The Law Society of British Columbia

Agenda

Benchers

Date: Friday, January 24, 2014

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

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.***

OATH OF OFFICE:

The Honourable Robert J. Bauman, Chief Justice of British Columbia, will administer an oath of office (in the form set out in Rule 1-1.2) to President Jan Lindsay, QC, First Vice-President Ken Walker, QC and Second Vice-President David Crossin, QC (individually) and all of the Benchers elected or appointed for the term commencing January 1, 2014 (en masse).

CONSENT AGENDA [Subject to Executive Committee Approval]:

The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Executive Support (Bill McIntosh) prior to the meeting.

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1	Administer Oaths of Office	5	The Hon. Robert J. Bauman, Chief Justice of BC		
2	Consent Agenda • Minutes of December 6, 2013 meeting (regular session) • Minutes of December 6, 2013 meeting (*in camera* session)	1	President	Tab 2.1 Tab 2.2	Approval Approval

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ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
	• Rules 2-69.1 and 4-38: Publication of hearing decisions • Rule 10-1: Service and delivery of documents			Tab 2.3 Tab 2.4	Approval Approval
DISCUSSION/DECISION					
3	2012-2014 Strategic Plan Annual Review	15	President/CEO		Discussion
4	Equity and Diversity Advisory Committee: Enhancing Diversity in the Judiciary	15	Maria Morellato, QC	Tab 4	Discussion
GUEST PRESENTATIONS					
5	2013 Employee Survey Results	10	Ryan Williams		Presentation
REPORTS					
6	Federation of Law Societies Update	10	Gavin Hume, QC		Briefing
7	President's Report	15	President	Oral report	Briefing
8	CEO's Report	15	CEO	Tab 8	Briefing
9	Report on Outstanding Hearing & Review Reports	4	President	(*To be circulated at the meeting*)	Briefing

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FOR INFORMATION					
10	Briefing on Process re: TWU Faculty of Law Matter	30	President/CEO Gavin Hume, QC	Tab 10	Briefing/ Discussion
IN CAMERA					
11	Report on Law Society Litigation Outstanding at December 31, 2013	5	Chief Legal Officer	Tab 11	Briefing
12	Other business	5	President/CEO		Discussion/ Decision
13	Bencher concerns	5	Benchers		Discussion/ Decision

The Law Society of British Columbia

Minutes

Benchers

Date: Friday, December 06, 2013

Present:

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

Excused: Not Applicable

Staff Present:

Tim McGee, QC
Deborah Armour
Robyn Crisanti
Su Forbes, QC
Ben Hadaway
Andrea Hilland
Michael Lucas
Bill McIntosh
Jeanette McPhee
Doug Munro
Lesley Small
Alan Treleaven
Adam Whitcombe

Guests:	Hon. Suzanne Anton, QC	Attorney General and Minister of Justice
	Godfrey Archbold	CEO, Land Title and Survey Authority of British Columbia
	Joseph Arvay, QC	2014 New Bencher
	Dom Bautista	Executive Director, Law Courts Center
	Mark Benton, QC	Executive Director, Legal Services Society
	Johanne Blenkin	Chief Executive Officer, Courthouse Libraries BC
	Jay Chalke, QC	Assistant Deputy Minister, Justice Services Branch
	Pinder Cheema, QC	2014 New Bencher
	Dean Crawford	President, Canadian Bar Association, BC Branch
	Jeevyn Dhaliwal	2014 New Bencher
	John Eastwood	Past-President, Society of Notaries Public of BC
	Craig Ferris	2014 New Bencher
	W. Martin Finch, QC	2014 New Bencher
	Ron Friesen	CEO, Continuing Legal Education Society of BC
	Dennis Hori	President, Trial Lawyers Association
	Gavin Hume, QC	Law Society Member of the Council of the Federation of Law Societies of Canada
	Derek LaCroix, QC	Executive Director, Lawyers Assistance Program
	Dean P.J. Lawton	2014 New Bencher
	Bruce LeRose, QC	Chair, Legal Service Providers Task Force
	Jamie Maclaren	2014 New Bencher
	Carmen Marolla	Vice-President, Sponsorship, BC Paralegal Association
	Sharon Matthews, QC	2014 New Bencher
	Yves Moisan	President, BC Paralegal Association
	Caroline Nevin	Executive Director, Canadian Bar Association, BC Branch
	Anne Pappas	J.D, Interim Dean of Law, Thompson Rivers University
	MaryAnn Reinhardt	Secretary, BC Paralegal Association
	Elizabeth Rowbotham	2014 New Bencher
	Jeremy Schmidt	Executive Coordinator to the Dean, University of British Columbia
	Alex Shorten	Vice President, Canadian Bar Association, BC Branch
	Kerry Simmons	Past-President, Canadian Bar Association, BC Branch
	Rose Singh	Vice-President, BC Paralegal Association
	Carla Terzanriol	CEO, Trial Lawyers Association
	A. Cameron Ward	2014 New Bencher
	Prof. Jeremy Webber	Dean of Law, University of Victoria

CONSENT AGENDA

1. Minutes

a. Minutes

The minutes of the meeting held on November 7, 2013 were approved as circulated.

The *in camera* minutes of the meeting held on November 7, 2013 were approved as circulated.

b. Resolutions

The following resolution was passed unanimously and by consent.

- Law Society Appointment to the Legal Services Society Board of Directors

  BE IT RESOLVED that upon consultation with the CBABC Executive Committee, Alison MacPhail be appointed to the Board of Directors of the Legal Services Society for a three-year term effective January 1, 2014.

- Law Society Nomination to the LTSA Board of Directors

  BE IT RESOLVED that Geoff Plant, QC be named as the Law Society's sole nominee to the Land Title and Survey Authority Board of Directors, for appointment as an LTSA director for a three-year term commencing April 1, 2014.

- Amendments to Rules 2-49, 2-49.3 and Others: Implementing the National Mobility Agreement

  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.

- 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*

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.

REGULAR AGENDA – for Discussion and Decision

2. Final Report and Recommendations of the Legal Service Providers Task Force

Bruce LeRose, QC addressed the Benchers as Chair of the Legal Service Providers Task Force. He introduced task force members Godfrey Archbold (CEO, Land Title and Survey Authority of BC), Satwinder Bains (Appointed Bencher), John Eastwood (Past-President, BC Society of Notaries Public), Carmen Marolla (Vice-President, BC Paralegal Association, Kerry Simmons, QC (Past-President, Canadian Bar Association, BC Branch) and Vice-Chair Ken Walker, QC (Kamloops Bencher and Second Vice-President of the Law Society). Mr. LeRose thanked the following Law Society staff for their invaluable assistance and support throughout the past year Michael Lucas (Manager, Policy & Legal Services), Doug Munro (Staff Lawyer), Anna Lin (Legal Assistant), Tim McGee (Chief Executive Officer) and Adam Whitcombe (Chief Information & Planning Officer).

Mr. LeRose outlined the research, consultation and public outreach conducted by the task force over the past year. He referred to paragraph 9 of task force's report to the Benchers (page 160 of the meeting materials) for a summary of the task force's conclusions:

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.

Mr. LeRose referred to paragraph 10 of the report (page 160-161 of the meeting materials) for the Legal Service Providers Task Force's three recommendations:

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.

Mr. LeRose confirmed the task force's views that if approved:

- Recommendation 1 should be pursued as a matter of negotiation between leaders and senior staff of the Law Society of BC and the BC Society of Notaries Public, rather than as the subject of another task force

- Recommendations 2 and 3 both raise complex and sensitive issues warranting further work, analysis, collaboration and consultation by the Law Society with other interested parties

Mr. LeRose commented that much of what the task force is recommending is already being done in other jurisdictions. He referred to the registration and regulation of Ontario's paralegals by the

Law Society of Upper Canada, and the creation of Washington State's "limited licence legal practitioners", under the authority of the Washington State Supreme Court. Mr. LeRose noted the task force's hope that a "made in BC" approach can be found for executing its three recommendations.

BC Paralegal Association (BCPA) Vice President Carmen Marolla confirmed that that BCPA has been pleased to participate in the Legal Service Providers Task Force, and supports the task force's report and recommendations. Ms. Marolla credited the excellent work done by Staff Lawyers Michael Lucas and Doug Munro (and by Law Society paralegals) in supporting the task force.

John Eastwood, Past President of the BC Society of Notaries Public, thanked Mr. LeRose and Mr. Vertlieb for the opportunity to serve on the task force and confirmed his view that it would be in the best interest of the public for the Benchers to adopt the task force's recommendations. Regarding the recommendation to merge the regulatory operations of the Law Society of BC and the BC Society of Notaries Public (Recommendation 1), Mr. Eastwood urged prompt commencement of merger discussions (if the recommendation is adopted), and he noted the importance of demonstrating to BC Notaries that their distinction and autonomy would be maintained, and that they would have fair and balanced representation.

Godfrey Archbold, Chief Executive Officer of the Land Title and Survey Authority of BC, expressed his appreciation for the opportunity to serve on the task force. He commented that the task force designed its recommendations to be guided by three implementation principles:

- no harm to the public interest
- no impairment of access to justice
- a collaborative approach to the building of support and a regulatory regime

Mr. Walker moved (seconded by Ms. Bains) the adoption of the Legal Service Providers Task Force's 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.

The following points were raised in the ensuing discussion:

- it will be important to avoid delay and a partisan approach in any merger discussions or negotiations by the Law Society, and to keep the needs and perspectives of BC notaries in mind
- a "big tent" approach is not new to the Law Society and is needed in this instance
- early and effective consultation with the legal profession will be important
- Recommendation 3 is as important as Recommendations 1 and 2, and should more than aspirational
- many challenges will confront the implementation of the task force's recommendations, with no assurance of success
- addressing the need to enhance access to legal services should be kept in mind as the paramount purpose of all three recommendations and their implementation

The motion was carried unanimously.

The Honourable Suzanne Anton, QC congratulated the Legal Service Providers Task Force and Benchers for taking a historic step forward.

Mr. Vertlieb thanked the task force members and the Benchers, and expressed the Law Society's appreciation for the encouragement and interest shown by the Ministry of Justice and Attorney General throughout the task force's work.

3. Proposal for Improving Access to Justice Funding in BC: Pro Bono Cost Awards and Cy Pres Awards

Bill Maclagan, QC briefed the Benchers as Chair of the Access to Legal Services Advisory Committee. Mr. Maclagan noted that the Committee has two suggestions for improving access to justice funding in BC, as outlined in the Committee's memorandum at page 198 of the meeting materials: pursuing legislative amendments to bring pro bono cost orders into the law of British Columbia, and to permit the courts to send cy pres awards in class proceedings to the Law Foundation, to be applied to supporting access to justice in BC. Mr. Maclagan referred to a letter dated March 1, 2011 from the then-President of the Law Society, Gavin Hume, QC, to the Honourable Barry Penner, QC, then-Attorney General of BC (Appendix 1 to these minutes), for a series of suggestions for activating revenue streams available to the provincial government for use in addressing the access to justice needs of British Columbians.

Mr. Maclagan moved (seconded by Mr. Mossop) the adoption of two resolutions (at page 199 of the meeting materials):

> *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.

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.

The motion was carried unanimously.

4. Governance Committee Year-end Report and Recommendations

Ms. Lindsay briefed the Benchers as Vice-Chair of the Governance Committee. She outlined the work done by the Committee over the past year to address governance issues identified in the report of the Governance Review Task Force that was approved by the Benchers in December 2012. Ms. Lindsay referred to page 209 of the meeting materials for a summary of 16 Governance Committee recommendations to the Benchers (the Recommendations).

The Benchers approved the Recommendations, subject to the addition of the words "continue to" to Recommendation 8, as follows:

*Committee, task force and working group appointments should **continue to** be based on skills and experience and not on title/position.*

Ms. Lindsay commented on the valuable contributions made by the members of the 2013 Governance Committee, and by Mr. McGee, Mr. McIntosh and Mr. Whitcombe in supporting and advancing the work of the Committee – particularly noting Mr. Whitcombe's leading role in the drafting of the Committee's interim and year-end reports.

5. Election of an Appointed Bencher to the 2014 Executive Committee

Mr. Kuiack confirmed that Haydn Acheson has been selected as the appointed Benchers' representative on the 2014 Executive Committee.

6. Law Society Feedback to Federation Consultation Report: National Suitability to Practise Standard

Mr. Petrisor briefed the Benchers as Chair of the Credentials Committee regarding the Federation of Law Societies' National Suitability to Practise Consultation Report. He reported that the Federation Council has invited its member societies to provide feedback on the approach to assessing the good character/suitability to practise of applicants for admission to the legal profession outlined in the report. Mr. Petrisor noted that the last issue of the Benchers' Bulletin included an article encouraging all BC lawyers to provide their written comments on any aspect of the Consultation Report by October 30, 2013; no responses were forthcoming.

The Credentials Committee has reviewed and discussed the Consultation Report, and has prepared draft comments thereto (page 242 of the meeting materials). Mr. Petrisor outlined the Committee's concerns with the report, particularly regarding:

- the absence of any criteria by which "suitability to practise" might be assessed
- the shifting of the onus to law societies to prove the basis for holding a credentials hearing to determine an applicant's suitability to practise law
- the need for broader scope in questions relating to an applicant's civil/criminal investigations history

In the ensuing discussion some Benchers questioned the Credentials Committee's position on onus; Mr. Vertlieb outlined the Executive Committee's view that BC should take an approach similar to Ontario's in relation to Paragraph 21 of the Consultation Report (add "and integrity" following "honesty;" and Mr. Hume noted that the member law societies will ultimately determine the appropriate elements and criteria of "good character" and "suitability to practise."

The Benchers agreed that the Law Society's response to the Federation's Suitability to Practise Standard Consultation Report must be determined by the Benchers as a whole, and that this matter should be reviewed by the Executive Committee before being returned to the Benchers for further consideration.

Mr. McGee commented that it will be helpful to the Federation for all member societies, including the Law Society of BC, to articulate their feedback to the Consultation Report as clearly and fully as possible.

GUEST PRESENTATIONS

7. BC's Legal Profession: Now and Then

Adam Whitcombe, Chief Information and Planning Officer, delivered a presentation on the demographics of BC's legal profession (Appendix 2 to these minutes).

Following Mr. Whitcombe's presentation a number of Benchers asked questions regarding the availability of additional information about the economics of the legal profession. Mr. Whitcombe noted that the leading text on the subject is *The Legal Profession in Canada*, published in 1993, and that more work needs to be done.

Mr. McGee confirmed that the Law Society's current Strategic Plan includes a commitment to increase the Society's understanding of the market for legal services in BC. Mr. McGee noted that accurate, current data is essential to good planning, and encouraged the 2014 Benchers to consider understanding the economics of the legal profession as an aspect of effective regulation.

8. University of Victoria Faculty of Law Update

Mr. Vertlieb welcomed Professor Jeremy Webber, Dean of Law at the University of Victoria. Professor Webber delivered a presentation focusing on the Faculty of Law commitment to experiential learning (Professor Webber's PowerPoint presentation is attached as Appendix 3 to these minutes). Professor Webber outlined the elements of four experiential programs: the Law Centre; the Environmental Law Centre, the Business Law Clinic and the Co-op program. Professor Webber stressed the funding challenges of experiential learning. He expressed gratitude to Bull Housser and Tupper LLP, the Law Foundation of BC, the Tula Foundation, the Ministry of Justice and the Victoria Bar Association for their financial support.

REPORTS

9. Year-end Reports from the 2013 Advisory Committees

a. Report from the Access to Legal Services Advisory Committee

Mr. Maclagan briefed the Benchers as Committee Chair on the work of the Access to Legal Services Advisory Committee in 2013, outlining that Committee's recommendations for 2014 and referring to the report at page 265 for details. Discussion followed.

b. Report from the Lawyer Education Advisory Committee

Ms. Merrill briefed the Benchers as Committee Chair on the work of the Lawyer Education Advisory Committee in 2013, outlining that Committee's recommendations for 2014 and referring to the report at page 270 for details. Discussion followed.

c. Report from the Equity and Diversity Advisory Committee

Ms. Morellato briefed the Benchers as Committee Chair on the work of the Equity and Diversity Advisory Committee in 2013, outlining that Committee's recommendations for 2014 and referring to the report at page 331 for details. Discussion followed.

d. Report from the Lawyer Education Advisory Committee

Ms. O'Grady briefed the Benchers as Committee Chair on the work of the Lawyer Education Advisory Committee in 2013, outlining that Committee's recommendations for 2014 and referring to the report at page 270 for details. Discussion followed.

e. Report from the Rule of Law and Lawyer Independence Advisory Committee

Mr. Richmond briefed the Benchers as Committee Chair on the work of the Rule of Law and Lawyer Independence Advisory Committee in 2013 outlining that Committee's recommendations for 2014 and referring to the report at page 341 for details. Discussion followed.

Mr. Vertlieb thanked the four advisory committee chairs for their leadership efforts over the past year.

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

Mr. Hume reported as the Law Society's representative of the Federation Council. He advised that the Council will meet in Ottawa later this month to receive and discuss the two TWU Federation reports: the Advisory Committee Report and the Law Degree Approval Committee Report.

Mr. Hume reported that the National Committee on Accreditation will meet in January to address issues relating to credit for courses on Canadian law provided by foreign law schools and potential requests for accreditation by foreign law schools.

Mr. Hume briefed the Benchers on the status of the National Admission Standards and National Discipline Standards Projects, and on work currently before the Standing Committee on the Model Code of Professional Chair, which he chairs.

Looking ahead to 2014, a governance review will flow from the Federation's current work on new by-laws and assessment of the present Presidential selection process: i.e. whether a more merit-based method should be pursued for Presidential selection, rather than the current geographic rotation approach.

11. 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
- Operational Updates
  - Review and Renewal of Management Structure
  - Lawyer Advice and Support Project
  - Support for Legal Services Providers Task Force
  - Regulation of Law Firms – Policy and Operational Assessment
  - Implementation of Governance Review Task Force
  - Annual Employee Survey
- Events and Conferences
  - Fall Justice Summit
  - National Action Committee on Access to Justice Event

12. President's Report

a. Law Society of Upper Canada Convocation (November 2013)

Mr. Vertlieb briefed the Benchers on his attendance at the Law Society of Upper Canada's November Convocation. He noted as a highlight a reception commemorating LSUC's certification of 200 paralegals.

b. Election to the 2014 Executive Committee

Mr. Vertlieb congratulated Haydn Acheson, Miriam Kresivo, QC, Nancy Merrill and Herman Van Ommen, QC on their election to the 2014 Executive Committee.

c. Presentation of the 2014 President's Pin

Mr. Vertlieb presented First Vice-President Jan Lindsay, QC with her 2014 President's Pin.

d. Presentation of Benchers' Gift to the 2013 President

Ms. Lindsay presented Mr. Vertlieb with a gift on behalf of the Benchers, in recognition of Mr. Vertlieb's leadership contributions as President of the Law Society for 2013.

e. Introduction of CBABC's Bencher Meeting Representative for 2014

CBABC President Dean Crawford introduced Vice-President Alex Shorten as the Canadian Bar Association's designated representative at 2014 Bencher meetings. Mr. Shorten expressed his appreciation for the positive and strong working relationship between the BC Branch of the Canadian Bar Association and Law Society.

Mr. Crawford presented Mr. Vertlieb with a gift on behalf of the CBABC, in appreciation of his hard work as President of the Law Society over the past year.

13. 2012-2014 Strategic Plan Implementation Update

Mr. McGee referred the Benchers to the update report on implementation of the 2012-2014 Strategic Plan at page 352 of the meeting materials.

14. Report on the Outstanding Hearing & Review Reports

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

The Benchers considered other matters *in camera*.

