The Law Society of British Columbia

Agenda

Benchers

Date: Friday, December 5, 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.***

CONSENT AGENDA:

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

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1	Consent Agenda	1	President		
	• Minutes of October 31, 2014 meeting (regular session)			Tab 1.1	Approval
	• Minutes of October 31, 2014 meeting (*in camera* session)			Tab 1.2	Approval
	• Appointment to the Legal Services Society Board of Directors			Tab 1.3	Decision
	• Proposed Amendment to the *BC Code of Professional Conduct*: Appendix C: Real Property Issues			Tab 1.4	Approval
	• Family Law Task Force: Extension of Time to Complete Mandate			Tab 1.5	Approval
	• 2015 Fees Schedule			Tab 1.6	Approval
	• Tribunal Program Review Task Force: Interim Report and Recommendations			Tab 1.7	Approval

The Law Society of British Columbia

Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
DISCUSSION/DECISION					
2	2015-2017 Strategic Plan Development Update	30	President/CEO	Tab 2	Briefing
3	Election of an Appointed Bencher to the 2015 Executive Committee	5	Appointed Benchers		Decision
GUEST PRESENTATIONS					
4	CLEBC Annual Update	20	Ron Friesen, CEO, CLEBC	Tab 4	Briefing
REPORTS					
5	Legal Services Regulatory Framework Task Force Report	30	Art Vertlieb, QC	Tab 5	Briefing and decision
6	• Justicia Project Recommendations: Demographic Data Collection, Parental Leave & Flexible Work Arrangements • Respectful Workplace Model Policy Update	30	Maria Morellato, QC	Tab 6.1 Tab 6.2	Briefing and decision
7	Governance Committee: Year-end Report and Recommendations	15	Miriam Kresivo, QC	Tab 7	Briefing and decision
8	2014 Advisory Committees: Year-end Reports	20	David Mossop, QC Maria Morellato, QC David Crossin, QC Tony Wilson	Tab 8	Briefing
9	President's Report	15	President	Oral report (update on key issues)	Briefing

The Law Society of British Columbia

Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
10	CEO's Report	15	CEO	*(To be circulated electronically before the meeting)*	Briefing
11	Briefing by the Law Society's Member of the Federation Council	5	Gavin Hume, QC		Briefing
12	2012-2014 Strategic Plan Implementation Update	5	President/CEO		Briefing
13	Report on Election of Benchers to the 2015 Executive Committee	5	President		Briefing
14	Report on Outstanding Hearing & Review Decisions	4	President	(*To be circulated at the meeting*)	Briefing
FOR INFORMATION					
15	• Complainants' Review Committee Activity Report – 2014 to date • National Discipline Standards - Quarterly Reporting on Standard 9			Tab 15.1 Tab 15.2	Information Information
IN CAMERA					
16	*In camera* • Bencher concerns • Other business	20	President/CEO		Discussion/ Decision

The Law Society of British Columbia

Minutes

Benchers

Date: Friday, October 31, 2014

Present:

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

Excused: Not applicable

Staff Present:

Tim McGee, QC
Deborah Armour
Taylore Ashlie
Lance Cooke
Su Forbes, QC
Andrea Hilland
Jeffrey Hoskins, QC
Michael Lucas
Bill McIntosh
Jeanette McPhee
Doug Munro
Alan Treleaven
Adam Whitcombe

Guests:	Dom Bautista	Executive Director, Law Courts Center
	Johanne Blenkin	Chief Executive Officer, Courthouse Libraries BC
	Kevin Boonstra	Legal Counsel, Trinity Western University
	Kari Boyle	Executive Director, Mediate BC Society
	Anne Chopra	Equity Ombudsperson, Law Society of BC
	barbara findlay, QC	Member, Law Society of BC
	Ron Friesen	CEO, Continuing Legal Education Society of BC
	Richard Fyfe, QC	Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General
	Jeremy Hainsworth	Reporter, Lawyers Weekly
	Gavin Hume, QC	Law Society of BC Member, Council of the Federation of Law Societies of Canada
	Tamara Hunter	Board Chair, Law Foundation of BC
	Bob Kuhn	President, Trinity Western University
	Dominique Marcotte	Director, BC Paralegal Association
	Michael Mulligan	Member, Law Society of BC
	Lorna O'Grady	Director of Administration, Human Resources and Public Programs, Canadian Bar Association, BC Branch
	Earl Phillips	Executive Director, Trinity Western University
	Wayne Robertson, QC	Executive Director, Law Foundation of BC
	Alan Ross	Board Chair, Courthouse Libraries BC
	Alex Shorten	Vice President, Canadian Bar Association, BC Branch
	Geoffrey Trotter	Member, Law Society of BC
	Prof. Jeremy Webber	Dean of Law, University of Victoria

CONSENT AGENDA

1. Minutes

a. Minutes

The minute of the September 17, 2014 email authorization was approved as circulated.

The minute of the meeting held on September 26, 2014 was approved as circulated.

The *in camera* minute of the meeting held on September 26, 2014 was approved as circulated.

b. Resolutions

The following resolutions were passed unanimously and by consent.

- Federation of Law Societies of Canada: Deferral of National Requirement for Joint and Dual Law Degree Programs until 2017

  BE IT RESOLVED to approve the deferral of the application of the National Requirement to joint and dual law degree programs to January 2017.

- Land Title and Survey Authority of BC Board of Directors: Law Society Nomination

  BE IT RESOLVED to re-nominate William (Bill) Cottick for appointment to the Land Title and Survey Authority Board of Directors, for a second three-year term commencing April 1, 2015.

- Proposed Rules Amendments (Cloud Computing and Retention and Security of Records)

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

  1. ***In Rule 1, by adding the following definitions:***

  "metadata" includes the following information generated in respect of an electronic record:

  (a) creation date;

  (b) modification dates;

  (c) printing information;

  (d) pre-edit data from earlier drafts;

(e) identity of an individual responsible for creating, modifying or printing the record;

"record" includes metadata associated with an electronic record;**.**

2. By adding the following rule:

Failure to produce records on complaint investigation

3-5.01(1) Subject to subrules (2) and (3), a lawyer who is required under Rule 3-5 *[Investigation of complaints]* or 4-43 *[Investigation of books and accounts]* to produce and permit the copying of files, documents and other records, provide information or attend an interview and answer questions and who fails or refuses to do so is suspended until he or she has complied with the requirement to the satisfaction of the Executive Director.

(2) When there are special circumstances, the Discipline Committee may, in its discretion, order that

(a) a lawyer not be suspended under subrule (1), or

(b) a suspension under this Rule be delayed for a specified period of time.

(3) At least 7 days before a suspension under this Rule can take effect, the Executive Director must deliver to the lawyer notice of the following:

(a) the date on which the suspension will take effect;

(b) the reasons for the suspension;

(c) the means by which the lawyer may apply to the Discipline Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

3. By rescinding Rule 3-43.1 and substituting the following:

Standards of financial responsibility

3-43.1 Instances in which a lawyer has failed to meet a minimum standard of financial responsibility include, but are not limited to, the following:

(a) a monetary judgment is entered against a lawyer who does not satisfy the judgment within 7 days after the date of entry;

(b) a lawyer is an insolvent lawyer;

(c) a lawyer does not produce and permit the copying of records and other evidence or provide explanations as required under Rule 3-79(2)(b) *[Compliance audit of books, records and accounts]*;

(d) a lawyer does not deliver a trust report as required under Rule 3-72 *[Trust report]* or 3-75(4) *[Report of accountant when required]*;

(e) a lawyer does not report and pay the trust administration fee to the Society as required under Rule 2-72.2 *[Trust administration fee]*;

(f) a lawyer does not produce electronic accounting records when required under the Act or these Rules in a form required under Rule 10-4(2) *[Records]*.

4. In Rule 3-59:

(a) by adding the following subrules:

(0.1) In this Rule, **"supporting document"** includes

(a) validated deposit receipts,

(b) periodic bank statements,

(c) passbooks,

(d) cancelled and voided cheques,

(e) bank vouchers and similar documents,

(f) vendor invoices, and

(g) bills for fees, charges and disbursements.

(2.1) A lawyer who maintains accounting records, including supporting documents, in electronic form, must ensure that

(a) all records and documents are maintained in a way that will allow compliance with Rule 10-4(2) *[Records]*,

(b) copies of both sides of all paper records and documents, including any blank pages, are retained in a manner that indicates that they are two sides of the same document, and

(c) there is a clear indication, with respect to each financial transaction, of

(i) the date of the transaction,

(ii) the individual who performed the transaction, and

(iii) all additions, deletions or modifications to the accounting record and the individual who made each of them.***;***

(b) in subrule (2), by rescinding the preamble and paragraph (c) and substituting the following:

(2) A lawyer must maintain accounting records, including supporting documents, in

(c) an electronic form in compliance with subrule (2.1)***., and***

(c) by rescinding subrule (4) and substituting the following:

(4) A lawyer must retain all supporting documents for both trust and general accounts.

5. In Rule 3-61.1:

(a) in subrule (2) by:

(i) striking out "and***" at the end of paragraph (a)(ii),***

(ii) striking out the period at the end of paragraph (b)(v) and substituting ", and***", and***

(iii) adding the following paragraph:

(c) indicate all dates on which the receipt was created or modified.***, and***

(b) in subrule (3) by:

(i) striking out "and***" at the end of paragraph (d),***

(ii) striking out the period at the end of paragraph (e) and substituting ", and***", and***

(iii) adding the following paragraph:

(f) all dates on which the receipt was created or modified.

6. In Rule 3-62(1), by adding the following paragraph:

(a.1) indicating all dates on which the bill was created or modified,.

7. In Rule 3-65, by rescinding subrule (3) and substituting the following:

(2.1) Each monthly trust reconciliation prepared under subrule (1) must include the date on which it was prepared.

(3) A lawyer must retain for at least 10 years

(a) each monthly trust reconciliation prepared under subrule (1), and

(b) the detailed listings described in subrule (2) as records supporting the monthly trust reconciliations.

8. By rescinding Rule 3-68 and substituting the following:

Retention of records

3-68 (0.1) This Rule applies to records referred to in Rules 3-59 to 3-62.

(1) A lawyer must keep his or her records for as long as the records apply to money held in trust and for at least 10 years from the final accounting transaction.

(2) A lawyer must keep his or her records, other than electronic records, at his or her chief place of practice in British Columbia for as long as the records apply to money held in trust and, in any case, for at least 3 years.

9. In Rule 4-43, by adding the following subrule:

(1.4) A request under subrule (1.1) must be refused unless the records in question are retained in a system of storage of electronic records that permits the segregation of personal information in a practical manner in order to comply with the request.

10. By adding the following rules:

Records

10-4 (1) In this Rule, **"storage provider"** means any entity storing or processing records outside of a lawyer's office, whether or not for payment.

(2) When required under the Act or these Rules, a lawyer must, on demand, promptly produce records in any or all of the following forms:

(a) printed in a comprehensible format;

(b) accessed on a read-only basis;

(c) exported to an electronic format that allows access to the records in a comprehensible format.

(3) A lawyer who is required to produce records under the Act or these Rules must not alter, delete, destroy, remove or otherwise interfere with any record that the lawyer is required to produce, except with the written consent of the Executive Director.

(4) A lawyer must not maintain records, including electronic records, with a storage provider unless the lawyer

(a) retains custody and control of the records,

(b) ensures that ownership of the records does not pass to another party,

(c) is capable of complying with a demand under the Act or these Rules to produce the records and provide access to them,

(d) ensures that the storage provider maintains the records securely without

(i) accessing or copying them except as is necessary to provide the service obtained by the lawyer,

(ii) allowing unauthorized access to or copying or acquisition of the records, or

(iii) failing to destroy the records completely and permanently on instructions from the lawyer, and

(e) enters into a written agreement with the storage provider that is consistent with the lawyer's obligations under the Act and these Rules.

(5) If the Executive Committee declares, by resolution, that a specific entity is not a permitted storage provider for the purpose of compliance with this Rule, no lawyer is permitted to maintain records of any kind with that entity.

Security of records

10-5(1) A lawyer must protect his or her records and the information contained in them by making reasonable security arrangements against all risks of loss, destruction and unauthorized access, use or disclosure.

(2) A lawyer must immediately notify the Executive Director in writing of all the relevant circumstances if the lawyer has reason to believe that

(a) he or she has lost custody or control of any of the lawyer's records for any reason,

(b) anyone has improperly accessed or copied any of the lawyer's records, or

(c) a third party has failed to destroy records completely and permanently despite instructions from the lawyer to do so.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

Ms. Lindsay noted that the work of the Cloud Computing Working Group is now completed. The Benchers then decided by consensus to dissolve the Cloud Computing Working Group.

- Ethics Committee: Rule 4.2-6 – Possible Elimination of Rule

BE IT RESOLVED to rescind Law Society Rule 4.2-6:

~~**Former firm of current judge or master**~~

4.2-6 [rescinded10/2014]~~A lawyermustnotstateonanyletterheadorbusinesscardorinany other marketingactivitythenameofajudgeormasterasbeingapredecessororformermember ofthelawyer's firm.~~

DISCUSSION/ DECISION

2. Consideration of the October 30, 2014 Referendum Result

Ms. Lindsay reported that a referendum of the members of the Law Society has been conducted on the following resolution:

> *Resolved that the Benchers implement the resolution of the members passed at the special general meeting of the Law Society held on June 10, 2014, and declare that the proposed law school at Trinity Western University is not an approved faculty of law for the purpose of the Law Society's admissions program.*

On October 30, 2014 the votes on 8,039 valid ballots were counted, with 5,951 (74%) in favour and 2,088 (26%) opposed. Thirteen thousand, five hundred thirty practising, non-practising and retired lawyers were entitled to vote.

Ms. Lindsay referred the Benchers to a letter dated October 30, 2014 from Trinity Western University (TWU) President Robert Kuhn, received by email (with a number of attachments) following communication of the referendum results to TWU, and circulated by Ms. Lindsay's email (with the attachments) to the Benchers during the evening of October 30. Ms. Lindsay confirmed that subject to a request by a Bencher or Benchers for additional time to review and consider the TWU letter and attachments, a motion to implement the referendum result will be presented on behalf of the Executive Committee.

Mr. Crossin moved (seconded by Mr. Van Ommen) that the Benchers declare, pursuant to Law Society Rule 2-27 (4.1), Trinity Western University's proposed School of Law is not an approved faculty of law.

Mr. Crossin invited TWU President Robert Kuhn to address the Benchers. Mr. Kuhn declined the invitation. Mr. Crossin confirmed that the Benchers' duty is to determine the appropriate response of the Law Society to any issue that may arise, such that the public interest in the administration of justice is protected.

Mr. Crossin also confirmed that the Law Society remains ready and willing to enter into discussion with TWU regarding amendment of TWU's community covenant.

There being no further discussion, Ms. Lindsay called for a vote on the motion by show of hands.

The following Benchers voted for the motion: Haydn Acheson, Joseph Arvay, QC, Satwinder Bains, Pinder Cheema, QC, David Corey, David Crossin, QC, Jeevyn Dhaliwal, Lynal Doerksen, Thomas Fellhauer, Craig Ferris, Martin Finch, QC, Miriam Kresivo, QC, Dean Lawton, Peter Lloyd, FCA, Jamie Maclaren, Sharon Matthews, QC, Ben Meisner, Nancy Merrill, Lee Ongman,

Phil Riddell, Elizabeth Rowbotham, Herman Van Ommen, QC, Cameron Ward, Sarah Westwood and Tony Wilson.

The following Bencher voted against the motion: Claude Richmond.

The following Benchers abstained: Maria Morellato, QC, David Mossop, QC, Greg Petrisor and Ken Walker, QC.

The motion was carried (25 in favour, one opposed and four abstained).

3. Governance Committee Recommendations: Amendments to General Meeting Rules Regarding Webcasting and Electronic Voting

Governance Committee Chair Miriam Kresivo, QC briefed the Benchers on the Committee's recent review of the Rules and procedures governing the Law Society's conduct of general meetings. She noted that a number of complaints have been received by the Law Society from BC lawyers in relation to various restrictions in the current Rules regarding participation and voting at general meeting—including the requirement to attend at one of the designated meeting locations to participate in discussions and to vote on motions and resolutions.

Ms. Kresivo confirmed the Governance Committee's recommendation that the strongly positive results of a 1993 referendum of the Law Society membership can and should be relied upon by the Benchers as authority to request the Act and Rules Committee to proceed with appropriate Rules amendments to permit online participation and electronic voting at general meetings. Ms. Kresivo also confirmed the Committee's recommendations that:

- those changes will be in addition to the current Rules regarding in-person attendance at designated general meeting locations, and telephone connection of satellite locations to the main meeting

- following further deliberation, the Committee expects to report to the Benchers in early 2015 regarding seeking member approval for amendments to provide for only one physical location for general meetings and electronic distribution of notices and other meeting materials

The Benchers agreed with the Committee's recommendations.

GUEST PRESENTATIONS

4. Law Foundation of BC Annual Review

Board Chair Tamara Hunter briefed the Benchers on the affairs of the Law Foundation of BC. She reviewed the Foundation's history, financial situation, governance structure, grant-making principles and strategic priorities. Ms. Hunter noted the Law Society's financial contribution to the Foundation's support for the provision of pro bono legal services in BC.

Ms. Hunter's PowerPoint presentation is attached as Appendix 1 to these minutes.

Ms. Lindsay thanked Ms. Hunter for her presentation, and for her valuable contributions to the governance of the Foundation as Chair of the Board of Governors for the past year, as a Governor since 2010. Ms. Lindsay also noted the distinguished service record of the Law Foundation's Executive Director, Wayne Robertson, QC.

5. Courthouse Libraries BC (CLBC) Biennial Review

CLBC Board Chair Alan Ross addressed the Benchers, providing historical background and context and then an assessment of CLBC's current financial situation.

Mr. Ross stressed the significance of the imminent 18% reduction of the Law Foundation's annual operating grant to CLBC for 2015, which will reduce CLBC's funding envelope by about $500,000 (from $4.7 million to $4.2 million). He outlined a number of cost-reduction measures already implemented by CLBC and confirmed that further reductions will require cutting core services. CEO Johanne Blenkin added that CLBC eliminated 142 print editions from its service offering in 2014; she pointed out that many of those are not available as digital editions.

Mr. Ross confirmed that in 2015 CLBC will request the Law Society to increase the current CLBC levy of $190 in the annual practice fee for 2016. He noted that replacing the lost Law Foundation funding would require a levy increase of about $50.

Mr. Ross commented on the importance of the access to justice aspect of CLBC's work, noting that about half of the service requests received by CLBC in 2014 were from the public.

REPORTS

6. 2015-2017 Strategic Planning Update

Mr. McGee updated the Benchers on progress in development of the 2015-2015 Strategic Plan. He noted that the Executive Committee has reviewed the results of the Benchers' September 25 environmental scan session, referring to his memorandum (at page 127 of the agenda package) for an outline of four thematic areas and related potential initiatives identified at that session. Mr. McGee outlined the Executive Committee's plan to have staff circulate a survey to the Benchers following the October 31 meeting: asking them to identify their top two or three strategies and initiatives under each of these four themes:

- Access to Legal Services
- Alternative Business Structures (ABSs)
- Public opinion of/confidence in the justice system
- Admission program reform

Mr. McGee noted that the Executive Committee recognizes that the Benchers may have additional ideas, and that the survey will include a 'verbatim comments' section. He confirmed that the Executive Committee will review the Benchers' survey responses at their November 20 meeting, and that staff will then develop a draft 2015-2017 Strategic Plan for the Benchers' consideration at their December 5 meeting.

7. Interim Report of the Tribunal Program Review Task Force

Ken Walker, QC briefed the Benchers as Chair of the Tribunal Program Review Task Force. After introducing the task force members and Law Society staff contact,[1] Mr. Walker outlined issues that the task force has been considering, including difficulties experienced by the Law Society's Hearing Administrator in overcoming Bencher conflicts in setting hearing panels, and the challenges encountered endeavouring to enhance both continuity and renewal of the membership of hearing panel pools.

Mr. Walker noted that all current hearing panel pools will dissolve at the end of 2014. He will present the task force's written interim report at the December 5 Bencher meeting, including a recommendation to extend the current pools through 2015. Mr. Walker expects the task force will also recommend that in the event a panel is reduced from three members to two, the two remaining panel members may carry on at the discretion of the President.

[1] Benchers: Ken Walker, QC (Chair)Haydn Acheson, Pinder Cheema, QC and David Mossop, QC. Non-Benchers: David Layton and Linda Michaluk. Staff contact: Jeffrey Hoskins, QC.

8. Financial Report to September 30, 2014 – Q3 Year-to-date Financial Results

Finance and Audit Committee Chair Ken Walker, QC referred the Benchers to the written report prepared by Jeanette McPhee, CFO & Director of Trust Regulation (at page 133 of the agenda package) and asked Ms. McPhee to provide highlights.

Ms. McPhee reported that the Law Society's 2014 operating expenses to September 30 total $654,000 (4.5% over budget): due primarily to costs associated with the TWU law school application process as well as higher than expected external counsel fees. These excess costs were partially offset by compensation and staff-related savings and forensic accounting fee savings. Ms. McPhee also reported that Law Society's 2014 revenue to September 30 is $346,000 (2.2% ahead of budget): due to an increase in PLTC students, unbudgeted recoveries, and increased interest income, offset by lower than expected practice fees.

Ms. McPhee confirmed that the Law Society is forecasting a 2014 negative variance of $430,000 for the General Fund (excluding capital and the Trust Administration Fee). She noted that explanatory notes for that forecast are included in her written report—at page 134 of the agenda package:

> Operating Revenue
>
> Revenues are projected to be ahead of budget by $255,000 (1.3%). Practicing membership revenue is projected at 11,115 members, 75 below the 2014 budget, a negative variance of $105,000. PLTC revenues are projected at 470 students, a positive variance of $50,000. We are also projecting higher recoveries of $155,000 and $40,000 of additional interest income.
>
> Lease revenues will have a positive variance of approximately $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
>
> Operating expenses are projected to have a negative variance to budget of $684,000 (3.4%). This variance excludes those expenses that were to be funded from the reserve in 2014, as approved by the Benchers during the 2014 budgeting process.
>
> There are three main areas of unanticipated costs:

1) The unbudgeted costs related to the TWU application process are projected at $366,000, including meeting costs, legal opinions, and referendum costs.

2) External counsel fees are projected at $575,000 over budget, with the increase due to a number of factors. There have been a higher percentage of complex files, including an increased number of 4-43 forensic files. In addition, there have been a number of files handled by the investigations and discipline departments that have been much more challenging than normal, causing a significant increase in workload for a number of staff members. Also, with the staff vacancies that occurred in 2013, and into 2014, there were a number of professional conduct files sent out to external counsel to ensure file timelines were addressed. The increase in external counsel fees is also reflective of the projected increase in number of hearing/review days in 2014. For 2014, the estimate is 80 hearing/review days, compared to an average of 44 per year over the past four years.

3) Building occupancy costs have increased, mainly related to an increase in property taxes and utilities.

We should note that some of these costs will be partially offset by savings related to staff compensation savings of $175,000 and forensic accounting fee savings of $155,000.

Mr. McGee noted that projecting external counsel fees for the coming year is an exercise in judgment, and is a core element of the budgeting process. He also confirmed that management always assesses carefully whether in-house counsel capacity can carry more load, and that assessment will be a key aspect of the 2016 budget-setting process to be conducted next year.

9. President's Report

Ms. Lindsay reported on various Law Society matters which have arisen since the last Bencher meeting, including:

a. Federation of Law Societies of Canada Conference and Council Meeting (October 7 – 10, Halifax)

i. Conference Theme: Access to Legal Services

Ms. Lindsay asked Mr. Riddell to brief the Benchers regarding his participation in a poverty simulation exercise and a tour of legal service provider organizations in the Halifax area. He did so, noting that considerable innovation and resourcefulness was evident in the operations he visited.

ii. National Committee on Accreditation (NCA)

Ms. Lindsay noted the value of NCA in assessing law schools and the quality of their curricula.

iii. 2014 Annual General Meeting (AGM) Member Resolution

Ms. Lindsay confirmed that the Executive Committee is considering the issues raised by the member resolution passed at the 2014 AGM, and will report to the Benchers in that regard at an upcoming meeting:

> *BE IT RESOLVED THAT the Law Society of British Columbia require all legal education programs recognized by it for admission to the bar to provide equal opportunity without discrimination on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, gender expression, gender identity, age or mental or physical disability, or conduct that is integral to and inseparable from identity for all persons involved in legal education – including faculty, administrators and employees (in hiring continuation, promotion and continuing faculty status), applicants for admission, enrolled students and graduates of those educational programs.*

Dean Jeremy Webber of the University of Victoria Faculty of Law commented on the pace of development, range and urgency of issues currently faced by the Federation of Law Societies.

iv. 2014 International Bar Association (IBA) Annual Conference (October 19 – 24, Tokyo, Japan)

Ms. Lindsay represented the Law Society at the 2014 IBA Annual Conference. Ms. Lindsay briefed the Benchers on several policy sessions she attended, on topics including:

- retention of lawyers in the profession, focusing on both generational and gender issues
- access to justice and legal services issues
- substance abuse in the legal profession
- legal regulation and compliance issues
- human rights in Zimbabwe

- Rule of Law issues, focusing on freedom of expression and freedom of the press

10. CEO's Report

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

- Introduction
- Federation of Law Society Matters
- Update on Process for Developing New 2015 – 2017 Strategic Plan
- International Institute of Law Association Chief Executives – Annual Conference

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

Gavin Hume, QC reported as the Law Society's member of the FLSC Council. He briefed the Benchers on matters addressed at the October 10 Council meeting in Halifax, including:

a. National Requirement Review Committee

The Federation Council has approved the establishment of a National Requirement Review Committee, with a mandate to consider, among other issues, whether a "non-discrimination" provision should be included in the National Requirement for approving law degrees.

b. Standing Committee on the *Model Code of Professional Conduct*

The Standing Committee presented a number of Model Code amendments for the Council's approval, on topics including: conflicts of interest, short-term legal services and incriminating physical evidence in criminal law. The Federation's member societies now need to consider if they should implement the changes made to the Model Code. The Standing Committee is consulting with the Federation's member law societies—among other bodies—on various topics, including consulting with witnesses, and duty to report.

c. Federation Budget Review

The Council approved an increase of $3.50 in the Federation's annual full-time fee equivalent assessment to the law societies, from $25.00 to $28.50.

d. Federation Governance Review Committee

A major review of the Federation's governance policies, processes and structure is underway. Considerable consultation with the Federation's member societies will be entailed in the review.

e. Report by the National Committee on Accreditation (NCA)

The NCA processes about 1,300 applications per year. Significant progress has been made toward aligning the NCA's curriculum with the Federation's national standards, with, more work still to be done in that regard.

f. National Admission Standards

Work continues on implementation of the Federation's national competency indicators by the member law societies. Work also continues on the challenging process of developing standards for the "good character" requirement set out in the enabling legislation of the Federation's various member societies.

12. Report on the Outstanding Hearing & Review Reports

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

The Benchers discussed other matters *in camera*.

WKM
2014-11-24


THE LAW
FOUNDATION
OF BRITISH COLUMBIA

Mandate

- Legal aid
- Legal education (professional legal education and public legal education)
- Law libraries
- Law reform
- Legal research

Vision

A society where access to justice is protected and advanced.

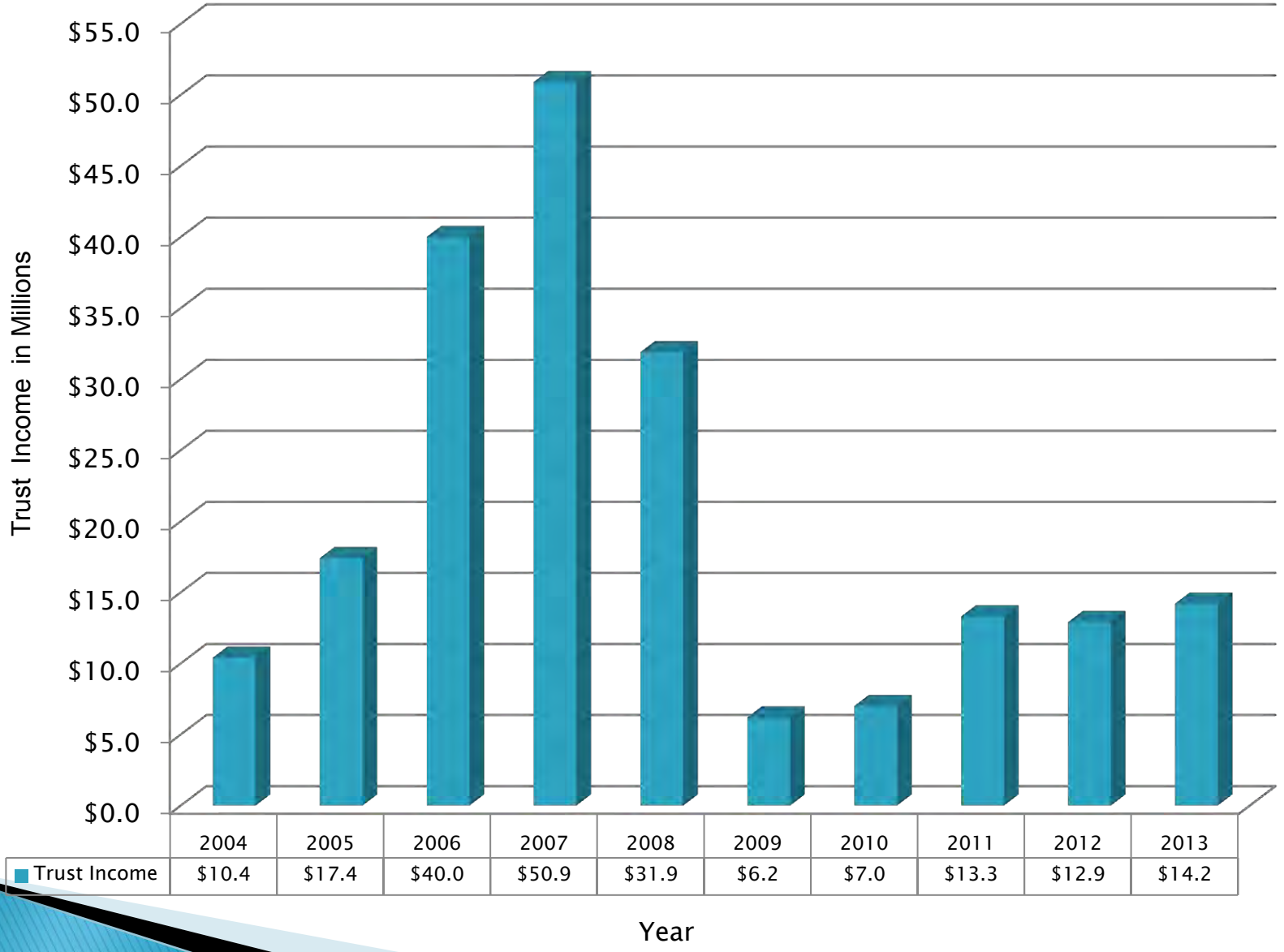
Mission

To advance and promote a just society governed by the rule of law, through leadership, innovation and collaboration.

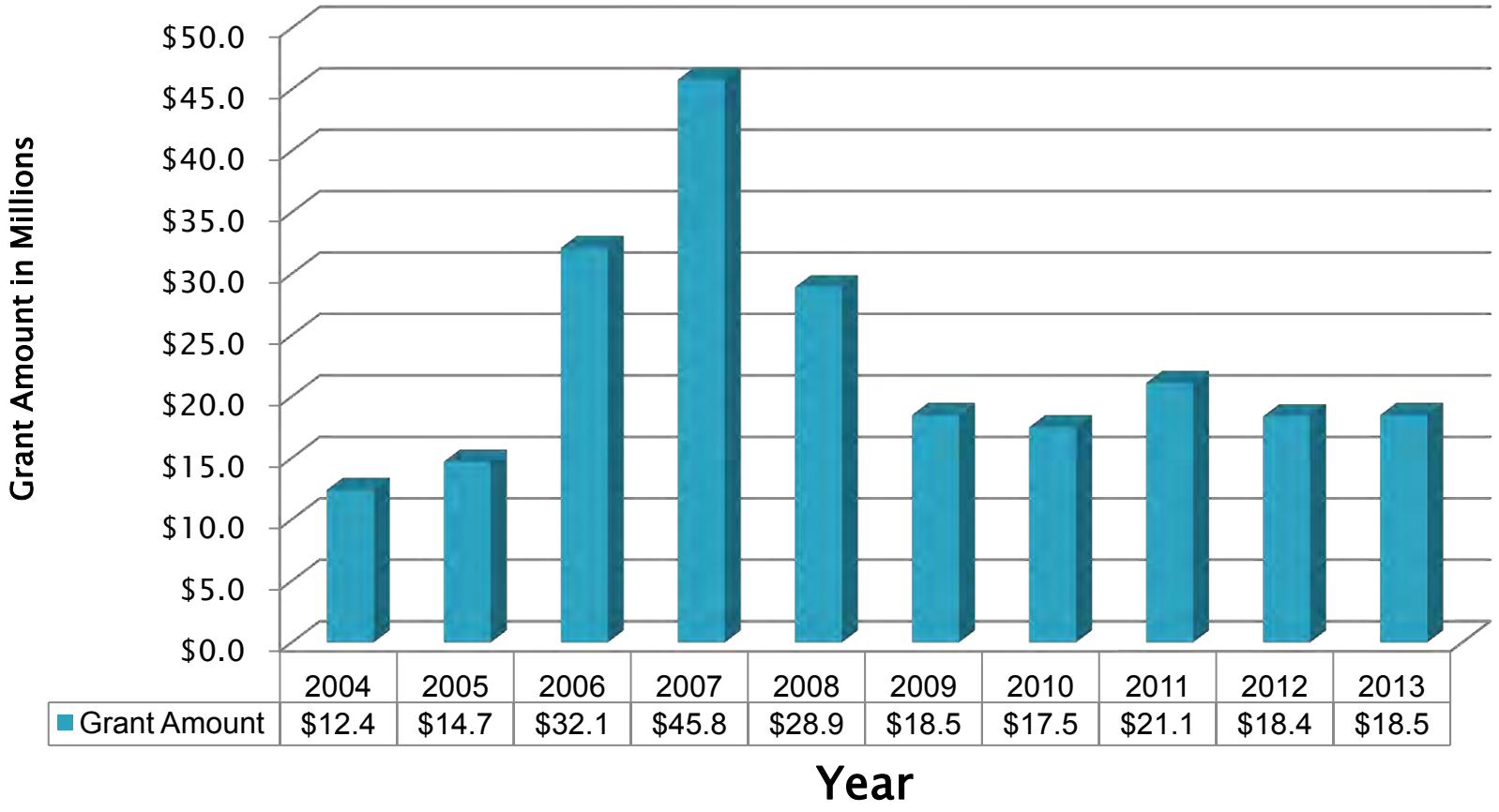
Strategic Priorities

1. Maintain and improve Law Foundation finances.
2. Provide support for Law Foundation grantees.
3. Continue the ongoing evaluation of Law Foundation programs and projects.
4. Research and address gaps in access to justice in BC – sectoral and substantive.
5. Develop new programs and initiatives.

Trust Income for the Past 10 Years



Grants for the Past 10 Years



Grantmaking Principles

1. Fulfilling its statutory mandate;
2. Remaining a stable and effective organization;
3. Producing the greatest value to the poor;
4. The importance of delivering services to disadvantaged people;
5. Giving a direct benefit to the public of Law Foundation funding ; and
6. Providing the maximum benefit to British Columbia.

Law Society Contributions to Law Foundation Work

1. Appointing Governors
2. $340,000 Grant
   - $280,000 to support pro bono initiative, mainly Access Pro Bono (out of total Law Foundation pro bono funding of $535,000)
   - $60,000 to support access to justice initiatives

Statistics: 2013 Law Foundation Funded Programs

A. FUNDING

- Number and annual dollar value of Continuing and OnTrack Programs: 88 Programs - $17,288,320
- Number and dollar value of projects: 48 Projects - $976,968

B. LEGAL AID

- Number of clients served by legal advocates and law students: 68,460
- Number of clients served by lawyers: 13,255
- Number of clients served by pro bono activities: 7,606
- Number of test cases worked on/ completed: 78; regulatory hearings: 26

C. PROFESSIONAL LEGAL EDUCATION

- Number of law students involved in Law Foundation funded programs: 826
- Number of law students receiving bursaries and scholarships: 161

Statistics: 2013 Law Foundation Funded Programs

D. PUBLIC LEGAL EDUCATION

- Numbers of publications produced and distributed: 126 titles; over 126,708 print copies

E. LAW LIBRARIES

- Information requests: 21,750 members of public , and 26,278 members of legal community
- CPD Training for lawyers on digital tools: 1,036, and CPD hours of training: 1,123

F. LAW REFORM

- Number of law reform projects worked on or completed in 2013: 37

G. LEGAL RESEARCH

- Number of legal research projects in 2013: 54

Thank You


THE LAW
FOUNDATION
OF BRITISH COLUMBIA

The Law Society of British Columbia

CEO's Report to the Benchers

October 23, 2014

Prepared for: Benchers

Prepared by: Timothy E. McGee

Introduction

September and October have been very busy months for Law Society operations and for me personally. In addition to our planning for the current referendum regarding TWU, the Annual General Meeting, the special meeting of Benchers on strategic planning, the recent Federation of Law Societies of Canada conference in Halifax, and finalizing our 2015 Budget and financial plan, we are also right in the thick of our performance review process for all staff and we will soon be conducting our annual all employee survey. You may also interested to know that the past few months have the been among the busiest on record for the number of Law Society hearing days over a similar time frame and we will likely set a record in 2014 for the total number of hearing days held in a calendar year. All of this is happening as the Legal Services Regulatory Framework Task Force chaired by Art Vertlieb QC is meeting, conducting surveys, consulting with a number of key groups and preparing to issue an interim report on schedule to the Benchers in December. This list while substantial is actually just a snapshot of a few of the important activities currently underway at the Law Society. Suffice to say we are fully engaged in the business of regulating the legal profession in the public interest.

In my report this month I would like to highlight a few related and additional items for your information.

Federation of Law Society Matters

As mentioned, the Federation of Law Societies of Canada held its bi-annual national conference in Halifax earlier this month, at which LSBC was well represented. I strongly encourage you to read the report about Federation activities including a report on the Halifax Conference set out in the new Federation "E-Briefing" report which is included with your Bencher package. The E-Briefing is a new initiative to help member law societies better connect with the work of their Federation and it complements the in-person briefing which Benchers receive from Gavin Hume QC, our representative on the Federation's governing council.

I specifically raise this with you because as your CEO I plan to do more to keep you aware and informed regarding the many emerging issues facing Canadian legal regulators, which warrant a national, coordinated response. The breadth and importance of these issues is remarkable. The challenge for all law societies in Canada is how to

effectively and in practical terms initiate regulatory reforms at the local level while ultimately recognizing the benefits on a national scale. Two clear success stories to date (among several) are the current regime of lawyer mobility across the country which started as an idea among a few western law societies including LSBC, and CANLI, which was born because a few law societies recognized that investing in purely local solutions to online case research was a losing strategy. Upcoming challenges include how to approach alternative business structures, admissions and articling reform, entity regulation and outcomes based regulation in a coordinated way. These are all topics which are currently contemplated for LSBC's new 3 year strategic plan so we will soon be addressing these challenges head on.

I have also attached to this report as Appendix "A" a brief summary of the in-kind contributions of LSBC staff in 2014 to the work of the Federation. This summary was prepared at the request of the Finance and Audit Committee to assist in its deliberations and it illustrates the breadth and depth of our staff contributions on national initiatives. I think it is important to emphasize that the benefits of this work flow not only to the Federation per se but also to many of the core regulatory functions we carry out at LSBC. In short, our relationship with the Federation is a mutually beneficial one but it is also evolving and because of this it warrants our close attention and support.

Update on Process for Developing New 2015 – 2017 Strategic Plan

Included as part of your meeting package is a separate memorandum from me setting out the next steps in the development of the Law Society's new 3 year strategic plan. These steps have been reviewed with the Executive Committee and follow on the results of the special environmental scanning session which you participated in on September 25. As you will see from the memorandum there are four core thematic areas for the new plan.

The task at hand is for you to consider the many possible strategies and initiatives clustered under each of the 4 headings and start to formulate a view regarding which are the top 2 or 3 in your view in each category. We don't expect to have a full discussion on this at the meeting on October 31 but rather we will be seeking your responses after the meeting by way of an online survey. This will feed into a compilation of the responses together with an assessment by staff of the related resource and timing requirements and the preparation of a initial draft strategic plan for consideration by the Benchers at the meeting on December 5.

International Institute of Law Association Chief Executives – Annual Conference

The International Institute of Law Association Chief Executives (IILACE) is a unique organization bringing together the CEOs of law regulatory and representative bodies from around the world. I have been a member of IILACE since I joined the Law Society in 2005 and I have now served on the Executive Committee and I am currently the Vice President of the organization. I will assume the Presidency of IILACE for a 2 year term at the next AGM during this year's conference in Cape Town from November 19 - 23. At last count the approximately 40 CEOs from around the world who attend the IILACE conference manage organizations that either regulate or represent over 1.5 million lawyers worldwide. I was the Chair of this year's program committee and I have attached a copy of the 2014 conference program as Appendix "B" for your information. I would be happy to discuss any of the topics with you in greater detail.

I consistently find the top benefit of participating in IILACE is being able to exchange views and compare notes with a relatively small group of people who have basically the same job description as me and, notwithstanding global diversity, whose organizations increasingly face a similar set of governance, operational and policy issues. I look forward to reporting back to the Benchers on this year's IILACE conference at the December meeting.

Timothy E. McGee
Chief Executive Officer

APPENDIX A

Law Society Employee In-Kind Contributions to Federation

The Law Society of British Columbia

Memo

To: Finance and Audit Committee
From: Tim McGee, QC and Alan Treleaven
Date: October 21, 2014
Subject: Law Society Employee In-Kind Contributions to Federation

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At the September committee meeting, management was requested to provide an estimate of the in-kind contributions of Law Society of B.C. staff to the work of the Federation.

The following is a rough estimate of the Law Society's in-kind contributions to the Federation in 2014, according to category of contribution.

In most instances the hourly estimates represent the dual purpose of contributing to the Federation and simultaneously to the ongoing fulfillment of the Law Society of BC's mandate. For example, staff participation on the Federation's National Discipline Standards Committee contributes to the enhancement of the Law Society of BC's discipline-related work, while furthering the national mandate of the Federation. In addition, it ensures that the Law Society of B.C. has a strong voice in determining national issues and standards at the Federation.

There are four key areas of engagement with the Federation.

1) Federation Standing Committees

   National Discipline Standards [D. Armour], Model Code [J. Olsen], National Admission Standards [A. Treleaven, T. McGee], Law Degree Approval [A. Treleaven], National Committee on Accreditation [A. Treleaven], National Mobility Policy [A. Treleaven], Access to Legal Services [T. McGee, M. Lucas, A. Whitcombe]

   Three Law Society staff [T. McGee, A. Treleaven, and D. Armour]: approximately 90 hours annually, plus two staff occasionally [M. Lucas, J. Olsen]

2) Federation Ad Hoc Task Forces and Working Groups

   Federation Governance Review [T. McGee], Character and Fitness Working Group [M. Lucas, L. Small], Communications Working Group [A. Whitcombe, T. Ashlie], Discipline Administrators [D. Armour + Regulatory managers], Mobility Staff Working Group [A. Treleaven, L. Small, J. Hoskins],

The Law Society of British Columbia

Memo

Equity and Diversity Staff Working Group [A. Hilland, A. Chopra], Working Group on the National Law Degree Requirement Review [T. McGee]
Five Law Society staff [T. McGee, A. Treleaven, D. Armour, M. Lucas, and L. Small]: approximately 100 hours annually, plus other staff occasionally [A. Whitcombe, T. Ashlie, J. Hoskins, A. Hilland, A. Chopra, Regulatory managers]

3) Federation Conference Planning and Participation

Regina (April 2014) [A. Treleaven] and Halifax (October 2014) [T. McGee] Conferences, as well as upcoming Ottawa Conference planning (March 2015) [T. McGee, A. Treleaven]

Two Law Society staff planning [T. McGee, A. Treleaven], and four to five staff typically attending: approximately 140 hours annually

4) Law Society CEO and Senior Management Consultation with the Federation

Two Law Society staff [T. McGee, A. Treleaven]: approximately 20 hours annually, plus other staff occasionally [A. Whitcombe, M. Lucas]

In summary, a rough estimate of time spent by Law Society of B.C. staff on Federation matters is approximately 350 hours annually.

APPENDIX B

IILACE Annual Conference 2014

Cape Town, South Africa

IILACE Annual Conference 2014

CAPE TOWN

November 19 - 22

Presented by

Willis

asi ADVANCED SOLUTIONS INTERNATIONAL

Invitation to the Largest Gathering of CEOs of Law Societies and Bar Associations

Jan Martin

Nic Swart

Dear colleagues,

We are delighted to present the IILACE 2014 program for our upcoming conference in Cape Town, which will take place at the beautiful Vineyard Hotel on the banks of the Liesbeek River, Newlands; a ten minute drive from the heart of Cape Town.

The Program Committee, chaired by Tim McGee has put together an exceptional program that will be of relevance to IILACE members from all parts of the world.

The social program provides an opportunity to see the picturesque waterfront in Cape Town ; to have dinner on the Bay nestled beneath the magnificent Table Mountain and to experience the delights of African cuisine.

Finally on Saturday morning our session will take place on Robben Island and will include spouses/guests travelling with delegates. As well as having our session there we will have the opportunity to tour the island and have lunch before returning to Cape Town.

As has become our ‘tradition’ there will be an ‘end-on’ to the Conference trip to the Stellenbosch wine area which will depart on Saturday afternoon and return on Sunday afternoon.

The deadline for reserving both your hotel and the trip to Stellenbosch is 10 September 2014. We urge you to make your reservations by that date.

The 2014 Conference promises to be a very exciting conference and we encourage you to register as soon as possible. If you have any questions concerning the program please do not hesitate to contact John Hoyles, Honorary Executive Member of IILACE at johnh@cba.org.

We very much look forward to welcoming you to beautiful Cape Town in November.

Travel safely and best wishes

Jan Martin,
President of IILACE

Nic Swart
CEO of the Law Society of South Africa

IILACE Annual Conference 2014

Business Program

All sessions take place at the Vineyard Hotel

Wednesday, November 19 (Pre-registration is open from 4:00 – 5:30)

5:30 – 7:00	Welcome reception at Vineyard Hotel
7:00	Meet in the lobby for bus transportation to Victoria & Albert Waterfront area
7:30 – 9:30	Touring Victoria & Albert Waterfront area Dress code: Casual
9:30	Bus transportation to Vineyard Hotel

Thursday, November 20 - Focus on Management (Registration is open from 8:30)

09:00 – 09:15 Conference Opening and Welcoming Speeches

Sponsored by The Law Society of England and Wales

- Jan Martin, President of IILACE
- Ettienne Barnard & Max Boqwana, Co-Chairs, The Law Society of South Africa
- President, Cape Law Society
- Nic Swart, CEO, The Law Society of South Africa

09:15 – 10:45 **Session #1: CEO Leadership – Building Personal Resilience and Effectiveness**

Sponsored by The Law Society of Queensland

Chair: Retha Steinmann

For CEOs it may often be “lonely at the top”. Rapid, disruptive change whether social-political, technological or managerial means that to cope, leaders need to be agile and resilient. Studies show CEOs make many decisions intuitively. Studies also show that leaders’ best thinking and decisions are grounded in emotional as well as intellectual intelligence. Authenticity, vulnerability and empathy are critical to success. This session will reveal a side of CEO leadership and success which may surprise you. But it is also designed to inspire and help you.

