of fee-based service from such persons generally constitutes an offence under the *Legal Profession Act*[3] as constituting the "unauthorised practice of law," the Law Society exercises discretion in deciding whether it is in the public interest to pursue each and every unauthorised practice matter.

---

[1] See s. 14 *Legal Profession Act,* S.B.C. 1998 c. 9

[2] Other examples include patent and trade mark agents, immigration consultants, and insurance adjusters licensed under the *Financial Institutions Act* carrying on the usual business of an insurance adjuster. See also the *Court Agent Act*, R.S.B.C.1996 c. 76

[3] See s. 85(1)(a), *Legal Profession Act*

21. Consequently, what arises is an uneven regulatory landscape that gives rise to the question: how should the practice of law be regulated? Given that individuals other than lawyers can practise law in BC, should there be joint or separate regulation of these individuals? Should other groups be added to those who are currently permitted to practise law in the Province? If so, should they be regulated, and if so by whom? Should the Law Society remain as the regulator of *lawyers* or should it become the regulator of a larger group of *legal service providers*?

Creating the Task Force

22. At the 2011 Benchers retreat, the future of legal regulation in British Columbia was discussed at some length. In particular, the Benchers debated whether the Law Society should seek to expand the scope of who it regulates. Should it confine its regulatory responsibilities to regulate only lawyers, or should it expand those responsibilities to include regulating other non-lawyer legal service providers? No consensus on those questions was reached at the time, but a decision was made to explore the issues in the Law Society's subsequent Strategic Plan.

23. As a result, the Law Society's current Strategic Plan therefore includes, as Initiative 1-1(c) the following:

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

24. At the same time, a number of other events were taking place that were relevant to the discussion. These included:

    a. discussions amongst the Attorney General, the Notaries Society, the Law Society and Canadian Bar Association (BC Branch) concerning the Notaries Society's request for an expanded scope of practice and modernization of their governing legislation. The Attorney General did not act on the Notaries Society's request, instead expressing the hope that the Notaries Society and the Law Society could work through issues concerning appropriate scope of practice and regulatory models for legal service providers that best protect the public while improving access to legal services;

    b. the Law Society's own developing reforms for expanding the permitted roles of articled students and paralegals working under the supervision of a lawyer, which had left the topic of paralegal credentialing and regulation open for future discussion.

25. The Benchers decided that consideration of Initiative 1-1(c) of the Strategic Plan warranted the creation of a task force to examine the issues and report back to the Benchers. Recognizing that the issues under consideration had a considerable external focus, the membership of the Task Force was established to reflect various external viewpoints, with the

hope that a consensus could be reached on the points under discussion. A decision was made as well to appoint a member of the public, who was not a member of any of the most directly interested parties, in order to bring a perspective not aligned to any one profession's interest in the subject.

26. The Task Force as appointed is comprised as follows:

Bruce LeRose, QC, Chair (Law Society Life Bencher)

Ken Walker QC, Vice Chair (Law Society Second Vice President, 2013)

Godfrey Archbold (President, Land Title Survey Authority)

Satwinder Bains (Appointed Bencher)

John Eastwood (2013 President, Society of Notaries Public)

Carmen Marolla (Vice President, BC Paralegal Association)

Kerry Simmons (2012 -13 President, Canadian Bar Association – BC Branch).

Wayne Robertson, QC, Executive Director of the Law Foundation of British Columbia also participated in Task Force meetings starting in September 2013.

Task Force Mandate

27. The Benchers established the following mandate for the Task Force:

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

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

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

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

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

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

28. The Task Force will address each of the points raised in the mandate throughout the body of this Final Report. Points 4 and 5 were addressed in a preliminary way in the Task Force's Interim Report issued in July 2013, but will be expanded upon here in light of the consultation and further debate of the Task Force.

Background

29. Some of the topics under consideration are not new to the Law Society.[4] In particular, the question of paralegal regulation and credentialing was discussed as far back as 1989. At that time, the Paralegalism Subcommittee recommended against the creation of a separate, new paralegal profession, [5] but did recommend that certification of paralegals (legal assistants) was in the best interest of the public, legal assistants and the profession generally.[6] The Benchers adopted those recommendations and asked that a certification program be developed.

30. Regulation of groups other than paralegals was also considered by the Paralegalism Committee in 1989. Notaries were observed at that time to be well-established, and a recommendation was made that the Law Society approach the Society of Notaries Public with a view to negotiating an agreement for the integration of notaries public into the legal profession as lawyers having restricted practice licences. This recommendation did not proceed. This issue does not appear to have been considered since.

31. In the early 1990s, as part of the discussion for a new *Legal Profession Act*, the Law Society asked that an amendment be included to allow it to certify and regulate paralegals. However, the request was not granted by the government at the time.

32. In 1995 the Benchers reconsidered the proposal for certification of paralegals and discontinued the initiative due to concerns about recovering the costs of the certification scheme.

33. Starting again in 2000, the Benchers created the Paralegal Working Group (later the Paralegal Task Force). In 2002 that Task Force recommended the adoption of a system for paralegal

---

[4] A more detailed review of the history of the consideration given by the Law Society to this subject can be found in the *Report to the Benchers by the Paralegal Working Group*, December 20, 2000, available on the Law Society's website.

[5] *Paralegals in the Delivery of Legal Services Part I. A Report of the Paralegalism Subcommittee*, October 1989

[6] *Paralegals in the Delivery of Legal Services Part II: Legal Assistants. A Report of the Paralegalism Subcommittee* September 1989

certification and for the creation of a Standing Committee on Paralegals to deal with accreditation issues and to explore the introduction of a regulatory regime. At the same time, the Task Force recommended an expansion of services that properly trained paralegals working under the supervision of a lawyer could perform.

34. A proposed certification scheme was circulated for comment in 2003 for paralegals working under lawyer supervision. The Benchers did not however approve the proposal, instead recommending that changes to then Chapter 12 of the ***Professional Conduct Handbook*** be explored to expand the range of services a supervised paralegal could provide. A final report was prepared in 2006,[7] and input from other Law Society Committees was sought. In early 2007, the Benchers referred to the Regulatory Policy Committee the issue of setting standard qualifications for paralegals. That Committee agreed on a staged approach to developing a credentialing program to assist lawyers in the supervision of paralegals by:

    a. Specifying the necessary credentials of paralegals before a lawyer may delegate to them specified services; and

    b. Setting out guidelines for lawyers' assistance as to what may constitute acceptable credentials for a paralegal who is to be assigned any certain tasks.

35. By this time, however, the further exploration of the issue of permitting independent, stand-alone paralegals to provide some legal services was no longer being discussed.

36. However, in January 2008, the Futures Committee released its report entitled "Towards a New Regulatory Model." The report stated at page 2:

> The strategic policy question is whether the current regulatory arrangements, in which lawyers have the exclusive right to practise law, facilitate or present a barrier to access to legal services and access to justice, or would the public have greater access to justice if some non-lawyers are permitted to provide some legal services? An ancillary question is who would regulate non-lawyers who provide legal services? If those questions are examined in a systematic and principled way, then the Law Society can either defend the status quo or advocate for progressive change on public interest grounds…The discussions in 2007 proceeded on the premise that a complete reservation of the practice of law to lawyers cannot be maintained.

37. The Futures Committee's report gave rise to the discussions at the 2008 Benchers retreat, which generated the discussion of initiatives, including the eventual analysis of the topic before this Task Force. The Futures Committee report also gave rise to specific initiatives on

---

[7] Paralegal Task Force *Report to Benchers on Delegation and Qualification of Paralegals,* April 2006

the Law Society's 2009-2011 Strategic Plan that ultimately led to the creation of the Delivery of Legal Services Task Force and the creation of the "Designated Paralegal" initiative.[8]

38. By that time, independent paralegals in Ontario had come under the direct regulation of the Law Society of Upper Canada, marking a new venture in the regulation of legal professionals. The situation was somewhat thrust upon the Law Society of Upper Canada due to the existence of unregulated paralegals who had for some considerable time provided stand alone legal services on various matters (a situation that has never existed in BC), and the Ontario government reached a political decision that this state of affairs could not persist. The Law Society of Upper Canada was asked to take on the regulatory responsibilities, and the *Law Society Act* R.S.O. 1990 c. L.8 was amended accordingly to permit the practice of law by various "licensees" (either lawyers or paralegals, depending on the licence obtained) in 2006.

Task Force Process

39. The Task Force began its process by reviewing the considerable research on legal regulation, including materials relating to past Law Society consideration of paralegal regulation and certification. It considered the work and the reports discussed in the section above, and drew what lessons it could from the detailed work already done. It concluded that the issue needed resolution.

40. The materials compiled by the Task Force also included statistics, surveys, reports, and academic articles from Canada and other jurisdictions. It also reviewed materials setting out the approach to legal professional regulation in Alberta, Ontario, and Quebec, and (outside of Canada) examined models in Washington State, England and Wales, and Denmark.

41. The development of regulation of paralegals by the Law Society of Upper Canada has already been referred to. The Task Force understands that the joint regulation has been reported to be working well. In the report on a five-year review of paralegal regulation[9], it was noted that the introduction of paralegal regulation by the Law Society was "by any objective measure....a remarkable success." It further reported that research commissioned by the Law Society indicated that paralegals were generally satisfied with the regulatory framework, and the satisfaction levels were generally high among members of the public who have consumed paralegal services.

42. Quebec was reviewed because it maintains two branches of its legal professionals. These two branches have some common educational requirements (including the requirement of a

---

[8] *Delivery of Legal Services Task Force Final Report*, October 1, 2010

[9] Report to the Attorney General of Ontario: Report of Appointee's Five-Year Review of Paralegal Regulation in Ontario Pursuant to Section 63.1 of the *Law Society Act*, November 2012.

degree in civil law). However, the two branches are separately regulated, although the *Code des Professions* governs both the Barreau du Quebec (which regulates avocats) and the Chambre de Notaires du Quebec (which regulates notaires). Further, both the Chambre and the Barreau fall under the jurisdiction of the Office des Professions.

43. Washington State was reviewed to take consideration of the Supreme Court order that created a category of limited licence legal technicians who are permitted to provide a limited range of legal services that were previously reserved for lawyers.[10] The rule is designed to assist otherwise self-represented litigants better navigate the court system.

44. England and Wales was reviewed due to the considerable regulatory reform that has occurred there in the past decade. The ***Legal Services Act 2007,*** c. 29 brought about a new regulatory structure in England and Wales that was intended to simplify the regulatory maze consumers faced. The review allowed the Task Force to consider a system with multiple regulators all operating under the supervision of an oversight regulator (the Legal Services Board). The 2007 reforms have been the subject of much criticism and recently, as part of a government review, many are calling for the current model to be overhauled.

45. Denmark was examined because it provides a counterpoint to the discussion on regulation. Anyone in Denmark is permitted to practise law, even for a fee, subject to certain exceptions with respect to court appearances in the superior courts. However, only members of the Danish Law Society (the Advokatsamfundet) are permitted to use the title of "advokat" (lawyer). All persons who have qualified for a licence as a lawyer automatically become members of the Advokatsamfundet and are regulated by that body. Other people who provide legal advice, but who are not lawyers, cannot use the title "advokat" and are not regulated. Clients therefore have a choice – they can obtain the legal services of a qualified, regulated and insured professional, or they can take their chances with anyone else.

46. The Task Force also reviewed the current initiative that is bringing the Chartered Accountants, Certified General Accountants and Certified Management Accountants together under a single designation of Chartered Professional Accountants. The initiative seeks to harmonize standards of education and regulation and to streamline the number of regulatory bodies overseeing the delivery of accounting services. The initiative recognizes the evolution of the various accounting professions and how the public interest is better served by harmonizing standards. In addition, the professions recognized the increasingly global nature of their practices and that Canada would fall behind if it maintained a patchwork of regulatory standards in the accounting world.

---

[10] The Supreme Court of Washington, In the Matter of the Adoption of New APR 28 – Limited Practice Rule for Limited License Legal Technicians Order N0. 25700-A-1005, filed June 15, 2012

47. The Task Force released its Interim Report in July 2013 in which it addressed its preliminary discussion on whether it was in the public interest that non-lawyer legal service providers be regulated and, if so, whether the Law Society should be the regulator, and whether the recognition and regulation of non-lawyer legal service providers would improve access to law-related service for the public (items 4 and 5 of its mandate). It also outlined possible advantages and disadvantages of a single regulator model for different groups of legal professionals.

48. The Interim Report recommended a period of consultation on a set of questions[11] arising from its work to that point in time in order to seek the views of interested parties and the public at large about whether legal service professionals other than lawyers should be regulated, who such providers should be, and what model of regulation might be preferred

49. Consultations took place through September and early October 2013 around the province, and through an on-line questionnaire posted on the Law Society's website. The Notaries Society also engaged in consultations of its members. A summary of the results of each consultation is attached as the Appendix to this report.

50. The Committee subsequently met to discuss the results of the consultations and to discuss what recommendations it could make on the basis of the work it has been able to accomplish during its existence. That discussion has resulted in this report and recommendations.

[11] The questions were as follows:

1. Should legal service providers other than lawyers and notaries be regulated?
2. If you think legal service providers other than lawyers and notaries should be regulated, which additional legal service providers?
3. Should legal service providers be regulated by a single regulator or should each profession be regulated by a distinct regulator?
4. If you think legal service providers should be regulated by a single regulator, who should the regulator be?

Analysis and Conclusions

Public Interest

51. The issues under consideration by the Task Force are significant. The mandate given to the Task Force invites a consideration of issues that could dramatically change the way legal services in British Columbia have been provided and regulated for almost 150 years.

52. The starting point for the Task Force was the premise upon which the Futures Committee based its discussion leading to its 2008 report: that a complete reservation of the practice of law to lawyers cannot be maintained. In fact, of course, the Task Force recognizes that this "complete reservation" has never really existed in BC in any event, as discussed above.

53. However, the point is important. Some groups other than lawyers can and do now provide legal services. Some are regulated and some are not. Moreover, the Task Force believes, the likelihood that other groups or individuals will seek to provide legal services will increase in light of the perceived high cost of legal services.

54. Consequently, the Task Force accepts that people other than lawyers will continue to provide legal services in the province. The Task Force accepts that there may be room to extend some types of legal services that are currently reserved to lawyers to other groups. However, this needs to proceed in a manner that protects the interest of the public. It also needs to protect the public interest in a broader sense to ensure that the justice system is not compromised by a plethora of service providers regulated to different standards.

55. In both in-person consultations and through feedback on the online survey and written submissions, the Task Force heard that providers of legal services should be regulated. There was a variety of opinion as to which types of legal service providers ought to be regulated. The predominant reasons favouring regulation was a need to protect the public from unqualified individuals providing legal services and to give the public some recourse to a system for resolving complaints about the quality of the services received. It was recognized by some, including in the written submission of the Canadian Bar Association BC Branch, that non-lawyers who provide legal services under the supervision of a lawyer (or a regulated legal service provider such as a notary public) need not be regulated, as the regulation of the person responsible for supervising the non-lawyer provides adequate protection to the public.

Conclusion

56. The Task Force concludes that it is in the public interest that legal service providers other than lawyers and notaries should be regulated unless operating under the supervision of a lawyer or other regulated service provider such as a notary public.

A Single Regulator of Legal Services

57. The Task Force concluded that "public interest" is not capable of a neat definition that will apply in all circumstances. Rather, it is varied and context specific. This conclusion suggests that a single regulator of legal services with a mandate to act in the public interest might be better able to apply a more consistent application of the "public interest" to the various contexts in which it would arise because that single regulator would be examining the totality of the legal services landscape. Multiple regulators might be expected to apply conflicting or inconsistent standards.

58. The Interim Report set out potential advantages and disadvantages of a single regulator model and of a multiple regulator model. The feedback from the consultation served to affirm that list and add to it.

59. The key advantages to a single regulatory model include having credentials, standards, and disciplinary systems that are logically reconciled as between the various providers of legal services. It is not in the public interest to permit two different legal professionals to provide the same service to the public but have them subject to different standards of professional responsibility and regulatory oversight. The potential for public confusion was seen to be reduced by a single regulatory model and a single regulator was seen to be better able to improve public trust in the administration of justice. A single regulator was seen to be better able to increase the types of services various professions could provide.

60. The Task Force also believes that the economies of scale that can be realised through a single regulator of legal services is a key advantage of a single regulator model. It is, simply put, more economically efficient to regulate legal service providers through one organization than it is to have to create multiple governance structures and regulatory bureaucracies, particularly when the same or similar services are being regulated. Not only does this duplication risk the creation of differing standards, it costs more to the system as a whole and is therefore difficult to justify.

61. The Task Force concluded that the key advantages of a multiple regulator model include less potential for confusion on the part of the public between the identities of various legal service providers as distinct professions. There is less risk of actual or perceived conflicts of interest on the part of the regulator when it does not need to balance competing professions under one roof. Multiple regulators may foster greater innovation through competition than might be the case in a single regulatory model. A multiple regulatory system insulates each profession from the special interests of the other and consequently can focus on protecting the public interest rather than managing potential disputes between different categories of membership.

62. The survey results suggested an overall preference, by a 60% - 40% margin, for a single regulator of legal services. The Task Force notes, however, that a consultation undertaken by the Notaries Society of its members showed no clear majority for a single regulator. 43% of

notaries who responded preferred each legal service provider to have its own regulating body. 35% of respondents preferred a single regulator. However, the response in favour of a single regulator increased to 62% if notaries were able to achieve an expanded scope of service through that single regulator.

63. The Task Force weighed the advantages of each model carefully against how it considered the public interest would best be served. The ability for a single regulator with an appropriate governance structure to assess the public interest in relation to the legal profession as a whole, rather than to only a constituent part of it, was an attractive feature to the Task Force. It would allow, for instance, a single regulating body to plan more effectively by being able to assess, from a profession-wide perspective, as to what level of competence and standards were needed for particular legal services, rather than having multiple groups advocate in their own self-interest as to what those standards should be.

64. Moreover, a single regulator model would be able to avoid competing standards being set for similar types of services that might be common to more than one group of professionals. The Task Force was concerned that the possibility of competing regulatory frameworks created too much of a risk of driving standards down in order to gain competitive advantages for particular professional groups, a result that would not be in the public interest. While it is possible that multiple regulators could continuously challenge each other to create higher standards, overall the Task Force concluded that a single regulator acting in the public interest by regulating all professionals would be better able to set appropriate standards. Competing standards would also risk public confusion as to what the appropriate standard should be.

65. Further, the Task Force believes that no matter how well-intentioned a regulator of a discrete group of legal professionals is, there is always a ***perception*** that the regulator acts to some degree in the interest of those professionals that it regulates. The Task Force believes that a single regulator of all, or of at least several groups of, legal professionals would be better able to overcome this perception because it would not be tied as clearly to any single group.

66. A single regulator also presents a clearer model to the public, who can seek redress for concerns about competency or conduct from a single body.

Conclusion

67. On balance, the Task Force concludes that a single regulator of legal services is the preferable model.

Who Should the Single Regulator Be?

68. If one regulator is the better model for legal service regulation, who should that regulator be?

69. The response to the Law Society consultation indicated that a majority of participants suggests that if there were to be one regulator of legal services, the Law Society should be that regulator. Other suggestions were made that a new body should be created, "independent" of any of the professions, and one suggested that a sub-committee of the Supreme Court (akin to American models) be created. On the other hand, the Task Force notes that the survey conducted by the Notaries Society discloses that only 7% of notaries who responded believed the Law Society should be the regulator in a single regulator model. Notaries preferred an "independent" regulator.

70. The Task Force deliberated which model it considered best.

71. Both the Law Society and the Society of Notaries Public have regulated their members for a considerable period of time and each has considerable expertise in regulatory matters.

72. The Law Society's mandate, however, is a broader one that is specifically required to consider the public interest, and the Law Society, unlike that of the Notaries, is solely a regulatory body. It has no mandate to represent the interests of its members except insofar as it is needed to ensure its members fulfil their duties in the practice of law. The Law Society has a mandate beyond regulation, as well, as it is required to "protect the public interest in the administration of justice" in a number of general ways that position it as an organization that might reasonably be expected to look at public rights and interests in the system in a way that the Notaries currently cannot.

73. Moreover, the Law Society currently has more robust legislation that allows it to regulate more effectively. The Notaries Society seeks amendments to its governing legislation to emulate many of the powers that the Law Society now has. Consequently, of the two bodies, the Law Society is better equipped to regulate those to whom it can accord membership.

74. A new body would be costly to start up and would likely have to re-create in any event the regulatory authority already existing with the Law Society.

75. The Task Force recognizes that the Law Society has been the regulator of lawyers for well over a century, and concern might exist that the influence of lawyers would dominate the single regulator model if the Law Society were to be the regulator. This concern is reflected in survey results, with calls for a single regulator to be "independent" of any current group of legal professionals.

76. The Task Force cannot agree to suggestions that the government set up a single regulator. The "independence of the bar" is a principle of fundamental justice[12], and while the effects on such independence will have to be analysed more closely after decisions are made about

[12] *Federation of Law Societies of Canada v. Canada (Attorney General)* 2013 BCCA 147

which model of regulation to pursue, the Task Force is well aware that a government-appointed regulator body for lawyers would contravene that independence at the most basic levels.

77. The Task Force believes that, while the "Law Society" may now be associated with lawyers, moving that organization to being a single regulator for more than one group of providers should mean that the Law Society need not continue to be associated with only lawyers. Indeed, it is possible that as a regulator of no single group of legal professionals, it could better be viewed by the public as an independent body that exists to protect the public interest in the administration of justice.

78. The Task Force therefore recognizes that changes to the governance structure of the Law Society would likely be necessary should it be the single regulator, and these changes would need to address the concerns raised by those in the consultation who advocated for a body "independent" of any particular profession.

Conclusion

79. On balance, the Task Force concludes that the Law Society is the logical regulator body if there is to be one regulator of legal services.

Who Should Be Regulated?

80. If there is a single regulator, should it regulate legal service providers other than lawyers and notaries?

81. The Task Force has concluded that it is in the public interest that non-lawyer (and, by extension, non-notary) legal service providers should be regulated. Which other legal service providers should be included?

82. The Task Force discussed this issue in a general way. It noted that the consultation response strongly indicated a preference for the regulation of paralegals, although again, the sample size of the consultation has to be considered, as does the fact that participants who identified themselves as "paralegals" constituted a large percentage of those who replied.

83. The Task Force wrestled with a definition of "paralegal". Currently there is no definition. This means that some people who have a great deal of practical experience and education from post-secondary institutions that offer specialized education and training for paralegals call themselves paralegals, while at the same time others with no such education or experience use the same title.

84. Some ability for the regulator of legal services to identify qualifications or experience that would allow for a designation of title would assist in giving a better meaning to "paralegal."

However, the Task Force also believes that ***regulation*** of individuals (as opposed to a certification recognizing the achievement of, for example, educational criteria) who are acting strictly under supervision of a regulated professional is unnecessary and could add needless expense to the cost of the legal services provided.

85. On the other hand, the Task Force supports the idea of developing a regulatory framework that would allow for the creation of new categories of legal service providers to be in the public interest, which would be regulated through the single-regulator model. The level of qualification and the scope of the legal services that this group would be enabled to provide will need, of course, to be determined. The Task Force believes that the proper scope of legal services can be assessed by the single regulator to maximize areas of need that are currently under-served, or not served at all, by regulated legal service professionals, and can therefore be designed to improve overall access to legal services.

86. With regard to other groups identified in the consultation, the Task Force believes that they ought not to be included in a regulatory model at this time. Doing so may have adverse consequences on the viability of some models, such as the community advocates who are under some supervision through the Law Foundation. Regulation of arbitrators may need consideration at some time, but as they perform an adjudicative function the Task Force is unsure if a legal ***service*** provider regulator is appropriate for them. Mediators are often considered to be performing legal services (although the definition of "practice of law" does not include mediation), and certainly ***lawyers*** who act as mediators need to be regulated by the Law Society. The Task Force also noted that commissioners might require some form of regulation. However, the Task Force concluded that consideration of the regulation of other legal service providers should be deferred for now. It is possible that the development of a regulatory framework referred to above could encompass the types of services provided by these groups, but that is something that the Task Force believes will have to be assessed at a later date.

87. The Task Force recognizes that beginning the process of examining the regulation of non-lawyer legal service providers by a single regulator by taking smaller steps may lead to a more successful end program of expanded regulation. It believes that the most effective course of action is to start the process by creating a single-regulatory model for the two currently separately regulated branches of the legal profession (lawyers and notaries), and by developing a regulatory framework through that single regulator by which other existing providers of legal services, or new stand-alone groups who are neither lawyers nor notaries, could provide credentialed and regulated legal services in the public interest. It is possible that some of the other groups identified in the consultation may, in fact, fall within the parameters of the new group.

Conclusion

88. The Task Force concludes creating some method to provide "paralegals" who have met prescribed educational and practical standards with a certification would assist greatly in giving definition to that function when working under the supervision of a lawyer. The Task Force also concludes that the regulation of non-lawyer, non-notary legal service providers of limited scope legal services should be included in the purview of a single regulator of legal services and that the Law Society should move to create a process by which that can take place. Other groups should not be regulated by such a body at this time.

Improving Access to Justice

89. The Task Force was asked to examine whether recognition and regulation of non-lawyer legal service providers would improve access to law-related services for the public. Access to legal services remains a topic of much discussion and concern, as evidenced in the recently released Canadian Bar Association summary of its report entitled "Reaching Equal Justice: an Invitation to Envision and Act" and the Report of the Action Committee on Access to Justice in Civil and Family Matters entitled "Access to Civil & Family Justice: A Roadmap for Change."

90. This topic was addressed in the Interim report. A significant challenge to the Task Force in examining this topic is that it found no empirical studies that analyze how forms of legal service regulation affect access to legal services. The academic articles reviewed by the Task Force confirmed this general lack of data. Nevertheless, the Task Force also attempted to discern how regulation in general, and a single regulatory model in particular, might improve access to legal services.

91. There are some examples demonstrating how access to justice may be improved by permitting an expansion of services to a new group of service provider. England, in 1985, removed conveyancing from legal services reserved to solicitors, and a new group of conveyancers was created. A separate regulatory body was created for this group. There is some evidence that suggests that the cost of conveyancing decreased in England in the following years. However, adding another regulatory body simply added to the plethora of legal regulators already existing in England, which ultimately led to the recommendation in the Clementi report[13] a decade and a half later to create a single body responsible for regulation of legal service providers in England to reduce the "regulatory maze" that existed.

92. The Task Force recognized that access to legal services is a concern for regulators of the legal profession and other legal system stakeholders and that changes are necessary. But the Task

---

[13] Clementi, Sir David *Review of the Regulatory Framework for Legal Services in England and Wales* December, 2004

Force also recognized the tension between the desirability of empirical evidence to support change and the difficulty of ever changing if empirical evidence were a necessary prerequisite.

93. The Task Force discussed past access initiatives of the Law Society, such as providing insurance coverage for pro bono legal services, modifying the rules of professional conduct to facilitate limited scope legal services, and expanding the roles of articled students and paralegals to improve access to lower cost, competently delivered legal services. These initiatives removed regulatory barriers in the market for legal services.

94. The Task Force noted that it has no direct evidence to date whether these initiatives have improved access to legal services. However, the common element of each of the initiatives is that there is an elimination or modification of regulatory barriers to services being provided. The Task Force also noted that regulation is necessary to ensure that standards are established and followed. In any regulatory model, therefore, there is a tension between attempting to maximize access to the regulated services while also providing assurances that services are provided by competent and ethical professionals.

95. The Task Force discussed the concept that a regulator can seek to facilitate greater access through policy reforms. It is then up to the market place to embrace or reject the reforms.

96. Regulatory reforms in other jurisdictions that the Task Force has examined are intended, in part, to maximize choice to the public in an effort to close the "access to justice gap"[14] but have recognized that the result is not certain. In Washington State, for example, the Supreme Court order that authorizes limited license legal technicians stated:

> No one has a crystal ball. It may be that stand-alone limited license legal technicians will not find the practice lucrative and that the cost of establishing and maintaining a practice under this rule will require them to charge rates close to those of attorneys. On the other hand, it may be that economies can be achieved that will allow these very limited services to be offered at a market rate substantially below those of attorneys. There is simply no way to know the answer to this question without trying it.[15]

97. It seems to the Task Force that it is ***possible*** that access will be improved if other groups of legal service providers besides lawyers are permitted to provide an increased scope of legal services. This seems to be the conclusion of the Futures Committee from 2008. Areas of

---

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

[15] Footnote 10 above

legal need, for example, that are currently not served by lawyers *might* be served by other groups.

98. In Ontario, the Law Society of Upper Canada submitted its five year review of the new regulatory paradigm to the Attorney General of Ontario in 2012. The regulatory regime has largely been viewed as a success by the Law Society and the Ontario government. The report expresses the view that access to justice has been improved.[16]

99. The Task Force recognizes, however, that no one form of regulation has a monopoly on improving access to legal services or facilitating access to justice, nor does amending the model of regulation constitute a complete solution to the issues relating to problems with access to legal services.

100. In order for access to justice benefits to derive from a regulator it is necessary for the regulator to have a commitment as part of its mandate and policy vision to improve the public's access to legal services. The regulator must then act on that vision. This is true whether one is dealing with a single regulator, or multiple regulators.

101. On balance, however, the Task Force believes that a single-regulator model is preferable to create a policy model by which access to legal services may be improved, for the reasons expressed above. A single regulator of all legal professionals is, the Task Force believes, better able to assess public needs for legal services across the entire profession and will be better able to develop appropriate responses that best serve the public interest.

Conclusion

102. The Task Force cannot conclude with certainty that a single-model regulator of a number of different groups of legal service providers will improve access to justice, and is uncertain that one would be able to create empirical evidence to prove this end. However, as in Washington State, there is no way to find the answer without trying it. The Task Force concludes that it should be tried.

[16] Footnote 9, above

Recommendations and Discussion

103. On the basis of the conclusions it has reached, the Task Force makes three recommendations. It considers these recommendations logically follow from its conclusions, recognizing that each recommendation is a first step toward an end result, and each will require further work, analysis and consultation.

104. It may be that further consideration will unearth reasons to discontinue efforts to implement any recommendation. However, the Task Force is confident that these recommendations are worth pursuing to improve regulation of legal service providers in BC in the public interest.

105. The Task Force makes these recommendations, as well, with an aspiration that they will assist in improving access to legal services, recognizing that it is unable to point to any studies or evidence that guarantee such a result. However, by creating new models for the regulation and provision of legal services, the Task Force hopes that it can set the stage for improved access to legal services.

Recommendation 1

That the Law Society seek to merge regulatory operations with the Society of Notaries Public with the result that the Law Society would become the regulator of both lawyers and notaries in the province, and that the Law Society otherwise continue to maintain the same object and duties as set out in section 3 of the Legal Profession Act, modified as necessary to achieve the recommended end.

106. This recommendation follows from the Task Force's conclusion that a single-regulator model for legal service providers ought to be pursued, and that the single regulator ought to be the Law Society.

107. As the Law Society is a public interest organization and not an advocacy or representative organization, the Task Force contemplates that any advocacy or representative functions now provided by the Notaries Society would not be included in scope of the regulatory operations of the merged organization. Advocacy or representative functions for notaries would be the responsibility of some other organization for the notaries, in much the same way as the Canadian Bar Association provides a representative function for lawyers.

108. The legal services provided by notaries are services that can be provided by lawyers. Proper protection of the public interest warrants a similar regulatory regime where two groups of service providers are able to provide the same service. Otherwise, a risk exists that the same legal service will be regulated differently or to a different standard. There is no good rationale for maintaining a system that preserves that risk.

109. A common regulatory regime for lawyers and notaries should work to enhance the public perception of and confidence in the legal profession generally, as well. The public could be assured that every legal service provider will have consistent ethical standards, regulation, insurance programs, complaint processes, and will have met a standard of competence necessary for the service provided. Clients will receive the same level of service meeting the same ethical and regulatory standards regardless of which provider they choose. The "regulatory maze" identified in England that was inimical to professional regulation in that jurisdiction will be avoided.

110. The Task Force is unsure how this recommendation will be received by the membership of either Society. It recognizes the governance concerns inherent in merging an organization of many thousands with that of a few hundred. Some of these concerns were raised in the consultation process, and they will need to be addressed in the development of appropriate governance processes acceptable to both organizations.

111. The Task Force is aware that this recommendation presents both philosophical and logistical challenges. The government would have to agree to and implement a number of legislative amendments in order for the recommendation to be implemented. The scope, governance and merger of the operations and assets of the two organizations will all have to be negotiated. Other organizations, such as the Law Foundation and the Notary Foundation will have views on the merger. The Task Force, therefore, views its recommendation as aspirational and recognizes that in seeking to merge operations with the Notaries Society, there are a number of hurdles that will have to be cleared before any merger occurs.

Recommendation 2

That a program be created by which the regulator of legal services could provide paralegals who have met specific, prescribed education and/or training standards with a certificate that would allow such persons to be held out by regulated legal service providers for whom they work as "certified paralegals." A regulated legal service provider would not be permitted to hold out as a "certified paralegal" any person who had not obtained a certificate.

112. This recommendation follows from the Task Force's conclusion that creating some method to provide "paralegals" with some form of certification would assist greatly in giving definition to that function when working under the supervision of a lawyer. It is also a recognition that much study has been given to the subject over the past 25 years, and that the idea of certifying paralegals within or through the Law Society is not new.

113. A resolution to develop a program to certify paralegals was passed in 1990, and work was undertaken over the next few years by the Certification of Legal Assistants Committee. That work was, however, terminated by the Benchers in 1995. Instead, the Benchers began working on identifying options that would educate the profession on the appropriate recognition and use of paralegals.

114. In 2002 the Paralegals Task Force again recommended that the Law Society adopt a system for certifying paralegals who met good character and education requirements. A draft certification scheme was developed. However, again, it was not approved. Instead, the Benchers decided to focus on revising Chapter 12 of the *Handbook* to expand the range of services that could be performed by paralegals.

115. Despite the rejection of these recommendations on previous occasions, the Task Force believes that creating a method by which paralegals can obtain certification from the Law Society ought to be recommended again.

116. The work of paralegals, and the available education for paralegals working under a lawyer's supervision continues to evolve.

117. Education programs at post-secondary institutions have become quite sophisticated. Much of the material studied is not dissimilar to that studied in law school. At least one university[17] offers a degree program that gives the successful candidate a "Bachelor of Legal Studies (Paralegal)" degree upon completion.

118. Many paralegals take on a high degree of responsibility for drafting documents, acting much like lawyers in meeting clients, taking instructions and preparing materials.

119. Further, the Law Society now permits "designated paralegals" to provide a very wide scope of supervised legal services, including, where permitted, making court appearances.

120. The Task Force believes it is in the public interest to encourage those who wish to assist in the provision of legal services to be credited for education and experience that they have gathered. Because there is no occupational definition of "paralegal," anyone can currently use that title regardless of their education or experience. The Task Force does not believe that this is in the interest of those who have educational qualifications and experience, which can benefit the public by better ensuring that the materials prepared by such paralegals are of a high quality. Nor does it assist the public when dealing with such persons, as the public is currently unable to ascertain from the appellation of "paralegal" exactly what level of skill or experience the paralegal has, and whether the cost of the provision of those services is commensurate with the qualifications of the provider.

121. The Task Force therefore believes that it is in the public interest to educate and qualify paralegals to a set standard if individuals choose to do so. Encouraging the continued improvement in the level of learning amongst paralegals and recognizing that standard in some relevant way is in the public interest.

---

[17] Capilano University, North Vancouver. See http://www.capilanou.ca/paralegal/Bachelor-of-Legal-Studies-Paralegal/

122. If the Law Society is considering expanding the use of designated paralegals at any time in the future, a group of educated, experienced paralegals will be needed. Encouraging candidates to achieve those qualifications is advised.

123. The Task Force believes that this can be done by giving those who have achieved qualifications (that will need to be established) some designation for having done so. This will accomplish a number of benefits:

- It will distinguish paralegals who have met established criteria from those who have not;
- It will provide tangible recognition for those demonstrating adherence to high ethical standards
- It will encourage the expanded use of paralegals by lawyers who can rely on the knowledge and professionalism of the paralegal
- It should assist the legal profession in providing cost effective legal services to the public;
- It will assist lawyers in choosing who to hire to assist them in providing legal services, and, the Task Force expects, in determining who could be a "designated paralegal;"
- It will allow members of the public to know that people with whom they are dealing in connection with their legal matters have achieved a standard of education and experience.

124. The Task Force recognizes that there may be costs should this recommendation be implemented, and the work of the Law Society Credentials Department could be increased, depending on the type of model created. However, the Task Force also believes that the recommendation is capable of being implemented without statutory amendment, provided there is no intention that paralegals who meet the certificate requirements will become "members" of the Law Society.

125. Rather, the proposal could be dealt with through the marketing rules. Individuals and entities over which the Law Society has regulatory authority would be unable to hold out any employee as a "certified" paralegal (or whatever term is agreed upon) unless that employee had met the certification requirements. It is also possible that the proposal could be dealt with through rules governing the provision of legal services by law firms, which is now permitted by the *Legal Profession Act.*

126. Work will therefore need to take place to develop the appropriate certification requirements and processes.

Recommendation 3

That the Law Society develop a regulatory framework by which other existing providers of legal services, or new stand-alone groups who are neither lawyers nor notaries, could provide credentialed and regulated legal services in the public interest.

