



# Agenda

## Benchers

Date: Friday, January 30, 2015

Time: **7:30 am** Continental breakfast

**8:30 am** Call to order

Location: Bencher Room, 9<sup>th</sup> Floor, Law Society Building

Recording: *Benchers, staff and guests should be aware that a digital audio recording is made at each Benchers meeting to ensure an accurate record of the proceedings.*

### OATH OF OFFICE:

The Honourable Chief Judge Thomas J. Crabtree, will administer an oath of office (in the form set out in Rule 1-1.2) to President Ken Walker, QC, First Vice-President David Crossin, QC and Second Vice-President Herman Van Ommen, QC (individually) and (Westminster County Bencher) Edmund Caissie for the term commencing January 1, 2015.

### 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 (Renee Collins Goult) prior to the meeting.

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1	Administer Oaths of Office	5	Chief Judge Thomas J. Crabtree		
2	Consent Agenda <ul style="list-style-type: none"> <li>Minutes of December 5, 2014 meeting (regular session)</li> </ul>	1	President	Tab 2	Approval

### DISCUSSION/DECISION

3	Final Review: 2015-2017 Strategic Plan and Implementation Plan	15	President/CEO	Tab 3	Decision
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# Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
4	BC Code Appendix C: Real Property Issues	10	Herman Van Ommen, QC	Tab 4	Discussion and Decision
<b>GUEST PRESENTATIONS</b>					
5	2014 Employee Survey Results	10	Ryan Williams		Presentation
<b>REPORTS</b>					
6	Finance & Audit Committee: 2014 Enterprise Risk Management Plan - Update	30	CFO	Tab 6	Briefing
7	President's Report	15	President	Oral report (update on key issues)	Briefing
8	Report on Outstanding Hearing & Review Decisions	4	President	<i>(To be circulated at the meeting)</i>	Briefing
9	CEO's Report	15	CEO	Tab 9	Briefing
10	Briefing by the Law Society's Member of the Federation Council	5	Gavin Hume, QC	Tab 10	Briefing
11	National Discipline Standards: Law Society of BC results for 2014	10	CLO	Tab 11	Briefing
<b>FOR INFORMATION</b>					
12	2012-2014 Strategic Plan Final Update Report			Tab 12	Information



# Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
<b><i>IN CAMERA</i></b>					
13	Litigation Report for 2014 Year-End	10	CLO	Tab 13	Briefing
14	<i>In camera</i> <ul style="list-style-type: none"> <li>• Bencher concerns</li> <li>• Other business</li> </ul>	20	President/CEO		Discussion/ Decision



# Minutes

## Benchers

Date: Friday, December 05, 2014

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

Excused: Ben Meisner

Staff Present:	Tim McGee, QC	Ryan Lee
	Deborah Armour	Michael Lucas
	Taylor Ashlie	Jeanette McPhee
	Su Forbes, QC	Alan Treleven
	Andrea Hilland	Adam Whitcombe
	Jeffrey Hoskins, QC	

Guests: Dom Bautista	Executive Director, Law Courts Center
Mark Benton, QC	Executive Director, Legal Services Society
Johanne Blenkin	Chief Executive Officer, Courthouse Libraries BC
Kari Boyle	Executive Director, Mediate BC Society
Edmund Caissie	2015 Westminster County Bencher
Jay Chalke, QC	Assistant Deputy Minister, Justice Services Branch
Anne Chopra	Equity Ombudsperson, Law Society of BC
Jennifer Chow	Vice President, Canadian Bar Association, BC Branch
Ron Friesen	CEO, Continuing Legal Education Society of BC
Richard Fyfe, QC	Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General
Gavin Hume, QC	Law Society of BC Member, Council of the Federation of Law Societies of Canada
Derek LaCroix, QC	Executive Director, Lawyers Assistance Program
Yves Moisan	President and Treasurer, BC Paralegal Association
Carmen Marolla	Non-Bencher Member, Legal Services Regulatory Framework Task Force
Caroline Nevin	Executive Director, Canadian Bar Association, BC Branch
Richard Parsons	President, Trial Lawyers Association of BC
Wayne Robertson, QC	Executive Director, Law Foundation of BC
Jeremy Schmidt	Executive Coordinator to the Dean, University of British Columbia
Ken Sherk	Non-Bencher Member, Legal Services Regulatory Framework Task Force
Alex Shorten	President, Canadian Bar Association, BC Branch
Rose Singh	Vice President, BC Paralegal Association
Art Vertlieb, QC	Life Bencher and Chair of the Legal Services Regulatory Framework Task Force
Prof. Jeremy Webber	Dean of Law, University of Victoria

## CONSENT AGENDA

### 1. Minutes and Consent Resolutions

#### a. Minutes

The minutes of the meeting held on October 31, 2014 were approved as circulated.

The *in camera* minutes of the meeting held on October 31, 2014 were approved as circulated.

#### b. Consent Resolutions

The following resolutions were passed unanimously and by consent.

- Appointment to the Legal Services Society Board of Directors

*BE IT RESOLVED to appoint Dinyar Marzban, QC to the Board of Directors of the Legal Services Society, for a three-year term commencing January 1, 2015.*

- Proposed Amendment to the *BC Code of Professional Conduct: Appendix C: Real Property Issues*

*BE IT RESOLVED to amend BC Code of Professional Conduct (Appendix C – Real Property Transactions, Commentary [1(d)] and Commentary [2]), as set out in Appendix 1 to these minutes.*

- Family Law Task Force: Extension of Time to Complete Mandate

*BE IT RESOLVED to extend the time for completion of the Family Law Task Force’s current mandate to July 2015.*

- 2015 Fees Schedule

*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”.*

## DISCUSSION/ DECISION

### 2. 2015-2017 Strategic Plan Development Update

Mr. McGee briefed the Benchers on the draft 2015 – 2017 Strategic Plan (page 81 of the agenda package). He confirmed that the strategies and initiatives set out in the current draft plan were derived from Benchers’ input provided in an environmental scanning session in September, and from the Benchers’ responses to a survey conducted during the week of November 10.

Mr. McGee noted that there was nothing in the plan about feasibility, cost and resourcing. Those issues will be addressed by the Executive Committee and staff, following receipt of further input from the Benchers in relation to the various proposed strategic initiatives and their relative priority.

Mr. McGee referred to page 82 of the agenda package for the three over-arching strategic goals proposed as the draft plan’s framework:

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.

In the ensuing discussion, several Benchers suggested that Goal 1 be broadened to address access in the context of justice, rather than legal services.

Ms. Lindsay noted the evident consensus support for that view, and requested staff to re-work that portion of the plan accordingly. Mr. Walker encouraged all the Benchers to review the draft plan closely, particularly in the context of their 2015 Committee assignments, and to consider what they can accomplish next year through this strategic plan—personally and through their committees, task forces and working groups.

### **3. Election of an Appointed Bencher to the 2015 Executive Committee Elections**

Ms. Lindsay announced that the Benchers have elected Vancouver County Bencher Miriam Kresivo, QC, Nanaimo County Bencher Nancy Merrill, and Vancouver County Bencher Tony Wilson to the 2015 Executive Committee. Ms. Lindsay thanked Mr. Doerksen, Mr. Maclaren, Ms. Morellato and Mr. Riddell for putting their names forward as candidates.

Ms. Bains announced that the appointed Benchers have chosen Haydn Acheson as their representative on the 2015 Executive Committee.

## **GUEST PRESENTATION**

### **4. Continuing Legal Education Society of BC (CLEBC) Annual Update**

CLEBC CEO Ron Friesen briefed the Benchers. Mr. Friesen described CLEBC as an effective, self-financing non-profit society. He reported that the organization conducts an annual financial review, as well as annual CEO and board reviews.

Mr. Friesen commented that the Law Society and the BC Branch of the Canadian Bar Association appoint the majority of CLEBC's directors. Noting that Westminster County Bencher Martin Finch, QC and Victoria County Bencher Dean Lawton have recently joined the CLEBC board of directors, he added that the Benchers should feel free to communicate their concerns about CLEBC to the Law Society's appointees to the board, including the Bencher members.

Mr. Friesen outlined areas of value added to the Law Society by CLEBC, including the provision of no-cost programming on the new *BC Code of Professional Conduct* to over 5,000 lawyers. Mr. Friesen noted that CLEBC provides about 85 CLE course titles per year, with an average participants' rating of 4 per course (5-point scale). He also noted that many of those courses can be accessed online through lawyers' offices.

Mr. Friesen thanked the Law Society for the support its Benchers and staff lawyers provide as volunteer lecturers. He particularly acknowledged Ms. Lindsay as a long-time supporter.

Mr. Friesen responded to a number of Benchers' questions:

- What are future developments for continuing legal education?
  - There is an increasing need for access to justice in legal services. CPD needs to do more to work for immediate support in "Just in Time" courses. These would be 5-minute presentations with related content that could be picked up quickly.
  - Tremendous amounts of information bombard lawyers and society on a daily basis, and CLE needs to get a better sense of what lawyers need.
  - Self-represented litigants remain an issue. That topic will form the subject of the CLE's upcoming Retreat agenda. He noted that CLE supports lawyers, not the general public, but there are ways to help lawyers and Judges to deal with self-represented parties through appropriate education.
- If non-lawyer legal service providers are created, CLE will be able to address them?
  - Even now, CLE provides support programs for notaries, and they are looking at ways to provide legal education to designated paralegals as well.
  - If non-lawyers become involved in providing legal services, CLE will expect to address that demographic.
  - CLE's content is not aimed at the general public; it is aimed at people who have been licensed to provide legal services.

Mr. Walker thanked Mr. Friesen and CLEBC for the archival material that has been made available. He noted that CPD course cost remained an issue, particularly for lawyers outside of the lower mainland.

## REPORTS

### 5. Legal Services Regulatory Framework Task Force Report

Task Force Chair Art Vertlieb, QC briefed the Benchers. Mr. Vertlieb introduced the task force members<sup>1</sup>, noting the diversity of their backgrounds, perspectives and opinions. He noted that in December 2013 the Benchers unanimously approved the Legal Services Provider Task Force Report. One of that task force's recommendations was to determine if there was a marketplace for existing providers of legal services—other than lawyers or notaries—and to consider how to bring a structure into place to regulate those service providers.

Mr. Vertlieb advised that the focus of the task force's work and resulting recommendations was unmet need for legal services. Ms. Marolla, a Task Force member and Vice-President of the BC Paralegals Association, agreed and noted:

- unrepresented parties place a burden on court and opposing parties
- some representation instead of none will reduce those burdens
- appropriate education and credentials will ensure competence in skills
- a number of unknown economics exist, but the Law Society must act in the public interest to fill the justice gap
- it may be a leap of faith, but it's a leap that needs to be taken
- the BC Paralegals Association supports the Task Force's report

A number of Benchers expressed their approval and support for the Task Force's report and recommendations, while noting the importance of effective, timely communication by the Law Society with the legal profession.

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<sup>1</sup> Art Vertlieb, QC (Chair), David Crossin, QC (Vice-chair), Satwinder Bains, Jeevyn Dhaliwal, Lee Ongman, Karey Brooks, Nancy Carter, Dean Crawford, QC, Carmen Marolla, Wayne Robertson, QC and Ken Sherk

Mr. Crossin moved (seconded by Ms. Ongman) that the recommendations of the Task Force (see page 95 of the agenda package) be adopted.

The motion was carried unanimously.

## **6. Justicia Project Recommendations: Demographic Data Collection, Parental Leave & Flexible Work Arrangements**

Ms. Morellato briefed the Benchers as Chair of the Equity and Diversity Advisory Committee. She confirmed that the Committee is seeking approval of the three policies created by *Justicia*, as well as the Respective Workplace Model Policy that had been updated through a subcommittee of the Equity and Diversity Advisory Committee. The three *Justicia* policies in question are:

- (i) parental leave policy (page 151 of the agenda package);
- (ii) a flexible work arrangement policy (page 161 of the agenda package);, and
- (iii) a demographic collection policy (page 190 of the agenda package).

She noted that the final policy being submitted to the Benchers for approval was the respectful workplace model policy (page 213 of the agenda package).

Ms. Morellato confirmed that these policies were provided as guides, and not as mandatory practices. She noted that the aim is to have these policies taken up by other firms not involved in the *Justicia* project, and then, at the next stage, develop them for smaller firms as well.

A number of Benchers spoke in favour of the proposed policies.

Mr. Van Ommen moved (seconded by Ms. Matthews) that the proposed policies be adopted. The motion was carried unanimously.

## **7. Governance Committee: Year-end Report and Recommendations**

Ms. Kresivo reported as Chair of the Governance Committee. She reviewed the work undertaken by the Committee since its mid-year report and referred the Benchers to page 235 of the agenda package for a summary of the Committee's 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 (page 241 of the agenda package)

Ms. Kresivo commented that the Governance Committee provided guidance to the Act and Rules Committee over the past year regarding that body's review and renewal of its terms of reference. She noted the Governance Committee's intention to work with the Law Society's other committees in 2015 in review and renewal of their respective terms of reference.

## **8. 2014 Advisory Committees: Year-end Reports**

### **a. Access to Legal Services Advisory Committee**

Access to Legal Services Advisory Committee Chair David Mossop, QC briefed the Benchers: providing highlights of the Committee's work over the past year; outlining its recommendations for the coming year; and referring to the Committee's report at page 248 for details.

Discussion followed.

### **b. Equity and Diversity Advisory Committee**

Equity and Diversity Advisory Committee Chair Maria Morellato, QC briefed the Benchers: providing highlights of the Committee's work over the past year; outlining its recommendations for the coming year; and referring to the Committee's report at page 260 for details. Ms. Morellato asked Ms. Bains to report on behalf of the Diversity on the Bencher Subcommittee (page 263).

