



Agenda

Benchers

Date: Friday, July 11, 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.*

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1	President Lindsay presentation of the 2014 Law Society Aboriginal Scholarship to the recipient, Kinwa Bluesky	5	President		Presentation
CONSENT AGENDA: The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Executive Support (Bill McIntosh) prior to the meeting.					
2	Consent Agenda <ul style="list-style-type: none"> Minutes of June 13, 2014 meeting (regular session) Minutes of June 13, 2014 meeting (<i>in camera</i> session) Ethics Committee: Alternate Dispute Resolution Recommendation Appointment to the Justice Education Society Board of Directors 	1	President	Tab 2.1 Tab 2.2 Tab 2.3 Tab 2.4	Approval Approval Approval Approval



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
DISCUSSION/DECISION					
3	Law Firm Regulation Task Force Mandate	5	President	Tab 3	Approval
4	Benchers' Consideration of Special General Meeting Resolution	120	President	Tab 4	Decision
5	CBABC REAL Program: 2014/2015 Funding	10		Tab 5	Decision
REPORTS					
6	President's Report	15	President	Oral report (update on key issues)	Briefing
7	CEO's Report	15	CEO	<i>(To be circulated electronically before the meeting)</i>	Briefing
8	Financial Report to May 31, 2014	15	Ken Walker, QC/ Jeanette McPhee	Tab 8	Briefing
9	2015-2017 Strategic Plan: Preparation Update	5	President/CEO		Briefing
10	Report on Outstanding Hearing & Review Decisions	4	President	<i>(To be circulated at the meeting)</i>	Briefing
11	Mid-year Reports from the 2014 Advisory Committees	20	David Mossop, QC, Maria Morellato, QC, David Crossin, QC & Tony Wilson	Tab 11	Briefing



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
12	Mid-year Report from the 2014 Governance Committee	10	Miriam Kresivo, QC	Tab 12	Briefing
FOR INFORMATION					
13	Equity Ombudsperson Annual Report			Tab 13	Information
IN CAMERA					
14	<i>In camera</i> <ul style="list-style-type: none"> • Other concerns • Benchers concerns 	30	President/CEO		Discussion/ Decision



Minutes

Benchers

Date: Friday, June 13, 2014

Present:	Jan Lindsay, QC, President	Jamie Maclaren
	Ken Walker, QC, 1 st Vice-President	Sharon Matthews, QC
	David Crossin, QC, 2 nd Vice-President	Ben Meisner
	Haydn Acheson	Nancy Merrill
	Joseph Arvay, QC	Maria Morellato, QC
	Satwinder Bains	Lee Ongman
	Pinder Cheema, QC	Greg Petrisor
	David Corey	Phil Riddell
	Jeevyn Dhaliwal	Elizabeth Rowbotham
	Lynal Doerksen	Herman Van Ommen, QC
	Craig Ferris	Cameron Ward
	Martin Finch, QC	Sarah Westwood
	Dean Lawton	Tony Wilson
	Peter Lloyd, FCA	

Excused:

Claude Richmond
Thomas Fellhauer
Miriam Kresivo, QC
David Mossop, QC

Staff Present:	Tim McGee, QC	Ryan Lee
	Deborah Armour	Michael Lucas
	Taylor Ashlie	Bill McIntosh
	Lance Cooke	Jeanette McPhee
	Su Forbes, QC	Doug Munro
	Andrea Hilland	Alan Treleaven
	Jeffrey Hoskins, QC	Adam Whitcombe

<p>Guests: Dom Bautista Mark Benton, QC Johanne Blenkin Kari Boyle Anne Chopra Richard Fyfe, QC Jeremy Hainsworth Gavin Hume, QC Colin Lachance Caroline Nevin MaryAnn Reinhardt Richard Parsons Alex Shorten Prof. Jeremy Webber</p>	<p>Executive Director, Law Courts Center Executive Director, Legal Services Society Chief Executive Officer, Courthouse Libraries BC Executive Director, Mediate BC Society Equity Ombudsperson Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General Reporter, Lawyers Weekly Law Society Member of the Council of the Federation of Law Societies of Canada President, Canadian Legal Information Institute Executive Director, Canadian Bar Association, BC Branch BC Paralegal Association President, Trial Lawyers Association of BC Vice President, Canadian Bar Association, BC Branch Dean of Law, University of Victoria</p>
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Bencher's Oath of Office

President Lindsay administered the Bencher's oath of office, which was affirmed by Sarah Westwood. Ms. Westwood was elected Bencher for the County of Prince Rupert in a by-election held on June 6, 2014.

CONSENT AGENDA

1. Minutes

a. Minutes

The minutes of the meeting held on May 10, 2014 were approved as circulated.

The *in camera* minutes of the meeting held on May 10, 2014 were approved as circulated.

b. Resolutions

The following resolution was passed unanimously and by consent.

- Rule 4-30 – Preliminary Matters

BE IT RESOLVED to amend Rule 4-30 of the Law Society Rules as follows:

1. *By rescinding the heading of the Rule and substituting the following:*

Preliminary matters

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

- (b) an agreed statement of facts,
- (c) an admission made or deemed to be made under Rule 4-20.1 [*Notice to admit*],
- (d) a conditional admission and consent to a specified disciplinary action tendered by the respondent and accepted by the Discipline Committee under Rule 4-22 [*Consent to disciplinary action*], and
- (e) any other document or evidence by agreement of the parties.

DISCUSSION/ DECISION

2. Selection of Benchers' Nominee for 2015 Second Vice-President

Ms. Lindsay declared Herman Van Ommen, QC selected by acclamation as the Benchers' nominee for election at the 2014 Annual General Meeting as the Law Society's Second Vice-President for 2015.

3. Approval of National Discipline Standards

Ms. Armour briefed the Benchers on the Federation's National Discipline Standards Project, and reported on the Law Society's progress in implementing the Standards. She referred to her memorandum at page 52 of the meeting materials for detail, and particularly:

- Attachment 1 (p. 55): NATIONAL DISCIPLINE STANDARDS List of Standards as of January 2014
- Attachment 2 (P. 57): LAW SOCIETY OF BRITISH COLUMBIA Staff Report on Status as at April 30, 2014

Ms. Armour noted that the National Discipline Standards are aspirational, and that while no law society has ever met all the Standards, significant progress has been achieved in a number of jurisdictions, including BC.

Mr. Walker moved (seconded by Mr. Crossin) that that the National Discipline Standards attached as Appendix 1 to these minutes be approved and implemented by the Law Society of BC.

The motion was carried unanimously.

GUEST PRESENTATION

4. Canadian Legal Information Institute (CanLII) Update

Ms. Lindsay invited CanLII President Colin Lachance to address the Benchers. Mr. Lachance provided a briefing on CanLII's history, goals and strategic objectives. Mr. Lachance noted that CanLII's operational funding is, and has always been, exclusively provided by members of Canada's provincial and territorial law societies. He also noted that CanLII forecasts 10 million visits to its website (<https://www.canlii.org/en/>) in 2014, including 450,000 in-bound visits from other websites. Mr. Lachance referred to PowerPoint slides throughout his presentation, which are attached as Appendix 2 to these minutes.

Courthouse Libraries BC (CLBC) CEO Johanne Blenkin confirmed that she is a director of CanLII. Ms. Blenkin advised that CanLII is integral to CLBC's own work in enhancing access to legal information and resources. CLBC will continue to focus on facilitating and training lawyers and the public to use resources such as CanLII.

Mr. McGee expressed appreciation for the valuable contribution made by Mr. Lachance to CanLII's direction and development of strategic partnerships with stakeholders.

REPORTS

5. President's Report

Ms. Lindsay briefed the Benchers on various Law Society matters, including:

a. Special General Meeting Follow-up

Generally the meeting went well, and reflected effective execution of a good process for managing a public dialogue on a difficult, emotionally charged set of issues. Many Law Society staff members contributed to the success of the meeting and were acknowledged.

At the July 11 Bencher meeting the Executive Committee will present a detailed analysis and recommended plan of action for addressing the results of the April 11 Bencher meeting and the June 10 SGM. Bencher discussion of issues to be addressed in that plan will be invited during the *in camera* portion of today's meeting.

A Bencher questioned whether that matter should be discussed in the public portion of the meeting or *in camera*. The Benchers agreed to defer discussion of the SGM Follow-up matter, including the *in camera* question, to the end of the meeting.

b. Welcoming Ceremonies

Former Bencher Dirk Sigalet, and Past-President Bruce LeRose, QC and Second Vice-President David Crossin, QC were thanked for their contributions on behalf of the Law Society at recent welcoming ceremonies for judges appointed in the spring of 2014.

c. Call Ceremonies

The Benchers and Life Benchers who attended two recent call ceremonies in Vancouver were thanked for their support of new Law Society members; and Mr. Fellhauer was acknowledged for stepping in on short notice to represent the Law Society at a call ceremony in Kelowna.

d. UBC Dean's Advisory Committee Meeting

An executive search is underway for a new UBC Dean of Law, as Mary Anne Bobinski is completing the final year of her second six-year term as Dean. The search committee is seeking input regarding the future focus UBC Law.

Dean Bobinski's strong leadership and successful tenure were noted, particularly in relation to recruiting quality faculty members and in guiding the long, difficult process culminating in the opening of UBC Law's beautiful new building, Allard Hall, in 2011.

6. CEO's Report

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

- Operational Priorities Plan Update
- Implementation of Legal Service Providers Task Force Report Recommendations
- Law Society as Insurer and Regulator Working Group
- Implementation of Lawyer Support and Advice Project
- Support for the Law Firm Regulation Review
- Review and Renewal of Staff Performance Management Process
- New Strategic Plan and Bencher Retreat Follow-Up
- Trinity Western University – Special General Meeting
- PLTC Update

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

Gavin Hume, QC briefed the Benchers as the Law Society's member of the FLSC Council. He reported on a number of issues addressed by the Council during its June 2 meeting in Ottawa, including:

- National Mobility Agreement (NMA) Implementation Update

- The Barreau du Québec is awaiting approval of the NMA by l'Office des professions du Québec, provincial regulator of the legal profession in Québec
- Several provincial law societies have already approved the NMA
- Nearing completion are reading materials highlighting differences between the common law and Quebec's civil code
- National Admission Standards (NAS) Implementation Update
 - A steering committee (including Law Society of BC CEO Tim McGee, QC) is working toward implementation of national competency standards already approved by the Federation's member societies
 - Another NAS project is development of a national standard of good character
 - A consultation paper was circulated to the member societies for comment, and a further paper is being prepared as a result of that consultation for the member law societies' consideration
 - The goal is to finalize the good character standard by late 2014 or early 2015
- Standing Committee on Access to Legal Services
 - A steering committee is reviewing the mandate and priorities of this important body
- National Discipline Standards Update
 - Law Society Chief Legal Officer Deb Armour reported on national discipline standards and 2013 results achieved by the member societies
- Canadian Legal Information Institute (CanLII):
 - Johanne Blenkin, CEO of Courthouse Libraries BC, was re-appointed as a member of CanLII's board of directors
- National Committee on Accreditation (NCA) Update
 - Bond University's special status is being discontinued
 - Going forward, graduates of Bond University will be subject to the same NCA criteria as graduates from all other foreign law schools

- Intervention in *Minister of National Defence v. Thompson*
 - Council approved intervention in this appeal to the Supreme Court of Canada, because the case raises issues of solicitor – client privilege important to the Federation and the member law societies
- Federation of Law Societies Governance Review
 - Outside consultants have been engaged to review and provide recommendations regarding the Federation’s governance regime and processes
 - The review will include considering the scope and focus of the Federation’s work, including development and implementation of national standards, and succession planning for the Federation President
- Strategic Plan
 - There was a preliminary strategic planning discussion
 - The Federation’s Strategic Plan will be a topic on the agenda for the Council’s fall meeting

The Federation’s Standing Committee on the Model Code of Professional Conduct, chaired by Mr. Hume, met on June 3. Input was reviewed on a number of topics for which Code amendments are being considered, including:

- Current client conflicts rules, gifts from clients, testamentary gifts and physical evidence of crime

8. 2012-2014 Strategic Plan Implementation Update

This matter was addressed in the CEO’s Report.

9. Report on the Outstanding Hearing & Review Reports

Written reports on outstanding hearing decisions and conduct review reports were received and reviewed by the Benchers.

10. Business Arising

a. SGM Next Steps Discussion (public or *in camera*)

Mr. Arvay questioned whether discussion of the Law Society's response to the SGM should be held *in camera*. He noted that on June 12 a notice of motion was delivered to the President on behalf of several Benchers: confirming that at the July 11 meeting a motion will be presented: calling for implementation of the members' resolution passed at the Special General Meeting.¹

Mr. Arvay requested a debate on the question of whether the Benchers' discussion of this matter should be held in public or *in camera*.

Mr. Meisner moved (seconded by Mr. Riddell) that the Benchers' discussion of the results and implications of the June 10 Special General Meeting be conducted *in camera*.

Ms. Lindsay noted that the intended purpose of the proposed *in camera* discussion was not to make secret decisions, but rather to facilitate the Benchers' free exchange of views on complex, sensitive issues in the course of developing a plan of action which would then be confirmed in the public session of the next meeting.

Mr. Hoskins directed the Benchers' attention to Part 3, Section J (Bencher Meetings) of the Benchers' Governance Policies, including:

¹ At the Law Society Special General Meeting held on June 10, 2014, the following members' resolution was passed (3,210 in favour and 968 against):

WHEREAS:

- Section 28 of the *Legal Profession Act* permits the Benchers to take steps to promote and improve the standard of practice by lawyers, including by the establishment, maintenance and support of a system of legal education;
- Trinity Western University requires students and faculty to enter into a covenant that prohibits "sexual intimacy that violates the sacredness of marriage between a man and a woman";
- The Barristers' and Solicitors' Oath requires Barristers and Solicitors to uphold the rights and freedoms of all persons according to the laws of Canada and of British Columbia;
- There is no compelling evidence that the approval of a law school premised on principles of discrimination and intolerance will serve to promote and improve the standard of practice of lawyers as required by section 28 of the *Legal Profession Act*; and
- The approval of Trinity Western University, while it maintains and promotes the discriminatory policy reflected in the covenant, would not serve to promote and improve the standard of practice by lawyers;

THEREFORE:

The Benchers are directed to declare, pursuant to Law Society Rule 2-27(4.1), that Trinity Western University is not an approved faculty of law.

Paragraph 1(c) The President may declare a meeting *in camera* when, in the discretion of the President it is necessary or desirable, but the Benchers may, by resolution, cause the meeting to be open despite the President's ruling.

The President may declare a meeting in camera when, in the discretion of the President it is necessary or desirable, but the Benchers may, by resolution, cause the meeting to be open despite the President's ruling.

In the ensuing discussion the following points were raised:

- Fairness requires timely, transparent action, and as the Law Society members are now part of the TWU discussion, as much as possible the Benchers should conduct their deliberations on the matter of TWU's accreditation promptly and in public
- Careful consideration of this matter's complex and unusual process questions may raise sensitive issues and topics that are or should be subject to privilege, and accordingly the discussion should be held *in camera*
- The best way to develop a transparent, fair process for the Law Society's conduct of this matter is through a full, thorough Bencher discussion, which would be best achieved *in camera*
- Consensus on the process and timing for the Benchers' consideration of the members' resolution passed at the SGM is desirable and most likely to be achieved in an *in camera* discussion

The motion was carried.

The Benchers considered other matters *in camera*.

WKM
2014-06-30



Memo

To: The Benchers
From: Deb Armour, Chief Legal Officer
Date: May 21, 2014
Subject: National Discipline Standards

Action Required

1. The Benchers are asked to approve the adoption and implementation of the National Discipline Standards with the following resolution.

Resolved that the National Discipline Standards attached as Attachment 1 to this memorandum be adopted and implemented by the Law Society of BC.

Background

2. The Federation of Law Societies of Canada established a National Discipline Standards Project in May of 2010 with a Steering Committee Chaired by Allan Fineblit, CEO of the Law Society of Manitoba, and comprised of a number of other CEOs and Discipline Administrators, a Federation Council member (Jeff Hirsch) and the Ombudsman of Saskatchewan, Kevin Fenwick. I was one of the Discipline Administrators on the Steering Committee.
3. The National Discipline Standards initiative was part of the following Federation strategic objective for 2010 – 2012:

To develop and implement high, consistent and transparent national standards for Canada's law societies in core areas of their mandates.

4. The goal set for the National Discipline Standards Project was the development and implementation of uniformly high standards for the processing of complaints and disciplinary matters in all law societies and the creation of a robust mechanism to monitor compliance with the standards.
5. The Steering Committee initially developed 23 discipline standards addressing such issues as timeliness, openness, public participation, transparency, accessibility and training of adjudicators and investigators. A two year pilot project was established in 2012 to test drive

those standards to ensure that they were realistic and achievable. All law societies in Canada participated in the pilot project with the exception of the Chambre des notaires du Québec.

6. From the outset, it was determined that the standards should be aspirational. It was not expected that law societies would meet all standards and in fact, during the pilot project, none of the law societies met all of them. Importantly, all law societies improved their results. Appropriate refinements were made to the standards as a result of the experiences of law societies during the pilot.
7. At its meeting on April 3 and as reported by LSBC Federation representative Gavin Hume, QC at the Benchers' meeting on April 11, Federation Council approved the refined National Discipline Standards ("Standards") which are at Attachment 1 and referred them to the law societies for adoption and implementation by January 1, 2015.
8. In addition, the Federation Council agreed that a Standing Committee on National Discipline Standards be established with members appointed from time to time by the Federation Executive. That Committee will be charged with monitoring implementation of and compliance with the Standards. The Standing Committee has not yet been constituted.

Report on LSBC Progress

9. LSBC progress on the Standards is found in Attachment 2.
10. We have made steady improvement since the implementation of the pilot project. Notable achievements are as follows:
 - a. We met 15 of the 21 Standards as of the end of April.
 - b. All of the Standards applicable to our intake and investigations functions (1 – 5 and 18) have been met with the exception of the minor shortfall on Standard 2.
 - c. 97% of all complaints were resolved or referred for a disciplinary or remedial response within 12 months. Standard 3 calls for 80%.
 - d. The Standards relating to public participation (10 and 11) and transparency (12 – 17) have all been met but for Standard 16. As it relates to Standard 16, Rule 2-15 requires us to provide information to another law society investigating one of our members, but it is not clear that solicitor/client privileged information must be protected in the hands of the recipient. We will seek a rule amendment to make that clear.
 - e. We provide training to all discipline hearing panel and Discipline Committee members as required by Standards 20 and 21.
11. Where we fall short:
 - a. Commencement of hearings (Standard 7) – while we are not yet meeting that standard, we have made substantial progress such that of all citations authorized in 2013, 100% were commenced within 12 months. Progress is attributable to changes

that we have made to our processes including not waiting for agreement on facts with the respondent before setting hearing dates. As well, we have filled a vacancy in the discipline group that was open for most of 2013, which will result in further improvements.

- b. Decisions rendered within 90 days of last submissions (Standard 8) – The standard is 90% and we are at 69% as at the end of April. We will continue to remind panellists of this deadline.
- c. Standard 9 (reporting quarterly on Standards 6 - 8) was new in January. I did not report to you in time to meet the quarterly requirement and will do so going forward.
- d. Easily accessible information on discipline history (Standard 19) – it is not easy to access any but the most recent discipline history on members. We currently have a staff working group looking at changes that could be made to Lawyer Lookup including those needed to ensure we meet this standard.

Recommendation

12. It is recommended that the Benchers adopt the resolution in paragraph 1.

Attachment 1

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

NATIONAL DISCIPLINE STANDARDS PILOT PROJECT

List of Standards as of January 2014

Timeliness

1. **Telephone inquiries:**
75% of telephone inquiries are acknowledged within one business day and 100% within two business days.
2. **Written complaints:**
100% of written complaints are acknowledged in writing within three business days.
3. **Timeline to resolve or refer complaint:**
80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months.
90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months.
4. **Contact with complainant:**
For 90% of open complaints there is contact with the complainant at least once every 90 days during the investigation stage.
5. **Contact with member:**
For 90% of open complaints there is contact with the member at least once every 90 days during the investigation stage.

Hearings

6. 75% of citations or notices of hearings are issued and served upon the lawyer within 60 days of authorization.
95% of citations or notices of hearings are issued and served upon the lawyer within 90 days of authorization.
7. 75% of all hearings commence within 9 months of authorization.
90% of all hearings commence within 12 months of authorization.
8. Reasons for 90% of all decisions are rendered within 90 days from the last date the panel receives submissions.
9. Each law society will report annually to its governing body on the status of standards 3, 4 and 5. For standards 6, 7 and 8, each law society will report quarterly to its governing body on the status of the standards.

...../2

Attachment 1

2

NATIONAL DISCIPLINE STANDARDS PILOT PROJECT

List of Standards

December 2013

Public Participation

10. There is public participation at every stage of discipline; i.e. on all hearing panels of three or more; at least one public representative; on the charging committee, at least one public representative.
11. There is a complaints review process in which there is public participation for complaints that are disposed of without going to a charging committee.

Transparency

12. Hearings are open to the public.
13. Reasons are provided for any decision to close hearings.
14. Notices of charge or citation are published promptly after a date for the hearing has been set.
15. Notices of hearing dates are published at least 60 days prior to the hearing, or such shorter time as the pre-hearing process permits.
16. There is an ability to share information about a lawyer who is a member of another law society with that other law society when an investigation is underway in a manner that protects solicitor-client privilege, or there is an obligation on the lawyer to disclose to all law societies of which he/she is a member that there is an investigation underway.
17. There is an ability to report to police about criminal activity in a manner that protects solicitor/client privilege.

Accessibility

18. A complaint help form is available to complainants.
19. There is a lawyer directory available with status information, including easily accessible information on discipline history.

Qualification and Training of Adjudicators

20. There is ongoing mandatory training for all adjudicators, including training on decision writing, with refresher training no less often than once a year and the curriculum for mandatory training will comply with the national curriculum if and when it is available.
21. There is mandatory orientation for all volunteers involved in conducting investigations or in the charging process to ensure that they are equipped with the knowledge and skills to do the job.



Attachment 2

**NATIONAL DISCIPLINE STANDARDS
PILOT PROJECT WITH STANDARDS AS REVISED IN JANUARY 2014**

**LAW SOCIETY OF BRITISH COLUMBIA PROGRESS
Staff Report on Status as at April 30, 2014**

STANDARD		STATUS
TIMELINESS		
1.	75% of telephone inquiries are acknowledged within one business day and 100% within two business days.	MET
2.	100% of written complaints are acknowledged in writing within three business days.	NOT MET. 99.7% was achieved. We have tweaked our processes to achieve 100% going forward.
3.	80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months. 90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months.	MET. 97% of all complaints were closed within 1 year. MET. 99.6% of all complaints were resolved or referred for a disciplinary or remedial response within 18 months.
4.	For 90% of open complaints there is contact with the complainant at least once every 90 days during the investigation stage.	MET in 94% of all cases.
5.	For 90% of open complaints there is contact with the member at least once every 90 days during the investigation stage.	MET in 93% of all cases.
HEARINGS		
6.	75% of citations or notices of hearings are issued and served upon the lawyer within 60 days of authorization. 95% of citations or notices of hearings are issued and served upon the lawyer within 90 days of authorization.	MET. 96% of citations were issued and served within 60 days of authorization. MET. 100% of citations were issued and served within 90 days of authorization.
7.	75% of all hearings commence within 9 months of authorization. 90% of all hearings commence within 12 months of authorization.	NOT MET. 40% of hearings commenced within 9 months of authorization. NOT MET. 68% of hearings commenced within 12 months of authorization.

Attachment 2

STANDARD		STATUS
8.	Reasons for 90% of all decisions are rendered within 90 days from the last date the panel receives submissions.	NOT MET. 69% of all decisions were rendered within 90 days of the last date the panel received submissions.
9.	Each law society will report annually to its governing body on the status of standards 3, 4 and 5. For standards 6, 7 and 8, each law society will report quarterly to its governing body on the status of the standards.	NOT MET. This is a new standard as of January. As it relates to the obligation to report 6-8 quarterly, this standard was not met.
PUBLIC PARTICIPATION		
10.	There is public participation at every stage of discipline; i.e. on all hearing panels of three or more; at least one public representative; on the charging committee, at least one public representative.	MET. There is one public representative on every disciplinary panel and currently 2 public representatives on our charging body.
11.	There is a complaints review process in which there is public participation for complaints that are disposed of without going to a charging committee.	MET. Our Complainants Review Committee has 2 public members. One public member sits on each panel.
TRANSPARENCY		
12.	Hearings are open to the public.	MET. Hearings are open to the public unless the panel exercises its discretion under Rule 5-6 to exclude some or all members of the public.
13.	Reasons are provided for any decision to close hearings.	MET. Rule 5-6 (5) requires panels to give written reasons for orders to exclude the public or to require non-disclosure of information.
14.	Notices of charge or citation are published promptly after a date for the hearing has been set.	MET. Our process is to publish the fact that a citation has been authorized as soon as the respondent has been informed and the content of the citation when the respondent has been served.
15.	Notices of hearing dates are published at least 60 days prior to the hearing, or such shorter time as the pre-hearing process permits.	MET. It is our regular practice to publish dates of hearings as soon as they are set.