09:15 – 09:45	Guest Speaker – Dr. Gustav Gous, CEO GetALife
09:45 – 10:30	Panel Discussion and Q&A – Merete Smith, John Hoyles, Makanatsa Mokanese
10:30 – 10:45	Health Break

10:45 – 12:00 **Session #2: The Successful Organization – Does Your Organization Measure Up? What Every CEO Needs to Know**

Sponsored by The Law Society of Ireland

Chair: Tim McGee

It’s not all about you. CEOs are hired to build successful organizations and to help them thrive. Personal fulfillment is another matter. Achieving both is up to you. In this session, we will build on the personal model for CEO success discussed in the morning and broaden our focus to include what makes an organization resilient and effective. Strong mission, values and culture, talent development, good

IILACE Annual Conference 2014

	governance, key performance indicators, strategic focus, employee engagement, accountability – buzz words or indispensable tools for a successful organization? How does your organization measure up? Learn how to leverage these in your organization whether you are big or small, established or developing.
10:45 – 11:15	Guest Speaker: Patricia McLagan, CEO, McLagan International
11:15 – 11:45	Panel Discussion – Noela L'Estrange, Cord Brügmann, Lorna Jack
11:45 – 12:15	Breakout Sessions – What Works for You?
12:30 – 2:00	Lunch *Sponsored by The Law Society of Hong Kong* Lunch Speaker – Renate Volpe – Topic "Political Intelligence and Power Imbalance in Organizations"
2:00 – 3:30	**Session #3: Nuts and Bolts Management and Governance – Contemporary Challenges** *Chair: Tinus Grobler* This session will offer participants an opportunity to take a detailed look at issues, best practices and solutions in three core areas; human resources issues including, recruitment, performance management, compensation, and succession planning; IS/IT issues including, intranet and extranets, desk top support, information and data storage and retrieval, and communications support; and Board issues including, managing expectations and reporting to your Board, relationship with the President, negotiating compensation and work arrangements, political intelligence and the importance of being politically saavy. Following a panel discussion to introduce and highlight the key features of these three streams you are free to join one or more of the facilitated smaller groups on the topic(s) of most interest to you. You are encouraged to bring ideas and examples which you think can help your colleagues identify issues and find good solutions and strategies.
2:00 – 2:30	Panel Discussion – Paul Carlin, Heidi Chu
2:30 – 3:30	Breakout Sessions to Share Experiences / Examples Streams: • HR issues • IS/IT issues • Board issues
3:30 – 4:00	Report back on Breakout Sessions and wrap up on Day 1
4:00	End of Day 1 business program
6:30	Meet in the lobby for bus transportation to African Café – Cape Town
9:30	Bus transportation back to Vineyard Hotel from African Café *Sponsored by The Law Society of Northern Ireland*

CAPE TOWN

Friday, November 21 – Focus on Legal Education, Services and the Public

09:00 – 10:30 **Session #4: Legal Education at a Crossroads: New Models for a New Era**

Chair: Paula Littlewood

Do you remember the first time you heard this: "The first year they scare you to death, the second year they work you to death and the third year they bore you to death"? Is that just a quaint lament of graduating law students or an inconvenient truth about the state of legal education that cannot be ignored? Has the legal "academy" lost touch with the needs of the modern marketplace for lawyers? Why are the law schools in some countries abandoning a three year program and making clinical and experiential learning a priority? Are the tenents of academic freedom and the need for practical skills on a collision course? Who is calling the shots and what are the stakes for regulators and associations and for students, lawyers and the public? And what of law school admissions? Are grades and LSAT scores determinative of those best suited and most likely to be excellent lawyers? Is there anything wrong with this picture? We will hear about all these issues which form part of a rapidly emerging debate around the world and how some of our ILLACE member organizations are taking matters into their own hands. What is your view and why?

09:00 – 09:45 Panel Discussion – Don Thompson, David Hobart, Paula Caetano

09:45 – 10:15 Breakout Sessions

10:15 – 10:30 Health Break

10:30 – 12:00 **Session #5: Legal Services at a Crossroads – What is the "Practice of Law" and Who Does It?**

Sponsored by The Law Society of British Columbia

Chair: Robert Lapper

The days of a lawyer monopoly for the provision of legal services to the public is long gone in many, if not all, of the IILACE member countries. The notion of a select few with rigid credentials plying their trade under the banner of the "Practice of Law" from fixed locations with established, captive clientele is rapidly fading. In this session we will take stock of how non-lawyers, including paralegals, legal technicians, community advocates, and self help on-line providers are rapidly filling a gap left vacant by lawyers or in which lawyers are not the preferred choice of provider. What does the "Practice of Law" mean today and where is it headed? How is the lawyer "value-add" changing? Is it being redefined by lawyers or by others, whether lawyers like it or not? For many the "business" of law is now a more relevant concept than the "profession" of law and this is raising a number of issues relating to the appropriate commercial differentiation among legal service providers as well as what separates a lawyer from others in terms of professionalism, ethical conduct and his/her relationship with the courts. What roles are IILACE member organizations playing today in terms of leading, following or ignoring this changing landscape and why?

10:30 – 11:15 Panel Discussion and Q&A – Darrel Pink, Anne Ramberg

11:15 – 12:00 Presentation and Q&A of IILACE Member Survey Results re: "Practice of Law"

12:00 – 1:30 Group Photo and Lunch

Sponsored by The Federation of Law Societies of Canada

Update from Willis – Andrew Fryer

IILACE Annual Conference 2014

1:30 – 2:00	**IILACE AGM**
2:00 – 2:20	Commonwealth Lawyers Conference – Glasgow 2015 *Presented by Lorna Jack, CEO Law Society of Scotland*
2:20 – 4:20	**Session #6: What is the "Public Interest"? Why Does it Matter? A "World Cafe" Exploration and Discussion** *Sponsored by The Law Society of Upper Canada* *Chair: Paul Mollerup* *Facilitators: Michael Brett Young, Megan Lawton, Jonathan Herman, Don Deya* All of us in the room will say that our respective organizations exist to serve the "public interest" in some way. The "public interest" is not the exclusive domain of the regulators - it plays a significant part in the life of member focused associations as well. The "public interest" is cited as the basis for a wide range of actions we take and services we provide from disciplining lawyers, to requiring minimum number of hours of continuing professional development, to conducting public forums on social issues, to issuing reports on access to justice, to encouraging pro bono work to running defalcation insurance programs, to condemning human rights violations around the world. But do any of us know for sure whether and to what extent the public is interested in these efforts? If so do they think we are doing a good job? In short, why does it matter and who cares? In this World Cafe interactive session we will explore these issues and consider whether a consensus exists across the breadth of the IILACE member countries and jurisdictions on matters such as the meaning of the public interest, what it means for lawyers, organizations and the public and do we have our priorities right to serve the public interest most effectively?
2:20 – 2:50	Round #1 Topics and Discussions in Groups of 8
2:50 – 3:20	Round #2 Topics and Discussions in Groups of 8
3:20 – 3:35	Health Break
3:35 – 4:20	Reporting out by group facilitators on World Cafe findings and wrap up
4:20	End of Day 2 business program
6:00	Meet in the lobby for bus transportation to Gala Dinner at 12 Apostles Hotel
7:00	Reception and Gala Dinner at Azure Restaurant at 12 Apostles Hotel *Sponsored by Willis* Dress code: Smart casual or traditional dress
10:00	Bus transportation from Azure Restaurant back to Vineyard Hotel

Saturday, November 22 – Focus on Core Values

07:00	Continental Breakfast – Meet in the lobby for bus transportation to ferry to Robben Island
09:00 – 10:00	Ferry trip to Robben Island – Participants and Guests
10:30 – 11:00	**Session #7: "A Short Walk to Freedom" The Legacy and Lessons of Nelson Mandela** *Speaker: Dr. Gustav Gous* In this very special session which will be held on what has become sacred ground for the cause of

	human rights and personal freedom in South Africa and around the world, we will hear from Dr. Gustav Gous, a well known authority on Nelson Mandela and his experience on Robben Island
11:00 – 12:00	**Session #8: Ethics and Professional Responsibility of Lawyers – A Contemporary Perspective and Global Scorecard** *Chair: Jan Martin* *Panel Discussion and Q&A – Joe Dunn, Raffi Van den Burg, Max Boqwana, Co-Chairperson of Law Society of South Africa, Ken Murphy* In this final session of the conference you will be encouraged to reflect on one of the recurring themes for IILACE annual conferences namely, the Core Values of the profession and whether they are being met. We will have a provocative panel discussion focusing on the ethical behaviour and professional responsibility demonstrated or lacking in legal practice today from several unique perspectives. Would you agree that the bar in this area must be set high? If so, what must we do to ensure no one fails to meet it?
12:00 – 2:00	Light lunch and guided tours of Robben Island Prison
2:00 – 4:00	Return ferry trip and transportation to Vineyard Hotel – Farewells
4:00	Optional: bus departure for special overnight trip to Stellenbosch

Sunday, November 23

2:30	Travel back from Stellenbosch
4:00	Arrive at Vineyard Hotel from Stellenbosch

Spouse Programme

Thursday, November 20

Tour of Cape Town including the Castle of Good Hope, the first building of the original Dutch settlement and tour of the waterfront.

Vincent Steenberg CC BY-SA 2.5

Friday, November 21

Trip to the top of Table Mountain (in case of high winds, alternate is a trip to Hout Bay with lunch in the heart of the harbor).

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REDACTED MATERIALS

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The Law Society of British Columbia

Memo

To: Benchers
From: Executive Committee
Date: November 27, 2014
Subject: Appointment to the Legal Services Society (LSS) Board of Directors

This memorandum provides background and the Executive Committee's recommendation that the Benchers appoint Dinyar Marzban, QC to replace Deanna Ludowicz, QC on the LSS Board of Directors, for a three-year term effective January 1, 2015.

Body	**Governing Statute/Other Authority**	**Law Society Appointing Authority**	**Law Society Appointee Profile**
Legal Services Society ("LSS") Board of Directors	*Legal Services Society Act* (the Act) S. 4(3) of the Act	Law Society Benchers, after consultation with the CBABC Executive Committee	4 Law Society members, as directors
Current Appointees	**Term of Office**	**Date First Appointed**	**Appointment Expiry Date**
Alison MacPhail	2 years, maximum of 3 terms	1/1/2014	12/31/2016
Thomas Christensen	2 years, maximum of 3 terms	9/7/2009	09/06/2015
Deanna Ludowicz, QC	3 years, maximum of 2 terms	1/1/2009	12/31/2014
Suzette Narbonne	3 years, maximum of 2 terms	5/1/2011	4/30/2017

For more information on Law Society appointments to the LSS Board of Directors, see pages 66 - 72 of the Law Society Appointments Guidebook (download from the Law Society website, under About > Volunteers and Appointments > Appointments: here).

a. Background

Deanna Ludowicz, QC completes her second and final three-year term as a LSS director on December 31, 2014. Legal Services Society CEO Mark Benton, QC's letter dated November 27, 2014 outlines the competency matrix-based review process employed by LSS in identifying prospective appointees for the Law Society's consideration.

Mr. Benton's letter also provides the particular qualities that LSS would appreciate in the current appointment: "a seasoned member of the bar with experience in family law; and ideally both with a practice that does not include so much legal aid work that it would create a material conflict of interest at the board table."

The prospects recommended by LSS are respected and senior members of the bar who have devoted a great deal of energy and expertise to the service of the Law Society, the legal profession and the public over the years. We are satisfied that any of the candidates would be a worthy addition to the LSS board.

b. Recommendation

Having consulted with the CBABC Executive Committee, we recommend that the Benchers appoint Dinyar Marzban, QC to the Board of Directors of the Legal Services Society, for a three-year term commencing January 1, 2015.

Legal Services Society

Providing legal aid in British Columbia since 1979

Suite 400
510 Burrard Street
Vancouver, BC V6C 3A8

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

Executive Office

November 27, 2014

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

Dear Tim,

Re: Appointment to the Legal Services Society ("LSS") board of directors to succeed Deanna Ludowicz, QC – January 1, 2015

I am writing to confirm earlier advice from our Chair seeking an appointment to replace Deanna Ludowicz, QC, whose term expires on January 1, 2015.

As you may recall LSS uses a competency matrix approach to address Board vacancies. In this case we are looking for a seasoned member of the bar with experience in family law and ideally with a practice that does not include so much legal aid work that it would create a material conflict of interest at the board table.

We have interviewed a number of qualified candidates including Dinyar Marzban, QC, and I confirm our understanding that Mr. Marzban is prepared to accept this appointment.

In the event that further information would be helpful I trust that Law Society staff will not hesitate to contact me directly.

Yours truly,

Mark Benton QC
Chief Executive Officer

Cc: Bill McIntosh, Manager, Executive Support, The Law Society of BC
Gulnar Nanjijuma, Assistant Corporate Secretary

COMPETENCY CRITERIA

Board Members	D. Ludowicz	B. Brink	D. Wickstrom	T. Christensen	S. Lee	S. Narbonne	A. McPhee	P. Sandhar	A. MacPhail
(end of term)	(Dec 2014)	(Aug 2015)	(Aug 2015)	(Sep 2015)	(Sep 2015)	(April 2017)	(June 2015)	(July 2015)	(Jan 2017)
Knowledge of the social and economic circumstances associated with the special legal needs of low income individuals and to the cultural diversity of BC (e.g. work/life experience that has exposed board members to the special needs of low-income individuals and kowledge of how the Aboriginal, cultural and geographic diersity of BC affectsa delivery of legal aid)									
Organizational Leadership experience and systems thinking expertise (e.g. Work experience as CEO/Senior Manager in a complex systems environment)									
Financial expertise (e.g. hold a financial designation preferably with CFO experience)									
Respected member of the legal profession (e.g. recognized as a leader or prominent member of the legal profession)									
Knowledge of government decision-making process (e.g. significant work experience with senior government decision-makers)									
Knowledge of justice system operations (e.g. in-depth knowledge of one or more areas of the justice system; exposure to or knowledge of conflict resolution alternative)									
Leadership experience in Aboriginal communities (e.g. significant experience in leading an Aboriginal organization or agency)									
Experience with provision of legal aid (e.g. delivery of legal aid services)									

Please note Tom Christensen, Alison MacPhail, Deanna Ludowicz, and Suzette Narbonne are Law Society (in consultation with the CBA) appointments

Adopted by the LSS Board of Directors - May 14, 2014

REDACTED MATERIALS

REDACTED MATERIALS

The Law Society of British Columbia

BC Code Appendix C: Real Property Issues

November 4, 2014

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

Prepared by: **Ethics Committee**

The Law Society of British Columbia

Memo

To: Benchers

From: Ethics Committee

Date: November 4, 2014

Subject: **Appendix C: Real Property Issues**

This memo discusses two areas where we believe small amendments to Appendix C are warranted: (1) amendments to define what constitutes "an institutional lender" in Commentary [1 (d)] and to ensure that a mortgage given to a mortgagee that is not an institutional lender does not qualify as a simple conveyance, and (2) an amendment to commentary [2] to make it clear that the drafting of a contract of purchase and sale in a real estate matter cannot be considered to be a "simple conveyance."

I. Whether Lawyer May Act for Borrower and Lender in Non-Institutional Mortgage Transactions

The current language of Appendix C is ambiguous about this question, although we think the better view is that a mortgage cannot be considered to be a simple conveyance within the meaning of paragraph 2 (b) if it is not provided by an institutional lender.

Paragraph 4, commentary [1] sets out the criteria that expressly permit a mortgage to qualify as a "simple conveyance." The major criteria are that the mortgage does not contain any commercial element and that it is given by a mortgagor to an institutional lender.

Rule 4, commentary [2] sets out the criterion that expressly prohibits a mortgage from qualifying as a "simple conveyance": the mortgage must have no commercial element. The commentary then goes on to give examples of disqualifying "commercial elements." This might mean that, although the mortgagee is not an institutional lender in commentary [1(d)], if the mortgage has no commercial element it might qualify as a simple conveyance.

We think it is undesirable for a lawyer to act for multiple parties in preparing a mortgage when the mortgagor is not an institutional lender. There are many characteristics of a private mortgage where mischief may be visited on the borrower, including prepayment penalties, brokerage fees, and discounts up front from mortgage proceeds. These characteristics all argue for separate representation. Because of ambiguity in the language of Appendix C concerning

this issue, however, we have drafted commentary [2 (n)] to prevent a lawyer from acting for a mortgagor and mortgagee when the mortgagor is not an institutional lender. "Institutional lender" is not currently defined in Appendix C and we think it is a good idea to define it to include only banks, trust companies and credit unions, and not to include mortgage brokers; we propose to do so by changing the current language of commentary [1(d)]. A mortgage broker could consist of one person or a one-person company, can lend his or her own money and qualifies to carry on business on receiving a very small amount of money and with a very small number of transactions. It is our view that the stability and predictability associated with mortgages advanced by banks, trust companies and credit unions cannot be taken for granted in the case of mortgage brokers.

We recommend the changes set out in commentary [1 (d)] and commentary [2 (0)] to deal with this issue.

II. Whether Lawyer May Act For Both Buyer and Seller in Drafting Contract

A lawyer contacted us and expressed a concern that Appendix C should not permit a lawyer to act for both a buyer and seller in drafting a contract for the purchase and sale of real property. The lawyer made the following points, with which we agree:

(1) Drafting a contract for both buyer and seller for expensive residential houses that may be valued in the millions of dollars is riskier than many commercial transactions with less money at stake.

(2) Drafting a contract for both buyer and seller creates a dilemma for lawyers about whether to include provisions in the contract that are beneficial to one party but not the other.

(3) A lawyer may be privy to information from one party that may affect the other party's willingness to enter into the contract but which is unknown to the other party.

We do not have any difficulty with a lawyer acting for both parties once the contract for the purchase and sale of real property is concluded, provided the transaction otherwise meets with the requirements of Appendix C.

We think the current language of Appendix C is not entirely clear about this issue. We recommend the addition of commentary [2 (n)] to make it clear.

III. Typographical Correction

The reference to paragraph 8 in paragraph 2 (c) of Appendix C should be a reference to paragraph 9. The attached materials correct this error.

Attachment:

- Proposed amendments to Appendix C. [613125 & 623181]

Appendix C – Real Property Transactions

Application

1. This Appendix does not apply to a real property transaction between corporations, societies, partnerships, trusts, or any of them, that are effectively controlled by the same person or persons or between any of them and such person or persons.

Acting for parties with different interests

2. A lawyer must not act for more than one party with different interests in a real property transaction unless:

(a) because of the remoteness of the location of the lawyer's practice, it is impracticable for the parties to be separately represented,

(b) the transaction is a simple conveyance, or

(c) paragraph ~~8~~ 9 applies.

3. When a lawyer acts jointly for more than one client in a real property transaction, the lawyer must comply with the obligations set out in rule 3.4-5 to 3.4-9.

Simple conveyance

4. In determining whether or not a transaction is a simple conveyance, a lawyer should consider:

(a) the value of the property or the amount of money involved,

(b) the existence of non-financial charges, and

(c) the existence of liens, holdbacks for uncompleted construction and vendor's obligations to complete construction.

Commentary

[1] The following are examples of transactions that may be treated as simple conveyances when this commentary does not apply to exclude them:

(a) the payment of all cash for clear title,

(b) the discharge of one or more encumbrances and payment of the balance, if any, in cash,

(c) the assumption of one or more existing mortgages or agreements for sale and the payment of the balance, if any, in cash,

(d) a mortgage that does not contain any commercial element, given by a mortgagor to a bank, trust company or credit union ~~institutional lender~~ to be registered against the

mortgagor's residence, including a mortgage that is

(i) a revolving mortgage that can be advanced and re-advanced,

(ii) to be advanced in stages, or

(iii) given to secure a line of credit,~~.~~

(e) transfer of a leasehold interest if there are no changes to the terms of the lease,

(f) the sale by a developer of a completed residential building lot at any time after the statutory time period for filing claims of builders' liens has expired, or

(g) any combination of the foregoing.

[2] The following are examples of transactions that must not be treated as simple conveyances:

(h) a transaction in which there is any commercial element, such as:

(i) a conveyance included in a sale and purchase of a business,

(ii) a transaction involving a building containing more than three residential units, or

(iii) a transaction for a commercial purpose involving either a revolving mortgage that can be advanced and re-advanced or a mortgage given to secure a line of credit,

(i) a lease or transfer of a lease, other than as set out in subparagraph (e),

(j) a transaction in which there is a mortgage back from the purchaser to the vendor,

(k) an agreement for sale,

(l) a transaction in which the lawyer's client is a vendor who:

(i) advertises or holds out directly or by inference through representations of sales staff or otherwise as an inducement to purchasers that a registered transfer or other legal services are included in the purchase price of the property,

(ii) is or was the developer of property being sold, unless subparagraph (f) applies, ~~or~~

(m) a conveyance of residential property with substantial improvements under construction at the time the agreement for purchase and sale was signed, unless the lawyer's clients are a purchaser and a mortgagee and construction is completed before funds are advanced under the mortgage,~~.~~

(n) the drafting of a contract of purchase and sale, or

(o) a mortgage given by a mortgagor to a mortgagee that is not a bank, trust company or credit union.

[3] A transaction is not considered to have a commercial element merely because one of the parties is a corporation.

Advice and consent

5. If a lawyer acts for more than one party in the circumstances as set out in paragraph 2 of this Appendix, then the lawyer must, as soon as is practicable,

(a) advise each party in writing that no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned and that, if a conflict of interest arises, the lawyer cannot continue to act for any of them in the transaction,

(b) obtain the consent in writing of all such parties, and

(c) raise and explain the legal effect of issues relevant to the transaction that may be of importance to each such party.

Commentary

[1] If a written communication is not practicable at the beginning of the transaction, the advice may be given and the consent obtained orally, but the lawyer must confirm that advice to the parties in writing as soon as possible, and the lawyer must obtain consent in writing prior to completion.

[2] The consent in writing may be set out in the documentation of the transaction or may be a blanket consent covering an indefinite number of transactions.

Foreclosure proceedings

6. In this paragraph, "mortgagor" includes "purchaser," and "mortgagee" includes "vendor" under an agreement for sale, and "foreclosure proceeding" includes a proceeding for cancellation of an agreement for sale.

If a lawyer acts for both a mortgagor and a mortgagee in the circumstances set out in paragraph 2, the lawyer must not act in any foreclosure proceeding relating to that transaction for either the mortgagor or the mortgagee.

This prohibition does not apply if

(a) the lawyer acted for a mortgagee and attended on the mortgagor only for the purposes of executing the mortgage documentation,

(b) the mortgagor for whom the lawyer acted is not made a party to the foreclosure proceeding, or

(c) the mortgagor has no beneficial interest in the mortgaged property and no claim is being made against the mortgagor personally.

Unrepresented parties in a real property transaction

7. If one party to a real property transaction does not want or refuses to obtain independent legal representation, the lawyer acting for the other party may allow the unrepresented party to execute

the necessary documents in the lawyer's presence as a witness if the lawyer advises that party in writing that:

(a) the party is entitled to obtain independent legal representation but has chosen not to do so,

(b) the lawyer does not act for or represent the party with respect to the transaction, and

(c) the lawyer has not advised that party with respect to the transaction but has only attended to the execution and attestation of documents.

8. If the lawyer witnesses the execution of the necessary documents as set out in paragraph 7, it is not necessary for the lawyer to obtain the consent of the party or parties for whom the lawyer acts.

9. If one party to the real property transaction is otherwise unrepresented but wants the lawyer representing another party to the transaction to act for him or her to remove existing encumbrances, the lawyer may act for that party for those purposes only and may allow that party to execute the necessary documents in the lawyer's presence as witness if the lawyer advises the party in writing that:

(a) the lawyer's engagement is of a limited nature, and

(b) if a conflict arises between the parties, the lawyer will be unable to continue to act for that party.

Appendix C – Real Property Transactions

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residence, including a mortgage that is

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8. If the lawyer witnesses the execution of the necessary documents as set out in paragraph 7, it is not necessary for the lawyer to obtain the consent of the party or parties for whom the lawyer acts.

9. If one party to the real property transaction is otherwise unrepresented but wants the lawyer representing another party to the transaction to act for him or her to remove existing encumbrances, the lawyer may act for that party for those purposes only and may allow that party to execute the necessary documents in the lawyer's presence as witness if the lawyer advises the party in writing that:

(a) the lawyer's engagement is of a limited nature, and

(b) if a conflict arises between the parties, the lawyer will be unable to continue to act for that party.

The Law Society of British Columbia

Memo

To: Benchers
From: Family Law Task Force
Date: November 3, 2014
Subject: Consent Agenda: Extension of the Family Law Task Force into 2015

The Family Law Task Force's mandate required it to develop the training requirements for lawyers acting as family law mediators, arbitrators and parenting coordinators. The Benchers passed rules in March 2013, adopting the recommendations of the Task Force.[1] Because the government regulations gave non-lawyer family law professionals until the end of December, 2013 to meet their training requirements, the Law Society provided a similar extension for lawyers. A credentialing verification scheme was developed and is overseen by Member Services staff.

The Task Force was kept active to monitor issues that might arise from the training requirements. The Task Force has heard some feedback from lawyers on a piecemeal basis and will be meeting with Lesley Small, Manager Members Services and Credentials, to discuss how the system has worked from the view of the Law Society. The Task Force would like to get the views of the membership, perhaps by way of a Notice to the Profession. The Task Force would then report back to the Benchers.

As part of its monitoring activity, the Task Force also referred to the Ethics Committee its views on whether designated paralegals ought to be able to perform "counsel" functions at family law mediations or arbitrations, as well as some general commentary suggestions. These were issues that had been raised directly with members of the Task Force. Discussions between the Task Force and Committee are ongoing.

In light of the work that remains to be completed, the Task Force anticipates it will need to be extended into 2015, with a mind to completing its work no later than July 2015.

/DM

[1] This work was done in response to government changes to the *Family Law Regulations*, which were to establish credentials for family law professionals performing this work.

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC
Date: November 17, 2013
Subject: **2015 Fee Schedules**

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

2. Under section 23(1)(a) of the *Legal Profession Act*, the Benchers have approved a practice fee of $1,992 for 2014. The insurance fee was also approved at $1,750 for lawyers in full-time practice and $875 for those in part-time practice, both of which are unchanged from 2014.

3. In addition, the enrolment fee for PLTC will increase from $2,250 to $2,500 effective September 1, 2015. To ensure that potential students and their principals and law firms have clear notice of that increase, I suggest including the new rate, with the effective date, in Schedule 1.

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

JGH

Attachments: resolution

2015 FEE SCHEDULES

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules, effective January 1, 2015, as follows:

1. In Schedule 1,

(a) by striking "$1,940.00***" at the end of item A 1 and substituting "***$1,992.00***", and***

(b) by rescinding items C 4 and 5 and substituting the following:

4.	Training course registration (Rule 2-44(4)(a))	
	until August 31, 2015	2,250.00
	effective September 1, 2015	2,500.00
5.	Remedial work (Rule 2-45(7)):	
	(a) for each piece of work	50.00
	(b) for repeating the training course	
	until August 31, 2015	3,500.00
	effective September 1, 2015	3,900.00

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

3. In the headings of schedules 1, 2, and 3, by striking the year "2014***" and substituting "***2015***".***

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Interim Report of the Tribunal Program Review Task Force

Tribunal Program Review Task Force

Ken Walker, QC (Chair)
Haydn Acheson
Pinder Cheema, QC
David Mossop, QC
David Layton
Linda Michaluk

December 5, 2014

Prepared for: Benchers
Prepared by: Jeffrey G. Hoskins, QC
Purpose: Decision

A. Introduction

1. The Tribunal Program Review Task Force was struck by the Benchers in May 2014. It comprises Benchers Ken Walker, QC (Chair), Haydn Acheson, Pinder Cheema, QC, and David Mossop, QC, along with non-Bencher lawyer David Layton and public representative Linda Michaluk. Tribunal and Legislative Counsel Jeff Hoskins, QC and Hearing Administrator Michelle Robertson provide staff support.

2. This was the resolution adopted by the Benchers at that time:

   BE IT RESOLVED to form a task force of Benchers and others to

   - review the progress of the changes to the tribunal system implemented since 2011;
   - recommend changes for the improvement of the system and correction of any problems;
   - identify any further reforms that the benchers should consider at this time;
   - report to the Benchers as soon as possible, and in any event before the end of 2014.

3. The materials before the Benchers at the meeting in May included 16 topics and issues for the Task Force to consider and make recommendations for the consideration of the Benchers. Mr. Walker reported at the October 31 meeting of the Benchers on the progress of the Task Force toward a final report, which we now anticipate will be available to the Benchers by mid-year 2015.

4. In the meantime, the Task Force has identified two topics that require immediate attention by the Benchers for the continued good governance of the tribunal program. We provide the background for each below, make recommendations and suggest resolutions for adoption by the Benchers.

B. Hearing panel pool appointed three years ago

5. After nearly two years of task forces, working groups, amending rules and recruiting non-Benchers, 25 lawyers and 25 non-lawyers were appointed to a “hearing panel pool” late in 2011. At the same time, the Benchers resolved that there would be a review of the new way of doing things at the end of three years, with a view to making improvements and, possibly, further changes to the tribunal process.

6. In the intervening years there has been some natural attrition to the groups due to judicial appointments and other career changes. Almost all members of the “pool” remain ready and willing, if not enthusiastic, about continuing to participate in Law Society Tribunals. A

number of new appointments have also been made, all of them Life Benchers leaving the ranks of current Benchers.

7. When appointments were made in 2011, no expiry date was specified. However, a three-year term was mentioned in the materials considered by the Benchers and others used to recruit pool members.

8. The review at the end of three years is underway by this Task Force. Among the matters to be considered in that process are issues relating to terms of appointments, performance appraisal, appointment and re-appointment criteria and continuity and renewal in the hearing panel pool. We expect that a final report with recommendations will be ready for consideration by the Benchers around mid-year 2015.

9. To ensure the continuity of the current hearing panel pool, we recommend that the Benchers extend the appointment of current members of the pool who are willing to continue. We expect that most members of the pool will be willing.

10. The length of the extension should be long enough to ensure that there is time for the Task Force's recommendations to be fully considered and implemented. We consider that an extension to the end of 2015 should allow sufficient time for Bencher decisions about the term, composition and recruitment of the hearing panel pool, if made mid-year, to be put in place and implemented.

Suggested resolution

11. The Task Force recommends that the Benchers adopt a resolution such as this:

    BE IT RESOLVED TO extend the appointment of those members of the hearing panel pool of non-Bencher lawyers and public representatives willing to accept the extension, to January 1, 2016.

C. Hearing panel member unable to continue

12. The Act and Rules Committee discussed this issue and referred it to the Executive Committee for a discussion of the policy issues involved and a recommendation to the Benchers as to how to proceed to remedy the problems outlined below. The Executive Committee considered the question in 2012, but was unable to come to a consensus for a recommendation to the Benchers. It was one of the issues referred to this Task Force by the Benchers.

13. We bring this matter to the attention of the Benchers now because the question of continuity of hearing panels is current and ongoing, and the risk that hearing proceedings might be lost as a result of the inability of a hearing panellist to continue with a matter continues to be

present. Tackling this difficult question was delayed for some time so that it could be considered in the context of the review the Task Force is undertaking. The Task Force is now prepared to make a recommendation that we consider would reduce the risk of a lost hearing in the future.

14. As you know, Law Society tribunals have changed from hearing panels composed entirely of Benchers to a composition in which only the chair of the panel is a current lawyer Bencher and the other members ("wingers") include a non-Bencher lawyer and a non-lawyer member of the public.

Winger unable to continue

15. Under the current Rules, if one of the members of the panel is unable to continue for some reason the hearing may continue in some, but not all, circumstances. Rule 5-2(2)(d) allows the hearing to proceed and conclude with one Bencher sitting alone as chair.

> (2) A panel may consist of one Bencher who is a lawyer if
>
> (d) one or more of the original panel members cannot complete a hearing that has begun.

16. That Rule continues in force. In the event that the non-Bencher lawyer or the non-lawyer member of the panel is unable to complete the hearing, the Rule will allow the hearing panel to continue. That would allow the hearing to continue and the reduced panel would continue to comply with Rule 5-2(3):

> (3) A panel must be chaired by a Bencher who is a lawyer.

17. However, the panel cannot continue with just one winger because of Rule 5-2(1):

> (1) A panel must consist of an odd number of persons but, subject to subrule (2), must not consist of one person.

18. Since only the lawyer Bencher member of the panel can continue as a single Bencher panel, the other "winger" would have to be excused. This result is inconsistent with the program initiated by the Benchers in 2011 that involves the participation of a non-Bencher lawyer and a member of the public in every discipline or credentials hearing.

Bencher unable to continue

19. There is a bigger problem when it is the lawyer-Bencher chair who cannot continue. Under the old regime, if a Bencher chair of a hearing panel was unable to proceed, one of the other Benchers could assume the chair and proceed as a single-Bencher panel. Now there is only one lawyer-Bencher on each panel. If that Bencher cannot continue, there is no one else on the hearing panel who can fulfill the requirement of Rule 5-2(3) that a Bencher who is a lawyer must chair the panel.

20. As a general proposition, an adjudicator who has not heard all of the evidence on which a decision is to be made must not participate in the decision. It would not be an option, in the midst of a hearing, to replace the Bencher-chair who cannot continue with another lawyer-Bencher who has not been present and heard the evidence up to that point.

21. As a result, the hearing must be abandoned and a new hearing begun with a new panel. That would cause a delay and potentially waste a lot of time and money. It could cause significant unfairness to the individual respondent or applicant who is the subject of the hearing.

Problems

22. The Law Society has gone to a great deal of effort some and expense to include members of the public and non-lawyer Benchers in the hearing process. This has engendered significant good will with the public and the media and, less demonstrably, one would expect with many members of the profession as well. Terminating public involvement or non-Bencher lawyer involvement in the event that the other winger is unable to continue seems to go contrary to the purpose of the reforms to involve members of the public and non-Bencher lawyers in the process.

23. Terminating a hearing and starting again in the event that the one lawyer-Bencher on the panel cannot continue would have the same effect, as well as causing a delay and potentially wasting a lot of time and money.

Options

24. When the hearing panel member who is unable to continue is the Bencher chair, one solution would be to give the President the discretion to allow the non-Bencher lawyer to continue as a single-member panel to complete the hearing. This would have the advantage of avoiding delay and costs thrown away by re-starting the hearing with a whole new panel. However, the appearance of excluding the public representative from the hearing and favouring the non-Bencher lawyer over the non-lawyer would be undesirable.

25. In the long run, the Task Force will consider the requirement that a Bencher must chair every hearing panel. It may be that members of the hearing panel pool who are not lawyer-Benchers, with the appropriate training in conducting hearings, could be allowed to act as chair in the ordinary course, and then it would not be an issue if the Bencher-chair cannot continue with a hearing. The Task Force will report on that consideration in its final report to the Benchers.

26. A further option would be to allow the President the discretion to continue both the non-Bencher members of the panel in the absence of a Bencher. This would require a relaxation of the Rule requiring an odd number of members of a panel for this sort of situation, as well as the requirement for a lawyer-Bencher chair in all cases.

27. The odd-number rule is intended to avoid a tie vote, in effect, by a hearing panel. The risk of that happening would be a disadvantage of this approach to the problem. It would also be inconsistent with the intention of the Benchers that individual lawyer-Benchers should continue to be involved in each hearing panel, albeit now one at a time. However, it would have the advantage of allowing proceedings to continue without sending an offensive message in relation to the involvement of non-lawyers and non-Benchers in the hearing process.

28. Without further direction in the Rules, the failure of the two panellists to agree would mean that there was no decision, and the hearing would have to be started over from the beginning with a new panel. That obviously would result in even greater delay and waste of time and money than restarting the hearing at the time that the Bencher became unable to continue.

29. It may also give rise to an argument that the citation should be dismissed for delay. The Rule change could require that both parties consent to the matter continuing with a panel of two and/or an undertaking that a delay argument would not be raised as a result.

30. If continuing with a panel of two is accepted when a Bencher chair is unable to continue, there is no reason why that would not also apply when one of the "wingers" is unable to continue. That would avoid the problem of having to excuse the other non-Bencher member of the panel who is able to continue.

Recommendation

31. The Task Force considered the options discussed above, as well as some other more unorthodox approaches. It is the view of the Task Force that the best option to avoid future problems is to allow two non-Bencher members of a panel to conclude a hearing when the lawyer-Bencher chair of the panel cannot continue for any reason. On the whole, the risk that there may be a "tie vote" in the end is outweighed by the certainty of an unnecessary departure from the established principles, as described above.

32. The Task Force is also of the view that the same factors lead to allowing any two members of a hearing panel to continue when a third member cannot continue. This would require amendments to the governing rules to allow an exception to the rule that a panel must consist of an odd number of panel members. Another exception to the rule that a lawyer-Bencher must act as chair would also be required to allow for the case where the chair is the panel member who cannot continue.

33. The Task Force considered that the President should have the discretion to decide whether to allow the two remaining members to continue as a panel. There may be circumstances where that may not be appropriate. That would also allow the President to consider factors such as the positions of the parties and whether delay is likely be a factor in each of the options available to the President.

34. The Task Force also considered the case of review boards. The current rules require an odd number of members of each board. The Task Force recommends a change to the rules to allow all the remaining members of the review board to continue, even if that leaves an even number of members.

Suggested resolution

35. The Task Force recommends that the Benchers adopt a resolution such as this:

BE IT RESOLVED TO

1. approve in principle changes to the Law Society Rules to allow for

   (a) the remaining two members of a hearing panel to continue to conduct a hearing when one member is unable to continue for any reason, and

   (b) the remaining members of a review board to continue to conduct a review when one member is unable to continue for any reason;

2. refer the matter to the Act and Rules Committee to recommend rule amendments to implement the changes.

The Law Society of British Columbia

Memo

To: Benchers
From: Tim McGee, QC
Date: November 26, 2014
Subject: 2015 – 2017 Strategic Plan – Next Steps

Review of the Process

In September, the Benchers conducted an environmental scanning session from which four themes were identified as being the most relevant issues facing the Law Society over the next three year period. These were: Access to Legal Services, Public Confidence in the Administration of Justice and the Rule of Law, Alternative Business Structures, and Admission Program and Education Reform. Further discussion later identified a number of possible strategies and initiatives that could be undertaken to address these four themes.

At the October 31 Bencher meeting, the list of strategies and initiatives was presented to the Benchers. The Benchers were asked to participate in an online survey to identify the top three initiatives under each theme and to identify any other initiatives or strategies they thought appropriate.

The survey of strategies and initiatives was conducted during the week of November 10. Twenty-five responses were received. These have provided the basis for the initiatives identified in the draft strategic plan attached. A summary of the survey results is also attached.

Structure of the Draft Plan

The 2012 – 2014 Strategic Plan identified certain goals. The goals reflected aspirations through which the object and duty (or mandate) of the Law Society as expressed in section 3 of the *Legal Profession Act* could be realized. It was not expected that these goals would change much, or at all, from Plan to Plan, as they should reflect the work expected of the Law Society in the discharge of its mandate over time. As a result, the attached draft plan continues to reflect these goals.

As with our current plan, strategies are identified under each goal that are intended to advance the goal. Under each strategy, there are specific initiatives for implementation of the particular strategy. The initiatives are based largely on the results of the Bencher survey, although some of

the initiatives are carried forward from the current Plan, where the work is not yet complete but will continue.

The major exception to the structure explained above is with the initiatives originally identified under the topic of Alternate Business Structures. In looking at all of the initiatives under this topic, it was apparent that any task force established to look at the issue of Alternate Business Structures would consider all of the issues and suggestions in undertaking its work. As a result, the draft 2015 – 2017 Strategic Plan simply identifies the consideration of whether to permit Alternate Business Structures as an initiative in expectation that all of the considerations listed during the environmental scan would form part of the work of the group tasked with looking at the issue.

While not one of the top ranking initiatives in the survey, examining the scope and meaning of s. 3(a) of the *Legal Profession Act* is in the draft plan because reaching a consensus on the scope and meaning of this subsection of the mandate will inform several other initiatives under the general goal of ensuring public confidence in the administration of justice and the rule of law.

Next Steps

The results of the environmental scan and the survey of strategies and initiatives were used to prepare the attached draft Strategic Plan for 2015 – 2017.

The Benchers review of this draft plan provides the opportunity to consider it in light of the information that has been gathered through both the environmental scan and the strategies and initiative survey. This consideration should include giving some thought to the relative importance and feasibility of the various initiatives. Is there anything to add? Does anything that appears on this draft seem out of place? Are there any other considerations that need to be addressed before preparing the final plan?

Any suggestions, edits, or comments on the goals, strategies and initiatives will be taken into account in preparing the final plan for approval at the Benchers January 2015 meeting.

The Law Society of British Columbia

2015 – 2017 Strategic Plan

Our Mandate

Our mandate is to uphold and protect the public interest in the administration of justice by

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

(b) ensuring the independence, integrity, honour and competence of lawyers,

(c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,

(d) regulating the practice of law, and

(e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

Our Goals

To fulfil our mandate in the next three years, we have identified three specific goals:

1. **The public will have better access to legal services.**

   We know that one of the most significant challenges in Canadian civil society today is ensuring that the public has adequate access to legal advice and services.

2. **The public will be well served by an innovative and effective Law Society.**

   We recognize that the public expects and deserves effective regulation of the legal profession. To meet that expectation, we will seek out and encourage innovation in all of our practices and processes in order to continue to be an effective professional regulatory body.

3. **The public will have greater confidence in the rule of law and the administration of justice.**

   We believe that the rule of law, supported by an effective justice system, is essential to Canadian civil society. The legal profession plays an important role in maintaining public confidence in both the rule of law and the administration of justice. We recognize the importance of working with others to educate the public about the rule of law, the role of the Law Society and the legal profession in the justice system and the fundamental importance of the administration of justice.

1. The public will have better access to legal services.

Strategy 1–1

Increase the availability of legal service providers.

Initiative 1–1(a)

Follow-up on recommendations from the December 2014 report of the Legal Services Regulatory Framework Task Force toward developing a framework for regulating non-lawyer legal service providers to enhance the availability of legal service providers while ensuring the public continues to receive legal services and advice from qualified providers.

Initiative 1-1(b)

Continue work on initiatives for advancement of women and minorities through the Justicia Program and the Aboriginal Mentoring Program.

Strategy 1–2

Increase assistance to the public seeking legal services

Initiative 1-2(a)

Evaluate the Manitoba Family Justice Program and determine if it is a viable model for improving access to family law legal services in British Columbia.

Initiative 1-2(b)

Examine the Law Society's role in connection with the advancement and support of Justice Access Centres.

Initiative 1-2(c)

Examine the Law Society's position on legal aid, including what constitutes appropriate funding and whether other sources of funding, aside from government, can be identified.

2. The Law Society will continue to be an innovative and effective professional regulatory body.

Strategy 2-1

Improve the admission, education and continuing competence of students and lawyers

Initiative 2-1(a)

Evaluate the current admission program (PLTC and articles), including the role of lawyers and law firms, and develop principles for what an admission program is meant to achieve.

Initiative 2-1(b)

Monitor the Federation's development of national standards and the need for a consistent approach to admission requirements in light of interprovincial mobility.

Initiative 2-1(c)

Conduct a review of the Continuing Professional Development program.

Initiative 2-1(d)

Examine Practice Standards initiatives to improve the competence of lawyers by maximizing the use of existing and new data sources to identify at-risk lawyers and by creating Practice Standards protocols for remediating high risk lawyers.

Initiative 2-1(e)

Examine alternatives to articling, including Ontario's new legal practice program and Lakehead University's integrated co-op law degree program, and assess their potential effects in British Columbia.

Strategy 2-2

Expand the options for the regulation of legal services

Initiative 2-2(a)

Consider whether to permit Alternate Business Structures and, if so, to propose a framework for their regulation.

Initiative 2-2(b)

Continue the Law Firm Regulation Task Force and the work currently underway to develop a framework for the regulation of law firms.

Initiative 2-2(c)

Continue discussions regarding the possibility of merging regulatory operations with the Society of Notaries Public of British Columbia.

3. The public will have greater confidence in the administration of justice and the rule of law.

Strategy 3-1

Increase public awareness of the importance of the rule of law and the proper administration of justice

Initiative 3-1(a)

Develop communications strategies for engaging the profession, legal service users, and the public in general justice issues.

Initiative 3-1(b)

Examine the Law Society's role in public education initiatives.

Initiative 3-1(c)

Identify ways to engage the Ministry of Education on high school core curriculum to include substantive education on the justice system.

Strategy 3-2

Enhance the Law Society voice on issues affecting the justice system

Initiative 3-2(a)

Examine and settle on the scope and meaning of s. 3(a) of the Legal Profession Act.

Initiative 3-2(b)

Identify strategies to express a public voice on the justice system, including public forums.

Topic	Initiatives	Responses	%
Access to Legal Services	Analyse the Manitoba Family Justice Program and determine if it is a viable model for British Columbia.	16	64.00%
Access to Legal Services	Examine the role of Justice Access Centers (JACs), including how they could be used to provide legal advice, how they could be best operated, and to examine the Law Society's role in connection with their advancement and support.	13	52.00%
Access to Legal Services	Develop a framework for the credentialing and regulation of non-lawyer legal service providers to improve the affordability of legal services (work that is currently being examined through the Legal Services Regulatory Framework Task Force).	10	40.00%
Access to Legal Services	Create a task force to examine the Law Society's position on Legal Aid, including what constitutes appropriate funding and whether other sources of funding, aside from government, can be identified	9	36.00%
Access to Legal Services	Examine whether a Public Defender's Office would improve low and middle income clients' access to legal services.	9	36.00%
Access to Legal Services	Examine endorsing a shift of focus for the Law Society's analysis of issues from "Access to Legal Services" to Access to Justice.	6	24.00%
Access to Legal Services	Examine the role of and viability of offering legal insurance programs.	6	24.00%
Access to Legal Services	Assess the viability of Public Private Partnerships for funding of access initiatives. Can one create "for-profit" low cost legal services by utilising philanthropic models of funding for access to legal services?	3	12.00%
Access to Legal Services	Identify and implement methods or programs to improve general public understanding of how the law and justice system intersects with day-to-day activities, and how to avoid engaging the justice system when making decisions.	1	4.00%
Admission program and Education reform	Evaluate the current admission program (PLTC and articles), and develop principles for what an admission program is meant to achieve.	18	72.00%
Admission program and Education reform	Monitor the Federation's development of national standards and the need for a consistent approach to admission requirements in light of interprovincial mobility.	13	52.00%
Admission program and Education reform	Examine the role of lawyers and law firms in providing articles, including quality of articles and whether all firms provide students with a salary.	12	48.00%
Admission program and Education reform	Conduct a review of the Continuing Professional Development program	11	44.00%
Admission program and Education reform	Examine alternatives to articling, including Ontario's new Legal Practice Program and Lakehead University's integrated co-op law degree program and their potential effect in BC.	11	44.00%
Admission program and Education reform	Undertake an assessment of the Rural Education and Access for Lawyers (REAL) initiative.	7	28.00%
Admission program and Education reform	Examine mentorship models of education (including the current Aboriginal Mentorship Program).	1	4.00%
Admission program and Education reform	Examine the implications of international agreements on trade in services, such as the Comprehensive Economic and Trade Agreement for future regulation of admissions.	1	4.00%
Public opinion of/confidence in the justice system	Develop communications strategies for engaging the profession, legal service users, and the public in general on justice issues.	16	64.00%
Public opinion of/confidence in the justice system	Examine the Law Society's role in education initiatives, including identifying ways to engage the Ministry of Education on high school core curriculum to include substantive education on the justice system and to improve the general public's understandin	14	56.00%
Public opinion of/confidence in the justice system	Identify strategies to express a public voice on the justice system, including public forums.	12	48.00%
Public opinion of/confidence in the justice system	Examine Practice Standards initiatives to improve the competence of lawyers by maximizing the use of existing and new data sources to identify at-risk lawyers and by creating Practice Standards protocols for remediating identified low, moderate, and high	10	40.00%
Public opinion of/confidence in the justice system	Develop further initiatives to reflect equity and diversity in the legal profession and in the justice system as a whole.	6	24.00%
Public opinion of/confidence in the justice system	Examine and settle on the scope and meaning of s. 3(a) of the Legal Profession Act.	6	24.00%
Public opinion of/confidence in the justice system	Identify the proper role of the Law Society in planning for and participating in future Justice summits.	6	24.00%
Public opinion of/confidence in the justice system	Identify ways to defend judges against unjust criticism and complaints.	1	4.00%
		25	

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Access to Legal Services	Create a task force to examine the Law Society's position on Legal Aid, including what constitutes appropriate funding and whether other sources of funding, aside from government, can be identified	9	36.00%
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Access to Legal Services	Examine the role of and viability of offering legal insurance programs.	6	24.00%
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THE CONTINUING LEGAL EDUCATION SOCIETY OF BRITISH COLUMBIA CLE BC

CLEBC Update
December 5th, 2014

1. **The Law Society is a controlling stakeholder in CLEBC**
    a. The Law Society, CBABC, UVic and UBC are the Members of CLEBC. The Members appoint the directors.
    b. Two benchers (Dean Lawton and Martin Finch QC) were recently appointed to the Board. The Law Society also jointly appoints, with CBABC, 10 directors, representing each county in the province. The Law Society is involved in appointing 12 of 19 directors, as a result it is a controlling stakeholder.
        i. Other directors of CLEBC include 2 members of CBABC Provincial Council, and 2 representatives of each of UBC and UVic Faculties of Law. CLEBC has ex-officio representatives from the Ministry of Justice and the Provincial and Supreme Courts. Anne Pappas of Thompson Rivers University Faculty of Law is currently attending board meetings.
    c. As a controlling stakeholder, the Law Society will want to know that CLEBC is appropriately governed. The Board completed a Governance Review in 2013; the mission, vision, and strategy are regularly updated; key performance measures are nearing completion; financial statements are audited; the Finance Committee meets in camera with the auditor; and the CEO has an annual assessment. CLEBC is financially sustainable.