Discussion followed.

### **c. Rule of Law and Lawyer Independence Advisory Committee**

Rule of Law and Lawyer Independence Advisory Committee Chair David Crossin, QC briefed the Benchers: providing highlights of the Committee's work over the past year; outlining its recommendations for the coming year; and referring to the Committee's report at page 269 for details.

Discussion followed.

#### **d. Lawyer Education Advisory Committee**

Lawyer Education Advisory Committee Chair Tony Wilson briefed the Benchers: providing highlights of the Committee's work over the past year; outlining its recommendations for the coming year; and referring to the Committee's report at page 277 for details.

Discussion followed.

### **9. President's Report**

Ms. Lindsay briefed the Benchers on various Law Society matters to which she has attended since the last meeting, including:

#### **a. 2014 Overview**

The Benchers and staff of the Law Society have accomplished a great deal over the past year, under difficult circumstances. Ms. Lindsay asked Mr. McGee to update the Benchers on the TWU file.

#### **b. Trinity Western University's Proposed School of Law: Next Steps**

Mr. McGee briefed the Benchers. He advised that to date no communication has been received from Trinity Western University (TWU) regarding commencement of litigation proceeding arising from the Benchers' decision at their October 31 meeting to declare TWU's proposed School of Law to be not approved as a faculty of law, pursuant to Rule 2-27 (4.1). Mr. McGee confirmed that Peter Gall QC has been retained as the Law Society's counsel in anticipation of those proceedings. He updated the Benchers on the status of the legal proceedings initiated by TWU against the Nova Scotia Barristers' Society and the Law Society of Upper Canada,<sup>2</sup> and regarding the BC Supreme Court proceeding challenging the decision of BC's Minister of Advanced Education to approve the proposed TWU School of Law.

Ms. Lindsay noted that the Litigation Subcommittee will continue to monitor these proceedings and provide advice to the Executive Committee, in the ordinary course.

#### **c. CBABC Presentation and Introduction**

Alex Shorten, President of the Canadian Bar Association, BC Branch (CBABC), noted that the end of today's meeting will mark the completion of Ms. Lindsay's responsibilities as chair of scheduled 2014 Bencher meetings. He paid tribute to the distinguished, effective

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<sup>2</sup> Regarding the decisions of their Benchers not to approve the accreditation of graduates of TWU's proposed School of Law to practise law in their respective jurisdictions.

leadership she demonstrated in guiding the Benchers and staff of the Law Society through the challenges of the past year, and to the quality of the Benchers' performance as the Law Society's directors over that period. Mr. Shorten presented a Vancouver Canucks jersey to Ms. Lindsay on behalf of the Executive, staff and members of CBABC.

Mr. Shorten then introduced Vice-President Jennifer Chow as CBABC's designated representative at Bencher meetings in 2014.

**d. Presentation of the 2015 President's Pin**

Ms. Lindsay presented the 2015 President's Pin to Ken Walker, QC.

**e. Presentation of the 2014 Benchers' Gift to the Out-going President**

Mr. Walker presented a gift to Ms. Lindsay on behalf of the 2014 Benchers.

Mr. McGee expressed appreciation to Ms. Lindsay on behalf of staff, noting Ms. Lindsay's dedication to the best interests of the Law Society, and her consideration for staff throughout the challenges of the past year.

**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
- Operational Updates
- Operational Priorities Plan Update
  - Implementation of Legal Service Providers Task Force Report Recommendations
  - Law Society as Insurer and Regulator Working Group
  - Implementation of Lawyer Support and Advice Project
  - Support for the Law Firm Regulation Review
  - Review and Renewal of Staff Performance Management Process
- 2014 Annual Employee Survey
- Events and Conferences

- International Institute of Law Association Chief Executives (IILACE) – Annual Conference
- Federation of Law Societies of Canada

## **11. Briefing by the Law Society’s Member of the Federation Council**

Gavin Hume, QC briefed the Benchers as the Law Society’s member of the FLSC Council on various matters, including:

### **a. Change of Leadership of the Federation of Law Societies of Canada (FLSC)**

On November 15 Tom Conway, QC (Past-Treasurer of the Law Society of Upper Canada) assumed the FLCC presidency for a one-year term.

### **b. Federation Governance Review Committee**

Past-President Marie-Claude Belanger-Richard, QC will chair the Federation Governance Review Committee, which will consult with the Federation’s member law societies in 2015 on a range of governance issues, including executive succession and whether the Federation should be more than a coordinating body for its member societies.

### **c. Bill C-44 (*An Act to Amend the Canadian Security Intelligence Service*)**

The Federation has made a submission in relation to the connection between the nature and source of information leading to detention, and the potential for compromising the ability of counsel to provide effective representation to detainees.

### **d. Intervention in the *Minister of National Revenue v. Thompson* (Supreme Court of Canada)**

The Federation’s intervention is on the issue of protection of solicitor-client privilege.

### **e. Standing Committee on the Model Code of Professional Conduct**

As of November 24, consultation has been completed on the Standing Committee’s current round of proposed amendments to the Model Code.

On December 3, preliminary discussions took place between the Federation and CanLII regarding digitization of the Model Code, more particularly:

- hosting and linking together the Model Code and its provincial counterparts on CanLII's website, together with the discipline decisions of the provincial law societies
  - the Law Society of BC is one of two law societies to be asked by the Federation to work on initiating that project

## **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.

Ms. Lindsay noted that the availability of trained Benchers is a key challenge faced by the Law Society's Hearing Administrator in setting hearing and conduct review panels in a timely manner. Ms. Lindsay urged any Benchers who have yet to complete their required hearing panelist training to do so at earliest opportunity.

Mr. Walker stressed the importance of completion of written hearing decisions and conduct review reports within the target period of 90 days.

The Benchers discussed other matters *in camera*.

WKM  
2014-12-23

## 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

### 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 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 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,
- (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.



## **CEO's Report to Benchers**

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December 1, 2014

Prepared for: Benchers

Prepared by: Timothy E. McGee

## Introduction

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

## Operational Updates

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

## Operational Priorities Plan Update

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

### ***Implementation of Legal Service Providers Task Force Report Recommendations***

The central recommendation of the Legal Service Providers Task Force Report was to develop a regulatory framework for non lawyer providers of legal services to provide credentialed and regulated legal services in the public interest. Following on this recommendation, the Legal Services Regulatory Framework Task Force chaired by Art Vertlieb, QC was formed and has had a series of meetings and consultations throughout the year. This Task Force is unique among those established by the Law Society in recent history because it includes among its members (in addition to Benchers) senior representatives of each of the CBABC branch, the Society of Notaries Public of BC, the BC Paralegal Association and the policy branch of the Ministry of Justice of British Columbia.

The Task Force has examined regulatory frameworks for non-lawyers in Ontario and Washington State, as well as how the regulation of multi service providers is accomplished in the health professions in BC. The Task Force has also examined the unmet needs for legal services in BC, and has developed the case for legislative amendments to permit the Law Society to regulate legal service providers other than lawyers. A report is being finalized for the December Benchers meeting. Leading the staff support for this important project are Michael Lucas, Manager, Policy and Legal Service and Doug Munro, Policy Counsel.

A related but separate recommendation of the Legal Services Regulatory Framework Task Force was to merge the regulatory operations of the Law Society and the Society of Notaries Public of BC. We are pursuing with the Notaries the possibility of such a merger. This work is still in the exploratory stage and a half day due diligence session is scheduled for December 2. This work is being led by me, Adam Whitcombe and Jeanette McPhee.

A third recommendation of the Task Force was to create a program to certify paralegals who have met specific, prescribed education and/or training standards. Lesley Small and Alan Treleaven are working on the Paralegal Certification project, and are developing a proposed certification framework and options. Factors being taken into account include, distinctions between certification and accreditation, the relationship to how the Law Society decides to accredit non-lawyer legal services providers, how to approve qualifying educational programs and lessons learned from the Washington State Bar's approach in developing its Limited License Legal Technician program. Lesley has visited and is consulting with the Law Society of Upper Canada staff on their experience with paralegal accreditation and specialist certification.

### ***Law Society as Insurer and Regulator Working Group***

The work of this group flows from the recommendations of the April 2013 report of the Rule of Law and Lawyer Independence Advisory Committee entitled "*Report of the Rule of Law and Lawyer Independence Advisory Committee on its Examination of the Relationship Between the Law Society as Regulator of Lawyers and as Insurer of Lawyers*" which was adopted by the Benchers in September 2013. The working group chaired by First Vice President Ken Walker, QC has met several times this year and has discussed in detail the options presented to it in the Report for analysis. It has debated, in particular, operational steps that could be taken to more transparently separate or distinguish the regulatory functions from the insurance functions of the Law Society. A report based on progress and areas of consensus reached has been prepared and pending the completion of certain related developments will be presented to the

Benchers for consideration at a future meeting. Leading the staff support for this project are Su Forbes, QC, Deb Armour and Jeanette McPhee, together with Michael Lucas.

### ***Implementation of Lawyer Support and Advice Project***

The Lawyer Support and Advice Project is a staff driven initiative started in October 2012 to fully examine and assess ways in which the Law Society can better support and advise lawyers in all areas relating to regulatory compliance including, in particular, the practice advice area. This work included the completion of a needs and preferences survey of lawyers throughout the province in 2013 and ultimately the preparation of a report, including recommendations, submitted to me in July 2013. This formed the basis for a plan of implementation including financial support being approved by the Benchers as part of the budget and fees approval process for 2014. Earlier this year we formed the Knowledge Management (KM) Working Group led by Taylore Ashlie our Director, Communication and KM.

The working group has started project plan development and is researching KM systems. In November, group representatives met with the Director of KM at the Lawson Lundell firm in Vancouver for a demonstration of their system. Further site visits are planned as part of the research phase. The group plans to have the project plan, including recommendations, finalized at the end of the first quarter of 2015.

### ***Support for the Law Firm Regulation Review***

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

Under the direction of the Executive Committee, staff have undertaken significant preparatory work over the past year in anticipation of the creation of a Bencher task force or working group in 2014 to formally pursue this area. To date this preparatory work has focused on compiling and examining models of law firm or entity regulation from other jurisdictions and collecting data and statistics regarding the demographics of individual and firm practice here in BC.

Due to the demands of the TWU matter in the first half of the year the formation of a task force for this review was delayed. The Law Firm Regulation Task Force has now been formed under the guidance of Herman Van Ommen, QC as Chair. The Task Force has had its initial meeting and has requested staff to generate a list of issues for

discussion over a planned series of meetings in 2015. Deb Armour and Michael Lucas are leading the staff support on this project.

### ***Review and Renewal of Staff Performance Management Process***

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

Our Human Resources group, in collaboration with the Performance Management Working Group and with extensive feedback from Leadership Council and Management Team, has developed a new performance management worksheet and a performance management toolkit for employees that is designed to foster greater clarity and consistency in staff performance evaluations, prompt better communication between employees and managers/supervisors, and foster greater confidence on the part of employees in the evaluation process.

To assist managers and employees with completing the worksheet and to help them conduct meaningful and constructive performance reviews, a “Performance Management Toolkit” was developed that includes:

- Reviewer “Tips” Sheet
- Employee “Tips” Sheet
- Performance Management Policy
- Guidelines on Writing Smart Goals
- Introduction of a Calibration Process (that will ensure that all managers apply a consistent set of standards when evaluating performance)

This new performance management system will be in place for all staff evaluations commencing in 2015.

## **2014 Annual Employee Survey**

Our ninth consecutive employee survey was conducted in November of 2014, focusing on employee engagement. I think you will find the results both interesting and encouraging on several fronts. As we have done in the past, Ryan Williams, President

of TWI Surveys Inc., the survey administrators, will attend a future Bencher meeting to provide an overview of the results and to respond to any questions.

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

## **Events and Conferences**

### **International Institute of Law Association Chief Executives (IILACE) – Annual Conference**

I recently returned from the IILACE Annual Conference in Cape Town. The conference was once again very successful and I will be presenting my full report at the Bencher meeting in January.

### **Federation of Law Societies of Canada**

I will also be attending meetings of the Governance Review Committee and the Standing Committee on Access to Legal Services in Toronto on November 30 and December 1. I will be providing an oral report on the highlights of those meetings.

# 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, articulated 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 justice.

### 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.

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### **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.

