The Law Society of British Columbia

Agenda

Benchers

Date: Friday, December 4, 2015

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

Location: Bencher Room, 9th Floor, Law Society Building

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

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1	Guest Speaker: The Honourable Chief Justice Robert J. Bauman		The Honourable Chief Justice Robert J. Bauman		Presentation
CONSENT AGENDA: The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Executive Support (Renee Collins Goult) prior to the meeting.					
2	Consent Agenda • Minutes of October 30, 2015 meeting (regular session) • Minutes of October 30, 2015 meeting (*in camera* session) • Rule Amendment: Appointed Benchers at AGM and Electronic Distribution of AGM Notices • Tribunal Review Implementation • Family Law Task Force: Final Report		President	Tab 2.1 Tab 2.2 Tab 2.3 Tab 2.4 Tab 2.5	Approval Approval Approval Approval Approval

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ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
	• Ethics Committee: Recommendations of the Family Law Task Force • Rule Amendments: Electronic Bencher Elections			Tab 2.6 Tab 2.7	Approval Approval
EXECUTIVE REPORTS					
3	President's Report		President	Oral report (update on key issues)	Briefing
4	CEO's Report		CEO	*(To be circulated electronically before the meeting)*	Briefing
5	Briefing by the Law Society's Member of the Federation Council • Report on National Requirement Review Committee		Gavin Hume, QC Herman Van Ommen, QC		Briefing
DISCUSSION/DECISION					
6	Lawyer Education Advisory Committee Report to the Benchers on Admission Program Review		Tony Wilson	Tab 6	Discussion
7	Truth and Reconciliation Commission: Call to Action #27: Proposal from the Lawyer Education Advisory Committee		Tony Wilson	Tab 7	Discussion/ Decision

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ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
REPORTS					
8	Year-End Reports from the 2015 Advisory Committees • Access to Legal Services Advisory Committee • Equity and Diversity Advisory Committee • Rule of Law and Lawyer Independence Advisory Committee • Lawyer Education Advisory Committee		 Phil Riddell Satwinder Bains David Crossin, QC Tony Wilson	 Tab 8.1 Tab 8.2 Tab 8.3	Briefing
9	Report on Outstanding Hearing & Review Decisions		President	(*To be circulated at the meeting*)	Briefing
10	2015-2017 Strategic Plan Implementation Update • Report from Executive Committee: Review and Recommendations for the Strategic Plan moving into 2016			Tab 10	Briefing
FOR INFORMATION					
11	• Complainants Review Committee: Year-End Progress Report			Tab 11	Information

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ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
12	• Letters between Ken Walker, QC and Jeff Hirsch, President of Federation of Law Societies of Canada: National Admission Standards Assessment Proposal			Tab 12	Information
13	• Letter from Ken Walker, QC to Board Resourcing Development Office			Tab 13	Information
14	• Letter from Ken Walker, QC to The Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada			Tab 14	Information
15	• Letter from Jeremy Webber, Dean of University of Victoria Faculty of Law to Timothy E. McGee, QC: The Pamela Murray, QC Entrance Scholarship Award Winner			Tab 15	Information
16	• Letter from Jamie Maclaren, Executive Director of Access Pro Bono to Timothy E. McGee, QC: Sponsorship of Pro Bono Going Public Legal Advice-a-thon			Tab 16	Information
17	• 2016 Agenda Package Encryption and Password Protection			Tab 17	Information

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ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
IN CAMERA					
18	*In camera* • Bencher concerns • Other business		President/CEO President/CEO		Discussion/ Decision

** In connection with our emerging work regarding the calls to action under the Truth and Reconciliation Commission Report, President Walker invites you to view a short video entitled *North Boys: The Story of Jimmy and Charlie*. The video tells of two boys' experience in residential schools. It runs for approximately 20 minutes and will begin at 1:00pm in the Bencher Room.

The Law Society of British Columbia

Minutes

Benchers

Date: Friday, October 30, 2015

Present:
Ken Walker, QC, President
David Crossin, QC, 1st Vice-President
Herman Van Ommen, QC, 2nd Vice-President
Haydn Acheson
Joseph Arvay, QC
Satwinder Bains
Edmund Caissie
David Corey
Jeevyn Dhaliwal
Lynal Doerksen
Thomas Fellhauer
Craig Ferris, QC
Martin Finch, QC
Miriam Kresivo, QC
Dean Lawton
Peter Lloyd, FCA
Sharon Matthews, QC
Nancy Merrill
Maria Morellato, QC
David Mossop, QC
Greg Petrisor
Claude Richmond
Phil Riddell
Elizabeth Rowbotham
Sarah Westwood
Tony Wilson

Excused:
Pinder Cheema, QC
Jamie Maclaren
Lee Ongman
Cameron Ward

Staff Present:
Tim McGee, QC
Deborah Armour
Taylore Ashlie
Renee Collins Goult
Su Forbes, QC
Andrea Hilland
Jeffrey Hoskins, QC
David Jordan
Michael Lucas
Jeanette McPhee
Doug Munro
Tim Travis
Alan Treleaven
Adam Whitcombe

Guests:	Dom Bautista	Executive Director, Law Courts Center
	Prof. Janine Benedet	Associate Dean of Academic Affairs, University of British Columbia
	Kari Boyle	Director of Strategic Initiatives, Mediate BC Society
	Maureen Cameron	Director of Membership and Communications, Canadian Bar Association, BC 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
	Prof. Bradford Morse	Dean of Law, Thompson Rivers University
	Brenda Rose	Director of Community Engagement, Courthouse Libraries BC

CONSENT AGENDA

1. Minutes

a. Minutes

The minutes of the meeting held on September 25, 2015 were approved as circulated.

The *in camera* minutes of the meeting held on September 25, 2015 were approved as circulated

b. Resolutions

The following resolution was passed unanimously and by consent.

- 2016 Fee Schedules

BE IT RESOLVED to amend the Law Society Rules, effective January 1, 2016, as follows:

1. ***In Schedule 1,***

   (a) by striking "$1,992.00***" at the end of item A 1 and substituting "***$2,057.09***", and***

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

   4. Training course registration (Rule 2-72(4)(a) *[Training Course]* 2,500.00

   5. Remedial work (Rule 2-74(8)):
      (a) for each piece of work 50.00
      (b) for repeating the training course 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 "***2015***" and substituting "***2016***".***

Introductory remarks:

Mr. Walker acknowledged the Coast Salish peoples, on whose territory the meeting was being held.

He noted the recent passing of Life Bencher Ann Wallace and extended his thoughts and good wishes to her family, and also noted the recent birth of Bencher Jamie McLaren's son, wishing the new parents well.

EXECUTIVE REPORTS

2. President's Report

Mr. Walker briefed the Benchers on various Law Society matters to which he has attended since the last meeting.

He, Mr. McGee and several Benchers and senior staff attended the recent Federation Conference, the focus of which was the Truth and Reconciliation Commission ("TRC") Report and calls to action. Specific note was made of Call to Action 27 which is directed to the Federation and Canadian Law Societies; he noted that the Federation will continue its work on Call to Action 27, and that the Law Society of BC must also find ways to engage Benchers, staff and lawyers on this important recommendation. He also noted that Mr. Hume was recognized at the Federation meeting for his considerable work.

On October 13 Mr. Walker was interviewed by a Kamloops radio station concerning the new Legal Aid Task Force.

Mr. Walker also reported on the recent Annual General Meeting ("AGM"), held October 14, noting that 4 resolutions were passed, 71 lawyers attended in Vancouver and another 70 around province, and between 21 and 63 people tuned in for the webcast, all at a cost of approximately $75,000. He questioned whether the outcomes achieved merited the costs incurred. He did note that the AGM process provides lawyers an opportunity to engage Benchers on relevant and important topics, and queried whether an alternate, more cost effective forum could be created to serve that important purpose.

On October 15, the Executive Committee met and discussed a report on external counsel fees, the TRC Report and Calls to Action, the Law Society's strategic goals and progress on them. Further discussion of the Strategic Plan, including its refinement for 2016, will be on the Agenda for the November Executive meeting.

On October 16 Mr. Walker welcomed new lawyers at the Kamloops regional call. He also attended the recent North Shore Bar Association dinner, discussing with attendees the Law

Society's admission program, the Legal Aid Task Force, and the possible merger with the notaries. On the topic of admissions, consensus was that articling and the mentoring it provides is important to student development. Suggestion was made that PLTC training should be conducted at the beginning of articles or in law school, to avoid disruption of the articling period.

Finally, he noted that Bencher election ballots have gone out, and congratulated Benchers Nancy Merrill, Lynal Doerksen and Tom Fellhauer on their elections by acclamation. He reminded Benchers that the nomination deadline for the Executive Committee is November 23, with election ballots to be distributed November 26 if an election is necessary. He also noted that any newly appointed Benchers would be announced December 4th.

3. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (attached as Appendix 1 to these minutes).

The annual review of the Strategic Plan is underway. Through this core governance function, the Benchers provide strategic direction for the Law Society. Mr. McGee's responsibility as CEO is to ensure that resources, operations and capabilities align with the strategic goals so that daily operations run as effectively as possible.

At its upcoming meeting, the Executive Committee will begin the exercise of reviewing the current Strategic Plan to determine if the Law Society remains on track, to consider whether priorities need revision, and to brief the Benchers on any recommended changes.

It will be a priority for the Executive Committee to review the status of the legal services provider strategic initiative. Mr. McGee reminded Benchers that this initiative, which seeks to close the gap between demand for legal services and supply, results from the recommendations of the LaRose report (2013) and the Vertlieb report (2014). Much work has been done in 2015 on the Notaries project, but this work has supplanted all else in this area and progress is slow. A clear strategic direction is needed, one which encompasses not just notaries but other legal service providers as well and makes progress on a wider scale.

The Executive Committee will also prioritize review of the Federation's development of national standards for admission requirements. As a participant in the Federation of Law Societies, harmonizing our standards in key areas is a desirable assumption; however, such harmony may prove difficult given that the Federation's proposal represents a fundamental shift in how we accredit and evaluate students before licensing them to practice law. Unlike many other Law Societies who have revised, or are in the midst of reviewing and revising their accreditation programs, we have an established, successful PLTC program. Balancing the commitment to

national standards against the success of our current system, we must now review whether these proposals put us in a better position than our current PLTC program.

There was a question as to why other provinces would not aspire to our PLTC model, given our view of its success. Mr. Walker noted that not all provinces share our assessment of the PLTC model; models across the country span the spectrum from little or no mentorship to full intensive training. Mr. Wilson observed that diverse factors, such as resources and numbers of students, drive the change to different models. Mr. McGee emphasized the need for a rigorous assessment of whether the Federation proposal is better, neutral or worse than our current system, being mindful of the need to remain connected to, rather than isolated from, a national approach.

Mr. McGee also touched on the importance of keeping Benchers apprised of operational initiatives such as performance reviews and the employee survey, which represent the 'infrastructure' of the Law Society. He emphasized the value of investing in infrastructure to ensure consistent growth in staff skills, leadership and quality, and avoid costly crises associated with staff inability to grow and lead.

Finally, Mr. McGee reminded Benchers of the upcoming BC Justice Summit, which will be the fifth such meeting of senior members of the judiciary and representatives from all stakeholder groups, who come together to collaborate on achieving better coordination and information sharing in family justice, criminal justice and child protection proceedings.

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

Gavin Hume, QC briefed the Benchers as the Law Society's member on the Federation Council.

He reported that the Winnipeg fall conference focused on the Truth and Reconciliation Commission recommendations, in particular Call to Action 27, and included healthy and positive discussions of what the Federation and law societies need to do to increase awareness and move forward. The Federation Council will continue discussion of the Truth and Reconciliation Commission recommendations at its December 17 meeting.

Included in the business of the meeting was the election of the new Second Vice-President, Sheila McPherson, from the Northwest Territories, discussion of the recent national admission standards proposal, and review of the second Governance Committee report. A Finance and Audit Committee was created, to which Mr. Hume has been appointed. Governance will continue to be a topic of discussion, given the differences in opinion that persist. The role of Federation Council and the evaluation of the CEO position are key issues.

There was also discussion of whether the Federation National Requirement Review Committee should continue its review of non-discrimination in light of the ongoing litigation. Council agreed that the work should continue. In response to a question on the progress of the National

Requirement Review Committee, Mr. Van Ommen reported that work plans for the committee had been approved, and that the next committee meeting would take place on November 13 and 14.

The issue of anti-money laundering rules and enforcement was also discussed, given the Federal government's renewed focus. Council agreed that work in the areas of accountability and enforcement should be a priority.

REPORTS

5. Report on the Outstanding Hearing & Review Decisions

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

6. 2015-2017 Strategic Plan Implementation Update

Ms. Bains, acting Chair of the Equity and Diversity Committee, reported to the Benchers on the Committee's work this year towards increasing public access to justice. Specifically, the work of the Committee has focused on increasing the number of legal service providers by promoting the recruitment, retention and advancement of women lawyers, Aboriginal lawyers and diverse lawyers in the legal profession.

For women lawyers, the Committee has coordinated the Justicia Project in BC, which has developed recommendations regarding flexible work arrangements, parental leave policies, leadership skills and partnership initiatives for women and which tracks gender demographics. Larger Vancouver firms have embraced the project; the next phase will involve encouraging the participation of smaller, more regional firms. The Committee has also updated the model policy to promote respectful workplaces in an effort to decrease sexual harassment and discrimination, and has overseen program reviews of the Maternity Leave Loan Benefit Program, and the Equity Ombudsperson Program.

For Aboriginal lawyers, the Committee has continued to build upon the success of the Aboriginal Lawyers Mentorship Program, is revisiting the Law Society's report regarding "Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers" from 2000, and is considering how to implement the TRC recommendation that lawyers receive appropriate cultural competency training regarding the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law and Aboriginal-Crown relations.

For diverse lawyers, the Committee will continue to monitor the demographic profile of the legal profession, has recommended an award to honour a lawyer who has made positive contributions to the diversity and inclusion in the legal profession in BC, and will continue to support collaborative efforts by diverse lawyers to increase diverse representation at all levels of the legal profession, including at the Bencher table.

In response to questions, Ms. Bains clarified that the Justicia report would be available for circulation following its upcoming meeting. A communications plan is in place to ensure effective communication with smaller regional firms; if sign-up of smaller firms is low, the plan can be modified to try to reach as many as possible.

7. Financial Report – September YTD 2015

Mr. Lloyd, Chair of the Finance and Audit Committee referred the Benchers to the Report and acknowledged the hard work of all involved.

Ms. McPhee summarized the results, noting that the forecast to year end was more positive than discussed in July. At that time, the overall projected negative variance was $370,000; the projected negative variance is now approximately $95,000. Expenses are as expected, but the revenue is higher than forecast due to an increase in members and higher than expected recoveries of approximately $175,000. Trust Assurance revenue is up as well and ahead of budget; the Lawyers Insurance Fund is also on track with positive investment returns to September of 2.62%, which is ahead of the benchmark of 2.42%.

Mr. Walker congratulated Mr. McGee and his staff team for their hard work on a complex budget process, reacting quickly and effectively to create savings to help offset other costs.

FOR INFORMATION

8. Memo from Alan Treleaven: Barreau du Quebec Bar Admission Training Process Overview

Responding to a question on this item, Mr. Treleaven confirmed that PLTC tuition is $2500, which is subsidized slightly by the Law Society; he also noted that the Law Foundation provides significant funding for the Kamloops program.

9. Memo from Ms. Hilland: Truth and Reconciliation Commission Recommendations

Despite its inclusion on the Agenda as an informational item, the Benchers discussed this item at length. Specific reference was made to TRC Call to Action 27:

> 27. We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

Call to Action 28, aimed at law schools, was also discussed. Associate Dean Benedit of Allard School of Law highlighted UBC's curriculum, which has one of the country's largest programs of courses on aboriginal law and indigenous legal traditions and offers an indigenous legal overnight camp. She noted that UBC is also committed to working with the Law Society through the PLTC program to provide cultural competency training for new lawyers.

Dean Morris of Thompson Rivers University Law School (TRU) noted his school's response, which has included launching a survey of all courses to identify aboriginal issues. Currently two thirds of first year courses include an aboriginal law component, as do over one third of upper years courses and the school is seeking to develop more specialized courses. Additionally, the school strives to provide opportunities to bring aboriginal issues to life in accessible ways, such as having first years visit the former Kamloops residential school and allowing students to observe negotiations between a local nation and a mining company. TRU is also committed to working with the Law Society to educate lawyers and foster increased awareness.

Regarding Call to Action 27, suggestion was made that PLTC be redesigned to include a half day program devoted to cultural competency training. In the shorter term, it was suggested that CPD credits be given for CLE courses incorporating such training. Also suggested was asking that the Board Resourcing and Development Office appoint a member of the aboriginal community as one of its available appointments to the Bencher table. Many other suggestions were discussed, all with the focus of educating Benchers, lawyers and students, and raising awareness today and moving forward.

It was noted by many that the work contemplated by the TRC is of paramount importance. Benchers confirmed their commitment to recognize this fact publicly, to take immediate and meaningful steps, and to give thoughtful consideration to proposed future action.

Considering the recommendations contained in the memo from Ms. Hilland, the Benchers recognized the importance of seeking input from the aboriginal community. They also discussed the possibility of striking a task force to initiate such consultation, and to help define a proposed plan of action in the short and long term.

For immediate action, it was moved (Van Ommen, Wilson) that staff revise the continuing professional development (CPD) program to allow lawyers to fulfill their mandatory two hour ethics requirement through training in aboriginal issues.

Discussion surrounded the availability of such training, staff's ability to make the necessary changes before December 1, the clarity needed around the description of such training, and the timing of any announcement to the Bar and to the public.

Following Mr. Treleaven's confirmation that such an amendment to the CPD program was achievable now, the motion passed unanimously.

Further, the Benchers agreed that the Law Society should release a statement recognizing the importance of this work, articulating its position, and committing the organization to the pursuit of the following initiatives:

1. Seeking opportunities to collaborate with Aboriginal groups and other organizations to further examine the TRC recommendations and identify strategic priorities;

2. Embarking upon the development of an action plan to facilitate the implementation of relevant recommendations;

3. Encouraging all lawyers in British Columbia to take education and training in areas relating to Aboriginal law (the Law Society's mandatory continuing professional development program recognizes and gives credit for education and training in areas relating to Aboriginal issues); and

4. Urging all lawyers in British Columbia to read the TRC Report and to consider how they can better serve the Indigenous people of British Columbia.

OTHER BUSINESS

Ms. Kresivo, Chair of the Governance Committee, noted that the revised bencher and committee year end surveys, which are an important tool in helping to determine how the Board is functioning, will go to committees in late November. She also reminded Benchers of the Governance education program on December 3 from 12-3.

Additionally, she raised the issue of how student interviews impact the workload of Benchers, and whether the additional workload is justifiable when weighed against the relative benefits. She has asked that Mr. Walker add this matter for consideration by the Executive Committee at its next meeting.

Mr. Caissie raised the concern that the current hearing panel training is excessive; sufficient training could be achieved with an intensive 2 day course. Mr. Walker noted that Mr. Hoskins, Legislative and Tribunal Counsel, is currently engaged in trying to determine national training standards, and suggested that Benchers be canvassed electronically for their feedback.

RCG
2015-10-30

The Law Society of British Columbia

CEO's Report to the Benchers

October 2015

Prepared for: Benchers

Prepared by: Timothy E. McGee

Introduction

The fall is always a busy time for us at the Law Society with a particular focus on staff and operational initiatives. For example, we will: complete performance evaluations for every employee, conduct our annual employee engagement survey, celebrate outstanding employee contributions under our RRex Awards programs, and hold our Fall all employee Staff Forum, which this year was dedicated to the launch of our new knowledge management project called "Lynx. . .linking LSBC". I have provided additional information on these important initiatives below. It is also an important time for preparations and planning for the annual review of the current 2015 – 2017 Strategic Plan, which the Benchers will consider in January of next year. I have provided a sneak preview of the work which the Executive Committee will be undertaking before the end of the year to prepare the Benchers for that review. And last, but not least, we have been busy with holding the Annual General Meeting and administering the current round of Bencher elections.

Strategic Plan Annual Review – Priorities Setting

We are completing year one of our three year 2015 – 2017 Strategic Plan. As part of our normal course governance the Benchers will undertake an annual review of progress under the Strategic Plan in January. The purpose of the annual review is not to break open the plan or start from scratch but rather to refresh our view on priorities for the coming year and to determine work plans and allocate our resources accordingly. This task falls in the first instance to the Executive Committee who are tasked with initiating the review and considering various options and bringing forward a report and recommendations for discussion and consideration by the Benchers. In anticipation of that process getting underway shortly, here are some initial thoughts I shared recently with the Executive Committee as we look forward to 2016.

Legal Services Providers

There are 2 Bencher Task Force Reports, the "Final Report of the Legal Service Providers Task Force" (the LeRose Report) and the "Report of the Legal Services Regulatory Framework Task Force" (the Vertlieb Report) which were adopted unanimously by the Benchers in 2013 and 2014, respectively. Those reports envision an expansion of properly trained and regulated legal services providers (in

addition to lawyers) to help address the need for access to affordable legal services. In addition, the vision adopted in those reports was of a unified regulatory regime for all legal service providers under the umbrella and authority of the Law Society. These task force reports stand largely unimplemented today. There has been considerable work in 2015, most notably on a possible merger with the Society of Notaries Public of BC coupled with a possible expansion of notarial scope of practice and on issues related to a possible certification regime for paralegals, but we need to clearly articulate next steps to move forward. In my view this will require the Benchers to refresh and/or restate their strategic intent and mission in this critical area and establish specific goals and desired outcomes for 2016.

The Law Firm Regulation Task Force

The Law Firm Regulation Task Force under the Chair of Herman Van Ommen, QC has gained some impressive ground over the summer and is about to embark on a consultation within the profession and selectively outside the profession to help guide its next steps. This task force might also be the vehicle to prepare the Benchers for a discussion around the desirability of alternative business structures and also the possible home for consideration of the discussion (now growing in popularity among law societies) on the topic of “outcomes based” regulation. Accordingly, the Benchers will need to consider relative priorities in these areas and determine what level of Bencher engagement and staff resources will be desirable in 2016.

The Legal Aid Task Force

The Legal Aid Task Force recently approved by the Benchers and soon to be at work has a high profile undertaking with many cross over points among key stakeholders in the justice system. I believe we will need to develop and communicate clearly and often in 2016 with those stakeholders and others about the scope of work and the desired outcomes.

FLSC – National Admissions Standards Assessment Proposal Report

The National Admissions Standards Assessment Proposal Report was a major topic of discussion at the recent FLSC conference in Winnipeg. The report outlines a proposal for national exams as a precondition of bar admission across the country, among other things. The Executive Committee has asked the Lawyer Education

Advisory Committee chaired by Tony Wilson to evaluate whether and why this proposal would be beneficial to LSBC. Most importantly, we will need to evaluate what this proposal might mean for our PLTC program and our planned review of both PLTC and articling, which is already part of our Strategic Plan. These various initiatives are related but not currently coordinated under a single work plan or strategic priority and the Benchers will need to provide guidance on how best to proceed.

Truth and Reconciliation Commission Recommendations

You will have in your Bencher package for the current Bencher meeting a briefing memorandum on this topic from Andrea Hilland our policy lawyer who is very well versed in this topic. The Benchers will be increasingly engaged in discussing awareness and understanding of the issues on this important topic and possible actions to be taken in the short, medium and longer term.

Operational Updates

Staff Performance Management Process

One of my most important responsibilities as CEO is to make sure that we have an engaged and skilled work force at LSBC and I believe strongly that we do. But that just doesn't happen because we wish it to be so. There are many facets of meeting this challenge, effective recruiting, continuous skills and leadership development, providing opportunities for growth and participation, receiving feedback through our annual survey, timely recognition, and perhaps most important of all an effective performance management process.

We made it a priority in 2014 to do a complete review of all aspects of our staff performance management process and to consider improvements for implementation in 2015. We assigned the task to a staff working group comprised of managers and employees drawn from all areas and all levels of the organization. That group looked at the very latest developments in this field, consulted broadly within the Law Society and made recommendations to the Leadership Council which we have now adopted.

The new performance evaluation program moves away from filling out pages of information about what you "did" in the year and focuses on managers and

employees having a two way conversation about what is going well, what can be done better and what needs to be done in the coming year. We have developed a Performance Management Toolkit which gives tips to both staff and managers helping them to prepare for the discussions. Ultimately the new program will also achieve greater clarity and consistency in staff evaluations across departments, prompt more useful discussions and feedback among managers and staff and help us engage our most precious resource more effectively. So, there is a lot of talking going on in the Law Society right now but it's a great investment in our future.

2015 Annual Employee Survey

Our tenth consecutive employee survey will soon be ready to launch and results will be available for review by the end of the year. The annual survey is an important tool to help us measure how we are doing as an organization and as a tool to help us develop action plans and initiatives to better engage employees in the work and life of the Law Society. We also use the annual employee survey to help target feedback in specific areas of interest. For example, this year we will have a special section asking employees a series of questions about how they use technology at work. The responses will be used to better refine our Skills Enhancement Project, which is being built to establish a high minimum standard of computer and technology literacy for all of us combined with the training and support to achieve that goal.

As in past years, the survey is being administered by TWI Surveys, Inc. an independent third party. The survey is voluntary and confidential (anonymous) and results will be shared with the Benchers at a future meeting.

RRex Day

RRex is the name of our employee Rewards and Recognition Program which we instituted in 2012. RRex responds to the workplace reality that employees are motivated to succeed in different ways including when and how their contributions are recognized. For example, some employees feel most rewarded by a show of gratitude from a colleague for a simple favor extended at work. Others are motivated by working on complex projects or assignments with specific goals where success is dependent on teamwork and collaboration. And no matter what the task or at whatever level in the organization we aim to celebrate excellence and exceptional achievement through constructive feedback.

So far in 2015 staff have used the RRex program to thank their peers for assistance and support through our “on-the-spot” recognition card program over 160 times. What I find particularly gratifying about that is that 58% of those cards were given by staff in one department to a colleague in a different department. To me this shows collaboration and teamwork across departments in action. Similarly, managers used the “on-the-spot” recognition card program over 170 times so far this year to recognize staff and 53% of those cards were given by managers to staff outside their departments.

On RRex day (held last Tuesday in the Bencher room) staff come together for lunch to celebrate some special individual awards. The RRex Award is given each year to an employee nominated by their peers who has demonstrated an outstanding commitment to excellence in their work. The nominations are carefully reviewed and the winner selected by the RRex awards committee, which is made up of a diverse cross section of staff. This year we had two RRex Award winners; Kasia Stabia of our IT department for her outstanding computer training and desktop support and Josie Noble from the Lawyers Insurance Fund for her outstanding work ethic and positive attitude.

The RRex Program also ties in with our annual performance review process as staff are eligible for employee recognition awards based upon the achievement of the goals established for their position and for demonstrating collaboration and teamwork.

Lynx. . . linking LSBC

”Lynx . . .linking LSBC” is the name and tag line for our Knowledge Management Project at LSBC. As I have mentioned in previous CEO reports this is a major change management exercise for us at LSBC and like previous successful projects such as the Core Process Review and the LEO project it involves and depends on broad engagement of all staff. Knowledge Management has rapidly become an essential tool and enabler for effective and high performing organizations. While it has its origins in the corporate world its benefits are particularly well suited to an organization like the Law Society which relies so heavily on the ability to capture, share and repurpose information, knowledge and experience.

At our recent all employee Staff Forum we officially launched the Lynx project plan through a series of inter active and informative exercises with staff. I will have more to report on Lynx in the months ahead but here are the 4 principal benefits of implementing Lynx as our knowledge management plan:

1. We will identify and capture information and knowledge relevant to our work whether it is explicit (i.e. in written form) or implicit (i.e. someone's knowhow, institutional knowledge or experience);

2. We will commit to share knowledge and make it accessible within our organization to all with limited exceptions;

3. We will provide the necessary tools and portals to quickly and easily access, share and reuse the knowledge; and

4. We will standardize processes wherever knowledge transfer or sharing is involved and eliminate duplication to be more effective and efficient.

So, this is exciting and important work, which is part of our commitment to continuously improve our operational capabilities through deliberate and focused innovation.

Fifth British Columbia Justice Summit

The fifth British Columbia Justice Summit is being held at Allard Hall, UBC Law School on November 6 – 7. I will be acting as Moderator for the Summit and President Walker will be among approximately 60 invited participants including senior members of the judiciary, community groups, the bar, government and other justice system stakeholders. Michael Lucas our Manager of Policy has once again been a member of the Summit steering committee. The main topic is "Towards better coordination and information sharing in and across family justice, criminal justice, and child protection proceedings".

Timothy E. McGee
Chief Executive Officer

REDACTED MATERIALS

REDACTED MATERIALS

The Law Society of British Columbia

Memo

To:	Benchers
From:	Jeffrey G. Hoskins, QC for Act and Rules Committee
Date:	November 24, 2015
Subject:	**Rule 1-8 and others — Appointed Benchers at general meetings; notice of general meetings**

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1. At the Annual General Meeting of the Law Society on October 14, the members nearly unanimously passed two resolutions proposed and recommended by the Benchers authorizing under section 12 of the *Legal Profession Act* amendments to the rules governing general meetings. One resolution would allow appointed Benchers to attend and speak at general meetings as of right, and the other would permit the Law Society to notify members of general meetings by electronic means, rather than by mail, which is the current requirement.

2. These are the resolutions passed by the AGM:

   Resolution 3: Appointed Benchers' rights at an AGM

   BE IT RESOLVED to authorize the Benchers to amend the Law Society Rules 2015 to allow appointed Benchers to attend and speak at a general meeting as of right and to act as a local chair at a general meeting if appointed by the Executive Director.

   Resolution 4: Electronic distribution of AGM Notices

   BE IT RESOLVED to authorize the Benchers to amend the Rules respecting general meetings to provide that the required notices of general meetings may be distributed by electronic means instead of by mail as presently required.

3. I attach a draft of amendments to the relevant rules approved and recommended by the Act and Rules Committee to implement both resolutions.

4. While discussion of the changes has centred on Annual General Meetings, the Committee also recommends amending the rules that apply to Special General Meetings since the same principles considered in advancing the AGM changes would apply there as well.

5. We have tried to make the language about notification of meetings consistent by using the phrase “by electronic or other means,” which currently applies to the audited financial statements.

6. With respect to the first notice of meetings, the proposal is that the Law Society’s obligation be to “distribute” a notice, which is the word used in the current rule for AGMs. The rule on SGMs, for some reason, says that the notice must be “mailed.” The second notice is to be “made available,” which is the word used in the current rule regarding the audited financial statements.

7. In order to ensure that appointed Benchers are treated as they should be (entitled as of right to attend and speak, but not to vote) the amendment adds Benchers to those entitled to be notified, to be appointed a local chair and to attend and speak as if right. Since appointed Benchers would then be entitled to attend as of right, the amendments separate them from persons “given permission to attend the meeting by the President” under Rule, 1-13(2). But, since they are still not entitled to vote, the amendments continue the requirement to give them a card for identification only

8. I attach redlined and clean versions of the changes, along with a suggested resolution, which the Act and Rules Committee recommends be adopted.

Attachments: draft amendments
resolution

JGH

LAW SOCIETY RULES 2015

PART 1 – ORGANIZATION

Division 1 – Law Society

Meetings

Annual general meeting

1-8 (5) At least 60 days before an annual general meeting, the Executive Director must, by electronic or other means, distribute to Benchers and members of the Society in good standing ~~by mail~~ a notice of the date and time of the meeting.

(7) At least 21 days before an annual general meeting, the Executive Director must, by electronic or other means, make available to Benchers and members of the Society in good standing~~,~~

(a) ~~by mail,~~ a notice containing the following information:

(i) the locations at which the meeting is to be held, and

(ii) each resolution received in accordance with subrules (6), and

(b) ~~by electronic or other means,~~ the audited financial statement of the Society for the previous calendar year.

Telephone connections

1-9 (2) The Executive Director may appoint a Bencher or a member of the Society in good standing to act as local chair of a location where the President is not present.

Special general meeting

1-11 (5) At least 21 days before a special general meeting, the Executive Director must, ~~mail~~ by electronic or other means, distribute to Benchers and ~~each~~ members of the Society in good standing a notice of the meeting stating the business that will be considered at the meeting.

(6) The accidental omission to give notice of a special general meeting to any Bencher or member of the Society, or the non-receipt of that notice, does not invalidate anything done at the meeting.

Procedure at general meeting

1-13 (1) Benchers, ~~Members~~ members of the Society in good standing and articled students are entitled to be present and to speak at a general meeting.

LAW SOCIETY RULES 2015

(2) The Executive Director must register all persons attending a general meeting as follows:

(a) members of the Society in good standing, who must be given a voting card;

(b) articled students, who must be given a student card;

(c) appointed Benchers and persons ~~all others~~ given permission to attend the meeting by the President, who may be given a card for identification only.

LAW SOCIETY RULES 2015

PART 1 – ORGANIZATION

Division 1 – Law Society

Meetings

Annual general meeting

1-8 (5) At least 60 days before an annual general meeting, the Executive Director must, by electronic or other means, distribute to Benchers and members of the Society in good standing a notice of the date and time of the meeting.

(7) At least 21 days before an annual general meeting, the Executive Director must, by electronic or other means, make available to Benchers and members of the Society in good standing

(a) a notice containing the following information:

(i) the locations at which the meeting is to be held, and

(ii) each resolution received in accordance with subrules (6), and

(b) the audited financial statement of the Society for the previous calendar year.

Telephone connections

1-9 (2) The Executive Director may appoint a Bencher or a member of the Society in good standing to act as local chair of a location where the President is not present.

Special general meeting

1-11 (5) At least 21 days before a special general meeting, the Executive Director must, by electronic or other means, distribute to Benchers and members of the Society in good standing a notice of the meeting stating the business that will be considered at the meeting.

(6) The accidental omission to give notice of a special general meeting to any Bencher or member of the Society, or the non-receipt of that notice, does not invalidate anything done at the meeting.

Procedure at general meeting

1-13 (1) Benchers, members of the Society in good standing and articled students are entitled to be present and to speak at a general meeting.

(2) The Executive Director must register all persons attending a general meeting as follows:

(a) members of the Society in good standing, who must be given a voting card;

(b) articled students, who must be given a student card;

(c) appointed Benchers and persons given permission to attend the meeting by the President, who may be given a card for identification only.

SUGGESTED RULE AMENDMENT RESOLUTION— GENERAL MEETINGS

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

1. In Rule 1-8, by rescinding subrules (5) and (7) and substituting the following:

(5) At least 60 days before an annual general meeting, the Executive Director must, by electronic or other means, distribute to Benchers and members of the Society in good standing a notice of the date and time of the meeting.

(7) At least 21 days before an annual general meeting, the Executive Director must, by electronic or other means, make available to Benchers and members of the Society in good standing

(a) a notice containing the following information:

(i) the locations at which the meeting is to be held, and

(ii) each resolution received in accordance with subrules (6), and

(b) the audited financial statement of the Society for the previous calendar year**..**

2. In Rule 1-9, by rescinding subrule (2) and substituting the following:

(2) The Executive Director may appoint a Bencher or a member of the Society in good standing to act as local chair of a location where the President is not present**..**

3. In Rule 1-11, by rescinding subrules (5) and (6) and substituting the following:

(5) At least 21 days before a special general meeting, the Executive Director must, by electronic or other means, distribute to Benchers and members of the Society in good standing a notice of the meeting stating the business that will be considered at the meeting.

(6) The accidental omission to give notice of a special general meeting to any Bencher or member of the Society, or the non-receipt of that notice, does not invalidate anything done at the meeting**..**

4. In Rule 1-13

(a) by striking the words in subrule (1) "Members of the Society***" and substituting the words "***Benchers, members of the Society***"; and***

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

(c) appointed Benchers and persons given permission to attend the meeting by the President, who may be given a card for identification only**..**

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: November 23, 2015
Subject: **Rules on appointment of panel and review board chairs**

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1. At the September meeting the Benchers approved this recommendation of the Tribunal Program Review Task Force, as amended at the Benchers meeting:

   RECOMMENDATION 5—Appoint experienced lawyers as chairs.

   The chair of a hearing panel or review board should be a lawyer with training and experience in conducting hearings. We recommend that, to be eligible to be appointed as chair of a hearing panel or review board, a lawyer must have participated in a minimum of two previous hearings or reviews, as the case may be, and must have completed the hearing skills workshop, regardless of whether he or she is a Bencher.

2. In order to effect that change, the Act and Rules Committee recommends the adoption of amendments that would allow appointment of a non-lawyer Bencher as the chair of a hearing panel or a review board.

3. These are some notes on the drafting:

4. Rule 5-2(2)(f) is to be removed because it is not necessary to provide for a single-Bencher panel when a member of a panel cannot continue. That is provided for elsewhere, and in fact allows for non-benchers to continue as a panel. This provision is inconsistent with that. Note that the only case where a non-Bencher could be a single-member panel except in the unlikely, but possible, situation where two members of a three-person panel are unable to continue and the only one left is the non-bencher lawyer. That is also possible under the current rules.

5. In Rule 5-3(2), the provisos at the beginning and the end of the subrule should both be removed because there is no longer a conflict with the requirement that the chair be a bencher.

6. The last note also applies to Rule 5-18(2).

7. More detail on the appointment of panel and review board chairs will be included in a revised protocol for the guidance of the President. This is consistent with our practice to date of minimizing the requirements and restrictions on the discretion of the President contained in the Law Society Rules.

8. I attach redlined and clean versions of the proposed changes, along with a suggested resolution, which the Act and Rules Committee recommends be adopted.

Attachments: draft amendments
suggested resolution

JGH

LAW SOCIETY RULES 2015

PART 5 – HEARINGS AND APPEALS

Hearing panels

5-2 (1) A panel must consist of an odd number of persons but, subject to subrule (2), must not consist of one person.

(2) A panel may consist of one Bencher who is a lawyer if

(a) no facts are in dispute,

(b) the hearing is to consider a conditional admission under Rule 4-30 *[Conditional admission and consent to disciplinary action]*,

(c) the hearing proceeds under Rule 4-33 *[Summary hearing]*,

(d) the hearing is to consider a preliminary question under Rule 4-36 *[Preliminary questions]*, or

(e) it is not otherwise possible, in the opinion of the President, to convene a panel in a reasonable period of time~~, or~~

~~(f) one or more of the original panel members cannot complete a hearing that has begun~~.

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

(4) Panel members must be permanent residents of British Columbia over the age of majority.

(5) The chair of a panel who ceases to be a ~~Bencher~~ lawyer may, with the consent of the President, continue to chair the panel, and the panel may complete any hearing or hearings already scheduled or begun.

(6) Two or more panels may proceed with separate matters at the same time.

(7) The President may refer a matter that is before a panel to another panel, fill a vacancy on a panel or terminate an appointment to a panel.

(8) Unless otherwise provided in the Act and these Rules, a panel must decide any matter by a majority, and the decision of the majority is the decision of the panel.

Panel member unable to continue

5-3 (1) Despite Rule 5-2 *[Hearing panels]*, if a member of a hearing panel cannot, for any reason, complete a hearing that has begun, the President may order that the panel continue with the remaining members.

(2) ~~Despite Rule 5-2 *[Hearing panels]*, if~~If the chair of a hearing panel cannot, for any reason, complete a hearing that has begun, the President may appoint another member of the hearing panel who is a lawyer as chair of the hearing panel~~, whether or not the lawyer is a current Bencher~~.

LAW SOCIETY RULES 2015

Reviews and appeals

Review boards

5-16 (1) When a review is initiated under Rule 5-19 *[Initiating a review]*, the President must establish a review board consisting of

(a) an odd number of persons, and

(b) more persons than the hearing panel that made the decision under review.

(2) A review board must be chaired by ~~a Bencher who is~~ a lawyer.

(3) Review board members must be permanent residents of British Columbia over the age of majority.

(4) The chair of a review board who ceases to be a ~~Bencher~~ lawyer may, with the consent of the President, continue to chair the review board, and the review board may complete any hearing or hearings already scheduled or begun.

Review board member unable to continue

5-18 (1) Despite Rule 5-16 *[Review boards]*, if a member of a review board cannot, for any reason, complete a review that has begun, the President may order that the review board continue with the remaining members, whether or not the board consists of an odd number of persons.

(2) ~~Despite Rule 5-16 *[Review boards]*, if~~If the chair of a review board cannot, for any reason, complete a review that has begun, the President may appoint another member of the review board who is a lawyer as chair of the hearing panel~~, whether or not the lawyer is a current Bencher~~.

LAW SOCIETY RULES 2015

PART 5 – HEARINGS AND APPEALS

Hearing panels

5-2 (1) A panel must consist of an odd number of persons but, subject to subrule (2), must not consist of one person.

(2) A panel may consist of one Bencher who is a lawyer if

(a) no facts are in dispute,

(b) the hearing is to consider a conditional admission under Rule 4-30 *[Conditional admission and consent to disciplinary action]*,

(c) the hearing proceeds under Rule 4-33 *[Summary hearing]*,

(d) the hearing is to consider a preliminary question under Rule 4-36 *[Preliminary questions]*, or

(e) it is not otherwise possible, in the opinion of the President, to convene a panel in a reasonable period of time.

(3) A panel must be chaired by a lawyer.

(4) Panel members must be permanent residents of British Columbia over the age of majority.

(5) The chair of a panel who ceases to be a lawyer may, with the consent of the President, continue to chair the panel, and the panel may complete any hearing or hearings already scheduled or begun.

(6) Two or more panels may proceed with separate matters at the same time.

(7) The President may refer a matter that is before a panel to another panel, fill a vacancy on a panel or terminate an appointment to a panel.

(8) Unless otherwise provided in the Act and these Rules, a panel must decide any matter by a majority, and the decision of the majority is the decision of the panel.

Panel member unable to continue

5-3 (1) Despite Rule 5-2 *[Hearing panels]*, if a member of a hearing panel cannot, for any reason, complete a hearing that has begun, the President may order that the panel continue with the remaining members.

(2) If the chair of a hearing panel cannot, for any reason, complete a hearing that has begun, the President may appoint another member of the hearing panel who is a lawyer as chair of the hearing panel.