2. **CLEBC assists the Law Society in achieving its Ends**
    a. The primary Law Society "Ends Statement" relevant to CLEBC is 2 b.
        "Post-call legal education that is relevant and of appropriate quality is available."
    a. **Relevance**: 1000 lawyers every year, or 10% of the profession, develop CLEBC resources as volunteer faculty and authors. That and the fact that lawyers consistently purchase CLEBC products and services speaks to relevance.
    b. **Quality**: CLEBC courses are consistently rated by lawyers as 4 on a scale of 1 to 5. CLEBC books are described by lawyers as the "standard of practice". CLEBC is a member of the international association of CLE providers and has won 25 awards in the past 23 years for public service, publications, courses and technology, amongst others. CLEBC is the largest BC specific cpd provider and publisher. 100% of volunteers surveyed would volunteer again. The fact that customers and volunteers keep returning is an indication of quality.
    c. **Availability**
        i. CLEBC provides 81 face to face courses/year, 54 live webinars, 23 CLE-TV sessions, 6 hours (and growing) of self-paced eLearning, 3000 modules (about 350 new modules/year) in the webinar archive, and 40 titles/year in rebroadcasts.
        ii. CLEBC provides 52 print books, 44 online books, digests of all BC superior court cases since 1996, a precedent service with 100s of precedents, and 4400 papers (about 350 new papers/year) in the course materials archive.
        iii. Cost is an availability issue (if you can't afford it, it isn't available) – CLEBC provides a courses bursary with an automatic 50% (and up to a 100%) discount without a means test. CLEBC provides an Easy Pay Plan that allows lawyers to pay for products over 4 months. Most CLEBC resources are available in Courthouse Libraries. CLEBC's efforts to make learning available online have dramatically reduced travel and out of office expenses.

3. **CLEBC wants to support the Law Society in providing leadership to the profession**
    a. CLEBC appreciates the regular participation of Law Society staff and Benchers as volunteers.
    b. In 2013, CLEBC worked with the Law Society to provide free training on the new Code of Conduct to over 5000 attendees. CLEBC also provided, with the Law Society, a free program on Succession Planning.
    c. CLEBC has offered to do an annual free CLETV program with the Law Society.

The Law Society of British Columbia

Report of the Legal Services Regulatory Framework Task Force

Art Vertlieb, QC (Chair)
David Crossin, QC (Vice-Chair)
Satwinder Bains
Jeevyn Dhaliwal
Lee Ongman
Karey Brooks
Nancy Carter
Dean Crawford
Carmen Marolla
Wayne Robertson, QC
Ken Sherk

December 5, 2014

Prepared for: Benchers

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

Purpose: Decision

Table of Contents

Executive Summary

1. In December 2013 the Benchers unanimously approved the report of the Legal Service Providers Task Force. That report, building on past work of the Law Society and a range of legal needs studies, recognized that in order to address unmet and underserved legal needs in our society the time had come to explore in more detail a liberalization of the market place concerning who can practice law.

2. This Task Force was created to follow up on the third recommendation in the Legal Service Providers Task Force Report. It was given the mandate (set out below in the body of this Report) to provide a framework for the expansion of legal service providers. The mandate can roughly be divided into two components: mandate items (a)-(c) focus on identifying the unmet need in society, who provides legal services, and what new services might be created to provide the public more options for getting legal help. Mandate items (d)-(f) focus on developing credentialing and regulatory schemes to govern those new services.

3. While the Benchers have already endorsed the idea of expanding the category of who can practice law, they did so without a detailed exploration of what that might theoretically encompass. This report attempts to fill in some of the detail by examining in particular mandate items (a)-(c). It follows the research already conducted by the Law Society on his subject, and examines legal needs studies both provincially and nationally to get a sense as to where unmet legal needs exist, and to identify where there are underserved areas of legal practice, and what might be done to address them. It has supplemented this research by engaging in preliminary consultation with courts, other regulatory bodies, and groups that are already utilizing some non-lawyer assistance, such as the Legal Services Society.

4. As a result of its work, the Task Force recommends that the initial areas of practice in which new classes of legal service providers could be permitted to practice should include:

    a. family law;

    b. employment law;

    c. debtor/creditor law;

    d. advocacy before administrative tribunals (subject to further discussion with administrative tribunals);

    e. advocacy in Small Claims Court (subject to further discussions with the Provincial Court);

    f. Traffic Court infractions in Provincial Court;

g. representation at mediations and arbitrations.

5. The Task Force has also concluded that the public interest in the administration of justice would not be well serviced if these new categories of legal service providers were not, in some manner, credentialed and regulated to provide legal services. There must be some standards to the services provided. There is no point in creating a system that enables people to retain uninformed legal advice, as that advice will in most cases exacerbate already existing legal problems.

6. The Task Force therefore concludes that these new providers of legal services must in some fashion be credentialed and regulated, and agrees with the recommendations of the Legal Service Providers Task Force that the Law Society should be the regulator of legal services.

7. However, the Task Force has recognized that in order to create, credential and regulate new categories of non-lawyer legal service providers, an amendment to the *Legal Profession Act* would likely be necessary. The Task Force therefore also recommends that the Benchers seek such an amendment in order to enable the Law Society to establish new classes of legal service providers to engage in the practice of law (as that term is defined in the legislation), set the credentialing requirements for such individuals, and to regulate their legal practice. This Report sets out some of the policy rationale for a legislative amendment.

8. Because the work that would be required in order to properly discharge mandate items (d)-(f) will require extensive consultation with a wide range of knowledgeable stakeholders, it is premature and potentially inappropriate to engage those groups until it is determined whether a legislative amendment is possible. The Task Force therefore recommends that those three items of the mandate be considered more fully at a later date.

Recommendations

9. The Task Force recommends that the Benchers seek an amendment to the *Legal Profession Act* to permit the Law Society to establish new classes of legal service providers to engage in the practice of law, set the credentialing requirements for such individuals, and regulate their legal practice.

10. While some further consideration needs to be given before final recommendations can be made, the Task Force recommends that the initial areas of practice in which new classes of legal service providers could be permitted to practice should include:

    a. family law;

    b. employment law;

    c. debtor/creditor law;

    d. advocacy before administrative tribunals (subject to further discussion with administrative tribunals);

    e. advocacy in Small Claims Court (subject to further discussions with the Provincial Court);

    f. Traffic Court infractions in Provincial Court;

    g. representation at mediations and arbitrations.

11. The specific types of services that new categories of legal service providers should be permitted to offer in each area must still be ascertained, and will be subject to several variables. This issue is discussed further in Part IV, below.

I. Introduction

The Issue for Consideration

12. The Benchers are asked to consider the Task Force's recommendation to seek a legislative amendment to the *Legal Profession Act*, S.B.C. 1998 c. 9 to permit the Law Society to develop a credentialing and regulatory scheme for new classes of legal service providers to engage in the practice of law.

13. This report focuses on items (a)-(c) of the Task Force's mandate.[1] The Task Force considers that items (a)-(c) establish the threshold question that has to be answered, first by the Benchers, and then by government: *is it in the public interest for the Law Society to have the authority to create, and regulate, new categories of legal service providers to engage in the practice of law, in order to provide the public greater options when it comes to accessing legal services?* If the concept is rejected, it would be unnecessary to develop any new credentialing and regulatory schemes. Consequently, this report only addresses mandate items (d)-(f) in an introductory fashion.

14. If the Benchers agree that a legislative amendment should be sought, staff will work toward refining the material to be provided to the government by spring 2015, in order that it can be considered by the government for the 2016 legislative cycle. If, on the other hand, the Benchers decide that a legislative amendment should not be sought, the work of the Task Force would be concluded.

Creating the Task Force

15. The Task Force has the following members:

Art Vertlieb, QC (Chair)
David Crossin, QC (Vice-chair)
Satwinder Bains
Jeevyn Dhaliwal
Lee Ongman
Karey Brooks
Nancy Carter
Dean Crawford
Carmen Marolla
Wayne Robertson, QC
Ken Sherk

[1] See Paragraph 18.

16. The Task Force was constituted to bring diverse professional perspectives to its work and to have a wide knowledge base for assessing the mandate through the lens of the public interest.

Background

17. On December 6, 2013 the Benchers unanimously adopted the report of the Legal Service Providers Task Force. That report contained three recommendations, including the following recommendation that gave rise to this Task Force:

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

18. At their April 11, 2014 meeting, the Benchers resolved:

> *…to create the Legal Services Regulatory Framework Task Force, and to endow that body with the mandate to develop a regulatory framework by which other existing providers of legal services, or new stand-alone groups who are neither lawyers nor notaries, could provide credentialed and regulated legal services in the public interest. Specifically, the Task Force should:*
>
> *(a) identify areas of unmet needs for legal services or advice;*
>
> *(b) identify who in British Columbia and elsewhere, besides lawyers and notaries, currently provide legal services and assess the current value and skill that those providers bring to their work;*
>
> *(c) identify areas of legal practice suitable for the provision of legal services by non-lawyers;*
>
> *(d) identify the qualifications necessary for non-lawyers to be able to provide such services;*
>
> *(e) make recommendations to the Benchers for a regulatory framework to:*
>
> *(i) credential non-lawyers to provide legal services in discrete areas of practice;*
>
> *(ii) set standards for the provision of such services; and*
>
> *(f) ensure that the framework developed is consistent with a unified regulatory regime for legal services.*

19. This Task Force is the most recent in a series of Law Society initiatives that have the goal of improving the public's access to legal services. In each instance the work on the various initiatives has sought to balance the public interest of improving access to more affordable legal services with the value of ensuring that legal service providers are properly qualified and regulated. The history of that prior work is set out in detail in the final reports of the Legal Service Providers Task Force, and the Delivery of Legal Services Task Force, and is therefore not duplicated here.[2]

20. The mandate of the Law Society, established in s. 3 of the *Legal Profession Act,* includes the following:

> *It is the object and duty of the society to uphold and protect the public interest in the administration of justice by*
>
> *(a) preserving and protecting the rights and freedoms of all persons;*
>
> *(d) regulating the practice of law.*

21. There are several ways by which the rights and freedoms of people can be preserved and protected, including by facilitating access to the services of skilled legal professionals. This can be accomplished by reducing barriers to accessing existing service providers, but it can also be accomplished by creating new categories of legal service providers. The Task Force believes is that the threshold question is whether the public needs access to new categories of legal service providers to improve access to legal advice. This requires assessing what services exist and determining the extent to which the public can access these services. To the extent the current market for legal services falls short of addressing public need, it is possible to identify the foundation on which the case for creating new categories of legal service providers must rest.

II. Task Force Process

22. The Task Force held eight meetings, engaged in extensive research, and undertook a series of in-person consultations as well as two online consultations.

23. The Task Force started with a review of core materials from past Law Society initiatives in order to understand the history that led to the creation of the Task Force. The Task Force then set a work plan in place, revisiting it from time to time as circumstances warranted.

24. The Task Force set the object of reporting to the Benchers in a timeframe that would allow the Law Society to make the case to government in 2015 for a legislative amendment

[2] Those reports, and others are available at: http://www.lawsociety.bc.ca/page.cfm?cid=99&t=Committee-and-Task-Force-Reports.

permitting it to regulate and credential new classes of legal service providers. There were a number of reasons for setting an ambitious timeline, but chief among them were the following.

25. Firstly, the other major initiative that arose from the Legal Service Providers Task Force was the recommendation that the Law Society and the Society of Notaries Public of BC work toward consolidating their regulatory structures, such that the Law Society would regulate both lawyers and notaries. That work is taking place separate from the work of the Task Force, but if it were to conclude in an agreement between the two governing bodies, that agreement would ultimately require statutory amendments. The Task Force wanted to ensure that its work was completed by the time the work regarding a regulatory merger with the notaries was complete to increase the chance the Law Society is able to present a comprehensive legislative reform proposal to the government.

26. Secondly, the impetus behind any recommendation to create new categories of legal service provider must be founded in the access to justice needs of British Columbians. The access to justice problem in British Columbia is well documented and immediate.[3] Recognizing that any recommendations of this Task Force will take a number of years to put into effect before the first properly trained new class of licensees would be available to the public also favoured setting an ambitious timeline so that unmet and underserved legal needs do not become a systemic part of our society.[4]

27. While these factors influenced the Task Force's decision to focus on mandate items (a)-(c), the Task Force concluded that if one were unable to make the case of the need for new categories of legal services, and provide some illustration of the types of services that were being contemplated, it would be unwise to develop a credentialing and regulatory structure on speculation. The only qualification the Task Force places on this observation is the recognition that the public interest requires not merely access to affordable legal services, but competently delivered legal services. Therefore, the model of credentialing and regulation is important to the ultimate goal of meeting public need. However, it is secondary to the question of whether the market place needs new classes of legal service providers.

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[3] For a sample of the numerous reports on point, see: Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil & Family Justice: A Roadmap for Change* (October 2013); the Canadian Bar Association, *reaching equal justice report: an invitation to envision and act* (November 2013); Leonard T. Doust, Q.C., Report of the Public Commission on Legal Aid in British Columbia, *Foundation for Change* (March 2011); Dr. Julie Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants* (May 2013); Carol McEown, Law Foundation of British Columbia, *Civil Legal Needs Research Report* (2nd Edition, March 2009); Law Society of British Columbia, Ipsos Reid, *Legal Services In BC Final Report* (September 2009).

[4] The Task Force considers that it required time to properly assess the matter, then it would take time for a legislative amendment, following which, regulatory and credentialing structures would have to be created, and finally, courses developed and staffed before the first class of future licensees even began their journey.

28. In order to answer mandate items (a)-(c) the Task Force reviewed legal needs literature for British Columbia and other jurisdictions, as well as past Law Society reports. The Task Force supplemented this research with consultations with the following:

    Chief Justice of British Columbia
    Chief Justice of the Supreme Court
    Chief Judge Crabtree and Associate Chief Judges Phillips and Gill of the Provincial Court of British Columbia
    Circle of Chairs of BC Administrative Tribunals
    The Canadian Bar Association, BC Branch
    Law Society of Upper Canada
    Washington State Bar Association
    Law Foundation of British Columbia
    Legal Services Society
    Community Legal Assistance Society
    Lawyers and other legal service providers
    The Public

29. Some of the consultations were in person, and others relied on feedback to consultation documents.

30. Following the consultations, the Task Force synthesized its research and formulated its recommendations based on its analysis of the materials it had read, the feedback it received during consultations, and the discussions that took place at its meetings.

III. Research and Consultation

31. The research and consultation of the Task Force confirmed the findings of the Legal Service Providers Task Force, the Delivery of Legal Services Task Force, the Unbundling of Legal Services Task Force, and numerous external reports, studies and academic articles that the present market for legal services fails to meet the legal needs of a vast majority of the population.

32. While statistics vary, findings are consistent that approximately 85% of people with a legal problem will not receive assistance from a lawyer. In some cases this is due to a personal choice of the individual to "go it alone", in some cases it is because the individual fails to recognize the problem as being "legal" in nature, and in many cases it is because people believe they cannot afford a lawyer or have determined that they cannot afford a lawyer. The

consistent findings are that the market, as presently constituted, is not adequately serving the public.[5]

33. The recognition of this market failure led to the Task Force being charged with exploring the concept of creating new categories of legal service providers. The mandate expressly requires consideration of unmet legal needs, so the Task Force decided to supplement its literature review with consultations. A detailed summary of the consultations and feedback is set out in Appendix 1 and the consultation questions are set out in Appendix 2.[6] A brief summary of the consultations and feedback is set out in this section of the report.

34. The Task Force held in-person meetings with the Chief Justice of British Columbia, the Chief Justice of the Supreme Court, the Chief Judge and two Associate Chief Judges of the Provincial Court of British Columbia, and representatives of the Circle of Chairs of Administrative Tribunals, the Community Legal Assistance Society ("CLAS"), the Law Foundation of British Columbia, the Legal Services Society ("LSS"), the Law Society of Upper Canada and the Washington State Bar Association. In addition, the Task Force posted online consultations for legal service providers[7] and for members of the public.[8] The Task Force also received feedback from Mediate British Columbia and the Canadian Bar Association (BC Branch).

35. The consultations provided a wide range of feedback. What was almost universally acknowledged was that there are unmet and underserved legal needs in our society and that the public would benefit from greater access to legal advice, assistance with preparing and interpreting documents, and advocacy services. There was less unanimity as to whether people other than lawyers ought to provide such services and if they are allowed to do so, what the exact scope of those services ought to be.

36. Because the feedback in favour of developing a more expansive model of regulated legal service provider outweighed the feedback against the proposition, the majority of this report explores the range of what might be possible. However, in order to give voice to the concerns that were identified both by members of the Task Force and through the consultation process, the report also contains a section entitled "Words of Caution", which sets out the key concerns that need to be considered.

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[5] This is not an indictment of the many lawyers who provide legal services to people across broad economic spectra, including to the middle class and people of modest means. It is a reflection on the broad operation of the market to meet the public need for affordable legal services.

[6] It is important to recognize that the Legal Service Providers Task Force, which gave rise to the creation of this Task Force, also engaged in consultations with the public and the profession and took that feedback into account prior to recommending the Law Society proceed with this project. As a result, the nature of the recent consultations was to identify the type of legal needs that exist and whether creating a new class of trained service provider to address that need makes sense.

[7] Fifty-eight people provided feedback.

[8] Twelve people provided feedback.

37. Amongst the adjudicative bodies the Task Force consulted with, there was a spectrum of views as to the need for non-lawyer advocates.[9] Non-lawyer advocacy in the Provincial Court, provided it was subjected to proper training and regulation, could benefit areas of general civil litigation and Traffic Tickets. On the other hand, the need for non-lawyer representation in the Court of Appeal and the Supreme Court is less pronounced, and there was a sense that, unless regulated to a very high degree, it was possible it could create harm.

38. The Circle of Chairs of Administrative Tribunals was far more explicit in support of the concept of establishing new classes of legal service provider and the desirability of having people who appear before administrative tribunals receive legal assistance. While uncertainty existed as to the potential market for such services, the Chairs of the various tribunals spoke of the general lack of lawyer advocacy that occurs before the tribunals now, and how both the parties and the tribunals themselves would benefit from having properly trained advocates.

39. Consultations with CLAS, the Law Foundation, and LSS confirmed the vast gap in unmet legal needs that exists between the wealthy and those of modest means who receive some subsidized and pro bono legal assistance. This access to justice gap could be served, in part, by liberalizing restrictions on who can practice law. The consultations provided greater insight into the work that is performed by paralegals at mental health panel reviews and by community advocates throughout British Columbia. In areas that lawyers largely do not now serve, alternative services have cropped up to begin to address some of the unmet legal need. These services, however, do not operate in the free market. In addition to confirming the potential benefit of expanding the free market for legal services, these consultations also cautioned that over-regulation would harm the efficient operation of legal services directed at the poor and disenfranchised.

40. The feedback from Mediate BC was essentially in the form of seeking clarification as to the scope of the project. The essence of the feedback was a concern that the Law Society not seek to expand its regulatory regime to regulate mediators and arbitrators.

41. The feedback from the CBA (BC Branch), reiterated its submission to the Legal Service Providers Task Force that any reforms would need to ensure lawyer independence is preserved, access to justice is enhanced, regulation is effective and the public understands the scope of roles permitted by various classes of service provider. The CBA (BC Branch) reminded the Task Force of the types of unmet legal need identified in the CBA report *Foundations for Change*.[10] This includes: *criminal law, child protection, mental health law for those involuntarily committed at a provincial health facility, refugees seeking asylum in BC, poverty law and family law.*

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[9] As is noted elsewhere in the report, including Appendix 1, the consultations with the courts in particular were preliminary in nature and the summaries contained in this report are not intended to reflect final determination of the issue by the court.

[10] See fn. 3.

42. The CBA (BC Branch) suggested that "there may be identifiable aspects of the delivery of legal services which may be suitable for non-lawyers with the governing principle that these legal services will likely, in most circumstances, require the mentorship, supervision and direction of lawyers."

43. The online survey of legal service providers recognized unmet and underserved need for assistance filling out legal forms, legal advice, representation before a court or tribunal or at a private dispute resolution process (such as a mediation or arbitration). When it came to the question of which of these services a new class of regulated professional ought to be able to provide, the feedback still favoured assistance with filling out forms but dropped off steadily, with providing legal advice and appearing before a court being favoured by less than a third of the respondents.

44. The online survey of the public generated a different result than that of legal professionals, in terms of both the percentage of people who felt the listed services required greater access and the large majority who favoured expanding the model of who was permitted to provide those services beyond the *status quo.*

45. Caution is required in considering both of the online surveys, as the respective sample sizes are very small. The legal service providers' survey generated 58 responses and the public survey only 12. To the extent the public survey is consistent with the various provincial and national legal needs surveys that sampled much larger portions of the public, some guidance can be taken, but the legal service providers response rate is simply too low to consider it a statistically accurate reflection of how legal service providers *en mass* would view the questions.

46. In forming its recommendation, the Task Force took into account the feedback it heard from all sources, including reflecting on the past work of the Law Society on this issue and a wide range of legal needs studies.

IV. Analysis

1. Opening Comments

47. Access to justice and access to legal services are problems that have existed for decades in varying degrees.

48. Access to the legal system – to legal advice, to seek justice – is crucial to any society that, like Canada, is based on the rule of law. As stated recently in a report for the International Bar Association:

> The importance of access to justice cannot be overstated. Access to justice is fundamental to the establishment and maintenance of the rule of law, because it enables people to have their voices heard and to exercise their legal rights, whether those rights derive from constitutions, statutes, the common law or international instruments. Access to justice is an indispensible factor in promoting empowerment and securing access to equal human dignity. Moreover, a mutually supportive link exists between, on the one hand, improving, facilitating and expanding individual and collective access to law and justice, and, on the other hand, economic and social development.[11]

49. Access to legal services and to justice is best accomplished where there is access to qualified, and regulated, providers of legal services. Law is complex. Ensuring that legal advice is given by individuals who have studied the law and are trained in its application is important. There is no point in creating a system that enables people to access uninformed legal advice, because more often than not, that advice will simply lead to further legal problems.

50. By and large, lawyers are currently the predominant providers of paid legal services. Lawyers are well-educated, credentialed, and regulated both as to competence and conduct. However, it is clear that not everyone can afford to retain a lawyer when faced with the need for legal advice. It is also clear that, as it is expensive to become a lawyer, some areas of practice in which advice is needed are simply uneconomical for lawyers to provide legal services. It can therefore be very difficult to find a lawyer to provide advice in some areas of practice.

51. If there is an unmet need for legal services, and lawyers are the only group that can provide legal services, then either lawyers have to review the way they offer services or some other group or groups will need to be trained to provide services to meet those areas of unmet need. Otherwise, "access to justice" becomes a meaningless ideal to a large segment of the population. This could have significant consequences on the maintenance of the rule of law.

[11] *International Access to Justice: Barriers and Solutions* Bingham Centre for the Rule of Law, October 2014.

52. The Task Force has been very aware of the link between its mandate and the need to develop ways to improve access. Expanding the market of legal service providers is one method of addressing access concerns. Expanding the market will not, however, by itself solve the access to justice problem. There will be individuals who (as discussed below) will still not be able to afford the services of new categories of legal service providers that may be created.

53. Moreover, expanding the market of service providers must not come at a cost of harming the public's ability to obtain helpful advice. An unregulated market, leaving the public to assess the value of the services they have contracted, is not in the overall public interest, as is elaborated on in the section below.

2. Public Interest

54. At each stage of its analysis the Task Force has considered whether establishing new classes of legal service provider is in the public interest. The Task Force recognizes that implementing such a proposal will likely be viewed by some legal service providers as a bad idea for reasons of principle, and will be opposed by others out of a desire to prevent competition in the market place. Other legal service providers will welcome the reforms if they achieve the desired object of improving access to justice. External opinions are important to consider, but the Benchers ultimately must be guided by their determination of what is in the public interest.

55. When analysing the public interest in connection with the mandate given to the Task Force, two essential elements must be considered.

56. **First**, does the existing model of reserving the right to practise law to lawyers (with few exceptions) contribute to the access to justice problem by creating a market place in which a sizeable portion of the public cannot afford lawyers' services, while simultaneously limiting competition from other service providers?[12] If the answer to that question is *yes*,[13] then s. 3 of the *Legal Profession Act* requires that the Benchers take steps to improve the public's access to legal services. **Second**, how is the public protected properly in a model that expands permitted practice of law to non-lawyers?

57. The Task Force has explored information gathered in the course of its research to assess whether creating new classes of legal service provider might improve access to justice.

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[12] The reasons why the services are unaffordable are complex. This is not an expression of moral blameworthiness for lawyers charging fees that the market can support.

[13] In its 2008 report *"Towards a New Regulatory Model"* the Law Society's Futures Committee reached a consensus that "it is in the public interest to expand the range of permissible choices of paid legal service provider to enable a reasonably informed person to obtain the services of a provider who is adequately regulated with respect to any or all of training, accreditation, conduct, supervision and insurance, and who can provide services of a quality and at a cost commensurate to the individual and societal interests at stake in a given matter."

Importantly, the Task Force noted that the 2009 IPSOS Reid survey[14] found that about 66% of British Columbians experienced at least one serious and difficult to resolve problem in the three year period preceding the survey. Despite this, 70% seek *no* assistance in trying to resolve the problem, preferring to "go it alone" rather than to seek the services of a professional. The three main reasons for seeking no assistance were: (1) legal assistance was not required or necessary, (2) legal assistance was too costly, and (3) legal assistance was too difficult to access.

58. In fact, the survey indicated that of the 30% who do seek assistance with their legal problems, only half (15% of the total surveyed) sought assistance from a lawyer. Those who sought help from someone who was not a lawyer[15] did so because of a desire to avoid court, as well as the expectation that non-lawyers are cheaper than lawyers. Most respondents who sought assistance from a lawyer had a monetary gain or loss at stake of, on average, $121,000, while those who sought help from a non-lawyer had at stake, on average, $47,000.

59. The main reason people seek no assistance is because they did not consider they needed help with their problem. However, cost and not knowing how to obtain assistance were also key indicators. An English study has suggested that while most "inaction" in dealing with a legal problem is "rational inaction," (that is, people make rational choices about whether to seek representation or not depending on a number of variables) "a significant minority of cases of inaction are characterised by helplessness or powerlessness[16]" and that "cost (or at least perceived cost) is evidently an important factor in decisions concerning sources of help."[17]

60. Further, the IPSOS Reid survey indicates that a lack of knowledge was the most difficult issue for respondents to overcome in resolving legal problems. This was broken down into (1) not knowing what to do, (2) thinking nothing could be done, and (3) being uncertain of their rights.

61. The Task Force, after considering these findings, believes that it is reasonable to conclude that if access could be provided to non-lawyer legal service providers in areas of law that created high(er) incidence of legal problems for British Columbians, or for which lack of legal assistance was most disruptive to people's lives or leads to a cascading of other problems,[18] people would be more likely to seek some assistance or advice and thereby be better informed of their options about what could be done to address their problem. They may still choose to do nothing, but at least then their choice would be a better informed one.

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[14] IPSOS Reid *Legal Services in BC* 2009

[15] "Non-lawyers" includes non-lawyers currently permitted to practice in some areas of law, other professionals such as accountants or health professionals, family, friends, government offices and the internet. It also likely includes others who would be engaging in unauthorised practice of law.

[16] Pleasance and Balmer *How People Resolve 'Legal' Problems* 2014 pgs 2-3

[17] *Ibid*, p. 5

[18] Be they legal, social, health related, etc.

On the other hand, they may be better guided about the range of options available, what rights are involved, and what it may be worth to them to pursue the matter with proper assistance.

62. The Task Force therefore concludes that it is in the public interest to permit non-lawyer legal service providers to provide certain legal services. It believes this conclusion will increase the number of people who seek legal advice by targeting the 70% of British Columbians who do not do so now, as well as at least some of the 15% who seek advice from non-lawyers now (recognizing that some of this advice comes from unregulated providers with no training or qualifications).

63. The Task Force does not, however, suggest it is in the public interest for there to be a completely unregulated market of non-lawyer legal service providers. Public protection arises from ensuring that people who provide legal services are properly trained, regulated, and carry liability insurance in circumstances where the absence of such safeguards create an unacceptable level of risk. The discussions about the types of legal services that new classes of service providers ought to be able to provide are frequently challenged by the absence of having created the education, regulation and liability schemes. A default position for many people is to express concern and suggest limits on what non-lawyer legal service providers ought to be able to do on the basis of the argument that the matters that need to be addressed are too complex for non-lawyers. This was a frequent refrain in previous examinations by the Law Society concerning the credentialing of paralegals.

64. The Task Force suggests that the better way to approach concerns about new classes of legal service provider is to start by identifying what legal services the public needs but to which it does not currently have adequate access. The identification of this gap creates the moral imperative to act. The next stage will be to identify the training that is required to ensure that non-lawyer providers can competently provide those services and to create courses to train people to the expected standard. This requires consultation with education providers and practitioners. It provides an opportunity to take the best of our current approach to legal education and also push forward to address gaps in the current model of legal education. As that work is being done, the regulatory and insurance framework for new categories of providers can be developed. However, as noted, it is premature to engage in the work of credentials and regulation frameworks unless the Benchers are convinced that the public's access to justice requires opening up the market place for legal services.[19] Concerns about existing levels of (or lack of) competency of non-lawyer service providers ought not to dictate the answer, as those concerns are properly addressed by creating the credentials and regulatory schemes addressing these categories of provider.

[19] It is important to note that, by unanimously accepting the findings of the Legal Service Providers Task Force, the Benchers have endorsed the concept that the market for regulated legal services needs to be expanded, so the question is how wide that door ought to be opened, rather than whether the door need be opened at all.

65. If the Benchers are convinced that creating new categories of legal service providers is in the public interest, and have some sense of the areas of practice that are being contemplated for these providers, the next step is to seek a legislative amendment to permit the Law Society to develop the credentialing and regulatory scheme for such a change. If the government agrees to such a scheme, in-depth work will be required to identify the specific types of legal services that the public requires and the type of training that is necessary to provide those services in a competent manner. A regulatory and governance scheme would also have to be developed at that time.

66. Although the Task Force's mandate contemplates that the Law Society should develop the regulatory scheme rather than create another regulatory body to take on that role, the Task Force spent some time considering whether the Law Society was the right body to act as regulator of all legal service providers. In this discussion, the Task Force was largely guided by the work of the Legal Service Providers Task Force, which came to the conclusion that the Law Society was the proper body to assume control of the regulatory functions of lawyers and notaries, should those functions be merged under the head of a single organization.

67. Much like the Legal Service Providers Task Force, the Task Force rejected the approach that exists in England where there are multiple legal service regulatory bodies operating under an omnibus regulator, or the approach in British Columbia of the regulation of the many health care providers, all operating under the aegis of an omnibus regulator. In order to best ensure consistency of standards and provide maximum transparency for the public regarding how legal services are regulated in British Columbia, the Task Force agrees with the Legal Service Providers Task Force that the Law Society is the proper body to regulate new classes of legal service providers who are engaged in the practice of law.

3. Areas of Practice in Which the Public Would Benefit from Greater Access to Legal Service Providers

68. In this section of the report, the Task Force identifies where it believes the public would be best served by expanding access to new categories of legal service providers. This section must be read with the qualification that the details of what those services will be and the training necessary to be credentialed to provide the services will need to be worked out following necessary amendments to the *Legal Profession Act.* The concepts that follow are, therefore, preliminary in nature and not conclusive of what the final model would look like.

69. In this section the Task Force also attempts to identify some boundaries to the concept. In other words, despite some areas of law having unmet need, there are some services that might

reasonably remain reserved to lawyers[20] and there are some services that might not require any credentialing or regulation at all.

70. It is also important to be realistic about the potential scope of such reforms to improve what is broadly termed an "access to justice crisis." There are many reasons why legal needs go unmet or are underserved. Not all of the reasons relate to the fees lawyers or notaries charge for their services. While a more open market may reduce the cost of some services, some legal needs will still not be able to be met by free market services, particularly for those whose income does not permit them to afford even the reduced rate. Addressing the poverty level of Canadians or the reduced amounts of disposable income that many commentators have identified[21] is not, however, within the scope of this Report. There are also some basic services that the public would benefit from, but which do not require the level of education or regulatory oversight that lawyers are subject to. The scope for these reforms then, must fall within that area that requires some level of credentialing and regulation in order to protect the public, but which can be accomplished at a sufficiently discounted cost to pursuing licensing as a lawyer.

71. In order to address the appropriate areas of practice for new categories of legal service providers, it is essential to start from the question *what legal services does the public need?* rather than *should anyone other than lawyers be able to provide the legal services the public needs?* By framing the question through the lens of public need, we are better able to focus on the rationale of the exercise. We will also be better able to later consider what type of training is required to meet those needs.

72. Approaching the problem from a blank slate, rather than a defence of the *status quo*, makes it possible to identify the services that are not being adequately met and what type of training is *necessary* in order to provide such services. For many people this question will be difficult to answer because the specifics of the type of training that would create the base-line of competence has yet to be established. Others, though, will see this as an opportunity to design legal education in a modern, streamlined way, making the best use of the existing model for training lawyers while introducing innovative, client-centred models of training to better ensure people are receiving the services they need.

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[20] In other words, there may be some services that any amount of legal training short of becoming a lawyer is deemed insufficient in order to protect the public.

[21] In addition to the various legal needs surveys referenced in this report, see, Gillian K. Hadfield, *The Price of Law: How the Market for Lawyers Distorts the Justice System,* 98 Mich. L. Rev. 953 1999-2000; Gillian K. Hadfield, *Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans*, 129 Fordham Urb. L.J. Vol. XXXVII, where the author notes at p. 133 "Indeed, we could say that the utter lack of attention to the size and vitality of the legal markets serving ordinary individuals in the conduct of their everyday lives in a law-thick world is itself testament to how the profession has defined these markets out of existence." Hadfield notes how the absence of data makes analysis of how the market is serving or failing the ordinary legal needs of people difficult.

73. Based on its research and discussion the Task Force has concluded that family law, debtor/creditor law, and employment law are three areas of law in which there is unmet and underserved public need in obtaining legal services. This list is not exhaustive of all the unmet and underserved legal need, but each of these three areas of law is one that represents a common problem and for which legal needs surveys have identified unmet need. In addition, each is an area that can be very disruptive to the people who experience the problems and have adverse ripple effects into communities and society at large.

74. In addition to these discrete areas, the Task Force has also concluded that establishing some capacity for a new class of legal professional to provide advocacy services before administrative tribunals and in small claims court is desirable. This categories of service are described below, and some additional observations are contained in the "Words of Caution" section of the report.

(a) Family Law

75. Family law is frequently identified as an area of need in legal need surveys and this was consistent with the perceptions of Task Force members. While questions may exist as to the propriety of having non-lawyers represent family law clients in court, the reality is there are many services that can be provided preparatory to a court appearance or to help people resolve matters outside of court. The government has been engaged in comprehensive reform of family law in the past decade, attempting to modernize this important area of law.

76. Family law is an area of practice in which non-lawyers already play an important role, and there is a growing appreciation that the traditional adversarial approach to conflict resolution is harmful in many family disputes. Due to the underlying emotional, financial and non-legal issues that can exist in family disputes, there is a growing acceptance of the utility of non-lawyer professional services. Part of what has to be considered, therefore, is whether it makes sense to supplement the training of these professionals with targeted legal training in order to enable them to provide a broader suite of services to people experiencing family disputes. It has been observed that "The growing gap of family law practitioners fundamentally impacts the right of those that already have little to no access to legal representation when faced with complex family law matters."[22] This gap can have particularly adverse impact on women and children as well as people of modest means.

77. Family law has seen the rise of mediation, collaborative family law practitioners, changes to the rules of court, best practice guidelines for family law lawyers, the need for training in screening for family violence and a recalibration of the policy objectives in this area. During

[22] Zara Suleman, *Not with a ten-foot pole: Law Students' Perceptions of Family Law Practice* (West Coast LEAF: January 2009) at p. 34.

this time of reform it is appropriate to consider how to train people to best serve the public and consider what new services can be established to meet these objectives.

78. Family law is complex and can have a profound impact on current and future generations of families. If family law is to be considered as an area to establish new classes of legal service providers, it will require careful consideration as to the education and training requirements. There are a range of services that fall within the scope of family law, and they range in complexity. The scope of services that will be permitted must be carefully aligned with the training and regulation in order to ensure the public is well served.

(b) Employment Law

79. As central as family law issues can be to the lives of the individual and communities, so too are issues arising in areas of employment law. Employment disputes often involve an imbalance of power and loss of employment can cascade into other problems (such as family and debt). In many respects, employment is intimately tied to an individual's identity because employment is the principal means by which we interact with our society and economy. A host of opportunities and obligations arise from employment. The loss of employment is not merely of significant impact to the individual involved or the employer, abstracted to the national level the rate of unemployment is an important indicator of the overall health of our economy. Both at the individual level and at the societal level, therefore, it is important that issues related to employment be resolved in as efficient and fair a manner as possible. Legal need studies suggest that employment law problems rank highly in frequency of problems faced by British Columbians, and are perceived as problems that are disruptive, important to resolve, and that legal assistance would improve outcome. Moreover, the perception is that resolutions with current resources available are perceived to be relatively unfair. [23]

80. The Task Force is of the view employment law merits detailed consideration as an area for expanded legal services.

(c) Debtor/Creditor Law

81. Debtor and creditor matters are areas where public need has been consistently identified. We live in a society where many people struggle to get by. One would be hard pressed to read the news for any extended period of time and not see concerns raised about the levels of debt Canadians possess. Like employment and family law issues, debt impacts both the individual and society in profound ways. It is important to recognize that both the rights of the debtor and creditor are at issue, and each party should have access to the services of a properly trained and credentialed professional. The Task Force considered that, with additional training, credit and debt counsellors (for example) might be able to take on additional useful

[23] IPSOS Reid *Legal Services in BC* September 2009.

roles, such as providing legal advice and representation services in small claims court or in an alternate dispute resolution forum.

(d) Advocacy before Administrative Tribunals

82. The Task Force is of the view that having properly trained advocates assisting people before administrative tribunals is also an area of need. From its consultation with the Circle of Chairs, the Task Force heard about the pressing need for properly trained advocates to assist people appearing before tribunals. From the perspective of the Chairs, the need for skilled advocates goes to the fundamental issue of having a fair hearing. Even though administrative tribunals were established to create a separate adjudicative system from the courts, the issues that arise can be complex and the implications of those issues on people's lives can be profound. To the extent that advocacy before administrative tribunals is an underrepresented area of practice for lawyers, action is required.

83. There are a range of areas of law that merit exploration based on legal need and which can involve tribunals. In addition to employment law, there are the areas of mental health law and poverty law (which encompasses a range of practice areas) that represent unmet and underserved need. These areas were also identified in the submission the Task Force received from the Canadian Bar Association BC Branch,[24] and the British Columbia legal needs materials the Task Force considered.

84. The exact range of tribunals before which a non-lawyer advocate should be permitted to appear need to be determined, but this should be done as part of further consultations with the Administrative Tribunals, and with particular reference to the education and training the advocates receive.

85. When the Benchers approved the creation of designated paralegals as a class of legal professional who could give legal advice and appear before a court or tribunal (as permitted by those bodies), they did so in part on the basis that the proper question to ask is whether it is better to receive legal advice or advocacy from a designate paralegal or to go without professional legal assistance.[25] The same paradigm is true in the case of establishing new classes of legally trained and regulated professionals: the Task Force is of the view the public is better served by having access to such services than it is having to "go it alone" simply because they are unable to access the market for legal services as it now exists.

[24] Letter from Alex Shorten, President of the Canadian Bar Association BC Branch, to Art Vertlieb, QC (October 31, 2014).

[25] This recognizes that comparing the designated paralegal to the services of a lawyer is not the right comparator, provided the designated paralegal can provide the services at a competent level.

(e) Advocacy in Small Claims Court

86. In its preliminary discussions with the Chief Judge and Associate Chief Judges of the Provincial Court, the Task Force heard that there could be a benefit in having assistance in general civil litigation. As noted elsewhere, this was a preliminary discussion and is not conclusive of the issue or the final view of the Court. The exact scope of an advocacy role for a new class of legal service provider in Small Claims Court will be dependent on the detail and ultimately will require further consultation with the Court to better identify the key areas of unmet need and the exact types of services that would better serve the public, and facilitate the efficient and fair operation of the Court. The Task Force identifies advocacy in Small Claims as an area of need, but one, like advocacy before administrative tribunals, that requires further consultations to ensure the proper scope of practice is identified and the requisite training and regulation is established.

(f) Traffic Court – Provincial Court

87. The Task Force also heard from its discussions with the Chief Judge and Associate Chief Judges that non-lawyer advocacy for matters involving Traffic Court might also be worth exploring, provided an appropriate education and regulatory scheme could be developed. The Task Force also noted from its discussions with the Law Society of Upper Canada that advocacy in by law matters is an area of practice permitted for paralegals regulated by that Law Society.

88. Surveys that the Task Force has reviewed do not seem to suggest that people in British Columbia raise concerns about a lack of access to legal services in Traffic Court, and the Task Force has not researched why this is so. Given however that it is an area of practice that the Provincial Court considers is worth consideration for non-lawyer advocacy, and given that there is an apparently successful model for paralegal advocates in this area of practice in Ontario, the task force considers that it is worth further consideration.

(g) Acting as Counsel at Mediations and Arbitrations

89. In the same way that there ought to be some expansion of an advocacy role before administrative tribunals and in Small Claims Court, the Task Force is of the view that there ought to be an advocacy role permitted at mediations and arbitrations within the areas of practice that are permitted under the limited scope license.

90. In order for this to be beneficial, the new class of legal professional would need to receive specific training in respect to how mediations and arbitrations work. The reality is that mediators and arbitrators are not required to be lawyers, though lawyers do perform those roles. If we accept that non-lawyers can discharge the duty of mediators and arbitrators in a

competent fashion once properly trained, it follows that non-lawyers when properly trained and regulated can act as counsel at mediations and arbitrations.

(h) Discussion

91. There are other areas of practice for which there are unmet and underserved legal needs. The Task Force, however, suggests starting with the areas identified above for several reasons.

92. Because the ability to obtain a limited licence to practice law in the areas of law and dispute resolution *fora* identified must be contingent on satisfying an education and training regime that is commensurate with the services permitted under the licence, it is important to recognize that "family law" covers a great deal more than what the uninitiated observer might consider. To be properly trained to provide legal advice in family law matters and to provide some representation services requires some exposure to a wide array of legal principles beyond what most people consider "family" issues (e.g. tax, trusts, wills and estates, conflict resolution, screening for family violence, to name a few). In light of this, it is expected that the training would be such that the service provider might be able to provide advice on these discrete sub-issues outside the family law context. Whether such an expanded license is in the public interest can always be determined at a later date. The key will be to properly train the people to provide the permitted services and, as is the case with the training for Limited License Legal Technicians, to train them to identify issues that lie outside the scope of their limited licence.

93. The other reason the Task Force prefers focusing on discrete core areas is that there is no guarantee that the market will respond to the introduction of a new category of service providers in a manner that will improve access to justice. The risk that it will not have a measurable impact can become magnified if the license is too expansive and diffuse. In other words, the Task Force prefers a narrower focus of areas of law with a broader license for the types of services provided, than a broader focus of areas of law with a more restricted license for the types of services provided. In order for there to be a notable improvement in the market place it is essential that the cost of becoming accredited and the cost of regulation allows for a lower cost legal service to be brought to the market.

4. Types of Services New Categories of Legal Service Providers Should be Permitted to Perform

94. Having addressed the areas of practice in which the public could benefit from access to new categories of legal service providers, the next issue to address is *what types of services ought a new category of legal service provider be able to perform in these areas?*

95. The answer to this question is dependent on the training that the legal service providers receive and the regulatory system to which they are subject. As such, it is important to

understand that the Task Force's conclusions in this regard, as well as the areas of law that should be covered, are contingent on the development of a proper credentialing and regulatory regime being developed. The creation of such schemes is contingent on getting the legislative authority to develop such regime. The Task Force sets out its thoughts in this section in order to provide the Benchers a better understanding of what should be considered in asking government for a legislative amendment.

96. The new classes of legal service providers should be able to practice law (as that term is defined in the *Legal Profession Act*) within the limited scope that is identified. They should be permitted to provide legal information and advice, assist in drafting, filling out forms, coaching, interpreting substantive and procedural law, and with some limitations, be permitted to provide advocacy services.

97. The full scope of permitted advocacy services will need to be determined through further consultations with the courts and administrative tribunals, lawyers, notaries and law schools while the credentialing requirements are being developed. As noted, those discussions will play a significant role in determining what type of appearances, if any, ought to be permitted. With that qualification in mind, the Task Force suggests, as a starting point for discussion, that properly credentialed and regulated professionals in the new class also be permitted to provide advocacy services before administrative tribunals, small claims court, and before mediators and arbitrators, in areas of law covered by their licence and within the jurisdiction of the dispute resolution forum to hear.

98. If the Law Society is successful in obtaining the legislative amendment recommended by this Task Force, other work that is underway (such as the potential merger of regulatory functions between the Law Society and the Society of Notaries Public), will also play an important role, as will any analysis of the potential to certify paralegals based on educational experience. These issues will be relevant because in considering the training necessary for an expanded scope of services to non-lawyer legal service providers, it is logical to examine the Masters of Applied Legal Studies at Simon Fraser University and, for example, the paralegal programs at Capilano University, and consider what additional courses graduates of those programs might be able to take under the new scheme in order to be able to provide the services contemplated under the new licence. That analysis can only take place once the proposed credentialing scheme is developed, but it has the potential to improve access by expanding what notaries and credentialed paralegals are permitted to do, in addition to developing a new class of service provider.

99. The discussions that will take place in developing such a scheme can consider whether limits might be placed on matters based on factors such as the amount in dispute, whether the matter involves children or vulnerable people, etc. The issue will be to balance the sufficiency of the training with the risk to the public. For the time being, the Task Force does not recommend exploring a broader licence to include appearances before the Supreme Court

or Court of Appeal. The reality is that if this work progresses, prudence suggests assessing the efficacy of the new profession in providing legal services and revisiting with the courts at a later date whether the trend in self-representation has risen to a degree where the court is prepared to entertain an audience from legal professionals other than lawyers and if so, on what terms. This would allow an evaluation of whether the training needed to be augmented through some form of continuing professional development or other discrete training.

100. Placing some limitations on the scope of services is prudent because it balances the need to protect the public with the reality that the mere act of liberating part of the market for paid legal services will not, absent a host of other reforms, solve the broad access to justice problem that exists in our society.

101. If the Benchers endorse the recommendation in this report, and legislation is amended to give the Law Society the authority to establish new classes of legal service provider(s) to meet unmet and underserved legal needs, the education requirements and the scope of practice will take concerted effort and consultations to develop properly. That process will necessarily require Bencher approval for the final form of the model. In this respect it is similar to the work on regulation of law firms. At the inception of that work, the Benchers saw the need for the legislative amendment to have the authority to regulate firms. The details of such a model were not before the Benchers, or government, at the time that legislative change was sought. What was understood was the policy argument for the need for that authority. That work is now underway and the Benchers will have the opportunity to discuss the proper form of those rules. The same is true of the process the Benchers are asked to endorse here. The ultimate form, both in terms of detail and scope, will likely be different than what the Task Force has set out in this Report. What is unlikely to change over that time, however, is the pressing need in our society to help British Columbians have better access to justice.

5. Independence of the Legal Profession

102. The independence of the legal profession is fundamental to the way in which the legal system ought to operate[26]. One of the great and often unrecognized strengths of Canadian society is the existence of an independent bar. An independent and competent Bar has long been an essential part of our legal system[27]. Because of that independence, lawyers are available to represent popular and unpopular interests, and to stand fearlessly between the state and its citizens.[28]

103. The right to independent advice from a legal professional who owes a paramount duty to his or her client, free from influence from other sources, is a fundamental public right in

[26] *Federation of Law Societies of Canada v. Canada (Attorney General)* 2013 BCCA 147
[27] *Lavallee, Rackell & Heintz v. Canada (Attorney General)* [2002] 3 S.C.R. 143 at 187
[28] *Omineca Enterprises Ltd. V. British Columbia (Minister of Forests)* (1993), 85 B.C.L.R. (2d) (BCCA) per McEachern C.J.B.C. (dissenting in part for unrelated reasons).

Canadian society. The Task Force realises that it is necessary to ensure that lawyer independence is preserved if non-lawyer legal professionals are to be permitted to provide legal services.[29]

104. The Law Society has advocated repeatedly over the past number of years that lawyer independence is best protected through a system of self-governance and, indeed, this is a position that has judicial recognition.[30] Such a system most clearly distances legal professionals from the state, thereby assuring the public of lawyers' independence and freedom from conflicts with the state. The determination of who is permitted to practise law, and who can be prevented from continuing to practise law, should not be left to those who could abuse such power for their own gain. If lawyers were not, for example, governed and regulated in a manner independent of the state, clients could not be assured that their lawyer would be providing them with independent representation, particularly if the client's case required a direct challenge to the state's authority. The state could abuse a power of licensing or disciplining such counsel to its own end if lawyers were not self-regulating.