### Strategic Plan 2015 - 2017 Draft Implementation Plan

<i>Goals</i>	<i>Strategies</i>	<i>Initiatives</i>	<i>Group</i>	<i>Assigned To</i>	<i>Start</i>	<i>Status</i>
<b>GOAL 1: THE PUBLIC WILL HAVE BETTER ACCESS TO JUSTICE</b>	<b>Strategy 1-1: Increase the availability of legal service providers.</b>	Initiative 1–1(a) Continue the Legal Services Regulatory Framework Task Force and its work in 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.	Legal Services Regulatory Framework Task Force	Michael Lucas, Doug Munro	Ongoing	Letter has been sent to government requesting statutory amendment. Work will be done at staff level addressing legislative amendment issues. Once confirmation is given, newly constituted task force will begin examining mandate items 4- 6 of Task Force mandate.
		Initiative 1-1(b) Continue work on advancement of women and minorities including through the Justicia Program and the Aboriginal Mentoring Program.	Equity and Diversity Advisory Committee	Andrea Hilland	Ongoing	
	<b>Strategy 1-2: Increase assistance to the public seeking legal services</b>	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.	Access to Justice Advisory Committee or New Task Force	Doug Munro, Jeanette McPhee	early 2015	The program has been successful in Manitoba. However, the new task force will have to evaluate its applicability to circumstances in British Columbia. Expect this could be done by year-end.
		Initiative 1-2(b) Examine the Law Society's role in connection with the advancement and support of Justice Access Centres.	Access to Justice Advisory Committee	Doug Munro	Ongoing	This work has been ongoing for some time through the Access to Legal Services Advisory Committee. Next stages will involve consultations with government and examining the use of technology to facilitate JACs in rural locations. Policy discussions will likely complete in 2015.
		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.	New Task Force	Doug Munro	Preparatory Work can start early 2015, Task Force could aim to start September 2015	The topic is complex and engages political considerations as well as the Law Society's own positions in the past. At present, there is no work underway on this issue. A dedicated task force with a limited mandate and timeframe would be the most effective way to address this initiative.
<b>GOAL 2: THE PUBLIC WILL BE WELL SERVED BY AN INNOVATIVE AND EFFECTIVE LAW SOCIETY</b>	<b>Strategy 2-1: Improve the admission, education and continuing competence of students and lawyers</b>	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.	Lawyer Education Advisory Committee	Alan Treleaven Andrea Hilland/ Charlotte Ensminger	01/01/2015	LEAC has done some preliminary work and analysis and has made some preliminary recommendations. Expectation is that a report to the Benchers would be delivered this year.

<i>Goals</i>	<i>Strategies</i>	<i>Initiatives</i>	<i>Group</i>	<i>Assigned To</i>	<i>Start</i>	<i>Status</i>
		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.	Credentials Committee Lawyer Education Advisory Committee, and staff	Alan Treleaven, Michael Lucas, Lesley Small, Lynn Burns	early 2015	The Federation working group's second consultation report on "suitability to practise" should be released in the next month or so.
		Initiative 2-1(c) Conduct a review of the Continuing Professional Development program.	Lawyer Education Advisory Committee	Alan Treleaven, Charlotte Ensminger	2015(?)	Work not yet started. Expect this will be done in parallel with work on Initiative 2-1(a).
		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.	Practice Standards Department	Kensi Gounden	01/01/2015	Work on this is underway. It is expected to complete before the end of 2015.
		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.	Lawyer Education Advisory Committee	TBD	01/01/2016	Work logically follows from the results of Initiative 2-1(a) and so would commence following the report contemplated under that initiative.
	<b>Strategy 2-2: Expand the options for the regulation of legal services</b>	Initiative 2-2(a) Consider whether to permit Alternate Business Structures and, if so, to propose a framework for their regulation.	New Task Force	TBD	early 2016	The Law Society has done a preliminary report, and information has been gathered from Ontario, which is undertaking its own analysis, and the UK and Australia, which have permitted ABSs. Consideration about whether to permit ABSs should involve some consultation within and perhaps outside the profession. A complete analysis should reasonably be expected to take at least 18 months.
		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.	Law Firm Regulation Task Force	Lance Cooke (Deborah Armour, Kerryn Garvie, Michael Lucas)	Ongoing	Meetings have been scheduled to June, 2015. The Task Force intends to assess where it's at at that time.
		Initiative 2-2(c) Continue discussions regarding the possibility of merging regulatory operations with the Society of Notaries Public of British Columbia.	Chief Executive Officer/Executive Committee	Tim McGee, Adam Whitcombe	Ongoing	Preliminary discussions have supported the development of a draft Memorandum of Understanding currently being negotiated.

<i>Goals</i>	<i>Strategies</i>	<i>Initiatives</i>	<i>Group</i>	<i>Assigned To</i>	<i>Start</i>	<i>Status</i>
<b>GOAL 3: THE PUBLIC WILL HAVE GREATER CONFIDENCE IN THE RULE OF LAW AND THE ADMINISTRATION OF JUSTICE</b>	<b>Strategy 3-1: Increase public awareness of the importance of the rule of law and the proper administration of justice</b>	Initiative 3-1(a) Develop communications strategies for engaging the profession, legal service users, and the public in general justice issues.	Communications Department, Policy Department Rule of law and Lawyer Independence Advisory Committee	Taylor Ashley, Michael Lucas	early 2015	
		Initiative 3-1(b) Examine the Law Society's role in public education initiatives.	TBD	TBD	01/01/2017	
		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.	TBD	TBD	01/01/2017	
	<b>Strategy 3-2: Enhance the Law Society voice on issues affecting the justice system</b>	Initiative 3-2(a) Examine and settle on the scope and meaning of s. 3 of the Legal Profession Act.	Rule of Law and Lawyer Independence Advisory Committee	Lance Cooke, Michael Lucas	Ongoing	Current plan is to present this topic for discussion or further direction at the May Bencher retreat.
		Initiative 3-2(b) Identify strategies to express a public voice on the justice system, including public forums.	Communications Department	Taylor Ashley, Michael Lucas	early 2015	

# The Law Society of British Columbia



## **BC Code Appendix C: Real Property Issues**

December 29, 2014

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**Purpose of Report:**

**Recommendation for Change to BC Code**

**Prepared by:**

**Ethics Committee**



# Memo

To: Benchers  
From: Ethics Committee  
Date: December 29, 2014  
Subject: **Appendix C: Real Property Issues**

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At the December 5, 2014 Benchers meeting you passed changes to section 4, commentary [1(d)] and section 4, commentary [2(o)] of Appendix C. These changes involved changing “institutional lender” in section 4, commentary [1(d)] to “bank, trust company or credit union” and making a similar reference to “bank, trust company or credit union” in section 4, commentary [2(o)].

Since the December 5 meeting a number of lawyers have raised questions with us about the wisdom of these changes. The objections to the changes centre on a concern that Life Insurance Companies [e.g. Manulife etc.] and the “monoline” institutional lenders [e.g. First National, Street Capital, MCAP etc.] ought to be listed with banks, credit unions and trust companies as they comprise a large part of the residential mortgage market and can generally be distinguished from other private lenders by the fact that they allow the borrower to pick the lawyer who acts for both the borrower and the lender in a transaction. One lawyer has suggested that mortgage investment corporations which are typically full-fledged lending institutions, with offices, staff, expertise, experience and investors and with mortgage portfolios of over two hundred million dollars should also be legitimately considered to be institutional lenders in some circumstances for the purpose of the rules.

Based on the representations from lawyers about these issues, we ask that you rescind the recently changed provisions in Appendix C that refer to “bank, trust company or credit union” and restore the former wording in accordance with the attached draft amendments, so that we can have further consultation with the profession concerning this issue. When we have completed that consultation we expect to bring this issue before you once again.

Other changes that were made on December 5, 2014 in sections 2 and 4 do not need to be rescinded.

Attachments:

- Proposed amendments to Appendix C. [702746 & 702703]

[702667/2014]

## 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 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 ~~an 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,
- (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, or
- (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

### 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 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 an 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,
- (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, or
- (n) the drafting of a contract of purchase and sale.

[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.

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

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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.



# Memo

To: Benchers  
From: Finance and Audit Committee  
Date: January 6, 2015  
Subject: Enterprise Risk Management Plan – 2014 Update

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Attached is the 2014 update to the Law Society's Enterprise Risk Management (ERM) plan, which has been in place since 2011.

## **Background**

The ERM plan is a governance tool to accomplish the following:

- Identify the enterprise risks that can have an impact on the achievement of the Law Society's strategic goals and mandate.
- Determine the relative priority of those risks based on the likelihood they would occur and the extent of the impact on the organization.
- Manage the risks through mitigation strategies that are either in place or in progress, which assist in retaining, reducing, avoiding or transferring the risks.

The initial ERM plan was prepared by management, reviewed by the Audit Committee and presented at the December 2011 Bencher meeting. An update to the plan was then reviewed by the Audit Committee and presented at the March 2013 Bencher meeting.

## **2014 Update**

In June 2014, management reviewed the ERM plan, which included identifying any new risks, adding new mitigation strategies, and re-ranking the risk register. The Finance and Audit Committee reviewed the plan and provided feedback at their October and December meetings.

Attached is an ERM Executive Summary which highlights the top 10 strategic residual risks, along with the updated enterprise risk register, highlighting in red new strategies and controls put in place since the inception of the plan.

**Law Society of British Columbia**  
**Enterprise Risk Management – December 2014**  
**Executive Summary**

An enterprise risk is the threat that an event or action will adversely affect an organization's ability to achieve its strategic goals and mandate.

An Enterprise Risk Management Plan (ERM) is a governance tool which provides for the:

- Identification of enterprise risks that can have an impact on the achievement of the Law Society's strategic goals and mandate
- Determination of relative priority of these risks based on their potential to occur and the extent of the impact
- Management of the risks through mitigation strategies, retaining, reducing, avoiding or transferring the risks

To successfully manage these risks, a framework for risk identification, measurement and monitoring has been developed and is reported to the Finance and Audit Committee (and then to the Benchers) on an annual basis.

The process going forward will be:

- Leadership Council plays a central role, with the Chief Executive Officer being the main liaison per the Executive Limitations
- The ERM plan will be maintained through discussions by Leadership Council and related departments to refresh the Risk Schedule and related risk management efforts
- Should a risk change or a new risk occur, the escalation process will be to inform the appropriate Executive Team member, and/or the CEO, with a report out to the President (or Executive Committee) when required, subject to the Executive Limitations

The top ten strategic residual risks are noted below, with the full Risk Schedule attached as Appendix A.

<b>Summary of Major Strategic Residual Risks (top 10 risks)</b>		
<b>Category</b>	<b>Risk</b>	<b>ET Lead</b>
Regulatory	R6: Actual or alleged failure to fulfill the statutory duties under the <i>Legal Profession Act</i>	CEO
Regulatory	R5: Actual or alleged failure to appropriately sanction, or deal with a lawyer in a timely way	CLO
Staff and Work Environment	SW1: Loss of key personnel	CEO
Lawyers Insurance	LIF3: Significant theft under Part B of the LPL policy	Dir of Insurance
Financial	F2: Significant economic and/or financial market downturn	CFO
Operational	O1: Natural disaster	CEO
Operational	O3: Significant breach of confidential and/or FOIPPA information to members, employees and/or the public	Tribunal Counsel
Regulatory	R3: Conflict of interest event by Benchers or staff	CEO
Operational	O4: Unauthorized access to data and information	CIPO and CFO
Operational	O5: Loss of data and information	CIPO and CFO

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Enterprise Risk Management  
Risk Schedule by Risk Level – Updated December 2014  
Appendix A

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2011	Residual Risk Level 2014	Planned (In Progress) Strategies and Controls	ET Lead
REGULATORY	<b>R6:</b> Actual or alleged failure to fulfill the statutory duties under the Legal Profession Act	<ul style="list-style-type: none"> <li>• <b>Political:</b> direct government intervention in the Law Society authority and structures</li> <li>• <b>Reputational:</b> diminished public confidence along with a loss of reputation with the membership</li> <li>• <b>Financial:</b> costs and damages - possible litigation</li> </ul>		<ul style="list-style-type: none"> <li>• Bencher governance policies and training</li> <li>• Bencher Strategic Plan</li> <li>• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law</li> <li>• Crisis communication plan (note: applies to all risks)</li> <li>• Government relations</li> <li>• <b>Hearing panel composition and training</b></li> </ul>	N/A <sup>1</sup>			CEO
REGULATORY	<b>R5:</b> Actual or alleged failure to appropriately sanction, or deal with a lawyer in a timely way	<ul style="list-style-type: none"> <li>• <b>Political:</b> direct government intervention in the Law Society authority and structures</li> <li>• <b>Reputational:</b> diminished public confidence along with a loss of reputation with the membership</li> <li>• <b>Financial:</b> costs and damages -possible litigation</li> </ul>		<ul style="list-style-type: none"> <li>• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law</li> <li>• Bencher governance policies and training</li> <li>• S.86 Legal Profession Act (statutory protection against lawsuits and liability)</li> <li>• D &amp; O policy underwritten by AIG</li> <li>• Government relations</li> <li>• Ability to seek review and/or appeal to the BC Court of Appeal</li> <li>• <b>Enhanced role of Tribunal Counsel</b></li> <li>• <b>Hearing panel composition and training</b></li> </ul>	N/A <sup>2</sup>			CLO and Tribunal Counsel

<sup>1</sup> This risk statement was recently added to the risk schedule.

<sup>2</sup> This risk statement was reworded.