LAW SOCIETY RULES 2015

Reviews and appeals

Review boards

5-16 (1) When a review is initiated under Rule 5-19 *[Initiating a review]*, the President must establish a review board consisting of

(a) an odd number of persons, and

(b) more persons than the hearing panel that made the decision under review.

(2) A review board must be chaired by a lawyer.

(3) Review board members must be permanent residents of British Columbia over the age of majority.

(4) The chair of a review board who ceases to be a lawyer may, with the consent of the President, continue to chair the review board, and the review board may complete any hearing or hearings already scheduled or begun.

Review board member unable to continue

5-18 (1) Despite Rule 5-16 *[Review boards]*, if a member of a review board cannot, for any reason, complete a review that has begun, the President may order that the review board continue with the remaining members, whether or not the board consists of an odd number of persons.

(2) If the chair of a review board cannot, for any reason, complete a review that has begun, the President may appoint another member of the review board who is a lawyer as chair of the hearing panel.

SUGGESTED RULE AMENDMENT RESOLUTION—
PANEL AND REVIEW BOARD CHAIRS

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

1. In Rule 5-2 as follows:

(a) in subrule (2), by rescinding paragraphs (d) to (f) and substituting the following:

(d) the hearing is to consider a preliminary question under Rule 4-36 *[Preliminary questions]*, or

(e) it is not otherwise possible, in the opinion of the President, to convene a panel in a reasonable period of time.***;***

(b) by rescinding subrule (3) and substituting the following:

(3) A panel must be chaired by a lawyer.;

(c) in subrule (5), by striking the words "a Bencher may***" and substituting the words "***a lawyer may***".***

2. In Rule 5-3, by rescinding subrule (2) and substituting the following:

(2) If the chair of a hearing panel cannot, for any reason, complete a hearing that has begun, the President may appoint another member of the hearing panel who is a lawyer as chair of the hearing panel.**.**

3. In Rule 5-16 as follows:

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

(3) A review board must be chaired by a lawyer.***;***

(b) in subrule (4), by striking the words "a Bencher may***" and substituting the words "***a lawyer may***".***

4. In Rule 5-18, by rescinding subrule (2) and substituting the following:

(2) If the chair of a review board cannot, for any reason, complete a review that has begun, the President may appoint another member of the review board who is a lawyer as chair of the hearing panel.**.**

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To:	Benchers
From:	Family Law Task Force
Date:	December 4, 2015
Subject:	Family Law Task Force Final Report

Purpose

The purpose of this memorandum is to provide a final report to the Benchers regarding the work of the Family Law Task Force. The Task Force was extended to the end of 2015 in order to be available for consultation with respect to material it provided to the Ethics Committee in 2014. At the October Benchers meeting, the Ethics Committee reported regarding that referral material. That report concludes the remaining work of the Task Force, and it can now be disbanded.

Before being officially disbanded, the Task Force wishes to update the Benchers regarding materials referred to it over the years and suggest a few proposals for future consideration by the Law Society.

Overview of the Task Force & its Work

The Task Force currently consists of the following members:

- Carol W. Hickman, QC (Life-bencher), Chair
- Nancy Merrill
- Lee Ongman
- Greg Petrisor
- Kathryn Berge, QC (Life-bencher)
- Richard Stewart, QC (Life-bencher).

1. Best Practice Guidelines for lawyers practicing family law

The Task Force was originally constituted by the Benchers in 2007 to develop best practice guidelines for lawyers practicing family law. This original mandate arose from a request from the Ministry of the Attorney General. The Task Force reported to the Benchers in 2008, which led to collaborating with the Canadian Bar Association BC Branch for the development of the guidelines. The initial draft guidelines the Task Force created were modified by the CBA BC Branch, and evolved into a product that was adopted by the CBA BC Branch in June 2011, and endorsed by the Benchers the following month.

2. Response to reforms to the Family Law Rules of Court

At the same time, the Task Force was asked by the Benchers to develop a response to the reforms to the Family Law Rules of Court. The Task Force undertook and completed that work in 2008.

3. Establishing training criteria for lawyers acting as family law mediators, arbitrators and parenting coordinators

In 2009 the government once again approached the Law Society about reforms underway in the area of family law. Specifically, the government was establishing new training criteria for family law mediators, arbitrators and parenting coordinators. The Benchers asked the Task Force to develop a set of training criteria for lawyers acting as family law mediators, arbitrators and parenting coordinators.

After extensive consultation and work, the Task Force completed that project and reported to the Benchers in September 2012. Following that report, the government extended implementation of its regulations until the end 2013, so the Task Force was kept active. Throughout 2014 the Task Force was kept active in order to monitor whether any issues arose as a result of the reforms that needed to be reported back to the Benchers.

4. Family Law pilot project under the Designated Paralegals initiative

When the Law Society created the designated paralegal initiative, the Task Force was once again called on to contribute to the work. The Task Force worked closely with the courts to develop the family law pilot project for designated paralegals. This work took place throughout 2012.

In March 2014 the Task Force referred to the Ethics Committee the issues that were addressed in the Ethics Committee's materials for the Benchers on December 4, 2015.

5. General

Over the course of its existence, the Task Force has produced multiple reports to the Benchers and provided support to other groups, such as the Delivery of Legal Services Task Force and the Civil Justice Reform Working Group. The Task Force has completed all of its work, but has a few concepts it recommends to the Benchers.

Concepts for Future Consideration by the Law Society

As the Task Force completes its work it wishes to draw to the Benchers' attention matters that it considers merit future attention by the Law Society.

1. *Updating the Best Practice Guidelines for Lawyers Practicing Family Law*

Since the Best Practice Guidelines were endorsed in 2011, the government has implemented a new *Family Law Act* and Family Law Act Regulation. As noted above, the Task Force engaged in work setting training standards for lawyers performing family law dispute resolution functions. Both the Family Law Regulation and the training requirements set by the Law Society for lawyers acting as family law mediators, arbitrators and parenting coordinators, require at least 14 hours of training in family violence awareness skills. However, for lawyers practising in family law in the traditional barrister or solicitor role, the Benchers endorsed the concept that lawyers be strongly encouraged to take such training, rather than it being required. Because the Best Practice Guidelines reflect *best practices*, the Task Force believes that it is appropriate that the CBA BC Branch be asked to consider amending the Best Practice Guidelines to state that it is a best practice for lawyers who take on family law clients to have such training.

The Task Force has approached the CBA to see if they are amenable to updating the Guidelines. If the Guidelines are updated, the Benchers may be asked in the future to endorse the modified version.

2. *As part of its Strategic Planning Process, consider whether there are discrete family law initiatives that ought to be addressed*

Throughout its existence, the Task Force grappled with the question of whether there should be a standing committee to address family law matters. Ultimately, the Task Force accepted that there are reasons not to have a dedicated committee to address family law matters, including that the Benchers can always constitute a task force to deal with discrete issues as they arise, and there is a risk that a standing committee will feel compelled to engage in reforms because it exists, rather than because reforms are required. Moreover, the Task Force notes that the creation of a committee to deal with one discrete areas of practice risks the creation of other committees to deal with other discrete areas of practice, and that it may be better to approach policy issues from a broader perspective.

Those cautions aside, the Task Force also notes that family law is consistently identified as a pressing area of legal need and a core concern in access to justice debates. It is identified in virtually every legal needs report over the past decade, family law remains the most litigated area of civil law, and as was observed at the presentation by the Legal Services Society to the Benchers in September 2015, is an area of great need. The Task Force is of the view that the Law Society needs to continue to focus on finding ways to make family law work for British Columbians.

The nature of the work performed by the Task Force requires ongoing monitoring and, from time to time, may require new initiatives. In light of this the Task Force is of the view that ongoing monitoring and work should be divided amongst the following groups.

(a) Access to Legal Services Advisory Committee

Improving access to justice and legal services has been a priority on each of the Law Society's three Strategic Plans. As the Benchers are aware from the annual reports of the Access to Legal Services Advisory Committee and the reports of the various task forces that have been charged with advancing the Strategic Plans, family law is one of the pre-eminent access to justice concerns. Virtually every legal needs report or survey identifies family law as a key area of concern. In addition, the government has engaged in extensive reform in this area of law and have recognized it as a priority area in its access to justice portfolio.

As the Benchers will note, the Access to Legal Services Advisory Committee's year-end report makes several observations about how the Law Society determines what its areas of focus ought to be, and the risk that from year to year, depending on the constituency of the Committee, the focus can shift a great deal. The structure of the Committee's draft mandate provides room for direction and clarity, however, if the Benchers identify areas of focus for the Committee. Given the broadly acknowledged importance of improving access to justice and legal services regarding family law matters, the Task Force recommends that the Benchers direct the Access to Legal Services Advisory Committee to ensure it keeps family law issues in the forefront of its consideration until such time as the Benchers direct otherwise. The twice yearly reporting structure of the Committee, coupled with the three year Strategic Planning cycle, will provide the Benchers ample opportunity to modify this directive if required.

(b) Credentials Committee & Law Society Staff

As noted above, the Task Force was kept active in the event any issues arose with respect to the standards that were set for training family law mediators, arbitrators and parenting coordinators. At this point the issues that arise have more to do with course providers structuring courses to meet the standards, and lawyers potentially having questions about whether courses meet the standards, than with regard to the policy behind the standards that were set. That having been said, as the Task Force was preparing this report a query came in from CLE BC regarding the

mediation standards as identified in the Family Law Regulation and whether courses are meeting the standards.

The plan regarding the query from CLE BC is to arrange for a meeting between Law Society staff, CLE BC staff, and a representative from Mediate BC in order to ensure everyone is on the same page regarding the understanding of not only the policy standards, but what each organization is doing at the operational end of things.

When the standards were created the Credentials Committee was charged with oversight of what the standards are. Similar to continuing professional development ("CPD") however, staff have been delegated the authority to determine which courses meet the criteria that have been set by the committee. If concerns arise with respect to the underlying standards, staff can report to the Credentials Committee but otherwise it is appropriate that they continue to oversee the operational end of the policy implementation. The monitoring function that was given to the Task Force, therefore, should be passed on to staff in the Member Services Department with the understanding that if concerns arise with respect to the underlying standards they should liaise with the Credentials Committee for guidance.

(c) CPD for Dispute Resolution Professionals

Law Society Rule 3-38 authorizes the Credentials Committee to determine the minimum number of hours of professional development required of family law mediators, arbitrators or parenting coordinators each year. The Credentials Committee has set the amount at six hours per year in courses focused on dispute resolution theory and practice.

Because the Family Law Task Force consists of family law practitioners it provided an ear to the ground for concerns about the standards of training required for lawyers acting as family dispute resolution professionals. Going forward, the Credentials Committee may wish to ensure it has consideration of how CPD training for family law dispute resolution professionals is working in practice. In part this may involve reminding lawyers that they can obtain CPD hours in more ways than taking courses, including teaching, writing, group studies, etc.

Recommendation: The Task Force recommends that the Benchers issue the following directions:

1. The Access to Legal Services Advisory Committee, as part of its function to monitor and advise on how to improve access to justice and legal services, continue to discuss and explore how to improve access to justice and legal services relating to family law matters until such time as directed otherwise by the Benchers;

2. Member Services staff will take over the monitoring role regarding concerns identified about the training requirements for family law dispute resolution professionals. Operational matters will be handled at the staff level. Concerns regarding the underlying standards should be directed to the Credentials Committee for review;

3. The Credentials Committee, pursuant to its authority under Rule 3-38, should consider ways to ensure lawyers understand the range of methods available to obtaining the 6 hour CPD requirements.

/DM

The Law Society of British Columbia

BC Code Rule 6.1-3.3, Appendix B and Appendix E: Issues Arising regarding Designated Paralegals

September 28, 2015

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

Prepared by: **Ethics Committee**

The Law Society of British Columbia

Memo

To: Benchers
From: Ethics Committee
Date: September 28, 2015
Subject: **Rule 6.1-3.3, Appendix B and Appendix E: Issues Arising regarding Designated Paralegals**

In a memo of March 14, 2014 the Family Law Task Force (the "FLTF") made a series of recommendations to us to change the *BC Code* to give effect to concerns with respect to paralegal representation of family law clients that were identified by the Task Force. The memorandum of March 14, 2014 is attached.

I. Recommendations of the FLTF

We accepted the following recommendations of the FLTF and these recommendations are reflected in the attached revisions to rule 6..1-3.3, Appendix B and Appendix E of the BC Code which we in turn recommend to you:

1. designated paralegals should be permitted to represent clients at family law mediations?

The FLTF memo of March 4, 2014 states (at page 1):

> The Task Force considered whether it is appropriate for a lawyer to permit a designated paralegal to represent clients at family law mediations. The Task Force concluded designated paralegals should be permitted to represent clients at family law mediations, subject to the proposed commentary in Appendix 1.
>
> Because designated paralegals are permitted to give legal advice and, subject to the views of the relevant court or tribunal, permitted to represent clients, the Task Force felt designated paralegals ought also to be permitted to represent clients at family law mediations. Family law mediations are consensual processes that may result in a binding disposition. There always remains recourse to the court. In addition, there is a culture shift taking place in family law where mediation is being encouraged as the first choice for many family disputes rather than the default of going to court. This is reflected in the policy developed by the Ministry of Justice and the objects of the *Family Law Act.* In order for the designated paralegal initiative to keep pace with emerging

> trends, it is important to permit designated paralegals to play a role in family law mediations.
>
> The Task Force considered the risks associated with permitting designated paralegals to represent clients at family law mediations. As with any delegation, it is essential that the lawyer believe the paralegal possesses the necessary skill and experience to carry out the work assigned by the lawyer. Some designated paralegals will be able to represent clients in some family law mediations and others will not possess the necessary skills. Some mediations will be appropriate, others will not. In order to be consistent with the model the Benchers adopted, it should remain the decision of the supervising lawyer. However, the Task Force believes the commentary set out in Appendix 1 would assist lawyers and provide an additional level of public protection.

comment

Given that designated paralegals are permitted to give legal advice and represent clients at court hearings, it seems appropriate that they also be permitted to represent clients at family law mediations where the supervising lawyer believes the designated paralegal has the necessary skill and experience to do so.

2. Appendix B should be amended to provide guidance to supervising lawyers who are considering sending a designated paralegal to represent a client at a family law mediation.

This recommendation is set out in Appendix 1 of the attached FLTF memo of March 4, 2014 at page 6.

3. The *BC Code* ought to contain general commentary that a supervising lawyer must be available by phone in critical situations involving designated paralegals?

The FLTF advises (at page 3):

> The Task Force also believes, as is the case with the family law pilot project, that lawyers must be available during the mediation by phone in the event an issue arises that the designated paralegal needs input from the lawyer. The file remains one between the lawyer and the client, despite the delegation and it is important that the mediation process not be subject to undue delay or additional cost by a designated paralegal not being able to speak to matters conclusively. Some general commentary that a lawyer must be available by phone whenever a designated paralegal is representing a client before a court, tribunal or dispute resolution proceeding is recommended.

4. The BC Code should require that an agreement arising from a family law mediation in which a designated paralegal represented a client, must be subject to final review by the lawyer?

The FLTF advises (at page 3)

> The Task Force suggests that the *BC Code* require that an agreement arising from a mediation in which a designated paralegal represented a client, must be subject to final review by the lawyer. The Task Force recognizes that the day may come where there is a sufficient body of experienced designated paralegals acting as counsel at mediations, and the need for a final review might no longer be required in all cases. Until that time, however, the Task Force prefers erring on the side of caution by requiring the supervising lawyer to review the agreement. This provides additional training opportunities for the designated paralegal and reinforces the quality of the supervision. The Task Force recognizes this can add some cost to the process, but cost saving ought to still be realized compared to having a lawyer act as counsel at the mediation. This should be discussed with the client at the front end of the retainer.

5. Designated paralegals should not be permitted to represent clients at family law arbitrations?

The FLTF advises (at page 3)

> The Task Force is of the view that designated paralegals should not be permitted to represent clients at family law arbitrations. There are several reasons for this conclusion.
>
> As a binding form of private dispute resolution, arbitrations have additional risks that are not present in mediations. The Task Force recognizes that designated paralegals can appear before a tribunal as permitted, but in the context of court appearances they are limited to select procedural applications in a limited number of registries. To allow them to represent clients at what are, essentially, private trials would be inconsistent with the scope of that license and without the additional safeguards that exist in the court setting.
>
> In many respects family law arbitration is in its infancy in British Columbia. If it is to flourish there is the need for a body of arbitral decisions to take shape and for skilled counsel to participate. This is so both to build public confidence in the process but also in order for the courts to respect the process and decisions. If the court is unprepared to permit designated paralegals representing clients in a broader range of trials and family law applications there is a risk the court might view paralegals representing clients at arbitrations as something that goes to the fairness of the process and adequacy of counsel. While this is speculative, it is a risk that does not seem worth taking relative to the theoretical access benefit.

Similarly, because the number of family law arbitrations is relatively small, the potential access benefit of permitting designated paralegals to represent clients at family law arbitrations is also small. There is a concern that the law of small numbers might create distorting effects on our ability to adequately assess the access benefits and the risks associated with permitting paralegals to represent clients at family law arbitrations.

6. Appendix B of the BC Code should set out the basic elements of what constitutes sound legal advice (proposed in Appendix 2 of the FLTF memo of March 4, 2014 at page 8)?

The FLTF advises (at page 4):

> Another matter of general concern is the risk of a settlement agreement being set aside due to lack of adequate counsel. While the Task Force identified this as a risk that can occur when the designated paralegal is acting as counsel at a mediation, there is also risk during the general function of providing legal advice or independent legal advice. As such, the proposed draft commentary in bullet 5 of Appendix 1 has broader application and the Committee may wish to consider if some general commentary is required. The Task Force sets out a possible example in Appendix 2.
>
> The Committee may wish to consider whether some commentary that sets out the basic elements of what constitutes sound legal advice should form part of the commentary. The Task Force suggests a framework in Appendix 2.

Proposed Appendix 2 states:

> **Appendix 2: Proposed Draft General Commentary**
>
> *Screening for family violence*
>
> The *Family Law Act*, SBC 2011, c. 25 requires family dispute resolution professionals to screen for family violence. Lawyers who practice family law are strongly encouraged to take at least 14 hours of training in screening for family violence, and lawyers who are acting as family law mediators, arbitrators or parenting coordinators are required to take such training.
>
> While designated paralegals do not fall within the definition of family dispute resolution professionals, lawyers who delegate to designated paralegals the ability to give legal advice in family law or represent clients in the permitted forums are strongly encouraged to ensure the designated paralegal has at least 14 hours of training in screening for family violence.
>
> If a designated paralegal has reason to believe family violence may be present, it is essential the paralegal bring this to the supervising lawyer's attention so the lawyer can turn his or her mind to the issue and the potential risks associated with it.

Designated paralegals giving legal advice and independent legal advice

As part of the process of supervising a designated paralegal who is permitted to give legal advice, lawyers should instruct the designated paralegal as to the key aspects of what giving sound legal advice involves.

Giving legal advice and independent legal advice involves consideration of process and of the content of the advice. As a matter of process the lawyer, or designated paralegal, must obtain the relevant factual information from the client. This requires the skill of focusing on necessary factual material, rather than an exhaustive and costly exploration of all potential facts no matter how tangential they may be. Once the lawyer, or designated paralegal, has the factual foundation, he or she advises the client to the legal rights, obligations and/or remedies that are implicated by the facts. Finally, the lawyer should make a recommendation as to the preferred course of conduct and explain in clear terms why the suggested course is preferred.

When a lawyer is training a designated paralegal it is essential to instruct the paralegal as to the proper process for ensuring the paralegal is imparting sound and cost effective legal advice to the lawyer's client.

II. Other Recommendations

There are two recommendations of the FLTF in its memorandum of March 14, 2014 that we have not addressed in the changes to the BC Code that we proposed. Those recommendations are the following:

1. Does the Ethics Committee or the Code of Conduct have any role in training in screening for family violence?

The FLTF advises (at page 4):

Section 8 of the *Family Law Act* requires that "family dispute resolution professionals" screen for the presence of family violence and assess whether safety is at issue or the ability to negotiate a fair agreement is compromised. Lawyers are family dispute resolution professionals; paralegals are not.

When the Benchers adopted the Family Law Task Force report they required lawyers acting as family law mediators, arbitrators or parenting coordinators to take at least 14 hours of training in screening for family violence. Lawyers who are not performing these roles, but are dealing with family law clients, are strongly encouraged to take such training, but it is not mandatory.

The issue is that a lawyer may delegate to a designated paralegal a family law file to give legal advice on, and subject to the Benchers determination to act as counsel at

> family law mediations and possibly arbitrations. The question is whether designated paralegals ought to be required to take training in screening for family violence.
>
> With respect to the designated paralegal giving legal advice or representing clients, the Task Force is of the view that, like lawyers, the designated paralegal ought to be strongly encouraged to take at least 14 hours of training in screening for family violence. The Task Force did not feel it could require such training of a designated paralegal when it is not required of the supervising lawyer. At the same time, the Task Force did not think the lawyer could, with a clear conscience, delegate a family law file to the paralegal without some comfort that the paralegal had the necessary skills to identify signs of family violence.
>
> Family violence might not be obvious at the initial intake stage and might only reveal itself down the road. In such cases, the ongoing obligation to screen for the violence suggests the need for the person with carriage of the file to possess the appropriate skills. The Task Force also believes that if the designated paralegal believes family violence may be present that they should immediately bring it to the attention of the lawyer for his or her consideration.

This seems to us to be an issue that ought to be considered by the Credentials arm of the Law Society and we have drawn its attention to the Credentials Committee..

2. Is any change to the Code required to deal with issues that may occur if a designated paralegal meets the training requirements of a family law mediator, arbitrator or parenting coordinator?

The FLTF advises (at page 5):

> Lastly, the Task Force considered what might happen if a designated paralegal meets the training requirements of a family law mediator, arbitrator or parenting coordinator. It is possible the lawyer may wish to enter into an arrangement where the paralegal provides those ADR services, perhaps while also providing paralegal services under the supervision of the lawyer, or perhaps only acting in the role of an ADR professional. While the Task Force did not explore this in detail, it recognized that any lawyer who is setting up a business with mediators, arbitrators or parenting coordinators, regardless of whether the ADR professional is a paralegal, needs to comply with the relevant rules for such a business model. In some cases the paralegal may wear multiple hats and there is potentially room for confusion if the relationships and how they are regulated are not clearly understood. The Committee may wish to consider whether any commentary is merited in this respect.

Although we agree the situation posed by the FLTF raises issues that would have to be dealt with if a paralegal is also a family law mediator, arbitrator or parenting coordinator, we think it may be preferable to deal with such an issue in an Ethics Committee opinion, rather than in commentary. We will be considering this issue further, but it is not addressed in any of the attached changes we recommend.

Attachments:

- Draft resolution [928532]
- Memorandum of March 4, 2014 from the Family Law Task Force. [531336]
- Draft changes to rule 6.1-3.3, Appendix B and Appendix E [886847, 895728, 818669, 895740, 838087, 895824]

[928515/2015]

September 28, 2015

Re: BC Code Rule 6.1-3.3: Designated Paralegals

SUGGESTED CODE OF PROFESSIONAL CONDUCT FOR BRITISH COLUMBIA AMENDMENT RESOLUTION

RESOLUTION 1

BE IT RESOLVED ***to amend rule 6.1-3.3 of the Code of Professional Conduct for British Columbia as follows :***

i. by rescinding rule 6.1-3.3 and by substituting new rule 6.1-3.3 which states:

"6.1-3.3 Despite rule 6.1-3, where a designated paralegal has the necessary skill and experience, a lawyer may permit the designated paralegal

(a) to give legal advice;

(b) to represent clients before a court or tribunal, other than a family law arbitration, as permitted by the court or tribunal; or

(c) to represent clients at a family law mediation."

ii. By rescinding commentary [1] and by substituting new commentary [1] which states:

"[1] Law Society Rule 2-13 limits the number of designated paralegals performing the enhanced duties of giving legal advice, appearing in court or before a tribunal or appearing at a family law mediation."

iii. Following commenary [1] by inserting the following words as commentary [2]:

"[2] Where a designated paralegal performs the services in rule 6.1-3.3, the supervising lawyer must be available by telephone, and any agreement arising from a family law medation must be subject to final review by the supervising lawyer."

RESOLUTION 2

BE IT RESOLVED ***to amend Appendix B of the Code of Professional Conduct for British Columbia as follows :***

Following paragraph 7 by inserting the following words:

"Commentary

[1] The purpose of this commentary is to provide guidance to supervising lawyers who are considering sending a designated paralegal to represent a client at a family law mediation.

[2] Designated paralegals are permitted to represent a client at family law mediations in circumstances the supervising lawyer deems appropriate. However, family law mediations present unique challenges and before permitting a paralegal to represent a client in such processes the supervising lawyer must:

(a) determine whether the designated paralegal possesses the necessary skill and knowledge to act in the matter (consistent with the general obligation for determining whether to delegate work to the designated paralegal);

(b) ensure that there is no prohibition at law that prevents the designated paralegal from representing the client. For example, consider the restrictions in the Notice to Mediate Regulations regarding who has the right to accompany a party to a mediation;

(c) obtain the client's informed consent to the use of the designated paralegal.

[3] It is prudent for the supervising lawyer to advise the mediator and the other party, through their counsel if they are represented, that the designated paralegal will be representing the client and provide the name and contact information for the supervising lawyer.

[4] In addition to considering the process in Appendix E of the BC Code, lawyers should consider the following before permitting a designated paralegal to represent a client at a family law mediation:

- Mediation requires as much competency of the legal representative as is required before a court or tribunal. The supervising lawyer must bear this in mind when determining when it is appropriate to have a designated paralegal represent a client;

- Family law is a unique area of law in which many other areas of law intersect. In addition, clients are often dealing with considerable emotional stress and in some cases come from environments where family violence exists. It is an area of practice fraught with risks that both the lawyer and the designated paralegal need the skills and knowledge to identify and properly manage. Considerable skill is required to represent a client effectively at a family law mediation. A supervising lawyer should ensure the designated paralegal has received specific training in representing a client at a family law mediation. It is prudent to have the designated paralegal shadow the lawyer for several sessions and then have the lawyer shadow the designated paralegal for his or her first few sessions.

[5] Despite more family law matters being directed to consensual dispute resolution processes rather than to court, it remains essential that those processes and the settlements that arise in them be fair. It is important, therefore, for both the supervising lawyer and the designated paralegal to understand the case law surrounding circumstances in which settlement agreements have been set aside by the court on the grounds that the settlement was unfair.

(6] Lawyers must review any settlement agreement arising from a family law mediation where their designated paralegal represented the client and to have such agreements be provisional only until such time as the lawyer signed off on it. This provides an opportunity for review and an additional safeguard for the client. The lawyer would also be prudent to advise the client about this process as a standard part of the retainer agreement."

RESOLUTION 3

BE IT RESOLVED ***to amend Appendix E of the Code of Professional Conduct for British Columbia as follows :***

Following item 4 of "A checklist for assessing the comptence of paralegals" by inserting the following words:

"Screening for Family Violence

1. The *Family Law Act*, SBC 2011, c. 25 requires family dispute resolution professionals to screen for family violence. Lawyers who practice family law are strongly encouraged to take at least 14 hours of training in screening for family violence, and lawyers who are acting as family law mediators, arbitrators or parenting coordinators are required to take such training.

2. While designated paralegals do not fall within the definition of family dispute resolution professionals, lawyers who delegate to designated paralegals the ability to give legal advice in family law or represent clients in the permitted forums are strongly encouraged to ensure the designated paralegal has at least 14 hours of training in screening for family violence.

3. If a designated paralegal has reason to believe family violence may be present, it is essential the paralegal bring this to the supervising lawyer's attention so the lawyer can turn his or her mind to the issue and the potential risks associated with it.

Designated Paralegals Giving Legal Advice

1. As part of the process of supervising a designated paralegal, a lawyer should instruct the designated paralegal as to the key aspects of what giving sound legal advice involves.

2. Giving legal advice and independent legal advice involves consideration of process and of the content of the advice. As a matter of process the lawyer, or designated paralegal, must obtain the relevant factual information from the client. This requires the skill of focusing on necessary factual material, rather than an exhaustive and costly exploration of all potential facts no matter how tangential they may be. Once the lawyer, or designated paralegal, has the factual foundation, he or she advises the client of the legal rights, obligations and/or remedies that are suggested by the facts. Finally, the lawyer should make a recommendation as to the preferred course of conduct and explain in clear terms why the suggested course is preferred.

3. When a lawyer is training a designated paralegal it is essential to instruct the paralegal as to the proper process for ensuring the paralegal is imparting sound and cost effective legal advice to the lawyer's client."

The Law Society of British Columbia

Memo

To: Ethics Committee
From: Family Law Task Force
Date: March 4, 2014
Subject: Suggested *BC Code* Commentary for Use of Designated Paralegals

Background

At the September 27, 2013 meeting the Benchers asked the Family Law Task Force to consider whether the ability of designated paralegals to "represent clients before a court or tribunal, as permitted by the court or tribunal"[1] ought to also include permitting the designated paralegal to represent clients at a family law mediation or arbitration. The Task Force is to liaise with the Ethics Committee for input on its recommendations prior to reporting back to the Benchers. As the Ethics Committee is responsible for changes to the *BC Code,* it may be the committee wishes to report out to the Benchers. Alternatively, the Committee can provide its feedback to the Task Force and the Task Force can report to the Benchers with that feedback incorporated into the report.

The impetus for looking at the issue of whether designated paralegals ought to be permitted to represent clients at family law mediations and arbitrations arose from some uncertainty in the profession as to whether this would be permitted. The earlier in 2014 the Law Society can provide guidance to the membership, the better. The Task Force would be pleased to assist the Committee as required, including sending someone to attend a committee meeting if you wish.

Analysis

Although the Task Force focused on whether designated paralegals ought to be permitted to represent clients at family law mediations and arbitrations, it also considered whether some general guidance is desirable regarding designated paralegals acting in this capacity or giving legal advice. Some of the principles the Task Force sets out have broader application, but it is outside the mandate of the Task Force to recommend whether paralegals acting outside the

[1] See *BC Code*, Chapter 6, Rule 6.1-3.3.

context of family law require additional guidelines. As such, the Ethics Committee may wish to consider whether there is a need for some general commentary in the *BC Code* rather than simply in the appendix relating to family law mediation.

In considering these issues the Task Force was guided by the policy decision of the Benchers to expand the legal services designated paralegals can provide in order to improve access to legal services at a more affordable cost. The model adopted by the Benchers rests considerable discretion in the hands of the supervising lawyer to determine the circumstances in which a designated paralegal ought to be able to give legal advice or represent clients. The Task Force recognized that it was the courts that limited the role of designated paralegals to a family law pilot project; the Benchers, through Chapter 6 of the *BC* Code, established an open-ended model where the lawyer could determine capacity subject to the willingness of the relevant court or tribunal to permit an appearance by the designated paralegal. Therefore, the restrictions the Task Force suggests, and any cautionary commentary, are intended to reflect the need for additional protection of the public while respecting the spirit of the policy decision to maximize public choice in accessing legal services.

Designated paralegals representing clients at family law mediations

The Task Force considered whether it is appropriate for a lawyer to permit a designated paralegal to represent clients at family law mediations. The Task Force concluded designated paralegals should be permitted to represent clients at family law mediations, subject to the proposed commentary in **Appendix 1.**

Because designated paralegals are permitted to give legal advice and, subject to the views of the relevant court or tribunal, permitted to represent clients, the Task Force felt designated paralegals ought also to be permitted to represent clients at family law mediations. Family law mediations are consensual processes that may result in a binding disposition. There always remains recourse to the court. In addition, there is a culture shift taking place in family law where mediation is being encouraged as the first choice for many family disputes rather than the default of going to court. This is reflected in the policy developed by the Ministry of Justice and the objects of the *Family Law Act.* In order for the designated paralegal initiative to keep pace with emerging trends, it is important to permit designated paralegals to play a role in family law mediations.

The Task Force considered the risks associated with permitting designated paralegals to represent clients at family law mediations. As with any delegation, it is essential that the lawyer believe the paralegal possesses the necessary skill and experience to carry out the work assigned by the lawyer. Some designated paralegals will be able to represent clients in some family law mediations and others will not possess the necessary skills. Some mediations will be appropriate, others will not. In order to be consistent with the model the Benchers adopted, it should remain the decision of the supervising lawyer. However, the Task Force believes the commentary set out in Appendix 1 would assist lawyers and provide an additional level of public protection.

The Task Force also believes, as is the case with the family law pilot project, that lawyers must be available during the mediation by phone in the event an issue arises that the designated paralegal needs input from the lawyer. The file remains one between the lawyer and the client, despite the delegation and it is important that the mediation process not be subject to undue delay or additional cost by a designated paralegal not being able to speak to matters conclusively. Some general commentary that a lawyer must be available by phone whenever a designated paralegal is representing a client before a court, tribunal or dispute resolution proceeding is recommended.

The Task Force suggests that the *BC Code* require that an agreement arising from a mediation in which a designated paralegal represented a client, must be subject to final review by the lawyer. The Task Force recognizes that the day may come where there is a sufficient body of experienced designated paralegals acting as counsel at mediations, and the need for a final review might no longer be required in all cases. Until that time, however, the Task Force prefers erring on the side of caution by requiring the supervising lawyer to review the agreement. This provides additional training opportunities for the designated paralegal and reinforces the quality of the supervision. The Task Force recognizes this can add some cost to the process, but cost saving ought to still be realized compared to having a lawyer act as counsel at the mediation. This should be discussed with the client at the front end of the retainer.

Designated paralegals appearing as counsel at family law arbitrations

The Task Force is of the view that designated paralegals should not be permitted to represent clients at family law arbitrations. There are several reasons for this conclusion.

As a binding form of private dispute resolution, arbitrations have additional risks that are not present in mediations. The Task Force recognizes that designated paralegals can appear before a tribunal as permitted, but in the context of court appearances they are limited to select procedural applications in a limited number of registries. To allow them to represent clients at what are, essentially, private trials would be inconsistent with the scope of that license and without the additional safeguards that exist in the court setting.

In many respects family law arbitration is in its infancy in British Columbia. If it is to flourish there is the need for a body of arbitral decisions to take shape and for skilled counsel to participate. This is so both to build public confidence in the process but also in order for the courts to respect the process and decisions. If the court is unprepared to permit designated paralegals representing clients in a broader range of trials and family law applications there is a risk the court might view paralegals representing clients at arbitrations as something that goes to the fairness of the process and adequacy of counsel. While this is speculative, it is a risk that does not seem worth taking relative to the theoretical access benefit.

Similarly, because the number of family law arbitrations is relatively small, the potential access benefit of permitting designated paralegals to represent clients at family law arbitrations is also small. There is a concern that the law of small numbers might create distorting effects on our ability to adequately assess the access benefits and the risks associated with permitting paralegals to represent clients at family law arbitrations.

General matters – giving legal advice and training in screening for family violence

Section 8 of the *Family Law Act* requires that "family dispute resolution professionals" screen for the presence of family violence and assess whether safety is at issue or the ability to negotiate a fair agreement is compromised. Lawyers are family dispute resolution professionals; paralegals are not.

When the Benchers adopted the Family Law Task Force report they required lawyers acting as family law mediators, arbitrators or parenting coordinators to take at least 14 hours of training in screening for family violence. Lawyers who are not performing these roles, but are dealing with family law clients, are strongly encouraged to take such training, but it is not mandatory.

The issue is that a lawyer may delegate to a designated paralegal a family law file to give legal advice on, and subject to the Benchers determination to act as counsel at family law mediations and possibly arbitrations. The question is whether designated paralegals ought to be required to take training in screening for family violence.

With respect to the designated paralegal giving legal advice or representing clients, the Task Force is of the view that, like lawyers, the designated paralegal ought to be strongly encouraged to take at least 14 hours of training in screening for family violence. The Task Force did not feel it could require such training of a designated paralegal when it is not required of the supervising lawyer. At the same time, the Task Force did not think the lawyer could, with a clear conscience, delegate a family law file to the paralegal without some comfort that the paralegal had the necessary skills to identify signs of family violence.

Family violence might not be obvious at the initial intake stage and might only reveal itself down the road. In such cases, the ongoing obligation to screen for the violence suggests the need for the person with carriage of the file to possess the appropriate skills. The Task Force also believes that if the designated paralegal believes family violence may be present that they should immediately bring it to the attention of the lawyer for his or her consideration.

Another matter of general concern is the risk of a settlement agreement being set aside due to lack of adequate counsel. While the Task Force identified this as a risk that can occur when the designated paralegal is acting as counsel at a mediation, there is also risk during the general function of providing legal advice or independent legal advice. As such, the proposed draft commentary in bullet 5 of Appendix 1 has broader application and the Committee may wish to

consider if some general commentary is required. The Task Force sets out a possible example in **Appendix 2.**

The Committee may wish to consider whether some commentary that sets out the basic elements of what constitutes sound legal advice should form part of the commentary. The Task Force suggests a framework in Appendix 2.

Lastly, the Task Force considered what might happen if a designated paralegal meets the training requirements of a family law mediator, arbitrator or parenting coordinator. It is possible the lawyer may wish to enter into an arrangement where the paralegal provides those ADR services, perhaps while also providing paralegal services under the supervision of the lawyer, or perhaps only acting in the role of an ADR professional. While the Task Force did not explore this in detail, it recognized that any lawyer who is setting up a business with mediators, arbitrators or parenting coordinators, regardless of whether the ADR professional is a paralegal, needs to comply with the relevant rules for such a business model. In some cases the paralegal may wear multiple hats and there is potentially room for confusion if the relationships and how they are regulated are not clearly understood. The Committee may wish to consider whether any commentary is merited in this respect.

/DM

Appendix 1: Draft Proposed Commentary for Appendix B of the *BC Code*

1. The purpose of this commentary is to provide guidance to supervising lawyers who are considering sending a designated paralegal to represent a client at a family law mediation.

2. Designated paralegals are permitted to represent a client at family law mediations in circumstances the supervising lawyers deems appropriate. However, family law mediations present unique challenges and before permitting a paralegal to represent a client in such processes the supervising lawyer must:

    a. Determine whether the designated paralegal possesses the necessary skill and knowledge to act in the matter (consistent with the general obligation for determining whether to delegate work to the designated paralegal);

    b. Ensure that there is no prohibition at law that prevents the designated paralegal from representing the client. For example, consider the restrictions in the *Notice to Mediate* Regulations regarding who has the right to accompany a party to a mediation;

    c. Obtain the client's informed consent to the use of the designated paralegal.

3. It is prudent for the supervising lawyer to advise the mediator and the other party, through their counsel if they are represented, that the designated paralegal will be representing the client and provide the name and contact information for the supervising lawyer.

4. In addition to considering the process in Appendix E of the BC Code, lawyers should consider the following before permitting a designated paralegal to represent a client at a family law mediation:

    a. Mediation requires as much competency of the legal representative as is required before a court or tribunal. The supervising lawyer must bear this in mind when determining when it is appropriate to have a designated paralegal represent a client;

    b. Family law is a unique area of law in which many other areas of law intersect. In addition, clients are often dealing with considerable emotional stress and in some cases come from environments where family violence exists. It is an area of practice fraught with risks that both the lawyer and the designated paralegal need the skills and knowledge to identify and properly manage. Considerable skill is required to effectively represent a client at a family law mediation. A supervising lawyer should ensure the designated paralegal has received specific training

regarding how to represent a client at a family law mediation. It is prudent to have the designated paralegal shadow the lawyer for several sessions and then have the lawyer shadow the designated paralegal for his or her first few sessions.

5. Despite more family law matters being directed to consensual dispute resolution processes rather than the default of court, it remains essential that those processes and the settlements that arise in them be fair. It is important, therefore, for both the supervising lawyer and the designated paralegal to understand the case law surrounding circumstances in which settlement agreements have been set aside by the court on the grounds that the settlement was unfair (see, for example, *Giebelhaus v. Giebelhaus* 2012 BCSC 1100, *Miglin v. Miglin* 2003 SCC 24, *Rick v. Brandsema,* [2009] 1 SCR 295).

6. Lawyers must to review any settlement agreement arising from a family law mediation where their designated paralegal represented the client and to have such agreements be provisional only until such time as the lawyer signed off on it. This provides an opportunity for review and an additional safeguard for the client. The lawyer would also be prudent to advise the client about this process as a standard part of the retainer agreement.

Appendix 2: Proposed Draft General Commentary

Screening for family violence

The *Family Law Act*, SBC 2011, c. 25 requires family dispute resolution professionals to screen for family violence. Lawyers who practice family law are strongly encouraged to take at least 14 hours of training in screening for family violence, and lawyers who are acting as family law mediators, arbitrators or parenting coordinators are required to take such training.

While designated paralegals do not fall within the definition of family dispute resolution professionals, lawyers who delegate to designated paralegals the ability to give legal advice in family law or represent clients in the permitted forums are strongly encouraged to ensure the designated paralegal has at least 14 hours of training in screening for family violence.

If a designated paralegal has reason to believe family violence may be present, it is essential the paralegal bring this to the supervising lawyer's attention so the lawyer can turn his or her mind to the issue and the potential risks associated with it.

Designated paralegals giving legal advice and independent legal advice

As part of the process of supervising a designated paralegal who is permitted to give legal advice, lawyers should instruct the designated paralegal as to the key aspects of what giving sound legal advice involves.

Giving legal advice and independent legal advice involves consideration of process and of the content of the advice. As a matter of process the lawyer, or designated paralegal, must obtain the relevant factual information from the client. This requires the skill of focusing on necessary factual material, rather than an exhaustive and costly exploration of all potential facts no matter how tangential they may be. Once the lawyer, or designated paralegal, has the factual foundation, he or she advises the client to the legal rights, obligations and/or remedies that are implicated by the facts. Finally, the lawyer should make a recommendation as to the preferred course of conduct and explain in clear terms why the suggested course is preferred.

When a lawyer is training a designated paralegal it is essential to instruct the paralegal as to the proper process for ensuring the paralegal is imparting sound and cost effective legal advice to the lawyer's client.

Chapter 6 - Relationship to Students, Employees, and Others

6.1 Supervision

Direct supervision required

6.1-1 A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.