WKM
2014-01-03

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

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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

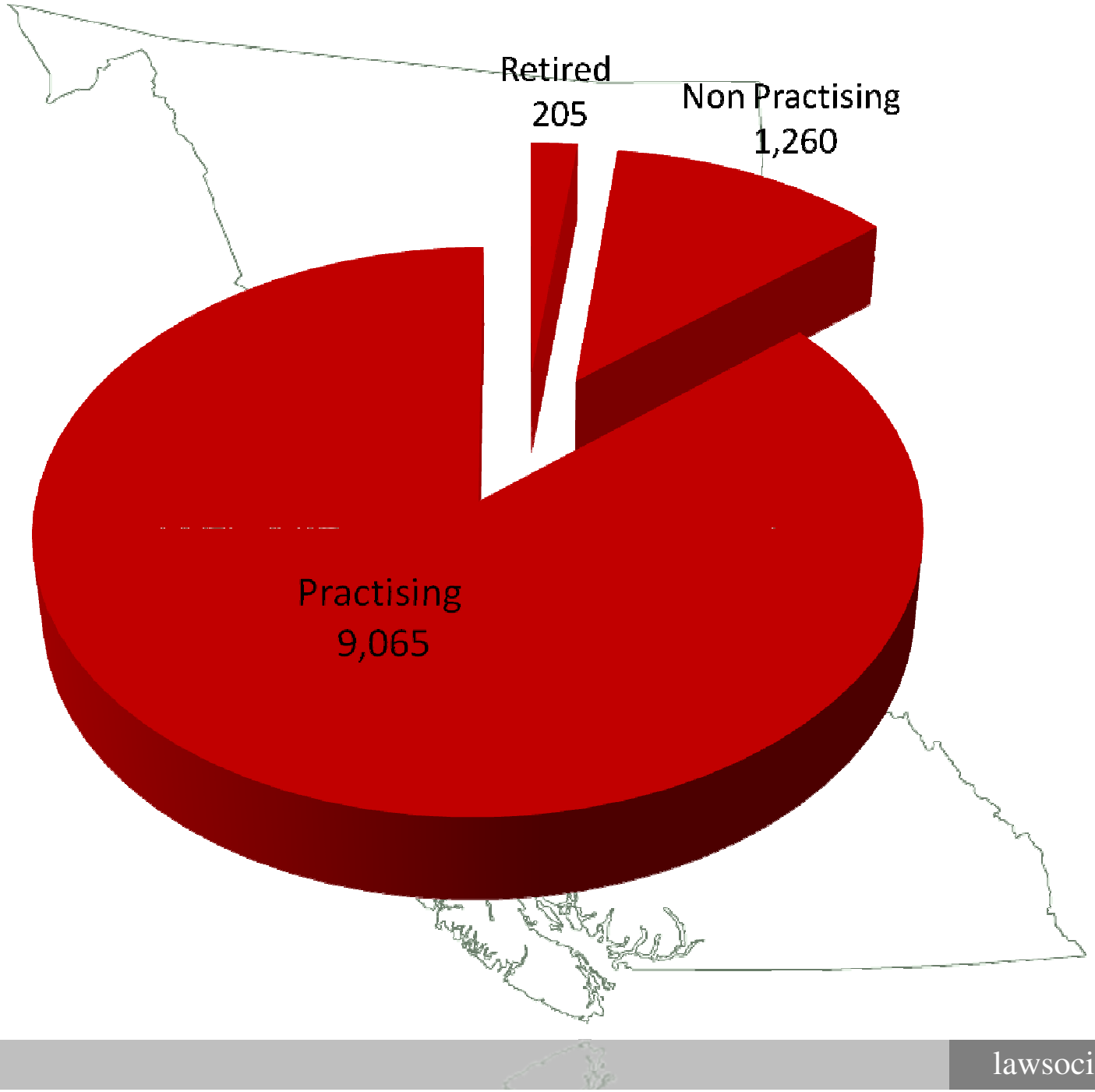
cc. Faye Wightman
President and CEO, Vancouver Foundation

David Loukidelis
Deputy Attorney General

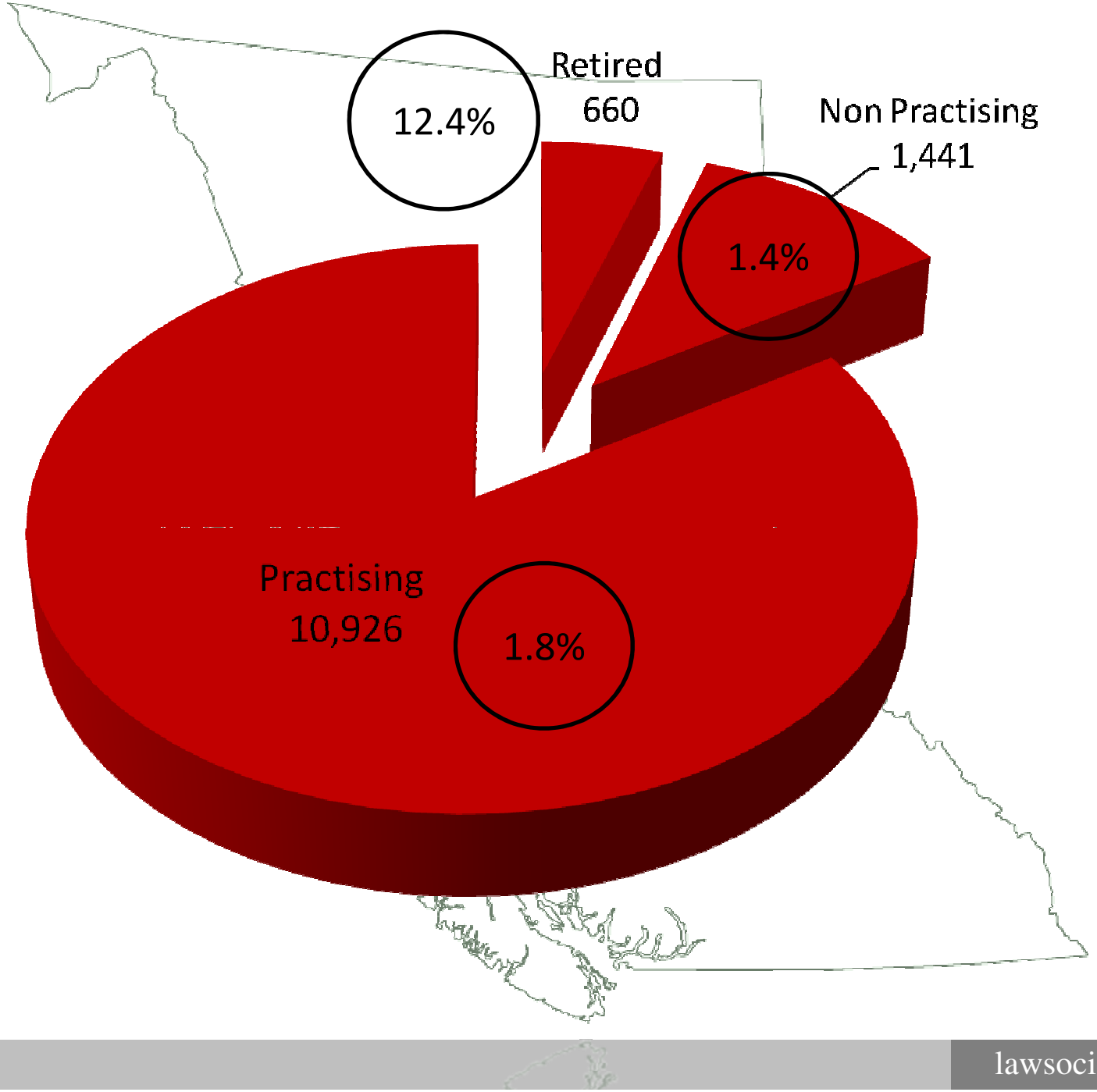
The Law Society of British Columbia

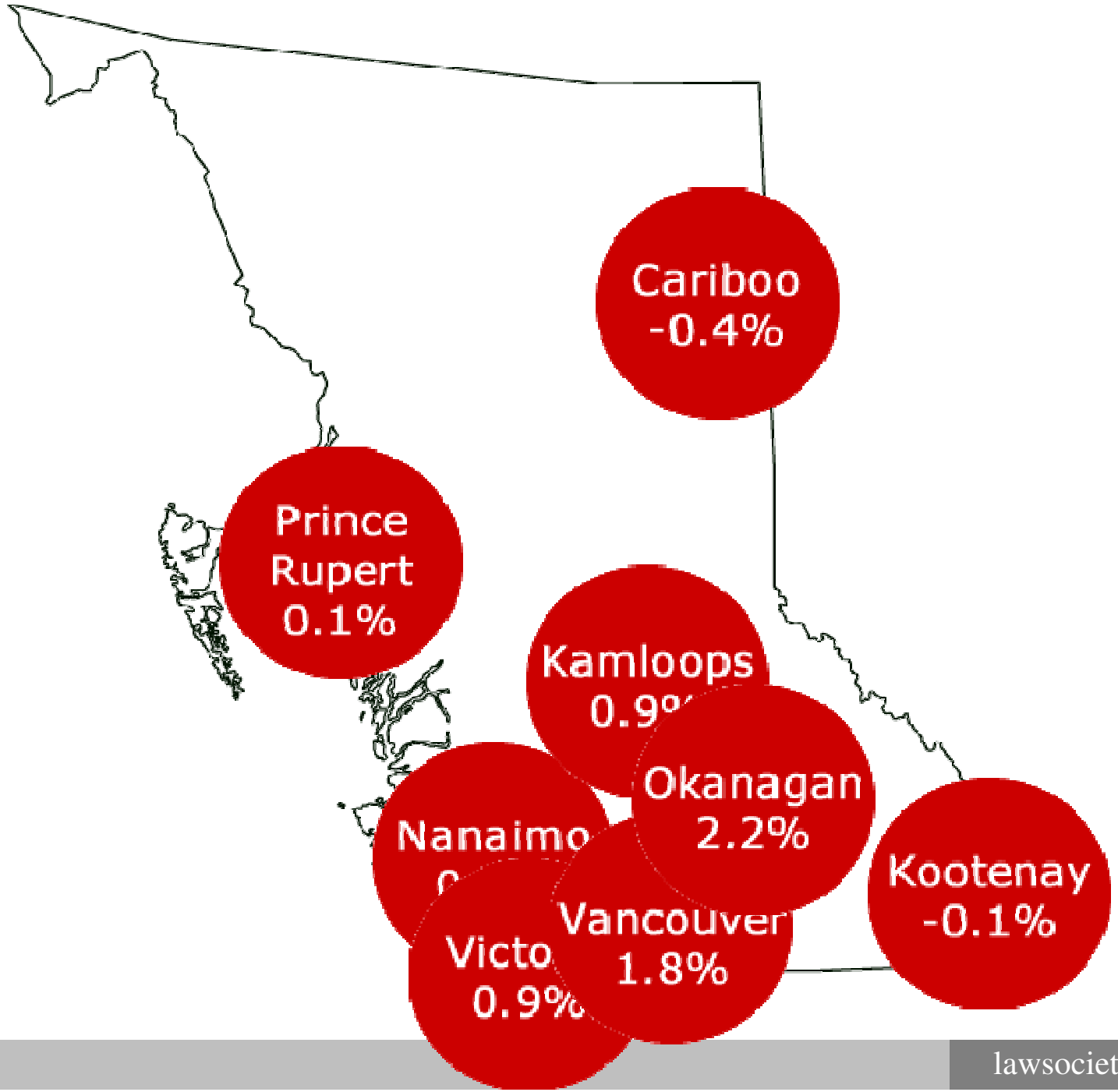
BC's Legal Profession: Now and Then

2003

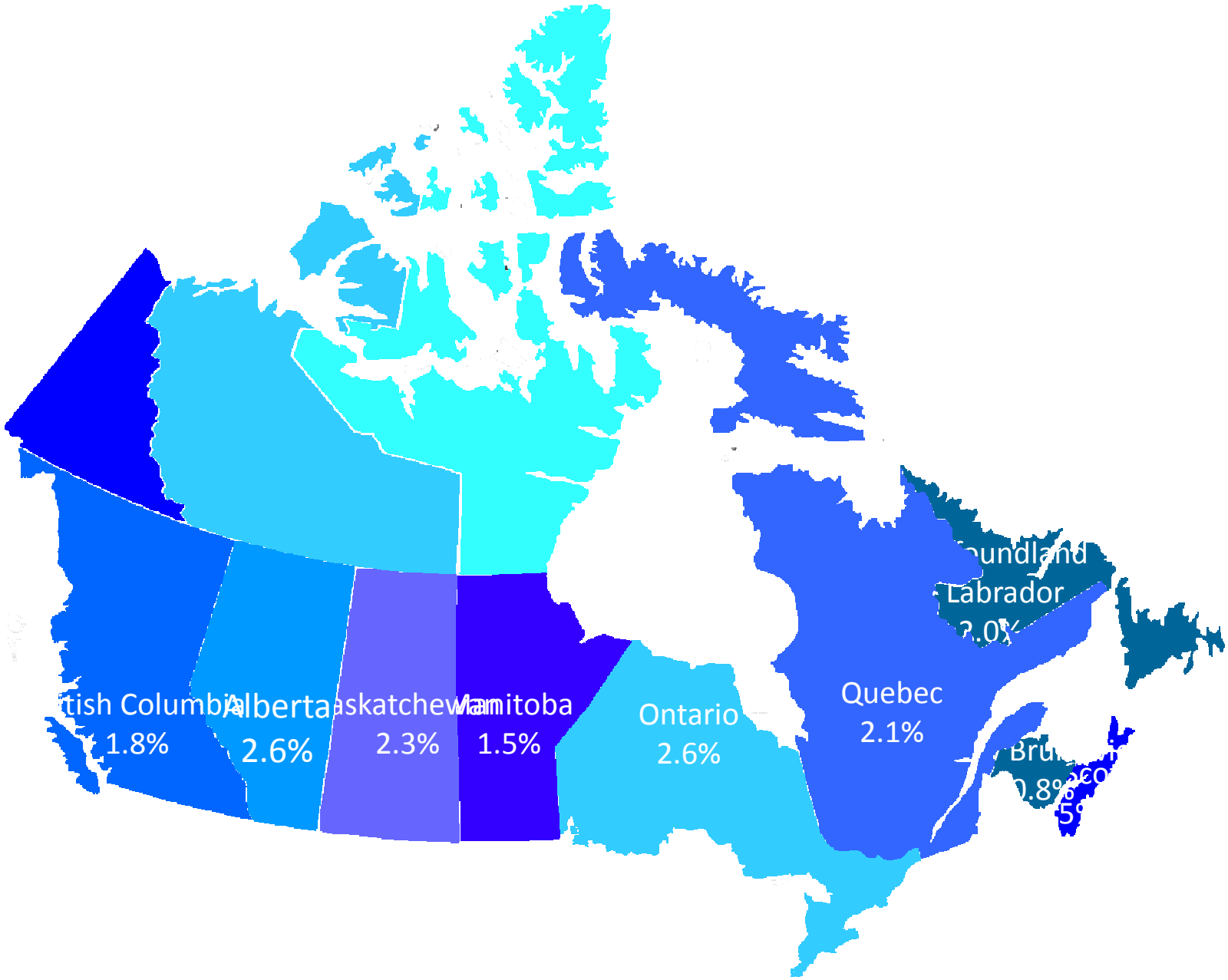


2013




Cariboo
-0.4%
Prince
Rupert
0.1%
Kamloops
0.9%
Okanagan
2.2%
Nanaimo
Kootenay
-0.1%
Vancouver
1.8%
Victo
0.9%

Annual Growth in Legal Population | 10 Year

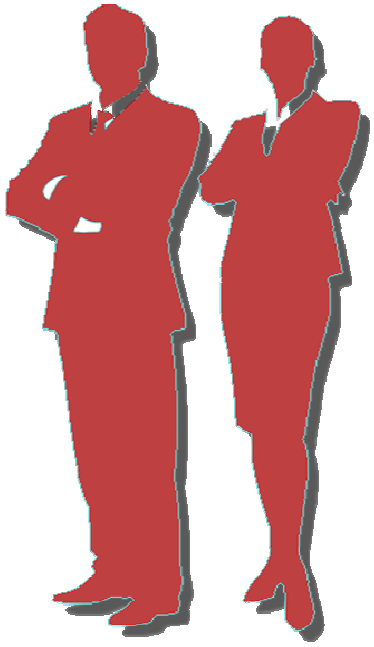


Annual Growth 2003 - 2013

1.9%

GDP

1.8%



Legal Population

1.6%

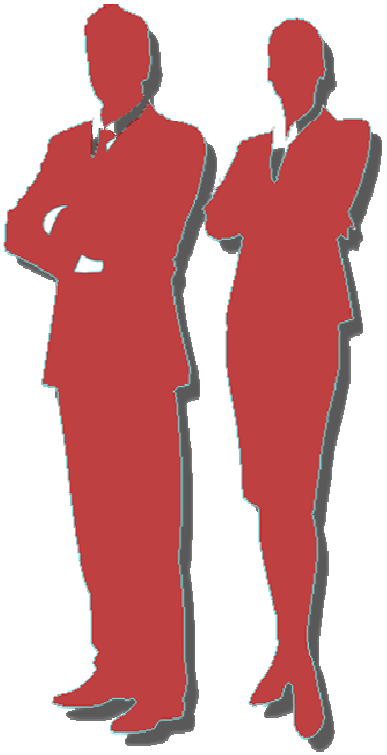
Population (18+)

Annual Growth 2000 – 2012

3.1%

GDP

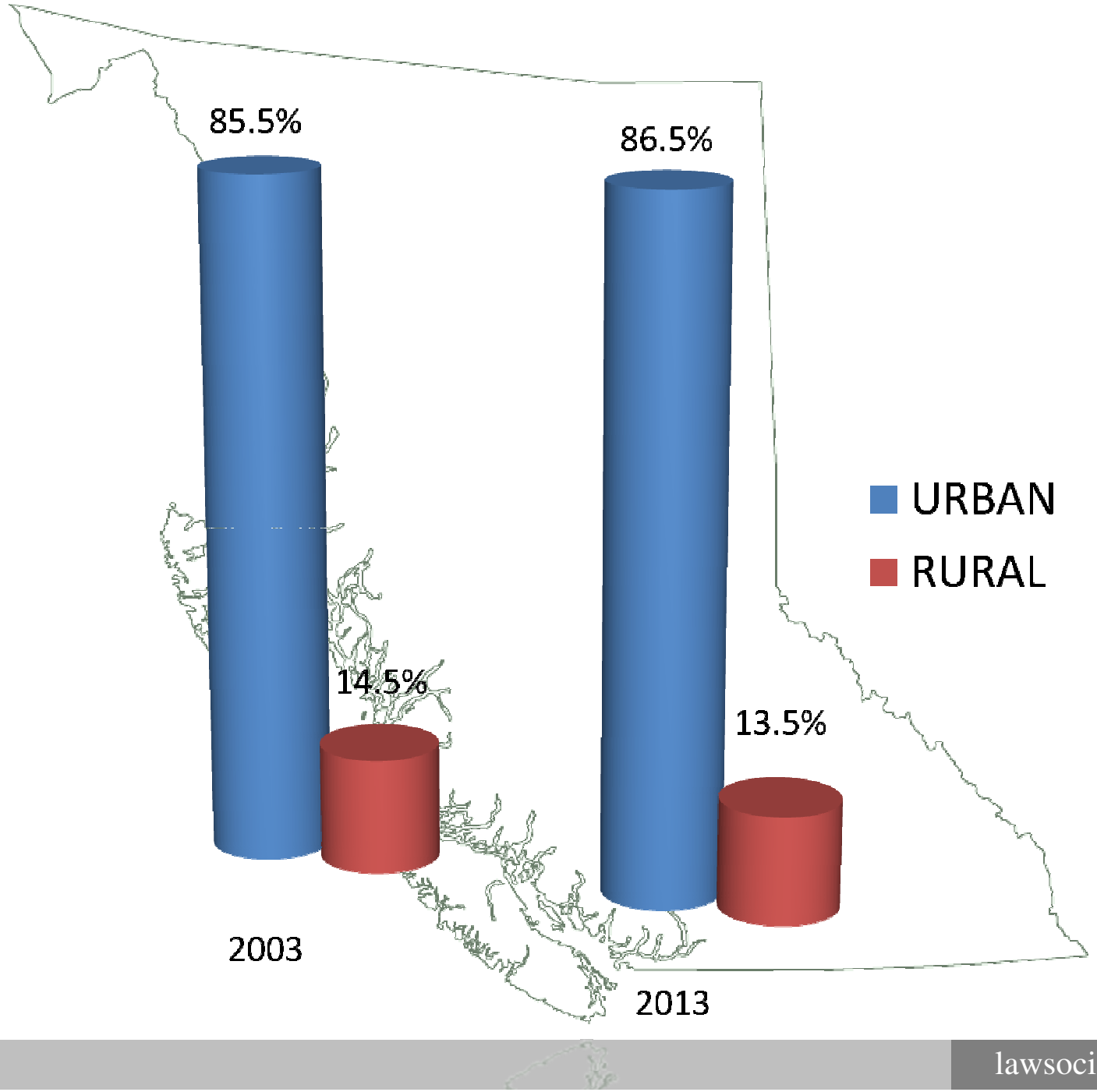
2.3%



Legal Population

1.3%

Population (18+)


85.5%
86.5%
URBAN
RURAL
14.5%
13.5%
2003
2013

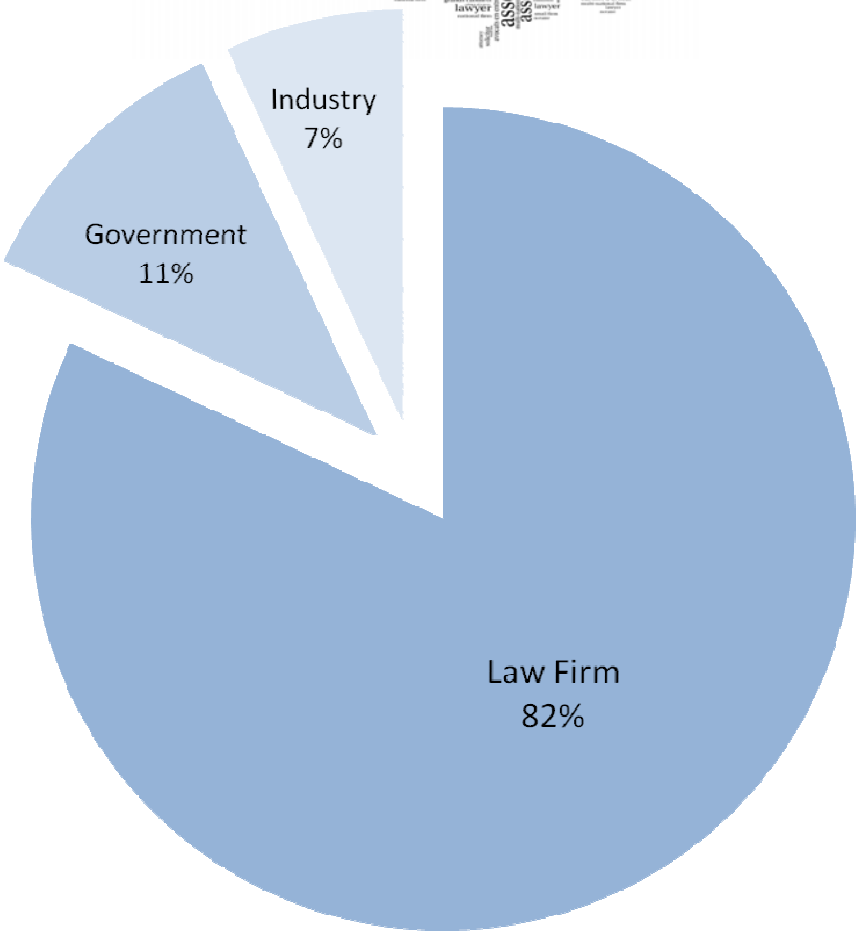
% 65+ 2003 -2013

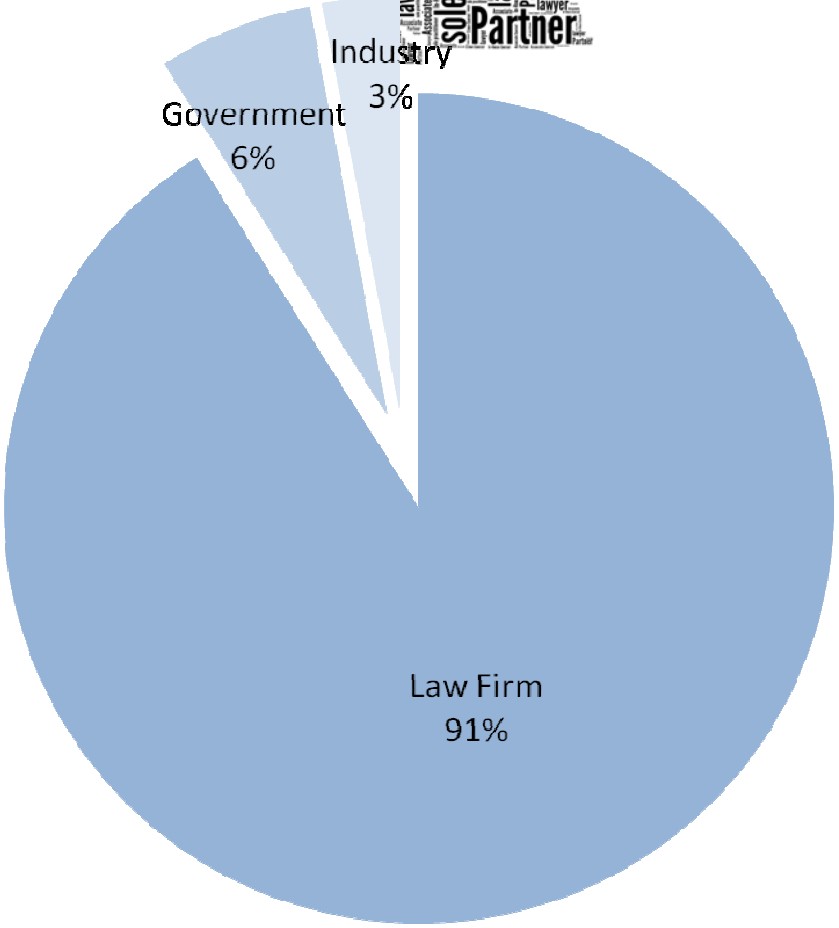

In-House Counsel
Lawyer
Associate Counsel
Partner
Associate
Crown Counsel
sole practitioner
Associate
Partner