127. The creation of a separate group of independent paralegals to provide stand-alone, unsupervised legal services has been considered and rejected before in the 1990s and 2000s.[18]

128. Times are different now, however. For example, it has been demonstrated in Ontario that independent paralegals regulated by the Law Society can have a place in the legal profession. Not all legal services can be delivered by such persons, but some appropriate level can. Other jurisdictions have also incorporated groups other than "lawyers" (that is, those who have received a law degree and have qualified to practise law as lawyers) into the provision of legal services in different ways.

129. The Task Force believes that there is merit in allowing clients a choice of service providers for some services, *provided that those service providers are appropriately qualified and regulated*.

130. The Task Force, for example, noted that the Futures Committee in its 2008 Report concluded that legal services should be reserved to lawyers where the power of the state is brought to bear on an individual's liberty or other constitutionally protected freedom, or when what was at stake in a matter was of sufficient magnitude that the education, skills, and professional obligations of a lawyer is needed to protect against the consequences of an adverse outcome.

131. That same Committee concluded that "it is in the public interest to expand the range of permissible choices of paid legal service providers to enable a reasonably informed person to obtain the service of a provider *who is adequately regulated with respect to any or all of training, accreditation, conduct, supervision and insurance*, and who can provide services of a quality and at a cost commensurate to the individual and societal interests at stake in a given legal matter." (emphasis added).

132. It follows that this Task Force agrees with the conclusions of the Futures Committee, provided that the regulation is undertaken in an appropriate manner by a single legal services regulator that can act in the public interest to ascertain the appropriate level of qualifications and standards having regard to the legal profession as a whole.

---

[18] See, for example, Part II of the *Paralegal Task Force Report: Report to Benchers on Paralegals,* October 27, 2003and *Paralegals in the delivery of Legal Services Part I A report of the Paralegalism Subcommittee* October 1989 (in which the Subcommittee recommended restrictive rights for independent paralegals but did not address issues of paralegal regulation)

133. Competency standards and the determination of the appropriate level of legal services that can be offered by other groups of legal service providers is therefore critically important to ensure the public is protected against incompetent or unethical service, and to ensure that there is some manner by which competence or conduct can be corrected or sanctioned in the event there are meritorious complaints against regulated individuals.

134. As noted by the Supreme Court of Washington in its order adopting the limited practice rule for limited licence legal technicians:

> The practice of law is a professional calling that requires competence, experience, accountability and oversight. Limited License Legal Technicians are not lawyers. . . But there are people who need only limited levels of assistance that can be provided by non-lawyers trained and overseen within the framework of the regulatory system developed by the Practice of Law Board. This assistance should be available and affordable. Our system of justice requires it.

135. The Task Force believes that the creation of standards, set and regulated by the Law Society as the single regulator of legal service providers, through which a group of stand-alone legal service providers can be created can serve the public interest by creating access to legal services in areas that notaries cannot yet offer, and in areas in which lawyers no longer routinely offer, legal services.

136. The Task Force believes that a great deal of thought and consideration will need to be given by the Law Society when investigating the creation of this framework, however, and it should not be viewed as a ***fait accompli***. It will require the development of a framework around which existing or new groups of legal service providers can be recognized and credentialed, as well as a framework for determining the scope of practice for such groups of service providers. This latter issue will involve, the Task Force believes, an assessment of a framework to address how educational standards would be rationalised with the scope of services to be provided.

137. The work contemplated by this recommendation might therefore be viewed as creating a framework for the liberalization of regulatory requirements to permit the Law Society to better respond to future initiatives and needs for the provision of legal services.

Next Steps

138. As noted above, the Task Force considers that each of its recommendations is a first step toward an end result, and each will require further work, analysis, collaboration and consultation with other interested parties.

139. In particular, further work on each of the recommendations will require a more detailed examination of the implications of any action to be undertaken on Law Society operations or on its mandate. The Task Force has not, in the time frame it has been given to operate, had the ability to analyse every topic related to, and implication that may arise from, its recommendations. Increasing the number of legal service providers that could be regulated by the Law Society would be expected to have operational consequences in both the credentialing and professional conduct/disciplinary functions of the organization. These have not been examined.

140. The effects of this recommendation on lawyer independence have not been analysed. The independence of the bar is a principle of fundamental justice.[19] It is therefore important to understand whether the public's right to retain legal advice from an independent lawyer is affected by regulating legal service providers other than lawyers. The Task Force understands that the topic is on the agenda of the Rule of Law and Lawyer Independence Advisory Committee, who are awaiting the recommendations of this Committee in order to be able to analyse that subject having reference to what is recommended.

141. The Agreement on Internal Trade (AIT) is another important consideration. The AIT is an agreement between the provinces and the federal government that provides for the streamlining and harmonization of regulations and standards. Its purpose is to reduce and eliminate, as much as possible, barriers to the free movement of persons, goods, services, and investment within Canada. It applies to regulated professions. Consequently, the effect of regulating other legal services providers under the auspices of the Law Society could engage considerations under the AIT, and these will need to be analysed.

142. In its December 20, 2000 Report to the Benchers,[20] the Paralegal Task Force referenced the AIT and reported that it had sought advice on what impact that agreement might have on the ability of the Law Society to regulate independent paralegals more restrictively than might be the case in other provinces. The advice received then was that consumer protection provisions would likely permit *bona fide* Law Society restrictions. Given the passage of time since it was received, this Task Force believes that this advice should be re-examined before further steps are taken relying on it.

---

[19] See note 6, above

[20] See footnote 3 above

143. The Task Force is mindful that it has not provided any comprehensive assessment of the implications for Law Society operations of any of its recommendations, as contemplated by item 3 of its mandate.

144. In considering this aspect of its mandate, the Task Force was faced with the difficulty of assessing the implications of an unknown model or program and concluded that it was not possible to provide much assistance to the Benchers on the operational implications without the detailed work that the Task Force expects will form the next phase if the Benchers agree with the Task Force "in principle" recommendations.

145. Accordingly, providing the Benchers adopt the Task Force's recommendations, the Task Force suggests that a significant element of the mandate of any further work be the development of a comprehensive model to be accompanied by a full operational analysis of the implications on the Law Society's operations and mandate by regulating more than just lawyers. As stated earlier, the Task Force is mindful that this further work could disclose reasons to discontinue efforts to implement one or more of the original "in principle" decisions if the consequences of such implications are assessed to outweigh the benefits of the recommendations as proposed and explained in this Report.

146. With these overarching considerations in mind, the Task Force suggests "next steps" on each of its recommendation as follow.

Recommendation 1

147. The Task Force's first recommendation will require the agreement of the Notaries Society, the agreement of the government to legislative amendments, and will involve detailed negotiations regarding the terms of merger.

148. The Task Force expects that the work involved in this task will be time-consuming and will require the commitment of senior levels of staff in order to be successful.

149. To that end, the Task Force recommends that the Law Society create a working group that involves senior management as well as members of the Executive Committee, and preferably a member of the Presidential "ladder." The Task Force expects that some similar group would be created by the Notaries Society and that both such groups would need to negotiate, discuss and resolve the various issues that will arise in the course of implementing such a merger before the terms of any merger are finally approved.

Recommendation 2

150. The second recommendation will require determining the appropriate criteria to be met by paralegals seeking certification from the Law Society.

151. The Task Force recommends the creation of a working group comprising Law Society staff, and recommends that this group meet with paralegal organizations and post-secondary institutions that offer degree, diploma or certificate programs through which paralegals can obtain academic and practical training.

152. The working group should develop criteria for obtaining certification, and make recommendations to the benchers concerning the process by which such certification could be obtained, as well as recommendations concerning any continuing requirements (such as continuing education) that would need to be met in order to maintain certification.

Recommendation 3

153. This recommendation involves developing a regulatory framework by which other existing providers of legal services, or new stand-alone groups, who are neither lawyers nor notaries, could provide credentialed and regulated legal services in the public interest.

154. The Task Force believes that the Law Society will need to give a considerable amount of thought about how to create this framework. Therefore, the Task Force recommends the creation of a task force to develop a framework around which existing or new groups of legal service providers can be, for example, recognized and credentialed, as well as a framework for determining the scope of practice for such groups of service providers. This latter issue will involve, the Task Force believes, an assessment of a framework to address how educational standards would be rationalised with the scope of services to be provided.

Appendix

Legal Service Providers Task Force: Summary of Consultations

The Legal Service Providers Task Force engaged in a consultation process, the highlights of which are summarized in this document. This document is not a stand-alone document and should be read in conjunction with the final report of the Legal Service Providers Task Force for proper context.

The Task Force held in person consultations on the following dates. With the exception of the September 6th consultation, all meetings were open to all who wished to attend:

- September 6, 2013 in Vancouver and by webinar with members of the British Columbia Paralegal Association;
- September 9, 2013 in Vancouver;
- September 16, 2013 in Victoria;
- September 18, 2013 in Prince George.

An online survey was hosted on the Law Society website from mid-August to October 14, 2013.

The results of these meetings, along with the results of the online survey, can be captured in numerical terms of how people answered questions, whereas the other consultations cannot. For example, the consultation in Prince George consisted of a meeting with three local lawyers, and was more conversational than an effort to poll responses to the survey. However, in composite the consultations and survey give some perspective on the work of the Task Force and the question of whether it is in the public interest to move towards a model of a single regulator of legal services.

In addition to the consultations noted above, the Task Force received a few written submissions from lawyers, a paralegal, and the Canadian Bar Association BC Branch.

Task Force member John Eastwood, President of the Society of Notaries Public, undertook through that organization extensive consultation with its membership at 14 Chapter meetings. A summary of that consultation follows at the end of this report.

Key Feedback from the Consultation and Submissions

The vast majority of feedback recognized the need for non-lawyers and non-notaries who are providing legal services directly to the public and without supervision to be regulated. There was some variance as to who should be included in such regulation, but the dominant theme in the call for regulation was the need to protect the public from people who lack proper training and oversight from providing legal services to the public. The feedback from the CBA suggested that if a non-lawyer is providing services under the supervision of a lawyer, sufficient public protection exists through the regulation of the lawyer and there is no additional benefit in credentialing and

directly regulating the employee. In fact, some concern about increased costs and the potential adverse impact on access to justice was noted.

With respect to categories of which free-standing legal service providers ought to be regulated, the views were wide-ranging. As the Task Force is not proposing a roadmap for such future credentialing and regulation at this time, the details suggestions are not captured here.

With respect to the question of whether there should be a single regulator or multiple regulators of legal services, the answers varied and there was a smaller majority favouring a single regulatory approach. What emerged are the following themes:

- Those who favoured a single regulator expressed the view it allows for a more stable platform for delivering consistent credentials, rules, ethical standards and discipline process. It was seen to be less confusing to the public and affords greater protection.

- Those who favoured multiple regulators felt that approach provides greater choice by not centralizing authority within a single body. Competition was seen to be fostered through a multiple model approach and potential risks of conflicting interests avoided.

- Although a majority favoured a single regulator approach the same is not true of the feedback from consultations with the notaries. Amongst those sessions approximately 67% favoured what could be categorized as "co-regulation" or "multiple regulators". The concern raised by notaries was the loss of autonomy of the profession if it were subsumed within a regulatory structure designed by and dominated (in terms of representation) by lawyers.

The question of who should be the single regulator sought to determine, ***if*** there were to be a single regulator, who should be that regulator. As such, feedback was provided by people who felt there should be a single regulator but also by people who preferred a multiple regulator approach. The answer to this question largely depended on who you asked. In the Law Society online survey 82% felt that the Law Society ought to be the regulator. In the consultations of the notaries, the strong feedback was that if there were to be a single regulator (remembering that this was not the preferred approach for notaries) that it be a new body and only 7% felt it should be the Law Society. This discrepancy highlights the importance of engaging in robust consultations and dialogue with notaries and lawyers if the project moves forward. What the feedback recognizes is that it is difficult to comment on the merit of either model without being able to see what the proposed model looks like.

It should be noted that some of the feedback pointed out that, to the extent improving access to justice is an important part of any justification to move to a new model of regulation, no existing regulatory body has made quantifiable strides to improve access. Consequently, it is difficult to argue in favour of one regulator over another unless new models of regulation and policies for improving access are proposed.

The results of the Law Society's online survey were:

1. Should legal service providers other than lawyers and notaries be regulated?

Response	Chart	Percentage	Count
Yes		87%	138
No		13%	20
	Total Responses		**158**

2. If you think legal service providers other than lawyers and notaries should be regulated, which additional legal service providers?

Response	Chart	Percentage	Count
Paralegals		93%	132
Mediators		66%	94
Arbitrators		70%	99
Native court workers		49%	69
Other (please specify)		23%	32
	Total Responses		**142**

3. Should legal service providers be regulated by a single regulator or should each profession be regulated by a distinct regulator?

Response	Chart	Percentage	Count
Single regulator for all providers		60%	89
Distinct regulator for each (or some) providers		40%	60
	Total Responses		**149**

4. If you think legal service providers should be regulated by ONE single regulator, who should the regulator be?

Response	Chart	Percentage	Count
Law Society of British Columbia		82%	102
Society of Notaries Public of BC		0%	0
Other (please specify)		18%	22
	Total Responses		**124**

Please choose the selection below that best describes your profession.

Response	Chart	Percentage	Count
Lawyer		30%	47
Notary public		2%	3
Paralegal		59%	92
Mediator, arbitrator or native court worker		0%	0
Other legal service provider		4%	6
I do not provide legal services		6%	9
	Total Responses		**157**

Society of Notaries Public Survey Analysis – Summary – October 2013

Number of Respondents to Survey: 137

Question 1

Respondents: 137

Should other legal service providers be regulated?

Yes: 94.2% No: 5.8%

91 Respondents made comments.

Comments can be categorized into three categories:

For standard rules, guidelines, codes of conduct, education	32.4%
For protection of the public	36.7%
Other (Generally better access to services)	5.1%

Question 2

Respondents: 129

If yes to question 1, who should be regulated?

Comments can be categorized into the following categories:

Commissioners	51%
Mediators/Arbitrators	58%
Mortgage Brokers	5%
Paralegals	65%
Realtors	3%
Accountants	18%
Court Workers	29%
Immigration Consultants	17%

Title Insurers	47%
Trust Companies	4%
Everyone who provides legal services	24%

Question 3

Respondents: 134

Should there be one single regulator, or should each have their own?

Comments categorized in four areas:

Single Regulator	35%
Each have their own	43%
2 Regulators with oversight	24%
Don't know	3%

Question 4

Respondents: 110

If sole regulator, who?

Comments can be categorized in 6 areas:

Law Society as sole Regulator	7%
Independent Regulator	51%
Government	15%
Not sole regulator	25%
Notary Society as Regulator	4%
Wayne Braid as Regulator	3%

Question 5

Respondents: 133

If Notaries were given expanded powers, would you support sole regulator?

Yes: 62.4% No. 37.6%

103 respondents made comments.

Comments can be categorized 5 ways:

New powers is the only reason for support	12%
Still no to sole regulator	26%
Yes, but not the Law Society	50%
This would be blackmail	6%
No Position	6%

Question 6

Respondents: 128

Would you support co-regulation?

Yes: 64.8% No: 35.2%

128 respondents made comments.

Comments can be categorized in 4 ways:

Maybe (not enough info to give reason)	37%
Yes, with equal representation	37%
No position	6%
No	17%

Question 7

Respondents: 117

Would you prefer the current model of regulation under the *Notaries Act*?

Yes: 54% No 46%

91 made comments.

Comments can be categorized in 5 ways:

Change must be approved by membership vote	1%
Need distinction and separation	16%
Works well now, don't change it	13%
Probably not an option	23%
Must change to get more powers	38%

The Law Society of British Columbia

Pro Bono Cost Orders and Cy Pres Awards

Access to Legal Services Advisory Committee
Bill Maclagan, Chair
Tom Fellhauer
David Mossop, QC (Vice-chair)
Richard Stewart, QC
Carol Hickman, QC, Life-Bencher
Lawrence Alexander
MaryAnn Reinhart
Rose Singh

December 6, 2013

Prepared for: Benchers

Prepared by: Access to Legal Services Advisory Committee

Purpose: Decision

Resolution 1

Whereas Access Pro Bono ("APB") seeks the Law Society`s support for obtaining a legislative amendment that would bring pro bono cost orders into the law of British Columbia, the Benchers are asked to adopt the following resolution:

> **Be it resolved** that the Law Society support, in principle, the concept of pro bono cost orders being introduced into British Columbia and assist Access Pro Bono's efforts to petition government for such a legislative change. This support would proceed on the understanding that:
>
> 1. The legislative change being sought would be general in nature, such that the court could direct, on a case-by-case basis, that pro bono costs to be paid to the non-profit organization that coordinated the pro bono legal services for which costs are sought;
>
> 2. Management at the Law Society liaise with Access Pro Bono in order to develop a coordinated strategy for approaching government about pro bono cost orders;
>
> 3. With respect to pro bono provided independent of a coordinating organization, the resolution of any cost order remains a matter of retainer between the pro bono lawyer and the client;
>
> 4. In the event the government declines to provide a legislative amendment, the Law Society encourage Access Pro Bono to develop standard terms for pro bono retainers that see pro bono clients assign any costs awards to the pro bono lawyer and that the lawyer undertakes to direct such costs recovered to Access Pro Bono.

Resolution 2

Whereas the Law Society, as part of its Strategic Plan, continues to try and find ways to reduce economic barriers to accessing legal services, the Benchers are asked to adopt the following resolution:

> **Be it resolved** that the Law Society follow up with the Attorney General regarding the March 1, 2011 letter from Gavin Hume, QC to Attorney General Penner that recommended amending s. 34 of the *Class Proceedings Act* to permit the courts to direct *cy pres* awards be sent to the Law Foundation of British Columbia to support access to justice in the province.

Purpose of Memorandum

The Committee suggests two steps the Law Society can take to improve access to justice funding in British Columbia.

Pro Bono Cost Orders

Pro bono cost orders are a part of the law of England and Wales by virtue of s. 194 of the *Legal Services Act 2007*. Pro bono cost orders were introduced to allow the cost function to apply where parties are represented pro bono so that there was not a litigation advantage to the other side. Pro bono costs orders give the judge the discretion to order costs where a party was represented pro bono. Rather than the costs going to the party, however, they are directed to the Access to Justice Foundation. The Foundation then directs funds to support agencies and projects that facilitate providing free legal help to those in need.

On July 11, 2013 Angus Gunn, QC, in his capacity as a board member of APB, made a presentation to the Access to Legal Services Advisory Committee. The purpose of the presentation was to determine whether the Committee would recommend to the Benchers that the Law Society support APB in seeking a legislative amendment to bring pro bono cost orders to British Columbia.

Mr. Gunn explained to the Committee that APB was seeking the Law Society's support for the introduction of pro bono cost orders in British Columbia. While it is difficult to forecast how much additional funding pro bono cost orders would generate (assuming all such funds were directed to APB), Mr. Gunn speculated, based on his extrapolation of English statistics regarding their use, that $40,000-50,000 a year would be a reasonable estimate. The specific reason for seeking the support of the Law Society was a consideration that such a legislative amendment might properly lie in the *Legal Profession Act*, but also generally to determine if the Law Society supported the concept.

Cy Pres Awards

In April 2010 Attorney General Penner indicated to the Benchers that he would be receptive to concepts that improved funding for access to justice and legal aid. The Committee considered the issue and made a series of recommendations to the Benchers, including that the *Class Proceedings Act* be amended to allow the court to send *cy pres* awards in class proceedings to the Law Foundation to support access to justice in British Columbia. The letter from Gavin Hume, QC to Attorney General Penner of March 1, 2011 (**Attached**) sets out a series of suggestions.

The Committee's View

The Committee is of the view that the *cy pres* concept should be followed up on with the government. As the Benchers have already determined, as a matter of policy that the suggested use of *cy pres* awards to improve access to justice is a good idea, the Committee does not reiterate the foundation on which that decision was made, and the remainder of this report focuses on pro bono cost orders. The Committee recommends the Benchers adopt Resolution 2. The Law Society should speak with the Law Foundation to determine whether they wish to participate in such a discussion with government.

The Committee is of the view that it is important for the Law Society to find innovative ways to encourage participation in and the delivery of pro bono legal services.

Regarding APB's request, the Committee sought input from the Law Society's government relations consultant. The advice the Committee received suggested that a legislative change to support pro bono cost orders would likely be a win for the public, for pro bono agencies and for government and there was every reason to support it. To the extent the government, like everyone, is struggling to find solutions to access problems there is merit in providing solutions that can make a difference and don't require an expenditure of tax dollars.

The Committee is of the view that the Law Society should support APB in seeking the legislative change subject to a few comments. APB saw itself as the logical recipient of pro bono cost orders. The Committee acknowledges that in many cases that may be so, but recognizes there are other organizations that provide pro bono legal services and the landscape of pro bono delivery in British Columbia may change in the future. The Committee recommends supporting in principle the concept of a legislative change introducing pro bono cost orders to British Columbia, but suggests that pro bono costs be paid to the non-profit organization that coordinated the pro bono legal services for which costs are sought. The Committee considered whether the pro bono costs ought to be paid to the Law Foundation but decided that the case-by-case model with payment going to the pro bono organization that was involved was preferable.

The Committee also considered what the case should be where a lawyer provides pro bono to a client in a retainer not coordinated through a pro bono agency. In such circumstances the Committee feels that the retainer agreement should take precedence and suggests any legislation should recognize this.

The Committee looked at other ways of funding pro bono activities if a legislative amendment was not obtained. It asked Mr. Gunn whether APB might use standard form retainer language to permit costs to be recovered and, if so, have the costs directed to APB. Mr. Gunn explained that APB does not direct the terms of retainers or how APB lawyers carry out their work. Mr. Gunn also explained that in some cases APB had provided disbursements and indicated that none of the pro bono clients who had received this benefit ever repaid any of the disbursements. This

conversation led the Committee to conclude that a possible solution was for pro bono costs and disbursements to be dealt with by way of standard form retainer language.

While it would ultimately lie with the government to determine the form of any legislation incorporating pro bono cost orders into the Law of British Columbia, the Law Society ought to draw to the government's attention to s. 24 of the *Legal Services Society* Act:

> 24 (1) The court may award costs to an individual in a proceeding in which the individual has received legal aid from or through the society or a funded agency even though the individual has not paid and will not be liable to pay counsel.
>
> (2) If costs are awarded under subsection (1), those costs are assigned to the society and recoverable by it.

The Committee is of the view the Law Society should support APB in seeking a legislative change, subject to the conditions set out in Resolution 1 of this report.

/DM

The Law Society of British Columbia

March 1, 2011

The Honourable Barry Penner
Attorney General of British Columbia
Minister's Office
PO Box 9044 Stn Prov Govt
Victoria, BC V8W 9E2

Dear Mr. Attorney:

Gavin Hume, QC
President

I write further to the discussion that took place at the January 28, 2011 Benchers' meeting regarding potential sources of funding for legal aid and programs to facilitate access to justice in British Columbia. At that meeting the Benchers resolved to amend the Law Society's Strategic Plan to include the following:

The Law Society should approach the Attorney General to discuss potential supplemental funding for legal aid and the justice system through amendments to the *Class Proceedings Act*, the *Civil Forfeiture Act*, and the *Unclaimed Property Act*.

The impetus for this arose from the April 23, 2010 Benchers' meeting at which the then-Attorney General indicated that he would be receptive to ideas for alternate funding sources for legal aid.

The intention of the Benchers was to raise the sources identified above as potential sources of funding, with the full understanding that the ultimate policy decision as to the merits of these sources lies with the government.

While the Benchers believe that the *Unclaimed Property Act*, SBC 1999, c. 48 would be a potential source for funding legal aid and access to justice, what we have discovered upon further review is that funds are already being allocated to the Vancouver Foundation for charitable purposes. Despite the importance of funding legal aid and access to justice, we would not want to see this money diverted from the worthwhile projects the Vancouver Foundation supports. We do, however, believe that there is value in the Vancouver Foundation considering access to justice as a lens through which it considers which projects are deserving of funding. We will discuss that directly with the Foundation itself. Support for social programming, such as for youth, immigrants and those with cognitive

845 Cambie Street, Vancouver, British Columbia, Canada V6B 4Z9
Telephone: 604-669-2533 Facsimile: 604-669-5232
Toll-free within B.C. 1-800-903-5300 TTY: 604-443-5700
www.lawsociety.bc.ca

disabilities or mental illness, can have a collateral benefit for the justice system by helping people live lives that require less engagement with the civil and criminal justice system. Access to justice, in this context, is broader than funding the court systems or legal aid. It includes programs that assist people in enjoying the full benefits of citizenship in a civil society. With respect to funding from the *Class Proceedings Act,* RSBC 1996, c. 50, the concept identified in the recommendation arose from consideration of the Ontario case *Cassano v. Toronto-Dominion Bank*, 2009 CanLII 35732 (ON S.C.). The judge in that case issued a *cy pres* award, which resulted in $14 million dollars being provided to the Law Foundation of Ontario to create an access to justice fund (http://www.lawfoundation.on.ca/atjf/). The view of the Benchers was that it is worth considering whether the *Class Proceedings Act* in British Columbia should have an express statement that a judge may, under s. 34, order that undistributed funds be sent to the Law Foundation of British Columbia to support access to justice in the province.

It is important to note that there is some similarity between section 34 of the British Columbia Act and section 26 of the Ontario Act, and that the discretion to make such an award may already lie with a judge to make in the appropriate cases. This would make any decision to amend section 34 a pure policy decision to articulate the object of using undistributed funds to support access to justice in British Columbia.

Lastly, the Benchers recommended that the Ministry of the Attorney General should consider the *Civil Forfeiture Act,* SBC 2005, c. 29 as a potential source of funding. Section 27 of the *Civil Forfeiture Act* sets out the purposes for distribution under the Act. While none of these directly align with funding legal aid, they may align with providing funds to the Law Foundation for some of its other activities. In addition, there is the authority to prescribe other purposes (s. 27(1)(e)), so legal aid could be added to the list if the government deemed it was an appropriate source of revenue.

The Benchers are aware of the considerable challenges that legal aid and the systems that support access to justice face in British Columbia and around the world. The sources suggested in this letter may provide useful revenue streams for the government to meet the access to justice needs of British Columbians. We appreciate your consideration of these suggestions. I would be happy to discuss this further at your convenience.

Yours truly,

Gavin Hume, QC
President

cc. Faye Wightman
President and CEO, Vancouver Foundation

David Loukidelis
Deputy Attorney General

The Law Society of British Columbia

Year-End Report: Governance Recommendations

Governance Committee

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

December 7, 2013

Prepared for: Benchers

Prepared by: Adam Whitcombe, Executive Support

Purpose: Decision

Table of Contents

Committee Process

1. Since delivering its mid-year report to the Benchers, the Governance Committee has met three times.

2. On August 26, 2013 the Governance Committee participated in a conference call to discuss the member resolution regarding disclosure of individual Bencher expenses. The Committee considered the issues raised by the resolution and decided to recommend that the Benchers publish on the Law Society website an annual summary of individual Bencher expenses by category. The consensus was that this would provide the appropriate level of transparency to permit members to understand the differences in Bencher expenses. The Benchers subsequently accepted this recommendation and the summary for 2012 was posted.

3. On September 6, 2013 the Committee met for a half-day retreat to consider the Governance Review Task Force recommendations concerning Bencher elections, appointed benchers, committee structure and appointments, Benchers as trusted advisors, merging the Finance and Audit Committees and the annual retreat.

4. On October 25, 2013 the Committee met for two hours to consider further GRFT recommendations concerning the composition and mandate for the merged Finance/Audit Committee, enhancing the Bencher conflicts of interest policies and the policy development framework. The Committee also spent some time reviewing a proposed Bencher expense policy.

5. During 2013, the Committee has considered 54 of the 60 recommendations referred to it by the Benchers arising from the work of the Governance Review Task Force. What remains for 2014 are recommendations concerning the vision and mandate and improvements to the conflicts of interest policies which the Committee expects to tackle early in the new year.

Summary of Recommendations

1. *Hold pre-election information sessions in conjunction with the annual general meeting to educate interested candidates (and the membership at large) about the role of a Bencher.*
2. *Recognize that the current statement on diversity at the Bencher table reflects the Benchers desire for more diversity and ensure that it is adequately communicated prior to elections.*
3. *Ensure that prospective Benchers are aware of the Bencher position description and the skills required to fulfill the roles and responsibilities set out in that description.*
4. *As and when requested, the President, on the advice of Executive Committee, should indicate to the government any skills and abilities required in appointed Benchers.*
5. *The Law Society should continue to provide feedback to government on appointed Benchers in the manner represented by our feedback in the 2011 submissions to government.*
6. *The current guidelines in the Bencher Policy Manual remain appropriate in guiding the President's discretion in making appointments and should be confirmed as the guidelines.*
7. *The Bencher Governance Policy Manual should memorialize the committee appointment selection process that's now in place.*
8. *Committee, task force and working group appointments should be based on skills and experience and not on title/position.*
9. *There should be no minimum number of years for membership on committees, task forces and working groups, but for non-Bencher committee members there should be a maximum of three years.*
10. *Combine the Finance and Audit Committees.*
11. *The President should appoint the members of the Finance/Audit Committee based on their skills and experience, provided that the Chair should be a Bencher and at least one member should be an appointed Bencher.*
12. *The Executive Committee should have responsibility for oversight of the Law Society's key performance measures.*
13. *The terms of reference for the combined Finance/Audit Committee are as attached as Appendix A.*
14. *Benchers and life Benchers should use and retain the checklist form attached as Appendix B when giving advice as trusted advisors.*
15. *Describe in the revised Bencher Governance Policies the overall framework for policy development so that it is better understood.*
16. *Periodically review the advisory Committee structure and ensure that they are aligned with the Law Society's strategic priorities.*

Bencher Elections

GRTF Recommendations

Hold mandatory pre-election information sessions to educate interested candidates (and the membership at large) about the role of a Bencher.

Prior to elections, hold a more proactive and targeted "awareness campaign" around the gaps identified.

Use a "Diversity Matrix" to identify the diversity "gaps" identified at the Bencher level.

Depending on the Bencher structure and election process ultimately established, consider using a "Skills Matrix" to identify the skills "gaps" identified at the Bencher level.

Background

6. The GRTF Interim Report observed that *"many interviewees noted that candidates are not always aware of the responsibilities associated with the Bencher role. Many interviewees also lamented the fact that the current election system has not to date resulted in a diverse Bencher table."* The suggestion was that without a centralized process, it is difficult to put measures in place to strive for a diverse group of elected individuals.

7. The Committee noted that the recommendations concerning mandatory pre-election information sessions, the use of a diversity matrix, a more proactive and targeted awareness campaign around the diversity gaps identified and using a skills matrix to identify the skills gaps at the Bencher table were all discussed at some length at the governance retreat. As the GRTF's final report noted, the consensus was that the Law Society should enhance pre-election information about the role of the Benchers so potential Benchers would have a better understanding of the role and responsibilities of Benchers. There was, however, no consensus about the use of a diversity or skills matrix in relation to Bencher elections.

Commentary

8. The recommendations raise two important issues. The first is whether and, if so, how the to make prospective Benchers more aware of the role of Benchers and the opportunities available for participation.

9. At present, the work of the Bencher is largely communicated in terms of results. Committee and Task Force reports are posted to the website, discipline and credentials hearing reports are made available in full on the Law Society website and in summary in the Benchers' Bulletin, and the monthly electronic publication EBrief summarizes major Bencher decisions and initiatives.

10. What our communications do not commonly do is explicate the involvement of the Benchers in this work.

11. One answer is the Bencher Position description, which this Committee proposed to the Benchers and was adopted at the June Bencher meeting. In general terms, the position description provides information about the various roles and responsibilities of the Benchers. The thought was that providing this to prospective Benchers and others would go some way towards outlining the how Benchers engage in the work of the Law Society.

12. Another response is suggested by the recommendation. Mandatory pre-election information sessions would ensure that anyone not already an elected Bencher and interested in running for Bencher would be provided with information about the role before accepting a nomination to run. In keeping with this recommendation, there will be sessions for an informal Q & A on what's involved in serving as a Bencher in Vancouver, Victoria and Abbotsford immediately following the 2013 Annual General Meeting. However, the Committee was of the view that they should not be mandatory.

13. The Committee did recognize that given the variety and complexity of Bencher work, it may be unrealistic to expect that any amount of information will eliminate the steep learning curve that most new Benchers encounter.

14. The second issue arising from the GRTF recommendations is whether and, if so, how the Benchers should be more assertive in identifying and recruiting for the "gaps" around the Bencher table in terms of Bencher skills, experience and diversity.

15. The Committee recognized that in general, it is thought that diversity is an essential element of good governance. It helps to avoid "group-think" and it ensures that decisions are made with the benefit of consideration from many different perspectives. Diversity at the Bencher table is not only important for the Law Society from a best practice perspective, it is important because "identifying ways to enhance Bencher diversity" is a specific initiative set out in the 2012-2014 Strategic Plan.

16. The Committee also accepted that boards often use a "skills matrix" to assist them in identifying the optimal skills, experience and background needed for the board as a

whole, the skills, experience and background of current members and the "gaps" that should be sought when filling vacancies.

17. The Committee was mindful that the development of matrices for diversity and skills might be useful in the context of appointed boards, but also was very aware that who sits at the Bencher table is very much dependent on who runs. While identifying the skills, experience and background desirable at the Bencher table might encourage candidates, the Committee recognized that the open nominations and election process will ultimately determine who becomes a Bencher.

18. After much discussion of the utility of matrices for diversity and skills, the consensus of the Committee was that the current diversity statement is an appropriate indication of the Benchers encouragement of diversity at the Bencher table. The current statement provides:

    The Benchers note that Aboriginal lawyers, solicitors, visible minority lawyers, women lawyers and young lawyers continue to be under-represented among elected Benchers. All lawyers who meet the qualifications for Bencher and want to contribute to the governance of the profession are encouraged to stand for election, but Aboriginal lawyers, visible minority lawyers, women lawyers, young lawyers and those practising predominantly in solicitors' fields are particularly encouraged to do so.

19. There was some discussion of whether the inclusion of solicitors was a matter of diversity. However, it was suggested that whatever could be done to encourage lawyers from all backgrounds to run for Bencher would assist in breaking through a possible perception that one can only get elected a Bencher if one is a litigation lawyer.

20. The Committee recognized that having adopted a position description for Benchers, the necessary skills for fulfilling the roles and responsibilities of Benchers were now clearly identified, such that the position description should be a sufficient to signal to prospective Benchers the skills required to undertake the Benchers' duties and responsibilities.

Recommendations

Hold pre-election information sessions in conjunction with the annual general meeting to educate interested candidates (and the membership at large) about the role of a Bencher.

Recognize that the current statement on diversity at the Bencher table reflects the Benchers desire for more diversity and ensure that it is adequately communicated prior to elections.

Ensure that prospective Benchers are aware of the Bencher position description and the skills required to fulfill the roles and responsibilities set out in that description.

Appointed Benchers

GRTF Recommendations 4.1 and 4.2

Proactively identify the skills, experience and background desired in appointed Benchers and communicate the same to the Board Resourcing and Development Office (BRDO).

When an appointed Bencher is eligible for reappointment, provide meaningful feedback to BRDO on the appointed Bencher's contribution.

Background

22. Historically, the Law Society has been reluctant to make any kind of request to government in terms of suggested candidates (or even suggested skills and expertise), out of a concern that this might be seen to diminish the independence of the Law Society or the independence of the appointees. While the interview process conducted by the GRTF revealed that many believe it is appropriate and in fact desirable for the Law Society to proactively identify the desired skills, knowledge, experience and diversity of Appointed Benchers, the Bencher interviews revealed differing views on the question of whether to provide government with an indication of the desired skills, experience and background for appointed Benchers.

"The Benchers have a policy of not seeking specific appointments from government. That policy is sound."

"I agree that the Law Society should be more pro-active in the process for appointed Benchers."

23. The work undertaken by the GRTF also revealed differing views on whether the Law Society should provide feedback on appointed Bencher performance.

"'Meaningful feedback' to BRDO is a slippery slope to be avoided."

"I also think it is appropriate to provide feedback on appointed Bencher performance. However, our feedback should be based on a template that is not subject to political criticism."

24. The GRTF observed that in 2009 the Law Society declined to provide any request or recommendation to the BRDO regarding particular candidates for 2010 appointments. This approach is reflected on our website where we note:

The BRDO asks organizations to which it makes appointments to provide a list of the specific skills or attributes needed for the position. The Law Society, however, has been very careful to avoid participating in the selection of Lay Benchers so that the public can have full confidence that Lay Benchers bring a truly independent voice to the table. Because of this "hands off" approach, the Law Society does not provide BRDO with specific selection criteria but instead relies upon the general selection criteria BRDO uses for all appointments.

25. By 2011 that reticence had been replaced by short statements confirming the Law Society's positive view of the prospect of their reappointment.

While the Law Society does not formally assess Benchers' individual qualities and performance, we note the value of [Appointed Bencher's] unique skill set and experience, and particularly the knowledge of the Law Society's complex regulatory and policy environment that [Appointed Bencher] has gained through training and experience as an appointed Bencher … [Appointed Bencher] demonstrates a thorough understanding of and commitment to this mandate … While respecting the independence of BRDO's judgment and of the provincial government's appointment process, the Law Society notes the value of [Appointed Bencher's] service to date and would welcome re-appointment.