Attachment 2

STANDARD		STATUS
16.	There is an ability to share information about a lawyer who is a member of another law society with that other law society when an investigation is underway in a manner that protects solicitor-client privilege, or there is an obligation on the lawyer to disclose to all law societies of which he/she is a member that there is an investigation underway.	NOT MET. Rule 2-15 requires us to provide information to another law society investigating one of our members, but it is not clear that solicitor/client privileged information must be protected in the hands of the recipient. We will seek a rule amendment to make that clear.
17.	There is an ability to report to police about criminal activity in a manner that protects solicitor/client privilege.	MET. Rule 3-3(2) allows the Discipline Committee to consent to delivery of such information to a law enforcement agency. Rule 3-3 (4) indicates we cannot share privileged material.
ACCESSIBILITY		
18.	A complaint help form is available to complainants.	MET. We have web based material that assists those wishing to make complaints as well as paper brochures that discuss our complaints processes and jurisdiction.
19.	There is a lawyer directory available with status information, including easily accessible information on discipline history.	NOT MET. Currently most discipline information is available although it is not all easy to access.
QUALIFICATION AND TRAINING OF ADJUDICATORS		
20.	There is ongoing mandatory training for all adjudicators, including training on decision writing, with refresher training no less often than once a year and the curriculum for mandatory training will comply with the national curriculum if and when it is available.	MET. All hearing panellists are required to take a basic course on the principles of administrative law, Law Society procedures and decision-writing. All lawyer panellists are required to take an advanced workshop on decision writing and all lawyer-Bencher panellists are required to take an advanced workshop on hearing skills. Annual refresher training took place late in 2013.
21.	There is mandatory orientation for all volunteers involved in conducting investigations or in the charging process to ensure that they are equipped with the knowledge and skills to do the job.	MET. For the last 3 years, we have provided orientation to everyone on the Discipline Committee. There are no volunteers involved in conducting investigations.

CanLII

The Law Society
of British Columbia



June 13, 2014
Colin Lachance



About CanLII



- Funded by Canada's lawyers and notaries for the benefit of all, CanLII provides free access to legal information
- Unique in the world among Legal Information Institutes (LIIs), CanLII's operational funding is, and has always been, exclusively provided by members of Canada's provincial and territorial law societies.
- Funding for specific projects such as expansion of historical collections has been gratefully received from provincial law foundations and other sources.

\$35

CanLII

other ways a

lawyer can spend \$35 ...

approximate national
per lawyer amount
contributed through
law societies to **fully**
fund CanLII's
operations in

2013
5013

a pair of



tab collars

pizza for
articling
students



30 minutes of
court
reporter
services



taxi
ride
to
court



2-3

searches
on
pay legal
search
services



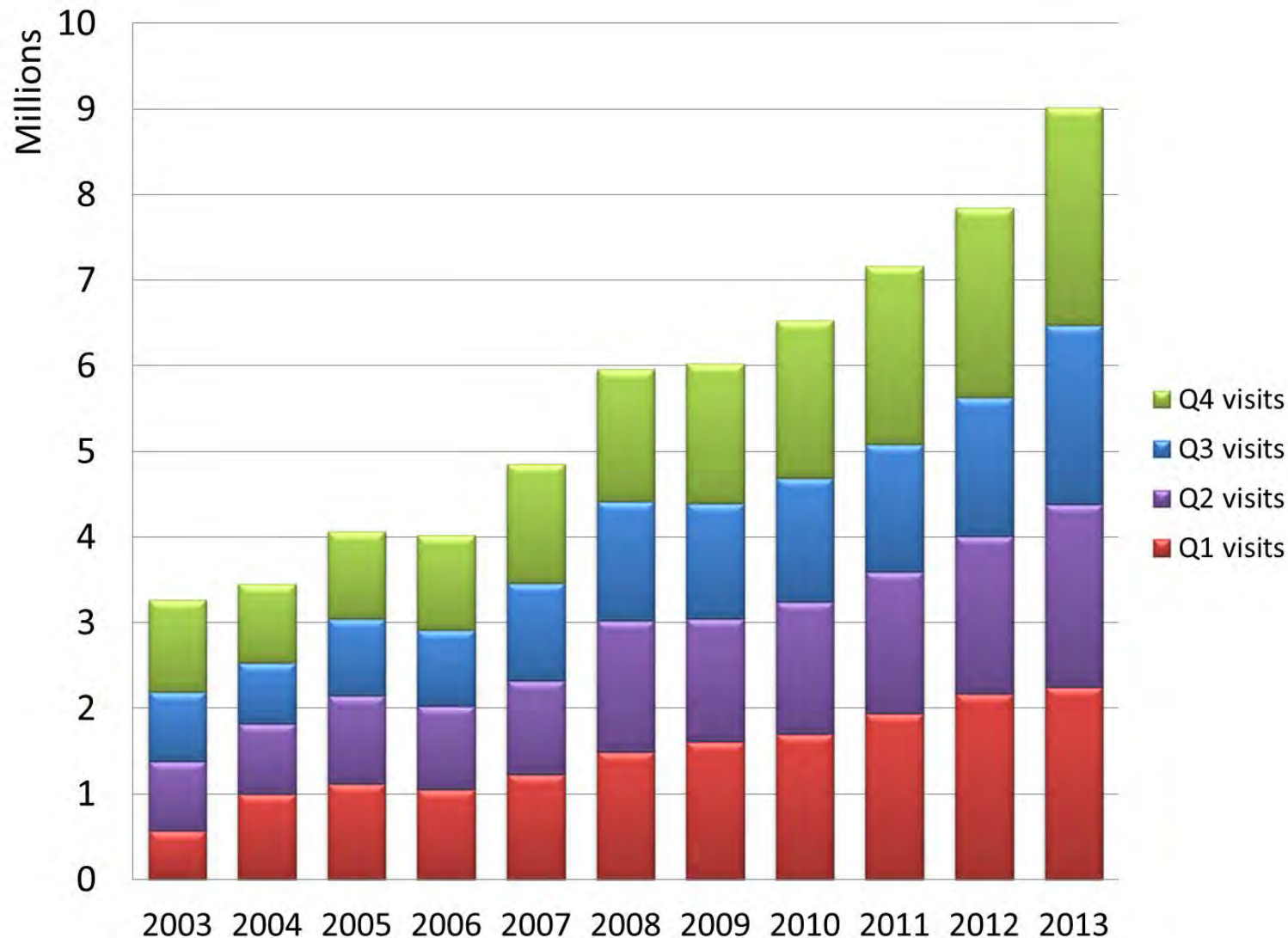
Notional per-search rate. See, e.g.,
[http://www.lexisnexis.ca/
documents/
QLPriceList_CAN_EN.pdf](http://www.lexisnexis.ca/documents/QLPriceList_CAN_EN.pdf)

Well stocked and well used



- Our website has over 1.3 million court judgments, tens of thousands of statutes and regulations and covers all the major courts and legislatures, as well as over 250 specialized courts and tribunals.
- More than a third of all professional legal research takes place on our website and that reliance is increasing. (source: CanLII 2012 survey)

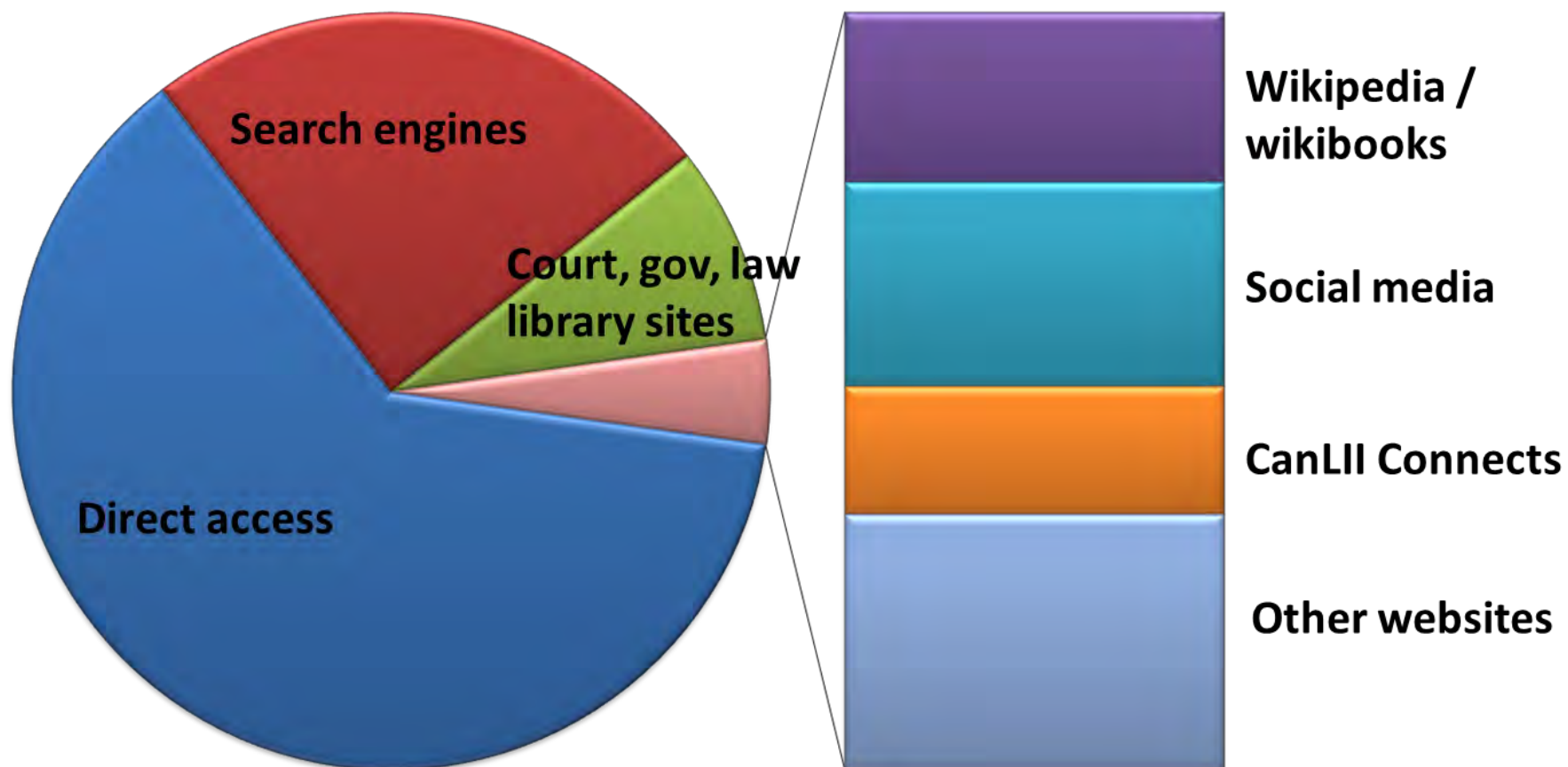
widespread and growing use among the public and among the legal profession



2014 forecast of CanLII site visits

10 million site visits

In-bound visits from other
websites ~450,000



How a user reaches CanLII will influence behaviours on CanLII



Intentional visit

Unplanned visit



	Direct link	Search engine	Link from any Web page	Social Media
Avg. Minutes on site	13.8	9	6.5	2.5
Avg. Number of actions	12.7	8.5	6	2.2
Avg. Bounce rate (single page view only)	24%	38.5%	51%	80%

CanLII chronology



- Origin - 1996 to 2001
- Early days – 2001 to 2003
- The next phase – 2003 to 2007
- A new beginning – 2008 to 2011
 - Futures committee
 - LexUM becomes Lexum Inc.
 - New Board, new president, new plan
- 2012 to 2014 strategic priorities
 - Permanence
 - Content
 - Technology
 - Policy

Board of Directors



Chair

[Dr. Martin Felsky](#), Lawyer and legal technology consultant , BLG 2010

vice-Chair

[Diana Miles](#), Executive Director, Organizational Strategy and Effectiveness, Law Society of Upper Canada 2007

[Johanne Blenkin](#), CEO, Courthouse Libraries BC 2010

[Professor Michael Geist](#), University of Ottawa 2010

[Marion Fraser](#), vice-president finance and administration, Ottawa Heart Institute 2011

[Brian McLaughlin](#), CIO Advisor, Moorcroft Group Professional Services 2012

[Dominic Jaar](#), Partner and National Practice Leader in Information Management Services, KPMG 2013

About CanLII



Mission:

Free access to law

Goals:

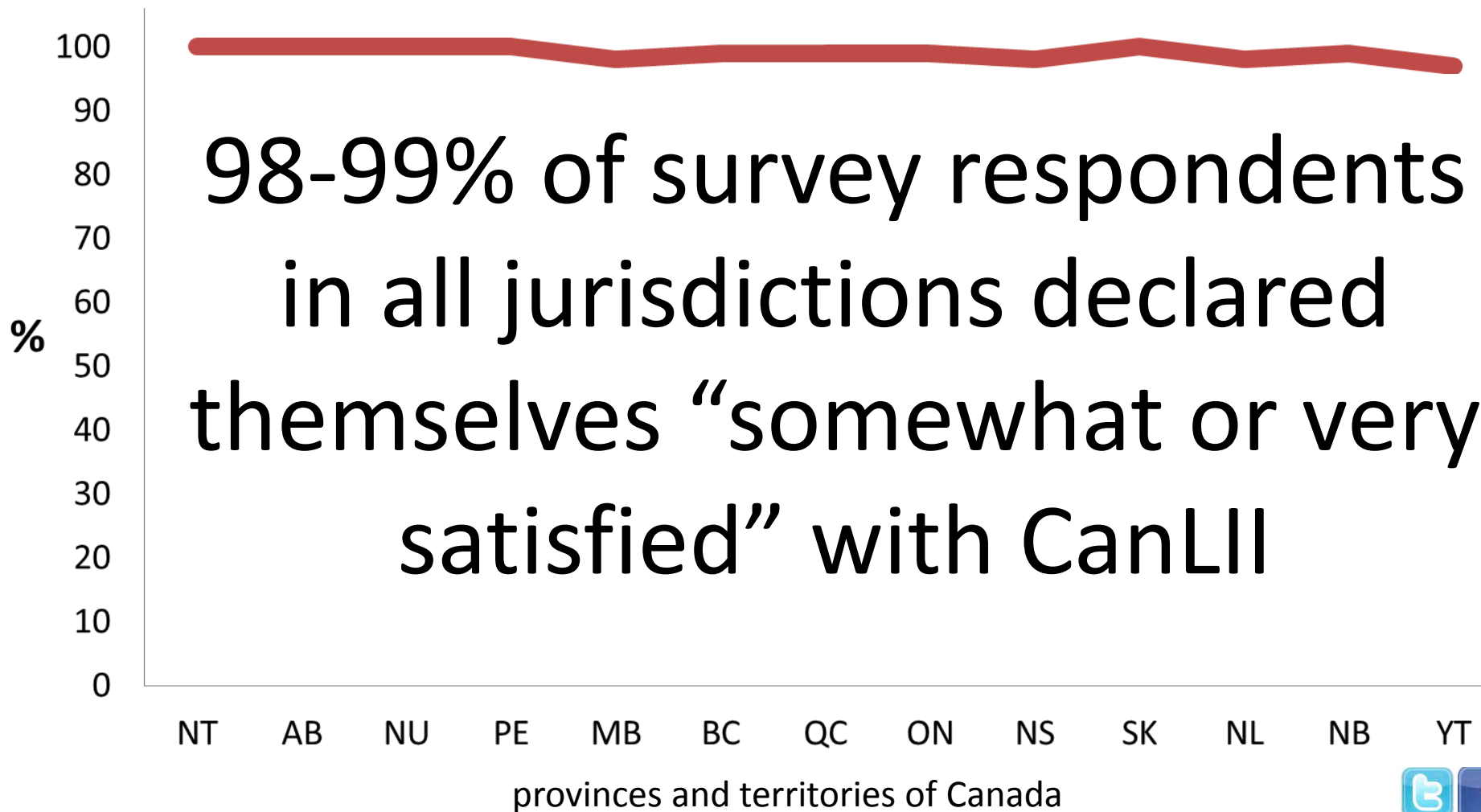
Meet public interest in free and unrestricted access to legal information

Satisfy legal community needs with a free, comprehensive and robust legal research service

Strategic Priorities 2012 to 2014



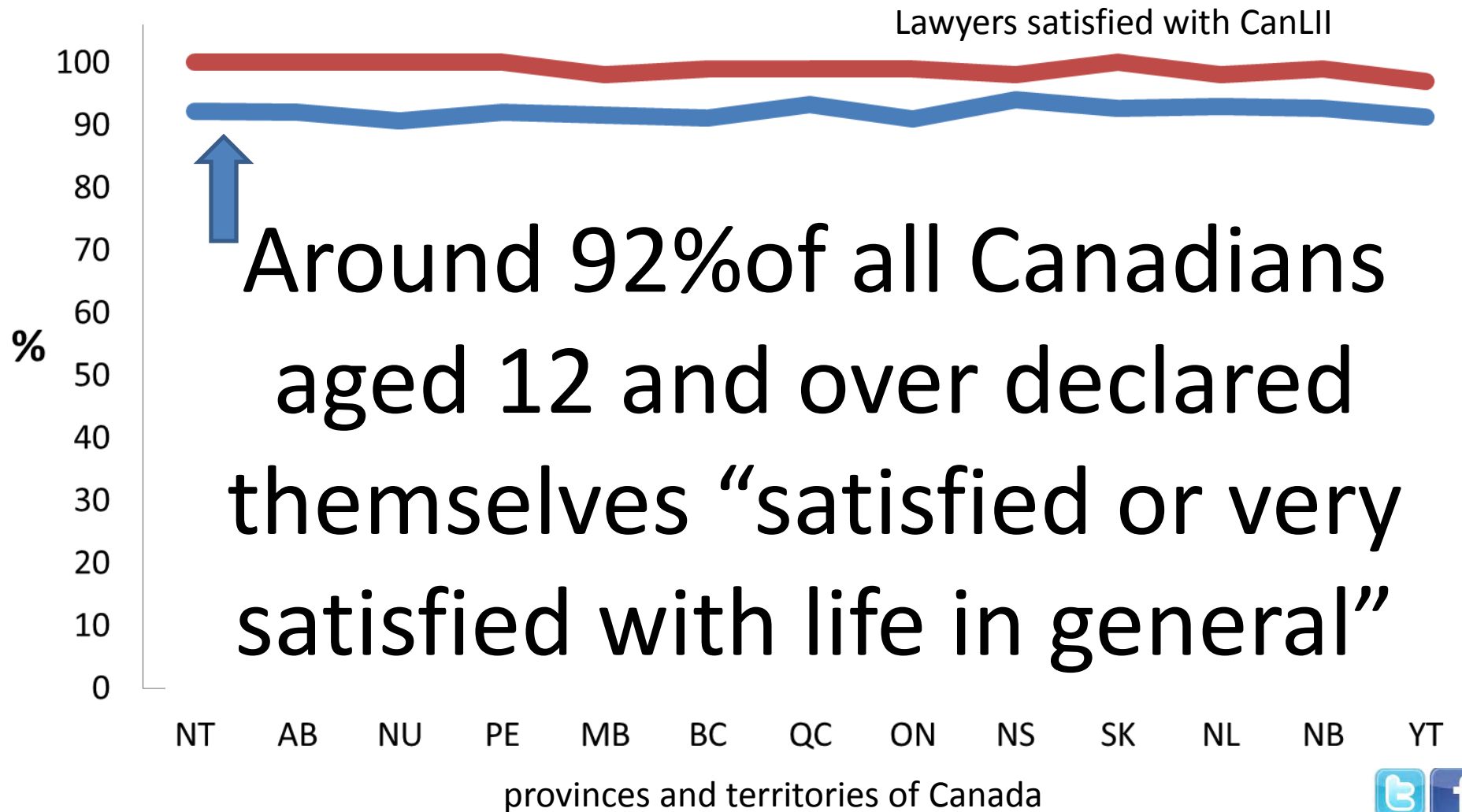
1. Secure permanent role as foremost source of free law in Canada
2. Continually enrich content to meet needs of public and professional users
3. Deliver easy to use professional grade tools and a compelling site experience
4. Continuously promote and defend free access to law



Does lawyer satisfaction with CanLII make
for a happy and satisfied country?

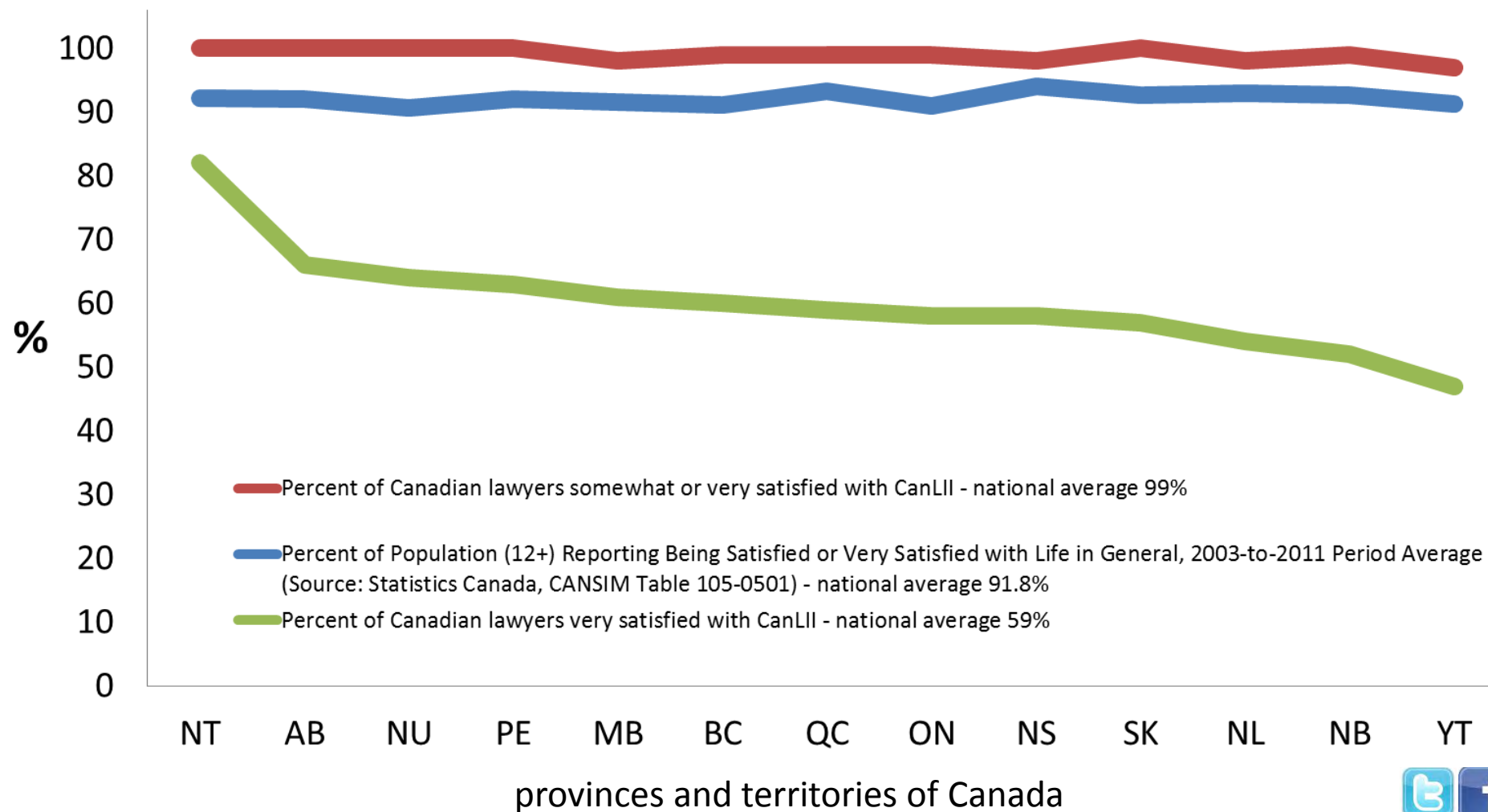


Or are Canadians just easy to please?