Commentary

[1] A lawyer may permit a non-lawyer to act only under the supervision of a lawyer. The extent of supervision will depend on the type of legal matter, including the degree of standardization and repetitiveness of the matter, and the experience of the non-lawyer generally and with regard to the matter in question. The burden rests on the lawyer to educate a non-lawyer concerning the duties that the lawyer assigns to the non-lawyer and then to supervise the manner in which such duties are carried out. A lawyer should review the non-lawyer's work at sufficiently frequent intervals to enable the lawyer to ensure its proper and timely completion. A lawyer must limit the number of non-lawyers that he or she supervises to ensure that there is sufficient time available for adequate supervision of each non-lawyer.

[3] If a non-lawyer has received specialized training or education and is competent to do independent work under the general supervision of a lawyer, a lawyer may delegate work to the non-lawyer.

[4] A lawyer in private practice may permit a non-lawyer to perform tasks delegated and supervised by a lawyer, so long as the lawyer maintains a direct relationship with the client. A lawyer in a community legal clinic funded by a provincial legal aid plan may do so, so long as the lawyer maintains direct supervision of the client's case in accordance with the supervision requirements of the legal aid plan and assumes full professional responsibility for the work.

[5] Subject to the provisions of any statute, rule or court practice in that regard, the question of what the lawyer may delegate to a non-lawyer generally turns on the distinction between any special knowledge of the non-lawyer and the professional and legal judgment of the lawyer, which, in the public interest, must be exercised by the lawyer whenever it is required.

Definitions

6.1-2 In this section,

"designated paralegal" means an individual permitted under rule 6.1-3.3 to give legal advice and represent clients before a court or tribunal;

"non-lawyer" means an individual who is neither a lawyer nor an articled student;

"paralegal" means a non-lawyer who is a trained professional working under the supervision of a lawyer.

Delegation

6.1-3 A lawyer must not permit a non-lawyer to:

(a)accept new matters on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer approves before any work commences;

(b)give legal advice;

(c)give or accept undertakings or accept trust conditions, except at the direction of and under the supervision of a lawyer responsible for the legal matter, providing that, in any communications, the fact that the person giving or accepting the undertaking or accepting the trust condition is a non-lawyer is disclosed, the capacity of the person is indicated and the lawyer who is responsible for the legal matter is identified;

(d)act finally without reference to the lawyer in matters involving professional legal judgment;

(e)be held out as a lawyer;

(f)appear in court or actively participate in formal legal proceedings on behalf of a client except as set forth above or except in a supporting role to the lawyer appearing in such proceedings;

(g)be named in association with the lawyer in any pleading, written argument or other like document submitted to a court;

(h)be remunerated on a sliding scale related to the earnings of the lawyer or the lawyer's law firm, unless the non-lawyer is an employee of the lawyer or the law firm;

(i)conduct negotiations with third parties, other than routine negotiations if the client consents and the results of the negotiation are approved by the supervising lawyer before action is taken;

(j)take instructions from clients, unless the supervising lawyer has directed the client to the non-lawyer for that purpose and the instructions are relayed to the lawyer as soon as reasonably possible;

(k)sign correspondence containing a legal opinion;

(l)sign correspondence, unless

(i) it is of a routine administrative nature,

(ii) the non-lawyer has been specifically directed to sign the correspondence by a supervising lawyer,

(iii) the fact the person is a non-lawyer is disclosed, and

(iv) the capacity in which the person signs the correspondence is indicated;

(m)forward to a client or third party any documents, other than routine, standard form documents, except with the lawyer's knowledge and direction*;*

(n)perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do; or

(o)issue statements of account.

Commentary

[1] A lawyer is responsible for any undertaking given or accepted and any trust condition accepted by a non-lawyer acting under his or her supervision.

[2] A lawyer should ensure that the non-lawyer is identified as such when communicating orally or in writing with clients, lawyers or public officials or with the public generally, whether within or outside the offices of the law firm of employment.

[3] In real estate transactions using a system for the electronic submission or registration of documents, a lawyer who approves the electronic registration of documents by a non-lawyer is responsible for the content of any document that contains the electronic signature of the non-lawyer.

6.1-3.1 The limitations imposed by rule 6.1-3 do not apply when a non-lawyer is:

(a)a community advocate funded and designated by the Law Foundation;

(b)a student engaged in a legal advice program or clinical law program run by, associated with or housed by a law school in British Columbia; and

(c)with the approval of the Executive Committee, a person employed by or volunteering with a non-profit organization providing free legal services.

6.1-3.2 A lawyer may employ as a paralegal a person who

(a)possesses adequate knowledge of substantive and procedural law relevant to the work delegated by the supervising lawyer;

(b)possesses the practical and analytic skills necessary to carry out the work delegated by the supervising lawyer; and

(c)carries out his or her work in a competent and ethical manner.

Commentary

[1] A lawyer must not delegate work to a paralegal, nor may a lawyer hold a person out as a paralegal, unless the lawyer is satisfied that the person has sufficient knowledge, skill, training and experience and is of sufficiently good character to perform the tasks delegated by the lawyer in a competent and ethical manner.

[2] In arriving at this determination, lawyers should be guided by Appendix E.

[3] Lawyers are professionally and legally responsible for all work delegated to paralegals. Lawyers must ensure that the paralegal is adequately trained and supervised to carry out each function the paralegal performs, with due regard to the complexity and importance of the matter.

6.1-3.3 Despite rule 6.1-3, where a designated paralegal has the necessary skill and experience, a lawyer may permit the designated paralegal

(a)to give legal advice; ~~o~~r

(b)to represent clients before a court or tribunal, other than a family law arbitration, as permitted by the court or tribunal; or

(c)to represent clients at a family law mediation.

Commentary

[1] Law Society Rule 2-13 limits the number of designated paralegals performing the enhanced duties of giving legal advice, ~~and~~ appearing in court or before a tribunal or appearing at a family law mediation.

[2] Where a designated paralegal performs the services in rule 6.1-3.3, the supervising lawyer must be available by telephone, and any agreement arising from a family law mediation must be subject to final review by the supervising lawyer.

[886847/2015]

Chapter 6 - Relationship to Students, Employees, and Others

6.1 Supervision

Direct supervision required

6.1-1 A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.

Commentary

[1] A lawyer may permit a non-lawyer to act only under the supervision of a lawyer. The extent of supervision will depend on the type of legal matter, including the degree of standardization and repetitiveness of the matter, and the experience of the non-lawyer generally and with regard to the matter in question. The burden rests on the lawyer to educate a non-lawyer concerning the duties that the lawyer assigns to the non-lawyer and then to supervise the manner in which such duties are carried out. A lawyer should review the non-lawyer's work at sufficiently frequent intervals to enable the lawyer to ensure its proper and timely completion. A lawyer must limit the number of non-lawyers that he or she supervises to ensure that there is sufficient time available for adequate supervision of each non-lawyer.

[3] If a non-lawyer has received specialized training or education and is competent to do independent work under the general supervision of a lawyer, a lawyer may delegate work to the non-lawyer.

[4] A lawyer in private practice may permit a non-lawyer to perform tasks delegated and supervised by a lawyer, so long as the lawyer maintains a direct relationship with the client. A lawyer in a community legal clinic funded by a provincial legal aid plan may do so, so long as the lawyer maintains direct supervision of the client's case in accordance with the supervision requirements of the legal aid plan and assumes full professional responsibility for the work.

[5] Subject to the provisions of any statute, rule or court practice in that regard, the question of what the lawyer may delegate to a non-lawyer generally turns on the distinction between any special knowledge of the non-lawyer and the professional and legal judgment of the lawyer, which, in the public interest, must be exercised by the lawyer whenever it is required.

Definitions

6.1-2 In this section,

"designated paralegal" means an individual permitted under rule 6.1-3.3 to give legal advice and represent clients before a court or tribunal;

"non-lawyer" means an individual who is neither a lawyer nor an articled student;

"paralegal" means a non-lawyer who is a trained professional working under the supervision of a lawyer.

Delegation

6.1-3 A lawyer must not permit a non-lawyer to:

(a)accept new matters on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer approves before any work commences;

(b)give legal advice;

(c)give or accept undertakings or accept trust conditions, except at the direction of and under the supervision of a lawyer responsible for the legal matter, providing that, in any communications, the fact that the person giving or accepting the undertaking or accepting the trust condition is a non-lawyer is disclosed, the capacity of the person is indicated and the lawyer who is responsible for the legal matter is identified;

(d)act finally without reference to the lawyer in matters involving professional legal judgment;

(e)be held out as a lawyer;

(f)appear in court or actively participate in formal legal proceedings on behalf of a client except as set forth above or except in a supporting role to the lawyer appearing in such proceedings;

(g)be named in association with the lawyer in any pleading, written argument or other like document submitted to a court;

(h)be remunerated on a sliding scale related to the earnings of the lawyer or the lawyer's law firm, unless the non-lawyer is an employee of the lawyer or the law firm;

(i)conduct negotiations with third parties, other than routine negotiations if the client consents and the results of the negotiation are approved by the supervising lawyer before action is taken;

(j)take instructions from clients, unless the supervising lawyer has directed the client to the non-lawyer for that purpose and the instructions are relayed to the lawyer as soon as reasonably possible;

(k)sign correspondence containing a legal opinion;

(l)sign correspondence, unless

(i) it is of a routine administrative nature,

(ii) the non-lawyer has been specifically directed to sign the correspondence by a supervising lawyer,

(iii) the fact the person is a non-lawyer is disclosed, and

(iv) the capacity in which the person signs the correspondence is indicated;

(m)forward to a client or third party any documents, other than routine, standard form documents, except with the lawyer's knowledge and direction*;*

(n)perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do; or

(o)issue statements of account.

Commentary

[1] A lawyer is responsible for any undertaking given or accepted and any trust condition accepted by a non-lawyer acting under his or her supervision.

[2] A lawyer should ensure that the non-lawyer is identified as such when communicating orally or in writing with clients, lawyers or public officials or with the public generally, whether within or outside the offices of the law firm of employment.

[3] In real estate transactions using a system for the electronic submission or registration of documents, a lawyer who approves the electronic registration of documents by a non-lawyer is responsible for the content of any document that contains the electronic signature of the non-lawyer.

6.1-3.1 The limitations imposed by rule 6.1-3 do not apply when a non-lawyer is:

(a)a community advocate funded and designated by the Law Foundation;

(b)a student engaged in a legal advice program or clinical law program run by, associated with or housed by a law school in British Columbia; and

(c)with the approval of the Executive Committee, a person employed by or volunteering with a non-profit organization providing free legal services.

6.1-3.2 A lawyer may employ as a paralegal a person who

(a)possesses adequate knowledge of substantive and procedural law relevant to the work delegated by the supervising lawyer;

(b)possesses the practical and analytic skills necessary to carry out the work delegated by the supervising lawyer; and

(c)carries out his or her work in a competent and ethical manner.

Commentary

[1] A lawyer must not delegate work to a paralegal, nor may a lawyer hold a person out as a paralegal, unless the lawyer is satisfied that the person has sufficient knowledge, skill, training and experience and is of sufficiently good character to perform the tasks delegated by the lawyer in a competent and ethical manner.

[2] In arriving at this determination, lawyers should be guided by Appendix E.

[3] Lawyers are professionally and legally responsible for all work delegated to paralegals. Lawyers must ensure that the paralegal is adequately trained and supervised to carry out each function the paralegal performs, with due regard to the complexity and importance of the matter.

6.1-3.3 Despite rule 6.1-3, where a designated paralegal has the necessary skill and experience, a lawyer may permit the designated paralegal

(a)to give legal advice;

(b)to represent clients before a court or tribunal, other than a family law arbitration, as permitted by the court or tribunal; or

(c)to represent clients at a family law mediation.

Commentary

[1] Law Society Rule 2-13 limits the number of designated paralegals performing the enhanced duties of giving legal advice, appearing in court or before a tribunal or appearing at a family law mediation.

[2] Where a designated paralegal performs the services in rule 6.1-3.3, the supervising lawyer must be available by telephone, and any agreement arising from a family law mediation must be subject to final review by the supervising lawyer.

[895728/2015]

Appendix B – Family Law Mediation, Arbitration and Parenting Coordination

Definitions

1. In this Appendix:

"dispute resolution process" means the process of family law mediation, family law arbitration or parenting coordination;

"family law arbitration" means a process by which participants submit issues relating to their marriage, cohabitation, separation or divorce to an impartial person (the family law arbitrator) for decision;

"family law mediation"

(a)means a process by which participants attempt, with the assistance of an impartial person (the family law mediator), to reach a consensual settlement of issues relating to their marriage, cohabitation, separation, divorce, children or finances, including division of assets, and

(b)includes, without limiting the generality of the foregoing, one or more of the following acts when performed by a lawyer acting as a family law mediator:

(i) informing the participants of and otherwise advising them on the legal issues involved,

(ii) advising the participants of a court's probable disposition of the issue,

(iii) preparing any agreement between the participants other than a memorandum recording the results of the family law mediation;

"parenting coordination" means a process by which an impartial person (the parenting coordinator), by agreement of participants or by court order, mediates a dispute with respect to the implementation of an agreement or a court order respecting the allocation of parenting time or parenting responsibilities, or contact with a child or makes a determination respecting that dispute that is binding on the participants;

"participant" means a person with issues relating to marriage, cohabitation, separation or divorce who has agreed to the intervention of an impartial person as family law mediator or arbitrator or parenting coordinator or is subject to a court order appointing such a person to assist in the resolution of such issues.

Disqualifications

2. (a) If a lawyer or a partner, associate or employee of that lawyer has previously acted or is currently acting for any of the participants to a dispute resolution process in a solicitor-client relationship with respect to any matter that may reasonably be expected to become an issue during the dispute resolution process, that lawyer may not act as a family law mediator or arbitrator or parenting coordinator for any of the participants;

(b)If a lawyer has acted in a dispute resolution process for the participants, neither that lawyer nor any partner, associate or employee of that lawyer may act in a solicitor-client relationship for either participant against the other participant;

(c)If a lawyer or a partner, associate or employee of that lawyer has acted in a dispute resolution process for the participants, neither that lawyer nor a partner, associate or employee of that lawyer may act for or against any person if to do so might require the lawyer to disclose or make use of confidential information given in the course of the dispute resolution process.

Obligations of family law mediator or arbitrator or parenting coordinator when participants unrepresented

3. A lawyer who acts as a family law mediator or arbitrator or parenting coordinator for participants who are unrepresented must:

(a)urge each unrepresented adult participant to obtain independent legal advice or representation, both before the commencement of the dispute resolution process and at any stage before an agreement between the participants is executed;

(b)take care to see that the unrepresented participant is not proceeding under the impression that the lawyer will protect his or her interests;

(c)make it clear to the unrepresented participant that the lawyer is acting exclusively in a neutral capacity, and not as counsel for either participant; and

(d)explain the lawyer's role in the dispute resolution process, including the scope and duration of the lawyer's powers.

Obligations of family law mediator or parenting coordinator

4. Unless otherwise ordered by the court, a lawyer who acts as a family law mediator or parenting coordinator and the participants must, before family law mediation or parenting coordination begins, enter into a written agreement that includes at least the following provisions:

(a)an agreement that the lawyer, throughout the family law mediation or parenting coordination, is not acting as legal counsel for any participant;

(b)an agreement that the lawyer may disclose fully to each participant all information provided by the other participant that is relevant to the issues;

(c)with respect to family law mediation, an agreement that, subject to rule 3.3-3, the family law mediation is part of an attempt to settle the differences between the participants and that all communications between participants or between any participant and the family law mediator will be "without prejudice" so that no participant will attempt:

(i) to introduce evidence of the communications in any legal proceedings, or

(ii) to call the family law mediator as a witness in any legal proceedings;

(c.1)with respect to parenting coordination, an agreement that no communications between the parenting coordinator and a participant, the child of a participant or a third party are confidential, except that the parenting coordinator may withhold any such information if, in the opinion of the parenting coordinator, the disclosure

of the information may be harmful to a child's relationship with a participant, or compromise the child's relationship with a third party.

(d)an acknowledgment that the lawyer must report to the Director of Family and Child Services any instance arising from the family law mediation or parenting coordination in which the lawyer has reasonable grounds to believe that a child is in need of protection;

(e)an agreement as to the lawyer's rate of remuneration and terms of payment;

(f)an agreement as to the circumstances in which family law mediation or parenting coordination will terminate.

Obligations of family law arbitrator

5. A lawyer who acts as a family law arbitrator and the participants must, before the lawyer begins his or her duties as family law arbitrator, enter into a written agreement that includes at least the following provisions:

(a)an agreement that the lawyer, throughout the family law arbitration, is not acting as legal counsel for any participant;

(b)an acknowledgment that the lawyer must report to the Director of Family and Child Services any instance arising from the family law arbitration in which the lawyer has reasonable grounds to believe that a child is in need of protection;

(c)an agreement as to the lawyer's rate of remuneration and terms of payment.

Lawyer with dual role

6. A lawyer who is empowered to act as both family law mediator and family law arbitrator in a dispute resolution process must explain the dual role to the participants in writing and must advise the participants in writing when the lawyer's role changes from one to the other.

7. A parenting coordinator who may act as a family law mediator as well as determine issues in a dispute resolution process must explain the dual role to the participants in writing and must advise the participants in writing when the lawyer's role changes from one to the other.

Commentary

[1] The purpose of this commentary is to provide guidance to supervising lawyers who are considering sending a designated paralegal to represent a client at a family law mediation.

[2] Designated paralegals are permitted to represent a client at family law mediations in circumstances the supervising lawyer deems appropriate. However, family law mediations present unique challenges and before permitting a paralegal to represent a client in such

processes the supervising lawyer must:

(a) determine whether the designated paralegal possesses the necessary skill and knowledge to act in the matter (consistent with the general obligation for determining whether to delegate work to the designated paralegal);

(b) ensure that there is no prohibition at law that prevents the designated paralegal from representing the client. For example, consider the restrictions in the Notice to Mediate Regulations regarding who has the right to accompany a party to a mediation;

(c) obtain the client's informed consent to the use of the designated paralegal.

[3] It is prudent for the supervising lawyer to advise the mediator and the other party, through their counsel if they are represented, that the designated paralegal will be representing the client and provide the name and contact information for the supervising lawyer.

[4] In addition to considering the process in Appendix E of the BC Code, lawyers should consider the following before permitting a designated paralegal to represent a client at a family law mediation:

- Mediation requires as much competency of the legal representative as is required before a court or tribunal. The supervising lawyer must bear this in mind when determining when it is appropriate to have a designated paralegal represent a client;

- Family law is a unique area of law in which many other areas of law intersect. In addition, clients are often dealing with considerable emotional stress and in some cases come from environments where family violence exists. It is an area of practice fraught with risks that both the lawyer and the designated paralegal need the skills and knowledge to identify and properly manage. Considerable skill is required to represent a client effectively at a family law mediation. A supervising lawyer should ensure the designated paralegal has received specific training in representing a client at a family law mediation. It is prudent to have the designated paralegal shadow the lawyer for several sessions and then have the lawyer shadow the designated paralegal for his or her

first few sessions.

[5] Despite more family law matters being directed to consensual dispute resolution processes rather than to court, it remains essential that those processes and the settlements that arise in them be fair. It is important, therefore, for both the supervising lawyer and the designated paralegal to understand the case law surrounding circumstances in which settlement agreements have been set aside by the court on the grounds that the settlement was unfair.

(6] Lawyers must review any settlement agreement arising from a family law mediation where their designated paralegal represented the client, and such agreements are provisional until such time as the lawyer has signed off on it. This provides an opportunity for review and an additional safeguard for the client. The lawyer would also be prudent to advise the client about this process as a standard part of the retainer agreement

[818669/2015]

Appendix B – Family Law Mediation, Arbitration and Parenting Coordination

Definitions

1. In this Appendix:

"dispute resolution process" means the process of family law mediation, family law arbitration or parenting coordination;

"family law arbitration" means a process by which participants submit issues relating to their marriage, cohabitation, separation or divorce to an impartial person (the family law arbitrator) for decision;

"family law mediation"

(a)means a process by which participants attempt, with the assistance of an impartial person (the family law mediator), to reach a consensual settlement of issues relating to their marriage, cohabitation, separation, divorce, children or finances, including division of assets, and

(b)includes, without limiting the generality of the foregoing, one or more of the following acts when performed by a lawyer acting as a family law mediator:

(i) informing the participants of and otherwise advising them on the legal issues involved,

(ii) advising the participants of a court's probable disposition of the issue,

(iii) preparing any agreement between the participants other than a memorandum recording the results of the family law mediation;

"parenting coordination" means a process by which an impartial person (the parenting coordinator), by agreement of participants or by court order, mediates a dispute with respect to the implementation of an agreement or a court order respecting the allocation of parenting time or parenting responsibilities, or contact with a child or makes a determination respecting that dispute that is binding on the participants;

"participant" means a person with issues relating to marriage, cohabitation, separation or divorce who has agreed to the intervention of an impartial person as family law mediator or arbitrator or parenting coordinator or is subject to a court order appointing such a person to assist in the resolution of such issues.

Disqualifications

2. (a) If a lawyer or a partner, associate or employee of that lawyer has previously acted or is currently acting for any of the participants to a dispute resolution process in a solicitor-client relationship with respect to any matter that may reasonably be expected to become an issue during the dispute resolution process, that lawyer may not act as a family law mediator or arbitrator or parenting coordinator for any of the participants;

(b)If a lawyer has acted in a dispute resolution process for the participants, neither that lawyer nor any partner, associate or employee of that lawyer may act in a solicitor-client relationship for either participant against the other participant;

(c)If a lawyer or a partner, associate or employee of that lawyer has acted in a dispute resolution process for the participants, neither that lawyer nor a partner, associate or employee of that lawyer may act for or against any person if to do so might require the lawyer to disclose or make use of confidential information given in the course of the dispute resolution process.

Obligations of family law mediator or arbitrator or parenting coordinator when participants unrepresented

3. A lawyer who acts as a family law mediator or arbitrator or parenting coordinator for participants who are unrepresented must:

(a)urge each unrepresented adult participant to obtain independent legal advice or representation, both before the commencement of the dispute resolution process and at any stage before an agreement between the participants is executed;

(b)take care to see that the unrepresented participant is not proceeding under the impression that the lawyer will protect his or her interests;

(c)make it clear to the unrepresented participant that the lawyer is acting exclusively in a neutral capacity, and not as counsel for either participant; and

(d)explain the lawyer's role in the dispute resolution process, including the scope and duration of the lawyer's powers.

Obligations of family law mediator or parenting coordinator

4. Unless otherwise ordered by the court, a lawyer who acts as a family law mediator or parenting coordinator and the participants must, before family law mediation or parenting coordination begins, enter into a written agreement that includes at least the following provisions:

(a)an agreement that the lawyer, throughout the family law mediation or parenting coordination, is not acting as legal counsel for any participant;

(b)an agreement that the lawyer may disclose fully to each participant all information provided by the other participant that is relevant to the issues;

(c)with respect to family law mediation, an agreement that, subject to rule 3.3-3, the family law mediation is part of an attempt to settle the differences between the participants and that all communications between participants or between any participant and the family law mediator will be "without prejudice" so that no participant will attempt:

(i) to introduce evidence of the communications in any legal proceedings, or

(ii) to call the family law mediator as a witness in any legal proceedings;

(c.1)with respect to parenting coordination, an agreement that no communications between the parenting coordinator and a participant, the child of a participant or a third party are confidential, except that the parenting coordinator may withhold any such information if, in the opinion of the parenting coordinator, the disclosure

of the information may be harmful to a child's relationship with a participant, or compromise the child's relationship with a third party.

(d)an acknowledgment that the lawyer must report to the Director of Family and Child Services any instance arising from the family law mediation or parenting coordination in which the lawyer has reasonable grounds to believe that a child is in need of protection;

(e)an agreement as to the lawyer's rate of remuneration and terms of payment;

(f)an agreement as to the circumstances in which family law mediation or parenting coordination will terminate.

Obligations of family law arbitrator

5. A lawyer who acts as a family law arbitrator and the participants must, before the lawyer begins his or her duties as family law arbitrator, enter into a written agreement that includes at least the following provisions:

(a)an agreement that the lawyer, throughout the family law arbitration, is not acting as legal counsel for any participant;

(b)an acknowledgment that the lawyer must report to the Director of Family and Child Services any instance arising from the family law arbitration in which the lawyer has reasonable grounds to believe that a child is in need of protection;

(c)an agreement as to the lawyer's rate of remuneration and terms of payment.

Lawyer with dual role

6. A lawyer who is empowered to act as both family law mediator and family law arbitrator in a dispute resolution process must explain the dual role to the participants in writing and must advise the participants in writing when the lawyer's role changes from one to the other.

7. A parenting coordinator who may act as a family law mediator as well as determine issues in a dispute resolution process must explain the dual role to the participants in writing and must advise the participants in writing when the lawyer's role changes from one to the other.

Commentary

[1] The purpose of this commentary is to provide guidance to supervising lawyers who are considering sending a designated paralegal to represent a client at a family law mediation.

[2] Designated paralegals are permitted to represent a client at family law mediations in circumstances the supervising lawyer deems appropriate. However, family law mediations present unique challenges and before permitting a paralegal to represent a client in such

processes the supervising lawyer must:

(a) determine whether the designated paralegal possesses the necessary skill and knowledge to act in the matter (consistent with the general obligation for determining whether to delegate work to the designated paralegal);

(b) ensure that there is no prohibition at law that prevents the designated paralegal from representing the client. For example, consider the restrictions in the Notice to Mediate Regulations regarding who has the right to accompany a party to a mediation;

(c) obtain the client's informed consent to the use of the designated paralegal.

[3] It is prudent for the supervising lawyer to advise the mediator and the other party, through their counsel if they are represented, that the designated paralegal will be representing the client and provide the name and contact information for the supervising lawyer.

[4] In addition to considering the process in Appendix E of the BC Code, lawyers should consider the following before permitting a designated paralegal to represent a client at a family law mediation:

- Mediation requires as much competency of the legal representative as is required before a court or tribunal. The supervising lawyer must bear this in mind when determining when it is appropriate to have a designated paralegal represent a client;

- Family law is a unique area of law in which many other areas of law intersect. In addition, clients are often dealing with considerable emotional stress and in some cases come from environments where family violence exists. It is an area of practice fraught with risks that both the lawyer and the designated paralegal need the skills and knowledge to identify and properly manage. Considerable skill is required to represent a client effectively at a family law mediation. A supervising lawyer should ensure the designated paralegal has received specific training in representing a client at a family law mediation. It is prudent to have the designated paralegal shadow the lawyer for several sessions and then have the lawyer shadow the designated paralegal for his or her

first few sessions.

[5] Despite more family law matters being directed to consensual dispute resolution processes rather than to court, it remains essential that those processes and the settlements that arise in them be fair. It is important, therefore, for both the supervising lawyer and the designated paralegal to understand the case law surrounding circumstances in which settlement agreements have been set aside by the court on the grounds that the settlement was unfair.

(6] Lawyers must review any settlement agreement arising from a family law mediation where their designated paralegal represented the client, and such agreements are provisional until such time as the lawyer has signed off on it. This provides an opportunity for review and an additional safeguard for the client. The lawyer would also be prudent to advise the client about this process as a standard part of the retainer agreement

[895740/2015]

Appendix E – Supervision of Paralegals

Key concepts

Lawyers who use paralegals need to be aware of several key concepts:

1. The lawyer maintains ultimate responsibility for the supervision of the paralegal and oversight of the file;
2. Although a paralegal may be given operational carriage of a file, the retainer remains one between the lawyer and the client and the lawyer continues to be bound by his or her professional, contractual and fiduciary obligations to the client;
3. The Society will protect the public by regulating the lawyer who is responsible for supervising the paralegal in the event of misconduct or a breach of the *Legal Profession Act* or Law Society Rules committed by the paralegal;
4. A lawyer must limit the number of persons that he or she supervises to ensure that there is sufficient time available for adequate supervision of each person.
5. A paralegal must be identified as such in correspondence and documents he or she signs and in any appearance before a court of tribunal.
6. A lawyer must not delegate any matter to a paralegal that the lawyer would not be competent to conduct himself or herself.

Best practices for supervising paralegals

1. Supervision is a flexible concept that is assessed on a case-by-case basis with consideration of the relevant factors, which, depending on the circumstances, include the following:

(a) Has the paralegal demonstrated a high degree of competence when assisting the lawyer with similar subject matter?

(b) Does the paralegal have relevant work experience and or education relating to the matter being delegated?

(c) How complex is the matter being delegated?

(d) What is the risk of harm to the client with respect to the matter being delegated?

2. A lawyer must actively mentor and monitor the paralegal. A lawyer should consider the following:

(a) Train the paralegal as if he or she were training an articled student. A lawyer must be satisfied the paralegal is competent to engage in the work assigned;

(b) Ensuring the paralegal understands the importance of confidentiality and privilege and the professional duties of lawyers. Consider having the paralegal sign an oath to discharge his or her duties in a professional and ethical manner;

(c) Gradually increasing the paralegal's responsibilities;

(d) A lawyer should engage in file triage and debriefing to ensure that matters delegated are appropriate for the paralegal and to monitor competence. This may include:

   (i) testing the paralegal's ability to identify relevant issues, risks and opportunities for the client;

(ii) engaging in periodic file review. File review should be a frequent practice until such time as the paralegal has demonstrated continued competence, and should remain a regular practice thereafter;

(iii) ensuring the paralegal follows best practices regarding client communication and file management.

3. Create a feedback mechanism for clients and encourage the client to keep the lawyer informed of the strengths and weaknesses of the paralegal's work. If the client has any concerns, the client should alert the lawyer promptly.

4. If a lawyer has any concerns that the paralegal has made a mistake, the lawyer must take carriage of the file and deal with the mistake.

5. Discuss paralegal supervision with a Law Society practice advisor if you have any concerns.

Best practices for training paralegals

1. Develop a formal plan for supervision and discuss it with the paralegal. Set goals and progress milestones.

2. Review the guidelines for supervising articled students and adopt concepts that are appropriate to the scope of responsibility being entrusted to the paralegal.

3. Facilitate continuing legal education for the paralegal.

4. Ensure the paralegal reviews the relevant sections of the Professional Legal Training Course materials and other professional development resources and review key concepts with the paralegal to assess their comprehension level.

5. Have their paralegals "junior" the lawyer on files and explain the thought process with respect to substantive and procedural matters as part of the paralegal's training.

6. Keep an open door policy and encourage the paralegal to discuss any concerns or red flags with the lawyer before taking further steps.

A checklist for assessing the competence of paralegals

1. Does the paralegal have a legal education? If so, consider the following:

(a)What is the reputation of the institution?

(b)Review the paralegal's transcript;

(c)Review the courses that the paralegal took and consider reviewing the course outline for relevant subject matters to assess what would have been covered in the course, consider total number of credit hours, etc.

(d)Ask the paralegal about the education experience.

2. Does the paralegal have other post-secondary education that may provide useful skills? Consider the reputation of the institution and review the paralegal's transcripts.

3. What work experience does the paralegal have, with particular importance being placed on legal work experience?:

(a)Preference/weight should be given to work experience with the supervising lawyer and/or firm;

(b)If the experience is with another firm, consider contacting the prior supervising lawyer for an assessment;

(c)Does the paralegal have experience in the relevant area of law?

(d)What responsibilities has the paralegal undertaken in the past in dealing with legal matters?

4. What personal qualities does the paralegal possess that make him or her well-suited to take on enhanced roles:

(a)How responsible, trustworthy and mature is the paralegal?

(b)Does the paralegal have good interpersonal and language skills?

(c)Is the paralegal efficient and well organized?

(d)Does the paralegal possess good interviewing and diagnostic skills?

(e)Does the paralegal display a strong understanding of both the substantive and procedural law governing the matter to be delegated?

(f)Does the paralegal strive for continuous self-improvement, rise to challenges, etc.?

Screening for Family Violence

1. The *Family Law Act*, SBC 2011, c. 25 requires family dispute resolution professionals to screen for family violence. Lawyers who practice family law are strongly encouraged to take at least 14 hours of training in screening for family violence, and lawyers who are acting as family law mediators, arbitrators or parenting coordinators are required to take such training.

2. While designated paralegals do not fall within the definition of family dispute resolution professionals, lawyers who delegate to designated paralegals the ability to give legal advice in family law or represent clients in the permitted forums are strongly encouraged to ensure the designated paralegal has at least 14 hours of training in screening for family violence.

3. If a designated paralegal has reason to believe family violence may be present, it is essential the paralegal bring this to the supervising lawyer's attention so the lawyer can turn his or her mind to the issue and the potential risks associated with it.

Designated Paralegals Giving Legal Advice

1. As part of the process of supervising a designated paralegal, a lawyer should instruct the designated paralegal as to the key aspects of what giving sound legal advice involves.

2. Giving legal advice and independent legal advice involves consideration of process and of the content of the advice. As a matter of process the lawyer, or designated paralegal, must obtain the relevant factual information from the client. This requires the skill of focusing on necessary factual material, rather than an exhaustive and costly exploration of all potential facts no matter how tangential they may be. Once the lawyer, or designated paralegal, has the factual foundation, he or she advises the client of the legal rights, obligations and/or remedies that are suggested by the facts. Finally, the lawyer should make a recommendation as to the preferred course of conduct and explain in clear terms why the suggested course is preferred.

3. When a lawyer is training a designated paralegal it is essential to instruct the paralegal as to the proper process for ensuring the paralegal is imparting sound and cost effective legal advice to the lawyer's client.

[838087/2015]

Appendix E – Supervision of Paralegals

Key concepts

Lawyers who use paralegals need to be aware of several key concepts:

1. The lawyer maintains ultimate responsibility for the supervision of the paralegal and oversight of the file;
2. Although a paralegal may be given operational carriage of a file, the retainer remains one between the lawyer and the client and the lawyer continues to be bound by his or her professional, contractual and fiduciary obligations to the client;
3. The Society will protect the public by regulating the lawyer who is responsible for supervising the paralegal in the event of misconduct or a breach of the *Legal Profession Act* or Law Society Rules committed by the paralegal;
4. A lawyer must limit the number of persons that he or she supervises to ensure that there is sufficient time available for adequate supervision of each person.
5. A paralegal must be identified as such in correspondence and documents he or she signs and in any appearance before a court of tribunal.
6. A lawyer must not delegate any matter to a paralegal that the lawyer would not be competent to conduct himself or herself.

Best practices for supervising paralegals

1. Supervision is a flexible concept that is assessed on a case-by-case basis with consideration of the relevant factors, which, depending on the circumstances, include the following:

(a) Has the paralegal demonstrated a high degree of competence when assisting the lawyer with similar subject matter?

(b) Does the paralegal have relevant work experience and or education relating to the matter being delegated?

(c) How complex is the matter being delegated?

(d) What is the risk of harm to the client with respect to the matter being delegated?

2. A lawyer must actively mentor and monitor the paralegal. A lawyer should consider the following:

(a) Train the paralegal as if he or she were training an articled student. A lawyer must be satisfied the paralegal is competent to engage in the work assigned;

(b) Ensuring the paralegal understands the importance of confidentiality and privilege and the professional duties of lawyers. Consider having the paralegal sign an oath to discharge his or her duties in a professional and ethical manner;

(c) Gradually increasing the paralegal's responsibilities;

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3. Facilitate continuing legal education for the paralegal.

4. Ensure the paralegal reviews the relevant sections of the Professional Legal Training Course materials and other professional development resources and review key concepts with the paralegal to assess their comprehension level.

5. Have their paralegals "junior" the lawyer on files and explain the thought process with respect to substantive and procedural matters as part of the paralegal's training.

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(b)If the experience is with another firm, consider contacting the prior supervising lawyer for an assessment;

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3. When a lawyer is training a designated paralegal it is essential to instruct the paralegal as to the proper process for ensuring the paralegal is imparting sound and cost effective legal advice to the lawyer's client.

[895824/2015]

The Law Society of British Columbia

Memo

To:	Benchers
From:	Jeffrey G. Hoskins, QC for Act and Rules Committee
Date:	November 7, 2015
Subject:	**Bencher election rules**

1. At the meeting in July, the Benchers adopted this motion following the mid-year report of the Governance Committee:

> ... Ms. Kresivo moved (seconded by Ms. Merrill) that the Law Society revise its rules now to permit the Benchers to conduct a "hybrid" Bencher election for next year's bi-election, [sic] consisting of both paper and electronic voting and electronic distribution of election material, including information about the candidates.
>
> The motion was passed by a vote of 18 to 6.

2. The Act and Rules Committee has discussed the rule changes required to implement that decision on a number of occasions, before and after the adoption of the resolution. The final result is the draft of rule amendments attached to this memo.

Drafting notes

3. In addition to the rules governing the election of Benchers, the Committee also reviewed other rules involving balloting, such as referenda, and made the same kind of changes to accommodate electronic voting.

4. Since the intention is to notify members and conduct elections and referenda by electronic means in the future, the draft removes reference to "mail" as the method of notifying members and providing voting materials.

5. “Voting papers” and “ballot papers” have become “ballots,” which can include electronic voting.

6. Two subrules have been added to Rule 1-25 *[Eligibility and entitlement to vote]* to enforce the principle that only members can vote and members can vote only once. These are the electronic voting equivalent of the more specific rules governing paper voting.

7. The Committee proposes adding a new Rule 1-27.1 *[Electronic voting]*, which allows for electronic voting, but does not necessarily require it. The draft rule also allows for a transition period in which both electronic and paper methods can be used. In the Committee’s view, the phrase “with the necessary changes and so far as they are applicable” in proposed Rule 1-27.1(4) makes it unnecessary to qualify provisions that can only apply to mail-in ballots, for example rules about the two-envelope system.

8. These rule amendments are intended as transitional provisions. The Committee assumes that the next election and probably a few more will require both paper voting and electronic voting. The draft amendments leave the paper voting provisions in place, but allow for electronic voting as well. Once electronic voting becomes the norm, the Committee assumes that there will be further amendments providing more specifics on electronic voting, based on experience with the procedure. The rules are also likely to be amended at some point to eliminate paper voting altogether.

9. A suggested resolution to give effect to the proposed amendments is attached.

LAW SOCIETY RULES 2015

PART 1 – ORGANIZATION

Division 1 – Law Society

Benchers

President and Vice-Presidents

1-5 (6) If a vacancy under subrule (5) occurs when there is no Bencher elected by the members to assume the office,

(a) the Benchers may elect a Bencher who is a member of the Society to act in the vacant office until a ~~mail~~ ballot of all members, the next general meeting or December 31, whichever comes first, and

(b) if the next general meeting or a ~~mail~~ ballot takes place before December 31, the members must elect a Bencher who is a member of the Society to the vacant office for the remainder of the year, and a Second Vice-President-elect.

Removal of the President or a Vice-President

1-6 (4) Within 30 days after the Benchers pass a resolution under subrule (1), the Executive Director must ~~mail~~ make available to each member of the Society in good standing

(b) a statement by the President or Vice-President, as the case may be, stating why he or she should not be removed from office, if that person wishes to have such a statement ~~sent~~ provided to each member, and

(6) After the counting of the ~~voting papers~~ballots is completed, the Executive Director must declare whether the President or Vice-President, as the case may be, ceases to hold office.

Elections

Eligibility and entitlement to vote

1-25 (1) A member of the Society in good standing is eligible to vote in a~~n~~ Bencher election ~~for Benchers~~.

(1.1) A member of the Society must not cast a vote or attempt to cast a vote that he or she is not entitled to cast.

(1.2) A member of the Society must not enable or assist a person

(a) to vote in the place of the member, or

(b) to cast a vote that the person is not entitled to cast.

LAW SOCIETY RULES 2015

(2) Only those members of the Society whose names appear on the voter list prepared under Rule 1-26 *[Voter list]*, as corrected, are entitled to vote in a~~n~~ Bencher election ~~for Benchers~~.

Voting procedure

1-27 (1) By November 1 of each year, the Executive Director must ~~mail~~ make available to each member of the Society whose name is on the voter list prepared under Rule 1-26 *[Voter list]*

(a) a ballot ~~paper~~ containing, in the order determined under Rule 1-28 *[Order of names on ballot]*, the names of all candidates in the district in which the member is entitled to vote and stating the number of Benchers to be elected in that district,

(b) instructions on marking of the ballot ~~paper~~ and returning it to the Society in a way that will preserve the secrecy of the member's vote,

(2) The accidental omission to ~~mail~~ make the material referred to in subrule (1) available to any member of the Society or the non-receipt of the material does not invalidate an election.

(3) For a ballot ~~paper~~ to be valid, the voter must

(a) vote in accordance with the instructions ~~enclosed~~ provided with the ballot ~~paper~~,

(c) place the ballot ~~paper~~ in the ballot envelope and seal the envelope,

(4) The Executive Director may issue a replacement ballot ~~paper~~ to a voter who informs the Executive Director in writing that the original ballot ~~paper~~ has been misplaced or spoiled or was not received.

Electronic voting

1-27.1 (1) The Executive Committee may authorize the Executive Director to conduct a Bencher election partly or entirely by electronic means.

(2) The Executive Director

(a) may retain a contractor to assist in any part of an election conducted electronically,

(b) must ensure that votes cast electronically remain secret, and

(c) must take reasonable security measures to ensure that only members entitled to vote can do so.

(3) A ballot may be produced electronically and, to cast a valid vote, a member must indicate his or her vote in accordance with instructions accompanying the ballot.

LAW SOCIETY RULES 2015

(4) Rules 1-20 to 1-44 apply, with the necessary changes and so far as they are applicable, to an election conducted partly or entirely by electronic means.

Rejection of ballots ~~papers~~

1-29 (1) A ballot ~~paper~~ must be rejected if it

(2) A vote is void if it is

(a) not cast for a candidate whose name appears on the ballot ~~paper as printed~~ provided by the Society, or

Scrutineers

1-31 (1) The Executive Director is a scrutineer for each Bencher election ~~for Benchers~~.

(4) The scrutineers must

(b) decide whether a vote is void or a ballot ~~paper~~ is rejected, in which case their decision is final.