Commentary

26. The two recommendations by the GRTF involve a fundamental question for the Benchers: should there be any difference between our view of appointed Benchers and our approach to elected Benchers?

27. The Committee recognized that appointed Benchers add skills and diversity that are missing from the Bencher table, either because lawyers do not generally have the skills, such as accounting training and experience, or because the election process does not result in Bencher diversity that reflects our community. On the other hand, the Committee accepted that anything more than a general statement about desirable skills and diversity might be taken as interference, possibly self-serving, with the government's interest in selecting appointed Benchers who vigorously advocate the public interest.

28. After much discussion, the Committee consensus was that the Law Society should indicate to the government those skills and abilities as determined by the President on the advice of Executive Committee.

29. In considering the recommendation that the Law Society provide meaningful feedback, the Committee was aware that, on the general topic of Bencher evaluation, the Committee had previously recommended and the Benchers had accepted that Bencher

evaluation should not be peer-to-peer and should focus on the evaluation of the Benchers' performance as a whole. Put another way, the accepted approach is that Bencher evaluation process does not involve individual performance evaluation.

30. The Law Society's past responses to the question about the degree and value of participation have been general, and the Committee was inclined to recommend that we continue to respond in the same manner in the future. The Committee did note that if there are issues or concerns about the performance or commitment of an appointed Bencher, it would be preferable to handle these in the same manner as with any elected Bencher rather than rely on the government to deal with our governance.

31. In light of this approach to Bencher evaluation generally, the Committee concluded that the approach to feedback reflected in the 2011 response to the government was the right approach.

Recommendations

As and when requested, the President, on the advice of Executive Committee, should indicate to the government any skills and abilities required in appointed Benchers.

The Law Society should continue to provide feedback to government on appointed Benchers in the manner represented by our feedback in the 2011 submissions to government.

Committee Appointment Process

GRTF Recommendations

The Benchers should develop a policy that provides a framework for Committee composition – specifically addressing the approach to Bencher/non-Bencher composition.

A nominating committee should recommend Committee appointments to the President for approval.

Choose Committee members and chairs on the basis of skills and experience as opposed to title/position.

Committee members should be appointed annually with the expectation that members will serve a minimum of two years. Membership on Committees should be staggered.

Oversight Committee members should be appointed annually with the expectation that members will serve a minimum of two years. Membership on Committees should be staggered.

Background

32. The GRTF noted in its Interim Report that the Rules provide that, for most committees, task forces and working groups, the President may appoint "any person as a member of a committee of the Benchers" and also terminate any appointment. In a few cases, the Rules set out some parameters that the President must follow. For example, Rule 4-2(1) provides that the President must appoint a Discipline Committee, including a chair and vice chair, both of whom must be Benchers. However, there are few formal constraints on the discretion provided to the President regarding appointments to the various committees, task forces and working groups established by the Benchers.

33. The discretion granted to the President to make appointments is not, however, completely without guidance. The current Bencher Policy Manual provides that the President should take the following into consideration, subject to the need to keep each committee to an appropriate size for efficiency:

(a) The President should ensure that well-qualified persons with the requisite character, knowledge, expertise, willingness and ability are appointed to committees.

(b) While also ensuring adequate continuity among committee members, appointments should ensure the regular introduction of people who have not previously served on committees.

(c) Committee membership should contain an appropriate mix of Benchers, non-Bencher lawyers and laypersons to ensure both connection to the Benchers and accountability to the membership of the Law Society and the general public.

(d) Representative numbers of barristers and solicitors should be appointed to all committees, except as may be otherwise appropriate to their terms of reference.

(e) Committee appointments should ensure appropriate representation of geographical areas of the province.

(f) The Law Society should promote gender equity and ensure adequate representation of all cultural groups on committees.

(g) The President should consult with the chairs of committees and, as appropriate, with the Canadian Bar Association and other organizations in appointing non-Benchers to Committees.

34. While there was not much discussion in the GRTF Interim Report about a nominating committee, the GRTF did propose that a committee be charged with recommending committee appointments for approval. The suggestion of a nominating committee appeared to flow from the observation in the Interim Report that the list of factors in the Bencher Policy Manual do not appear "to be followed and the feedback revealed a strong sense that the Committee appointment process is not as systematic or transparent as it could be."

35. The GRTF recommendation that the committee members and chairs be selected based on skills and experience, as opposed to title/position, was made in the context of the GRTF discussion of oversight committees. The GRTF commented by way of example that instead of requiring that the First Vice-President automatically become the chair of the Finance Committee, it might be required that the chair and all other members have sufficient financial acumen and relevant experience. On the other hand, beyond the Finance Committee, there are few other appointments to committees or task forces that are based on titles or position.

36. In support of its recommendations regarding minimum terms for Law Society committee and task force members, the GRTF observed that feedback obtained during the governance review indicated that the one-year appointment cycle sometimes makes it difficult for committees to tackle longer-term initiatives. It was suggested that the Benchers' appointment policy provide that, although appointments are done on an annual basis, under normal circumstances a Committee member will serve a minimum of two years on the Committee.

37. Although not specifically addressed in the GRTF reports to the Benchers, the Committee observed that our current practice for making appointments is largely undocumented and yet has some well-defined elements. For example, current Benchers are asked their committee preferences as part of the information the incoming President receives in considering appointments for the following year. Similarly, although not required, for the past several years it has been customary for the incoming President to involve the current President, the Second Vice-President and the CEO in the appointment meetings, along with other staff.

Commentary

38. The Committee spent some time discussing the guidelines in the current Bencher Policy Manual and what guidance should be provided to the President regarding committee, task force and working group appointments. The Committee also reviewed the appointment practices at law societies in other jurisdictions. The Committee noted that much of what would be desirable in a committee appointment policy is already provided for in the current policy. For example, it seemed hard to improve a guideline that well-qualified persons with the requisite character, knowledge, expertise, willingness and ability are appointed to committees. The Committee therefore concluded that it should recommend to the Benchers that the current guidelines remain appropriate in guiding the President's discretion in making appointments, and should be confirmed as guidelines.

39. In looking at the recommendation that a nominating committee be struck to propose committee and other appointments to the President, the Committee found it difficult to accept the observation in the GRTF Interim Report that "that the Committee appointment process is not as systematic or transparent as it could be." While recognizing that the current appointment process is the responsibility of the President alone, there is a well developed convention that has the incoming President seeking the input of the Benchers themselves, the Chairs of the current committees and task forces and the current President, and Second Vice President and Second Vice-President elect before making the appointments. Overall, the Committee was not persuaded of the need to recommend to the Benchers the creation of a formal nominating committee for the sole purpose of making recommendations once a year. The Committee was, however, of the view that the Bencher Governance Policy Manual should memorialize the current selection process.

40. In keeping with its general view of committee appointments, the Committee concluded that, to the extent there were any ccommittee chairs or positions based on titles or positions, such that appointments should be based on skills and experience in the future.

41. In looking at the suggestion that committee membership should be for a minimum of two years, the Committee was of two minds. On the one hand, there was a general recognition that in some cases, committee work did carry over from year to year and that longer participation would contribute to greater continuity on policy matters in particular. On the other hand, there was a concern that Benchers ought to have an opportunity to understand the work of all our committees while serving as a Bencher in order to gain a thorough understanding of the Law Society and its work. In the end, the Committee decided to recommend to the Benchers that there should be no minimum number of years for committee participation, but for non-Bencher committee members there should be a maximum of three years.

Recommendations

The current guidelines in the Bencher Policy Manual remain appropriate in guiding the President's discretion in making appointments and should be confirmed as the guidelines.

The Bencher Governance Policy Manual should memorialize the committee appointment selection process that's now in place.

Committee, task force and working group appointments should be based on skills and experience and not on title/position.

There should be no minimum number of years for membership on committee, task force and working groups but for non-Bencher committee members there should be a maximum of three years.

Finance and Audit Committees

GRTF Recommendation

Combine the Finance and Audit Committees.

Background

42. In April 1994, as part of the Carver governance review then underway, the Benchers were asked to consider eliminating the Finance Committee and creating an Audit Committee. Warren Wilson, QC, then Chair of Carver Implementation Committee, reported that in the view of that Committee, the Finance Committee was not needed. In its place, the Committee recommended the appointment of an audit committee to monitor the executive limitations. It was suggested that there would be five aspects to the monitoring: the independent auditor, the internal audit committee, a certificate of compliance required of the Secretary annually, and periodic reports on each of the funds and on investments. As a result, in May, 1994 the Benchers resolved to establish an audit committee with a mandate consistent with those five monitoring aspects.

43. In February 2003, then-Executive Director James Matkin, QC proposed that the Benchers create a new subcommittee of the Executive Committee composed of the first or second vice-president, a Bencher from the Futures Committee, the chair of the Audit Committee, and a Bencher appointed by the Executive Committee. As a result, the Financial Planning Subcommittee was established to review a preliminary budget, provide due diligence and oversight over the strategic plan and priorities, and make recommendations to the Benchers about the Law Society's annual fees.

44. In December 2007, as a result of a general restructuring of Law Society committees, task forces and working group, the Benchers approved amending the Law Society committee and task force structure to eliminate the Financial Planning Subcommittee and establish a Finance Committee. The new Finance Committee would be responsible for the responsibilities of the former Financial Planning Subcommittee and also for oversight of investment decisions and capital planning. The Committee was to be composed of the First Vice-President and Second Vice-President, two Benchers nominated by the Benchers, at least one of whom is not a member of the Executive Committee, the Chair of the Audit Committee and an appointed Bencher nominated by the appointed Benchers.

45. To assist the Committee in considering this GRTF recommendation, the Chair asked appointed Bencher Peter Lloyd, FCA to provide his views on whether it would be better governance practice to amalgamate the Audit and Finance Committees, or keep them as

separate committees. Mr. Lloyd presented his report to the Committee at its September meeting and recommended that the two committees be combined effective January 1, 2014 with combined committee to be responsible for all the functions of the separate committees.

Commentary

46. Mr. Lloyd's central observation, shared by others, was that the non-Bencher members of the Audit Committee are not familiar enough with the operations of the Law Society in general and current issues in particular, to participate fully in the matters before the committee.

47. In terms of any concern about "independent" members of an audit committee, Mr. Lloyd commented, *"There may be a concern that Benchers, especially those sitting on Finance, are not sufficiently independent of management to sit on Audit. I do not share that concern and believe Benchers are all, for this purpose, completely independent. Historically we understand (from Warren Wilson) the non-Bencher addition was to ensure adequate expertise."* The GRTF noted that all members of the Finance Committee are independent in the sense required: none participate with management in setting finance policy.

48. After considering the respective functions of the Finance and Audit Committees and their increasingly convergent responsibilities for oversight of operational matters, the Committee concluded that it should recommend to the Benchers that the two committees should be combined.

49. Having resolved to recommend the merger of the two committees, the Committee also gave consideration to the composition and terms of reference for the proposed Finance/Audit Committee.

50. The Committee considered several options for the composition of the new Finance/Audit Committee, including:

    (a) A composition based on the existing composition of the Finance Committee.

    (b) A new composition based on ex-officio, elected and appointed members that reflects the need for some expertise, the support of the Benchers and experience with and understanding of the Law Society operations.

    (c) A composition based on the usual method for populating committees in which the President exercises his or her discretion to appoint members, as with other committees.

51. While the Committee was mindful that the current composition of the Finance Committee reflects a different method for populating committees, it could not find a compelling reason for this difference in the material provided in 2007, when the Finance Committee was created. And in light of the recommendation by the Committee that committee appointments ought to be based on skills and experience, the Committee decided to recommend to the Benchers that the President should appoint the members of the new Finance/Audit Committee based on their skills and experience – provided that the Chair should be a Bencher and at least one member should be an appointed Bencher.

52. The Committee considered the current mandates of both the Audit and Finance Committees. In general, the Committee was satisfied that the two current mandates could be combined for the new Finance/Audit Committee, with two revisions.

53. The first revision was responsibility and oversight of the key performance measures. The Committee concluded that this oversight responsibility was more consistent with the mandate of the Executive Committee to provide direction and oversight for the strategic and operational planning of the Law Society.

54. The second was responsibility for monitoring the insurance program. The Committee was mindful of the Benchers' decision to establish a working group to look at options for the insurance program. Nevertheless, the Committee concluded that the Finance/Audit Committee should continue to have responsibility for the financial aspects of the insurance fund itself, since this is a responsibility of the Law Society under the Act, and for the executive limitations relating to the financial aspects of the insurance program. The Committee therefore recommends retaining these aspects of insurance oversight with the combined Finance/Audit Committee, and expects that the report from the pending insurance working group will dictate how any further oversight of the Law Society's insurance program and operations should be managed.

Recommendations

Combine the Finance and Audit Committees.

The President should appoint the members of the Finance/Audit Committee based on their skills and experience, provided that the Chair should be a Bencher and at least one member should be an appointed Bencher.

The Executive Committee should have responsibility for oversight of the Law Society's key performance measures.

The terms of reference for the combined Finance/Audit Committee should be as provided in Appendix A.

Trusted Advisor

GRTF Recommendation

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

Background

55. The GRTF in its Interim Report noted that many Benchers felt very strongly about their role in providing ethical advice to the profession but also observed that our Law Society appears to be the only law society in Canada that actively encourages lawyers to contact Benchers for ethical advice. It also noted that there was no formal protocol around how the Benchers should practice as trusted advisors.

56. At the 2012 Bencher governance retreat, the consensus was that Benchers should continue their role as trusted advisors. There was, however, an acknowledgement that the Benchers need to develop a protocol and guidelines around these functions.

57. During a preliminary discussion of this issue by the Committee, some members were of the view that Benchers shouldn't give advice as Benchers but should approach the provision of advice as a retainer, so that the lawyer seeking advice can treat the Bencher as her or his lawyer and rely on the protection of the solicitor-client relationship. Other members argued that this approach would create an inherent potential conflict for the Bencher. The Committee also discussed the institutional risk associated with Benchers providing advice to lawyers who may become the subject of action by the Law Society. The lack of clarity around the notion of "Bencher advice" as opposed to "legal advice" or "ethical advice" was noted. At the conclusion of the discussion, the Committee agreed to seek legal advice on the elements of a protocol.

58. The Committee noted that if Benchers act as trusted advisors, a necessary consequence is consideration of the *BC Code of Professional Conduct* provision requiring lawyers to report certain matters to the Law Society.

Duty to report

7.1-3 *Unless to do so would involve a breach of solicitor-client confidentiality or privilege, a lawyer must report to the Society:*

(a) a shortage of trust monies;

(a.1) a breach of undertaking or trust condition that has not been consented to or waived;

(b) the abandonment of a law practice;

(c) participation in criminal activity related to a lawyer's practice;

(d) the mental instability of a lawyer of such a nature that the lawyer's clients are likely to be materially prejudiced;

(e) conduct that raises a substantial question as to another lawyer's honesty, trustworthiness, or competency as a lawyer; and

(f) any other situation in which a lawyer's clients are likely to be materially prejudiced.

59. In 2006 the Benchers considered the application of this provision to the role of Benchers as trusted advisors. At that time, Gavin Hume, QC observed that the requirements of the *Professional Conduct Handbook* and the provision of advice to lawyers by Benchers reflected two competing objectives. The first objective was to encourage lawyers to seek advice on professional conduct matters. The second objective, reflected in the Code, is to ensure the Law Society is made aware of certain types of unprofessional conduct. After much discussion, the Benchers resolved that when Benchers give practical or ethical advice in their capacity as Benchers, they have the discretion to keep confidential information that would be covered by *Professional Conduct Handbook* Chapter 13, Rule 1(a) or 1(c). A similar motion was passed with respect to Life Benchers. This Bencher decision is reflected in the current Bencher Code of Conduct.

60. The Chair invited Past-President Ralston Alexander, QC to assist the Committee with advice about a formal protocol. Mr. Alexander presented his advice and recommendations at the Committee's September 6th meeting.

Commentary

61. The Committee spent some time discussing the role of Benchers as trusted advisors and how to ensure that the role is fulfilled consistently by Benchers.

62. On the question of whether Benchers should treat the role of trusted advisor as a solicitor-client retainer, the Committee consensus was that this was not an appropriate

characterization of the relationship. The Committee concluded that while communications between the Bencher and the lawyer are not privileged, any such communications should still be treated as confidential by the Bencher. As a result, the Committee was of the view that it is important to ensure that any lawyer seeking advice from a Bencher acting in the role of trusted advisor understands that communications are not privileged, but that the Bencher will keep the communication confidential, subject to the obligations in Rule 7.1-3, as modified by the 2006 resolution.

63. The Committee discussed the potential situation where a lawyer subsequently wished to rely upon the advice received from a Bencher in defence of a proceeding by the Law Society. There was some concern that it would be unfair to the lawyer to encourage lawyers to contact Benchers as trusted advisors, but stipulate that the lawyer cannot subsequently rely upon that advice. On the other hand, it was noted that raising reliance on the advice given by a Bencher in defence of a Law Society proceeding may have undue influence on the panel. Overall, the Committee did not reach a conclusion on this issue, but expects that its future recommendations to the Benchers on Bencher conflicts of interest will provide some guidance.

64. Regardless of how the question of future reliance on any advice given by a Bencher is answered, the Committee was very much of the view that the advice given will only be as good as the facts provided by the lawyer. The Committee concluded that taking accurate notes of what was said and the advice given was critical to the integrity of the trusted advisor role. Any notes should be retained and secured by the Bencher or Life Bencher in the same manner as they would keep client files.

65. The Committee recognized that lawyers also turn to Life Benchers for advice and considered whether any protocol the Benchers adopt for themselves should apply equally to Life Benchers. The consensus was that Life Benchers, to the extent they act as trusted advisors in the same capacity as sitting Benchers, should abide by any protocol the Benchers adopt.

66. The Committee considered that the most appropriate method for implementing a protocol and ensuring consistency when Benchers and life Benchers act as trusted advisors was to recommend a checklist form that would to guide Benchers and life Benchers in providing advice as trusted advisors. Attached as Appendix B is the Committee's recommended form of checklist.

Recommendation

That Benchers and Life Benchers use and retain the checklist form attached as Appendix B when giving advice as trusted advisors.

Policy Development

GRTF Recommendation

The Benchers should establish a clear framework that outlines how policy at the Law Society is developed and approved.

Background

67. The GRTF observed that it would be helpful if there were a formal description of how policy is to be developed, from the germ of an idea (that could be brought forward by a Bencher, staff member, Committee or external party) to the approval of a formal policy. The observation was based on the interviews conducted during the GRTF review GRTF, in which it was noted that policy issues appeared to be brought forward on an *ad hoc* basis through various channels, such as individual Benchers, Committees, staff, or the President.

Commentary

68. In the Committee's view, the GRTF Interim Report overstated the case in suggesting there was no overall framework in relation to policy development. The Committee believes there is a well defined process for identifying the policy issues the Benchers consider important, developing the policy advice the Benchers receive on those issues and seeing that it is implemented.

69. Our current policy development process flows from the work of the Governance Review Steering Committee in 2007. In its report to the Benchers in December of that year, the Steering Committee made three recommendations regarding the annual policy planning cycle.

    (a) Direct the cycle of Bencher meetings during the year toward development and consideration of strategic priorities and plans, and the resources necessary to support those plans.
    (b) Reform the content of Bencher meetings to permit the Benchers to focus on what is most important, and ensure that individual Benchers are sufficiently informed so they can meaningfully participate in knowledge-based decision-making.

(c) Ensure that the relationship between the Benchers and the various committees, task forces and working groups supports the strategic priorities and plans, while also ensuring that the regulatory work of the Law Society is done.

70. The Steering Committee also suggested that the role of the Executive Committee be realigned to focus primarily on setting priorities for strategic issues and overseeing the pre-board work necessary to bring those priorities to the Benchers for consideration.

71. Rule 1-48 provides that the Executive Committee has the responsibility for assisting the President and Executive Director in establishing the agenda for Bencher meetings; for assisting the Benchers and the Executive Director in establishing relative priorities for the assignment of Society financial, staff and volunteer resources; and for planning Bencher meetings or retreats held to consider a policy development schedule for the Benchers.

72. In addition to the role of the President, CEO and the Executive Committee, the current Advisory Committees play an important role in ensuring that the strategic priorities reflect changes in legal regulation and the broader issues arising in the legal profession and the justice system. Each of the Advisory Committees provides a semi-annual report to the Benchers in relation to its mandate, which in turn mirror the priorities set in the 3 year strategic plans.

73. Finally, the Committee noted that the Act and Rules Committee sees to the implementation of Bencher policy decisions to the extent that they require amendments to or development of Rules for implementation.

74. Overall, the work of the Steering Committee in 2007 ultimately led to our first three-year strategic plan and the process the Law Society continues to employ in setting Bencher priorities and in strategic planning.

75. The Committee did observe that despite the overall framework we have in place for policy development, policy issues can still be brought forward on an *ad hoc* basis through various channels, such as individual Benchers, Committees, staff, or the President.

76. The Committee recognized that in any given year circumstances arise outside the scope of our strategic plan which raise policy issues and which end up before the Benchers. For example, the issue of Trinity Western University seeking to establish a law school has occupied time and attention outside our strategic plan. Occasionally, an individual Bencher or committee raises an issue for policy consideration that is not specifically contemplated by the initiatives identified in the strategic plan. For example, the Access to Legal Services Advisory Committee was asked to assist in seeking a legislative

amendment to establish that costs recovered in pro bono actions be paid in certain circumstances to a pro bono organization.

77. Overall, the Committee did not believe that *ad hoc* nature of these issues amounted to an absence of a well defined policy development process but rather reflected the necessary flexibility required to accommodate the inevitable development of circumstances that require the Benchers attention and consideration. And despite those *ad hoc* issues that have been considered, the process for consideration and implementation remains the same in each case. Ultimately, the Benchers decide Law Society policy and its implementation.

Recommendation

Describe in the revised Bencher Governance Policies the overall framework for policy development so that it is better understood.

Advisory Committees

GRTF Recommendations

Use the Advisory Committees to inform the Benchers on key issues within their area of study and develop recommendations consistent with the priority areas identified by the Benchers by their vision and strategic goals.

The Benchers should periodically review the current Advisory Committee structure and ensure that they are satisfied that the Committees in place are the "right" ones (i.e. that they are aligned with the Law Society's revised statutory mandate and strategic priorities.)

The Benchers should review the Advisory Committees and consider whether they continue to be the priority Committees and/or whether any standing Committees should be replaced with ad hoc Committees.

Background

78. The GRTF Interim Report suggested that it is important to ensure that committee work supports the Benchers' broad vision and major initiatives and that the advisory committees complement the areas of priority identified by the Benchers. As the GRTF put it *"The Benchers' role is to set the vision, goals and major initiatives for the Law Society. The role of Committees should be to inform the Benchers with respect to issues within their areas of study - e.g., to provide a "state of the nation" report on an annual basis prior to the Benchers' annual consideration of strategy - and, based on the broad goals set by the Benchers, to recommend specific initiatives consistent with those broad goals."*

79. Our four current Advisory Committees (Access to Legal Services, Equity and Diversity, Rule of Law and Lawyer Independence and Lawyer Education) were all established in April 2008 and reflected the issues and concerns that the Benchers felt were of strategic importance at the time. The GRTF observed, *"Historically, many organizations handled their policy development in this manner, with standing committees in areas of major interest. However, given that priorities change over time, it is more common today to develop working committees on an ad hoc basis, as and when required, to deal with important issues as they arise. In this way, committees stay relevant to the key priority areas and typically are more energized to deal with current, pressing issues. The Benchers may wish to, at least, review the topic areas of the Advisory Committees to ensure they remain relevant to priority areas of focus established by the Benchers."*

Commentary

80. As the observations of the GRTF indicate, the mandates of the advisory committees should reflect the evolving strategic priorities and interests of the Law Society. Today, the three major strategic goals of the Law Society are:

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

81. The first goal reflects elements of the mandates of the Lawyer Education and Equity and Diversity Advisory Committees. The second goal neatly aligns with the Access to Legal Services Advisory Committee and the third goal falls within the ambit of the Rule of Law and Lawyer Independence Committee.

82. Overall, the Committee concluded that the current advisory committee structure is consistent with the Law Society's current strategic goals, although some aspects of the strategic plan have required the creation of task forces to assist with their development. However, the Committee does recommend that the Benchers periodically review the advisory committee structure to ensure alignment with the Law Society's strategic priorities as determined by the Benchers.

Recommendation

Periodically review the advisory Committee structure and ensure that they are aligned with the Law Society's strategic priorities.

Annual Retreat

GRTF Recommendations

Use the annual Bencher retreat as a strategic planning retreat.

Focus the annual Bencher retreat on strategic planning and policy development (with one full day spent on each).

Background

84. The GRTF Interim Report commented that *"Most well-governed organizations today schedule an annual strategic planning session in addition to the regular meeting schedule. The purpose of the annual planning session is to review the organization's external and internal environment and review, and update as required, its mission, vision and strategic goals."* The GRTF observed that *"The Law Society currently holds an annual Benchers retreat but it is not always directly tied to strategic planning." and "Even at the retreat, the opportunity for substantive discussion is limited, given the retreat agenda's social emphasis."*

85. The Law Society Rules provide that one of the duties of the Executive Committee is the *"planning of Bencher meetings or retreats held to consider a policy development schedule for the Benchers;"* As a matter of practice over the last number of years, the First Vice-President has been given the opportunity and the responsibility to set the theme and agenda for the retreat portion of the Benchers' annual retreat.

Commentary

86. While the GRTF Interim Report suggests that the annual retreats are not always tied to strategic planning and the opportunity for substantive discussion is limited, a look at the themes for the last five retreats suggests that the Benchers are at least reviewing the organization's external and internal environment in the context of the Law Society's mandate.

2009 *How do we ensure that the Law Society meets the appropriate standards of governance for a self-regulating profession?*

2010 *Enhancing the Delivery of Legal Services*

2011 *The Future of Legal Regulation in BC*

2012 *Good Governance in the Public Interest*

2013 *The Business of Law in the 21st Century: Are we at Risk of Losing (or can we Maintain) our Professional Values?*

87. Overall, the Committee was satisfied that First Vice-Presidents have given sufficient consideration to the issues of strategic importance in planning recent Bencher retreats, and that therefore no recommendation is required.

Appendix A

FINANCE/AUDIT COMMITTEE

TERMS OF REFERENCE

Updated: November, 2013

MANDATE

The Finance and Audit Committee provides oversight over the financial affairs of the Law Society. The Finance and Audit Committee provides recommendations on the annual fees, reviews the annual budgets, and periodically reviews the financial and investment results as needed. In addition, the committee oversees the external audit process, recommends the approval of the audited financial statements to the Benchers, and provides oversight over the internal controls and enterprise risk management of the Law Society.

COMPOSITION

1. The members of the Committee shall be appointed annually by the President in accordance with Rule 1-47 and in compliance with the Benchers' policies regarding committee appointments.
2. The Chair must be a Bencher and at least one appointed Bencher must be member of the Committee.

MEETING PRACTICES

1. The Committee shall operate in a manner that is consistent with the Benchers' governance policies.
2. The Committee shall meet as required.
3. Quorum is at least half the members of the Committee (Rule 1-16(1))

ACCOUNTABILITY

The Committee is accountable to the Benchers as a whole.

REPORTING REQUIREMENTS

The Chair shall report regularly to the Benchers on the work of the Committee.

DUTIES AND RESPONSIBILITIES

1. Financial Reporting
    a. Annual Fees and Budgets
        i. Review the draft annual fees and related budgets prepared by management, and make a recommendation on the annual fees to the Benchers.
        ii. Act as a watchdog on the costs of any new programs or proposals.

b. Review the financial results on a quarterly basis.

2. Internal Controls and Risk Management
   a. Receive the CEO/CFO confirmation letter on internal controls.
   b. Ensure that any recommendations made by the external auditors and agreed to by the Committee and management are implemented.
   c. Review the annual report on Enterprise Risk Management.
   d. Institute any special investigations considered necessary and, if appropriate, hire external experts to assist.
   e. Review and make recommendations to the CEO and/or the Benchers relating to any possible conflict of interest situations that come to the Committee's attention.
3. External Audit
   a. Recommend the selection of external auditors, who are then appointed by members at the Annual General Meeting.
   b. Review directly with the auditors and approve the audit plan and engagement letter, receive the management representation letter, receive the annual Audit Report and recommends approval of the audited statements to the Benchers.
   c. Review and approve any major changes in financial reporting as required by changes to the CICA Handbook Rules.
   d. Review the overall performance of the auditors and approve the audit fee and related costs.
4. Executive Limitations
   a. Periodically review the executive limitations relating to the financial affairs of the Law Society, including the insurance program, and advise Benchers if any changes are needed.
   b. Monitor executive performance to ensure that all major limitations dealing with the financial affairs of the Law Society are being met.
5. Insurance Monitoring
   a. Investments
      i. Periodically review the Law Society Statement of Investment Policies and Procedures and recommend to the Bencher any changes as necessary.
      ii. Review the quarterly performance of the Lawyers Insurance Fund investment portfolio managers.
   b. In conjunction with the external audit, review the annual actuarial reports.
6. Bencher assignments
   a. Act on any issues referred to the Committee by the Benchers.

STAFF SUPPORT

Chief Financial Officer

Appendix B

BENCHER AND LIFE BENCHER ADVICE CHECKLIST

Information	
Date	
Time	
Member Name	
Parties Identified	Yes ☐
Conflicts Checked	Yes ☐
Confidentiality Statement	
Ensure that the lawyer understands you will keep confidential any information he or she provides but that your communications are not privileged and that you have an obligation under section 7.1-3 of the Code of Professional Conduct to report to the Law Society a breach of undertaking or trust condition that has not been consented to or waived; any abandonment of a law practice; the mental instability of a lawyer of such a nature that the lawyer's clients are likely to be materially prejudiced; any conduct that raises a substantial question as to another lawyer's honesty, trustworthiness, or competency as a lawyer; and any other situation in which a lawyer's clients are likely to be materially prejudiced.	
General Nature of the Problem	

Relevant Facts
Advice Given

Agreed Course of Action	
Other Consideration (If Any)	
Follow Up Required	Yes ☐
Follow Up Date	

The Law Society of British Columbia

Memo

To: Benchers
From: Credentials Committee
Date: November 28, 2013
Subject: **National Suitability to Practise Standard – Consultation Report**

The Council of the Federation of Law Societies of Canada has provided law societies with the National Suitability to Practise Standard Consultation Report and has invited feedback on the approach to assessing the good character/suitability to practise of applicants for admission to the legal profession outlined in the report.

Background

In October 2009, Council of the Federation approved a plan for a project to develop national standards for admission in the legal profession in Canada. Consistency in admission standards and candidate assessment were identified as key goals for the project.

A key element of the first phase of the project was the identification of the competencies required for new members of the profession to practice competently. In December 2012, the Benchers considered and approved the Competency Profile on the understanding that implementation would be based on a nationally accepted implementation plan, and to support the development of that plan.

The drafting of a common standard for ensuring that applicants meet the requirement to be of good character is another key component of the National Admission Standards Project.

Consultation Report

The Invitation to Comment provides the rationale for this project:

> *Although applicants for admission to the profession across Canada are required to "be of good character", there is no nationally agreed upon statement of exactly what an applicant must demonstrate to meet the requirement. The drafting of a common standard is intended to address this problem by ensuring that the requirements are clearly articulated and defensible and that the process of assessing candidates are consistent and*

> *fair. The Good Character Working Group ("the Working Group") has reviewed relevant statutory requirements, academic literature and criticism, case law, current law society practices, and the practices of regulators in other countries and other professions to consider the policy rationale for the good character requirement, define the principles that should be reflected in a common standard, and recommend consistent processes.*

The goal of the consultation is to obtain meaningful feedback on all aspects of the report, including:

- the purpose of the good character assessment;
- the proposed use of the concept of "suitability to practise";
- the four elements proposed to form part of the national standard; and
- the proposed guidelines for applying the standard.

In addition, Tim McGee, CEO, wrote an article in the latest Benchers' Bulletin encouraging all BC lawyers to express their views with written comments accepted by the Law Society until October 30, 2013. No comments from the profession were received.

Credentials Committee Process

The Credentials Committee considered the Consultation Report at its meeting in October 2013. At that time, a subcommittee comprising Greg Petrisor, Ken Walker, QC and Vincent Orchard, QC was created to review the report further and provide comments.

The Committee's preliminary comments are attached to this memo and are intended as a framework to facilitate further discussion among the Benchers.

Attachment

- Credentials Committee's comments
- National Suitability to Practise Standard Consultation Report

Credentials Committee's Comments to the National Suitability to Practise Standards Consultation Report

Questions Raised in the Consultation

The Consultation Report asks that particular feedback be provided related to:

- The working group's consideration of the purpose of the good character assessment;
- The proposed use of the concept of "suitability to practise";
- The four elements that should form part of the national standard;
- The proposed guideline for applying the standard.

The Purpose of the Good Character Assessment

The Credentials Committee agrees with the working group's consideration of the purpose of the good character assessment and the conclusion that good character assessments represent an important first opportunity for law societies to review the conduct of applicants to determine whether they are suitable for the practice of law with the goal of protecting both the public and the reputation of the profession.

The Concept of "Suitability to Practise" and The Four Elements

The Committee does not take issue with the use of the word "suitability" or the description of how suitability is to be determined as described in the body of the Consultation Report. The Committee agrees with the discussion of conduct and the consideration of specific types of conduct as described in paragraph 21 of the Consultation Report.

The Committee does have a concern regarding the absence of any mention of "fitness" or perhaps "ability" in the discussion of suitability and factors which measure suitability. In BC, this is a crucial aspect of our statutory requirement and the Law Society, as part of our admission process, obtains information about any condition, including substance abuse issues, which may affect an applicant's ability to practice law.

Guidelines for Applying the Standard

The Committee strongly agrees with the concept of bringing greater consistency across the country to the assessment of suitability to practice. As the working group has pointed out, this is particularly important given the ever-increasing mobility of members of the profession between jurisdictions.

While the Committee agrees with the preliminary gathering and verifying of information, further investigation, and assessing information, we are concerned regarding the principles under the heading "Hearings and Appeals" in paragraphs 42-45 of the draft report. The Committee does not agree that the Law Society should have to meet an onus or prove a basis for a credentials hearing. The Committee also does not agree that an applicant should be entitled to written reasons for a hearing being ordered. The onus should be on the applicant throughout to prove his or her suitability to practise law. An unsatisfactorily explained negative response to a question on the questionnaire forms the basis of the hearing. The law societies should not be required to prove a basis for the hearing. Rather, the applicant needs to establish to the satisfaction of the

law society why he or she is suitable to practise law, which is the question at issue in the hearing itself.

Proposed Questionnaire

The Committee has also reviewed the proposed questionnaire and provide the following comments:

Question 1. Suggest a more open question, for example, "Have you or any business you control ever been the subject of an order of a court or administrative tribunal?" If the answer is positive, then perhaps check boxes for contempt, or other types of orders that merit special consideration could be used.

Question 4. Include whether or not a warrant has ever been issued for the applicant.

Question 5. Criminal charges be dealt with completely separately from civil matters. In respect of civil matters, the question should include allegations, as well as findings, of fraud etc.

Question 6. Question number 6 be deleted. It requires an applicant to, in essence, try to advise why a judge thought something. A broader question number 5 as set out above would bring to light almost any information that the current question number 6 seeks to elicit.

Question 7. Any question regarding outstanding warrants, judgments or orders is unnecessary if questions number 1 and 4 are broadened as we suggest.

Question 8. Suggest a broader scope for question number 8, to include whether the applicant or any business controlled by the applicant has ever been investigated for the unauthorized practice of law, or has ever practiced law when unauthorized to do so.

Question 9. Suggest a broader scope for question number 9, to include "investigated or charged". "Delinquency" should be removed.

Question 10. We see no point to question number 10 and suggest it be deleted.

As stated above, given the Law Society's statutory requirements, the issue of "fitness" or "ability" needs to be addressed on a National level. While the Committee recognizes that the Working Group recommended that a Fitness Task Force be created to explore fitness issues more broadly, the suggestion that individual law societies may choose to continue their current practise concerning fitness enquiries on admission to the profession does not, in our view, lend itself to National Standards. We suggest that the Working Group develop a schedule as is currently in use in British Columbia designed to identify medical issues, including substance abuse issues, which may impact an applicant's ability to practice law.

The Committee has not had an opportunity to consider whether the new approach of any of the particular questions raise privacy or human rights implications. Consideration ought to be given

to obtaining an opinion on those subjects to ensure that these important issues are addressed in a manner that does not contravene privacy or human rights legislation.

National Suitability to Practise Standard

Consultation Report

July 2013

FEDERATION OF LAW SOCIETIES OF CANADA • FÉDÉRATION DES ORDRES PROFESSIONNELS DE JURISTES DU CANADA •

NATIONAL SUITABILITY TO PRACTISE STANDARD

CONSULTATION REPORT

INVITATION TO COMMENT

Law societies in Canada are mandated by statute to regulate the legal profession in the public interest. Setting appropriate standards for admission to the profession to ensure that lawyers and Quebec notaries are competent and understand their ethical obligations is a critical aspect of this mandate. While there is much common ground in the admission programs in Canada's 14 law societies, differences do exist.