105. The Task Force has not fully considered the implications of how expanding the market of legal service providers to include non-lawyers will affect the independence of lawyers. The Task Force's preliminary view is that, provided the legal profession remains self-governing, its independence should be maintained. It will remain to the regulator – assumed to be the Law Society – to set standards for licensing and conduct of legal service providers, including any new categories of legal service providers that may be created. The independent regulator will set standards for competence and conduct in practice for such practices. Some questions – such as the applicability of solicitor-client privilege to advice provided by non-lawyers who are regulated by the Law Society – will need to be worked out. It is possible that some will argue that different considerations apply to legal service providers who are not lawyers. The Task Force believes that, provided these categories of new service providers are properly trained and regulated by the same body that sets standards for training and regulation of lawyers, then the same considerations of independence can be brought to bear on their activities. If that is not the case, however, the standards of education and regulation for lawyers will not change, and therefore *lawyer* independence should be preserved as a public right.

106. The Task Force considers that the case for independence of legal advice from non-lawyer legal service providers may be improved if their regulation is undertaken by the Law Society, as similar standards of ethics, conduct and function within the justice system can be established, which could justify the independence of commonly-regulated legal service providers. If, on the other hand, categories of non-lawyer legal service providers were

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[29] This point was specifically raised as well in the submissions to the Task Force from the CBA (BC Branch)

[30] See, for example, *A.G. Can. v. Law Society of B.C* [1982] 2S.C.R. 307 at 335, *Finney v. Barreau du Québec*, [2004] 2 S.C.R. 17 at paragraph 1

created and regulated by government, independence of the overall legal profession would be compromised.

107. It appears that the licensing of paralegals by the Law Society of Upper Canada has not adversely affected the maintenance of lawyer independence in Ontario, and the Task Force takes some comfort from this.

108. However, this is a subject that the Task Force urges remain on any list of issues to consider as this project moves forward. If lawyer independence is at risk of being compromised by the licensing of categories of non-lawyer legal service providers, the Task Force urges that the proposal be reconsidered.

6. Words of Caution

109. In the course of its consultation, the Task Force received some feedback that expressed the need for caution and some feedback that rejected the premise that creating a new category of legal service provider is in the public interest. In this section of the Report the Task Force summarizes the main concerns that were identified. It is important to consider these cautions as they may inform the Benchers decision whether to request a legislative amendment and, if so, the scope of what might be requested.

110. From consultations and the Task Force's own analysis there were three main cautions that were identified: 1) the potential adverse economic impact of creating new categories of legal service providers; 2) the complexity of legal matters; and 3) the risk of over-regulation.

111. Some legal service providers expressed concern that the current market for providing legal services is very difficult and that proposals for a model that would create more competition would be harmful to existing legal service providers being able to continue providing needed services to the public. Much as public need cannot be viewed in a one size fits all fashion, legal service providers have vastly different incomes. There is a risk that creating new categories of legal service providers will create competition for legal services not only in areas of unmet need[31] but for underserved and for *served* areas as well.

112. The concern about competition may be viewed in at least two ways. The purely protectionist view is such that existing service providers do not want to have to compete with new service providers, necessitating a consideration of how to adjust their prices to provide the public more options because they want to preserve the *status quo*. From a public interest perspective this concern cannot be the Benchers' concern, as the Benchers are tasked with upholding the public interest in the administration of justice. If an expansion of legal services to non-lawyer legal services providers is in the public interest, the fact that it creates competition with existing legal services providers is extraneous to the consideration.

[31] By the definition there ought not be competition for unmet need as it is not being served.

113. The second view is more expansive. It contemplates that competition from lower cost limited licensed legal service providers can have the effect of cannibalizing core areas of practice for legal service providers who are already operating at the margins in order to serve the public. So, for example, sole practitioners who are generalists might be able to sustain their practices by providing certain "bread and butter" services, which, if lost to a service provider that could offer the services at even lower costs, might drive the sole practitioner out of business, thereby removing other legal services from the community. In other words, there could be unintended consequences to the loss of the generalist services in favour of opening the market to discrete lower cost services particularly in small communities where not many lawyers are present.

114. The Task Force observes that the broader question of economics remain unknown to it. It has been generally recognized that but for a few studies and academic articles, there is an absence of detailed empirical data on the economics of providing legal services or the market for those services. It is therefore difficult to quantify the potential benefit to accessing legal services or the potential economic harm. Whether one rejects or accepts the concern, one is essentially taking a leap of faith regarding how they have weighed the risk and reward of either expanding the market or refusing to do so.

115. Another concern that was identified was the argument that because legal issues are so complex, only a lawyer should be able to engage in the practice of law. The Task Force believes that such a caution has to be contingent on the type of training the new category of legal service provider is ultimately subject to and the regulatory scheme that is put in place to protect the public.

116. It is important to bear in mind that lawyers in British Columbia are not subject to a standardized educational experience. Lawyers will have different undergraduate degrees, will have attended different law schools and, with the exception of first year law, will have taken considerably different courses when compared to each other. Further, lawyers have no standardised articling experience, and undertake different continuing professional development experiences. Yet, once licensed to practice law, lawyers are entitled to practice in any area of law and the *BC Code* leaves it to lawyers to self-assess competence to provide the services. The principal safeguard is the professional requirement that a lawyer should not practice in an area of law in which he or she is not familiar.

117. To accept the argument that law is too complex for anyone but a lawyer to practice is to accept the reasoning that non-lawyers cannot be taught to do some of the things that, at present, only lawyers are permitted to do. From the Futures Committee report to the Benchers, to the Delivery of Legal Services Task Force through the Legal Service Providers Task Force, the Benchers of the Law Society have adopted a more expansive view that this Task Force now echoes. Creating new categories of legal service providers can only be in the public interest if the service providers are properly trained and regulated. The training must

be tailored to equip the professionals to provide the services permitted under the scope of the limited license. If that is done, then for those services it would be illogical to say that only a lawyer is equipped to provide them.

118. In discussing the concept of complexity, the Task Force recognized that some legal matters might justify a reservation of practice to lawyers, such as complex matters of substantive or procedural law, or where there is a significant risk of harm to the client – such as the deprivation of liberty - if the services were negligently performed. Such limitations could, of course, be subject to review at a later date.

119. The Task Force paid particular attention to the concept of complexity in considering whether there is a role for non-lawyer advocates in Small Claims Court. Small Claims Court can involve a wide range of legal matters, and just because the monetary value of the issues is capped does not mean that the issues at stake are not complex or the consequences are not profound for the individuals involved. Because of this the Task Force recognized that further exploration of a right to act as counsel in Small Claims Court requires further consultations. At the heart of the matter is identifying what skills are required to properly train an individual to assist a client and also be capable of understanding the boundaries of the professional's capacity to provide value to the client.

120. The third major concern that the Task Force was alerted to was the risk of over-regulation. The unifying theme from this feedback was that there are certain legal services that do not fall within the current definition of the practice of law, such as mediators, arbitrators, and people who are providing legal services without expectation of a fee or reward from the person to whom the service is provided. The latter category can include community advocates and employees of clinics that provide social-legal services free of charge.

121. Information obtained from consultations with the Law Foundation, LSS, and CLAS does not suggest that there is a problem with the model that has given rise to community advocates funded through the Law Foundation, or other similar models. Nor does there seem to be a current problem or risk to the public with the model under which mediators and arbitrators operate. If problems or risks develop in the future, the matter can be reconsidered to determine if the definition of "practice of law" should be expanded to include some or all of these groups. The object of this Report, having adopted the proposition in the Legal Service Providers Task Force report that an expansion of legal service providers is warranted, is to determine what services within the practice of law can be expanded either to existing service providers or to new categories, contingent on them satisfying the identified credentials and regulatory requirements.

122. The Task Force does not recommend an expansion of the definition of the practice of law to capture service providers that are currently excluded for the purposes of bringing those individuals under the regulatory authority of the Law Society.

V. Conclusion

123. The mandate for this Task Force was created to follow up on the third recommendation from the Legal Service Providers Task Force Report from December 2013. That report recognized that in order to address unmet and underserved legal needs in our society, the time had come to explore in more detail a liberalization of the market place concerning who can practice law. Consequently, the mandate for this Task Force was to provide a framework for that expansion.

124. The Task Force decided to divide its mandate into two components.

125. The consideration of the first three aspects of the mandate, which forms the focus of this report, was to identify the unmet legal needs and to assess what new services might be created to provide the public more options for getting legal help.

126. The Task Force affirms that there are unmet legal needs and underserved areas of practice on which the public currently struggles to obtain access to lawyers. The Task Force has concluded that access could be improved in these areas of unmet or underserved areas of practice. In particular, the Task Force has identified family law, employment law, debtor/creditor law, advocacy before administrative tribunals, advocacy in Small Claims Court, and representation at mediations and arbitrations as areas of law in which new categories of legal service providers could improve public access to legal services.

127. The Task Force has also concluded that the public interest in the administration of justice would not be well serviced if these new categories of legal service providers were not, in some manner, credentialed and regulated to provide legal services. There must be some standards to the services provided. There is no point in creating a system that enables people to retain uninformed legal advice, as that advice will in most cases exacerbate already existing legal problems.

128. The Task Force therefore concludes that these new providers of legal services must in some fashion be credentialed and regulated, and agrees with the recommendations of the Legal Service Providers Task Force that the Law Society should be the regulator of legal services.

129. In order for the Law Society to create, credential and regulate these new categories of non-lawyer legal service providers, this Task Force believes that legislative amendments to the *Legal Profession Act* are necessary. Therefore, this Task Force recommends that the Benchers seek an amendment to the *Legal Profession Act* to permit the Law Society to establish new classes of legal service providers to engage in the practice of law, set the credentialing requirements for such individuals, and regulate their legal practice.

130. The policy basis for the request for a legislative amendment is contained in the Task Force's report.

131. The Task Force has determined not to address the final three aspects of the mandate at this time. Those considerations focus on developing credentialing and regulatory schemes to govern the new services proposed above. It is likely premature to develop a system of credentialing and regulating new providers of legal services until the Benchers have approved recommendations of the Task Force as to the need for such providers, and areas of practice in which the public would benefit from new providers of legal services. As the Task Force believes a legislative amendment would be advisable to permit the Law Society to credential and regulate these new providers of legal services, the Task Force believes that it should be ascertained whether an amendment is likely before programs are developed concerning credentialing and regulation.

VI. Next Steps

132. If the Benchers adopt the recommendation in this Report, the next steps will be for staff to develop the materials to be provided to government in spring 2015 for consideration of an amendment to the *Legal Profession Act*. The Task Force should be kept active for the purposes of overseeing this work.

133. If the government grants the legislative amendment, the Benchers will need to consider what group is best equipped to oversee the work on mandate items (d)-(f). That work will of necessity require very specialized skills from those involved and it would be appropriate at that time to consider how, if at all, the constituency of the Task Force might be amended to provide the best oversight for that work.

134. If the Benchers reject the recommendation in this report, the Task Force ought to be dissolved.

135. If a legislative amendment is not forthcoming, the Benchers will need to consider the reasons for the rejection and whether future work on such a concept is merited.

Appendix 1: Consultation Summaries

Consultations with the Courts

1. The Task Force met with the Honourable Chief Justice Bauman of the Court of Appeal for British Columbia, the Honourable Chief Justice Hinkson of the British Columbia Supreme Court, and the Honourable Chief Judge Crabtree, the Honourable Associate Chief Judge Phillips, and the Honourable Associate Chief Judge Gill of the Provincial Court of British Columbia. It is important to recognize that the meetings were preliminary in nature and that the views of the judges consulted do not represent formal positions of the courts, nor do they capture the views of all judges of the courts. That said, the meetings were extremely useful for the purpose of exploring the concepts the Task Force is looking at and to get some preliminary feedback as to where areas of unmet need exist from the perspective of the courts.

2. From the preliminary feedback received, the Task Force understands that the areas of criminal law and family disputes could benefit from the assistance of non-lawyers, although the extent to which their advocacy in the superior courts would be of assistance is open to some debate. Family disputes, for example, is an area of law that is undergoing considerable reform and is often fraught with emotional issues and can impact future generations of families. In light of this, the feedback from the Supreme Court suggested it is more difficult to see non-lawyer advocates as being helpful and it is possible to create more harm than good unless significant education and training is contemplated.

3. The Task Force understands that the skills of honesty, candour, common sense, and proper training are generally considered essential to effective advocacy. Lawyers are officers of the court, and this allows the court to place some trust in lawyers. Advocates must be able to narrow issues and the court needs to be able to trust the representations the advocates make.

4. Moreover, properly trained, highly skilled advocates are critical to maintaining the development of the common law, and there is a danger that some may view a move towards non-lawyer advocates as detrimental to the development of the law through effective advocacy. Having said that, there was some recognition that new approaches are needed and that properly trained non-lawyers could assist with file and document organization, both of which are essential to effective use of courts, as well as at case management conferences.

5. Furthermore, it was noted that courts, and especially the Court of Appeal, sit at the end of a long process and the court is not privy to a great deal of the preparation work that may have taken place along the way. This makes it difficult for judges to identify where along the way properly trained non-lawyers might be able to provide useful help. It would ultimately be easier for the court to consider the final work product of the Law Society that sets out in more detail the specific services non-lawyers could provide, and make comments at that time.

6. From the consultations conducted of the courts, the Task Force believes that the greater need for skilled advocates to assist people who would otherwise be self-represented because they are unable to afford lawyers can be found in the Provincial Court to address the problem of the rising trend of self-representation.

7. The Task Force took from these consultations the sense that, in Provincial Court, general civil law matters and Traffic Court would be areas worth exploring for the use of non-lawyer advocates, if an education and regulatory scheme could be developed for new categories of such advocates. The wide array of non-legal skills that a family law practitioner should be versed in, in order to provide quality service to a client, may make it more difficult to envision effective use of non-lawyer advocacy. General civil law might be viewed as less technical and seems to have fewer supports in place for self-represented litigants than does family law.

8. The Task Force was grateful for the input from the courts. If the Benchers decide to move forward with the project and seek a legislative amendment, and if the government grants such a request, it will be important to follow up with the courts as the details of any new licensing scheme are developed in order to benefit from the perspectives of the Province's judiciary.

Consultation with the Circle of Chairs

9. The Task Force met with the Circle of Chairs of BC Administrative Tribunals. This meeting involved receiving feedback from the chairs of 26 administrative tribunals.

10. The feedback the Task Force received was overwhelmingly in favour of creating new categories of legal service providers who could be trained and regulated in a manner that would permit them to provide competent representation before administrative tribunals. A real access to justice problem was seen to exist with the lack of representation that exists in many tribunals, particularly those in which one party is represented by counsel and the other is not.

11. The feedback also included reference to the importance of simplifying processes so that they can be navigated quickly and at low cost to the user. This is an important adjunct to the concept of finding ways to improve access to advocates.

12. The consultation with the Circle of Chairs strongly supported the need for advocates who appear before administrative tribunals to be properly trained and regulated. Skilled representation is important to ensuring a fair result. In many cases, lawyers are not appearing as advocates for parties appealing before Tribunals, so there is a gap in the market place. Some question exists as to how much of a market can exist given the limited means of many people, but that may ultimately be a question of business practices and economics rather than a question of whether it is in the public interest that advocates who appear before tribunals be properly credentialed and regulated.

Consultation with the Law Foundation of British Columbia and the Legal Services Society

13. The Task Force held a meeting where Task Force member Wayne Robertson, QC provided information as to legal needs as identified by the work of the Law Foundation, and where Mark Benton, QC provided input as to legal needs as identified by the Legal Services Society. At that meeting Mr. Robertson and Mr. Benton were asked for their perspective as to the need for creating new categories of legal service providers to address unmet and underserved legal services in British Columbia.

14. This consultation was extremely important because between the Legal Services Society and the Law Foundation of British Columbia there exists decades of knowledge about the legal needs of British Columbians, distilled from on the ground services, to the funding of community advocates and justice projects, to comprehensive legal needs research. The meeting confirmed much of the Task Force's existing research, but added important details.

15. There is an access to justice / access to legal services problem that exists in British Columbia and much of the world. While the cost of legal services is part of the problem, current research suggests the problem is more nuanced than mere cost alone. To date, no one appears to have solved the difficult problem of how to improve access for people who fall between the level of state subsidized legal services and the wealthy who can more easily afford legal services on their own. The closer people get to the margins of poverty and into a state of poverty, the more serious legal problems they face. Moreover, there is a greater likelihood that their legal problems will cluster with other legal problems and ultimately cascade into other problems (e.g. unemployment, health, etc.).

16. The Task Force was cautioned against over-regulation. There are many services that would be of benefit to people that fall short of acting as an advocate or providing legal advice in the traditional sense of providing an opinion on substantive or procedural law, and for which regulation might act as an impediment by increasing cost of operation and imposing compliance schemes on service providers.

17. Mr. Benton suggested that access to justice can encompass (at least) four broad objectives for people: 1) an awareness of rights, entitlements, obligations and responsibilities, 2) an awareness of ways to avoid or resolve legal problems, 3) the ability to effectively access resolution systems and procedures, and 4) the ability to effectively participate in resolution processes in order to achieve just outcomes. The solutions for objects 1 and 2 are likely different than the solutions for objects 3 and 4.

18. Mr. Benton said that the work of the Task Force is important and challenging. There is room to innovate to address the unmet and underserved legal needs in society, but the efforts must be careful so as to not impose regulation where none is required.

19. Mr. Robertson provided an overview of the community advocates program.[32] This program arose following the Law Foundation having engaged in a poverty law needs assessment. From this assessment, it determined that people mostly want face-to-face assistance. A model was created to try to ensure that people in communities of 10,000 or more had to travel no farther than 50 km to obtain the assistance of an advocate. There are 72 full or part time community advocates funded by the Law Foundation, and student law clinics. Beyond this, there are 20-40 non-funded advocates. They work in 33 communities.

20. There are three tiers of service: 1) information and referral (under 30 minutes), 2) advice and summary help (under 2 hours) and 3) full representation (over 2 hours). The Law Foundation has provided $9 million in the past two years and 125,000 people have been helped.

21. Community advocates have a range of backgrounds. Of the 76 advocates: 16 have law degrees (three from outside Canada), 42 have university degrees, eight have college education, nine have completed high school, and one is unknown. As there is no formal certificate for poverty law, the Law Foundation developed a course. Since inception in 2007, 76 advocates have completed the program. The Law Foundation also has a credentials review process for applications of exceptional skill who might qualify without taking the course. Continuing professional development is required and there is a 3 day course each year, run jointly by the Law Foundation and the LSS. The Law Foundation also provides funding to support advocates taking other CPD.

22. Supervision of an advocate by a lawyer is a condition of grants from the Law Foundation. There are a variety of review processes but they are usually tailored to the experience of the advocate. The Law Foundation funds a full time lawyer at Community Legal Assistance whose job it is to be available to all community advocates funded by the Foundation.

23. Mr. Robertson explained that reporting is required, including a monthly statement detailing the type of help and level of service. The Law Foundation is interested in outcomes, so it interviewed 3500 clients as well as the advocates themselves, to cross reference feedback. Over 80% of clients said their problem was solved. Over 90% were satisfied. The next phase is to have experienced poverty law lawyers do file reviews.

24. The model of Community Advocates demonstrates how unmet legal needs can be addressed through creative models. In this case, training and CPD are combined with lawyer oversight and quality assurance standards by the granting body. The question is whether the types of services might be expanded out into the market place, and whether additional credentialing

[32] It is important to observe that Mr. Robertson made a similar presentation to the Legal Service Providers Task Force in September 2013 and that task force made the recommendation that gave rise to this task force. The distinction is that the prior task force was considering whether it was in the public interest to create new categories of legal service provider and this task force is considering, with greater specificity, what types of services the public might benefit from.

and the presence of regulation would allow for similar services to have a broader reach than to people living in poverty, and be able to function in the absence of supervision.

Consultation with Community Legal Assistance Society

25. The Task Force met with David Mossop, QC, former counsel at Community Legal Assistance Society ("CLAS"), to hear about legal needs in the area of poverty law. At first blush it might appear that focusing on unmet and underserved legal need in the area of poverty law is counter-intuitive to a consideration of whether opening up the market for legal services is in the public interest. However, it is important to recognize that the organizations that provide legal services to people living in poverty face considerable financial strain, and it is possible that specially trained non-lawyer service providers may assist poverty law services in meeting the public need, while stretching their budgets farther.

26. Mr. Mossop explained the work CLAS does in the area of mental health, disability, human rights, and most recently, its support of the network of Law Foundation funded community advocates. The work that is most relevant to the review of the Task Force is that performed by paralegals who represent people who are subject to involuntary detainment under the *Mental Health Act.*[33] Most of these paralegals were either former Legal Services Society paralegals or people with criminology degrees. The paralegals are trained, but they have a fair measure of independence in that they are making submissions directly to a panel that determines whether the detained individual gets released. The detained individuals often have limited capacity and their liberty is at stake, so the work is important and challenging. Despite this, Mr. Mossop indicated the paralegals do good work and he felt comfortable that there is room to expand legal services to include non-lawyers providing there is proper education and skills training. Mr. Mossop suggested one possibility is requiring some form of apprenticing with a lawyer, particularly to impart some of the ethical teachings that are important to the practice of law.

27. The CLAS paralegals who are mental health advocates do important work. The nature of this work is such that, to the extent it occurs, it is performed through social services such as those provided by CLAS or by lawyers acting pro bono. While these are not free-market services, they are legal skills that are transferable and, given that people's liberty is at stake, quite important. The CLAS model involves a team operating under one roof, so lawyers are available to the paralegals as required, but the skills the CLAS trained paralegals possess are not contingent on their being part of a team that involves lawyers.

[33] RSBC, 1996, c. 288.

Consultation with the Law Society of Upper Canada and the Washington State Bar Association

28. The Task Force met with Paralegal Benchers Cathy Corsetti, Brian Lawrie, together with Julia Bass, Policy Counsel from the Law Society of Upper Canada, and also with Paula Littlewood, Executive Director of the Washington State Bar, and Steve Crossland, Chair, Limited License Legal Technician Board.[34] This consultation was of particular importance because Ontario and Washington State are the only two jurisdictions in North America that have moved to open up legal services by creating new categories of regulated legal service provider.[35]

29. In Ontario, since May 2007, the Law Society of Upper Canada has been responsible for licensing and credentialing paralegals. This includes a regulatory scheme for paralegals and the involvement of paralegal Benchers in the governance of the Society. Prior to that, paralegals in Ontario were unregulated and not subject to any credentialing scheme or required to carry insurance. The decision to credential and regulate paralegals in Ontario arose in response to the presence of an unregulated marketplace where paralegals were providing a range of legal services. In this respect the move towards regulation is slightly different than the work the Task Force is engaged in. In Ontario, the emphasis was on protecting the public from an unregulated legal service provider. In British Columbia, the focus is on expanding access to justice in a manner that best serves the public interest.

30. Paralegals in Ontario are permitted to engage in advocacy work in small claims court, criminal matters that carry a maximum sentence of six months incarceration, and before administrative tribunals. Paralegals commonly represent clients in landlord/tenant matters (mostly landlords), and traffic tickets. There are approximately 6000 licensed paralegals in Ontario. They are able to work with a lawyer or independent of a lawyer and do not require supervision by a lawyer if they are providing the services permitted under the Law Society by-laws.

31. When the Law Society of Upper Canada undertook to credential and regulate paralegals, it was met with strong resistance from lawyers. Resistance to regulation has generally abated, although efforts to expand paralegal practice into other areas such as family law have met with concentrated opposition from the family bar. This opposition will ultimately have to be considered in light of s. 4.2 of the *Law Society Act* that states "The Society has a duty to facilitate access to justice for the people of Ontario."

32. The situation in Washington State is similar, but has some notable differences. In Washington State the Supreme Court is responsible for regulating lawyers. It has delegated some functions to the Washington State Bar Association, but ultimately it is the Court that is responsible. Over the past 12 years the Supreme Court has been concerned about the inability of many

[34] Mr. Crossland also chaired the Practice of Law Board, appointed by the Washington State Supreme Court.

[35] California is at the early stages of exploring an approach similar to that in Washington.

people to access the services of lawyers due to cost and unavailability of services, so it tasked the State Bar Association with coming up with solutions.

33. A decade of research and consultation ultimately led to the recommendation of a new class of legal service provider called a Limited License Legal Technician ("LLLT"), and the Supreme Court adopted a rule in 2013 for the creation of this type of service provider. The Court has started by instructing the LLLTs to be trained to deal with select matters in family law, but the model is sufficiently flexible that over time new categories of legal services can be added to the scheme.

34. LLLTs must complete 90 credit hours of college, of which 45 credits must be in the courses identified by the Bar Association. These courses were created in conjunction with the four ABA approved state law schools, which now also teach LLLTs. While the local bar strongly opposed the measures, there has been an increasing trend of cooperation to help the Bar Association ensure LLLTs are properly trained and regulated. The feedback the Task Force received is that some lawyers are starting to recognize that there is room in the market for complimentary legal service providers, such that lawyers are freed up to deal with the more difficult legal issues and LLLTs can deal with lower threshold matters at a lower cost, and then refer clients to lawyers for matters that are outside the LLLTs' jurisdiction. How this will work in the market place will start to be better understood starting 2015, when the first cohort of LLLTs graduates and receives the license to practice law in limited capacity.

35. The representatives from Washington State pointed out that while enrollment in law schools has dropped by about 30% in recent years, the LLLT programs have waiting lists. Firstly, it takes about half as much schooling to obtain an LLLT as it does a JD, and secondly the total cost of an LLLT is about $15,000 versus an average of approximately $100,000 for a JD. The fact that LLLTs are not able to provide all the services a lawyer can provide, coupled with the lower cost of obtaining the license, leads to the assumption that their services will be delivered at a lower cost, thereby improving access to justice.

Consultation with Lawyers and Other Legal Service Providers

36. The Task Force posted a consultation document on the Law Society website to give legal service providers (lawyers, notaries and other legal professionals) an opportunity to provide input as to the Task Force's work. As of the end of the consultation, the survey had 58 responses. This is a very small sample size so should not be read as predictive of the larger population, but the feedback is nevertheless informative.

37. The feedback from legal service providers generally recognized the public would benefit from greater access to more affordable services in filling out legal forms, legal advice, and representation before a court or tribunal or at a private dispute resolution process. When asked the specific question as to what services new types of credentialed service providers should be permitted in order to provide greater choice to the public, the numbers dropped.

38. The survey questions were answered as follow.[36]

39. **Question 1:** *What types of legal services should the public have easier and more affordable access to?*

    a. Help filing out legal forms = 45 of 58;

    b. Legal advice = 38 of 58;

    c. Representation before a court or tribunal = 34 of 58;

    d. Representation at a private dispute resolution process, such as mediation or arbitration = 41 of 58.

40. **Question 2:** *If new types of legal service providers were to be credentialed to provide the public with more choice in the marketplace, what types of services do you think they should be able to provide?*

    a. Representing people before a court = 13 of 58;

    b. Representing people before a tribunal =23 of 58;

    c. Representing people at a mediation = 32 of 58;

    d. Representing people at an arbitration = 22 of 58;

    e. Providing legal advice to a client = 17 of 58;

    f. Assisting a client to fill out legal forms = 41 of 58;

    g. None of the above = 9 of 58.

41. With respect to the question, *What areas of law do you think would benefit most by allowing for new categories of legal service providers and why?* family law was by far the most identified area of law where legal service providers saw the need for greater access to the public.[37] Criminal law and small claims matters were also identified by more than one respondent.

42. With respect to the question, *What areas of law do you think would benefit least by allowing for new categories of legal services providers and why?* the responses did not lead to clear categories. However, the most common themes were not to permit appearances in Supreme

[36] Single responses are not noted.

[37] Note that this should be read in conjunction with the view that assisting with forms and alternative dispute resolution was viewed far more favourably than appearing in court.

Court, representation in matters where liberty was at stake or where the matter was complex (be it commercial, family, intellectual property or otherwise).

Consultation with the Public

43. The Task Force posted a consultation document on the Law Society website to give members of the public an opportunity to provide input as to the Task Force's work. The sample size of the public survey was 12, so it is not a statistically significant sample size. The feedback the Task Force received indicated a much greater willingness to see new classes of service provider appear in court or provide legal advice.

44. When asked why they chose not to hire a legal service provider, cost was identified as the primary reason. Concerns about the cost of the legal services that are available in the present market is consistent with much of the legal needs research, and with the findings of past Law Society task forces.

45. Although the feedback to the online consultation was too limited to draw conclusions, the Task Force observes that the numerous legal needs surveys it, and its predecessor Task Force, considered all point to a significant justice gap between people who are accessing the current market and those who receive subsidized legal services.

46. With respect to the question, *If new types of legal service providers were created to provide the public with more choice in the marketplace, what types of services do you think they should be able to provide?* the answers were:

    a. Representing people before a court = 8 of 12;

    b. Representing people before a tribunal = 8 of 12;

    c. Representing people at a mediation = 9 of 12;

    d. Representing people at an arbitration = 11 of 12;

    e. Providing legal advice to a client = 11 of 12;

    f. Assisting a person to fill out legal forms = 12 of 12.

Appendix 2: Consultation Documents

The form of the various consultation questions are set out below.

Consultation with the Courts and Tribunals

Consultation Questions

The Task Force is seeking input from courts and tribunals as to the areas of greatest need for skilled advocates and input as to whether it is desirable to create new classes of legal license that would permit properly credentialed and regulated service providers to fill those advocacy roles. As courts and tribunals control their processes, the Task Force is seeking input at the developmental stage to ensure that its recommendations to the Benchers, and ultimately the Law Society's recommendation to government, reflect the needs of British Columbia's courts and tribunals.

Question 1:

Recognizing that not everyone who needs to appear before a court or tribunal can afford the services of a lawyer, are you in favour of creating new classes of trained and regulated legal service providers to provide discrete categories of representation before you?

Question 2:

How regularly do parties seek assistance from a non-lawyer advocate, friend, or relation in matters in your court?

Question 3:

What skills and professional qualities do you think an advocate must possess in order to provide "good service?"

Question 4:

What, in your view, are the types of matters that most require legal representation by a person who is properly trained and regulated? Do litigants before your court appear to be underserved (or abandoned) by regulated legal service providers in any of the types of matters you have identified?

Question 5:

Are there areas of law that you think would benefit most by allowing for new categories of legal service providers?

Question 6:

Conversely, are there areas of law that you think would benefit least by allowing for new categories of legal service providers?

Question 7:

If the government were to amend the *Legal Profession Act* to permit the Law Society to create new categories of regulated legal service provider, including developing credentials and a regulatory scheme, are you prepared to work with the Law Society to identify the necessary training for advocates who could be licensed to appear before you?

Consultation with representatives from the Law Society of Upper Canada and the Washington State Bar Association

Question 1: What have been the benefits of expanding the market place to permit legal service providers other than lawyers?

Question 2: What, if any, roadblocks did you encounter as you developed your model of regulation of non-lawyer legal service providers? In particular, how did lawyers react to the proposal, and how did you address any issues or concerns raised by lawyers? Were there any other groups that you needed to address specifically in connection with your proposal?

Question 3: What, if any, problems have you encountered with expanding the market place to permit legal service providers other than lawyers?

Question 4: What types of legal services are non-lawyers permitted to provide in your jurisdiction?

Question 5: Are you considering expanding the scope of legal services non-lawyers are permitted to provide? If so, what policy rational have you identified in favour of such expansion?

Question 6: If you were to create new classes of legal services non-lawyers could provide, what types of legal services do you think the public would benefit most from, and why?

Question 7: Has the regulation of non-lawyer legal service providers improved access to legal services in your jurisdiction?

Consultation with Legal Services Providers (online)

Question 1: What types of legal services should the public have easier and more affordable access to:

- Help filling out legal forms;

- Legal advice;
- Representation before a court or tribunal;
- Representation at a private dispute resolution process, such as mediation or arbitration.

Question 2: If new types of legal service providers were to be credentialed to provide the public with more choice in the market place, what types of services do you think they should be able to provide:

- Representing people before a court;
- Representing people before a tribunal;
- Representing people at a mediation;
- Representing people at an arbitration;
- Providing legal advice to a client;
- Assisting a client to fill out legal forms;
- Other. Please specify _____;
- None of the above.

Question 3: What areas of law do you think would benefit most by allowing for new categories of legal service providers?

- Why?

Question 4: What areas of law do you think would benefit least by allowing for new categories of legal service providers?

- Why?

Question 5: Please identify your profession.

- Lawyer
- Notary Public
- Paralegal
- Mediator

- Arbitrator
- Parenting Coordinator
- Community Advocate
- Other (please specify)

Question 6: How many legal professionals work in your firm?

- Sole practitioner
- Small firm (2 - 5)
- Medium firm (6 - 25)
- Large firm (25+)

Consultation with the Public (online)

Question 1: Have you ever sought help from a professional who provides legal services?

- Yes/No?

Question 1a: If yes, which type of professional?

- Lawyer
- Notary
- Other (please specify) _____

Question 2: Have you ever needed legal assistance, but have chosen, upon consideration, not to hire a legal services professional?

Question 2a: If so, why did you choose not to hire a legal services professional?

Question 2b: What was the nature of the problem?

- Employment issue
- Creditor / Debt
- Social services benefits
- Human rights complaint

- Immigration
- Personal Injury
- Family Dispute / Relationship Breakdown
- Residential tenancy
- Business services
- Tax
- Wills / Estates
- Other (specify: _____)

Question 3: What type of services did you obtain from the service provider?

- Acting as an advocate before a court, a tribunal or at a mediation or arbitration;
- Giving legal advice (but not representing you before a court, tribunal, at a mediation or arbitration);
- Assisting with the preparation of documents, such as a will, a conveyance, a contract, etc.;
- Other (specify) _____.

Question 4: What type of help do you want from a legal service professional?

- Legal advice
- Legal information
- Advocacy services (e.g. appearing in court)
- Drafting legal documents
- Interpreting legal documents
- Other (specify) _____

Question 5: What types of legal services should the public have easier and more affordable access to:

- Help filling out legal forms;
- Legal advice;
- Representation before a court or tribunal;
- Representation at a private dispute resolution process, such as mediation or arbitration;
- Other (specify) _____.

Question 6: If new types of legal service providers were created to provide the public with more choice in the market place, what types of services do you think they should be able to provide:

- Representing people before a court;
- Representing people before a tribunal;
- Representing people at a mediation;
- Representing people at an arbitration;
- Providing legal advice to a client;
- Assisting a client to fill out legal forms;
- Other (specify) _____;
- None of the above.

The Law Society of British Columbia

Memo

To: Benchers
From: Andrea Hilland
Date: October 21, 2014
Subject: Justicia Model Policies and Best Practice Materials

Recommendation

1. This memo recommends that the Benchers endorse best practice materials for parental leave, flexible work arrangements, and demographic data (attached). The attached materials were prepared by representatives from law firms participating in the Justicia in BC Project, and have been endorsed by the Equity and Diversity Advisory Committee. The model policies for parental leave and flexible work arrangements were based on, and are intended to update and replace, the model policies that are currently posted on the Law Society's website. It is intended that they be placed on the Law Society's website and that firms be encouraged to adopt them as appropriate.

Background

2. The Justicia Project has been actively underway in British Columbia since 2012. It is a voluntary program, facilitated by the Law Society of British Columbia and undertaken by law firms, to identify and implement best practices to retain and advance women lawyers in private practice. It was created in response to evidence that women leave the profession at a higher rate than men in the first ten years of practice. Justicia's Diversity Officers have been selected by participating firms. Andrea Hilland is coordinating regular meetings among the Diversity Officers, which are also attended by Michael Lucas, Maria Morellato, and representatives from the Canadian Bar Association of BC's Women Lawyers Forum.

3. The Project is proceeding in two phases. Phase one is directed at national firms with offices in BC, as well as large regional firms. Phase two will be directed at all other BC firms.

4. Phase one of Justicia has already seen tremendous success. All seventeen firms that were targeted for participation in phase one have committed to developing and implementing best practices to facilitate the retention and advancement of women in private practice.

5. The Justicia Diversity Officers have created focus groups to meet regularly to develop recommendations in six areas:

- Improving parental leave policies;
- Enhancing flexible work arrangements;
- Tracking gender demographics;
- Adopting initiatives to foster women's networking and business development;
- Promoting leadership skills for women; and
- Developing paths to partnership initiatives.

6. The first piece of work that has been undertaken involves parental leave policies, flexible work arrangements, and gender demographics. The development of model policies and practical tools to improve parental leave, enhance flexible work arrangements, and track gender demographics is now complete, and has resulted in the preparation of the attached model policies. It is proposed that these policies be posted on the Law Society's website and that firms be encouraged to adopt them as appropriate. Law Society staff is developing a communications strategy to ensure that the model policies and best practices guides are shared broadly with the legal profession in British Columbia. 7 The attached model policies and best practices guides were endorsed by the Equity and Diversity Advisory Committee on September 5, 2014.

Next Steps for Justicia

8. Justicia's work on model policies continues. 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 at a future date.

/Attachments

PREGNANCY AND PARENTAL LEAVE POLICY

ASSOCIATES

Preface

This policy was developed by the Law Society of British Columbia and updated in collaboration with the firms participating in the Law Society of British Columbia Justicia Project. The policy is intended as a tool to assist firms in developing internal policies on pregnancy and parental leave for their lawyers in British Columbia. The guide does not provide legal advice and is not meant to be the ultimate or ideal policy.

This policy is drafted in the context of a traditional law firm environment with partners, associates and other staff. Firms are encouraged to adapt and tailor their internal policy to reflect their own structure and culture. For example, the policy may not apply to lawyers hired on shorter, fixed-term contracts, depending on the terms stipulated in those contracts.

This policy is intended to apply to associates and others in an employment-type relationship with the law firm. Equity partners and lawyers in similar ownership arrangements are covered by the policy for partners that has also been prepared as part of this project.[1]

Law firms have differing abilities to provide benefits, and lawyers have differing needs. For smaller firms, certain aspects of the policy may be impractical or impossible to implement. For this reason, this policy is intended to serve as a guide only. However, law firms are strongly encouraged to adopt some form of written pregnancy and parental leave policy for a number of reasons, including the following:

- Increasing transparency, objectivity, fairness and consistency in decision-making;
- Providing an internal procedure to process requests for leaves and benefits;
- Enhancing a firm-wide acceptance that pregnancy and parental leaves are positive practices;
- Showing that the firm's management is committed to advancing inclusiveness and diversity at the firm and to providing the appropriate supports to new parents;
- Communicating the firm's commitment to potential recruits, lawyers of the firm, and clients; and

[1] Each firm will need to determine whether this policy or the partner policy should apply for roles such as associate counsel or income partner depending on the nature of the arrangement and whether it is closer to an employment relationship versus that of an owner.

- Ensuring that the firm complies with its legal obligations, including under the British Columbia *Human Rights Code*.[2]

As an additional guide, footnotes in this policy set out the lowest and highest available unpaid leave periods and remuneration levels during firm-paid leave, and other key survey information drawn from a survey of 17 Vancouver firms, each having 50 or more lawyers, conducted by the Law Society of British Columbia in July 2013 (the "2013 Justicia BC Survey").

The provincial *Employment Standards Act, R.S.B.C. 1996 c. 113* (the "ESA") does not apply to lawyers.[3] The pregnancy and parental leave benefits outlined therein do, however, provide guidelines that are instructive, since they apply to most other firm employees and it may be desirable to place lawyers on at least equal footing with other employees with regard to pregnancy and parental benefits. As of March 2014, the ESA provides for up to 17 weeks of unpaid leave for birth mothers (pursuant to section 50 of the ESA) plus up to 35 consecutive weeks of unpaid parental leave beginning immediately after the end of the leave taken under section 50 or, for birth mothers who do not take leave under section 50, up to 37 consecutive weeks of unpaid parental leave. Birth fathers and adoptive parents are entitled to up to 37 consecutive weeks of unpaid parental leave. In particular circumstances, the ESA provides for additional periods of leave.[4]

Law firms also have legal obligations under provincial and/or federal human rights legislation and case law, and lawyers are bound by rules that promote human rights under the Law Society's *Code of Professional Conduct*. These obligations include a prohibition against discrimination on the basis of pregnancy, family status or gender, as well as a duty to accommodate to the point of undue hardship.[5]

Leaving aside the question of the length of time a lawyer may take for pregnancy and parental leave, there is also the question of remuneration during the leave. The results of the 2013 Justicia BC Survey demonstrate that many law firms do provide for some form of remuneration during these leaves, whether in the form of EI top-up or regular pay.

In this model policy, "pregnancy leave" refers to leave time available to birth mothers who are pregnant or have recently given birth, and "parental leave" refers to leave time available to parents of either gender who have not taken pregnancy leave and are caring for a newborn or newly adopted child. This policy recommends that an adoptive parent who is the child's primary caregiver be eligible to receive the same amount of overall paid leave time as would be available to a birth mother (albeit under the parental, rather than pregnancy, leave category).

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2 Context attributed to the guides published by the Law Society of Upper Canada in its Justicia materials.

3 *Employment Standards Act Regulation*, B.C. Reg. 396/95, s.31(c).

4 *Employment Standards Act*, R.S.B.C. 1996 c. 113 at sections 50(3) and 51(2).

5 A detailed review of this topic is beyond the scope of this policy, but lawyers and law firms should familiarize themselves with these legal requirements. Law firms should also consider involving firm members or other lawyers with expertise in employment and human rights matters in drafting firm pregnancy and parental leave policies. The Law Society of British Columbia Code of Professional Conduct places a special responsibility on lawyers not to discriminate against any person.

Under the federal *Employment Insurance Act, S.C. 1996 c. 23*, lawyers may be eligible for 15 weeks of government-paid pregnancy leave benefits and 35 weeks of government-paid parental leave benefits for a total of 50 weeks of government-paid leave after a two-week waiting period. Under the *Employment Insurance Act*, the highest benefit payment possible, as of the date of this policy, is $501 a week.

Sections of this policy are based upon the materials produced by the Law Society of Upper Canada's Justicia Project. Permission to adapt the materials is gratefully acknowledged.

Policy

1. Statement of Principles

1.1 Commitment of the Firm

[Name of firm] understands that new parents may wish to spend an extended period of time with newborn or newly adopted children. In recognition of the physical impact of pregnancy and childbirth on birth mothers, the policy provides for periods of paid and unpaid pregnancy leave. The policy also provides for periods of paid and unpaid parental leave that are available to parents other than the birth mother upon the birth or adoption of a child in recognition of the time necessary to adjust to the demands of having a new child in the home.

This policy applies to all associate lawyers, associate counsel and income partners.

1.2 Purpose

Policies to support women during their childbearing years and to assist women and men in balancing the demands of their career and family responsibilities provide long-term benefits for law firms, and contribute to the promotion of equality, human dignity and respect. This policy also recognizes the role of the firm in assisting lawyers to transition their practice prior to, during and after a leave, and the role of the lawyer who takes a leave in ensuring continued excellence in client service and practice management.[6]

2. Pregnancy Leave

2.1 Eligibility

The pregnancy leave portion of this policy is applicable to lawyers who are pregnant or have given birth.

Every such lawyer, regardless of her period of service with the firm, is eligible for pregnancy leave for the length of time described in Section 2.2.

[6] See Law Society of Upper Canada's Justicia Guide to Assist Law Firms in Developing Pregnancy and Parental Leave Policies for Associates, pages 7 and 19.

Every such lawyer who has completed at least ____ months of continuous employment with the firm before the commencement of her pregnancy leave is eligible for the paid pregnancy leave described in Section 2.3.[7]

2.2 Length and Timing

All eligible lawyers are entitled to a period of pregnancy leave, whether paid or unpaid, of up to ____ continuous weeks.[8] Pregnancy leave may commence as early as eight weeks before the expected date of birth and as late as the actual birth date.[9]

Pregnancy-related illnesses requiring absence from work prior to and after the pregnancy leave period are not covered by this policy. Lawyers should refer to applicable firm sick-leave policies and disability benefit plans and/or employment insurance sick-leave benefits.[10]

2.3 Remuneration for Lawyers Eligible for Paid Pregnancy Leave

All eligible lawyers are entitled to ___ weeks of paid pregnancy leave (the balance, if any, to be taken as unpaid pregnancy leave).[11]

Lawyers on paid pregnancy leave who are eligible for employment insurance benefits will be entitled to receive supplementary payments (the "Pregnancy Leave Top-Ups") during the period provided for in this Section 2.3.[12] The Pregnancy Leave Top-Ups will top up the gross

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7 A firm may choose to require an employee to work for a period of time before becoming entitled to paid pregnancy leave. In the 2013 Justicia BC survey, two firms stipulated an eligibility period of two years, six firms stipulated one year, two stipulated six months, and seven did not impose an eligibility period at all. Some firms have chosen to require that the lawyer return to "active" employment for a particular period of time before a subsequent paid leave may be taken.

8 The specific amount of time that a firm chooses to offer is to be determined by the firm. The ESA provides for 17 weeks of unpaid pregnancy leave. Of the 17 firms in the 2013 Justicia BC Survey, all offered up to 52 weeks of total (paid and unpaid) pregnancy leave.

9 The recommended timing for commencement of paid pregnancy leave is the same as the timing for pregnancy leave benefits under the *Employment Insurance Act.*

10 Law firms should examine their disability benefit plans to ensure they are in accordance with the Supreme Court of Canada decision in *Brooks Allan & Dixon v. Canada Safeway* (1989), 59 DLR (4th) 321, which held that disability insurance plans that exclude pregnancy-related illness from coverage contravene human rights protections against sex discrimination.

11 Some firms may offer only paid or only unpaid pregnancy leave, or a combination. Of the 17 firms in the 2013 Justicia BC Survey, one offered eight weeks of paid pregnancy leave, three offered 15 weeks, 12 offered 17 weeks, and one offered 26 weeks.

12 Employers are not required to obtain formal approval from Human Resources Development Canada for plans used to supplement pregnancy and parental benefits but employers are required to indicate in the record of employment that a supplement will be paid to an employee. These supplementary benefits will not be considered earnings to the employee and, therefore, will not be deducted from employment insurance benefits if:

(i) when the payment is added to the employee's weekly benefits, the total does not exceed the employee's normal weekly wage earnings, or 100% of gross salary; and

(ii) the payment will not be used to reduce other accumulated employment benefits such as sick leave, vacation leave credits, or severance pay.

employment insurance benefits and any other earnings of the lawyer to ___ %[13] of the lawyer's normal weekly salary.[14]

Lawyers on paid pregnancy leave who are not eligible for employment insurance benefits will be entitled to receive an amount equivalent to the Pregnancy Leave Top-Ups that the firm would pay to a lawyer who qualifies for such benefits.

2.4 Benefits

The firm will maintain all employee benefits, including accrual of paid vacation, in accordance with its usual practice, throughout a period of paid pregnancy leave.

The firm will maintain all employee benefits, other than accrual of paid vacation, in accordance with its usual practice, throughout a period of unpaid pregnancy leave.[15]

2.5 Reimbursement

A lawyer who has taken paid pregnancy leave is expected to return to work at the firm on the same basis (whether full or part-time) as before her leave, or on an agreed-upon reduced-work schedule, and to remain working at the firm for a period of not less than ___ months following her return from leave.[16]

If a lawyer who has taken a paid pregnancy leave does not return to work for that period or resigns during that period, that lawyer must repay __ %[17] of the Pregnancy Leave Top-Ups she received during the period of paid pregnancy leave.

3. Parental Leave

3.1 Eligibility

The parental leave portion of this policy is applicable to lawyers with newborns or newly adopted children who have not taken pregnancy leave.

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[13] In the 2013 Justicia BC Survey, the percentage to which salary was topped up ranged from 75% to 100%, with one firm topping up to 75%, one firm topping up to 95%, and 15 firms topping up to 100%.

[14] Firms that do not compensate lawyers on a straight salary basis (for instance firms that use a base salary plus performance compensation model) will need to determine the appropriate formula for paid leave.

[15] The *Employment Standards Act* contains express rules about the continuation of benefits and vacation accrual during pregnancy leave; however, lawyers are exempt from that statute. This model policy recommends that firms treat pregnancy leave as they would other types of leave for purposes of vacation accrual and benefits.

[16] Some firms have implemented a "return to work" requirement that stipulates that a lawyer who has taken paid pregnancy leave is required to return to work at the firm for a specified period of time, failing which she must repay all or a pro rata portion of the remuneration received from the firm during the period of paid leave. Of the 17 firms in the 2013 Justicia BC Survey, seven did not have a return to work requirement, one required a return to work for at least 26 weeks, and eight required a return to work for one year.