Counting of votes

1-32 The Executive Director must supervise the counting of votes according to the following procedure:

(a) the name of each voter who votes is crossed off the voter list, and all the ballots ~~papers~~ of a voter who submits more than one ballot ~~paper~~ must be rejected;

(b) each voter declaration is read, and the ballot ~~paper~~ of a voter who has not completed and signed the declaration correctly is rejected;

(c) the ballot envelopes containing ballot ~~paper~~s are separated by district, and mixed to prevent identification of voters;

(d) for each district, the ballot envelopes are opened and the ballot ~~paper~~s removed;

(e) ballot ~~paper~~s that are rejected according to the Act or these rules are kept separate;

(f) all votes are counted and recorded unless void or contained in a rejected ballot ~~paper~~.

Review by Executive Committee

1-36 (1) A candidate who is not elected in ~~an~~ a Bencher election ~~for Bencher~~ may apply to the Executive Committee for a review of the election.

LAW SOCIETY RULES 2015

Retention of documents

1-37 The Executive Director must retain the ~~voting papers~~ ballots and other documents of ~~an~~ a Bencher election for at least 14 days after the election or, if a review is taken under Rule 1-36 *[Review by Executive Committee]*, until that review has been completed.

Referendum ballots

1-40 (1) The Benchers may direct the Executive Director to conduct a referendum ballot of all members of the Society or of all members in one or more districts.

(2) The rules respecting ~~the~~ a Bencher election ~~of Benchers~~ apply, with the necessary changes and so far as they are applicable, to a referendum under this rule, except that the ~~voting paper envelopes~~votes need not be reported ~~separated~~ by districts.

Interruption of postal service

1-43 [rescinded]~~If an interruption of postal service makes it impracticable to conduct an election according to the schedule set by this Part, the Executive Committee may~~

~~(a) postpone the election,~~

~~(b) extend the time for the doing of an act, or~~

~~(c) make special arrangements for the delivery and receipt of notices and ballots.~~

LAW SOCIETY RULES 2015

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(a) the Benchers may elect a Bencher who is a member of the Society to act in the vacant office until a ballot of all members, the next general meeting or December 31, whichever comes first, and

(b) if the next general meeting or a ballot takes place before December 31, the members must elect a Bencher who is a member of the Society to the vacant office for the remainder of the year, and a Second Vice-President-elect.

Removal of the President or a Vice-President

1-6 (4) Within 30 days after the Benchers pass a resolution under subrule (1), the Executive Director must make available to each member of the Society in good standing

(b) a statement by the President or Vice-President, as the case may be, stating why he or she should not be removed from office, if that person wishes to have such a statement provided to each member, and

(6) After the counting of the ballots is completed, the Executive Director must declare whether the President or Vice-President, as the case may be, ceases to hold office.

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(a) to vote in the place of the member, or

(b) to cast a vote that the person is not entitled to cast.

(2) Only those members of the Society whose names appear on the voter list prepared under Rule 1-26 *[Voter list]*, as corrected, are entitled to vote in a Bencher election.

LAW SOCIETY RULES 2015

Voting procedure

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(a) a ballot containing, in the order determined under Rule 1-28 *[Order of names on ballot]*, the names of all candidates in the district in which the member is entitled to vote and stating the number of Benchers to be elected in that district,

(b) instructions on marking of the ballot and returning it to the Society in a way that will preserve the secrecy of the member's vote,

(2) The accidental omission to make the material referred to in subrule (1) available to any member of the Society or the non-receipt of the material does not invalidate an election.

(3) For a ballot to be valid, the voter must

(a) vote in accordance with the instructions provided with the ballot,

(c) place the ballot in the ballot envelope and seal the envelope,

(4) The Executive Director may issue a replacement ballot to a voter who informs the Executive Director in writing that the original ballot has been misplaced or spoiled or was not received.

Electronic voting

1-27.1 (1) The Executive Committee may authorize the Executive Director to conduct a Bencher election partly or entirely by electronic means.

(2) The Executive Director

(a) may retain a contractor to assist in any part of an election conducted electronically,

(b) must ensure that votes cast electronically remain secret, and

(c) must take reasonable security measures to ensure that only members entitled to vote can do so.

(3) A ballot may be produced electronically and, to cast a valid vote, a member must indicate his or her vote in accordance with instructions accompanying the ballot.

(4) Rules 1-20 to 1-44 apply, with the necessary changes and so far as they are applicable, to an election conducted partly or entirely by electronic means.

Rejection of ballots

1-29 (1) A ballot must be rejected if it

LAW SOCIETY RULES 2015

(2) A vote is void if it is

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(c) the ballot envelopes containing ballots are separated by district, and mixed to prevent identification of voters;

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LAW SOCIETY RULES 2015

(2) The rules respecting a Bencher election apply, with the necessary changes and so far as they are applicable, to a referendum under this rule, except that the votes need not be reported by districts.

Interruption of postal service

1-43 [rescinded]

SUGGESTED RULE AMENDMENT RESOLUTION—ELECTRONIC BENCHER ELECTIONS

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

1. By rescinding Rule 1-5 (6) by striking the words "a mail ballot***" in both places that it occurs, and substituting the words "***a ballot***".***

2. In Rule 1-6:

(a) by rescinding the preamble to subrule (4) and substituting the following:

(4) Within 30 days after the Benchers pass a resolution under subrule (1), the Executive Director must make available to each member of the Society in good standing**,**

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

(b) a statement by the President or Vice-President, as the case may be, stating why he or she should not be removed from office, if that person wishes to have such a statement provided to each member, and***, and***

(c) by rescinding subrule (6)) and substituting the following:

(6) After the counting of the ballots is completed, the Executive Director must declare whether the President or Vice-President, as the case may be, ceases to hold office**.**

3. By rescinding Rule 1-25 (1) and (2) and substituting the following:

(1) A member of the Society in good standing is eligible to vote in a Bencher election.

(1.1) A member of the Society must not cast a vote or attempt to cast a vote that he or she is not entitled to cast.

(1.2) A member of the Society must not enable or assist a person

(a) to vote in the place of the member, or

(b) to cast a vote that the person is not entitled to cast.

(2) Only those members of the Society whose names appear on the voter list prepared under Rule 1-26 *[Voter list]*, as corrected, are entitled to vote in a Bencher election**.**

4. By rescinding Rule 1-27 (1) to (4) and substituting the following:

(1) By November 1 of each year, the Executive Director must make available to each member of the Society whose name is on the voter list prepared under Rule 1-26 *[Voter list]*

(a) a ballot containing, in the order determined under Rule 1-28 *[Order of names on ballot]*, the names of all candidates in the district in which the member is entitled to vote and stating the number of Benchers to be elected in that district,

(b) instructions on marking of the ballot and returning it to the Society in a way that will preserve the secrecy of the member's vote,

(2) The accidental omission to make the material referred to in subrule (1) available to any member of the Society or the non-receipt of the material does not invalidate an election.

(3) For a ballot to be valid, the voter must

(a) vote in accordance with the instructions provided with the ballot,

(b) not vote for more candidates than the number of Benchers to be elected in the district,

(c) place the ballot in the ballot envelope and seal the envelope,

(d) complete the declaration and sign it,

(e) place the ballot envelope in the mailing envelope and seal the envelope, and

(f) deliver, or mail postage prepaid, the mailing envelope to the Executive Director.

(4) The Executive Director may issue a replacement ballot to a voter who informs the Executive Director in writing that the original ballot has been misplaced or spoiled or was not received**.**

5. By adding the following rule:

Electronic voting

1-27.1(1)The Executive Committee may authorize the Executive Director to conduct a Bencher election partly or entirely by electronic means.

(2) The Executive Director

(a) may retain a contractor to assist in any part of an election conducted electronically,

(b) must ensure that votes cast electronically remain secret, and

(c) must take reasonable security measures to ensure that only members entitled to vote can do so.

(3) A ballot may be produced electronically and, to cast a valid vote, a member must indicate his or her vote in accordance with instructions accompanying the ballot.

(4) Rules 1-20 to 1-44 apply, with the necessary changes and so far as they are applicable, to an election conducted partly or entirely by electronic means**..**

6. In Rule 1-29:

(a) by rescinding the title and substituting "*Rejection of ballots*";

(b) in subrule (1), by striking the words "A ballot paper must***" and substituting the words "***A ballot must***"; and***

(c) in subrule (2) (a), by striking the words "the ballot paper as printed by the Society***" and substituting the words "***the ballot provided by the Society***".***

7. In Rule 1-31:

(a) in subrule (1), by striking the words "for each election for Benchers***" and substituting the words "***for each Bencher election***"; and***

(b) in subrule (4) (b), by striking the words "a ballot paper is rejected***" and substituting the words "***a ballot is rejected***".***

8. By rescinding Rule 1-32 and substituting the following:

Counting of votes

1-32 The Executive Director must supervise the counting of votes according to the following procedure:

(a) the name of each voter who votes is crossed off the voter list, and all the ballots of a voter who submits more than one ballot must be rejected;

(b) each voter declaration is read, and the ballot of a voter who has not completed and signed the declaration correctly is rejected;

(c) the ballot envelopes containing ballots are separated by district, and mixed to prevent identification of voters;

(d) for each district, the ballot envelopes are opened and the ballots removed;

(e) ballots that are rejected according to the Act or these rules are kept separate;

(f) all votes are counted and recorded unless void or contained in a rejected ballot.

9. ***In Rule 1-36 (1), by striking the words "***in an election for Bencher***" and substituting the words "***in a Bencher election***".***

10. ***By rescinding Rule 1-37 and substituting the following:***

Retention of documents

1-37 The Executive Director must retain the ballots and other documents of a Bencher election for at least 14 days after the election or, if a review is taken under Rule 1-36 *[Review by Executive Committee]*, until that review has been completed**..**

11. ***In Rule 1-40, by rescinding subrule (2) and substituting the following:***

(2) The rules respecting a Bencher election apply, with the necessary changes and so far as they are applicable, to a referendum under this rule, except that the votes need not be reported by districts**..**

12. ***By rescinding Rule 1-43.***

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Admission Program Review Report

Lawyer Education Advisory Committee

Tony Wilson, Chair
Maria Morellato, QC, Vice-Chair
Dean Lawton
Sharon Matthews, QC
Micah Rankin

December 4, 2015

Prepared for:	Benchers
Prepared by:	The Lawyer Education Advisory Committee
Purpose:	Information and discussion

LAWYER EDUCATION ADVISORY COMMITTEE REPORT TO THE BENCHERS

The Lawyer Education Advisory Committee submits this report to the Benchers for information and discussion at the December 4, 2015 meeting, and plans to present its report to the Benchers in 2016 for decision.

EXECUTIVE SUMMARY

1. The Lawyer Education Advisory Committee submits this report to the Benchers pursuant to the Committee's mandate under section 2 of the 2015–17 Strategic Plan.

2. The Committee's recommendations are unanimous, and flow from section 3 of *the Legal Profession Act*, which states that it *is the object and duty of the society to uphold and protect the public interest in the administration of justice by … establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission … .*

3. **The Committee has gathered an extensive amount of information in 2015, including by:**

    - surveying lawyers who have been in practice for two to three years,
    - surveying the 2014 and 2015 students in the Professional Legal Training Course (PLTC) students,
    - surveying the 2014 articling principals,
    - conducting a *BarTalk* survey of the profession, yielding over 35 responses,
    - following up on the surveys with 25 BC law firms,
    - meeting with BC's three Law Deans and at BC's law schools,
    - examining bar admission programs in other Canadian provinces, particularly in Ontario and the prairie provinces, and in the United States, Australia, New Zealand, so that the Committee would be cognizant of other skills training programs as possible alternatives to PLTC,
    - examining workplace and apprenticeship programs in other professions and trades,
    - examining the range of costs to implement and operate various online educational programs as possible alternatives to PLTC.

4. Law firms were asked several questions, including:

    - Should we retain or eliminate articling? Is there anything we could do to make articling better?
    - What do you think of PLTC? Is it a valuable transition to practice? Is there anything you would change or eliminate, and why?

- Would you prefer to replace PLTC with an online training course?
- Should PLTC be integrated within the curriculum of the law schools?

5. **The universal themes in the responses were these:**

   - Articling should continue in its current nine month format. Articling is important as an essential tool for transitioning from law school to practice, and neither law firms nor students have an appetite for eliminating articling, such as we see in the United States.

   - PLTC should be retained and not replaced with an online learning program. The PLTC skills assignments and feedback are important. PLTC's small group interactive format provides a valuable learning process that online learning cannot match.

   - Online learning during articling is a poor idea, because law firms told the Committee unequivocally that it would add to the pressure students experience in articling to perform legal work and bill for their time. The quality of learning in an online program would suffer if an online program and articling were to take place simultaneously.

   - PLTC enables students to develop life-long, diverse, collegial relationships that strengthen their ongoing professional competence and the fabric of profession as a whole, particularly for students who did not attend a BC law school, as well as National Committee on Accreditation (NCA) students.

   - Try to minimize, as much as possible, disruption to articles encountered by students and law firms.

   - Integration with law schools is a poor idea, because of the distinct roles of law schools and law societies. (The Committee observes that law schools themselves are resistant to this idea.)

The Committee's Deliberations

6. The Committee, as a part of its mandate, felt obliged to study various educational programs as an alternative to PLTC, including existing programs in BC and elsewhere in Canada. The online programs that the Committee examined were, in most respects, "*not ready for prime time*." Many of them are asynchronous, not permitting direct interaction in real time between students and instructor. Others that are synchronous (for example, Blackboard collaborate, which replaced E-Live and is used extensively by Simon Fraser University and other universities) are still technologically cumbersome and are only

audio-based, unless both students and instructors have very high bandwidth internet connections.

7. The Committee met with the designer of the original CPLED program, the largely online training course in Alberta, Saskatchewan and Manitoba, who described PLTC as a "gold standard" in Canada for bar admission programs.

8. Replacing our well respected skills training program with something that is of a lesser standard may well be contrary to the public interest and, arguably, at odds with section 3 of the *Legal Profession Act*.

9. The Committee has concluded that it is in the public interest to maintain both PLTC and articling as indispensable components of the Admission Program.

Summary of Highlights of the Committee's 22 Recommendations

10. The Committee's 22 recommendations include the following highlights.

11. **Recommendation #6:** Continue the basic character of PLTC, including:

    a. a single stream mandatory curriculum,
    b. ten weeks in duration, including student assessments,
    c. a primary focus on lawyering skills and practical know how, professional responsibility, and practice management,
    d. primarily in-person delivery,
    e. an interactive small group workshop format in class sizes of 20 students,
    f. a full time professional teaching faculty with periodic volunteer practitioner guest instructors,
    g. restoring funding levels sufficient to achieve these recommendations, including in particular (e) and (f), and explore the possibility of creating an additional May session in Vancouver.

13. **Recommendation #8:** In relation to the Truth and Reconciliation Commission's Call to Action #27, strengthen the PLTC curriculum and assessments by enhancing cultural competency content and, in particular, awareness with respect to Aboriginal issues and the tragedy of residential schools, including integrating cultural competency into the curriculum in areas such as professional responsibility, interviewing and dispute resolution.

14. **Recommendation #9**: Implement measures to minimize instances where articling is disrupted by PLTC, including:

    a. PLTC placement policies that take into account articling location, law school location, and firm size, including priority placement preferences, where possible, for law firms to take on a single student,

    b. a communication plan aimed at students and small firms designed to assist them to avoid or minimize the disruption factor.

15. **Recommendation #10:** Continue to work with the Law Foundation in administering its funded PLTC Travel and Accommodation bursary bursary program, which provides travel and accommodation bursaries for students who must travel from their place of residence and articles and pay for temporary accommodation while attending PLTC.

16. **Recommendation #12:** Continue the basic character of the articling requirement, including a nine month term, subject to:

    a. the Credentials Committee, governed by the Law Society Rules, continuing to have discretion to reduce an individual's articling requirement based on factors such as practice or articling experience in other jurisdictions, but not for summer articles,

    b. the Credentials Committee considering a revision to its process for assessing these articling reduction requests to permit reduction applications before an applicant has secured articles,

    c. articling credit for court clerkships continuing to be for up to five months of the articling requirement.

17. **Recommendation #13:** Strengthen Law Society support for the effectiveness of articling principals by publishing online video clips, guides, checklists and other resources on how to provide effective student supervision.

18. **Recommendation #17:** That the Credentials Committee consider recommending to the Benchers that Rule 2-57 be amended to change the qualifications to serve as an articling principal from having engaged in the active practice of law for 5 years instead of 7 years.

19. **Recommendation #18**:

    a. Actively encourage potential articling principals to provide remuneration that is reasonable according to the circumstances of the proposed articling placement.

b. Continue to gather information on articling remuneration, and then determine whether to develop a policy on minimum articling remuneration.

The Federation's National Admission Standards Assessment Proposal

20. The Committee has carefully studied the Federation's national assessment proposal, which was distributed during the course of the Committee's analysis of articling and PLTC, and has consulted by telephone with Federation staff.

21. The Committee has significant concerns with the proposal, and has concluded that the proposal does not adequately deal with matters of provincial law, attempts to duplicate or replace by online testing PLTC's in-person skills assessments, is not psychometrically defensible, relies far too heavily on multiple-choice testing, and is unduly expensive.

22. An overall concern is that the almost complete lack of focus on bar admission training, articling, and law school education cannot be in the public interest.

23. The Committee has concluded that the Federation, working with all law societies, must put the process back on track, and take whatever time is necessary for law societies to work together in a process that is open, practical, and visionary, and which may allow individual law societies to use various components of the Federation's proposed assessment model.

24. The highlights of the Committee's Federation-related recommendations include:

25. **Recommendation #19**: Urge the Federation to respond proactively to the Truth and Reconciliation Commission's Call to Action #27 by including a mechanism for its advancement in the National Admission Standards project.

26. **Recommendation #20**: Urge the Federation to collaborate proactively with law societies, the Council of Canadian Law Deans, and the profession to assess options for principled alternatives to the Federation's National Assessment Proposal, including:

    a. alternatives to the dominant focus on multiple-choice testing,
    b. strengthening the testing of local law and practice,
    c. lowering the significant costs,
    d. establishing an overall vision, with considerable specificity, of the critically important and interrelated roles of bar admission training, articling, student assessment and law school education.

27. **Recommendation #22:** Not endorse the Federation's current form of National Assessment Proposal.

WHAT THE BENCHERS ARE BEING ASKED TO DO

28. The Lawyer Education Advisory Committee requests that the Benchers approve the Committee's recommendations. **(APPENDIX A)**

    Part I: Admission Program Review, recommendations 1 to 18
    Part II: Federation National Admission Standards Assessment Proposal, recommendations 19 to 22

THE REPORT AND RECOMMENDATIONS

Committee Strategic Priorities

29. The Lawyer Education Advisory Committee submits this report to the Benchers pursuant to the Committee's mandate under section 2 of the 2015–17 Strategic Plan:

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

Overview of the Committee's Work in 2015

30. The Committee began by reviewing the work of the former 2014 Committee, which had commenced its consideration of the Admission Program pursuant to the previous Law Society Strategic Plan. The Committee agreed to build on the former Committee's work, rather than redoing its work or revisiting its conclusions.

31. This year, the Committee's work has included consideration of:

- PLTC's history and mandate,
- PLTC's teaching and training: strengths and weaknesses, and options for change,
- PLTC's skills assessments and examinations: strengths and weaknesses, and options for change,
- PLTC and articling's administrative challenges, including cost, space, and rising student numbers,
- the potential for online learning, including examining
    - CPLED (the Canadian Centre for Professional Legal Education Program), the bar admission course online and in classrooms in Alberta, Manitoba, and Saskatchewan,
    - Simon Fraser University's two-year online MA Graduate Program in Legal Studies, a program designed for training notaries,
    - the Law Practice Program at Ryerson University in Toronto, delivered principally online,
- articling strengths and weaknesses,
- articling remuneration, and unpaid articles,
- bar admission systems in other provinces and the territories, as well as in other countries,
- licensing requirements for several professions and trades in BC **(APPENDIX B)**,
- the Federation of Law Societies' national admission standards assessment proposals,
- extensive information gathered through surveys, email, and consultation discussions:
    - surveys of two and three year post call BC lawyers,
    - responses to Committee Chair Tony Wilson's *BarTalk* article, including follow up discussion and email with many firms,
    - the Law Society's Key Performance Measures for PLTC and articling,
    - meetings with the law deans of BC's three law schools, and meetings at the law schools with faculty and students,

- two meetings with Federation of Law Societies' representatives to discuss national admission standards.

Part I: Admission Program Review, PLTC and Articling

PLTC Overview

32. The 10-week PLTC term and the nine-month articling term are the two stages of the Admission Program, so that together PLTC and articling are integral parts of one comprehensive Admission Program.

33. Students may select one of the three scheduled PLTC sessions in Vancouver commencing in February, May or September, or in Victoria or Kamloops in May.

34. The lesson plans are designed as inter-active participatory workshops, not lectures. The focus is on skills, ethics, practice management, and practice and procedure in several common areas of entry-level practice. The skills taught and assessed are Drafting, Writing, Interviewing/Oral Advising, and Oral Advocacy. The practice and procedure areas examined in two 3-hour examinations are Business, Real Estate, Criminal, Civil, Wills, and Family, in addition to Ethics and Practice Management. The interactive participatory classes also focus on mediation, negotiation, criminal and civil advocacy, and legal research, and student assignments include client interviews, civil trial analysis, Notice of Claim and affidavit drafting, statements of adjustments, trust accounting, financial statement analysis, letter writing, and drafting contracts.

35. The skills are learned in classes, ideally of 20 students each, who receive written material and engage in small group instruction and discussion. The students have multiple opportunities to practise the skills and receive feedback before they are assessed. Issues of practice management and ethics also form a part of the many exercises and assignments in which the students engage.

36. PLTC is taught by a combination of Law Society staff instructors, sessional contract instructors, and hundreds of volunteer guest instructors. Although the course is delivered in person, the Practice Materials, statutes, rules, daily lesson plans, daily schedule, and assignments are accessible by the students through the online student portal. Students submit their completed written assignments and assessments electronically. Feedback on written assignments is provided electronically, and student results are posted online. PLTC does not yet have the capacity to post videos online, but that is being planned.

37. During PLTC, articling students are immersed in the interactive learning environment. They learn from each other as well as from the regular and guest faculty. Students are

strongly discouraged from working in their firms during PLTC, and may not work elsewhere without Law Society permission.

Surveys of Two and Three Year BC Lawyers

38. The Committee administered an Admission Program survey to lawyers called to the bar for two to three years. The responses indicated very strong support for PLTC maintaining its current small group/workshop format as a live in person course, and continuing to focus on skills, ethics, practice management, and practice and procedure. The responses also strongly indicated that articling should continue but be strengthened.

Survey Summary (104 responses / 605 invitations)

1. *Should PLTC continue as a LIVE course?*
   Yes - 94 No - 7

2. *Is ten weeks the correct length for PLTC?*
   Yes - 74 No - 27

3. *Should PLTC maintain its current small group/workshop format?*
   Yes - 98 No - 5

4. *Should PLTC's teaching continue to focus on skills, ethics, practice management, practice and procedure?*
   Yes - 101 No - 1

5. *Should PLTC continue to assess student competence in the following skills?*
   Interviewing: Yes – 89 No – 15
   Drafting: Yes – 98 No - 6
   Writing: Yes – 89 No - 15
   Advocacy: Yes – 93 No - 10

6. *Should PLTC continue to assess student competence by written examinations covering practice, procedure, law, ethics and practice management?*
   Yes - 89 No - 13

7. *Does articling need improving?*
   Somewhat: *68*
   Not at All: 22
   Very Much: 14

8. Could the Law Society do more to improve articling?
Somewhat: 62
Very Much: 22
Not at All: 20

Report on Responses to *BarTalk* Article

39. Tony Wilson's June 1, 2015 *BarTalk* article, *I'm Conducting an Opinion Poll!!! - How can we improve Articling and PLTC?*, solicited the profession's input on the Admission Program, both articling and PLTC, and in particular on the question of whether in person PLTC should be replaced with online education. The article elicited over 35 written responses from newly called, mid-level and senior lawyers, and many telephone responses. Although the Committee had anticipated that there might be criticisms of the Admission Program, and particularly PLTC, from those who chose to voice their opinions, the responses were overwhelmingly supportive of PLTC, and did not favour moving in the direction of online training.

40. The following significant themes emerge from the responses.

PLTC Strengths

- effective transition from law school to articling and to practice
- skills training
- quality of teaching
- value of small group learning
- collegiality – development of life long professional relationships
- meeting with volunteer senior lawyers as guest instructors

PLTC Suggestions

- retain the in person instructional format
- some suggestions for additional / reframed skills
- strengthen practice management content
- try to minimize disruption to articles (Some firms, including in particular smaller firms, find PLTC to be disruptive when it is scheduled in the middle of the articling term.)

Articling

- valuable, but uneven quality
- should be retained and enhanced
- support for paid articles

41. These are a few of the responses to the *BarTalk* article:

> *I strongly feel that an in person, class based program is very valuable. Already so much of the legal profession is online; it would be a tragedy to get rid of an in person setting. I now have a strong network of peers who are going through the same journey as I am. As a foreign law school graduate and as someone who articled in a small firm with no other articling students, I felt isolated from others in the legal profession. Not only does my network of peers allow a space for sharing experiences and asking questions, it permits us to teach each other from our mistakes!*
>
> -a 6 month, small firm lawyer

> *PLTC should not go online. I can't stress this enough. As a person who had to travel to PLTC and pay for and arrange my own accommodation (and is therefore one of the more put-out people that has to do PLTC), I would say that it would lose the majority of its benefit if it went online. I went through law school with a lap top in front of me and I can say that it does nothing (besides provide more opportunities to buy shoes online) but detract from my ability to pay attention, retain information, and generally learn. In addition, the most useful parts of PLTC are the practical activities, which I actually enjoyed, in part, because I had made good friends with the other students and enjoyed having an awesome instructor. Being in class every day creates a safe and fun environment, so I wouldn't think it would be the same to try to incorporate online components.*
>
> -a small firm lawyer in the north

> *I am not a fan of online training because it eliminates the immediacy of classroom training and does not allow for the same kind of group learning that can be gained from a class of learners.*
>
> -a lawyer in a mid-size firm

> *Articling remains a necessary part of the development of lawyers to serve the public. Training competent lawyers takes years beyond the articling year, and articling provides a base.*
>
> -a lawyer in a small firm

Discussions and Emails Following Up on Surveys and *Bar Talk* Responses

42. The Committee followed up on the *BarTalk* article responses with 25 firms, soliciting input on PLTC and articling, and in particular on the question of whether the in-person PLTC model should be replaced or significantly supplemented with online education.

43. The following significant themes emerged from the responses.

- Articling should continue. It is important, in conjunction with PLTC, for transitioning from law school to readiness to practise law. A lawyer in a smaller firm had this to say:

  Articling should continue. It is essential, with PLTC, for filling the training gap between law school and readiness to practice law.

- PLTC fills a practical training gap after law school. The skills assignments and feedback are important.

- The articling term should not be shortened for students who complete law school clinical programs.

- Do not add to PLTC's substantive law content, because that would detract from the practical skills focus. Substantive law should continue as a role for the law schools.

- Do not replace PLTC with online learning. PLTC's small group interactive format provides a valuable learning process that online learning cannot match.

- PLTC enables students to develop life-long diverse, collegial relationships that strengthen their ongoing professional competence and the profession as a whole. A lawyer from a larger firm had this to say:

  I support maintaining PLTC as a course delivered live, rather than online. In addition to PLTC being a terrific substantive program, the benefits of being in a classroom with peers and future colleagues should not be underestimated. It is not uncommon, even after many years in practice, to refer to someone as "She was in my PLTC small group". The ability for PLTC to enable professional connections and bonds is a valuable "side benefit" that would be lost in an online program. I am lucky enough to serve as a principal to some terrific students, including from elsewhere in Canada and from other countries through the NCA, and they have cited the fact that PLTC enabled them to meet other colleagues as being part of the reason they valued PLTC.

- Online learning during articling is a poor idea, because it would add to the pressure students are already experiencing in articling. The quality of learning in an online program would suffer if the online program and articling were to take place simultaneously. These are two of the responses:

  If an online course were to be held concurrently with articles, students would definitely not have enough time to focus on the course. If students are expected to

prioritize studying, they should be insulated from the real-time demands of clients.

-a larger firm

Online training during articles would be really difficult for the students at this firm. Articling students work long hours and are expected to put in the time as a junior at trial and often go out of town for trials. It would mean a significant restructuring of articles if PLTC were to be done online concurrently with articles. It would not matter if the principal were to tell the students that PLTC should be a priority. If a student is working on a trial, the trial will take first priority.

-a mid-size Victoria firm

- Try to minimize PLTC disrupting articles.

- Integration with law schools is a poor idea, because of the distinct roles of law schools and law societies.

Key Performance Measures

44. Each year the Law Society evaluates the effectiveness of its programs through the Key Performance Measures process. Admission Program students and articling principals are surveyed on the value of PLTC and articles.

45. The most recent Key Performance Measure data for the Admission Program is for 2014. On a five point scale (1 = lowest, 5 = highest), PLTC students rated PLTC's value at preparing them for the practice of law as 4, and articling as 4.2. Articling principals rated PLTC's value at preparing their students for the practice of law as 4.2, and articling as 4.4. The data has been similar over the past five years.

PLTC Program Delivery: In-person and Online

46. Although the Committee's extensive consultation reveals overwhelming support for continuing PLTC in an interactive small group workshop format with primarily in-person delivery, the Committee investigated the potential for online learning in the Admission Program, including advantages and disadvantages, as well as cost.

47. The Committee reviewed a discussion paper, prepared at its request by Charlotte Ensminger, Staff Lawyer in the Policy and Planning Group, summarizing research and assessments of online learning, including how online learning is used in training student lawyers in the United Kingdom, Australia, New Zealand, and four Canadian provinces (Nova Scotia and the prairie provinces). The discussion paper elaborates on the

characteristics, advantages and disadvantages of an online learning model, as well as a blended learning (hybrid) model.

48. The Committee also reviewed research assembled by PLTC Deputy Director Lynn Burns on small group collaborative learning, and the pros and cons of this method of delivery. The positives include peer support, team work, mentoring, establishing contacts, relationship building that continues into practice and reduces isolation for students who article or will practice in small or remote firms, immersion in an environment focusing on ethics and professional values, daily discussion, debate, feedback and reflection. The challenges relate to the increase in student numbers from 340 to 500 over the past five years, and include the need for classrooms and instructors. Individual class sizes have increased from approximately 18 to 22 to 25. For some students, their articles are disrupted to attend PLTC, and some must travel and incur additional cost to relocate, although fewer than 5% of students relocate for PLTC, as they are typically either articling in or graduating from law school in one of the three PLTC cities.

CPLED (Canadian Centre for Professional Legal Education)

49. The Committee met with Sheila Redel, who was the first designer and Director of CPLED, the bar admission training course Alberta, Saskatchewan and Manitoba. Sheila's professional background includes a Masters' degree in Distance Education from Athabasca University and being the former Law Society of Manitoba Director of Education, the former CBA Director of Professional Legal Education, and currently a frequent contract Instructor with PLTC in Victoria and Vancouver.

50. CPLED, since 2004, has been the bar admission program for the three prairie law societies. CPLED was subsequently adopted by the law societies of the Northwest Territories and Nunavut, and three of the CPLED online modules form a part of the Nova Scotia and PEI shared program.

51. In 2002 the three prairie law societies and the Law Society of British Columbia had already developed and adopted a common entry-level Competency Profile. In BC, PLTC was modified to accord with the new Profile. The prairie law societies decided to design a new program, CPLED, to both accord with the new Competency Profile and meet their individual concerns.

52. Each of the three prairie law societies had other significant reasons for setting up CPLED. Alberta was finding it increasingly difficult and costly to find teaching space in hotels. Without staff or contract faculty, Alberta also had problems recruiting volunteer instructors. The Law Society of Saskatchewan had recently dissolved the Saskatchewan Legal Education Society, was looking for a means of bringing bar admission training in

house, and was concerned about costs. Manitoba's former course was delivered on Fridays throughout the fall and winter in Winnipeg. Not only did firms find the absence of their students for one day per week disruptive, but the Law Society was paying weekly travel and accommodation for students from outside of Winnipeg.

53. Although substantially online, CPLED is a blended learning bar admission training course with seven 3-week online modules and three 3-day live modules (Negotiation, Oral Advocacy, and Interviewing). The seven online modules are Drafting Contracts, Drafting Pleadings, Legal Research and Writing, Practice Management, Written Advice and Advocacy, Ethics and Professionalism, and Client Relationship Management. Each module lasts three weeks. All ten modules are delivered throughout the articling year, twice in Alberta and once in Saskatchewan and Manitoba.

54. CPLED runs throughout articling, and so law firms are expected to provide their articling students with sufficient time (one day per week) to complete the seven 3-week online modules and three 3-day absences for the live modules. In many articling settings this has proven to be an inconsistent practice, and some students must find their own time to meet their obligations.

55. The CPLED platform was initially WebCT, followed by Blackboard, and now Desire to Learn. Each law society contributed approximately $100,000 to the start up. The balance was funded by the Law Foundations of each of the three provinces.

56. Although advances in technology would now permit CPLED to be improved considerably, including by re-introducing effective online synchronous learning, there is a concern about the substantial resources required to make those kinds of improvements. The three prairie law societies value the CPLED program for providing a valuable educational experience, but recognize that CPLED needs to be reviewed and revised to account for advances in technology and changes in law and practice.

57. The Committee engaged Sheila is a discussion of the merits of face-to-face, online and blended learning. Sheila described face-to-face learning as the gold standard for education on professionalism, interpersonal skills and communication, and higher level performance skills.

58. Sheila described PLTC as meeting the "gold standard," although PLTC would be even better if there were more resources to contribute to frequent updating. Sheila suggested that although some task training components, such as Writing or Drafting, could be effectively delivered online, that would not necessarily enhance PLTC's educational quality.

59. Sheila described PLTC as intricately constructed and interwoven, rather than modularized like CPLED. Therefore it would not be possible without redesigning PLTC in its entirety to simply patch portions of CPLED or other online learning models into PLTC. Moving PLTC to a blended model design would be complex, and extremely expensive, costing potentially millions of dollars because of the complexity.

Other Online Formats

60. The Committee has also explored the feasibility, including financial, of other models of online learning, including the Law Practice Program at Ryerson University in Toronto and Simon Fraser University's two-year MA Graduate Program in Legal Studies for notaries, as possible alternatives to PLTC. The ongoing cost of operating the Law Practice Program at Ryerson University has approximately doubled the Law Society of Upper Canada's student fees, after spreading the much higher cost of the online program across the Law society of Upper Canada's entire student body.

61. Many online programs are asynchronous, not permitting direct interaction in real time between students and instructor. Others that are synchronous (for example, Blackboard collaborate, which replaced E-Live and is used extensively by Simon Fraser University and other universities) are still technologically cumbersome, and are only audio-based, unless both students and instructors have very high bandwidth internet connections.

62. The Committee has concluded that moving PLTC to an online or blended model would not make sense educationally or financially.

Online Enhancements to PLTC

63. The Committee has observed that there are more modest but effective online means by which PLTC has been recently enhanced.

64. PLTC already places its lesson plans, schedules, notices, Practice Material, case files, fact patterns and precedents online for students to access on the PLTC student portal. WIFI is available in the classrooms, and students access all of this as well as statutes and other resources on their laptops daily. PLTC has begun posting some lectures on the student portal as pre-class assigned viewing, and plans to post individual student performance videos of Advocacy and Interviewing assessments on to the portal with password protection so that students can review their own failed performance in private with the benefit of included instructor commentary.

RECOMMENDATIONS

65. The Committee, having engaged in careful and sometimes spirited discussions throughout 2015, is unanimous in referring its 22 recommendations to the Benchers for approval.

66. Implementation of the recommendations would have no longer term budgetary impact, and only modest impact relating to the online learning recommendation (recommendation #2).

Admission Program Overall Recommendations

67. **Recommendation #1**

Adopt the following as the principles the Admission Program's articling and Professional Legal Training Course components are meant to achieve:

a. Newly admitted lawyers are competent and of good character and fitness to begin the practice of law;

b. The articling, PLTC and assessment components of the Admission Program:

- **provide an effective transition between law school and admission to the bar through supervised practical experience in articles and effective professional training;**
- **teach and assess the how-to of the practice of law, including practical application of substantive law, procedure, skills, professional responsibility, loss prevention and practice management;**
- **socialize students to their role in the profession and responsibility to the public, the profession and the administration of justice.**

Discussion and Analysis

68. The Committee has concluded that the Admission Program is central to the Law Society mandate, pursuant to section 3 of the *Legal Profession Act*:

> *It is the object and duty of the society to uphold and protect the public interest in the administration of justice by*
> *(b) ensuring the independence, integrity, honour and competence of lawyers,*
> *(c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,*

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

69. The Law Society's mandate is clearly a proactive one, and it is therefore readily apparent that there is no Law Society program or obligation that is of a higher priority the Admission Program in fulfilling the section 3 mandate.

70. The Committee reviewed the rationale for the Admission Program articulated in the *Report on Admission Program Reform*, approved by the Benchers on June 28, 2002, and the Federation's *Entry to Practice Competency Profile for Lawyers and Quebec Notaries* **(APPENDIX C)**, approved by the Benchers on January 24, 2013, and has concluded that together they articulate a sound rationale for the Admission Program. The following are relevant excerpts from the 2002 *Report on Admission Program Reform*.

11. … the mandate of the Admission Program is to ensure that students admitted to the Bar of B.C. are competent and fit to begin the practice of law. Therefore, a student, to complete the Admission Program successfully, must demonstrate such competence and fitness.

12. … the profession needs, in the public and its own interest, to be satisfied that newly called lawyers possess:
- *legal knowledge,*
- *lawyering and law practice skills,*
- *professional attitude,*
- *experience in the practice of law, and*
- *good character and fitness.*

17. There are important reasons for supporting an effective Admission Program, including both a teaching and articling component. These reasons include:
- *narrowing the competence gap that otherwise exists between law school graduation and admission to the Bar, by providing supervised practical experience with actual clients,*
- *teaching the "how-to" of the practice of law, including practical application of substantive law, procedure, skills, professional responsibility, loss prevention and office management,*
- *socializing students to their role in the profession and responsibility to the public, the profession and the administration of justice,*
- *assisting and preparing those students who may soon be either in sole practice or otherwise largely unsupervised, and mitigating through teaching and mentoring*

any disadvantage that may be faced by students from groups under-represented in the profession.

71. **Recommendation #2**

Strengthen the practice management content of the Admission Program by:

a. expanding the interweaving of practice management issues into components of the PLTC curriculum relating to specific practice areas, such as Business Law, Family, Residential Conveyances, and Wills,

b. requiring all articling students, either during articles or PLTC, to successfully complete an online course modelled on the Small Firm Practice Course to be eligible for admission to the bar.

Discussion and Analysis

72. The Committee concluded, based on its consultations, that Practice Management, including business of law training, should be enhanced. The Committee decided to recommend a two prong approach: in PLTC and in the Admission Program as a whole.

73. In PLTC, there would be a continuation and strengthening of the current Practice Management content, with more extensive interweaving of practice management issues into components of the PLTC curriculum relating to specific practice areas, such as Business Law, Family, Residential Conveyances, and Wills.

74. So as not to overload PLTC, and to provide Practice Management training in the context of articling's practical experience, the Committee concluded that it would be useful to require students to complete an online course modelled on the Small Firm Practice Course during articles or PLTC to be eligible for admission to the bar.

75. Rule 3-28 would continue to require lawyers who are beginning practice in a firm of four or fewer lawyers to complete the Small Firm Practice Course within 12 months before or six months afterward. Continuation of this requirement is meant to ensure that the Small Firm Practice Course is fresh in the minds of lawyers at the time they begin small firm practice.

76. **Recommendation #3**

Engage regularly with BC's law schools, including by exploring potential synergies between the competencies taught in the PLTC and those taught in the law schools, to ensure that the system of legal education and training from law school to admission to the bar is forward thinking and practical in meeting the rapidly changing needs of the public, and the ability of lawyers and law firms to meet those needs.

Discussion and Analysis

77. The Committee concludes that its successor committees should schedule regular meetings with the law schools, twice yearly or as circumstances may require. The system of legal education and training from law school to admission to the bar should be forward thinking and practical, and although law school education and the Admission Program are distinct stages in the legal education and training continuum, together they should ensure that students are fully prepared for their calling in the practice of law.

78. In recent years there has been considerable inconsistency in the frequency and quality of dialogue with law schools Canada-wide. This has been particularly so in the context of emerging Federation standards for approval of law degrees, the current Federation review of the law degree approval process, and the potential impact of the Federation's national admission standards project. All too often, the law deans and the Council of Canadian of Law Deans have been left on the outside.

79. **Recommendation #4**

Engage regularly with the legal profession to ensure that the system of legal education and training is forward thinking and practical in meeting the rapidly changing needs of the public, and the ability of lawyers and law firms to meet those needs.

Discussion and Analysis

80. The Committee has found its surveys and consultations with BC lawyers to be of immense value. Inviting the regular input of lawyers through surveys and by meeting with bar groups will strengthen the Admission Program, and assist in ensuring that the Admission Program does not fall behind in meeting the rapidly changing needs of the public, and the ability of lawyers and law firms to meet those needs.

81. **Recommendation #5**

Ensure that the Admission Program is subject to a structured process of systematic, regular review and enhancement to ensure it is forward thinking in meeting the needs of the public, the profession, and articling students, including through:

a. regular review of the prescribed lawyering competencies,

b. attention to new administrative, learning and practice technologies, including new developments in online education,

c. ongoing updating and enhancement.

Discussion and Analysis

82. Because the Admission Program is central to the Law Society's fulfilment of its statutory mandate pursuant to section 3 of the *Legal Profession Act*, Benchers should in the future carefully consider whether it is time to include another Admission Program review in the Law Society Strategic Plan.

83. Interim ongoing reviews should be conducted by the management and professional staff, with input as appropriate from the Lawyer Education Advisory Committee.

Professional Legal Training Course Recommendations

84. **Recommendation #6**

Continue the basic character of PLTC, including:

a. a single stream mandatory curriculum,

b. ten weeks in duration, including student assessments,

c. a primary focus on lawyering skills and practical know how, professional responsibility, and practice management,

d. primarily in-person delivery,

e. an interactive small group workshop format in class sizes of 20 students,

f. a full time professional teaching faculty with periodic volunteer practitioner guest instructors,

g. restoring funding levels sufficient to achieve these recommendations, including in particular (e) and (f), and explore the possibility of creating an additional May session in Vancouver.