Members of the legal profession in Canada today enjoy unprecedented mobility between jurisdictions. The mobility regime established under the Federation's mobility agreements – the National Mobility Agreement, the Territorial Mobility Agreement, and the Quebec Mobility Agreement and Addendum - permits members of the profession to move with ease between jurisdictions. Changes to the federal-provincial-territorial Agreement on Internal Trade have led to mobility rights for all licensed professionals and certified workers being enshrined in legislation.

Mobility has generated increased reflection about what the law societies do and why. With admission as a lawyer in one jurisdiction effectively opening the door to admission in all jurisdictions in Canada, mobility may make different regulatory practices difficult to justify as being in the public interest. Recognizing this, the Council of the Federation has identified the following strategic priority:

> To develop and implement high, consistent and transparent national standards for Canada's law societies in core areas of their mandates.

The National Admission Standards Project reflects this priority.

In 2010, Canada's law societies agreed on a uniform national requirement that graduates of Canadian common law programs must meet to enter the licensing program of any of the Canadian common law jurisdictions. The national requirement, which will apply to graduates of existing and prospective law schools effective 2015, specifies the competencies and skills graduates must have attained and the law school academic program and learning resources law schools must have in place. The National Admission Standards Project is intended to build on this base by developing comprehensive standards for admission for implementation in each jurisdiction.

The Council of the Federation identified two goals for the first phase of the project: (i) developing a national profile of the competencies required upon entry to the profession; and

(ii) the drafting of a common standard for ensuring that applicants meet the requirement to be of good character.

Through the collaborative efforts of senior law society admission staff members, professional credentialing consultants, and practicing lawyers, a profile of entry-level competencies – knowledge, skills and tasks – was developed. The National Entry-Level Competency Profile for Lawyers and Quebec Notaries was adopted by the Council of the Federation in September 2012. The profile has now been adopted by 13 of Canada's 14 law societies. Work is now under way to explore options for implementation of the profile by the law societies.

Law society policy and credentialing counsel (the Good Character Working Group) have also been working on drafting a common good character standard.[1]

Although applicants for admission to the profession across Canada are required to "be of good character", there is no nationally agreed upon statement of exactly what an applicant must demonstrate to meet the requirement. The drafting of a common standard is intended to address this problem by ensuring that the requirements are clearly articulated and defensible and that the process of assessing candidates is consistent and fair. The Good Character Working Group ("the Working Group") has reviewed relevant statutory requirements, academic literature and criticism, case law, current law society practices, and the practices of regulators in other countries and other professions to consider the policy rationale for the good character requirement, define the principles that should be reflected in a common standard, and recommend consistent processes.

The considerations and preliminary views of the Working Group are set out in the following consultation report. The goal of this consultation is to obtain the comments of law societies and other interested stakeholders on the Working Group's views to facilitate the final development of a national standard.

Detailed feedback is invited on any or all aspects of the report, in particular related to,

[1] Concurrent with the drafting of a common good character standard, the Working Group explored the appropriateness of a "fitness to practise" requirement. Some law societies enquire into fitness to practise by asking applicants about their mental health, physical health, and substance abuse or addictions. The Working Group recommended that a Fitness Task Force be created to explore fitness issues more broadly, both at entry to the legal profession and throughout a legal professional`s career. Due to other Federation priorities, the establishment of a Fitness Task Force has been deferred. The drafting of a National Suitability to Practise Standard will proceed without consideration of a fitness requirement at this time. A recommendation about fitness to practise in the context of the National Suitability to Practise Standard may be made in the future after the Task Force has been established and has completed its work. In the meantime, law societies may choose to continue their current practises concerning fitness enquiries on admission to the profession.

- the working group's consideration of the purpose of the good character assessment;
- the proposed use of the concept of "suitability to practise";
- the four elements that should form part of the national standard; and
- the proposed guidelines for applying the standard.

Interested stakeholders are encouraged to provide written comments by **November 30, 2013**. Please direct them to:

National Admission Standards Project
Federation of Law Societies of Canada
consultations@flsc.ca

INTRODUCTION

1. Applicants for admission to the legal profession bear the onus of showing that they are qualified for admission. Some qualifications, such as whether the applicant has the required law degree or has passed the bar exam, are straightforward to assess. Determining whether an applicant understands and can be expected to act in accordance with the standards demanded of lawyers and Quebec notaries[2] is more complex.

2. The provincial and territorial statutes under which Canadian law societies operate include requirements that members of the profession be of "good character", "good repute", or "fit and proper persons" (referred throughout this report as "good character"), and all regulators of the legal profession in Canada currently assess good character as part of the admission process. It has been suggested that the conceptual rationale for the requirement rests on the interrelated concepts of protection of the public and protection of the reputation of the profession.[3] Assessing character, it is argued, is essential for determining whether an applicant will adhere to the high ethical standards required of members of the profession.[4]

3. The legal profession is not alone in requiring that its members be of good character; most professions have similar requirements. In the case of the legal profession, the roles that lawyers and Quebec notaries play in the legal system and the nature of their relationships with their clients provide perhaps the strongest justification for the requirement.

4. Lawyers and Quebec notaries occupy a position of trust. The administration of justice, in which legal professionals play an integral part, can operate effectively only if those who function within it do so with honesty and integrity. Individual clients, the public at large, the courts, and the regulators must be able to rely on members of the profession to be honest and trustworthy. Clients require honest and candid advice, and tribunals and other members of the profession must be able to rely on the representations of legal counsel. As key participants in the justice system and as officers of the court, lawyers and Quebec notaries must also demonstrate respect for the rule of law and the administration of justice, and a willingness to be governed by the regulators of the

---

[2] In Ontario, licensed paralegals regulated by the Law Society of Upper Canada, must also meet the good character requirement. As the licensing of paralegals is unique to Ontario and as Ontario's paralegals do not fall under the Federation's umbrella, the report refers to lawyers and Quebec notaries throughout.

[3] *Re Rajnauth and Law Society of Upper Canada* (1993), 13 O.R. (3d) 381 at 384

[4] *Law Society of Upper Canada v. Aidan Christine Burgess,* 2006 ONLSHP 0066 at para 10 (paraphrasing from *Preyra v. Law Society of Upper Canada*, [2000] L.S.D.D. No. 60) ["*Burgess*"]

profession. As fiduciaries for their clients legal professionals must place their clients' interests above their own at all times and must be capable of handling client funds honestly and responsibly.

~~5.~~ While it seems reasonable to expect regulators to take steps to screen out applicants who pose a risk of breaching their ethical duties and harming their clients, the ability of good character assessments to achieve this goal has been the subject of discussion and criticism.

6. The Working Group was asked to consider whether there is a sufficient rationale for continuing to assess the character of applicants for admission and if it concluded there was, to draft a common good character standard for consideration and adoption by the provincial and territorial regulators of the legal profession. In doing so it has considered criticisms that the requirement's vagueness and inconsistency in application make its utility in protecting the public questionable. It has also considered whether, if the requirement is to continue, the process for conducting good character assessments could be improved.

7. The Working Group has reviewed the statutory provisions related to good character from each jurisdiction, the practices of each law society in applying the requirement, approaches to good character assessments of regulators of the legal profession outside Canada and of regulators of other professions, and academic criticism of good character assessments. It has also reviewed case law and hearing panel decisions from a number of Canadian jurisdictions.

8. This report first sets out the underlying rationale for continuing to have a good character requirement, although the Working Group recommends moving away from "character" to "suitability" and focusing not on personal attributes, but rather on the behaviour that is required of all members of the legal profession. This concept is discussed in detail below.

9. Next, the report describes four categories of conduct that the Working Group believes are relevant – respect for the rule of law and the administration of justice, honesty, governability and financial responsibility – and discusses the specific factors in each category that the Working Group thinks are relevant to an assessment of the applicant's conduct and suitability.

10. The report concludes with a description of the recommended process for conducting an assessment of an applicant's suitability to practise law, including the gathering of information and the conduct of hearings.

RATIONALE

11. Canada's law societies are mandated by statute to regulate the legal profession in the public interest. Included in this statutory mandate is a duty to take reasonable measures to protect the public. Protection of the public requires regulators to endeavour to ensure that members of the profession are suitable to practise and will conduct themselves in a manner expected of them, both on admission and throughout their careers.

12. Public confidence in the legal profession is important to the effective administration of justice. Clients repose tremendous trust in the legal professionals they engage to assist them. The reputation of the profession is important to the maintenance of that trust. All reasonable efforts must be taken by the regulators to ensure that those they admit to the profession will conduct themselves in accordance with the high ethical standards required of legal professionals.

13. Candidates for licensing are expected to satisfy a number of requirements before law societies will admit them. These requirements establish a "point-in-time" assessment of candidates' qualifications. Licensing examinations and good character assessments are the two most prevalent point-in-time assessments on which law societies rely at the admission stage, measuring competence and suitability to practise.

14. Continued use of good character assessments has been criticized on the basis that they have limited predictive value. But it is not only predictive regulatory activities that are useful to protect the public. The purpose of good character assessments, as with licensing examinations, is to assess an applicant's suitability to practice at the time of application, not to predict the applicant's future conduct. They are a baseline that provides law societies with an initial measurement, but are by no means the end of the law society's monitoring of the member's character and competence. Good character assessments are but one of a number of tools at the disposal of regulators to monitor suitability throughout a lawyer's career. Practice and trust account audits, members' annual reporting requirements, complaints, and disciplinary investigations and proceedings are all used by law societies to assess suitability and competence over the course of the career of a legal professional.

15. As discussed above, the statutes or regulations governing the legal profession in every jurisdiction in Canada require applicants to the profession to be of good character. The Working Group has concluded that good character assessments represent an important first opportunity for law societies to review the conduct of applicants to determine whether they are suitable for the practice of law.

16. The Working Group is of the view that a good character assessment is a useful regulatory tool, however it agrees that there is room to improve both the definition and

the application of the standard. Appropriately refined, good character assessments can assist law societies in meeting the important goals of protecting both the public and the reputation of the profession. The Working Group's ideas for refining and improving both the standard against which applicants are assessed and the process for conducting the assessment are explored in the following section.

ELEMENTS OF A COMMON STANDARD

17. The Working Group recognizes that the elements of the standard that applicants must meet should be firmly rooted in the realities of ethical legal practice and should be as clear as possible. In an effort to bring greater clarity to both the standard and the assessment process, the Working Group recommends replacing the concept of "character'" with one of "suitability to practise" and focusing not on character traits, but rather on the behaviour that is required of all members of the profession.

18. Although precise descriptions vary, the following definition of good character from one Nova Scotia Barristers' Society decision is representative: "good character refers to the character traits of an ethical lawyer."[5] Others have described character as "the combination of qualities or features distinguishing one person from another."[6]

19. Critics have suggested that such definitions are vague, potentially subjective, and, as a result of their lack of precision, provide little concrete guidance to applicants on the standard they have to meet. The Working Group sees some merit in these criticisms. In its view, however, by focusing on suitability and identifying conduct directly related to the practice of law, the standard can be made clearer and fairer.

20. To identify the conduct that is relevant to the practice of law and therefore the determination of an applicant's suitability, the Working Group began with an examination of the general requirements of practice. It notes that the practice of law requires that practitioners adhere to high ethical standards, exercise good judgment, uphold the rule of law and the administration of justice, be accountable, comply with the legal and regulatory obligations imposed on members of the legal profession, provide honest and candid advice to clients, accept responsibility for their decisions and conduct, and handle client money reliably and responsibly. This means that members of the profession must act with integrity, candour, honesty, and trustworthiness.

---

[5] *Christopher Ian Robinson v. The Nova Scotia Barristers' Society*, 2008 NSBS 4 (CanLII) at para 52.

[6] *Re P (DM),* decision of a panel of the Law society of Upper Canada [1989] O.J. No. 1574 at 22, cited in Alice Woolley, "Tending the Bar: "The "Good Character" Requirement for Law Society Admission" (2007) 30 Dalhousie L.J. 27at 36.

21. The Working Group considers that in assessing whether an applicant is likely to meet these expectations and so be suitable for the practise of law information on an applicant's conduct in the following areas is relevant:

    i. Respect for the rule of law and the administration of justice
    ii. Honesty
    iii. Governability
    iv. Financial responsibility

i. Respect for the rule of law and the administration of justice

22. The rule of law is a central characteristic of a just society. Members of the legal profession are key participants in a justice system that advances the rule of law and should therefore be expected to uphold and demonstrate respect for the rule of law and the administration of justice by acting in accordance with the law. Public confidence in the legal profession would suffer if an applicant who does not show this respect were to be admitted to the practice of law.

23. Evidence of criminal convictions, failure to comply with court orders, abuse of court processes, contempt of court, or participation in an organization that advocates violence or unlawful discrimination may demonstrate that an applicant lacks the required respect for the rule of law and the administration of justice.

24. Participation in offences involving dishonesty, fraud, perjury, bribery, and obstruction of justice are of particular concern as they demonstrate that the applicant has engaged in conduct that demonstrates that the applicant lacks the required ability to act with the honesty and integrity necessary to practise law.

25. Although past conduct may not predict future conduct, evidence of past misconduct does merit further inquiry as it inevitably raises questions about the applicant's understanding of the conduct required of a member of the profession. The circumstances of the past misconduct, the applicant's actions since the misconduct, and the applicant's insight into the incident should all be considered in determining whether, notwithstanding the past misconduct, the applicant is currently suitable to practise law.

26. In determining the relevance of past misconduct to the applicant's current suitability, law societies should consider the following:

    a) the nature and seriousness of the misconduct including its relevance to the practice of law;
    b) the age of the applicant at the time of the conduct;
    c) number of offences or incidents of the misconduct;

d) the length of time between the conduct in question and the application;
e) evidence of remorse;
f) evidence of rehabilitation including but not limited to acknowledgments that the conduct was wrong and acceptance of responsibility for the conduct; treatment and/or counselling; compliance with any disciplinary sanctions, sentences, or court orders; conduct since the offences or misconduct, including evidence of positive social contributions through employment, community or civic service;
g) evidence of the applicant's current understanding that the conduct was wrong.

ii. Honesty

27. Members of the legal profession are in a position of trust and are expected to conduct themselves honestly in their dealings with and representation of their clients. Failure to demonstrate the required honesty will undermine the confidence a client has in her legal counsel, public confidence in the profession, and the effective administration of justice.

28. Evidence that an applicant has engaged in dishonest conduct, including crimes of dishonesty, professional or academic misconduct, and breach of trust, requires further investigation. As in the case of misconduct that calls into question an applicant’s respect for the rule of law and the administration of justice, the circumstances, intervening conduct, and insight into the dishonest conduct are all relevant considerations.

29. A pattern of dishonest behaviour may indicate that an applicant does not possess the required honesty to practise law, but is not necessarily an automatic bar to admission. As in the case of all other misconduct it is the applicant's current suitability that is at issue. In assessing the relevance of past dishonest behaviour to current suitability the following should be taken into consideration:

a) the applicant's age at the time of the conduct;
b) whether the dishonest acts were committed to achieve personal gain or advantage;
c) the impact on others of the dishonest behaviour;
d) evidence of the applicant's understanding of the matter and acceptance of responsibility;
e) compliance with any sanctions for the dishonest conduct;
f) evidence of rehabilitation;
g) the passage of time since the dishonest acts and the applicant's conduct in the interim.

30. Failure to disclose all relevant information or a lack of candour in the admission process is also relevant to the assessment of the ability of the applicant to conduct themselves with honesty. Not every inaccuracy, however, will be a bar to admission. In determining

the relevance of any misrepresentation or lack of candour, the following should be taken into consideration:

a) whether the applicant has deliberately provided false or misleading information, or has demonstrated recklessness or wilful blindness in relation to the information provided;
b) whether the information in question is material to the application for admission.

iii. Governability

31. The regulators of the legal profession are charged with ensuring that the public interest is protected. Applicants for admission to the legal profession must demonstrate a willingness to accept the authority of the law society, and an understanding of the importance of effective governance of the profession to the protection of the public. They must be prepared to comply with the regulations in place to protect clients, the administration of justice, and the public, and must respond to the law society appropriately and in a timely manner in order to facilitate effective and efficient regulation.

32. Information about the regulatory history of an applicant who has previously been subject to professional regulation in another profession or jurisdiction is relevant to a determination of whether the applicant has demonstrated the required willingness to comply with professional regulation. Evidence that an applicant has been the subject of a serious disciplinary finding, sanction or action by a regulatory body or that an applicant has been refused registration by a regulatory body may raise questions about the applicant's willingness to accept the authority of the regulator. The circumstances of any regulatory sanction or refusal to license must be examined. Matters relevant to an assessment of the relevance of such actions to the determination of the applicant's suitability to practise include:

a) when the sanction or other action or the refusal to license occurred;
b) whether the applicant accepted responsibility for the underlying conduct;
c) the seriousness of the underlying conduct;
d) evidence of rehabilitation;
e) evidence of subsequent compliance with regulatory authority.

iv. Financial responsibility

33. Evidence of lack of financial responsibility is relevant to the assessment of suitability to practise in a number of ways. Lawyers and Quebec notaries act as fiduciaries for their clients and may be entrusted with significant amounts of money. Once money has been deposited into a lawyer's or a notary's trust account clients have little or no direct control

over the money they have entrusted; they must rely on their legal counsel to handle their money with integrity and in accordance with their instructions. It is essential that members of the legal profession be honest in dealing with client funds and that they handle the funds in a professional and responsible manner consistent with their fiduciary role.

34. Public confidence in the handling of client funds by lawyers and Quebec notaries may also be undermined if members of the profession demonstrate an inability to handle their personal finances. An applicant's ability to handle client funds responsibly may be called into question if the applicant has been wilfully financially irresponsible in the past. Serious financial difficulties may also present a risk that an applicant will misuse client funds.

35. Evidence of financial problems, mismanagement or neglect of financial responsibilities including, for example, unpaid court judgments or liens, failure to make child support payments, defaulting on debts or bankruptcy raise questions about an applicant's financial responsibility. In order to determine whether an applicant is guilty of deliberate financial mismanagement or avoidance of financial responsibility or is simply an honest, but unfortunate debtor it is essential to examine information on the details surrounding any bankruptcy or other financial problems. Factors to consider include the following:

    a) the circumstances surrounding any bankruptcy or other financial problems, including, in particular, any evidence of wilful financial mismanagement or exceptional circumstances beyond the control of the applicant that could not have reasonably been foreseen;
    b) the nature of the debt at the time of bankruptcy or other financial difficulty;
    c) actions, if any, taken to discharge debts;
    d) the applicant's financial situation since the bankruptcy or other financial problems including the applicant's recent credit history;
    e) the passage of time since the bankruptcy or other financial difficulty; and
    f) evidence, if any, of the handling of funds for others since the bankruptcy or other financial problems.

GUIDELINES FOR APPLYING THE STANDARD

36. The Working Group recognizes the value in bringing greater consistency to the assessment of suitability to practise. Identifying both a common process for the assessments and a set of common factors that should be considered is likely to promote consistency both within individual jurisdictions and between jurisdictions. The latter aspect is particularly important in this era of ever-increasing mobility of members of the profession between jurisdictions.

37. The assessment process can be divided into the following possible stages: preliminary gathering and verifying information, further investigation, assessing information, hearings, and appeals. The following sections describe a template for the different stages.

Gathering and verifying information

38. Law societies currently employ a variety of means of gathering information from which to assess whether an applicant has demonstrated that they are suitable to practise. Self-reporting by applicants through a series of questions on the admission application is a common element and one that the Working Group believes should be preserved. The Working Group has drafted a proposed standard questionnaire (attached as Appendix "A") that includes questions relating to the four categories of conduct discussed above: respect for the administration of justice and the rule of law; honesty; governability; and financial responsibility. The draft standard questionnaire also includes the rationale for the questions and guidance for assessing the answers. Using a common questionnaire will promote consistency in suitability assessments both within and across jurisdictions.

39. Independent verification of the information provided by applicants is not now carried out in all jurisdictions, and where it is, it is not done consistently. The Working Group suggests that obtaining information from independent sources – for example criminal records checks, court registry databases, certificates of standing and reports of disciplinary history from other regulatory bodies, references from third parties, and reports or certificates from articling principles – is important and recommends that such independent verification be included in the standard and undertaken by all jurisdictions.

Further Investigation

40. For the majority of applicants the inquiry into suitability will end with the answers to the questions on the application form and a review of the independently obtained information. In some cases, however, the information provided about the applicant's past conduct will trigger further inquiry. This further investigation may be undertaken by law society staff or by independent investigators retained by the law society. The scope of any additional investigation will vary according the facts of each case, but in all cases it should involve gathering additional information, either from the applicant directly, through further independent verification, or both. Information should be obtained about the circumstances of any past misconduct revealed on the application, the applicant's intervening conduct, and the applicant's current understanding of the incident(s) to determine whether, at the time of application, they are suitable to practise law.

Assessing Information

41. Following the preliminary gathering and verification of information and any further investigation an assessment of the applicant's suitability to practise (good character) must be made. Practices vary between law societies – in some staff are mandated to undertake this assessment while in others the assessment is made by a committee comprised of benchers or members of council. In each case, it is important that the information be assessed against the factors discussed above, including the nature and seriousness of the conduct at issue, the passage of time since the conduct, and the applicant's current understanding of the conduct.

Hearings and Appeals

42. In the event of a negative assessment of an applicant's suitability, procedural fairness requires that the applicant be given an opportunity to be heard. A negative assessment triggers a right to a hearing and applicants who are unsuccessful at the hearing must also have a right of appeal or review.

43. The applicant must be provided with written reasons for the negative assessment and the law society must disclose all information that it intends to rely on at a hearing into the applicant's suitability.

44. At the hearing the law society must prove on a balance of probabilities that there is a factual basis for questioning the applicant's suitability, for example evidence of misconduct that bears on the likelihood that the applicant will conduct themselves appropriately if admitted to the practise of law. Where this factual basis has been established, the onus is on the applicant to rebut (on a balance of probabilities) the presumption that they are not suitable to practise law.

45. Written reasons of the hearing or appeal decision must be provided.

CONCLUSION

46. The screening of applicants for licensing as lawyers or Quebec notaries – whether to determine their character or their suitability to practise law – raises a number of important and challenging issues. In its suggested approach to a common standard the Working Group has endeavoured to respond to the major criticisms of the current approach by proposing criteria and processes that can be applied consistently across the country.

47. The final determination of how to address suitability or character assessments cannot be made without your feedback. We encourage you to comment on any of the issues raised in the report.

Appendix "A"

DRAFT STANDARD QUESTIONNAIRE

To the Applicant:

Law societies regulate the legal profession in the public interest. One of the most important decisions that law societies make is who they license to practise law. The public interest requires that all applicants prove they are suitable to practise.

Law societies assess the suitability of applicants in many ways, but the following factors are particularly relevant and important:

- Respect for the rule of law and administration of justice
- Honesty
- Governability
- Financial responsibility

The questions in the following questionnaire are one of the primary ways in which law societies obtain the information necessary to assess an applicant's suitability.

The questions that follow are arranged under headings based on the factors set out above. In general, all positive answers to the questions set out in the sample questionnaire will be investigated. A positive answer does not necessarily mean that the applicant will be refused admission to the law society. Follow-up questions or further investigation may be pursued, and the applicant may, in certain circumstances, be entitled to a hearing into the issues raised by their answers.

In answering the questions, the applicant must disclose all material information relating to their application, including any matters that have occurred in Canada and elsewhere. Law societies regard failure to disclose material information as prima facie evidence of dishonest behaviour.

All records or required information must be provided along with the licensing application or the application will be considered incomplete.

Criminal background check: you must submit with this application, the result of a criminal record search conducted by a municipal, regional, provincial, or federal police force issued within the past 90 days

Respect for the Rule of Law and the Administration of Justice

Respect for the rule of law and the administration of justice is essential to a free and democratic society. Although all members of such a society should show this respect, it is particularly important that those who work in the justice system do so. Information about past conduct that raises questions about an applicant's respect for the justice system warrants further

investigation to determine if the applicant will conduct themselves with honesty and integrity and will comply with the ethical rules governing members of the legal profession.

The questions below seek to identify conduct that may suggest a lack of respect for the justice system. There will be overlap with other categories, such as honesty and governability.

1. Have you, or has any business that you control, ever been found in contempt of an order of a court or an administrative tribunal?

2. Have you, or any business that you control, ever violated an order of a court or an administrative tribunal?

3. Has a court ever made a finding:
    a. That you, or any business that you control, is a vexatious litigant?
    b. That you, or any business that you control, has abused the process of the court?

4. Have you ever failed to respond to a warrant or subpoena?

5. Has there ever been a conviction or finding of liability against you, or any business that you control, involving a breach of trust, fraud, perjury, misrepresentation, deceit, forgery, dishonesty, or undue influence in any civil, criminal, or administrative proceeding?

6. Has a court or an administrative tribunal ever determined that your evidence was not credible?

7. Are there any outstanding warrants, judgments or court orders against you or any business that you control?

8. Have you, or any business that you control, ever been the subject of an order enjoining you from the unauthorized practice of law, or are there any outstanding allegations of unauthorized practice of law outstanding against you or any business that you control?

9. Have you ever been charged in Canada or anywhere else with a crime, offence, or delinquency under any statute, regulation, ordinance or law?

10. Are you a member of an organization that advocates violence or unlawful discrimination?

Honesty

The administration of justice, in which members of the legal profession pay an integral part, can operate effectively only if those who function within it do so with a commitment to honesty and integrity.

Appendix "A"

The public, the courts, and the regulators require members of the profession to be free of deceit. It is essential that they be able to rely upon representations made by a member of the profession as truthful.

Lawyers and Quebec notaries have a professional obligation to give honest and candid advice. If a client has any doubt about the honesty or trustworthiness of their legal advisor an essential element of the solicitor/client relationship is missing.

A lawyer is an officer of the court. As such, a lawyer has special responsibilities to the administration of justice, including the duty to be candid and the prohibition against deceiving or misleading the court.

Dishonest conduct on the part of a member of the legal profession brings discredit upon the profession and the administration of justice.

1. Have you ever been refused admission to any post-secondary institution or similar institution for the stated reason of dishonesty or other misconduct?

2. Have you ever been suspended, expelled or penalized for misconduct (including warning, placed on probation, permitted or advised to resign in lieu of discipline) while attending a post-secondary institution?

3. Are you currently the subject of any allegations or misconduct by a post-secondary institution?

4. Have you ever been refused admission as a student-at-law, articled clerk, or similar position in any other professional body?

5. While undertaking studies for the purpose of admission to a professional body (law or other) have you ever been suspended or expelled or penalized for misconduct (including warning, placed on probation, permitted or advised to resign in lieu of discipline)?

6. Have you ever been discharged, suspended, disciplined, or permitted to resign from employment in lieu of discipline due to allegations of misconduct? Misconduct includes dishonesty or human rights code violation or other inappropriate conduct.

7. Have you ever been a member of a group that advocates conduct that violates the Criminal Code, human rights or privacy legislation? If you answer yes, please provide the name of the group and describe the extent of your participation in it.

Governability

The regulators of the legal profession are charged with insuring the public interest is protected. Members of the profession must demonstrate respect for the authority of the regulator and a willingness to comply with the professional standards in place to protect clients, the administration of justice, and the public. Lawyers and Quebec notaries must respond to the regulator appropriately and in a timely manner in order to facilitate effective and efficient regulation. They must demonstrate that, if they have previously been subject to professional regulation, they respected and complied with such regulation, despite any personal differences or disagreements they may have had with their regulatory body.

The following questions seek information as to whether or not the applicant will accept governance by their regulator. Law societies ask questions about the regulatory history of applicants to assess whether the applicant has demonstrated the required willingness to comply with professional regulation. Law societies must also know if the applicant has been refused entry into a regulated profession due to good character concerns. Evidence of failure to comply with professional regulatory requirements or denial of admittance to any profession may call the applicant's suitability to practise or governability into question.

1. Have you ever been suspended, disqualified, censured or disciplined as a member of any profession or organization or as the holder of a public office?

2. Have you ever been denied a licence or had a licence revoked for any business, trade or profession?

3. Have you ever been or are you currently the subject of any charges, complaints, grievances (formal or informal), investigations, findings, proceedings, or concerns regarding your conduct as a member of any profession or organization or as the holder of a public office?

4. Have you ever been cautioned, warned, or your conduct subject of a regulatory advisory by a Canadian law society?

5. Have you ever applied for and been refused a licence from a regulatory body where proof of good moral character or fitness to practise was required?

Financial Responsibility

There are two reasons it is important that applicants demonstrate that they are financially responsible.

The first is that clients entrust their legal advisors with significant amounts of money. Additionally, clients do so under circumstances in which they have little direct control over the

money they have entrusted. It is therefore essential that members of the legal profession deal with client's funds honestly and in a professional manner.

The second reason is that the public expects members of the legal profession to be business-like and financially responsible in their own affairs. An inability to manage personal finances may be indicative of an inability to appropriately manage client's funds.

Wilful financial irresponsibility raises serious concerns about an applicant's ability to handle client funds responsibly. Serious financial difficulties may also present a risk that an applicant will misuse client funds.

Bankruptcy will not automatically disqualify an applicant, but will require an investigation of the circumstances to determine, for example, whether the applicant is an honest but unfortunate debtor, or is deliberately avoiding responsibilities for their debts. Either way, it is important for law societies to ascertain the circumstances as they may go beyond financial mismanagement to ethical breach.

1. Are you now, or have you ever been a bankrupt, made a proposal under the *Bankruptcy and Insolvency Act*, or made any other formal declaration of insolvency?

2. Has any corporation, partnership, or business entity over which you have or had control become bankrupt or made a proposal under the *Bankruptcy and Insolvency Act,* or made any other formal declaration of insolvency?

3. Have you, in the last two years, been in default, or are you currently in default of any financial obligation, including any loan, debt or credit?

4. Have you ever misused your position to obtain financial advantage, or misused your position of trust in relation to vulnerable people?

The Law Society of British Columbia

Year End Report

Access to Legal Services Advisory Committee
Bill Maclagan, Chair
David Mossop, QC (Vice-chair)
Tom Fellhauer
Richard Stewart, QC
Carol Hickman, QC, Life-Bencher
Lawrence Alexander
MaryAnn Reinhart
Rose Singh

December 6, 2013

Prepared for: Benchers

Prepared by: Access to Legal Services Advisory Committee

Purpose: For Information

Purpose of Report

1. Advisory Committees are required to report to the Benchers twice a year. The purpose of this report is to apprise the Benchers of the work the Committee has engaged in since July 2013 and to alert the Benchers to the work the Committee, as currently constituted, believes the Committee ought to undertake in 2014.

Meetings

2. The Committee held meetings September 23rd, October 23rd, November 6th and will meet on December 5th.

September 23rd Meeting

3. The September meeting was held at the offices of Community Legal Assistance Society British Columbia. The purpose of the meeting was to familiarize the Committee with the work CLAS does to provide much needed poverty law services in British Columbia.

4. The meeting gave the Committee an opportunity to better appreciate the scope of services CLAS provides regarding mental health law, poverty law, human rights law and support to the network of community advocates in British Columbia. The work CLAS engages in ranges from assisting people with representation, to speaking to whether an individual ought to be detained for mental health reasons, to advocating for changes to the law on behalf of disadvantaged members of society. Like every front-end non-profit service provider, CLAS faces considerable funding challenges in these times, and this highlights the reality that when funding of these agencies falls short of need, it is the most vulnerable members of our society who are left to fend for themselves – in most cases without the capacity to do so in a manner that achieves a just result.

October 23rd Meeting

5. The Committee discussed Justice Cromwell's National Action Committee on Access to Justice' report *Access to Civil & Family Justice: A Roadmap for Change* (October 2013). The Committee started to consider how to integrate the issues raised in the report to the type of issues the Committee is considering. The Committee determined that its present consideration of Justice Access Centres (JACs) is thematically consistent with some of the issues raised in the Cromwell Report.

6. In addition, the Committee continued its analysis of pro bono cost orders. As that topic is the subject of a separate report to the Benchers in December 2013, it is not detailed in this

report. However, the Committee notes that pro bono cost orders are an example of the creative ways to find funding for legal services that help people of modest means.

November 6th Meeting

7. At the November meeting the Committee discussed the Canadian Bar Associations' interim report *Envisioning Equal Justice* (August 2013), and continued its discussion of the National Action Committee report. The Committee did so for the purposes of facilitating discussion at the November Benchers meeting. As the Committee's views were shared with the Benchers they are not repeated here in detail.

8. The Committee discussed in some detail what the role of lawyers and the Law Society ought to be in order to better facilitate access to legal services and access to justice. The discussion was wide-ranging. While the Committee is of the view that access to justice is, at its core, a societal problem, it is important for lawyers and the Law Society to critically assess how we might be part of the problem and what we can do to be part of the solutions. It is important to realize all the things that work well within our justice system, rather than merely condemning the good with the bad. At the same time, strong leadership and innovation will be required if we are to better realize the goals of improving access to legal services and justice.

9. The Committee also discussed the challenges that exist when access to justice (or access to law) has been commoditized. The many societal problems that exist outside the four corners of the justice system have profound impacts on how that system operates and its actual (or perceived) fairness. The Committee discussed a range of concepts, from raising the societal understanding of civic rights, obligations and remedies, to market-based concepts that explore how legal services are delivered and regulated. There is a need not merely to improve matters within the traditional justice system; there is a need to better equip people to manage affairs in a manner that they have less cause to engage the formal system, or can mitigate the cost and harm that can arise when they do engage the formal system. Part of the discussion involved continuing to explore how JACs can be developed and improved upon, both through use of technology and through consideration of which entities should have "ownership" of JACs. JACs are still in their early days and the Committee believes it is important to consider what the JAC of the future ought to look like.

December 6, 2013 Meeting

10. The Committee will continue its discussion of JACs. There currently are JACs in Vancouver, Nanaimo and in October 2013 one opened in Victoria. The government has expressed an interest in trying to expand JACs to other locations, largely through the use of

technology. As noted, throughout 2013 the Committee has been considering what, if anything, the Law Society might be able to contribute to this process.

11. In addition, the Committee is in the process of developing a snap-shot of access to justice for British Columbia. What the Committee hopes to do is engage the Benchers in a detailed access to justice discussion in 2014. In November the Benchers would have had a preliminary discussion, largely focused on the CBA report, *Envisioning Equal Justice*. The Committee thinks the topic of Access to Justice merits a detailed discussion by the Benchers and hopes to develop a framework and materials for such a discussion.

Conclusion – Looking Ahead to 2014

12. In 2013 the Committee considered a range of issues affecting access to justice, both in British Columbia and abroad. It brought to the Benchers two proposals, consistent with the Strategic Plan to improve access to legal services: 1) the increased funding of pro bono and the creation of a new access to justice fund, and 2) the recommendation in its report on pro bono cost orders to support Access Pro Bono in its efforts to bring the law of pro bono cost orders to British Columbia.

13. In addition to these concrete products, the Committee analyzed various reports to support discussion by the Benchers of Access to Justice. 2013 was a year with several high profile "access to justice" reports, summits and conferences, and the Committee spent a fair amount of time discussing materials that were generated in advance of such initiatives, or that arose from them. While this provided a rich framework for discussion, it also hindered the speed with which the Committee could sketch out homegrown solutions for the Benchers consideration. The Committee recognizes that as an advisory committee it is not its function to construct fully realized projects for the Benchers; however, it is very important for the Law Society to not merely think about how to improve access to justice and legal services but to take concrete steps to do so. In that vein the Committee hopes to provide some conceptual sketches to the Benchers in 2014 to see if the concepts fit within the Benchers view of the direction the Law Society should take to improve access to justice and legal services.

14. The creation of a new access to justice fund through the Law Foundation also established the need for consultation with the Law Foundation, by which the Law Society might recommend potential worthwhile projects/recipients for the access to justice funding. Part of the work for the Committee in 2014, therefore, will be to set up a meeting to engage this process.

15. The Committee will continue its work on JACs and report to the Benchers with its views by mid-year. While the Committee recognizes the importance of continuing to discuss access to justice issues at a high level, it stresses that it is as important to implement solutions. The work on JACs may be one such example, but there is more than can and should be done to help people have better access to legal services and justice.

16. As part of its general monitoring function, the Committee continued to read articles and reports regarding access to justice issues in British Columbia, Canada, and abroad.

17. Access to justice continues to be a challenge that is engaging stakeholders in many jurisdictions. Funding constraints and cut backs threaten the current level of support for legal aid and poverty law programs in many jurisdictions. In the United States there continues to be a growing problem with funding for state courts being slashed and judicial vacancies not being filled. In both Canada and the United States, 2013 cast greater light on governments spying on its citizens, collecting vast sums of personal information, with limited judicial oversight or transparency. It is too early to say what the implications of this might be for people to enjoy their civic rights without unconstitutional interference by the State, or the potential harm to the public confidence in the administration of justice. To the extent such spying may have implications on the right to consult a lawyer and have those communications subject to solicitor and client privilege, there is a need for lawyers and Law Societies to be vigilant.