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				<ul style="list-style-type: none"> <li>• National Discipline standards</li> </ul>				
<b>STAFF AND WORKING ENVIRONMENT</b>	<b>SW1:</b> Loss of key personnel	<ul style="list-style-type: none"> <li>• <b>Operational:</b> service disruption as well as loss of corporate knowledge</li> </ul>		<ul style="list-style-type: none"> <li>• Succession planning and cross training</li> <li>• Compensation and benefit philosophy</li> <li>• Professional, leadership and skills development program</li> <li>• Review and renewal of management structure and working groups to provide leadership experience</li> <li>• Employee Recognition Program (RREX)</li> </ul>				CEO
<b>LAWYERS INSURANCE FUND</b>	<b>LIF3:</b> Significant theft under Part B of the LPL policy	<ul style="list-style-type: none"> <li>• <b>Reputational:</b> diminished public perception of the profession</li> <li>• <b>Financial:</b> significant investigation expense and settlement payments</li> </ul>		<ul style="list-style-type: none"> <li>• Proactive claims and risk management practices</li> <li>• Policy wording and limits</li> <li>• AIG insurance policy for Part B</li> <li>• Member Manual, including trust rules</li> <li>• Practice support and advice</li> <li>• Trust assurance audit program</li> <li>• Education and risk management advice to lawyers</li> <li>• Effective regulatory response (ie: custodianships, suspensions)</li> <li>• Appropriate reserve levels and Minimum Capital Test ratio</li> </ul>				Director of Lawyers Insurance Fund

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<b>FINANCIAL</b>	<b>F2:</b> Significant economic and/or financial market downturn	<ul style="list-style-type: none"> <li>• <b>Financial:</b> investment devaluation as well as losses of market value in the building and member revenue, member economic impact</li> </ul>		<ul style="list-style-type: none"> <li>• Investment policies and procedures (SIIP)</li> <li>• Quarterly reviews of investment performance and benchmarking</li> <li>• Investment managers and pooled funds</li> <li>• Annual operating and capital budgeting process</li> <li>• Monthly and quarterly financial review process</li> <li>• Long-term leases</li> <li>• Real estate expert advice and monitoring</li> <li>• Adequate reserve levels and <b>Minimum Capital Test</b></li> </ul>				CFO
<b>OPERATIONAL</b>	<b>O1:</b> Natural disaster	<ul style="list-style-type: none"> <li>• <b>Operational and financial:</b> injury of staff and/or building damage</li> <li>• <b>Operational:</b> service disruption</li> <li>• <b>Financial:</b> unexpected costs</li> </ul>		<ul style="list-style-type: none"> <li>• Fire and earthquake safety plan and training</li> <li>• Information technology backup plan</li> <li>• Building due diligence review</li> <li>• Insurance coverage</li> <li>• Off-site storage</li> <li>• <b>Off-site server location</b></li> <li>• <b>Annual manager training to back up floor wardens (both operations and fire/earthquake)</b></li> </ul>				CEO
<b>OPERATIONAL</b>	<b>O3:</b> Significant breach of confidential and/or FOIPPA information to members, employees and/or the	<ul style="list-style-type: none"> <li>• <b>Reputational:</b> diminished public perception of independence and possible loss of reputation with membership</li> </ul>		<ul style="list-style-type: none"> <li>• Information technology security policy, process and procedures</li> <li>• Member file and case file management procedures</li> <li>• Building security system and procedures</li> <li>• <b>FOIPPA training of staff</b></li> <li>• <b>Established Privacy Policies</b></li> <li>• <b>Enhanced FOIPPA training completed May 2014, and annual training in place</b></li> <li>• <b>Privacy report recommendations implemented,</b></li> </ul>			<ul style="list-style-type: none"> <li>• Privacy report recommendations, continuing to be implemented</li> </ul>	Tribunal Counsel

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Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2011	Residual Risk Level 2014	Planned (In Progress) Strategies and Controls	ET Lead
	public			including file security and procedures				
<b>REGULATORY</b>	<b>R3:</b> Conflict of interest event by Benchers or staff	<ul style="list-style-type: none"> <li>• <b>Political:</b> direct government intervention in the Law Society authority and structures</li> <li>• <b>Reputational:</b> diminished public perception of independence along with a loss of reputation with the membership</li> </ul>		<ul style="list-style-type: none"> <li>• Bencher governance policies and training</li> <li>• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law including investigations conducted by independent, external counsel where appropriate</li> <li>• <b>Enhanced role of Tribunal Counsel</b></li> <li>• <b>Hearing panel composition and training</b></li> </ul>			<ul style="list-style-type: none"> <li>• Governance committee made recommendations to the Benchers in 2014. Consideration of these recommendations is ongoing.</li> </ul>	CEO
<b>OPERATIONAL</b>	<b>O4:</b> Unauthorized access to data and information	<ul style="list-style-type: none"> <li>• <b>Reputational:</b> diminished public perception of independence and possible loss of reputation with membership</li> </ul>		<ul style="list-style-type: none"> <li>• Information technology security policy, process and procedures</li> <li>• Records management policies</li> <li>• Confidential shredding contract</li> <li>• <b>External website security review completed in 2012</b></li> <li>• <b>LEO document management security profiles</b></li> <li>• <b>Established New Privacy Policies</b></li> <li>• <b>Enhanced FOIPPA training completed May 2014, and annual training in place</b></li> <li>• <b>Privacy report recommendations implemented, including file security and procedures</b></li> </ul>				CIPO and CFO

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OPERATIONAL	O5: Loss of data and information	<ul style="list-style-type: none"> <li>• <b>Reputational:</b> diminished public perception of independence and possible loss of reputation with membership</li> <li>• <b>Operational:</b> service disruption</li> <li>• <b>Financial:</b> unexpected costs</li> </ul>		<ul style="list-style-type: none"> <li>• Information technology backup plan</li> <li>• Information technology security policy, process and procedures</li> <li>• Records management policies and LEO</li> <li>• Off-site Iron Mountain storage for closed files</li> <li>• Insurance coverage</li> <li>• Off-site storage</li> <li>• <b>Off-site server location</b></li> <li>• <b>External website security review - 2012</b></li> </ul>				CIPO and CFO
LAWYERS INSURANCE FUND	LIF8: Investment devaluation	<ul style="list-style-type: none"> <li>• <b>Financial:</b> insufficient reserves or surplus</li> </ul>		<ul style="list-style-type: none"> <li>• Investment policies and procedures (SIIP)</li> <li>• Investment managers and pooled funds</li> <li>• Quarterly reviews of investment performance</li> <li>• Appropriate reserve levels and <b>Minimum Capital Test ratio</b></li> </ul>				CFO
REGULATORY	R1: Adverse change in Provincial Legal Profession Act or government policy direction	<ul style="list-style-type: none"> <li>• <b>Political:</b> direct government intervention in the Law Society authority and structures as well as the possible loss of the right to self regulation</li> <li>• <b>Reputational:</b> diminished public perception of independence</li> </ul>		<ul style="list-style-type: none"> <li>• Bencher Strategic Plan</li> <li>• Meet KPMs and monitor Bellwether</li> <li>• Continuous review of regulatory model</li> <li>• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law</li> <li>• Bencher governance policies and training</li> <li>• Media monitoring</li> <li>• 2011 Regulatory review/plan in place</li> <li>• Government relations</li> </ul>			<ul style="list-style-type: none"> <li>• Federation - National admission standards being developed</li> <li>• Regulation and Insurance Working Group</li> </ul>	CEO

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				<ul style="list-style-type: none"> <li>National Discipline Standards</li> <li>Legal Profession Act Amendments – 2012</li> <li>Governance Committee – 2013</li> <li>Hearing panel composition and training</li> </ul>				
<b>OPERATIONAL</b>	<b>O2:</b> Failure (not due to natural disaster) in infrastructure and/or security of the building	<ul style="list-style-type: none"> <li><b>Operational and financial:</b> injury of staff and/or building damage</li> <li><b>Operational:</b> service disruption</li> <li><b>Financial:</b> unexpected costs</li> </ul>		<ul style="list-style-type: none"> <li>Information technology backup plan</li> <li>External property management firm</li> <li>Building due-diligence review</li> <li>Capital plan</li> <li>Building maintenance plan</li> <li>Insurance coverage</li> <li>Off-site storage and servers</li> </ul>				CFO and CIPO
<b>REGULATORY</b>	<b>R2:</b> Loss of a lawsuit alleging a failure of the Law Society to follow due process	<ul style="list-style-type: none"> <li><b>Political:</b> direct government intervention in the Law Society authority and structures as well as the possible loss of the right to self regulation</li> <li><b>Reputational:</b> diminished public perception of independence along with a loss of reputation with the membership</li> <li><b>Financial:</b> lawsuit defense and settlement costs</li> </ul>		<ul style="list-style-type: none"> <li>Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law</li> <li>Bencher governance policies and training</li> <li>S.86 Legal Profession Act (statutory protection against lawsuits and liability)</li> <li>D &amp; O policy underwritten by AIG</li> <li>Hearing panel composition and training</li> <li>Enhanced role of the Tribunal Counsel</li> <li>2011 Regulatory review/plan in place</li> <li>National Discipline Standards</li> </ul>			<ul style="list-style-type: none"> <li>Federation - National admission standards being developed</li> </ul>	CLO
<b>STAFF AND WORKING</b>	<b>SW3:</b> Labour action	<ul style="list-style-type: none"> <li><b>Operational:</b> service disruption</li> </ul>		<ul style="list-style-type: none"> <li>PEA contract</li> </ul>				CIPO and CFO

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ENVIRONMENT	(strike)			<ul style="list-style-type: none"> <li>• Cross training</li> <li>• Compensation and benefit philosophy</li> <li>• Human resource and operational standards, policies and procedures</li> <li>• Reward and Recognition Program (RREX)</li> </ul>				
STAFF AND WORKING ENVIRONMENT	<b>SW5:</b> Loss of a lawsuit on human rights issues by staff	<ul style="list-style-type: none"> <li>• <b>Operational and reputational:</b> diminished levels of staff performance</li> <li>• <b>Financial:</b> unexpected costs</li> </ul>		<ul style="list-style-type: none"> <li>• Human resource and operational standards, policies and procedures</li> <li>• Annual performance management and coaching process</li> <li>• Leadership development training</li> <li>• Legal counsel and advice</li> </ul>				CFO
LAWYERS INSURANCE FUND	<b>LIF1:</b> Inadvertent loss of LIF captive structure	<ul style="list-style-type: none"> <li>• <b>Financial:</b> requirement to restructure insurance program</li> </ul>		<ul style="list-style-type: none"> <li>• Legal and tax advice of appropriate structure</li> </ul>				Director of Lawyers Insurance Fund

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Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2011	Residual Risk Level 2014	Planned (In Progress) Strategies and Controls	ET Lead
<b>STAFF AND WORKING ENVIRONMENT</b>	<b>SW2:</b> Inability to recruit and/or retain skilled staff as an organization	<ul style="list-style-type: none"> <li><b>Operational:</b> service disruption as well as loss of corporate knowledge</li> </ul>		<ul style="list-style-type: none"> <li>• Compensation and benefits program</li> <li>• Market benchmarking</li> <li>• Human resource and operational standards, policies and procedures</li> <li>• Succession planning and cross training</li> <li>• Employee survey and action plans</li> <li>• Annual performance management and coaching process</li> <li>• Hiring practices and use of recruiting firms</li> <li>• Professional, leadership and skills development program</li> <li>• <b>Employee Survey staff working group</b></li> <li>• <b>Performance Management staff working group</b></li> <li>• <b>Development of the Employee Enrichment Program</b></li> <li>• <b>Rewards and Recognition Program - RREX</b></li> </ul>				CEO
<b>FINANCIAL</b>	<b>F4:</b> Unexpected escalation of operating costs	<ul style="list-style-type: none"> <li><b>Financial:</b> loss of revenue</li> </ul>		<ul style="list-style-type: none"> <li>• Executive limitations</li> <li>• Schedule of Authorizations</li> <li>• Annual operating and capital budgeting process</li> <li>• Monthly and quarterly financial review process</li> <li>• External property management firm expertise</li> <li>• Building maintenance plan</li> <li>• Building due-diligence review</li> <li>• Capital plan</li> </ul>				CFO
<b>REGULATORY</b>	<b>R7:</b> Loss of a lawsuit alleging wrongful	<ul style="list-style-type: none"> <li><b>Reputational:</b> diminished public perception of independence along with a loss of reputation with the</li> </ul>		<ul style="list-style-type: none"> <li>• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law</li> <li>• Appropriate credentialing procedures, including</li> </ul>			<ul style="list-style-type: none"> <li>• Federation - National admission standards being developed</li> </ul>	CLO and the Director of Education

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Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2011	Residual Risk Level 2014	Planned (In Progress) Strategies and Controls	ET Lead
	deprivation of lawyers (prospective) membership (livelihood)	membership <ul style="list-style-type: none"> <li>• <b>Financial:</b> costs and damages imposed through possible litigation</li> </ul>		<ul style="list-style-type: none"> <li>• investigations, assessment of applications and credentials hearings</li> <li>• Bencher governance policies and training</li> <li>• S.86 Legal Profession Act (statutory protection against lawsuits and liability)</li> <li>• D &amp; O policy underwritten by AIG</li> <li>• <b>Hearing panel composition and training</b></li> </ul>				and Practice
<b>REGULATORY</b>	<b>R4:</b> Failure of the Law Society to stay within jurisdiction and/or wrongful prosecution	<ul style="list-style-type: none"> <li>• <b>Political:</b> direct government intervention in the Law Society authority and structures</li> <li>• <b>Reputational:</b> diminished public perception of independence along with a loss of reputation with the membership</li> </ul>		<ul style="list-style-type: none"> <li>• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law</li> <li>• Bencher governance policies and training</li> <li>• <b>Hearing panel composition and training</b></li> <li>• <b>Enhanced role of the Tribunal Counsel</b></li> </ul>				CLO and Tribunal Counsel
<b>FINANCIAL</b>	<b>F3:</b> Loss of tenants	<ul style="list-style-type: none"> <li>• <b>Financial:</b> losses of market value in the building and lease revenue</li> </ul>		<ul style="list-style-type: none"> <li>• Long-term leases, effect early renewals when appropriate</li> <li>• External property management firm expertise</li> <li>• Building maintenance plan</li> <li>• Building due-diligence reviews</li> <li>• Capital plan</li> <li>• Annual operating and capital budgets</li> </ul>				CFO
<b>FINANCIAL</b>	<b>F6:</b> Lower member base	<ul style="list-style-type: none"> <li>• <b>Financial:</b> loss of revenue to the Law Society</li> </ul>		<ul style="list-style-type: none"> <li>• Bencher Strategic Plan</li> <li>• Research into profession demographics</li> </ul>				CEO