Discussion and Analysis

85. The value of PLTC in fulfilling the Law Society's section 3 statutory mandate must be reflected, as a matter of top priority, in PLTC's resourcing: to enable maintaining of small class sizes of approximately 20 students and instruction teaching by a Faculty of full-time qualified Instructors.

86. A competent lawyer must possess, in addition to legal knowledge, a range of skills and abilities, including professional responsibility and practice management, for carrying out a variety of ever-changing functions. A lawyer must, for example, be an effective interviewer, adviser, researcher, analyst, manager, organizer, negotiator, writer, drafter and advocate. Legal knowledge is essential, but is of little value without skill and know-how. The Law Society must ensure that newly called lawyers possess the requisite lawyering skills and attributes, through effective professional training and rigorous assessments.

87. The Committee has observed that students in law school, and frequently in articles, pursue varied practice area interests. PLTC is the only stage in the professional legal education process where a broadly based experience in basic core practice areas and skills is assured. Articling students, once provided with this solid PLTC base, can best enhance their competence in their preferred areas of practice during articling and, post-call, through continuing legal education courses and the development of their law practices.

88. The Committee has concluded, based on the extensive information it has gathered, its review of programs in other jurisdictions and professions, and its consideration of other learning formats, including online learning, that the public interest in being served by competent lawyers will be most practically and effectively met by continuing PLTC's ten week program, with primarily in-person delivery in an interactive small group workshop format, and by a full time professional teaching faculty with periodic volunteer practitioner guest instructors.

89. The Committee's consultations have included law firms throughout the province, both large and small. Consultation with some of the national firms permitted comparisons of PLTC with programs in other provinces. For example:

> *Ontario's articling students would greatly benefit from having PLTC. PLTC is an excellent transition to practice. PLTC provides important consistency in training for*

BC articling students, including essential lawyering skills training. The students in the Toronto office complete the much shorter Ontario online program during articles.

-a national firm, with offices in Toronto and Vancouver

It is my strong opinion that hands-on experiential learning is the best way to impart practical knowledge and know-how, and improve one's practical lawyering performance.

-a small firm lawyer in Ottawa

90. **Recommendation #7**

Align the PLTC curriculum with the competencies listed in the Federation of Law Societies' *Entry to Practice Competency Profile for Lawyers and Quebec Notaries*, approved by the Benchers on January 24, 2013, while accounting for those competencies mandated for law school graduates by the Federation's law degree approval requirements.

Discussion and Analysis

91. The Committee has reviewed the PLTC curriculum, and concludes that PLTC, in combination with the Federation's law degree approval requirements, substantially accords with the Federation's *Competency Profile*. Therefore the PLTC curriculum would require only modest adjustment.

92. **Recommendation #8**

In relation to the Truth and Reconciliation Commission's Call to Action #27, strengthen the PLTC curriculum and assessments by enhancing cultural competency content and, in particular, awareness with respect to Aboriginal issues and the tragedy of residential schools, including integrating cultural competency into the curriculum in areas such as professional responsibility, interviewing and dispute resolution.

Discussion and Analysis

93. The Truth and Reconciliation Commission's Call to Action #27 addresses the training of lawyers:

We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and

Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

94. PLTC's *Practice Materials* include Aboriginal law and practice within PLTC's designated subject areas, and there are related examination questions. PLTC's instructors have received cross-cultural skills training to support the effectiveness of their teaching. However, PLTC does not yet include a meaningful focus on cross cultural skills training for students. There is time that can be made available in PLTC to include cultural training, as well as to include additional Aboriginal law and practice content in the curriculum.

95. Call to Action #27 urges that all lawyers, not only newly called lawyers, receive appropriate cultural competency training. The Committee concludes that the Law Society, in addition to enhancing the PLTC curriculum, should go further, such as by working with BC's First Nations and the Continuing Legal Education Society, and supplementing the online Small Firm Practice Course, the Practice Refresher Course, and the Communication Toolkit.

96. The 2016 Lawyer Education Advisory Committee will review the CPD program pursuant to the Strategic Plan, and in that context consider Truth and Reconciliation Commission call to action #27 more fully.

97. **Recommendation #9**

Implement measures to minimize instances where articling is disrupted by PLTC, including:

a. PLTC placement policies that take into account articling location, law school location, and firm size, including priority placement preferences, where possible, for law firms to take on a single student,

b. a communication plan aimed at students and small firms designed to assist them to avoid or minimize the disruption factor.

Discussion and Analysis

98. PLTC's small class size and interactive skills training focus rely structurally on operating the program three times yearly, which is why demand for placement in the May session cannot be fully met.

99. In Ontario, the Law Society of Upper Canada was overwhelmed by trying to train all of its students in a single session, which ultimately undercut the viability of Ontario's former Bar Admission Course.

100. The Committee concludes that solo and small law firms, particularly outside the Lower Mainland, should be encouraged to take on articling students, and should be assisted by the Law Society to avoid articling being disrupted by PLTC. The Committee believes that this could in fact encourage more articling positions being made available.

101. Therefore is important to implement PLTC placement policies that take into account articling location, law school location, and firm size, including priority placement preferences, where possible, for law firms to take a single student.

102. The Law Society's Communications Department has published and posted advice to students and firms on how to take steps to obtain their first choice of PLTC placement and commencement date.

103. **Recommendation #10**

Continue to work with the Law Foundation in administering its funded PLTC Travel and Accommodation bursary bursary program, which provides travel and accommodation bursaries for students who must travel from their place of residence and articles and pay for temporary accommodation while attending PLTC.

Discussion and Analysis

104. Students qualify to apply for a PLTC Travel and Accommodation Bursary to a maximum of $5000, if they are enrolled in the Admission Program, and must travel from their place of residence and pay for arms-length temporary accommodation in Vancouver, Kamloops or Victoria to attend PLTC and will be returning to their place of residence afterward.

105. Fewer than 5% of students relocate for PLTC, as students are mostly either articling or graduating from law school in the three PLTC cities.

106. **Recommendation #11**

Continue to require students to secure articles before commencing PLTC.

Discussion and Analysis

107. The Credentials Committee has considered a recommendation arising from the Small Firm Task Force Report of January 2007 that students be able to enrol in PLTC before securing articles. After much debate, the Credentials Committee concluded that while the recommendation was a laudable effort at creating opportunities for

students, the consequences of the recommendation could actually be expected to provide more impediments or costs for students generally. The greatest concern identified by the Credentials Committee was the real possibility that over time firms could start requiring students to take PLTC before offering articles. This would delay a student's progression to becoming a lawyer, and could add to the cost of the process for the student.

Articling Recommendations

108. **Recommendation #12**

Continue the basic character of the articling requirement, including a nine month term, subject to:

a. the Credentials Committee, governed by the Law Society Rules, continuing to have discretion to reduce an individual's articling requirement based on factors such as practice or articling experience in other jurisdictions, but not for summer articles,

b. the Credentials Committee considering a revision to its process for assessing these articling reduction requests to permit reduction applications before an applicant has secured articles,

c. articling credit for court clerkships continuing to be for up to five months of the articling requirement.

Discussion and Analysis

109. The Committee's surveys and consultations provide a clear message that students and articling principals alike value the articling program, and support its continuation.

110. The articling term should fulfil a significant role in preparing students, in a practical way, to apply their legal knowledge, acquire and enhance practical skills and know-how, and develop a sense of professionalism that encompasses the attitudes and values of the legal profession. Articling is a key building block in the preparation for becoming a competent lawyer. Articling provides the real-life component of a student's professional training.

111. The Committee has assessed the current nine-month length of the articling term. The Committee concludes that shortening the articling term would impair the training opportunity for students through inadequate time being available to work through

complete matters. The groups consulted by the Committee have not made any suggestions or expressed any concerns in this regard.

112. The rationale for continuing the nine-month requirement is a significant reason for the Committee recommending that the requirement not be shortened based on experience during law school in student clinics and summer articles. (Only Newfoundland credits summer articles, to a maximum of three months of the 15 month requirement.) Students who have, however, practised law or articled in another jurisdiction would continue to be able to apply to the Credentials Committee for a reduction of their articles but not an exemption.

113. The Committee's rationale for continuing to recommend the limiting of articling credit for court clerkships to five months is that the clerkship experience, while excellent, does not provide sufficient experience in the broader range of articling skills. The Committee notes that some provinces, including Ontario, do not limit articling credit for court clerkships.

114. Rule 2-72(7) permits an articling student to apply in writing to the Credentials Committee for exemption from all or a portion of PLTC if a student has successfully completed a bar admission course in another Canadian jurisdiction or engaged in the active practice of law in a common law jurisdiction outside of Canada for at least 5 full years. Rule 2-65 permits an articling student or applicant for enrolment who holds professional qualifications obtained in a common law jurisdiction outside Canada and has been in the active practice of law in that jurisdiction for at least one full year, to apply in writing to the Executive Director for a reduction in the articling requirement.

115. Applicants can find it difficult to approach prospective principals when there is uncertainty about whether they will be granted an exemption from PLTC or a reduction in the length of articles. If the Credentials Committee were to revise its process for considering these articling reduction requests to permit reduction applications before an applicant has secured articles, this problem could be eliminated.

116. **Recommendation #13**

Strengthen Law Society support for the effectiveness of articling principals by publishing online video clips, guides, checklists and other resources on how to provide effective student supervision.

Discussion and Analysis

117. The Committee reviewed the following findings in the Report on Admission Program Reform, approved by the Benchers on June 28, 2002, about the goals articling is meant to achieve, as well as articling's shortcomings, and has concluded that those findings continue to be relevant.

> *36. The articling term should fulfil a significant role in preparing students, in a practical way, to apply their legal knowledge, acquire and enhance practical skills and know-how, and develop a sense of professionalism that encompasses the attitudes and values of the legal profession. Articling is a key building block in the preparation for becoming a competent lawyer. It provides the real-life part of the student's professional training.*
>
> *37. ... for some students, the articling term is too often the weak link in the professional legal education process. Articling functions in isolation, and the quality of experience for some students can provide inadequate preparation for the competent practice of law. The articling term is the only part of the pre-call education and qualification process, from the first day of law school to call to the bar, dedicated to assisting students to acquire, in an actual law practice context, the competence to practise law. As such, it is analogous to the teaching hospital experience for medical students, but too often can fall far short. The 1997 and 2001 surveys of articling principals and students, supplemented by interviews, confirm the perception that the most significant shortcomings of the articling term include:*
>
> - *inconsistent quality in articling experiences,*
> - *inconsistent supervision and feedback,*
> - *inconsistent instruction about professional values and attitudes, and*
> - *powerlessness of students to ensure they receive a satisfactory quality of articles.*

118. The Committee recognizes that although the variety of experiences available in articling placements can be positive for students who have particular career goals, it is important that articling provide a quality training experience.

119. Accordingly, the Committee has resolved to enhance the quality of articling placements by supporting articling principals through publishing online video clips, guides, checklists and other resources on how to provide effective student supervision.

120. The 2016 Lawyer Education Advisory Committee, in conducting its CPD review, will consider extending CPD credit to articling principals for preparatory training and student mentoring.

121. **Recommendation #14**

Continue the skills focus of the articling requirements, and revise the requirements to accord with Federation of Law Societies' *Entry to Practice Competency Profile*, while accounting for the competencies prescribed as PLTC requirements and those mandated for law school graduates by the Federation's law degree approval requirements.

Discussion and Analysis

122. The Law Society's articling requirements are skills based, and do not require experience in any particular area of practice or practice setting. The mandatory skills exposure required for articles is in advocacy, negotiation and mediation, drafting, writing, interviewing, problem solving, legal research, professional ethics, and practice management.

123. While the Committee does not propose that there be a shift of focus, the Committee recommends, consistent with its PLTC proposals, adapting the articling skills requirements to accord with the Federation's Competency Profile, while accounting for the competencies prescribed as PLTC requirements and those mandated for law school graduates by the Federation's law degree approval requirements.

124. **Recommendation #15**

Although it is premature to reach any conclusions on the four month work term placement in the Law Practice Program at Ryerson University and the University of Ottawa, and the work placements in Lakehead University's integrated law degree – bar admission program, because these programs that are still in their infancy, the Law Society should:

a. Assess the potential impact in BC of these programs as soon as reasonably possible;

b. Not provide credit for these alternatives to articling at this time;

c. Remain open to considering proposals from institutions, such as law schools, to offer programs that include alternatives to articling.

Discussion and Analysis

125. The Strategic Plan requires the Committee to report on Initiative 2-1(e):

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

126. These programs are, however, still in their infancy, and the Committee considers it more appropriate to follow up in 2017, the third year of the Strategic Plan.

127. **Recommendation #16**

Monitor the availability of articling positions on an ongoing basis, and:

a. Co-ordinate with and promote the work of law school career service offices as a means of assisting students to find articles suited to their career goals;

b. Be current on an ongoing timely basis on whether the number of available articling positions is likely to meet the needs of students seeking articles, including out of province and NCA students, and be prepared to respond if a problem arises;

c. Endeavour, in co-operation with the NCA, to ascertain the number of NCA qualified students who are seeking articles in BC, and consider appropriate support mechanisms;

d. Encourage joint and shared articles.

Discussion and Analysis

128. The Law Society is not formally involved in the articling recruitment process. The three BC law school career services offices currently publish lists of potential articling principals and provide articling placement and support services. The three BC law school career services also co-ordinate with their counterparts at other Canadian law schools to assist students who come to BC from other provinces.

129. Law Society staff consult regularly with the three BC law school career services offices, and have been told that the articling market in BC appears to be adequate. It is important that the Law Society remain current on an ongoing basis on whether the number of available articling positions is likely to meet the needs of students seeking articles, and to be prepared to respond if a problem arises. Rather than initiate a new Law Society program by setting up an articling placement program, the Committee

recognizes an ongoing opportunity to co-ordinate with the law schools' existing programs.

130. The Committee also sees value in encouraging joint and shared articles, particularly in small firm and solo practitioner environments. The CBABC's Articling Registry, which was designed to include joint and shared articling opportunities, has been suspended because of lack of use. The CBABC would like to relaunch the Registry with an effective campaign for postings, and to that end has initiated consultations with Law Society staff.

131. The Law Society does not have data on NCA student articling placement, because NCA students are not included in law schools' placement records. Anecdotally, the articling placement challenge appears to be greater for NCA students, who do not have the support of law school placement offices, and very often do not have community connections. Therefore Law Society should endeavour, in co-operation with the NCA, to ascertain the number of NCA qualified students who are seeking articles in BC, and consider appropriate support mechanisms.

132. **Recommendation #17**

That the Credentials Committee consider recommending to the Benchers that Rule 2-57 be amended to change the qualifications to serve as an articling principal from having engaged in the active practice of law for 5 years instead of 7 years.

Discussion and Analysis

133. Rule 2-57 (2) stipulates:

To qualify to act as an articling principal, a lawyer must have
(a) engaged in the active practice of law in Canada
(i) for 7 of the 10 years, and
(ii) full-time for 3 of the 5 years
immediately preceding the articling start date …

134. The Credentials Committee has previously considered the eligibility requirements for articling principals and has directed staff to provide a policy analysis and workup for further consideration by the Credentials Committee. The Credentials Committee's general consensus was a recommendation that the years of active practice of law in Canada be changed to 5 years and to reduce the required time spent engaged in practice in BC to 1 year. The Credentials Committee also plans to explore the idea of

removing the reference to "full-time" practice, but include some equivalent practice provision and define what is meant by "active practice."

135. **Recommendation #18**

a. Actively encourage potential articling principals to provide remuneration that is reasonable according to the circumstances of the proposed articling placement.

b. Continue to gather information on articling remuneration, and then determine whether to develop a policy on minimum articling remuneration.

Discussion and Analysis

136. Some professions and occupations are excluded from the application of the *Employment Standards Act*. Section 31(c) of the *Employment Standards Act* Regulations stipulates that the Act does not apply to an employee who is enrolled as an articling student under the *Legal Profession Act*. As a result, articling students are not protected by the *Employment Standards Act*, which includes minimum wage, hours of work, overtime, public holidays, and vacation with pay.

137. The Committee is concerned that there have been reports of instances where students are articling without remuneration. The Committee has canvassed potential Law Society options, including whether articling without remuneration should be regulated, forbidden, permitted but with a requirement that the articling principal inform the Law Society, or permitted only with case-by-case Law Society approval.

138. There may be an issue as to whether there is an ethical obligation to provide articling remuneration or an appropriate amount of remuneration, although presumably there would be no blanket standard. The Committee has heard that some students would prefer that the Law Society not become involved, so that they can simply complete their articles and become credentialed.

139. The informal view of the Committee is that, as a principle, it is probably inappropriate for articling principals who can reasonably afford to provide remuneration to offer little or no student remuneration. The Committee agrees that there is no objective standard for quantifying reasonable remuneration or articulating remuneration best practices, and that there may be situations, such as for public interest advocacy lawyers and legal aid lawyers, where there would be insufficient funds to provide student remuneration.

140. The Committee decided to gather information from students and lawyers to determine the extent to which there might be a problem. Questions were included in the survey of two to three year called lawyers, which produced the following results.

1. *During articles, your monthly salary range was*
   Greater than $3,500 43
   $2,000 - $3,500 51
   Under $2000 7
   Nil 3

2. *Were you paid a salary while at PLTC?*
   Yes 92 No 10

3. *Were your PLTC fees paid by your articling firm?*
   Yes 98 No 6

141. The Committee, in recommending that the Law Society actively encourage potential articling principals to provide remuneration that is reasonable according to the circumstances of the proposed articling placement, intends that the Law Society's message be motivational, and say that taking on an articling student will be beneficial to the firm and demonstrates professionalism.

142. The 2016 and 2017 Committees should continue to monitor the situation, to determine whether to develop a policy for Bencher consideration on articling remuneration.

Part II: Federation National Admission Standards Assessment Proposal

143. The Committee's mandate pursuant to the Strategic Plan includes 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.

144. Accordingly, the Committee has considered the Federation proposal in the context of the Committee's Admission Program Review.

Overview of the Federation National Admission Standards Assessment Proposal

145. In 2013, the Benchers approved the National Entry-Level Competency Profile for Lawyers and Quebec Notaries pursuant to the following resolution.

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

146. The National Competency Profile lists the knowledge and skills that students must possess, and the tasks that they must be able to perform upon entry to the profession.

147. The Federation's National Admission Standards Project Steering Committee is presenting its national assessment proposal **(APPENDIX D)** as the next step in the National Admission Standards project.

148. The Proposal, in light of national mobility, aims to provide consistency in how law societies assess the competencies in the National Competency Profile.

149. The Proposal asks law societies to endeavour by the end of 2015 to be ready to make a decision about whether they will commit to the process moving forward. The Proposal anticipates that development of the national assessments would involve the law societies that are ready to make the commitment

150. The Barreau du Québec and the Chambre des notaires du Québec have decided not to participate in the national assessments.

151. The Proposal covers only student assessment, and states that a national approach to professional training courses and articling would be reserved for a later stage of the project (likely after 2020).

152. The assessments would cover national law, and not include provincial law coverage except in aspects of some of the assessment answer guides. Law societies wanting to test provincial law could administer their own additional assessments.

153. The Proposal states that the knowledge competencies covered by the common law degree national requirement would not be retested. The knowledge competencies that would remain to be tested therefore likely include national aspects of Family, Corporate and Commercial, Wills and Estates, Evidence, Rules of Procedure (Civil and Criminal), and Real Estate.

154. The assessments would occur in three phases, to be implemented in stages over time, and at a cost the Proposal asserts "is consistent with what most law societies spend on assessment now," but not including the cost of training.

155. Phases One and Two would rely exclusively on computer-based testing through designated testing facilities across Canada.

156. In Phase One, students would be assessed through a 6 to 7 hour multiple choice examination on their skills and application of practical knowledge, including analytical reasoning, fact analysis, legal analysis and reasoning, problem solving, and resolution of ethical dilemmas.

157. In Phase Two, the focus would be on assessing skills and tasks in a knowledge-based context through a 5 to 7 hour online examination. Phase Two introduces more complex skills and tasks including problem solving and decision making; identification and resolution of ethical dilemmas; legal research; written communication; client communication, and organization and management of legal issues and tasks.

158. Phase Three would take place in articling, with articling principals assessing student competence, including in performance skills such as advocacy, interviewing and dispute-resolution. Online training and would be provided to prepare articling principals to assess students consistently. Alternatively, individual law societies could choose to assess the Phase Three competencies directly.

159. The Proposal briefly discusses national performance-based assessment: "Preliminary consideration has been given to whether Objective Structured Clinical Examinations ("OSCE") or OSCE-style assessment should form part of the national assessment program. OSCEs are commonly used in the health professions to assess candidates at entry to practice. They consist of a circuit of short stations in which candidates are examined on a particular task (e.g. examining a patient) with one or more examiners and typically an actor or real patient." The Proposal states that "developing and implementing an OSCE program across the country is resource intensive and would present significant challenges. Given the high cost and impracticality of OSCEs, and the ability to effectively test skills and tasks through other means (as outlined in Phases Two and Three), the Steering Committee is not proposing OSCE-style assessment." This why performance-based assessment would be done by articling principals, with an option for individual law societies to include a performance-based assessment of students for high priority skills such as advocacy, interviewing and dispute-resolution.

160. The following chart summarizes what Phases One, Two and Three would each entail.

WHAT IS ASSESSED	ASSESSMENT METHOD & RATIONALE
PHASE ONE	
The focus is on assessing skills and application of knowledge, including analytical reasoning, fact analysis, legal analysis and reasoning, problem solving, and resolution of ethical dilemmas.	Assessment may include multiple choice questions and case-based multiple choice questions completed online.
PHASE TWO	
The focus is on assessing skills and tasks in a knowledge-based context. Phase Two introduces more complex skills and tasks including problem solving and decision making; identification and resolution of ethical dilemmas; legal research; written communication; client communication, and organization and management of legal issues and tasks.	Assessment may require long answers using information supports provided online (e.g. facts, case law), through to skills assessment requiring task completion (e.g., drafting an opinion, affidavit, pleading, or case analysis). Interactive audiovisual practice scenarios would be used in which students apply critical and analytical thinking skills. Students may view a video of a lawyer interviewing a client or negotiating. Students may be asked to analyze a lawyer's performance and how standards for the practice of law have been demonstrated.
PHASE THREE	
The focus is on assessment of competence by the articling principal. Phase Three involves application of the skills and tasks in Phases One and Two, and includes the ability to complete tasks, engage in productive interaction and team work, exhibit improvement, develop personal growth strategies, and engage in self-reflection and feedback.	This phase may involve enhancements to articling, beginning with a framework of competencies that must be demonstrated and a set of performance criteria and ratings supporting the assessment of skills and tasks. Flexibility must be maintained, given the diversity of articling placements.

Proposed Funding

161. The estimated costs of the assessments are divided into development costs and operating costs for ongoing administration once the program is implemented. The projected capital development cost for creating Phases One, Two and Three, net of taxes, is estimated at approximately $2.8 million.

162. Start-up funding would be needed to begin development of the assessment tools. The Federation would contribute to the start-up development costs from its surplus fund. Funding options for the development stage, which might include a cost-sharing formula, a repayable loan, or other possible models, are to be explored in greater depth.

163. The annual operating cost for administering the new assessment regime is estimated at approximately $1,725 per student, based on 3,800 students. This includes all law societies except the Barreau du Québec and the Chambre des notaires du Québec, who are not participating. The per-student cost would depend on the number of participating law societies. The $1,725 per student cost equates to an estimated annual operating budget of $6.5 million.

Proposed Timing

164. The Proposal states that this timing would depend on when law societies are ready to proceed.

2016 – 2018: Phase One would be developed between 2016 and 2018, including the examination pilot test, and implementation of the first assessment.

2018 – 2020: Phases Two and Three would developed between 2018 and 2020.

Commentary and Critique

165. An overall advantage, consistent with national lawyer mobility, is that the proposed national assessments would introduce more uniformity in national admission standards than exists today.

166. One overall disadvantage is that the national assessments would not include provincial law and procedure. The knowledge competencies that would be tested include national aspects of Family, Corporate and Commercial, Wills and Estates, Evidence, Rules of Procedure (Civil and Criminal), and Real Estate, which cannot be assessed adequately without reference to provincial law, and are now covered through a combination of law school courses and the PLTC examinations. For example, how could a "national assessment" adequately assess students who practice in a Torrens land registration system? As rules of procedure and laws with respect to wills and estates different throughout Canada, how could they be examined nationally?

167. A second overall disadvantage is that PLTC already assesses, with only modest adjustments, what would be covered in the proposed assessments (all three phases) more effectively and with the advantage of including applied knowledge of

provincial law and procedure. The Committee is concerned that this Federation Proposal would drive the standards for bar admission down to the lowest common denominator, and concludes that the Law Society should not lower its standards simply in a quest for national standards or psychometric defensibility.

168. The Proposal speaks to the importance of the national assessments being psychometrically defensible, and asserts that in this way the national assessment will generally be superior to what exists today. Psychometrics is a field of study originally developed to apply statistical and mathematical analysis to psychological testing to ensure objective measurement. Currently it is often applied to other kinds of testing, including high stakes testing for professional qualification. Its purpose is to ensure testing instruments provide as objective a measurement as reasonably possible of the skills or knowledge being tested. Psychometrics recommends blueprinting testing instruments to align with competency statements, using guidelines for preparing quality, clear test questions, processes for assembling questions into a test including weighing degree of difficulty and response time, inter/intra class correlation (by statistical analysis), best practices for testing administration, and clear grading guidelines to eliminate or reduce bias or subjectivity.

169. PLTC has consulted a professional psychometrician to conduct a statistical analysis of PLTC's examinations and skills assessments, and to educate the legal professional staff about theory, processes and best practices for examination question and answer preparation, compilation, marking, and administration. PLTC's examinations and assessments were found to be satisfactory.

170. PLTC continues to follow best practices for setting and grading examinations and skills assessments. The format of the two examinations is short answer and essay. The skills assessments are necessarily more subjective.

171. The Committee has concluded that PLTC examinations and skills assessments meet the standard of psychometric defensibility.

Phase One Examination

172. The Phase One element of the proposal is unnecessary and needlessly expensive, as it largely duplicates the skills already approved for the law degree competencies and in PLTC (application of knowledge, including analytical reasoning, fact analysis, legal analysis and reasoning, problem solving). It would burden the admission process with a 6 to 7 hour multiple choice examination, a dominant new feature.

173. Although the knowledge competencies covered by the common law degree requirement would not be retested, the knowledge competencies that would be remain to be tested include national aspects of Family, Corporate and Commercial, Wills and Estates, Evidence, Rules of Procedure (Civil and Criminal), and Real Estate, which are now typically covered through a combination of law school courses and PLTC.

Phase Two Examination

174. The Phase Two online skills assessments requiring task completion (e.g., drafting an opinion, affidavit, pleading, or case analysis) and critique of recorded lawyer performances would have some merit, although they offer nothing much in addition to what PLTC offers.

175. There should be a thoughtful national discussion and consultation on why Phase Two would only be an online written assessment (a 5 to 7 hour examination), without any live performance testing (in person skills assessments) for the most highly rated competencies (such as advocacy, interviewing and dispute-resolution). Learning by doing is the best way to teach skills, and performance testing is the best way to assess skills. Committee members have concluded that for skills assessments, a quest for perfect psychometric defensibility should not be allowed to undercut the quality of what PLTC is achieving.

Phase Three Skills Assessment

176. A positive feature of the Phase Three proposal is that having articling principals assess student skills could enhance the educational quality of articling.

177. However, because articling principals would assess the competencies, there would be no defensible national standard for assessing the most highly rated skills, including no assurance of quality and no psychometric defensibility. An assessment that would replace evaluation by professional educators with evaluation by articling principals cannot be psychometrically defensible. Moreover, the possibility of bias, whether intended or not, could not be eliminated. Therefore it is inaccurate for the Proposal to state that it would "Ensure that candidates have demonstrated the required knowledge and skills …"

178. Phase Three requires more deliberation and consultation, before deciding that in-person testing of performance skills would be too expensive and impractical. It is clear that PLTC assesses the skills proposed to be covered in Phase Three more comprehensively and reliably.

Professional Training Courses

179. The Proposal covers only student assessment and articling, and states that a national approach to professional training courses has been reserved for a later stage of the project [likely after 2020].

Costing

180. The significant per student cost does not take into account any continued law societies' training courses and local testing. The overall per student cost of a combination of national assessments, provincial assessments, provincial training courses, and administering articling would be higher than today for the law societies that continue some form of professional training course and local assessments.

181. Although the Proposal states: "Our goal is an assessment regime that will be cost neutral and that may also bring cost savings to local bar programs in the long term," such a cost impact cannot even be guessed at before the Federation develops proposals for the future of bar admission training. The timing of that important work is described as being at "a later stage of the project."

Consultations on the Federation Proposal

182. The Committee consulted with the BC Deans on September 24th, and has been following up with meetings at the law schools.

183. The Committee's deliberations have included two consultation meetings with Federation representatives.

184. The Committee has consulted informally with some law firms. Comments received include the following:

- Our firm would be against any form of national assessment proposal that does not involve live teaching as with PLTC. It is conceivable, that in the future, systems such as "telepresence" may prompt another look at online learning again.

- Our firm would not support any national evaluation system that does not include provincial law.

- We are not convinced that multiple-choice examinations are appropriate assessment tools, even if multiple-choice examinations make it easier for people to mark the examination.

- The Federation's proposal attempts to involve the student's principal in assessing interview/negotiation or other skills. Shortcomings include:
    - Evaluation by principals would not be as consistent within the firm or province-wide as it would be within PLTC.
    - Do not offload this to the law firms. They may do an inferior job of it or an inconsistent job of it (or both).
    - Evaluation is likely to be pushed down the chain to associates or junior partners.
- Lawyers are not professional educators.
- There would be too much room for bias and unfairness if this were performed within the law firms.
- There would be too much room for inconsistency if this were performed within the firm.
- Firms would rather have the skills assessments done by PLTC so the issues of bias and inconsistency can be avoided within the firm. PLTC has no bias toward or against a particular student.
- Having the principals or other members of the firm involve themselves in evaluation of students (normally done by PLTC), may add additional burdens to firms, particularly small firms, and they simply might not do it. And if they do it, they may not do it well. And, the burden may cause some smaller firms to rethink whether they should take on articling students.
- How can involving articling principals or other lawyers in the firm in the evaluation process be in any way psychometrically defensible given the potential problems with inconsistency and bias?
- Intuitively, a live, in person training program like PLTC has to be better than either no training or online training combined with examinations.
- How would it look if we simply eliminated of PLTC and adopted the Federation's model just so we could save money by eliminating the teaching staff and being able to rent out the classroom space? Wouldn't that look like were abrogating our *Legal Profession Act* responsibilities?
- Why would we lower our standards to the lowest common denominator just because it is easier for mobility?

185. **Recommendation #19**

Urge the Federation to respond proactively to the Truth and Reconciliation Commission's Call to Action #27 by including a mechanism for its advancement in the National Admission Standards project.

Discussion and Analysis

186. The Proposal includes no mention of the Truth and Reconciliation Commission's Call to Action #27:

We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

187. The National Admission Standards project presents the Federation with its first concrete opportunity to act.

188. **Recommendation #20**

Urge the Federation to collaborate proactively with law societies, the Council of Canadian Law Deans, and the profession to assess options for principled alternatives to the Federation's National Assessment Proposal, including:

a. alternatives to the dominant focus on multiple-choice testing,

b. strengthening the testing of local law and practice,

c. lowering the significant costs,

d. establishing an overall vision, with considerable specificity, of the critically important and interrelated roles of bar admission training, articling, student assessment and law school education.

Discussion and Analysis

189. If the Federation initiates a new round of broadened discussions as proposed by recommendation #20, the potential impact on the Admission Program would be subject to those discussions and further direction from the Benchers.

190. The Committee sees the major points of contention that have emerged as including:

- the absence of an opportunity to propose options outside the three phase assessment model advanced by the Steering Committee;

- the significant costs, which would be in addition to law society costs for administering an articling program, operating a bar admission training course, and testing provincial or territorial law and practice;

- the dominant focus on 10 to 12 hours of online testing, with an over emphasis on multiple-choice content;

- that important knowledge of provincial and territorial law and practice in several areas, such as Family, Commercial, Wills and Estates, Rules of Procedure, and Real Estate, is ignored, and cannot be assessed adequately without reference to provincial law and territorial law;

- that much of the Phase One testing duplicates the skills already required for the law degree competencies (application of knowledge, including analytical reasoning, fact analysis, legal analysis and reasoning, problem solving), and is therefore unnecessary and needlessly expensive;

- the inadequate assessment of the highest priority skills (e.g. advocacy, interviewing) by relegating them to articling online testing and to articling principals, who are not professional legal educators and where there would be no assurance of quality standards or psychometric defensibility;

- the lack of specificity about the critically important and interrelated roles of bar admission training, articling, student assessment and law school education. There is no anticipated timing for beginning work on national standards for bar admission training. The Proposal covers only student assessment and articling, and states that a national approach to professional training courses has been reserved for a later stage of the project, likely after 2020.

191. The Committee has identified other options that should be considered, including accrediting provincial and territorial bar admission programs on the basis of the national competencies, asking law societies to commit each in their own way to implementing the national competencies in their training and testing programs, or permitting law societies to opt in or out of components of the national assessments.

192. **Recommendation #21**

Urge the Federation to work with the Council of Canadian Law Deans in moving forward with National Admission Standards.

Discussion and Analysis

193. The Deans reasonably expect to be consulted, particularly as they are concerned about the impact of national admission standards on and the potential related changes to the law degree approval requirements. Time should be set aside for meaningful consultation.

194. In the interests of achieving a true national solution, the Law Society of BC should expect the Federation to work together with all law societies and the Council of Canadian Law Deans to consider options in addition to the three phase assessment model advanced by the Steering Committee. There is no reason why law societies are being required to make a commitment in a hurried manner. It would be very unfortunate if the Federation does not to take the necessary time to collaborate on the critical next steps in the process, particularly with the Council of Canadian Law Deans.

195. Legal education from law school through to call to the bar and post-call CPD is a continuum. The Federation assessment proposal risks overwhelming and corrupting what is an excellent continuum of legal education in BC

196. **Recommendation #22**

Not endorse the Federation's current form of National Assessment Proposal.

Discussion and Analysis

197. Whether a law society is in or out on this proposal will not impact participation in national mobility. The National Mobility Agreement 2013 and the Territorial Mobility Agreement 2013 do not include provisions relating to admission standards, and law societies and the Federation have made commitments to the federal and provincial governments that law societies support lawyer mobility.

198. Although the Law Society of BC has been a proponent of effective national admission standards, and has been a participant on the National Admission Standards Steering Committee, the Lawyer Education Advisory Committee cannot endorse the current form of assessment proposal.

199. The Lawyer Education Advisory Committee has completed an extensive review of the Admission Program, and has asked itself the central question of how and why the Federation national proposal might be better for BC. Harmonizing national standards by way of online testing focused on federal law (effectively discounting the importance of provincial and territorial law), with such a significant use of multiple-

choice questions, and defending the assessment model on the grounds of psychometric validity are insufficient answers on their own.

200. Effectively, the Law Society of BC would be compromising what has been called a "gold standard" of Canadian legal skills training programs with an expensive and educationally inferior online testing model.

201. The Committee cannot recommend an approach to assessment that is inferior to our own. There must be more work done at the Federation level, which is why the Committee recommends that the Benchers not endorse the Federation proposal in its current form. The Committee is concerned that adopting the proposed Federation model would risk shortchanging the public interest, and be inconsistent with the Law Society's obligations under section 3 of the *Legal Profession Act*.

202. The Federation and all law societies have a collective obligation to make every effort to seek consensus before even considering a process that would invite law societies to declare themselves in or out of the project.

APPENDIX A

RECOMMENDATIONS

The Lawyer Education Advisory Committee requests that the Benchers approve the following recommendations.

Admission Program Overall Recommendations

Recommendation #1
Adopt the following as the principles the Admission Program's articling and Professional Legal Training Course components are meant to achieve:

a) Newly admitted lawyers are competent and of good character and fitness to begin the practice of law;
b) The articling, PLTC and assessment components of the Admission Program:
   - provide an effective transition between law school and admission to the bar through supervised practical experience in articles and effective professional training;
   - teach and assess the how-to of the practice of law, including practical application of substantive law, procedure, skills, professional responsibility, loss prevention and practice management;
   - socialize students to their role in the profession and responsibility to the public, the profession and the administration of justice.

Recommendation # 2
Strengthen the practice management content of the Admission Program by:

a) expanding the interweaving of practice management issues into components of the PLTC curriculum relating to specific practice areas, such as Business Law, Family, Residential Conveyances, and Wills,
b) requiring all articling students, either during articles or PLTC, to successfully complete an online course modelled on the Small Firm Practice Course to be eligible for admission to the bar.

Recommendation #3
Engage regularly with BC's law schools, including by exploring potential synergies between the competencies taught in the PLTC and those taught in the law schools, to ensure that the system of legal education and training from law school to admission to the bar is forward thinking and practical in meeting the rapidly changing needs of the public, and the ability of lawyers and law firms to meet those needs.

Recommendation #4
Engage regularly with the legal profession to ensure that the system of legal education and

training is forward thinking and practical in meeting the rapidly changing needs of the public, and the ability of lawyers and law firms to meet those needs.

Recommendation #5
Ensure that the Admission Program is subject to a structured process of systematic, regular review and enhancement to ensure it is forward thinking in meeting the needs of the public, the profession, and articling students, including through:

a) regular review of the prescribed lawyering competencies,
b) attention to new administrative, learning and practice technologies, including new developments in online education,
c) ongoing updating and enhancement.

Recommendation #6
Continue the basic character of PLTC, including:

a) a single stream mandatory curriculum,
b) ten weeks in duration, including student assessments,
c) a primary focus on lawyering skills and practical know how, professional responsibility, and practice management,
d) primarily in-person delivery,
e) an interactive small group workshop format in class sizes of 20 students,
f) a full time professional teaching faculty with periodic volunteer practitioner guest instructors,
g) restoring funding levels sufficient to achieve these recommendations, including in particular (e) and (f), and explore the possibility of creating an additional May session in Vancouver.

Recommendation #7
Align the PLTC curriculum with the competencies listed in the Federation of Law Societies' *Entry to Practice Competency Profile for Lawyers and Quebec Notaries*, approved by the Benchers on January 24, 2013, while accounting for those competencies mandated for law school graduates by the Federation's law degree approval requirements.

Recommendation #8
In relation to the Truth and Reconciliation Commission's Call to Action #27, strengthen the PLTC curriculum and assessments by enhancing cultural competency content and, in particular, awareness with respect to Aboriginal issues and the tragedy of residential schools, including integrating cultural competency into the curriculum in areas such as professional responsibility, interviewing and dispute resolution.

Recommendation #9
Implement measures to minimize instances where articling is disrupted by PLTC, including:

a) PLTC placement policies that take into account articling location, law school location, and firm size, including priority placement preferences, where possible, for law firms to take on a single student,
b) a communication plan aimed at students and small firms designed to assist them to avoid or minimize the disruption factor.

Recommendation #10
Continue to work with the Law Foundation in administering its funded PLTC Travel and Accommodation bursary bursary program, which provides travel and accommodation bursaries for students who must travel from their place of residence and articles and pay for temporary accommodation while attending PLTC.

Recommendation #11
Continue to require students to secure articles before commencing PLTC.

Articling Recommendations

Recommendation #12
Continue the basic character of the articling requirement, including a nine month term, subject to:

a) the Credentials Committee, governed by the Law Society Rules, continuing to have discretion to reduce an individual's articling requirement based on factors such as practice or articling experience in other jurisdictions, but not for summer articles,
b) the Credentials Committee considering a revision to its process for assessing these articling reduction requests to permit reduction applications before an applicant has secured articles,
c) articling credit for court clerkships continuing to be for up to five months of the articling requirement.

Recommendation #13
Strengthen Law Society support for the effectiveness of articling principals by publishing online video clips, guides, checklists and other resources on how to provide effective student supervision.

Recommendation #14
Continue the skills focus of the articling requirements, and revise the requirements to accord with Federation of Law Societies' *Entry to Practice Competency Profile*, while accounting for the competencies prescribed as PLTC requirements and those mandated for law school graduates by the Federation's law degree approval requirements.

Recommendation #15
Although it is premature to reach any conclusions on the four month work term placement in the Law Practice Program at Ryerson University and the University of Ottawa, and the work

placements in Lakehead University's integrated law degree – bar admission program, because these programs that are still in their infancy, the Law Society should:

a) Assess the potential impact in BC of these programs as soon as reasonably possible;
b) Not provide credit for these alternatives to articling at this time;
c) Remain open to considering proposals from institutions, such as law schools, to offer programs that include alternatives to articling.

Recommendation #16
Monitor the availability of articling positions on an ongoing basis, and:

a) Co-ordinate with and promote the work of law school career service offices as a means of assisting students to find articles suited to their career goals;
b) Be current on an ongoing timely basis on whether the number of available articling positions is likely to meet the needs of students seeking articles, including out of province and National Committee on Accreditation (NCA) students, and be prepared to respond if a problem arises;
c) Endeavour, in co-operation with the NCA, to ascertain the number of NCA qualified students who are seeking articles in BC, and consider appropriate support mechanisms;
d) Encourage joint and shared articles.

Recommendation #17
That the Credentials Committee consider recommending to the Benchers that Rule 2-57 be amended to change the qualifications to serve as an articling principal from having engaged in the active practice of law for 5 years instead of 7 years.

Recommendation #18
a) Actively encourage potential articling principals to provide remuneration that is reasonable according to the circumstances of the proposed articling placement.
b) Continue to gather information on articling remuneration, and then determine whether to develop a policy on minimum articling remuneration.

Federation National Admission Standards Assessment Proposal

Recommendation #19
Urge the Federation to respond proactively to the Truth and Reconciliation Commission's Call to Action #27 by including a mechanism for its advancement in the National Admission Standards project.