18. Lastly, if the Benchers wish, the Committee will continue to develop an access to justice workshop for the Benchers, to take place at a Benchers meeting in 2014 as best fits the agenda schedule. We recommend that the Committee identify two or three concrete issues that it intends to explore in 2014, with the specific object to developing them for potential inclusion in the next 2015-2017 Strategic Plan. The idea would be to pre-vet the concepts early in 2014 with the Executive Committee to ensure developing the issues in more detail was desirable and to then construct a foundation for the work if it is adopted in the next Strategic Plan, including providing thoughts as to specific initiatives that can address the issues (whether by referral back to the Committee or to a newly formed Task Force).

The Law Society of British Columbia

Lawyer Education Advisory Committee Year End Report

Nancy Merrill, Chair
Vincent Orchard, QC, Vice-Chair
Thelma O'Grady
David Renwick, QC
Phil Riddell
Tony Wilson

December 6, 2013

Prepared for: Benchers

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

Purpose: Information

Introduction

1. This 2013 year-end report from the Lawyer Education Advisory Committee Chair, Nancy Merrill, summarizes the Committee's activities and planning.

Committee Activity for 2013

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

    a) ensure that Law Society of BC admission processes are appropriate and relevant, and work on national admission standards while considering the rationale and purpose of the overall BC admission program;

    b) work with continuing professional development providers to develop programs about the new *Code of Conduct*.

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

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

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

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

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

7. The Benchers have approved the *National Entry-Level Competency Profile for Lawyers and Quebec Notaries* pursuant to the following resolution.

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

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

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

Committee Next Steps

10. The Committee is linking its work to the work of the Federation, and therefore has not actively focused on admission program review in the fall of 2013. The Federation reports that it expects to publish recommendations by the fall of 2014 for subsequent adoption by law societies.

11. The Federation's September 2013 Communiqué says, in part:

> *Over the summer months, the Federation's Technical Advisory Committee and Federation staff continued to work with ProExam, our credentialing consultant, to identify a range of effective options for assessing the competencies set out in the National Competency Profile. Once this work is complete, the options will be presented in a discussion paper for consideration by law societies. Later in the fall, the Federation will begin a series of informal meetings with law societies. These meetings will involve law society elected leaders, CEOs, senior admission staff and Federation staff. The meetings will provide an opportunity to develop a shared understanding about the implications of the assessment options for each law society's admission program and the challenges and opportunities presented by the options identified. It is hoped that the meetings will also stimulate discussion about the development of national admission standards that are consistent and defensible, yet flexible enough to accommodate local realities.*
>
> *Our ultimate aim is to develop a national consensus on the preferred method of assessment for national admission standards. Once consensus is reached, we will continue to work with law societies and other stakeholders about how best to implement the chosen assessment option. We anticipate that Council of the Federation will approve a final recommendation for subsequent adoption by law societies by the fall, 2014.*

12. On November 25 the Federation provided a further update to law societies, including the following information.

As part of the Federation of Law Societies of Canada's plans to continue to engage with law societies in the development of national admission standards, we are writing to provide you with a report prepared by our credentialing consultant, Professional Examination Services (ProExam) on options for assessment of the competencies set out in the National Competency Profile.

Attached is a discussion paper that provides context and further discussion about the issues raised in the report. In 2014 we will begin meeting with law societies to consider together the ideas presented in the paper and ProExam's report and what they mean for each jurisdiction.

We invite you to share these documents with other thought leaders in your law society:

- *Appendix A: Federation discussion paper,*
- *Appendix B: report prepared by ProExam on options for assessment.*

We look forward to meeting with many of you in the new year, and discussing implementation of the National Competency Profile with you.

13. Beginning in January 2014, the Committee should develop and follow a working plan leading up to the Federation Council's anticipated publication of recommendations. The working plan should include:

    a) PLTC history and mandate: review and assessment,
    b) PLTC teaching / training: overview, strengths and weaknesses, options,
    c) PLTC skills assessments / examinations: overview, strengths and weaknesses, options,
    d) articling: overview, strengths and weaknesses, options,
    e) Admission Program (PLTC and articling) administrative challenges, including budget and student numbers,
    f) consider the Federation consultation paper(s), when published, and provide comments,
    g) participate in the Federation's 2014 consultation meetings.

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

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

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

CPD Program

16. The CPD program is completing its fifth year. In 2013, the Committee has not conducted a CPD program review, as the 2012 – 2014 Strategic Plan does not mandate a review.

17. At the November 7 Bencher meeting, a speaker from the Canadian Corporate Counsel Association recommended expanding the detailed guidelines for CPD accreditation of Practice Management topics. The guidelines are applied pursuant to the recommendations of the Lawyer Education Advisory Committee following its 2011 CPD program review, as approved by the Benchers on September 9, 2011.

18. If the Benchers decide that the Committee should conduct a full review of the CPD program or a review focused on specific CPD issues, the Committee suggests that a review be mandated in the next Law Society Strategic Plan.

National Admission Standards Project

Discussion Paper on the Implementation of the National Competency Profile

November 2013

ABOUT THIS DISCUSSION PAPER

1. The regulators of Canada's legal profession have completed the first part of the National Admissions Standards project – setting standards for entry level competence. The adoption of the National Entry to Practice Competency Profile for Lawyers and Quebec Notaries (the "National Competency Profile") by thirteen law societies was a critical milestone in the first phase of our work. In this second part of the project, our challenge is to agree on a meaningful way to evaluate the competencies. Close collaboration with each law society is required as we advance further in this exciting phase of the project.

2. In the spring of 2013, the Federation of Law Societies of Canada retained credentialing consultant Professional Examination Services (ProExam) to review a range of possible methods for assessing the knowledge, skill and task competencies set out in the National Competency Profile. ProExam has produced a report in relation to this engagement. The report is attached to this paper as Appendix "B".

3. The purpose of this paper is to create a shared starting point from which law societies can explore a common approach to assessment of the competencies. This paper, together with ProExam's report, will equip us to investigate the full range of issues bearing on selection of an effective approach to assessment. It is also intended to prompt input from law society elected leaders and staff and to lay the foundation for fruitful dialogue during face-to-face meetings with law societies. The impact of implementing the National Competency Profile on the admission practices and processes of individual law societies must be fully understood before a consensus on assessment can be reached, and the implications, advantages and disadvantages of each option presented in ProExam's report need to be fully explored and understood.

4. We also intend this paper and report to provide needed background, and to ensure we are asking the right questions to arrive at our ultimate goal of achieving a national consensus on an option or options for assessment of the National Competency Profile. The recent decision in Ontario to approve an application by Lakehead University Faculty of Law to establish a Legal Practice Program for its students highlights the need to move quickly to attain a high level of harmonization in assessment in coordination with existing developments.

NATIONAL ADMISSION STANDARDS PROJECT OVERVIEW

5. Law societies in Canada are mandated by statute to regulate the legal profession in the public interest. Setting appropriate standards for admission to the profession to ensure that lawyers and Quebec notaries are competent and understand their ethical obligations is a critical aspect of this mandate.

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

7. The driving force behind national admission standards is mobility. Members of the legal profession in Canada today enjoy unprecedented mobility between jurisdictions. The mobility regime established under the Federation's mobility agreements permits lawyers and Quebec notaries to move with ease between jurisdictions. Changes to the federal-provincial-territorial Agreement on Internal Trade have led to mobility rights for all licensed professionals and certified workers being enshrined in legislation.

8. Mobility has generated increased reflection about what the law societies do and why. With admission as a lawyer in one jurisdiction effectively opening the door to admission in all jurisdictions in Canada, mobility may make different regulatory practices difficult to justify as being in the public interest. The National Admission Standards project seeks to address this concern through common and consistent standards.

9. The first phase of the project had two goals: a profile of the competencies required upon entry to the profession and a standard for ensuring that applicants meet the requirement to be of good character ("National Suitability to Practise Standard"). Law societies have agreed on the benchmark for entry level competence through the National Competency Profile, which has now been adopted by 13 of Canada's 14 law societies on the understanding that approval is subject to the development and adoption of a plan for implementation. The National Suitability to Practise Standard Consultation Report was distributed for comment in August 2013, seeking feedback to incorporate into a final standard.

PHASE 2: IMPLEMENTATION OF NATIONAL ADMISSION STANDARDS

10. The second phase of the project is focussed on how we will assess the competencies in the National Competency Profile. An assessment model based on demonstrating achievement of defined competence standards provides tangible evidence of competence. When admission standards are built on demonstrated competence, granting admission to practice is a reliable indicator of an individual's ability to practice according to the profession's performance standards. To protect the public, the assessment of whether a candidate possesses the competencies (e.g. the knowledge, skills and task abilities) required for licensure should be carried out in accordance with credentialing best practices, and should result in an assessment scheme that is reliable, defensible, valid and fair. To this end, the Federation retained ProExam to assist with the exploration of options for assessment. This is the same firm that assisted in developing the National Competency Profile.

WHY CONSISTENCY MATTERS

11. Since assessment is the mechanism used to verify the knowledge, skills and abilities of applicants for admission to the legal profession, consistency among law societies in the assessment of the competencies will result in a reliable, credible and fair method for ensuring that all entry level lawyers and Quebec notaries have attained the same level of competence. Without consistency in the method of assessment, there would be no guarantee that candidates have met the standard set by the National Competency Profile.

12. When all applicants for admission to the profession across Canada are required to meet the same assessment benchmark, law societies can be confident that only those applicants who meet the profession's high admission standards are admitted to legal practice in Canada. This is critical in light of the fact that under mobility rules lawyers can transfer between jurisdictions without undergoing any additional assessment. The only way law societies can be assured that any legal professional practising in their jurisdiction, and for whom they are accountable, is competent is to provide for consistency in admission standards and assessment methods.

13. The driver for a high level of consistency in admission standards is mobility and the need to protect the public and safeguard the reputation of the profession. For further reading on this topic, please see the Federation's briefing notes on consistency and defensibility distributed to law societies in September with the National Admission Standards project Communiqué.

A SYNOPSIS OF PROEXAM'S REPORT

14. The Federation engaged ProExam to identify a range of options for assessment of the competencies in the National Competency Profile. ProExam's work was informed by advice from a seven-member Technical Advisory Committee (TAC) comprised of law society senior admission staff. ProExam's resulting report is structured around the following four points:

- the priority for assessment of each competency;
- the point in the training and development of potential entrants to the profession at which the competencies might be assessed;
- the criteria to guide the selection of assessment options;
- the potential assessment methods that law societies might consider for adoption.

15. An important factor in selecting an assessment method is determining the relative emphasis to be placed on each competency in an overall assessment scheme. The first step in ProExam's engagement was to use the data from the National Entry to Practice Competency Profile Validation Survey ("survey") conducted last year, to prioritize the 117 competencies set out in the profile. This analysis drew on the information from the survey about the frequency of use of each competency, as well as the consequences of a lawyer not having the competency. The prioritization exercise revealed that skills are the highest priority category of competencies to be assessed. While all competencies must be assessed, this suggests that, within the overall assessment regime, the relative focus on skills should be greater than the focus on knowledge and tasks.

16. The Report also considers which competencies are the most appropriate for assessment by law societies and the point in the learning and admission process at which the assessments might occur: during law school for competencies that mirror the Canadian common law degree national requirement ("national requirement"), during the bar admission process, and during articling.

17. In its report, ProExam provides a list of criteria that should be taken into account when selecting an assessment method. For example, how reliable is the assessment method (psychometric consideration) and how much will it cost to develop and deliver (practical consideration)? Finally, the report sets out potential assessment methods. A number of key findings from the report are provided below.

KEY FINDINGS FROM PROEXAM'S REPORT

- Law societies are responsible for ensuring the assessment of all competencies listed in the National Competency Profile: the tasks, as well as the knowledge and skills that are not included in the national requirement. The national requirement, which will come into force in 2015, specifies the competencies for entry to law society bar admission programs that must be taught and assessed in law school.

- Skills are the highest priority category of competencies to be assessed.

- Most skills and all knowledge competencies can be effectively assessed through written tests that permit a wide sampling of cognitive abilities (e.g. knowledge, knowledge application, knowledge about how to perform skills).

- Carefully constructed written tests are psychometrically sound and relatively cost effective.

- Other modes of assessment that more closely approximate practice (e.g. case-based and simulated practice assessments) are more costly and complex to develop and score. They should be reserved for the highest priority aspects of competence, particularly those aspects that cannot be assessed by other means.

- For higher priority skills that cannot otherwise be assessed through written tests (e.g. oral communication, advocacy, negotiation), performance-based assessment is preferable.

- The ability to perform job tasks (e.g. drafting an opinion letter, interviewing a client) can be assessed through either performance-based or on-the-job assessment (e.g. during articles).

- Assessment on the job may be costly and administratively challenging to implement, and it is possible to devise written assessments that capture *some* *aspects* of the task, as well as the knowledge and skill base that underlies successful task performance.

- The information from the prioritization exercise should be used to make data-informed decisions in designing the overall assessment scheme.

- Both practical considerations and those grounded in evaluation theory must be weighed in selecting an appropriate assessment method. How reliable the assessment instrument is (i.e. its accuracy: the extent to which it yields the same result on repeated trials) and its validity (i.e. it's success at measuring what it is intended to measure) are primary considerations for ensuring that accurate decisions are made about who is admitted to practice.

THE SCOPE OF THE REPORT

18. The analysis undertaken by ProExam asked: *given where we are today, what tools for assessment might be appropriate?* The report is rooted in the current bar admission environment and possibilities that may lie outside of the existing regulatory regime are afforded limited consideration. The report is a not a blue-sky appraisal of all possibilities.

19. This is most notable in relation to the discussion about where in the process the competencies might be assessed. The Report considers where in the process leading to admission – law school, practical training and bar admission programs – each of the competencies could be assessed. Additional possibilities that lie outside the scope of current admission regimes are explored in greater depth further in this paper.

20. Only assessment is examined. The report does not consider how the knowledge, skill and task competencies might be acquired or comment on the training that might be needed to prepare candidates for assessment. It also does not examine who might perform the assessments. The potential assessor(s) will become clearer once preliminary decisions about assessment methods are made. Training programs are discussed at paragraphs 46 to 48 of the paper.

21. ProExam's report summarizes the technical steps that were taken to arrive at its conclusions. These steps are critical to developing objective and evidence-based options that are psychometrically sound and legally defensible. The report is an important piece in the complex mission to develop an assessment regime. However, it is important to keep in mind that ProExam's report is just one piece of the assessment puzzle. As outlined above, it does not canvass all of the issues relevant to the implementation of national admission standards. Also, only those assessment methods that were considered by ProExam to be appropriate to assess the National Competency Profile are highlighted in the report.

THE IMPORTANCE OF MATCHING ASSESSMENT METHOD TO COMPETENCIES

22. ProExam's report relies on Miller's pyramid of competence ("Miller's Pyramid"), for assessing professional competence. Miller's Pyramid was developed for clinical practice in medicine and can be applied to all professional competencies. It provides a framework for assessing competence and allows us to match the competencies in the National Competency Profile with assessment methods correlated to the various levels in the pyramid: *knows*, *knows how*, *shows how* and *does*.

23. "Knows" is at the base of the pyramid. Assessment at the "knows" level measures whether a candidates possesses specific knowledge (e.g. knowledge of the ethics and principles of client confidentiality applying to legal practice in Canada). Assessment methods appropriate to the "knows" level include multiple choice questions (MCQ), true-false, fill in blank and short answer questions. The next level up the pyramid is "knows how." At the "knows how" level candidates are assessed on their ability to apply knowledge in a professionally relevant context (e.g. candidate evaluates a client confidentiality dilemma; given relevant facts and law, candidate knows how to apply legal reasoning to analyze the legal issues). At the "knows how" level, possible assessment methods include MCQ (including scenario based), short essay and oral examinations.

24. Moving up the pyramid the next tier is the "shows how" level, which demonstrates the integration of knowledge and skills into successful performance of the competency in a controlled environment (e.g. candidate demonstrates how he or she would respond to an ethical dilemma in the context of conducting a mock interview of a client.). Examples of the types of assessment at the "shows how" level include simulations and clinical examinations. Finally, at the top of the pyramid is "does." Assessment at the "does" level captures a candidate's actual performance in the workplace (e.g. the candidate demonstrates his or her ability to draft a demand letter on the job). Checklists and rating scales administered by peers or supervisors, direct or video observation, and portfolios of actual work samples are examples of assessments used at the "does" level.

25. For each category of competency in the National Competency Profile (knowledge, skills and task abilities), one or more levels of assessment in Miller's Pyramid might be appropriate. Knowledge can readily be assessed at the "knows" and "knows how" levels; skills at the "knows how," "shows how," and "does" levels; and tasks at the "shows how" and "does" levels. A breakdown of the types of assessments appropriate for each of these four levels is provided in Figure 2 at page 11 of the report.

26. Miller's Pyramid provides an analytical framework for mapping (matching) each category of competency (i.e. knowledge, skills and tasks) to an appropriate assessment method. Another analytical framework seeks to determine how important each discrete competency is for assessment. Best practice in assessment development is to link the overall assessment program to a formal study of professional practice.

27. Our formal study was the survey conducted with entry level lawyers to validate the National Competency Profile (the National Entry to Practice Competency Profile Validation Survey). Using the data from the survey each competency was ranked as either "essential", "high", "medium" or "low" priority to

assess based on how frequently the competency was used and the severity of the consequences of a lawyer not possessing the competency. For example, all oral and written communications skills ranked 'essential' priority to assess, while a number of tasks in the adjudication/ADR context, including preparing a list of documents for an affidavit of documents ranked "low" priority to assess. The methodology used for calculating the priority weights for the competencies appears at Appendix B of ProExam's Report.

28. The prioritization exercise ensures that the selection of an assessment mechanism is data-driven and is connected to the knowledge, skill and task competencies entry-level legal professionals must possess to practice competently. Based on the prioritization data, skills emerged as the highest priority category of competencies to be assessed.

29. The report proposes that many skills and all knowledge competencies can be adequately assessed through written tests. However, for those skills that were ranked highest priority more authentic assessments that require demonstration of skills are desirable. This is consistent with present practice in many law societies, where skills such as advocacy, negotiation, and interviewing/oral communication are assessed on the basis of live demonstrations. Our task is to determine based on a risk analysis which skills should be assessed at the higher tiers of the pyramid – the "shows how" and "does" level – through actual or simulated job behaviour. For instance, what are the risks of not assessing skills such as advocacy and negotiation in either a simulated or work-based setting?

WHERE COMPETENCIES ARE ASSESSED

Knowledge Competencies

30. The Canadian common law degree national requirement, which will come into force in 2015, specifies the competencies for entry to law society bar admission programs that must be taught and assessed in law school. With the exception of the competencies respecting ethics and professionalism, which must be satisfied in a dedicated course, each law school may determine how its students satisfy the competency requirements. Of the 27 knowledge competencies listed in the National Competency Profile, 17 are included in the national requirement.

31. ProExam's report suggests that competencies that are assessed by law schools in the fulfillment of the national requirement need not be assessed by law societies, as this would be a duplication of effort. This does not preclude law societies from including aspects of these substantive legal knowledge items in law society assessments. It does, however, leave open the question of how to treat the 10 knowledge competencies that are not included in the national requirement. They are listed below along with their assessment priority ranking:

Canadian substantive law:

Family (and the law of persons in Quebec)	LOW
Wills and estates	LOW
Evidence (for Quebec notaries, only as applicable to uncontested proceedings)	HIGH

Rules of procedure in relation to:

Civil	MEDIUM
Criminal (except for Quebec notary candidates)	LOW
Administrative	LOW
Alternative dispute resolution processes	LOW

Procedures applicable to the following types of transactions:

Commercial	LOW
Real estate	LOW
Wills and estates	LOW

32. The report states that law societies must assess these 10 competencies. Two options for assessment are provided: creating specific questions in relation to these competencies, or incorporating them into items designed to assess other competencies. Examination questions are often crafted to draw upon a mix of knowledge, skills and aspects of task performance. A skills-focused question situated in the real estate law context, for instance, could assess both skills and knowledge of real estate procedures. The priority ranking of each competency provides guidance as to the relative focus required. Within the overall assessment scheme, relatively more questions might be devoted to specific competencies that are ranked higher in priority.

33. A third option not raised in the report would be to incorporate the 10 additional competencies into the national requirement. This would ensure that applicants for entry to law society admission programs would have satisfied all of the knowledge competencies listed in the National Competency Profile during law school. A change of this scope would not be contemplated without full consultation with the law school deans and other interested stakeholders. Even if all the knowledge competencies were satisfied in law school, the assessment of skills and task performance inevitably will be situated in the context of a practice area. Thus, high priority knowledge items could be reassessed by the regulator when considered appropriate.

34. The report says that all knowledge competencies and some skills can be effectively assessed through written tests. For knowledge competencies that are conceptual in nature (e.g. the best interests of the child in family law), examination questions might be designed that could apply equally to all jurisdictions. For those competencies that must account for variations in provincial or territorial law, targeted questions could be developed that are tailored to each jurisdiction. In the event that certain areas of law present a greater challenge in some jurisdictions, the jurisdiction could opt to include more written examination questions related to these competencies.

Skill and Task Competencies

35. A number of competencies in relation to research skills, oral and written communication skills, and analytical skills are included in the national requirement. All of these skills are ranked as either “high” or “essential” priority to assess. The law societies may wish to assess these skills again. As noted earlier, most skills can be effectively assessed through written tests that permit a wide sampling of cognitive abilities. For example, a fact scenario followed by short answer questions can assess whether an applicant knows how to identify legal issues, analyse the issues and advise the client.

36. ProExam’s report holds that assessment of skills that are not part of the national requirement should primarily occur at the bar admission phase. Assessment of lower priority skills could also occur during articling. Tasks ranked highest in priority should also be assessed by law societies through the bar admission process. For lower priority tasks, assessment may also be possible during articling.

Articling

37. ProExam has proposed that articling would present an opportunity to assess applicants while they employ skills and perform tasks in a real-world context. There are a variety of approaches to monitoring articling across Canada and all of them would likely present challenges in terms of consistency in the articling experience of candidates and reliability of assessment results. A dramatic shift in culture would be required to successfully introduce a rigorous evaluation process during articling.

38. The report indicates that in order to assess at the articling stage, all candidates would need to be provided with the same or similar opportunities to acquire the competencies to be assessed. If this were not a tremendous enough challenge, the report goes on to say that for assessment at the articling stage to be valid and reliable, new assessment instruments, scoring systems, and training programs for articling principals would need to be developed. In considering whether such large scale change is feasible, law societies will need to explore

how to make the evaluation fair and reliable given the great variances in articling opportunities and experiences, the cost of doing so, and whether an assessment scheme would deter law firms and principals from taking on articling students.

39. As part of the Law Society of Upper Canada's ("LSUC") Legal Practice Program ("LPP") pilot project, commencing in 2014, the LSUC will introduce rigorous performance-based evaluations for articling students. Performance evaluations were previously required at the halfway and end point of the articling term. The LSUC removed these in 2009 in an effort to reduce the burden on principals and thereby increase the number of articling positions. Under the new evaluation scheme, all articling placements will require a formal training plan. The articling evaluations will mirror the competencies that students are expected to gain by completing the law practice program; competencies that parallel the skills and tasks listed in the National Competency Profile. The LSUC experience may provide useful information on the feasibility of articling-based assessments.

Law Society Bar Admission Process

40. All skills and task performance could be assessed by law societies during the bar admission phase. Most law societies already evaluate many of the skills and tasks set out in the National Competency Profile through written tests, online exercises and face-to-face performance-based assessments.

41. For instance, Alberta, Saskatchewan and Manitoba rely on the CPLED (Canadian Centre for Professional Legal Education) Program. Students are assessed both online and in person. In-person assessments include conducting a mock interview, negotiating, and conducting an advocacy simulation. In B.C. advocacy and interviewing skills are assessed through simulations during the Bar Course. In Nova Scotia, students must complete four performance-based assessments including a mock interview, a negotiation, appearance before a chambers judge, and a mock trial. The Barreau du Quebec assesses student performance in mock interviews, negotiation, advocacy and in some cases, mediation or arbitration simulations. All jurisdictions except Ontario and Newfoundland require some form of performance-based assessment, whether directly or by partnering with another law society.

42. Skills and elements of task performance that are not assessed through an in-person or online simulation or demonstration are currently assessed by many law societies through written tests. The existing bar admission practices at law societies provide a wealth of assessment tools to draw upon and the collective experience of Canada's law societies should continue to be mined as we examine options for achieving a consistent and effective assessment scheme.

Other Options

43. There may be points outside of the bar admission where an applicant could prove that he or she has demonstrated the skill and task performance competencies. Applicants who successfully complete an alternative assessment process might be granted credit for some or all of the competencies already achieved. Practical training through law schools or third party providers could provide alternative options for training and assessment. So long as law societies are assured that the competencies have been assessed at the appropriate level, and in a manner that meets the national standards for consistency and reliability, it might not matter where they are acquired. Alternative points at which the competencies could be satisfied are discussed below.

Legal Practice Course

44. Practical training courses are used in a number of common law jurisdictions to act as a bridge between academic study and either apprenticeship or practice. The legal practice program being piloted by the LSUC will serve as an alternative to articling. It is conceivable that a legal practice course could be designed to equip students with the required competencies in the areas of skill and task performance and assess those competencies. Further, the program could be offered in modules, so that students who have already satisfied some of the competencies elsewhere could focus on only those components that remain to be acquired and assessed.

Law School

45. Partnering with law schools represents another opportunity for assessment of the competencies. Law schools could integrate their teaching of law in core subjects with training in skills and the ability to perform tasks necessary for entry to legal practice. Lakehead University Faculty of Law, with its focus on preparing students for legal practice, and its recently approved bid to offer a Legal Practice Program during the three year law school time frame, provides an example of this approach. Practice-readiness skills training could be integrated throughout the three-year curriculum, targeted for the third year of law school, or provided as a separate program following completion of a traditional three-year LL.B./J.D.

HOW THE COMPETENCIES ARE ACQUIRED (TRAINING)

46. With the exception of the LSUC, all Canadian law societies either have a mandatory bar admission course/bar school or require applicants to attend a bar course offered in another jurisdiction (e.g. P.E.I. and the territories). This phase of the project does not explicitly address the future of law society training programs. As training and assessment need not go hand in hand, the development of a common approach to training is not contemplated at this stage. At one end of the spectrum, there is the possibility of symmetry in both assessment and training programs. At the other end, there is the potential for a high degree of symmetry in assessment only. In other words, as long as we are assessing the same things in the same ways, it may not matter that different types of training programs are offered.

47. By focusing on assessment first, teaching and learning objectives will be clearer. For instance, as we design the assessment around the task "negotiate resolution of a dispute or legal problem", we will have to ask "what observable actions by the applicant will qualify as evidence that they have achieved this competency?" Once we have answered this question, we will be able to articulate clear learning objectives and outcomes (e.g. understand the significance of body language and respond accordingly) that will assist in designing an appropriate curriculum. Existing bar programs could be tailored to ensure that they achieve the learning outcomes articulated through the assessment design process.

48. Leaving training aside for this stage of the project allows us to arrive at an agreed upon assessment tool without getting bogged down in the complexities of training program design. It is not necessary that all law societies adopt standardized training. Conceivably, as long as a training program adequately prepares applicants for the assessment regime, it should not matter how it varies from other training programs or who provides the program. Law societies may choose to tailor existing training programs to meet the standard or leave it to the market to provide training for applicants.

ADMISSION STANDARDS IN OTHER JURISDICTIONS AND PROFESSIONS

49. The regulation of legal professionals in several common law jurisdictions is moving toward an increased emphasis on the acquisition of competencies. The Solicitor's Regulation Authority in the United Kingdom is considering major changes to solicitor admission standards and assessments. Under the proposed outcomes-driven model, the focus is on core competencies, with minimal formal prerequisites for candidates seeking admission to the solicitor profession. Similar to Canada, Australia is moving towards more uniformity in the regulation of legal professionals, and defensible admission standards and assessment in particular. Uniform Admission Rules have been adopted in most Australian jurisdictions. The United States takes an exam-based approach to admission to the bar, and has so far resisted following these regulatory trends.

50. The shift towards unification of standards and an increased focus on competencies in the legal profession is shared with the other major professions canvassed in Canada. For a more detailed discussion of the admission regimes in the United States, England and Wales, and Australia for legal professionals, and the regulatory requirement for admission to practice for physicians, nurses and chartered accountants in Canada, please see Appendix "A".

NEXT STEPS

51. The Federation will begin meeting with individual law societies in early 2014 to discuss ProExam's report and the issues highlighted in this paper. The meetings represent an essential engagement with law societies to develop a collective understanding of and consensus around what makes sense in terms of assessment.

52. Our goal is to develop a national consensus on the method or methods for assessing the competencies set out in the National Competency Profile by the summer, 2014. Once consensus is reached, we will need to continue to work together to determine how best to implement the chosen assessment option or options. We anticipate that Council of the Federation will approve a recommendation on an appropriate assessment mechanism for subsequent adoption by law societies later in 2014. Continued communication and collaboration will be essential.

APPENDIX "A"

INTERNATIONAL LEGAL REGULATORS AND ASSESSMENT OF PRACTICE READINESS

Legal regulators in other common law countries adopt a range of approaches to admission standards and assessment of practice readiness. This note highlights the systems used in the United States, Australia, and England & Wales.

UNITED STATES

In the United States, admission to the profession does not include any apprenticeship requirement or skills-based assessment. Rather, applicants are generally admitted solely on the basis of obtaining a law degree, passing the state bar, and in some states, also passing the multi-state uniform qualifying examinations ("MBEs"). Following the economic downturn of 2008, dimming job prospects for law school graduates, and decreasing numbers of applicants for law school admission, there is a renewed debate as to whether the current U.S. law school education, with its traditional focus on theoretical learning and knowledge based exams, is adequately preparing new lawyers for the practice of law. Although certain U.S. law schools have adopted practice-based learning, and certain law schools are moving towards offering a more practical legal education, it remains to be seen whether the admission standards in the United States will undergo significant reform in the near future.

AUSTRALIA

Australia, like Canada, is a federal system where the regulation of legal practitioners is the responsibility of each state and territory. Starting in the mid-1990s, Australia has shifted towards developing nationally consistent standards for regulating legal practitioners. A model *Legal Profession Bill* developed by the Law Council of Australia has been adopted in some form by all Australian states and territories except for South Australia. The Law Admissions Consultative Committee ("LACC") established *Uniform Admission Rules* which have been adopted in most jurisdictions. In all Australian jurisdictions, an applicant must meet four key requirements to be admitted to practice, namely: (1) meet the necessary academic qualifications; (2) undertake practical legal training; (3) be admitted by the Supreme Court to have his or her name on the rolls; and (4) be issued a practicing certificate by the state or territorial law society or bar association.

However, certain regional differences remain, particularly with respect to satisfying the practical legal training requirement. In some jurisdictions, such as New South Wales, this may only be met by completing a practical legal training program. In certain other jurisdictions, such as Victoria, applicants may choose between completing a supervised workplace training of at least 12 months under an approved training plan, and completing a practical legal training program of a shorter duration. The *Uniform Admission Rules* recognizes both pathways as potentially meeting the practical legal training requirement.

Although there are different pathways to admissions both across Australian jurisdictions and within certain jurisdictions, efforts have been undertaken to ensure that all applicants meet certain uniform competency standards set by the LACC. The LACC's *Competency Standards for Entry Level Lawyers* sets competency standards for entry level lawyers. The competency standards are based on observable skills, practice areas and values. The LACC standards seek to assess practice readiness at various stages against observable performance indicators.

ENGLAND & WALES

In England & Wales the pathways to becoming a barrister or solicitor, and the related assessment of an applicant's practice readiness, are both in a state of flux due to the June 2013 report of the Legal Education and Training Review ("LETR"), *Setting Standards, The Future of Legal Services Education and Training Regulation in England and Wales.* The LETR was commissioned in January 2011 by the Solicitors Regulatory Authority ("SRA"), the Bar Standards Board and the Institute of Legal Executives Professional Standards to comprehensively review the legal education and training requirements of both individuals and entities providing legal services.

The LETR reviewed the current licensing processes for barristers and solicitors together with various other legal professions authorized to deliver regulated 'reserved legal activities'. It noted that although a law degree is not a prerequisite to becoming a barrister or solicitor, law graduates are the single largest group of entrants. Applicants must obtain either a law degree or another undergraduate degree and then complete a 'conversion course' to meet the academic stage of qualification to be a barrister or solicitor. Solicitors must then complete the Legal Practice Course, as well as a two-year "training contract" with an authorized training establishment. Aspiring barristers must complete a Bar Professional Training Course, followed by a twelve month apprenticeship.

The LETR found that the current system fails to consistently ensure that the desired competency levels are reliably and demonstrably achieved. It concluded that there are knowledge and skills gaps regarding legal values, professional ethics, and communication management skills in the current admissions systems. It recommended that learning outcomes be prescribed for the knowledge, skills and attributes expected of a competent member of each regulated profession. It further recommended increased apprenticeship opportunities and pathways into legal professions for those without degrees.

In October 2013, the SRA released *Training for Tomorrow, Ensuring the lawyers of today have the skills for tomorrow,* in which it announced that it is considering a "radical" departure from its traditional admissions system. The SRA is considering a new licensing system whereby applicants may choose their own pathways to accreditation. The focus would be on assessing knowledge, skills and attributes to ensure competence, as well as on learning outcomes rather than minimum training hours and other "tick box" approaches to qualification. The SRA is currently consulting on its proposed new framework.

CANADIAN PROFESSIONAL REGULATORS AND ASSESSMENT OF PRACTICE READINESS

There are various efforts being undertaken by Canadian regulators of other professions to assess entry level competence. By way of example, the regulation of physicians, nurses and chartered accountants are discussed below.

MEDICINE

Physicians are frequently credited as being among the early adopters of outcomes based education and training, which is accompanied by regular assessments. To become a licensed physician, an applicant must first receive a medical degree from an accredited medical school. Training and assessments start at the university level. Canadian medical schools have generally shifted away from pure text-book and theoretical study to include more opportunities where knowledge must be applied. Classroom learning is supplemented by practical apprenticeships in hospital and other settings.

An applicant must also pass the Medical Council of Canada's examinations to obtain the Licentiate of the Medical Council of Canada. The applicant must also complete requisite postgraduate training for the applicant's particular discipline(s). Residencies are tailored to the licensee's discipline. They are accredited by the Royal College of Physicians and Surgeons of Canada, and are required to include regular evaluations of each resident. Finally, the applicant must achieve certification from the College of Family Physicians of Canada or the Royal College of Physicians and Surgeons of Canada, or the Collège des médecins du Québec. At all points on the pathway to accreditation, the physician applicant is assessed for various competencies.

NURSING

Although nurses are regulated at the provincial and territorial levels, starting in the early 2000s, regulators worked together to develop a set of national competencies for entry-level registered nurse practitioners and registered practical nurses. Competencies for entry level registered nurse practitioners are organized into five categories, namely (1) professional responsibility and accountability; (2) knowledge-based practice; (3) ethical practice; (4) service to the public; and (5) self-regulation. These competencies are assessed at various stages of an applicant's professional training. For example, in order to be licensed as a registered nurse practitioner in Ontario, an applicant must complete a nursing program, where the applicant will be regularly assessed, write Registration Examinations, which test for entry level competencies, and write a Jurisprudence Examination, which tests the applicant's understanding of various laws, practice standards and guidelines governing nurses in Ontario.

CHARTERED PROFESSIONAL ACCOUNTANTS

Canada's three accounting professions – chartered accountants (CAs), certified general accountants (CGAs), and certified management accountants (CMAs) – are in the process of uniting as one body: Chartered Professional Accountants (CPAs). Over 90% of the accounting bodies in Canada have agreed to the unification. The move to a single designation was spearheaded by Quebec, which implemented the CPA regime in 2012.

The Chartered Professional Accountants of Canada (CPA Canada) certification program is designed to equip accountants with a broader set of skills. To qualify for admission to the CPA certification program, certain academic pre-requisites must be met. In addition, candidates must complete the CPA Professional Education Program ("PEP"), write a qualifying exam and complete a practical training program. In October 2013, national accreditation standards were released for post-secondary institutions interested in offering components of the PEP.

The CPA PEP is a competency-based program that was developed nationally and will be delivered regionally. It is expected to roll out across Canada in the fall of 2014. It is a two-year program delivered part-time while candidates gain practical experience by working. PEP comprises six modules delivered via a combination of on-line learning, self-study, classroom learning and teamwork:

- *Two common core modules* focusing on the development of competencies in management and financial accounting, and the integration of the six core technical competencies.
- *Two elective modules* targeting skills in four areas of career interest: assurance, performance management, tax and finance. Candidates choose two. Those pursuing careers in public accounting must choose assurance and tax.
- A *capstone integrative module* that focuses on the development of the enabling competencies such as leadership and professional skills and the integration of core competencies.
- A *capstone evaluation preparation module* to prepare CPA candidates for the Common Final Evaluation (CFE).

Appendix “B”

COMPETENCY MAPPING PROJECT
FINAL REPORT

Professional Examination Service
475 Riverside Drive
New York NY 10115 USA

October 2013

Contents

I. Background

Entry into the legal profession is regulated in all provinces and territories to ensure that new practitioners possess the requisite knowledge, skills, and abilities to perform the job competently. Each provincial law society establishes its own standards for entry to practice. All provinces' requirements for bar admission include assessment and a supervised work placement known as articling. In addition, most provincial authorities provide training as part of their bar admission process. Articling is intended to provide candidates for admission to the bar with skills and experience in a practice context.