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STAFF AND WORKING ENVIRONMENT	SW4: Unhealthy or unsafe conditions	<ul style="list-style-type: none"> <li><b>Operational and reputational:</b> injury to staff and/or diminished levels of staff performance</li> <li><b>Operational:</b> service disruption</li> </ul>		<ul style="list-style-type: none"> <li>Human resource and operational standards, policies and procedures</li> <li>First Aid attendants</li> <li>Fire and earthquake safety plan and training</li> <li>Property management firm expertise and building maintenance plan</li> <li>Workers Compensation coverage</li> <li><b>Health and Safety Committee</b></li> </ul>				CFO
LAWYERS INSURANCE FUND	LIF7: Lawsuit for “bad faith” failure to settle / denial of coverage	<ul style="list-style-type: none"> <li><b>Reputational:</b> loss of reputation with the public or profession</li> <li><b>Financial:</b> exposure to excess damage award</li> </ul>		<ul style="list-style-type: none"> <li>Established and documented quality control (Claims Manual)</li> <li>Protocol to avoid “bad faith” losses</li> <li>S.86 Legal Profession Act (possible statutory protection against lawsuits and liability)</li> <li>E&amp;O insurance policy underwritten by Markel</li> <li>Appropriate reserve levels and Minimum Capital Test ratio</li> </ul>				Director of Lawyers Insurance Fund
LAWYERS INSURANCE FUND	LIF5: Significant error in advice to insured or payment (non-payment) of individual claim	<ul style="list-style-type: none"> <li><b>Financial:</b> unnecessary payments</li> </ul>		<ul style="list-style-type: none"> <li>Established and documented quality control (Claims Manual)</li> <li>E&amp;O insurance policy underwritten by Markel</li> </ul>				Director of Lawyers Insurance Fund
FINANCIAL	F1:	<ul style="list-style-type: none"> <li><b>Reputational:</b> loss of</li> </ul>		<ul style="list-style-type: none"> <li>Internal controls</li> </ul>				CFO

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Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2011	Residual Risk Level 2014	Planned (In Progress) Strategies and Controls	ET Lead
	Misappropriation of Law Society financial assets	reputation with the membership <ul style="list-style-type: none"> <li>• <b>Financial:</b> loss of revenue, increased fees</li> </ul>		<ul style="list-style-type: none"> <li>• Schedule of authorizations</li> <li>• External audit</li> <li>• Monthly and quarterly financial review process</li> <li>• Crime insurance</li> </ul>				
LAWYERS INSURANCE FUND	LIF6: Error in actuarial advice	<ul style="list-style-type: none"> <li>• <b>Financial:</b> insufficient reserves</li> </ul>		<ul style="list-style-type: none"> <li>• External actuarial</li> <li>• External auditor reviews of actuarial methodology and numbers</li> <li>• Monitoring of LPL insurance trends and risks</li> <li>• Appropriate reserve levels and <b>Minimum Capital Test ratio</b></li> </ul>				Director of Lawyers Insurance Fund
LAWYERS INSURANCE FUND	LIF2: Loss of third-party lawsuit against captive, insurance operations or in-house counsel	<ul style="list-style-type: none"> <li>• <b>Financial:</b> exposure to compensatory damage award</li> </ul>		<ul style="list-style-type: none"> <li>• Established and documented quality control (Claims Manual)</li> <li>• S.86 Legal Profession Act (possible statutory protection against lawsuits and liability)</li> <li>• E &amp; O insurance policy underwritten by Markel</li> </ul>				Director of Lawyers Insurance Fund
LAWYERS INSURANCE FUND	LIF4: Catastrophic losses under Part A of the LPL policy	<ul style="list-style-type: none"> <li>• <b>Financial:</b> significant investigation expense and settlement payments</li> </ul>		<ul style="list-style-type: none"> <li>• Policy wording on limits and “related errors”</li> <li>• Proactive claims and risk management practices</li> <li>• Monitoring of LPL insurance trends and risks</li> <li>• Education and risk management advice to lawyers</li> <li>• Appropriate reserve levels and <b>Minimum Capital Test ratio</b></li> <li>• <b>Stop-loss reinsurance treaty underwritten by ENCON</b></li> </ul>				Director of Lawyers Insurance Fund

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<b>FINANCIAL</b>	<b>F5:</b> Inaccurate or untimely financial reporting	<ul style="list-style-type: none"> <li>• <b>Reputational:</b> loss of reputation with the membership</li> <li>• <b>Financial:</b> loss of revenue or increase in costs</li> <li>• <b>Operational:</b> poor decision-making</li> </ul>		<ul style="list-style-type: none"> <li>• Internal controls</li> <li>• Executive limitations</li> <li>• Annual external audit</li> <li>• Investment policies and procedures (SIIP)</li> <li>• Quarterly reviews of investment performance and benchmarking</li> <li>• Annual operating and capital budgets</li> <li>• Monthly and quarterly financial review process</li> </ul>				CFO
<b>REGULATORY</b>	<b>R8:</b> Admission decisions are not reflective of the character, fitness, and competencies of a prospective lawyer	<ul style="list-style-type: none"> <li>• <b>Political:</b> possible loss of the right to self regulation</li> <li>• <b>Reputational:</b> diminished public perception of independence</li> <li>• <b>Financial:</b> costs and damages imposed through possible litigation</li> </ul>		<ul style="list-style-type: none"> <li>• Law Society Admission Program</li> <li>• Credentialing standards and procedures</li> <li>• <b>Hearing panel composition and training</b></li> <li>• <b>Enhanced role of Tribunal Counsel</b></li> </ul>			<ul style="list-style-type: none"> <li>• Legislative amendment to allow Law Society appeals of prior decisions</li> <li>• Federation - National admission standards being developed</li> </ul>	Director of Education and Practice

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Likelihood (Rating)	Estimated Chance of a Single Occurrence Within Five Years
High (4)	80 - 100%
Medium-High (3)	60 – 80%
Medium (2)	40 – 60%
Low (1)	0 – 40%

Consequences (Rating)	Financial	Operational	Reputational	Political
	Consequences	Consequences	Consequences	Consequences
High (5)	A material loss of financial assets or cash: > \$750,000 in general, or 200% of gross case reserves/expected value for LIF claims, or >20% negative return for LIF investments	A substantial proportion of operations cannot be restored in a timely manner, essential services are unable to be delivered, and/or there is a significant loss of corporate knowledge that will result in the under-achievement of the Law Society's mandate	An irreparable loss of member and stakeholder trust in, or severe public criticism at a national and provincial level that brings disrepute to the reputation of, the Law Society	Change in the mandate and/or the imposition of a new governance as well as management structure for the Law Society is enacted by the government
Medium-High (4)	A substantial loss of financial assets or cash: \$500,000 - \$750,000 in general, 190% of gross case reserve expected value for LIF claims >15% negative return for LIF investments	Part of the operation cannot be restored in a timely manner, with some disruption to essential services, and/or a loss of corporate knowledge that can impact on the ability to render key decisions for the Law Society in the short to medium term	A substantial loss of member and stakeholder trust in, or sustained public criticism at a provincial level of, the Law Society which will be difficult to remedy over the short to medium term	The Law Society is susceptible to a potential change in government rules and legislation with implications for its authorities and/or an imposed change in the management structure

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Medium (3)	<p>A moderate loss of financial assets or cash: \$250,000 - \$500,000 in general 180% of gross case reserves/expected value for LIF claims 10% negative return for LIF investments</p>	<p>Some parts of the operation will be disrupted, but essential services can be maintained, and/or there is some loss of corporate knowledge that warrants management attention but the implications for which are limited to select projects or processes</p>	<p>Some loss of member and stakeholder trust in, and local public criticism over a short period of time of, the Law Society which warrants management attention</p>	<p>A change in Provincial direction affecting the operations of the Law Society is likely, but can be addressed within the current governance and management structure</p>
Low-Medium (2)	<p>A manageable loss of financial assets or cash: \$100,000 - \$250,000 in general 170% of gross case reserves/expected value for LIF claims 5% negative return for LIF investments</p>	<p>Some inefficiency will exist, leading to increased cost and/or time in the provision of essential services, and/or a loss of corporate knowledge that may result in minor disruptions in specific projects or processes</p>	<p>A relatively minor setback in the building of member and stakeholder trust in, or "one off" unfavorable local public attention put toward, the Law Society</p>	<p>Minor, non-routine changes may occur in regulation of relevance, and the nature of guidance that is provided by the government, to the Law Society</p>
Low (1)	<p>A relatively immaterial loss of financial assets or cash: &lt; \$100,000 in general 160% of gross case reserves/expected value for LIF claims &lt;5% negative return for LIF investments</p>	<p>No measurable consequence</p>	<p>No measurable consequence</p>	<p>No measurable consequence</p>

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		Consequences				
		Low 1	Low-Medium 2	Medium 3	Medium-High 4	High 5
Likelihood						
High	4	Green	Yellow	Red	Red	Red
Medium-High	3	Green	Yellow	Yellow	Red	Red
Medium	2	Green	Green	Yellow	Yellow	Red
Low	1	Green	Green	Green	Yellow	Yellow



## **CEO's Report to the Benchers**

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January 22, 2015

Prepared for: Benchers

Prepared by: Timothy E. McGee

## **Introduction**

This is my first CEO's report to the Benchers for 2015 and I would like to wish you all the very best for the New Year. I would also like to extend a warm welcome on behalf of all the staff to our new President Ken Walker, QC and to both our new and returning Benchers. We look forward to working with all of you in the coming year.

## **Operational Priorities for 2015**

In my first report each year I present management's top five operational priorities for the ensuing year. These priorities, which for 2015 are set out below, have been developed in consultation with the Leadership Council and have been discussed with President Walker and presented to the Executive Committee.

I always emphasize that these priorities do not derogate from our day-to-day responsibility to perform all of our core regulatory functions to the highest standards. However, in each year there are certain items that require extra attention and focus to ensure success. The top five operational priorities (in no particular order) for management in 2015 are as follows:

### **Knowledge Management Project – Next Phase**

In 2013, the Lawyer Support and Advice Working Group (LSAWG) evaluated current practices in lawyer support and advice at the Law Society and brought forward four recommendations as part of their final report. Building on the work done by the LSAWG, the Knowledge Management Working Group is charged with implementing those recommendations, as part of the development and implementation of an organization-wide knowledge management system.

Knowledge management involves capturing and sharing knowledge with the goal of making that knowledge easily accessible through a range of distribution methods. Knowledge includes facts, information, expertise and skills, as well as the theoretical or practical understanding of a subject, acquired by a person through experience or education.

The mandate of the Knowledge Management Working Group is to develop and implement a knowledge management system that supports the mandate of the Law Society by:

- facilitating the aggregation and dissemination of practice support and advice information for lawyers;
- ensuring knowledge and information shared internally and externally is easy to find, reliable, consistent and up-to-date;
- using various means to share knowledge, including technology and interpersonal communication;
- providing efficiency in accessing and delivering knowledge both within and outside the organization;
- supporting continuous learning and growth by sharing knowledge and experience;
- fostering and maintaining a culture of sharing knowledge that crosses departmental boundaries;
- promoting innovation across the organization by sharing knowledge and encouraging dialogue and collaboration;
- evaluating, maintaining and measuring outcomes to ensure ongoing benefits to the Law Society.

One of the innovative ideas being considered is the establishment of an internal LSBC “Google” style search capability to provide a portal to a wide range of information and knowledge which we possess.

### **Skills Enrichment Project**

We are committed to a process of continuous improvement for our staff in respect of everything we do at the Law Society. As I have said to the Benchers on many occasions the staff are our single biggest asset and ensuring that we support them in being able to perform their roles at a high level means investing in skills development that is proactive, relevant and universal.

In this regard, it is no mystery that computer literacy and being able to fully exploit the benefits of technology in everything we do will enhance performance. For this reason, we are going to put a special focus on establishing and supporting attainment of a new, high minimum standard of computer/ technical literacy for all our staff. We recognize that this may be a daunting direction for some staff. However, the time is now to help set everyone on the path to attaining a universally

high standard of skills in these areas. To do this we will establish a working group and develop a plan which will set as one of its goals a cooperative, supportive approach so that, no matter what an individual's current skill level may be, they will be supported in achieving a new higher competency level within an achievable timeframe.

### **Public Issues Voice Working Group**

One of the goals in our new 3 Year Strategic Plan is to be a more effective voice in the public domain on issues and topics relating to our mandate and to our regulatory activities in the public interest. In 2015 the Bencher retreat will focus on the scope of section 3 (a) of the Legal Profession Act and we are also looking at how we can reshape our public outreach and media relations to better address this goal.

One thing we learned from engaging our staff during interactive briefing sessions last year to ensure that they were kept informed about the issues surrounding the TWU matter was the depth of knowledge and interest of our staff on a wide range of public interest issues. When this topic was canvassed more recently among managers and through informal surveys we received a very strong willingness to help identify and assess issues which could help inform and support our strategic initiatives. To tap into this and to take advantage of the strong connection to our strategic plan we will form a staff working group of those most interested and provide a mechanism to share their insights and suggestions.

### **Values and Code of Conduct**

Upon joining the Law Society, all employees agree to adhere to certain standards of conduct. But we are aware that since those standards were established we have seen shifts in our demographic profile and changing workplace habits and expectations. With those changes we believe there is a need to refresh and restate the values and standards under which agree to serve as Law Society staff and to ensure that this common bond is understood and enshrined in our mission statement and a code of conduct. The interest level and engagement in this work will be very broad and we will need to ensure we stay focused so that we are all prepared to be accountable for what we produce.