[17] Of the 17 firms in the 2013 Justicia BC Survey, seven had no return to work requirement (and so no consequence for failure to return to work), two had discretionary consequences, three required the repayment of a pro rata portion, and five required the repayment of 100% of the Top-Ups received during the period of paid pregnancy leave.

Every such lawyer, regardless of his or her period of service with the firm, is eligible for parental leave for the length of time described in Section 3.2.

Every such lawyer who has completed at least ____ months[18] of continuous employment with the firm before the commencement of his or her parental leave is eligible to receive the remuneration described in Section 3.3.

3.2 Length and Timing

The maximum cumulative period of parental leave, including paid and unpaid leave, for a lawyer who is the primary caregiver of a newborn or newly adopted child is ____ continuous weeks.[19]

The maximum cumulative period of parental leave, including paid and unpaid leave, for a lawyer who is not the primary caregiver of a newborn or newly adopted child is ____ continuous weeks.[20]

Where an eligible lawyer is either:

(a) the primary caregiver of a newborn or newly adopted child, he or she is entitled to a period of paid parental leave of up to ____ continuous weeks[21] following the arrival of the child in the lawyer's home; or

(b) not the primary caregiver of a newborn or newly adopted child, he or she is entitled to a period of paid parental leave of up to ____ continuous weeks[22] within the first year following the birth or adoption of a child.

Details of the remuneration for lawyers entitled to paid parental leave under this policy are set out in Section 3.3 below.

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[18] A firm may choose to require an employee to work for a period of time before becoming entitled to paid parental leave. In the 2013 Justicia BC survey, two firms stipulated an eligibility period of two years, six firms stipulated one year, two stipulated six months, and seven did not impose an eligibility period at all.

[19] For a lawyer with a newborn or newly adopted child who is the primary caregiver of that child, three of the 17 firms in the 2013 Justicia BC Survey offer 35 continuous weeks of paid and unpaid leave, 12 offer 52 weeks, and two have discretionary periods of cumulative leave. Firms for which the absence of a lawyer for an extended period is a hardship could consider hiring a contract lawyer or making use of legal outsourcing services for that period**.**

[20] Of the 17 firms in the 2013 Justicia BC Survey, two offer a lawyer with a newborn or newly adopted child who is not the primary caregiver of that child no leave, two offer two weeks, two offer four weeks, one offers 30 weeks, three offer 35 weeks, two offer 37 weeks, and three offer 52 weeks. Firms for which the absence of a lawyer for an extended period is a hardship could consider hiring a contract lawyer or making use of legal outsourcing services for that period.

[21] The amount of time that a firm chooses to offer as paid time is to be determined by the firm. This model policy recommends that the primary caregiver of a newly adopted child be eligible to receive the same overall amount of paid leave time as would be available to a birth parent.

[22] The amount of time that a firm chooses to offer as paid time is to be determined by the firm. Of the 17 firms in the 2013 Justicia BC Survey, nine offer a lawyer with a newborn or newly adopted child who is not the primary caregiver of that child zero weeks of paid leave, one offers two weeks, five offer four weeks, and two offer 17 weeks.

Where paid parental leave has been taken, unpaid parental leave is to commence immediately following the paid parental leave unless the firm and the lawyer agree to a different schedule. In any event, parental leave (whether paid or unpaid) is to be completed within 52 weeks of the child's arrival in the home.

3.3 Remuneration

A lawyer on paid parental leave who is eligible for employment insurance benefits will be entitled to receive supplementary payments (the "Parental Leave Top-Ups") during the period provided for in Section 3.2.[23] The Parental Leave Top-Ups will top up the gross employment insurance parental leave benefits and any other earnings of the lawyer to _____%[24] of the lawyer's normal weekly salary.

A lawyer on paid parental leave who is not eligible for employment insurance parental leave benefits will be entitled to receive an amount equivalent to the Parental Leave Top-Ups that the firm would pay to a lawyer who qualifies for such benefits.

3.4 Benefits

The firm will maintain all employee benefits, including accrual of paid vacation, in accordance with its usual practice, throughout a period of paid parental leave.

The firm will maintain all employee benefits, other than accrual of paid vacation, in accordance with its usual practice, throughout a period of unpaid parental leave.[25]

3.5 Reimbursement

A lawyer who has taken a paid parental leave is expected to return to work at the firm on the same basis (whether full or part-time) as before the leave, or on an agreed upon reduced work

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[23] Employers are not required to obtain approval from Human Resources and Social Development Canada for plans used to supplement pregnancy and parental benefits, but employers are required to indicate in the record of employment that a supplement will be paid to an employee and to maintain records showing when the supplemental benefits were paid and that the benefits meet the two conditions for not being considered earnings. These supplementary benefits will not be considered earnings to the employee and, therefore, will not be deducted from employment insurance benefits if:

(i) when the payment is added to the employee's weekly benefits, the total does not exceed the employee's normal weekly wage earnings, or 100% of gross salary; and

(ii) the payment will not be used to reduce other accumulated employment benefits such as sick leave, vacation leave credits, or severance pay.

[24] Firms that do not compensate lawyers on a straight salary basis (for instance, firms that use a base salary plus performance compensation model) will need to consider the appropriate formula to use.

[25] The ESA contains express rules about the continuation of benefits and vacation accrual during parental leave; however, lawyers are exempt from that statute. This model policy recommends that firms treat parental leave as they would other types of leave for purposes of vacation accrual and benefits.

schedule, and to remain working at the firm for a period of not less than ____ months[26] following his or her return from leave.

If a lawyer who has taken a paid parental leave does not return to work for that period or resigns during that period, that lawyer must repay ____ %[27] of the Parental Leave Top-Ups he or she received during the period of paid leave.

4. Consequences of Leave

A lawyer's targets for hours recorded and fees billed will be reduced to reflect the number of weeks of pregnancy or parental leave taken.

Salary increases for lawyers on pregnancy or parental leave may or may not be affected or delayed, depending on the length of the leave and its impact on the lawyer's professional development, but will be discussed with the lawyer upon his or her return to the firm.[28]

The firm will determine whether and when an associate will be admitted to partnership or an income partner will be admitted to equity partnership based on the individual's professional and practice development, among other factors.

Because law is an experience-based profession, a lawyer's compensation, billing rate and prospects for advancement are tied to his or her legal skills and development. While taking any significant period of leave (or successive leaves) for any reason may affect the lawyer's professional and practice development, the impact will be considered on an individual basis and not simply assumed.

Taking a leave of up to ____ weeks[29] should not in and of itself affect the lawyer's remuneration or path to partnership.

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[26] Some firms have stipulated that a lawyer who has taken paid parental leave is required to return to work at the firm for a specified period of time, failing which he or she must repay to the firm some or all of the remuneration received from the firm during the period of paid leave. Of the 17 firms in the 2013 Justicia BC Survey, one required a return to work for at least 26 weeks, eight provided for one year, and seven had no requirement.

[27] Of the 17 firms in the 2013 Justicia BC Survey, two had discretionary consequences, three required the repayment of a pro rata portion, and five required the repayment of 100% of the Top-Ups received during the period of paid parental leave. Seven firms had no return to work requirement and therefore no consequence.

[28] In determining whether a lawyer's salary will increase after a leave, firms should consider the length of the leave and the impact on the lawyer's professional development and growth during the period being considered. For instance, a short leave period during a work year would have little impact on the year overall in terms of professional growth and development opportunities, whereas a year-long leave could have a different result.

[29] 17 weeks is the minimum period of pregnancy leave stipulated by the ESA, which, while it does not apply to lawyers, is instructive. A firm may decide to specify here a shorter or longer period, possibly to coincide with the duration of the paid pregnancy leave provided by the firm if longer than 17 weeks, or to leave out this reference, which is included in the model policy in order to provide lawyers taking leave with some certainty.

5. Notice and Approval Procedures

5.1 Notice and Confirmation

Except in the case of a medical emergency or adoption when its timing is unexpected, a lawyer must notify the firm, in writing, in advance of his or her intention to take a leave for which he or she is eligible. The notice should specify the approximate starting date of the leave and the estimated date of return and should be submitted to [insert appropriate position e.g. Associate Coordinator, Practice Lead, the Director of Human Resources] as soon as possible and not less than three months prior to the leave period. The firm will promptly confirm the terms of the leave.

5.2 Approval of Excess Leave

Leave requests in excess of the policy period will be subject to the approval of [insert appropriate position e.g. Associate Coordinator, Practice Lead, the Director of HR].

The criteria for approval will include the needs of the requesting lawyer, workload, specific client needs, the unique skills of the requesting lawyer and time for proper planning to meet the demands of the practice.

6. Transitional Procedures

6.1 Transition Plan

Upon receipt of the lawyer's notice of his or her intention to take leave for which he or she is eligible, the firm shall designate _____ to assist the lawyer to develop and implement a transition plan which addresses the following matters:

(a) transfer of client files including, for each file, to whom the file will be transferred, the timing of the transfer, any transfer memos or meetings required, the form of notification to the client and others involved in the file, and the resumption of responsibility for those files when the lawyer returns from leave;

(b) transfer of administrative, client management, marketing or other non-billable responsibilities of the lawyer, and resumption of those responsibilities when the lawyer returns from leave;

(c) the lawyer's intentions and expectations regarding continuation of any duties or responsibilities while on leave, such as the availability of the lawyer for consultation on client files, client management and marketing, and continued participation in firm committees or other administrative work, and whether this is paid;

(d) mentoring, coaching, and practice support including the acquisition of work and the maintenance and growth of his or her practice before and after return from leave;

(e) social and other contact with the firm while on leave (e.g. if the lawyer wishes to be notified of or actively involved in firm or client events, practice group meetings, committee meetings, educational seminars and lunches with colleagues);

(f) administrative issues such as mode of communication with the firm, remote access to the firm computer system, mobile device usage, e-mail and voice mail access and notification, any administrative support, and any office space required while on leave;

(g) any accommodation anticipated to be required both before and after return from leave (e.g. room for breastfeeding);

(h) notification to the firm/colleagues regarding some or all of the above issues;

(i) confirmation of benefits (e.g. extended health, top-up, disability) and the effects, if any, of the leave (e.g. eligibility for partnership, salary upon return, scheduled reviews); and

(j) the timing of and attendance at meetings with _____ to facilitate all of the above before, during and after the leave.

Assuming professional obligations are met, lawyers on leave are not required to be available for legal work. However, the lawyer and the firm should consider the fact that extended leaves, particularly where the lawyer is entirely cut off from the firm and its clients, will likely delay the professional development of the lawyer and his or her practice. The lawyer and firm should discuss opportunities for the lawyer to continue to have involvement in legal work and business and professional development, as appropriate to the circumstances, should the lawyer on leave wish to do so.

6.2 Joint Responsibility

It is the joint responsibility of the lawyer taking leave and the firm to properly manage the lawyer's practice to ensure that the necessary steps are taken to appropriately transition client and practice obligations before and after taking a leave and to be as productive as possible during the transition periods.

6.3 Transitional Work Scheduling

(a) Reduced work schedule prior to birth of child

Lawyers may find that the physical impact of pregnancy necessitates a reduced-hours schedule prior to the birth of a child. Lawyers may request to work a reduced-hours schedule in accordance with the firm's Flexible Work Arrangements Policy or in accordance with the firm's short-term disability policy.

(b) Reduced work schedule on return

Lawyers may find that the demands of child-care necessitate a reduced-hours schedule on return to work. Lawyers may request to work a reduced-hours schedule in accordance with the firm's Flexible Work Arrangements Policy.

7. Legislation

7.1 Applicable Legislation

This policy will be deemed to incorporate any changes required to comply with applicable legislation from time to time. It will be updated to reflect such changes as soon as practicable.

PREGNANCY AND PARENTAL LEAVE POLICY

PARTNERS

Preface

This policy was developed by the Law Society of British Columbia and updated in collaboration with the firms participating in the Law Society of British Columbia Justicia Project. The policy is intended as a tool to assist firms in developing internal policies on pregnancy and parental leave for their partners in British Columbia. The guide does not provide legal advice and is not meant to be the ultimate or ideal policy.

This policy is drafted in the context of a traditional law firm environment with partners, associates and other staff. Firms are encouraged to adapt and tailor their internal policy to reflect their own structure and culture.

This policy is intended to apply to equity partners and lawyers in similar ownership arrangements as equity partners in a law firm. All references to partners in this policy shall mean equity partners and lawyers in such similar ownership arrangements. Associates and others in an employment type relationship with the law firm are covered by the policy for associates that has also been prepared as part of this project.[1]

Law firms have differing abilities to provide benefits and partners have differing needs. For smaller firms, certain aspects of the policy may be impractical or impossible to implement. Law firms will also need to ensure consistency between this policy and any contractual arrangements among their partners. For this reason, this policy is intended to serve as a guide only. However, law firms are strongly encouraged to adopt some form of written pregnancy and parental leave policy[2] for a number of reasons, including the following:

- Increasing transparency, objectivity, fairness and consistency in decision making;
- Providing an internal procedure to process requests for leaves and benefits;
- Enhancing a firm wide acceptance that pregnancy and parental leaves are positive practices;
- Showing that the firm's management is committed to advancing inclusiveness and diversity at the firm and to providing the appropriate supports to new parents;
- Communicating the firm's commitment to potential recruits, lawyers of the firm and clients; and

[1] Each firm will need to determine whether this policy or the associate policy should apply for roles such as associate counsel or income partner depending on the nature of the arrangement and whether it is closer to an employment relationship versus that of an owner.

[2] A survey of 17 Vancouver firms, each having 50 or more lawyers, conducted by the Law Society of British Columbia in July 2013 indicates that over two-thirds of those firms have written pregnancy and parental leave policies for partners.

- Ensuring that the firm complies with its legal obligations, including under the British Columbia *Human Rights Code*.[3]

The provincial *Employment Standards Act, R.S.B.C. 1996 c. 113* (the "ESA") does not apply to lawyers (including partners).[4] The pregnancy and parental leave benefits outlined therein do, however, provide guidelines that may be instructive. As of March 2014, the ESA provides for up to 17 weeks of unpaid leave for birth mothers (pursuant to section 50 of the ESA) plus up to 35 consecutive weeks of unpaid parental leave beginning immediately after the end of the leave taken under section 50 or, for birth mothers who do not take leave under section 50, up to 37 consecutive weeks of unpaid parental leave. Birth fathers and adoptive parents are entitled to up to 37 consecutive weeks of unpaid parental leave. In particular circumstances, the ESA provides for additional periods of leave.[5]

Law firms also have legal obligations under provincial and/or federal human rights legislation and case law, and lawyers are bound by rules that promote human rights under the Law Society's *Code of Professional Conduct*. These obligations include a prohibition against discrimination on the basis of pregnancy, family status or gender, as well as a duty to accommodate to the point of undue hardship.[6]

Leaving aside the question of the length of time a partner may take for pregnancy and parental leave, there is also the question of remuneration during the leave. In this model policy, "pregnancy leave" refers to leave time available to birth mothers who are pregnant or have recently given birth and "parental leave" refers to leave time available to parents of either gender who have not taken pregnancy leave and are caring for a newborn or newly adopted child.

This policy recommends that an adoptive parent who is the child's primary caregiver be eligible to receive the same amount of overall paid leave time as would be available to a birth mother (albeit under the parental, rather than pregnancy leave, category).

Sections of this policy are based upon the materials produced by the Law Society of Upper Canada's Justicia Project. Permission to adapt the materials is gratefully acknowledged.

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[3] Context attributed to the guides published by the Law Society of Upper Canada in its Justicia materials.

[4] *Employment Standards Act Regulation*, B.C. Reg. 396/95, s.31(c).

[5] *Employment Standards Act*, R.S.B.C. 1996 c. 113 at sections 50(3) and 51(2).

[6] A detailed review of this topic is beyond the scope of this policy, but law firms should familiarize themselves with these legal requirements. Law firms should also consider involving firm members or other lawyers with expertise in employment and human rights matters in drafting firm pregnancy and parental leave policies. The Law Society of British Columbia *Code of Professional Conduct* places a special responsibility on lawyers not to discriminate against any person.

Policy

1. Statement of Principles

1.1. Commitment of the Firm

[Name of firm] understands that new parents may wish to spend an extended period of time with newborn or newly adopted children. In recognition of the physical impact of pregnancy and childbirth on birth mothers, the policy provides for periods of paid and unpaid pregnancy leave. The policy also provides for periods of paid and unpaid parental leave that are available to parents other than the birth mother upon the birth or adoption of a child in recognition of the time necessary to adjust to the demands of having a new child in the home.

This policy applies to all equity partners or lawyers in similar arrangements as equity partners in a law firm, collectively referred to in this policy as "partners".

1.2. Purpose

Policies to support women during their childbearing years and to assist women and men in balancing the demands of their career and family responsibilities provide long-term benefits for law firms, and contribute to the promotion of equality, human dignity and respect. This policy also recognizes the role of the firm in assisting partners to support their practice prior to, during and after a leave, and the role of the partner who takes a leave in ensuring continued excellence in client service and practice management.[7]

2. Pregnancy Leave

2.1. Eligibility

The pregnancy leave portion of this policy is applicable to partners who are pregnant or have given birth.

Every such partner is eligible for pregnancy leave for the length of time described in Section 2.2.

Every such partner is eligible for the paid pregnancy leave described in Section 2.3. [8]

2.2. Length and Timing

An eligible partner is entitled to a period of pregnancy leave, whether paid or unpaid, of up to _____ continuous weeks. Pregnancy leave may commence as early as eight weeks before the expected date of birth and as late as the actual birth date.[9] Pregnancy-related illnesses requiring

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[7] See Law Society of Upper Canada's Justicia Guide to Assist Law Firms in Developing Pregnancy and Parental Leave Policies for Partners, January 2010, page 14.

[8] A firm may choose to require a partner to be at the firm for a period of time before being entitled to paid pregnancy leave or require a partner to return to "active" practice for a particular period of time before a subsequent paid pregnancy leave may be taken.

[9] The recommended timing for the commencement of paid maternity leave is the same as the timing for pregnancy leave benefits under the *Employment Insurance Act.*

absence from work prior to and after the pregnancy leave period are not covered by this policy. Partners should refer to applicable firm sick-leave policies and disability benefit plans.[10]

2.3. Remuneration for Partners Eligible for Paid Pregnancy Leave

An eligible partner is entitled to _____ weeks of paid pregnancy leave (the balance, if any, to be taken as unpaid pregnancy leave).

A partner on paid pregnancy leave is entitled to receive, during the period provided for in this Section 2.3, __% of her [monthly draw, bonus and profit-sharing entitlement and share of profit allocation] [11] for the period (the "Pregnancy Benefit").

2.4. Benefits

The firm will maintain all benefits for a partner on pregnancy leave in accordance with its usual practice for all partners, throughout the entire period of the pregnancy leave, whether paid or unpaid.[12]

2.5. Reimbursement

A partner who has taken paid pregnancy leave is expected to return to work at the firm for a period of not less than ____months following her return from leave.

If a partner who has taken a paid pregnancy leave does not return to work at the firm for that period, that partner must repay ____% of the Pregnancy Benefit she received during the period of paid pregnancy leave.

3. Parental Leave

3.1. Eligibility

The parental leave portion of this policy is applicable to partners with newborns or newly adopted children who have not taken pregnancy leave.

Every such partner is eligible for parental leave for the length of time described in Section 3.2.

Every such partner is eligible to receive the remuneration described in Section 3.3.[13]

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[10] Law firms should examine their disability benefit plans to ensure they are in accordance with the Supreme Court of Canada decision in *Brooks, Allan & Dixon* v. *Canada Safeway* (1989), 59 DLR (4th) 321, which held that disability insurance plans that exclude pregnancy-related illness from coverage contravene human rights protections against sex discrimination.

[11] Law firms need to carefully consider their compensation arrangements for partners and be clear on the entitlement of a partner on leave for each category of compensation.

[12] The *Employment Standards Act* contains express rules about the continuation of benefits during pregnancy leave; however, lawyers are exempt from that statute. This model policy recommends that firms treat pregnancy leave as they would other types of leave for purposes of benefits.

[13] A law firm may choose to require a partner to be at the firm for a period of time before being entitled to paid parental leave.

3.2. Length and timing

The maximum cumulative period of parental leave, including paid and unpaid leave, for a partner who is the primary caregiver of a newborn or newly adopted child is _____ continuous weeks.

The maximum cumulative period of parental leave, including paid and unpaid leave, for a partner who is not the primary caregiver of a newborn or newly adopted child is _____ continuous weeks.

Where an eligible partner is either:

(a) the primary caregiver of a newborn or newly adopted child, he or she is entitled to a period of paid parental leave of up to _____ continuous weeks[14] following the arrival of the child in the partner's home; or

(b) not the primary caregiver of a newborn or newly adopted child, he or she is entitled to a period of paid parental leave of up to _____ continuous weeks within the first year following the birth or adoption of a child.

Where paid parental leave has been taken, unpaid parental leave is to commence immediately following the paid parental leave unless the firm and the partner agree to a different schedule. In any event, parental leave (whether paid or unpaid) is to be completed within 52 weeks of the child's arrival in the home.

3.3. Remuneration

A partner on paid parental leave is entitled to receive, during the period provided for in Section 3.2, ___% of his or her [monthly draw, bonus and profit-sharing entitlement and share of profit allocation] [15] for the period (the "Parental Benefit").

3.4. Benefits

The firm will maintain all benefits for a partner on parental leave, in accordance with its usual practice for partners, throughout the entire period of the parental leave, whether paid or unpaid.[16]

3.5. Reimbursement

A partner who has taken paid parental leave is expected to return to work at the firm for a period of not less than ____months following his or her return from leave.

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[14] The amount of time that a firm chooses to offer as paid time is to be determined by the firm. This model policy recommends that the primary caregiver of a newly adopted child be eligible to receive the same overall amount of paid leave time as would be available to a birth parent.

[15] See note 10.

[16] The *Employment Standards Act* contains express rules about the continuation of benefits during parental leave; however, lawyers are exempt from that statute. This model policy recommends that firms treat parental leave as they would other types of leave for purposes of benefits.

If a partner who has taken a paid parental leave does not return to work at the firm for that period, that partner must repay ____% of the Parental Benefit he or she received during the period of paid parental leave.

4. Consequences of Leave

A partner's targets for hours recorded and fees billed will be reduced to reflect the number of weeks of pregnancy or parental leave taken.

Compensation levels for partners who have taken a pregnancy or parental leave may or may not be affected, depending on the length of the leave and its impact on the partner's overall contribution to the firm. This will be discussed between _____ [insert appropriate position e.g. Managing Partner] and the partner prior to the start of the leave, and upon his or her return from the leave.[17]

5. Notice and Approval Procedures

5.1. Notice and Confirmation

Except in the case of a medical emergency or adoption when its timing is unexpected, a partner must notify the firm, in writing, in advance of his or her intention to take a leave for which he or she is eligible. The notice should specify the approximate starting date of the leave and the estimated date of return and should be submitted to [insert appropriate position e.g. Managing Partner] as soon as possible and not less than _____ months prior to the leave period.

The firm will promptly confirm the terms of the leave.

5.2. Approval of Excess Leave

Leave requests in excess of the policy period will be subject to the approval of [insert appropriate position e.g. Managing Partner].

The criteria for approval will include the needs of the requesting partner, workload, specific client needs, the unique skills of the requesting partner and time for proper planning to meet the demands of the practice.

6. Transitional Procedures

6.1. Transition or Support Plan

After notice of intention to take a leave has been submitted by a partner pursuant to Section 5.1, that partner will, as soon as reasonably possible, provide a written plan to [insert appropriate position e.g. Managing Partner] which addresses the following matters:

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[17] A firm may consider inserting a provision in its policy to provide that a pregnancy or parental leave of a specified duration should not, in the normal course, have any impact on the compensation of the partner for the fiscal year in which the leave was taken, particularly if the firm would continue to pay a partner his or her usual compensation during a similarly limited period of leave occasioned by illness, accident or bereavement.

(a) transfer of responsibility for client files including, for each file, to whom the responsibility for the file will be transferred, the timing of the transfer, any transfer memos or meetings required, the form of notification to the client and others involved in the file, and the resumption of responsibility for those files when the partner returns from leave;

(b) transfer of administrative, client management, marketing or other non-billable responsibilities of the partner, and resumption of those responsibilities when the partner returns from leave;

(c) the partner's intentions and expectations regarding continuation of any duties or responsibilities while on leave, such as the availability of the partner for consultation on client files, client management and marketing, and continued participation in firm committees or other administrative work;

(d) practice support including the acquisition of work and the maintenance and growth of his or her practice before and after return from leave;

(e) social and other contact with the firm while on leave (e.g. involvement in firm or client events, practice group meetings, committee meetings and educational seminars);

(f) administrative issues such as mode of communication with the firm, remote access to the firm computer system, mobile device usage, e-mail and voice mail access and notification, any administrative support, and any office space required while on leave;

(g) any accommodation anticipated to be required both before and after return from leave (e.g. room for breastfeeding); and

(h) notification to the firm/colleagues regarding some or all of the above issues.

7. Legislation

7.1. Applicable Legislation

This policy will be deemed to incorporate any changes required to comply with applicable legislation from time to time. It will be updated to reflect such changes as soon as practicable.

Pregnancy and Parental Leave Model Policies: Questions and Answers

1. What is the difference between pregnancy and parental leave, and why do the Model Policies deal with them differently?

   Pregnancy leave applies only to lawyers who are pregnant or have given birth (ie. birth mothers). Parental leave applies to birth fathers and adopting parents. A similar distinction in leave entitlements is made in the provincial *Employment Standards Act*, R.S.B.C. 1996, c.113 ("ESA") and in the federal *Employment Insurance Act*, S.C. 1996, c. 23 for benefits except that in those enactments leave benefits for birth mothers are divided between pregnancy and parental leaves; in the Model Policies, for ease of application, all of a birth mother's leave entitlements are included under the rubric of pregnancy leave. The ESA does not apply to lawyers, but it provides a context and guidelines that are broadly understood and accepted. The Model Policies provide for both pregnancy and parental leaves, both to be of durations and with compensation benefits to be determined by individual firms.

2. Why is there one Model Policy for associates (and other lawyers in an employee relationship) and a separate Model Policy for partners?

   The Model Policies address matters of compensation and advancement which, at the partnership level, are generally matters shared only with partners. Issues of file transition and responsibilities are also handled a little differently.

3. Why are Articled Students not included in the Model Policies?

   Articling students are fixed term employees and are therefore typically entitled to different benefits from lawyers.

4. How do these Model Policies compare to the recommendations made by the Justicia Project of the Law Society of Upper Canada (the "LSUC Justicia Project")?

   Our Justicia Project (i.e. which was launched by the Law Society of British Columbia) formed several committees to consider issues pertaining to:

   - pregnancy and parental leave;
   - flexible work arrangements;
   - collecting demographic data;
   - fostering women's networking and business development;
   - promoting leadership skills for women; and
   - developing path to partnership initiatives.

The Pregnancy and Parental Leave Committee reviewed the materials and guidelines published by the LSUC Justicia Project and has broadly endorsed them. While comprehensive, the LSUC materials are only guidelines. Our work has been to add to those materials by providing policy templates that could be adopted by individual law firms with minimal changes.

5. How do these Model Policies contribute to the mandate of the LSBC to support the retention and advancement of women in the legal profession?

   Supporting lawyers during pregnancy and parental leaves is a recognized component of the retention and advancement of women lawyers. The Model Policies:

   - endorse pregnancy and parental leaves as positive practices;
   - provide clear and transparent processes that can be applied objectively to all lawyers; and
   - communicate a firm's commitment to advancing inclusiveness and diversity at the firm.

6. What changes were made to the original model policy which was adopted by the LSBC in December 2006?

   The 2006 policy has been separated into a policy for salaried lawyers and one for equity partners. In addition, provisions have been added to reflect best practices, that deal with reimbursement of compensation benefits in certain circumstances, that discuss the consequences of a leave, and that more fully describe transition arrangements. The data from survey firms was also updated.

7. Why should law firms financially compensate lawyers who choose to take pregnancy or parental leave?

   Law firms have different cultures and financial structures. Compensation decisions are driven by the market, and many law firms do provide some form of compensation during these leaves (e.g. see the results from the 2013 survey which are foot noted in the Model Policies). Decisions to support lawyers on leave are investments in lawyer retention. In this regard it is instructive to consider the Business Case for Retaining and Advancing Women Lawyers in Private Practice (LSBC, July 2009) which had this to say:

   "Given the demographics of the legal profession in BC, and the fact that law firms will continue to need to compete for talent, law firms need to seek and maintain advantages in the competition for talent and for clients. Law firms that fail to engage women lawyers and fail to prevent their departure in disproportionate numbers will be less able to compete against those that do succeed in retaining and advancing women lawyers. Law firms cannot continue to lose talent and incur the costs of lawyer turnover. Keeping and developing talent increases efficiency, client service, lawyer morale and future recruitment ability. The rewards are measured not only through increased profits but also

through the development of a stronger and more sustainable firm culture based on merit, flexibility and diversity."

8. **To what kind of leave are adoptive parents entitled?**

Adoptive parents are entitled to the parental leave benefits in these Model Policies which include a longer leave for an adoptive parent who is the primary caregiver. The Model Policies treat adoptive parents on the same footing as birth parents.

FLEXIBLE WORK ARRANGEMENTS POLICY

Preface

The attached Model Policy[1] was developed by The Law Society of British Columbia and updated in collaboration with the firms participating in The Law Society of British Columbia Justicia Project. The Model Policy and the accompanying Guide to Assist Law Firms and Lawyers in Developing Successful Flexible Work Arrangements[2] (the "Guide") is intended as a tool to assist firms in developing internal policies on flexible work arrangements for their lawyers in British Columbia. The Model Policy and the Guide do not provide legal advice and are not meant to be the ultimate or ideal policy.

This Model Policy is intended to apply to associates, associate counsel and income partners within a law firm. Equity partners and lawyers in similar ownership arrangements are not covered by the policy prepared as part of this project. While the Model Policy may be adopted to apply to equity partners, this is a matter to be determined by individual firms.

The Law Society of British Columbia recognizes that individuals committed to the practice of law may, for reasons including work-life balance, family responsibility, or other interests, prefer flexible work arrangements which restructure or reduce the time devoted to work. The Model Policy on flexible work arrangements is made available to encourage and support British Columbia lawyers to develop best practices that increase productivity and enhance a law firm's ability to retain and recruit lawyers with diverse perspectives.

Flexible work arrangements take many forms. Advances in both telecommunications and computerization technology make it feasible for lawyers to practice from locations other than the law firm's offices. Many lawyers work full-time and take advantage of these advances to work at alternative times and places. In certain cases it may be valuable to have a specific agreement with a lawyer who works full-time but regularly from a different location or on a unique schedule. However, being able to work at alternate times and locations is part of being a professional and is not intended to be covered by the Model Policy. The focus of the Model Policy is on reduced hour arrangements, including job sharing.

This Model Policy recognizes that firms may choose different approaches to promote flexible work arrangements that are consistent with the ethos and specific goals of the firm. Therefore, some firms may choose to implement a detailed policy while others may adopt broad statements of commitment and purpose (as is set out at the beginning of the Model Policy) and deal with individual requests on a case-by-case basis.

This Model Policy addresses flexible (reduced hour) work arrangements generally. The Pregnancy and Parenting Leave Model Policy contains specific provisions for returning to work after the birth or adoption of a child.

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1 This Model Policy has drawn upon a number of policies and publications including: the publication of the Commission on Women in the Profession of the American Bar Association and published in *Lawyers and Balanced Lives: A Guide to Drafting and Implementing Workplace Policies for Lawyers* (First edition 1990: ABA, Chicago) and *Lawyers and Balanced Lives* by the ABA Commission. See also: Women's Bar Association of the District of Columbia's *Guidelines on Family and Medical Leave and Alternative Work Arrangements* and *Flexible Working Arrangements* published by the Ontario Women's Directorate and Camco Inc.

2 The Guide has, in large part, been based on work conducted by the Law Society of Upper Canada as part of its Justicia Project.

Policy

1. Statement of Commitment

[Name of firm] has adopted a policy addressing requests for flexible work arrangements ("FWAs"). The firm recognizes that while our lawyers are highly committed to the practice of law, it may become desirable for a lawyer to seek a work arrangement which is more flexible than the traditional work schedule to attend to family or other non-firm related responsibilities. The firm recognizes that FWAs must be fair to the lawyers who work in a FWA, their colleagues, the firm's clients and the firm itself. Lawyers working flexible work arrangements (a "FWA lawyer") remain committed professionals and **[firm name]** believes their opportunities for professional growth and career advancement should not be unduly impacted.

2. Purpose[1]

The firm's primary purpose in providing FWAs is to retain and attract lawyers whom we value while promoting and supporting excellence in the practice of law by including lawyers who choose FWAs.

The firm will make every effort to accommodate reasonable requests for FWAs from its lawyers having regard to the needs of the firm and the firm's commitment to high quality client service. It is equally important that the FWA lawyer be willing to accommodate, when required, work on an irregular schedule, work involving travel, and occasionally work in highly concentrated periods of time.

3. Flexible Work Arrangements

3.1 Types of Arrangements[2]

Work structures that do not reduce billable hours expectations or significantly restructure hours/location of work[3], such as occasionally working remotely or varying office hours from time to time are typically permitted without formal approval, subject to the applicable lawyer continuing to meet the quality and timeliness expectations of clients and the senior lawyer(s) responsible for the files and matters on which work is required.

FWAs to which this policy applies are those which result in a lawyer working reduced hours, including job sharing arrangements.

3.2 Reduced Hour Arrangements

Examples of FWAs to which this policy applies may include the following:

(a) Reduced work schedule — A reduced work schedule is a work arrangement in which the FWA lawyer works reduced hours. The arrangement may be structured in any number of ways, including specifying a reduced billable hours target,

1 See the Guide, Section 6, for more information on Purpose of a Policy.
2 More information on types of flexible work arrangements can be found in the Guide at Section 2.
3 See Section 4 of this Model Policy for a discussion of Significantly Restructured Hours/Location of Work (Full-Time).

specific days in a week, weeks in a month, or months in a year that the FWA lawyer will not work; and

(b) Job sharing — Job sharing is an arrangement in which two or more lawyers share a position and are paid proportionately for their share of the work.[4]

3.3 Parameters

There is wide latitude in designing a FWA, which may include any of the above, providing the FWA lawyer agrees:

(a) to maintain fairly regular or predictable core office hours or core hours of work and to communicate these days/hours and any changes to his or her colleagues;

(b) to remain in contact with his or her assistant or to be reachable on a reasonable basis during off hours in case of an emergency;

(c) to remain reasonably willing to accommodate unusual work demands; and

(d) to agree to strive for continuous improvement and to participate in non-billable professional and business development activities of the firm, on an agreed basis to be negotiated.

Each of the FWA lawyer and the firm have a role to play in making the FWA as effective as possible while also ensuring clients' needs are met. Both the firm and the FWA lawyer may have to be flexible in their approach, including avoiding rigid schedules.[5]

4. Significantly Restructured Hours/Location of Work (Full-time)

A lawyer who works full-time but has a significantly restructured work schedule (compressed work week/month/year) or who regularly works from a location other than the office, is not strictly covered by this policy as they are contributing in a full-time capacity. These types of arrangements should be discussed with **[the designated authority in the firm, usually the managing partner or the department head]**. However, many aspects of this policy may be relevant to the proposal and approval of such an arrangement.

5. Eligibility and Duration[6]

Income partners, counsel and associates are eligible to use this policy.[7]

In considering proposals, the firm will be guided not only by the lawyer making the request, but also by the overall size and composition of the firm and needs of its clients. There is no predetermined limit to the number of lawyers who will be permitted to work under a FWA at the

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4 Job sharing is a less common form of reduced hour arrangement in a law firm environment. In addition to the considerations applicable to reduced hour arrangements, depending on the nature of the lawyer's practice, job sharing may involve consideration of how multiple lawyers will service shared clients in an efficient and cost-effective manner.

5 See the Guide, Section 7, for responsibilities of the firm and the FWA lawyer in structuring an effective FWA.

6 See the Guide, Section 9, for more information on Eligibility and Section 17 for more information on Duration.

7 This Model Policy may be adopted to apply to equity partners, however, this is a matter to be determined by individual firms.

same time, nor is there a predetermined minimum or maximum period which a FWA lawyer may spend on flexible arrangement status.

The firm will work with the FWA lawyer to address any concerns identified by either the FWA lawyer or the firm arising from time to time and to consider and implement any remedial adjustments to be made to the FWA. Approval and termination of a FWA is at the sole discretion of the firm.

The firm, when terminating any FWA will give sufficient notice to the FWA lawyer to enable that lawyer to make appropriate alternative arrangements.

6. Compensation and Benefits

6.1 Associates' Compensation, Benefits and Bonus

Salary[8]

Compensation for the FWA lawyer will be negotiated between the firm and the FWA lawyer.

In most cases, the FWA lawyer will be paid a basic salary that is calculated on a pro-rated basis, although adjustments may be made to reflect various factors, including the increase or reduction of overhead costs resulting from the FWA.

Benefits[9]

Where possible, the firm will continue to provide an adjusted benefits package while the FWA is in effect.

The FWA lawyer's discretionary allowance will be adjusted as necessary.

Bonus[10]

The FWA lawyer will remain eligible for bonuses using the criteria applicable for other lawyers, although adjustments may be made having regard to the nature of the FWA.

6.2 Partners' Compensation, Benefits and Bonus

Partners' Compensation

Compensation for FWA income partners will be determined in the same manner as for other income partners, taking into consideration the same factors that apply to other partners and making reasonable adjustments to reflect the FWA.

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8 The firm may wish to include how compensation is determined, including who makes the decision, what factors are considered, and/or whether a formula is applied. This is but one example. See the Guide, Section 13, for more information.

9 See the Guide, Section 15, for more information on Benefits.

10 The firm may wish to include how bonuses will be determined for the FWA lawyer, including what factors are considered in light of the flexible work arrangement and/or whether a formula is applied. This is but one example. See the Guide, Section 14, for more information.

Benefits

Where possible, the firm will continue to provide an adjusted benefits package while the FWA is in effect.

Bonus

The FWA income partner will remain eligible for bonuses using the criteria applicable for other income partners, although adjustments may be made having regard for the nature of the FWA.

7. Career Advancement and Eligibility of Associates for Partnership[11]

The firm has a keen interest in the long-term career development of all lawyers. Therefore, to the extent reasonably possible, and except as otherwise agreed between the FWA lawyer and the firm, there should be no difference in the quality of work given to FWA lawyers and no difference in the firm's attitude toward their professional development.

The firm will make available to the FWA lawyer opportunities for professional enrichment and advancement and the FWA lawyer will recognize that such opportunities may, at times, interfere with the FWA.

The fact of participation in a FWA will not, in itself, influence the decision of whether or not an associate is to be admitted to partnership, or whether or not an income partner is to be admitted to equity partnership.

A FWA may have (but does not automatically have) an impact on progression to partnership, to the extent that such arrangement has an effect on a lawyer's practice and professional development. This will necessarily be assessed on a case by case basis.

The firm's standard partnership admission process, including the firm's partnership criteria, will apply to the FWA lawyer.

8. Requests for Flexible Arrangement Status[12]

Prior to requesting a FWA a lawyer should meet with **[the designated authority in the firm, usually the managing partner or department head]** to discuss the proposed FWA. The FWA lawyer should then draft a written proposal that includes, among other things, a business case for the FWA, a proposal as to how the FWA will be structured and an outline as to how client service will be maintained. The firm will consider the proposal in consultation with the lawyer's practice group leader and other stakeholders to assess the feasibility of the proposal and will communicate the firm's response to the proposal to the requesting lawyer. A template Flexible Work Arrangement Proposal is attached as Appendix 1 to this policy.

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[11] See the Guide, Section 16, for more information on Partnership Admission.

[12] See the Guide, Section 10 for more information on the Procedure to Request a FWA and a checklist of procedural steps which could be followed. Also see Section 11 of the Guide for more information on considerations in preparing a written proposal for a flexible work arrangement.

When necessary, the firm may appoint a partner as an advisor to work with lawyers seeking to be approved for, or who wish to remain on, a FWA. The advisor's role may include assisting the FWA lawyer in preparing their FWA proposal, assisting the FWA lawyer in developing the business case for the FWA, addressing anticipated billable and non-billable hours, the office schedule the FWA lawyer expects to maintain while on a FWA, arrangements for managing workload and addressing client service expectations, the duration of the arrangement, and a possible compensation and benefits proposal. The advisor may also work with the FWA lawyer and the firm to develop suggestions for ways in which overhead expenses can be reduced, if appropriate. The advisor may also, together with **[the designated authority in the firm, usually the managing partner or the department head]**, ask other lawyers to cooperate and participate in making the flexible work arrangement program successful.

All requests for changes in work arrangements (whether on to, off of or during a FWA) should be submitted in writing to **[the designated authority in the firm, usually the managing partner or the department head]**. Requests should be made as far in advance as is reasonably possible.

If a FWA lawyer wishes to return to a standard work arrangement, the FWA lawyer should meet with **[the designated authority in the firm, usually the managing partner or department head]** to discuss the proposed termination of the FWA. As with requests to commence a FWA, the FWA lawyer should draft a written proposal that includes, among other things, a business case for the return to a standard work arrangement. The firm will consider the proposal in consultation with the lawyer's practice group leader and other stakeholders to assess the feasibility of the proposal and will communicate the firm's response to the proposal to the requesting lawyer.

9. Review of Flexible Work Arrangement and Performance[13]

The performance of a FWA lawyer will be assessed on the same basis and on the same timeline as is used for full-time lawyers. There will also be a separate periodic review of the FWA to evaluate whether the FWA is working for both the firm and the FWA lawyer and to assess the impact on clients' needs and client service. If as part of the review of the FWA, it is determined that the hours worked by the FWA lawyer are substantially in excess of or below the agreed-upon percentage, or if the FWA lawyer's professional development is being materially impeded, the review will include a discussion of hours, compensation or other adjustments required to address these concerns.[14]

[13] See the Guide, Section 17, for further information on Monitoring/Review of flexible work arrangements.

[14] See the Guide, Section 17 for further details regarding items a firm may wish to include in the policy relating to the review of the flexible work arrangement.

Appendix 1 Template of Flexible Work Arrangement Proposal

Name:
Year of Call:
Office:
Practice Group:
Proposed FWA start date:
Practice Group Leader:
Managing Partner:

1. What is the flexible work arrangement (FWA) you are proposing? What is the reason for the request?

Please consult the policy for a list of examples of FWAs.

(Comment: Please outline the key features of your FWA proposal, including the FWA hours target, the work schedule, such as hours and days worked, and the days when you will generally be available and the days when you expect to be in the office.)

2. What is the business case for your proposed FWA?

(Comment: Outline the financial and other implications of FWA proposal. Note: Completion of this aspect of the proposal will require the input/assistance of your supervising partner, practice group leader or managing partner.)

3. What is the start date and length for your proposed FWA?

(Comment: Also indicate whether you would be willing to work the FWA on a trial basis and, if so, the timeline.)

4. What are your proposed annual target billable hours?

5. What are your proposed annual target non-billable hours and what is the general nature of the non-billable activities?

(Comment: Also indicate how you will continue to conduct new business development, including networking and participating in marketing efforts, participation in Practice Group and Continuing Legal Education activities as well as in internal firm events or functions.)

6. How do you expect to manage your workload?

(Comment: You may include information about the following: your recent and anticipated workload; your expected sources of work; how the work will be shared with other members of the firm; how the work will be handled in the context of the FWA (particularly on those days when you are not in the office); the benefits of the proposal; and your flexibility and availability, such as your availability to travel and to meet unexpected work needs.)

7. How will you meet clients' service expectations and manage clients' demands? What can the firm do to help?

(Comment: Maintaining professional and high quality client services is essential and an outline on how such services will be maintained is helpful in considering your request. You should include your current client responsibilities/relationships and any changes your new arrangement would require, such as transitioning clients to other lawyers and relinquishing main contact relationship. Where a primary client contact relationship will be maintained, discuss proposed arrangements for coverage of client matters when you are not in the office. Please also indicate how the firm can support you to meet client expectations, such as greater assistance from other lawyers, students or paralegals, using technology to facilitate remote access.)

8. What level of compensation do you hope to receive during the term of the arrangement?

(Comment: The lawyer may also wish to include expectations related to bonuses.)

9. What are the benefits that you would like to maintain, including vacation that you would expect to receive during the term of the arrangement?

10. What are your administrative and technology requirements under the FWA?

(Comment: For example, office space, support staff, home office accommodation, and other administrative matters or technical resources such as lap top computer or BlackBerry.)

11. What mentoring and career development support can the firm offer you to help make your arrangement successful?

(Comment: You should also describe how you will maintain your professional development, such as participating in firm sponsored or external courses, keeping current on general legal issues and case developments.)

GUIDE TO ASSIST LAW FIRMS AND LAWYERS IN DEVELOPING SUCCESSFUL FLEXIBLE WORK ARRANGEMENTS

Content

Part I - Background

1. Introduction

The Law Society of British Columbia developed this Guide in collaboration with firms participating in The Law Society of British Columbia Justicia Project. This Guide has, in large part, been based on the work conducted by the Law Society of Upper Canada as part of its Justicia Project.

The Guide is meant to be a tool for firms to refer to when developing flexible work arrangement ("FWA") policies for lawyers, including associates, counsel and income partners and should be considered in conjunction with The Law Society of British Columbia's Model Policy on Flexible Work Arrangements (the "Model Policy").

FWAs can be profitable, particularly when taking into account the cost of attrition and recruitment replacement costs associated with the loss of highly trained professionals. However, notwithstanding this, firms historically may have questioned the business rationale for entering into FWAs as they may have been predisposed to assuming that such arrangements are not in and of themselves economically viable (i.e. do not make any profit) and lead to a loss for the firm.

This Guide provides general advice and reasons to adopt FWAs. Although firms have no obligation to adopt the Model Policy or all or any part of the Guide, firms should ensure that their policies and practices are consistent with legal obligations, including legal obligations to accommodate, up to the point of undue hardship, lawyers needs that are based on enumerated grounds under the British Columbia *Human Rights Code.* The Guide does not provide legal advice.

Factors such as firm culture, size of firm, practice area, existing policies, jurisdictions in which offices are located and economic considerations may be relevant to the development of a firm's FWA policy. This Guide outlines factors to consider when developing a FWA policy and provides options and checklists that firms may wish to rely on when developing their policy. FWAs may include full-time arrangements with a significantly altered schedule and/or location of work, or reduced hour arrangements; however the Model Policy and this Guide focus on reduced hour arrangements as they are most prevalent, and have the greatest impact on the relationship between the firm and the lawyer.

The Guide is only up-to-date as at the date of writing. When drafting a policy, firms should ensure that they comply with relevant legislation and jurisprudence, including the British Columbia *Human Rights Code* and the *Code of Professional Conduct*, where applicable.

2. What Are Flexible Work Arrangements?

A FWA is defined as any one of a spectrum of work structures that alters the time, place or amount of work that gets done on a regular basis. The following list is not exhaustive and firms are encouraged to work with their lawyers to develop arrangements that will best meet the needs of the lawyer, his or her clients and the firm. Firms may use other terminology to refer to such

arrangements, for example "customized work arrangements", "alternative work arrangements" or "special work arrangements".

Firms should be mindful that there remains some stigma attached to FWAs, particularly when referred to as a "part-time arrangements" as the use of this term often results in people assuming that such an arrangement entails a lesser commitment to the practice of law. Such stigma can be mitigated through the establishment of policies and procedures designated to develop and support FWAs. Law firms that allow for reduced hour FWAs should promote the nature and value of such arrangements with firm members and clients, where necessary.

2.1 *Common FWAs*

Reduced hours – fewer hours and/or a reduced billable target, in exchange for reduced compensation. This Guide and the Model Policy focus on reduced hour FWAs as this type of arrangement, together with job sharing arrangements, often have the biggest impact on the FWA lawyer's career progression and require a larger expenditure of firm resources to implement and make effective.

Working remotely (often referred to as telecommuting or flexplace) – regularly working a significant number of work hours/days off-site at home.

Variable office hours (often referred to as flextime) – while targets for number of hours worked and billing requirements are not reduced, the lawyer's in-office hours are significantly restricted on a regular and preset basis. A compressed work week is a type of variable office hour arrangement and includes lawyers who work their expected hours in a smaller block of longer days in a week, or in a smaller block of longer weeks in a month.

Job sharing – at least two or more lawyers who share the responsibilities of one full-time lawyer. Each person works less than a full-time schedule.

3. Best Practices and Issues to Consider When Drafting FWA Policies

Internal policies on FWAs alone are often not sufficient to ensure the success of FWAs. Guidelines and institutional and firm leadership support are critical to the effectiveness and success of such programs and demonstrate that they are supported from within. Justicia participants and organizations such as the U.S. Project for Attorney Retention and the National Association for Law Placement (NALP)[1] have identified certain best practices for FWAs noted below.