All fourteen provincial and territorial law societies are members of the Federation of Law Societies of Canada (the Federation). The Federation, on behalf of its members, has undertaken the National Admission Standards Project to ensure that bar admission standards are defensible, psychometrically sound, and consistent across the country. A National Entry-Level Competency Profile for Lawyers and Quebec Notaries (the “National Competency Profile”) was developed in the first phase of the project. Thirteen of the fourteen jurisdictional law societies have now adopted the National Competency Profile. Through its widespread adoption, the National Competency Profile represents a shared framework describing the requirements for entry to practice in the profession.

The National Competency Profile describes three components of professional competency: knowledge, skills, and tasks. *Knowledge* refers to a body of information, usually factual or procedural in nature. Knowledge is acquired through formal and informal education and/or experience. The competency profile includes knowledge specific to the practice of law that is required to perform the entry-level job tasks. *Skills* are cognitive, technical, or integrative behaviors that are acquired through experience. They involve the mental, verbal, or manual manipulation of data or things. In the Competency Profile, each skill statement describes a behavior that is used to perform multiple tasks. *Tasks* describe the work activities undertaken by entry-level lawyers, what they have to do and produce on the job using the knowledge and skills that they possess.

The Federation has engaged in discussions with the law societies regarding implementation of the National Competency Profile. The Federation engaged the consulting services of Professional Examination Service, the organization that facilitated development of the National Competency Profile, to facilitate a "competency mapping" process. The engagement represents a *preliminary* investigation into assessment options related to the National Competency Profile.

In all phases of the engagement, ProExam consulted with a seven-member Technical Advisory Committee (TAC) comprised of law society senior staff. Five members of the TAC had served in a similar consultative capacity during the National Competency Profile development process.

II. Methodology

The engagement was structured around four main questions, which were considered in sequence during the engagement:

1. **Which competencies should be given higher or lower priority for assessment?**
   This activity focused on the development of guidance regarding the relative focus on the 117 competencies during assessment for admission to the bar. To address the question, ProExam re-analyzed the data from a national survey of entry level lawyers that was administered as part of the process to develop the National Competency Profile. The TAC was consulted regarding the implications of the findings from the data analysis.

2. **Which competencies should be assessed during the bar admission process and at what point?**
   The 117 competencies in the National Competency profile have all been validated as being required for entry to practice in the profession. There are various points in the training and development of potential entrants to the profession at which the competencies might be assessed, including during law school and during the bar admission process and during articling. The TAC advised ProExam on which competencies are the most appropriate for assessment by law societies and the point(s) in the admission process at which the assessments might occur.

3. **In considering options for assessing the competencies during bar admission, what criteria should guide the evaluation process?**
   This activity involved development of a list of considerations, both psychometric and practical, that the Federation should take into account when selecting methods for evaluating those competencies identified as most appropriate for law society assessment.

4. **What potential assessment methods might the law societies consider for adoption?**
   For the competencies targeted for assessment during the bar admission process, potential methods for assessment were investigated, with the goal of identifying a range of suitable options for the Federation to consider.

The TAC acted in a consultative capacity to ProExam: it supplied and verified information about the bar admission and articling processes in various jurisdictions; offered guidance on the weighting of the data from the survey, and advised on the implications of the points of assessment and methods of assessment considered. ProExam, TAC and Federation staff held a series of two-hour web-based meetings on May 15, June 26, July 2, July 22 and August 21 to carry out this work, in addition to doing preparatory work between meetings.

III. Synopsis

An effective assessment program must be developed based on a set of validated national competencies: the National Competency Profile. While all of the competencies (knowledge, skills and tasks) in the National Competency Profile must be assessed, an important factor in selecting an assessment method is determining the relative emphasis on each competency in an overall assessment scheme. Prioritizing the competencies was therefore an important preliminary step in determining a range of effective assessment methods.

The prioritization exercise revealed that skills are the highest priority category of competencies to be assessed. Most skills (and all knowledge competencies) can be effectively assessed through written tests. Carefully constructed written tests are psychometrically sound and relatively cost effective. For higher priority skills that cannot otherwise be assessed through written tests (e.g. oral communication, advocacy, negotiation), performance-based assessment is preferable. Finally, the ability to perform job tasks (e.g. drafting an opinion letter, interviewing a client) can be assessed through either performance-based or workplace-based assessment (e.g. articles). Assessment on the job may be costly and administratively challenging to implement, and it is possible to devise written assessments that capture *aspects* of the task, as well as the knowledge and skill base that underlies successful task performance.

A summary of the work carried out in prioritizing the competencies follows at section IV. The full range of possible assessment options is explained in detail at section V of the report and a discussion of the possible points of assessment appears at section VI. The criteria to be considered in selecting an appropriate assessment method appear at part VII of the report, followed by considerations for moving forward at section VIII.

IV. Prioritization of Competencies

Which competencies should be given higher or lower priority for assessment?

Best practice in assessment development is to link specifications for an assessment to a formal study of practice; in this case, the National Entry to Practice Competency Profile Validation Survey ("survey"). Assessment specifications indicate the relative focus in an assessment on different aspects of practice identified in the study. In alignment with recommended practice, the prioritization exercise involved "mining" of data previously collected during the survey used to validate the National Competency Profile

In that validation survey, respondents made two ratings for each competency, one focused on how frequently they personally performed the competency, and the other focused on the severity of the consequences if an entry-level lawyer in their practice setting did not possess the competency (in the case of the knowledge and skill-based competencies) or was unable to perform the competency properly (in the case of the task-based competencies).

ProExam calculated priority weights for each of the 117 competency elements and categorized the results into four priority groupings: based on their weighting, competencies were grouped into bands indicating low priority, medium priority, high priority, or essential to test. In calculating the priority weights, the severity of consequence rating was given more prominence in the weighting equation than frequency. The rationale for weighting severity of consequence more heavily relates to the law societies' public protection mandate and the potential for harm caused by the absence of competence. Frequency is given some emphasis in the equation, since the more frequently a competency is performed, the greater opportunity for it to be performed incorrectly. Details regarding the methodology, the weighting equation, and the priority weights assigned to each competency element are found in Appendix B.

In Table 1, the composition of each priority band is shown. The percentage of the knowledge, skill, and tasks within each band are displayed across the rows. Looking across the top row of data, it can be seen that 59% of competencies in the lowest priority band were tasks, 38% were knowledge, and 3% were skills. The bottom row of data indicates that the majority of the competencies deemed essential to test are skills (82%). It is not surprising that skills were categorized in the highest priority level. Skills are used frequently to perform a range of job tasks and are required for successful performance of those tasks.

Table 1.
Composition of Assessment Priority Bands

	Competency Type			
Priority Band	Knowledge	Skill Sets	Tasks	**Total**
Low (N=30)	38%	3%	59%	100%
Medium (N=31)	26%	7%	67%	100%
High (N=27)	24%	48%	28%	100%
Essential (N=29)	11%	82%	7%	100%

The same weighting data are presented in a different manner in Table 2. Here the distribution of each type of competency (i.e., knowledge, skills, or task) across the four priority bands is shown. In this presentation, it can be seen that 33% of the knowledge competencies are in the high priority and essential to test priority bands, as are 92% of the skills and 25% of the tasks. Another way of looking at this is to say that, relative to knowledge and tasks, substantially more skills are weighted as Essential or High priority for testing.

Table 2.
Relative Priority of Competency Types

	Priority Band				
Competency Type	**Low**	**Medium**	**High**	**Essential**	**Total**
Knowledge (N=27)	41%	26%	22%	11%	100%
Skills (N=37)	3%	5%	32%	60%	100%
Tasks (N =53)	34%	41%	17%	8%	100%

Both Table 1 and Table 2 indicate that, based on the validation survey data, skills are the highest priority for assessment. Skills are used to perform multiple tasks, and combined with substantive knowledge, are the foundation for task performance. Higher priority might translate for purposes of assessment into one or more of the following:

- The law societies might devote more resources to assessing skills than assessing knowledge or tasks.
- More “authentic” assessments, that require demonstration of skill acquisition, might be employed.
- Within the overall assessment scheme, relatively more questions might be devoted to skills than to knowledge or tasks.

Although knowledge and tasks have lower priority weights than skills, this does not imply that knowledge or tasks need not be assessed. Rather it suggests that within the bar admission process, the *relative* focus on knowledge and tasks should be less than the focus on skills.

Most knowledge competencies that were rated "high priority" or "essential" are also included in the Canadian Common Law Degree uniform national requirement (the “national requirement”) and will be subject to assessment during law school. A number of highly rated skills related to Research, Oral and Written Communication, and Analysis are also included in the national requirement and will also be assessed in law school. The national requirement takes effect in January, 2015.

Bar admission candidates may have opportunities to use most skills and perform many tasks during articling. While exposure or opportunity to perform the skill or task may be provided, at present measurement of how well the skill or task is performed is not part of the articling process in most jurisdictions.

It should be emphasized that all of the 117 competencies are potentially assessable. That is, no competency should be excluded from an assessment scheme based on a low priority rating. The priority data should only be considered to guide the relative coverage of the individual competencies within an overall assessment system.

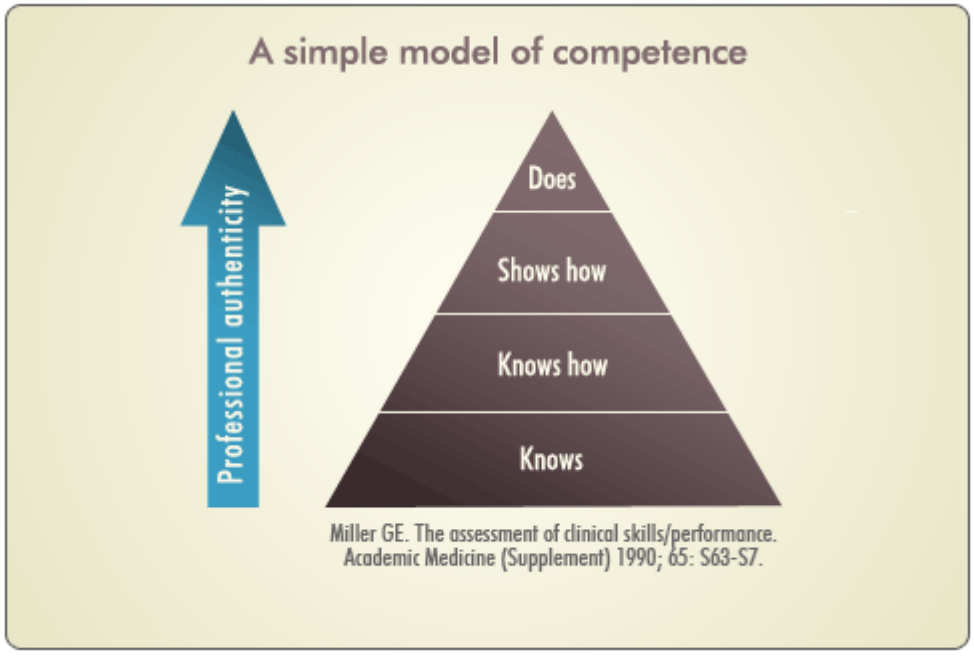
V. Options for Assessment

What potential assessment methods might the law societies consider for adoption?

A. Modes and Levels of Assessment

A model of competency first introduced by Miller in 1990 describes four levels at which professional competency can be assessed: knows, knows how, shows how, and does. The model was developed in the context of medical education, but the concepts translate easily to other professions. The model is depicted visually in Figure 1.

Figure 1.
Miller's Pyramid



The "knows" level is at the base of the pyramid. Assessment at the "knows" level captures whether a candidate possesses specific factual knowledge that is foundational to the practice of the profession. This level is best measured by written objective tests, such as selected and constructed response tests. Multiple choice, matching, ranking, true false and fill-in-the-blank questions are examples of methods that can be used to assess professional competence at this level.

At the "knows how" level, the candidate is assessed on his or her ability to apply knowledge in a professionally relevant context, using reasoning, judgment, and other mental processes. Demonstration of the extent to which the candidate "knows how" can be captured quite adequately using carefully constructed written tests (for example, using multiple choice items or short- or extended-answer constructed response questions). Although subjective, observational procedures such as oral examinations might also be considered when assessing at this level.

The "shows how" level shifts away from traditional written tests of knowledge toward its application during performance of a competency. In performance assessment, the candidate makes observable and ratable demonstrations of job-related behavior in controlled conditions. Such assessments may take many forms including objective structured clinical exams (OSCEs) and simulations. OSCEs are examinations in which candidates move through a series of timed stations, each one focusing on a different task. Often standardized clients – actors who are trained to portray clients – are incorporated into the examinations. Standardized clients are being used currently in some UK law schools for educational assessment and by some Canadian law societies.

Finally, assessment at the "does" level captures a candidate's actual on-the-job performance. Checklists and rating scales administered by peers or supervisors, direct or video observations, and portfolios of actual work samples are examples of assessments used at this level.

As one moves up the pyramid, assessments take on increasing levels of professional "authenticity". Generally, the increase in authenticity corresponds to an increase in costs, a decrease in reliability (due to rater error), and lower “generalizability”. That is, situation-specific performance may not generalize to new or varied situations. In addition because more authentic assessments may take more time to administer, the ability to sample widely within a given area of competence may be limited.

As shown in Figure 2, for each type of competency in the National Competency Profile, one or more levels of demonstration might be appropriate. Knowledge can readily be assessed at the "knows" and "knows how" level; skills at the "knows how," "shows how” and "does" level, and tasks at the "shows how" and "does" level. Any assessment at the "does" level would be undertaken during the articling experience.

Figure 2.
Levels and Types of Assessments

		Competency Type		
Level of Assessment	**Types of Assessment**	**Know-ledge**	**Skill**	**Task**
Does	Performance ratings, observations, portfolios		✓	✓
Shows how	OSCE, simulation		✓	✓
Knows how	MCQs (including scenario-based), short answer, essay, oral examination	✓	✓	
Knows	MCQs, true false, fill in blank, short answer	✓		

It should be noted that although simulated or actual task performance is not readily assessed below the "shows how" level, one can assess the knowledge and skills that are foundational to task performance below the "shows how" level.

B. Relationship between Competency Profile and Assessments

Before moving into detailed discussion regarding how the National Competency Profile competencies might be assessed, it is important to understand the relationship between the National Competency Profile and an assessment system.

- The competency profile is an exhaustive, high-level description of the knowledge and skills that an entry-level lawyer or Quebec notary is expected to possess and the tasks that the entry-level lawyer or Quebec notary is expected to be able to perform.

- Assessment specifications will be developed to provide guidance on the absolute and relative focus on the various competency headings and subheadings for any given version of the assessment instrument.

- An individual competency element does not represent a discrete area that will appear in each version of the assessment.

- Potentially assessable content related to each competency element will be identified.

- A given version of the assessment instrument will represent a sampling of potentially testable content.

- High priority and essential competency elements will be represented in assessments with greater frequency than the low and medium priority elements. Low priority elements might not be represented in every version of the assessment.

- Knowledge, skills, and tasks are not assessed in isolation. They are interrelated aspects of professional competency. A single question or scenario can incorporate knowledge, skill, and/or task elements.

- The law societies are responsible for ensuring the assessment of the tasks, as well as the knowledge and skills that are not included in the national requirement.

C. Assessments Currently Administered

The 14 Canadian law societies currently use various methods of assessment during the bar admission process. Across jurisdictions, assessments might include written examinations with question formats such as true-false, multiple choice, short answer and/or essay questions. Many examinations are open book exams and references are provided. Some jurisdictions employ performance-based skills assessments. In many instances, assessments are administered in the context of training provided during a bar admission course.

D. Options for Consideration

There are numerous assessment types and item formats that potentially could be employed. In this section, we describe methods that may be useful in assessing the knowledge, skills and tasks in the National Competency Profile. Strengths and weaknesses with regard to the considerations for selecting assessment methods are also provided. Note that many of the options described below are currently in use in at least one jurisdiction.

1. Written - Selected Response

In a written examination format, selected response questions such as multiple choice, matching and true-false can be used to assess many of the knowledge and skills in the National Competency Profile. Within the selected response category, multiple choice questions (MCQs) are a particularly good option because they permit the examination of a wide range of content very efficiently and are highly reliable.

To create a more "authentic" presentation, MCQs can be set in a practice-based context. Known as case-based or scenario-based items, they begin with an opening vignette that describes a realistic situation encountered in the practice of the profession and are followed by a series of MCQs related to the vignette.

MCQs can be targeted toward the "knows" and "knows how" (i.e., applied) level of Miller's pyramid. Testing at the "knows" level might focus on substantive knowledge not included in the national requirement (should the law societies ultimately decide to examine candidates on this knowledge). Testing at the "knows how" level might focus on the application of knowledge as well as the correct way to perform skills and tasks.

2. Written - Constructed Response

Constructed response items require the candidate to produce the answer rather than to select it from a list of response options. In addition to content knowledge, research, writing, and analysis skills can be assessed using constructed response questions.

These questions can include the provision of written stimulus materials (e.g., a description of a client or situation, ancillary documents related to the issue, reference books) by the examiner. The candidate could be required to interpret the information provided, identify the issues, review and apply the law to the case, and/or recommend a course of action.

The Federation might consider use of *formulating hypotheses* items. A scenario is presented, and examinees are asked to generate a list of examples, explanations, hypotheses, or other information relevant to the situation. For example, examinees might be asked to list questions that should be asked of a client prior to developing a case strategy or list the actions they would propose to take to address a client matter.

Item development may be simpler for constructed response items than for MCQs, but more effort will be required to develop the scoring key.

Constructed response items are generally less susceptible to guessing than selected-response items. They also have good reliability if well-constructed. They are more time consuming to score than selected response items, and scoring rules must be developed and consistently applied by trained scorers.

Examinees may need significantly more time to respond to this kind of item. Due to the time required for the candidate to produce the responses, a narrower range of content can be covered in the same time frame as a MCQ test. If constructed response questions are used exclusively, it may be difficult to sample adequately from the performance domain (i.e., the competencies in the National Competency Profile). This can negatively impact the content validity of the overall assessment scheme. Using selected response questions (which can be answered more quickly and can produce more score-able answers over a wider range of content) in addition to constructed response questions can mitigate the threat to validity.

3. Video-enhanced Items

Video can be used to enhance selected and constructed response questions. Instead of or as an enhancement to written material, candidates view videos and answer questions about what is viewed.

Case-based vignettes can be constructed that are designed to represent real-life situations as closely as possible. A range of content can be covered by vignettes. For example, a video might show an initial interview with a potential client, an ethical dilemma, or a negotiation. Questions related to the presentation are posed. Such questions might include: What was performed correctly/ incorrectly? What step was omitted? What would you do next? How would you address the issue?

Vignettes generally require greater effort and cost to develop, validate, and score than less complex item formats. They may also be more memorable than other items. However, they also enable the measurement of relatively complex skills that may not be accessible via simpler formats. Also, they can be considered as an alternative to more resource-intensive methods such as live simulations or OSCEs (discussed later).

4. Portfolios completed during articling

Portfolios are collections of material such as work products, videos, reflective writings, and supervisor ratings that represent aspects of an individual's actual work experience. There is some evidence that completion of a portfolio encourages reflective practice. Portfolios are used by one certifying organization that we are aware of (advanced practices genetics nurses in the US) for certification purposes.

The use of portfolios to assess learning outcomes and readiness for practice has been piloted in the United Kingdom. Portfolio assessment could be incorporated into the articling experience. The portfolios could then be evaluated for indicators of competence.

Portfolio assessment should not be undertaken in isolation but should be combined with other assessment methods. The UK pilot study report indicated that the portfolio was "insufficient to give a complete picture of whether or not that candidate would be a good solicitor".

A caution on the use of portfolios—they require extensive development, administration, and scoring resources. In addition, because not all students are able to obtain articling placement and because it is unlikely that articling students who do obtain placements will have equal (or at least similar) exposure to experiences that would be reflected in a portfolio, fairness and equity are of major concern. Also, caution would be required to ensure client confidentiality is maintained.

5. Supervisory ratings during the articling process

The adoption of a more structured and stringent system of performance assessment during articling should be considered. Specifically, behaviorally-anchored rating scales (BARS) can be used to evaluate the skills all candidates for the bar and the tasks all candidates will encounter during articling, *regardless of placement.*

In contrast to simple numeric scales or checklists, behaviorally anchored scales provide examples of specific behaviors that would be demonstrated at the low, middle, and high ends of the performance of specific competencies. For example, a five point rating related to productivity might have the following behavioral descriptions associated with it:

Exhibit 1 Behaviorally Anchored Rating Scale Example

PRODUCTIVITY				
1	**2**	**3**	**4**	**5**
Unsatisfactory	**Needs development**	**Meets expectations**	**Exceeds expectations**	**Greatly exceeds expectations**
Is prone to periods of inactivity, wasted time, and poor productivity		Is generally focused and productive		Consistently maintains very high levels of activity and productivity

It is important to be aware that development of BARS is time-consuming and labor-intensive. In addition, successful implementation will require that articling principals receive training on use of the instrument, and be evaluated in their ability to use of the instrument correctly; that is, they must be deemed proficient. However, we believe that the method offers important advantages over the checklists currently in use. The use of behavioral anchors minimizes differences in interpretation by different raters, thus reducing construct-irrelevant variance caused by rater error. Also, because they describe job behaviors, BARS may provide useful feedback to the individual being rated.

Because of the development expense, we recommend that the BARS be limited to those skills and tasks that have been identified as the highest priority for assessment “in vivo”. For those skills and tasks that have been identified as lower priority, candidates might be provided with exposure opportunities during articling that are not formally considered in the summative assessment performed by the law society.

VI. Competencies Targeted for Assessment

Which competencies should be assessed during the bar admission process and at what point in the process?

This aspect of the engagement focused on identifying which of the competencies the law societies should assess during the bar admission process. Exploration of this question was undertaken at the suggestion of the TAC and required data collection from and consultation with the TAC members.

In contrast to the prioritization analysis, which was performed at the level of the 117 specific competency elements, the point of assessment discussion focused on the point or points at which groups of related competency elements are most appropriately assessed. That is, when should competency in major groupings of related knowledge, skills, and tasks be tested?

Three potential points of assessment were considered for knowledge, skill sets and tasks: prior to the bar admission process (i.e., during law school), during the bar admission process and during articling. The question was addressed through data collection and consultation with the TAC. To provide an initial basis for discussion, TAC members individually rated each major grouping of competencies, indicating the primary point at which they should be assessed. A copy of the data collection instrument and the results can be found in Appendix C.

In discussions, TAC members made it clear that it is possible and might be desirable to assess a competency, particularly a highly weighted one, at more than one point.

A. Points of Assessment for Knowledge

There is considerable but not complete overlap between the knowledge competencies in the National Competency Profile and competencies specified in the national requirement. TAC members suggested that law societies need not assess competencies that can be expected to be assessed by law schools in the fulfillment of the national requirement, as this would represent a duplication of effort. This does not exclude the potential for including particular aspects of legal knowledge in law society assessments. To be more relevant to practice, examination questions are often crafted to draw upon a mix of knowledge, skills and aspects of task performance.

However, not all of the knowledge competencies in the National Competency Profile are included in the national requirement and so may not be assessed at law school. These competencies were the focus of extensive discussion among members of the TAC. ProExam recommends that for the knowledge

competencies not included in the national requirement, some form of assessment be undertaken by the law societies. Options include creating specific items (questions) for these competencies or incorporating them into items designed to assess other competencies. For instance, a skills-focused question situated in the wills and estate law context could assess both skills and knowledge.

B. Point of Assessment for Skills

All of the research-related skills, as well as some oral and written communication and analytical skills, are covered in the national requirement. Assessment of these during the bar admission may represent a duplication of effort, but given their high priority rating, the law societies might wish to build aspects of these skills into the assessment process. These skills should not be excluded from consideration for assessment by law societies

Analytic and communication skills that are not part of the national requirement, as well as client relationship management and practice management skills should primarily be covered in assessments administered by the law societies. Secondary, lower stakes assessment during articling may also be possible.

C. Point of Assessment for Tasks

Assessment of ethics, professionalism, and practice management tasks should be undertaken through law society-administered assessments given their high priority rating. The other five groups of tasks (Establishing Client Relationships, Conducting Matter, Concluding Retainer, Adjudication/Alternate Dispute Resolution, and Transactional/Advisory Matters) might be assessed either through the bar admission process or during articles.

Articling presents an opportunity to provide on-the-job assessment. This would require that assessment tools be developed and administered in such a way that they generate reliable data and a valid representation of candidates' abilities. It is recognized that extensive investment and systems change would be required to accomplish this.

TAC members' support for assessment at the articling stage was contingent upon the ability to develop appropriate, reliable, valid assessment tools within the articling process. Further, TAC members reported a lack of consistency in candidates' articling experiences both within and across jurisdictions. There is also a shortage of articling placements in some jurisdictions. The articling evaluations that are completed by articling principals are typically checklists verifying that candidate have been exposed to various job tasks. They do not address whether the tasks have been performed at a required level of proficiency.

The current articling system would need to undergo extensive modification to permit a psychometrically rigorous and fair articling assessment system for tasks. In order to be fair, all candidates would need to be provided with the same or similar opportunities to acquire the competencies to be assessed. To be valid and reliable, new assessment instruments, scoring systems, and rater training programs would need to be developed and pilot tested. Whether such large-scale change is feasible is something that would have to be explored.

D. Other Options for Skills and Task Assessment

The competencies that are expected to be acquired during articling may need to be developed and assessed by other means. A law practice course could be designed to provide training with respect to these competencies. During the course, targeted training on certain skills/tasks could be conducted that provide for a simulated real-world experience. Assessment would be delivered at the conclusion of the training. Such a course would be standardized and scoring rubrics would be developed so that all students would be graded using the same criteria.

Practical training courses are used in many jurisdictions outside Canada, including the U.K., Australia and New Zealand. In some cases, they fully replace articling/placement regimes. As an example, because shortage of articling placements is a real concern in Ontario, the Law Society of Upper Canada is developing an alternative pathway to bar admission for students who cannot obtain an articling placement. The process involves a training course designed to reflect the articling process. Students will have to be assessed in the context of the course, since they will not article.

VII. Considerations in Selecting Assessment Mechanisms

In considering options for assessing the competencies during bar admission, what criteria should guide the evaluation process?

ProExam is aware of a number of areas to consider when selecting an assessment instrument. We have included detailed descriptions of these considerations below.

The considerations fall into two major categories: psychometric and practical. From the standpoint of legal defensibility, psychometric considerations are of primary importance. That being said, it is necessary to consider parameters such as stakeholder acceptance and resource requirements (time, labour, and money) in addition to the psychometric qualities of the assessment methods in order to determine the best means of assessment.

Psychometric Considerations

- **Validity.** Are the knowledge, skills, and abilities to be assessed using the method, ones that are performed frequently on the job or of a critical nature? Does the assessment measure what it is intended to measure or will the methodology introduce construct-irrelevant variance?
- **Content Coverage.** How well does the format permit sampling of a range of competencies?
- **Fidelity**. To what extent does the assessment format represent the real-life application of the knowledge, skills, and abilities to be tested? To what extent does it need to?
- **Reliability.** How reliable is the assessment type? If reliability is lower for some assessment types, is there an acceptable trade-off for gains in validity, fidelity, or content coverage?
- **Scoring.** If complex scoring systems need to be developed, is there evidence of reliability and validity?

Practical Considerations

- **Professional Acceptability.** How meaningful is the assessment to the candidates, educators, regulators and other members of the profession?
- **Public Credibility.** Will the assessment method support or increase public confidence? Has the profession implemented similar requirements in other countries? Have other professions implemented the method?
- **Development Cost.** How much time, effort, and costs are involved in developing, reviewing, producing, and field testing this type of assessment?
- **Delivery Cost.** What are the costs for administering this type of assessment?

- **Scoring.** How much time, effort, and cost are needed to develop scoring keys, scoring algorithms, scoring rubrics--at start-up and/or on an ongoing basis? What resources are needed to score the assessments?

- **Administration**. Can administration be standardized across provinces/territories? Across different technology platforms?

- **Security.** Would it be easier, or harder, to cheat on this assessment type?

- **Testing time.** Does this type of assessment require more of the examinee's time? If it requires more, is something gained (i.e., is something being measured better or measured more) that makes it worth the extra time? More time may mean using fewer items to maintain a reasonable testing time frame --would there be a sacrifice in reliability or content coverage in doing so?

- **Disability accommodations.** Would this assessment type present any problems for providing the type of accommodations that are typically requested? Is it feasible to provide such accommodations?

- **Overall feasibility.** Can sufficient resources be marshalled to make the assessment method feasible, given cost, complexity, candidate volume, etc.?

VIII. Considerations for Moving Forward

In this report, we have summarized several preliminary lines of thought and considerations regarding implementation of an assessment system for the National Competency Profile. This engagement was intended to represent a high level environmental scan with respect to the questions raised. Reliable assessment of the competence of candidates for admission is essential.

Based on the information available to us at this time, ProExam provides these observations and recommendations:

1. The overall assessment scheme should use the information from the prioritization exercise to make data-informed decisions.

2. The overall assessment scheme should ensure adequate sampling of the entire content domain defined by the National Competency Profile.

3. Psychometric considerations, especially reliability and validity, are the primary considerations in ensuring decision accuracy regarding admission to practice.

4. At the same time, overall feasibility must be taken into account. Assessment method should be selected after weighing the practical as well as psychometric considerations.

5. Knowledge and skills addressed through the national requirement need not be assessed by law societies, but may be incorporated into test questions assessing other competencies in a secondary or tertiary manner.

6. Generally, it is most effective to assess the ‘know’ and ‘knows how’ aspects of competence through written tests that permit a wide sampling of cognitive abilities (i.e., knowledge, knowledge application, “how to” perform skills).

7. Other modes of assessment which more closely approximate practice (e.g., case based, simulated practice assessments) are more costly and complex to develop and score. As such, they should be employed for the highest priority aspects of competence, particularly those aspects that cannot be assessed by other, lower-fidelity to practice means.

8. For these aspects of competence, the Federation must consider the following question: What are the risks of not assessing at the highest possible levels (i.e., using a proxy measure in a written exam rather than assessing actual or simulated job behavior)?

IX. References

Miller, G.E. (1990). The assessment of clinical skills/competence/performance. Academic Medicine, 65, S63–S67.

Solicitors Regulatory Authority. Work based learning: Executive summary. Institute for Work Based Learning, Middlesex University, UK.

Appendix A

Technical Advisory Committee

Lynn Burns	Deputy Director, Professional Legal Training Course Law Society of British Columbia
Brenda Silver	Director, Professional Education and Competence Law Society of Manitoba
Paul Wood	Former Executive Director Legal Education Society of Alberta
Diana Miles	Executive Director, Organizational Strategy Director, Professional Development and Competence Law Society of Upper Canada
Lise Tremblay	Directrice générale Barreau du Québec
Johanne Delage	Directrice générale adjointe, développement de la profession Chambre des notaires du Québec
Frank O'Brien	Director of Legal Education Law Society of Newfoundland and Labrador

Appendix B

Calculation of priority weights: Methodology and results

ProExam performed a re-analysis of data collected during a survey to validate the National Competency Profile. In the validation survey, respondents made two ratings for each competency, one focused on how frequently they personally performed the competency, and the other focused on the severity of the consequences if an entry-level lawyer in their practice setting did not possess the competency (in the case of the knowledge and skill-based competencies) or was unable to perform the competency properly (in the case of the task-based competencies).

The frequency rating scale had five response options.

> How frequently, on average, do you use the knowledge/use the skill/perform the task?
>
> 1 = Never
> 2 = Once a month or less
> 3 = About once a week
> 4 = About once a day
> 5 = More than once a day

The severity of consequences rating scale had four response options.

> How serious would the consequences be if a newly-called lawyer or Quebec notary in your practice setting did not possess the knowledge/did not have the skill/could not perform the task competently?
>
> 1 = Not serious (no harm to the client or the lawyer's/Quebec notary's practice)
> 2 = Minimally serious (causes inconvenience to the client or the lawyer's/Quebec notary's practice)
> 3 = Moderately serious (negatively affects the client's interest or the lawyer's/Quebec notary's practice)
> 4 = Highly serious (jeopardises the client's interest or the lawyer's/Quebec notary's practice)

For each survey respondent, ProExam created a numerical weight for each competency by multiplying the respondent's frequency rating (F) by four times the severity of consequences rating (C). That is, each respondent's weight (RW) was calculated as

$$RW = (4*C) + F$$

The weights were then averaged across respondents to create an overall priority weighting. Note: Because a subset of competencies applies solely to Quebec notaries, ProExam utilized the responses from this subgroup to create the weights for those competencies.

The severity of consequence rating was given prominence in the weighting equation over frequency. The rationale for this decision is that the Law Societies serve to protect the public from incompetent practitioners, and the severity of consequences scale directly relates to the potential for harm due to incompetence. Frequency is given some emphasis in the equation, with the rationale that a more frequently performed competency has more opportunity to be performed incorrectly.

For each respondent, each competency weight could theoretically range from 5 (for a competency that was never performed and not serious) to 21 for a competency that was performed more than once a day and highly serious.

Actual priority weights ranged from a low of 10.4 (Substantive Knowledge: Wills and estates) to a high of 19.9 for (Communication: Communicating clearly in the English or French language, and in addition for candidates in Quebec, the ability to communicate in French as prescribed by law). The mean weight across competencies was 15.1.

ProExam allocated the weights into four groups, using quartiles as the cutoff points between groups. Quartiles are the three points that divide the priority weights into four equal groups, so that 25% of the competencies are contained in each of four groups. Labels were assigned to the groups as follows:

Group	**Contains Priority Values**	**Importance for Testing**
1	10.4 - 12.9	Low
2	13.0 – 15.2	Medium
3	15.3 – 17.4	High
4	17.5 – 19.9	Essential

Priority weights and importance for testing categories for each competency follow.