## **E- Voting and Webcasting**

The recommendations of the Governance Committee and our recent experience with the Special General Meeting and the Referendum have underscored the importance of ensuring that implementing the e-voting and webcasting capabilities is done smoothly and with a high degree of reliability and resiliency. The concepts are simple and the underlying technology is well tested. What is not simple nor well tested is the roll out to our more than 13,000 members, a portion of whom we know are not regularly connected online or, in fact, connected at all. Issues such as voting security, verification and audio/visual quality across receiving devices will need to be addressed. We will make it a special focus in 2015 to anticipate all the implementation issues and minimize any risk factors to the maximum extent possible.

## **2014 Employee Survey**

Our ninth consecutive employee survey was conducted in November of 2014. We had a record high response rate of 88% for the survey and I think you will find the results both interesting and encouraging on several fronts. Ryan Williams, President of TWI Surveys Inc., the survey administrators, will be at the meeting to provide an overview of the results and to respond to any questions.

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

## **Communications Strategy – Legal Services Regulatory Framework Task Force**

A communications strategy has been developed to advise members that we are seeking a legislative amendment in order to credential new categories of legal service providers. Some of the items we are working on include:

- A presentation that includes key messages from the report for presentation at local Bar Association meetings;
- A series of posts on the President's Blog; each blog post will be tweeted;
- A feature article and CEO's Perspective column in the March 2015 Benchers' Bulletin; and
- Media will be approached for opportunities for stories or op-ed pieces.

## **Paralegal Certification Project Update**

Lesley Small and Alan Treleaven continue to work with Carmen Marolla and Rose Singh of the BC Paralegal Association on the Certification of Paralegals project. The focus of the last meeting included these topics:

- Qualification issues
  - Education standards
  - Practical experience requirements
  - Grand parenting of current paralegals
- CPD requirement
- Renewal requirement
- Project consultation and communication
- Project timeline (to be set at the next meeting on February 17)

## **Events and Conferences**

### ***2014 International Institute of Law Association Chief Executives (IILACE) - Annual Conference***

Attached to this report as Appendix "A" is my report on the highlights of the 2014 IILACE Annual Conference. I would be pleased to provide additional information or answer any questions you might have about the conference at any time.

### ***Federation Governance Review Committee - Provincial Law Society Visits***

As I noted in a recent email to Benchers, the Federation of Law Societies of Canada has created a Governance Review Committee (of which I am a member) to look at all aspects of the governance of the Federation including its relationship to member Law Societies. This is a big project which is being tackled in phases. Phase 1 is a series of field visits to each of the Law Societies in the January to March timeframe

to better introduce the governance review process and to seek the input and views of member Law Societies on some of the preliminary issues under review. The process being followed across the country is for the Federation delegation to meet with the equivalent of our Executive Committee i.e. some sub-group of the larger Benchers group, to get the process underway.

The Federation delegation will be meeting with our Executive Committee (and to provide additional representation, while being mindful of the need to keep the size of the meeting manageable for this purpose, four additional Benchers namely, Lee Ongman, Pinder Cheema, QC, Lynam Doerksen and Craig Ferris, QC) on Thursday, January 29 from 10:00 am – 1:00 p.m. Included in my recent email is an information package for the meeting. Please take a moment to review the package and pass along any questions or comments you may have at this time.

I should add that while this is the first step in consulting with Law Societies across the country it definitely will not be the last. A survey of all Benchers across the country is being planned and additional milestone briefings and progress reports are being scheduled to ensure additional meaningful opportunities for input and feedback.

### ***Federation CEO's Strategic Issues Roundtable***

This last week I organized and hosted a meeting of all Federation CEO's at the Law Society, with the purpose of reviewing key initiatives under our respective strategic plans, including the timing and prospects for implementation in 2015.

In addition to identifying the key themes that have an impact on our work, we also examined the key issues in regulation, and the impact these could have if they develop in law societies without coordination or consistency. The key issues include:

- Entity regulation;
- ABS's;
- Risk factor analysis as the basis for regulation;
- Access to justice;
- Practice audits, and
- The broad topic of proactive regulation.

We concluded that development of these issues, which in many ways amount to a redesign of our regulatory model, can have a significant impact on the public

interest, the profession, and the regulators in each jurisdiction. All of us felt that it is important to be aware of how these are developing in each jurisdiction, and to consider whether and where collaboration among interested organizations would be a preferable way to proceed.

There is considerable scope for the CEO's to work as a group to coordinate work in these areas (and possibly others), and all participants recognized the need to develop a continuing forum to work together.

Timothy E. McGee  
Chief Executive Officer

# **International Institute of Law Association Chief Executives - 2014 Annual Conference – Cape Town**

## **Conference Highlights**

### **Delegates and Program**

This year's conference held in Cape Town from November 19 - 22, 2014 brought together the Chief Executive Officers of law regulatory and representative bodies from over 30 countries including Canada, USA, England, Ireland, Scotland, Australia, New Zealand, Germany, Norway, Sweden, Denmark, Africa, Hong Kong, Korea and Japan. In all there were over 30 delegates to the conference who collectively regulate and/or represent approximately 1.6 million lawyers around the world.

The stated purpose of ILLACE is to create a forum for a small group of executives to discuss important topics for the regulation and advocacy of the profession and to compare notes on operational and governance matters. Once again the conference program delivered on this goal. I have set out below highlights from four of the topics covered in the program. I would be pleased to expand on these topics or discuss the remainder of the program at your convenience.

### **The Successful Organization**

The first day of the conference was dedicated to management topics and was split between presentations and discussion on building resilience and effectiveness both on a personal level as CEO and for our organizations as a whole. The best insights from my perspective centered on a model of leadership which was presented by an international expert in organizational behavior.

The discussion began with a true story about a new CEO in an organization who in the first few weeks on the job convened a meeting to get to know some of the staff. As she settled into a chair she commented casually to the group that the room seemed a little dark. Later in the week she returned to that room for another meeting to find it was unavailable as it was in the process of being torn up so a whole new lighting system could be installed followed by a new white paint job. When she asked what was going on she was told by the workers "The new CEO said this all had to be changed " Not thinking this was the new CEO, the workers confided "What a waste of time and money, whoever that new person is sure isn't very smart". The story illustrated the starting premise for the discussion, which was, as a leader you have power and

influence which must be understood on the right terms by others and managed effectively by you.

In identifying some of the key characteristics of highly functioning organizations we heard that it is imperative to look at the nature of the relationships among staff within the organization. In doing so we were shown data which showed that the way people interact in the workplace can be described in 4 basic ways moving from dysfunctional to highly effective that is, in conflict with, dependent upon, independent of ,and working in partnership with, your colleagues. Good leaders and particularly CEOs need to be moving people to the right, that is, towards partnering. It should not be left to chance and therefore requires a great performance management system and there must be accountability at the top to make it happen. The best take away for me from the session was the following advice for CEOs regarding staff: “Give your full attention when you are present. Be visually and 100% connected. The biggest gift you can give your organization and staff is your full attention and because you have the power to do so, don’t squander the opportunity.”

## **Legal Education at a Crossroads – New Models for a New Era**

This was a fascinating wide ranging discussion. We heard from CEOs from large jurisdictions such as the Solicitors Regulatory Authority in London where there are more solicitors practicing than there are lawyers in all of Canada and from smaller jurisdictions such as Cape Province, South Africa where a whole new cohort of black South Africans are seeking legal education. Among a long list of highlights for me some information stood out:

- The cost of legal education in the US has reached a tipping point. The average debt of students entering the profession is between US\$100K - \$150K and law school applications are down 30% over the past 3 years. Deans are having to decide whether to keep entry standards or drop them to increase numbers due to pressure from University administrations;
- In the UK big firms are engaged in a highly competitive search for global talent of a specific nature. They are not waiting for the “system” to help them. More than 60 firms now educate and train over 1000 “law students” a year and provide them with skills that are immediately in demand;
- In the UK law schools are now increasingly asking law firms to describe the types of skills the firms need and what sort of education they will look for in their new hires. Previously, it was the other way around, that is, the law firms were asking the law schools if they would accommodate their needs;

- Some jurisdictions are looking at new models which offer one type of law degree for those who intend to practice and another for those who do not;
- Some jurisdictions are marketing law programs on the basis of producing a well balanced professional who can enter into any position where knowledge of law and other skills such as accounting would be a strong asset rather than just practicing law.

One remark that I thought captured the common tension in jurisdictions around the world regarding the nature of legal education and its relation to practice was this: “There have been repeated calls for academia to produce practice ready graduates. However, law schools cannot do this; instead they need to produce graduates who are ready to learn to practice”.

## **Legal Services at a Crossroads – What is the Practice of Law?**

This discussion was led off by a panel discussion of CEOs from the UK, the US and Canada. There were 3 common trends in those jurisdictions ; non-lawyers are increasingly filling not just un-met demand for legal services but core demand as well; regulators are trying to determine whether they should “lead, follow, or get out of the way” relative to this changing landscape (the response seems to be “all of the above” but there isn’t consistency across jurisdictions); and the cost of legal services is increasingly becoming the main determinant of why clients are seeking alternatives to lawyers.

The use of the term “non-lawyer” is rapidly falling out of use in the US and the UK because recognized and accredited legal services providers with their own monikers are becoming well known such as Limited License Technicians and Paralegals. In effect these providers are not even considered non-lawyers; instead they are an extension of the legal profession and increasingly an integral part of the legal services market.

In focusing on the future prospects for the practice of law there was a consensus that due to the extensive commoditization of both legal content and process the growing opportunity for lawyers is to differentiate on the basis of advice, counsel and advocacy on more complex matters. This specific value added approach for lawyers would be further complemented by the high ethical standards and professionalism which all lawyers swear to uphold.

Interestingly, at the end of the discussion and debate around new entrants and the changing market for legal services no one could recall if the phrase “access to justice” had been used. We agreed that this was indicative of a subtle shift occurring towards

seeing the value of new entrants and changing delivery mechanisms for legal services as being good for all consumers and not just those who have unmet demands.

## **Ethics and Professional Responsibility - Contemporary Perspectives on Core Values**

This is a standing topic for all ILLACE conferences. To provide some continuity in our annual discussion we survey ILLACE members and others outside the legal profession. This year the survey showed that most believe the core values of the legal profession are under greater pressure now than in previous years because of shifting roles for lawyers in a changing marketplace for legal services.

We reviewed a number of specific cases drawn from a variety of countries which illustrated difficult moral and/or conflict of interest issues for lawyers. The cases were chosen to illustrate where lawyers made good choices when faced with difficult issues and where they made bad choices. As a group we tried to “unpack” the decisions and look at all aspects of what had gone into the making of those decisions e.g.; age, size of firm, nature of work, access to advice, legal education, personal circumstances, etc.

As expected, there was no magic formula for how to always make the right or better choice when faced with a moral/conflict of interest dilemma. However, the sense was, at least from the actual cases we examined, that some lawyers viewed the mere existence of the dilemma as a personal failing or a problem which they were uncomfortable or embarrassed to share. This led to a discussion around the benefit of programs in other fields which are designed to remove the stigma of talking about issues and perhaps revealing some personal doubts, in the interest of dealing more effectively with the underlying problem.

All of this discussion took place on Robben Island where Nelson Mandela had been imprisoned for a quarter century. In fact, we had been given special permission to hold this discussion in the very room on Robben Island where F.W. de Klerk met in secret discussions with the ANC and agreed to the final terms of Mandela’s release. And the rest, as we all know, is history.



## An Update on the National Admission Standards project

The National Admission Standards Project Steering Committee is developing a plan to move forward with assessment of the competencies required of new lawyers and Quebec Notaries. The plan arises from the meetings held with law societies in the first half of 2014 to discuss options for assessing the competencies in the National Competency Profile and to learn first-hand what issues will be important to address in an assessment strategy. The meetings revealed a broad consensus amongst the law societies that there is value in a defensible and nationally harmonized assessment regime.

While the focus of the project to date has been on the identification and assessment of the competencies required of applicants, appropriately focused professional training (e.g. bar admission programs and preparation for assessment) and experiential learning (e.g. articling and the Law Practice Program in Ontario) are also essential elements of national admission standards. Coordination with the Common Law Degree approval process and the National Committee on Accreditation (“NCA”) process will also be important. The National Admission Standards project continues to take a step-by-step approach in addressing these elements and no step will be overlooked.

Based on the feedback obtained through the Federation’s cross-country engagement tour, the assessment plan will incorporate the following principles:

- The assessment scheme will be nationally developed and administered.
- The focus will be on skills, consistent with the prioritization of the competencies derived from the survey undertaken to validate the Competency Profile and the advice of our consultant, ProExam, working in consultation with the Technical Advisory Committee. The decision to focus on skills is also consistent with what we heard from law societies: that the area of greatest concern for new members of the profession is practice skills.
- The knowledge competencies will form the contextual basis for the assessment of skills and the performance of tasks. A separate exam covering the knowledge competencies included in the National Requirement is not contemplated.
- The assessment scheme will include written and performance-based testing, which may be live, online or both.
- The assessment program will take into account the possibility that not all jurisdictions may be ready to commit at the same time, and that the project may proceed with those jurisdictions ready to move forward.

The Steering Committee is preparing a Business Plan that will provide a framework for the development of a national assessment strategy. The Plan will be shared with law societies early in 2015.

The Business Plan will flesh out the approach to assessment that emerged from our engagement with law societies. It will outline the technical steps required to move from the competencies to a full-blown assessment model. The assessment plan will have multiple components that build upon each other, and can be phased in over time as necessary. This incremental approach will allow us to be flexible and apply resources realistically from both a time and cost perspective.