3.1 *Develop a Business Case*

It is advisable for law firms to develop their own FWA business imperative by considering the value of FWAs in light of statistics quantifying the firm's attrition rates and recruiting expenses. It is also important to recognize the long-term contribution that FWA lawyers can make to the

[1] Joan C. Williams and Cynthia Thomas Calvert, *Solving the Part-Time Puzzle: The Law Firm's Guide to Balanced Hours* (Washington: NALP, 2004)

firm. For small and medium firms, the business case might take the form of expressions of satisfaction by FWA lawyers and a calculation of overhead costs and profitability of the FWA.

When proposing a FWA, it is also a good practice for the requesting lawyer to present his or her individual business case for the FWA. For ideas on how to develop the lawyer's business case, see the description in Part II of this Guide and the Template of Flexible Work Arrangement Proposal at Appendix 1.

It is noted that the firm's situation or needs will change over time and FWAs are neither automatic nor an entitlement.

3.2 *Firm and Key Individuals' Support*

As mentioned above, support of the firm's management and senior partners is important when implementing a FWA program. The firm may wish to consider the development of an action plan, including:

- a schedule for roll out of the policy;
- an internal communication plan to promote the FWA policy within the firm; and
- a process to measure progress and obtain feedback.

If the firm has the resources, it may wish to consider assigning experienced mentors or a FWA coordinator to oversee FWAs and to provide support to FWA lawyers. In order to emphasize the commitment of the firm to the FWA policy, it may be prudent to assign a partner to act as the FWA coordinator as opposed to a non-legal professional.

For firms with limited resources, a structured program may not be possible, but positive communications in which the firm is seen as supporting FWAs may be helpful.

3.3 *Broad Eligibility and Access to FWA*

It is advisable for firms to make FWAs available to all lawyers of the firm, not just women with small children.

3.4 *Managing Expectations*

A key to a successful FWA is to manage expectations of both the firm and the FWA lawyer. Both the firm and the FWA lawyer will likely have to be flexible and rigid schedules may not be possible. In particular, an overriding assumption regarding any FWA should be that client demands are paramount and therefore FWA lawyers may need to be available outside the proposed FWA hours or days. The level of predictability often depends on client demands and the nature of the FWA lawyer's practice.

3.5 *Fairly Balanced Compensation and Benefits*

To enhance fairness and transparency, compensation and benefits for FWA lawyers should be fair and consistent with the firm's existing compensation system.[2] It is a good practice to base the level of compensation on merit and on the contribution of the FWA lawyer to the firm. Some firms may wish to set a number of hours threshold or to develop a model to calculate profitability to ensure that the FWA is profitable for the firm while also fair for the FWA lawyer.

Part II of this Guide and Appendix 1, Template of Flexible Work Arrangement Proposal, discuss factors to be taken into account when considering the profitability of a FWA.

3.6 *Individualized Approach*

While having a policy in place is a good practice, it is also suggested that the firm maintain some flexibility within the policy to be able to take an individualized approach to FWAs by considering the circumstances, needs, performance and career objectives of each FWA lawyer and the needs of the firm and its clients.

3.7 *Clarity about Advancement and Partnership*

Firms have found it helpful to clarify in their written FWA policy whether a FWA lawyer who is on the partnership track will continue to be considered for partnership. The firm may wish to include in the policy the timeline, process and partnership criteria that will be considered. It is a good practice to discuss with the FWA lawyer the impact of the FWA on the progression toward partnership. This should be monitored and discussed on a routine basis with the FWA lawyer.

3.8 *Technology, Office and Administrative Resources*

It is a good practice for firms to continue to provide effective technological support to the FWA lawyer to ensure continued efficiency, flexibility and access to the firm's resources.

The FWA lawyer should also continue to have the appropriate level of office and administrative support, such as secretarial assistance, an office as required, and other necessary administrative resources.

4. Reasons to Adopt a Policy

4.1 *Why Adopt FWAs?*

Reasons to adopt a policy to provide flexible work arrangements include:

Retention of Lawyers – Firms invest a tremendous amount of time and money in the recruitment and development of associates. As a result, law firms may wish to reconsider traditional work structures and provide models that allow for greater flexibility in the workplace. Of the firms that have formal written policies and routine uptake on the policies, most find that they contribute

[2] It should be noted that if a FWA results in a reduction of the number of hours worked, this may have an impact on eligibility to benefits under insurance policies.

positively to the retention of lawyers, even though they often impact on the timing of lawyers' partnership progression.

Recruiting Talent – Firms that promote flexibility and are committed to providing opportunities to have productive and fulfilling personal and professional lives are more likely to be seen as desirable work environments for law students and lawyers.

Attracting Clients – Clients in a global market are increasingly committed to doing business with law firms that are inclusive, diverse and that promote the retention of women.

Career Flexibility – Firms that promote FWAs recognize and support the various career trajectories, evolving needs and objectives of lawyers throughout their careers.

Long Term Commitment of Lawyers – There may be periods of time or circumstances when external commitments (children or elderly parents, for example) limit a lawyer's ability to meet standard hours and other requirements of the firm. These periods account for a relatively short period of time, when viewed in the context of an entire career. The firm, in accommodating the needs of individual lawyers in these circumstances, will benefit in the long run by retaining strong talent and future contributors to the firm.

4.2 *Why Adopt a Written FWA Policy?*

In addition to recognizing the value of FWAs, it is also a good practice for law firms to adopt written FWA policies to:

- Allow the firm to move away from ad hoc practices that can lead to inconsistency in approach and uncertainty for lawyers about the firm's practices;
- Increase transparency, objectivity, fairness, predictability and consistency in decision making;
- Provide an internal procedure to request and consider a FWA;
- Demonstrate the firm's support for FWAs; and
- Demonstrate to staff, lawyers, new recruits and clients the firm's commitment to inclusiveness, diversity and the retention of women at the firm.

Part II - Elements of a Policy

This part is meant to assist law firms in developing FWA policies by providing a checklist of elements that could be considered in the policy development process.

5. Elements of a Policy

The following elements could be included in a FWA policy. They are more fully described below:

Purpose of policy

Responsibilities

Definitions and types of FWAs

Eligibility

Procedure to request a FWA

Written proposal

Consideration and finalizing of proposal

Compensation (excluding bonuses)

Bonuses

Benefits

Partnership admission

Duration/termination

Monitoring/Review

6. Purpose of a Policy

Firm policies often include an introductory section that outlines:

- the purpose of the policy;
- the firm's commitment to FWAs and to the provision of high quality client service;
- any relevant governing legislation; and
- the fact that FWAs are intended to retain and recruit the best professional talent.

Justicia participants also emphasized that FWAs are voluntary arrangements that are meant to be considered by firms when lawyers request them. They are generally not arrangements that firms impose on lawyers, either directly or indirectly, nor are they offered as of right. A firm may consider including a note on this point in the FWA policy.

Firms also have to consider their economic situation and the benefit of the FWA to the firm when considering whether to allow FWAs. A firm may wish to include wording in the policy such as "FWAs will be considered in light of the needs of the firm."

It should be noted that there may be situations where a lawyer's practice is so specialized or of a nature that makes it difficult to generate full-time hours. In those cases, a firm could offer reduced hours for less compensation to allow the lawyer to maintain his or her position at the firm.

It is a best-practice to make FWAs available broadly, recognizing that there may be limits on some firms' ability to have several lawyers on FWAs. Firms that impose restrictions on the number of FWAs that are available may wish to include an explanation in their policy.

7. Responsibilities

Both the FWA lawyer and the firm have a role to play in making the FWA as effective as possible and in ensuring that clients' needs are met.

Managing expectations and flexibility are important for FWAs to work effectively. It is often difficult to maintain effective FWAs and meet client needs with consistently predictable hours, and both the firm and the FWA lawyer may have to be flexible in their approach, including avoiding rigid work schedules.

7.1 *Checklists of responsibilities that could be listed in the policy*

<u>The Firm's Responsibilities</u>

assist the FWA lawyer in developing a business case to support the FWA proposal

assist the FWA lawyer in maintaining the FWA schedule when possible

provide the resources that may enhance the success of the FWA

assist the FWA lawyer in seeking to be provided with work consistent with his or her career and development goals or the FWA, if applicable

ensure the FWA lawyer has access to resources such as continuing legal education programs and mentoring consistent with other lawyers

consider and address any issues with the FWA

The FWA Lawyer's Responsibilities

develop an individual business case in the form of a proposal

maintain high quality legal services to his or her clients

continue to take ownership for the direction of her or his legal career development

collaborate with colleagues to ensure the work provided to the FWA lawyer is consistent with the FWA, if applicable

maintain and manage the practice in a professional and timely manner in accordance with his or her professional obligations

demonstrate a reasonable amount of flexibility, including allowing for last minute work requirements, and concentrated periods of work outside the alternative schedule

identify proposed schedule and plan for necessary arrangements to ensure availability

communicate promptly to the firm any concerns or problems with the FWA and collaborate with the firm to address them

identify any resources that the FWA lawyer believes are needed

strive to maintain billable and non-billable hours as agreed upon in the FWA

8. Definitions and Types of FWAs

A firm may find it useful to include the definition of a FWA and/or a non-exhaustive list of the types of FWAs that could be provided. (For descriptions and definitions of FWAs, please refer to Part I of this Guide.)

9. Eligibility

The firm may wish to state in the policy who is eligible to work on FWAs.

While it is not uncommon for firms to require lawyers to be at the firm for some time before being eligible for a FWA, it is considered a good practice for firms to make FWAs available to everyone, including new hires.

9.1 *Eligibility options*

- all lawyers are eligible
- only lawyers who meet certain length of service requirements are eligible
- only lawyers who meet high performance standards are eligible

10. Procedure to Request a FWA

An established procedure for requesting a FWA enhances fairness, consistency and transparency.

10.1 *Checklist of procedural steps that could be listed in the policy*

Informal discussion – encourage a meeting between the requesting lawyer and the practice group leader or equivalent to discuss the request prior to the development of a written proposal.

Written proposal – specify that the proposal from the requesting lawyer, if possible, be in writing and include the details described in the next section.

Submitting the proposal – specify to whom the proposal is made and the approval process, including who considers and approves or rejects the proposal.

Consulting – specify that the committee or person responsible for considering the request should consult with stakeholders (e.g. practice group leaders, mentors and practice group colleagues) to determine whether the FWA is feasible.

Responding to the request – provide a process for the approval or denial of a proposal. For example, if a proposal is denied, the responsible committee/person should provide an explanation to the requesting lawyer. A denial of a request for a FWA should not prevent a lawyer from reapplying for a FWA at a later date.

Implementing an on-going review – specify which committee/person monitors and reviews the FWA and at what regular interval.

11. Written Proposal

It is a good practice for the requesting lawyer to draft a written proposal that includes a business case for the FWA, a proposal as to how the FWA will be structured, and an outline as to how high quality client service will be maintained. It should be noted that the requesting lawyer may require assistance from the firm in developing the business case for the proposal.

Some firms use an informal approach and reduce to writing only the essential elements of the agreement, such as the FWA schedule and impact on compensation and benefits, while other firms develop detailed agreements that include compensation, bonus expectations, target of billable and non-billable hours, secretarial shared resources, and office and technical arrangements. While the informal approach enhances the flexibility of the arrangement and relies on trust that the arrangement will be honoured by both the FWA lawyer and the firm, it is a less transparent approach. A more structured written approach provides clear expectations and guidelines about the agreement and less uncertainty in the approach, but is likely to allow less flexibility in the implementation.

Some policies include a template proposal (see Appendix 1).

There is divided opinion on whether asking for the reasons for the FWA is helpful or necessary. Some literature indicates that it is a best practice to allow all lawyers to work on a FWA regardless of their reason for wanting to do so. Limiting those arrangements to lawyers who are mothers of young children runs the risk of creating a stigmatized “mommy track”. However, some firms may decide that the reason for the request is relevant. For example, firms with

limited economic and human resources may only be able to allow a certain number of FWAs and may wish to consider the reason for the request as a factor in making the decision to grant or refuse.

11.1 ***Checklist of important elements for a written proposal that could be listed in the policy***

Reason for the request (where required)

Proposed work schedule including,

- target hours and days worked
- expectation of days when the lawyer will be available and/or in the office
- plan for working outside FWA schedule as needed

Anticipated length of the proposed FWA

Proposed annual target billable hours (Firms should assist the lawyer by providing enough data to estimate the target of billable and non-billable hours that will make the arrangement profitable.)

Target non-billable hours and the general nature of the non-billable activities (e.g. practice group activities, continuous legal education, etc.)

Management of work and the provision of high quality legal services to clients

- the lawyer's current and anticipated workload
- current and expected sources of work
- how work will be shared with other colleagues
- how file responsibilities will be managed, including urgent work matters
- changes to the work routine

Administrative and technological requirements

- office space
- support staff
- remote access/lap top
- mobile devices

Mentoring and professional development needs

Expected impact on partnership track, including anticipated delay in being considered (assuming the lawyer is on partnership track)

Compensation expectations

Benefits the lawyer would like to maintain, including vacation

12. Consideration and Finalizing of Proposal

The policy may provide for a process that includes a consultation with colleagues of the requesting lawyer, the practice group leader, partners in the group and mentors, to ensure they will be able to continue to work with the FWA lawyer.

The following factors may be relevant to the firm when considering a FWA proposal:

- Sources and nature of work;
- Some practice areas may lend themselves more easily to successful FWAs;
- Support from partners and practice groups will be necessary in making a FWA successful;
- The resources the FWA lawyer will require with respect to mentoring, leadership and practice development opportunities offered by the firm;
- Tools and resources that will be required to allow the lawyer to work effectively on a FWA (e.g. technology, office supplies, meeting rooms, offices and administrative assistance); and
- The performance to date of the FWA lawyer.

Some policies state that a FWA will not be approved if it is requested to pursue other remunerated work.

It is important to be mindful of legal obligations under the *Human Rights Code*, more specifically the obligation not to discriminate based on enumerated grounds such as family status or disability. A firm may also have a duty to accommodate a lawyer under the Code based on an enumerated ground such as family status or disability, and such accommodations could be FWAs. Case law and the B.C. Human Rights Tribunal have outlined relevant considerations when addressing these types of accommodations and the firm may wish to adopt a separate policy and procedures to address such requests.

12.1 ***Checklist of factors that may be relevant from the firm's perspective when making its decision***

Reason for the FWA request, if relevant

Urgency of the request, if relevant

Economic and business implications of the FWA for the firm. This could include an assessment of the number of FWAs the firm can economically support and the profitability of any particular FWA

Anticipated length of the FWA and its impact on the firm

Ability of the FWA lawyer and the firm to effectively service its clients

Ability of the firm to allocate and manage the workload of lawyers with whom the FWA lawyer works

Mentoring and professional development needs of the FWA lawyer

The FWA lawyer's demonstrated commitment to his or her practice, including ability to develop his or her practice, delivering quality service to clients and fulfilling firm responsibilities

Capacity of the FWA lawyer who is on the partnership track to continue with the firm and achieve the criteria necessary for admission to partnership, including developing a mature practice, exceeding performance expectations, demonstrating commitment to the firm, consistently delivering quality service to clients and fulfilling internal firm responsibilities

Potential benefits to the firm and lawyers generally, such as improved morale, retention and loyalty, increased performance of the FWA lawyer and a more representative or balanced professional group

Whether the FWA will meet the lawyer's professional development and career goals in the short and long-term

Whether colleagues will continue to provide the FWA lawyer with assignments consistent with the proposal and his or her development

Whether the department and type of practice lend themselves to the FWA

Whether the business case for the FWA is sound from the firm's perspective

Note: An application could be denied even if it meets all the factors outlined. A lawyer's individual performance at the firm is not the only factor that will be considered by the firm.

12.2 *Checklist of expectations and details that could be included in a written agreement*

target billable and non-billable hours

compensation and benefits

office space arrangements and administrative resources

technology and other required resources

length of the FWA

review process and timeline

in the case of associates who are on the partnership track, the timeline and factors for consideration to partnership

performance level expectation

13. Compensation (Excluding Bonuses)[3]

An arrangement between the firm and the FWA lawyer that allows for fair compensation based on the work done and contributions to the firm is important to a successful FWA. The agreement may also include provisions about compensation when the FWA lawyer is above or below target.

13.1 *Examples of options for compensation clauses*

Compensation negotiated between parties

Compensation decisions made by firm without consultation – The firm may wish to specify,

- who makes the decision; and
- the factors that will be considered, such as billable and non-billable target hours.

Compensation for additional hours worked - Firms may wish to include a clause that provides for additional compensation or time off when the FWA lawyer works hours that are substantially higher than the FWA.

[3] This section is particularly relevant for FWAs that result in reduced work hours. It is not anticipated that full-time FWAs would require a modification in the compensation scheme.

Formula – A formula enhances transparency and proportionality, but may lack flexibility. Where that approach is taken, the policy should specify the formula. The firm may also wish to provide a formula that will allow compensation for additional billable and non-billable hours worked during the year.

Examples of Formula Clauses

Proportional: If a lawyer is reducing his or her hours, the compensation will be reduced proportionately (80% target at 80% pay).[4]

Non-proportional: For example, although a four day week arrangement will reduce hour targets by 20%, pay will be reduced by a greater percentage (80% target at 75% pay).

14. Bonuses[5]

Firms may wish to allow FWA lawyers to remain eligible for bonuses using the criteria applicable to other lawyers. However, the eligibility for bonuses may have to be adjusted in accordance with the FWA and the firm compensation structure.

It is a good practice, in a firm policy, to list the relevant criteria considered by the firm when making decisions about bonus entitlement and to indicate how the eligibility for bonuses is affected by FWA. This increases transparency, consistency and predictability.

14.1 *Examples of Options for Bonus Clauses*

Eligible for bonus using same criteria as with other lawyers

Bonus used to compensate for hours worked that are substantially higher than the FWA

Eligible for bonus on a proportional basis (formula)

Bonus negotiated as part of the FWA negotiation

No bonus eligibility

15. Benefits

Benefit entitlements are generally governed by the contract between the lawyer and the firm. Many health and welfare benefits are also dependent on contracts between the firm and the insurance company which cannot be modified. Where a FWA impacts benefit entitlements, the policy should indicate which benefits may be lost/reduced as a result of a FWA. It may also be useful to discuss these changes with an employment lawyer and/or the firm's Human Resource Department.

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[4] This proportional practice appears to be more common than the non-proportional practice.

[5] This section is particularly relevant for FWAs that result in reduced hours. It is not anticipated that full-time FWAs would require a modification in the bonus scheme.

16. Partnership Admission

This section applies to associates, counsel or income partners, as the case may be.

The policy should recognize that admission to partnership is ultimately a business decision made by the partners of the firm. However, it is suggested that the policy could include the following:

- Recognize that if a FWA lawyer is considered for partnership, the firm's standard criteria for admission to partnership apply.

- List the criteria enumerated in the firm's policies on partnership or attach the policy itself to the FWA policy. If the firm does not have eligibility criteria, the firm is encouraged to adopt such criteria and make them available to lawyers. This information is useful for lawyers to know what will be expected of them when seeking to join the partnership. Being on a FWA may result in a lawyer not acquiring the experience or skills needed to be eligible for partnership at the same progression as full-time lawyers. A process could also be put in place to allow FWA lawyers to request delaying their application to partnership in order to acquire these further skills and experience.

17. Duration/Termination and Monitoring/Review

It is a good practice to include in a policy a provision for regular reviews of FWAs to ensure that the arrangement works effectively from the perspective of the lawyer and the firm. The frequency of reviews may be stipulated or may be negotiated on a case by case basis between the FWA lawyer and the firm. The periodic review of the FWA should be in addition to the review of the lawyer's performance, which should be on the same basis and timeframe as is used for other lawyers.

It is advisable to involve the FWA lawyer in the review, along with the practice group leader, managing lawyer or person responsible for monitoring the FWA. The review may include discussions about whether,

- the FWA is working for the lawyer and the firm;

- work is being completed in a timely fashion;

- clients' needs are being met;

- the FWA could be more effective through use of technology or delegation; and

- the compensation level is adequate based on the experience and level of competency of the lawyer and the hours worked by the lawyer.

It is also a good practice to provide information about the factors to consider in a review and by whom the FWA will be reviewed.

Firms may wish to consider allowing a lawyer to move between FWAs and standard hours without fear of repercussion. A notice period applicable to both parties to terminate a FWA could also be included (See Section 17.3).

A firm may wish to assign a firm member to the FWA lawyer to monitor the work, his or her capacity to produce high quality work and the success of the FWA.

17.1 *Options Related to Duration of FWAs*

Permanent FWAs are allowed and a monitoring process is in place. There may also be a process and timeline for reviews, and provision for altering or terminating the FWA.

Duration approved provisionally, including a process to regularly monitor the FWA and allow for adjustments to be made.

Temporary FWAs only.

Temporary FWAs with discretion to extend where the FWA is working satisfactorily for the firm and the lawyer. This option should include a process to allow the FWA lawyer to provide notice within a specified timeline of a desire to extend. The policy could also include specific information to be addressed in the request and an outline of the approval process and new expiration date.

17.2 *Checklist of Items That a Firm May Wish to Include in the Policy Relating to Monitoring*

Monitoring input and quality of work: The policy may provide that a person will be assigned to the FWA lawyer to monitor the work, his or her capacity to produce high quality work and the success of the FWA.

Timeline for regular reviews, (e.g. every 6 months/annually). Some policies also provide that a FWA will be piloted for a trial period to ensure that it meets the needs of the lawyer, clients and the firm.

Review process, which indicates who is responsible for the review, (e.g. a mentor, a practice group leader, a committee). The process often includes a consultation with colleagues to ensure the FWA is effective for the firm and clients. It is good practice for the process to specify how the FWA may be altered or terminated.

Factors to consider during the review, such as whether work is being completed in a timely fashion; whether the lawyer is responsive to clients; whether the agreed upon schedule is being adhered to; whether there are ways for the lawyer to be more productive through the use of technology or delegation.

17.3 *Return to a Standard Work Arrangement*

A FWA lawyer wishing to return to a standard work arrangement should communicate their intention to the firm well in advance. Depending upon the nature of the FWA lawyer's practice and the circumstances of the firm at the time, it may not be possible for the firm to accommodate the change in status.

Much like the procedure to request a FWA, there should be an established procedure to request a return to a standard work arrangement. An established procedure enhances fairness, consistency and transparency. Many of the procedural steps set out in this Guide (see Section 10.1) should be considered in preparing a request to return to a standard work arrangement. Similarly, a written proposal should be prepared by the requesting lawyer, which includes a business case for the return to a standard work arrangement. The proposal should be prepared in consultation with the lawyer's supervising partner, practice group leader or managing partner.

Appendix 1 Template of Flexible Work Arrangement Proposal

Name:
Year of Call:
Office:
Practice Group:
Proposed FWA start date:
Practice Group Leader:
Managing Partner:

1. What is the flexible work arrangement (FWA) you are proposing? What is the reason for the request?

Please consult the policy for a list of examples of FWAs.

(Comment: Please outline the key features of your FWA proposal, including the FWA hours target, the work schedule, such as hours and days worked, and the days when you will generally be available and the days when you expect to be in the office.)

2. What is the start date and length for your proposed FWA?

(Comment: Also indicate whether you would be willing to work the FWA on a trial basis and, if so, the timeline.)

3. What is the business case for your proposed FWA?

(Comment: Outline the financial and other implications of FWA proposal. Note: Completion of this aspect of the proposal will require the input/assistance of your supervising partner, practice group leader or managing partner.)

4. What are your proposed annual target billable hours?

5. What are your proposed annual target non-billable hours and what is the general nature of the non-billable activities?

(Comment: Also indicate how you will continue to conduct new business development, including networking and participating in marketing efforts, participation in Practice Group and Continuing Legal Education activities as well as in internal firm events or functions.)

6. How do you expect to manage your workload?

(Comment: You may include information about the following: your recent and anticipated workload; your expected sources of work; how the work will be shared with other members of the firm; how the work will be handled in the context of the FWA

(particularly on those days when you are not in the office); the benefits of the proposal; and your flexibility and availability, such as your availability to travel and to meet unexpected work needs.)

7. How will you meet clients' service expectations and manage clients' demands? What can the firm do to help?

(Comment: Maintaining professional and high quality client services is essential and an outline on how such services will be maintained is helpful in considering your request. You should include your current client responsibilities/relationships and any changes your new arrangement would require, such as transitioning clients to other lawyers and relinquishing main contact relationship. Where a primary client contact relationship will be maintained, discuss proposed arrangements for coverage of client matters when you are not in the office. Please also indicate how the firm can support you to meet client expectations, such as greater assistance from other lawyers, students or paralegals, using technology to facilitate remote access.)

8. What level of compensation do you hope to receive during the term of the arrangement?

(Comment: The lawyer may also wish to include expectations related to bonuses.)

9. What are the benefits that you would like to maintain, including vacation that you would expect to receive during the term of the arrangement?

10. What are your administrative and technology requirements under the FWA?

(Comment: For example, office space, support staff, home office accommodation, and other administrative matters or technical resources such as lap top computer or smart phone.)

11. What mentoring and career development support can the firm offer you to help make your arrangement successful?

(Comment: You should also describe how you will maintain your professional development, such as participating in firm sponsored or external courses, keeping current on general legal issues and case developments.)

DEMOGRAPHIC DATA COLLECTION GUIDE

These materials are based on the Law Society of Upper Canada's Justicia materials, and are used with permission from the Law Society of Upper Canada.

Introduction

The Justicia Project is an initiative designed to retain and advance women lawyers in private practice. In that context, participating Justicia law firms have committed to collecting and maintaining gender demographic data. While the collection of this data will be used to identify principles and best practices that can accomplish these goals, there is no requirement for Justicia firms to report such data either to the Law Society of British Columbia or publicly.

However, firms may wish to release their gender demographic data to highlight their progress related to the inclusion and gender diversity of lawyers at various levels of the organization. Firms can also use the information as a marketing tool with clients and potential recruits.

The Law Society of British Columbia recognizes the value of collecting demographic data. It has maintained gender data of lawyers for a number of years and in 2013 began collecting broader self-identification demographic information about its lawyers. Such data will provide a benchmark for the legal profession and law firms.

In addition to collecting quantitative gender demographic data, firms may wish to establish a process by which qualitative data is gathered, for example through exit interviews with departing lawyers. This practice can assist in better understanding reasons for departures and developing programs to address identified issues.

This guide provides the following information to assist firms in collecting gender demographic data:

1. Benefits and challenges of collecting data in your firm;
2. Human rights obligations;
3. Steps to collecting data;
4. Template to collect gender demographic data;
5. How to report gender demographic data;
6. Collecting demographic data beyond gender;
7. Developing exit interview processes for law firms;
8. Exit interview principles; and
9. Exit interview templates.

1. Benefits and Challenges of Collecting Data in Your Firm

Some of the benefits for collecting and analysing gender demographic data include:

a. It is good business for law firms to be representative of their client base and the data can be used as a marketing tool to recruit talent and clients.

b. The purpose of collecting and maintaining gender demographic data in the context of the Justicia Project is to allow firms to analyze trends within their environment, such as the number of women and men who leave, lateral hires at each level of the firm, and representation at the partnership level or in positions of leadership. This information may lead to the development of strategies to remedy any gaps and underrepresentation.

c. When data is gathered, tracked and analyzed in a credible way over time, it becomes possible to measure progress and advancement. Budgets, policies, practices, processes, programming, services and interventions can be evaluated, modified and improved.

Some may challenge the collection of data, more particularly if the firm decides to gather demographic information about characteristics other than gender, such as race, disability or sexual orientation. Some issues raised may include the following:

a. Data collection may be seen as a way of unduly favouring specific groups. To proactively reduce and address those perceptions, the firm should clearly communicate the purpose, goals and methodology for collecting data.

b. Data collection is resource intensive and can be technical, complex and expensive – this may be the case for larger firms especially. However, once a system is in place, the cost of gathering, maintaining and reporting the data is reduced.

2. Human Rights Obligations

Purpose: the demographic collection program should clearly set out a purpose that is consistent with the *Human Rights Code*. This can be contextualized by taking into account a group's position within society. In the case of the Justicia firms, the purpose of the collection program could be to enable firms to analyze trends within their environment, such as the number of women and men who leave, lateral hires at each level of the firm, and representation at the partnership level or in positions of leadership by gender, so that this information may assist in the development of strategies to remedy any gaps and/or underrepresentation noted by the collected data. There should be a logical connection between the nature of the information being collected and its intended use.

Anonymity: Measures should be taken to protect confidentiality and privacy.

3. Steps to Collecting Data

The following are some of the key considerations that may arise during various steps in the data collection process. How data is gathered and analyzed depends on many factors, including the context, the issues that need to be monitored, the purpose of the data collection, and the nature and size of the organization.

a. Set Goals: The law firm should set goals to be accomplished by the data collection. For example, the goals of Justicia firms may be to find out whether women are leaving the firm and at what level in their career, or to gather gender demographic data to demonstrate the leadership roles that women have in the firm, and to promote the firm as an inclusive employer or service provider.

b. Plan: The firm should consider the following questions:

- Is there support from senior management or leadership of the firm, such as the executive committee?
- Who will be accountable for decisions about the data collection process, such as design, logistics, communication, management, coordination and finances?
- What survey instrument or methodology will be used to gather the information?
- When and how will the collection of data be done?
- How often will data be collected?
- Who will be asked to participate?
- What benchmark statistics will be used for comparison?
- Who will do the analysis?
- How will the data be reported?
- Who will receive the data?

c. Collect the Data: Collecting the data requires an organized approach, which includes a number of practical considerations. The firm should consider the following checklist:

- Identify the logistics, resources, technology and people needed to develop and implement a data collection initiative;
- Identify who will review the data to ensure that it is relevant and accurate;
- Anticipate and address concerns and questions about the project; and
- Design a communication plan.

d. Analyze and Interpret the Data: In the analysis of the data, the firm should consider the following checklist:

- Identify the kind of analysis that will be used and who will perform the analysis;
- Prepare a report of the data, including charts, graphs and other forms of visual representation with a summary of findings and interpretation;
- Analyze the efficiency and efficacy of the data collection process and how it can be improved;
- Identify gaps, areas of improvement, and opportunities; and
- Develop steps to address the findings and identify the individuals who will be responsible to implement the steps.

e. Repeat: demographics are most useful when tracked over time. The firm should make a decision on how it will maintain gender demographic data and how often it will analyze and report on the results. For consistency, measurement and tracking purposes, a firm should collect data at the same point in time every year.

4. Template to Gather Gender Demographic Data

Office Location: _____

Excluding anyone on long term disability, please indicate the following:

DEMOGRAPHIC INFORMATION	MALE	FEMALE	TOTAL
Lawyers			
1. Total lawyers			
Students			
2. Summer students			
3. Articling Students			
4. Articling Students Hired back to Associate level			
Associates			
5. Junior Associates (1 - 4 years) (Total including lateral hires)			
6. Sr. Associate (5+ years) (Total number including lateral hires)			
7. Jr. Associates (1 - 4 years) hired laterally from outside of the firm			
8. Sr. Associates (5+ years) hired laterally from outside of the firm			
9. Associates eligible[1] to become Income Partners			
10. Associates eligible to become Equity Partners			
Income Partners			
11. Income Partners			
12. Income Partners appointed from Associate ranks			
13. Income Partners hired laterally from outside of the firm			
14. Income Partners eligible to become Equity Partners			

[1] Eligible means all lawyers the firm considers eligible to apply.

Equity Partners			
15. Equity Partners			
16. Equity Partners appointed from Associate ranks			
17. Equity Partners appointed from Income Partner ranks			
18. Equity Partners hired laterally from outside of the firm			
Counsel/other			
19. Counsel			
20. Other			
LEAVES	**MALE**	**FEMALE**	**TOTAL**
21. Maternity leaves			
A. Articling Students			
B. Junior Associates (1 - 4 years)			
C. Sr. Associates (5+ years)			
D. Income Partners			
E. Equity Partners			
22. Parental leaves			
A. Articling Students			
B. Junior Associates (1 - 4 years)			
C. Sr. Associates (5+ years)			
D. Income Partners			
E. Equity Partners			
23. Leaves other			
A. Articling Students			
B. Junior Associates (1 - 4 years)			
C. Sr. Associates (5+ years)			

D. Income Partners			
E. Equity Partners			
FLEXIBLE WORK ARRANGEMENTS	**MALE**	**FEMALE**	**TOTAL**
24. Full-time hours flexible work arrangements			
A. Articling Students			
B. Junior Associates (1 - 4 years)			
C. Sr. Associates (5+ years)			
D. Income Partners			
E. Equity Partners			
25. Reduced hours flexible work arrangements			
1. Articling Students			
2. Junior Associates (1 - 4 years)			
3. Sr. Associates (5+ years)			
4. Income Partners			
5. Equity Partners			

* ***This part of the template should be adapted to reflect the practice areas in your firm:***

PRACTICE AREA DEMOGRAPHICS	**MALE**	**FEMALE**	**TOTAL**
25. Number of Lawyers by Practice Area			
Litigation			
Business Law			
Labour and Employment			
Private Clients (e.g. family, wills and estates, residential real estate)			
26. Number of Equity Partners by Practice Area			
Litigation			

Business Law			
Labour and Employment			
Private Clients (e.g. family, wills and estates, residential real estate)			
27. Number of Income Partners by Practice Area			
Litigation			
Business Law			
Labour and Employment			
Private Clients (e.g. family, wills and estates, residential real estate)			
28. Number of Junior Associates (1-4 years) by Practice Area			
Litigation			
Business Law			
Labour and Employment			
Private Clients (e.g. family, wills and estates, residential real estate)			
29. Number of Senior Associates (5+ years) by Practice Area			
Litigation			
Business Law			
Labour and Employment			
Private Clients (e.g. family, wills and estates, residential real estate)			
30. Number of Associate Lateral Hires by Practice Area			
Litigation			
Business Law			
Labour and Employment			
Private Clients (e.g. family, wills and estates, residential real estate)			

DEPARTURES	MALE	FEMALE	TOTAL
31. Total Number of Departures			
32. Number of Junior Associate (1-4 years) Departures			
a. Exit interviews conducted			
33. Number of Senior Associate (5+ years) Departures			
a. Exit interviews conducted			
34. Number of Income Partner Departures			
a. Exit interviews conducted			
35. Number of Equity Partner Departures			
a. Exit interviews conducted			
LEADERSHIP	**MALE**	**FEMALE**	**TOTAL**
36. Total Senior Management and Leadership Positions			
37. Executive Committee			
38. Compensation Committee			
39. Finance Committee			
40. Practice Group Lead			
41. Department Heads			
42. Committee Chairs			

5. How to Report Gender Demographic Data

Once the gender data has been collected and analyzed, the committee or individuals responsible for the initiative should consider the following factors for the release of the data:

a. The Audience: The firm should decide whether the results will be made available only to senior management (such as the executive committee and the diversity or women's initiatives committees), to all lawyers at the firm, or to the public at large. Each strategy has different objectives, advantages, and disadvantages as follows:

    i. Release to management only or first: The objective of releasing the results of the report to management, practice group leaders and/or key committees allows the management of the firm to consider strategies to address any gaps and positive results without the input of the firm as a whole. If results are to be released broadly, it is a good practice for the management of the firm to consider the results, develop a strategy for action, and a communication plan prior to the release of the results.

    ii. Release to all lawyers of the firm: The objective of releasing the results or the summary of the data of the report or key data or summary of data to all lawyers of the firm is to create an awareness of the firm's successes and gaps when it comes to gender representation, to create buy-in from all lawyers about any action plan and to make lawyers a part of the solution. It is a good practice to have a communication plan prior to releasing the results with highlights of findings and key messages.

    iii. Release externally: The objective of releasing the results to the public at large may be beneficial if results are positive and can be used for student recruitment and client development purposes, and to create a competitive edge with other law firms. However, if the results are not as positive as anticipated, there may be some value in promoting the results with a full plan for action.

b. The Report: The firm should consider the type of information to release in the report and the method of releasing the information. For example, the results could be included on the firm's internal or public website, in hard copy with the full analysis of the results, including charts, and in a power point presentation to lawyers. Some firms have used this initiative as an opportunity to launch the results through a networking event.

The firm may provide the firm or committees with the following information:

a. benchmark statistics;
b. a summary of the results of the analysis and interpretation of the data;
c. identification of the gaps and opportunities that exist or may exist;
d. steps that will be taken to address these gaps and opportunities now and in the future;
e. realistic, attainable goals with short-term and longer-term timelines;
f. input sought from stakeholders and affected communities; and
g. how progress in meeting these goals will be monitored, evaluated and reported.

6. Developing Exit Interviews

An exit interview is a way of determining the reasons why a departing lawyer has decided to leave an organization.

When collecting information from exiting lawyers, law firms should:

a. gather the data in a structured and consistent manner;
b. aggregate the results for the organization as a whole;
c. analyze the findings to identify consistent trends, patterns and themes; and
d. use the results to determine and implement strategies to increase retention and reduce turn-over.

Organizations use the following practices in exit interviews:

a. A traditional method is to have a representative in the Human Resources department, a supervisor, or a person with the authority conduct the exit interview on the last day of work, or on a day following the last day of work. The disadvantage of this model is that employees may be reluctant to reveal the full range of factors that led to a resignation and to give an honest critique of the expectations, conditions and requirements of their jobs. In order to collect the most effective information, law firms should recognize the need to provide the departing member of the firm with a forum that makes them comfortable to provide an honest and complete account of the reasons for departures. Delaying the interview for a period of time following the departure may assist in making an employee or member of the firm more comfortable to provide information about the departure.

b. Another method is to conduct exit interviews through a third party. This method may make the employee more at ease, but may also lead to a more structured or formal interview. External exit interviews may also be more costly to perform for the firm.

Exit interviews are typically conducted face-to-face because it enables better communication, understanding and interpretation, a better opportunity to probe and get to the root of sensitive or reluctant feelings. Questionnaires are also appropriate if face-to-face interviews are not possible.

Participation in an exit interview should be voluntary. If a person refuses to attend an in person interview, you may offer a questionnaire instead.

7. Exit Interview – Principles

An exit interview may touch on the following topics:

a. career opportunities, including perceived opportunities for advancement and clarity of development plan;

b. enjoyment of the work, including how well work utilizes skills and work/life balance;

c. firm leadership, including management style, perception of leadership, support of lawyers;

d. availability of training, including corporate commitment to professional development, keeping up with technology, opportunity to learn new skills;

e. compensation and benefits, including bonuses, recognition of contributions, communication regarding performance;

f. culture of firm/practice group, including opportunity to learn and take on good files, size and reputation of practice group; and

g. opportunity for flexible work arrangements.

Useful principles for planning an exit interview process include the following:

a. provide an opportunity to all employees who leave the firm voluntarily to participate in an exit interview to have a complete understanding of turnover;

b. use a standardized approach by asking a consistent set of questions to ensure comparability;

c. be comprehensive in the approach by including feedback on the work environment in addition to reasons for leaving;

d. make the information in aggregate form available to firm members as required to plan strategies to reduce turnover; and

e. set targets for reduction in turnover through planned strategies, which helps to ensure that the investment made in exit surveys is put to its maximum use.

8. Exit Interview Template

Background Information

Name:

Hire Date:

Departing Date:

Current Year of Practice:

Current Practice Area:

Gender:

Identifies as a member of an equality-seeking community: (If yes, identify which one)

Date of Exit Interview:

Interviewer Name:

Reason for Leaving

Primary	Secondary	
[ ]	[ ]	Secured better job
[ ]	[ ]	Return to school
[ ]	[ ]	Family
[ ]	[ ]	Issues with supervisor
[ ]	[ ]	Not satisfied with income
[ ]	[ ]	Disliked type of work
[ ]	[ ]	Professional level of job
[ ]	[ ]	Quantity of work
[ ]	[ ]	Physical conditions
[ ]	[ ]	Transportation problems
[ ]	[ ]	Other: _____

General Information

a. Why have you decided to leave the firm?

b. Did you discuss leaving with your supervisor or human resources before you resigned?
    i. If not, why not?

c. Do you have another position you are going to? If yes:
    i. What is the position and who is it with?
    ii. What does the new position offer that your present position does not?

d. In the future, will you be doing the same type of work? If not, what type of work will you be doing?

e. What might we have done to have prevented your resignation from the firm?

f. What two things will you miss most about working at the firm?

g. What two things will you be happy to leave behind?

h. Was your job what you thought it would be after hearing it described in your hiring interview? Explain:

i. Do you feel that you were accomplishing something worthwhile at this firm? Explain:

Leadership, Management and Mentoring

a. Who were your mentors? Were they available and accessible to you? Do you feel they provided you with the appropriate amount of direction and support? How did they differ from one another? What did they excel in? What could they have done better?

b. Who were the good partners, managers, supervisors or practice group leads that you worked under and why? Who could use some improvement and why?

c. Were the firm's performance expectations of you clearly outlined? (e.g. work quality, work load, timelines, etc.) If not, please explain.

d. Were you given the right amount of direction (or too much, too little) on assignments? Were you given timely and constructive feedback on a regular basis? How could we improve in this area?

e. On a scale of 1 (low) to 5 (high), how would you rate the effectiveness of leadership (i.e. partners) at the firm? Why?

f. How did you feel about your supervisor's management methods? (+) 5-4-3-2-1 (-)

   i. What did s/he do best?

   ii. What could s/he improve on?

   iii. Do you think s/he was fair and reasonable? Explain:

   iv. Do you feel your contribution was appreciated by your supervisor and others? Explain:

Professional Development

a. Were you given the right amount of professional development opportunities? How could we improve in this area?

Work Challenge and Interest – Career Development

a. When you first started with the firm, did you plan on making your career solely at the firm or did you see this position as a stepping stone in your career path?

b. Was your role what you expected it to be? If not, why not?

c. As you grew in your role, did your role continue to meet your expectations? If not, why not?

d. Did you get exposure to a variety of matters and clients? If not, why do you think that is?

e. Do you feel your skills and knowledge were used to their fullest potential? If not, why not?

f. Do you feel your work was challenging enough, over-challenging or under-challenging? Explain why?

Compensation and Benefits

a. Do you feel you have been recognized appropriately for your performance and contribution to the firm?

b. Have any of the following influenced your decision to leave: vacation, paid leaves (personal days, sick leave), benefits etc.?

c. Have any of the following influenced your decision to leave: approaches to compensation / salary administration?

d. Do you feel you have been fairly compensated for the work you performed:
    i. In relation to the market (external)
    ii. In relation to your peers (internal)

e. Have you been satisfied with the benefits and associated programs provided by the firm? Is there anything you would recommend including?

Support Systems, Tools and Training

a. Was your initial orientation comprehensive enough to allow you to easily transition into your position? How could we improve upon it?

b. Do you feel you received enough on the job training to allow you to grow in your role? Is there any training you would have liked to have received that was not offered?

c. How would you rate the administrative support provided to you, on a scale of 1 (low) to 5 (high)? Please explain.
    i. Secretarial support
    ii. Technical support
    iii. Research support
    iv. Department support

Overall Environment and Firm Culture

a. How would you characterize the firm people you know? (+) 5-4-3-2-1 (-)

b. What do you think we should work to improve?

c. Did you feel that there was room for you to grow – expanding your experiences and knowledge in the job or through other jobs?

d. How would you characterize your work area/department? (+) 5-4-3-2-1 (-)
    i. What did you like best about working there?
    ii. What do you think they should work to improve?
    iii. What was the most common positive comment by your co-workers?
    iv. What was the most common complaint?

e. Do you feel the firm's policies and practices, as they relate to associates, were communicated clearly and applied consistently and fairly? What could we do to improve in this area?

f. Do you feel everyone has an equal opportunity to succeed at the firm? If no, why?

g. Do you have any suggestions for improving associate relations or the work environment in general?

h. How would you describe your relationship with your peers?

i. It would be very helpful if you could provide three suggestions that would help us make the firm a better place to work.

General Comments:

a. Is there anything else that you could share with us that would help us to improve things for current and future employees?

SUMMARY OF EXIT INTERVIEW:

Reason for Leaving:

Primary:

Secondary:

Experience at the firm:

Best part of working at the firm:

The people:

Recommendations for improvement:

Room to grow:

Work/Area Department:

Improvements:

Supervisor's Methods:

The Job:

Orientation:

Benefits:

Training:

Recommendations:

Changes that would have prevented resignation:

REPORT OF THE SURVEY OF JUSTICIA FIRMS IN BRITISH COLUMBIA

Introduction

Between February and May, 2013, the Law Society of British Columbia conducted a survey of the 17 law firms participating in the Law Society's Justicia Project. The 17 firms include national and large regional firms. All 17 firms responded to the survey. The results of the survey are as follows:

Firms that Collect Gender Demographic Data

Position	Yes	No	N/A[1]
Summer Students	11	6	0
Articling Students	11	5	2
Contract Associates	8	5	4
Permanent Associates	11	5	1
Counsel	15	1	1
Income Partners	11	1	5
Equity Partners	11	5	1

Maternity/Parental/Adoption Leave

Policies	Yes	No	N/A
Maternity leave for women associates	17	0	0
Maternity leave for women partners	12	5	0
Parental leave for associates	17	0	0
Parental leave for partners	11	6	0
Adoption leave for associates	12	4	1
Adoption leave for partners	8	9	0

Eligibility

Parental leave	Yes	No	N/A
Parental leave for men and women associates	**17**	**0**	**0**
Birth and adoptive parents (full-time associates)	17	0	0
Birth and adoptive parents (part-time associates)	8	4	5
Birth and adoptive parents (contract associates)	2	9	6
Parental leave for men and women partners	**13**	**4**	**0**
Full-time income partners	6	6	5
Part-time income partners	4	7	6
Full-time equity partners	13	2	2
Part-time equity partners	9	3	5

[1] "Not applicable" may mean that there is no such position, that there is no provision in a written policy, or that a provision in a policy is discretionary.

Eligibility Period

Eligible for parental leave after	0 months	6 months	1 year	2 years	N/A
Full-time associates	7	2	6	2	0
Part-time associates	5	1	5	0	6
Contract associates	2	0	2	0	13
Full-time income partners	11	6	0	0	0
Part-time income partners	7	0	0	0	10
Full-time equity partners	6	0	0	0	11
Part-time equity partners	5	0	0	0	12

Paid Parental Leave

Period of paid leave	0 weeks	2 wks	4 wks	8 wks	15 wks	17 wks	22 wks
Maternity leave	0	0	0	1	3	12	1
Parental leave	9	1	5	0	0	2	0

Period of paid leave	0	2 wks	4 wks	11 wks	17 wks	24 wks	26 wks
Primary caregiver	1	0	0	1	14	1	1
Non-primary caregiver	6	3	5	0	3	0	0

Period of unpaid leave	0	24 wks	26 wks	33 wks	35 wks	37 wks	Discretionary
Primary caregiver	0	1	1	0	12	1	2
Non-primary caregiver	3	0	1	1	4	3	5

Top Up

Top up amount	75%	95%	100%
	1	1	15

Two firms described complex top up scenarios. One firm provided:

Weeks	Percentage of top up
1 through 17	100%
18 through 22	90%
23 through 26	80%

Another firm provided 75% top up, and the top up period was related to length of tenure:

Length of Tenure	Top up period
Under 24 months	0 weeks
24-35 months	8 weeks
36-59 months	12 weeks
Over 60 months	16 weeks

Cumulative (paid and unpaid) Leave

Cumulative leave	0	2 wks	4 wks	30 wks	35 wks	37 wks	52 wks	Discretionary
Primary caregiver	0	0	0	0	3	0	12	2
Non-primary caregiver	2	2	2	1	3	2	3	2

Return to Work Requirement

Period Required to Return	0 weeks	26 weeks	52 weeks
	7	1	8

Consequence for breach of "return to work" requirement

None	Discretionary	Pro-Rated Repayment	Full Repayment
7	2	3	5

Number of firms with lawyers currently taking parental leave

Number of Lawyers	0	1	2	3	4	5
Female	3	3	6	2	2	1
Male	16	1	0	0	0	0

Flexible Work Arrangements (FWA)

Policies	Yes	No	N/A
Full-time FWAs for associates	10	7	0
Full-time FWAs for partners	7	10	0
Reduced hours for associates	12	5	0
Reduced hours for partners	10	7	0

Number of firms with lawyers currently working under full time FWA

Number of Lawyers	0	1	2	3
Number of Firms	11	5	0	1

Number of firms with lawyers currently working under reduced hour FWA

Number of Lawyers	0	1	2	3	4	5	6	7
Number of Firms	1	5	3	2	1	1	2	2

Other Written Policies

Policies	Yes	No	N/A
Harassment and discrimination	17	0	0
Accommodation for special needs	3	14	0
Admission to income partnership	12	2	3
Admission to equity partnership	13	4	0
Fixed equity partner arrangement	0	11	6

Networking and Professional Development

Programs and Initiatives	Yes	No	N/A
For women lawyers to network with women lawyers	13	4	0
For women lawyers to network with clients	14	3	0
To assist women lawyers in professional development	13	4	0
Mentoring of women lawyers by male/female mentors	15	2	0
Mentoring of women lawyers by women mentors	4	10	3
Group mentoring for women lawyers	4	11	2

Leadership

Women in Leadership Positions	Yes	No	N/A
Chief Executive Officer	0	7	10
Managing Partner	7	10	0
Practice Group Leader	10	5	2
Chair of Significant Committee (e.g. Executive)	2	0	15

Other Programs and Initiatives

- Business development for women lawyers
- Internal women's initiatives and presentations
- Women's initiative committee that organizes a variety of events during the year including professional development speakers, dinners, client events, and networking opportunities for women lawyers
- Women only events
- Women's retreat
- Women's Forum: a group established to provide mentoring, support, and networking opportunities to all female lawyers and clients. The firm hosts various events (both internally for lawyers and externally for lawyers and clients) to facilitate and build relationships.