Recommendation #20
Urge the Federation to collaborate proactively with law societies, the Council of Canadian Law Deans, and the profession to assess options for principled alternatives to the Federation's National Assessment Proposal, including

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a) alternatives to the dominant focus on multiple-choice testing,
b) strengthening the testing of local law and practice,
c) lowering the significant costs,
d) establishing an overall vision, with considerable specificity, of the critically important and interrelated roles of bar admission training, articling, student assessment and law school education.

Recommendation #21
Urge the Federation to work with the Canadian Council of Law Deans in moving forward with National Admission Standards.

Recommendation #22
Not endorse the Federation's current form of National Assessment Proposal.

The Law Society of British Columbia

Appendix B

Admission and Certification Requirements for Entry to a Number of Professions and Trades in BC

September 29, 2015

Prepared for: The Lawyer Education Advisory Committee

Prepared by: Charlotte Ensminger

Purpose: For Information

THE PURPOSE OF THIS MEMORANDUM

1. The Chair of the Lawyer Education Advisory Committee has asked staff to prepare a summary of the admission and certification requirements for entry to a number of professions and trades in BC. This memorandum provides that summary, together with links directing the reader to more detailed information about the various professions and trades profiled in the summary.

PROFESSIONS

Accountants (Chartered, Certified General, Certified Management)

2. On June 24, 2015 the President/Chairs and CEOs of the Institute of Chartered Accountants of BC, Certified General Accountants Association of BC, and Certified Management Accountants Society of BC announced the establishment of a new body, the Chartered Professional Accountants of British Columbia (the "CPA"), unifying the three professional accounting bodies. The enabling legislation, the *Chartered Professional Accountants Act*, received royal assent on June 25, 2015.

3. A new CPA professional education program began in September 2013. Students who graduate from the program will receive the official designation of CPA. As a result of the merger, the CPA has more than 38,000 members and students in BC, and over 190,000 members across Canada who provide financial expertise to businesses in every sector of the economy.

4. To practice as a professional accountant in BC under the new CPA designation, a person must have:

    - Completed an undergraduate degree in any discipline along with required prerequisite courses as defined by the subject area coverage.

    - Completed the CPA education program – this consists of a 24 month graduate-level program delivered on a part-time basis. The CPA Professional Education Program (PEP) provides candidates with greater flexibility and the ability to customize their training toward a specific industry or focus area.

    - Be employed full-time in relevant accounting or finance positions while completing CPA PEP. Using a blended learning model, CPA PEP combines online learning, self-study, and classroom learning.

    - Completed 30 months of practical, relevant work experience.

- Passed a final examination set by the national organization, CPA Canada. Candidates write the examination provincially, invigilated by CPA members. It is written over a three day period, typically Friday, Saturday, and Sunday.

5. Until June 2017, legacy CMA, CA, and CGA courses will be accepted for entry into a CPA Professional Education Program ("PEP"). Students must meet the prerequisite course requirements of only one of the legacy pathways, CA, CMA, or CGA, to be accepted for entry into the CPA PEP.

Additional information regarding CPA designation in British Columbia is available at: https://www.bccpa.ca/ ; http://www.bccpa.ca/students/ ; http://www.bccpa.ca/become-a-cpa/home/

For national information, see: https://cpacanada.ca/en/become-a-cpa/pathways-to-becoming-a-cpa/national-education-resources/the-cpa-competency-map

Architects

6. To practice architecture in BC, a person must be registered with the Architectural Institute of British Columbia (the "AIBC"). To qualify to register and receive a Certificate of Practice, an applicant must have:

   - A Masters level university degree (M.Arch) from a program accredited and/or recognized by the AIBC;
   - Acquired 5,600 hours of prescribed internship work experience;
   - Attended 6 mandatory professional development courses offered by the AIBC;
   - Passed an oral, peer review process; and
   - Written and passed a series of national examinations, either the Examination for Architects in Canada, or the Architectural Registration Examination offered through the National Council of Architectural Registration Boards.

7. In addition to individuals, all businesses/firms in the practice of architecture are required to be registered through the AIBC. An architectural firm is only permitted to offer or provide professional services under a valid Certificate of Practice.

8. The category of Intern Architect is the designation used for a person who has successfully completed a professional degree in architecture and is undertaking the domestic Internship in Architecture Program.

For more information, see: http://www.aibc.ca/membersite/membership-registration/

Dentists

9. The College of Dental Surgeons of British Columbia, the regulatory body for dentists, dental therapists, and certified dental assistants in BC, sets the requirements to practice dentistry in British Columbia.

10. There are 12 classes of registration available to dentists. These range from full registration to temporary and include such categories as academic, limited (research), limited (volunteer), among others. Most, but not all of these classes require, at minimum, a degree from an accredited general dentistry program and a National Dental Examining Board (NDEB) certificate, which confirms that the holder has passed the national examinations.

11. By way of example, dentists who wish to practice general dentistry must have:

    - A degree or equivalent qualification from an accredited general dentistry program or equivalent general dentistry program.

    - Successfully completed the National Dental Examining Board (NDEB) written and clinical examinations.

        - The Written Examination consists of two books, each with 150 multiple choice type questions. Each book is given in a 150 minute examination session. The sessions are held in the morning and afternoon of one day.

        - The OSCE is a station type examination comprised of a morning session and an afternoon session on the same day. The majority of the stations will have 2 questions and will require the candidate to review the information supplied (e.g. case history, dental charts, photographs, radiographs, casts, models) and answer extended match type questions.

    - Certification does not guarantee licensure. The provincial regulatory authorities may require additional documents and/or language proficiency testing for the purpose of licensure.

12. In addition to the 12 classes of registration, there are 11 dental specialties recognized in BC. To practice as a Certified Specialist the applicant must hold full registration as described above, plus:

    - A degree or equivalent qualification in a recognized specialty from an accredited specialty program or equivalent specialty; and

    - Successfully completed the National Dental Specialty Examination (NDSE)

For more information, see: https://www.cdsbc.org/registration-renewal/dentists

Engineers

13. The BC Association of Professional Engineers and Geoscientists (the "APEGBC") is the regulatory body for engineers and geoscientists in British Columbia.

14. To work as an engineer or geoscientist, a person must be registered as a professional engineer or geoscientist in the province or territory in which s/he is working, or work under the direct supervision of someone who is registered as a professional engineer or geoscientist in the province in which s/he is working.

15. To apply for Professional Engineer status with APEGBC, applicants must meet certain academic, experience, law and ethics, language and good character requirements. Specifically, these are:

    - the equivalent of graduation from a four year full time bachelors program in applied science, engineering, geoscience, science or technology. This normally means that the applicant has a bachelor's degree in engineering from an accredited university program. (In certain limited circumstances, it is possible to obtain the designation of Professional Engineer without an undergraduate degree in engineering.)

    - a minimum of four years of satisfactory engineering work experience. At least one of these years must be gained in a Canadian Environment. If a person's work experience is in a different discipline from his or her academic qualifications, the individual will need to undergo an academic review and possible interview and/or examinations.

    - passed the national Professional Practice Examination. The exam is closed book, three and a half hours in length and consists of a two and a half hour, 110 question multiple-choice section followed by a one hour essay section. The exam tests knowledge of Canadian professional practice, law, and ethics. It is generally recommended that applicants have 24 months of engineering experience before they take the exam.

    - established their English Language Competence for Practice, which is evaluated through the Professional Practice Examination essay, comments of referees/validators, and the observations of interviewers (where an interview is required).

    - established their good character and reputation. Good character connotes moral and ethical strength and includes integrity, candor, honesty and trustworthiness. All APEGBC members are held accountable to a Code of Ethics that governs the way an individual practices his or her profession. APEGBC will review the information provided in an application to ensure that applicants meets these standards.

    For more information see: https://www.apeg.bc.ca/Become-a-Member ; https://www.apeg.bc.ca/getmedia/c721f7d8-1fbf-4a6c-a06d-16d9227c4c13/APEGBC-Guidelines-for-Satisfactory-Experience-in-Engineering.pdf.aspx

Occupational Therapists

16. The practice of occupational therapy in BC is regulated provincially through the College of Occupational Therapists of British Columbia. To practice as an occupational therapist in BC requires the following:

    - confirmation of having met all requirements for graduating with a degree in occupational therapy, and confirmation of a conferred degree. This includes 1000 hours of supervised fieldwork.
    - successful completion of a national examination called the National Occupational Therapy Certification Examination.
    - a completed criminal records check.

For more information see: http://cotbc.org/

Pilots

17. To become a licensed pilot in BC, a person must meet national and/or international standards and requirements, depending on the type of license or permit one holds. Training is through a combination of ground school and flying school. The specific age, medical, ground training and flying school requirements depend on the category of license being applied for.

18. There are 5 categories of licences or permit:

    - Student pilot permit
    - Recreational pilot permit – allows the holder to fly family and friends for fun and transportation. This is a permit issued according to Canadian standards and is valid in Canada only. The holder of a permit is licensed to fly a four-seat or smaller (including ultra-light, single-engine, and multi-engine) aircraft during the day only.
    - Private Pilot license – allows the holder to fly with family and friends for fun and transportation. The various classes of licences are issued in accordance with international standards and are recognized throughout the world.
    - Commercial Pilot licence – allows the holder to fly professionally. It is valid throughout the world and includes flying large commercial jets, but not as a captain.
    - Airline Transport Pilot licence – allows the holder to fly professionally. It is valid throughout the world and includes flying large commercial jets, including as captain.

19. The more limited permits and classes of licences can be upgraded through additional training and experience, and it is possible to add ratings and endorsements to a licence (such as a Multi-Engine Rating, Instrument Rating, Float Rating, Instructor Rating, among others). These also require additional training and examinations.

20. By way of example, the specific requirements for a commercial pilot licence are:

- Minimum age of 18 years
- Category 1 Medical Certificate
- Training as per Transport Canada requirements
- A minimum of 80 hours ground school on subjects specified by Transport Canada
- A minimum of 200 hours flight time experience, including 100 hours of pilot-in-command, and 20 hours of cross-country pilot-in-command
- A total minimum of 65 hours flight training in the aircraft category (aeroplane, gyroplane, or helicopter) including no less than 35 hours dual with a flight instructor, and 30 hours solo practice
- Of the 35 dual hours, 5 hours must be at night, including a 2 hour night cross-country, 5 hours must be cross-country, and 20 hours must be with reference only to flight instruments
- Of the 30 solo hours, there must be a cross country flight to a point not less than 300 nautical miles from the point of departure, with three full-stop landings
- The 30 solo hours must also include 5 hours by night and completion of 10 circuits
- Successful completion of a flight test

21. A person applying for a pilot's licence must pass a regular medical examination. There are various classes of medical exams depending on the licence being applied for. The medical examination is conducted by a doctor specifically qualified by Transport Canada to conduct pilot medical exams. They have to be repeated as often as every six months, to once every five years depending on the type of licence held and the pilot's age.

Additional information is available at: http://www.tc.gc.ca/eng/civilaviation/opssvs/general-flttrain-menu-1872.htm ; http://www.airfun.org/bap/

Physicians

22. To qualify as a physician in Canada takes a minimum of 7 years. Canadian medical schools require two to four years of full-time undergraduate courses with a focus on subjects such as physics, chemistry and biology, as a precondition to medical studies. Most students entering medical school have an undergraduate degree.

23. Completing medical school generally takes three to four years. Practical training in a hospital, clinic or doctor's office occurs in the final year or two. This is followed by a residency of two to seven years, depending on specialty or area of focus, and a mandatory written examination.

24. The College of Physicians and Surgeons of British Columbia (the "College") regulates the practice of medicine in British Columbia. The legislation granting the College authority is the *Health Professions Act.* All physicians who wish to practice in BC must meet certain registration requirements in order to obtain a licence. The College reviews an applicant's education, training, and relevant experience, as well as character references, health status, and any outstanding investigations, disciplinary actions or practice restrictions from other jurisdictions prior to making a decision about whether to issue a licence.

25. The general registration and licensure requirements are set out in the Bylaws. These requirements include:

    - providing satisfactory evidence of identification, experience, good professional conduct and good character to the registration committee

    - providing a letter dated within 60 days from the date of the application, from the competent regulatory or licensing authority in each other jurisdiction where the applicant is or was, at any time, registered or licensed for the practice of medicine or another health profession

        - certifying that the applicant's entitlement to practise medicine or another health profession has not been cancelled, suspended, limited, restricted, or subject to conditions in that jurisdiction at any time, or specifying particulars of any such cancellation, suspension, limitation, restriction, or conditions, and

        - certifying that there is no investigation, review, or other proceeding underway in that jurisdiction which could result in the applicant's entitlement to practise medicine or another health profession being cancelled, suspended, limited, restricted, or subjected to conditions, or specifying particulars of any such investigation, review, or other proceeding

    - providing satisfactory evidence of currency in clinical practice

- having the ability to speak, read and write English to the satisfaction of the registration committee

- providing documentary proof that the applicant meets all requirements of the registration class applied for

- providing a signed criminal record check consent form

26. A registrant must practise medicine within the scope of his or her training and recent experience and must not engage in a medical practice that he or she is not competent to perform.

27. Certifications in a range of specialties are available through a number of bodies that set national standards for training and certification in various areas of specialization. Two examples follow.

The College of Family Physicians of Canada

28. The College of Family Physicians of Canada (the "CFPC") is the body that establishes national standards for training and certification in family medicine in Canada. http://www.cfpc.ca/Home/

29. Eligibility for certification in family medicine is granted by the CFPC to its members who have either completed approved residency training in family medicine or become eligible for certification through a combination of approved training and practice experience. Certification in family medicine is a special CFPC membership designation.

30. Once eligible, individuals may be granted certification either by successfully completing the Certification Examination in Family Medicine or through one of the following alternative pathways:

- Alternative Route to Certification (ARC) - a self-directed, computer-based, educational program which assists family physicians to critically review their own practice and does not include an examination component.

- Recognized Training and Certification in jurisdictions outside Canada - a recently opened route to Certification (CCFP) without examination based on recognition of training and certification obtained in international jurisdictions.

- Academic Certification - this program assists Canadian faculties of medicine and universities in the recruitment and retention of family medicine specialists as full-time, clinical faculty at the rank of full or associate professor. This program aims to facilitate the recruitment of clinician scientists and clinician educators.

31. Certificants of the CFPC may use the designation CCFP (Certificant of the College of Family Physicians), but must also be registered and licenced through their provincial College of Physicians and Surgeons in order to practice their specialty.

32. Maintaining a Certification in Family Medicine requires continuing membership in the CFPC and participating in a number of continuing medical education/continuing professional development activities independently or in groups (scientific meetings and other accredited group activities). Individuals must demonstrate they are keeping up with advances in the practice of family medicine by subscribing to an accredited program of continuing professional development.

Royal College of Physicians and Surgeons of Canada

33. The Royal College is the national professional association that oversees the medical education of specialists in Canada. It accredits the university programs that train resident physicians for their specialty practices, and it drafts and administers the examinations that residents must pass to become certified as specialists.

For more information see: http://www.royalcollege.ca/portal/page/portal/rc/about/whatwedo

Teachers

34. Any person wishing to teach kindergarten to grade 12 in BC's public school system generally must hold a teaching certificate (Certificate of Qualification) issued through the Teacher Regulation Branch of the Ministry of Education. To obtain a certificate, the applicant must establish that s/he has completed an undergraduate degree and a teacher education program.

35. Course requirements for the undergraduate degree are determined in part by the grades the prospective teacher wishes to teach. Grades are generally grouped as elementary, middle school, and secondary.

36. Teacher education training programs offered in BC range in length from one to two years and include both theoretical coursework and practical experience in schools.

37. An application for a Certificate of Qualification is evaluated on the basis of three areas:

- Academic record, teaching education training and subject area studies
- Relevant teaching experience

- Fitness, or suitability for working with children (which requires a criminal record check)

38. The applicant must establish that s/he meets certification standards, is of good moral character, and is otherwise fit and proper to be issued a certificate. (Section 30(1)(c) of the *Teachers Act* [RSBC 2011])

39. There are 8 classes of certificates available, ranging from a Professional Certificate, which is essentially an unrestricted, non-expiring license, to the most restricted certificate, a School and Subject Restricted Certificate, which restricts the holder to teaching specific subjects only at a sponsoring authority seeking to employ the applicant.

40. Teacher mobility is possible across Canada but still requires meeting BC standards for certification if a person wishes to teach in BC, and will likely require additional training and an examination: https://www.bcteacherregulation.ca/Teacher/LabourMobility.aspx

For more information generally, see:
https://www.bcteacherregulation.ca/TeacherEducation/TeacherEducationOverview.aspx

THE TRADES

41. Industry Training Authority BC is the body that manages over one hundred trade programs in BC, including carpentry, electrical, and plumbing: http://www.itabc.ca/discover-apprenticeship-programs/search-programs

Carpenters

42. In BC, an individual can become certified as a carpenter by completing the Carpenter program or by challenging the certification. Apprenticeship programs are for individuals who have an employer to sponsor them and challenge programs are for individuals who have extensive experience working in the occupation and wish to challenge the certification.

43. Youth can begin apprenticeship in high school through either the Secondary School Apprenticeship (SSA) program or the ACE IT program. The SSA Program is available for any trade if an employer is willing to sponsor the student. Trades offered through ACE IT vary by region.

44. Foundation programs, where available, provide adults and youth who do not have work experience nor employer sponsorship with an opportunity to gain the knowledge and skills

needed to enter the occupation. Individuals who wish to enroll in a Foundation program must register directly with the training provider.

45. There are no specific education prerequisites for the trade of carpenter, but Grade 10 or equivalent including English 10, Mathematics 10, and Science 10 are recommended.

46. In order to become a certified carpenter in British Columbia, an applicant must complete an apprenticeship process that involves both on-the-job training and in-school training, or apply through the Challenge Program.

47. The apprenticeship route requires that the apprentice complete a program that includes 6,480 workplace hours and 840 in-school hours of training completed in four levels. Each level runs for seven weeks. The program generally takes 4 years to complete. The apprentice is then issued a Certificate of Apprenticeship, a Certificate of Qualification, and if interprovincial standards are met, an Interprovincial Standard Endorsement known as a Red Seal.

48. Credentialing through the Challenge Program requires a total of 9,720 documented hours of directly related experience working in the trade, and completing the Interprovincial Red Seal Exam with a minimum mark of 70%.

49. Credentialing through the Foundation Program results in a Certificate of Completion (not a Certificate of Qualification), which is awarded upon successful completion of technical training and completing the ITA standardized written exam with a minimum mark of 70%. Credit for a Certificate of Completion can be applied toward the Carpenter apprenticeship program.

50. Jurisdictions each have their own laws about which trades are designated for apprenticeship training and certification within their borders. These are called "designated trades" and there are more than 400 across Canada.

Red Seal Designation

51. In Canada, because trades' training and certification are the responsibility of the provinces and territories, the Interprovincial Standards Red Seal Program was established to help harmonize training and certification requirements across Canada. Over the years, the Red Seal has become the national standard of excellence for skilled trades in Canada.

52. Trades approved for Red Seal status are called "designated Red Seal trades." The Red Seal Program and the designation of trades as Red Seal is the responsibility of the Canadian Council of Directors of Apprenticeship (CCDA).

53. A trade may not have Red Seal status in each jurisdiction due to jurisdictional legislative differences in terms of the scope or definition of the trade. Red Seal designation is available to trades and occupations regardless of whether their workforces are unionized, non-unionized, or both.

Gold Seal Designation

54. The Canadian Construction Association offers an additional certification called the Gold Seal, which is a nationally recognized certification in the management of construction.

55. To qualify under the Examination Criteria, an individual must have a minimum of 5 years industry experience as a Project Manager, Superintendent, Estimator, Owner's Project Manager or Construction Safety Coordinator. Foreign experience can only qualify for 3 of the 5 years. Also, 2 of the 5 years can be in an assistant role (e.g. Project coordinator, Assistant Super, Jr. Estimator, etc.).

56. Challenging the gold seal exam requires a minimum of 25 education and training credits. A Technologist/Technician diploma or a related University degree will meet the minimum education/training requirements. In addition, Construction Management education (courses, workshops/seminars) would also be counted towards the required credits.

For more information see:
http://goldsealcertification.com/?page_id=118#sthash.128GFqUa.dpuf

Electricians

57. In BC, an individual can become certified as an electrician by completing the Electrician Program or by challenging the certification. Apprenticeship programs are for individuals who have an employer to sponsor them and the challenge program is for individuals who have extensive experience working in the trade and wish to challenge the certification.

58. Like the carpentry program, there are several pathways to certification and apprenticeship training to become an electrician can begin in high school.

59. While not a prerequisite, apprentices entering the program are encouraged to be recent Grade 12 graduates who have taken Principles of Mathematics 11, Physics 11, and English 12 or Communications 12, and demonstrated mechanical aptitude.

60. A total of 6000 hours of work-based training, and 1200 hours (over 4 levels) of technical training with a minimum 70% mark at each level, are required to obtain a Certificate of Qualification or Apprenticeship. The program generally takes 4 years to complete.

61. To qualify for a Red Seal designation as an electrician, a candidate must pass an interprovincial Red Seal exam.

Plumbers

62. Similar to other trades, an individual can become certified as an electrician by completing the Plumber program or by challenging the certification.

63. The recommended education level for apprentices entering the plumbing trade is Grade 12 or equivalent, and completion of English 12, Algebra 11 or Trade Mathematics 11, and Physics 11 or Science and Technology 11.

64. A total of 6,420 work based hours, and 780 hours of technical training with a minimum 70% mark on the exam at each level, are required to obtain a Certificate of Qualification or Apprenticeship. The program generally takes 4 years to complete. Plumbers are also eligible for a Red Seal designation on successfully passing an interprovincial Red Seal exam.

National Admission Standards Project

Appendix C

National Entry to Practice Competency Profile for Lawyers and Quebec Notaries

September, 2012

FEDERATION OF LAW SOCIETIES OF CANADA
FÉDÉRATION DES ORDRES PROFESSIONNELS DE JURISTES DU CANADA

NATIONAL ENTRY TO PRACTICE COMPETENCY PROFILE FOR LAWYERS AND QUEBEC NOTARIES

1. SUBSTANTIVE LEGAL KNOWLEDGE

All applicants are required to demonstrate a general understanding of the core legal concepts applicable to the practice of law in Canada in the following areas:

1.1. Canadian Legal System

(a) The constitutional law of Canada, including federalism and the distribution of legislative powers
(b) The Charter of Rights and Freedoms
(c) Human rights principles and the rights of Aboriginal peoples of Canada and in addition for candidates in Quebec, the Quebec Charter of Human Rights and Freedoms
(d) For candidates in Canadian common law jurisdictions, key principles of common law and equity. For candidates in Quebec, key principles of civil law
(e) Administration of the law in Canada, including the organization of the courts, tribunals, appeal processes and non-court dispute resolution systems
(f) Legislative and regulatory system
(g) Statutory construction and interpretation

1.2 Canadian Substantive Law

(a) Contracts and in addition for candidates in Quebec: obligations and sureties
(b) Property
(c) Torts
(d) Family, and in addition for lawyers and notaries in Quebec, the law of persons
(e) Corporate and commercial
(f) Wills and estates
(g) Criminal, except for Quebec notary candidates
(h) Administrative
(i) Evidence (for Quebec notaries, only as applicable to uncontested proceedings)
(j) Rules of procedure
    i. Civil
    ii. Criminal, except for Quebec notary candidates
    iii. Administrative
    iv. Alternative dispute resolution processes

(k) Procedures applicable to the following types of transactions:
    i. Commercial
    ii. Real Estate
    iii. Wills and estates

1.3 Ethics and Professionalism

(a) Principles of ethics and professionalism applying to the practice of law in Canada

1.4 Practice Management

(a) Client development
(b) Time management
(c) Task management

2. SKILLS

All applicants are required to demonstrate that they possess the following skills:

2.1 Ethics and Professionalism Skills

(a) Identifying ethical issues and problems
(b) Engaging in critical thinking about ethical issues
(c) Making informed and reasoned decisions about ethical issues

2.2 Oral and Written Communication Skills

(a) Communicating clearly in the English or French language, and in addition for candidates in Quebec, the ability to communicate in French as prescribed by law
(b) Identifying the purpose of the proposed communication
(c) Using correct grammar and spelling
(d) Using language suitable to the purpose of the communication and the intended audience
(e) Eliciting information from clients and others
(f) Explaining the law in language appropriate to audience
(g) Obtaining instructions
(h) Effectively formulating and presenting well-reasoned and accurate legal argument, analysis, advice or submissions
(i) Advocating in a manner appropriate to the legal and factual context. This item does not apply to applicants to the Chambre des notaires du Québec
(j) Negotiating in a manner appropriate to the legal and factual context

2.3 Analytical Skills

(a) Identifying client's goals and objectives
(b) Identifying relevant facts, and legal, ethical, and practical issues
(c) Analyzing the results of research
(d) Identifying due diligence required
(e) Applying the law to the legal and factual context
(f) Assessing possible courses of action and range of likely outcomes
(g) Identifying and evaluating the appropriateness of alternatives for resolution of the issue or dispute

2.4 Research Skills

(a) Conducting factual research
(b) Conducting legal research including:
    i. Identifying legal issues
    ii. Selecting relevant sources and methods
    iii. Using techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues
    iv. Identifying, interpreting and applying results of research
    v. Effectively communicating the results of research
(c) Conducting research on procedural issues

2.5 Client Relationship Management Skills

(a) Managing client relationships (including establishing and maintaining client confidence and managing client expectations throughout the retainer)
(b) Developing legal strategy and advising client in light of client's circumstances (for example, diversity, age, language, disability, socioeconomic, and cultural context)
(c) Advising client in light of client's circumstances (for example, diversity, age, language, disability, socioeconomic, and cultural context)
(d) Maintaining client communications
(e) Documenting advice given to and instructions received from client

2.6 Practice Management Skills

(a) Managing time (including prioritizing and managing tasks, tracking deadlines)
(b) Delegating tasks and providing appropriate supervision
(c) Managing files (including opening/closing files, checklist development, file storage/destruction)
(d) Managing finances (including trust accounting)
(e) Managing professional responsibilities (including ethical, licensing, and other professional responsibilities)

3. TASKS

All applicants are required to demonstrate that they can perform the following tasks:

3.1 GENERAL TASKS

3.1.1 Ethics, professionalism and practice management

(a) Identify and resolve ethical issues
(b) Use client conflict management systems
(c) Identify need for independent legal advice
(d) Use time tracking, limitation reminder, and bring forward systems
(e) Use systems for trust accounting
(f) Use systems for general accounting
(g) Use systems for client records and files
(h) Use practice checklists
(i) Use billing and collection systems

3.1.2 Establishing client relationship

(a) Interview potential client
(b) Confirm who is being represented
(c) Confirm client's identity pursuant to applicable standards/rules
(d) Assess client's capacity and fitness
(e) Confirm who will be providing instructions
(f) Draft retainer/engagement letter
(g) Document client consent/instructions
(h) Discuss and set fees and retainer

3.1.3 Conducting matter

(a) Gather facts through interviews, searches and other methods
(b) Identify applicable areas of law
(c) Seek additional expertise when necessary
(d) Conduct legal research and analysis
(e) Develop case strategy
(f) Identify mode of dispute resolution
(g) Conduct due diligence (including ensuring all relevant information has been obtained and reviewed)
(h) Draft opinion letter
(i) Draft demand letter
(j) Draft affidavit/statutory declaration
(k) Draft written submission
(l) Draft simple contract/agreement
(m) Draft legal accounting (for example, statement of adjustment, marital financial statement, estate division, bill of costs)
(n) Impose, accept, or refuse trust condition or undertaking
(o) Negotiate resolution of dispute or legal problem
(p) Draft release
(q) Review financial statements and income tax returns

3.1.4 Concluding Retainer

(a) Address outstanding client concerns
(b) Draft exit/reporting letter

3.2 ADJUDICATION/ALTERNATIVE DISPUTE RESOLUTION

3.2.1. All applicants, except for applicants for admission to the Chambre des notaires du Québec, are required to demonstrate that they can perform the following tasks:

(a) Draft pleading
(b) Draft court order
(c) Prepare or respond to motion or application (civil or criminal)
(d) Interview and brief witness
(e) Conduct simple hearing or trial before an adjudicative body

3.2.2 All applicants are required to demonstrate that they can perform the following tasks:

(a) Prepare list of documents or an affidavit of documents
(b) Request and produce/disclose documents
(c) Draft brief

3.3. TRANSACTIONAL/ADVISORY MATTERS

3.3.1 Applicants for admission to the Chambre des notaires du Québec are required to demonstrate that they can perform the following tasks:

(a) Conduct basic commercial transaction
(b) Conduct basic real property transaction
(c) Incorporate company
(d) Register partnership
(e) Draft corporate resolution
(f) Maintain corporate records
(g) Draft basic will
(h) Draft personal care directive
(i) Draft powers of attorney

National Admission Standards Project

Appendix D

Assessing Candidates to Ensure They Meet the National Standard: A Proposal for Moving Forward

National Admission Standards Project Steering Committee

August 2015

Prepared by the National Admission Standards Project Steering Committee:

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INTRODUCTION

Law societies across Canada have been working collaboratively to develop national admission standards since 2009. The primary driver for national admission standards is mobility.

Legal professionals can now move from one jurisdiction to another with relative ease and this makes differences in admission practices difficult to defend as being in the public interest. Enhanced mobility has propelled the need for greater consistency in admission practices across Canada.

In 2013, law societies adopted the National Competency Profile, which describes the competencies required of new lawyers and Quebec notaries. Law societies must now decide how best to assess whether applicants have demonstrated that they possess these competencies. This proposal sets out a plan for a national assessment regime that:

- recognizes the primacy of law societies' public protection mandate;
- adopts assessment best practices used by many other professions in Canada; and
- follows practical and realistic strategies from both a time and cost perspective.

This proposal provides a vision and structure for moving forward with the development and implementation of a national assessment regime. The assessment plan is practical; it will occur in phases and at a cost that is consistent with what most law societies spend on assessment now. The assessment regime envisaged involves written examinations in an online context and assessment of applicants in the experiential (articling) phase. Skills are the focus of assessment.

Our work has reached a critical juncture. Law societies are being asked to make a decision by the end of 2015 to commit to the direction for moving forward outlined in this proposal. We recognize that the timing will ultimately depend on when law societies are ready to move ahead.

As we take the next step toward implementing a national assessment regime, we will have to maintain flexibility. Our destination is a defensible national assessment program that is alive to the practical realities facing law societies; aligns with best practices, and fulfills our duty to protect the public interest. The proposal provides a road map for the journey. We expect that some adjustments will need to be made along the way as we learn from each step in the process and navigate the best route forward together.

Proposal Overview

1. This proposal describes the exciting next step in the National Admission Standards project – how to move forward with the assessment of the competencies in the National Competency Profile. The National Competency Profile lists the knowledge and skills that candidates must possess, and the tasks that they must be able to perform upon entry to the profession. Law Societies are being asked to decide how they will participate in this next phase of the project.

2. Having identified the necessary competencies, we are now focussing on how to assess whether applicants can demonstrate that they possess those competencies. We know there are two other important pieces of the admissions puzzle: professional training (e.g. bar admission programs) and experiential learning (e.g. articling and the Law Practice Program in Ontario). Articling is included in this proposal. A national approach to professional training, on the other hand, has been reserved for a later stage of our work to ensure that the project maintains momentum and that the necessary time and resources can be dedicated to a national dialogue on training.

3. The proposed assessment regime will focus on skills. The knowledge competencies in the National Competency Profile will provide the context for all assessment activities. Candidates will not be directly tested on those knowledge competencies in the National Competency Profile that are also included in the common law degree national requirement. The proposed national assessment is designed to be national in application, and to address the competencies of lawyers no matter where they practise in Canada. Law societies wanting to address local law or other specific issues can add a local assessment for their candidates.

4. This document is written specifically for law society leaders and other law society stakeholders with an interest in legal professional education. It is intended to provide the necessary information to assist law societies in determining whether they will participate in the national assessment regime. We expect that further dialogue is needed with individual law societies to work through the issues raised in the proposal.

5. We will meet with law societies throughout the fall of 2015 to discuss the proposal. Law societies are being asked to sign on to the proposal following this period of engagement and internal review in each jurisdiction. Our goal is to move forward by the end of 2015. We recognize that timing will depend on when law societies are ready to proceed.

6. This proposal is a pivotal step in our collaborative effort to develop National Admission Standards. It provides a strategy for building on law societies' long history and strong foundation in the preparation and assessment of candidates in order to achieve greater consistency, efficiency, accountability, and overall quality in how candidates are assessed for admission to practice law in Canada.

Why change how law societies assess candidates?

7. Presently, each law society has its own procedures for assessing candidates for admission to practice. A snapshot of admission practices across Canada is available at **Appendix 1**. Members of the legal profession in Canada today enjoy unprecedented mobility between jurisdictions and this has generated increased reflection about what law societies do and why. With admission as a lawyer in one jurisdiction effectively opening the door to admission in all jurisdictions in Canada, mobility makes different regulatory practices difficult to justify as being in the public interest.

8. Although considerable differences exist in how law societies train, prepare and assess candidates, there are also many similarities. With agreement on the entry level competencies described in the National Competency Profile, a harmonized assessment of the competencies will serve as a vehicle for bridging the different education and training practices that exist among law societies. This will give law societies greater confidence in the competence of their lawyers regardless of where they were admitted. Canadian consumers will also have enhanced confidence in the ability of lawyers to provide competent and ethical legal services.

9. A national assessment strategy will also take advantage of the latest theory and practice in assessment of competence at entry to practice. Training and assessment methodology and technology have evolved dramatically since many law societies developed their current bar admission courses. A national assessment would enable all law societies to benefit from the latest tools and best practices, many of which are employed by other professions in Canada.

10. 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. In 2014, Lakehead University adopted an Integrated Practice Curriculum (“IPC”) in which practice skills are integrated into the curriculum. In September, 2015, the University of Calgary will launch its new curriculum designed to offer students more opportunities to develop performance, deepen their competence and to be engaged in their learning, breaking down the separation between academic inquiry and practice. These new models of legal education may provide an indication of the law school curriculum of the future.

11. Preparation for professional practice occurs on a continuum and the law school academic phase and law society practical preparation phase are closely interconnected. The move to a nationally consistent, defensible competency assessment framework will facilitate the coordination and alignment of all facets of lawyer education and preparation, including the process for approving common law degree programs, and the assessment of internationally trained candidates through the National Committee on Accreditation (“NCA”). This alignment is critical to the regulator’s duty to protect the public.

12. The transition to a national assessment regime will:

I. Deliver an appropriate degree of consistency between jurisdictions given the mobility of the legal profession.

II. Align different facets of lawyer education and preparation, including the Canadian common law degree approval process and the NCA.

III. Enhance the confidence in and accountability of assessments by employing best practices and drawing on the latest testing practices, resources and tools.

IV. Improve the efficiency of assessment by pooling expertise and avoiding duplication of effort across the country.

V. Ensure fairness for candidates through a standardized assessment.

VI. Assist law societies to meet their public interest mandate through consistent, defensible and high standards for admission to the legal profession.

VII. Ensure that candidates have demonstrated the required knowledge and skills for admission to the legal profession.

The Proposal

13. The Federation met with law societies in 2014 to discuss options for assessing the competencies in the National Competency Profile. The meetings revealed a broad consensus amongst the law societies that there is value in a defensible and nationally harmonized assessment regime.

14. The Steering Committee has identified a number of outcomes, or psychometric qualities, which must flow from a national assessment regime if all participants and stakeholders are to have confidence in its strength, quality and reliability. The assessment program should result in outcomes that are:

- Valid: it will assess what it says it does;
- Consistent: other assessors would make the same or comparable judgements on the basis of the same evidence;
- Fair: the assessment will allow all candidates to demonstrate their competence;
- Relevant: the assessment reflects real life scenarios and situations;
- Defensible: the assessment follows testing best practices, including the above principles.

15. The National Competency Profile will be used as the starting point for developing an assessment regime that is valid, consistent, fair, relevant and defensible. Before assessment methods can be chosen and specific assessment tools can be designed, the information (or evidence) that demonstrates a candidate is competent in relation to a given competency must first be identified. The process of identifying the evidence and developing an assessment program from the competencies in the National Competency Profile involves numerous steps.

16. It begins with describing what an applicant will be required to demonstrate in relation to each competency. This listing is then translated into discrete statements of performance. The survey data obtained to derive the profile, and the ratings of importance and frequency are then used to refine and define how the statements will be prioritized and organized for testing. This process helps determine the relative proportion that each competency area should represent in the assessment. This is known as the “blueprinting” process.

17. The blueprinting process began after law societies adopted the National Competency Profile. This early work led to the development of options for assessment. The process will continue and will require further work with psychometricians and input from law societies, which will in turn guide the ultimate outcome or final assessment product. It is not possible to know what that outcome might be before the development process is completed. While we can describe the kinds of assessments that might be used, the final decisions will be based on the results of the blueprinting work.

18. With these limitations in mind, the Steering Committee has prepared a proposal that provides a vision and structure for moving forward with the development of a national qualifying assessment system for admission to the legal profession in Canada. The Steering Committee asked one of its members with the appropriate expertise, Diana Miles, to prepare a work-up of how the assessment regime might play out. The resulting Business and Implementation Plan (“Business Plan”) expands on the proposal and provides a model of what the assessment regime might look like in operation, including the specific assessment methods and tools. The Business Plan is intended to serve as a starting point for a collaborative discussion about the details of the national assessment regime among jurisdictions that commit to this proposal.

19. The Business Plan provides background on the purpose and objectives to be achieved, the reasons for undertaking each step of the development process, and the operational tasks that must be completed. The plan goes into extensive detail on all of these elements in an effort to provide a clearer understanding of what will be involved and the complexities of developing a national assessment system. It also provides more detail on a possible governance structure and funding. The Business Plan is available at **Appendix 2**.

20. The proposed assessment regime occurs in three core phases that build upon each other and that are phased in over time. In Phase One, candidates will demonstrate the ability to learn and apply practical legal knowledge and procedure. In Phase Two, candidates will apply skills to complete more complex legal work. The focus in Phases One and Two is on the assessment of skills and tasks in the context of substantive and procedural law – the knowledge competencies. The knowledge competencies contained in the common law degree national requirement would not be retested. It is proposed that Phases One and Two would rely exclusively on computer-based testing through designated testing facilities across the country.

21. Law societies told us that experiential training is an important component of preparation for legal practice. The proposed assessment regime acknowledges the central role of articling and its alternatives in Ontario, the Law Practice Program and the IPC through Lakehead University. Phase Three of the assessment regime will introduce performance measures for articling students. Law societies would continue to set the rules and general requirements of articling in their respective jurisdictions. Training and tools would be provided to articling principals to be able to assess students in a consistent manner. Phase Three would help to clarify training expectations through assessing and documenting students' achievement of specified learning outcomes.

22. A further two phases, Phase Four and Phase Five, will provide for coordination and alignment of the national qualifying assessment regime, the process for approving common law degree programs, and the National Committee on Accreditation.

23. The Business Plan elaborates an operational model of each phase in order to work through the policy and practical considerations involved. The table below provides a summary of what each phase might entail for illustration purposes. The left column lists what would be assessed in Phases One through Three. The right column lists the specific assessment methods and tools that might be used to accomplish each phase, and the rationale for their use.

A SNAPSHOT OF WHAT THE ASSESSMENT REGIME MIGHT INCLUDE:

WHAT IS ASSESSED	ASSESSMENT METHOD & RATIONALE
PHASE ONE	
The focus is on assessing skills and the application of knowledge in a knowledge-based context. Cognitive and analytical reasoning and response, factual analysis, legal analysis and reasoning, problem solving, and identification and resolution of ethical dilemmas are assessed.	Assessment may include single multiple choice questions ("MCQ") and case-based MCQs completed online. MCQs permit the examination of a wide range of content very efficiently and are highly reliable, objective and fair. MCQs provide an anchor for the assessment methods proposed for Phases Two and Three, which provide more in-depth assessment of select competencies (but less breadth of coverage).
PHASE TWO	
The focus is on assessing skills and tasks in a knowledge-based context. Phase Two introduces more complex skills and tasks including ability in problem solving and decision making; the identification and resolution of ethical dilemmas; legal research; written communication; client communication, and the organization and management of legal issues and tasks.	Test items may include questions requiring long answers using information supports provided online (e.g. facts, case law), through to skills assessment requiring task completion, e.g., drafting an opinion, affidavit, pleading, or case analysis. With the addition of interactive, audiovisual components, simulated practice scenarios will be used in which test takers must apply critical and analytical thinking skills. For example, candidates may view a series of short videos of a lawyer interviewing a client or undertaking a negotiation. They may be asked to analyze the performance of the lawyer and discuss how competencies or standards for the practice of law have or have not been demonstrated.
PHASE THREE	
The focus is on demonstrated experience in the workplace (articling) or alternative environment. Phase Three involves application of the skills and tasks outlined in Phases One and Two, and includes the ability to complete assigned tasks, engage in productive interaction and team work, exhibit improvement, develop personal growth strategies, and engage in self-reflection and feedback.	This phase may involve enhancements to articling and its alternatives, beginning with the creation of a framework of competencies that must be demonstrated and a set of performance criteria and ratings supporting the assessment of skills and tasks. By specifying learning outcomes based on standardized performance reporting, a degree of validity and defensibility is achieved. Needed flexibility is also maintained, given the diversity of workplace experiences common to articling.

Adding to the National Assessment

24. The Proposal recognizes that some law societies may see the need for a separate assessment reflecting content considered relevant to its jurisdiction alone. Should a law society consider it necessary, it may choose to add (or keep) a local law exam. However, modifications to the national assessment to accommodate local content will not be possible.

Candidate Preparation

25. The assessment regime will integrate preparation materials and test simulation opportunities designed to assist candidates to be successful on the assessment. Preparation of test takers is considered critical for the validity of the examinations. Providing examinees with sample tests that mirror the test-taking environment will ensure that the testing format is not a factor in performance.

26. The proposed assessment regime does not address existing in-class instruction or formal training programs. It is anticipated that law societies will continue with their existing bar admission instruction courses and that they will adapt them to the National Competency Profile as they see fit.