The assessment plan will take into account the significant change that will be required to make a national assessment tool work with existing bar admission programs. It will address the other elements of national admission standards that are closely related to assessment, including experiential learning, professional training, the Common Law Degree approval process and the NCA process. The transition planning required to help law societies move to a national assessment regime will be an important part of the work described in the plan. Cost considerations and a governance structure that will ensure law society input will also be included.

The time line for moving to a nationally harmonized assessment scheme will be aggressive but also realistic. The precise timing for each step in the process will be finalized once we have the Business Plan and can coordinate with law societies on the transition planning required to implement the first steps in the assessment regime. We hope to be able to commence implementation of the national assessment in the latter part of 2017.

As we move from concepts and consultation to concrete action, we will be asking each law society to commit to the framework and steps outlined in the Business Plan. Moving to a national assessment model will involve significant change. As with mobility, it may be that not all law societies will be ready to move forward at the same time, and a staggered implementation process is possible.

What was clear from our meetings is that in developing a national assessment strategy we can and should rely on the extensive experience and resources of the law societies. Working collaboratively with law societies will allow us to leverage the in-depth knowledge and far-reaching experience with performance-based assessment and take advantage of many existing tools and expertise, including exam banks and advances in online assessment.

The second component of national admission standards is a common good character standard. A consultation report on the standard was circulated to law societies and other stakeholders in the fall of 2013 to solicit feedback on a number of important policy issues. Following the review of the feedback to the first consultation report, the Good Character Working Group comprised of law society policy and credentialing counsel concluded that additional consultation would be valuable. A second consultation report will be circulated to law societies soon for further feedback.

Dramatic changes in legal education and training in Canada are taking place. Significant numbers of students now enter law society admission programs with a law degree from outside Canada. Lakehead University's new model of legal education, in which practice skills are integrated into the curriculum, is a forerunner for other programs. We are beginning to see changes in law school curriculum lining up with this new model. Innovations in bar admission training and experiential learning programs are emerging. The move to a nationally consistent, defensible competency assessment regime is consistent with these changes and is critical to our duty as regulators of the legal profession in Canada to protect the public.

A national project of this scope and level of transformative change requires extensive consultation and can be slow going at times. While we have moved forward significantly, the pace of advancement has not always been even. As we launch the implementation phase of the project, we anticipate that the project will progress at a steadier pace.

These are exciting times for law societies and those involved in admissions, and we look forward to our continued work with each regulator to navigate the change together.



# Memo

To: The Benchers  
From: Deborah Armour, Chief Legal Officer  
Date: January 20, 2015  
Subject: National Discipline Standards

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## Background

1. The National Discipline Standards were developed as a Federation of Law Societies of Canada initiative to create uniformly high standards for all stages of the processing of complaints and disciplinary matters in law societies.
2. The Standards address timeliness, openness, public participation, transparency, accessibility and training of adjudicators and investigators.
3. The Standards are aspirational. To date, none of the law societies have met all of the standards.
4. At the meeting on May 10, 2014, the Benchers approved the adoption and implementation of the National Discipline Standards.
5. Standard 9 requires me to report to you annually on standards 3 – 5 and quarterly on 6 – 8. I provide those reports below.

## Report on LSBC Progress

6. LSBC progress on the Standards is found in Attachment 1.
7. We continue to make steady improvement. When I reported last May, we were meeting 15 of the 21 Standards. As of year-end, we are meeting 17.
8. Where we continue to fall short:
  - a. Commencement of hearings within 9 months of authorization (Standard 7) – The Standard is 75% and we are at 62% (up from 40% in May).

- b. Decisions rendered within 90 days of last submissions (Standard 8) – The Standard is 90% and we are at 71% (up from 69% in May).
- c. Ability to share information about lawyers with other Law Societies *in a manner that protects solicitor/client privilege* (Standard 16) – Rule 2-15 requires us to provide information to another law society investigating one of our members, but it is not clear that solicitor/client privileged information must be protected in the hands of the recipient. We will seek a rule amendment to make that clear.
- d. Easily accessible information on disciplinary history (Standard 19) – it is not easy to access any but the most recent disciplinary history on members. The staff Lawyer Lookup Working Group has made recommendations to Leadership Council for changes which, if implemented, would bring LSBC into compliance with this standard.

# ATTACHMENT 1

## NATIONAL DISCIPLINE STANDARDS

### ANNUAL REPORT ON LSBC STATUS AS AT DECEMBER 31, 2014

STANDARD		STATUS
<b>TIMELINESS</b>		
1.	75% of telephone inquiries are acknowledged within one business day and 100% within two business days.	<b>MET.</b>
2.	100% of written complaints are acknowledged in writing within three business days.	<b>MET.</b>
3.	80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months.  90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months.	<b>MET.</b> 95% of all complaints were closed within 1 year.  <b>MET.</b> 98% of all complaints were resolved or referred for a disciplinary or remedial response within 18 months.
4.	For 90% of open complaints there is contact with the complainant at least once every 90 days during the investigation stage.	<b>MET</b> in 98% of all cases.
5.	For 90% of open complaints there is contact with the member or Quebec notary at least once every 90 days during the investigation stage.	<b>MET</b> in 96% of all cases.
<b>HEARINGS</b>		
6.	75% of citations or notices of hearings are issued and served upon the lawyer or Quebec notary within 60 days of authorization.  95% of citations or notices of hearings are issued and served upon the lawyer or Quebec notary within 90 days of authorization.	<b>MET.</b> 100% of citations were issued and served within 60 days of authorization (25/25 citations).  <b>MET.</b> 100% of citations were issued and served within 90 days of authorization (25/25 citations).
7.	75% of all hearings commence within 9 months of authorization.	<b>NOT MET.</b> 62% of hearings commenced within 9 months of authorization (18/29 hearings).

STANDARD		STATUS
	90% of all hearings commence within 12 months of authorization.	<b>NOT MET.</b> 86% of hearings commenced within 12 months of authorization (25/29 hearings).
8.	Reasons for 90% of all decisions are rendered within 90 days from the last date the panel receives submissions.	<b>NOT MET.</b> 71% of all decisions were rendered within 90 days of the last date the panel received submissions (30/42 decisions).
9.	Each law society will report annually to its governing body on the status of standards 3, 4 and 5. For standards 6, 7 and 8, each law society will report quarterly to its governing body on the status of the standards.	<b>MET.</b>
<b>PUBLIC PARTICIPATION</b>		
10.	There is public participation at every stage of discipline; i.e. on all hearing panels of three or more; at least one public representative; on the charging committee, at least one public representative.	<b>MET.</b> There is one public representative on every disciplinary panel and currently 2 public representatives on our charging body (Discipline Committee).
11.	There is a complaints review process in which there is public participation for complaints that are disposed of without going to a charging committee.	<b>MET.</b> Our Complainants Review Committee has 2 public members. One public member sits on each panel.
<b>TRANSPARENCY</b>		
12.	Hearings are open to the public.	<b>MET.</b> Hearings are open to the public unless the panel exercises its discretion under Rule 5-6 to exclude some or all members of the public.
13.	Reasons are provided for any decision to close hearings.	<b>MET.</b> Rule 5-6 (5) requires panels to give written reasons for orders to exclude the public or to require non-disclosure of information.
14.	Notices of charge or citation are published promptly after a date for the hearing has been set.	<b>MET.</b> Our process is to publish the fact that a citation has been authorized as soon as the respondent has been informed and the content of the citation when the respondent has been served.
15.	Notices of hearing dates are published at	<b>MET.</b> It is our regular practice to publish

STANDARD		STATUS
	least 60 days prior to the hearing, or such shorter time as the pre-hearing process permits.	dates of hearings as soon as they are set.
16.	There is an ability to share information about a lawyer or Quebec notary who is a member of another law society with that other law society when an investigation is underway in a manner that protects solicitor-client privilege, or there is an obligation on the lawyer or Quebec notary to disclose to all law societies of which he/she is a member that there is an investigation underway.	<b>NOT MET.</b> Rule 2-15 requires us to provide information to another law society investigating one of our members, but it is not clear that solicitor/client privileged information must be protected in the hands of the recipient. We will seek a rule amendment to make that clear.
17.	There is an ability to report to police about criminal activity in a manner that protects solicitor/client privilege.	<b>MET.</b> Rule 3-3(2) allows the Discipline Committee to consent to delivery of such information to a law enforcement agency. Rule 3-3 (4) indicates we cannot share privileged material.
<b>ACCESSIBILITY</b>		
18.	A complaint help form is available to complainants.	<b>MET.</b> We have web based material that assists those wishing to make complaints as well as paper brochures that discuss our complaints processes and jurisdiction.
19.	There is a lawyer or Quebec notary directory available with status information, including easily accessible information on discipline history.	<b>NOT MET.</b> Currently most discipline information is available although it is not all easy to access. The staff Lawyer Lookup Working Group has made recommendations to Leadership Council for changes which, if implemented, would bring the Law Society into compliance with this standard.
<b>QUALIFICATION AND TRAINING OF ADJUDICATORS</b>		
20.	There is ongoing mandatory training for all adjudicators, including training on decision writing, with refresher training no less often than once a year and the curriculum for mandatory training will comply with the national curriculum if and when it is available.	<b>MET.</b> All hearing panellists are required to take a basic course on the principles of administrative law, Law Society procedures and decision-writing. All lawyer panellists are required to take an advanced workshop on decision writing and all lawyer-Bencher panellists are required to take an advanced workshop on hearing skills. Annual refresher training will take place in March 2015.

STANDARD		STATUS
21.	There is mandatory orientation for all volunteers involved in conducting investigations or in the charging process to ensure that they are equipped with the knowledge and skills to do the job.	<b>MET.</b> For the last 3 years, we have provided orientation to new members of the Discipline Committee. There are no volunteers involved in conducting investigations.

#### QUARTERLY STAFF REPORT ON STANDARDS 6 – 8

STANDARD		STATUS
<b>HEARINGS</b>		
6.	75% of citations or notices of hearings are issued and served upon the lawyer or Quebec notary within 60 days of authorization.  95% of citations or notices of hearings are issued and served upon the lawyer or Quebec notary within 90 days of authorization.	<b>MET.</b> 100% of citations were issued and served within 60 days of authorization (5/5 citations).  <b>MET.</b> 100% of citations were issued and served within 90 days of authorization (5/5 citations).
7.	75% of all hearings commence within 9 months of authorization.  90% of all hearings commence within 12 months of authorization.	<b>MET.</b> 83% of hearings commenced within 9 months of authorization (5/6 hearings).  <b>MET.</b> 100% of hearings commenced within 12 months of authorization (6/6 hearings).
8.	Reasons for 90% of all decisions are rendered within 90 days from the last date the panel receives submissions.	<b>NOT MET.</b> 64% of all decisions were rendered within 90 days of the last date the panel received submissions (7/11 decisions).

# The Law *of British Columbia*

## **2012 – 2014 Strategic Plan**

### **Final Status Report**

**For:           The Benchers**  
**Date:         December 31, 2014**

**Purpose of Report:   Information**  
**Prepared on behalf of the Executive Committee**

## INTRODUCTION

Section 3 of the *Legal Profession Act* states that the mandate of the Law Society is to uphold and protect the public interest in the administration of justice by:

- (i) preserving and protecting the rights and freedoms of all persons;
- (ii) ensuring the independence, integrity and honour of its members; and
- (iii) establishing standards for the education, professional responsibility and competence of its members and applicants for membership.

To carry out its mandate effectively, the Law Society must keep in mind the interests and concerns of all parties that engage the justice system. This includes the public generally, users of the legal systems (both individual and corporate), courts, governments, and lawyers.

The Benchers have created a process to plan for and prioritize strategic policy development to properly meet the mandate of the Society and to optimize staff resources.

Through this process, the Benchers identified three principal goals and related strategies that the Law Society should pursue over the next three years. In identifying these goals, strategies and initiatives, the Benchers have been mindful not only of what the role of the Law Society is in relation to its mandate, but also of what may be achievable within that mandate.

The goals, strategies and initiatives set out in this strategic plan are in addition to the overall operations of the Law Society's core regulatory programs, such as discipline, credentials, and practice standards. These programs are fundamental to fulfilling the Law Society's mandate and will always be priorities for the Law Society.

The plan will be reviewed on an annual basis during its three year term to ensure that the strategies and initiatives remain appropriate and to address any additional strategies or initiatives that may be necessary in light of changing circumstances.

## **Law Society Goals**

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

## **GOAL 1: The Law Society will be a more innovative and effective professional regulatory body.**

The Law Society recognizes that it is important to encourage innovation in all of its practices and processes in order to continue to be an effective professional regulatory body. The following strategies and initiatives will ensure that the Law Society continues to improve in delivering on its regulatory responsibilities.

### **Strategy 1–1**

Regulate the provision of legal services effectively and in the public interest.

#### ***Initiative 1–1(a)***

Consider ways to improve regulatory tools and examine whether the Law Society should regulate law firms.

#### ***Status – December 2014***

*A Bencher Task Force has been appointed to recommend a framework for the regulation of law firms. The Task Force has met twice, and will continue its work into 2015.*

#### ***Initiative 1–1(b)***

Examine the relationship between the Law Society as the regulator of lawyers and the Law Society as the insurer of lawyers.