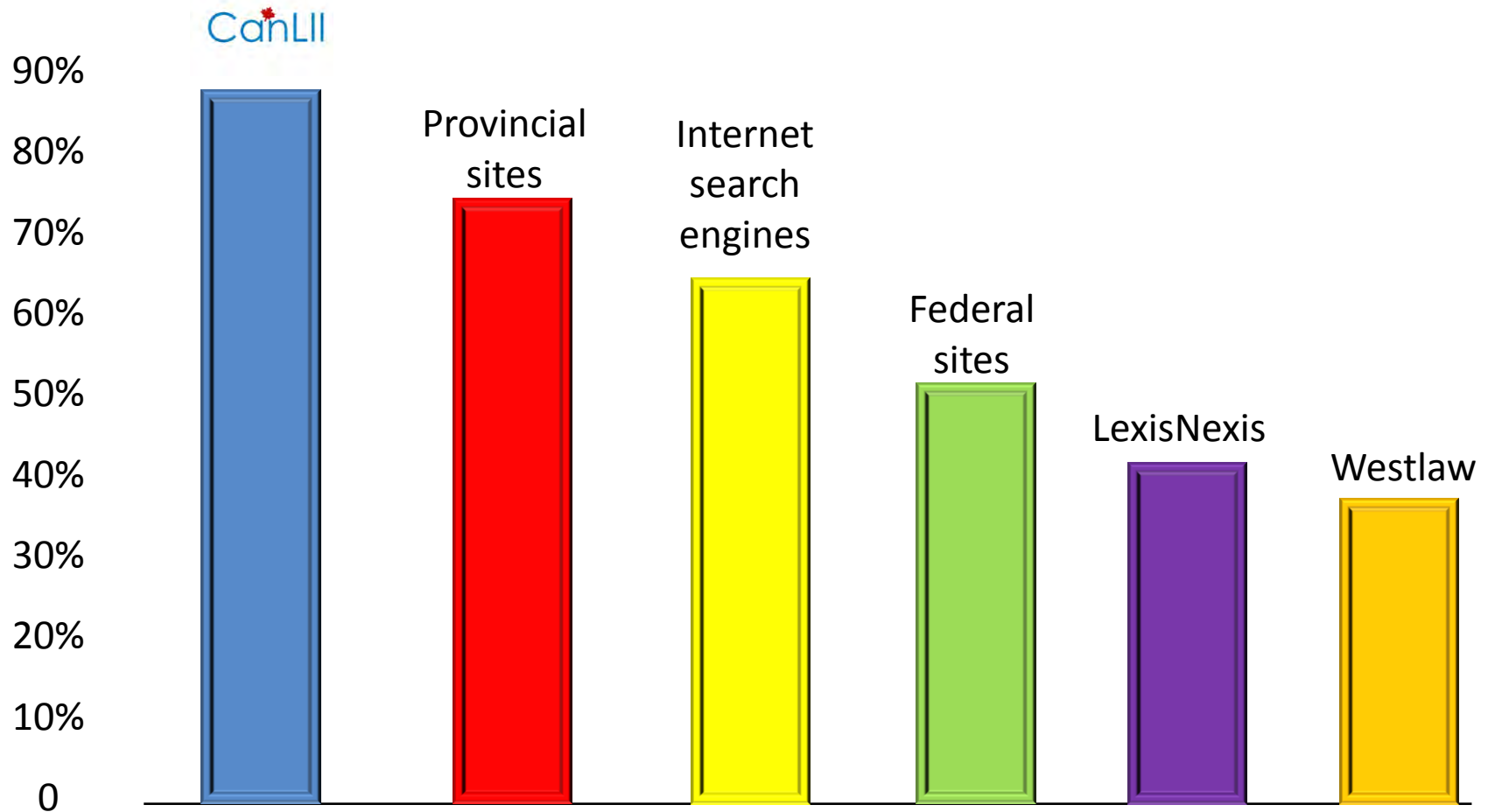
Does lawyer satisfaction with CanLII make for a happy and satisfied country?

Or are Canadians just easy to please?



2012 Poll of Canadian lawyers: on which online sites have you conducted legal research in the past 12 months?

n=4292



2012 Poll of Canadian lawyers: when researching case law, which online source do you consult first?

n=4292

CanLII



From survey: Top 3 areas for improvement



- Improved search functionality
- Comprehensive case collections
- Addition of secondary sources, topic databases and other explanatory aids

Top 3 initiatives to address lawyer interests within current plan



- Improve search
- Expand content
 - “Comprehensive” primary law coverage
 - Selected secondary source coverage
- Expand community

New search (Launched September 2013)



CanLII Home > Search CanLII Français | English

+ certify /p "bargaining unit" x ? Q

All CanLII (187) **Cases (181)** Legislation (5) Commentary (1)

Nova Scotia ▾ All courts and tribunals ▾ Any date ▾ Clear filters By Relevance ▾ in

1. CanLII 181
Nova Scotia Labour Board 77
bargaining unit 55
[...] employees 104
Un- board certifies the Canadian Staff 102
Ba- Unit consisting of: [...] 27,
cer- ing met, we would be prepared to
uni- our task is to certify a bargaining
al bargaining unit. [...]
2. Nova Scotia Labour Board 94
2012 Nova Scotia Labour Board 7
time bar- presented — bargaining
[...] employees ("the Union") applied for an order
certify those known as Training Centre Instructors)
[...]
3. Nova Scotia Labour Board 94
2012 Nova Scotia Labour Board 7
time bar- presented — bargaining
[...] employees ("the Union") applied for an order
certify those known as Training Centre Instructors)
[...]

Nova Scotia

- Labour Arbitration Awards 2
- Nova Scotia Labour Board 94**
- Nova Scotia Labour Relations Board 7
- Nova Scotia Labour Standards Tribunal 1
- Nova Scotia Workers' Compensation 0
- Appeals Tribunal

Community Builders Inc (Cole Harbour Place),

Pursuing comprehensive court collections



“comprehensiveness” is a moving target and a function of the following factors:

- **Historical coverage period** – what start date for coverage is commensurate with the degree of professional reliance on historical decisions? How does it vary based on court level?
- **Completeness within a coverage period** – must a collection include all decisions, all reported decisions, or some other objective?
- **Leading decisions outside the coverage period** – how to identify and collect significant decisions outside the coverage period?

Judgments and Deliberations of the Sovereign Council of New France, 1663 to 1675, v. I, page 117



— 117 —

LOU'S COUILLARD SIEUR DE LESPINAY demandeur en requeste
Jacques BILLAudeau et Antoine POUPIN TOUT LA CHANCE defendants
Après que le demandeur a conclu à ce que les defendants soient con-
damnez luy rendre un original qu'il a leué et que Claude Guyon son associé
a tûé, lequel original les defendants ont pris et enléué. Et que par les de-
fendants a esté dict qu'à la requeste du demandeur ils ont esté assignez à
comparoir en ce Conseil par exploit de Bouliard sergent de la seigneurie
de Beupré en date du six des presens mois et au qu'on pretend estre en
vertu d'une requeste respondre par Monsieur le gouverneur le quatre du
dict present mois dont ils n'ont rien veu. Et qu'ils demandent estre renvoyez
pardenant le juge prenost de Beupré leur juge naturel pour toutes choses,
jusqu'à ce qu'il aye plu au Roy establir des officiers pour les Eaux et forests,
et demandent despens et acte de leur dire. Ouy le procureur general du
Roy LE CONSEIL a ordonné et ordonne que les parties procedent au prin-
cipal en ce Conseil sans tirer à consequence pour estre reiglez.

ET A L'INSTANT le dict Billaudeau a dict qu'ayant leué un original dans
les bois qu'il a poussé et fait descendre sur la grane et fochy poursuivy
jusqu'à ce que le dict Guyon qui s'estant rencontré audenant l'auroit tûé
à coup de fusil pourquoy il en auroit eu la teste de laquelle il se seroit bien
contenté. Et ne sçait ce que le demandeur veult dire n'ayant point paru que
le lendemain.

Parties oüyes et de leur consentement LE CONSEIL les a mises hors de
Cour et de proces sans despens %.



Foray into secondary sources: Organizing and integrating case summaries and opinions

(April 2014)



COURT OF QUEEN'S BENCH

Apr 4,
2014

Meads v. Meads, 2012 ABQB 571 (CanLII)

Share on:
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[See full case on CanLII](#)



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related
content
▼

1 COMMENTARY

[Add your own commentary](#)

**by Jonnette Watson
Hamilton — ABLawg**
Mar 27, 2014

**The Organized
Pseudolegal
Commercial
Argument (OPCA)
Litigant ...**

1 | CONCUR



Colin Lachance commented
4 days ago

Amazing to see the influence of

1 SUMMARY

[Add your own summary](#)

by JSS Barristers
Mar 19, 2014

**Summary of Meads
v. Meads**

1 | CONCUR

[Read the full Summary](#)

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Building a community of contributors



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CONNECT OTHER ACCOUNTS
TO LOG IN WITH:

 CONNECT WITH LINKEDIN

 CONNECT WITH FACEBOOK

 CONNECT WITH TWITTER

 CONNECT WITH GOOGLE

If you're a member of an organization, select
or enter them here:



Find your Publisher ▼

Building a community of innovators through the CanLII API (March 2013)



By supplying
content like
this:

```
https://api.canlii.org/v1/caseBrowse/en/abwcac  
/2013canlii8673/?api_key=1234567890
```

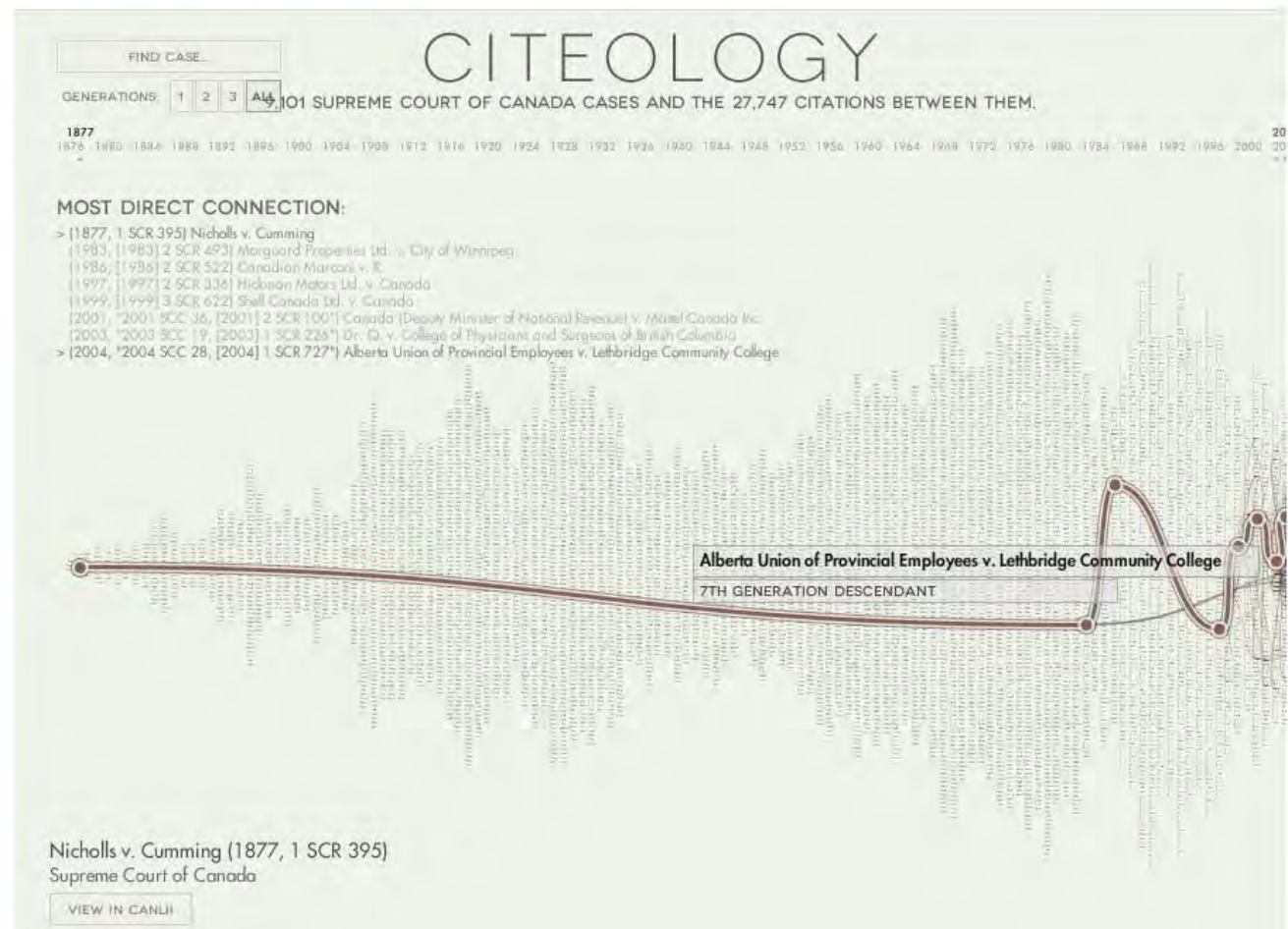
```
{  
  "databaseId": "abwcac",  
  "caseId": "2013canlii8673",  
  "url": "http://canlii.ca/t/fw90n",  
  "title": "Decision No: 2013-0155",  
  "citation": "2013 CanLII 8673 (AB WCAC)",  
  "language": "en",  
  "docketNumber": "2013-0155; AC0695-12-53",  
  "decisionDate": "2013-02-26"  
}
```



Building a community of innovators

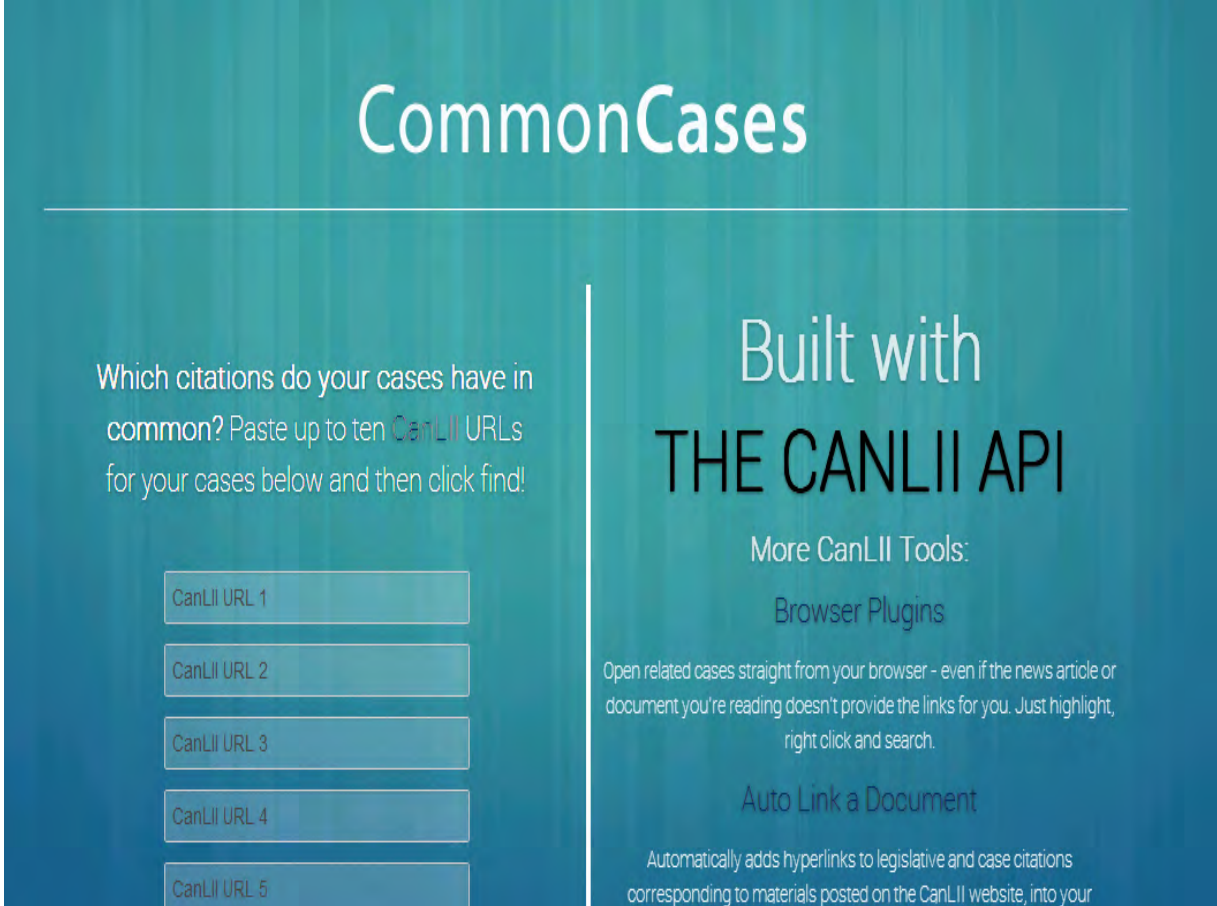


Anyone can
build
something
like this:



Building a community of innovators

Or this:



CommonCases

Which citations do your cases have in common? Paste up to ten CanLII URLs for your cases below and then click find!

CanLII URL 1

CanLII URL 2

CanLII URL 3

CanLII URL 4

CanLII URL 5

Built with
THE CANLII API

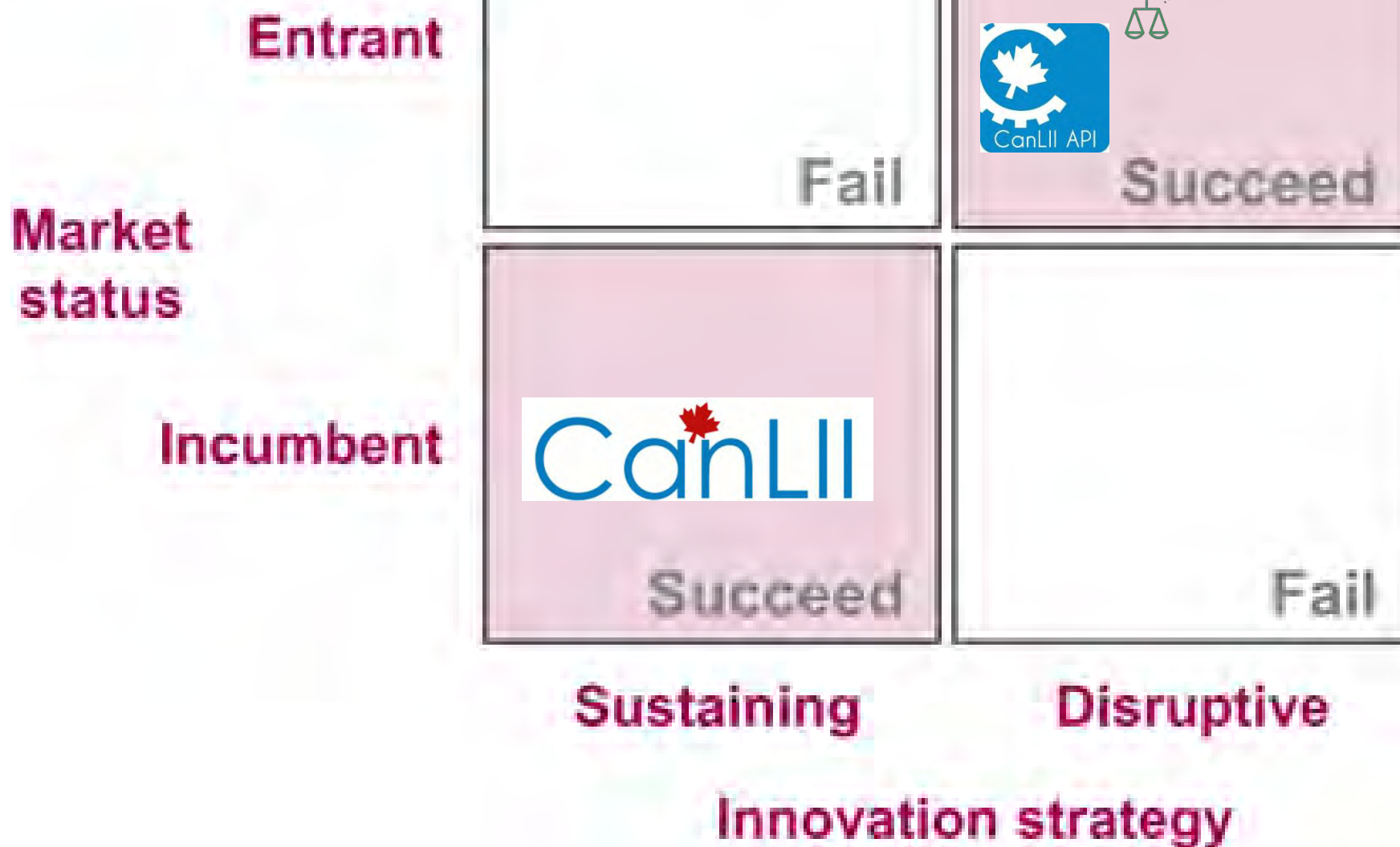
More CanLII Tools:

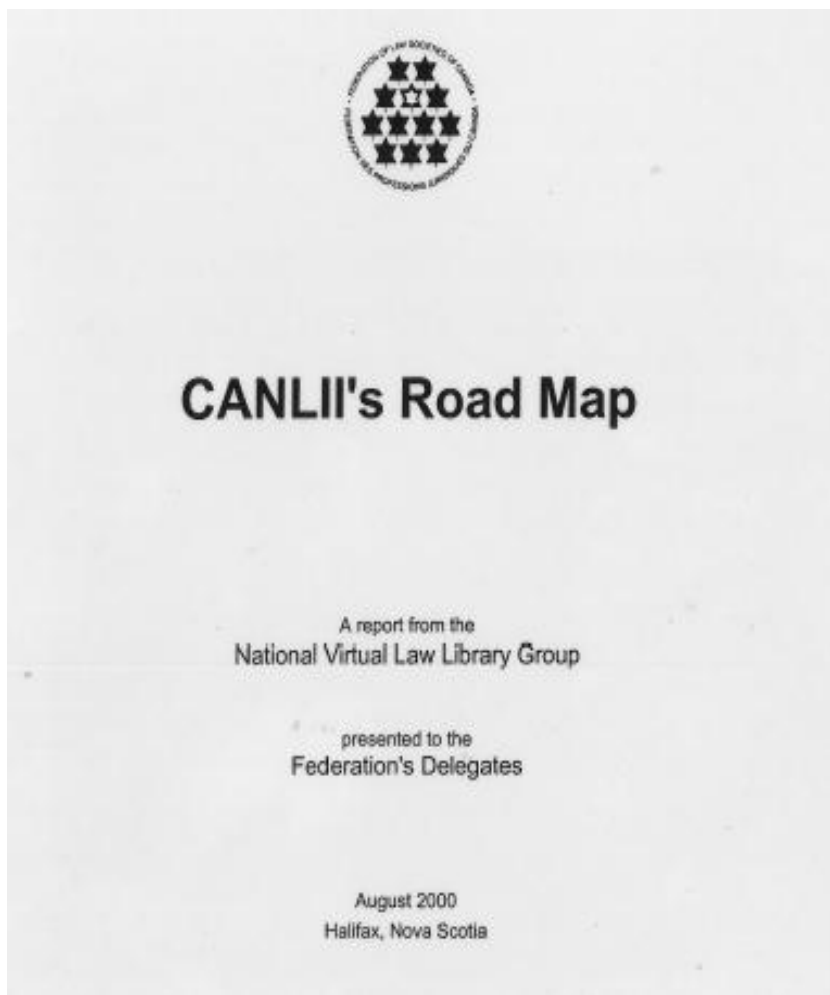
Browser Plugins

Open related cases straight from your browser - even if the news article or document you're reading doesn't provide the links for you. Just highlight, right click and search.

Auto Link a Document

Automatically adds hyperlinks to legislative and case citations corresponding to materials posted on the CanLII website, into your





“In sum,
CanLII’s
mission is to
become the
best place to
consult
Canadian law.”

*In truth, this is potentially
the beginning of a complete
and interconnected law
network.*

[Toward a Business Plan for a Canadian Virtual Law Library, March 2000]



THANK YOU

Click below to find and follow



bonus material: fun facts

CanLII 2012 lawyer survey – ensuring alignment between priorities and user need



The purpose of the study was to assess the extent of CanLII's success in meeting client needs, and solicit or derive recommendations for improvement

The study consisted of both in-depth interviews with senior representatives of the 14 provincial and territorial law societies, and an online survey of law society members (4,326 people completed the survey)

Strong alignment across law society executives on the following points:

- the future of legal research is online
- public access to legal resources is important
- CanLII should evolve to a broader base of “one-stop-shopping” for legal research services.

59% of lawyers rated themselves “very satisfied” with CanLII and only 1% expressed a lack of satisfaction

Top areas for improvement are:

- Improved search functionality
- Comprehensive case collections
- Addition of secondary sources, topic databases and other explanatory aids

legal research trends



How often do you conduct legal research yourself (i.e., on your own)?

	All n=4292	Lawyers under 35 n=1154
• frequently	63%	76%
• occasionally	29%	21%
• rarely	7%	3%
• never	1%	0%

For research you did yourself in the past 12 months, which resources did you use most often?