Proportion of Practising Lawyers 65+ 2003 – 2013
2003
2013
19.7%
15.3%
14.8%
12.7%
12.5%
12.3%
12.2%
10.9%
2.5%
4.6%
5
1.4%
3.0%
1.0%
8.7%
Kootenay
Nanaimo
Cariboo
Kamloops
Victoria
Okanagan
Prince Rupert
Westminster
Vancouver

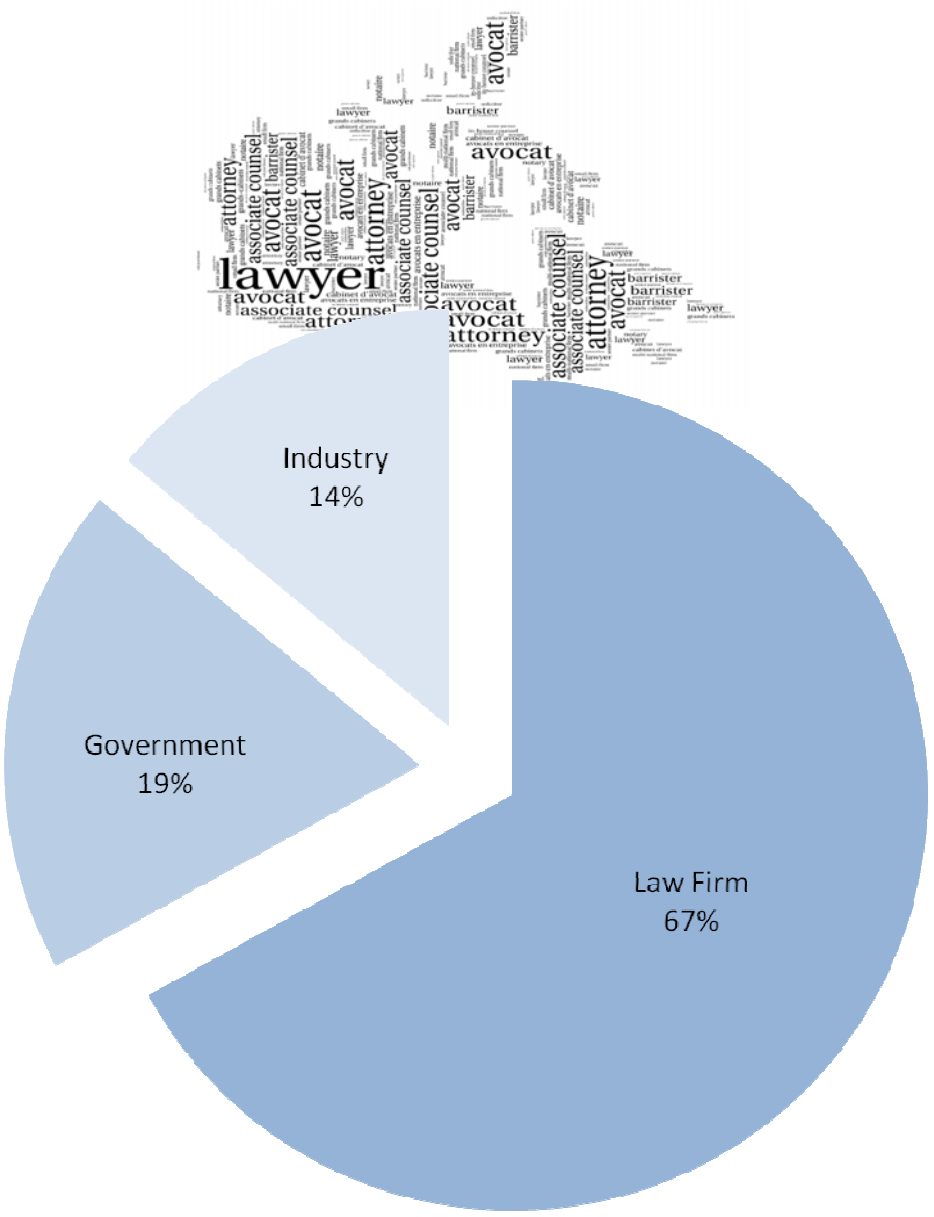
Age Distribution 2003 - 2013

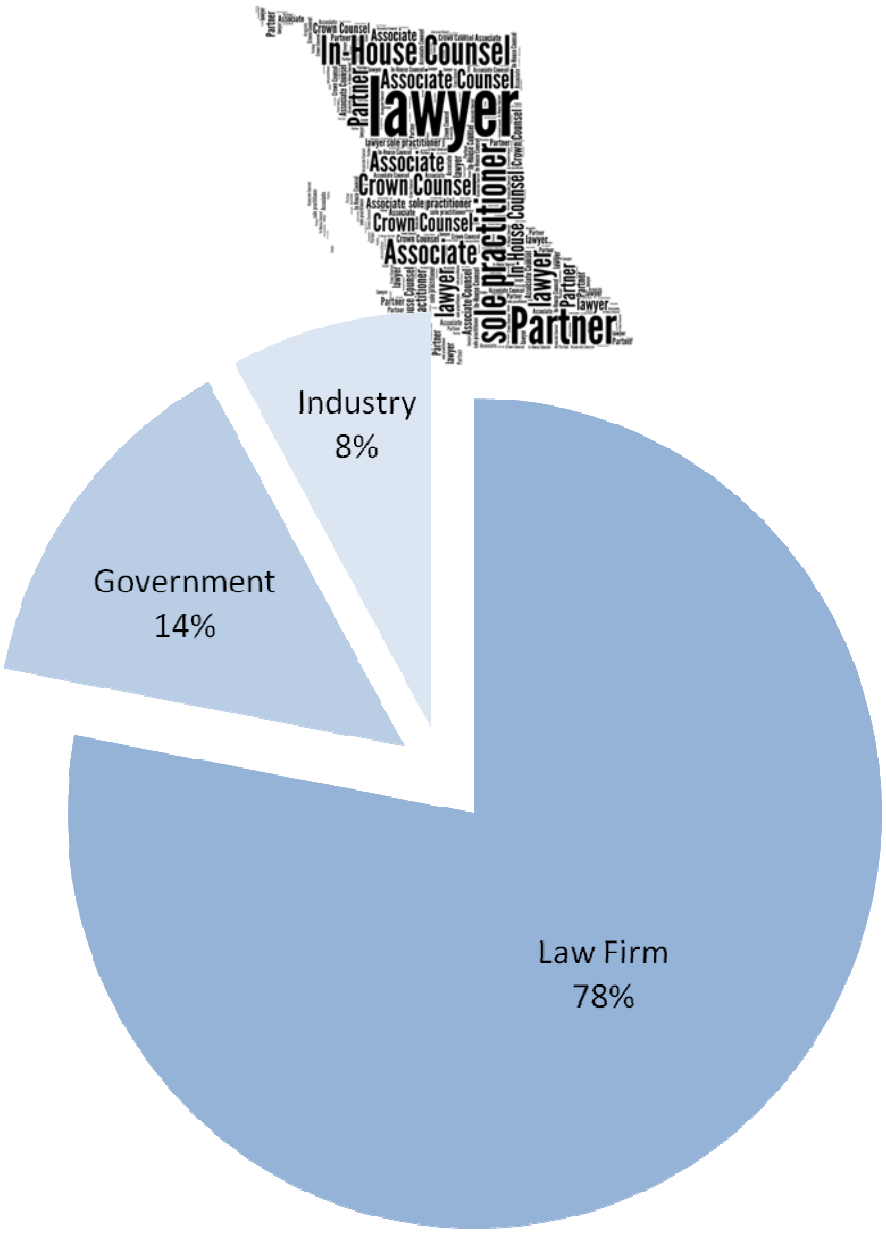
% of the Profession by Type of Practice: 1986



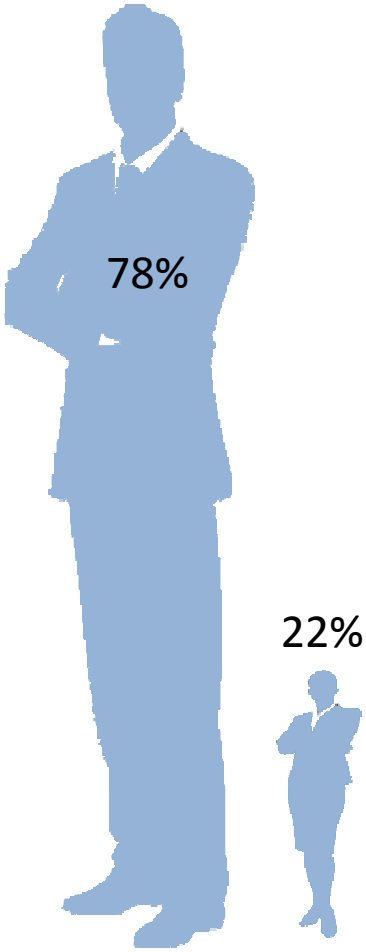


% of the Profession by Type of Practice: 2012

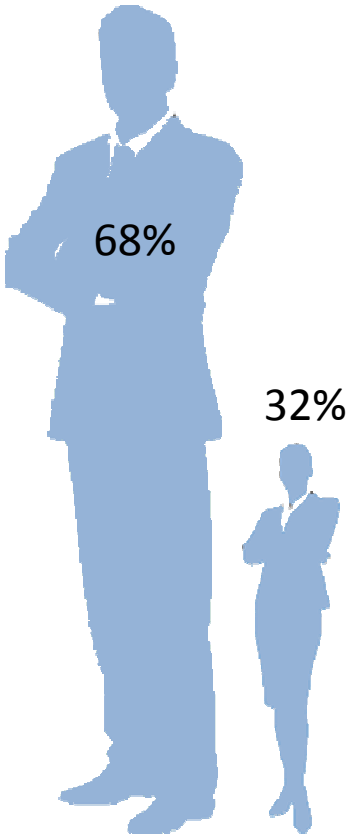




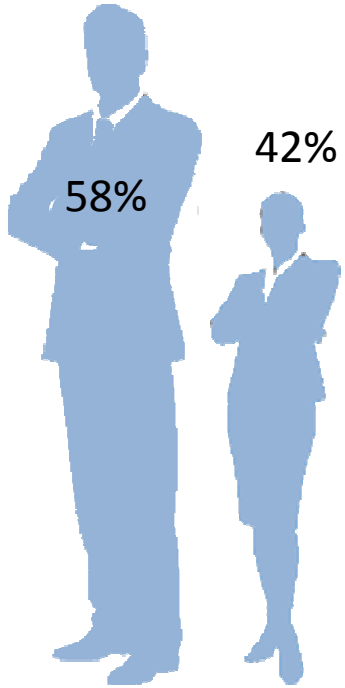
Percentage of Lawyers By Gender



1986

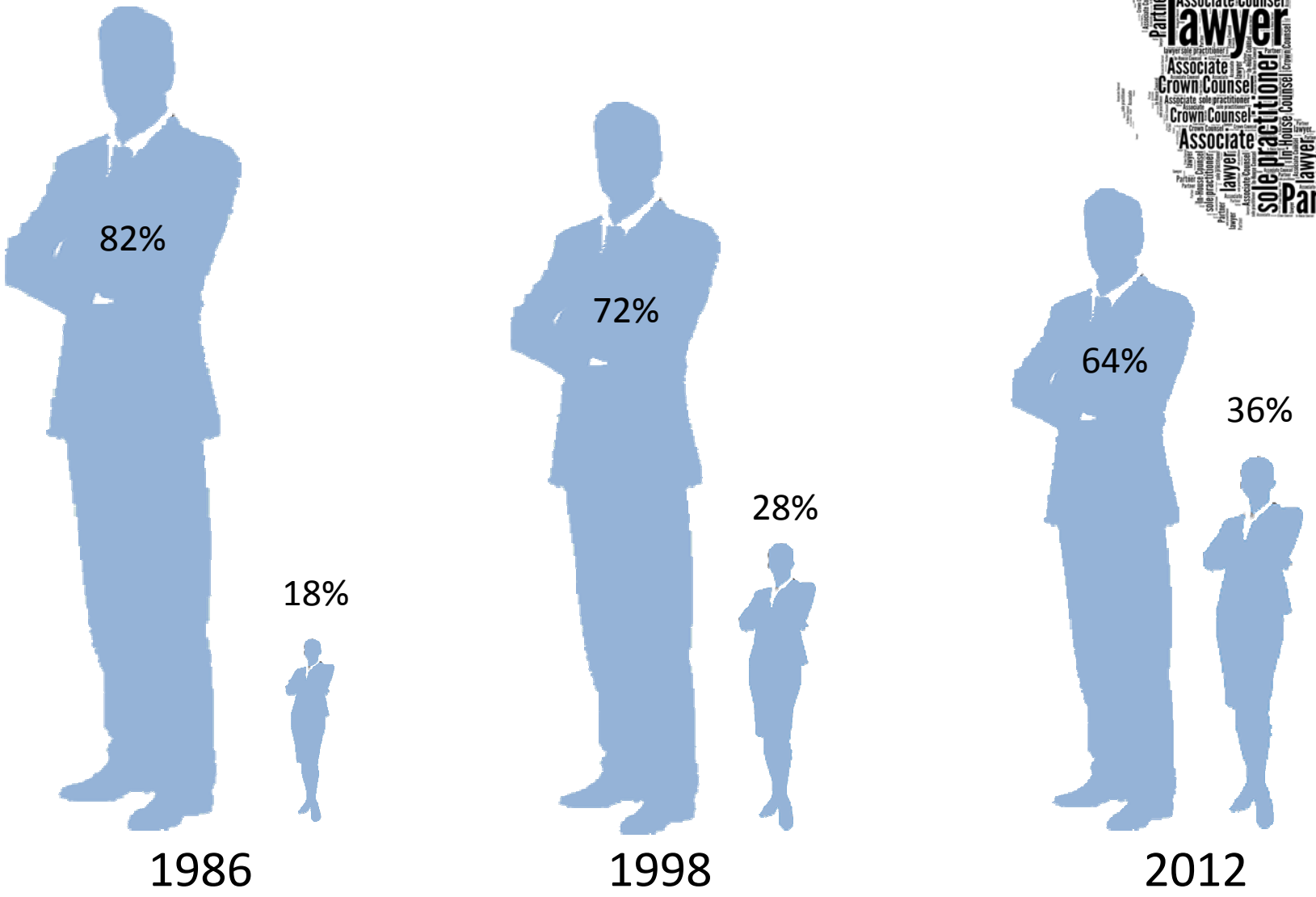


1998



2012

Percentage of Lawyers By Gender



Lawyer Income 2010

$155,898

$107,749

$152,342

$106,638

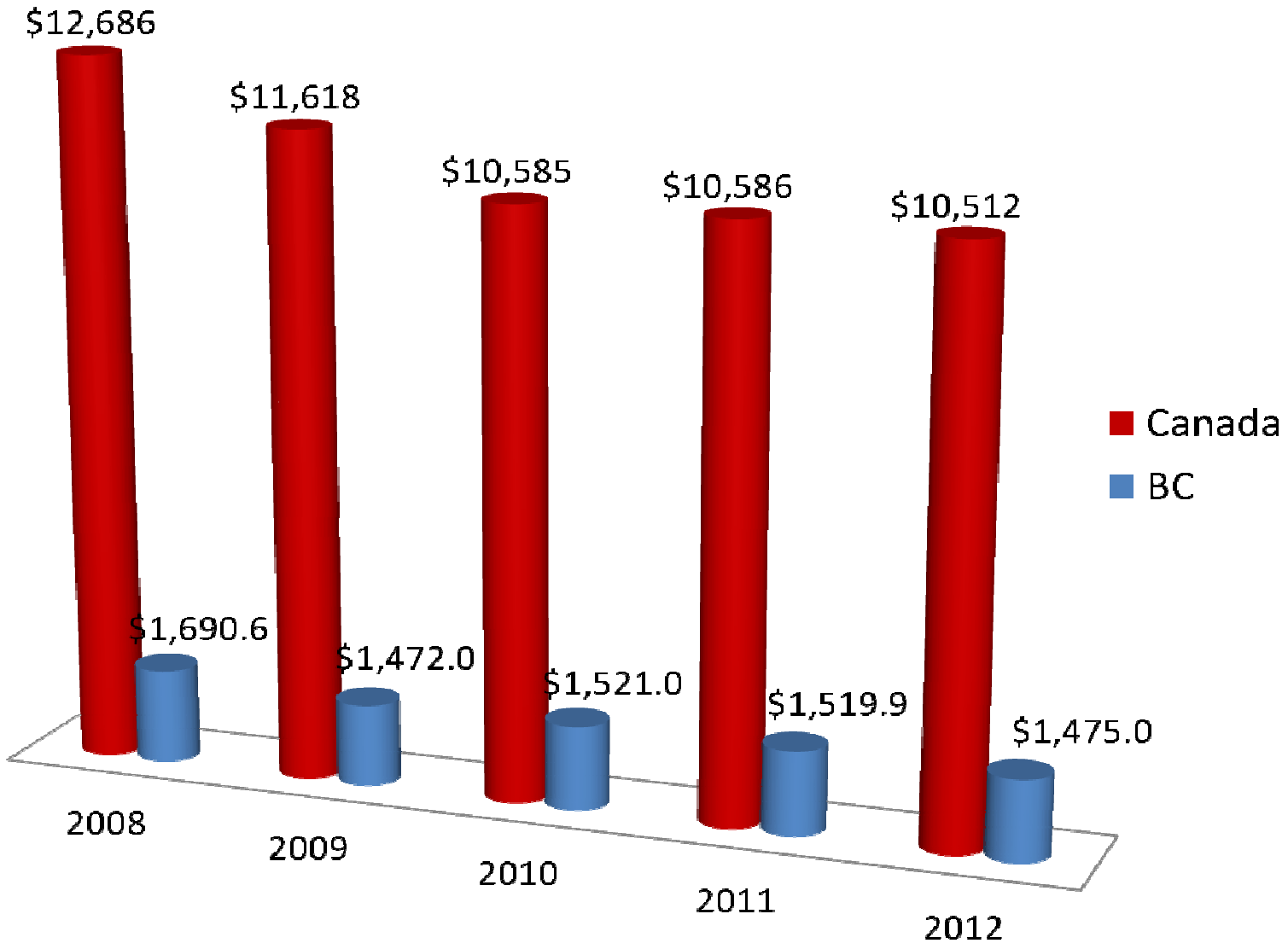
Median Income

Average Income

Median Income

Average Income

Gross Domestic Product for Legal Services By Year



(dollars x 1,000,000)

The Law Society of British Columbia

Thank You

Experiential Learning at UVic and in the National Debate

Jeremy Webber
Dean of Law, University of Victoria

Experiential Learning at UVic: Overview

- 3 Legal Clinics (for credit)
  - Law Centre (42 students annually)
  - Environmental Law Clinic (28 students annually)
  - Business Law Clinic (36 students annually)
- Co-op (30-40 students annually)
- Volunteer activities
  - ProBono Students of Canada (40-50 students annually)
  - Legal Information Clinic (up to 55 students annually)

Experiential Learning at UVic: Law Centre

- Founded in 1977: now in its 37th year
- Co-located with the new Victoria Justice Access Centre (in the old Land Titles Office, Victoria Courthouse)
- Term-long Program: 3 terms of 14 students = 42 students annually

Experiential Learning at UVic: Law Centre

Preparation and supervision:

- Intensive, 4- week 'boot camp'
  - Skills
  - Judgement
  - Common questions

- Students under temporary articles
- 3 supervising lawyers, led by Glenn Gallins, QC, plus volunteer principals for each student

Experiential Learning at UVic: Law Centre

- Caseload:
  - 30 % criminal
  - 30 % family
  - 25 % administrative law (including income support)
  - 10 % human rights
  - 5 % wills and representation agreements
- 1800 to 2000 clients served annually

Experiential Learning at UVic: Law Centre

- Innovations:
  - Until 2002, run in conjunction with operations of the Legal Services Society
  - Since 2003, contract with Ministry of Justice for representation in human rights complaints
  - Since 2007, full-time on-site social worker
  - Now, co-location with Justice Access Centre

  - Future? Representation of self-represented litigants.

Experiential Learning at UVic: Environmental Law Clinic

- Founded in 1993, society incorporated in 1996: clinic now in its 21st year
- Located in the UVic Law Library, but activities extend throughout the province
- 2 models:
  - Intensive: 6 students per year – half-time for two terms
  - Regular: 22 students per year – equivalent to one course

Experiential Learning at UVic: Environmental Law Clinic

Preparation and supervision:

- Class sessions and seminars

- 4 supervising lawyers (3 of whom also have substantial teaching obligations)
- Additional supervision by 49 ELC Associates
- Approval of each project by ELC Board
- Assisted by articling student serving half articles with ELC

Experiential Learning at UVic: Environmental Law Clinic

- 45 clients served each year
- 50 more clients receive summary advice

- almost half of all ELC projects serve northern, central or coastal British Columbia

- Telephone and in-person conferences for professional development of Associates

Experiential Learning at UVic: Environmental Law Clinic

Examples:

- Representing BC Nature and Nature Canada at the Northern Gateway hearings
- Report on Muzzling of Government Scientists
- Manual for Indigenous Guardians/Watchmen on the Central Coast
- Modernizing the Water Act
- Seeking a Strategic Environmental Assessment of LNG Development
- Home Heating Oil Tank Spills

Experiential Learning at UVic: Business Law Clinic

- Founded in 1998: now in its 16th year
- 36 students do the clinic each year
  - Clinic is equivalent to one course
  - Legal information conveyed to clients
- 90 clients served each year
  - Small businesses
  - Non-profit organizations
  - Skype and teleconferencing to provide service at a distance

Experiential Learning at UVic: Business Law Clinic

Preparation and supervision:

- instruction in practice skills such as interviewing, practical drafting and file management
- Practitioner-delivered guest lectures on such things as accounting, intellectual property and insolvency

- In addition to the BLC's Director, lawyers throughout BC provide mentorship, guidance and guest lectures

Experiential Learning: Benefits

1. **Education**
   - Practical training in client interaction, advocacy, drafting of briefs, and other skills
   - Knowledge of substantive law
   - Approaching a legal problem from a client's point of view
   - Professionally-led. Not simulations.