		Weight	Priority for Assessment
	KNOWLEDGE		
	All applicants are required to demonstrate a general understanding of the core legal concepts applicable to the practice of law in Canada in the following areas:		
1	**SUBSTANTIVE LEGAL KNOWLEDGE**		
1.1	**Canadian Legal System**		
(a)	The constitutional law of Canada, including federalism and the distribution of legislative powers	12.6	Low
(b)	The Charter of Rights and Freedoms	13.5	Medium
(c)	Human rights principles and the rights of Aboriginal peoples of Canada, and in addition for candidates in Quebec, the Quebec Charter of Human Rights and Freedoms	12.1	Low
(d)	For candidates in Canadian common law jurisdictions, key principles of common law and equity. For candidates in Quebec, key principles of civil law	17.1	High
(e)	Administration of the law in Canada, including the organization of the courts, tribunals, appeal processes and non-court dispute resolution systems	16.0	High
(f)	Legislative and regulatory system	16.1	High
(g)	Statutory construction and interpretation	16.4	High
1.2	**Canadian Substantive Law**		
(a)	Contracts and in addition for candidates in Quebec: obligations and sureties	16.4	High
(b)	Property	14.4	Medium
(c)	Torts	14.1	Medium
(d)	Family, and in addition for candidates in Quebec, the law of persons	11.5	Low
(e)	Corporate and commercial	13.9	Medium
(f)	Wills and estates	11.2	Low
(g)	Criminal, except for Quebec notary candidates	11.4	Low
(h)	Administrative	13.2	Medium
(i)	Evidence (for Quebec notaries, only as applicable to uncontested proceedings)	15.3	High
(j)	Rules of procedure		
i.	Civil	15.1	Medium
ii.	Criminal, except for Quebec notary candidates	10.7	Low
iii.	Administrative	12.4	Low
iv.	Alternative dispute resolution processes	11.7	Low
(k)	Procedures applicable to the following types of transactions:		
i.	Commercial	11.8	Low

		Weight	Priority for Assessment
ii.	Real estate	11.2	Low
iii.	Wills and estates	10.4	Low
1.3	**ETHICS AND PROFESSIONALISM**		
(a)	Principles of ethics and professionalism applying to the practice of law in Canada	18.4	Essential
1.4	**PRACTICE MANAGEMENT**		
(a)	Client development	14.4	Medium
(b)	Time management	18.2	Essential
(c)	Task management	18.2	Essential

2	**SKILLS**		
	All applicants are required to demonstrate that they possess the following skills:		
2.1	**Ethics and Professionalism Skills**		
(a)	Identifying ethical issues and problems	17.4	High
(b)	Engaging in critical thinking about ethical issues	16.9	High
(c)	Making informed and reasoned decisions about ethical issues	17.2	High
2.2	**Oral and Written Communication Skills**		
(a)	Communicating clearly in the English or French language, and in addition for candidates in Quebec, the ability to communicate in French as prescribed by law	19.9	Essential
(b)	Identifying the purpose of the proposed communication	19.3	Essential
(c)	Using correct grammar and spelling	19.0	Essential
(d)	Using language suitable to the purpose of the communication and for its intended audience	19.2	Essential
(e)	Eliciting information from clients and others	19.0	Essential
(f)	Explaining the law in language appropriate to audience	18.6	Essential
(g)	Obtaining instructions	18.6	Essential
(h)	Effectively formulating and presenting well-reasoned and accurate legal argument, analysis, advice or submissions	19.0	Essential
(i)	Advocating in a manner appropriate to the legal and factual context. This item does not apply to applicants to the Chambre des notaires du Québec	17.7	Essential
(j)	Negotiating in a manner appropriate to the legal and factual context	17.4	Essential
2.3	**Analytical Skills**		
(a)	Identifying client's goals and objectives	18.2	Essential
(b)	Identifying relevant facts, and legal, ethical, and practical issues	19.3	Essential
(c)	Analyzing the results of research	17.7	Essential
(d)	Identifying due diligence required	16.7	High
(e)	Applying the law to the legal and factual context	19.1	Essential
(f)	Assessing possible courses of action and range of	18.4	Essential

		Weight	Priority for Assessment
	likely outcomes		
(g)	Identifying and evaluating the appropriateness of alternatives for resolution of the issue or dispute	16.8	High
2.4	**Research Skills**		
(a)	Conducting factual research	17.1	High
(b)	Conducting legal research including:		
i.	Identifying legal issues	18.3	Essential
ii.	Selecting relevant sources and methods	17.3	High
iii.	Using techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues	17.6	Essential
iv.	Identifying, interpreting and applying results of research	17.6	Essential
v.	Effectively communicating the results of research	17.4	Essential
(c)	Conducting research on procedural issues	15.7	High
2.5	**Client Relationship Management Skills**		
(a)	Managing client relationships (including establishing and maintaining client confidence and managing client expectations throughout the retainer)	16.9	High
(b)	Developing legal strategy in light of client's circumstances (for example, diversity, age, language, disability, socioeconomic, and cultural context)	15.2	Medium
(c)	Advising client in light of client's circumstances (for example, diversity, age, language, disability, socioeconomic, and cultural context)	15.2	Medium
(d)	Maintaining client communications	17.6	Essential
(e)	Documenting advice given to and instructions received from client	17.9	Essential
2.6	**Practice Management Skills**		
(a)	Managing time (including prioritizing and managing tasks, tracking deadlines)	19.2	Essential
(b)	Delegating tasks and providing appropriate supervision	16.0	High
(c)	Managing files (including opening/closing files, checklist development, file storage/destruction)	15.9	High
(d)	Managing finances (including trust accounting)	12.2	Low
(e)	Managing professional responsibilities (including ethical, licensing, and other professional responsibilities)	15.3	High
3	**TASKS**		
	All applicants are required to demonstrate that they can perform the following tasks:		
3.1	**GENERAL TASKS**		
3.1.1	**Ethics, professionalism and practice management**		
(a)	Identify and resolve ethical issues	16.2	High
(b)	Use client conflict management systems	13.8	Medium
(c)	Identify need for independent legal advice	14.2	Medium
(d)	Use time tracking, limitation reminder, and bring forward	16.2	High

		Weight	Priority for Assessment
	systems		
(e)	Use systems for trust accounting	11.6	Low
(f)	Use systems for general accounting	11.1	Low
(g)	Use systems for client records and files	15.3	High
(h)	Use practice checklists	13.6	Medium
(i)	Use billing and collection systems	11.9	Low
3.1.2	**Establishing Client Relationship**		
(a)	Interview potential client	13.6	Medium
(b)	Confirm who is being represented	13.7	Medium
(c)	Confirm client's identity pursuant to applicable standards/rules	13.6	Medium
(d)	Assess client's capacity and fitness	13.3	Medium
(e)	Confirm who will be providing instructions	13.8	Medium
(f)	Draft retainer/engagement letter	12.2	Low
(g)	Document client consent/instructions	15.2	Medium
(h)	Discuss and set fees and retainers	12.5	Low
3.1.3	**Conducting Matter**		
(a)	Gather facts through interviews, searches and other methods	17.0	High
(b)	Identify applicable areas of law	17.5	Essential
(c)	Seek additional expertise when necessary	16.2	High
(d)	Conduct legal research and analysis	17.5	Essential
(e)	Develop case strategy	15.4	High
(f)	Identify mode of dispute resolution	13.3	Medium
(g)	Conduct due diligence (including ensuring all relevant information has been obtained and reviewed)	16.1	High
(h)	Draft opinion letter	14.4	Medium
(i)	Draft demand letter	12.1	Low
(j)	Draft affidavit/statutory declaration	14.1	Medium
(k)	Draft written submission	14.7	Medium
(l)	Draft simple contract/agreement	14.2	Medium
(m)	Draft legal accounting (for example, statement of adjustment, marital financial statement, estate division, bill of costs)	10.8	Low
(n)	Impose, accept, or refuse trust condition or undertaking	11.9	Low
(o)	Negotiate resolution of dispute or legal problem	14.4	Medium
(p)	Draft a release	12.3	Low
(q)	Review financial statements and income tax returns	11.3	Low
3.1.4	**Concluding Retainer**		
(a)	Address outstanding client concerns	13.1	Medium
(b)	Draft exit/reporting letter	11.7	Low
3.2	**ADJUDICATION/ALTERNATIVE DISPUTE RESOLUTION**		
3.2.1	*All applicants, except for applicants for admission to the Chambre des notaires du Québec, are required to demonstrate that they can perform the following tasks:*		

		Weight	Priority for Assessment
(a)	Draft pleading	13.4	Medium
(b)	Draft court order	12.4	Low
(c)	Prepare or respond to a motion or application (civil or criminal)	13.6	Medium
(d)	Interview and brief witnesses	12.9	Low
(e)	Conduct simple hearing or trial before an adjudicative body	12.8	Low
3.2.2	*All applicants are required to demonstrate that they can perform the following tasks:*		
(a)	Prepare list of documents or an affidavit of documents	12.1	Low
(b)	Request and produce/disclose documents	12.9	Low
(c)	Draft brief	12.7	Low
3.3	**TRANSACTIONAL/ADVISORY MATTERS**		
3.3.1	*Applicants for admission to the Chambre des notaires du Québec are required to demonstrate that they can perform the following tasks:*		
(a)	Conduct basic commercial transaction	14.4	Medium
(b)	Conduct basic real property transaction	17.9	Essential
(c)	Incorporate company	13.7	Medium
(d)	Register partnership	12.5	Low
(e)	Draft corporate resolution	15.4	High
(f)	Maintain corporate records	14.0	Medium
(g)	Draft basic will	17.5	Essential
(h)	Draft personal care directive	14.2	Medium
(i)	Draft power of attorney	16.5	High

Appendix C

Point of Assessment – TAC Member Survey

Exit

FLSC TAC Prioritization Survey

Dear TAC members: *Please complete your ratings by COB Friday, June 28.* ProExam will summarize the results and share them with you before our next call, scheduled for Tuesday, July 2.

Name

The purpose of this data collection form is to obtain individual TAC members' perceptions regarding the primary point at which the various entry-to-practice competencies should be assessed (law school, bar admission, or articling). For the purpose of this poll, please select only one of the three points of assessment for each competency category.

*

KNOWLEDGE

	Law school	Bar admission	Articling
1.1 Canadian Legal System	●	●	●
1.2a Canadian Substantive Law: Factual (a) - (i)	●	●	●
1.2b Canadian Substantive Law: Procedural (j) & (k)	●	●	●
1.3 Ethics and Professionalism	●	●	●
1.4 Practice Management	●	●	●

SKILLS

	Law school	Bar admission	Articling
2.1 Ethics and Professionalism Skills	●	●	●
2.2 Oral and Written Communication Skills	●	●	●
2.3 Analytical Skills	●	●	●
2.4 Research Skills	●	●	●
2.5 Client Relationship Management Skills	●	●	●
2.6 Practice Management Skills	●	●	●

TASKS

	Law school	Bar admission	Articling
3.1.1 Ethics, Professionalism and Practice Management	●	●	●
3.1.2 Establishing Client Relationship	●	●	●
3.1.3 Conducting Matter	●	●	●
3.1.4 Concluding Retainer	●	●	●
3.2 Adjudication/Alternative Dispute Resolution	●	●	●
3.3 Transactional/Advisory Matters	●	●	●

Please provide any additional comments here.

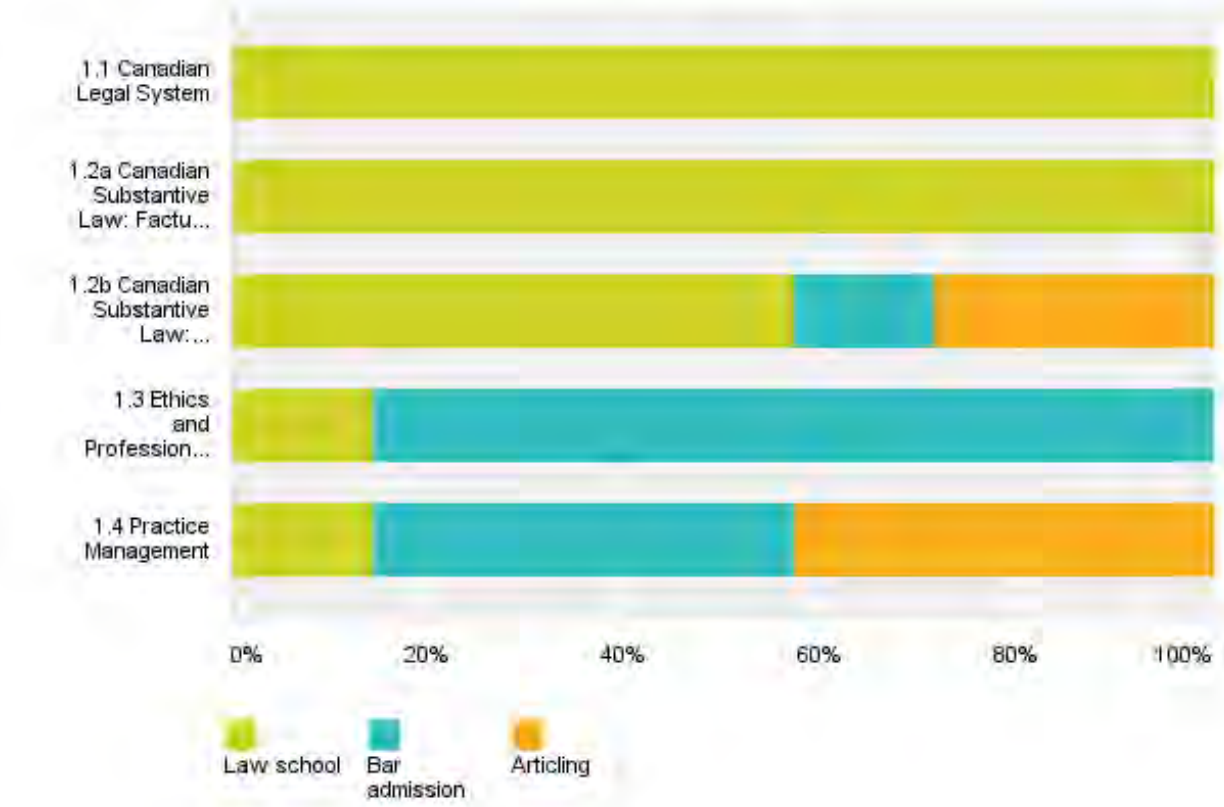
NOTES DELETED FROM APPENDIX

Please provide any additional comments here.

Submit

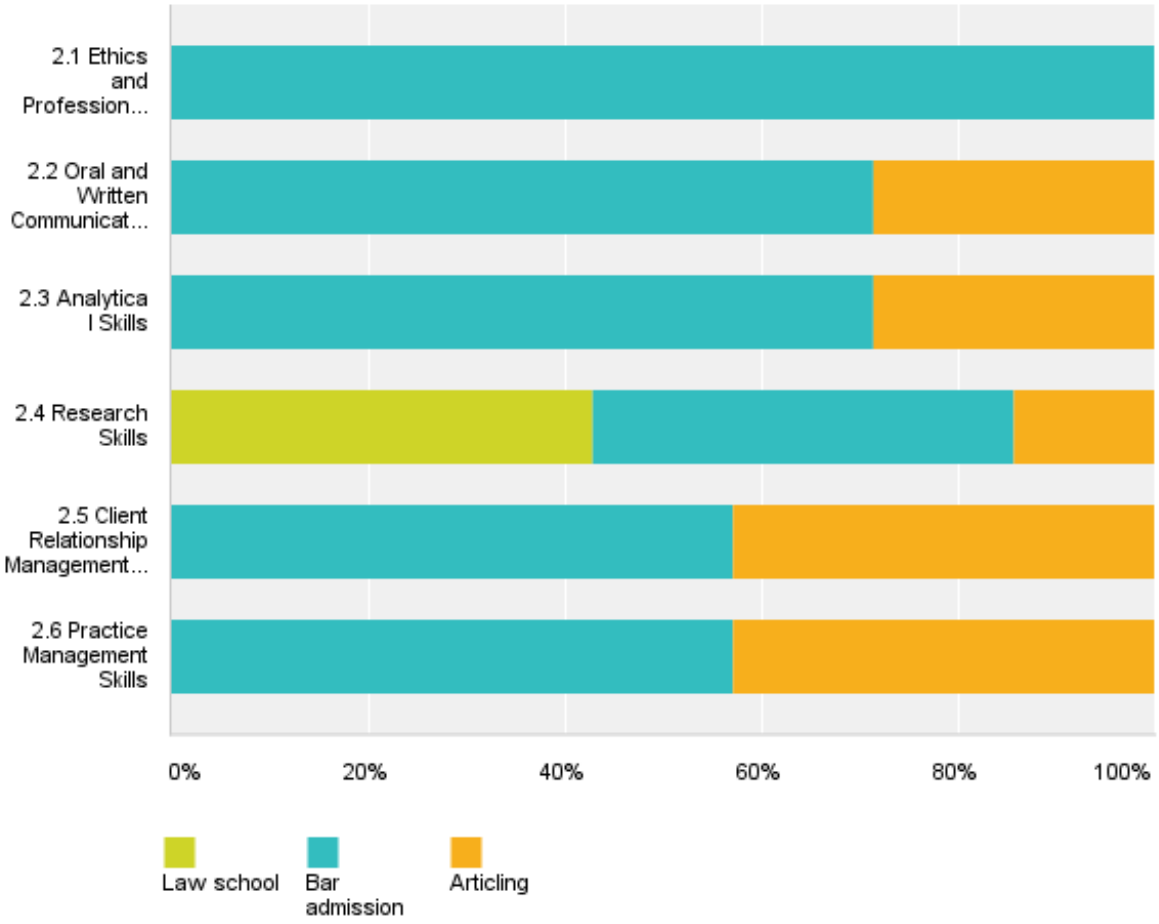
Q2 KNOWLEDGE

Answered: 7 Skipped: 0



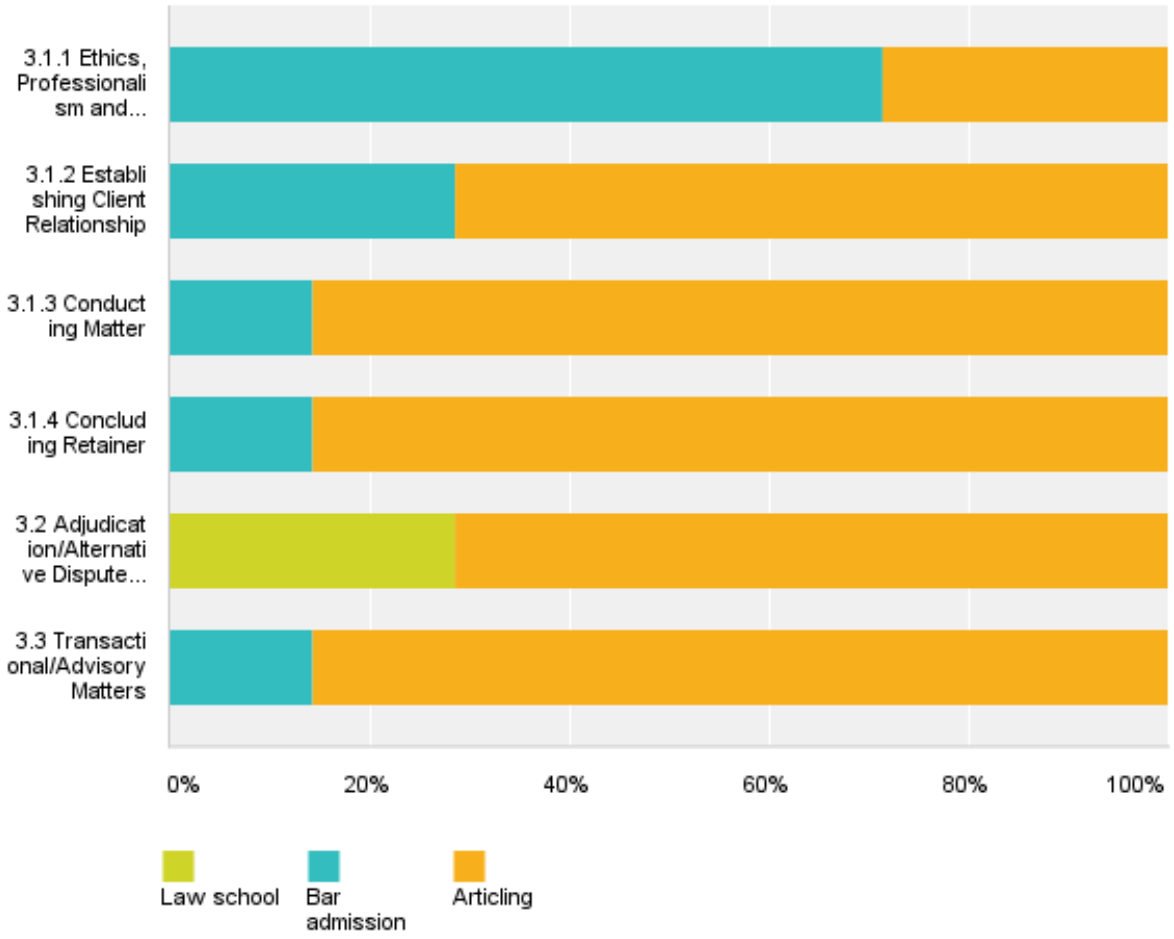
Q3 SKILLS

Answered: 7 Skipped: 0



Q4 TASKS

Answered: 7 Skipped: 0



The Law Society of British Columbia

Equity and Diversity Advisory Committee Year End Report

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

December 6, 2013

Prepared for: Benchers

Prepared by: Andrea Hilland, Staff Lawyer, Policy and Legal Services

Purpose: For Information

Introduction

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

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

3. The mandate is to:

   - monitor and develop effective equity and diversity in the legal profession and the justice system in British Columbia;

   - report to the Benchers on a semi-annual basis on those developments;

   - advise the Benchers annually on priority planning in respect of issues affecting equity and diversity in the legal profession and the justice system in British Columbia; and

   - attend to such other matters as the Benchers or Executive Committee may refer to the advisory committee from time to time.

Topics of Discussion: January to December 2013

4. This year the Committee has focused its efforts on launching the Aboriginal Lawyers Mentorship Program, implementing the Justicia Project, and collaborating with the CBA and other equity and diversity seeking groups within the profession on matters of common interest and commitment. Details of this work are outlined below.

5. The Committee held working meetings on January 24, April 4, May 9, June 6, July 11, September 24, and November 14, 2013; it will meet again on December 12, 2013. In addition, representatives of the Committee have met throughout the year with: the CBA BC Equality and Diversity Committee; the Diversity Officers from each of the seventeen law firms committed to the Justicia Project; and various groups within the profession.

Aboriginal Lawyers Mentoring Program

6. The Aboriginal Lawyers Mentoring Program was launched on National Aboriginal Day, June 21, 2013, and it is now well underway. It has been well received. The Program was featured as the cover story in the October 25, 2013 issue of Lawyers Weekly.

7. Mentors and mentees have been matched. Currently the Program has matched a total of twelve mentorship pairs, seven of which reside in areas outside the lower mainland of Vancouver. The Committee is in the process of facilitating networking events and functions to support existing mentorship pairs, and to further promote the Program so that it can be readily accessed by members throughout the Province.

8. Law Society staff has developed training and orientation materials, building on the experience of other mentoring initiatives, such as that of the CBA's Women Lawyers Forum ("WLF") and the CBA Aboriginal Lawyers Forum ("ALF"). We wish to acknowledge the WLF and ALF for enthusiastically providing their support, commitment, and expertise to this initiative, as well as the various focus groups and individuals who provided their time and talent in developing the Program.

9. We are encouraged by the significant level of interest, support and engagement in our Program to date. We will continue to support, monitor and assess the Program in the coming year.

Aboriginal Graduate Scholarship

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

Justicia Project

11. The Justicia Project has been actively underway in British Columbia since early this year. It is a voluntary program, facilitated by the Law Society of British Columbia ("LSBC") and undertaken by law firms, to identify and implement best practices to retain and advance women lawyers in private practice. It was created in response to evidence that women leave the profession at a higher rate than men in the first ten years of practice.

12. The Project is proceeding in BC in two phases. Phase one is directed at national firms with offices in BC, as well as large regional firms. Phase two will be directed at all other BC firms.

13. Phase one of Justicia has already seen tremendous success. All seventeen firms that were targeted for participation in phase one have committed to achieving goals in four core areas: 1) tracking gender demographics, 2) parental leave programs and flexible work arrangements, 3) networking and business development, and 4) mentoring and leadership skills for women. Attached as Appendix "A" is the Letter of Commitment signed by the seventeen participating firms. The Letter of Commitment sets out a Justicia work plan for the next two years.

14. Justicia's Diversity Officers have been selected by participating firms. Andrea Hilland of the LSBC is coordinating regular meetings among the Diversity Officers, which are also attended by Michael Lucas, Lisa Vogt, Bill Maclagan, Maria Morellato, and representatives from the CBA WLF. This group has identified specific next steps and have created focus groups to meet regularly to develop recommendations in six areas:

    i) Enhancing flexible work arrangements;
    ii) Improving parental leave policies;
    iii) Tracking gender demographics;
    iv) Adopting initiatives to foster women's networking and business development;
    v) Promoting leadership skills for women; and
    vi) Developing paths to partnership initiatives.

15. This work has been grouped into two consecutive pieces of work. The first piece of work is already well underway on the first three of the above-listed topics and involves the development of practical tools to enhance flexible work arrangements, improve parental leave policies, and track gender demographics. This will culminate in the production of written recommendations to the Benchers, including resource materials, which will be available on the LSBC website. Currently, it is anticipated that work on the first three topics will be completed by the end of January of 2013; following that, work will commence on the remaining three topics. This second piece of work will also culminate in the production of written recommendations and resource materials for approval by the Benchers.

16. Once the phase one recommendations are adopted, the second phase of Justicia, involving smaller law firms, will begin. The resource materials developed on the six areas identified above from the first phase of Justicia may then be adapted or utilized, as appropriate, for the development of best practices for the smaller firm context.

Maternity Leave Benefit Loan Program

17. On the recommendation of the Committee, the Executive Director made a minor amendment to the eligibility criteria for the Maternity Leave Benefit Loan Program to allow lawyers to retain practicing membership status while accessing the Program.

Enhanced Demographic Question

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

Law Societies Equity Network

19. Law Society staff contributed to the Law Societies Equity Network's presentation to the Federation of Law Societies on March 20, 2013 regarding the importance of collecting comparable demographic data nationally. To follow up on the presentation, Law Society staff also contributed to the development of a demographic questionnaire to collect consistent demographic data from law societies across Canada in order to create a national equity profile.

20. Ms. Hilland will present on the Law Societies Equity Network's efforts to compile national demographic information, and on the LSBC's report entitled "*Towards a More Diverse Legal Profession: Better Practices, Better Workplaces, Better Results*" at the Canadian Legal Diversity Conference in Toronto on December 5, 2013.

Diversity on the Bench Presentation

21. At the invitation of LSBC President, Art Vertlieb, retired justices Lynn Smith and Donna Martinson presented on the importance of diversity on the bench at the July 12, 2013 Bencher meeting. Following the presentation, Mr. Vertlieb requested that the Committee develop recommendations to the Benchers before the end of the year to improve diversity on the bench.

22. The Committee has prepared draft recommendations as requested which have been provided to the Executive Committee within the last week, with the intention that they will be presented to the Benchers for their consideration at the January 24, 2014 Benchers meeting.

Collaborations with the CBA BC Equality and Diversity Committee

23. The Committee nominated Ms. Hilland to liaise with the CBA BC Equality and Diversity Committee. The CBA BC Equality and Diversity Committee organized a panel regarding diversity on the bench, held on May 1, 2013, and will hold a follow-up panel in 2014. The Committee will assist with the planning and implementation of the 2014 panel.

24. Along with the CBA BC Equality and Diversity Committee, Ms. Hilland is co-chairing a "diversity stakeholders" coalition which includes the Chair of our Committee, as well as a number of CBA BC Equality and Diversity subgroups representing diverse

lawyers in British Columbia. Members of the coalition intend to conduct a strategic planning session in 2014, along with an event sponsored by all members of the coalition. The Committee will assist with the proposed strategic planning session and the proposed event.

Unconscious Bias Workshop

25. On the recommendation of the Committee, Laraine Kaminsky presented a workshop on unconscious bias to the LSBC on January 25, 2013. The event was well attended. Representatives from each of the seventeen law firms who have agreed to participate in the Justicia Project attended, along with a number of Benchers and the LSBC executive.

The Law Society of British Columbia

The *Justicia* Project
Phase 1
LAW FIRM COMMITMENT

Statement of Principles

1. The Law Society of British Columbia and the signatory law firm acknowledge the challenges faced by the legal profession in general and law firms in particular in the retention and advancement of women.

2. We also recognize that women in private practice are diverse by virtue of, but not limited to, ethnicity, ancestry, place of origin, colour, citizenship, race, religion or creed, disability, sexual orientation, marital status, age and/or family status. We will take into account this diversity when implementing this project.

3. The signatory law firm commits to the following principles and pledges to participate in the *Justicia* Project for the retention and advancement of women.

Project Description

4. The *Justicia* Project in British Columbia will advance in two phases. Phase 1 will be directed at the national law firms with offices in British Columbia who have participated in the *Justicia* Project in Ontario, as well as at the larger regional firms in British Columbia. Phase 2 will be directed at other British Columbia firms.

5. Phase 1 will proceed in 2012, with the creation of a Managing Partners Network Group from the national law firms and the larger regional firms in British Columbia, and a first summit meeting of the Group will be held on November 20, 2012. A Diversity Officers Working Group will also be created to serve as liaison with the Law Society and the law firms.

6. The signatory law firms will develop and implement programs, with the collaboration and assistance of the Law Society, focusing on the following four core areas:

    a. tracking demographics;
    b. parental leave programs and flexible work arrangements;
    c. networking and business development; and
    d. mentoring and leadership development skills for women.

The development and implementation of programs will be staggered to ensure that appropriate resources are in place in each signatory law firm and to optimize the effectiveness of the programs.

845 Cambie Street, Vancouver, BC, Canada V6B 4Z9
t 604.669.2533 | f 604.669.5232
toll free 1.800.903.5300 | TTY 604.443.5700
lawsociety.bc.ca

7. At the end of the project, the following activities will be undertaken:

    a. an assessment of the programs to identify best practices and develop model policies and guidelines;
    b. communication of best practices to the legal profession as a whole;
    c. identification of other law firms that may wish to implement best practices; and
    d. establishment of next steps with signatory law firms.

The Signatory Law Firm's Commitment

8. The signatory law firm commits to the following:

    a. participating in this project to the end of 2015;
    b. ensuring that the managing partner participates in the Managing Partners Network Group, and attends a minimum of one summit meeting of the *Justicia* Project in each calendar year; [1]
    c. nominating a partner and/or a director of professional development/students and associates with the expertise and knowledge of issues related to diversity and the advancement of women in the firm, to have operational responsibility for the *Justicia* Project ("Diversity Officer");
    d. ensuring that the Diversity Officer participates in regular meetings of the Diversity Officers Working Group as are required to advance understanding of issues affecting women and develop best practices and programming, and serves as a liaison with the Law Society and other signatory law firms;
    e. monitoring and measuring the firm's experiences with the programs and, on a voluntary basis, sharing these with the Law Society and other signatory law firms in order to develop best practices for the profession; and
    f. considering the needs of women from Aboriginal and/or equality-seeking communities.

<u>Details of Commitment</u>

2012/2013 - Launch of Tracking Demographics and Policy Development

9. The signatory law firm will:

    a. collaborate with the Law Society in its collection of best practices in parental leave programs and flexible work arrangements, with a goal to creating model policies for the profession by mid-2014
    b. review its existing written policies relating to maternity, parental and adoption leave, flexible work arrangements and accommodations; consider developing its own written policies relating to those topics; and have written policies or templates in this area by mid-2014, based on its individual needs and culture; and

    c. collaborate with the Law Society and other signatory law firms to develop a template to track gender demographics and it will develop a system to

[1] It is anticipated that summit meetings will last between 1 and 2 hours.

maintain statistical data about gender in the composition of the firm and track gender demographic information once the system is in place and before the end of 2013.

2013/2014 - Launch of Networking and Business Development Initiative

10. The signatory law firm will, in 2013 and 2014:

    a. continue to build on existing programs, develop its own strategic business development plan and consider allocating appropriate resources to implement effective business development and networking opportunities focused on women lawyers' needs and women clients; and
    b. collaborate with the Law Society to share information about business development and networking opportunities and programs specifically tailored for women lawyers and women clients.

2013/2014 – Launch of Mentoring and Leadership Skills Development for Women

11. The signatory law firm will, in 2013 and 2014:

    a. collaborate with the Law Society to assist it in developing various models of mentoring and leadership skills development programs, identify through consultation what women in the firm need and want regarding mentoring and leadership development opportunities, and allocate the resources to support those programs;
    b. consider whether women lawyers are well represented throughout the firm, as group leaders, committee members and other positions of leadership, and will identify gaps and develop strategies to enhance women's participation in the leadership of the firm; and
    c. implement mentoring programs for women based on identified need.

The Law Society of British Columbia's Commitment

12. The Law Society of British Columbia commits to the following:

    a. assisting in the coordination of the *Justicia* Project and providing expertise and advice for the project;
    b. coordinating a Managing Partners Network Group, arranging at least one *Justicia* summit meeting in each calendar year and liaising with the Managing Partners Network Group;
    c. assisting in the coordination of regular meetings of the Diversity Officers Working Group with the objective of advancing understanding of issues affecting women, developing best practices and programming, serving as a forum for information sharing between participating firms and the Law Society, and providing administrative support to the Diversity Officers Working Group;
    d. coordinating teleconference meetings of an advisory group of women from Aboriginal, and equality seeking communities; and

e. providing advice and expertise to assist signatory law firms in the implementation of programs.

13. In discharging its commitment, the Law Society will undertake activities, including the following:

    a. collecting and disseminating to the signatory law firms examples of workplace policies such as flexible work arrangements and parental/maternity leave policies and seeking input with respect to best practices;
    b. providing the signatory law firms with models of networking and business development activities tailored for women lawyers and clients, to identify best practices with respect to business development training for women;
    c. providing the signatory law firms with models of mentoring and leadership skills development models for women;
    d. promoting best practices in the legal profession as a whole;
    e. assessing the effectiveness of the project and identifying next steps with signatory law firms and in the legal profession; and
    f. developing guidelines and templates on recording demographic data.

We hereby commit to participating in the *Justicia* project. We allow the Law Society to release the name of our firm as a participating firm in the *Justicia* project.

Firm Name

_____

Managing Partner Name

_____

Contact information

_____

_____

_____

_____

Signature _____ Date_____

The Law Society of British Columbia

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

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

December 6, 2013

Prepared for: Benchers

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

Purpose: Information

Introduction

1. The Rule of Law and Lawyer Independence Advisory Committee is one of the four advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers in connection with those issues. From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and may be asked to develop the recommendations or policy alternatives regarding such initiatives.

2. The Committee's mandate is:

    - to advise the Benchers on matters relating to the Rule of Law and lawyer independence so that the Law Society can ensure

        - its processes and activities preserve and promote the preservation of the Rule of Law and effective self-governance of lawyers;

        - the legal profession and the public are properly informed about the meaning and importance of the Rule of Law and how a self governing profession of independent lawyers supports and is a necessary component of the Rule of Law; and

    - to monitor issues (including current or proposed legislation) that might affect the independence of lawyers and the Rule of Law, and to develop means by which the Law Society can effectively respond to those issues.

3. The Committee met on January 23, February 12, February 27, May 8, July 10, September 25, November 5, and December 4, 2013.

4. This is the year end report of the Committee, prepared to advise the Benchers on its work in 2013.

Overview

5. This Committee endeavours to state at each opportunity that lawyer independence is a fundamental right of importance to the citizens of British Columbia and Canada.

6. This year, in *Federation of Law Societies of Canada v. Canada (Attorney General)* 2013 BCCA 147, the Court of Appeal added judicial authority to this concept, holding that the independence of the Bar is a principle of fundamental justice. The Court's judgment on this issue is worth repeating, as it aptly summarizes what this Committee has been advocating over the past years:

> [106] ... the independence of the Bar is a legal principle .... See, for example: the *Legal Profession Act*, s. 3; *Canada (Attorney General) v. Law Society (British Columbia)*, [1982] 2 S.C.R. 307.
>
> [107] The independence of the Bar is fundamental to the way in which the legal system ought fairly to operate. The importance of the independence of the Bar has long been recognized as a fundamental feature of a free and democratic society. In *Canada (Attorney General) v. Law Society (British Columbia)*, [1982] 2 S.C.R. 307 at 335–336, Mr. Justice Estey commented that:
>
> > The independence of the bar from the state in all its pervasive manifestations is one of the hallmarks of a free society. Consequently, regulation of these members of the law profession by the state must, so far as by human ingenuity it can be so designed, be free from state interference, in the political sense, with the delivery of services to the individual citizens in the state, particularly in fields of public and criminal law. The public interest in a free society knows no area more sensitive than the independence, impartiality and availability to the general public of the members of the Bar and through those members, legal advice and services generally. The uniqueness of position of the barrister and solicitor in the community may well have led the province to select self-administration as the mode for administrative control over the supply of legal services throughout the community.
>
> [108] In *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869 at 887, Mr. Justice Iacobucci wrote:
>
> > Stress was rightly laid on the high value that free societies have placed historically on an independent judiciary, free of political interference and influence on its decisions, and <u>an independent bar, free to represent citizens without fear or favour in the protection of individual rights and civil liberties against incursions from any source, including the state</u>. *[Emphasis added.]*

> [109] The independence of the Bar is also an integral part of Canadian society as a whole. In *Omineca Enterprises Ltd. v. British Columbia (Minister of Forests)* (1993), 85 B.C.L.R. (2d) 85 at para. 53 (B.C.C.A.), McEachern C.J.B.C., (dissenting in part for unrelated reasons), wrote:
>
> > One of the great and often unrecognized strengths of Canadian society is the existence of an independent bar. Because of that independence, lawyers are available to represent popular and unpopular interests, and to stand fearlessly between the state and its citizens.
>
> [110] This view was echoed in *Finney v. Barreau du Québec*, 2004 SCC 36, [2004] 2 S.C.R. 17 at 21, where LeBel J. commented that "[a]n independent bar composed of lawyers who are free of influence by public authorities is an important component of the fundamental legal framework of Canadian society."
>
> [111] The independence of the Bar has also been asserted as an element of the rule of law which is essential to the constitution of a modern democracy, as expressed by Lord Bingham in his book *The Rule of Law* (London: Allen Lane, 2010) at pp. 92–93:
>
> > Scarcely less important than an independent judiciary is an independent legal profession, fearless in its representation of those who cannot represent themselves, however unpopular or distasteful their case may be.
>
> ...
>
> [113] I am satisfied that the independence of the Bar is capable of being identified with sufficient precision so as to yield a manageable standard against which to measure deprivations of life, liberty or security of the person. As shown by the authorities listed above, the independence of the Bar consists of lawyers who are free from incursions from any source, including from public authorities. ...

7. This public right to a lawyer who is "available to represent popular and unpopular interests, and to stand fearlessly between the state and its citizens" is not a right that is well understood and, the Committee suspects, neither are the consequences of it being diluted or lost.

8. Canadians are generally fortunate to live in a society that recognizes the importance of the Rule of Law. The independence of lawyers is an important protection for the Rule of Law. The Rule of Law is, the Committee has concluded, best protected by lawyers who operate and are regulated independent of government in order to best be able to represent a client free of all outside interests including those of the state. Self governance must therefore be vigilantly monitored to ensure that the obligation of self governance is not lost.

Topics of Discussion – January to December 2013

The Role of the Law Society as Insurer and Regulator

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

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

10. The Committee finalized its report in May of this year, and it was circulated to the Benchers.

11. The report was debated at the November 7, 2013 Benchers meeting. After a lengthy discussion, the Benchers agreed 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, and resolved that a working group of Benchers and staff be created to undertake a detailed examination of the two solution options described in the Committee's report, having regard to the need to provide best practices oversight and governance of the insurance portfolio:

Conflicts arising where a Bencher acts for a Party bringing an Action against a Lawyer represented through the Lawyers' Insurance Fund.

12. This is a topic that the Committee identified while it was debating the role of the Law Society as both an insurer and regulator of lawyers.