• Online resources	78%	86%
• Print or offline resources	3%	0%
• Used both about the same	20%	14%

use and preference: CanLII is the “go-to” site for B.C. lawyers



All B.C. Outside
Vancouver
and
Victoria
n=667 n=186

Which resources have you used to research legal information in the past 12 months?

• CanLII	90%	91%
• Provincial court/legislative sites	82%	82%
• Internet Search engines	65%	57%
• Federal court/legislative sites	53%	40%
• Quicklaw	50%	44%
• Westlaw	33%	34%

When looking for case law, which resource do you consult first?

• CanLII	60%	63%
• Quicklaw	17%	17%
• Provincial sites	9%	9%
• Westlaw	6%	6%
• Internet search engines	4%	3%
• Federal sites	1%	1%

When looking for legislation, which resource do you consult first?

• Provincial sites	40%	40%
• CanLII	34%	38%
• Federal sites	5%	3%
• Internet search engines	11%	10%
• Quicklaw	4%	4%
• Westlaw	2%	3%



CEO's Report to the Benchers

June 13, 2014

Prepared for: Benchers

Prepared by: Timothy E. McGee

Introduction

My report this month sets out progress to date on the 2014 Operational Priorities plan and updates on two specific matters of interest.

Operational Priorities Plan Update

At the start of each year I outline for the Benchers five specific areas which management has identified as requiring special focus and attention by staff in the year. This is known as the Operational Priorities plan. Typically these areas include both support for the most pressing priorities in the Strategic Plan as well as areas of greatest operational need in the year. I am always careful to point out that the annual Operational Priorities plan is in addition to and does not detract from the day to day operations of our core regulatory functions which, by definition, are always a priority.

Implementation of Legal Service Providers Task Force Report Recommendations

The Legal Services Regulatory Framework Task Force chaired by Art Vertlieb QC has now been formed. At its initial meeting on May 2, the Task Force settled on a work plan for the year including initial areas of focus and timelines. This task force is unique among those established by the Law Society in recent history because it includes among its members (in addition to Benchers) senior representatives of each of the CBABC branch, the Society of Notaries Public of BC, the BC Paralegal Association and the policy branch of the Ministry of Justice of British Columbia. The diversity and seniority of the non-Bencher membership reflects the significant scope of work of the Task Force and the importance of its public interest mandate.

The Task Force is beginning its work by examining regulatory frameworks for non-lawyers in Ontario and Washington State, as well as how the regulation of multi service providers is accomplished in the health professions in BC. The Task Force will then examine the unmet needs for legal services in BC, and begin to develop the case for legislative amendments to permit the Law Society to regulate legal service providers other than lawyers. The next meeting of the Task Force is on June 16 and the current plan calls for an interim report on progress to the Benchers by next summer. Leading the staff support for this important project are Michael Lucas, Manager, Policy and Legal Service and Doug Munro, Policy Counsel.

In a related but separate development, we are pursuing with the Society of Notaries Public of BC the possibility of the merger of our respective regulatory operations. This work is very much in the exploratory stage. Senior representatives of the Notaries have recently indicated that they are now ready to discuss with the Law Society the development of a non-binding memorandum of understanding to facilitate this review. We will be reviewing the options and parameters for this with the Executive Committee in the weeks ahead.

Law Society as Insurer and Regulator Working Group

The work of this group flows from the recommendations of the April 2013 report of the Rule of Law and Lawyer Independence Advisory Committee entitled “*Report of the Rule of Law and Lawyer Independence Advisory Committee on its Examination of the Relationship Between the Law Society as Regulator of Lawyers and as Insurer of Lawyers*” which was adopted by the Benchers in September 2013. The working group chaired by First Vice President Ken Walker, QC has met three times this year and has discussed in detail the options presented to it in the Report for analysis. It has debated, in particular, operational steps that could be taken to more transparently separate or distinguish the regulatory functions from the insurance functions of the Law Society. A report based on progress and areas of consensus reached to date is being drafted for further discussion at the next meeting of the working group on June 24. Leading the staff support for this project are Su Forbes, QC, Director of Insurance, Deb Armour, Chief Legal Officer and Jeanette McPhee, Chief Financial Officer and Director, Trust Regulation, together with Michael Lucas, Manager, Policy & Legal Services.

Implementation of Lawyer Support and Advice Project

The Lawyer Support and Advice Project is a staff driven initiative started in October 2012 to fully examine and assess ways in which the Law Society can better support and advise lawyers in all areas relating to regulatory compliance including, in particular, the practice advice area. This work included the completion of a needs and preferences survey of lawyers throughout the province in 2013 and ultimately the preparation of a report, including recommendations, submitted to me in July 2013. This formed the basis for a plan of implementation including financial support being approved by the Benchers as part of the budget and fees approval process for 2014. We have been waiting to hire Robyn Crisanti's replacement to be the staff lead for the implementation phase of this project.

I'm pleased to advise that we have now hired Taylore Ashlie as our Director, Communications and Knowledge Management. Taylore will be managing the staff and functions of the Communications department as well as the development and implementation of the recommendations from the Lawyer Support and Advice Project. She will be forming the Lawyer Support and Advice Project Implementation Working Group this month so that work can commence in July.

Taylore brings 12 years of experience as Director, Communications with the Certified General Accountants Association of Canada, where she oversaw all the communications requirements of that organization, including the development of websites, digital, online, written and print-based communications. Most recently, Taylore worked at Telus as a senior communications manager.

Support for the Law Firm Regulation Review

As part of the package of amendments to the *Legal Profession Act*, which were adopted in 2012, the Law Society obtained the statutory authority to regulate entities in addition to individual lawyers. This authority is widely regarded by law regulators across Canada and indeed around the world as an important tool in being a more efficient and effective regulator in the public interest.

Under the direction of the Executive Committee staff have undertaken significant preparatory work over the past year in anticipation of the creation of a Benchers task force or working group in 2014 to formally pursue this area. To date this preparatory work has focused on compiling and examining models of law firm or entity regulation from other jurisdictions and collecting data and statistics regarding the demographics of individual and firm practice here in BC. A background paper is being prepared that pulls this information together and which can be used when the Benchers group assigned to examine this topic commences its work. Deb Armour and Michael Lucas have been leading the staff support on this project to date.

Review and Renewal of Staff Performance Management Process

We have made it a priority to complete a thorough review of all aspects of our staff performance management process in 2014 and to have recommendations for consideration by the Leadership Council this Fall. Leading this staff-driven project is Donna Embree our Manager, Human Resources, together with a working group of staff and managers drawn from all levels and areas of the organization. The working group is well into its review of our performance management process and is on track to report out on schedule.

The base premise and rationale for this work is that we believe having a system for staff performance evaluation which is constructive, relevant, interactive and timely is critical to a thriving and engaged workplace. Our current system has served us well since it was implemented approximately six years ago. But since then and over that time our demographics have changed, our way of working has changed, our reliance on technology has changed and our organizational structures have changed, to name a few key items. As a result, the time is right to take a fresh look at how we do things in this area and ensure we are well positioned to continue to have thriving staff in the years ahead.

New Strategic Plan and Benchers Retreat Follow-Up

As you know, our current three year Strategic Plan (2012 – 2014) will be complete at the end of this year. The Benchers will soon be tasked with formulating a new three year strategic plan to guide the Law Society over the 2015 - 2017 period. In the lead up to this work, the Benchers will receive the reports of our four standing Advisory Committees and input from the Executive Committee, which will be overseeing the planning for the Benchers review and approval process. The results from the recent Benchers retreat on prioritizing options for enhancing access to legal services in BC provides a valuable head start on at least one area which will no doubt be part of the new strategic plan review.

Trinity Western University – Special General Meeting

At the time of writing we had completed all the necessary planning for the Special General Meeting of Members on June 10. This has been a major undertaking on all fronts including logistical, administrative, governance, media and public relations and financial. We are very grateful for the more than 70 staff, lead by Adam Whitcombe, Bill McIntosh, and Jeff Hoskins, QC, who will support the meeting around the province. We are also grateful to the many Benchers who will be acting as Chairs and Co-Chairs of regional meetings and generally helping to ensure that the meeting runs as smoothly as possible. Our President Jan Lindsay, QC deserves special mention for dedicating countless hours in the past months to preparing for the meeting and to the Executive Committee who have met on several extra occasions to ensure we have proper direction and oversight.

PLTC Update

On May 20 a new PLTC session began in Vancouver (136 students), Victoria (59 students) and, for the first time, in Kamloops at Thompson Rivers University (24 students).

I would like thank the Benchers and Life Benchers who taught Professional Responsibility to PLTC students on May 23:

Rita Andreone, QC, Life Bencher (Vancouver)
 Pinder Cheema, QC (Victoria)
 Anna Fung, QC, Life Bencher (Vancouver)
 Terry LaLiberte, QC, Life Bencher (Vancouver)
 Dean Lawton (Victoria)
 Bruce LeRose, QC, Life Bencher (Vancouver)
 Jamie Maclaren (Vancouver)
 Nancy Merrill (Victoria)
 Gordon Turriff, QC Life Bencher (Vancouver)
 Ken Walker, QC (Kamloops)

Timothy E. McGee
 Chief Executive Officer

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

The Law Society *of British Columbia*



Alternative Dispute Resolution Task Force Recommendations

June 9, 2014

Purpose of Report:

Recommendations for Change to BC Code

Prepared by:

Ethics Committee



Memo

To: Benchers
From: Ethics Committee
Date: June 9, 2014
Subject: **ADR Task Force Recommendations**

I. Background – The Alternative Dispute Resolution Task Force

In October 2007 the ADR Task Force report was considered by the Benchers and approved for distribution to the profession and generally for consultation purposes. The report contained a number of recommendations with respect to the practice of mediation by lawyers, many of which would involve amendments to the *Code of Professional Conduct of British Columbia* (“the BC Code”). Following on its consideration by the Benchers, the Task Force received and considered commentary by members of the profession engaged in mediation practice and ultimately made recommendations with respect to specific changes to the *Code* to us. We identified from the ADR Task Force recommendations the changes to the *Code* that we thought were desirable, as well as those that were either unnecessary or undesirable, and obtained the consent of Task Force members to proceed with the proposals for change set out below, omitting other recommendations for change we considered unnecessary.

For those wishing to review the original ADR Task Force Report it is located at:

<http://www.lawsociety.bc.ca/docs/publications/reports/ADRreport.pdf>

II. Proposals For Change

The ADR Task Force recommended the following changes to the *BC Code* which we endorse.

(a) Preamble

The Task Force recommended the addition of a preamble to the Code. It advised:

The Professional Conduct Handbook includes a short statement on the title page that alludes to the advisory nature of the Handbook as a whole:

“Published under the authority of the Benchers for the guidance of members of The Law Society of British Columbia”

The ADR Task Force recommends that that statement be added to the Code of Professional Conduct before the Definition section and augmented with a statement that clarifies that it applies to lawyers when engaged in mediation:

“Published under the authority of the Benchers for the guidance of members of The Law Society of British Columbia.

The rules in this Code should guide the conduct of lawyers, not only in the practice of law, but also in their other activities, including but not limited to the conduct of mediation.”

We think it is reasonable to do this and recommend this change to you, although we do not think it is necessary to mention mediation expressly. The attached change to the preamble to the *BC Code* omits the words “including but not limited to the conduct of mediation” from the recommended change.

(b) Legal advice and information

The Task Force made the following recommendation with respect to this issue:

The first paragraph of the commentary to Rule 5.7 indicates that a lawyer should not give legal advice, as opposed to legal information, to the parties when acting as a mediator. This is a highly controversial issue among lawyers practising mediation. The distinction between legal advice and legal information is often difficult to make, and in many situations it is not practical for a lawyer-mediator to avoid giving what could be considered advice. It is not fair to the parties to require them to get separate advice in matters where the law is settled. The Task Force has recommended that the Law Society take no formal position on this issue.

For the reasons given by the Task Force, we agree that rule 5.7 should be amended to conform to the Task Force’s view of this matter and we recommend the attached change to you.

(c) Lawyer may act as mediator and counsel in some divorce situations

The Task Force made the following recommendation with respect to this issue:

The Ethics Committee has decided that a lawyer who has acted as a mediator in a family law matter may act for both spouses in a divorce action provided that all relief sought is by consent and both parties have received independent legal advice in relation to the matter. The Task Force suggests that that specific ruling, which relates to a very common situation, be included in the commentary to Rule 5.7.

We agree that the commentary to rule 5.7 should be amended to include a statement equivalent to the Ethics Committee’s opinion on this issue and recommend the attached change to you.

(d) Specific reference in rule 5.7 to Appendix B

The Task Force made the following recommendation with respect to this issue:

The Professional Conduct Handbook, Chapter 6, Rule 9 refers specifically to Appendix 2 of the Handbook, indicating that a lawyer acting as a family law mediator must comply with the provisions of the Appendix as well as those in that chapter of the Handbook that are not inconsistent with the Appendix. There is nothing in the body of the Code of Professional Conduct that refers to Appendix B—Family law mediation, although each of the other appendices are referenced in the body of the Code. The Task Force recommends that such a reference be added with a statement that compliance with the provisions of the Appendix are mandatory for family law mediators.

We agree that rule 5.7 should be amended in this way and recommend the attached change to you.

III. Expansion of Appendix B Beyond Family Law Mediation

The ADR Task Force made the following comments about expanding what is currently Appendix B (formerly Appendix 2 of the old *Professional Conduct Handbook*) of the *BC Code* to include what it terms “relationship mediation”:

The Code of Professional Conduct carries forward Appendix 2 in the Professional Conduct Handbook as Appendix B. While the Task Force would have preferred to include provisions regulating family law mediators in the body of the Code of Professional Conduct, they feel that it is important to continue with those provisions in whatever form is chosen.

The Task Force recommended that the field of mediation regulated by the Law Society should be expanded from just family law to other areas in which similar sensitivities are present. The Task Force has suggested that the larger field be called “relationship mediation”. This is the definition that the Task Force recommended:

“‘relationship mediation’ means mediation of issues relating to the parties’ marriage, cohabitation, separation or divorce, as well as mediation of issues relating to child protection, adoption, parent and child disputes, elder care or estate disputes among parties related by blood, marriage or adoption.”

The full rationale for these two recommendations is set out in Chapter 5 of the report. The argument for expanding the scope of the definition of family law mediator concludes with the following paragraph:

“The view of the Task Force is that the rationale that has supported mandatory training for family law mediation since 1984 continues to operate and should logically be extended to a broader range of disputes. Generally, these cases would be those where disputes between persons in personal relationships create a reasonable possibility of, or greater potential for, power imbalance, undue influence, abuse, violence, threats or intimidation.”

The ADR Task Force is in communication with the Family Law Task Force with respect to this issue. That Task Force is dealing with government proposals concerning the regulation of dispute resolution in the family law context and its views concerning this issue are essential to the discussion in this area. It may be that, following those discussions, the Ethics Committee may be asked to consider further changes to give effect to the result.

The reasons for the ADR Task Force's recommendation with respect to this issue are set out in section 5.2 of the ADR Task Force report (at page 41). Although we are of the view that this recommendation is one that may have merit, a decision to change Appendix B in the way the ADR Task Force has recommended may require some lawyers who are mediating in areas currently not covered by Appendix B to meet the Law Society's requirements for mediation training, and the implications for such a requirement need to be considered carefully. Such a consideration falls into the responsibility of the Credentials Committee and we recommend that consideration of this recommendation of the Task Force be postponed until the Credential Committee completes its review of the matter. We will provide a further assessment of the merits of this proposal, apart from the Credentials issues it raises, at a future meeting when the Credentials Committee has completed its review of the matter.

Attachments:

- Proposed changes to the *BC Code*.

Code of Professional Conduct for British Columbia (the BC Code)

**Published under the authority of the Benchers
for the guidance of BC lawyers**

**The rules in this Code should guide the conduct of lawyers, not only in the
practice of law, but also in other activities**

Published by the Law Society of British Columbia
Effective date: January 1, 2013

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5.7 Lawyers and mediators

Role of mediator

5.7 A lawyer who acts as a mediator must, at the outset of the mediation, ensure that the parties to it understand fully that:

- (a) the lawyer is not acting as a lawyer for either party but, as mediator, is acting to assist the parties to resolve the matters in issue; and
- (b) although communications pertaining to and arising out of the mediation process may be covered by some other common law privilege, they will not be covered by solicitor-client privilege.

Commentary

~~[1] In acting as a mediator, generally a lawyer should not give legal advice, as opposed to legal information, to the parties during the mediation process. This does not preclude the mediator from giving direction on the consequences if the mediation fails.~~

[1.1] Appendix B contains additional rules that govern the conduct of family law mediation.

[2] Generally, neither the lawyer-mediator nor a partner or associate of the lawyer-mediator should render legal representation or give legal advice to either party to the mediation, bearing in mind the provisions of section 3.4 (Conflicts) and its commentaries and the common law authorities.

[3] If the parties have not already done so, a lawyer-mediator generally should suggest that they seek the advice of separate counsel before and during the mediation process, and encourage them to do so.

[4] If, in the mediation process, the lawyer-mediator prepares a draft contract for the consideration of the parties, the lawyer-mediator should expressly advise and encourage them to seek separate independent legal representation concerning the draft contract.

[5] A lawyer who has acted as a mediator in a family law matter may act for both spouses in a divorce action provided that all relief is sought by consent and both parties have received independent legal advice in relation to the matter.

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Memo

To: Benchers
From: Executive Committee
Date: June 27, 2014
Subject: **Appointment to the Justice Education Society Board of Directors**

This memo provides the Executive Committee's recommendation that Life Benchers Leon Getz, QC be re-appointed as a member and director of the Justice Education Society for a third two-year term, commencing September 1, 2014.

Body	Governing Statute/Other Authority	Law Society Appointing Authority	Law Society Appointee/ Nominee Profiles
Justice Education Society ("JES") Board of Directors	<i>Society Act</i> JES By-law 3.2(f)	Law Society Benchers	1 person, as a JES member (members are also directors)
Current Appointment	Term Allowance	Date First Appointed	Expiry Date
Leon Getz, QC	Maximum of three 2-year terms	9/1/2010	8/31/2014

a. Background

The purposes of the Justice Education Society (JES) are to organize and carry on educational programs on the court system and legal system for the benefit of the community as a whole.¹

JES defines its three objectives as:

1. To provide hands-on educational programs and services to the general public, as well as to youth, Aboriginals, ethnic and immigrant communities, deaf people, those with special learning abilities, and other groups as needed.

¹ Justice Education Society Constitution, Article 2

2. To make those working within the justice system (judges, lawyers, sheriffs, and other justice system personnel) aware of the barriers that certain groups face in accessing our justice system.
3. To continually identify new ways in which the justice system can be made more accessible to all.²

For more background on JES, see pages 49 – 51 of the Law Society Appointments Guidebook (download from [here](#)).

Life Bencher Leon Getz completes his second two-year term as a JES member and director on August 31. Mr. Getz's commitment to JES's purposes and to the enhancement of public knowledge and understanding of the judicial and legal systems, so evident in his years as a Bencher, is undiminished as he prepares to retire from legal practice.

It should be noted that JES is currently reviewing a number of restructuring options, including merger with the People's Law School. Mr. Getz's strong interest in public legal education and his vast experience in corporate and securities law make him well-suited to support JES through this challenging process.

Renewal of his appointment would be welcomed by the JES board, and Mr. Getz has confirmed that he would be pleased to serve a third and final two-year term as a JES member and director.

b. Recommendation

We recommend that Leon Getz, QC be re-appointed as a member and director of the Justice Education Society, for a term of two years, effective September 1, 2014.

² JES's website: <http://www.justiceeducation.ca/about-us/history-and-mission> (June 20, 2014). Since its formation in 1989 as the Law Courts Education Society (re-branded in 2009 as the Justice Education Society), JES "has provided public legal education and information to more than one million individuals, including over 700,000 students and youth."



Memo

To: The Benchers
From: The Executive Committee
Date: June 18, 2014
Subject: Creation of Law Firm Regulation Task Force

Recommendation

The following resolution is proposed:

BE IT RESOLVED to create the Law Firm Regulation Task Force, whose mandate is to recommend a framework for the regulation of law firms.

Discussion

When the *Legal Profession Act* was amended, the Law Society was given legislative authority to regulate “law firms” in addition to “lawyers” whom the Law Society has regulated since its inception. Consequently, where the *Act* gave the Law Society authority to make rules governing lawyers, it now also gives the Law Society the authority to do likewise for law firms. “Law firm” means a “legal entity or a combination of legal entities carrying on the practice of law.”

These new provisions of the *Act* are not yet in force, and some have not been implemented by enacting rules, as they await the Benchers’ determination about how to exercise this new authority.

The Executive Committee has given some preliminary consideration to the rationale and perceived advantages of regulating law firms, and determined last year that a staff working group should be created to gather information about law firm regulation in other jurisdictions, together with possible models for regulation that includes their advantages and disadvantages. A staff group has been preparing this material, and it has now largely been collected.

Therefore, it is time to create a Benchers Task Force to consider the work that the staff group has collected. The Task Force will also be expected to consult broadly with the membership of the Law Society, other regulatory experts, and legal regulatory bodies in other jurisdictions. It will use all the information it has gathered and analysed to recommend a framework for the regulation of law firms. The Task Force can be supported by further work from the staff group as required.

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Memo

To: Benchers
From: Executive Committee
Date: July 3, 2014
Subject: REAL Program Funding 2014/2015

The Canadian Bar Association BC Branch has provided a proposal to the Law Society for increasing and extending the Law Society's current financial support of REAL for a further year (September 2014-August 2015). The proposal is attached.

Background

The history of the REAL program is set out in some detail in the proposal. The CBABC originally proposed what is now the REAL program to the Law Foundation of B.C. The Law Foundation agreed to provide \$720,000 in funding for a three-year program running from 2009-2011.

At the conclusion of the three-year program, the Law Foundation was unable to continue their funding. The CBABC approached the Law Society for matching funds for a CBABC contribution of \$75,000 to a \$150,000 budget, which was approved by the Benchers for 2012-2013.

For the 2013-14 program, the CBABC, the Law Foundation and the Law Society agreed to each contribute \$50,000 towards a budget of \$150,000.

The Proposal

As suggested in the proposal, the optimal budget for 2014/2015 is \$150,000.

The CBABC indicates that it will not be able to make a financial contribution as it has in years past, although it will continue to provide the in-kind support and administration of the REAL program that it has provided since the program's inception.

The CBABC has advised that the Law Foundation has approved providing \$75,000 towards the optimal budget of \$150,000 for 2014/2015. We understand that the Law Foundation funding is not contingent on the amount of funding by the Law Society.

The CBABC is seeking a contribution of \$75,000 from the Law Society for the 2014/2015 period but has provided three budget scenarios for different levels of contribution.

\$150,000 Funding

Proposed allocation of funds

- \$80,000 Student Placements in high-need communities
- \$60,000 Project Manager (part-time, year-round contract)
- \$ 8,000 Project Expenses (admin, promotion, modest travel)
- \$ 2,000 Advisory Committee Expenses (teleconferences, chair travel)
- CBABC continues to provide project oversight, financial management and bookkeeping, promotion and marketing

\$100,000 Funding

- \$70,000 Student Placements in high-need communities
- \$25,000 Project Manager (part-time, 4-5 month peak period contract)
- \$ 5,000 Project expenses (admin, promotion, modest travel)
- CBABC continues to provide project oversight, financial management and bookkeeping, promotion and marketing. CBABC will also take on the Project Manager's role from September – April through staff and volunteers

\$75,000 Funding

- \$55,000 Student Placements in high-need communities
- \$15,000 Project Manager (part-time, 4 month contract)
- \$ 5,000 Project expenses (admin, promotion and resources)
- CBABC continues to provide project oversight, financial management and bookkeeping, promotion and marketing. CBABC will also take on the Project Manager's role from September – April through staff and volunteers

Comment

At the Benchers retreat in May, a number of access initiatives were considered for impact and feasibility. The REAL program was ranked highly by those present on the impact scale and moderately highly on the feasibility scale. However, as noted above, the Law Society's contribution was \$50,000 for 2013/2014 and the Executive Committee recommends to the Benchers that the Law Society make the same \$50,000 contribution for 2014/2015 with the hope that, as much as possible, funding be allocated to student placement rather than administration.



PROPOSAL TO THE LAW SOCIETY OF BRITISH COLUMBIA

June 2014

The Proposal

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

We ask the LSBC to consider increasing and extending the current financial support of REAL for a further year (September 2014-August 2015) together with the Law Foundation of BC, and with “in kind” support of the CBABC. The description and evolution of REAL and details of the future funding proposal follow below.

What is the Rural Education and Access to Lawyers Initiative?