2. **Meeting Pressing Social Needs**
   - Substantial direct contribution to access to justice
   - Law Centre alone: 1900 students per year, for 36 years
   - Training of individuals for long-term pro bono contributions

Experiential Learning: Benefits

3. Concern with Law in Action – and Access to Justice – throughout UVic's teaching and research contributions

- Assessing arguments for their genuine social impact
- Expansive conception of the practice of law, including policy analysis and proposals for regulatory reform

How does this relate to Experiential Learning nationally?

- UVic is clearly the national leader
- Focused upon engagement with actual legal issues. Other schools' 'experiential offerings' often include skills courses and simulations
- High degree of preparation and supervision
- Range of forms of lawyering

- Why not more activity on experiential learning?

Ontario Law Practice Program:

- Basic model: 4-month web-based training course plus 4-month placement as an alternative to articles

- 2 models:
  - Ryerson/Ottawa: practical training after the JD
  - Lakehead: integrated into the 3-year JD

  - Each include 4-month work placements

- 3-year pilot project
- The quality of articles is also being evaluated

UVic's Linkage to Access to Justice:

- Clinics, Public Interest Placements in Co-op, Volunteer activities:
  - Direct contribution to access
  - Apprenticeship for future contributions
  - Integration of the practice of law with policy and regulatory development
- Forum for the consideration of justice initiatives:
  - Patrick Parkinson and the Australian Family Relations Centres
  - Visiting Lectures and Seminars
  - Community Conference on Access to Justice

Linkage to Access to Justice:

- Jerry McHale, QC, Lam Chair in Law:
  - As ADM, led a series of justice reform initiatives:
    1. Justice Access Centres
    2. Innovations in Court Rules
    3. Mediation initiatives
  - Member, Steering Committee, Action Committee on Access to Justice in Civil and Family Matters
  - Chair, Family Justice Working Group
  - Course on Access to Justice
  - Research Agenda

Linkage to Access to Justice:

- Access to Justice through Access to Law School
  - Special admissions programs, but also:

    Academic and Cultural Support Programs, now the 'Amicus Program', in place since 1992

What Next?

1. **Development and Extension of Clinics:**
   - Law Centre:
     - 2 more places
     - appellate representation
   - Environmental Law Clinic:
     - Litigation capacity built around lawyer/student teams
     - Integration of Legal and Scientific Knowledge
     - Indigenous Dimensions

What Next? (cont)

- Business Law Clinic:
  - New sponsorship

- For all clinic and for Co-op:
  - Ease access, eliminate balloting.

2. **Indigenous initiatives:**
   - Indigenous Law Clinic
   - Canada Research Chair in Indigenous Law
   - Joint Program in the Common Law and Indigenous Law

The Law Society of British Columbia

CEO's Report to Benchers

December 6, 2013

Prepared for: Benchers

Prepared by: Timothy E. McGee

Introduction

In this report I have featured a year end review of progress under our 2013 top five operational priorities. As well, I have provided reports on the recent Fall Justice Summit and the National Action Committee on Access to Justice event recently hosted by the Law Society.

As this is my last report to the Benchers for the year, I would like to take this opportunity, on behalf of all of the staff at the Law Society, to wish you and your families a very safe and enjoyable holiday season.

Operational Updates

In my initial report to the Benchers in January, I outlined management's top five operational priorities for the year. These items are areas or initiatives which receive special focus and attention during the year. The annual operational priorities are in addition to our standing objective of achieving all of the Key Performance Measures established by the Benchers for our core regulatory functions. I have reported on progress against those priorities below.

Review and Renewal of Management Structure

The key feature of the management renewal initiative in 2013 was the creation of the new Leadership Council. The Council replaced the old Management Board and is comprised of my five direct reports (Deborah Armour, Su Forbes, QC, Jeanette McPhee, Alan Treleaven and Adam Whitcombe), plus Jeff Hoskins, QC, and three senior managers appointed by me for a one year term from among a list of managers who put their names forward for consideration. The three senior managers appointed to the Leadership Council for the inaugural term (ending December 31, 2014) are Robyn Crisanti, Kensi Gounden and Lesley Small.

The Council met twice over the summer and recently completed a full day retreat to discuss operational priorities for 2014. An important part of the new management approach is to establish working groups comprised of managers and staff to assume responsibility for implementing the operational priorities established by the Leadership Council. We expect to have those working groups established and ready to go early in the new year. One of the reasons we have moved to this more focused approach is because it puts a premium on teamwork, initiative and accountability, while broadening opportunities for managers and staff to demonstrate and develop their leadership skills and potential. I will be reviewing the 2014 operational priorities and our plan to achieve

those with the Executive Committee early in the new year and with the Benchers at the meeting in January.

Lawyer Advice and Support Project

The 2010 Core Process Review (CPR) revealed that over the prior five years the number of phone calls and email inquiries to the Practice Advice department alone was growing at a compound growth rate of 6.7%. The CPR report suggested ways to better handle calls through a triage system and to reduce calls by providing alternative means for obtaining information and assistance through web-based tools.

Lawyer support and advice is not limited to the Practice Advice group. Staff with the Lawyers Insurance Fund, Trust Regulation, Professional Conduct, Practice Standards and Member Services are also engaged in providing advice and support to lawyers. A survey of lawyers recently demonstrated very strong support for the Law Society providing practice advice and support.

Throughout 2013, a cross-departmental working group looked extensively at our current delivery of lawyer support services and concluded that our model needs to be broadened to provide more self-help assistance to meet lawyers' evolving expectations both in what is available and how it accessed. A series of recommendations from the working group was included in the budget planning process at the Finance Committee meetings this year. As a result of that review, specific resourcing support for the recommendations is now included in the 2014 budget approved by the Benchers earlier this year.

I look forward to sharing with the Benchers the roll out of the new lawyer support and assistance initiatives in 2014.

Support for Legal Services Providers Task Force

The Legal Services Providers Task Force chaired by Bruce LeRose, QC has finalized its report and that report is before the Benchers for consideration at the meeting.

The task force met eight times over the year, conducted three public consultations, and engaged a number of stakeholders as part of its work plan. Recent meetings have focused on finalizing the written report to the satisfaction of all the members of the task force. Staff support for this task force has been exemplary in my view given the tight timelines, the diverse membership of the group, and the significance of the issues. Recognition is due to Adam Whitcombe, Michael Lucas and Doug Munro for their commitment to and support of this priority. While part of the original mandate of the task

force was to make a preliminary assessment of the operational impacts of the options presented this was deferred on recommendation of the task force to the next phase following Bencher review.

Regulation of Law Firms – Policy and Operational Assessment

The Executive Committee at its meeting on June 27 and most recently on November 26, reviewed memorandums which laid out a rationale for regulating law firms and assessed the positive impacts on each of our core regulatory functions. The Committee also considered and approved a proposal for next steps specifically the creation of a cross-departmental staff working group to prepare a more detailed assessment of implementation options. This work will be brought back to a task force of Benchers to be formed in the new year for further action and direction. This topic is a live one in several of our sister law societies including, Ontario, Alberta and Nova Scotia. We will be looking to coordinate and collaborate as much as possible with those jurisdictions as we move forward.

Implementation of Governance Review Task Force

The Governance Committee following on the Governance Review Task Force had a busy and productive year in 2013. The mid-year report was presented to the Benchers at the June meeting in Tofino and since then the Committee has systematically reviewed all of the recommendations slated for follow-up. The Committee has finalized its report for the year and that report is before the Benchers for review at the meeting. Work on the preparation of a Governance Manual will continue in the new year.

Supporting the implementation of the Governance Review Task Force Report was specifically made one of the top operational priorities for 2013 because of the importance and breadth of the issues affecting the Law Society on a day to day basis. The sense is that the Governance Committee has done much of the heavy lifting and can now continue its work with many of the foundational items in place. Once again, I think the staff support led by Adam Whitcombe and Bill McIntosh for this work in 2013 has been exemplary.

Annual Employee Survey

We recently conducted our eighth annual employee survey. I'm pleased to advise that we had the best response rate to date, with 86% of employees completing the survey and providing valuable feedback and suggestions. An initial review of the results shows positive increases in almost all areas. The results are being compiled and will be shared with staff shortly. 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 answer any questions you might have.

Events and Conferences

Fall Justice Summit

The second Justice Summit was held at Allard Hall, at the UBC Faculty of Law on November 8 and 9. The summit brought together approximately 80 participants from stakeholders in the justice system including the Chief Justice of British Columbia Robert Bauman, Associate Chief Justice Austin Cullen, Chief Judge Thomas Crabtree, the Minister of Justice and Attorney General Suzanne Anton, QC and leaders from law enforcement, the Bar, social agencies and First Nations.

The summit was the follow up to the inaugural Justice Summit held in March and it built on the work from those sessions. The focus of the November summit was to expand and further articulate the goals and objectives for the criminal justice system in BC. In particular, the participants examined each of the stated goals of fairness, protection, sustainability, and public confidence highlighting the gaps between the current state of affairs and the desired vision. Through panel discussions and small group sessions a general consensus was formulated around what needs to be done in each area. The Law Society's Second Vice-President Ken Walker, QC participated on the panel discussing "public confidence" and his remarks about the challenge that every participant must face including the Law Society, the CBA, the Crown, the Police, the Ministry, the Courts and others was very well presented and well received. Once again I acted as the Moderator of the summit over the two days and Michael Lucas was part of the organizing committee and the staff "war room".

A report of the summit for public distribution is being developed and should be available early in the new year. The general sense was that while much remains to be done the emerging spirit of joint commitment and collaboration among the diverse stakeholders bodes well for the future.

National Action Committee on Access to Justice Event

As reported last month, the Law Society and the Ministry of Justice teamed up to host a presentation by Mr. Justice Cromwell on the Report of the Action Committee on Access to Justice, of which he was the Chair, entitled ***Access to Civil & Family Justice: A Roadmap for Change***. The event was held at the Law Society on November 19 and 36 invitees from various justice stakeholder groups, including the Courts, the Ministry, the Law Society, the CBA, public legal education bodies, and other organizations including

the Law Foundation, the Courthouse Library Society, Access Pro Bono, and other similar groups, attended.

Mark Benton, the CEO of the Legal Services Society and a member of the national committee gave a fascinating and revealing description of the recent history of events and initiatives in the access to justice area. This set up the key note address by Mr. Justice Cromwell.

Justice Cromwell gave a presentation and overview of the Committee's report focusing on its thesis that a significant change is needed in the justice system. In particular, Justice Cromwell spoke about the fact that the architecture of the system is good, but that the infrastructure needs fundamental change to bring it up to current needs.

The participants then broke into smaller groups to address four questions:

1. Do the justice system leaders believe there is an urgent need for change?
2. What are the most important problems in access to justice, what are the root causes, and what are the most promising solutions?
3. What are the best ways for us to reach consensus on the problems, priorities and solutions?
4. What can we do to ensure a strong public voice in the process?

The participants then discussed in the broader group the points that they had raised in trying to address these questions. The event ended with some concluding remarks by Mr. Justice Cromwell exhorting the participants in the justice system to work in a collaborative way to reach solutions because collaboration will always lead to a more durable solution and a broader, more inclusive, overall plan. He also encouraged all of the participants to look within their own programs, noting that it is often easy to find fault with others, but necessary first of all to look within to find out what can be done better and how to do so.

The Ministry and Law Society are preparing a summary review of the meeting, which will be available likely sometime in January.

REDACTED MATERIALS

REDACTED MATERIALS

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: January 3, 2014
Subject: **Publication of credentials decisions and disciplinary action**

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1. This memo asks the Benchers to approve some relatively minor reforms to the rules governing the publication of hearing panel and review board decisions. The changes are recommended by the Act and Rules Committee. I have attached clean and redlined versions of the proposed amendments and a suggested resolution to give them effect.

Removal of decisions from current list to archive

2. Under the current rules, a credentials decision posted to the Law Society website must be moved from the current decision list to an archive area of the site after six months from the time that the decision was made. When an review or appeal is taken, which normally takes more than six months, the rule would have the decision in question removed from the list of current decisions after six months and, when the review decision is issued, the two decisions are located in different places on the Law Society website for another six-month period. (Appeal decisions are posted on the court website.)

3. In the case of discipline decisions, when there is a disciplinary action taken, the decision is to stay on the current list until six months after the decision or when "all aspects of the disciplinary action imposed have been completed." That does not appear to be the optimum measure of when the change ought to be effected. It can be too soon when the matter continues to be before the tribunal or the courts, or disproportionately late, such as when a respondent is not able to pay a fine imposed. Strictly interpreted it would leave a residue of unarchived decisions indefinitely, including disbarments and cases where fines are never paid, suspensions never served and conditions never fulfilled.

4. The Committee is of the view that the niceties of where information is located on the Law Society website are not appropriately dealt with in the Law Society Rules. Those considerations really go to the discretion of the Executive Director and his staff, like so many other aspects of the disclosure of information.

5. The Act and Rules Committee recommends rescinding the rules governing the placement of decisions from the rules. This would be a start toward compliance with the spirit of the National Discipline Standards, which read in part:

> 20. There is a lawyer directory available with status information, *including discipline history* and information on how to access more information about that history.

Publication of interlocutory decisions

6. Another problem with the current publication rules is a lack of clarity and consistency with respect to decisions other than the final decisions in credentials and disciplinary matters.

7. Rule 2-69.1(1), which mandates the publication of credentials decisions, is as follows:

> **2-69.1** (1) Subject to Rule 2-69.2, the Executive Director may publish and circulate to the profession a summary of the circumstances and of any decision of a hearing panel on an application under this Division and the reasons given for the decision.

8. It is not immediately clear whether a decision on a preliminary matter in a credentials matter is a decision "on an application under this Division", which in this context generally means an application for enrolment, admission or reinstatement. To ensure the completeness of the Law Society jurisprudence in credentials matters, the Act and Rules Committee recommends language that would expressly include interlocutory decisions in those that can be published.

9. For discipline decisions, it is clear that decisions other than final decisions may be published in the form of a summary. This is the applicable rule:

> **4-38** (1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of any decision, reasons and action taken
>
> (a) at the conclusion of the facts and determination portion of a hearing on a citation,

(a.1) at the conclusion of the disciplinary action portion of a hearing on a citation,

(a.2) at the conclusion of a hearing on a citation under Rule 4-24.1,

(b) at the conclusion of a hearing before a review board under section 47 of the Act,

(c) at the conclusion of an appeal to the Court of Appeal under section 48 of the Act,

(d) when an order is made or refused under Rule 4-19(13) or (14),

(e) when a lawyer or former lawyer is suspended or disbarred under Rule 4-40, or

(f) when an admission is accepted under Rule 4-21 or 4-22.

(2) The Executive Director may publish and circulate to the profession a summary of any decision, reasons and action taken not enumerated in subrule (1), other than

(a) a decision not to accept a conditional admission under Rule 4-21 or 4-22, or

(b) any decision under Rule 4-17(1).

(3) When a publication is required under subrule (1), the Executive Director may also publish generally

(a) a summary of the circumstances of the decision, reasons and action taken,

(b) all or part of the report of the hearing panel or review board, or

(c) in the case of a conditional admission that is accepted under Rule 4-21, all or part of an agreed statement of facts.

10. Rule 4-38(1) lists a number of types of discipline decisions that must be published to the profession in the form of a summary. Subrule (2) then adds that, subject to two exceptions, other decisions not enumerated in subrule (1) may be published in summary to the profession.

11. The problem comes in subrule (3), which then allows the publication of decisions to the public generally in summary form or by publishing all or part of the actual decision only if they are enumerated in subrule (1). Those to which (2) would apply are not included.

12. Again, to ensure that there is a complete jurisprudence in Law Society decisions available on the Law Society website, the Act and Rules Committee recommends that the language be clarified to allow publication of interlocutory decisions in disciplinary hearings.

Hearing "reports"

13. Before 1988, only the Benchers could impose disciplinary penalties. Since hearings before the entire Benchers would be unwieldy, hearing committees, or panels, were struck and tasked with holding a hearing and reporting back to the Benchers with recommendations as to disciplinary outcomes. Since it was not their decision to impose discipline, the results of their endeavours were referred to as hearing "reports". Since 1988, the actual decision is made by the hearing panel (no longer a committee) and, until recently, was only reviewable by the Benchers. We now refer to the written work product as "decisions" because that is what they are.

14. Or that's how they should be referred to. The point of this brief history lesson is that the old language of "hearing reports" has lived on in the rules in both credentials and discipline hearing rules. While we are making substantive changes in this area, the Act and Rules Committee recommends adopting the more current language regarding panel "decisions".

Attachments: draft amendments
suggested resolution

JGH

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Credentials hearings

Publication of credentials decision

2-69.1 (1) Subject to Rule 2-69.2, the Executive Director may publish and circulate to the profession a summary of the circumstances and of any final or interlocutory decision of a hearing panel or review board on an application under this Division and the reasons given for the decision.

(2) When a publication is allowed under subrule (1), the Executive Director may also publish generally

(a) a summary of the circumstances of the decision of the hearing panel and the reasons given for the decision, or

(b) all or part of the ~~report of the hearing panel~~written reasons for the decision.

(3) **[rescinded]**~~When the Executive Director publishes a document under this Rule by means of the Society's website, the Executive Director must remove the publication from the part of the website for current decisions and may relocate it to an archive part of the website when 6 months have elapsed from the decision of the hearing panel.~~

PART 4 – DISCIPLINE

Publication of disciplinary action

4-38 (1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of any decision, reasons and action taken

(a) at the conclusion of the facts and determination portion of a hearing on a citation,

(a.1) at the conclusion of the disciplinary action portion of a hearing on a citation,

(a.2) at the conclusion of a hearing on a citation under Rule 4-24.1,

(b) at the conclusion of a hearing before a review board under section 47 of the Act,

LAW SOCIETY RULES

(c) at the conclusion of an appeal to the Court of Appeal under section 48 of the Act,

(d) when an order is made or refused under Rule 4-19(13) or (14),

(e) when a lawyer or former lawyer is suspended or disbarred under Rule 4-40, or

(f) when an admission is accepted under Rule 4-21 or 4-22.

(2) The Executive Director may publish and circulate to the profession a summary of any decision, reasons and action taken not enumerated in subrule (1), other than

(a) a decision not to accept a conditional admission under Rule 4-21 or 4-22, or

(b) any decision under Rule 4-17(1).

(3) When a publication is required under subrule (1) or permitted under subrule (2), the Executive Director may also publish generally

(a) a summary of the circumstances of the decision, reasons and action taken,

(b) all or part of the ~~report of the hearing panel or review board~~written reasons for the decision, or

(c) in the case of a conditional admission that is accepted under Rule 4-21, all or part of an agreed statement of facts.

(4) **[rescinded]**~~When the Executive Director publishes a document under this Rule by means of the Society's website, the Executive Director must remove the publication from the part of the website for current decisions and may relocate it to an archive part of the website when~~

~~(a) 6 months have elapsed from the decisionof the hearing panel, and~~

~~(b) all aspects of the disciplinary action imposed have been completed.~~

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Credentials hearings

Publication of credentials decision

2-69.1 (1) Subject to Rule 2-69.2, the Executive Director may publish and circulate to the profession a summary of the circumstances and of any final or interlocutory decision of a hearing panel or review board on an application under this Division and the reasons given for the decision.

(2) When a publication is allowed under subrule (1), the Executive Director may also publish generally

(a) a summary of the circumstances of the decision of the hearing panel and the reasons given for the decision, or

(b) all or part of the written reasons for the decision.

(3) **[rescinded]**

PART 4 – DISCIPLINE

Publication of disciplinary action

4-38 (1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of any decision, reasons and action taken

(a) at the conclusion of the facts and determination portion of a hearing on a citation,

(a.1) at the conclusion of the disciplinary action portion of a hearing on a citation,

(a.2) at the conclusion of a hearing on a citation under Rule 4-24.1,

(b) at the conclusion of a hearing before a review board under section 47 of the Act,

(c) at the conclusion of an appeal to the Court of Appeal under section 48 of the Act,

(d) when an order is made or refused under Rule 4-19(13) or (14),

(e) when a lawyer or former lawyer is suspended or disbarred under Rule 4-40, or

LAW SOCIETY RULES

(f) when an admission is accepted under Rule 4-21 or 4-22.

(2) The Executive Director may publish and circulate to the profession a summary of any decision, reasons and action taken not enumerated in subrule (1), other than

(a) a decision not to accept a conditional admission under Rule 4-21 or 4-22, or

(b) any decision under Rule 4-17(1).

(3) When a publication is required under subrule (1) or permitted under subrule (2), the Executive Director may also publish generally

(a) a summary of the circumstances of the decision, reasons and action taken,

(b) all or part of the written reasons for the decision, or

(c) in the case of a conditional admission that is accepted under Rule 4-21, all or part of an agreed statement of facts.

(4) **[rescinded]**

PUBLICATION

SUGGESTED RESOLUTION:

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

1. In Rule 2-69.1, by rescinding subrules (1) to (3) and substituting the following:

(1) Subject to Rule 2-69.2, the Executive Director may publish and circulate to the profession a summary of the circumstances and of any final or interlocutory decision of a hearing panel or review board on an application under this Division and the reasons given for the decision.

(2) When a publication is allowed under subrule (1), the Executive Director may also publish generally

(a) a summary of the circumstances of the decision of the hearing panel and the reasons given for the decision, or

(b) all or part of the written reasons for the decision.***; and***

2. In Rule 4-38, by rescinding subrules (3) and (4) and substituting the following:

(3) When a publication is required under subrule (1) or permitted under subrule (2), the Executive Director may also publish generally

(a) a summary of the circumstances of the decision, reasons and action taken,

(b) all or part of the written reasons for the decision, or

(c) in the case of a conditional admission that is accepted under Rule 4-21, all or part of an agreed statement of facts.

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: January 6, 2014
Subject: **Rule 10-1: Service and notice**

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1. I attach a memorandum prepared by Alison Kirby on behalf of the discipline staff. The Act and Rules Committee was asked to consider revisions to Rule 10-1

   (a) to clarify whether service on the Respondent may be effected by leaving the documents at their place of business; and

   (b) to clarify when service of the documents is deemed completed.

2. The memorandum sets out the context for the request. I attach draft amendments and a suggested resolution, which the Act and Rules Committee recommends to the Benchers for adoption.

3. The Committee proposes that the Rule specify that notice may be effected or a document served by leaving it at the recipient's place of business and that it is deemed to be served on the next business day.

4. Similarly, the Committee proposes that a document sent by fax or email should also be deemed to be served on the next business day after it is sent.

5. Finally, since delivery by courier or registered mail can be verified by evidence such as the signature of a person receiving it, there is no need to deem the document so delivered received at a later day. However, with respect to ordinary mail, where there is no proof of delivery available, there should be a deemed service seven days after it is sent.