- Women's Business Network to celebrate and encourage women in business and the professions. Through sponsorship of events, the goal is to facilitate introductions between women professionals and business contacts in many fields. Through organizing internal events and external events with clients, the goal is to create mentoring opportunities for women.
- Women's networking events
- Business development coaching
- Speakers on women's professional development
- Transitioning assistance: off-ramping and on-ramping
- Employee assistance resources to expectant parents
- Maternity coaching upon return from leave
- New parent toolkit
- Parent workshops

The Law Society of British Columbia

Memo

To: Benchers
From: Equity and Diversity Advisory Committee - Respectful Workplace Subcommittee
Date: November 12, 2014
Subject: Respectful Workplace Model Policy Update

Recommendation

1. This memo recommends that the Benchers endorse an updated model policy for respectful workplaces. The updated policy is intended to replace the Workplace Harassment model policy that is currently posted on Law Society's website. The last update to that model policy occurred in June of 2006. It is intended that this model policy be placed on the Law Society's website and that firms be encouraged to adopt it as appropriate.

Background

2. In February of 2014, Sharon Matthews approached Maria Morellato with concerns about ongoing sexual harassment in the legal profession. Ms. Morellato called a meeting with Ms. Matthews, Michael Lucas, Andrea Hilland, and Anne Chopra in April of 2014 to discuss the issue. It was decided that an update to the model policy was warranted, particularly in light of the anti-bullying requirements set out in *WorkSafeBC's Occupational Health and Safety Policies*, implemented on November 1, 2013.

3. To work on these issues, the Equity and Diversity Committee created the Respectful Workplace Subcommittee, consisting of Maria Morellato, QC (chair), Sharon Matthews, QC, Kathryn Berge, QC, Cameron Ward, Jamie Maclaren, Anne Chopra, and Preston Parsons. The Subcommittee held a teleconference on June 9, 2014 and an in-person meeting on August 22, 2014. The Subcommittee also circulated feedback to the updated model policy by email. Law Society staff incorporated the feedback, and presented the updated model policy at the October 30, 2014 Equity and Diversity Advisory Committee meeting.

4. The Equity and Diversity Advisory Committee endorsed the updated model policy at the October 30, 2014 meeting.

Practice Resources

The Law Society of British Columbia

PROMOTING A RESPECTFUL WORKPLACE: A GUIDE FOR DEVELOPING EFFECTIVE POLICIES

INTRODUCTION

The Law Society of B.C. has a long-standing commitment to promoting and assisting law firms to provide a healthy and respectful workplace free of discrimination, bullying and harassment. The Law Society has endorsed this guide for developing respectful workplace policies to support and assist B.C. law firms in developing best practices to prevent and address workplace harassment. The guide is intended to provide examples of the steps a responsible employer can take towards maintaining a working environment in which all firm members treat each other with mutual respect. The guide incorporates the anti-bullying requirements set out in *WorkSafeBC's Occupational Health and Safety Policies*, implemented on November 1, 2013.

REASONS TO ADOPT A POLICY

The advantages of written policies include:

a) encouraging respect for the dignity of all individuals in the firm;

b) demonstrating that the firm's management takes these issues seriously and promotes a respectful workplace;

c) providing procedures for handling complaints and enhancing transparency;

d) encouraging prompt resolution of instances of workplace bullying, harassment and discrimination;

e) outlining preventative, remedial and disciplinary actions that may be taken; and

f) minimizing the risk of harm to staff, paralegals and lawyers, as well as the risk that a firm will be held liable for discrimination, bullying and harassment.

HOW LAW FIRMS SHOULD APPROACH THESE SAMPLE POLICIES

The sample policies and templates are precedents and are intended to provide guidance, rather than to represent the ultimate or ideal documents. The precedents apply to a legal environment composed of partners, associates and other staff, not subject to a collective agreement. Firms should adapt and tailor the precedents to their own structure and culture.

Throughout the model policy:

- Square brackets "[]" are used to indicate that firms should include terminology or information relevant to their organization.
- Text boxes are used to provide supplemental commentary.

COMMUNICATING THE POLICY

Once adopted, it is important for firms to communicate the policy to all firm members and to develop an education strategy. The initial presentation of the policy and a clear statement of management support are important.

Education programs should be organized to inform firm members about the provisions of the policy and the objectives that it is intended to meet.

The firm might consider asking those covered by the policy to sign a commitment pledge acknowledging receipt and an understanding of the policy. This increases the acceptance and understanding of the policy and allows the firm to ensure that all firm members are fully aware of the policy.

CONSIDERATIONS FOR SMALL FIRMS

Smaller law firms may face challenges in implementing this model policy. Smaller firms will frequently have limited financial resources or personnel to adopt the same kind of processes as larger firms.

To effectively implement a policy, small firms may:

a) appoint one person, such as a senior member of the law firm, to implement the policy. This person should be: approachable, well positioned to notice situations of bullying, harassment, or discrimination, and able to take action when necessary. The person should also set an example of appropriate firm behavior.

b) establish liaisons with other firms or sole practitioners for the purpose of:

- arranging for educational and training programs for preventing and addressing workplace harassment;
- conducting regular reviews of the procedures in its policy;
- appointing a member of a different law firm or another sole practitioner to act as an advisor, investigator, or decision-maker, having due regard to the protection of the privacy rights of the parties.

c) utilize the Law Society's resources (such as the Equity Ombudsperson) to assist in workplace bullying, harassment, and discrimination issues; and

d) retain outside consultants, where appropriate.

MODEL POLICY FOR PROMOTING A RESPECTFUL WORKPLACE

PART I: STATEMENT OF PRINCIPLES

1. Purposes

The purposes of this policy are to:

a) promote respect for the dignity of all members of the firm;

b) maintain a working environment that is free from discrimination, bullying and harassment;

c) set out the types of behaviour that may be considered offensive;

d) establish a mechanism for receiving complaints of workplace discrimination, bullying and harassment;

e) provide a procedure by which the firm will deal with such complaints; and

f) educate members of the firm about how to proactively support a respectful workplace.

2. Commitment

[Name of firm] is committed to providing a collegial working environment in which all individuals are treated with respect and dignity. Each individual has the right to work in a professional atmosphere that is equitable, respectful, and free from bullying, harassment, and discrimination.

Workplace bullying, harassment, and discrimination will not be tolerated. The firm encourages reporting of all incidents of workplace harassment, regardless of who the offender may be. Any person who engages in conduct in violation of this policy will be dealt with as outlined in the policy. The firm recognizes that its members may be subjected to discrimination, bullying and harassment in the workplace, not only by coworkers, but also by clients, others who conduct business with the firm, opposing counsel, court personnel or judges. In such circumstances, the firm acknowledges its responsibility to support and assist the person subjected to such bullying, harassment, or discrimination.

3. Application

3.1 Firm members

This policy applies to all individuals working for [name of firm] including administrative support, associates, partners, dependent and independent contractors, articling and summer students, and volunteers.

The application of the policy to all those in the work context (including volunteers), to all types of employment relationships (including partners), and to any legal work-related environment and professional dealings is consistent with BC human rights law. The Supreme Court of Canada found that partners may potentially be in an employment relationship with the firm capable of founding a claim based on discrimination under the BC *Human Rights Code* (See: *McCormick v. Fasken Martineau DuMoulin LLP*, 2014 SCC 39.)

3.2 Location

This policy applies to any work-related environment, including:

a) the office;

b) any location where the business of [name of firm] is being carried out, including off-site work assignments, courtrooms, telephone and electronic communications, etc.;

c) official and unofficial work-related social functions;

d) work-related conferences or training sessions; and

e) work-related travel.

4. Confidentiality

4.1 General

To protect the interests of the complainant, the respondent, and persons who report incidents of discrimination, bullying and harassment in the workplace, confidentiality will be maintained throughout the process to the extent permitted by the investigation.

4.2 Information and records

All information relating to the complaint (including contents of meetings, interviews, results of investigation, and other relevant material) will be disclosed only to the extent necessary to carry out the procedures under the policy, or where disclosure is required by law.

Information collected and retained is subject to the privacy protection provisions of the *Freedom of Information and Protection of Privacy Act* RSBC 1996, c. 165 and the *Personal Information Protection Act*, SBC 2003, c. 63.

Confidentiality at every stage of the process is important. The absence of assurances of confidentiality may discourage individuals from using the policy. A statement of confidentiality is meant to protect the complainant, respondent and the firm. However, the nature of an investigation may necessitate some exceptions to the rule of confidentiality and a firm should include a statement to that effect in the policy.

PART II: LEGAL PRINCIPLES

5. Legal Background

5.1 Legislation

Section 13 of the *BC Human Rights Code* prohibits discrimination in the workplace. Rule 6.3 of the Law Society of British Columbia's *Code of Professional Conduct* goes further, providing that a lawyer must not: sexually harass any person (Rule 6.3-3), engage in any other form of harassment of any person (Rule 6.3-4), or discriminate against any person (Rule 6.3-5). The *WorkSafeBC Occupational Health and Safety Policy Guideline* D3-115-2 ("*Anti-Bullying Legislation*") requires employers to adopt written policies and procedures, and to provide training to ensure that supervisors and staff are aware of them.

5.2 Other remedies

The policy is in addition to, and not in substitution for, such rights as an individual may have under the *BC Human Rights Code* or the procedures of the Law Society of B.C. Law firms cannot contractually exempt lawyers from the *BC Human Rights Code* or the Law Society *Code of Professional Conduct*.

> An agreement that contains a confidentiality provision purporting to require a complainant to refrain from reporting the offender to the Human Rights Tribunal or the Law Society is not permitted and is in breach of the *Code of Professional Conduct*.

6. Prohibited conduct

Bullying, harassment, discrimination, retaliation, and malicious complaints are prohibited.

6.1 Bullying and harassment

"Bullying and harassment" is defined in B.C.'s *Anti-Bullying* legislation and "(a) includes any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated, but (b) excludes any reasonable action taken by an employer or supervisor relating to the management and direction of workers or the place of employment."

Bullying and harassment may consist of a single incident or several incidents over a period of time. Examples of conduct which may constitute bullying and harassment can be found at Appendix 1.

Mutually acceptable social interaction is not workplace bullying or harassment.

6.2 Discrimination

The *BC Human Rights Code* prohibits discrimination in employment based on: race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment of that person ("enumerated grounds"). The *Code of Professional Conduct* is consistent with the *BC Human Rights Code* and prohibits sexual harassment, harassment, and discrimination. Discrimination that is not based on enumerated grounds is prohibited under the *Anti-Bullying* legislation.

6.3 Retaliation

"Retaliation" is any adverse action taken against an individual for:

a) invoking this policy in good faith whether on behalf of oneself or another individual;

b) participating or cooperating in any investigation under this policy; or

c) associating with a person who has invoked this policy or participated in these procedures.

6.4 Malicious complaints

A "malicious complaint" occurs when a person has made a complaint of bullying, harassment, or discrimination that he or she knows is untrue. Submitting a complaint in good faith (e.g. where the complaint is based on a mistake, a misunderstanding, or a misinterpretation, or where the complaint cannot be proven) does not constitute a malicious complaint.

PART III: RIGHTS AND RESPONSIBILITIES

7. Rights

Every firm member has the right to a respectful workplace, and the right to enforce his or her rights under this policy.

7.1 Firm member responsibilities

Every firm member has a responsibility to uphold this policy and to ensure that the working environment is free from bullying, harassment, and discrimination by:

a) promoting respect for the dignity of all members of the firm;

b) not engaging in bullying, harassment, or discrimination;

c) conducting themselves in a manner that demonstrates professional conduct, respect for others, and that honours diversity and inclusion in the workplace;

d) participating fully and in good faith in any formal complaint, investigation, or resolution process where they have been identified as having potentially relevant information;

e) reporting any incidents that may be in violation of this policy;

f) respecting the rights to personal dignity, privacy, and confidentiality pertaining to this policy; and

g) participating in education and training opportunities aimed at maintaining and promoting a respectful workplace.

7.2 Supervisor responsibilities

Firm members with supervisory authority, including partners, have additional responsibilities under the policy to establish and maintain a workplace free of bullying, harassment, and discrimination. Their responsibilities include:

a) ensuring that bullying, harassment, and discrimination are not allowed, condoned, or ignored;

b) acting as a role model for professional and respectful conduct;

c) providing training on this policy, and on bullying, harassment, and discrimination;

d) ensuring that all firm members have full access to information regarding the firm's policies and standards;

e) taking immediate action on observations or allegations of bullying, harassment, or discrimination;

f) notifying police when there are reasonable grounds to believe that a violation of the *Criminal Code* or other applicable law has occurred;

g) respecting the rights of all parties to a fair, equitable, and confidential process for dealing with complaints of bullying, harassment, or discrimination;

h) supporting all individuals who participate in a resolution process;

i) supporting any firm member who complains of workplace bullying, harassment, or discrimination by a person who is not a firm member (e.g. client, opposing counsel, judge, member of court staff, supplier, etc.);

j) taking remedial or disciplinary measures, where appropriate;

k) appointing and training appropriate advisors, investigators, and [decision-makers];

l) regularly reviewing the procedures of this policy to ensure that they adequately meet the policy objectives.

Sections 7.3 to 7.5 set out roles and responsibilities for advisors, investigators, and decision-makers. Having three separate designated positions is ideal but not required.

7.3 Advisor responsibilities

Advisors will be appointed by [managing partners/the executive committee/other].

The role of advisors is important to the successful implementation of the policy. Each advisor should be:

- well respected, and influential within the firm;
- able to discuss a complaint with the complainant or respondent, regardless of that person's seniority;
- empathetic and sensitive to the nature and effects of bullying, harassment and discrimination;
- trusted as a person who will observe the principles of confidentiality; and
- properly trained to deal with complaints of bullying, harassment, and discrimination.

The number of appointed advisors usually depends on the number of firm members, in addition to the culture and structure of the firm. The appointment of more than one advisor is recommended because it allows firm members to have choices when requiring the assistance of an advisor. Where only one advisor is feasible, firms should provide an alternate to act in a situation where the appointed advisor is either the complainant or respondent in an allegation of bullying, harassment, or discrimination.

Advisors are responsible for:

a) providing training, and conveying information about this policy and the process for making a complaint;

b) assisting individuals who have concerns or complaints regarding workplace bullying, harassment, or discrimination;

c) helping a complainant to move through the steps of this policy;

d) keeping a written record of any complaint;

e) maintaining confidentiality of communications relating to inquiries and complaints, unless under an obligation to disclose the information by law or under this policy; and

f) referring individuals who require counseling to the appropriate resources.

A firm may include a provision such as:

"An advisor will not condone harassment or discrimination. In instances where an advisor is made aware of bullying, harassment, or discrimination that, if proven, would be a violation of this policy, he or she [will/may] report the incident to the investigator, and will inform the complainant of the action taken."

However, the firm should contemplate whether such a provision would encourage or discourage the use of an advisor by potential complainants. The provision should enable an advisor to exercise discretion to make a formal complaint and initiate an investigation in cases where the complainant decides not to pursue a complaint.

Advisors are not responsible for investigating or determining the merits of a complaint of workplace bullying, harassment, or discrimination.

> Advisors are not investigators, decision-makers, or counsellors. They help to clarify options available, answer questions and explain the policy.

7.4 Investigator responsibilities

Investigators will be appointed by [managing partners/the executive committee/other].

Investigators are responsible for:

a) investigating every complaint that is not resolved informally;

b) applying principles of fairness and impartiality throughout the investigation;

c) interviewing parties and witnesses;

d) preparing written reports that include findings of fact and conclusions; and

e) maintaining confidentiality of records of complaints, unless under an obligation to disclose the information by law or under this policy.

7.5 Decision-maker responsibilities

Decision-makers will be appointed by [managing partners/executive committee/other].

Decision-makers are responsible for deciding whether the policy has been violated.

A decision-maker, in conjunction with the appropriate level of management, is responsible for determining what action will be taken as a result of the investigator's findings.

> It may be appropriate for a firm to appoint one or more firm members to process complaints under the policy. Another option could be to appoint an existing committee to handle complaints. Firms should consider privacy and confidentiality concerns in making such appointments. Decision-makers should be knowledgeable about human rights issues and represent different sectors of the organization. Every effort should be made to include members from diverse communities in the pool of decision-makers.
>
> Firms should take into account their culture and context to determine what process would be the least intimidating, and to ensure that complaints are brought forward.

7.6 Education and training

All firm members will be provided with training on this policy, and on bullying, harassment, and discrimination.

All individuals charged with implementing and applying the policy (e.g. advisors, investigators, and decision-makers) will be properly trained, and fully versed in the specifics of the policy, the law, interviewing techniques, and information gathering, and on bullying, harassment, and discrimination.

PART IV: PROCEDURES

8. External avenues

While the firm is committed to resolving incidents of bullying, harassment, and discrimination internally, nothing in this policy precludes firm members from pursuing other avenues of redress, including making a complaint under the:

a) *Criminal Code*;

b) *BC Human Rights Code*; or

c) Law Society's *Code of Professional Conduct*.

> The policy should make reference to the time limits for external avenues. The time limit for filing a complaint under the *BC Human Rights Code* is 6 months. The *Code* also allows a person to apply after the expiry of the time if it is in the public interest to do so, and no substantial prejudice will result to any person because of the delay.
>
> Law Society Rule 6.3-1 states that "The principles of human rights laws and related case law apply to the interpretation of this section," so the time limit for filing a complaint of bullying, harassment, or discrimination accords with those of the *BC Human Rights Code*.

During the initial meeting between the complainant and advisor, the advisor will notify the complainant of the external avenues of redress, and the applicable time limits.

9. Initial action

A person who considers that he or she, or someone else, has been subjected to bullying, harassment, or discrimination (the complainant) should keep a written record of the offensive behaviour, including the date(s), time(s), circumstances, witnesses (if any), and any other pertinent information.

The complainant is encouraged to bring the matter to the attention of the person responsible for the conduct (the respondent).

Where the complainant is not comfortable bringing the matter directly to the attention of the respondent, or where such an approach is attempted and does not produce a satisfactory result for the complainant, the complainant may seek assistance from an advisor.

Directly approaching the person whose conduct has caused offence is usually the first step in a policy. Frequently, people are unaware that their conduct is offensive and all that is required to prevent its repetition is a simple statement that the conduct is unwelcome. However, power and status disparities between the respondent and the complainant may make it impossible or unreasonable for the complainant to approach the respondent. Therefore, such a first step should not be a mandatory step to the process.

Time limits

If a firm stipulates a time limit for reporting a complaint, the firm should include a clause to indicate that a complaint will not be dismissed simply because it has not been reported in a timely fashion. Frequently, fear of retaliation or embarrassment may cause a person to wait until the bullying, harassment, or discrimination becomes unbearable before reporting the behaviour. The very act of having to report bullying, harassment, or discrimination may also add to the individual's distress.

Complainants often feel uncomfortable, embarrassed, or ashamed when they talk about personal incidents of bullying, harassment, or discrimination. Some may feel that they will be ignored, discredited, or accused of misunderstanding intentions. Common reasons given for not reporting incidents are that the complainant believes nothing would be done, that the complaint would be ridiculed or treated lightly, that the complainant would be blamed, or would suffer repercussions.

10. Meeting with advisor

Any firm member may meet with an advisor to:

a) obtain information about this policy;

b) discuss concerns about workplace bullying, harassment, or discrimination; and

c) discuss alternative courses of action available under this policy, and externally.

Once a complainant has approached an advisor with a complaint of workplace bullying, harassment, or discrimination, the advisor will provide the complainant with a copy of this policy and will advise the complainant of the:

a) importance of keeping a written record of incidents of bullying, harassment, or discrimination;

b) right to make an informal or formal complaint under this policy;

c) availability of counseling and other support services offered by the firm and others;

d) right to be accompanied or represented by legal counsel or other person of choice at any stage of the process where the complainant is required or entitled to be present;

e) right to withdraw from any further action in connection with the complaint at any stage; and

f) other avenues of recourse available to the complainant, such as a complaint to the Law Society, BC Human Rights Tribunal, or police, as well as any time limitations for filing an external complaint.

Other confidential support services available to lawyers in BC, free of charge, include the:

- Law Society of BC's Equity Ombudsperson https://www.lawsociety.bc.ca/page.cfm?cid=270&t=Equity-Ombudsperson;
- Lawyers Assistance Program http://lapbc.com/; and
- PPC Canada http://www.ca.ppcworldwide.com/ .

The firm may wish to specify whether the firm will cover the costs of legal counsel, and whether lawyers from the firm are allowed to act for the complainant.

Where a person believes that a colleague has experienced or is experiencing workplace bullying, harassment, or discrimination, and reports this belief to an advisor, the advisor will meet with the person who is said to have been subjected to workplace bullying, harassment, or discrimination, and will then proceed in accordance with paragraph 10.0.

10.1 Outcomes of meeting with advisor

If the complainant and the advisor agree that the conduct in question is not workplace bullying, harassment, or discrimination as defined in this policy, the advisor will take no further action and will maintain a record of the meeting in his or her confidential file.

If the complainant and the advisor agree that the conduct in question is workplace bullying, harassment, or discrimination as defined in this policy, the complainant may choose to initiate a an informal or formal complaint.

The advisor will remind the complainant of the importance of documenting incidents of bullying, harassment, or discrimination, and may assist the complainant in creating a written record.

The advisor will create a written record of the meeting, which will be kept in the complainant's personnel file.

11. Complaints

11.1 Notice to the respondent

If the complainant initiates an informal or formal complaint, the advisor will provide the respondent with:

a) a copy of this policy;

b) written notice of the complaint;

c) notice of the respondent's right to be represented by legal counsel or other person of choice at any stage of the process where the respondent is required or entitled to be present; and

d) information about the availability of counseling, educational, and other support services offered by the firm and others.

Other confidential support services available to lawyers in BC, free of charge, include the:

- Law Society of BC's Equity Ombudsperson https://www.lawsociety.bc.ca/page.cfm?cid=270&t=Equity-Ombudsperson;
- Lawyers Assistance Program http://lapbc.com/; and
- PPC Canada http://www.ca.ppcworldwide.com/ .

The firm may wish to specify whether the firm will cover the costs of legal counsel, and whether lawyers from the firm are allowed to act for the respondent.

11.2 Informal complaint procedure

Where appropriate, the advisor will offer the parties an opportunity to resolve the issue informally. No person is required to attempt to resolve the issue informally.

As part of the informal process, the complainant may, with the assistance of the advisor, meet with the respondent with a view to arriving at a solution to the situation.

Where the complainant and the respondent are satisfied that they have achieved an appropriate resolution, the advisor will make a confidential written record of the resolution, which the advisor will keep in a locked filing cabinet. The written record will be signed by both parties, and both parties will be provided with a copy of the resolution.

The advisor will follow up with both parties to ensure that the solution is working.

11.3 Formal complaint procedure

If the complainant is not satisfied with the results of the informal procedure, or chooses not to utilize the informal procedure, the complainant may make a formal written complaint to the investigator.

At any time after a formal complaint has been initiated, the complainant may make a request to [the decision-maker] for temporary accommodation until the complaint resolution process comes to an end. Every effort will be made to reasonably accommodate the complainant.

Temporary accommodation may include limiting contacts between the complainant and respondent by relocating the respondent to another area of the workplace or allowing the complainant to report to work with someone other than the respondent. The complainant should not bear the inconvenience of job relocation. Care must be taken to support the complainant and ensure that his or her career development is not negatively affected as the process unfolds.

12. Investigation

The investigator will interview the complainant, respondent, and witnesses. The investigation will be completed in a timely manner. Upon completion of the investigation, the investigator will prepare a written report that includes findings of fact. The [decision-maker] will be advised of the outcome of the investigation.

12.1 Action taken following investigation

Based on the outcome of the investigation, the [decision-maker] in conjunction with the appropriate level of management, will make a decision about whether the policy has been violated, and what action will be taken as a result of the findings. The complainant and respondent will be informed of the outcome of the investigation and any decisions as to whether the policy has been violated.

12.2 Complaint not substantiated

If an investigation results in a finding that the complaint of workplace bullying, harassment, or discrimination is not substantiated, no record will be placed in the respondent's file. All other documentation will be kept in a locked filing cabinet by the investigator.

If an investigation results in a finding that the complainant made a malicious complaint, the [decision-maker] will implement an appropriate remedial action, based on the nature and severity of the violation, in accordance with the "remedial action" section of this policy (see section 13). The outcome of the proceedings will be recorded in the complainant's personnel file and may be used in any investigation of a subsequent complaint.

12.3 Complaint is substantiated

Where the investigation results in a finding that the complaint of workplace bullying, harassment, or discrimination is substantiated, the [decision-maker] in conjunction with the appropriate level of management will implement an appropriate remedial action, based on the nature and severity of the violation.

Where the complaint is substantiated, the confidential outcome of the proceedings will be recorded in the respondent's personnel file and may be used in any investigation of a subsequent complaint.

> Since members of the firm usually have the right to inspect the contents of their own personnel files, to protect the confidentiality of witnesses and others, it is important that details of the investigation and the evidence not be kept in the personnel file. Only the outcome of the investigation should be recorded in the personnel file.
>
> Generally, the only person who will have access to witness statements is the investigator. When the investigator provides his or her final report, he or she should not refer to witnesses by name.

13. Remedial action

Remedial action may include:

a) an apology;

b) educational training;

c) counseling;

d) reprimand;

e) reassignment;

f) withholding a promotion;

g) a financial penalty;

h) probation;

i) a suspension, with or without pay;

j) suspension or removal from the partnership; or

k) dismissal, with or without notice.

Remedial actions that involve a financial penalty or suspension or removal from the partnership will be approved by the [appropriate level of management]. Suspension or removal of a partner must proceed in accordance with the provisions of the partnership agreement.

A remedy should be based on the nature and severity of the violation; the more serious the violation, the harsher the remedy. Bullying, harassment, and discrimination policies are usually remedial in nature and aim at establishing a workplace that is respectful.

The resolution may include a reinstatement of the complainant if he or she was forced to terminate his or her employment due to bullying, harassment, or discrimination, back pay for wages lost, restoration of benefits that may have been denied or an apology to the complainant.

Appeal Process

The sample policy does not provide an appeal process. An appeal process will depend upon how disciplinary measures are normally appealed in the firm. If there are no internal appeal procedures, a respondent who has been disciplined may take the matter to court.

A complainant should be informed of the right to file an application with WorkSafe BC or the BC Human Rights Tribunal if he or she is dissatisfied with the disposition of the complaint. The complaint may be dismissed if the substance of the complaint has been appropriately dealt with in another proceeding.

14. Review

The firm will review this policy regularly to ensure that the procedures meet the policy objectives.

It is important to review the policy on a periodic basis. The first review should take place approximately one year after the adoption of the policy so that the effectiveness of the policy can be assessed early on.

Firms should not rely solely on complaints to detect workplace bullying, harassment, or discrimination. Firms may ask about workplace bullying, harassment, or discrimination in employee surveys and/or during exit interviews.

It is not necessary to include examples of harassment or discrimination. However, including examples may provide some guidance regarding the types of behaviour that is inappropriate.

APPENDIX 1: EXAMPLES OF BULLYING, HARASSMENT, AND DISCRIMINATION

The following are examples of workplace bullying, harassment, and discrimination:

a) verbal conduct, such as:

- unwelcome attention of a sexual nature, including:
  - questions or remarks about sex life
  - propositions of physical intimacy
  - remarks about physical appearance
  - requests for dates or sexual favours
  - offers of job related benefits in return for sexual favours
  - requests or demands to submit to sexual requests in order to keep one's job or avoid some other loss, etc.
- unwarranted criticism
- ridicule
- epithets
- derogatory comments
- slurs
- name-calling
- offensive remarks
- jokes
- rumours
- gossip
- innuendo
- abusive language
- threats
- shouting
- yelling
- swearing

b) visual conduct, such as:

- displaying or disseminating pornographic, sexist, racist or other offensive or derogatory material (e.g. posters, cartoons, drawings, photographs, etc.) including via e-mail, internet, or text message.
- leering
- gestures
- ostracism (e.g. deliberately excluding a firm member from work-related social interaction, “silent treatment,” etc.)

c) physical conduct, such as:

- interfering with a person’s normal movement;
- unwelcome physical contact including touching and assault.

APPENDIX 2: COMPLAINT FORM

Complaint Form under the Respectful Workplace Policy

I, [name of complainant], working as a [title] in the [department/practice group] have reasonable grounds to believe that [name of respondent] working as a [title] in the [department/practice group] has [bullied/harassed/discriminated against] me in employment on [date].

The grounds of [bullying/harassment/discrimination] are:

The particulars are as follows:

Signed at: [place] on: [date]

Complainant's signature: _____

APPENDIX 3: RESPONSE FORM

Response Form under the Respectful Workplace Policy

I, [name of respondent], working as a [title] in the [department/practice group] have received a complaint signed by [complainant's name] working as a [title] in the [department/practice group] alleging that I have [bullied/harassed/discriminated against] [him/her] in employment on [date].

The grounds of [bullying/harassment/discrimination] are:

I deny the allegations and provide particulars as follows:

Signed at: [place] on: [date:]

Respondent's signature: _____

APPENDIX 4: ADVISOR CHECKLIST

Once a complainant reports offensive behaviour to an advisor, it is necessary for the advisor to gather as much information as possible in order to ascertain whether there is *prima facie* evidence of workplace harassment sufficient to justify an investigation.

The following checklist, based on material prepared by the law firm, Levin and Funkhouser, Ltd., (Chicago), and used with permission, might be followed by an advisor in the initial meeting with a complainant.

- Confirm the name and position of person complaining.
- Ascertain who allegedly bullied, harassed, or discriminated against the employee.
- What occurred? Try to get as many details as possible, even though this may be uncomfortable for the complainant. Ask open-ended, non-judgmental questions.
- How often did the harassment occur?
- On what dates and at what times did the harassment take place?
- Where did the incidents of harassment take place?
- Who, if anybody, witnessed the incidents of harassment?
- How did the complainant feel about the harassment at the time it occurred?
- Does the complainant feel the same way now? If not, what is different about how the complainant now feels, and what brought about the difference?
- How did the complainant respond to the harassment? Did the complainant make any effort to stop it?
- Did the complainant tell anyone else about the incidents of harassment? If so, get the details concerning who, what, when, where, and the response, if any.
- Does the alleged harasser have control over the compensation, working conditions, or future employment of the complainant?
- Has the alleged harasser made or carried out any threats or promises in connection with the alleged harassment?
- Does the complainant know of or suspect that there are other victims of harassment by the same person?
- To what extent has [the managing body of the firm] been made aware of the situation?
- What action would the complainant like the firm to take?

Once this information has been ascertained, the advisor will prepare or assist the complainant in preparing a written complaint.

The Law Society of British Columbia

Year-End 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

November 18, 2014

Prepared for: Benchers

Prepared by: Adam Whitcombe

Purpose: Discussion and Decision

Committee Process

1. Since our mid-year report, the Governance Committee has met three times.

2. At its August 14 meeting, the Committee considered a draft terms of reference for the Act and Rules Committee. Mr. Hoskins attended and spoke to the draft. The Committee suggested that the mandate be revised to better define the scope of authority of the Act and Rules Committee and suggested the terms of reference should be more particular about the basis for the recommendations from Act and Rules Committee to the Benchers, whether based on a Bencher policy or direction, self-generating, or based on another committee instruction or staff input.

3. At that same meeting, the Committee returned to its consideration of the conflicts issues identified in the final report of the Governance Review Task Force.

4. At its September 18 meeting, the Committee concluded its discussion of the conflicts issues.

5. At the same meeting, the Committee also considered whether the result of a 2003 referendum authorizing the Benchers to amend the Rules to allow members to attend and vote at general meetings by way of the Internet could be relied upon now to permit some of the amendments to the general meeting rules the Committee considers necessary. The Committee concluded that the results of the 2003 referendum could be relied upon as authority to amend the rules to provide for webcasting general meetings and electronic voting at those meetings. The Committee made its recommendations on these two provisions at the October 31 Bencher meeting.

6. The Committee also considered concerns that had been raised regarding the reasons in the discipline decision involving Mr. Chiasson. The Committee concluded that the public statements that had been made regarding the implications of individual panel decisions on Law Society policy generally and the necessity of maintaining independence between the Benchers as a group and the individual hearing panels and their decisions were consistent with our governance obligations.

7. At its November 4 meeting, the Committee considered a memorandum from Mr. Hoskins regarding the attendance of appointed Benchers at general meetings of the Law Society. The issue was our present Rules which provide that only members of the Law Society and articled students are entitled to be present and speak at general meetings. It was suggested that appointed Benchers, having the same rights and responsibilities as elected Benchers, ought to be able to attend and speak at general meetings as of right. The Committee agreed but suggested there should also be a practice whereby appointed Benchers should identify themselves as such when addressing a general meeting but did not think that this needed to be formally stated in the Rules.

8. The Committee also considered a memorandum from Mr. Cooke at its November 4 meeting. The issue was formal guidance on the question of recusal by a Committee member where the member may have a connection with the specific matter or where there may be a conflict or apprehension of bias or a perception of conflict or bias in the matter. The Committee discussed the issue at some length in light of its consideration of the conflict of interest policies generally and intends to continue its consideration of the issue of recusal in 2015 and attempt to provide some general guidance to ensure consistency across the regulatory committees. The Committee did decide to recommend to the Benchers that a Rule or a clear Law Society direction should be developed to override the common law rule that the member of the committee is the one who decides whether recusal is warranted.

9. The Committee also reviewed and revised the current conflict of interest provisions in the Bencher Code of Conduct in light of its consideration of the various issues raised by the GRTF report. The Committee's consideration and recommendations are set out later in this report.

Summary of Recommendations

A. Each Chair of a regulatory committee should provide an orientation at the beginning of each year covering conflicts and bias issues and how they will be handled if situations arise during the course of the committee's work.

B. A Rule or a clear Law Society direction should be developed to override the common law rule that the member of the committee is the one who decides whether recusal is warranted.

C. The Bencher Code of Conduct be revised as set out in Appendix A

Hearing Panel Reasons

10. The decision of the hearing panel in the matter of Douglas Bernard Chiasson raised an issue about the relationship between the Benchers as governors of the Law Society and hearing panels. The decision in the Chiasson matter was issued on July 30, 2014. The hearing involved allegations that Mr. Chiasson failed to serve his client in a conscientious, diligent and efficient manner and that he withdrew funds from trust in payment of fees in an amount representing 25 per cent of both the amount recovered on his client's behalf and the amount awarded as costs. Mr. Chiasson made a conditional admission of a disciplinary violation and consented to a specific ddisciplinary action under Rule 4-22. After due consideration, the panel found the proposed disciplinary action of a fine in the amount of $4,500 within the range of a fair and reasonable disciplinary action and accepted it.

11. In the course of its reasons for the decision, the panel commented on contingent fee agreements in paragraph 22.

> *[22] Contingency fee agreements put a lawyer in an inherent conflict of interest arising from being paid on a percentage contingency fee basis and the conduct of a client's case. Contingency fee agreements pose a risk that a lawyer will: (a) set fees at a level that bears little relationship to the time and money spent on the claim; (b) have little incentive to settle a case unless he has maximized his own hourly return; and (c) inflate his fee by including an amount that should not have been included as part of the contingency fee.*

12. The publication of the decision, and particularly paragraph 22, resulted in a number of lawyers expressing concern, particularly about the panel's observation that contingency fee agreements put a lawyer in an inherent conflict of interest. Several wondered whether the paragraph represented "*a changing view of the LSBC regarding contingency fee agreements*" and suggested that it reflected *"negatively on the profession and need[ed] to be corrected."* In particular, Mr. Parsons, on behalf of the TLABC, asked "*that paragraph 22 be edited from the Chiasson decision so that the public is not mislead to believe that lawyers acting under a contingency fee arrangement are somehow drawn to behave unethically by an "inherent conflict of interest" that is peculiar to contingent fee relationships and does not exist for lawyers acting under other forms of retainer."*

13. The President's responses to the email inquiries emphasized that one panel decision on specific facts does not change Law Society policy or the Rules and the written response to the TLABC letter stated that *"the integrity of our administrative process for hearing discipline matters depends upon the independence of hearing panels from the Benchers, much as the integrity of the courts depends upon their independence from government. Any review by the Benchers at a Bencher meeting, as you request, would in our view compromise that independence to the detriment of the Law Society and the profession."*

14. The Committee concluded that the President's response expressed our governance obligations and that nothing further need be done.

Recusal of Committee Members

15. The Committee was asked to consider providing formal guidance on the question of recusal by a Committee member where the member may have personal knowledge or a personal connection with the specific matter or where there may be a potential for a perception of a significant personal connection or other interest in the matter.

16. The Committee had considered the issue of recusal in its previous discussions of the conflicts policies and had decide that it might provide some guidance about who decides and when a panel members should recuse him or herself.

17. The Committee noted that any formal guidance would appear to fall within a 'gap' in the current Bencher Code of Conduct. The memorandum from Mr. Cooke outlined the experience of various regulatory committees and noted that, generally, there was not a significant issue with members of these committees recusing themselves when their involvement with the member or their knowledge of the circumstances created a conflict or an apprehension of bias or the potential for same. However, the Committee thought that it would be desirable if there were consistency in how the members of each regulatory committee managed these situations and how the members respond when such situations arise. In particular, the Committee was concerned that the common law appears to leave the decision to the individual member as to whether to recuse her or himself.

18. The Committee concluded that it should recommend to the Benchers that each Chair of a regulatory committee should provide an orientation at the beginning of each year covering conflicts and bias issues and how they will be handled if situations arise during the course of the committee's work. The Committee also concluded that it should recommend that a Rule or a clear Law Society direction should be developed to override the common law rule that the member of the committee is the one who decides whether recusal is warranted. Finally, the Committee agreed that it would continue its consideration of the issue of recusal in 2015 and attempt to provide some general guidance to ensure consistency across the regulatory committees.

Conflicts of Interests

19. In its final report to the Benchers in December 2012, the Governance Review Task Force made several recommendations regarding the current Bencher Code of Conduct.

> *The Benchers should enhance the Bencher Code of Conduct to address with greater clarity and specificity the types of conflicts that can arise at the Bencher table and how they will be handled.*
>
> *Review the Law Society's internal conflict of interest policies to ensure they are in keeping with public interest standards and expectations.*
>
> *Require each Bencher to complete an annual Conflict Declaration so that all Benchers are aware of areas of potential conflict. Include any interests the Bencher may have in respect of employment, current or recent board appointments, current or recent community and civic activities, membership in professional organizations, publications, close family links and any other relevant interests. Publish Declarations on the Law Society website.*

20. During its consideration of the existing conflicts policies, the Committee took note of the fact that we confront and manage conflicts of interests on a daily basis. And while in daily life, we can usually sort out our own hierarchy of values and interests, in the context of organizational life, the Committee thought it was important to understand the extent of the Law Society's interest in providing guidance on how to address conflicts. To that end, the Committee considered various definitions of "conflict of interest" and concluded that they all had 3 elements in common:

- an opportunity, obligation or responsibility to decide or act;
- interests or values that should influence the deciding or acting; and
- interests or values that should not unduly, materially or adversely influence how to decide or act.

21. In the context of an organizational conflict of interest policy, the opportunity to decide or act is usually based on the role or responsibilities of the individual in the organization. The interests or values that should influence the decision or action are almost always the interests and values of the organization and the interests or values that should not unduly, materially or adversely influence how to decide or act are almost always personal to the individual.

22. However, the Committee recognized that simply because an individual has a personal interest in a decision or action does not always mean that the individual cannot make the decision or act. As *Robert's Rules of Order* notes in §45 (Voting Procedure), in the first subsection on Rights and Obligations in Voting:

> *The rule of abstaining from voting on a question of direct personal interest does not mean that a member should not vote for himself for an office or other position to which members*

generally are eligible, or should not vote when other members are included with him in a motion. If a member never voted on a question affecting himself, it would be impossible for a society to vote to hold a banquet, or for the majority to prevent a small minority from preferring charges against them and suspending or expelling them.[1]

23. With these considerations in mind, the Committee reviewed the recommendations of the GRTF Final report, our existing policies and considered whether changes were required. In particular, the Committee considered the issue of conflicts in light of the four distinct roles that Benchers fulfill: governors; legislators; adjudicators and trusted advisors.

24. The Committee discussed the current provision in the Bencher Code of Conduct that provides "*A Bencher must not sit on a hearing if the Bencher or a member of the Bencher's firm is associated in the practice of law or has a personal, business or professional relationship with the respondent, applicant or claimant, or counsel for any party."* The concern with the current provision was that a Bencher might not have knowledge of whether a member of the Bencher's firm had a personal, business or professional relationship with a respondent, applicant or claimant or counsel for any party. After consideration, the Committee decided to recommend that the provision be revised to address situations within the Bencher's knowledge and to look further at when relationships with members of the Bencher's firm might preclude Benchers from participating.

25. The Committee discussed the issue of Benchers seeking election or accepting appointments to other organizations while sitting as a Bencher. The current policy set out in the Bencher Code of Conduct provides that "… *Benchers must not accept appointment or election to a board of directors or a committee of an organization the objectives of which are, or may reasonably be perceived to be, in conflict with the objectives of the Law Society unless the Benchers, the Executive Committee or the President approves the appointment*."

26. There was general agreement that the language of the current policy left too much room for interpretation which had led to uncertainty in the past. Initially, the Committee thought that the test for not seeking election or accepting appointment should be that the other organization's mandate was wholly inconsistent with that of the Law Society. Some members of the Committee thought that it would be unlikely that the objectives of any organization with which Benchers might be involved could ever be said to be wholly inconsistent with the mandate of the Law Society. Others thought the threshold was appropriate and the fact that very few organizations might achieve this threshold was acceptable. At the end of the discussion, the Committee resolved to seek the input of the Benchers before recommending a change to the current standard.

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[1] Robert III, Henry M., et al. *Robert's rules of order: Newly revised*. Da Capo Press, 2000, p. 407

27. The Committee also considered whether to make a recommendation regarding some form of annual conflict declaration and the publication of such declarations on the Law Society website. It was noted that Benchers already complete an annual conflict declaration in connection with the annual audit of the Law Society financial statements. The Committee observed that the conflicts that arise are all situation specific and concluded that, apart from the financial relationships covered in the audit declaration, there was unlikely to be any general conflicts that need be disclosed in an annual conflict declaration. The Committee concluded that the annual declaration for the purposes of the audit is sufficient and need not be published on the Law Society website and resolved to make no recommendation on this point.

28. The results of that consideration are reflected in the proposed revisions to the current Bencher Code of Conduct Attached to this report as Appendix A are the recommended revisions, redlined to the current Code. Attached as Appendix B is a clean version of the revised Code.

Appendix A

H. Bencher code of conduct

1. Participation in hearing panels, review boards and Bencher decisions

(a) ~~A Bencher~~The following persons must not ~~sit on the panel that hears a citation or~~ participate ~~as a Bencher on a review of any decision on the citation if the Bencher participated in~~ in a ~~decision to~~

~~i) authorize the citation,~~

~~ii) suspend the respondent pending~~ panel hearing ~~of the~~a citation~~,~~

~~iii) impose restrictions on the practice of the respondent,~~ or

~~iv) order a medical examination of the respondent.~~

~~(b) A Bencher must not sit on~~ a review board reviewing the decision of the hearing ~~if the Bencher~~panel:

(a) a person who participated in the decision that authorized issuing the citation;

(b) one of the Benchers who made an order under Rules 3-7.1 to 3-7.3 or Rule 4-17 regarding the respondent; or

(c) a member of a panel that heard an application under Rule 4-19 to rescind or vary an interim suspension or practice condition or limitation in respect of the respondent.

(b) A person who participated in the decision to order the hearing on an application for enrolment as an articled student, for call and admission or for reinstatement must not participate in the panel on that hearing.

(c) A member of a hearing panel must not participate in a review board reviewing the ~~Bencher's firm is associated in the practice~~decision of ~~law or~~that hearing panel.

(d) A Bencher must not sit on a panel, review board or proceeding if the Bencher has a personal, business or professional relationship with the respondent, applicant or claimant, or counsel for any party.

(~~e~~e) A Bencher must not participate in a decision of a panel or of the Benchers if a member of the Bencher's firm gives evidence in the proceeding.

~~(d) Care must be exercised to avoid situations in which there may be an appearance of a conflict of interest or bias in relation to discipline, credentials or Special Compensation Fund proceedings. A Bencher who is in doubt about a situation should discuss the matter with the President or the chair of the relevant committee.~~

~~(e) A Bencher or non-Bencher~~(f) A member of a committee must not participate in a policy decision of the Benchers or of a committee when

i) the person or the person's firm represents a client whose interests will be significantly affected by the decision,

ii) the person or the person's firm has obtained, through a solicitor-client relationship or an employment relationship, confidential or privileged information that may influence the person's decision on the matter, or

iii) the person's employer has a significant interest in the decision that is distinct from the legal profession as a whole.

~~...~~

2. Appearing as counsel

~~(a) [replaced by Rule 5-3(4)]~~

~~(b) A non-~~ (a) A person must not appear as counsel for any party for three years after

(i) serving as a Bencher, or

(ii) the completion of a hearing in which the person was a member of the panel.

(b) A member of a committee must not appear personally on behalf of a member or the Law Society in any proceeding that relates to the work of that committee.

(c) Former Benchers should not be retained to represent the Law Society in discipline matters.

(c) A Bencher must not appear before the courts on behalf of a member or the Law Society in a discipline, credentials or Special Compensation Fund matter.

(d) Members of a Bencher's firm may represent members or the Law Society, but the Bencher concerned must not participate in any decision relating to that representation.

…

4. Transactions that may benefit a Bencher or a Bencher's firm

(a) The Benchers recognize the importance of avoiding even the appearance of conflicts of interest. However, it is in the interests of the Law Society and the legal profession as a whole that the Law Society obtain competent and cost-effective legal services from practitioners whose skills, training and experience are appropriate to the task. Very often, those practitioners are members of law firms whose members include Benchers. Accordingly, when it is appropriate to retain the legal services of a member of a Bencher's firm, the Law Society may do so, with the approval of the CEO.

(b) A Bencher must not participate in any way in a decision to retain the services of a member of the Bencher's firm.

(c) The Law Society does not pay a preferential rate for legal services to members of a Bencher's law firm.

(d) The Law Society must not enter a transaction, other than for legal services, with any concern in which a Bencher has a substantial financial interest.

…

~~I. Assistance and rulings~~

~~1. In~~6. Advice regarding conflicts and bias

Care must be exercised to avoid situations ~~involving~~in which there may be an appearance of a conflict of interest or bias in relation to Law Society proceedings. Any Bencher, Life Bencher, Committee or Task Force member may, if concerned about whether her or his participation in any part of the decision-making process may be a potential or actual conflict of interest or ~~the appearance of conflict of interest relating to Bencher responsibilities, a Bencher (a) is encouraged to consult informally with~~ raise an apprehension of bias, seek advice from the ~~President~~Law Society conflicts advisor. However, any decision to ~~seek guidance, and (b) may seek a ruling on the matter by the Benchers.~~

~~2. When a ruling is sought, the Benchers may require any Bencher concerned in the matter~~continue to ~~(a) leave the meeting, (b) remain in the meeting to inform the Benchers, but not otherwise~~ participate in the ~~debate or~~ decision~~, or (c) abstain from voting.~~ making process is your sole responsibility.

~~3. For future reference, the Benchers will maintain a record of rulings made and advice given under this section.~~

Appendix B

H. Bencher code of conduct

1. Participation in hearing panels, review boards and Bencher decisions

(a) The following persons must not participate in a panel hearing a citation or a review board reviewing the decision of the hearing panel:

(a) a person who participated in the decision that authorized issuing the citation;

(b) one of the Benchers who made an order under Rules 3-7.1 to 3-7.3 or Rule 4-17 regarding the respondent; or

(c) a member of a panel that heard an application under Rule 4-19 to rescind or vary an interim suspension or practice condition or limitation in respect of the respondent.

(b) A person who participated in the decision to order the hearing on an application for enrolment as an articled student, for call and admission or for reinstatement must not participate in the panel on that hearing.