REAL Phase I, Phase II, and Phase III

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

The key components of REAL include:

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

REAL's History

The Law Foundation of BC funded REAL for the first three years of the program with \$720,000 (“Phase I”). *Phase I* (2009-11) created 52 positions of summer employment, a year round Regional Legal Careers Officer (“RLCO”) position, promotional materials and events in the four western provinces, and the legacy of guidebooks for lawyers and students. We have followed the students involved with

the program and as a result of participation in this program, **27 of the first 52 participants are now lawyers working in smaller and rural communities.**

In the following two years, “*Phase II*” (2012-13) evolved to provide more student placement opportunities with less funding and continued to prove the theory that “if you build it, they will come”. The Law Foundation of BC was unable to fund Phase II but remained proud encouragers of the Initiative. Matching funds from the CBABC and the Law Society of BC (together a \$150,000 annual investment) reduced the annual budget by half yet the number of placements remained steady. In 2012, 15 students participated in and 2013, 13 students participated.

Within the *Phase II* funding model, the RLCO's contract was reduced to six months with the CBABC senior staff responding to inquiries the balance of each year. As the program matured, the promotion to the law firms and law schools increased primarily through the participants' enthusiasm for the program, and both benefit from the education and past learning. Firms requested less funding and students actively sought rural and smaller community postings. Promotion focused on the law schools in British Columbia rather than western Canada. These changes resulted in stretching the funding pool further.

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

In *Phase II*, 17 of 28 students were offered articles arising from their REAL placements and 11 of those 17 accepted the offer of articles.

Results

After each year of summer placements, surveys were distributed to both students and employers to collect information about their experience. In addition to the formal surveys, the RLCO maintained contact with students and employers through the course of the summer to gather other information about their experiences. The overwhelming majority of participants found **the experiences to be positive, informative and confidence-building**. For students, confidence-building meant a belief that they could develop a career and life in a smaller community and for employers, confidence-building meant that they could have a successful experience with a student including hiring the student back for articles.

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

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

The REAL Initiative tracks REAL participant students and the resulting statistics in order to determine the relative impact of its efforts in addressing the complex problem that it was established to address. This data is collected through a variety of means including electronic surveys, direct contact with participants and mining of existing data sources. A summary of present data in regards to participants in the REAL summer student program from 2009 to 2013 shows that 79 students received placements. Of these 79 students, 41 students were offered articles by their REAL Initiative firm and 28 students accepted articles. An additional 5 students accepted articles in a different rural community in British Columbia. While there may be variations in the manner that statistics are collected and reported, it is clear that the REAL Initiative has made an impact in rural areas and small communities through its summer student program.

It should be noted however that the REAL Initiative is about more than statistics. Perhaps more importantly, the REAL Initiative has resulted in a considerable shift in the dialogue surrounding legal practice outside of urban areas. The stereotype of practice in a rural setting as a second rate career has been seriously challenged in law schools across Western Canada while a noticeable increase in student interest in these positions has occurred. Additionally, the foresight of the CBABC, the Law Foundation of BC and the Law Society of BC in supporting the REAL Initiative has resulted in considerable attention from legal organizations from across the country that are now planning on launching their own similar initiatives. The key to longevity for the REAL Initiative is momentum – *Phase III* has been designed to build on the lessons learned in *Phase I* and *II* and allow for a sustainable future.

With a critical mass of younger lawyers developing in regions such as Prince Rupert County and Kootenay County, there is momentum to now retain lawyers in those regions. In December 2013, in response to a call from young lawyers in the northern region, CBABC established a Young Lawyers-North section to bring new lawyers together to discuss their professional and business development, receive guidance from senior lawyers and judges, and develop professional relationships to foster collegiality in the region. In June 2014, the CBABC will consider a similar application for the Young Lawyers – Kootenay section. These developments would not have been possible without REAL *Phase I* and *II*.

A report on the first five years of the REAL Initiative will be delivered in early July 2014.

Refinement: Supporting the Highest Needs Communities

In 2013-14, the CBABC successfully sought funding from CBABC, the Law Foundation of BC and the Law Society of BC to launch a new phase of the REAL Initiative (*"Phase III"*). Each organization contributed \$50,000 to maintain the annual budget of \$150,000 and CBABC continued to provide in-kind support and administer the Initiative. Further details about the budget appear below.

REAL *Phase III* is **building on the experiences and lessons learned** through the delivery of the Initiative over the initial five years.

Phases I and II showed us that the common barriers to hiring students to experience rural practice were:

- a lack of financial resources on the part of some law firms;
- insufficient time on the part of supervising lawyers to meet client demands while providing an appropriate level of training and supervision;
- unrealistic or incorrect expectations on the part of some law firms and some students;
- insufficient time and lack of knowledge on the part of law firms to connect with students at law schools; and
- difficulty on the part of students in gaining information about availability of employment and the nature of the potential employer.

The continuing existence of the REAL Initiative is essential to assist lawyers in rural and small communities to connect with students who want to practice in those areas and to support those firms in funding the summer student placement.

In particular, the role of the Regional Legal Careers Officer, now known as the Project Manager, was identified as instrumental in overcoming these barriers. The Project Manager facilitates connections, promotes opportunities, helps to manage expectations, and assists with any issues that arise. Specifically we discovered the key to the Project Manager's role is assisting the students/law firm partnerships to be the best fit possible. With dozens of comments documented, three key lessons emerge:

- Firms don't have the time nor the expertise/knowledge to recruit;
- Students first need to be aware of the opportunities that exist in smaller communities, then want to work there and ensure they are a good match for the firm; and

- Many communities benefited from REAL directly or indirectly and records show more articling students in certain areas, yet others struggle.

Phase III began, not with an open invitation to apply for funding, but with a **targeted identification of communities that are in high need** of lawyers. This work was begun by members of the REAL Advisory Committee which was populated primarily by lawyers with “on the ground” knowledge of each area of the Province. The Project Manager completed the assessment to finalize the list.

The highest needs communities were identified through consideration of population, the number of private firm lawyers, the presence of a Provincial Court, service area for the community, the “travel counts” of the Legal Services Society (how frequently it pays for travel of a lawyer to the area), and the nature of the region (access to major centres, local challenges, etc.).

Once identified, the Project Manager worked with lawyers in the community, or adjoining communities if no lawyer existed in the high need area, to secure a commitment to take on a summer student and to return the student for articles. The Project Manager then ascertained the lawyer’s specific needs; recruited a suitable student with an emphasis on a student with connections to the area or a strongly expressed desire to practice in the area and will provide a series of ongoing supports throughout the summer experience. These additional supports may range from the development of an orientation program to the facilitation of a succession plan and exit strategy for a retiring lawyer.

The 2014 Summer Student Placements are in the following communities:

Lumby	100 Mile House	Powell River
Ucluelet	Port Hardy	Prince Rupert
Williams Lake	Terrace	Revelstoke
Smithers	Hazelton	Fernie

Many of these communities have not previously been able to take a student but with five years of success, word of mouth support and enthusiasm, and additional support from the Project Manager, employers in these new regions were able to provide the opportunities.

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

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

Enhance access to legal services in communities by:

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

Provide effective education to the legal profession by:

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

As in *Phases I* and *II*, the Project Manager will seek qualitative feedback from all REAL *Phase III* participants through both informal discussion and the distribution of a formal survey. The Project Manager will also continue to track the 2012 and 2013 participants.

Future Funding – Community Support

A second goal of *Phase III* is to build a foundation of community-based funding for the future of the REAL Initiative, starting with Summer Student Program funding. In 2013-14, the REAL Advisory Board was reconstituted with individuals who began to identify local funding organizations such as the Columbia Basin Trust and Central Okanagan Foundation. Once initial contact is made by the local lawyer, it is intended that the Project Manager will make presentations and further develop that contact to secure one-time or ongoing funding for a summer student placement.

In 2013-14, the CBABC partnered with the BC Chamber of Commerce to develop support within the Chamber for our advocacy work around legal aid, the judicial complement and court services. During the course of that experience, the shortage of lawyers in rural and smaller communities was discussed and BC Chamber staff expressed interest in the REAL Initiative. This interest may be developed into in-kind and promotional support, if not funding. Law firms supported by their local Chamber may be in a better position to promote their region and the opportunities within it and help the summer student develop local connections which translate into business.

Why Continue REAL?

REAL *Phase III* is needed as **there remains a shortage of lawyers practicing in certain rural areas and small communities** in British Columbia which results in difficulties for those requiring access to legal services in these communities. This

shortage is brought about by two factors; namely the aging of the baby boomer generation combined with a preference among new lawyers to practice in urban regions.

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

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

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

Our funding model has evolved, and will continue to adapt to the changing needs and restraints to the legal profession as a whole. Collaboration among the Canadian Bar Association, BC Branch, the Law Foundation of BC, the Law Society of BC and the Local and County Bar Association network allows us to collectively support the needs in the local communities as well as the lawyers and law students. Each organization individually cannot fund the yearly program. However, we can each contribute to *Phase III* and **together** sustain the future of our profession in BC.

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

Law Society of BC – a Natural Partner

In 2013, the LSBC embraced the opportunity to make the REAL Initiative part of its initiatives under its Strategic Plan 2011-2014 by contributing \$50,000 towards the REAL Initiative to bring new lawyers to small and rural BC

communities. LSBC determined that the Initiative fell squarely within its mandate.

The goals of the Law Society of BC, as outlined in the **2012-2014 Strategic Plan**, echo the objectives of the REAL initiative, specifically in Goals 2 & 3:

Law Society Goals

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

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

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

LSBC Goal 2 is achieved in Strategy 2.1 (*Increase the availability of legal service providers*) and Strategy 2.2 (*Improve access to justice in rural communities*) as the REAL initiative instantly addresses these needs by placing law students in communities that are short on lawyers. The cycle continues when the students then return to smaller markets to article, and eventually return once again to practice. This collaborative approach addresses the need for the long-term, engages young lawyers and brings them together with those aiming to retire. REAL sustains a vibrant legal workforce throughout the province for years to come.

And finally, Goal 3 of the LSBC Strategic Plan states ‘access to justice equals public confidence’. The Rural Education and Access to Lawyers initiative does just that – provides access for students/lawyers and the public and boosts both the confidence in the administration of justice and the rule of law because the public can see that lawyers are available to them and part of their community..

The Budget

2009-2012 (Phase I)

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

2012-2013 (Phase II)

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

2013-14 (Phase III-Year One)

Funding was provided by the Law Foundation of BC (\$50,000), the Law Society of BC (\$50,000) and the CBABC (\$50,000). The allocation of funds was as follows:

\$80,000	Student placements in high need communities
\$60,000	Project Manager (part-time, year-round contract)
\$ 8,000	Project expenses (administration, promotion and resources)
\$ 2,000	Advisory Board expenses (teleconference calls, travel of Chair)

In addition, the CBABC provides the majority of administrative services at no cost to the Initiative. These costs have included considerable time and resources for matters such as financial management, book keeping and project oversight.

2014-15 (Phase III – Year Two)

Phase III – Year Two depends heavily on the level of funding achieved through various funding requests for the project. The optimal total amount needed for 2014-15 is \$150,000. The CBABC is not able to make a financial contribution as it has in years past.

The CBABC has requested \$75,000 from the Law Foundation of BC's Large Project Grant. Given the current financial position of the Law Foundation, it may be that a lesser amount than the full \$75,000 will be granted. **We ask that the LSBC consider a contribution of \$75,000.**

The following are possible project budget allocations given potential funding scenarios.

\$150,000 Budget (LSBC and LFBC each contribute \$75,000)

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

\$80,000	Student Placements in high-need communities
\$60,000	Project Manager (part-time, year-round contract)
\$ 8,000	Project Expenses (admin, promotion, modest travel)
\$ 2,000	Advisory Committee Expenses (teleconferences, chair travel)

CBABC continues to provide project oversight, financial management and bookkeeping, promotion and marketing.

\$100,000 Budget (LSBC and LFBC each contribute \$50,000)

Based on \$100,000 budget we would suggest the following allocation of funds:

\$70,000	Student Placements in high-need communities
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\$25,000 Project Manager (part-time, 4-5 month peak period contract)
 \$ 5,000 Project expenses (admin, promotion, modest travel)

CBABC continues to provide project oversight, financial management and bookkeeping, promotion and marketing. In this scenario, CBABC, through staff and volunteers, takes on the Project Manager's role from September – April which includes developing future funding, identifying employers, assisting employers with creating their ads, promotion to students, administering the summer student survey and data collection.

\$75,000 Budget

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

\$55,000 Student Placements in high-need communities
 \$15,000 Project Manager (part-time, 4 month contract)
 \$ 5,000 Project expenses (admin, promotion and resources)

CBABC continues to provide project oversight, financial management and bookkeeping, promotion and marketing. In this scenario, CBABC, through staff and volunteers, takes on the Project Manager's role from September – April which includes developing future funding, identifying employers, assisting employers with creating their ads, promotion to students, administering the summer student survey and data collection.

References

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

Sean Rowell
 Chair, REAL Advisory Committee (2013-14)
 Perry and Company
 250.847.4341 (Smithers)

Kerry L. Simmons, QC
 Past Chair, REAL Advisory Committee (2009-13)
 250.413.3312 (Victoria)

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

Jeremy Webber
 Dean, University of Victoria, Faculty of Law
 250.721.8147 (Victoria)

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

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

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

Chris McEwan
Partner, McEwan Law Corporation
250.368.8211 (Trail)

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

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

Erin Crocker
Associate, Perry & Company and REAL Participant
250.847.4341 (Smithers)

Don Kawano
Lawyer, Rella & Paolini
250.426.8981 (Cranbrook)

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

Conclusion

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

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



Kerry L. Simmons, QC
Past -President
CBABC

ksimmons@cookroberts.bc.ca

The Law Society
of British Columbia



Financial Report

May 31, 2014

Prepared for: Finance & Audit Committee Meeting – July 10, 2014

Bencher meeting – July 11, 2014

Prepared by: Jeanette McPhee, CFO & Director Trust Regulation

Financial Report – To May 31, 2014

Attached are the financial results and highlights for the first five months of 2014.

General Fund**General Fund (excluding capital and TAF)**

The General Fund operations resulted in a negative variance to budget of \$32,000 to May 31, 2014.

Revenue

Revenue is \$9,069,000, \$215,000 (2.4%) ahead of budget due to the timing of recoveries, interest and miscellaneous revenue.

Operating Expenses

Operating expenses for the first five months were \$8,074,000, \$247,000 (3.2%) over budget due primarily to costs associated with the Trinity Western University (TWU) law school application process, plus the timing of various operating expenses.

2014 Forecast - General Fund (excluding capital and TAF)

We are forecasting the General Fund to be ahead of budget for the year, projecting a positive variance of \$150,000, due to additional lease revenue, PLTC students and recoveries.

Operating Revenue

Practicing membership revenue is budgeted at 11,190 members, which is slightly below budget by approximately 75 members, or \$105,000. PLTC revenue will be over budget, with 465 students, compared to a budget of 450. We are also projecting higher recoveries of \$65,000.

Lease revenue will have a positive variance of \$100,000 for the year, with a new lease on the third floor of 835 Cambie and the renewal of the atrium café lease.

Operating Expenses

At this time, operating expenses are projected to be slightly over budget \$50,000. It is projected that there will be additional compensation savings related to staff vacancies (\$300,000) and forensic accounting fee savings (\$100,000), but these savings will be offset by additional costs relating to the TWU application (\$315,000).

- 3 -

to June 10th SGM), and higher than expected regulatory external counsel fee costs (\$100,000).

TAF-related Revenue and Expenses

The first quarter TAF revenue was on budget and the second quarter TAF revenue will be received in the July/August time period. Trust assurance expenses are on budget at the end of May 2014.

Special Compensation Fund

Once any final recoveries are received, the remaining Special Compensation Fund reserve will be transferred to LIF.

Lawyers Insurance Fund

LIF operating revenues were \$6.1 million for the first five months, very close to budget.

LIF operating expenses were \$2.0 million, \$365,000 below budget. This positive variance was due to lower staffing costs, external counsel costs and insurance costs.

The market value of the LIF long term investments is \$120 million, an increase of \$6.2 million in the first five months. The year to date investment returns were 5.38%, slightly below the benchmark of 5.78%.

Summary of Financial Highlights - May 2014
(\$000's)

2014 General Fund Results - YTD May 2014 (Excluding Capital Allocation & Depreciation)

	Actual*	Budget	\$ Var	% Var
Revenue (excluding Capital)				
Membership fees	7,135	7,129	6	0.1%
PLTC and enrolment fees	348	347	1	0.3%
Electronic filing revenue	291	309	(18)	-5.8%
Interest income	216	131	85	64.9%
Recoveries	226	112	114	101.8%
Other revenue	468	448	20	4.5%
Building revenue & recoveries	385	378	7	1.9%
	9,069	8,854	215	2.4%
Expenses (excl. dep'n)*	8,074	7,827	(247)	-3.2%
	995	1,027	(32)	

* Note: YTD actuals include partial costs related to Benchers approved items to be funded from the reserve

2014 General Fund Year End Forecast (Excluding Capital Allocation & Depreciation)

	Avg # of Members	Actual Variance
Practice Fee Revenue		
2008 Actual	10,035	
2009 Actual	10,213	
2010 Actual	10,368	
2011 Actual	10,564	
2012 Actual	10,746	
2013 Actual	10,985	
2014 Budget	11,190	
2014 YTD Actual	11,025	
2014 Projected	11,115	
Revenue		
Membership revenue - estimated below budget by approx. 75 members		(105)
PLTC revenue, total of 465 students, versus budget of 450		40
Recoveries		65
845/835 Cambie - new lease on 3rd floor 835 Cambie, plus café lease renewal		100
		100
Expenses		
Compensation savings		300
Costs related to TWU application process (to June 10th SGM)		(315)
Additional regulation external counsel fees		(100)
Forensic accounting fee savings		100
Miscellaneous savings		65
		50
2014 General Fund Actual Variance		150
2014 General Fund Budget		-
2014 General Fund Actual, before additional approved costs funded from reserve		150
Reserve funded amounts (Benchers approved):		
CBA REAL 2014 contribution		(50)
Estimated Lawyer support & advice program set up costs		(235)
Update Practice standards/On-line courses		(80)
Regulation and Insurance Working Group costs		(75)
Articling student		(57)
		(497)
2014 General Fund Actual, incl. items funded from reserve		(347)

Trust Assurance Program Actual

	2014 Actual	2014 Budget	Variance	% Var
TAF Revenue**	695	690	5	0.0%
Trust Assurance Department	946	981	35	3.6%
Net Trust Assurance Program	(251)	(291)	40	

** Q2 revenue not due until July 31st

2014 Lawyers Insurance Fund Long Term Investments - YTD May 2014 Before investment management fees

Performance	5.38%
Benchmark Performance	5.78%

The Law Society of British Columbia
General Fund
Results for the 5 Months ended May 31, 2014
(\$000's)

	2014 Actual	2014 Budget	\$ Var	% Var
Revenue				
Membership fees (1)	9,075	9,098		
PLTC and enrolment fees	348	347		
Electronic filing revenue	291	309		
Interest income	216	131		
Other revenue	695	560		
Building Revenue & Recoveries	384	378		
Total Revenues	11,009	10,823	186	1.7%
Expenses				
Regulation	2,732	2,766		
Education and Practice	1,402	1,397		
Corporate Services	1,194	1,104		
Bencher Governance	482	336		
Communications and Information Services	760	794		
Policy and Legal Services	712	721		
Occupancy Costs	979	950		
Depreciation	134	173		
Total Expenses	8,395	8,241	154	1.9%
General Fund Results before TAP	2,614	2,582	32	
Trust Administration Program (TAP)				
TAF revenues	695	690	5	
TAP expenses	946	981	35	4%
TAP Results	(251)	(291)	40	
General Fund Results including TAP	2,363	2,291	72	

(1) Membership fees include capital allocation of \$1.94m (YTD capital allocation budget = \$1.969m).

The Law Society of British Columbia
General Fund - Balance Sheet
As at May 31, 2014
(\$000's)

	May 31 2014	Dec 31 2013
Assets		
Current assets		
Cash and cash equivalents	29	179
Unclaimed trust funds	1,878	1,808
Accounts receivable and prepaid expenses	7,861	1,105
B.C. Courthouse Library Fund	1,499	505
Due from Lawyers Insurance Fund	5,970	22,211
	<u>17,237</u>	<u>25,808</u>
Property, plant and equipment		
Cambie Street property	12,467	12,721
Other - net	1,332	1,438
	<u>31,036</u>	<u>39,967</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	2,034	4,612
Liability for unclaimed trust funds	1,878	1,808
Current portion of building loan payable	500	500
Deferred revenue	9,690	18,971
Deferred capital contributions	42	47
B.C. Courthouse Library Grant	1,499	505
Deposits	22	16
Due to Lawyers Insurance Fund	-	-
	<u>15,665</u>	<u>26,459</u>
Building loan payable	<u>3,100</u>	<u>3,600</u>
	<u>18,765</u>	<u>30,059</u>
Net assets		
Capital Allocation	2,808	1,482
Unrestricted Net Assets	9,463	8,426
	<u>12,271</u>	<u>9,908</u>
	<u>31,036</u>	<u>39,967</u>

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
For the 5 Months ended May 31, 2014
(\$000's)

	<i>Invested in capital \$</i>	<i>Working Capital \$</i>	Unrestricted Net Assets	Trust Assurance	Capital Allocation \$	2014 Total \$	2013 Total \$
Net assets - December 31, 2013	10,059	(1,595)	8,464	(38)	1,482	9,908	8,543
Net (deficiency) excess of revenue over expense for the period	(473)	1,146	673	(250)	1,940	2,363	1,365
Repayment of building loan	500	-	500	-	(500)	-	-
Purchase of capital assets:							-
LSBC Operations	61	-	61	-	(61)	-	-
845 Cambie	53	-	53	-	(53)	-	-
Net assets - May 31, 2014	10,200	(449)	9,751	(288)	2,808	12,271	9,908

The Law Society of British Columbia
Special Compensation Fund
Results for the 5 Months ended May 31, 2014
(\$000's)

	2014 Actual	2014 Budget	\$ Var	% Var
Revenue				
Annual assessment	-	-		
Recoveries	21	-		
Total Revenues	21	-	21	100.0%
Expenses				
Claims and costs, net of recoveries	-	-		
Administrative and general costs	-	-		
Loan interest expense	(13)	-		
Total Expenses	(13)		(13)	-100.0%
Special Compensation Fund Results	34	-	34	

The Law Society of British Columbia
Special Compensation Fund - Balance Sheet
As at May 31, 2014
(\$000's)

	May 31 2014	Dec 31 2013
Assets		
Current assets		
Cash and cash equivalents	1	1
Accounts receivable	-	-
Due from Lawyers Insurance Fund	1,320	1,289
	<u>1,321</u>	<u>1,290</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	-	3
Deferred revenue	-	-
	<u>-</u>	<u>3</u>
Net assets		
Unrestricted net assets	1,321	1,287
	<u>1,321</u>	<u>1,287</u>
	<u>1,321</u>	<u>1,290</u>

The Law Society of British Columbia
Special Compensation Fund - Statement of Changes in Net Assets
Results for the 5 Months ended May 31, 2014
(\$000's)

	2014	2013
	\$	\$
Unrestricted Net assets - December 31, 2013	1,287	1,226
Net excess of revenue over expense for the period	<u>34</u>	<u>61</u>
Net assets - May 31, 2014	<u><u>1,321</u></u>	<u><u>1,287</u></u>

The Law Society of British Columbia
Lawyers Insurance Fund
Results for the 5 Months ended May 31, 2014
(\$000's)

	2014 Actual	2014 Budget	\$ Var	% Var
Revenue				
Annual assessment	6,057	5,948		
Investment income	6,180	1,269		
Other income	98	50		
Total Revenues	12,335	7,267	5,068	69.7%
Expenses				
Insurance Expense				
Provision for settlement of claims	5,703	5,703		
Salaries and benefits	1,042	1,217		
Contribution to program and administrative costs of General Fund	512	550		
Office	217	357		
Actuaries, consultants and investment brokers' fees	114	129		
Allocated office rent	88	88		
Premium taxes	9	4		
Income taxes	-	2		
	7,685	8,050		
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	325	352		
Total Expenses	8,010	8,402	392	4.7%
Lawyers Insurance Fund Results	4,325	(1,135)	5,460	

***The Law Society of British Columbia
Lawyers Insurance Fund - Balance Sheet
As at May 31, 2014
(\$000's)***

	May 31 2014	Dec 31 2013
Assets		
Cash and cash equivalents	7,145	24,440
Accounts receivable and prepaid expenses	651	766
Due from members	125	144
General Fund building loan	3,600	4,100
Investments	128,857	121,304
	<u>140,378</u>	<u>150,754</u>
Liabilities		
Accounts payable and accrued liabilities	900	1,474
Deferred revenue	8,144	7,065
Due to General Fund	5,970	22,211
Due to Special Compensation Fund	1,320	1,290
Provision for claims	53,245	52,240
Provision for ULAE	7,045	7,045
	<u>76,624</u>	<u>91,325</u>
Net assets		
Unrestricted net assets	46,254	41,929
Internally restricted net assets	17,500	17,500
	<u>63,754</u>	<u>59,429</u>
	<u>140,378</u>	<u>150,754</u>

The Law Society of British Columbia
Lawyers Insurance Fund - Statement of Changes in Net Assets
For the 5 Months ended May 31, 2014
(\$000's)

	Unrestricted \$	Internally Restricted \$	2014 Total \$	2013 Total \$
Net assets - December 31, 2013	41,929	17,500	59,429	49,821
Net excess of revenue over expense for the period	4,325	-	4,325	9,608
Net assets - May 31, 2014	<u>46,254</u>	<u>17,500</u>	<u>63,754</u>	<u>59,429</u>

The Law Society *of British Columbia*



Mid-Year Report

Access to Legal Services Advisory Committee

July 11, 2014

David Mossop, QC (Chair)
Nancy Merrill (Vice-Chair)
Joseph Arvay, QC
Sharon Matthews, QC
Phil Riddell
Sarah Westwood
Lawrence Alexander
Michael Mulligan
Rose Singh

Prepared for: Benchers

Prepared by: Access to Legal Services Advisory Committee / Doug Munro

Purpose of Report

As part of the Strategic Plan process, advisory committees are required to report to the Benchers twice a year. In this report the Access to Legal Services Advisory Committee (“Committee”) reports out on the work it has engaged in since January 2014.