Attachments: memo from A Kirby Sept 23, 2013
draft amendments
resolution

DM454719

The Law Society of British Columbia

Memo

To: Jeffrey G. Hoskins, QC for Act and Rules Subcommittee
From: Alison L. Kirby
Date: September 23, 2013
Subject: **Rule 10 Service and Rule 4-20.1 Notice to Admit**

Issue

Discipline Counsel request that the Act and Rules Subcommittee consider whether to amend Rule 10.1 of the Law Society Rules:

(a) to clarify whether service on the Respondent may be effected by leaving the documents at their place of business; and

(b) to clarify when service of the documents is deemed completed.

Background

1. In April 2013, the Benchers adopted Rule 4-20.1 relating to a Notice to Admit. Either discipline counsel or the respondent may serve a Notice to Admit on the other party. Under Rule 4.20.1(1) the request must be made not less than 45 days before date set for hearing of a citation.

2. A Response to the Notice to Admit is required within 21 days of service or the party receiving the Notice will be deemed to have admitted the truth of the fact or authenticity of the documents attached.

3. As the result of the Bencher's adoption of Rule 4-20.1 relating to a Notice to Admit in April 2013, the precise calculation of time for service of documents under Rule 10.1 has become very important.

4. Service of both the Notice to Admit and the Response is to be made in accordance with Rule 10-1.

5. Rule 10-1 of the Law Society Rules provides as follows:

> **Service and notice**
> **10-1** (1) A lawyer, former lawyer, articled student or applicant may be served with a notice or other document personally or by sending it by
> (a) registered mail, ordinary mail or courier to his or her last known business or residential address,
> (b) electronic facsimile to his or her last known electronic facsimile number,
> (c) electronic mail to his or her last known electronic mail address, or
> (d) any of the means referred to in paragraphs (a) to (c) to the place of business of his or her counsel or personal representative or to an address given to discipline counsel by a respondent for delivery of documents relating to a citation.
> (1.1) [rescinded 04/2013]
> (1.2) If it is impractical for any reason to serve a notice or other document as set out in subrule (1), the President may order substituted service, whether or not there is evidence that
> (a) the notice or other document will probably
> (i) reach the intended recipient, or
> (ii) come to the intended recipient's attention, or
> (b) the intended recipient is evading service.
> (1.3) The President may designate another Bencher to make a determination under subrule (1.2).
> (2) A document may be served on the Society or on the Benchers by
> (a) leaving it at or sending it by registered mail or courier to the principal offices of the Society, or
> (b) personally serving it on an officer of the Society.
> (3) A document sent by registered mail or courier is deemed to be served 7 days after it is sent.
> (4) Any person may be notified of any matter by ordinary mail, electronic facsimile or electronic mail to the person's last known address.

6. Rule 10-1(2)(a) permits service on the Law Society by leaving the documents at the Law Society's principal offices *in addition to* service by registered mail or courier. Rule 10-1(1) on the other hand does not expressly permit service on the respondent by leaving the documents at the respondent's place of business or at the address provided for delivery of documents relating to the citation. Confusion may arise in interpreting Rule 10-1(1)(a) as to whether the date a courier drops off the documents at reception or the date a registered letter is signed for at reception may be considered the date of service or whether the 7 day deemed delivery rule under Rule 10-1(3) should be applied regardless of the date the documents were actually left at the place of business.

7. Rule 10-1(3) provides that service by registered mail or courier is effective 7 days after it is sent.

8. Rule 10-1 is silent however as to when the service by "ordinary mail", "electronic facsimile", "electronic mail" or by "leaving it at" the Law Society's principal office is deemed effective.

9. Difficulties in calculating the time arise in the context of the new Rule 4-20.1. For example, assuming a hearing date of August 1, 2013:

   (a) the Notice to Admit must be "made" under Rule 4-20.1(1) not less than 45 days set for the hearing, so it must be served no later than Monday, June 17, 2013.

   (b) If it is sent by registered mail or courier, another 7 days must be added to ensure that it is deemed served by June 17, 2013, so it must be sent by Monday, June 10th (52 days prior to hearing).

   (c) If the Notice is sent by email or fax, the date service is deemed completed is not specified under the Law Society Rules. Under the *Administrative Tribunals Act*[i], SBC 2004, c. 45, a document sent by electronic transmission is to be considered to be received on the next day that is not a "holiday" which, by virtue of sections 25 and 29 of the *Interpretation Act*, RSBC 1996, c. 238, does not include Sunday or Saturday (if the business office is not open on a Saturday during regular business hours), so it must be sent prior to 5 pm on Friday, June 15, 2013. Under the *Supreme Court Civil Rules*[ii], service by email or fax would be completed the same business day or the next business day depending on the length of the document, so the Notice could be sent on June 15 or June 17th .

   (d) If the Notice is sent by ordinary mail, the date service is deemed completed is not specified under the Law Society Rules. Under the *Administrative Tribunals Act*, the document is considered received on the fifth day after the day it is mailed (unless that day is a holiday) so it must be sent by June 12, 2013. Under the *Supreme Court Civil Rules*, service by ordinary mail is completed one week after mailing (assuming it falls on business day) so it must be sent by June 10, 2013.

   (e) The Response to the Notice to Admit must be served within 21 days from date of service of the Notice to Admit or in this case by July 8th if served on June 17, 2013.

   (f) If the Response is to be sent by registered mail or courier the Response would have to be sent by July 1st (14 days after service).

   (g) If the respondent leaves the Response at the Law Society offices, the date service is deemed effective is not specified under the Law Society Rules or the *Administrative Tribunals Act*. Under the *Supreme Court Civil Rules*, service by leaving the document at a person's address for service is deemed to be completed (if done before 4 pm on a day that is not a Saturday or holiday) on the day of service. If left after 4 pm, then service is deemed completed on the next day that

is not a Saturday or holiday so the Response must be left before 4 pm on Monday July 8, 2013.

(h) The respondent may not serve his response on the Law Society by email or fax or by ordinary mail.

10. Discipline Counsel request that Rule 10-1(1) be amended to expressly provide for service on the Respondent by leaving the documents at their place of business (which address must be provided to the Law Society under Rule 2-8).

11. Discipline Counsel also request that Rule 10-1 be amended to clarify when the date service is deemed completed.

[i] **Section 19 of Administrative Tribunals Act provides as follows:**

19 (1) If the tribunal is required to provide a notice or any document to a party or other person in an application, it may do so by personal service of a copy of the notice or document or by sending the copy to the person by any of the following means:

(a) ordinary mail;

(b) electronic transmission, including telephone transmission of a facsimile;

(c) if specified in the tribunal's rules, another method that allows proof of receipt.

(2) If the copy is sent by ordinary mail, it must be sent to the most recent address known to the tribunal and must be considered to be received on the fifth day after the day it is mailed, unless that day is a holiday, in which case the copy must be considered to be received on the next day that is not a holiday.

(3) If the copy is sent by electronic transmission it must be considered to be received on the day after it was sent, unless that day is a holiday, in which case the copy must be considered to be received on the next day that is not a holiday.

(4) If the copy is sent by a method referred to in subsection (1) (c), the tribunal's rules govern the day on which the copy must be considered to be received.

(5) If through absence, accident, illness or other cause beyond the party's control a party who acts in good faith does not receive the copy until a later date than the date provided under subsection (2), (3) or (4), that subsection does not apply.

[ii] **Rule 4-2 of the Supreme Court Civil Rules provides as follows:**

Documents normally to be served by ordinary service
(1) Subject to Rule 4-3 (1) and unless the court otherwise orders, documents to be served by a party under these Supreme Court Civil Rules may be served by ordinary service.

How to serve documents by ordinary service
(2) Unless the court otherwise orders, ordinary service of a document is to be effected in any of the following ways on a person who has provided an address for service in the proceeding:

(a) by leaving the document at the person's address for service;
(b) by mailing the document by ordinary mail to the person's address for service;
(c) subject to subrule (5) of this rule, if a fax number is provided as one of the person's addresses for service, by faxing the document to that fax number together with a fax cover sheet;
(d) if an e-mail address is provided as one of the person's addresses for service, by e-mailing the document to that e-mail address.

When service by delivery is deemed to be completed
(3) A document served by leaving it at a person's address for service is deemed to be served on the person as follows:

(a) if the document is left at the address for service at or before 4 p.m. on a day that is not a Saturday or holiday, the document is deemed to be served on the day of service;
(b) if the document is left at the address for service on a Saturday or holiday or after 4 p.m. on any other day, the document is deemed to be served on the next day that is not a Saturday or holiday.

When service by mail is deemed to be completed

(4) A document sent for service by ordinary mail under this rule is deemed to be served one week later on the same day of the week as the day of mailing or, if that deemed day of service is a Saturday or holiday, on the next day that is not a Saturday or holiday.

When documents may be served by fax

(5) A document may be served by fax as follows:

(a) if the document, including the fax cover sheet, is less than 30 pages, the document may be served by fax at any time;

(b) if the document, including the fax cover sheet, is 30 pages or more, the document may be served by fax if it is transmitted

(i) between 5 p.m. and the following 8 a.m., or

(ii) at another time if the person receiving the document agreed to that time before service.

When service by fax or e-mail is deemed to be completed

(6) A document transmitted for service by fax or e-mail under this rule is deemed to be served as follows:

(a) if the document is transmitted before 4 p.m. on a day that is not a Saturday or holiday, the document is deemed to be served on the day of transmission;

(b) if the document is transmitted on a Saturday or holiday or after 4 p.m. on any other day, the document is deemed to be served on the next day that is not a Saturday or holiday.

If no address for service given

(7) If, despite these Supreme Court Civil Rules, a party of record on whom a document is to be served has no address for service, and if these Supreme Court Civil Rules do not specify that the document must be served by personal service on the party,

(a) the document may be served by mailing a copy of the document by ordinary mail to

(i) the party's lawyer, or

(ii) if the party has no lawyer representing the party in the proceeding, to the party's last known address, and

(b) subrule (4) applies.

LAW SOCIETY RULES

PART 10 – GENERAL

Service and notice

10-1 (1) A lawyer, former lawyer, articled student or applicant may be served with a notice or other document personally, by leaving it at his or her place of business or by sending it by

(a) registered mail, ordinary mail or courier to his or her last known business or residential address,

(b) electronic facsimile to his or her last known electronic facsimile number,

(c) electronic mail to his or her last known electronic mail address, or

(d) any of the means referred to in paragraphs (a) to (c) to the place of business of his or her counsel or personal representative or to an address given to discipline counsel by a respondent for delivery of documents relating to a citation.

(3) A document sent by ~~registered mail~~ordinary mail ~~or courier~~ is deemed to be served 7 days after it is sent.

(3.1) A document that is left at a place of business or sent by registered mail or courier is deemed to be served on the next business day after it is left or delivered.

(3.2) A document sent by electronic facsimile or electronic mail is deemed to be served on the next business day after it is sent.

(4) Any person may be notified of any matter by ordinary mail, electronic facsimile or electronic mail to the person's last known address.

LAW SOCIETY RULES

PART 10 – GENERAL

Service and notice

10-1 (1) A lawyer, former lawyer, articled student or applicant may be served with a notice or other document personally, by leaving it at his or her place of business or by sending it by

(a) registered mail, ordinary mail or courier to his or her last known business or residential address,

(b) electronic facsimile to his or her last known electronic facsimile number,

(c) electronic mail to his or her last known electronic mail address, or

(d) any of the means referred to in paragraphs (a) to (c) to the place of business of his or her counsel or personal representative or to an address given to discipline counsel by a respondent for delivery of documents relating to a citation.

(3) A document sent by ordinary mail is deemed to be served 7 days after it is sent.

(3.1) A document that is left at a place of business or sent by registered mail or courier is deemed to be served on the next business day after it is left or delivered.

(3.2) A document sent by electronic facsimile or electronic mail is deemed to be served on the next business day after it is sent.

(4) Any person may be notified of any matter by ordinary mail, electronic facsimile or electronic mail to the person's last known address.

SERVICE AND NOTICE

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Rule 10-1 as follows:

1. In subrule (1), by rescinding the preamble and substituting the following:

(1) A lawyer, former lawyer, articled student or applicant may be served with a notice or other document personally, by leaving it at his or her place of business or by sending it by

2. By rescinding subrule (3) and substituting the following:

(3) A document sent by ordinary mail is deemed to be served 7 days after it is sent.

(3.1) A document that is left at a place of business or sent by registered mail or courier is deemed to be served on the next business day after it is left or delivered.

(3.2) A document sent by electronic facsimile or electronic mail is deemed to be served on the next business day after it is sent.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To: Benchers
From: Equity and Diversity Advisory Committee
Date: December 2, 2013
Subject: Recommendations to Improve Diversity on the Bench

Background

At the invitation of Law Society of British Columbia President, Art Vertlieb, QC, the Honourable Lynn Smith, QC, and the Honourable Donna Martinson, retired justices of the Supreme Court, presented on the importance of diversity on the bench at the July 12, 2013 Bencher meeting. Following the presentation, Mr. Vertlieb requested that the Equity and Diversity Advisory Committee develop recommendations to the Benchers to improve diversity on the bench.

To fulfill this request, a subcommittee of Equity and Diversity Advisory Committee was struck to develop recommendations. The subcommittee was chaired by Satwinder Bains, and included Thelma O'Grady, Linda Robertson, and Andrea Hilland. The subcommittee met over the course of October and November 2013 to consider the matter, and produced draft recommendations that were then presented to the entire Equity and Diversity Advisory Committee for consideration. The draft recommendations were further reviewed and amended by the Committee for presentation to the Executive Committee and the Benchers.

Recommendations

The Equity and Diversity Advisory Committee recommends that the Law Society of British Columbia:

1. Be pro-active in selecting a more diverse list of lawyers as the Law Society's candidates for appointment to the Federal Judicial Advisory Committee;

2. Investigate and endeavour to address the systemic barriers impacting the retention and advancement of lawyers from equity seeking groups, through the development and implementation of effective programs and more informal ways of supporting lawyers from equity seeking groups;

3. On an annual basis, monitor and assess the effectiveness of Law Society of British Columbia initiatives relating to the retention and advancement of lawyers from equity seeking groups, in light of the objective of improving diversity on the bench; and

4. Continue to collaborate with organizations representing lawyers from equity seeking groups in British Columbia to help disseminate information on the judicial appointments process, and to facilitate the career advancement of lawyers from equity seeking groups.

Rationale

Recommendation 1: Federal Judicial Advisory Committee

The Federal Judicial Advisory Committee is comprised of:

- 1 nominee of the provincial Law Society;
- 1 nominee of the provincial branch of the Canadian Bar Association;
- 1 nominee of the Chief Justice of the province;
- 1 nominee of the provincial Attorney General;
- 1 nominee of the law enforcement community; and
- 3 nominees of the federal Minister of Justice representing the general public; and
- 1 ex officio non-voting member: Commissioner for Federal Judicial Affairs or Executive Director, Judicial Appointments.

When appointing Federal Judicial Advisory Committee members, the Minister of Justice attempts to reflect factors appropriate to each jurisdiction including geography, language, multiculturalism, and gender.

The subcommittee anticipates that a Federal Judicial Advisory Committee that is more representative of the diversity in society would likely lead to improved diversity on the bench by enabling a broader perspective regarding the definition and perception of merit in relation to judicial appointments. To ensure diverse representation on the Federal Judicial Advisory Committee, the subcommittee believes that the Law Society should be strategic in putting forward a diverse list of candidates for the Federal Judicial Advisory Committee.

Recommendation 2: Systemic Barriers

Systemic barriers include situations, policies, and practices which unfairly exclude members of equity seeking groups from career progression. The subcommittee understands that systemic barriers likely exist within the legal profession in British Columbia. However, subcommittee members felt that to properly address systemic barriers, further research is required to identify what the current barriers are and what measures should be taken to alleviate such barriers.

The subcommittee anticipates that alleviating systemic barriers in the legal profession would help more equity seeking lawyers to remain and advance in legal practice, so that a more diverse pool of candidates will be available for judicial appointment in the future. Moreover, an examination of definitions and standards of merit, as well as hidden assumptions and bias in criteria and selection processes, would likely lead to a better appreciation of a broader pool of qualified candidates from equity seeking groups.

Recommendation 3: Law Society Initiatives

The third recommendation acknowledges that the Law Society is already taking measures to improve the retention and advancement of equity seeking lawyers. As stated above, the subcommittee acknowledges that helping to keep equity seeking lawyers in practice to advance in their careers will likely lead to a more diverse pool of candidates being available to compete for judicial appointment in the future.

Recommendation 4: Dissemination of Information

The subcommittee acknowledges the importance of outreach, recruitment, and role modelling to enhance diversity on the bench. Outreach is necessary to: demonstrate that a judicial position is a realistic career goal for equity seeking lawyers; explain the processes for judicial appointments; help equity seeking lawyers to develop their career plans toward judicial appointment; and to highlight judges from equity seeking groups to serve as role models for equity seeking lawyers. The subcommittee believes that the dissemination of this information will facilitate the career advancement of equity seeking lawyers towards judicial appointment, resulting in a broader pool of diverse candidates.

Request

The Committee requests that the Benchers consider the four recommendations at the January 24, 2014 Benchers meeting.

The Law Society of British Columbia

CEO's Report to the Benchers

January 24, 2014

Prepared for: Benchers

Prepared by: Timothy E. McGee

Introduction

This is my first CEO's report to the Benchers for 2014 and I would like to wish you all the very best for the New Year. I would also like to extend a warm welcome on behalf of all the staff to our new President Jan Lindsay, QC and to both our new and returning Benchers. We look forward to working with all of you in the coming year.

Operational Priorities for 2014

In my first report each year I present management's top five operational priorities for the ensuing year. These priorities, which for 2014 are set out below, have been developed in consultation with the Leadership Council and have been discussed with President Lindsay.

I always emphasize that these priorities do not derogate from our day-to-day responsibility to perform all of our core regulatory functions to the highest standards. However, in each year there are certain items that require extra attention and focus to ensure success. The top five operational priorities (in no particular order) for management in 2014 are as follows:

Implementation of Legal Service Providers Task Force Report Recommendations

Following on the Benchers adoption in December of the three recommendations from the Legal Service Providers Task Force, steps have been taken to start work on the implementation of those recommendations.

In respect of the recommendation that the Law Society seek to merge regulatory operations with the Society of Notaries Public, I met earlier this month with Wayne Braid, CEO of the Society for a preliminary discussion of how merger discussions might be organized. We had a good discussion and Wayne expected to be meeting with his Board on January 17 to get direction on this issue.

The second recommendation directed that a program be created by which paralegals who have met specific, prescribed education and training standards could be held out as "certified paralegals". Staff will be working on developing a framework for certification of paralegals to be considered by the Benchers later this year.

The third recommendation provided 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. The Benchers will soon create a task force to do the review and workup and provide the Benchers with a proposed regulatory framework.

These recommendations touch on most if not all aspects of the operations of the Law Society. As a result, we will be very focused in 2014 to ensure that we formulate appropriate operational impact assessments to assist the Benchers in their deliberations and decision making with regard to this very important body of work.

Law Society as Insurer and Regulator Working Group

Following the September 2014 approval by the Benchers of the recommendations in the April 12, 2013 Report of the Rule of Law and Lawyer Independence Advisory Committee, President Lindsay has established a working group to undertake a detailed examination and analysis of the two solution options described in the Report for future consideration by the Benchers. The working group members are:

Ken Walker, QC - Chair

Herman Van Ommen, QC
Vince Orchard, QC
Miriam Kresivo, QC
Hayden Acheson
Don Yule, QC
Su Forbes, QC
Deborah Armour
Jeanette McPhee
Michael Lucas
Tim McGee ex officio

This working group is comprised of Benchers and a non-Bencher member, as well as senior staff due to the breadth and significance of the policy and operational issues which will be considered. Our goal is to ensure that we provide the most thorough analysis and assessment of the options as possible from the operational perspective and to respond fully to the needs of the working group regarding additional information which may be required from third parties.

Implementation of Lawyer Support and Advice Project

The 2010 Core Process Review (CPR) revealed that over the prior five years the number of phone calls and email inquiries to the Practice Advice department alone was growing at a compound growth rate of 6.7%. The CPR report suggested ways to better handle calls through a triage system and to reduce calls by providing alternative means for obtaining information and assistance through web-based tools.

Lawyer support and advice is not limited to the Practice Advice group. Staff with the Lawyers Insurance Fund, Trust Regulation, Professional Conduct, Practice Standards and Member Services are also engaged in providing advice and support to lawyers. A survey of lawyers recently demonstrated very strong support for the Law Society providing practice advice and support.

Throughout 2013, a cross-departmental working group looked extensively at our current delivery of lawyer support services and concluded that our model needs to be broadened to provide more self-help assistance to meet lawyers' evolving expectations both in what is available and how it accessed. A series of recommendations from the working group was included in the budget planning process at the Finance Committee meetings this year. As a result of that review, specific resourcing support for the recommendations is now included in the 2014 budget approved by the Benchers earlier this year.

I look forward to sharing with the Benchers the roll out of the new lawyer support and assistance initiatives in 2014.

Support for Law Firm Regulation Review

In November 2013, the Executive Committee approved the establishment of a staff working group to compile information from other jurisdictions and develop possible models for law firm regulation in BC for the review and consideration of the Benchers. That direction from the Executive Committee followed on the amendment to the ***Legal Profession Act*** to include this additional jurisdiction (in addition to the regulation of individual lawyers), which was part of a package of amendments to the Act approved by the Benchers in 2010 and passed into law in 2012.

The staff working group will report its findings and ideas to a Bencher task force to be established in the new year. The Bencher task force will then direct and oversee additional work and refinement of the policy and operational issues with a view to reporting to the Executive Committee and ultimately to the Benchers on progress by the end of the year. Our goal is to ensure that the best possible review and due

diligence is undertaken at the staff level to assist the task force in its formulation of options for Bencher consideration.

Review and Renewal of Staff Performance Management Process

One of the aspects of our operations which we take great pride in is the extensive time and effort we take to ensure that every member of the Law Society's staff participates in an annual performance review and assessment. Today this involves an interactive process whereby managers and their reports share evaluation of individual performance in the year against personal and departmental goals and discuss achievements and areas for improvement. The current model for this has been in place for about seven years and much has changed both in the demographics of our staff and the way organizations go about performance management. We believe it is time to review and possibly improve how we do this important work.

With the introduction of the new employee rewards and recognition program last year known as RRex we completely overhauled the way we encourage and recognize the positive behaviours which we desire at all levels of the organization. By undergoing a review and assessment of our performance management process we will check to ensure that it aligns with RRex and also provides the best possible mechanism for staff to receive constructive, relevant and clear feedback on how they are doing.

We have struck a staff working group to be led by Donna Embree our Manager of Human Resources to review best practices, consult with staff and make recommendations as early as possible in the year.

New Workplace Bullying and Harassment Policy

Many of you may be aware from your own work environments that WorkSafeBC introduced new workplace bullying and harassment policies last November. The new policies set out the duties of employers, workers and supervisors to ensure or protect the health and safety of the workplace. We are now developing our own workplace bullying and harassment policy, based on the WorkSafeBC requirements, and are aiming for completion in February 2014.