13. The Committee discussed this topic at its November meeting.

14. It agreed that there was merit in concluding that a director of an organization that is responsible for insuring lawyers and acting on their behalf in the defence of claims brought against a lawyer ought not to act as counsel for a party suing a lawyer. Regardless of whether a director of the insuring regulatory body would have any special insight into the operations of the insurer that might benefit his or her client, acting as counsel for a party opposite an organization of which one is a governor seems contrary to good corporate governance and may create the perception of a potential conflict of interest. Acting in this manner could negatively affect the case for self-regulation, as it could be perceived that Benchers were putting their professional or financial interests ahead of their role as director of the organization. Conversely, some might consider that the Bencher, even unintentionally, could put the interests of the organization ahead of his or her client.

15. The Committee did not believe, however, that all the lawyers of a Bencher's firm ought to be affected by this restriction. While all lawyers at a firm may be imbued with the knowledge of

one lawyer for conflicts of interest relating to acting for or against clients, a Bencher's role as a *director* of the Law Society is different from his or her role as *counsel* for a client. A director of an organization owes a duty to act honestly, in good faith in the best interests of the organization that he or she governs, and this, the Committee believes, means that the knowledge the Bencher has of the Society is not one that is presumed to exist with other lawyers within the firm because it would be contrary to the Bencher's obligations as a director to share such knowledge with others.

16. The Committee concluded that the Benchers' policies should include a provision advising that Benchers must not act for clients suing a lawyer who is represented by the Lawyers' Insurance Fund because this would conflict with their role as a director of the Law Society.

17. The Committee understands that the Governance Committee is reviewing the Bencher policies at this time, and it will be communicating its views on this topic to that Committee for its consideration.

Commenting Publicly on Violations of the Rule of Law

18. Strategy 3-2 of the Law Society's current strategic plan is to "educate the public about the importance of the rules of law, the role of the Law Society and the role of lawyers."

19. It would be expected that the Law Society would take steps to address violations of the rule of law or lawyer independence should they occur in British Columbia and, of course, the Law Society has done so, such as initiating the action against the federal government on the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act.*

20. It is obvious that the Law Society is not in a position to prevent denigrations of the rule of law or attacks upon an independent bar in a foreign jurisdiction. However, at its September meeting the Committee discussed developing a way for the Law Society as a public interest organization to comment publicly on violations of the Rule of Law elsewhere when they come to our attention. This would serve two purposes.

21. First, it demonstrates in a public way the benefits of the system of justice under which British Columbians live by comparing it to systems where the rule of law is not robust, thereby emphasizing the strengths of our justice system. It can serve to remind the public that while there are problems with our justice system, it is much preferable to that of many, many other nations. Education is an important aspect of the Law Society's mandate of protecting the public interest.

22. Second, making such comments lends the Law Society's voice to those of other organizations doing likewise, which may have some effect on the interests in other nations or work to assist those trying to make positive changes to the system of justice within those other nations.

23. The Law Society of Upper Canada has for a number of years had a *Human Rights Violations Against Members of the Legal Profession and the Judiciary Monitoring Group*, whose mandate has been to review information that comes to its attention about human rights violations that target members of the profession and judiciary, determine if the matter is one that requires a response from the Law Society and, if so, to prepare a response for review and approval by Convocation. The Law Society of Upper Canada makes a number of public comments each year in accordance with this mandate, and in practice they get published quite quickly so as to remain current with the issue.

24. Other Law Societies engage much more publicly on this issue as well. Notably, the Law Society of New Zealand's Rule of Law Committee's mandate includes responding, as appropriate, to requests for advice and assistance from international legal associations on rule of law issues. It has from time to time commented on concerns about the actions of foreign countries' activities in connection with its legal profession or judiciary and has publically supported organizations in appropriate circumstances.

25. The Committee discussed how a similar approach might be developed by the Law Society in a manner consistent with Strategy 3-2. The Committee thought that the approach in Ontario might be too focused on human rights abuses. The Committee was mindful that the Law Society should not simply parrot the responses to various issues undertaken by Ontario.

26. The Committee has consulted with the Communications Department about how such an initiative might work and received valuable advice about the practicalities of discharging this sort of function.

27. After debate, the Committee reached a consensus that the issue was one within its general mandate and was worth pursuing as a way of discharging one of the Law Society's strategies. The Committee agreed to flesh the proposal out a bit further and to then present it to the Benchers for consideration as to whether to develop it fully. The Committee expects to present its recommendation early in the new year.

Independence and Self-Regulation Issues and the Work of the Legal Service Providers Task Force

28. Initially, the topic about "who should the law society regulate" (Strategic Initiative 1-1(c) on the Strategic Plan) was bifurcated between the Access to Legal Services Advisory Committee (which was to examine if there was a benefit to access to justice if the law society were to regulate other legal service providers) and the then Independence and Self-Governance Advisory Committee (which was to examine whether lawyer independence is put at risk if the law society were to regulate other legal service providers).

29. Because it was unwieldy to have two separate committees working at the same time on this strategic objective, a single task force (the Legal Service Providers Task Force) was created

instead. Its mandate was focused on public interest implications, access to justice considerations, and impact on Law Society operations.

30. The impact on lawyer independence has not been forgotten, however, and that issue has been on the agenda for consideration by the Rule of Law and Lawyer Independence Advisory Committee, the Legal Service Providers Task Force having concluded that the Committee is still best suited to analyse that issue.

31. Consequently, the Committee has kept the topic on its agenda. It spent some time at its September meeting discussing preliminary considerations on the effects on lawyer independence should non-lawyers be integrated into a single regulator, as well as the consequences of having multiple groups of authorised legal service providers not being integrated into a single regulator. It also gave some preliminary thought to whether a single regulatory body regulating groups of legal service providers other than lawyers would adversely affect principles such as solicitor-client privilege, and reviewed the state of affairs in Ontario, where the Law Society regulates lawyers and paralegals.

32. The Committee concluded, however, that at this point it is difficult to assess effects on lawyer independence without first reviewing the recommendations from the Legal Service Providers Task Force. The Committee expects that it will return to this topic after the recommendations have been published.

Alternate Business Structures

33. The Committee has given Alternate Business Structures some consideration over the course of the year, and in particular spent a good portion of its November meeting discussing the topic.

34. The predecessor of this Committee's Report on Alternate Business Structures, dated December 2012, was one of the first (if not the first) discussion papers on the subject in Canada – certainly from the position of a legal regulator. The report examined the concerns that ABSs created, as well as the alleged benefits. The concerns centred on their effect on core values of the legal profession, including lawyer independence. The benefits focused on improved access to legal services and "consumer" interests.

35. The Report concluded that the *form* of structure through which legal services are offered is less important than ensuring that the services that are offered by the entity providing them can be properly regulated. Consequently, the report concluded that the Law Society should not take a position against ABSs solely on the basis that they may result in structures owned by interests outside the legal profession that offered legal services, provided that (a) core values of the legal profession could be protected and (b) access to legal services could be improved through the new entities.

36. The Committee has continued to monitor ABSs and their development elsewhere. ABSs continue to develop in the United Kingdom, and most specifically in England and Wales. English reports continue to tout the benefits of ABSs for the development of the legal marketplace in the 21st century. England is the main source of information on ABSs. Australia, which also allows them, does not seem as prominent in their development. Perhaps they have reached a state of equilibrium in that country and have become an accepted part of the legal service landscape. The most prominent Australian connection with ABSs seems to be the Australian firm of Slater and Gordon, which has become an ABS in England and is working hard to expand its reach into the English market for legal services.

37. ABSs continue to be viewed with less enthusiasm, and are not yet permitted, in other European countries or the United States (with the limited exception of the District of Columbia). There has been some indication that Germany may be weakening in its opposition to ABSs.

38. The Law Society of Upper Canada has become interested in the topic and has created an Alternative Business Structures Working Group, which issued its first report in June, 2013. Its focus is to assess whether differing regulator models that focus on business structures and alternative means of legal services delivery could improve the delivery of legal services in Ontario while protecting clients and the public interest. LSUC held a symposium on ABSs in Toronto in early October, as well, to which it invited stakeholders to obtain their views on ABS regulation and law firm financing. The Working Group's aim is to present a report to Convocation in the spring of 2014, in which it will outline both short and long-term recommendations for action.

39. The topic of ABSs also formed a portion of the substantive part of the Benchers Retreat this year. Benchers heard presentations on what is happening in the legal services marketplace, and how alternate business structure forms might enhance or expand the provision of legal services and improve access to legal services.

40. The Committee's examination of ABSs indicates that there is widespread support in parts of the common law world for new approaches to regulation, including changing rules to permit new forms of legal service providers in an effort to support and improve access for people in the need of legal services. So far, there is unfortunately little if any evidence that these new forms of structures have achieved or will achieve this goal. Moreover, as far as the Committee is aware, there is no apparent demand within the business community in BC to create an opportunity for outside interests to create entities through which legal services could be offered. The Committee recognizes that this apparent lack of interest may not be a determinative factor, given that Law Society rules currently do not permit such entities.

41. The December 2012 Report outlines what sort of regulatory conditions should be examined if there were an appetite to create a regulatory regime that permitted ABSs. The Committee believes that these conditions remain appropriate, and that there is little if anything to add to

them at this time. The question therefore is whether it has yet become appropriate for the Law Society to move forward with the development of ABS accommodation proposals.

42. The Committee considered two academic articles that explore some of the economic rationales for alternate forms of legal services delivery and how they may improve access to legal services.[1] The Committee discussed whether it should recommend that the Law Society create a regulatory regime that *permitted* outside ownership of the new entities offering legal services, as this permissive regime might attract organizations to develop models to take advantage of the expanded legal service provider opportunities. It would create options that do not currently exist, with no guarantee, of course, that anyone would take up the opportunities offered. These determinations would be left to the marketplace to make decisions based on economic considerations.

43. The Committee concluded it was not yet in a position to make that recommendation. It has, however, asked staff to develop a framework around how to assess the future consideration of this issue in order that the Committee can, if it is to continue to be responsible for this topic, advance its assessment of the subject to make recommendations to the Benchers.

Monitoring

44. The Committee continues to monitor issues relating to the Rule of Law, lawyer independence and judicial independence.

General

45. In particular, the Committee has noted struggles and challenges with the Rule of Law as reported through the International Bar Association in Malawi, Hungary, and Georgia, noted particular concerns with respect to judicial independence in Sri Lanka and Argentina, with lawyer independence in Zimbabwe and Colombia, and has noted the struggles that lawyers have been facing in the upheavals in Turkey earlier in the year. Events that take place in China frequently come to the Committee's attention as well.

46. The Committee continues to monitor the World Justice Project Rule of Law Index, noting with some concern that Canada does not rank as highly on this index as one might perhaps expect, although the independence of the courts was commented on positively. However, delays in court processes were commented on in the report as an aspect of concern.

---

[1] Semple, Noel, *Access to Justice: Is Legal Services Regulation Blocking the Path?*
Iacobucci, Edward M. and Michael J. Trebilcock *An Economic Analysis of Alternative Business Structures for the Practice of Law.*

47. The Committee will continue to monitor events and issues world-wide, as it believes that understanding challenges elsewhere in the world is important to gaining a perspective on issues and challenges that may arise domestically. While it is obvious that the Law Society is not in a position to fix problems existing elsewhere, it is important to understand the events or history that have given rise to the systems in place in some of these countries, which ought to better inform us should concerns develop in British Columbia.

Review of Regulation of the Legal Profession (England)

48. The Committee has also placed on its monitoring agenda the current Review of Regulation of the Legal Provision taking place in England. This review is interesting, given that it follows so soon after the review of regulation undertaken by Sir David Clementi that led to the creation of the *Legal Services Act* (UK) in 2007.

49. There has been criticism that the resulting structure under the *Legal Services Act*, 2007 is no less confusing, and may in fact be more confusing, than what existed prior to Clementi's investigation.

50. In June of this year, the government in England announced that it was going to conduct another review of the regulation of legal services, saying that it wanted to reduce the burden on the "industry" by simplifying the regulatory framework, while ensuring that there is still appropriate oversight (ironically, the very issues that Clementi was supposed to be investigating in the early 2000s).

51. The Committee believes that it is worth monitoring the progress of this review. While some have already commented that the regulation of the legal profession in England is no longer a truly independent self regulatory model, what is being proposed by organizations such as the Legal Services Board is a model that would be even less independent and less self regulatory. Essentially, a structure such as the Legal Services Board could be responsible for regulation of the entire profession, and organizations such as the SRA and the Bar Standards Board might be abolished. Consequently, the regulator would be a body like the Legal Services Board which is appointed by government, the majority of whose members are not lawyers.

The Law
of Britis

2012 – 2014 Strategic Plan

Status Update as at December 2013

For: The Benchers
Date: December 6, 2013

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

DM426596

INTRODUCTION

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

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

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

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

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

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

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

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

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

Law Society Goals

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

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

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

Strategy 1–1

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

Initiative 1–1(a)

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

Status – December 2013

The Legal Profession Act has been amended to permit the regulation of law firms. A review has been prepared for the Executive Committee that outlines the rationale and anticipated benefits of law firm regulation. The Committee is being asked to confirm next steps after which work on the initiative will begin in earnest.

Initiative 1–1(b)

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

Status – December 2013

The Rule of Law and Lawyer Independence Advisory Committee has completed its review of this issue and has prepared a report with recommendations, which was considered by the Benchers in September. A Working Group will be created to examine the two options presented in the Report.

Initiative 1–1(c)

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

Status – December 2013

The Legal Service Provider Task Force was created to examine this topic. The Task Force prepared an interim report, which was presented to the Benchers in July. The Task Force's Final Report and recommendations are being considered by the Benchers at the December 2013 meeting.

Strategy 1–2

Identify and develop processes to ensure continued good governance.

Initiative 1–2(a)

Examine issues of governance of the Law Society generally including:

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

Status – December 2013

This initiative has been divided into separate tasks:

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

Strategy 1–3

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

Initiative 1–3(a)

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

Status – December 2013

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

Initiative 1–3(b)

Improve uptake of Lawyer Wellness Programs.

Status – December 2013

Development of this initiative has been undertaken in the Practice Standards Department. A special Working Group of the Practice Standards Committee has been addressing the topic, and a survey was undertaken. The Working Group's final report was presented to the Committee on December 5, 2013.

Strategy 1–4

Ensure that admission processes are appropriate and relevant.

Initiative 1–4(a)

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

Status – December 2013

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

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

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

Implementation of the standards is the focus of the second phase of the Federation project. At the Federation level, work is now underway on developing options for implementation of the admission competency standards, with the goal of achieving a high level of consistency and quality in national admission standards. The Committee should be in a position to move ahead with its work beginning in January 2014, including an active review of the Law Society admission program.

The Credentials Committee has recently recommended a response to the consultation from the Federation on the good character initiative.

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

Initiative 1–4(b)

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

Status – December 2013

On December 2, 2011, the Benchers approved the joint recommendation of the Lawyer Education Advisory Committee and the Access to Legal Services Advisory Committee that a Task Force be created to address the qualification standards or requirements necessary for the effective and competent provision of differing types of legal services. The Task Force was, amongst other things, to identify priorities for types of legal services that might be offered without the provider qualifying as a lawyer, and that would most benefit the public, identify priorities for types of legal services that might be offered by a lawyer with a restricted license, and that would most benefit the public, examine and analyse potential delivery models, and make recommendations to the Benchers. However, the creation of the Legal Services Provider Task Force overlapped some of the planned work for this Task Force. That Task Force will be presenting its report in December and will recommend establishing a framework for recognition of alternate legal service providers.

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

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

Strategy 2–1

Increase the availability of legal service providers.

Initiative 2–1(a)

Consider ways to improve the affordability of legal services:

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

Status – December 2013

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

At the July Benchers meeting the Benchers increased the level of funding provided to the Law Foundation to support pro bono organizations and introduced a new fund with the Law Foundation designed to fund discrete access to justice initiatives. The result effectively doubled the Law Society's financial support for pro bono and access to justice initiatives (not including funding for the REAL program).

Initiative 2–1(b)

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

Status – December 2013

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

Initiative 2–1(c)

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

Status – December 2013

An Aboriginal Mentoring Program has been developed and was presented to the Benchers for information in May 2013. It was formally launched on National Aboriginal Day, June 21 with a call for mentors. Matching of mentors with mentees took place in the fall, so the program is now well underway and will be assessed from time to time by the Equity and Diversity Committee.

Strategy 2–2

Improve access to justice in rural communities.

Initiative 2–2(a)

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

Status – December 2013

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

Initiative 2–2(b)

Develop ways to improve articling opportunities in rural communities.

Status – December 2013

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

Strategy 2–3

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

Initiative 2–3(a)

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

Status – December 2013

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

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

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

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

Strategy 3–1

Develop broader and more meaningful relationships with stakeholders.

Initiative 3–1(a)

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

Status – December 2013

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

Strategy 3–2

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

Initiative 3–2(a)

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

Status – December 2013

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

education was the Law Society's focus during Law Week and the first vice-president and senior staff were made available to the media over a week-long period to speak about the Law Society's role in promoting access to justice and protecting the public. Other proactive media relations efforts to discuss events or Law Society initiatives have also resulted in coverage of the Law Society and the opportunity to profile the work of the organization to hundreds of thousands of British Columbians. Content related to the Law Society have been added to Clicklaw, the primary online source of public information regarding the law in BC. The infrastructure to support the new Speakers' Bureau is complete and the bureau is being promoted on the Law Society website. The Law Society is also currently developing a series of educational videos and expects to have two completed in January with more to come over the course of 2014. The videos will provide basic information about the Law Society, including information about the rule of law, and will be available on the Law Society website and YouTube channel.

The Law Society of British Columbia

Memo

To: Benchers
From: Bill McIntosh
Date: December 6, 2013
Subject: Executive Support Protocol for Handling Bencher Mail

---

From time to time mail is delivered to Benchers in care of the Law Society. Such mail may initiate or otherwise relate to matter raising legal issues for the Law Society, may be personal and time-sensitive, or may be personal, routine correspondence. Mail initiating legal proceedings involving the Law Society (and potentially raising directors and officers insurance coverage issues), may be marked "PERSONAL AND CONFIDENTIAL."

Historically, mail addressed to a Bencher and delivered to the Law Society has been placed in that Bencher's tote box in the 9th floor mail room. Sometimes a significant period of time may pass between a Bencher's attendances to the Law Society building.

It has become apparent that a more formal and reliable procedure for the Law Society's handling of Bencher mail is needed. With input from Deb Armour, Su Forbes, Adam Whitcombe and Bernice Chong, Executive Support has developed the following protocol for handling Bencher mail delivered to the Law Society.

Executive Support Protocol for Handling Bencher Mail

1. All mail addressed to Benchers and delivered to the Law Society should be relayed to an Executive Support staff member for handling. If it is demonstrably apparent from the appearance of the unopened envelope or package that it was sent to the addressee in her or his personal capacity and not as a Bencher of the Law Society, Paragraph 2 (below) applies.

2. Bencher mail that is demonstrably personal and not apparently time-sensitive will be placed unopened by Executive Support in the appropriate Bencher's tote box in the 9th floor Mail Room. If such mail is apparently time-sensitive, Executive Support will contact the Bencher for forwarding instructions.

3. If Paragraph 2 (above) does not apply, Executive Support will open the envelope or package and examine its contents for connection to a legal matter (whether potential, past or current,

and including matters relating to complaints, unauthorized practice, interventions, claims, potential or threatened claims, or suits against a lawyer, the Law Society, Law Society staff or a Bencher).

4. Executive Support will notify the Bencher in question that mail addressed to that Bencher has been received, opened and examined by the Law Society, apparently relates to a legal matter, and is being reviewed by the Chief Legal Officer for appropriate handling Executive Support will immediately forward such Bencher mail to the Chief Legal Officer for review, with a cover note confirming that the Bencher has been notified accordingly, noting the date and time of forwarding, and identifying the Executive Support staff member handling the matter.

5. Executive Support staff will record their handling of Bencher mail in a log that confirms the identity of the ES staff member, date and time of receipt, identity of the Bencher to whom the mail is addressed, action taken and the date and time of that action, and notification of the Bencher.

President's Report to the Law Societies

November 2013

From: **Gérald R. Tremblay, C.M., O.Q., Q.C., Ad.E, President**
Federation of Law Societies of Canada

To: **All Law Societies**

Date: **November 6, 2013**

INTRODUCTION

1. On October 17, 2013, I presided over my last Council meeting as President of the Federation. This is my report of that meeting.

2. On November 15, 2013, my duties will formally come to an end when I pass the proverbial "baton" to my very able successor, Bâtonnier Marie-Claude Bélanger-Richard, Q.C. of New Brunswick. It has been a privilege to serve the Federation, its members, and indeed all of Canada's legal profession in this capacity over the last year. I am immensely proud of what we have accomplished together. Looking forward, I have no doubt that the Federation will move from strength to strength as it plays its crucial leadership role among national stakeholders in Canada's justice system.

3. The Federation proves its worth every day. Whether as facilitator of national standards in the areas of legal ethics, admissions and discipline, as advocate for the preservation and advancement of core values such as the independence of the bar, or as the driving force behind national initiatives such as CanLII and top-drawer CLE programs in criminal and family law, the Federation is sustained by the support of all of its member law societies for whom the public interest is paramount.

4. In St. John's, Newfoundland and Labrador, just two weeks ago, the best of law society leadership was on display. The law societies came together in two very important ways.

5. First, they participated in a stimulating two-day conference that reflected on whether it is time to re-examine the foundations of how legal regulation is carried out in Canada. I believe there was a great deal of open-minded discussion that will provoke even more reflection about how we can discharge our duties in ways that increase public confidence in what law societies do. If nothing else, it has become apparent that legal regulation needs to adapt to our times and evolve by taking into account the great changes that are afoot in society generally and in our profession in particular. And no reflection of this sort can usefully occur without attention to improving access to justice. Separate Federation reports will provide additional detail about this work.

6. On October 17th, the provincial law societies formally signed a new national mobility agreement that bridges both of Canada's two legal traditions, the common law and the civil law. I count the signing of this agreement among my proudest moments as President.

7. On that day we formally declared what has been known for so long by so many in the profession - that there are more similarities in legal training and in daily practice in these two legal traditions than there are differences. That in acknowledging this fact we agree that crossing borders, even the ones that separate Quebec from its neighbours, ought to be as easy and as seamless as moving between Alberta and Saskatchewan, or Nova Scotia and New Brunswick. That in creating this type of mobility regime, lawyers can more easily choose where to best serve their clients, with the clients they serve being just as well protected as they would be if their lawyer remained licensed in his or her original jurisdiction. All of the eleven provincial law societies have agreed to this new mobility regime, and over the next few months, this arrangement is expected to be agreed by all law societies to apply to the three northern territories as well.

COUNCIL MEETING

8. The Council of the Federation meets no less than four times each year – twice in conjunction with major national conferences that bring together the top leadership of the law societies including Presidents, Vice Presidents and senior staff. If necessary, it also meets by teleconference.

Strategic Planning and Priorities

9. The Federation Council, in consultation with member law societies, sets the strategic direction and priorities for the Federation. In 2012, the Council approved a Strategic Plan for 2012-2015. It is reviewed annually as part of a priority setting exercise. At this meeting, the Council agreed that the Federation should continue to focus its energies on the national standards initiatives that are underway, as well as to review how best for the law societies and the Federation to address the challenge of improving access to legal services.

National Standards Initiatives – Core Projects

10. **National Admission Standards Project**. The first phase of the project, the adoption of a National Competency Profile for admission to the legal profession, was completed last year and adopted by all law societies. We are now in the process of examining how a consistent approach to implementation might be achieved. Elected leaders and staff at all law societies are engaged in this process with the objective of arriving at a consensus over the next year. At the same time, consultations are underway with respect to a good character standard.

11. **National Discipline Standards Project**. A pilot project involving thirteen of Canada's law societies began in April 2012 to test standards in the areas of timeliness, fairness, transparency, public participation and accessibility in matters dealing with complaints about and discipline for members of the legal profession. This coming spring, the pilot project will be complete and law societies will be engaged in a process of arriving at a consensus on what the standards should be going forward, as well as how to make sure they are working to meet those standards.

12. **Model Code of Professional Conduct**. The Standing Committee on the Model Code of Professional Conduct continues to work through a number of issues it has identified as priorities. A central feature of how it accomplishes its task is through a thorough consultative process with the law societies, key stakeholders and legal academics. Current consultations include matters relating to aspects of the rule on conflicts of interest, as well as draft rules addressing official language rights.

Access to Legal Services

13. The Federation has identified improving access to legal services as a continuing priority for this year. The Federation plays a coordinating role among law societies and serves as a vehicle for exchanging information. It is also a key stakeholder in the Action Committee on Access to Justice in Civil and Family Matters, led by Justice Thomas Cromwell of the Supreme Court. The Action Committee has issued its final report. At this meeting, the Federation Council amended the terms of reference of the Standing Committee on Access to Legal Services to specifically consider, in consultation with Canada's law societies, any reports issued by the Action Committee and other justice system stakeholders that deal with access to legal services for the purpose of determining whether and in what manner the Federation and the law societies should address specific recommendations arising from such reports.

National Mobility

14. The signature of the new National Mobility Agreement is referenced above. In order for the new regime to be extended to the northern territories, a revision to the Territorial Mobility Agreement is required in order to import the new provisions of the NMA that deal with permanent mobility between members of the Barreau du Québec and those in common law jurisdictions. The Federation Council approved a draft revision of the TMA for this purpose and referred it to the law societies for consideration and eventual approval.

Core Operations

15. **National Committee on Accreditation**. The NCA assesses the international legal credentials of a growing number of applicants who wish to practice law in Canada. There were 1,316 applications this year, an increase of 5% over last year's total. The NCA administered over 5,000 challenge examinations, and 730 Certificates of Qualification were issued to applicants wishing to apply to Canadian law society bar admission programs.

16. **Law School Common Law Program Approvals**. The Federation's Common Law Program Approval Committee has the mandate to monitor compliance by Canada's law schools with the national requirement for law school programs which was adopted by Canada's law societies in 2011. The national requirement will need to be met for individuals who graduate from Canadian law schools in 2015. The Committee is making excellent progress in its dealings with the law schools in this regard. The Committee also verifies whether any proposed law school program offered by a Canadian university meets the national requirement. Trinity Western University has applied and the Committee is reviewing the application. In April, the Federation Council struck a Special Advisory Committee on TWU to look at issues that fall outside the Approval Committee's mandate. The Federation Council has asked that the reports of both of these committees be released publicly at the same time, once the work has been completed.

Other Projects and Initiatives

17. **CanLII**. The Council heard from the President and CEO of CanLII, Colin Lachance. CanLII is one of the Federation's and the law societies' great success stories. This year the free, online search engine for legal information unveiled a new user interface and embarked on a number of projects to grow its database of case law.

18. **Continuing Legal Education Programs**. Support continues to be provided by the Federation for two top-end CLE programs in criminal law and in family law. The National Criminal Law Program reached a milestone with its 40th edition this past summer in Ottawa with a record 691 attendees. By all accounts, the program was a great success. Next year, it will be held in Halifax. The National Family Law Program is presented every two years. In 2014 it will be held in Whistler, B.C.

Law Society and External Relations, Administration and Leadership

19. **Outreach**. An important part of my responsibilities has been to be the Federation's ambassador, both within Canada and beyond its borders, to explain the work of our organization and its focus on the public interest. I reported to Council about my many visits to law societies throughout the year, whether for meetings with Benchers or other events such as openings of the legal year. I have visited and spoken with the leadership of eleven of the Federation's member law societies at least once.

20. I have also worked to maintain strong relationships with key partners and stakeholders in Canada's justice system through meetings with the Canadian Bar Association, the Department of Justice, the Public Prosecution Service of Canada, as well as the Chief Justice of the Supreme Court of Canada.

21. Internationally, I participated in two meetings of the International Bar Association, attended the annual meeting of the American Bar Association and led a panel on the future of the legal profession for the Union internationale des avocats. The Federation was also well-represented at a meeting of International Legal Regulators in the summer. The Federation is very highly regarded internationally as a defender of core values including the independence of the bar and solicitor-client provilege, as a result of its leadership in how it and the law societies have dealt with anti-money laundering legislation before the Courts.

22. **Administration**. The Federation operated within the approved budget for 2012-2013 and finished the year with an unqualified audit. Council approved the Federation's budget for 2014-2015 which is based on an annual law society levy of $25 per FTE, unchanged for the third consecutive year.

23. **Leadership.** The Council elected new executive officers who begin their one-year terms on November 15, 2013. Our new President will be Marie-Claude Bélanger-Richard, Q.C. Marie-Claude is currently Vice President of the Federation and is a former Bâtonnier of the Law Society of New Brunswick. Thomas Conway, the current Treasurer of the Law Society of Upper Canada, continues for another year as Vice President and President-elect. In accordance with our regional rotation policy, the next Vice President to join the Executive ladder was selected from among the Council members who represent the Western law societies. For 2013-2014, the new Vice President will be Jeff Hirsch, the representative of the Law Society of Manitoba. Jeff has been deeply involved in the work of the Federation for several years and is a Past-President of the Law Society of Manitoba.

CONCLUSION

24. I wish to thank the Council of the Federation and indeed all of Canada's law societies for the trust they have placed in me this past year. It is been an honour to serve the interests of the Canadian public in this way and I look forward to the coming year as I assume my new role as Federation Past-President.

access probono | *Increasing Access to Justice in BC*

October 30, 2013

FYI → Benchers

Thank, Tim, for LSBC's ongoing and generous support.
JAMIE

Timothy E. McGee
Law Society of British Columbia
845 Cambie Street
Vancouver, BC V6B 4Z9

Tim

Dear Mr. McGee,

On behalf of the directors and staff at Access Pro Bono (APB), I extend a heartfelt thank you to the Law Society of British Columbia for its continued sponsorship of our Pro Bono Going Public legal advice-a-thon. The annual legal service, awareness and fundraising event would not be possible without the generous financial support of organizations like yours.

This year, over the course of five days in September, a record breaking 110 volunteer lawyers provided free legal advice and assistance to 232 pre-booked and walk-up clients. As always, our clients were overwhelmingly appreciative of the opportunity to receive free legal advice at a time and place where they did not necessarily expect it.

Pro Bono Going Public 2013 received extensive publicity in several media outlets, including CBC Radio, CTV, CKNW Radio, the Globe and Mail, and several local radio stations and newspapers. We feel that we were able to raise considerable awareness in each host city concerning the widespread availability of our free legal clinics and services.

Last and far from least, participating lawyers raised $40,000 in support of our direct pro bono services. Together with $17,000 in corporate sponsorships (including yours), the event raised $57,000 for the maintenance and expansion of our vital pro bono programs as we forge ahead into 2014.

Please visit our website at www.accessprobono.ca for more information on our pro bono programs, and our event website at www.advice-a-thon.ca/sponsors.php for acknowledgment of your support.

Once again, we thank you for your continued support and we look forward to the possibility of partnering with you again for Pro Bono Going Public 2014.

Sincerely,

Jamie Maclaren
Executive Director

300–845 Cambie Street
Vancouver, BC V6B 4Z9
T 604-482-3195
F 604-893-8934
ACCESSPROBONO.CA

ULCC | CHLC

UNIFORM LAW CONFERENCE OF CANADA
CONFÉRENCE POUR L'HARMONISATION DES LOIS AU CANADA

Wednesday October 30, 2013

Ms. Nancy Merrill
Bencher
Law Society of British Columbia
c/o Merrill, Long & Co
201 Milton Street
Nanaimo BC V9R 2K5

Dear Ms Merrill,

On behalf of the Executive Committee of the Uniform Law Conference of Canada and our delegates, I would like to take this opportunity to thank you for taking time out of your busy schedule to attend the welcome reception for our Annual Meeting on August 11th at the Maritime Museum and receiving our delegates so warmly.

Your kind words of welcome to our delegates and recognition of the ongoing work of the ULCC were much appreciated.

British Columbia, and the organizing committee in particular, have every right to be proud of the successful annual meeting they hosted. So much was accomplished in a short period of time. This can be attributed to the care that was taken to provide comfortable and spacious meeting rooms and a secretariat that was second to none, as well as wonderful social activities. The feedback from our delegates in both the Criminal and Civil Sections was very positive.

The strong support that we enjoy from British Columbia, both financial and in human resources, allows us to continue to undertake research projects and provide a national forum for addressing important and timely legal issues in both the civil and criminal areas. We simply cannot do our work without this support!

Once again, on behalf of the Executive Committee of the ULCC, I thank you for the important role you played in the overall success of our 2013 annual meeting.

Best,

Marie Bordeleau

Marie Bordeleau
Executive Director

The Law Society of British Columbia

Memo

To: **Benchers**

From: **The Complainants' Review Committee:**

- Haydn Acheson, Chair, Appointed Bencher
- Ben Meisner, Vice-Chair, Appointed Bencher
- Gregory Petrisor, Bencher
- Lee Ongman, Bencher
- Pinder Cheema, QC, Non-Bencher Lawyer
- Johanne Blenkin, Non-Bencher Lawyer

Date: **November 19, 2013**

Subject: **Activity Report – 2013 to date**

BACKGROUND

The Complainants' Review Committee ("CRC") was established in late 1988 under Rule 103 of the *Law Society Rules* (now Rule 3-8). The Benchers' Meeting Minutes of December 4 and 5, 1987 indicate that the purpose of the CRC was "to give unhappy complainants a procedure to have their complaints reviewed by an impartial body". The CRC carries out a review function to determine whether complaints have been closed at the staff level when they should not have been.

The CRC initially consisted of three members: an Appointed Bencher (Chair), a Bencher and a non-Bencher lawyer. Due to the increasing demand for reviews by the CRC over the years, the CRC was increased to six members in 1995. The Rules provide that at least one member of the CRC must be an appointed Bencher. Traditionally, the Chair and Vice Chair have been appointed Benchers, as is the case at present.

Any complainant may apply to the CRC for a review if the file was closed under Rule 3-6 of the *Law Society Rules* after investigation of a complaint. When a file is closed under Rule 3-6, every closing letter sent to a complainant advises of their right to request a review by the CRC. If a file is closed under Rule 3-5 of the *Law Society Rules* the CRC does not have the jurisdiction to review it.

The role of the CRC is to determine whether an adequate investigation was conducted and whether the decision of the staff lawyer was appropriate in light of the information before them. The *Law Society Rules* require that the CRC be provided a copy of the entire file. Unlike other Committees, the CRC has the opportunity to see some of the 600-700 files

that are closed each year at the staff level, and to obtain an insight into the types of complaints that, while important to the complainants, do not give rise to further Law Society action.

During 2013 CRC orientation, the Committee was provided information about the Practice Standards Committee and the Discipline Committee, to ensure they fully understood the mandates of those Committees.

The procedure governing the CRC is in Rule 3-9 of the *Law Society Rules*. After review of the file the CRC can:

- make inquiries of the complainant, the lawyer or any other person (The purpose of an inquiry is to seek clarification on an issue)
- confirm the staff decision to take no further action;
- refer the complaint to the Practice Standards Committee; or
- refer the file to the Discipline Committee, with or without recommendation.

When the CRC process has concluded, the Chair sends a letter to the complainant and the lawyer advising of the decision. If the CRC decides to confirm the staff decision they advise the complainant that if they have remaining concerns about the Law Society's investigation of their complaint they may contact the Office of the Ombudsperson. The Ombudsperson is empowered by legislation to investigate complaints about regulatory bodies.

PROGRESS

In previous years the CRC held monthly reviews with agendas containing roughly 8-10 items. At the end of 2010 the CRC had a "backlog" of 49 files pending review, so that it was taking approximately 6 months for a review to occur. In 2011, the CRC eliminated the backlog of files by holding two meetings per month; to maintain the fairness and integrity of a file, the CRC set a goal to review files within a 2-3 month timeframe. The CRC cleared the backlog from 2010 in 2011 and advanced into 2012 having achieved their goal, without any files in the backlog. In 2012, the CRC decided to conduct their meetings reactively as file review requests were received as opposed to set meeting dates. Therefore if a large number of requests were received in any given month, two meetings were scheduled for the next month, rather than one. The CRC felt it was important to maintain the desired timeframe from the year before and successfully reviewed files within the timeframe. In 2013 the same standards applied as in 2012. Below is a snapshot of the

CRC statistics as of November from 2010, 2011, 2012 and 2013. The CRC has 2 panel meetings remaining for 2013 with 13 files scheduled for review before the end of the year. By year end the CRC will have reviewed 73 files. There are 3 remaining CRC requests that have recently been submitted that will be reviewed in 2014.

STATISTICS

2010			2011	
87	Total Files Reviewed		99	Total Files Reviewed
79	No Further Action		90	No Further Action
5	Additional Information Requested[1]		4	Additional Information Requested[1]
0	DC Referrals		4	DC Referrals
2	PSC Referrals		5	PSC Referrals
49	Files going into 2011		0	Files going into 2012

2012			2013	
58	Total Files Reviewed		60	Total Files Reviewed
55	No Further Action		58	No Further Action
2	Additional Information Requested[1]		1	Additional Information Requested[2]
2	DC Referrals		2	DC Referrals
0	PSC Referrals		0	PSC Referrals
0	Files going into 2013		3	Files going into 2014

1 After receiving and reviewing the additional information, the CRC ordered that no further action be taken.

2 After receiving and reviewing the additional information, the CRC referred the matter to the Discipline Committee. The matter will be reviewed by the Discipline Committee in 2014.