Overview

The Committee met January 23, February 27, April 10, May 7 and June 12th. Barry Zacharias was Chair of the first two meetings and David Mossop, QC has chaired the remaining meetings. The meetings involved monitoring issues relating to access to legal services, discussing potential access to justice / legal services initiatives for the Law Society, and carrying out work previously assigned to the Committee by the Benchers. The previously assigned work related to two topics, one of which is an annual requirement and the other is a discrete topic.

When the Benchers adopted the Committee’s July 2013 report that led to an increase in funding of pro bono and the creation of a new access to justice fund, to be operated by the Law Foundation, (the “Fund”) they adopted a process by which representatives of the Law Foundation would meet with the Committee on an annual basis to discuss potential uses for the Fund. Much of the access to justice literature speaks about work being done in “silos” and there is a concerted effort towards broader stakeholder engagement and dialogue. The idea behind holding the annual meeting was to provide the Law Society an opportunity to discuss concepts worthy of funding with the Law Foundation. The dialogues are meant to be constructive and do not constitute binding directives as to how the Fund is to be used. The Committee held the first such annual meeting May 7th.

In 2013 the Committee considered what the Law Society might do to expand the development of Justice Access Centres (JACs) and increase lawyer participation in JACs. The Committee advanced the work significantly in 2013, but did not complete the work. The Committee continued that work in 2014 and reports to the Benchers with its findings in this report.

Committee Meetings

January 23 meeting:

In the January meeting the Committee sketched out its plan for the first half of the year and engaged in the following discussion.

Funding of legal aid – The Committee had a preliminary discussion about whether the Law Society ought to take a more pro-active role regarding the funding of Legal Aid. Since the substantial cuts to Legal Aid in 2002 the Legal Services Society has had to cut back on many of its traditional offerings and reinvent itself. Amongst other things, this involved closing approximately 45 branch offices, moving to a

model of seven regional centres, which was most recently reduced to two such centres.¹ As will be touched upon in the discussion of JACs, people need a place to go in their community to get help with legal problems. The government's current efforts to explore how to expand JACs led the Committee to consider what has been lost in the closure of the regional offices and whether a hybrid model – something between the current JAC structure and the traditional regional legal aid office – is required. While the Committee sees the value in JACs, it was concerned the government might increasingly focus on JACs in their current structure, where no lawyers are present to give legal advice, and funding for legal advice services will diminish.

The Committee discussed the 2002 Special General Meeting that led to the censuring of the then Attorney General. The Committee thinks this arose through a failure of leadership on the part of the Benchers of the day to take a position on the cuts to Legal Aid. The Committee is of the view that more than a decade has passed since then and government relations have improved but the need for legal aid funding remains great. At the same time, the Committee recognizes that calls for increased funding have been raised consistently over the past decade to little effect. Consequently, the Committee feels it is important that a constructive dialogue take place where the Law Society is working with government to figure out how to properly fund Legal Aid. The Committee considers that this might include such steps as engaging stakeholders, including government, to assess what constitute essential legal services and to set the funding to match the need for such services. This discussion could include consideration of the best models for delivery of such services and developing a methodology to better assesses the social and economic benefit of such services. At a minimum, the essential participants in such a discussion are the government and the Legal Services Society. The Committee is of the view that regardless of the outcome of such discussions, the Law Society must continue to identify what it can and will do to improve access to legal services.

The Committee anticipates dedicating meeting time in the second half of 2014 to further develop a recommendation to the Benchers regarding what the Law Society ought to do to improve funding for legal aid. This work may take the form of a recommendation for work to be done in the 2015-2017 Strategic Plan.

An Access to Justice Workshop – one of the ideas the Committee had was holding a half-day access to justice workshop for the Benchers. This was before the Benchers Retreat topic was fully developed. The Retreat focused on what lawyers and law firms can do now to improve access to legal services. If the Benchers wish for the Committee to provide supplementary materials or analysis to support that work, the Committee would be pleased to assist. In addition, the Committee has considered the issues of access to justice more broadly than the topics covered in the Retreat, so if the Benchers wish to have the Committee engage the Benchers in a workshop on access to justice, the Committee would be pleased to do so. In light of the topic of the Retreat, the Committee did not further develop its concept of an access to justice workshop at this time.

¹ The Committee does not set out the full impact of the cuts to legal aid funding. For a good summary see, Leonard T. Doust, QC, "Foundation for Change: The Report of the Public Commission on Legal Aid in British Columbia" (March 2011).

February 27 meeting:

Justice Access Centres - The Committee discussed the tentative conclusions of the 2013 committee regarding JACs, which were:

1. To realize their potential, JACs require staff who are capable of providing legal advice;
2. JACs should not be run by government;
3. Government should continue to provide support to JACs.

The Committee is of the view that most people who attend a JAC want legal advice. The Committee thinks what is required is to have lawyers available at JACs to provide legal advice. It is possible to structure a team of lawyers and designated paralegals to provide such services. At the February meeting (and subsequent meetings) the Committee discussed how it might be possible to accomplish this.

The Committee considered that JACs are a flagship feature of the government's access to justice platform. As such, it is unlikely the government will shift the entire model, and there is much to the current model that is commendable. However, the Committee felt there is an opportunity to have a JAC run by a non-profit, but funded by the government, and use it as a comparison with the existing JACs. The two primary differences would be that the new JAC would have lawyers integrated into the service provider team, and therefore be able to dispense legal advice, and it would operate outside of government. The Committee thinks the latter point could result in cost efficiencies.

In its discussions the Committee considered the role of technology. The Committee and its predecessor have viewed the use of technology to create "virtual JACs" with some caution. The primary concern the Committee has is the capacity of the end user to experience the intended benefit of the JAC in a virtual model. Many people lack the basic skills to navigate complex legal issues through an online, text-based interface. Some of the barriers can be language-based, some cognitive, some skills-based. What many people need is someone to help them face-to-face. At the same time, the Committee recognizes that technology can be used to link resources and people in disparate locations. Through technology, information and services can reach areas that otherwise would have to go without. It is also the case that technology can connect service providers, such that a community-based JAC that has onsite staff can connect with other JAC resources in the province. It is possible in such models to leverage the provincial resources to assist the local service provider.

The Committee discussed the concept of setting up a JAC in New Westminster run by a non-profit and at which legal advice was given. Such a model could then be tested against the existing JACs to provide a comparison as an alternative. Absent a model for testing, we will lack evidence to make the compelling case that the current JACs need to be upgraded to JACs that provide legal advice. The Committee discussed self-help centers in California that track results and show that pleadings and satisfaction are

greatest through the self-help model with legal advice and are preferable to people who receive no advice but also to people who receive assistance outside the clinic model.

A question was raised about where the funding would come for a non-profit and what the appeal would be. This led to observations about the need for government support. It also generated an observation about new legislation that permits public-private social venture partnerships, where the government puts up 60% and private capital puts up 40%. This concept of social impact partnering formed the basis of the May 7th meeting.

The discussion about JACs continued at the June 12th meeting.

April 10 meeting:

Access to Justice Fund – at the meeting the Committee met with Wayne Robertson, QC, Executive Director of the Law Foundation of British Columbia to discuss the new access to justice fund (the “Fund”). The Fund holds approximately \$60,000 each year.² Mr. Robertson shared some potential ideas for the fund and the Committee shared some of its concepts.

At the “big picture” end of the spectrum the Committee discussed the potential role for an access to justice coordinating body. Such bodies exist in 31 states in America and have been recently discussed in Canada. The idea of such a body is to play a coordinating role amongst various stakeholders and agencies, assisting with the free flow of information so groups that are on the ground can operate more effectively and not need to reinvent the wheel. In addition, such committees can be a valuable information source and sounding board. They also can speak to stakeholders with a certain level of credibility. While the Committee saw the value in such boards, it did not feel that this was the proper destination for the fund. The Committee preferred more ground level services, rather than supporting the creation of an entity that was not providing legal services to the public. The Committee also discussed providing support to LawLine, the REAL Program and whether innovative court programs, such as integrated family violence courts (such as exist in Ontario) might be explored and supported.

The discussion led the Committee to discussing the following potential principles:

1. Do we fund research or services or both?
2. Do we focus on the areas of greatest need, or some other consideration?
3. Do we focus on the most “bang for the buck”, or some other consideration?
4. Where can we generate the greatest leverage for the money?

² This represents a portion of the \$340,000 allotment the Law Society provides to the Law Foundation on an annual basis to promote pro bono and access to justice in British Columbia. It represents a significant contribution by the lawyers of British Columbia to improving access to legal services.

5. How do we tap into the innovative, entrepreneurial forces that exist? Example: run a contest for the most innovative Access to Justice Apps and award cash prizes. This might lead to some ground-breaking inventions.
6. How to we identify transformative initiatives to fund?

While discussion of these principles did not lead to a final decision, the Committee thinks they are a good start for discussions on the topic. The Committee thinks factors such as these can lead to more transformative innovation and also provide money to services that have a direct impact on people's lives.

The Committee discussed the potential for the Fund to supplement JACs. The Committee considered that even if the concept of a non-governmental run JAC did not take place, it might be possible to run a pilot project at a JAC where a lawyer was available 3 days a week to provide legal advice and the Fund could support that initiative. It would require an assessment methodology to be set up to compare it to other JACs, but it might facilitate making the case for lawyer and legal service providers to be at JACs.

Mr. Robertson took the Committee's observations back to the Law Foundation, which will determine what to do with the funding by mid-year. The Committee felt the process of consultation was fruitful and recognized that it will build year over year and the process can be refined.

May 7 meeting:

Social Finance Enterprises – The Committee met with David LePage, Principal at Accelerating Social Impact CCC, Ltd.³ The purpose of the meeting arose from a discussion about what role the private sector might play in supporting access to justice. The Committee recognized that initiatives require funding, but was concerned that the traditional approach of going to government and asking for money did not appear to be addressing the considerable need that exists. At the same time, the Committee did not feel it was appropriate to require lawyers to solve a social problem by paying ever more money to fund initiatives or provide ever more pro bono to address the gaps in government funding. The Committee invited Mr. LePage to discuss the potential for social impact funding to address access to justice needs.

The theory behind social finance enterprises is that the public, private and social sector needs to innovate collaboratively to resolve 21st century social problems.⁴ Social enterprises seek a blended social return on investment, thus placing them between traditional non-profit organizations and for profit organizations. In British Columbia we can have blended value funds. These funds must have no more than 40% investment purpose and no less than 60% social purpose. Such funds generate a financial return on investment and a social return. The Committee discussed the potential for social enterprises to take root in the legal landscape. As of yet, law-focused social enterprises have yet to

³ See <http://socialimpactpartners.ca/about/partners/david-lepage/>.

⁴ Dr. James Tansey, Sauder School of Business, "A Social Innovation Primer" (2011) at p. 3.

flourish but the Committee considers it might be a worthwhile area for further exploration. In order to tap into the millions of dollars of social investment funding that exist in British Columbia it is anticipated the rules regarding profit sharing would have to be examined. It may be, as the topic of alternative business structures is explored, that the potential access to justice benefit of social enterprises forms part of the policy analysis of whether ABS are desirable.

June 12 meeting:

Justice Access Centres – the Committee met with Jay Chalke, QC and Dan Vandersluis to discuss JACs. This was a continuation of two meetings the Committee held in 2012 and 2013. The purpose of the meeting was to build upon the prior meetings, but also take into consideration Mr. Chalke's presentation to the Benchers at the May 10th Benchers Retreat and to discuss the Committee's tentative views on JACs.

The Committee met with Jay Chalke, QC, Mike Rittinger and Dan Vandersluis to discuss JACs. The Committee shared its views about the need to increase the amount of lawyers providing legal advice in JACs, explored the concept of operating a JAC through an NGO, and briefly discussed the concept of virtual JACs.

The meeting was the third opportunity for the Committee (including prior years) to discuss JACs with representatives of the Ministry. It provided an opportunity to get feedback on the Committee's concepts and move the discussion further down the path. It was pointed out that JACs were not built to be "access to lawyer" centres. Rather, they are predicated on a holistic model of bringing together various services to help people resolve problems that have a legal element, but often have other elements (social, health, etc.). The JACs work with partnerships, such as Legal Services Society, Access Pro Bono, debt counselling, etc. The discussions allowed the Committee to explore how access to legal advice services might be maximized while recognizing that the JACs are not intended to match every person who walks through the door with a lawyer.

The discussions included whether a pilot project could take place with a lawyer at a JAC to test the value of the extra services to greater use of designated paralegals. The representatives of the Ministry said that a real challenge going forward is how to transform the urban centre bricks and mortar model of JACs into something that can reach remote communities where the current model cannot be duplicated in an economical model. Preliminary discussions were held about the potential to create a virtual infrastructure that connects JACs and their various justice system partners, along with the lawyers and other legal professionals who work or volunteer at JACs, such that people in remote communities can link into the full suite of resources that exist in Vancouver, Nanaimo and Victoria.

At this point the Committee has not reached a conclusion on JACs. It asked for some additional information. The Committee plans to consider that information along with its discussions to date, and

then seek to integrate that into the discussion the Benchers had about JACs at the Benchers Retreat. The Committee will continue to explore the greater use of paralegals in JACs during any future discussions.

JACs have been a part of the British Columbia justice landscape for less than a decade and promise to be a part for decades to come. It is appropriate, at these early days, to explore not only how we can expand the reach of the current model, but improve it.

Because the Committee has been analyzing JACs for several years now, along with broader access to legal services considerations, it suggests the Benchers draw upon it as a resource when it comes to refining the access to legal services elements of the next strategic plan. The Committee intends to report out on JACs with a mind to what the Law Society can do to broaden the reach of JACs going forward, but also contribute to the concept of what services ought to be provided by JACs in the future.

Conclusion

The Committee has been working to advance the topics assigned to it at the same time as monitoring access to justice issues that the Law Society ought to be engaged in. The Committee recognizes that at the end of the year the Benchers will set the next Strategic Plan and that access to justice and legal services will form an important part of that plan. The Committee has ideas as to what should be involved in that plan and those ideas extend beyond the topics identified at the Benchers retreat. The Committee stands available to the Benchers to lend its expertise to identifying what access issues the Law Society should focus on in the next Strategic Plan, including providing comment on any of the concepts identified at the Retreat. If the Benchers would like the Committee to engage the Benchers in a discussion or provide materials to that end, it would be happy to do so.

In the second half of the year the Committee intends to formalize its preliminary discussion of the proper role for the Law Society regarding legal aid funding and to continue its work on developing a position on what the Law Society can do to increase lawyer participation in JACs and consider how the services at JACs can be made available to more British Columbians. It is anticipated additional concepts will be identified. As should be apparent from the foregoing discussion, especially around the philosophy for on the ground, change-oriented philosophy for use of access to justice funds, the Committee is focused on ways to advance access to justice in concrete ways in both the short and long term. The Committee intends to make a series of recommendations for inclusion in the next Strategic Plan to give effect to these objectives.

/DM



Equity and Diversity Advisory Committee Mid-Year Report

Maria Morellato, QC, Chair
Satwinder Bains, Vice Chair
Jamie Maclaren
A. Cameron Ward
Kathryn Berge, QC
Robert Holmes, QC
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July 2014

Prepared for: Benchers

Prepared by: Andrea Hilland, Staff Lawyer, Policy and Legal Services

Purpose: Information

Introduction

1. The Equity and Diversity Advisory Committee is one of the four advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers in connection with those issues.
2. From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and maybe asked to develop the recommendations or policy alternatives regarding such initiatives.
3. The mandate is to:
 - monitor and develop effective equity and diversity in the legal profession and the justice system in British Columbia;
 - report to the Benchers on a semi-annual basis on those developments;
 - advise the Benchers annually on priority planning in respect of issues affecting equity and diversity in the legal profession and the justice system in British Columbia; and
 - attend to such other matters as the Benchers or Executive Committee may refer to the advisory committee from time to time.

Topics of Discussion – January to June 2014

4. The Committee met on January 23, February 27, April 10, May 7, and June 12, 2014. In addition, representatives of the Committee have met with: the CBA BC Equality and Diversity Committee; the Diversity Officers from each of the seventeen law firms committed to the Justicia Project; and various groups within the profession.
5. The following items have been addressed by the Committee between January and July 2014.

Aboriginal Lawyers Mentoring Program

6. The Aboriginal Lawyers Mentoring Program has now matched 20 mentorship pairs. The Committee is in the process of facilitating networking events and functions to support existing mentorship pairs and to further promote the program so that it can be readily accessed by lawyers throughout the Province.

Aboriginal Graduate Scholarship

7. On the recommendation of the Executive Committee, the Benchers created a scholarship for Aboriginal law students intending to pursue graduate legal studies. The scholarship of \$12,000 was awarded to Kinwa Bluesky, an Aboriginal Ph.D. student attending the University of British Columbia Faculty of Law.

Justicia Project

8. The Justicia Project is a voluntary program, facilitated by the Law Society, and undertaken by law firms to identify and implement best practices to retain and advance women lawyers in private practice. The Project is proceeding in two phases. Phase one is directed at national law firms with offices in BC, as well as large regional firms. Phase two will be directed at all other BC firms.
9. Diversity Officers have been selected by participating firms. Andrea Hilland, Staff Lawyer with the Law Society, is coordinating regular meetings among the Diversity Officers.
10. The Diversity Officers have created focus groups that have completed model policies and best practices regarding flexible work arrangements and parental leave, and a template for tracking gender demographics. These materials have now been completed, subject to review by the Equity and Diversity Advisory Committee. The materials will then be presented to the Benchers for approval at the September 26, 2014 Bencher Meeting. Once approved, the resources will be publicized on the Law Society's website. Diversity Officers have also discussed promoting the materials through a panel presentation.
11. The Diversity Officer focus groups are now meeting to develop their second set of resources which highlight best practices regarding business development, leadership skills, and

partnership initiatives for women. This work will also culminate in the production of written recommendations and resource materials for approval by the Benchers.

12. The Committee recommended increasing communications regarding Justicia in BC. Representatives from the participating firms unanimously agreed that the recommendations, model policies, and practical tools produced by the subcommittees should be shared broadly with the legal profession in British Columbia. Ms. Hilland published an article about Justicia in BC in the CBA BC Women Lawyers Forum Spring 2014 Newsletter. Law Society staff is continuing the development and implementation of a communications strategy in relation to Justicia in BC.

Diversity in the Judiciary

13. Following the presentation on the importance of diversity on the bench by Honourable Lynn Smith, QC, and the Honourable Donna Martinson (retired justices of the Supreme Court) at the July 12, 2013 Benchers meeting, then President Art Vertlieb requested that the Equity and Diversity Advisory Committee develop recommendations to the Benchers to improve diversity on the bench.
14. To fulfill this request, a subcommittee of Equity and Diversity Advisory Committee (the “Diversity on the Bench Subcommittee”) was struck to develop recommendations for the Law Society of British Columbia to:
 - i. 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;
 - ii. Investigate and endeavor 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;
 - iii. 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
 - iv. 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.
15. The Benchers unanimously adopted these recommendations at the January 24, 2014 Benchers Meeting. Ms. Lindsay instructed that the Diversity on the Bench Subcommittee should continue its work towards implementing the recommendations, and provide a progress report at the July 2014 Benchers Meeting (attached as Appendix 1).

16. The Diversity on the Bench Subcommittee is comprised of the following members:

- Satwinder Bains (Chair)
- Pinder Cheema, QC
- Jamie Maclaren
- Nancy Merrill
- Thelma O’Grady
- Linda Robertson

17. The Subcommittee held teleconference meetings on March 10, 2014, April 15, 2014 and May 13, 2014.

18. The Subcommittee created a survey to investigate systemic barriers that are impacting the advancement of lawyers from equity seeking groups, which was distributed at a panel presentation regarding “Building Diversity on the Bench,” held on May 27, 2014. (More information about this event is included under the “Collaborations with the CBA BC Equality and Diversity” section, below.) Respondents to the survey identified unconscious bias, feelings of exclusion, lack of mentoring, and qualification barriers (such as standardized testing) as systemic barriers in relation to the legal profession. The Subcommittee intends to continue to solicit survey responses as a method of investigating systemic barriers.

19. The Subcommittee has identified the work the Law Society has already undertaken that will assist in improving diversity on the bench, including:

- The Aboriginal Lawyers Mentorship Program;
- The Equity Ombudsperson Program;
- The Justicia Program;
- The Maternity Leave Loan Benefit Program;
- Section 1.1.4 of the Law Society’s Appointments Policy, which states: “The Law Society promotes diversity in its internal and external appointments and should ensure adequate representation based on gender, Aboriginal identity, cultural diversity, disability, sexual orientation, and gender identity.”
- The “change in status” survey, conducted when lawyers transition from “practicing” to “non-practicing” status. The Subcommittee intends to review the responses to this survey to investigate the extent to which systemic barriers affect the change in status of Law Society members;
- The demographic questionnaire that now forms part of the Annual Practice Declaration;

- Law Society reports regarding lawyers from equity seeking groups, such as: “Towards a More Representative Legal Profession: Better practices, better workplaces, better results” (2012), “Lawyers with Disabilities: Overcoming Barriers to Equality” (2004), “Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers” (2003), and the “Report of the Retention of Women in Law Task Force” (2009); and
 - Collaborative work with organizations representing lawyers from equity seeking groups.
20. The Subcommittee has instructed Law Society staff to evaluate the effectiveness of the current programs by conducting formal reviews of the current programs, and to build evaluation mechanisms into future programs as a matter of course.
21. The Subcommittee will continue monitoring the statistics of equity seeking groups in the legal profession, including Queen’s Council and judiciary appointments.

Respectful Workplace Model Policy

22. At the recommendation of the Committee, a subcommittee has been created to update the Law Society’s model workplace harassment policy. The Subcommittee members are:
- Maria Morellato, QC (Chair)
 - Jamie Maclaren
 - Kathryn Berge, QC
 - Preston Parsons
 - Sharon Matthews, QC
 - Cameron Ward
 - Anne Chopra
23. The Subcommittee met on June 9, 2014, and will meet again at the end of August, 2014.
24. The Subcommittee’s first revision was to rename the Model Policy from the “Workplace Harassment Policy” to the “Respectful Workplace Policy” in order to emphasize the positive term of “respect” rather than the negative term of “harassment”.
25. The Subcommittee has instructed Law Society staff to revise the model policy to incorporate the new anti-bullying legislation contained in the BC *Workers Compensation Act*.
26. The Subcommittee considers the promotion of respectful workplace behavior at the outset to be more effective than the correction of negative behavior after it has occurred. Therefore, the Subcommittee intends to focus its efforts on the prevention of workplace harassment through the development of best practice resources and a multifaceted educational strategy,

to facilitate the meaningful implementation of the model policy and best practices by law firms.