This type of policy is not new for the Law Society as we have a respectful workplace policy today which is very similar in scope and intent to the new WorkSafeBC policy.

However, there are important aspects which are new in the WorkSafeBC rules which we want to ensure are properly covered here at the Law Society.

As mandated by WorkSafeBC, the new policy applies to all those working for the Law Society in any capacity including Benchers, management, professional staff, administrative staff, articling students, summer students, contract personnel, volunteers and committee members.

The policy further mandates that training be provided. Law Society managers received training on December 10 and we expect to complete the balance of staff training within the next few weeks.

We will need to ensure that Benchers have an opportunity to take this training to fulfill the Law Society's obligations. The training is not onerous and can be completed in a one hour session. We very much appreciate your cooperation and will communicate further once arrangements are in place.

Fall Justice Summit Report

The second Justice Summit was held at Allard Hall, at the UBC Faculty of Law on November 8 and 9. The summit brought together approximately 80 participants from stakeholders in the justice system including the Chief Justice of British Columbia Robert Bauman, Associate Chief Justice Austin Cullen, Chief Judge Thomas Crabtree, the Minister of Justice and Attorney General Suzanne Anton, QC and leaders from law enforcement, the Bar, social agencies and First Nations.

The summit was the follow up to the inaugural Justice Summit held in March and it built on the work from those sessions. The focus of the November summit was to expand and further articulate the goals and objectives for the criminal justice system in BC. In particular, the participants examined each of the stated goals of fairness, protection, sustainability, and public confidence highlighting the gaps between the current state of affairs and the desired vision. The report for the summit has now been prepared and is attached as Appendix A to this report.

As I have pointed out on prior occasions, the general sense among the participants was that while much remains to be done the emerging spirit of joint commitment and collaboration among the diverse stakeholders bodes well for the future.

Continuing Professional Development (CPD) Program – Update

Here is a brief update on the compliance statistics for our CPD program in 2013.

Of the 10,528 lawyers who had CPD requirements to report in 2013, 349 did not report year end completion (a modest decrease from 2012) and as at January 10, 2014, 233 had still not recorded completion and are overdue. Overall, 2013 continues a trend of increasing timely compliance by the members with the CPD requirements since inception.

2013 Employee Survey

Our eighth consecutive employee survey was conducted in November of 2013. We had a record high response rate of 86% for the survey and I think you will find the results both interesting and encouraging on several fronts. Ryan Williams, President of TWI Surveys Inc., the survey administrators, will be at the meeting to provide an overview of the results and to respond to any questions.

The results of our annual employee survey are used to help us measure how we are doing as an organization and to help management develop action plans to better engage employees in the work and life of the Law Society.

Timothy E. McGee
Chief Executive Officer

Appendix A

British Columbia
JUSTICE SUMMIT

SECOND JUSTICE SUMMIT
NOVEMBER 8 – 9, 2013

REPORT OF PROCEEDINGS

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REPORT OF PROCEEDINGS

This Report of Proceedings was prepared for the Honourable Suzanne Anton, Attorney General and Minister of Justice; the Honourable Chief Justice Robert Bauman, Chief Justice of British Columbia; the Honourable Chief Justice Christopher Hinkson, Supreme Court of British Columbia; and the Honourable Chief Judge Thomas Crabtree, Provincial Court of British Columbia.

BRITISH COLUMBIA JUSTICE SUMMITS

Justice Summits are convened by the Attorney General and Minister of Justice of British Columbia, at least once a year, to facilitate innovation in, and collaboration across, the justice and public safety sector. As indicated in s. 9 of the *Justice Reform and Transparency Act*, a Summit may:

a. review and consider initiatives and procedures undertaken in other jurisdictions in relation to the justice system in those jurisdictions;
b. provide input to assist the Justice and Public Safety Council of British Columbia in creating a strategic vision for the justice and public safety sector;
c. make recommendations relating to priorities, strategies, performance measures, procedures and new initiatives related to the justice and public safety sector;
d. assess the progress being made in justice reform in British Columbia, and
e. engage in any other deliberations that the Justice Summit considers appropriate.

On the conclusion of its deliberations, a Justice Summit must report to the Minister on the outcome of those deliberations. By agreement between the executive and judicial branches of government, the report of the Justice Summit is simultaneously submitted to the Chief Justice of British Columbia, to the Chief Justice of the Supreme Court of British Columbia, and the Chief Judge of the Provincial Court of British Columbia.

Grand Chief Edward John of the British Columbia First Nations Summit addresses the plenary.

BACKGROUND TO THE SECOND BC JUSTICE SUMMIT

The *Justice Reform and Transparency Act* (2013) provides for the Attorney General to convene a British Columbia Justice Summit by invitation at least annually. Currently held twice a year, Summits are intended to encourage innovation and facilitate collaboration across the sector, by providing a forum for frank discussion between sector leaders and participants about how the system is performing and how it may be improved. As the Act also establishes a Justice and Public Safety Council, appointed by the Minister, to develop a Vision and an annual plan for the sector across the province, the Summit represents a key source of input and recommendations into the Council's planning process, and is a forum to assess the plans and the progress made under them.

The inaugural Justice Summit, held in March 2013, was based on the theme of criminal justice. The agenda for the Summit focused primarily on consideration of the basic values of the criminal justice system as a foundational element of future discussions around planning and system performance. The first Summit also provided an initial opportunity for participants to identify and discuss criminal justice policy priorities. Finally, both during the first Summit and in subsequent dialogue with participants, Summit organizers were provided with important feedback concerning the makeup and content of future Summits. The first Summit's deliberations were summarized in a *Report of Proceedings* in June 2013.

Participants at the March Summit agreed to return to a second Summit dealing with criminal justice in the fall, at which time it was anticipated that work done by the Justice and Public Safety Council on a Vision and set of Values for the sector – informed by the work of the Summit – would be tabled for discussion. Participants at the March Summit also expressed a desire to see a more diverse and representative population at future Summits, including increased participation by aboriginal organizations.

GOVERNANCE AND PLANNING

The Justice Summit saw the establishment of a Steering Committee (see Appendix 3) with representation from the executive and judicial branches of government, as well as independent legal and policing organizations. The Steering Committee was supported by an internal Working Group (see Appendix 3).

The Steering Committee met between April and November 2013, its principal tasks being to consider the deliberations of the first Summit; develop an agenda in furtherance of the discussion in March and informed by the work of Justice and Public Safety Council; settle on a representative list of participants; and reach agreement on facilitation, location, and other planning matters. Consistent with the theme of the first Summit, criminal justice was reconfirmed by the Committee as the broad-based topic of the second Summit, and as an organizing principle to determine participation.

Attendance at the first Summit had been consciously restricted in numbers to allow candid and productive dialogue in a new and untried forum. Based on the success and collaborative nature of the first event, the Steering Committee worked to increase participation from less than 50 to nearly 70 attendees.

As was the case in March, the Committee agreed that, consistent with protocol in similar gatherings in other jurisdictions to encourage free expression, no comments made by participants during the Summit would be attributed to those individuals or to their organizations in the Summit report.

Prior to the Summit, a productive bilateral meeting was held between the Attorney General and Minister of Justice, the Chief Justice of the Court of Appeal, and the Chief Judge of the Provincial Court (at the time of the meeting the Chief Justice of the Supreme Court had not yet been appointed). In this meeting the judiciary expressed strong support for this multilateral Summit process. It was also agreed that a high priority would be placed on completion of a Memorandum of Understanding between the executive and the judiciary that will outline how continued bilateral meetings will take place between these two branches of government and their relationship to the Justice Summit process.

AGENDA DEVELOPMENT

While the first Summit had established an important precedent for dialogue at this level, the Steering Committee believed that the agenda for the second Summit should focus more on substantive questions of criminal justice reform. In developing the agenda, the Committee saw an opportunity for participants to achieve four objectives.

First, it was appropriate for the Summit to return to the topic of values, first raised in March, to assess progress. Since the first Summit's work on the values that characterize the criminal justice system, the Justice and Public Safety Council had developed draft Vision and Values statements for the BC justice and public safety sector, in consultation with Summit participants (Appendix 4). One key opportunity for the Summit in November, therefore, was to **consider the progress made by the Council in developing a sector Vision and statement of Values** as foundational documents for governance and reform of the system.

Second, on the assumption that the Vision identified by the Council was sufficiently reflective of participants' goals for the criminal justice system, the Committee saw the Summit as an ideal opportunity for participants to **identify any gaps between the Vision for the system and reality**, in constructive but candid terms. In other words, participants would identify and discuss areas in which the criminal justice system was failing to meet commonly held aspirations. This would be achieved through sessions focusing on each of the four goals comprising the Vision: fairness, protection of people, sustainability, and public confidence.

The Honourable Suzanne Anton, Attorney General and Minister of Justice, addresses Summit participants on the first morning of the Summit.

Third, based on this gap analysis the Summit was well placed to **recommend priority actions to close these gaps**: participants were therefore encouraged to specify steps which should be given priority by sector organizations in terms of resources and effort. These recommendations, issued as part of the Summit's report, would offer a meaningful contribution to public debate over reform of the system, and would represent important input into the development of the Justice and Public Safety Council's first annual strategic plan in March 2014.

Fourth, and finally, the Summit was seen by the Committee as an opportunity to **consider the challenges and opportunities of sector-level performance measures and targets**, required by statute as a component of the Council's planning process. While the development of performance measures for the sector is still in its early stages, the relevance of these measures for Summit participants led the Committee to save space on the agenda for an initial presentation on performance measurement in justice systems.

SUMMIT PROCEEDINGS

VISION AND VALUES DOCUMENTS

OVERVIEW OF DEVELOPMENT

In accordance with its statutory mandate, and further to dialogue at the first Summit, between April and August 2013 the Justice and Public Safety Council (Appendix 5) developed a draft statement of Values applicable to the justice and public safety sector in British Columbia, as well as a draft Vision for the sector, with accompanying goals.

Participants were provided by the Council's Vice-Chair with an overview of the development of these documents, the manner in which Summit participants' recommendations in March had been incorporated, and the subsequent consultation activities undertaken by the Council with Summit participants between August and October 2013. It was noted that during consultation, Summit participants had provided feedback both on the draft Vision and Values, but also on policy questions relevant to the development of the Council's strategic plan in March 2014. The Council had returned a revised Vision statement and listing of Values (Appendix 4) to the Summit for consideration. The revised Vision statement was offered as the basis for the Summit's two days of deliberations around the four goals identified in the Vision: fairness, protection of people, sustainability, and public confidence in the system.

It was also acknowledged that the documents required that other voices be heard – as they did not yet reflect the product of consultation with aboriginal peoples, nor had they been subjected to a complete analysis from the perspective of family or civil justice – and were, thus, being tabled at the Summit by the Council as living documents.

Following the overview, the Summit facilitator posed a question to the room:

Recognizing that there is still work to do, has the Council done enough to start a useful conversation around these four goals – fairness, protection of people, sustainability, and public confidence – to begin considering how far we are from the ideal, and what we might do to bridge the gap?

PLENARY DISCUSSION

In plenary discussion, participants offered the following observations as important consideration with respect to the Vision and Values:

- Commitment to implementing the Vision implies a similar commitment to measure progress. This includes baseline measurement of our current situation and performance, in order to be able to show progress.
- Further clarity is required to communicate that the Vision is intended by the Council to reflect the full system of justice and public safety – including civil, family and administrative justice – not simply the criminal justice system.
- The Council has incorporated feedback from stakeholders, but the meaning of the Values and Vision as applied will become clearer as a plan emerges. How concepts such as proportionality or fairness are applied depends on the perspective brought to the issue and on the details of implementation.
- In the documents there could still be greater emphasis on education and information of the public with respect to the system, particularly early in life.
- Although words such as transparency and accountability are present, the power and intent of dialogue over these themes at the first Summit does not yet come through in the Vision.
- The role and interests of the accused and of offenders in the system is not yet sufficiently reflected in these documents, both in terms of rights of the accused and also with respect to rehabilitation.
- As the Vision leads to sector-wide planning, continuing awareness is required with respect to ways in which decisions made at one level of government can have significant impact on other levels of government – with respect to policing, but also regarding other services and system functions as well.
- Competence should be considered for inclusion within the Vision. The tools and training made available to personnel within the system need to match expectations created around the system's functioning and performance.

- With this Vision developed, it now needs to be shared with the public, people working in the system, and people experiencing the system. The Council and the Summit need to hear directly from the people who will be affected.
- As developed by the Council, these documents neither exclude nor assume the addition of new resources for the system. They are an exercise in prioritization towards most effective use of whatever resources are available.

Further to this discussion, with respect to the question put forward by the Summit facilitator, participants were satisfied that the documents were sufficiently developed to proceed with a comparison of the Vision and the current system. It was also agreed that should there be concerns arising during the Summit's remaining work, the Vision and Values documentation would be revisited at the conclusion of the Summit.

COMPARING THE VISION WITH REALITY

PUBLIC CONFIDENCE

The Summit heard a panel discussion on the question of public confidence in the system, followed by intensive work by all participants in small groups. Participants were asked to consider the goal of public confidence as defined in the Vision statement:

PUBLIC CONFIDENCE

Adaptive – We offer services and programs that are nimble; we solicit and respond to the needs of people and monitor the effectiveness of our programs.

Performance-focused – We assume collective and respective responsibility for system performance, engaging British Columbians in dialogue as users and observers of the system.

Empowering – People entering the system have sufficient opportunity to learn its rules and practices at their level of need; the public both understands and values the system.

Two questions were posed to the panelists and to participants as a whole in their small group discussion:

1. *What are the most significant gaps between this Vision and our criminal justice system as it is?*
2. *To close these gaps, where could we apply major change efforts (e.g., innovation, resources)?*

The following points emerged in the small group discussions and were reported in plenary on behalf of the group. Common themes are summarized in the sub-headings below; reporting of any particular point should not be taken as necessarily reflecting participant consensus.

More effective education, information and engagement is required

- It is important to engage proactively with the public, in a structured and appropriately designed manner, to identify issues or areas where confidence in the system is most important, and to monitor confidence in those areas. Questions of confidence should relate both to the specific internal workings of the system, but also to more general external perception.
- The system must be explained to British Columbians in simple, non-technical and accessible ways, accenting the human characteristics of the system and its processes.
- Efforts to inform and educate people about the system – what they need to know – should occur early, as part of basic life education, and at appropriate opportunities later in life, reflecting the importance of the system for life in our province. Education strategies should be tailored to reflect differing needs across society.

Greater transparency is required in working with the media

- In working with media, true transparency means reporting both good and bad news stories, and a willingness to distinguish successes and failures. Similarly,

as part of a more transparent regime, in the public interest there is a need to challenge inaccuracies and public misinformation.

- Information should be delivered proactively, with more public release of documentation. Media strategies should be channeled to providing meaningful information to target audiences; media lock-ups should be continued or expanded for important stories or events.
- Where this is possible given the independent roles of various elements of the sector, it is useful to deliver joint messages from system participants on the same issue, as opposed to segmented news releases.

Accountability and performance measures contribute to public confidence

- There will be an enduring lack of trust in system reporting unless performance is independently assessed. This includes complete reporting on the effectiveness of reforms, what is working and what has not worked.
- When there is a gap between our goals and our current effectiveness, measurement must also be aligned with incentives to improve.
- The appropriate methodologies for research and reporting on effectiveness exist and do not need to be created. Some have already been applied in other jurisdictions, from whom we can learn.
- Both qualitative and quantitative data are necessary to demonstrate progress, and appropriate investment is required (e.g., for survey methods and necessary information technology supports). In some areas of the system further work is required to capture progress.
- Research and reporting are necessary but not sufficient with respect to performance. We require a knowledge management strategy to translate our findings into policy and operations. This strategy needs to be effective at the community level, not just centrally.

Areas impacting directly on public confidence should be clearly identified and addressed

- There are several issues of significant concern which require public identification and attention. These include:
  - affordability of securing appropriate representation in justice processes;
  - the over-representation of aboriginal people in the criminal justice system.
- Wherever possible and appropriate, we need to demonstrate action, not simply engage in dialogue.

Broader engagement on justice reform is required

- The membership of the Justice and Public Safety Council should be expanded beyond the current Ministry of Justice executive.
- Documents developed within the reform process should be released proactively, with appropriate public consultation.

PROTECTION OF PEOPLE

The Summit heard a panel discussion on the question of the protection of people by the system, followed by intensive work by all participants in small groups. Participants were asked to consider the goal of protection of people as defined in the Vision statement:

> ***PROTECTION OF PEOPLE***
>
> ***Preventative – We offer early, appropriate and effective interventions to reduce antisocial behaviour, assisting people in rebuilding healthy, productive lives.***
>
> ***Protective – We work together to reduce threats to public safety, protect complainants and victims of crime, and prevent re-victimization of the vulnerable by the system.***
>
> ***Comprehensive – We work across all levels of government to understand and address root causes of crime, and support and participate in effective alternative interventions.***

Two questions were posed to the panelists and to participants as a whole in their small group discussion:

1. *What are the most significant gaps between this Vision and our criminal justice system as it is?*
2. *To close these gaps, where could we apply major change efforts (e.g., innovation, resources)?*

The following points emerged in the small group discussions and were reported in plenary on behalf of the groups. Common themes are summarized in the sub-headings below; reporting of any particular point should not be taken as necessarily reflecting participant consensus.

A distinct strategy is required to protect vulnerable populations

- Vulnerable populations include those vulnerable as victims and those with a high probability of criminal involvement. These categories, in some situations, may overlap.
- Any broad approach to justice and public safety requires recognition of the specialized needs of aboriginal peoples. Other vulnerable populations requiring specialized attention include the elderly, the mentally ill, addicted persons, domestic and sexual violence victims, and the homeless.
- Prolific offending is often a manifestation of vulnerability – a specialized approach should be taken with respect to prolific offenders.
- There is often a lack of services to address victim needs, poor knowledge of services available, or regional disparity in service. There is a need for more comprehensive and specialized services to support victims.

The Honourable Robert Bauman, Chief Justice of British Columbia, addresses the plenary at the close of the Summit.

- Protection of vulnerable people needs to address alienation of individuals from the community. We must get communities more involved, not just professionals, to create communities of care. Through addressing environmental factors we have an opportunity to prevent people from becoming victims.
- We have exhibited a lack of creativity in addressing needs, including protective services. We need to develop and expand multi-disciplinary coordinated approaches. The criminal justice system is a last resort and an implicit recognition that other systems have failed an individual or a group; therefore, our system needs to connect better with other systems.

- Proactive operational responses, including policing, must be proportionate in nature, targeting the right people and the right resources.
- The system's clients need better-coordinated services and early intervention
- Information sharing is vital, and must overcome existing obstacles in the need to balance privacy considerations with the goals of protection and fairness. Similarly, processes which impede timely protective activity unduly should be examined (e.g., making protection orders accessible without court intervention).
- Triage of individuals into one system or another is critical to avoid criminalization being the only option available (e.g., mental health workers working as first responders with police).
- The Justice and Public Safety Council should include other sectors to facilitate an overall provincial framework and strategy for services, such as education, health and social development. Cross-sectoral leadership is needed to sustain support for promising multi-disciplinary approaches, and to identify how changes in one sector can cause pressures in another (e.g., mental health treatment referrals).
- Broader strategies must overcome the pressures of the budget cycle and the election cycle – an inconvenient truth. Cross-sectoral preventative investments are required to realize future savings, but may require "double funding" in transition periods until effects are realized.
- We should show courage with innovation where this requires significant change (e.g., restorative justice, supervised injection site), piloting and considering local initiatives for broader application. Innovation may involve specialized courts, including consideration of the appropriate role of the judiciary and expanded use of discretion regarding appropriate responses.
- Training and investment in early assessment (of e.g. risk, lethality), education, prevention and care across sector service lines can address causes rather than symptoms. Arbitrary thresholds for service delivery (e.g. age) should be revisited.

SUSTAINABILITY

The Summit returned to plenary for a panel discussion on the question of the sustainability of the system, followed by intensive work by all participants in small groups. Participants were asked to consider the goal of sustainability as defined in the Vision statement:

> ***SUSTAINABILITY***
>
> ***Effective – We measure and improve the return on investment of public resources, collectively and as institutions.***
>
> ***Managed – We allocate resources prudently across the system according to clear and demonstrated cause and effect; we treat the time of every participant as valuable.***
>
> ***Focused – Based on measurable demand, we take evidence-based decisions to resource the system's necessary functions, ensuring these services are delivered efficiently.***

Two questions were posed to the panelists and to participants as a whole in their small group discussion:

1. *What are the most significant gaps between this Vision and our criminal justice system as it is?*
2. *To close these gaps, where could we apply major change efforts (e.g., innovation, resources)?*

The following points emerged in the small group discussions and were reported in plenary on behalf of the groups. Common themes are summarized in the sub-headings below; reporting of any particular point should not be taken as necessarily reflecting participant consensus.

The need for long-term integrated strategies

- Complex systems of governance, accountability and financing are barriers to integrated long-term strategies. Governance of the system and its reform should be clear and should reflect alignment of decision-making and funding authority wherever possible.
- A cross-sector (as opposed to program-specific) approach should be taken to resource discussions, reflecting a continuum of decision-making. Policy choices should reflect understanding of the impacts of each decision on the whole system. The cheapest solutions within one program area may not be best for the system as a whole.
- Real change requires recognition of downstream impacts; we should not let short-term goals trump the public's long-term needs. Holistic planning cannot be based on short-term political priorities, and the system's tendency to respond reactively to high profile incidents works against longer-term reform.

The need for a robust evidence base

- Datasets used for performance metrics should be comprehensive and carefully chosen. Lots of data does not always translate into useful information, and likewise overly simple data should not drive decisions.
- Rigorous analysis should be undertaken regarding the effectiveness of system programs, requiring agreement in advance on definitions of success. Data should be openly available to allow meaningful analysis by those from outside the system.
- An evidence-based approach should not be an undue impediment to creative solutions.
- New capacity created by reform projects needs to be identified in advance and protected for reinvestment.
- Return on investment can be characterized as justice outcomes rather than cost (i.e., in terms of quality versus efficiency outcomes).

- System agencies should take advantage of existing, well-established and empirically supported research and tools on risk assessment.
- Innovation and risk taking should be valued.
- A culture of continuous improvement requires that leadership rewards risk-taking. A sustainable framework must support and encourage innovation.
- Resistance to change may be addressed through introducing appropriate incentives.
- Creative solutions to complex problems may include collaborative approaches (e.g., Victoria Integrated Court), while stand-alone services (e.g., traditional courthouses) may be a dated approach.