#### ***Status – December 2014***

*The Rule of Law and Lawyer Independence Advisory Committee completed its review of this issue and its report with recommendations was adopted by the Benchers in September 2013. A Working Group of Benchers and staff was tasked with analyzing the options put forward identified in the Committee's report. The Working Group has met a number of times and has prepared a report for the Benchers' that is awaiting final approval.*

#### ***Initiative 1–1(c)***

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

### **Status – December 2014**

*The Legal Service Provider Task Force created to examine this topic reported to the benchers in December 2013..*

*The Task Force made three recommendations which were adopted by the Benchers in December 2013*

- *That the Law Society seek to merge regulatory operations with the Society of Notaries Public such that the Law Society would become the regulator of both lawyers and notaries in the province.*

*Preliminary discussions have taken place and a draft Memorandum of Understanding to guide the discussions has been prepared for consideration.*

- *That a program be created by which paralegals who have met specific, prescribed education and/or training standards could be provided with a certificate that would allow such persons to be held out by regulated legal service providers for whom they work as “certified paralegals.”*

*Work is underway at the staff level in conjunction with representatives of the BC Paralegal Association to create a scheme through which this recommendation can be implemented.*

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

*The Benchers have established the Legal Services Regulatory Framework Task Force in April. The Task Force’s work will continue beyond this Strategic Plan.*

### **Strategy 1–2**

Identify and develop processes to ensure continued good governance.

#### **Initiative 1–2(a)**

Examine issues of governance of the Law Society generally including:

- identifying ways to enhance Bencher diversity;
- developing a model for independent evaluation of Law Society processes;
- creating a mechanism for effective evaluation of Bencher performance and feedback.

***Status – December 2014***

*This initiative has been divided into separate tasks:*

- *The Governance Review Task Force presented its final report to the Benchers in December 2012 with 72 recommendations, all of which were adopted by the Benchers.*
- *The Benchers established the Governance Committee in January 2013 with a mandate to assist the Benchers in meeting their governance obligations by reviewing and advising the Benchers about governance policy and practice. The Governance Committee has reviewed and implemented over 60 of the recommendations of the Governance Review Task Force and continues to review the remaining recommendations in 2014*
- *Bencher diversity was actively considered at the Bencher governance retreat and by the Governance Committee, which made three recommendations in its 2013 year-end report to the Benchers which were adopted. ;*
- *The development of a model for the independent evaluation of Law Society processes was begun prior to a series of initiatives, including the governance review, had been undertaken by the Law Society. As a result of the outcome of those initiatives, the rationale for independent evaluation of Law Society processes is less evident and the necessity of this initiative should be re-evaluated when consideration is given to the next strategic plan.*

**Strategy 1–3**

Ensure that programs are available to assist lawyers with regulatory and workplace changes.

***Initiative 1–3(a)***

Work with continuing professional development providers to develop programs about the new Code of Conduct.

***Status – December 2014***

*The Law Society and the Continuing Legal Education Society of BC jointly planned and delivered webinars on the new BC Code of Conduct, which were available to all BC lawyers free of charge. The recorded version of the webinars continues to be accessible free of charge through the Law Society website. The Law Society website also features an Annotated BC Code of Conduct as well as a guide to the BC Code of Conduct that compares key features of the current Handbook to the new Code.*

***Initiative 1–3(b)***

Improve uptake of Lawyer Wellness Programs.

***Status – December 2014***

*Development of this initiative has been undertaken in the Practice Standards Committee. A special Working Group was created to research and address the topic and to make recommendations to the Practice Standards Committee. A member survey was undertaken. The Working Group's final report was presented to the Committee on December 5, 2013. The Committee's process of review of the lawyer wellness recommendations ended with its meeting in July 2014, where it considered aspects of the Working Group's report, in conjunction with a request to support the concurrently developing CBA Lawyer Wellness Initiative, the latter of which is aimed at providing wellness information and facilitating access to wellness programs for lawyers and their family members across Canada. The Committee concluded its efforts to improve the uptake of lawyer wellness programs by voting to endorse the Law Society's support for the CBA's Lawyer Wellness Initiative. Subsequently, the Law Society has participated in supporting the CBA's Initiative, as have other law societies across Canada.*

**Strategy 1–4**

Ensure that admission processes are appropriate and relevant.

***Initiative 1–4(a)***

Work on national admission standards while considering the rationale and purpose of the overall admission program.

***Status – December 2014***

*The Lawyer Education Advisory Committee's 2013 – 14 focus has been on Admission Program review, taking into account the Federation's progress on National Admission Standards Project.*

*The first phase of the Federation project was to draft a profile of the competencies required for entry to the profession and the standard for ensuring that applicants meet the requirement to be fit and of good character. The Benchers approved the National Entry-Level Competency Profile for Lawyers and Quebec Notaries on January 24, 2013.*

*Implementation of the National Entry-Level Competency Profile is the focus of the second phase of the Federation project. At the Federation level, work is well underway on developing options for implementation, with the goal of achieving a high level of consistency and quality in national admission standards.*

*The Lawyer Education Advisory Committee has been moving forward with its review of the Admission Program, and has met with Federation representatives who are consulting nationally on the admission standards project.*

*Although the Lawyer Education Advisory Committee would have preferred to complete its Admission Program review by the year-end, it is unlikely that the Federation's development of proposals for implementation of the National Entry-Level Competency Profile will be complete. Therefore, this work of the Lawyer Education Advisory Committee will likely have to carry over into 2015.*

*Ultimately, all law societies will be asked to approve how the National Entry-Level Competency Profile will be implemented, likely in 2015.*

*On the national good character initiative, the Credentials Committee has provided informal input as a part of the Federation's ongoing national consultation.*

***Initiative 1–4(b)***

Consider qualification standards or requirements necessary for the effective and competent provision of differing types of legal services.

***Status – December 2014***

*On December 2, 2011, the Benchers approved the joint recommendation of the Lawyer Education Advisory Committee and the Access to Legal Services Advisory Committee that a Task Force be created to address the qualification*

*standards or requirements necessary for the effective and competent provision of differing types of legal services. Responsibility for this initiative was assigned to the Legal Services Providers Task Force which presented its final report to the Benchers in December 2013. The Legal Services Regulatory Framework Task Force is now charged with looking at the overall delivery of legal services and for developing a framework for establishing qualification standards and requirements.*

## **GOAL 2: The public will have better access to legal services.**

The Law Society recognizes that one of the most significant challenges in any civil society is ensuring that the public has adequate access to legal advice and services. The Law Society has identified a number of strategies to respond to this challenge over the next three years and will continue to gather demographic data about lawyers to inform these strategies.

### **Strategy 2–1**

Increase the availability of legal service providers.

#### ***Initiative 2–1(a)***

Consider ways to improve the affordability of legal services:

- continue work on initiatives raised by recommendations by the Delivery of Legal Services Task Force;
- identify and consider new initiatives for improved access to legal services.

#### ***Status – December 2014***

*The changes to the BC Code that allow for lawyers to supervise up to two Designated Paralegals have been in effect for over a year. The Annual Practice Declaration has been updated to ask select questions about the use of Designated Paralegals and we know that there are at least 460 Designated Paralegals in BC. We will have a better sense as to the total numbers once we review the APDs in spring 2015.*

*The Family Law Pilot Project was scheduled to end, December 31, 2014. The Provincial Court has extended that project until October 1, 2015 to allow for a review with the Court. Preliminary meetings with the Court have been arranged. The Supreme Court pilot was not extended beyond the new year. In 2015 the Law Society will also approach lawyers who supervise Designated Paralegals to invite them to participate in a voluntary survey to better assess how*

*Designated Paralegals are working and how that work is being received by clients*

*At the July 2014 Benchers meeting the Benchers increased the level of funding provided to the Law Foundation to support pro bono organizations and introduced a new fund with the Law Foundation designed to fund discrete access to justice initiatives. The result effectively doubled the Law Society's financial support for pro bono and access to justice initiatives (not including funding for the REAL program). The new fund, which amounts to approximately \$60,000 will be allocated in 2015 to a family law pilot project that uses legal advocates under the supervision of lawyers to provide information and referral services, as well as education and support for court and ADR processes, and assisting with document preparation and public legal education. The pilot will take place in Quesnel and Kelowna.*

*The Benchers adopted the report of the Legal Services Regulatory Framework Task Force in December 2014 recommending 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. The Task Force also identified several areas of practice in which new classes of legal service providers could be permitted to practice. Staff will develop the material for submission to the government by spring 2015 to seek a legislative amendment that will permit the Law Society to develop a credentials and regulatory scheme for new class(es) of legal service provider(s).*

*The Access to Legal Services Advisory Committee reported to the Benchers regarding its perspective as to what steps the Law Society should take regarding the creation of a Task Force to focus on Legal Aid, the approach to take with government regarding the future of Justice Access Centres, the need for the Law Society to focus on "access to justice" and not simply "access to legal services" and the necessity for the Law Society to do its work through a lens of innovation, considering both how technology may foster access to justice and how we can look to alternate sources of funding (including the private sector)..*

### ***Initiative 2–1(b)***

Support the retention of women lawyers by implementing the *Justicia* Project.

***Status – December 2014***

*Work on Phase 1 on implementation of the Justicia project has begun. Managing Partners have met, and Diversity Officers have been appointed by participating firms. Working Groups have developed model policies for Maternity Leave, Flexible Work Arrangements, and Demographic Information Collection, which were presented to and approved by the Benchers in December 2014. Working Groups to create model policies for Business Development, Partnership, and Leadership Programs for women are underway and should be completed soon for presentation to the Benchers.*

***Initiative 2–1(c)***

Support the retention of Aboriginal lawyers by developing and implementing the Indigenous Lawyer Mentoring Program.

***Status – December 2014***

*An Aboriginal Mentoring Program was formally launched on National Aboriginal Day, June 21, 2013. Twenty mentorship pairs were matched in 2014. The program is now well underway and is being assessed from time to time by the Equity and Diversity Committee. “Meet and greet” sessions to encourage participation in the program have been held in Vancouver with another scheduled to be held in Victoria.*

**Strategy 2–2**

Improve access to justice in rural communities.

***Initiative 2–2(a)***

Develop ways to address changing demographics of the legal profession and its effects, particularly in rural communities.

***Status – December 2014***

*This initiative will benefit from information gathered through the REAL program. Work will begin after there has been an opportunity to review and analyse some of that program’s results. This initiative will therefore likely carry over for consideration in connection with new initiatives in the subsequent Strategic Plan*

***Initiative 2–2(b)***

Develop ways to improve articling opportunities in rural communities.

***Status – December 2014***

*Work on this initiative is planned to commence in 2014 and will also review and analyze the results from the REAL program. This initiative will also therefore likely carry over for consideration in connection with new initiatives in the subsequent Strategic Plan*

**Strategy 2–3**

Understand the economics of the market for legal services in British Columbia.

***Initiative 2–3(a)***

Work collaboratively with other stakeholders in the legal community to identify questions that need to be answered and engage, with others, in focused research.

***Status – December 2014***

*In the implementation plan for this initiative, the initial work was assigned to staff to determine what work on this subject other stakeholders in the legal community were developing. After discussions with the Law Foundation, which is undertaking an examination relating to economic analysis of certain aspects of the justice system in conjunction with the Legal Services Society, it has been determined that the focus of their research is not focused on the market for legal services.*

*A staff group has therefore met to discuss in a preliminary manner what sort of research and issues could be examined in order to gather information to create a better understanding of the economics of operating a law practice and the market for legal services. This work is expected to be subsumed into some of the analysis of issues being undertaken by the Legal Services Regulatory Framework Task Force to provide some basis for analysis of the market for legal services in the Province, and is therefore expected to carry over to the next Strategic Plan in connection with the work of that Task Force.*

**GOAL 3: The public has greater confidence in the administration of justice and the rule of law.**

The rule of law, supported by an effective justice system, is essential to a civil society. This requires public confidence in both the rule of law and the administration of justice. The Law Society recognizes the importance of working with others to educate the public about the rule

of law, the role of the Law Society in the justice system and the fundamental importance of the administration of justice.

### **Strategy 3–1**

Develop broader and more meaningful relationships with stakeholders.

#### ***Initiative 3–1(a)***

Identify, establish and build on relationships with the Ministry of Attorney General and other government ministries, the Courts, and non-governmental stakeholders.

#### ***Status – December 2014***

*Work has been undertaken at the Bench and staff level and has resulted in meetings with the Minister of Justice and Attorney General and ministry senior staff on a number of occasions. A meeting in Victoria with policy staff in various government ministries together with the Chief Executive Officer and Law Society policy and communication staff took place in 2012.*

### **Strategy 3–2**

Educate the public about the importance of the rule of law, the role of the Law Society and the role of lawyers.

#### ***Initiative 3–2(a)***

Identify methods to communicate through media about the role of the Law Society, including its role in protecting the rule of law.

#### ***Status – December 2014***

*To increase awareness of the Law Society and the Rule of Law, several initiatives have been completed. A dedicated webpage has been created and is updated regularly. During Law Week in 2012, the Law Society's "Day-in-the-Life" Twitter campaign was run and promoted. The following year, public education was the Law Society's focus during Law Week and the first vice-president and senior staff were made available to the media over a week-long period to speak about the Law Society's role in promoting access to justice and protecting the public. Other proactive media relations efforts to discuss events or Law Society initiatives have also resulted in coverage of the Law Society and the opportunity to profile the work of the organization to hundreds of thousands of British Columbians. Content related to the Law Society have been added to Clicklaw, the primary online source of public information regarding the law in BC. The*

*infrastructure to support the new Speakers' Bureau is complete and the bureau is being promoted on the Law Society website. The Law Society also developed a series of educational videos that provide basic information about the Law Society, available on the Law Society website and YouTube channel. The Rule of Law and Lawyer Independence Advisory Committee is considering ways in which the Law Society might usefully comment on examples of violations of the rule of law when they appear in media reports, and a proposal is expected to be presented to the benchers in the fall.*

# **REDACTED MATERIALS**

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