Collaborations with the CBA BC Equality and Diversity Committee

27. The Committee nominated Ms. Hilland to liaise with the CBA BC Equality and Diversity Committee. The CBA BC Equality and Diversity Committee organized a panel regarding diversity on the bench on May 27, 2014.¹ At the recommendation of the Committee, Ms. Hilland assisted with the planning and implementation of the 2014 panel.
28. The panel presentation regarding “Building Diversity on the Bench,” held on May 27, 2014 was hosted by the Canadian Bar Association BC Equality and Diversity Committee with support from the Law Society of British Columbia, the BC Federation of Asian-Canadian Lawyers, the Canadian Association of Black Lawyers, and the BC South Asian Bar Association.
29. Approximately 80 lawyers were in attendance at the May 27, 2014 event. President Jan Lindsay provided a demographic overview of the legal profession in BC that was based on the Law Society’s 2012 Report entitled “Towards a More Diverse Legal Profession: Better practices, better workplaces, better results”. She also highlighted Law Society initiatives aimed at improving the retention and advancement of lawyers from equity seeking groups, including the Justicia Project and the Aboriginal Lawyers Mentorship Program. Other panelists included the President of the Canadian Bar Association BC Branch, Dean Crawford, Associate Chief Justice Austin Cullen, Chief Judge Crabtree, Justice Masuhara, Justice Loo, and Judge St. Pierre.
30. Along with the CBA BC Equality and Diversity Committee, Ms. Hilland has taken a lead role in co-chairing a “diversity stakeholders” coalition which includes the Chair of our Committee, as well as a number of CBA BC Equality and Diversity subgroups representing diverse lawyers in British Columbia. Members of the coalition intend to conduct a strategic planning session in 2014, along with an event sponsored by all members of the coalition. The Committee will assist with the proposed strategic planning session and the proposed event.

Maternity Leave Benefit Loan Program

31. On the recommendation of the Committee, Law Society staff is reviewing the Maternity Leave Benefit Loan Pilot Program.

¹ This event was a follow up event to a similar panel held in May of 2013. Art Vertlieb QC, then President of the Law Society, spoke on the panel in 2013.

Enhanced Demographic Question

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

Law Societies Equity Network

33. Law Society staff has been involved with the Law Societies Equity Network (LSEN), comprised of equity and diversity staff and ombudspersons from law societies across Canada. The LSEN has been collaborating to compile the demographic data from various jurisdictions across Canada in order to create a national equity profile. Law Society staff is compiling responses to the Law Society of BC's enhanced demographic question to contribute to the LSEN's national equity profile.



Diversity in the Judiciary Progress Report

Diversity on the Bench Subcommittee

Satwinder Bains (Chair)
Pinder Cheema, QC
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July 2014

Prepared for: Benchers

Prepared by: Andrea Hilland, Staff Lawyer, Policy and Legal Services

Purpose: For Information

Table of Contents

Table of Contents	2
Introduction	3
Recommendation 1 Judicial Advisory Committee	4
Recommendation 2 Systemic Barriers	4
Recommendation 3 Law Society Initiatives	5
Recommendation 4 Collaborative Efforts	7
Conclusion	7

Introduction

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 Benchers 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 (the “Diversity on the Bench Subcommittee”) was struck to develop the following recommendations. The Law Society of British Columbia should:

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 endeavor 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.

The Benchers unanimously adopted these recommendations at the January 24, 2014 Benchers Meeting. Ms. Lindsay instructed that the Diversity on the Bench Subcommittee should continue its work towards implementing the recommendations, and provide a progress report at the July 2014 Benchers Meeting.

The Diversity on the Bench Subcommittee is comprised of the following members:

- Satwinder Bains (Chair)
- Pinder Cheema, QC
- Jamie Maclaren
- Nancy Merrill
- Thelma O’Grady
- Linda Robertson

The Subcommittee held teleconference meetings on March 10, 2014, April 15, 2014 and May 13, 2014. This report summarizes the work of the Subcommittee from January to June, 2014.

Recommendation 1: Judicial Advisory Committee

The first recommendation is that the Law Society will 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.¹ 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.

For the Provincial Judicial Council, the Law Society President or his/her designate serves on the Judicial Council. The Subcommittee recommends that the Law Society President should be mindful of diversity if appointing a designate.

The Subcommittee acknowledges that the Law Society's Appointments Policy is aligned with the first recommendation. In particular, Section 1.1.4 of the Law Society's Appointments Policy states: "The Law Society promotes diversity in its internal and external appointments and should ensure adequate representation based on gender, Aboriginal identity, cultural diversity, disability, sexual orientation, and gender identity."

For the Federal Judicial Advisory Committee, three members from Law Society of BC are nominated, and the Minister of Justice appoints one of the nominees as a voting member of the Judicial Advisory Committee. The Subcommittee observed that if all three Law Society nominees are from equity seeking groups, then that will ensure that the Law Society's appointment will enhance diversity on the Judicial Advisory Committee. This is a tangible, immediate action that the Law Society can take to improve diversity in the judiciary.

The Subcommittee hopes that this approach to nominating candidates to judicial advisory committees will serve as an inspirational model for other appointing bodies.

Recommendation 2: Systemic Barriers

The second recommendation provides that Law Society will investigate and endeavor 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.

The Subcommittee created a survey to investigate systemic barriers that are impacting the advancement of lawyers from equity seeking groups (attached as Sub-Appendix A). The survey

¹ The first recommendation was limited to the Federal Judicial Advisory Committee because the Law Society President nominates three candidates, and the federal Minister of Justice appoints one of the three nominees, whereas for the Provincial Judicial Council, the Law Society President or his/her designate serves on the Judicial Council. Accordingly, there is less opportunity for strategizing in relation to the Provincial Judicial Council.

was distributed at a panel presentation regarding diversity in the judiciary, held on May 27, 2014. Responses to the survey identified the need for increased inclusion, encouragement, and mentorship of lawyers from equity seeking groups, including the presentation of more information sessions like the May 27, 2014 event. The Subcommittee intends to continue to solicit survey responses as a method of investigating systemic barriers.

The Subcommittee is aware that the Law Society conducts a “change in status” survey, when lawyers transition from “practicing” to “non-practicing” status. The Subcommittee has instructed Law Society staff to review the responses to this survey to investigate the extent to which systemic barriers affect the change in status of Law Society members.

The Subcommittee recognizes that the Law Society’s Equity and Diversity Advisory Committee has a number of initiatives to support lawyers from equity seeking groups. The Subcommittee also acknowledges the Law Society’s research regarding systemic barriers affecting lawyers from equity seeking groups, such as: “Towards a More Representative Legal Profession: Better practices, better workplaces, better results” (2012), “Lawyers with Disabilities: Overcoming Barriers to Equality” (2004), “Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers” (2003), and the “Report of the Retention of Women in Law Task Force” (2009). Some systemic barriers identified by this research include: unconscious bias, in-group bias, stereotyping, lack of mentors and sponsors, competing responsibilities (e.g. parenting obligations), and insufficient accommodations (e.g. for differently-abled lawyers).² The Subcommittee has instructed Law Society staff to support the Equity and Diversity Advisory Committee in ensuring that leading research on systemic barriers informs the development of the programs and initiatives to support lawyers from equity seeking groups.

The Subcommittee also supports the Equity and Diversity Advisory Committee’s collaborations with organizations representing lawyers from equity seeking groups. The Subcommittee acknowledges that formal and informal interactions with lawyers from equity seeking groups facilitates the identification of systemic barriers that may impact the retention and advancement of diverse lawyers, as well as strategies for alleviating such barriers.

Recommendation 3: Initiatives

The third recommendation encourages the Law Society to monitor and assess the effectiveness of its initiatives relating to the retention and advancement of lawyers from equity seeking groups, in light of the objective of improving diversity on the bench.

² This list is not meant to be exhaustive.

The Subcommittee has identified the current programs aimed at supporting lawyers from equity seeking groups, including the:

- Aboriginal Lawyers Mentorship Program;
- Equity Ombudsperson Program;
- Justicia Program; and
- Maternity Leave Loan Benefit Program.

The Equity and Diversity Advisory Committee and the Diversity on the Bench Subcommittee have observed that the Law Society will likely need to improve support for the recruitment, retention, and advancement of differently-abled lawyers. The Subcommittee has instructed Law Society staff to support the Equity and Diversity Advisory Committee in the design and implementation of such an initiative.

The Subcommittee recommends that Law Society staff should evaluate the effectiveness of the equity and diversity programs by conducting formal reviews of the current programs, and should build evaluation mechanisms into future programs as a matter of course.

As of January, 2013, the Annual Practice Declaration includes a demographic question which asks members to self-identify as:

- ☐ Aboriginal/Indigenous – First Nations, Metis, Inuit
- ☐ Visible Minority/Racialized/Person of Colour
- ☐ Person with a Disability
- ☐ Lesbian/Gay/Bisexual/Transgender

Responses to the demographic survey will reveal statistical information about the diversity of the legal profession in British Columbia. The current statistics provide a baseline for future comparison. The Law Society's objective is for the diversity in the legal profession to be reflective of the diversity in the population in British Columbia. It is anticipated that over time, the demographic trends of the legal profession in British Columbia will indicate the effectiveness of the Law Society's programs geared toward supporting lawyers from equity seeking groups. The Subcommittee also encourages the development of other methods to evaluate the Law Society's initiatives to support equity seeking lawyers.

The Subcommittee will continue monitoring the statistics of equity seeking groups in the legal profession, including Queen's Council and judiciary appointments.

The Subcommittee acknowledges that the Equity and Diversity Advisory Committee's collaborative work with organizations representing lawyers from equity seeking groups will be instrumental in the identification, development, and implementation of effective programs to support the advancement of lawyers from equity seeking groups into leadership roles, thus broadening and diversifying the pool of potential candidates for judicial appointment.

Recommendation 4: Collaborative Efforts

The fourth recommendation is that the Law Society should 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.

To that end, the Law Society contributed to a panel presentation regarding “Building Diversity on the Bench” held in Vancouver, and available by webcast, on May 27, 2014.³ Approximately 80 lawyers were in attendance. President Jan Lindsay provided a demographic overview of the legal profession in BC that was based on the Law Society’s 2012 Report entitled “Towards a More Diverse Legal Profession: Better practices, better workplaces, better results”. She also highlighted Law Society initiatives aimed at improving the retention and advancement of lawyers from equity seeking groups, including the Justicia Project and the Aboriginal Lawyers Mentorship Program. Other panelists included the President of the Canadian Bar Association BC Branch, Dean Crawford, Associate Chief Justice Austin Cullen, Chief Judge Crabtree, Justice Masuhara, Justice Loo, and Judge St. Pierre.

As mentioned above, the Subcommittee acknowledges that the Equity and Diversity Advisory Committee provides leadership and vision in its collaborations with organizations representing lawyers from equity seeking groups. Such collaborations will help with the identification and alleviation of systemic barriers that may impact the retention and advancement of lawyers from equity seeking groups, and will help to generate effective initiatives to support the advancement of lawyers from equity seeking groups into leadership roles. An important objective of identifying and alleviating systemic barriers and developing initiatives to support lawyers from equity seeking groups is to increase the diversity of the candidate pool for judicial appointments.

Conclusion

The Diversity on the Bench Subcommittee acknowledges that programs and initiatives to support lawyers from equity seeking groups are already being implemented by the Law Society. Such programs and initiatives are important for the retention and advancement of equity seeking lawyers, and for broadening the pool of potential candidates for judicial appointment. The Subcommittee intends to continue supporting the Equity and Diversity Advisory Committee in the identification, development, and implementation of programs and initiatives to support equity seeking lawyers.

³ This event was a follow up event to a similar panel held in May of 2013. Art Vertlieb QC, then President of the Law Society, spoke on the panel in 2013.

The Subcommittee intends to further investigate systemic barriers affecting the retention and advancement of lawyers from equity seeking groups, and will share the results of their research to support the development of programs and initiatives to support equity seeking lawyers.

The Subcommittee will continue to monitor the demographic profile of judicial appointments across Canada, and of the legal profession in British Columbia.

The Subcommittee may take further action, as deemed necessary, to help to increase diversity in the judiciary.

This survey is being conducted to investigate systemic barriers affecting lawyers from equity seeking groups. Responses are voluntary, anonymous, and greatly appreciated.

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The Law Society
of British Columbia



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

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July 2014

Prepared for: Benchers

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Purpose: Information

Introduction

1. The Rule of Law and Lawyer Independence Advisory Committee is one of the four advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers in connection with those issues. From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and may be asked to develop the recommendations or policy alternatives regarding such initiatives.
2. The Committee's mandate is:
 - to advise the Benchers on matters relating to the Rule of Law and lawyer independence so that the Law Society can ensure
 - its processes and activities preserve and promote the preservation of the Rule of Law and effective self-governance of lawyers;
 - the legal profession and the public are properly informed about the meaning and importance of the Rule of Law and how a self governing profession of independent lawyers supports and is a necessary component of the Rule of Law; and
 - to monitor issues (including current or proposed legislation) that might affect the independence of lawyers and the Rule of Law, and to develop means by which the Law Society can effectively respond to those issues.
3. The Committee has met on January 22, February 26, May 6, and June 11, 2014.
4. This is the mid-year report of the Committee, prepared to update the Benchers on its work in 2014, and to identify issues for consideration by the Benchers in relation to the Committee's mandate.

Overview

5. During its existence, this Committee, and its predecessor Committee (the Independence and Self Governance Advisory Committee) has focused on the importance of lawyer independence as a fundamental right of importance to the citizens of British Columbia and Canada.
6. As was reported in the Committee's year end report in 2013, the importance of lawyer independence as a principle of fundamental justice was recognized by the Court of Appeal in *Federation of Law Societies of Canada v. Canada (Attorney General)* 2013 BCCA 147. The Court of Appeal commented on the independence of the Bar being fundamental to the way in which the legal system ought fairly to operate, and confirmed that the importance of the independence of the Bar has long been recognized as a fundamental feature of a free and democratic society. The decision was been appealed to the Supreme Court of Canada, and the appeal was heard in May. A decision from that Court is pending.
7. The Court of Appeal quoted from *Omineca Enterprises Ltd. v. British Columbia (Minister of Forests)* (1993), 85 B.C.L.R. (2d) 85 at para. 53:

One of the great and often unrecognized strengths of Canadian society is the existence of an independent bar. Because of that independence, lawyers are available to represent popular and unpopular interests, and to stand fearlessly between the state and its citizens.

This public right to a lawyer who is “available to represent popular and unpopular interests, and to stand fearlessly between the state and its citizens” is not a right that is well understood and, the Committee suspects, neither are the consequences of it being diluted or lost. Ensuring that citizens understand the importance is, the Committee believes, something that falls within the mandate of the Law Society and is reflected in this Committee's mandate.

8. Canadians are generally fortunate to live in a society that recognizes the importance of the Rule of Law. In 2008, the predecessor of this Committee published a report concluding that the independence of lawyers and its self regulating Bar is necessarily linked to the preservation of the Rule of Law. The report concluded that the Rule of Law is best protected by lawyers who operate and are regulated independent of government in order to best be able to represent a client free of all outside interests including those of the state.

Topics of Discussion – January to June 2014

Defining the Rule of Law

9. Having focused for a number of years on the importance of an independent Bar, the Committee determined that it should spend some time focusing on the Rule of Law.
10. In order to do so, the Committee thought it would be useful to ensure that it had a generally common perspective on what was meant by the “Rule of Law”.
11. The Committee undertook some rudimentary research, and noted that there is no accepted, standard definition that is universally used to describe the Rule of Law. The credit for creating the phrase is often attributed to Dicey from his book *An Introduction to the Study of the Law of the Constitution* from 1885, as noted by Lord Bingham of Cornhill (formerly Lord Chief Justice) in his 2010 book *The Rule of Law*.
12. Lord Bingham’s book discusses the interpretation and meaning of the Rule of Law and the difficulties that exist in giving it meaning. While he noted that it was “tempting to throw one’s hand up and accept that the Rule of Law is too uncertain and subjected an expression to be meaningful”, he ultimately rejected that notion. Rather, he commented that while it may be difficult to devise a pithy definition suitable for inclusion in a statute, that did not mean that the phrase was a meaningless notion capable of being ruled on by judges if and when the question arose for decision.
13. Consequently, the Committee returned to the 2008 report referred to above. In that report, the Independence and Self Governance Committee settled on a general definition of the Rule of Law arising from the Supreme Court of Canada’s decision in *Reference re Manitoba Language Rights* [1985] 1 S.C.R. 721 at 748, as follows:

“The rule of law, a fundamental principle of our Constitution, must mean at least two things. First, that the law is supreme over officials of the government as well as private individuals, and thereby preclusive of the influence of arbitrary power. Indeed, it is because of the supremacy of law over the government, as established in s. 23 of the *Manitoba Act, 1870* and s. 52 of the *Constitution Act, 1982*, that this Court must find the unconstitutional laws of Manitoba to be invalid and of no force and effect.

Second, the rule of law requires the creation and maintenance of an actual order of positive laws which preserves and embodies the more general principle of normative order. Law and order are indispensable elements of civilized life.” The rule of law in this sense implies ... simply the existence of public order.” (W. I. Jennings, *The Law and the Constitution* (5th ed. 1959), at p. 43). As John Locke once said, “A government without laws is, I suppose, a mystery in politics, inconceivable to human capacity and inconsistent with human society” (quoted by Lord Wilberforce in

Carl-Zeiss-Stiftung v. Rayner and Keeler Ltd. (No. 2), [1966] 2 All E.R. 536 (H.L.), at p. 577). According to Wade and Phillips, *Constitutional and Administrative Law* (9th ed. 1977), at p. 89: "... the rule of law expresses a preference for law and order within a community rather than anarchy, warfare and constant strife. In this sense, the rule of law is a philosophical view of society which in the Western tradition is linked with basic democratic notions".

14. The Committee considers that this description provides a workable basis for its work.

Commenting Publicly on Violations of the Rule of Law

15. Strategy 3-2 of the Law Society's current strategic plan is to "educate the public about the importance of the rule of law, the role of the Law Society and the role of lawyers."

16. The Committee considers that it would be prudent and helpful, and completely within the Law Society's mandate, to take some steps to identify and comment on violations of the Rule of Law should they occur in British Columbia or elsewhere.

17. The Law Society is obviously not in a position to prevent violations of the Rule of Law or attacks on an independent Bar in foreign jurisdictions. It can, however, as a public interest organization, comment publicly on such violations elsewhere when to do so:

- demonstrates in a public way the benefits of the system of justice under which British Columbians live by comparing it to systems where the Rule of Law is not as robust, thereby emphasizing the strengths of our justice system. It can serve to remind the public that while there may be problems within our justice system, it is much preferable to that of many other nations. Education is an important aspect of the Law Society's mandate of protecting the public interest;
- can lend the Law Society's voice to those of other organizations doing likewise, which may have some effect on the interests in other nations or work to assist those trying to make positive changes to the system of justice within those other nations.

18. The Committee noted that the Law Society of Upper Canada and, in a somewhat different vein, the Law Society of New Zealand, both make proactive efforts to comment on Rule of Law violations. The Committee examined both jurisdictions and determined that a slightly different approach should be pursued.

19. The Committee is currently developing a process, with input from the Communications Department, with a view to presenting it to the Benchers for consideration later in the year.

Meaning of the Rule of Law in Connection with the Law Society Mandate

20. Moving forward, the Committee has given some preliminary consideration to discussing the objects and duties of the Law Society as set out in Section 3 of the *Legal Profession Act* in connection with the Rule of Law.
21. The Committee has a general sense that Section 3 of the *Legal Profession Act* relatively clearly engages the Rule of Law, and believes that the Committee could usefully consider discussing a statement of principle as it might relate to Section 3 in the public interest.
22. The Committee plans to develop its analysis on this topic over the balance of the year, with the intent to identify some principles for consideration by the Benchers.

National Security Agency (US) and Communications Security Establishment Canada

23. Late last year, the President of the Law Society received a letter from a lawyer in British Columbia raising questions about a lawyer's duty with respect to communications with a client in the face of revelations that most electronic communication appears to be open to review by the National Security Agency in the United States and the Communications Security Establishment in Canada.
24. The Committee raised the matter with the Executive Committee for its consideration as to whether or not this was a matter that the Law Society should pursue. The Executive Committee agreed it was, and asked the Committee to consider the topic.
25. The Committee devoted some time at its May 6th meeting to a preliminary consideration of the matter, agreeing that for lawyers, two issues are raised by the matter:
 - section 3 and the public interest in balancing privilege and *Charter* values against the need for state surveillance for public safety; and
 - professional obligations to preserve the confidence and privilege. If a state is capturing such documents but one doesn't know the parameters under which the state is viewing them, how can one advise a client about the security of information provided to a lawyer?
26. The Committee considered how to approach the topic, with a view to creating guidelines for lawyers to follow in order to best protect professional obligations, as well as the possibility of undertaking some education or training about risks. The Committee agrees that providing general guidance about how to stay current on the risks created by electronic technology should be considered, and some suggestion was given to making a lobbying effort for protection of oversight bodies, as well as to identifying cases in which it may consider recommending that the Law Society seek leave to intervene.

27. The Committee will devote some further time in the balance of the year to further consideration of this topic.

Alternate Business Structures

28. As has been requested by the Benchers, this Committee continues to monitor in general the development of alternate business structures in England, Australia, and the debates in other parts of the world concerning whether or not to implement such proposals. The Committee is also aware of efforts being undertaken by the Federation of Law Societies to begin some discussion on the topic, and will continue to monitor and participate in those discussions as it is able to do.

Independence of Lawyers in an In-house Context

29. The Committee also raised for a topic for future discussion analyzing the independence of lawyers who are operating in an in-house context, and whether different considerations need to be addressed to deal with lawyers in those situations.



Lawyer Education Advisory Committee Mid-Year Report

Tony Wilson, Chair
Thelma O'Grady, Vice-Chair
Martin Finch, QC
Dean Lawton
Mary Childs
Meghan Maddigan

July 11, 2014

Prepared for: Benchers

Prepared by: The Lawyer Education Advisory Committee

Purpose: Information

Introduction

1. The Lawyer Education Advisory Committee 2014 Mid-Year Report summarizes the Committee's 2014 activities to date and planning for the balance of the year.

Committee Strategic Priority

2. Pursuant to the Law Society Strategic Plan, the Committee's 2012 - 2014 remaining strategic priority is *to ensure that Law Society of BC admission processes are appropriate and relevant, and to work on national admission standards while considering the rationale and purpose of the overall BC admission program.* (Law Society Strategic Initiative 1-4(a))

Admission Program Review

3. The Committee's primary focus for 2014 is therefore Admission Program review in the context of the Federation's ongoing National Admission Standards Project (the NASP), by which Canada's law societies, through the Federation, are developing proposals for national admission standards and related implementation.
4. A Federation Steering Committee is responsible for overall direction of the NASP. Tim McGee and Alan Treleaven are Steering Committee members.
5. The first phase of the NASP was to draft a profile of the competencies required for entry to the profession. This process involved the participation of a national technical working group. Lynn Burns, Deputy Director of the Professional Legal Training Course (PLTC), was a member.
6. The Benchers have now approved the *National Entry-Level Competency Profile for Lawyers and Quebec Notaries* pursuant to the following resolution.

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

7. The second phase of the NASP is focusing on developing proposals for implementation of the new national competency profile. At the Federation level, work is in progress on developing options, with the goal of achieving high levels of consistency and quality in national admission standards.
8. Ultimately, law societies will be asked to approve how the admission standards will be implemented.
9. One of the original underlying premises of national lawyer mobility, when it began in 2003, was that standards for admission were reasonably similar from jurisdiction to jurisdiction. However, the current reality is that significant differences now exist in the admission standards and

processes of each jurisdiction. These differences need to be rationalized. The Committee intends to include specific recommendations on this issue in its report to the Benchers.

10. On February 13, 2014 the Committee met with Federation representatives, who have been consulting with Canadian law societies on the national admission standards project. The Federation expects to publish recommendations by early 2015 for consideration and then adoption by law societies. The Lawyer Education Advisory Committee, in conducting its review of the Admission Program, needs to take into account this work of the Federation.
11. Pending the Federation's publication of its recommendations, the Committee is conducting its review of the Admission Program, including articling, PLTC and related skills assessments and examinations. More specifically, the Committee's work includes consideration of
 - a) PLTC history and mandate: review and assessment,
 - b) PLTC teaching and training: overview, strengths and weaknesses, options for change,
 - c) PLTC skills assessments and examinations: overview, strengths and weaknesses, options for change,
 - d) articling: overview, strengths and weaknesses, options for change,
 - e) articling remuneration, and whether or to what extent unpaid articles occur and are permitted,
 - f) PLTC and articling administrative challenges, including cost, space, and rising student numbers,
 - g) technology options for enhancement,
 - h) bar admission requirements in other jurisdictions,
 - i) whether the NASP focus should include standards for bar admission training and articling/experiential learning, in addition to skills assessment and examinations, and
 - j) Federation consultation papers, as they are published, and providing comments,
 - k) input from current and former students and principals,
 - l) observations of Committee members who have conducted student Bencher interviews, volunteered to teach on PLTC Bencher Day or, in 2014, taken on a greater role at PLTC during the year, specifically, Dean Lawton, Thelma O'Grady and Meghan Maddigan.
12. Because the work of the Federation on the NASP will not likely be complete by the year end, the Lawyer Education Advisory Committee's 2014 Year-End Report on its review of the Admission Program will likely identify a need beyond 2014 to take into account the anticipated recommendations of the NASP in completing the Admission Program review.