FAIRNESS

The Summit returned to plenary for a panel discussion on the question of the fairness of the system, followed by intensive work by all participants in small groups. Participants were asked to consider the goal of fairness as defined in the Vision statement:

> ***FAIRNESS***
>
> ***Accessible – We offer services accessible to all regardless of means, provide meaningful redress, and ensure access to justice for vulnerable and marginalized people proactively.***
>
> ***Impartial – We model integrity, fairness and natural justice in our procedures and in delivering services, treating people equally.***
>
> ***Timely – We work together to reduce systemic delay as an impediment to justice; we seek early resolution of individual processes wherever possible.***

Two questions were posed to the panelists and to participants as a whole in their small group discussion:

1. *What are the most significant gaps between this Vision and our criminal justice system as it is?*
2. *To close these gaps, where could we apply major change efforts (e.g., innovation, resources)?*

Remarks on aboriginal justice

As part of the panel session, participants heard a presentation by Grand Chief Edward John of the BC First Nations Summit and First Nations Leadership Council. Key points of this presentation included the following:

- Aboriginal peoples are significantly overrepresented in the Canadian prison system, but are underrepresented in positions of authority within the justice system as a whole.
- Understanding and application of the Gladue decision (requiring the courts to consider all reasonable alternatives to incarceration for aboriginal offenders) is lacking. The 'crisis' of overrepresentation at the time of Gladue has only worsened in terms of the numbers of incarcerated aboriginal people.
- The UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) report – which identifies significant connections between historical injustice and discrimination towards indigenous people, their current social and economic circumstances, and access to justice – is an instructive and useful document which may be of assistance to the Council in its planning activity.
- In British Columbia, the First Nations Leadership Council has concluded a protocol agreement with the Native Courtworker and Counselling Association of BC (NCCABC) for it to undertake a lead role in facilitating better justice outcomes for First Nations peoples and communities. An important step in that regard is the recent NCCABC report, Better Outcomes for Aboriginal People and the Justice System.

The following points emerged in the small group discussions and were reported in plenary on behalf of the groups. Common themes are summarized in the sub-headings below; reporting of any particular point should not be taken as necessarily reflecting participant consensus.

Action is required on specific fairness issues, particularly regarding aboriginal justice

- We require a strategy to address overrepresentation of aboriginal people in the court and correctional systems. This response needs to be based at the community level. We require a strategy to address overrepresentation of aboriginal people in the court and correctional systems. This response needs to be based at the community level.
- There are structural requirements to achieve fairness in the justice and public safety sector for the aboriginal community. We must address underrepresentation of aboriginal people in the justice professions and system leadership roles. More generally, we need to address barriers to justice which may lead to systemic discrimination on racial lines.
- Aboriginal justice issues warrant creation of a specific advisory board under the *Justice Reform and Transparency Act*.

Fairness is informed by the circumstances of the participants

- Fairness is both foundational and the measure by which we gauge our other efforts. Fairness can be enhanced by collaborative activities and by providing space to a range of perspectives.
- Fairness is, above all, a perception. Achieving or maintaining system fairness requires differing perceptions of fairness to be identified and addressed, such as those of accused persons, or those who are victims of crime.
- Within the Vision statement:
    - The wording around “impartial” should not suggest treating people the same regardless of other circumstances.

- Civility, empathy and respect are lacking in the overall wording of the goal of fairness.

Importance of accessibility as part of fairness

- Our adversarial system requires sufficient resourcing of both the accused and the state. However, improved access is not resolved through blanket resource increases to existing structures, but also entails effective targeting of resources, making use of key enablers such as e.g., outreach workers, and addressing imbalance between urban and rural accessibility. It also entails addressing how to ensure competent representation for the most vulnerable persons.
- Legal aid is inadequately funded, which represents a barrier to fairness. Changes to legal aid funding should clearly establish expected improvement in outcomes, as part of broader education regarding legal aid funding needs.
- Flexibility and specialization may increase access. We should explore the potential of specialized courts/court days in meeting specific needs; moving beyond "9 to 5" courtrooms and using weekends; and using technology to innovate where traditional access is ineffective.
- Balance in the resources allocated to represent the interests of accused persons with those representing state interests (police and crown) is critical to fairness. Adequate compensation to defence lawyers allows for the mentorship of young criminal lawyers which is essential to developing competent defence counsel to match competent, adequately-funded Crown counsel.
- In addition to the rights of the accused, access to justice should also address the needs of victims, and of offenders post-conviction.
- There is an enduring need to address the "culture of delay," which relates inherently to access, through increased judicial control over what is occurring in the courts.

- An independent advocacy office function with respect to the justice system should be considered.

Need for stamina, collaboration and strategic focus in provincial criminal justice policy

- Real policy change entails risk. Getting more resources and seeking real change in the system entails risk to careers and institutions, and requires political will, effective communications and sustained support for those who assume risk.
- System reform cannot be accomplished through individual programs and silos. We require leadership in overall direction, and common training and language in the field.
- We need to recognize and accommodate significant delay for positive outcomes associated to new programs. Clarity of objective and commitment to measurement are required to maintain focus on long term benefits and outcomes, as some of the key determinants of crime are social (e.g., poverty).
- We should acknowledge that the criminal justice system cannot address all social conditions: prevention is the key. Effective investment in prevention requires active and reciprocal collaboration with other parts of government. An effective criminal justice system would achieve justice outcomes through broader community engagement and support.
- We require dialogue with the federal government, through federal-provincial-territorial meetings or other venues, to address unnecessary limitations placed on discretion within the system (e.g., minimum sentences).

PERFORMANCE MEASUREMENT

In light of the Council's requirement to produce a strategic plan by March 2014, complete with performance measures and targets, participants were provided with a presentation by Professor Yvon Dandurand of the University of the Fraser Valley on the development of useful measures of performance in the justice and public safety sector. While the

presentation was not the subject of plenary discussion, the key points of the presentation were as follows:

- **Clear measures and timely data:** successful justice reforms require clear goals and objectives to be achieved collectively and by each agency; explicit and measureable performance targets and expected timeframes; collection and timely analysis of relevant data.
- **Limited, clear, accepted and repeated measurement:** success also depends on a limited number of measures (with established targets/benchmarks); which are not controversial and represent in clear terms what the system is intended to deliver; which offer sensible feedback to managers and policy makers; which make sense to the population; and which are measured consistently over time.
- **Types of measures** can include workload, activity/input, output/cost, and outcome indicators.
- **Outcome indicators** might include timeliness, access to justice, social equity, public confidence, public trust and respect, public safety, public order, fear of crime, crime reduction, responsiveness to change, offender accountability, and reintegration. Groups of indicators are preferable to individual proxies.
- **Types of data** can include administrative data (statistical indicators), perception data (from the public, experts or key actors) or survey data about experience with the justice system (e.g., victimization).
- **Good examples** include key indicators developed by the Kennedy School of Government, the American Bar Association, the United Nations and Scotland's Ministry of Justice.
- **Pitfalls** include measures that are poorly designed, creating perverse incentives, "gaming" of the system, adverse effects on morale (constrains professionalism) and poor performance; and measures which focus on outputs instead of outcomes.

- **Obstacles** encountered implementing performance indicators may include confusion, different types of indicators, lack of data, competing interests within the system, unrealistic expectations that the indicators will satisfy all and every need for data/feedback, the challenge of an incremental process which is slow and long and may lead to wavering commitment.
- **Performance measures are challenging:** they are hard to define and difficult to implement; they are instruments of power; they define accountability; and they affect the reward structure within institutions. They may negatively affect behaviour and operations. Done well, they can be sources of insight and pride, promoting good governance, accountability and transparency through inspiration rather than coercion. They must be the result of a process of consultation and discussion. There is a technical aspect to "measurement," but it should not entirely dictate the choice of indicators.

THE FORTHCOMING JUSTICE AND PUBLIC SAFETY PLAN

The Chair of the Justice and Public Safety Council provided participants with an overview of the process leading to the first Justice and Public Safety Plan by March 2014. Key points of the presentation included the following:

- The plan will be a strategic plan for the sector, covering the full range of justice and public safety. By statute it is the Council's plan, not the Summit's. Rather, the Summit provides the greatest single opportunity for input into the plan from leaders across the justice system not directly represented on the Council.
- The plan, released publicly and inviting public attention, will articulate goals for the sector, and identify ways in which progress towards these goals may be measured. As a Council document, it will not be binding on any one entity or agency. The different elements of the sector (such as the Ministry of Justice) will reflect elements of the plan which they are able to address in their own business planning.

- The Council is aware of the need not to conflate the ministry's perspective with that of the sector as a whole. As the Council membership evolves in the medium term to include individuals appointed by the Minister from outside the Ministry of Justice and/or the provincial government, this distinction will become clearer, and will make the Council itself and discussions at the Summits stronger. The Council has to speak to the entire sector. It should not, and will not, be a rebranded version of the interests of the executive branch.
- The plan will include the Vision that the Council has developed. The plan must contain positive actions, no matter how limited a first-year plan may be, and the Council will engage on the content of these actions. The sector has received abundant feedback and is in receipt of half a dozen or more major reviews and reports that point the way to needed reforms.
- The plan will include performance measures and targets. Initially, these will comprise a limited, manageable set of measures that relate directly to our goals.

2014 JUSTICE SUMMITS (SPRING AND FALL)

The Chair of the Summit Steering Committee provided participants with details around the planning of Justice Summits in the coming year (calendar 2014).

While the focus of the Summits will move from criminal justice in the short term, the work of participants is not yet finished. Based on the Vision for the sector, the input from participants at the March and November 2013 Summits, and other consultation, the Justice and Public Safety Council will finalize its strategic plan for the sector in the coming months. Participants will be provided with draft versions of the plan for review and comment as it moves from draft to publication.

The 2014 Summits will move in focus to other parts of the justice system to match progress achieved to date with respect to criminal justice, in particular, family justice and civil justice. This move reflects the need to attend to significant issues in these areas, and

capitalizes on the work of the National Action Committee on Access to Justice in Civil and Family Matters: A Roadmap for Change.

Once initial family and civil Summits – or Summits on other key areas of the sector – have been held, the focus will return to criminal justice, such that the leaders gathered here today can assess the progress made in planning and implementing reforms.

As the system achieves a "mature state" of Summits, the annual cycle will include two Summits: a proactive, aspirational, issue-focused summit in the Spring of each year, and Fall Summits in which the Council consults on its draft three-year strategic plans, plans which will include criminal, civil and family justice.

Professor Yvon Dandurand addresses the plenary.

APPRECIATION

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

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

Thanks, too, are due to those invited participants who made time to prepare presentations for panel discussions, including: Ken Walker, Len Goerke, Dr. Sharon McIvor, Mark Benton, Dr. Ray Corrado, Jonny Morris, Brad Haugli, Chief Doug White, Richard Fowler, Murray Dinwoodie, Tracy Porteous, and Grand Chief Ed John.

The Steering Committee would also like to thank Dean Mary Anne Bobinski and staff of the University of British Columbia, Faculty of Law, as well as the Law Society of British Columbia and their Chief Executive Officer (and Summit Moderator) Tim McGee, for their generosity and flexibility in again creating an excellent setting for the Summit.

Finally, the Steering Committee would like to thank the Summit facilitator, George Thomson; Professor Yvon Dandurand; Darlene Shackelly; Michelle Burchill; and the many individual employees of justice and public safety organizations in British Columbia who made direct personal contributions to the success of the Justice Summit.

SUMMIT FEEDBACK

Comments on this *Report of Proceedings* and the Summit process are encouraged and may be emailed to justicereform@gov.bc.ca. Written communication may be sent to:

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

APPENDIX 1: SUMMIT AGENDA

Second Justice Summit
Allard Hall, Faculty of Law, UBC
Friday, November 8 and Saturday, November 9, 2013

Friday, November 8

8:15	Registration and coffee	
8:45	Introduction	**Tim McGee** (Summit Moderator), Law Society of BC
	Greeting	Elder **Debra Sparrow**, Musqueam First Nation *
	Welcome from UBC	**Emma Cunliffe**, UBC Faculty of Law
	Welcome to participants	The Honourable **Suzanne Anton**, Attorney General and Minister of Justice
	Summit overview	**George Thomson** (Summit Facilitator)
9:20	Remarks: *Draft Vision, Goals and Values: Summary of Progress to Date*	**Richard Fyfe**, Deputy Attorney General and Vice-Chair, Justice and Public Safety Council
9:35	Plenary discussion on Vision and Values	**George Thomson**
10:00	Break	
10:15	Comparing our Vision to the sector today: Public Confidence	*Panel participants* Chief **Doug White III**, Snuneymuxw First Nation * **Len Goerke**, BC Association of Chiefs of Police **Ken Walker**, Law Society of BC
10:45	Small groups discuss, report	**George Thomson**

12:00	Lunch Remarks: *Developing Useful Performance Measures in the Justice System*	**Yvon Dandurand**, University of the Fraser Valley
1:00	Comparing our Vision to the sector today: Protection of People	*Panel participants* **Jonathan Morris**, Canadian Mental Health Association **Sharon McIvor**, Nicola Valley Institute of Technology * **Brad Haugli**, BC Association of Chiefs of Police
1:30	Small groups discuss, report	**George Thomson**
2:45	Break	
3:00	Comparing our Vision to the sector today: Sustainability	*Panel participants* **Mark Benton**, Legal Services Society **Murray Dinwoodie**, City of Surrey **Ray Corrado**, Simon Fraser University
3:30	Small groups discuss, report	**George Thomson**
4:45	Daily wrap/ housekeeping	**Tim McGee**
5:00 to 7:00	Reception (Allard Hall)	*Sponsored by the Law Society of BC*

* Note: Due to unforeseen circumstances affecting travel, some participants were unable to attend as planned.

Saturday, November 9

Time	Event	Lead
8:30	Coffee	
9:00	Welcome	**Tim McGee**
	Mid-point overview	**George Thomson**
9:15	Comparing our Vision to the sector today: Fairness	*Panel participants* **Tracy Porteous**, End the Violence Association Grand Chief **Edward John**, First Nations Summit **Richard Fowler**, Fowler, Smith
9:45	Small groups discuss	**George Thomson**
10:30	Break	
10:45	Small groups report	**George Thomson**
11:15	Presentation: *Towards a First Justice and Public Safety Plan*	**Lori Wanamaker**, Deputy Minister of Justice and Chair, Justice and Public Safety Council
11:30	Plenary discussion on developing Plan	**George Thomson**
12:00	Lunch	
1:00	Recap of Summit recommendations Plenary discussion to check accuracy and amend	**George Thomson**
2:00	Preview of Spring 2014 Summit	**Jay Chalke**, Chair, Justice Summit Steering Committee

2:15	Closing remarks	The Honourable **Robert Bauman**, Chief Justice of British Columbia
2:30	Final remarks	**Tim McGee**
2:45	Summit concludes	

APPENDIX 2: SUMMIT PARTICIPANTS

Anton	Honourable Suzanne	Attorney General and Minister of Justice	Government of British Columbia
Bauman	Honourable Robert	Chief Justice	Court of Appeal for British Columbia
Benedet	Janine	Associate Professor	Faculty of Law, University of British Columbia
Benton	Mark	Executive Director	Legal Services Society
Blenkin	Johanne	Chief Executive Officer	BC Courthouse Library Society
Callens	Craig	Deputy Commissioner and Commanding Officer	"E" Division RCMP
Cavanaugh	Lynda	Assistant Deputy Minister	Community Safety and Crime Prevention Branch, Ministry of Justice
Chalke	Jay	Assistant Deputy Minister	Justice Services Branch, Ministry of Justice
Christensen	Tom	Chair	Legal Services Society Board
Corrado	Ray	Professor, Criminology Department	Simon Fraser University
Corrigan	Kathy	Opposition Critic for Public Safety and Solicitor General	British Columbia Legislative Assembly
Crabtree	Honourable Thomas	Chief Judge	Provincial Court of British Columbia
Craig	Rick	Executive Director	Justice Education Society
Crawford	Dean	President	Canadian Bar Association – B.C.
Cronin	Kasandra	Barrister	LaLiberté Cronin
Cullen	Honourable Austin	Associate Chief Justice	Supreme Court of British Columbia
Cunliffe	Emma	Associate Professor	Faculty of Law, University of British Columbia
Dandurand	Yvon	Professor and Associate Vice-President	Research and Graduate Studies, University of the Fraser Valley
DeWitt-Van Oosten	Joyce	Assistant Deputy Attorney General	Criminal Justice Branch, Ministry of Justice
Dicks	Bev	Assistant Deputy Minister	Provincial Office of Domestic Violence

			and Strategic Initiatives, Ministry of Children and Family Development
Dinwoodie	Murray	Chief Administrative Officer	City of Surrey
Eder	Birgit	LAAC Co-chair	Trial Lawyers Association of BC
Faganello	Tara	Assistant Deputy Minister	Corporate Management Services Branch, Ministry of Justice
FitzGerald	Amy	Policy and Program Analyst	Ending Violence Association
Fowler	Richard	Barrister	Fowler and Smith
Fyfe	Richard	Deputy Attorney General	Ministry of Justice
German	Peter	Regional Deputy Commissioner	Correctional Service Canada
Gill	Honourable Gurmail	Associate Chief Judge	Provincial Court of British Columbia
Goerke	Len	Deputy Chief Constable	Abbotsford Police Department
Gottardi	Eric	Barrister	Peck and Company
Graham	Jamie	President	BC Association of Municipal Chiefs of Police
Grant-John	Wendy	Chair	Minister's Advisory Council on Aboriginal Women
Gutray	Bev	Chief Executive Officer	Canadian Mental Health Association, BC
Haugli	Insp. Brad	President	BC Association of Chiefs of Police
Jamieson	Gene	Legal Officer	Provincial Court of British Columbia
Jardine	Kevin	Assistant Deputy Minister	Court Services Branch, Ministry of Justice
John	Edward	Grand Chief	First Nations Summit
Jones	Dave	Chief	New Westminster Police Department
Juk	Peter	Director, Appeals and Special Prosecutions, Criminal Law Division	Criminal Justice Branch, Ministry of Justice
Kraemer	Frank	Executive Director and Senior Counsel	Superior Courts Judiciary
Krog	Leonard	Opposition Critic for Attorney General	British Columbia Legislative Assembly

LeBlanc	Robert	Lawyer, Prosecution Office	City of Vancouver
LePard	Doug	Deputy Chief Constable	Vancouver Police Department
MacLeod	Sam	Superintendent of Motor Vehicles	Ministry of Justice
Mason	Heidi	Director, Legal Advice and Representation	Legal Services Society
McBride	Heidi	Legal Counsel	Supreme Court of British Columbia
McGee	Tim	Chief Executive Officer	Law Society of British Columbia
Merchant	Brent	Assistant Deputy Minister	Corrections Branch, Ministry of Justice
Morris	Jonathan	Director, Public Safety	Canadian Mental Health Association, B.C.
Morrison	Brenda	Director, Centre for Restorative Justice and Assistant Professor, School of Criminology	Simon Fraser University
Moyse	Geoff	A/Assistant Deputy Attorney General	Legal Services Branch, Ministry of Justice
Nevin	Caroline	Executive Director	Canadian Bar Association – B.C.
Outerbridge	Tim	Legal Counsel	Court of Appeal for British Columbia
Pearson	Paul	Barrister	Mulligan, Tam, Pearson
Pecknold	Clayton	Assistant Deputy Minister	Policing and Security Programs Branch, Ministry of Justice
Phillips	Honourable Nancy	Associate Chief Judge	Provincial Court of British Columbia
Plecas	Darryl	MLA and Parliamentary Secretary, Crime Reduction	Government of British Columbia
Porteous	Tracy	Executive Director	Ending Violence Association
Prior	Robert	Chief Federal Prosecutor	Public Prosecution Service of Canada (British Columbia)
Robertson	Wayne	Executive Director	Law Foundation
Ruebsaat	Gisela	Legal Analyst	Ending Violence Association
Shackelly	Darlene	Executive Director	Native Courtworker and Counselling Association of B.C.

Sieben	Mark	Deputy Minister	Ministry of Children and Family Development
Somers	Julian	Professor	Faculty of Health Sciences, Simon Fraser University
Vance	Ken	Senior Policy Advisor	Union of British Columbia Municipalities
Veresh	Tim	Executive Director	John Howard Society, Lower Mainland
Walker	Ken	Second Vice President	Law Society
Wanamaker	Lori	Deputy Solicitor General and Deputy Minister, Justice	Ministry of Justice
Wilkinson	Craig	Executive Director	Provincial Court of British Columbia

APPENDIX 3: STEERING COMMITTEE AND WORKING GROUP

Steering Committee

Members:

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

Facilitator:

George Thomson	Director, National Judicial Institute

Ex-officio:

Allan Castle	Executive Lead, Justice and Public Safety Secretariat Ministry of Justice
Michael Lucas	Manager, Policy and Legal Services, Law Society of British Columbia

Nancy Pearson	Manager, Stakeholder Relations, Justice Services Branch, Ministry of Justice

Working Group

Members:

Allan Castle (Chair)	Executive Lead, Justice and Public Safety Secretariat Ministry of Justice
Richard de Boer	Director, Policy and Legislation, Criminal Justice Branch Ministry of Justice
James Deitch	Executive Director, Criminal Justice and Legal Access Policy Division, Justice Services Branch, Ministry of Justice
Shelley Eisler	Director, Planning and Performance Reporting, Justice and Public Safety Secretariat, Ministry of Justice
Michael Lucas	Manager, Policy and Legal Services, Law Society of BC
Nancy Pearson	Manager, Stakeholder Relations, Justice Services Branch Ministry of Justice

Special assistance provided by:

Edna Philippides	Executive Administrative Assistant, Justice Services Branch Ministry of Justice
Tiny Vermaning	Administrative Assistant, Justice Services Branch Ministry of Justice

APPENDIX 4: DRAFT VISION AND VALUES FOR THE SECTOR

British Columbia Justice and Public Safety Council
Vision (including Goals and Objectives) and Values
Draft – October 30 2013

Vision

British Columbia is committed to a system of justice and public safety founded on the rule of law. This system encompasses criminal, civil, family and administrative law. It is fair, protects people, is sustainable, and enjoys the public's confidence. This is achieved through the promotion of a peaceful and safe society and by being accessible, transparent, accountable, and focused on improving outcomes and services.

Goals and objectives

Our system is fair

- **Accessible** – We offer services accessible to all regardless of means, provide meaningful redress, and ensure access to justice for vulnerable and marginalized people proactively.
- **Impartial** – We model integrity, fairness and natural justice in our procedures and in delivering services, treating people equally.
- **Timely** – We work together to reduce systemic delay as an impediment to justice; we seek early resolution of individual processes wherever possible.

Our system protects people

- **Preventative** – We offer early, appropriate and effective interventions to reduce antisocial behaviour, assisting people in rebuilding healthy, productive lives.
- **Protective** – We work together to reduce threats to public safety, protect complainants and victims of crime, and prevent re-victimization of the vulnerable by the system.