Ongoing Evaluation of the Assessment Regime

27. The Business Plan provides for ongoing evaluation to ensure that the assessment regime is meeting its objectives and continues to be viable and current.

Other Assessment Models

28. The proposed assessment regime is the result of extensive consultations with law societies, the research and technical work carried out with our consultant ProExam and a team of advisors from the law societies (the Technical Advisory Committee), and input from the Steering Committee. It is a best estimate of the operational and policy dimensions of a future assessment regime based on our research about law societies' ability to support the project financially and otherwise. Some assumptions were necessary in order to provide an operational model. Assumptions will be tested with law societies as we meet to discuss the proposal.

29. From the outset, discussions with law societies about how the National Competency Profile will be assessed have included the possibility of performance-based assessment. Preliminary consideration has been given to whether Objective Structured Clinical Examinations ("OSCE") or OSCE-style assessment should form part of the national assessment program. OSCEs are commonly used in the health professions to assess candidates at entry to practice. They consist of a circuit of short stations in which candidates are examined on a particular task (e.g. examining a patient) with one or more examiners and typically an actor or real patient.

30. Developing and implementing an OSCE program across the country is resource intensive and would present significant challenges. Given the high cost and impracticality of OSCEs, and the ability to effectively test skills and tasks through other means (as outlined in Phases Two and Three), the Steering Committee is not proposing OSCE-style assessment.

31. The Proposal recognizes that face-to-face, performance-based assessment has deep roots in the culture of many bar admission programs, and that further consideration of this issue may be required as we delve into the details of the plan. One option for law societies is to add an OSCE-style performance-based assessment of candidates for high priority skills such as advocacy, interviewing and dispute-resolution in the context of Phase Three.

Who will be involved in the development of Phases One through Three?

32. The following groups will be involved in the development process:

- Practitioner subject matter experts from across the country
- Law society expert staff
- Psychometricians and other expert external providers (e.g. video production support)

33. Law society staff with the appropriate expertise will be asked to contribute their time and knowledge on the understanding that a formula will be developed to compensate law societies for such in-kind contributions.

34. Management costs for Phase One assume that one or more experienced law society administrators will be seconded into required roles to allow the development process to leverage existing knowledge and skill, avoid extensive staff training and begin development on a timely basis. The Proposal relies heavily on the extensive experience and resources of the law societies and leverages existing tools and expertise, including exam banks, reference materials and advances in online assessment.

35. An experienced, interim management and staff team is contemplated for Phase One. Toward the end of the Phase One development period, and with the benefit of greater insight into the national processes, a full-time staff complement will be hired and office space and other operational infrastructure will be established to sustain the new national assessment regime.

Transition Planning

36. Participation in the national assessment regime will require significant change to our existing business practices. Understandably, law societies are eager to hear the details about the transition plan. What will the move to a national assessment regime mean for current bar admission programs? The national assessment regime is designed to replace existing testing practices. Changes to existing teaching programs are not part of this proposal: law societies will

have to assess the impact of the national assessment program on their current bar courses, staffing, budget and overall operations.

37. Each law society's transition plan is an important aspect of the overall plan. Ultimately, each jurisdiction will determine how best to design and manage the transition process. We contemplate working with each law society to develop a transition plan tailored to its unique circumstances and responsive to local needs.

Funding and Costs

38. The estimated costs of the new assessment regime are divided into development costs and operating costs for the ongoing administration once the program is implemented. The projected capital development cost for creating Phases One, Two and Three, net of taxes, is approximately $2.8 million.

39. Start-up funding will be needed to begin development of the assessment tools proposed. The Federation will contribute to the start-up development costs from its surplus fund. Funding options for the development stage, which may include a cost-sharing formula, a repayable loan, or other possible models, will be explored in greater depth with law societies.

40. The projected annual operating cost for administering the new assessment regime is approximately $1,725 per candidate, based on the participation of 3800 candidates. This includes candidates of all law societies except the Barreau du Québec and the Chambre des notaires du Québec. The per-candidate cost is dependent on the number of law societies that ultimately participate in the assessment regime. The cost of $1,725 per candidate equates to an annual operating budget of $6.5 million, which we expect will be largely paid for by student fees.

41. This fee covers the cost of assessment only. Our analysis is that this is close to what individual programs across the country are now spending on assessment, although most programs bundle assessment in with other costs. How this will line up with current fees for bar admission programs that include both training and assessment will be worked out in consultation with each law society during transition planning. Our goal is an assessment regime that will be cost neutral and that may also bring cost savings to local bar programs in the long term.

42. The Barreau du Quebec has a sophisticated and psychometrically defensible system to assess the competencies of future lawyers that is recognized as highly reliable. The Barreau du Quebec supports the need for a National Competency Profile for future lawyers in order to protect the public, and views the national assessment as one of several possible measures that can be taken to ensure consistent application of the Competency Profile. In the circumstances, including the necessity of ensuring assessment of candidates meets the requirements of Quebec's statutes and regulations, the Barreau has decided not to participate in the national assessment regime.

43. The Chambre des notaires du Quebec has not yet adopted the National Competency Profile. The Chambre has not been in a position to fully participate in national admission standards due to its significant education-related reform in connection with Bill No. 17, *An Act to amend the Act respecting the Barreau du Québec, the Notaries Act and the Professional Code*. Given that the Chambre's new training program has just begun and that it must also ensure that assessment of applicants meets the requirements of Quebec's statutes and regulations, the Chambre will not participate in the project at this time.

Governance Structure

44. Phase One will require significant dedicated resources in a short time. This requires that the senior law society managers involved in developing Phase One be able to make decisions without the confines of a complex committee structure, yet with the appropriate oversight and policy direction from an oversight committee.

45. An interim governance model for Phase One might include modifications to the composition of the National Admission Standards Project Steering Committee, which oversees all aspects of the project. The exact model will be agreed upon with input from participating law societies. In the meantime, work on developing a permanent governance structure will begin. The permanent governance body should be independent and skills based. It would oversee the ongoing administration of the assessment regime once Phase One is ready to be implemented.

Looking Forward

46. Collectively, law societies have made a considerable investment in national admission standards through the development of the National Competency Profile and identification of assessment options. We are at a crucial stage of the project. Law societies are being asked to make a decision to commit to the direction for moving forward outlined in this proposal, and illustrated in more detail in the Business Plan. We want to build on the momentum and good will to move the project forward, while acknowledging that each law society will have to carefully consider the plan before deciding if they will participate.

47. Canada's legal regulators have been engaged in an incremental and open process of review and policy development in relation to the creation of National Admission Standards since 2009. The past steps in the National Admission Standards project are available at **Appendix 3.**

48. This project provides an opportunity to rethink how we prepare candidates for practice and to look ahead to the next generation of legal professionals. What does the state of the art in assessment tell us about how skills are acquired and assessed? What are the needs of tomorrow's candidates? These questions will be explored in our discussions with law societies.

Next Steps

49. Given the nature of this project, including both the financial requirements and the significant local changes it will create for some law societies, we are asking law societies to make a firm commitment to move forward with this proposal. The exact nature of the assessment tools and details of the program require further blueprinting work and involvement from law societies. At each stage of the process there will be opportunities for input so that law societies are comfortable with the plan as the project progresses.

50. It will be up to each law society to decide whether they are ready to commit to the proposed plan, and it may be that not all law societies will be ready to move forward at the same time. This is the case, for example, with the Barreau and the Chambre. Law societies that commit at the outset will have the opportunity to be involved in the development process. Some law societies may decide to take a wait and watch approach, and join at a later stage of implementation.

51. At this time, we anticipate moving forward with those jurisdictions that are ready to commit to the proposal. Law societies that are not in a position to sign on to the proposal may wish to align their bar admission programs to the National Competency Profile as some law societies have already begun to do.

52. We anticipate holding meetings (both in person and electronically, as appropriate) with law societies throughout the summer and fall to discuss this proposal and answer questions.

53. The meetings with law societies will give us a better sense of the time law societies need to reach a decision on participation. We are hopeful that we can meet an end-of-year timeframe. The ultimate timeline will be driven by law societies. A general timetable for the technical work required to develop the assessment program follows. It is premised on a start date of early 2016:

2016 - 2018	Phase One is developed between 2016 and 2018, including the examination pilot test, and implementation of the first assessment.
2018 - 2020	Phases Two and Three are developed between 2018 and 2020.

Conclusion

54. Law societies are being asked to share their resources and leverage their extensive knowledge in the preparation and assessment of candidates in order to develop a national assessment regime. The goal of the new assessment regime is to improve law societies' collective ability to protect the public interest.

55. The mobility of legal professionals in Canada has been the main driver for more consistent admission practices. Significant changes affecting law society admission processes

may also signal that the time is ripe to re-evaluate admission practices through a national lens and along the continuum of lawyer preparation, from law school through to articling. These changes include the marked increase in the number of internationally-trained applicants in recent years; the advent of new programs emphasizing practice skills at several Canadian law schools, and changes to experiential training requirements in Ontario. Creating a national assessment program will provide an opportunity for greater coherence in the preparation of future lawyers while also achieving greater consistency, efficiency, accountability, and overall quality in how candidates are assessed for admission to practice law in Canada.

Admission Landscape

- BC, Que, NB – In-class Training, Skills Assessment, Written Test
- AB, Sask, Man – In-class & Online Training, Online Assessment, Skills Assessment, Written Test
- Ontario –Written Test
- NS/PEI – In-class & Online Training, Online Assessment, Skills Assessment, Written Test (plus local test in PEI)
- NFLD & Lab – In-class Training, Written Test
- The North -- Bar Admission Course elsewhere, plus local test

APPENDIX 2

National Law Practice Qualifying Assessment Business and Implementation Plan

National Admission Standards Project Steering Committee

August 2015

Table of Contents

Executive Summary

This business and implementation plan provides a vision and structure to move forward with the development of a national law practice qualifying assessment system for admission to the legal profession in Canada. The plan of implementation begins with the National Admission Standards Competency Profile as approved by the members of the Federation of Law Societies of Canada ("Federation"). The Competency Profile will be used as the starting point for further development and implementation activities.

The plan also assumes that candidates who have completed a law degree from an accredited Canadian law school or received a Certificate of Qualification from the National Committee on Accreditation have been exposed to and assessed on sufficient substantive law information and analysis so that:

a) Candidates need not be tested on the "why" of the legal system, or what may be referred to as "foundational law concepts" at the point of admission to practice;

b) Candidate assessment will focus on proficiency related to determining what and how law should be applied in varied practising circumstances and must include sufficient and appropriate practice and procedural contexts to ensure that assessment activities address reasonable expectations of knowledge, skill, ability, attitude and judgment in a law practice environment at entry to the profession.

Qualifying Assessment Requirements

A skilled team of developers, working on behalf of the participating members of the Federation and what will eventually become a newly established independent assessment agency will be tasked with the responsibility of developing the plan for and implementing a progressive and defensible assessment regime for law practice. The qualifying assessment regime will be developed in phases and will include the following components.

Phase 1: National Law Practice Qualifying Examination

In this assessment component, the following assessment outcomes will be addressed:

- Ability to learn and apply practical legal knowledge and procedure by demonstrating ability in cognitive and analytical reasoning and response, factual analysis, legal analysis, reasoning, problem solving, identification and resolution of ethical dilemmas.

Phase 2: National Law Practice Qualifying Examination – Skills and Tasks

In this assessment component, the following assessment outcomes will be addressed:

- Application of skill to complete complex multi-dimensional legal work by demonstrating ability in problem solving, aptitude and decision making, identification and resolution of ethical dilemmas, legal research, written communication, client communication, organization and management of legal issues and tasks.

Phase 3: National Law Practice Qualifying Experiential Learning Requirement

In this assessment component, the following assessment outcomes will be addressed:

- Demonstrated experience in the legal workplace or alternative environments applying the skills and abilities outlined in phases 1 and 2 including the ability to complete assigned tasks, engage in productive interaction and team work, exhibit iterative improvement, develop personal growth strategies, engage in self-reflection and feedback activities.

In addition to the three components of assessment set out above, a further two phases of redevelopment related to pre-admission activities are recommended. Although the details of the development of these additional phases are outside of the scope of this plan, they are foundational components in the continuum of legal learning and should be a part of the change management dialogue to ensure that the overall national qualifying process is moving proactively toward defensibility in all aspects of the assessment regime.

Further validation on the scope and application of the competencies for entry level legal professional practice will occur during implementation of phases 1, 2 and 3 of the plan. This will assist in defining the need for and extent of the oversight, criteria and accreditation activities related to law degree accreditation and equivalencies testing for internationally trained law candidates. The following phases of development should then be addressed.

Phase 4: Canadian Law Degree Approval

In this learning and assessment component, the following training and assessment outcomes should be addressed:

- Demonstrated achievement in the instruction and assessment of foundational legal knowledge, including the provision of supports and resources necessary to ensure a comprehensive and progressive curriculum of legal learning.

Phase 5: Accreditation for Internationally Trained Law Candidates

In this assessment component, the following assessment outcomes will be addressed:

- Knowledge and ability at equivalence to the level of competency required at completion of a comprehensive law school curriculum, with an emphasis on foundational law competencies and also expanded to include competencies directly related to achieving success in the national law practice qualifying assessment process and the actual practice of law.

Plan of Implementation

The development process for establishing the national law practice qualifying assessment regime set out in phases 1, 2 and 3 of the plan is scheduled to commence as soon as practicable and will continue for four years. In the first two years of the development, phase 1 will be completed. In year three and four, phases 2 and 3, the skills and tasks assessment and the experiential training requirements, will be completed contiguously.

The work that must be completed in phase 1 of this implementation plan is critical to all components of the development process. Without a robust and exacting development process in phase 1, the components of the national process will not be achievable. Projected costs are more significant in phase 1 as the development process lays down all of the ground work to ensure standardized, consistent, fair and defensible assessment processes.

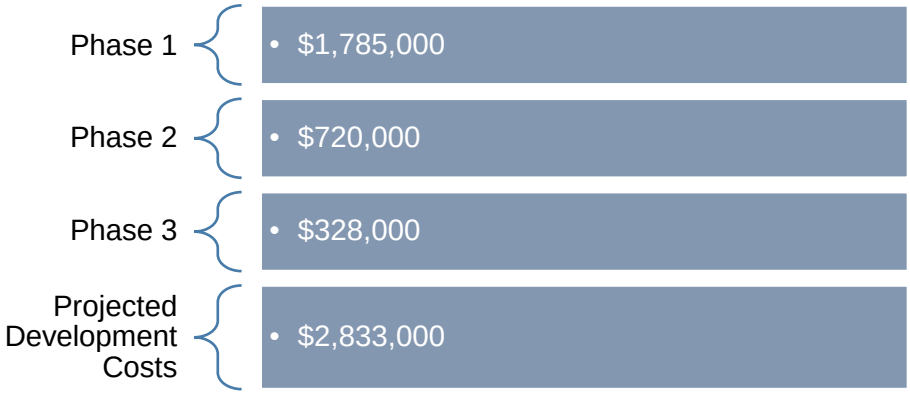
Process of Development

The business and implementation plan provides information on how a defensible system of licensure is developed. It provides background on the purpose and objectives to be achieved, the reasons for undertaking each step of the development process, and the actual operational tasks that must be completed. The plan goes into extensive detail on all of these elements, in an effort to provide a clearer understanding of why each step must be taken and the complexities of such a development.

Cost Projections

The estimated costs for each phase of the plan are based on actual experiences with similar systems of development and operations. At this early stage in the planning, it is not possible to determine if cost savings may be achieved through economies of scale or leveraging of existing admission assessment content. Where it was reasonable to make such assumptions, those have been made. Otherwise, the cost analysis assumes a significant level of grassroots development will be required to achieve the level of defensibility necessary to support internationally accepted standards of licensure.

The projected costs for the development phases set out in this plan, with all costs calculated net of taxes, are:



Governance

The discussion of governance for the model of oversight that will be employed to support the operations of a new national assessment system has been left to the end of the report. The choice of governance structure will be informed by the extent of the ongoing development and operational activities outlined in this plan.

Business and Implementation Plan Overview

Purpose of National Law Practice Qualifying Assessment Process

Assessment in the context of law practice admission is a high stakes activity. Such an assessment system should support the legal regulatory mandate to protect the public interest by assuring competence at entry to the profession. It should also be acceptable to the profession as relevant and defensible, and should be acceptable to the test takers as a process that is valid, fair, and consistent.

An assessment system for professional licensure must take into account what is assessed, how it is assessed, and the assessment's usefulness in fostering ongoing learning. By the time candidates for admission to the legal profession apply for licensing to respective law societies across Canada, they have engaged in a lengthy and high quality academic experience. They have been exposed to significant legal issues and applications and, in some cases, practical legal experiences either through law school courses or on-the-job opportunities.

Candidates arrive at the law practice admission gate knowing why the law has been developed and applied. For admission to the profession, the law societies that regulate entry are obligated to assure that each candidate has the requisite knowledge, skill and ability to understand what and how legal concepts should be applied to competently serve clients.

In addition to the need to protect the public by denying entry to the profession to those candidates who are not able to overcome entry level competency deficiencies, the desired outcomes of a high stakes qualifying assessment regime include:

- Fostering learning
- Inspiring confidence in the candidate
- Enhancing the candidate's understanding of their strengths and weaknesses
- Enhancing the candidate's ability to self-monitor and drive personal improvement and ongoing learning and skills development.

Competence is an inferred quality. In the legal profession it builds upon a foundation of basic legal skills, legal knowledge, and ethical development. It includes a cognitive component – acquiring and using knowledge to solve real life legal problems; an integrative function – using information and learning in legal reasoning activities; and a relational function – communicating effectively with clients and colleagues.

Professional competence is also developmental, impermanent and context-dependent. It follows that a qualifying assessment process for lawyers is a point-in-time assessment only and it should be developed and applied with the objective of gaining reasonable assurance that a candidate for admission is capable of providing competent legal services at entry to the profession.

Implementing a valid, fair and defensible national law practice qualifying assessment regime will assist law societies to obtain that reasonable assurance.

Objectives of Development Process

The critical objective of a national qualifying assessment system is to achieve a level of uniformity in the application of testing criteria to all admission candidates. To support the assessments in phase 1, 2 and 3, significant additional psychometric development is required to clarify and enhance the competency profile work that has already been conducted. The additional work will have to be completed in phase 1 to support continuity of outcomes in the assessment process as a whole. This ensures alignment between all competencies and test formats throughout the entirety of the national process.

The focus of the national assessment regime will be on assuring entry level comprehension and analytical ability related predominantly to skills competencies. Knowledge, ability and judgment in the application of skills can be effectively and validly assessed in a written format and is being tested in this manner in numerous professional environments in Canada and internationally. However, it is not possible to undertake such testing of skills competencies without placing the assessment questions in context.

Learning can be greatly enhanced by summative assessment, but only when that assessment is relevant to the learner. Relevance is most reliably achieved when the assessment reflects real life scenarios and situations within which the learner is required to apply their knowledge or skill. Therefore, a key premise of the national qualifying assessment regime will be that knowledge and enabling skills and abilities will only be effectively assessed through the use of context-specific situations.

Scope of the Development Process

The focus of phase 1 will be on skills and tasks competencies assessed by integrating them into knowledge-based issues that have strong cross-representation in participating jurisdictions and that support the achievement of practising law competencies, specifically.

Most Canadian law societies currently engage in admission testing that is supported by robust knowledge-based study or preparation materials for candidates. These materials are relatively consistent across the country, as should be expected given the similar practice competencies applied by law societies and the history of information exchange and dialogue between law society admission groups.

For purposes of defining the relevant and contextually appropriate knowledge competencies within which the skills and tasks will be assessed, law society expert staff from the participating jurisdictions will be asked to work with psychometricians to develop a framework of the core practising law competency categories and contexts.

The cross-representational competency categories will then be validated by practitioner subject matter expert work that will be undertaken to derive the assessments, as discussed later in this plan.

Expectations of the Development Process

A word about an ongoing concern that has frustrated the timely development of a national law practice qualifying assessment system – the need for "local testing".

At its best, a well-defined national assessment would potentially eliminate the need for testing on "local" law and issues – placing the focus on the underlying competencies achievements in the practice of law, and not on the particulars of statutory or other legal nuances. It is not unreasonable to assume that candidates who have completed a law degree and then have also successfully applied their cognitive and analytical abilities to manage the higher-level assessment processes proposed in this plan, are capable of applying themselves to the task of developing practice strategies to deal with unique jurisdictional laws and policies as they begin to apply them. Having proven mastery of entry level competencies, a candidate's next obligation is to develop growth strategies for maintaining and enhancing competence in law practice.

If further or other proof of law practice ability is required, it would more logically come after the new entrant has selected an area of legal expertise – at which time a more directed assessment that focuses on measures of success in a specific practice area might be a consideration, in the public interest.

But it is acknowledged that proof of concept will take time. As is the case with all new national regulatory processes, the development of the qualifying assessment system will occur in stages, will be iterative and regulatory participants will have to acquire a level of comfort with the outcomes at each stage.

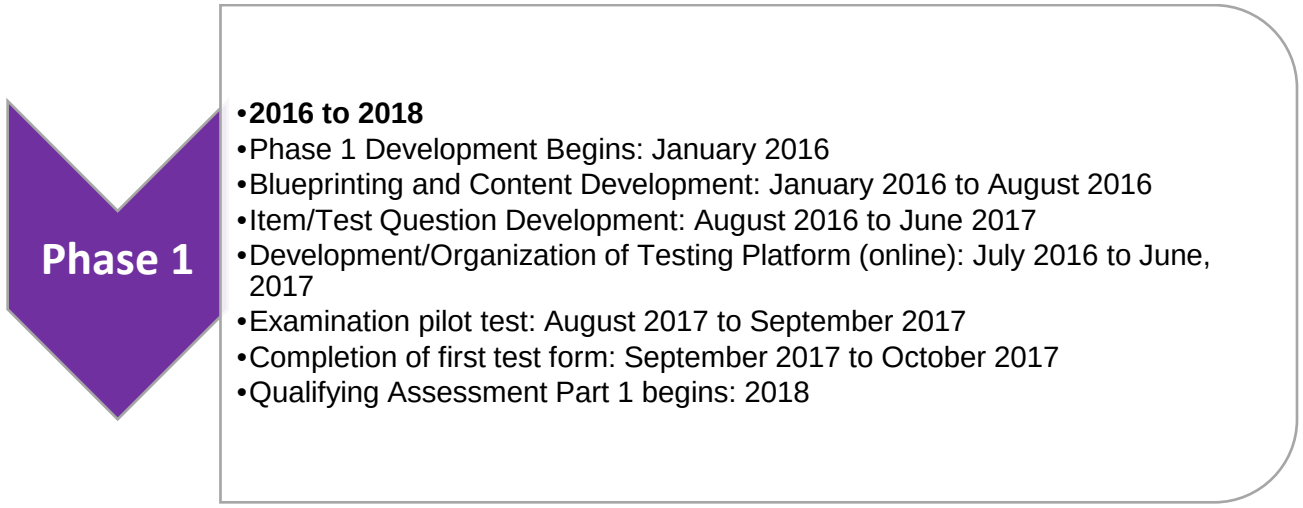
In the interim, participating law societies may continue to feel the need to engage their candidates in further assessment focusing specifically on the unique law and/or circumstances of serving clients in their particular jurisdiction. That need is to be respected as an additional opportunity to enhance the training of candidates.

Ideally, any law society deeming it necessary to engage in further assessment of local legal knowledge would consider availing themselves of the use of the new national law practice qualifying agency, its skills, staff and expert providers such as psychometricians. In doing so, individual law societies could begin to follow a similar path of re-development, supporting consistency in the application and testing of competencies across the country regardless of the form that any additional testing may take.

Schedule of Development Process

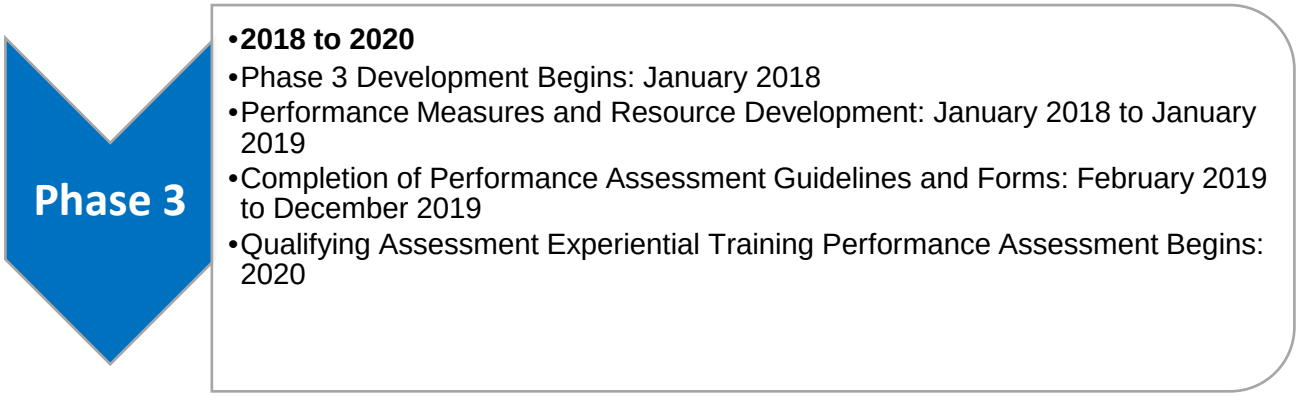
Based on the development activities outlined in this plan, the following general timetable of events is anticipated.

National Law Practice Qualifying Examination



National Law Practice Qualifying Examination – Skills and Tasks

National Law Practice Qualifying Experiential Learning Requirement



The Plan

With this as the background for the national law practice qualifying assessment process, the business and implementation plan that follows will provide the explanation of and particulars for the development process, supports and costs.

PHASE 1
National Law Practice Qualifying Assessment
Project Development Plan

National Law Practice Qualifying Examination

In the development of the phase 1 qualifying examination, focus will be on the following components:

A. Defining the scope of the examination
B. Development of examination content
C. Format of the examination
D. Assuring validity of the examination

A. Defining the Scope of the Examination

The first step to building a technically sound and legally defensible licensure examination is the completion of a practice analysis. The practice analysis provides a way to evaluate the knowledge, skills and tasks required of lawyers entering the profession. It determines the feasibility and resources required for assessment, and also supports the development of an assessment blueprint documenting the content, length, time allotment and other requirements of the examination.

Key to the development of any competency profile derived from such a practice analysis and used for assessment in licensure is to ensure that the competencies to be assessed by the test are those that:

- Have the most direct impact on public protection
- Influence effective and ethical practice
- Can be measured reliably and validly by the assessment format used by the examination.

Under the oversight of the Federation's National Admission Standards Steering Group, the first step in this practice analysis has been completed. The national competency profile articulates the knowledge, skills and tasks required of entry level lawyers.

However, the current competency profile sets out the general competencies required for entry only at the highest competency category level. Those categories have yet to be distilled to set out the specific demonstration of knowledge and skill required in each. Attaining this level of clarity will require further meetings of subject matter experts to define the scope of achievements in each of the categories. A lack of clarity in these categories could result in the inadvertent expansion of the scope of the assessments outside of the boundaries of entry level competency, and cause developers and subject matter experts to struggle with the determination of how to most accurately assess the required level of achievement.

From this additional competency definition activity, an assessment blueprint will begin to form setting out the particulars of the assessment – breadth and depth. An assessment blueprint is essentially the key specifications document that will be used to develop and administer all national assessments. Specifications of the blueprint will be applied to every examination or other test format and will ensure consistency and fairness in all assessment outcomes. The framework for a blueprint applicable to a national law practice qualifying examination is attached to this plan as Addendum A.

Once the competencies have been revisited by subject matter experts and distilled into targeted requirements of achievement, test questions will be developed. The parameters in the blueprint form the basis for content validity and legal defensibility of the assessment tool and its test items.

B. Development of Examination Content

The development of the phase 1 national law practice examination will include the following steps:

i) Define knowledge and skills eligible for assessment
ii) Determine structure of assessment
iii) Define the examinable content
iv) Develop test items/questions
v) Pilot test questions
vi) Construct the official test form
vii) Develop feedback mechanisms for test takers.

i) Define the knowledge and skills eligible for assessment

The starting point for defining the scope of the phase 1 examination begins with the existing competency profile. A process of further development will result in a lengthier and more robust listing of the expected demonstrated knowledge, skill and task activities expected in the practice repertoire of candidates seeking admission to the legal profession.

This review of the competencies and their breakdown into more discrete and manageable statements of achievement will be supported by psychometricians who will facilitate subject matter expert legal practitioners through the process.

The subject matter experts will draft a set of statements that clarify the knowledge, skills and tasks required for entry level lawyers under each category set out in the competency profile. The supporting survey data obtained to derive the profile, and the ratings of relevance, importance and frequency, will assist this group to clarify, refine and then define how the statements will be prioritized and organized for testing. They will also determine the relative proportion that each competency area should represent on the examination. This is known as the “blueprinting” process.

ii) Determine structure of the assessments

For purposes of this process, the blueprint will be developed for the assessment of all components of the national system to ensure consistency in approach. Some skills and tasks may not be capable of assessment in the phase 1 examination and will become the primary focus of phase 2. The phase 1 examination is likely to be comprised of multiple choice, single question and case-based multiple question formats.

Multiple choice testing offers the opportunity for breadth of coverage of subject areas which cannot be duplicated using only essay questions or performance tests. Multiple choice can also be scored objectively and fairly, and the results are capable of being scaled to ensure adjustments for difficulty. This assures comparability between test administrations and consistent applications of difficulty as between tests and candidates regardless of the test taken.

As the first stage of assessment in a new national system of assessment, multiple choice testing will provide an anchor for other more subjective skills testing and assessment.

iii) Define examinable content

Using the completed blueprint, the examinable content will be mapped against the competency requirements. The first step in this process will be to review the pre-existing and robust reference materials currently used by the law societies, leveraging the wealth of high quality law admission content and assessment work. Experienced law society admission staff will assist to establish the practising categories and develop a set of limited, but critical, cross-representational competencies for each. These will form the contexts and background for the entire assessment process.

The second step will then refine the existing, and/or develop new, reference materials to match the competencies requirements that will be set out in the profile and blueprint. The materials will be the source of study for all candidates. They should hold within them all relevant information or referrals to such information as is necessary for the test taker to prepare to be successful on the examination. Practitioner subject matter experts chosen for their breadth and depth of knowledge and skill in the relevant competency category will be selected to assist with that content matching process.

iv) Develop test items/questions

Using the blueprint and the reference materials, test question or “item” development will begin. Item writers will require specific training on the art of writing test questions. Lawyers will be recruited to draft test questions. Each question is created with the assistance of psychometricians to confirm the match to specifications, accuracy, and relevance.

In the development of multiple choice test questions, the distractors (incorrect answers) provided in the selection of possible answers are equally important as and often far more onerous to develop than the correct answer. All multiple choice options may be correct, but only one choice will be optimal in the circumstances and context of the question. On average, a high quality multiple choice item development process will see only 25 to 30 draft test questions produced in a full day of item development by a team of six to eight subject matter experts.

Following further assessment of the questions, perhaps 20 of those will be judged adequate to support the assessment process without having to be significantly rewritten.
Questions will also be reviewed by staff developers and psychometricians for editorial quality to ensure they meet test development guidelines for the construction of questions, for example, avoiding cultural or other biases in the creation of the item.

Once formed, questions will go to item assessors who are a different group of subject matter expert practitioners. They will review for accuracy, relevance, match to specifications and other criteria. Item assessors may choose to approve, propose revisions for, or reject a test question. Proposed revisions will be returned and reconsidered by item writers, revised if necessary, and sent out to other item assessors for confirmation. A rejected item will be returned to item writers for reconstruction.

Before commencing the administration of the very first national law practice examination, a minimum number of items will be required for the databank. The number of initial items will be determined by the blueprint which will set out the length of the examination based on the need to assure assessment of the competencies in proportion to their importance and frequency.

As an example, a full day or six to seven hour examination, taken in two parts of approximately three or more hours each, is likely to require 200 to 250 test questions. To ensure that the examination item bank has effectively covered all competencies, and taking into account the need to hold more than one administration of the examination in any given year, it is likely that the initial item databank will require a minimum of approximately 750 operational items.

How will the test items be developed for the first administration of the examination?

In order to formulate the first national qualifying examination in accordance with the schedule of development set out in this plan, it is proposed that the development process should look to the participating law societies for contributions, saving on time and cost by leveraging existing test question content and databanks.

Participating law societies with applicable test item content will be requested to submit items relevant to the competencies that have been validated through the blueprinting process. Experienced law society staff will review their item banks with the assistance of a framework developed by psychometricians and with a view to matching questions as closely as possible to the new competency profile and blueprint.

The test items that align with the competencies profile will be submitted for further analysis *on an anonymous basis*. The items will be put through the review processes without attribution to ensure an objective review of applicability. Only the most aligned items will be accepted for purposes of the examination system, regardless of origin, and will then be revised as necessary by item writers to meet the specifications.

v) Pilot test questions

Pilot testing the law practice examination questions is an important requirement in the development process and complements all of the subject matter expert reviews that have already been completed to this point.

Using newly licensed lawyers from across Canada (fewer than two years of practice), a pilot examination will be formed and administered in an environment that as closely as possible resembles a true examination administration. The results of the pretest will be analyzed with specific reference to:

- Item difficulty – did the percentage of candidates expected to get the answer right, actually get the answer right?
- Distribution of responses – are there any areas of the test that performed better or worse than other areas of the test?
- Item to test correlation – how did the performance on each question compare to the performance on other questions?

Questions that do not achieve the performance specifications set out in the blueprint will go back for review to item writers to determine if they will be deleted, or revised and accepted for future use.

In addition, pilot tester commentary on the format and experience of the test will assist to inform policies and administration improvements in preparation for the first formal examination.

Test item development is an ongoing process and will be regularly scheduled throughout each year. All test items developed following the first official administration of the examination will be pretested by being included as “experimental” items in each test. Items that are experimental are items that have not yet been pretested. A certain percentage of questions in each examination administration will be experimental and will not be included in the final calculation of the candidate scores. Instead, the results of the responses to each question will be assessed and analyzed by psychometricians and subject matter experts and if the question performed adequately, will be made “operational” and become a permanent part of the item bank for use in future examinations.

vi) Construct official test form

The construction, or particulars, of the examination will have been set out in the blueprint. The first test form, and all test forms thereafter, will be organized to meet the blueprint specifications on a variety of dimensions. The goal is to have test versions that are comparable to each other. They must be fair to all candidates, regardless of which version of the test is taken.

Content specifications for the examination describe how many questions of each type will be included. This includes the format of the questions – single or case-based multiple question – and the distribution of the questions, or percentage of questions in each competency category.

Once the test is formed, it is again reviewed based on a variety of criteria by the psychometricians and an appointed subject matter expert advisory group, in preparation for

formal test administration. This process of assessing the test form will occur before every sitting of every examination that is held.

Following administration of the examination, it will be scored and put through a psychometric analysis. The results will be returned to the appointed advisory group for review.

Once the advisory group and psychometricians are satisfied that all questions fairly and accurately assess for entry level competence, the examination will be finalized and candidates will receive their results.

vii) Develop feedback mechanisms for test takers

Candidates who fail the examination must receive input and direction on their areas of weakness. A profile of their results, as compared to the rest of the test taking group, will be provided to support their iterative improvement in anticipation of rewriting the examination. The results profile information and format must also be determined and derived during the development process.

C. Format of the Assessments

Implementing a robust national law practice qualifying assessment system that will serve thousands of candidates every year will require a significant shift in thinking about the modalities to be used for the testing environment.

Given the size of the cohort and the need to ensure multiple test taking opportunities and geographic locations for test takers, it is highly recommended that the national assessment system be enabled through computer based testing (“CBT”).

CBT has many practical advantages and it also has the ability to facilitate enhanced validity for assessments. It has been shown to be generally popular with examination takers and efficient for delivery and marking. It is ideal for a large number of test takers, with benefits including greater efficiency, lower costs, provision of a level playing field (standardization), delivery convenience and flexibility, without compromising examination integrity.

CBT can be delivered anywhere via a secure computer network and is increasingly invigilated at commercial computer-based assessment centres located across the country. These test centres are usually some distance from the test source, but invariably closer to the test taker to provide greater convenience, flexibility and ease of scheduling. Test centres have closely monitored testing rooms with partitioned cubicles and use audio and video surveillance.

In-person invigilation continues to be an accepted requirement for assessments that are high-stakes and summative in nature. The national law practice qualifying assessment is such a high stakes effort. It is anticipated that any CBT environment used to support law practice testing will apply stringent security and administrative policies including robust invigilation. The benefit of CBT enabled systems is that test taking activities, facilities, and provision of invigilation and security can be outsourced to providers of such high stakes services, decreasing overall costs for participants – regulators and candidates alike.

CBT Process

The law practice assessment process will utilize an external provider of CBT systems. That provider will support registration and scheduling for individual assessments, delivery of the assessment, transfer of scores, and candidate management as required.

Based on a review of potential CBT providers, it is anticipated that this will allow candidate access to real-time scheduling on a 24/7 basis, provide an online test site and appointment locator, appointment confirmations and rescheduling. These services will allow participating law societies to reduce their administration costs by outsourcing what can be a very labour intensive process of managing candidate examination registration and processing.

The CBT provider will be required to have a robust system for and broad experience in the provision of accommodation for candidates requiring specialized assessment supports and services. Their approach to test accommodation must increase accessibility and create a high quality testing experience for candidates. The CBT provider will be expected to have significant experience in the application of adaptive systems to support self-service access and create consistency in the authorization, notification, delivery and tracking of testing accommodations.

Finally, the CBT provider must be fully able to provide all facets of their examination, including invigilation, scheduling and support services in both English and French.

Given the large cohort of candidates moving through the processes, windows of opportunity will be scheduled for the taking of assessment(s). Although still to be determined through the blueprinting process, it is likely that there will be one to two week windows of opportunity, three times per year. During those periods, candidates may schedule themselves directly with the CBT provider for their assessment in accordance with their personal scheduling needs. As there will be candidates writing the same examination throughout each window, albeit in different versions, it will be critical to ensure strict and high quality security services are enabled for the assessment processes.

In addition to essential test services, a variety of security measures are highly recommended to ensure that the assessment process is not compromised. Standardized security measures that can be provided by the CBT service may include fingerprint collection and comparison or palm printing identification, wanding and emptying of pockets, surveillance as required, diligent proctoring of the testing room at all times, monitoring and reporting of suspicious behaviour. Services should also include dedicated hardware and software, data encryption throughout the testing lifecycle, encrypted virtual private network connections, and intrusion protection systems during testing sessions.

It is also recommended that the law practice assessment process consider engaging an external provider of specialized fraud and audit services to conduct forensic data review during all assessment cycles. Such a service would reach out into the internet and monitor online exchanges for test content dissemination, and other security breaches. Such services may also be able to locate and advise on the individual who may be engaging in a breach of the

confidentiality of the examination. This is an important risk mitigation tool supporting the efficacy and defensibility of the testing system, and may provide information on a candidate's professionalism and future governability.

D. Assuring Validity of the Examination

To ensure that the assessment system is fair in its application, there must be an alignment between learning and testing. An assessment is most reliable when the format of the examination is not a factor in performance. This means that test takers should have had prior exposure to, and preferably actual experience with, the test format.

For this reason, practice tests will be developed and provided for use by candidates in their preparation activities. These supports will be offered in the same format and through the same modality as the official assessment, providing candidates with an opportunity to experience the testing platform and learn how to navigate the system prior to the test.

In addition, the newly defined competency profile with all competency achievement statements and expectations will be publicly available so that candidates may fully understand the extent of the anticipated testing in advance of registering for admission to the profession.

It is recommended that the new law practice qualifying assessment agency engage in the active provision of assessment preparatory supports for candidates. The preparatory activities would be directly aligned with the actual content, items and modalities of the national assessment making the use of the preparatory package directly supportive of candidate success on the test. This is unlike "bar admission prep" courses that have developed in Canada and market themselves as support systems to prepare for law societies' current examinations. A review of those third party preparatory courses shows a lack of alignment and applicability to the actual examinations – providing limited or no benefit to the test taker for an often high cost of time and money.

The preparatory package that is offered by the national assessment agency would be computer enabled and supported through the same CBT provider platform. It would utilize test questions that are actually derived during the item writing activities, and would support enhanced learning of the content and the actual test taking environment.

In the case of the phase 1 multiple choice testing, the preparatory package will allow candidates access to the CBT system that will be used in their actual assessment, providing the opportunity to engage with the software and systems as they answer practice test questions. It is recommended that there would be no additional cost to candidates for this access, as it is a natural extension of the testing platform and included in the development specifications. For the phase 2 case-based skills testing, a comprehensive package of preparatory supports that would serve both as a practice test and a formative learning opportunity might be offered as part of the assessment package or as a value-added support for a nominal fee.

Phase 1 Development Costs

Assumptions for Development of Phase 1

The following assumptions have been made to determine the development activities and estimate costs of the system of assessment that is described in this plan:

- Phase 1 written test will be multiple choice and approximately 6 to 7 hours in length
- Assessment will be supported by computer-based testing
- Psychometricians will be placed on retainer for all relevant ongoing competency profile, blueprint and item development and redevelopment
- Subject matter expert ("SME") practitioners will be paid an honorarium to recognize the contribution made to supporting defensibility of law practice entry assessment
- Law society subject matter expert participation will be in-kind
- All costs are calculated net of taxes.

Development Process and Costs

1 • Confirm scope of competencies for assessment

Psychometrician and law society SME review of competency achievements in law practice contexts.

- 5 to 8 law society (staff) SMEs
- Minimum 2 day meeting
- Psychometricians – 4 day prep + 2 days facilitation
- Cost $15,000

2 • Refine competency framework and clarify competencies for blueprinting and test item writing

Practitioner SME teams, from across the participating jurisdictions, working with Psychometricians and staff to clarify competency achievement, by category.

- 12 practitioner SMEs x 2 key competency categories (advocacy and transactional)
- 2 sessions of 4 full days each
- SME honorarium of $250 each
- Psychometricians – 2 days prep + 8 days facilitation
- Cost $75,000

3 • Develop content specifications for assessment reference materials and derive content

Given the wealth of high quality reference materials available in law societies, and general consensus on scope of competencies that will be achieved in step 2, content will be developed and validated through group work with law society/staff SMEs and practitioner SMEs.