CPD Program

13. The CPD program is in its sixth year. In 2014, the Committee has not conducted a CPD program review, as the 2012 – 2014 Strategic Plan does not mandate a review.
14. If the Benchers would like the Committee to conduct a full review of the CPD program or a review focused on specific CPD issues, the Committee suggests that the Benchers mandate a review in the next Law Society Strategic Plan.

The Law Society *of British Columbia*



Mid-Year Report

Governance Committee

Miriam Kresivo, QC (Chair)

Haydn Acheson (Vice-Chair)

David Crossin, QC

Stacy Kuiack

Dean Lawton

Sharon Matthews, QC

Elizabeth Rowbotham

Herman Van Ommen, QC

July 11, 2014

Prepared for: Benchers

Prepared by: Adam Whitcombe, Executive Support

Purpose: Information

Committee Process

1. Since the beginning of the year, the Governance Committee has met three times.
2. On January 24, the Committee met and reviewed the results of the year-end 2013 Benchers and Committee evaluation process. The review followed on the Committee's recommendation, adopted by the Benchers in 2013, that Benchers and committee evaluations be conducted annually in December and that Governance Committee be responsible reviewing and compiling a report for the Benchers each year in early January.
3. The Committee provided its report on the 2013 Benchers and committee evaluations at the February Benchers meeting and made several recommendations which were accepted by the Benchers.
4. The Committee also established a schedule and issues it wished to tackle during 2014. Specifically, the Committee identified the recommendations regarding conflicts and vision and mandate from the Governance Review Task Force final report as outstanding and major items for consideration.
5. On May 12, the Committee again met and began its consideration of the broad recommendation that the Benchers enhance the Benchers Code of Conduct to address with greater clarity and specificity the types of conflicts that can arise at the Benchers table and how they will be handled. Specifically, the Committee began its discussion of conflicts arising from the Benchers' roles as governors of the Law Society, legislators, adjudicators and trusted advisors. The Committee considered the current conflict of interest policy and concluded that there should be a simple and clear direction to the Benchers about seeking advice regarding a potential or actual conflict of interest. The Committee also considered whether the current provision in the mandate for the Finance and Audit Committee regarding reviewing and making recommendations about managing conflicts of interest should be the responsibility of the Committee. The Committee expects to report later in the year regarding its recommendations regarding a conflicts of interest policy in the Benchers' Governance Manual.
6. On June 23, the Committee departed from its schedule of issues to consider whether to recommend changes to the Rules regarding the conduct of general meetings arising from concerns that have been raised in the past regarding participation and voting at general meetings.
7. The recent experience with the special general meeting highlighted for the Committee some of the difficulties inherent in our current Rules. Specifically, a number of members expressed concern about the limitations arising from the rules about voting in person and the absence of proxy voting. That concern was made manifest recently in the demand for additional locations over and above the 16 locations approved by the Benchers and repeated

suggestions for electronic voting. The Committee also considered whether the requirement for mailing general meeting notices remained necessary with the ubiquitous use of email and the Internet by the membership.

8. The Committee noted that any change to the Rules regarding general meetings and their conduct required approval by 2/3 of those members voting at a general meeting or in a referendum.
9. The Committee agreed that there was a need to change the Rules to allow for greater and easier participation by members and recognition that many members expect to be able to participate electronically.
10. Specifically the Committee agreed to explore the following:
 - Conduct the general meetings from one physical location with additional member participation by webcast;
 - Members participating by webcast should be able to communicate electronically with the meeting;
 - All participating members need to be able to vote on resolutions either in person at the physical location or electronically for those participating by webcast; and
 - Whether notices of meetings, and perhaps other matters, could be sent electronically rather than be mail as the present Rules require.
11. The Committee has asked staff to explore the details of implementing these changes.

Next Steps

12. As noted, the Committee will continue its work on the conflict of interest recommendations. The Committee expects to report later in the year with specific recommendations about the general meeting Rules and a proposal for obtaining member approval.

The Law Society *of British Columbia*



Annual Report of the Law Society of British Columbia Equity Ombudsperson Program for the Term January 1, 2013 to December 31, 2013

For: The Benchers
Date: April 30th, 2014

Purpose of Report: For Information

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

TABLE OF CONTENTS

Preface.....	3
A. Overview of New Contacts.....	4
• Volume of new Contacts	
• Geographic location of Callers	
• Profile Distribution of the Callers	
B. Grounds of Complaints, Narrative Examples and Ombudsperson's Observations.....	6
C. Services Provided to Callers.....	9
D. Summary of Callers.....	11
E. Outreach and Education.....	11
F. LSEN- Training and Education for Ombudsperson.....	13
G. Objectives Achieved During 2013.....	13
H. Conclusions	14
I. Appendix A (Background-For New Benchers).....	15

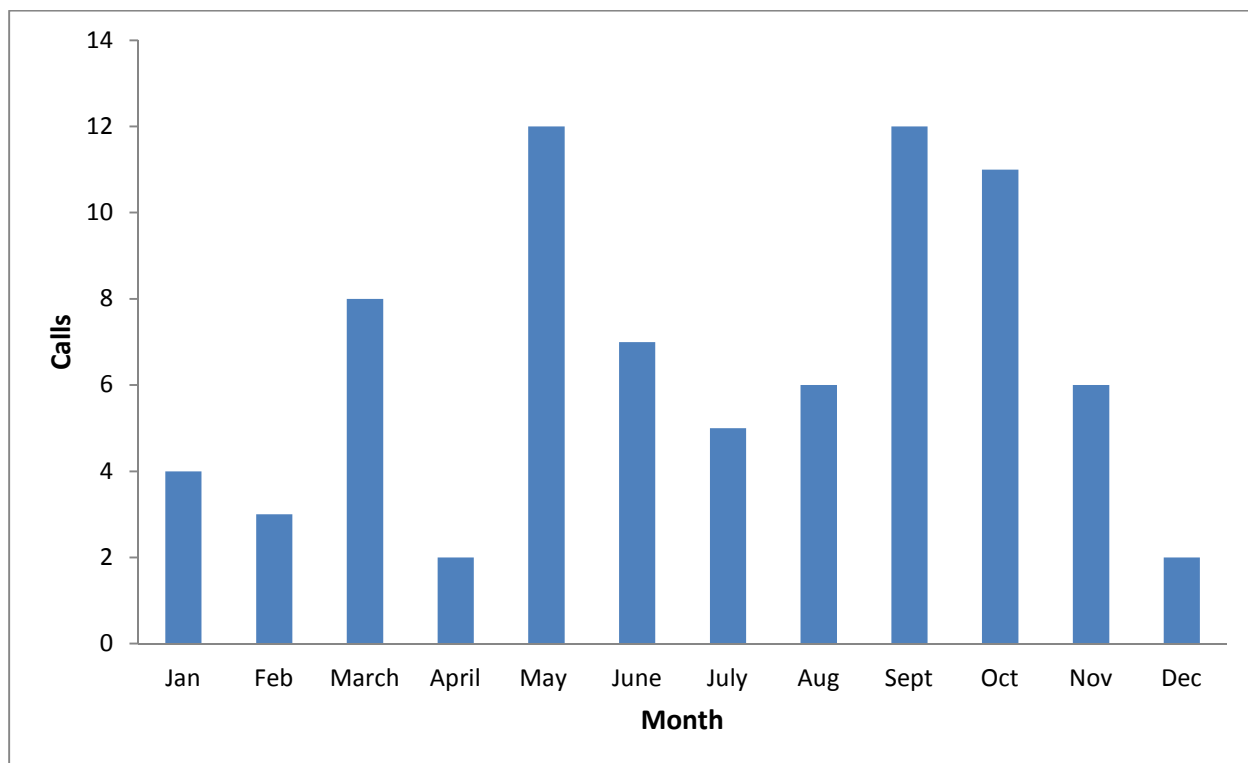
PREFACE

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

A. OVERVIEW OF NEW CONTACTS

1. The Law Society of British Columbia (the “LSBC”) Equity Ombudsperson Program (the “Program”) reports there were 78 new contacts made by individuals during the reporting period January 1 to December 31, 2013 (the “Reporting Period”). These were contacts made by individuals with a new matter. Of the 78 new contacts, 48 of these contacts were within the Mandate (as defined below) of the Program. Further, each individual who made contact with the Ombudsperson may have contacted the Program on the new matter on a number of occasions. As a result, the total number of contacts made with the Program during this period was 245.
2. Table 1 displays the distribution of the 78 new contacts made with the Program during the Reporting Period:

TABLE 1: 78 New Contacts—2013 (Including outside the Mandate)



¹ Mandate = Calls from lawyers, articling students and staff dealing with issues arising from the prohibited grounds of discrimination, including workplace/personal harassment.

3. The means of initial contact used by these individuals is distributed as follows: 22 (28%) made in person, 40 (51%) used the telephone, 14 (18%) used email, and 2 (3%) used regular mail. It is interesting to note that there has been a 13% increase in the use of email to make contact with the Ombudsperson and similarly, there is a 13 % increase in contacts made after an event or a presentation given by the Ombudsperson compared to 2012. For the purposes of this report, the Ombudsperson may refer to the individual who makes contact as the “Caller” regardless of how the individual made initial contact.
4. Further, of the 78 new contacts with the Program, 68 (87%) were made by women and 10 (13%) were made by men. There is no significant change in the percentage of contacts made by either gender.
5. Table 2 notes the total new contacts made with the Program since 2009 and their geographic distribution throughout the Province of British Columbia:

TABLE 2: Geographic Distribution of the Contacts—2009-2013

	2009	2010	2011	2012	2013
Total Contacts:	258	260	256	261	245
Vancouver (GVRD ²):	128	135	140	133	122
Victoria:	64	65	60	58	54
Rest of BC	32	32	24	31	39
Outside the Mandate ³ :	34	28	32	39	30
NOTE:					
¹ Contacts = All email, phone, in person (meeting and/or after a presentation), fax and mail contacts made with the Program. Some contacts may have resulted in more than one issue.					
² Greater Vancouver Regional District (GVRD) = the municipalities and cities that make up the GVRD of Vancouver, West Vancouver, North Vancouver, the District of North Vancouver, Burnaby, Richmond, New Westminster, Surrey, Delta, White Rock, the City of Langley, Coquitlam, Port Coquitlam, Port Moody, Anmore, Pitt Meadow, Maple Ridge and the University Endowment Lands.					
³ Outside Mandate = Callers are from the public and/ or lawyers dealing with issues not within the Mandate of the Program.					

6. Table 3 identifies the profile of the 215 contacts made within the Mandate by 48 Callers, based on position, gender and size of firm:

TABLE 3: Profile Distribution of total contacts made by Callers in the Mandate—2009-2013

Profile Distribution:	2009	2010	2011	2012	2013
Position					
Associates	53	58	56	54	51
Partners	38	26	21	23	16
Students	11	16	19	20	17
Articling Students	50	58	52	56	58
Support Staff	72	74	76	69	73
Gender					
Females	178	191	189	179	176
Males	46	41	35	43	39
Size of Firm in (Percent %)					
Small (1-10)	42%	51%	42%	40%	43%
Medium (10-50)	32%	20%	28%	35%	36%
Large (50+)	24%	29%	30%	25%	21%

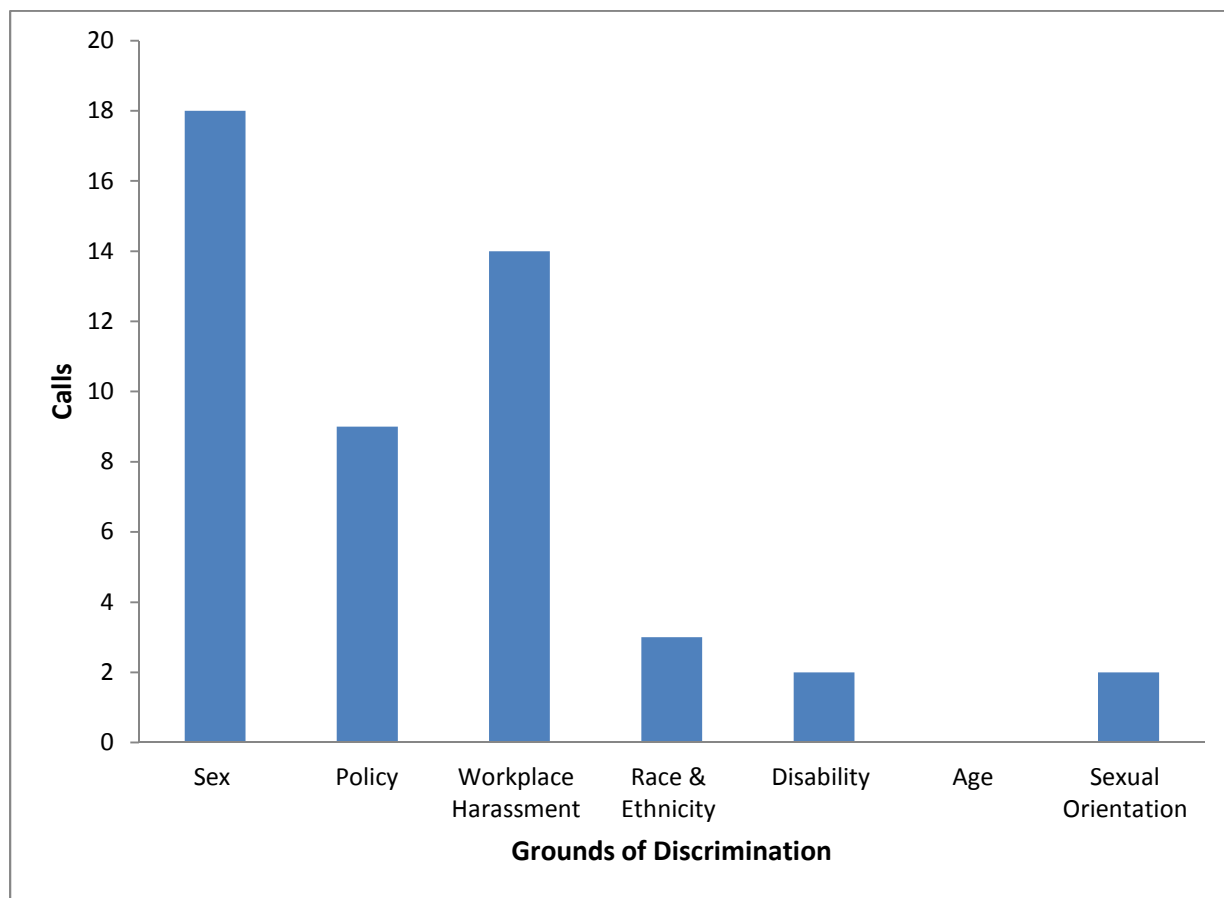
7. The Ombudsperson notes that in 2013 there was no significant change in the profile of the Caller compared to previous 4 years.

B. GROUNDS OF COMPLAINT, NARRATIVE EXAMPLES AND THE OMBUDSPERSON'S OBSERVATIONS:

1. In order for the reader to appreciate the nature and types of complaints, the Ombudsperson is providing the following: a) Table 4, which displays the grounds of discrimination raised by the Caller, based on the following categories: sex/gender, disability, race/ethnicity, religion, age, sexual orientation, policy, and workplace/personal harassment; b) narrative examples that illustrate the nature and types of complaints. The examples are taken from the the last 5 years of the Program to ensure anonymity and confidentiality for the Caller; and c) the Ombudsperson's observations.

- a) The following Table displays the various grounds of discrimination raised by the Callers and the number of complaints in each category:

TABLE 4: Grounds of Discrimination raised by the Caller—2013



- b) The Ombudsperson provides the following narrative examples:

Based on sex/gender:

- One female lawyer complained that when she approached her law firm requesting maternity leave, the attitude in the firm shifted and she was not given files of significance.
- One female lawyer complained that a male partner at the firm spoke to her about getting pregnant and said that he had a “wife” and she would find it difficult to

have a law practice with a family, and he thought he should share this advice with her, before she embarked on getting pregnant.

- One female lawyer complained that a senior male lawyer leaned over and tried to kiss her while driving to the courthouse. He had a history of remarking on her appearance.

Policy:

- One female lawyer complained of breach of the firm's parental leave policy. She stated that throughout her leave she was asked to come in to the firm and never received the proper leave, even though she had formally applied to take the firm's parental leave and the same was approved.

Based on disability:

- One male lawyer asked that he be moved to a quiet area in the law firm but his request was denied. This request was made to accommodate his disability.
- One law firm accepted a female lawyer with a disability but made it difficult for her to function. When interviewed, she was promised the firm would accommodate her disability but in practice the firm was not willing to incur any costs to accommodate the same.

Based on race and ethnicity:

- One male lawyer was asked what was under his turban.
- One female lawyer associate complained that she was asked inappropriate questions about her race and cultural customs during a job interview by a law firm.
- One female was told in an interview that all the women from her culture were exotic.

Based on personal/workplace harassment:

- One articling student was consistently given positive feedback by her male principal but harassed verbally by a senior female lawyer without any basis. The

comments made by this senior female lawyer were made in front of staff on various occasions leaving her feeling humiliated.

(Please see previous reports for further examples.)

c) Observations made by the Ombudsperson:

- There was no significant change in the nature and number of the complaints compared to 2012;
- Discrimination based on sex/gender continues to be the greatest source of complaints;
- Discrimination based on Workplace Harassment is the second greatest source of complaints, following the trend of previous years;
- The Ombudsperson did not receive any complaints based on age during the Term; and
- The narrative examples follow the same factual patterns from year to year. There is no factual pattern that is significantly different and no new trend was noted.

C. SERVICES PROVIDED TO CALLERS

1. Table 5 denotes the services provided to the Caller. These services are advertised on the LSBC website and in the Ombudsperson pamphlet. Pamphlets are provided to articling students, lawyers and support staff by the Ombudsperson at presentations, training sessions and at information tables.

TABLE 5: Services Provided —2004-Present

CALLERS:	SERVICES:
LAW FIRMS	<ul style="list-style-type: none"> • Advise them of their obligations under the Human Rights Act and the LSBC Code of Conduct- January 2013 • Confidentially assist them with the particular problem, including discussing strategies, obligations and possible training • Provide information to firms on education seminars or

	training workshops
COMPLAINANTS	<ul style="list-style-type: none"> • Listen to the complainant and provide safe haven for their personal story • Assist in identifying and clarifying the issues for the complainant • Provide the complainant with his or her options, such as: 1) internal complaints process in their firm (as applicable), 2) formal complaint process at the LSBC, 3) mediation, 4) civil litigation and 5) the BC Human Rights Tribunal including any costs, references for legal representation, remedies that may be available and time limits for the various avenues, as relevant • Mediation is offered to the complainant, where feasible. To date, only informal mediation sessions have taken place • Provide the complainant information on resources, such as Personal Performance Consultants (PPC) and Lawyers Assistance Program (LAP), as relevant • Direct them to relevant resource materials available from other organizations, including the LSBC and the BC Human Rights Tribunal
GENERAL INQUIRER	<p>Providing the inquirer with information about the:</p> <ul style="list-style-type: none"> • The Program mandate • Services offered by the Program • An information seminar on the Program • Reporting statistics gathered by the Program
CALLER (outside Mandate)	<ul style="list-style-type: none"> • All callers outside the mandate are re-directed. Minimum time is spent by the Ombudsperson on these callers • The Program has a detailed telephone voice mail, in order that calls outside the Mandate be properly screened • The Ombudsperson does not assist these callers beyond the initial contact

D. SUMMARY OF THE CALLS

1. Table 6 notes the distribution of all the issues, as raised by a Caller, within the Mandate, during the Reporting Period:

TABLE 6: Issue Distribution—2009-2013

Issues addressed	2009	2010	2011	2012	2013
1. Information, direction or referral:					
a) General Information	24	30	24	20	24
b) Office Policy Concerns	14	16	15	14	18
2. Discussion/Request:					
a) Article, Training or Presentation	26	14	21	25	18
3. Discuss specific issue or concern:					
Discrimination:					
a) Gender	17	24	20	21	29
b) Race/Ethnicity	12	14	14	9	13
c) Disability	16	10	10	14	12
d) Sexual Orientation ¹	0	0	4	0	9
e) Age ²	n/a	n/a	n/a	4	0
Harassment:					
a) Sexual harassment	59	60	55	59	51
b) Workplace/Personal harassment	37	38	37	33	38
Specific Policy Concern:					
a) Maternity leave policy	18	15	13	14	12
b) Other policies	1	2	1	3	2
Inappropriate questions asked in the interview Process²	6	9	10	6	7
¹ New Category in 2009					
² New Category in 2012					

E. OUTREACH AND EDUCATION:

1. In 2013, the Ombudsperson travelled to:

- Cowichan Valley and delivered the *Equity Ombudsperson Respectful Workplace Course* (the "Course") which entitles the participants to receive CPD credits. The participants appreciated the LSBC's initiative of bringing the Ombudsperson out to the Valley;
 - Victoria to present to articling students at PLTC (approx.70+ PLTC students);
 - Victoria to present to the Victoria Legal Support Staff Association (25 attendees); and
 - Victoria to present to Camosun College, Legal Assistant Students (36 students attended).
2. The Ombudsperson provided pamphlets, presentations and follow up to:
- Women's Lawyer Forum/CBA (the "WLF") members at the WLF launch;
 - WLF members at their AGM;
 - WLF members at their Mentoring Event; and
 - PLTC students in Vancouver at the LSBC.
3. The Ombudsperson continued to work with Continuing Legal Education Society of British Columbia (CLE) to develop the web based module for the Program (the "Module"). The Ombudsperson is relying on the expertise of CLE. Further, the deployment of the Module is dependent upon CLE's resources and schedule. As CLE has volunteered to assist in the development of the Module with no cost to the Program, the exact date for the completion of the Module is uncertain. However, it is anticipated that the first draft of the contents of the Module would be completed in 2014. Given the sensitivity of the issues being addressed CLE and the Ombudsperson have expended much time on the method and approach to be utilized.

As stated in the 2012 Annual Report of the Equity Ombudsperson, the purpose of the Module is to: a) inform members, articling students and support staff on the important issues facing Callers; b) enhance awareness of the Program and the LSBC's commitment to a respectful workplace for all; c) be available for use by firms to educate their lawyers and staff internally; and d) assist the Program to reach a larger and remote target audience.

**F. Federation of Law Societies, Law Societies Equity Network (LSEN) -
TRAINING AND EDUCATION FOR OMBUDSPERSON:**

1. The Ombudsperson travelled to Nova Scotia to meet with the members of LSEN. LSBC staff and the Ombudspersons meet every 18 months in a convenient jurisdiction to exchange information/ initiatives, receive training and provide support. In 2013, the topic of discussion was cultural competency. This formalized group has been very successful in providing support and education. This group has also been effective in sharing and exchanging resources between the various jurisdictions. This has resulted in all the law societies benefiting by eliminating costs associated with duplicating resources.

G. OBJECTIVES ACHIEVED DURING 2013:

1. The Ombudsperson achieved the following objectives during the Term:
 - To raise awareness and knowledge of the Program;
 - To provide general support/education to the legal profession in British Columbia about respectful workplace issues;
 - To provide consultation on workplace policies and initiatives, as requested;
 - To continue to disseminate the Ombudsperson informational brochure;
 - To follow-up on contacts made through seminars, presentations, the confidential phone line, e-mail and post-office box;
 - To exchange information with provincial Equity Ombudsperson counterparts and other equity experts with the other law societies;
 - To developing the Module (a web based training module with CLE) for respectful workplace behaviour;
 - To develop and maintain a relationship with the Equity Staff Lawyer, Policy and Legal Services, so there is enhanced communication between the Ombudsperson and the LSBC;

- To serve as liaison/resource for the LSBC's Equity and Diversity Advisory Committee so as to ensure and encourage exchange of information; and
- To deliver the information session/ the Course to various locations in British Columbia (outside of the GVRD) as time and the budget permits.

H. CONCLUSIONS:

1. The Ombudsperson is pleased to report that the Program has been enhanced by the Ombudsperson's ability/resources to travel outside the GVRD. The Ombudsperson has received very positive feedback at the conclusion of delivering the Course. Participants stated that they were pleased that the LSBC sent resources to their community.
2. At this time, the Ombudsperson reports that she is committed to continue to work on the goals as noted in section G of this report and will be travelling to two geographic locations, outside the GVRD annually.
3. She will continue to attend and support the Equity Diversity Advisory Committee meetings by working with them on their annual initiatives and being available, as requested.
4. The Ombudsperson is continuing work with CLE to make progress on the Module so the same is completed in 2014.
5. The Ombudsperson suggests that the Program material and the 2013 Code of Conduct may require reviewing in light of the amendments made by WorkSafe BC to the *Workers Compensation Act* and related *Guidelines* (Relevant Sections: 115,116, and 117) and (Guidelines- D3-115 (1)-3 Bullying and Harassment).

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

Background

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

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

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

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

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

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

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

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

i) **Description of Service since 2006**

The Equity Ombudsperson:

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

ii) **Objective of the Program**

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

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

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

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

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