- **Comprehensive** – We work across all levels of government to understand and address root causes of crime, and support and participate in effective alternative interventions.

Our system is sustainable

- **Effective** – We measure and improve the return on investment of public resources, collectively and as institutions.
- **Managed** – We allocate resources prudently across the system according to clear and demonstrated cause and effect; we treat the time of every participant as valuable.
- **Focused** – Based on measurable demand, we take evidence-based decisions to resource the system's necessary functions, ensuring these services are delivered efficiently.

Our system enjoys public confidence

- **Adaptive** – We offer services and programs that are nimble; we solicit and respond to the needs of people and monitor the effectiveness of our programs.
- **Performance-focused** – We assume collective and respective responsibility for system performance, engaging British Columbians in dialogue as users and observers of the system.
- **Empowering** – People entering the system have sufficient opportunity to learn its rules and practices at their level of need; the public both understands and values the system.

Values

In a justice and public safety system within a free and democratic society, the rule of law and principles of fundamental justice must guide the behaviour of the sector. Based on this foundation, the following values apply to our work, such that our actions are:

1. **Fair and equitable**: acting without discrimination with regard to ethnicity, age, religion, gender, gender identification, sexual orientation, belief or socio-economic status.
2. **Open and responsive to change**: thinking critically about existing practice, considering information that challenges orthodoxy, and responding actively to environmental changes.
3. **Outcome-focused**: setting realistic objectives, assessing our work according to results, and working together to ensure our activities do not have unintended adverse consequences.
4. **Accountable**: engaging the public on the effectiveness of our work, and reporting regularly on meaningful aspects of our performance.
5. **Evidence-based**: managing operations and innovating through shared collection and analysis of data about what works, and by enabling rigorous research through partnership.
6. **Proportionate**: allocating resources in ways that are necessary and reasonable, according to agreed-upon risks, and taking action in consideration of the sector's goals as a whole.
7. **Transparent**: making information broadly available about the sector's functions, enabling constructive democratic dialogue about goals, outcomes, services and performance.

APPENDIX 5: JUSTICE AND PUBLIC SAFETY COUNCIL

Under provisions of the *Justice Reform and Transparency Act*, Council members are appointed by the Attorney General and Minister of Justice.

Membership on the Council may include: an individual who is in a senior leadership role in the government and who has responsibility for matters relating to the administration of justice in British Columbia or matters relating to public safety, and includes any other individual the minister considers to be qualified to assist in improving the performance of the justice and public safety sector.

The Council is chaired by the Deputy Minister of Justice and, currently, includes Ministry of Justice executive members and a representative from the Ministry of Children and Family Development. The Council is supported by a Justice and Public Safety Secretariat within the Ministry of Justice. Further to Ministerial Order, the current membership is as follows:

Cavanaugh, Lynda	Asst. Deputy Minister, Community Safety and Crime Prevention, Ministry of Justice
Chalke, Jay	Asst. Deputy Attorney General, Justice Services Branch Ministry of Justice
DeWitt-Van Oosten, Joyce	Asst. Deputy Attorney General, Criminal Justice Branch Ministry of Justice
Faganello, Tara	Asst. Deputy Minister, Corporate Management Services, Ministry of Justice
Fyfe, Richard (Vice-Chair)	Deputy Attorney General, Ministry of Justice
Jardine, Kevin	Asst. Deputy Minister, Court Services Branch Ministry of Justice
MacLeod, Sam	Superintendent of Motor Vehicles, Ministry of Justice
Merchant, Brent	Asst. Deputy Minister, Corrections Branch, Ministry of Justice

Moyse, Geoff	A/Asst. Deputy Attorney General, Legal Services Branch, Ministry of Justice
Pecknold, Clayton	Asst. Deputy Minister, Policing and Security Programs Ministry of Justice
Sadler, Bobbi	Chief Information Officer, Ministry of Justice
Sieben, Mark	Deputy Minister, Ministry of Children and Family Development
Wanamaker, Lori (Chair)	Deputy Minister and Deputy Solicitor General Ministry of Justice

The Law Society of British Columbia

Memo

To: Benchers
From: Executive Committee
Date: January 17, 2014
Subject: Trinity Western University Law School – Rule 2-27(4.1) Process for Consideration

Introduction

This memorandum sets out the process for Bencher consideration of the TWU faculty of law matter as determined by the Executive Committee.

Background

Rule 2-27 deals with enrolment in the Law Society's admission program. Subrule (4)(a) provides that applicants can meet the academic qualification requirement by demonstrating:

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

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

As the Benchers know, the Federation of Law Societies has granted preliminary approval of Trinity Western University's (TWU) application for approval of a faculty of law at TWU. The Minister of Advanced Education has subsequently authorised TWU to grant law degrees. As a result of Rule 2-27(4.1), the Benchers continue to have the final say in whether any faculty of law is an approved faculty of law for the purpose of meeting the academic qualification requirement for our admission process.

Administrative Law Requirements

The advice we have received from Geoffrey Gomery, QC is that if the Benchers are to adopt a resolution under subrule (4.1) (thereby rejecting the Federation's approval), that decision is an

administrative one and will consequently require a degree of procedural fairness. A memorandum from Mr. Gomery in which he provides his advice is attached as Appendix A.

Bencher Process

There are several factors that will affect how any decision under subrule (4.1) is considered by the Benchers.

1. Several Benchers have expressed the need for a full and open discussion by the Benchers about the approval of a faculty of law at TWU.

2. There are eleven new Benchers who will be attending their first meeting as Benchers and who will have only recently received the large volume of material related to this issue.

3. There are the administrative law requirements covered in Mr. Gomery's memorandum.

In light of these factors and our Bencher meeting schedule, the Executive Committee concluded that there be should be a background briefing at the upcoming January 24th Bencher meeting at which general information would be presented about the process to date , together with the Federation decisions and some other considerations.

In the interests of transparency and openness, following the January Bencher meeting the Executive Committee concluded we should also invite input in writing through a posting on our website and communication through our regular E-Brief communication to the members. These responses would be compiled and provided to the Benchers as part of the material for their consideration at the February 28th meeting. If questions occur to the Benchers following the January 24th meeting, they should feel free to send them to the President.

For the February 28th Bencher meeting, the Executive Committee expects that all the Benchers will have read and fully considered all of the relevant material, as well as had an opportunity to reflect on the January briefing. The agenda for that February meeting will provide for a full and open discussion of any issues that approval of a TWU faculty of law presents. At the conclusion of that discussion, in the absence of a motion from any of the Benchers, the President will remind the Benchers that an applicant for admission from TWU faculty of law will meet the requirements for academic qualification under our Rules (in effect, that TWU will be an approved faculty of law) unless the Benchers adopt a resolution otherwise. It is expected that the wording of such a resolution should reflect the advice from Mr. Gomery:

> *Pursuant to Rule 2-27(4.1), the Benchers declare that, notwithstanding the preliminary approval granted to Trinity Western University on 16 December 2013 by the Federation of Law Societies' Canadian Common Law Program Approval Committee, the proposed faculty of law of Trinity Western University is not an approved faculty of law.*

If a resolution declaring that that the proposed TWU faculty of law is not an approved faculty of law is moved, and seconded, the discussion of the motion would be adjourned to the April 11th Bencher meeting. TWU would be provided with a transcript of the Bencher discussion at the February 28th meeting and any input we have received. TWU would be given the opportunity to make written submissions for consideration by the Benchers on April 11th. We would also provide representatives of TWU with the opportunity to attend the April 11th Bencher meeting.

The objective of the process is to ensure, to the greatest extent possible, that any decision by the Benchers to not approve a TWU faculty of law is not subject to challenge on procedural grounds. The Executive Committee has been assured that this timetable will not present an opportunity for any claim of prejudice or disadvantage by TWU.

Other Considerations

In addition to the material previously provided, including the Federation's legal opinions, there are some additional considerations that arise now that the Federation has granted preliminary approval and BC government has approved TWU's application to grant law degrees.

Each of the law societies across Canada is now confronted, as are we, with the issue of recognizing future graduates of a TWU faculty of law. The law societies of Alberta, Saskatchewan, Manitoba and Nova Scotia have provided in their by-laws or rules that the Federation decision is determinative of their acceptance of the TWU faculty of law. Our current understanding is that Nova Scotia and possibly Saskatchewan and Manitoba are considering further discussion of their delegation to and acceptance of the Federation approval. Alberta is planning to accept the Federation decision based on their current by-law. Other law societies have retained some discretion, as we have. We understand that Ontario is planning a review similar to what is proposed in this memorandum, likely in February or March of this year. As a result of the individual law societies considering the Federation decision, there is at least the possibility of patchwork acceptance of a TWU faculty of law across Canada. This issue is further complicated by the provisions of the interprovincial Agreement on Internal Trade and the Federation's own National Mobility Agreement. Attached as Appendix B is a memorandum from the Federation describing these two agreements.

There is also the possibility, regardless of what decision the Benchers may make about a TWU faculty of law, that the Law Society becomes engaged in litigation regarding that decision. The process described here is intended to minimize the risk that the Bencher decision can be successfully challenged based on the process we follow.

Conclusion

The Executive Committee is of the view that this process gives all the Benchers sufficient time to become familiar with the issues and material so as to participate effectively in a discussion of approving or not approving a TWU faculty of law, while meeting our obligations to provide procedural fairness and providing all of the Benchers with the opportunity to engage in a full and open discussion of this difficult and important issue.

M E M O R A N D U M

TO: Law Society of British Columbia

FROM: Geoffrey B. Gomery, Q.C.

RE: Trinity Western University approval issue

DATE: 8 January 2014

This memorandum sets out a procedure that could be adopted in the Law Society's consideration of the Trinity Western University ('TWU') approval issue, with a view to limiting the risk of a successful judicial review application by TWU in the event of a decision against it.

Legal context

On 16 December 2013, the Federation of Law Societies ('FLS') granted preliminary approval to the common law faculty of law TWU proposes to establish. Pursuant to Law Society Rule 2-27(4.1), approval by the FLS qualifies the undergraduate law degrees to be issued by TWU as 'academic qualification' for the purpose of enrolment in the admission program

> … unless the Benchers adopt a resolution declaring that it is not or has ceased to be an approved faculty of law.

In my opinion, Rule 2-27(4.1) confers on TWU what the cases describe as a legitimate expectation that its undergraduate law degrees will constitute academic qualification. The Law Society is therefore subject to an obligation of administrative fairness in considering any proposal that TWU's faculty of law be disapproved by the Law Society. That obligation requires that TWU be given notice of the proposal and an opportunity to make submissions before a final decision is made.

The duty of administrative fairness thus imposed on the Law Society only arises in the context of a resolution that TWU's faculty of law is not an approved faculty. It would not arise in the absence of any action by the Law Society, or in the event of a Benchers' resolution not to disapprove the TWU faculty.

Proposed procedure

I understand that the Benchers have been provided with a briefing package including submissions from TWU and persons opposed to TWU that were considered by the FLS and the relevant reports of the FLS. They may be invited to consider the issue generally, briefly at the Benchers' meeting in January 2014 and at greater length at the Benchers' meeting in February.

The Benchers should be advised that, at the conclusion of the discussion in February, they will be asked to consider whether they wish to move the following motion:

(A) Pursuant to Rule 2-27(4.1), the Benchers declare that, notwithstanding the preliminary approval granted to Trinity Western University on 16 December 2013 by the Federation of Law Societies' Canadian Common Law Program Approval Committee, the proposed faculty of law of Trinity Western University is not an approved faculty of law; or

If the motion is not moved and carried, then the FLS approval governs and the proposed TWU faculty of law is, from the Law Society's perspective, an approved faculty of law. If it were felt that there should be some resolution to reflect that conclusion (though not strictly necessary), it could be worded as follows:

(B) The Benchers do not disapprove the preliminary approval granted to Trinity Western University on 16 December 2013 by the Federation of Law Societies' Canadian Common Law Program Approval Committee.

The Benchers should be advised that, in the event motion (A) is moved and seconded, the motion will be tabled to the Benchers' meeting in April in order that TWU may be advised of the proposed motion and the concerns expressed in the discussion leading to the motion and given an opportunity to make submissions for consideration by the Benchers. The material to be provided to TWU will include a transcript of the discussion by the Benchers in January and February (excepting any *in camera* discussions, which will be limited to the receipt and discussion of legal advice). TWU will be invited to make its submissions in writing, but it will be afforded an opportunity to attend the Benchers' meeting in April and the Chair may permit TWU to make oral submissions as seems appropriate at that time.

The Law Society does not owe a duty of administrative fairness to those opposed to TWU. However, input from the profession and the public could be solicited before and after the February meeting and, in the event that motion (A) is moved and seconded in February, the pending motion could be communicated to the profession and made available on the Law Society's website. Submissions from persons supporting or opposing TWU prior to a cut-off date (say, one week before the April meeting) will be communicated to the Benchers and TWU and made publicly available.

In my opinion, adopting a procedure along these lines will satisfy the Law Society's obligation of administrative fairness to TWU.

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

MEMORANDUM

FROM : Frederica Wilson
Senior Director, Regulatory and Public Affairs

TO: Jonathan G. Herman, CEO

DATE : January 10, 2014

SUBJECT : Agreement on Internal Trade – Chapter 7 Labour Mobility

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INTRODUCTION

1. This memorandum provides an overview of the labour mobility provisions contained in the Agreement on Internal Trade (the "AIT").

OVERVIEW OF LABOUR MOBILITY PROVISIONS

2. The AIT is an intergovernmental agreement in force since 1995, the objective of which is "to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investments within Canada and to establish an open, efficient and stable domestic market."[1] The federal government and all the provincial and territorial governments, except the government of Nunavut, are signatories to the AIT.

3. Labour mobility is addressed in Chapter 7 of the AIT. Article 701 identifies the following purpose for the chapter: "to eliminate or reduce measures adopted or maintained by the Parties that restrict or impair labour mobility in Canada and, in particular, to enable any worker certified for an occupation by a regulatory authority of one Party to be recognized as qualified for that occupation by all other Parties."

4. In 2009 the chapter was amended to require mandatory mutual recognition of the credentials of workers in regulated occupations. Under the amended provisions governments and non-governmental organizations responsible for certification and licensing of workers (such as law societies) must license or certify workers from other Canadian jurisdictions without requiring material additional training, education or assessment.

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[1] Agreement on Internal Trade, Article 100.

5. Although the agreement is a government-to-government agreement, Chapter 7 includes a provision requiring parties to ensure compliance with the labour mobility provisions by non-governmental bodies such as regulators established by statute.[2]

6. The requirement for recognition of the credentials of a worker from another jurisdiction is set out in the first paragraph of Article 706 which states:

> 1. Subject to paragraphs 2, 3, 4 and 6 and Article 708, any worker certified for an occupation by a regulatory authority of a Party shall, upon application, be certified for that occupation by each other Party which regulates that occupation without any requirement for any material additional training, experience, examinations or assessments as part of that certification procedure.

7. Pursuant to paragraph 3 of Article 706, parties may impose on workers from other jurisdictions requirements that are substantially the same as those imposed by the regulatory authority as part of its normal licensing or certification process such as a requirement to pay an application or processing fee, obtain insurance or post a bond, undergo a criminal records check, and provide evidence of good character provided the requirements are not a disguised restriction on labour mobility.

8. Paragraph 4 of Article 706 recognizes the right of regulatory authorities to refuse to certify a worker or to impose specific terms or conditions in limited circumstances, for example where necessary to protect the public interest "as a result of complaints or disciplinary or criminal proceedings in any other jurisdiction relating to the competency, conduct or character of that worker."[3] The paragraph also permits a regulatory authority to impose additional training, experience, examinations or assessments "where the person has not practiced the occupation within a specified period of time." [4]

9. Chapter 7 does include a provision permitting limited exceptions to the rule requiring mutual recognition without imposing additional training or other requirements. Pursuant to Article 708 a party to the agreement may establish additional measures "to achieve a legitimate objective" provided "the measure is not more restrictive to labour mobility than necessary to achieve that legitimate objective" and "does not create a disguised restriction to labour mobility." This power may be exercised only by a government that is a party to the AIT. Regulatory bodies have no power to impose such additional requirements without the concurrence of the government.

10. Paragraph 2 of Article 708 makes it clear that the exception provision is to be narrowly construed. The paragraph states in part:

> [A] mere difference between the certification requirements of a Party related to academic credentials, education, training, experience, examination or assessment methods and those of any other Party is not, by itself, sufficient to justify the imposition of additional education, training, experience, examination or assessment requirements as necessary to achieve a legitimate objective. In the case of a difference related to academic credentials, education, training or experience, the Party seeking to impose an additional requirement must be able

[2] Article 703(1)(b).
[3] Article 706(4) (a).
[4] Article 706(4) (b).

to demonstrate that any such difference results in an actual material deficiency in skill, area of knowledge or ability. As an example, the imposition of a requirement for additional, education, training or experience may be justified under paragraph (1)(b) where a Party can demonstrate that:

> (a) there is a material difference between the scope of practice of the occupation for which the worker is seeking to be certified in its territory and the scope of practice of the occupation for which the worker has been certified by the regulatory authority of another Party; and
>
> (b) as a result of that difference, the worker lacks a critical skill, area of knowledge or ability required to perform the scope of practice of the occupation for which the worker seeks to be certified.

11. The definition of "legitimate objective" in Article 711 also suggests that the scope of permissible exceptions to the usual rules is quite narrow:

> **legitimate objective** means one or more of the following objectives pursued within the territory of a Party:
>
> (a) public security and safety;
>
> (b) public order;
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> (c) protection of human, animal or plant life or health; (d) protection of the environment;
>
> (e) consumer protection;
>
> (f) protection of the health, safety and well-being of workers;
>
> (g) provision of adequate social and health services to all its geographic regions; and
>
> (h) programs for disadvantaged groups;

12. The AIT includes a mechanism to challenge an additional measure imposed by a party on the grounds that it is inconsistent with the party's obligations under the agreement. The general dispute resolution provisions contained in Chapter 17 of the AIT apply to disputes relating to labour mobility. In addition to the right of a party to the agreement to initiate a complaint, an Individual may request that a party commence dispute resolution proceedings on their behalf.[5] If the party refuses, an individual may initiate proceedings on their own, but such individual complaints are subject to a screening process and may not be permitted to proceed if found to be frivolous or vexatious, initiated solely to harass the party complained about, or where there is no reasonable case of injury or denial of benefit.[6]

[5] Article 1710.
[6] Article 1711, and 1712.

13. The dispute resolution process commences with a request for a consultation (mediation), but if consultations do not result in a resolution of the issue, a party or a person pursuing an individual complaint may request that a Panel be established to consider the matter. Panels are mandated to inquire into the matter and to issue a report containing findings of fact, a determination of whether the measure in question is or would be inconsistent with the AIT, and recommendations for resolution of the dispute. A Party that fails to bring itself into compliance with the agreement may face monetary penalties and possibly other retaliatory measures. [7]

14. To date there has been only one panel review specifically addressing the legitimate objectives exception under Article 708. The case involved a complaint by the government of Manitoba over the imposition by Ontario of additional assessments for certified general accountants ("CGAs") from other jurisdictions seeking licensing authorization to practise public accounting. In a report issued in January 2012 the panel concluded that the additional measure required by Ontario was inconsistent with Article 706 of the AIT and could not be justified under Article 708.[8]

15. In reaching its conclusion the panel considered the objectives of the AIT and in particular the revisions to the labour mobility provisions and made several important findings about how the agreement and the exception provision are to be interpreted. Noting that it is clear from the amendments to Chapter 7 that the parties to the AIT were seeking to strengthen the labour mobility provisions, the panel concluded that "certification by one Party should be accepted by all other Parties" and held that "the bar to justify exceptions should be a high one." The panel also stated that that as an exception to the obligations established by the chapter and Article 706 in particular, the use of Article 708 "should be narrowly construed and strictly applied."

16. The panel made it clear that the onus on establishing the existence of a legitimate objective for an additional measure is on the party seeking to impose the requirement. The party must demonstrate that the measure is necessary to meet the objective and in accordance with Article 708 (2) must demonstrate that "a difference related to academic credentials, education, training, or experience " "results in an actual deficiency in skill, area of knowledge or ability."

17. The panel relied on the language of Article 708 to conclude that while the educational pathway to certification of CGAs in Ontario differ from those in the rest of the country these differences were not sufficient to justify the additional measure imposed by Ontario. The panel held that a party seeking to impose an additional measure cannot simply identify a difference in the education of workers from other jurisdictions but must provide "real factual confirmation that there is an actual material deficiency in skills, area of knowledge or ability." It is clear from the panel's decision that a claim that there is a *risk* of a material deficiency is not sufficient to justify the imposition of additional measures. What is required is factual evidence of the alleged deficiency.

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[7] Articles 1702.1-1709, and 1713-1717.

[8] *Report of Article 1703 Panel Regarding the Dispute between Manitoba and Ontario Concerning Ontario's Notice of Measure with respect to Public Accountants* available at http://www.ait-aci.ca/index_en/dispute.htm)

RELATIONSHIP BETWEEN THE AIT AND THE FEDERATION'S MOBILITY AGREEMENTS

18. When both the National Mobility Agreement ("NMA") and the Territorial Mobility Agreement ("TMA") were entered into in 2002 and 2006 respectively, compliance with credential recognition provisions of the AIT by regulatory bodies was not mandatory. The mobility regime introduced by the NMA exceeded the requirements of the AIT, both by providing for transfer between jurisdictions without the need to write transfer exams or satisfy other similar requirements, and by including provisions governing temporary mobility between jurisdictions. While not including temporary mobility provisions, the TMA was also ahead of the AIT in providing for the transfer of lawyers between the territorial and provincial jurisdictions on the same basis as under the NMA. As a result, the 2009 amendments to the labour mobility provisions in the AIT had very little impact on Canada's law societies.

19. The main concern that the Federation and the law societies had about the amendments related to mobility for lawyers to and from Quebec. Although the NMA had been in effect for a number of years, there had been virtually no experience with mobility to or from Quebec. The Barreau du Québec had just implemented regulations establishing the Canadian Legal Advisor ("CLA") category of membership and the common law jurisdictions had not yet agreed to establish a reciprocal arrangement (subsequently brought into place in 2010 with the signing of the Quebec Mobility Agreement). In the circumstances each of the law societies sought and obtained an exception that permitted the regulators to impose additional requirements or restrictions on lawyers seeking to transfer to or from Quebec. Once all jurisdictions have implemented the NMA 2013 or the TMA 2013, those exceptions will no longer be required or appropriate and it is expected that they will be withdrawn.

20. Although the amendments to the AIT did not require changes to the mobility regime established by the law societies, they did change the legal landscape. Most jurisdictions introduced legislation to implement the mandatory recognition provisions of the AIT and those that have not yet done so have legislation ensuring that decisions under the AIT can be enforced. Mandatory recognition of credentials without requiring additional education, training or assessments is no longer simply a voluntary matter agreed to by the law societies, it is the law.

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