(c) A member of a hearing panel must not participate in a review board reviewing the decision of that hearing panel.

(d) A Bencher must not sit on a panel, review board or proceeding if the Bencher has a personal, business or professional relationship with the respondent, applicant or claimant, or counsel for any party.

(e) A Bencher must not participate in a decision of a panel or of the Benchers if a member of the Bencher's firm gives evidence in the proceeding.

(f) A member of a committee must not participate in a policy decision of the Benchers or of a committee when

i) the person or the person's firm represents a client whose interests will be significantly affected by the decision,

ii) the person or the person's firm has obtained, through a solicitor-client relationship or an employment relationship, confidential or privileged information that may influence the person's decision on the matter, or

iii) the person's employer has a significant interest in the decision that is distinct from the legal profession as a whole.

2. Appearing as counsel

(a) A person must not appear as counsel for any party for three years after

(i) serving as a Bencher, or

(ii) the completion of a hearing in which the person was a member of the panel.

(b) A member of a committee must not appear personally on behalf of a member or the Law Society in any proceeding that relates to the work of that committee.

(c) Former Benchers should not be retained to represent the Law Society in discipline matters.

(c) A Bencher must not appear before the courts on behalf of a member or the Law Society in a discipline, credentials or Special Compensation Fund matter.

(d) Members of a Bencher's firm may represent members or the Law Society, but the Bencher concerned must not participate in any decision relating to that representation.

…

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(a) The Benchers recognize the importance of avoiding even the appearance of conflicts of interest. However, it is in the interests of the Law Society and the legal profession as a whole that the Law Society obtain competent and cost-effective legal services from practitioners whose skills, training and experience are appropriate to the task. Very often, those practitioners are members of law firms whose members include Benchers. Accordingly, when it is appropriate to retain the legal services of a member of a Bencher's firm, the Law Society may do so, with the approval of the CEO.

(b) A Bencher must not participate in any way in a decision to retain the services of a member of the Bencher's firm.

(c) The Law Society does not pay a preferential rate for legal services to members of a Bencher's law firm.

(d) The Law Society must not enter a transaction, other than for legal services, with any concern in which a Bencher has a substantial financial interest.

…

6. Advice regarding conflicts and bias

Care must be exercised to avoid situations in which there may be an appearance of a conflict of interest or bias in relation to Law Society proceedings. Any Bencher, Life Bencher, Committee or Task Force member may, if concerned about whether her or his participation in any part of the decision-making process may be a potential or actual conflict of interest or raise an apprehension of bias, seek advice from the Law Society conflicts advisor. However, any decision to continue to participate in the decision-making process is your sole responsibility.

The Law Society of British Columbia

Year End Year Report

Access to Legal Services Advisory Committee

December 5, 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 on the work it has engaged in since July 2014.

The Committee also makes three recommendations that it thinks are important to consider implementing/developing as part of the next Strategic Plan.

Overview

The Committee met five times since drafting its last report.[1] Much of the Committee's work in the second half of the year involved discussion about how access to legal services / access to justice ought to be situated in the next Strategic Plan.

Committee Meetings

July 10th meeting:

The meeting was dedicated to hearing from Mark Benton, QC regarding the state of legal aid in British Columbia and discussing what the Law Society might be able to do to improve matters. As a general rule, most years the Committee invites Mr. Benton to advise it as to the state of legal aid in BC. These meetings provide important opportunities for the Committee to receive current information concerning the challenges and opportunities the Legal Services Society faces.

Legal Aid in BC is underfunded and overburdened. In large part this is due to the long term effects of the drastic cuts to funding in 2002, coupled with the growth in demand over the years. The economic downturn of 2008 has had a double impact of increasing the number of people of modest means, while simultaneously leading governments to adopt austerity measures that adversely impact important social programs.

The Legal Services Society emphasises triage and getting people connected to the services required to address legal needs and related social problems. As LSS has had to reform their approach over the years in light of insufficient funding, they have had to innovate. Part of their innovative approach is to adopt a "no wrong point of entry" approach to their services, such that people can be referred to other stakeholders to address collateral issues. Considerable emphasis is being placed on how to better use technology, recognizing that many people will stop using technology if they don't find the solution right away. This has led LSS to begin exploring a promising a Dutch model that harnesses technology for intake and analytics to lead people towards the required help in a cost effective and streamlined fashion.

[1] The December 4th meeting will have taken place after this report was submitted.

This year the Provincial Government provided an additional $2 million in funding for new projects. While the LSS is grateful for all the funding it receives from government and the Law Foundation of BC, the current level of funding falls far short of the need in society and legal aid funding in BC is at the low end of funding in Canada. To get the tariff up to Ontario levels would require an additional $13 million and to get the *per capita* spend up the level in Ontario would require an additional $40 million. It was recognized that such an increase in government funding is not going to happen. The LSS continues to receive important support from the Law Foundation of BC, but as that organization faces pressure due to the continued low-interest rate environment, it is anticipated funding from LFBC will decrease by $650,000 in the next year.

The discussion with Mr. Benton reaffirmed the critical importance of other justice system partners supporting LSS by raising the profile of legal aid and its central importance in our society. It is essential that high profile organizations, like the Law Society, articulate a clear vision of how access to justice should operate in British Columbia, including the role legal aid plays in achieving that ideal.

Legal Aid needs champions. The Committee's views on what steps the Law Society should take regarding legal aid are articulated at the end of this report.

September 11th meeting:

The Committee dedicated this meeting to considering what access issues should be discussed by the Benchers at the September 25th strategic planning session. In addition to canvassing high level environmental scanning issues, the Committee also discussed some more detailed concepts, building on its work throughout the year.

The Committee explored the importance of moving from only talking about "access to legal services" to include "access to justice". The Committee's predecessor Committee was called the Access to Justice Committee, but during the reorganization that brought about the four advisory committees the name was changed to the Access to Legal Services Advisory Committee. This change was intended to reflect a narrowing of approach to focus on access to legal services, as that was viewed as something that was more clearly within the Law Society's capacity to influence.

The Committee's mandate is:

(a) The mandate of the Access to Legal Services Advisory Committee is to

- monitor developments affecting access to legal services 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 access to legal services in British Columbia; and
- attend to such other matters as the Benchers or the Executive Committee may refer to the Advisory Committee from time to time.

The Committee is of the view that this narrowing may be overly restrictive in light of s. 3 of the *Legal Profession Act,* and encourages the Benchers to consider whether the time has come to revisit a broader approach.[2] As a practical matter, from the inception of the Committee under this mandate it has been tacitly recognized that to perform its monitoring function the Committee has to consider access to legal services beyond the borders of BC. How one understands issues relating to access to legal services is often inextricably linked to the object of ensuring access to justice; by remaining alive to laws and policies that may have implications for access to justice, the Committee is better able to advise the Benchers of matters within the Society's public interest mandate. The Law Society of Upper Canada, for example, "has a duty to act so as to facilitate access to justice for the people of Ontario."[3] Unless the Law Society of British Columbia reflects on the full scope of s. 3 of the *Legal Profession Act* with respect to the function of its advisory committees and its access initiatives, it risks being parochial in focus. As access to justice assumes a more prominent role at the national level, particularly through the work of the Federation, an overly narrow approach at home might diminish the valuable role British Columbia might otherwise play.

Within the framework of the discussion about access to legal services and access to justice, the Committee recognized the importance of the Law Society focusing its resources on things it can accomplish to bring about change, whether alone or in partnership with others. Any discussion of the scope of the "access" topic needs to be mindful that we should not content ourselves with merely spending time talking about difficult problems, but that we should be equally committed to spend our time and resources at doing something to make things better for the public who we serve.

The Committee continued its year-long discussion of funding in the justice system. Concepts that were explored included greater advocacy for government funding of legal aid, to finding different approaches and participants in funding. With respect to the latter, the Committee revisited its discussion of social finance and the possibility that a vast sum of untapped social finance may exist for worthwhile projects that facilitate access to legal services and access to justice.

Throughout the year the Committee has been cognizant of, and reflected on, the extensive body of research that has taken place in recent years regarding access to justice. Most recently, the CBA report *Envisioning Equal Justice*, the National Action Committee Report, and the Doust Report on Legal Aid, all engaged in comprehensive research and consultation and suggest concepts for improving the state of access to justice that merit consideration by the Law Society. At the same time, the Committee considered that certain types of empirical evidence remain absent in the analysis, largely because the correct data is not being collected and there is no analytical architecture in place to measure access to legal services (and, more problematically, define and measure access to justice). As a result, it can appear that many of our own efforts, and those of other interested bodies, appear random and reactionary. The question of how to best ensure we are focusing on the right problems and working on

[2] This question was raised, independent of the Committee, at the September 25th planning session of the Benchers.
[3] *Law Society Act,* RSO 1990, c. L.8, s. 4.2(2).

the right solutions was very much a part of the Committee's discussion in 2014 (and in 2013). In fact, it provided much of the underpinning for the suggestion of the Committee in 2013 that the Benchers dedicate a half-day to a workshop on better understanding the access to justice landscape in order to plan proactively. The Committee remains of the view that this would be a worthwhile exercise for the Benchers as they work through the next strategic plan.

One concept the Committee has discussed from time to time since 2013, is how to reach out to engage the legal profession in articulating what the scope of the access to justice problem is and participate in finding solutions. This discussion involved considering the mantra to ask not what the government can do, but what the legal profession – and by extension the Law Society – can do to improve access to justice and access to legal services.

October 8th meeting:

The Committee held a special meeting in order to provide input for the strategic planning process, taking into account the Benchers discussion on September 25th and the Committee's own work throughout the year.

At this meeting the Committee endorsed the following concepts as matters the Benchers should consider as part of the next Strategic Plan:

1. Expand the focus of the Law Society from "access to legal services" to the broader object of improving "access to justice". Access to justice includes access to legal services, but also covers subjects like public legal education and information, advocacy regarding important justice systems issues (e.g. the funding and structure of legal aid, creation of systems like the Civil Resolution Tribunal, reforms to rules of court, etc.). To be a relevant player at the national level, the Committee is of the view a focus on access to justice is required;
2. Establish a task force to recommend to the Benchers what the Law Society can do to improve the state of Legal Aid in BC. The Committee is of the view that this issue requires a dedicated focus as the concepts to be considered are complex, ranging from what constitutes essential services, to the funding of Legal Aid, to the structure of the *Legal Services Society Act.* The Committee is of the view it is important, should a Task Force be struck, that it has some connection to the Committee either through its membership or process;
3. Justice Access Centres. The Committee is required to report out on its work regarding Justice Access Centres, and its findings are set out later in this report. If JACs form part of the next Strategic Plan, the Committee is of the view that its findings on the subject need to be considered;
4. The Committee considered several ways in which innovation can become part of the Strategic Plan with respect to access to justice. In establishing future initiatives, the Benchers ought to consider the following:
    a. Exploring sources of funding other than government. The Committee discussed social finance several times throughout the year. There appears to be a large amount of social

finance that is waiting for the right projects. This is an area that has not been properly explored with respect to access to justice. Rather than approaching the question of funding and partnering only through traditional venues, it is appropriate to explore the concept of public-private partnerships;

b. Casting a wider net on who we engage in discussions about how to solve the justice challenges we face. To start with, technology allows us to reach out to the entire legal profession and engage it in the discussion. This has the benefit of getting a multitude of perspectives and possible solutions, but also gets lawyers thinking about what can be done by the profession to make a difference, rather than relying on others to be the agents of change. The Committee also considered that having participation at the Committee level of non-lawyer experts to provide perspectives on access to justice is worth exploring, as it engaging professors from the universities;
c. Engaging the profession across the country, perhaps through the aegis of the Federation of Law Societies, in order to lend a national voice of the profession to the access to justice challenges and to create grass-roots solutions.

October 30th meeting:

The Committee met to discuss what its input should be for purposes of the upcoming Strategic Plan. The Committee used the meeting to ascertain whether it had any additional concepts to recommend to the Benchers. After reflecting on its discussion to date, the Committee concluded that the four concepts identified at the October 8th meeting ought to form the recommendations to the Benchers for inclusion in the next Strategic Plan.

The Committee discussed whether Recommendation 4 ought to be a standalone initiative or was better understood to be a lens through which the Law Society should approach all access to justice initiatives. The Committee concluded that the latter view is preferable.

The Committee also considered input from David Crossin, QC regarding the topic of Legal Aid. Those views are summarized in the "Legal Aid" section of this report.

Prior to the meeting on October 30th, Mr. Mossop, Ms. Merrill and Mr. Munro met with Wayne Robertson, QC to follow up on the new Access to Justice Fund and where the Law Foundation was planning on directing the new funds.[4] The Law Foundation held its planning meetings the following week and Mr. Robertson subsequently reported that it is anticipated the $60,000 Access to Justice Fund will be used to support a new Family Law Advocacy Pilot Project (FLAPP).

[4] Earlier this year the Committee met with Mr. Robertson to discuss potential uses of the new Access to Justice Fund and that discussion was captured in the mid-year report. Approximately $60,000 of the $340,000 that the Law Society sends to the Law Foundation Annually to support pro bono organizations and access to justice is directed towards the Access to Justice Fund. The fund is a new creation and is intended to support the development of access to justice initiatives beyond pro bono. See the July 12, 2013 Access to Legal Services Committee report to the Benchers "Law Society Funding of Pro Bono."

The FLAPP will take place in Kelowna and Quesnel. The project is anticipated to be funded in the amount of $75,000 a year for two years, and will be subject to evaluation by the Law Foundation. The purpose of the FLAPP is to pilot the use of family law advocates, who will be supervised by a lawyer, in providing family law assistance to people in Quesnel and Kelowna. The advocates will provide information and referral services as well as education and support for court and alternate dispute resolution processes. They will also assist with document preparation and public legal education activities.

The Committee is of the view that the FLAPP is exactly the sort of innovative and important access to justice project that was envisioned when the Access to Justice Fund was established. In spring of 2015 the Committee will hold its annual meeting with the Law Foundation to discuss the potential use of the 2015 funding and will explore the FLAPP in greater detail at that meeting, including a consideration of whether the Access to Justice Fund should be dedicated to supplement the funding of the FLAPP through its second year.

December 4th meeting:

The Committee will meet on December 4th to conclude its work for the year. The Committee intends to discuss the topic of Legal Aid in greater detail. The Committee intends to meet with Geoff Plant, QC and Jerry McHale, QC to get their views on how the government sees access to justice and what approaches work best to engage government in a constructive dialogue about unmet legal needs in British Columbia.

Justice Access Centres

Over the past two years the Committee has been discussing what the Law Society might do to improve lawyer participation in Justice Access Centres (JACs). This work was the result of a referral of this topic by the Benchers, arising from a request of the former Deputy Attorney General, David Loukidelis to the Benchers. This work has involved three visits with representatives of JACs, including Jay Chalke, QC, Dan Vandersluis and Mike Rittinger. The Committee did a site visit to the Vancouver JAC in 2013 and individual Committee members have attended JACs on separate occasions. The Committee has discussed JACs on a number of additional occasions.

For the most part, the Committee has a favourable view of JACs. The recommendations the Committee makes are not intended to diminish the value JACs currently provide; rather, the observations are intended to suggest how JACs might be improved and their reach expanded.

When the government first sought feedback on the civil justice reform that included JACs the Law Society's submission stated that before Civil Hubs (as they were then called) were built the government should consider how to get lawyer services provided through a JAC in a manner other than solely relying on the provision of pro bono services, and to determine how to leverage technology in the architecture

of the JAC so as to maximize its reach. The Benchers supported the general concept of Civil Hubs, provided they did not result in resources being funneled away from the Legal Services Society to support legal information, self-help clinics.

In many ways the request for the Law Society to determine how to increase lawyer participation and explore how JACs could be expanded outside the three current locations goes back to the initial recommendation of the Law Society. For JACs to flourish there needs to be a way to involve lawyers to provide legal advice without requiring them to do so pro bono, and for JACs to reach smaller communities, we need to leverage modern technology to connect satellite centres to the primary JAC infrastructure.

The Committee is of the view that ideally JACs would be run by NGOs, but still receive funding and space from government. There are many types of legal problems people face in which government is on the other side of the issue, so having government employees operate JACs and having government have a say in how "need" is assessed can create some impediments to optimizing how the public is served. For example, a person who has a legal parenting problem, is legal aid eligible and enters a JAC, may be exposed to the intake officers' obligation to report potential allegations of abuse to the Ministry. An independent lawyer would not have that obligation and the individual could be referred to Legal Services Society.

The Committee has heard in its consultations that JACs are likely more expensive to operate as part of government than if run by an NGO without the same reporting structure and where the employees are government employees. To the extent operations cost less, the money can go farther and provide greater access to British Columbians.

With respect to expanding the reach of JACs, the Committee and its predecessor are of the view that JACs could be franchised out to smaller communities by providing them a template for how to establish a JAC. Such satellite JACs could be set up in government space or in community centres, local churches, mosques, synagogues, etc. as per the individual community's needs. Technology could then be used to link the satellite JACs to the central JACs, creating a virtual JAC in which people in the remote communities could go to the physical JAC but the staff at that JAC could connect with the other JACs and with lawyers across the province to assist with people's problems. A virtual JAC model could support links to other non-legal, social service providers to help with the types of problems people often have when facing legal problems. As was observed by Mr. Benton at the July meeting of the Committee, what is required is a "no wrong point of entry" approach for people who are using JACs. Technology can help facilitate that objective.

If the Benchers decide to move forward with the topic of how to improve lawyer participation in JACs and how to expand the reach of JACs as part of the next Strategic Plan, or as part of future discussions with government, the Committee **recommends**:

1. Exploring with government the potential for a pilot JAC to be established in New Westminster. Such a JAC would be run by an NGO and be able to staff lawyers and designated paralegals who

would be able to provide legal advice to people attending the JAC. The JAC would operate independently of government, save for funding and facilities being made available. The JAC should then have its outcomes tested against existing JACs to determine over the course of several years which model the public prefers and which best generates the desired outcomes.

2. Explore with the government the establishment of a franchising model, which allows remote communities to establish JACs, scaled to meet the local need, but with access to the information and services available at the existing JACs. Technology should be leveraged to connect people at these franchised JACs.

3. Exploring in a virtual JAC model how lawyers might be able to sign up for the virtual JAC community and be available to JAC staff to assist clients with legal advice and information.

The Committee recognizes that many details would have to be worked out in order for the suggestions to succeed. JACs, as presently constituted, are a valuable addition to the landscape. But the Committee is of the view that in order to reach their potential, JACs have to be opened beyond the framework that is presently permitted under a government run model. Rather than abandoning the current model, however, it would be prudent to test it against the alternative to see which approach best serves the public.

What should the Law Society's Role be Regarding Legal Aid?

The Committee thinks the Law Society must take a more proactive role in supporting a robust legal aid system for British Columbia.

Throughout the history of organized legal aid in British Columbia the Law Society has played a role. In the early days the Law Society was an important agent in developing legal aid in the province. The Committee understands that the Benchers in the 1980s and 1990s spent a great amount of time discussing legal aid, and it was a point of active concern. In 2002 the government cut funding for legal aid dramatically. The Benchers of the day did not take steps to address the cuts. This led to a Special General Meeting of the membership and ultimately led to the censuring of the Attorney General.

Since the censuring of the Attorney General, the Law Society has put considerable effort in mending the relationship with government, and these efforts have led to good work being done (for example, the efforts to get provincial legislation made accessible for free). It is important for the Law Society to have a constructive relationship with the government, and the Committee thinks this can take place while also being a more proactive champion of legal aid.

The Law Society provided funding for the Public Commission on Legal Aid, which resulted in the Doust Report. This was an important report, but like many reports it requires follow-up to see its

recommendations be given effect. While providing funding for research is important, the Committee is of the view that the Law Society needs to do more when it comes to supporting legal aid.

The Committee benefited by receiving some input from Mr. Crossin on this subject. The views echo those of the Committee and expand on its observations as well. If access to justice is part of the Law Society's Strategic Plan, then Legal Aid must be part of the plan as well. Improving access to legal services requires a consideration of how to support a sustainable legal aid program that helps people of modest means resolve legal problems. Our work in this regard should start by considering the following:

1. What is the Law Society's vision for publicly funded legal aid services? This question can include identifying what services the province must provide as a matter of law to what services are desirable based on policy grounds. Consideration as to the cost to tax payers of failing to provide legal aid in discrete areas might also be explored.
2. The need to work collaboratively with Legal Services Society and be supportive of their work. This approach recognizes the importance of having the same goals as the Legal Services Society, even though our messages and perspectives may differ.
3. The need to promote involvement by lawyers in legal aid. The Law Society has done much to encourage lawyers to do pro bono work and this is a logical extension of those policy efforts. Lawyer participation in legal aid has declined significantly over the past decade.

The discussion about funding will have to occur in a nuanced manner, but advocacy is required. Consideration should be given to improving the funding and coverage available for family law matters. Family law is consistently recognized as an area of need, and it merits our focused attention. In discussing all of this it is important to recognize that legal aid should be seen as an equal partner in the justice system. Funding in other areas has increased over the decades while it has diminished for legal aid. Failure to recalibrate the relationship of legal aid within the justice system will only lead to the systemic problems it faces getting worse.

Legal aid is a topic of central importance and complexity. As suggested, the Committee is of the view that the best vehicle for advancing the issue of legal aid is a task force. The Committee also thinks that the task force should have some connection to the Committee either by way of membership or reporting structure or both.

Conclusion

The Committee sets out recommendations for consideration by the Benchers as part of the next Strategic Plan. The Committee has forwarded these recommendations to Tim McGee, QC for inclusion in the Strategic Planning materials. The recommendations are duplicated here for completeness but also because Recommendation 3 relates to a topic that was directed to the Committee by the Benchers and requires the Committee to report back on its work.

For the reasons set out in this report, the Committee recommends the following:

Recommendation 1: The Law Society should expand its focus from access to legal services to include access to justice. The Access to Legal Services Advisory Committee should have its name and mandate amended to reflect this change.

Recommendation 2: As part of the next Strategic Plan, the Benchers should establish a task force to explore what the Law Society can do to improve the delivery of legal aid in British Columbia. The Committee has received valuable feedback and has important perspectives to share with the Benchers in setting the mandate for such a task force. The task force should give specific consideration of how to improve:

1. Legal aid funding;
2. The legislative / governance model for Legal Services Society;
3. What should constitute essential legal services that are covered by legal aid; and
4. How the Law Society can be a more proactive champion of legal aid?

Recommendation 3: If the Benchers decide to include in the next Strategic Plan the issue of how to improve lawyer participation in JACs and expand the reach of JACS, that work should include consideration of the following concepts:

1. Explore with government the potential for a pilot JAC to be established in New Westminster. Such a JAC would be run by an NGO and be able to staff lawyers and designated paralegals who would be able to provide legal advice to people attending the JAC. The JAC would operate independent of government, save for funding and facilities being made available. The JAC should then have its outcomes tested against existing JACs to determine over the course of several years which model the public prefers and which best generates the desired outcomes.

2. Explore with the government the establishment of a franchising model, which allows remote communities to establish JACs, scaled to meet the local need, but with access to the information and services available at the existing JACs. Technology should be leveraged to connect people at these franchised JACs.

3. Explore in a virtual JAC model how lawyers might be able to sign up for the virtual JAC community and be available to JAC staff to assist clients with legal advice and information.

Recommendation 4: In establishing future access to justice initiatives, the Benchers ought to consider the following:

    a. Exploring sources of funding other than government. The Committee discussed social finance several times throughout the year. There appears to be a large amount of social finance that is waiting for the right projects. This is an area that has not been properly explored with respect to access to justice. Rather than approaching the question of

funding and partnering only through traditional venues, it is appropriate to explore the concept of public-private partnerships;

b. Casting a wider net on who we engage in discussions about how to solve the justice challenges we face. To start with, technology allows us to reach out to the entire legal profession and engage it in the discussion. This has the benefit of getting a multitude of perspectives and possible solutions, but also gets lawyers thinking about what can be done by the profession to make a difference, rather than relying on others to be the agents of change. The Committee also considered that having participation at the Committee level of non-lawyer experts to provide perspectives on access to justice is worth exploring, as it engaging professors from the universities;
c. Engaging the profession across the country, perhaps through the aegis of the Federation of Law Societies, in order to lend a national voice of the profession to the access to justice challenges and to create grass-roots solutions.

/DM

The Law Society of British Columbia

Equity and Diversity Advisory Committee Year End Report

Maria Morellato, QC (Chair)
Satwinder Bains (Vice-Chair)
Jamie Maclaren
Cameron Ward
Kathryn Berge, QC
Robert Holmes, QC
Linda Locke, QC
Suzette Narbonne
Daniele Poulin
Linda Robertson

December 5, 2014

Prepared for: Benchers

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

Purpose: For Information

Introduction

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

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

3. The mandate is to:

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

4. This is the year-end report of the Committee, prepared to update the Benchers on its work in 2014.

Topics of Discussion: January to December 2014

5. This year the Committee has focused its efforts on implementing the Aboriginal Lawyers Mentorship Program, furthering the Justicia Project, fostering diversity in the judiciary, improving respectful workplaces, and collaborating with other equity and diversity seeking groups within the profession on matters of common interest and commitment. Details of this work are outlined below.

6. The Committee met on January 23, February 27, April 10, May 7, June 12, July 10, September 5, October 30, and December 4, 2014. The Committee also held a teleconference on October 9, 2014 to discuss how Equity and Diversity initiatives relate to the Law Society's strategic plan. In addition, representatives of the Committee have met throughout the year with the CBA BC Equality and Diversity Committee; the Diversity Officers from each of the seventeen law firms committed to the Justicia Project, the Legal Equity and Diversity Roundtable, and various other groups within the profession.

Aboriginal Lawyers Mentorship Program

7. The Aboriginal Lawyers Mentorship Program was launched in 2013 and matched 22 mentorship pairs in its first cycle, from September 2013 to August 2014. The second cycle of the Program was launched at a networking event hosted by Mandell Pinder, LLP on September 12, 2014. Nineteen mentorship pairs have already been matched during the second cycle, with additional matches anticipated as the second cycle progresses.

8. The Committee is in the process of facilitating networking events to support existing mentorship pairs, and to further promote the Program so that it can be readily accessed by members throughout the Province. To that end, Woodward and Company, LLP has agreed to host a networking event in Victoria, BC in January of 2015. We are encouraged by the significant level of interest, support and engagement in the Program to date. We will continue to support, monitor and assess the Program in the coming year.

Aboriginal Graduate Scholarship

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

Justicia Project

10. The Justicia Project is a voluntary program, facilitated by the Law Society of British Columbia ("LSBC") and undertaken by law firms, to identify and implement best practices to retain and advance women lawyers in private practice. It was created in response to evidence that women leave the profession at a higher rate than men in the first ten years of practice.

11. 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.

12. Diversity Officers have been selected by participating firms. Andrea Hilland, Staff Lawyer with the Law Society, is coordinating regular meetings among the Diversity Officers. Various Equity and Diversity Advisory Committee members have also contributed to this work.

13. 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 approval at the December 5, 2014 Bencher Meeting. Once approved, the resources will be publicized on the Law Society's website. Law Society staff is continuing with the development and implementation of communication and education strategies in relation to Justicia in BC.

14. 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.

Diversity in the Judiciary

15. 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 Bencher meeting, then President Art Vertlieb requested that the Equity and Diversity Advisory Committee develop recommendations to the Benchers to improve diversity on the bench.

16. 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 improve diversity in the judiciary. 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, April 15 and May 13, 2014, and held an in-person meeting on September 5, 2014. The work of the Subcommittee from January to December 2014 is outlined below.

18. The Subcommittee developed four recommendations to improve diversity in the judiciary. Specifically, the Law Society should:

    i. Be pro-active in selecting a more diverse list of lawyers as the Law Society's candidates for appointment to judicial advisory committees;

    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.

    The Benchers unanimously adopted these recommendations at the January 24, 2014 Benchers Meeting.

19. The Subcommittee recommended that the Law Society's President, Jan Lindsay, write a letter to the federal Minister of Justice, Peter MacKay. The letter encourages Minister Mackay to improve transparency of demographic data regarding judicial applicants and appointments to federal courts and tribunals.

20. The Law Society of BC has implemented the first recommendation: to be pro-active in selecting a more diverse list of lawyers as the Law Society's candidates for appointment to judicial advisory committees. 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. The current Law Society President, Jan Lindsay, implemented the first recommendation by selecting three candidates from equity seeking groups as the Law Society's nominees for appointment to the Judicial Advisory Committee. It is hoped that this approach to nominating candidates to judicial advisory committees will serve as an inspirational model for other appointing bodies.

21. 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.

22. 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 will 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, which will provide baseline statistical information about the diversity of the legal profession in British Columbia for future comparison;
- 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.

23. The Subcommittee also 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.

24. 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. The Subcommittee has requested that Law Society staff evaluate the effectiveness of the equity and diversity programs by conducting formal reviews of the current programs, with the view to building evaluation mechanisms into future programs as a matter of course. To meet this request, Law Society staff is currently reviewing the Maternity Leave Benefit Loan Program and is in the planning stages of reviewing the Equity Ombudsperson Program.

25. 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.

26. 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. 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.

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

28. The Equity and Diversity Advisory Committee will review this work once complete, and report back to the Executive Committee and Benchers.

Respectful Workplace Subcommittee

29. 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
- Sharon Matthews, QC
- Cameron Ward
- Anne Chopra

30. The Subcommittee met on June 9 and August 22, 2014, and circulated feedback on the model policy by email. The Subcommittee renamed the model policy the "Respectful Workplace Model Policy" and updated it to incorporate the new anti-bullying legislation contained in the BC *Workers Compensation Act*. The updated model policy was completed, and was endorsed by the Equity and Diversity Advisory Committee on October 30, 2014. The model policy will be presented to the Benchers for approval at the December 5, 2014 Bencher Meeting. Once approved, the model policy will replace the current model policy on the Law Society's website. Law Society staff is continuing the development and implementation of an educational strategy in relation to the Respectful Workplace Model Policy.

Legal Equity and Diversity Roundtable

31. Law Society staff has taken a lead role in co-chairing a coalition of diversity stakeholders, dubbed the Legal Equity and Diversity Roundtable, 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. The Legal Equity and Diversity Roundtable have adopted terms of reference, and intend to conduct a strategic planning session to identify key priorities and to develop a plan of action. The Committee will assist with the proposed planning session.

Law Societies Equity Network

32. 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.

Collaborations with the CBA BC Equality and Diversity Committee

33. 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. At the recommendation of the Committee, Ms. Hilland assisted with the planning and implementation of the 2014 panel.

34. 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.

35. 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.

The Law Society of British Columbia

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

David Crossin, QC, Chair
Leon Getz, QC, Vice Chair
Jeevyn Dhaliwal
Herman Van Ommen, QC
Gregory Petrisor
Ben Meisner
Jon Festinger, QC
Sandra Weafer

December 2014

Prepared for: Benchers

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

Purpose: Information

DM657219

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, June 11, September 10, October 6, October 29 and December 3, 2014.

4. This is the year-end 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 lawyer independence as a fundamental right of importance to the citizens of British Columbia and Canada.

6. 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 – 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". The committee therefore devoted some of its earlier meetings this year to a discussion of that topic

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 subjective 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. Rather, it was 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 has spent meetings in the latter part of this year discussing and refining a proposal to this end. It has engaged the Communications Department in some of those discussions, and as a result of input has revised its earlier drafts.

19. The Committee is now identifying examples of rule of law violations on which comment might be provided, with a view of using these examples to describe to the Benchers the extent of the type of comment contemplated by the Committee and the nature of publication that might be anticipated.

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

20. The Committee is giving 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. Section 3 of the *Legal Profession Act* engages the Rule of Law. The Committee believes that a statement of principle could clarify the meaning and practical implications of Section 3, while also taking adequate account of the relationship between the Law Society's mandate and the Rule of Law.

22. The Committee plans to identify some principles for consideration by the Benchers and has agreed to direct its development of a section 3 analysis and discussion toward facilitating a larger discussion involving all of the Benchers at a later date, possibly at the 2015 Benchers' Retreat.

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. It has also discussed the possibility of identifying an expert in the area who could come and educate the committee further on some of the issues.

27. 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.

28. The Committee will devote a further meeting in the fall to this topic, and will keep it on its agenda moving into 2015 to ensure that the Law Society is on the leading edge of this important issue.

Alternate Business Structures

29. 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.

30. 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.

31. Further, the Committee has identified that the expansion of Law Firm regulation may have significant implications for the Law Society's ability to accommodate ABSs, if the Benchers were to judge such accommodation to be warranted. In this regard, the Committee's support staff are also involved with the LFRTF and the Committee anticipates the opportunity to develop its position on ABSs in light of the work of the Task Force, as the latter information becomes available.

32. The Committee is encouraged that this topic appears to have been identified as a major issue for consideration for the Law Society's next Strategic Plan, and will assist in its development as required.

Independence of Lawyers in an In-house Context

33. 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. The Committee has not, however, yet developed its analysis of the the in-house context of practice with the principle of lawyer independence.

Magna Carta – 800th Anniversary

34. The Committee has noted that 2015 marks the 800th anniversary of the Magna Carta As part of its mandate, the Committee has been considering ways to celebrate that anniversary.

35. The Law Society has been invited to help organize, together the government and other interested parties (such as the universities and the CBA (BC Branch)), a public lecture or discussion on the subject of Magna Carta and the Rule of Law. Speakers and a date have not been confirmed. The committee will continue to liaise with other groups toward the organization of such an event.

36. The Committee also intends to investigate creating (provided adequate volunteers can be found), an essay contest for high school students writing on Magna Carta, the rule of law, and its importance to Canadian society and values. The Committee suggests a modest prize be presented to the best essay, if this proposal is feasible.

The Law Society of British Columbia

Lawyer Education Advisory Committee 2014 Year-End Report

Tony Wilson, Chair
Thelma O'Grady, Vice-Chair
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Meghan Maddigan

December 5, 2014

Prepared for: Benchers

Prepared by: The Lawyer Education Advisory Committee

Purpose: Information

Introduction

1. The Lawyer Education Advisory Committee's 2014 Year-End Report to the Benchers summarizes the Committee's work in 2014 and recommends ongoing work pursuant to the anticipated 2015-17 Law Society Strategic Plan.

Committee Strategic Priority

2. The Law Society's current Strategic Plan includes the following priority for the Lawyer Education Advisory Committee.

> *STRATEGY 1-4: Ensure that admission processes are current and relevant.*
> *INITIATIVE 1-4(a): Work on national admission standards while considering the rationale and purpose of the overall admission program.*

Admission Program Review - National Admission Standards Project

3. When national lawyer mobility was launched across Canada in 2003, one of its underlying premises was that standards for admission were reasonably similar from jurisdiction to jurisdiction. However, the current reality is that significant and widening differences exist in admission standards and processes for each jurisdiction, as evidenced most recently by major changes in Ontario.

4. The Lawyer Education Advisory Committee's Admission Program review is in the context of the Federation of Law Societies' ongoing National Admission Standards Project, by which Canada's law societies, through the Federation, are developing proposals for national admission standards and related implementation.

5. The Federation National Admission Standards Steering Committee is responsible for overall direction of the Project. Tim McGee and Alan Treleaven are Steering Committee members.

6. Development of national admission standards for character and fitness is a significant feature of the National Admission Standards Project. Lesley Small, Manager of Member Services and Credentials, and Michael Lucas, Manager of Policy and Legal Services, serve on the Federation Working Group, which has consulted with law societies on draft proposals. This aspect of the National Admission Standards Project has proven to be particularly challenging, and the Federation is still in the process of developing formal proposals for law societies' consideration, likely in 2015. As the Federation moves forward with this aspect of national admission standards, future proposals are best suited for consideration by the Credentials Committee.

7. On the competencies for admission aspect of the National Admission Standards Project, the first phase was to develop a national profile of the competencies required for entry to the profession. This process involved the participation of a Federation national technical working group. Lynn

Burns, Deputy Director of the Professional Legal Training Course (PLTC), has been a working group member.

8. The Benchers have approved the *National Entry-Level Competency Profile for Lawyers and Quebec Notaries* pursuant to the following resolution.

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

9. The current phase of the National Admission Standards Project is focusing on developing proposals for implementation of the national competency profile. At the Federation Steering Committee level, work is underway on developing proposals, with the goal of achieving a high level of consistency and quality in national admission standards.

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

11. The Lawyer Education Advisory Committee has met with Federation representatives, who have been consulting with law societies on the National Admission Standards Project. The Federation expects to present its next set of recommendations in 2015 for consideration by law societies. The Lawyer Education Advisory Committee recognizes that the review of the Admission Program should take into account the work of the Federation.

12. Because the work of the Federation on the National Admission Standards Project is ongoing, the Committee concludes that the review of the Admission Program should continue into the next Law Society Strategic Plan.

Admission Program Review - Interim Update

13. Pending the Federation publishing its recommendations, the Committee has continued to conduct its review of the Admission Program, including articling, PLTC, and related skills assessments and examinations. More specifically, the Committee's work has included 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 to what extent unpaid articles occur,
    f) PLTC and articling administrative challenges, including cost, space, and rising student numbers,
    g) technology options for enhancement,

h) input from current and former students and principals,
i) bar admission requirements in other jurisdictions,
j) the extent to which the Federation's National Admission Standards Project focus should include standards for bar admission training and articling learning, in addition to skills assessment and examinations, and
k) Federation consultation papers, as they are published, and providing input.

14. To assist with an ongoing admission program review, the following sections of this report summarize the Committee's activity and interim conclusions.

Articling requirement – continuation and quality

15. *Continuation of the articling requirement*: The Committee supports continuation of an articling requirement, including that the combined duration of articling and PLTC continue to be in the 12 month range.

16. *Alternatives to articling*: The Committee does not recommend alternatives to articling for the Admission Program, such as a combined law degree – bar admission program like the one at Lakehead University or experiential learning alternatives such as Ontario's Law Practice Program pilot project at Ryerson University and University of Ottawa, unless it can be demonstrated that the quality of the training experience would not be compromised. However, the Committee is in favour of the Credentials Committee continuing to exercise its discretion in individual cases, governed by the Law Society Rules, to reduce the length of the articling requirement based on factors such as practice or articling experience in another jurisdiction and clerking for a court.

17. *Articling quality - criteria for eligibility to serve as an articling principal:* The Committee has considered whether to recommend changing the criteria for eligibility to serve as an articling principal (e.g. increase or decrease the required minimum years of practice, and/or disentitle some principals from having students based on practice history) in order to enhance the quality or availability of articles. As this issue is under consideration by the Credentials Committee, the Committee has decided not to make its own recommendation.

18. *Articling quality - requirements for the Articling Agreement, joint mid-term report, and joint final compliance report:* The Committee has considered whether the student and articling principal joint mid-term report, which is currently a letter, could be more structured to require answers to specific questions, without being it reduced to a checklist. The Committee has decided to simply identify the issue and refer it to the Credentials Committee.

Availability of articling placements

19. The Committee recommends that the Law Society monitor developments in the articling placement market on an ongoing basis to assist the Law Society in being forewarned if negative

trends are developing, and to respond strategically before facing an emergency such as the one reported by the Law Society of Upper Canada.

Articling remuneration

20. Committee members have heard concerns that some students article without remuneration, a situation that some Committee members view as unfair to students and not reflecting appropriate standards of lawyer professionalism.

21. The Committee has followed up on these concerns by surveying PLTC students and consulting BC's law schools on the extent to which students might be articling without remuneration. Although the Committee is limited to gathering information on a voluntary basis, it appears that articling without remuneration is not wide-spread. There have been anonymous reports of isolated occurrences on Vancouver Island and in the Lower Mainland. However, there is little articling remuneration data for foreign trained lawyers who have come to Canada and obtained a Certificate of Qualification from the National Committee on Accreditation. Anecdotal evidence suggests that those foreign trained lawyers are more likely to article with little or no remuneration. The Committee has been unable to substantiate second hand information that there might be instances when students pay for their articles.

22. The Committee recommends that the Communications Department develop and implement a communications strategy that urges articling principals to provide reasonable articling remuneration to students. The Law Society would then attempt to monitor whether there is a positive impact.

23. Committee members are concerned that a heavier-handed approach might have a negative impact on the availability of articling positions. Some affected students may well want the Law Society to stay out of the remuneration arrangement that the student makes with the articling principal, given that the alternative may be no articles at all. Also, the Committee is aware that flexibility and accommodation in dealing with some articling situations may be needed. Examples could include the University of Victoria's Law Centre or other pro bono initiatives where there is either a limited or no budget for articling students. The Committee considered but decided against other options, including prohibiting articling without remuneration, permitting it but with a requirement that the articling principal inform the Law Society, or permitting it only with case-by-case Law Society approval.

Further admission program information to be gathered

24. The Committee has reviewed the PLTC students' course evaluations and the Law Society Key Performance Measure data gathered each year from newly called lawyers and their articling principals. The Committee finds the evidence of quality in PLTC and articling to be persuasive, and is surveying lawyers who have been called for two years on their assessment of the value of

PLTC and articling in their first two years in the practice of law. The results of the survey should be useful in the ongoing review of the Admission Program.

Disparity in standards of admission nationally

25. The Committee is concerned about national disparities in bar admission training and testing standards arising from recent changes in Canada, and has discussed whether the Law Society would effectively serve the public interest by enabling lawyers to transfer under the National Mobility Agreement 2013 rules when they may not have demonstrated entry-level competence and received training at levels that reasonably measure up to Law Society of BC standards.

26. The Committee has discussed whether some transfer applicants might be required to complete supplemental Law Society of BC prescribed courses or testing, or perhaps targeted CPD, but understands that the National Mobility Agreement 2013 arguably rules out those possibilities, and that the Comprehensive Economic and Trade Agreement has implications for the future regulation of admission to Canadian professions.

27. Committee members have concluded that there is a pressing need for a consistent approach to admission requirements across Canada in light of national mobility, and that the Federation's development of national admission standards should deal effectively with the disparities, not only in standards of assessment, but in standards for bar admission training and articling. A Federation consideration of articling standards in Canada should include an evaluation of alternatives to articling, such as Ontario's new Legal Practice Program (Ryerson University and University of Ottawa) and Lakehead University's integrated co-op law degree program, and their potential impact in BC.

CPD Program Review – Recommendation for the Next Strategic Plan

28. The CPD program is in its sixth year. The CPD program was last reviewed by the Lawyer Education Advisory Committee in 2011, when the Benchers adopted the Committee's recommendations. The Committee has not reviewed the CPD program since 2011, as the 2012 – 2014 Strategic Plan does not mandate a review.

29. The Committee strongly recommends that the new Strategic Plan include a review of the CPD program.

The Law Society of British Columbia

Memo

To: **Benchers**

From: **The Complainants' Review Committee:**

- Satwinder Bains, Chair
- Claude Richmond, Vice-Chair
- Pinder Cheema, QC, Bencher
- Sarah Westwood, Bencher
- Julie Lamb, non-Bencher
- Amrik Narang, non-Bencher

Date: **November 5, 2014**

Subject: **Activity Report – 2014 to date**

BACKGROUND

The Complainants' Review Committee (CRC) was established in late 1988 under Rule 103 of the Law Society Rules (now Rule 3-8). The Benchers' Meeting Minutes of December 4 and 5, 1987 indicate that the purpose of the CRC was "to give unhappy complainants a procedure to have their complaints reviewed by an impartial body". The CRC carries out a review function to determine whether complaints have been closed at the staff level when they should not have been.

The CRC initially consisted of three members: an Appointed Bencher (Chair), a Bencher and a non-Bencher lawyer. Due to the increasing demand for reviews by the CRC over the years, the CRC was increased to six members in 1995. The Rules provide that at least one member of the CRC must be an appointed Bencher. Traditionally, the Chair and Vice Chair have been appointed Benchers, as is the case at present.

AUTHORITY

A complainant can request a review by the CRC if their complaint was closed under Law Society Rule 3-6. Rule 3-6 provides for no further action when a complaint is a) not valid, b) does not warrant further investigation or c) resolved. When the complaint is closed, the Law Society advises the complainant of their right to request a review by the CRC and encloses an Information Sheet that explains the process.

The CRC has no authority to review complaints that were closed under Rule 3-5 of the Law Society Rules. Rule 3-5 provides that there is no need to investigate complaints that are a) not within the Law Society's jurisdiction, b) frivolous, vexatious or an abuse of process, or c) would not constitute a discipline violation. In some of these cases we will refer complainants to the Ombudsperson's Office.

ROLE OF COMMITTEE

The CRC determines whether the staff lawyer or outside counsel conducted an adequate investigation and whether the decision of the staff lawyer was appropriate in light of the information before them. The CRC receives a copy of the entire complaint file. Unlike other Committees, the CRC has the opportunity to see some of the 600-700 files that are closed each year at the staff level. The CRC gets to obtain an insight into the types of complaints that do not give rise to further Law Society action.

OUTCOME

The procedure governing the CRC is in Rule 3-9 of the Law Society Rules. After review of the file the CRC can:

- make inquiries of the complainant, the lawyer or any other person (The purpose of an inquiry is to seek clarification on an issue);
- confirm the staff decision to take no further action;
- refer the complaint to the Practice Standards Committee; or
- refer the file to the Discipline Committee, with or without recommendation.

Staff gives CRC members information about the Practice Standards Committee and the Discipline Committee at the January orientation session to ensure they fully understand the mandates of those Committees.

After the CRC's review, the Chair sends a letter to the complainant and the lawyer advising them of the decision. If the CRC confirms the staff decision the Chair ensures to advise the complainant that if they have remaining concerns about the Law Society's investigation of their complaint they can contact the Office of the Ombudsperson. The Ombudsperson is empowered by legislation to investigate complaints about regulatory bodies.

PROGRESS

In 2011 the CRC implemented a 2-3 month timeframe to review a file once it had been received to maintain the fairness and integrity of a file. The CRC also held 2 meetings at the same time to get through a backlog of review requests from the previous year. The CRC advanced into 2012 without any files in its queue. In 2012, the CRC decided to conduct its meetings reactively as file review requests were received and maintain the same timeframes. Therefore if a large number of requests were received in any given month, two meetings were scheduled for the next month, rather than one. In 2013 and 2014 the same standards applied as in 2012. In 2014 the CRC met its timelines for completing reviews with the exception of one file where the request for review was received at the Law Society but inadvertently was not forwarded to CRC for a number of months. This file's review by the CRC has since been completed.

STATISTICS

Below is a snapshot of the CRC statistics as of November from 2010-2014. The CRC has 2 panel meetings remaining for 2014 with 8 files scheduled for review in December. By year end the CRC will have reviewed 65 files.

2011			2012	
99	Total Files Reviewed		58	Total Files Reviewed
90	No Further Action		55	No Further Action
4	Additional Information Requested[1]		2	Additional Information Requested[1]
4	DC Referrals		2	DC Referrals
5	PSC Referrals		0	PSC Referrals
0	Files going into 2012		0	Files going into 2013

2013			2014 to date	
60	Total Files Reviewed		58	Total Files Reviewed
58	No Further Action		55	No Further Action
1	Additional Information Requested[2]		2	Additional Information Requested[3]
2	DC Referrals		1	DC Referrals
0	PSC Referrals		0	PSC Referrals
3	Files going into 2014		8	Files to be reviewed in December
			2	Files going into 2015

1 After receiving and reviewing the additional information, the CRC ordered that no further action be taken.

2 After receiving and reviewing the additional information, the CRC referred the matter to the Discipline Committee.

3 The matters are still outstanding.

The Law Society of British Columbia

Memo

To The Benchers
From Deb Armour, Chief Legal Officer
Date November 12, 2014
Subject National Discipline Standards - Quarterly Reporting on Standard 9

The Federation of Law Societies of Canada's National Discipline Standard (NDS) 9 requires that the law societies report quarterly on the status of Standards 6, 7 and 8.

Please see below our quarterly report on those standards. As has been the case since the beginning of the NDS Pilot Project, Standard 6 was met for the 3 months ending October 31, 2014. For the first time ever, Standard 7 was met. You will see this represents a significant improvement over the results in our last report. While we met Standard 8 in the previous reporting period, we did not do so in this period.

	STANDARD	STATUS
HEARINGS		
6.	75% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 60 days of authorization. 95% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 90 days of authorization.	**MET** 100% of citations issued and served in this reporting period were issued and served within 60 days of authorization (11/11 citations). **MET** 100% of citations issued and served in this reporting period were issued and served within 90 days of authorization (11/11 citations).
7.	75% of all hearings commence within 9 months of authorization. 90% of all hearings commence within 12 months of authorization.	**MET** 80% of hearings commenced in this reporting period were commenced within 9 months of citation authorization (4/5 hearings). Last report results were 64%. **MET** 100% of hearings commenced in this reporting period were commenced within 12 months of citation authorization (5/5 hearings). Last report results were 73%.
8.	Reasons for 90% of all decisions are rendered within 90 days from the last date the panel receives submissions	**NOT MET** 70% of discipline decisions issued in this reporting period were issued within 90 days (7/10 decisions). Last report results were 90.9%.