- Law society SMEs
- Assumes a minimum of 20 practitioner SMEs
- Honorarium to practitioner SMEs revise existing and/or develop new content to support the testing of the underlying competencies
- Honorarium = $2000 per practitioner SME
- Cost $40,000

4 • Validation of competencies

External SME teams working with Psychometricians and staff to ensure that the competencies are progressive, practical and relevant to today's entry level lawyer practitioner market.

- 8 practitioner SMEs x 2 key competency categories (advocacy and transactional)
- 1 session of 2 days each
- Honorarium of $250 per day
- Psychometricians – 1 day prep + 4 days facilitation
- Cost $20,000

5 • Map competencies to reference materials

Law Society SMEs and a select group of SME practitioners review all competencies and content to ensure appropriate coverage in accordance with profile and blueprint.

- 3 – 5 Law Society SMEs
- 5 practitioner SMEs x 2 key competency categories
- 1 session of 2 days each
- Honorarium of $250 per day
- Psychometricians – 2 days prep + 4 days facilitation
- Cost $20,000

6 • Finalize competencies and test specifications for the assessment process

Same group as in step 2 will come back together to do a final review of the competencies and will assess the scope and depth of testing, refining the blueprint and finalizing the criteria for administration of each assessment.

- 12 SMEs x 2 key competency categories (advocacy and transactional)
- 1 session of 2 days each
- Honorarium of $250 per day
- Psychometricians – 2 days prep + 4 days facilitation
- Cost $24,000

7 • Develop test items: Leverage existing content

Item, or question, development will begin once the blueprinting is finalized and will include:

a) Receipt and review of all items from participating law societies and mapping to the blueprinted competencies
b) Revision of currently existing databank items from various jurisdictions to support the new competency profile.

- Minimum of 8 SMEs x 2 key competency categories (advocacy and transactional)
- 2 sessions per category of 3 days each
- Honorarium of $500 per day
- Psychometricians – 2 days prep + 12 days facilitation
- Cost $85,000

8 • Develop test items: Create new test items

Practitioner SME development of originating items to ensure sufficient items available to adequately test every competency category and articulated practice achievements.

- 8 SMEs x 2 competency categories (advocacy and transactional)
- 3 sessions per category of 3 days each
- Honorarium of $500 per day
- Psychometricians – 6 days prep + 18 days facilitation
- Cost $135,000

9 • Conduct pilot test

Psychometricians will derive a test format approximating the anticipated standardized test, based on the blueprint. The pilot is the opportunity to measure test results against blueprint metrics, such as length, difficulty, validity of items. The test taker group will be randomly selected lawyers, newly called to the bar.

- 50 to 100 test takers
- Honorarium of $250 per test taker
- Psychometricians – derive pilot test, complete analysis of results and reporting
- Cost $35,000

10 • Form Advisory Groups and Approve First Test Form for Administration

At this point in the process, it is advisable that the oversight entity be constituted. Membership on the Advisory Groups/skills-based committees should be established and participants should receive training to provide ongoing analysis of assessments and setting of scores. They will train and then process the first examination form. For purposes of the first assessment administration only, the following will apply:

- 10 SMEs per Advisor group, 2 competency categories (advocacy and transactional)
- 1 session per category for 3 days each
- Honorarium of $500 per day
- Psychometricians – 4 days prep + 6 days facilitation
- Cost $56,000

Costs for phase 1 related to development of content and test items by subject matter expert practitioners and providers, for the period from early 2016 through to and including the completion and approval of the first examination form for test administration in early 2018, are projected at $505,000.

There are also associated costs for SME travel, meals and accommodation expenses and for potential facilities rental and catering for meetings. See *Table 1.1* on the following page for all projected costs.

Table 1.1

Activity	Cost
Development Process	
Confirm scope of competencies for assessment	15,000
Refine competency framework and clarify competencies for blueprinting and test item writing	75,000
Develop content specifications for assessment reference materials and derive content	40,000
Validation of competencies	20,000
Map competencies to reference materials	20,000
Finalize competencies and test specifications for the assessment process	24,000
Develop test items: Leverage existing test items	85,000
Develop test items: Create new test items	135,000
Conduct pilot testing	35,000
Form Advisory Groups/Approve first test form	56,000
	$ 505,000
Additional Associated Costs	
SME travel, meals and accommodation expenses	200,000
Facilities rental and catering for meetings	80,000
	$ 280,000
Total	**$ 785,000**

Phase 1 Management and Operations Costs

To advance planning for the implementation of a high quality national law practice qualifying assessment regime as set out in this plan, it will be necessary to appoint an experienced management and staff team.

At a minimum, it is anticipated that the personnel supports and operational supports set out in *Table 1.2* will be required. Expenditures are spread across the full development cycle for phase 1, or two full years from early 2016 to early 2018. In 2018, an oversight agency will have been established will full-time staff and operational controls. See Governance discussion.

Management costs for phase 1 assume that one or more experienced law society administrators will be seconded into required roles. This will allow the national development process to leverage existing knowledge and skill, avoid extensive staff training, and begin development on a timelier basis. It also avoids full-time employment agreement commitments in advance of establishing a viable system of national assessments.

Operational costs for phase 1 assume that the seconded, contracted or employed staff will be able to work virtually, in many instances, and that seconded staff will be invited to continue to work out of their offices in their respective law societies. For this reason, the projected costs for seconded staff will likely be provided to the law societies as a contribution toward the salary of those individuals, in recognition for the law society's willingness to allow the secondment.

Toward the end of the phase 1 development period, and with the benefit of greater insight into the national processes, a full-time staff complement will be hired and office space and other operational infrastructure will be established to sustain the new national law practice qualifying assessment services.

Table 1.2 sets out the project costs for management and operations for the phase 1 development.

Table 1.2

Expense Category	Cost (two years)
Management and Staffing	
Interim Executive Director (secondment – contribution to the home jurisdiction) • Hands-on leadership in the development including oversight of all components of the process through to implementation of phase 1	200,000
Team Leader – Psychometrics (secondment – contribution to home jurisdiction) • Senior manager with experience in the development of competency regimes and test items, adult learning designation preferred	150,000
Coordinator x 2 (secondments if possible, otherwise term contracts)	200,000
Provision for Additional Staff (contract or secondment)	100,000
	$ 650,000
Operations	
Technology Development • Retainers to develop programming, systems and tracking, assessment results, secure/encrypted information exchange	200,000
Office Expenses • Telephony/technology use contributions to home jurisdictions, courier, print production, translation, staff travel, other	150,000
	$ 350,000
Total	**$ 1,000,000**

Phase 1 Development Costs and Funding Model

Total costs including all phase 1 examination development, management and staffing will be approximately $1,800,000 across a two-year period that commences in early 2016. Assuming that the costs will be spread across the entirety of 2018, providing law societies with additional time to plan for monetary commitments, the estimated phase 1 development and operational cost commitment will be:

Funding Model

The availability of sufficient funding for the development of the new national law practice qualifying assessment process will be critical in achieving completion of a high quality, psychometrically sound, and acceptable test system. It is important that ample funding be readily available to meet scheduling and quality targets.

There are a variety of options for financing of the development process by law societies. Two potential models are set out here, but with limited detail. *Further exploration of options for the funding model should be undertaken with the assistance of a financial advisor.*

Included in the options could be a request for contributions from each participating law society that is derived based on a cost sharing model that may consider the number of full-time equivalent members, the number of candidates registered in the jurisdiction, or another agreed formula. Contributions would be placed into a fund from which monies will be drawn as required.

The cost sharing formula is likely to require modification to acknowledge the contributions of participating law societies to the provision of foundational content that will be used in the system.

It is generally accepted in the licensure arena that the cost of deriving just one multiple-choice examination question is in the range of $5000 to $6000. Managers of the development process will be required to track the usage of content received from law societies. This contribution by individual law societies may greatly reduce both the development and ongoing operational costs of the new system and that value should be attributed accordingly. Until development begins and the activities set out in phase 1, activities 1 through 7 of this plan (pages 21 – 23) are completed, it is not possible to estimate the value of these potential contributions.

It is feasible that a system of funding that includes a repayable loan model could be established. Participating law societies might contribute to the financing of the development process, or an

independent loan arranged with a financial institution, and the new assessment agency will be required to achieve a modest annual income used to pay down the loan over time.

In such a funding model, any income should only be derived from ancillary revenue sources. New candidates into the admission system should not pay for original development costs which are an investment in the future of competency assessment for the Canadian legal profession generally. Opportunities for income may come from revenues generated from the preparatory supports that will be provided for phase 2 of the assessment process, or a percentage of revenues generated from the payment of the assessment fees for rewriting the examinations.

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PHASE 2
National Law Practice Qualifying Assessment
Project Development Plan

National Law Practice Qualifying Examination – Skills and Tasks

In phase 2 of the project, development will begin on an enhanced online assessment that includes interactive components. Candidates will complete test items requiring constructed responses.

A constructed response may range from questions requiring long answers using information supports provided online, through to skills assessment using task completion. With the addition of audiovisual components, simulated practice scenarios will also be incorporated to enhance the opportunity for test takers to apply critical and analytical thinking skills, make judgments and draw conclusions – higher level competencies that form an integral part of an entry level lawyer's repertoire.

The skills based segment of the assessment regime will require extensive examination infrastructure. The development process will hope to avail itself of existing content developed by participating law societies and then refine and expand as necessary in accordance with the new competency profile and blueprint.

Without predetermining the outcomes of the blueprinting process, and based on existing skills and tasks competency requirements in participating law societies and the current competency profile, it is quite feasible to suggest the following outline as a sample full-day assessment developed in phase 2 of this plan:

- Test Component 1: candidates for assessment are provided with a statement of facts and access to legal databases or static legal information (both relevant and irrelevant in the circumstances) and are required to draft an opinion letter for the client or memorandum to a senior partner – 60 minutes

- Test Component 2: candidates for assessment are provided with a statement of facts, client interview information or abbreviated transcripts, and are required to draft an affidavit or a short pleading – 90 minutes

- Test Component 3: candidates for assessment are provided with two or three ethical scenarios and access to relevant online documentation and are required to draft an analysis of the situations – 60 minutes

- Test Component 4: candidates for assessment view a series of three short videos of a lawyer interviewing a client, undertaking a negotiation, or other examples of professional interactions, and are required to analyze the performance and discuss how competencies/standards for the practice of law have or have not been demonstrated – 90 - 120 minutes

In the same manner as the blueprint that was developed during phase 1 is then applied to the phase 1 assessment questions, the blueprint will be applied to the development of cases and questions for phase 2 testing.

Phase 2 will also require additional test items to be developed to ensure an accumulation of content prior to launching the assessment. It is recommended that a minimum development of three completed segments for every one assessment be produced in advance of the first iteration of the phase 2 examination. In essence, accumulating the equivalent of a minimum of one full year of test items prior to implementation.

The development will include practitioner subject matter expert assistance with case development, script development and validation along with expert external providers to support video production support. Psychometric supports will be required to ensure that the achievement of the outcomes aligns appropriately with the competency profile and that test versions meet the expectations of the blueprint.

In addition to developing the first iteration of the phase 2 examination content, significant work must be completed on the development of scoring rubrics for those examination components. Constructed response and task completion questions will be manually scored by legal practitioners. This will require the development of training plans and formal training sessions for a significant number of practitioner assessors who will be requested to assist in the scoring activities. It will also require psychometric support to align all of the scoring rubric requirements with the competency profile and blueprint, ensuring validity and fairness in their application.

In the phase 2 national law practice qualifying examination creation, the focus will be on the same components of development as in phase 1:

A. Defining the scope of the examination
B. Development of examination content
C. Format of the examination
D. Assuring validity of the examination

A. Defining the Scope of the Examination

The preliminary practice analysis for the skills and tasks examination components was completed under the oversight of the National Admission Standards Steering Group. The skills and tasks categories will be further distilled to set out the specific demonstration of competency required in each. The new competency profile and the blueprint derived in phase 1 will complete all of this work, including a review by subject matter expert practitioners to ensure that there are targeted requirements of achievement against which to develop case-based scenarios for skills testing.

B. Development of Examination Content

The process of development of examination content will be very similar in nature to phase 1 activities, except that the content for phase 2 test questions will require a different level of creative application of experienced subject matter expert knowledge. The derivation of long form, case-based, questions that will meet the targeted competency requirements must be a carefully managed process including multiple levels of development, review and validation.

During this component of development, the structure of the assessment must also be defined to ensure that the skills and tasks competencies will be validly assessed. The structure of phase 2 testing will require increased candidate interactivity with the test modality if it is going to reliably assess skills and tasks competencies.

The examinable content will be mapped against the competency requirements and will be developed by practitioner subject matter experts chosen for their breadth and depth of experience in the application of skills in the relevant practice contexts within which the skill or task will be integrated.

Test question development in this phase will include an increased emphasis on the application of adult learning assessment techniques applied by experienced administrators or others retained for this purpose. The art of creating case-based assessment questions is as complicated and exacting as creating multiple-choice distractor options, but with the added requirement of ensuring a logical flow of expanded content through scenario building. Case question developers must be trained to assist with this work.

C. Format of the Assessments

The phase 2 assessment system will rely on CBT to effectively and efficiently serve the number of candidates moving through the qualifying examinations.

A significant benefit of using a CBT environment for the national law practice qualifying examination components will be in its application to phase 2 where more interactive test forms will be integrated.

The types of assessment forms provided through CBT may be substantially enhanced through the application of multimedia. In particular, test questions may be made dynamic by adding video and audio and will allow for a broader set of critical and interpretive skills to be assessed than would be feasible using a paper-based testing method. A multimedia task may measure important elements of professional competency that more conventional assessment modalities may not.

Simulations are increasingly used for authentic formative assessments and also for summative assessments. Simulations can combine audiovisual and data resources to create realistic client situations, and the test taker can interact with the simulation by completing tasks, making judgments and observations, and drawing conclusions.

In performance-based CBT, test takers are assessed by having them perform tasks similar to what would be required “on-the-job” rather than simply asking them a series of questions about those tasks and then inferring from their answers that they know how to do those tasks.

Given the high cost of engaging in performance based testing in the legal profession – testing that approximates Objective Structured Clinical Examinations used in some of the healthcare professions – the use of innovative applications of CBT are a viable and cost effective way to assess legal skills competencies at entry to the profession.

D. Assuring Validity of the Examination

The provision of preparatory supports for candidates taking the phase 2 testing will be particularly important as it is likely that many will not have had prior exposure to skills-based testing. In most cases, candidates in the process will have just completed law school and will not have encountered this type of modularized online testing requiring the completion of tasks and the use of audiovisual enabled testing content.

Validity will be enhanced by providing the opportunity to experience the assessment format in advance of formal testing. Consideration should be given to the development of an extended preparatory package that will reflect the actual types of case scenarios and response activities that the test taker will be presented at the time of formal assessment. Developing and providing a more robust preparatory package will reduce or eliminate concerns about lack of exposure to the test content and the test taking environment which in turn will improve the defensibility of the outcomes.

Phase 2 Development Costs

Assumptions for Estimating Costs of Development in Phase 2

The following assumptions have been made to determine the development activities and estimate costs of the system of assessment that is described in this plan:

- Phase 2 written test will be case-based, focused on skills and tasks and approximately 5 to 7 hours in length
- Assessment will be supported by CBT
- Psychometricians will be placed on retainer for all relevant ongoing competency profile, blueprint and item development and redevelopment
- Subject matter expert practitioners will be paid an honorarium to recognize the contribution made to supporting defensibility of law practice entry assessment
- Law society subject matter expert participation will be in-kind
- All costs are calculated net of taxes.

Case-based Skills and Tasks Content and Item Development Process and Costs

1

- Develop cases for Components 1, 2 and 3

Practitioner SMEs working with law society SMEs and the development team will derive a series of case-based scenarios that address required competencies as set out in the profile and blueprint.

- 2 practitioner SMEs per item x 3 components with multiple items, along with developer (staff) SMEs
- 3 cases for every one item required in each of the components (approximately 9 independent items, 3 case versions = 27 items)
- Average of 3 days development per item
- Honorarium of $500 per day
- Psychometricians – 3 days prep + 3 day case review to align competencies with profile and blueprint
- Cost $95,000

2 • Validate cases for Components 1, 2 and 3

Practitioner SMEs review, revise and validate the content of each case item to be used in the test components. Psychometrician and developer SME review thereafter and integration of further adult-learning requirements.

- Validation by 2 practitioner SMEs per each item in each component
- Average of 1 day validation per item, for 27 items
- Honorarium of $500 per day
- Psychometricians – 3 day review to finalize validation of case competencies
- Cost $35,000

3 • Develop content and scripts for videos in Component 4

Assumes three videos will be used in Component 4. Developer SMEs will work with practitioner SMEs to derive content and produce a supporting script to enable video creation. Practitioner SMEs will also act as quality control during video production.

- 9 videos (3 per item x 3 items in the bank) in English and French = 18 videos
- 2 Practitioner SMEs per video = 36 SMEs
- Average of 2 day development per video outline and script = 72 days
- Honorarium of $500 per day
- Psychometricians – 9 days script validation to align competencies with profile and blueprint
- Cost $60,000

4 • Validate content and scripts for videos in Component 4

Practitioner SMEs review, revise and validate the content of each video. Psychometrician and developer SME review thereafter and integration of further adult-learning requirements.

- 3 Practitioner SMEs to review each script, two English and one French
- 1 day to review each script
- 18 scripts - 9 each in English(2) and French(1) = 27 SMEs
- Honorarium of $500 per day
- Psychometricians – 2 day review of overall validation results with SME developers
- Cost $20,000

5 • Produce Component 4 videos

Production outsourced to video production company.

- Script training of actors, including SME participation – minimum of 1 practitioner SME from above present during video shooting to ensure authenticity
- ½ to 1 day video shoot per video = 5 to 9 days of shooting
- For purposes of estimating cost, assume 1 day shoot x 18 videos (English and French) x 2 SMEs
- Honorarium of $500 per day
- Video production by production provider: casting (actor and union fees), facilities, production requirements, editing
- Cost $320,000

6 • Develop of Scoring Rubrics for all Components

Case-based skills testing will require manual scoring. Key to assuring the validity of the assessment format is the reliable application of the assessment rubrics for marking.

- SME participation in development and validation of rubrics
- 4 to 6 SMEs per component = 24 SMEs
- Average of 2 days of development for each component
- Honorarium of $500 per day
- Psychometrician facilitation – 2 days prep + 8 days facilitation
- Cost $50,000

7 • Validate Scoring Rubrics for all Components

Review and confirmation that rubrics align with competency requirements.

- 2 new SMES per component = 8 SMEs
- 1 day for validation per component
- Honorarium of $500 per day
- Psychometrician facilitation – 1 day prep + 4 days
- Cost $20,000

Costs for phase 2 related to development of content and test items by subject matter expert practitioners and providers, for the period from early 2018 through to and including the completion and approval of the first examination form for test administration in the latter half of 2019, are projected at $600,000.

There are also associated costs for SME travel, meals and accommodation expenses and for potential facilities rental and catering for meetings. See *Table 2.1* below for all projected costs.

Table 2.1

Activity	Cost
Development Process	
Develop cases for Components 1, 2 and 3	95,000
Validate cases for Components 1, 2 and 3	35,000
Develop content and scripts for videos in Component 4	60,000
Validate content and scripts for videos in Component 4	20,000
Produce Component 4 videos	320,000
Develop Scoring Rubrics for all Components	50,000
Validate Scoring Rubrics for all Components	20,000
	$ 600,000
Additional Associated Costs	
SME travel, meals and accommodation expenses	70,000
Facilities Rental and catering for meetings	50,000
	$ 120,000
Total	**$ 720,000**

Phase 2 Development Costs and Funding Model

At this point in the development process, it is assumed that the new national law practice qualifying assessment agency will have been formally constituted. Ongoing operational costs including management and staffing, as distinct from assessment development costs, will have been integrated into budgeting activities and will be supported by revenues generated from phase 1 examination fees, on a cost recovery basis.

Development costs for phase 2 are comparable to phase 1 but predominantly relate to provider services for production activity as opposed to subject matter expert participation. Some activities such as script writing and video production management will be supported by existing administrators or contracted out to expert providers such as accredited adult educators, skilled in the development of case-based scenarios used in testing environments. The most significant cost will be in video production to create an accumulation of content for a full year of testing.

Funding of this segment of the development process would mirror the financing structure chosen for phase 1 development.

These decisions will be taken in 2017 in preparation for establishing the 2018 budget for the national law practice qualifying assessment system.

PHASE 3
National Law Practice Qualifying Assessment
Project Development Plan

National Law Practice Qualifying Experiential Learning Requirement

A significant component of law admission processes for law societies is the experiential learning requirement. Articling programs or their alternatives in each jurisdiction vary somewhat in form and length, but overall the expected learning outcomes – the skills and tasks achievements – are the same.

As the requirement of the admission process that depends on support of the profession to meet its objectives, regulatory control over learning outcomes in articling is significantly more challenging. However, greater clarity in training expectations and increased focus on documenting achievement of validated learning outcomes will assist all law societies to confirm appropriate entry level skills achievement prior to admission.

Redefining Experiential Learning

For purposes of the national law practice qualifying assessments, the activity of articling or its alternatives would remain the domain of each participating law society. To validate articling or alternatives as an appropriate experiential learning activity in preparation for admission to the legal profession, law societies would move forward with an agreement to support increased accountability, and therefore increased integrity and defensibility, of this component.

The experiential learning activities of the admission process become even more important in light of the outcomes of the national competency profile. It is clear from the foundational competency development work undertaken under the oversight of the National Admission Standards Steering Group, that articling or some other form of experiential learning continues to be a foundational expectation of training for new lawyers. It is the only component capable of supporting hands-on formative learning. But it must be acknowledged that articling systems across the country lack consistency, validated performance targets, and a sufficient level of regulatory oversight and accountability to serve as a defensible component of qualifying assessment.

One method of overcoming the perceived deficiencies of current experiential training programs is to develop, and require the application of, specified learning outcomes based on standardized performance reporting. It is quite feasible to do so while still recognizing that there must be sufficient flexibility in the application of learning outcomes to accommodate a myriad of experiential opportunities – not all workplace experiences are created alike.

This plan proposes the development of a framework of standardized competencies achievements during experiential learning including a formal set of performance criteria and performance ratings supporting the assessment of those skills and tasks. In this way, regulators,

supervisors and candidates will be in a better position to meet and confirm expectations for entry level competence.

Those skills and tasks have been articulated in the competency profile and the criteria for demonstration of appropriate performance can and should be included in the competencies validation and blueprinting process that will take place during phase 1 development. This will ensure that all law practice assessment processes are aligned and delegated to the appropriate component of the law practice assessment activities.

Development Process for Phase 3

In the development of the experiential component of the qualifying assessments required by law societies, focus will be on the following components:

A. Defining the scope of experiential assessment
B. Development of experiential assessment performance criteria and rating systems
C. Creation of formal documentation and reporting requirements for experiential assessments

A. Defining the scope of experiential assessment

The national law practice qualifying assessment development team will be in a position, with assistance from retained psychometricians, to develop a performance assessment framework and then assist participating law societies to integrate the learning requirements into formal reporting procedures.

The objective of validating experiential learning requirements will be to move toward a standardized assessment rubric for practical experience requirements regardless of the format of the articling program or alternatives. This phase of assessment must recognize that the disparity in the size of candidate groups across the country may make complete consistency of ***form*** for experiential learning an unreasonable expectation, but that consistency in the ***function*** of the experiential assessment requirement can and should be defined and measured.

Fundamentally, the defensibility of articling programs can only be enhanced if the legal profession accepts the notion that there is a need to improve the performance achievements during that process and to more consistently evaluate candidates.

By re-validating experiential learning through a psychometric review of skills and tasks requirements, the experiential training becomes more consistent and candidate entry level competency is enhanced.

B. Development of experiential assessment performance criteria and rating systems

Following the psychometric development of skills and tasks competencies achievement in a viable and defensible articling placement, a standardized set of performance criteria will be established with the assistance of practitioner subject matter experts. This process will acknowledge the tremendous diversity of professional environments within which a candidate may undertake experiential learning. It will integrate flexibility in the definition of the core skills and tasks competencies that will become the standardized expectations of achievement.

The criteria will support the creation of a performance rating system that can be applied consistently by all supervisors to assess candidate skills and tasks achievements. The criteria will be translated into appropriate competency achievement statements and a performance management process will be created to support assessments and feedback. This system of rating will utilize behaviourally anchored statements of achievement and will provide supervisors with a means and consistent prompts to score the articling candidate and provide feedback and reasons for that scoring.

Candidates for admission will participate actively in the performance rating exercises. They will improve their learning and development receiving appropriate feedback that is channeled to focus on core competencies leading to effective and ethical entry level practice.

C. Creation of formal documentation and reporting requirements for experiential assessment

The final development activity in phase 3 will be to create formal and consistent reporting mechanisms for supervisors and candidates. Guidelines and resources will be provided to enhance the performance management experience.

It is often assumed that members of the profession will be less likely to support an articling placement if the reporting obligations are increased. A recent experience in Ontario appears to dispel that notion.

The work of Ontario’s Articling Task Force elicited input from the profession that there was concern for the fact that articling experiences are not equivalent, calling the defensibility of articling into question. Many respondents in the consultation process indicated that the experiential learning component would benefit from greater definition. When this translated into new performance evaluation requirements, increasing the amount of time and effort that would be required to oversee an articling candidate, supervisors accepted the challenge and fulfilled all new obligations willingly and at a high level of quality.

In Ontario, significantly more onerous documentation and tracking requirements have initially been met with a 96% completion rate. Input indicates that providing supervisors with criteria and tools for use in performance review and feedback allows them to participate more meaningfully in entry level lawyer competence assurance, and they appear to be embracing this enhanced obligation.

Phase 3 Development Costs

Assumptions for Estimating Costs of Development in Phase 3

The following assumptions have been made to determine the development activities and estimate costs of the system of assessment that is described in this plan:

- Phase 3 competency assessment will be focused on skills and tasks achieved in an articling placement or alternative skills environment
- Assessment will be supported by performance criteria and rating systems
- Psychometricians will be retained to develop defensible criteria and behaviorally anchored rating scales
- Subject matter expert practitioners will be paid an honorarium to recognize the contribution made to supporting defensibility of law practice entry assessment
- Any law society subject matter expert participation will be in-kind
- All costs are calculated net of taxes.

Development Process and Costs

1 • Confirm scope of experiential learning competencies assessment

Practitioner SME teams, from across participating jurisdictions, working with Psychometricians to clarify skills and tasks achievements in articling placements.

- 12 SMEs
- 1 session of 3 days
- Honorarium of $250 per day
- Psychometricians – 2 days prep + 3 days facilitation
- Cost $22,000

2 • Develop performance criteria and rating scales

Practitioner SMEs and Psychometricians define the performance expectations in each skill or task.

- 12 SMEs
- 2 session of 2 days
- Honorarium of $250 per day
- Psychometricians – 1 day prep + 2 days facilitation
- Cost $20,000

3

- Validate performance criteria and rating scales

Different group of practitioner SMEs and Psychometricians review, refine, and validate.

- 12 SMEs
- 1 session of 2 days
- Honorarium of $250
- Psychometricians – 1 day prep + 2 day facilitation + 5 days final compilation into rating system
- Cost $26,000

Costs for phase 3 related to development of performance measures and rating systems by subject matter expert practitioners and providers, for the period from early 2018 through to and including the completion and approval of the first administration of the new articling performance standards in the latter half of 2019, are projected at $68,000.

There are also associated costs for technical development related to developing and providing the supporting reporting forms and materials in an online format for greater efficiency of use by supervisors and candidates. Other ancillary costs include SME travel, meals and accommodation expenses and for potential facilities rental and catering for meetings. See *Table 3.1* on the following page for all projected costs.

Table 2.1

Activity	Cost
Development Process	
Confirm scope of experiential learning competencies assessment	22,000
Develop performance criteria and rating scales	20,000
Validate performance criteria and rating scales	26,000
	$ 68,000
Additional Associated Costs	
Technical supports for standardized forms and reporting	150,000
SME travel, meals and accommodation expenses	60,000
Facilities Rental and catering for meetings	50,000
	$ 260,000
Total	**$ 328,000**

Phase 3 Development Costs and Funding Model

Phase 3 development will occur contiguously with phase 2. As these expenditures will be required during the same schedule as phase 2, the costs will be incorporated into the ongoing operational budget for the new assessment agency with decisions on funding taken in 2017 in preparation for establishing the 2018 budget of the new agency.

National Law Practice Qualifying Assessment
Annual Operation

Once the test formats have been developed and validated, the system will be ready to administer the admission examinations. The full day multiple choice examination is scheduled to commence after January 2018, the full day skills and tasks examination after January 2020. Annual operational costs set out in this section of the plan relate to anticipated expenditures to support all components thereafter.

The estimates of cost for the development of the process set out in the previous sections of this business and implementation plan included some investment in future development; for instance, the development of additional test questions or skills-based cases to ensure a sufficient accumulation of content and test items as the process moves forward. This will assist administrators to effectively manage the very first and next administration of assessments in the new regime, particularly in light of the rather aggressive time frames set out in this plan.

This section of the plan sets out the anticipated ongoing annual administration costs following completion of the development and implementation of phases 1, 2 and 3.

Assessment Development Expenditures

The system will benefit from input of practitioner subject matter experts who will act as ongoing advisors in this effort. In particular, a highly skilled and trained group of legal practitioners will be required to work with staff and psychometricians to support a variety of validation activities, including: reviewing all versions of the examinations; confirming passing scores for all test items; validating scoring rubrics for cases; assessing examination outcomes against expected results; and generally confirming that all aspects of the competency profile and blueprint are being adequately supported in accordance with internationally accepted norms for licensure.

Item writing for the full-day multiple choice examination will be undertaken, at a minimum, three times per year, for three days per session in each competency category. This assumes there will be a sufficient accumulation of test items banked after participating law societies contribute their item content. If not, then additional item writing sessions will be required for a few years. Case development for the full-day skills and tasks examination will also be undertaken, at a minimum, three times per year, for two days per session.

Content for the supporting reference materials will require review, revision, editorial and production annually, once again by practitioner subject matter experts and supporting staff. All test items must also be ‘tagged’ to the materials to ensure that the assessable competencies are integrated in accordance with the blueprint requirements.

In each activity, from participation on subject matter expert advisory groups through to subject matter expert content development, exemplary practitioners will be recruited to assist. It is proposed that they will be paid an honorarium of $500 per day.

Psychometricians will be placed on retainer to work with various subject matter expert groups as they continue to develop test questions and cases, monitor the application of the competency profile and blueprint to all aspects of the assessment system, and evolve the testing platform accordingly.

Anticipated costs related to ongoing development and psychometric defensibility is anticipated to be in the range of $1,200,000 annually beginning in 2020.

Assessment Format Expenditures

The estimated cost of providing a full-day examination through CBT, based on discussions with providers, will be in the range of $225 per candidate. For purposes of this business plan, it is estimated that there will be approximately 3800 test takers completing the two day examination for the first time. It is further estimated that approximately 25% of test takers will be required to retake the examinations one or more times. This results in an estimated 4750 or more candidates moving through the test taking environment per year.

For 4750 candidates, the CBT provider cost for one full day of testing is estimated to be $1,100,000 per annum.

Once the phase 2 skills-based assessment is added, the cost of CBT provision will increase to support admission testing serving 9500 or more test takers. For purposes of estimating ongoing operational expenses, and *factoring some cost reduction recognizing economies of scale* achieved through negotiation with the provider, this plan estimates annual CBT services in the range of $1,900,000 annually.

Assessment Scoring Expenditures

The phase 1 full day multiple choice examination will be scored electronically. Individual test results will be communicated via secure channels back to the national assessment agency. The appointed subject matter expert group will work with psychometricians to confirm final pass scores. The agency will then forward results to the participating law societies, also via secure channels, for integration into their respective candidate record keeping systems. As a result, significant technology and database systems development will be required to support phases 1 and 2.

The phase 2 case-based skills testing will require additional administration and costs related to scoring, including the need to have trained practitioner assessors manually score the results based on an established rubric. It may be possible to automate this scoring activity to the extent that in-person scoring sessions will not be required, saving significant time and facilities costs. The secure exchange of candidate test responses with trained practitioner assessors will be further explored, but for purposes of this plan, it is assumed to be achievable.

To assure the fairness and validity of phase 2 outcomes, significant investment must be made in the development of the scoring rubrics and the training of large numbers of qualified assessors.

To support this cost analysis, it is assumed each of the four components of the phase 2 assessment will require an average of 30 minutes to score – or two hours of assessor time to score one complete examination. This is equivalent to 9500 hours of scoring for 4750 candidates (3800 plus 25% rewrite) per year.

It is also necessary to allow for secondary scoring, in the event that a candidate receives a failed grade on the examination. All failed examinations must be evaluated by a different assessor to validate the results.

Rather than paying assessors at a daily rate, it would be more effective and economical to address the value of their contribution on a production model, by the number of examinations scored or re-evaluated. It is recommended that assessors receive $100 for each examination scored, and $50 for each examination re-scored.

Assuming two hours of time required to score one examination, or approximately three examinations “per day”, that would require approximately 1700 to 1900 “days” of effort during each calendar year to complete original scoring and re-scoring activities. Further assuming that assessors would be willing to commit 10 days of their time throughout the year to complete this work, the system will require at least 190 practitioners trained to support the effort.

Assessor training is a critical component of defensible licensure systems. Prior to each scoring session, a review of scoring protocols, rubrics and test samples will be required. This plan proposes that at least one-half of a day will be required from each assessor to undertake that training in advance of every scoring session. It is proposed that assessors will receive $250 for each training session.

The anticipated costs related to phase 2 scoring activities, per annum, consisting of the provision of honoraria to practitioner assessors for training and scoring time will be in the range of $650,000.

While it is feasible to rely on the good will of the profession and seek to have them participate as assessors free of charge, adding a value to the work emphasizes the importance of this activity in the public interest. These assessors will be guided through a valid and defensible process for vetting the competencies achievement of new candidates and should have their time and dedication to that task acknowledged. This small monetary recognition is reasonable in the circumstances, and represents a critical investment in and commitment to the profession’s acceptance of the process, by those who regulate it. It also acknowledges that subject matter expert participants are being paid for the provision of a service that is governed by the regulator, and they accept the protocols and apply them as required.

Operational Expenditures

The national law practice qualifying assessment entity will require a highly skilled full-time staff complement. A number of the management and staff of the organization must be formally accredited and/or highly experienced adult educators with expertise in licensure and assessment.

It is anticipated that a minimum of 12 – 15 full-time staff will be required to support the ongoing administration of the assessment system outlined in this plan. Estimated salary and benefits will be in the range of $1.5 million per year.

General program and office expenses are estimated in the range of $1.2 million and include various categories of fixed and variable expenses required to support the system.

Table 3.1 sets out anticipated annual expenditures for a fully operational national law practice assessment system.

Operating Costs for Ongoing Administration

This cost projection is based on an anticipated candidate cohort of 3800, assumes full cost recovery through the application of examination fees, and is calculated net of taxes. The projected candidate fee is for the first attempt of both examination days. Additional fees for further attempts at each examination will be derived on the basis of a cost recovery model.

Table 3.1

Expense Category	Annual Cost (2019 and beyond)
Assessment Activities	
Ongoing Development of Items, Cases, Reference Materials, Review and Analysis (SME Honoraria and Psychometrician Retainers)	1,200,000
CBT Provision and Services	1,900,000
SME Assessor Scoring Honoraria	650,000
	$ 3,750,000
Operations	
Salaries and Benefits	1,500,000
Program, and Other Consulting/Skilled Provider Contracts	200,000
Production, development, supports and services	300,000
Travel, accommodation, catering, facilities	200,000
Office Expenses, Technology Systems, Human Resources, Communications, Finance, Legal, Leasehold, other	500,000
	$ 2,700,000
Governance	
Board, Committee, Law Society liaison	100,000
Total	**$ 6,550,000**
Cost per Candidate (first writing, both test days, not including taxes)	**$ 1,724**

Governance

Interim Oversight for Development Process

During the transition process, which is defined as the period of time and activities up to and including the completion of all aspects of phase 1 of this plan, it is proposed that interim reporting be established under the oversight of the National Admission Standards Project Steering Committee of the Federation. Consideration will be given to modifying the composition of the Steering Committee for this purpose. The governance model for the transition process will be agreed upon with input from participating law societies.

In phase 1 of the development process, it is proposed that an interim Executive Director be appointed to implement the plan, as approved. Given the aggressive timelines for development of phase 1, the Executive Director should be able to focus on the hands-on development activities without the encumbrance of a complex committee structure. Managing a significant governance implementation at the same time as deriving the foundational assessment process is likely to be detrimental to meeting scheduled milestones. An oversight committee such as the Steering Committee can provide the appropriate oversight and policy direction.

Following phase 1 development, it is recommended that the participating law societies create an independent entity for purposes of continuing the implementation and fulfilling obligations of the national law practice qualifying assessment system.

New Governance Entity

The new permanent governance entity would be responsible for providing participating law societies with access to valid and defensible assessments for candidates seeking entry to the legal profession in Canada.

The new entity will require independence from the law societies to ensure that its activities and assessment processes remain consistent, fair and defensible, avoiding any suggestion of preferential treatment, bias or influence. The assessment results must stand for themselves as demonstrating the highest quality and defensibility of assessment processes, applied consistently and fairly, and supporting recognized international standards in professional licensure.

The permanent governance body should also be skills based. While further work is required to flesh out the details of the new governance entity, the intent is for participating law societies to determine how the body will be structured and constituted.

Addendum A

Blueprint Purpose and Development

A competency-based blueprint serves the following purposes:

- ensures the relevance of the assessment/examination by indicating links to the competency profile for entry level lawyer professionals
- maximizes the functional equivalence of alternative versions of the examination
- provides direction for content developers when writing new items for the examinations
- facilitates evaluations of the appropriateness and effectiveness of the examination by content experts and other stakeholders.

The competency-based blueprint advances these purposes by definitively stating what is assessed, for what purpose, to what extent, with what types of items, in what contexts, to what standards and provides documentation of the processes leading to each of these decisions.

A comprehensive blueprint development identifies key assessment information including the process, content, structure, context and scoring of the examination.

The blueprint will establish all of the following specifications for use in the assessment activities:

Process

- a clear statement of the purpose of the examination
- a definition of the candidate target population
- the methodology employed for all key blueprint activities
- a list of the content experts involved in the blueprint development process

Content

- competencies related to the purpose of the examination
- entry level lawyer competency weightings (the extent to which they will be represented on the examination)
- entry level lawyer competency categories (used to organize competencies to support provision of feedback to test takers – each category must be assessed by a sufficiently high number of examination items to provide reliable results)
- cognitive domain weightings of the examination (ensures competencies are measured at different levels of cognitive ability – knowledge/comprehension, application, and critical thinking)

Structure

- item format of the examination
- item presentation of the examination (individual, case, multiple response)
- response format of the examination (selected, constructed, written, computerized)
- examination length, duration and breaks
- assessment aids permitted for writing the examination

- percentage of ‘new’ content to appear on new versions of the examination

- number of experimental items to be assessed on each administration of the examination
- number of forms of the examination (versions)

Context

- client type specified in the examination (individual, family, population, community)
- client age and gender specified in the examination
- client legal situation specified in the examination
- client culture included in the examination

Scoring

- standard setting method(s) employed for the examination
- an overview of the scoring procedures of the examination
- acceptable statistical item characteristics.

APPENDIX 3

THE NATIONAL ADMISSION STANDARDS PROJECT

BACKGROUND SUMMARY

1. In 2009, the CEOs of the law societies and the Council of the Federation identified the need to develop national standards for admission to practice and the National Admission Standards project was launched. The project reflects an important strategic priority identified by the Council of the Federation: the development and implementation of high, consistent and transparent national standards for the regulation of the legal profession.

2. General oversight of the project is provided by a Steering Committee. The members of the committee are:
Don Thompson, Q.C., Executive Director, Law Society of Alberta, Committee Chair
Tim McGee, Q.C., CEO, Law Society of British Columbia
Alan Treleaven, Director, Education and Practice, Law Society of British Columbia
Jeff Hirsch, Thompson Dorfman Sweatman LLP, Council Vice-President and President-elect, and past president, Law Society of Manitoba
Allan Fineblit, Q.C., Thompson Dorfman Sweatman LLP and former CEO, Law Society of Manitoba
Laurie Pawlitza, Council member and past Treasurer, Law Society of Upper Canada
Robert Lapper, CEO, Law Society of Upper Canada
Diana Miles, Executive Director, Organizational Strategy / Professional Development and Competence, Law Society of Upper Canada
Lise Tremblay, CEO, Barreau du Quebec
Bâtonnier Bernard Synnott, former Bâtonnier, Barreau du Quebec
Darrel Pink, Executive Director, Nova Scotia Barristers' Society
Bâtonnière Marie-Claude Bélanger-Richard, Q.C., Federation past president and former Bâtonnière, Law Society of New Brunswick
Jonathan Herman, Federation CEO
Support to the Steering Committee is provided by Federation personnel as follows:
Frederica Wilson, Senior Director, Regulatory and Public Affairs
Stephanie Spiers, Director, Regulatory Affairs and project manager
Daphne Keevil-Harrold, Policy Counsel

3. The first phase of the project had two goals: the development of a profile of the competencies required upon entry to the profession, and a standard for ensuring that applicants meet the requirement to be of good character. Law societies have agreed on the benchmark for entry-level competence through the National Competency Profile, which has been adopted by 13 law societies on the understanding that adoption is subject to the development and approval of a plan for implementation.

Development of the National Competency Profile

4. The Federation engaged a consultant with expertise in credentialing, Professional Examination Services (ProExam) to ensure that The National Entry-Level Competency Profile for Lawyers and Quebec Notaries (“National Competency Profile”) was developed in accordance with best practices. ProExam guided work on the profile and senior admissions staff from five law societies played a critical role as members of a Technical Advisory Committee ("TAC").

5. The TAC drew from the various competency profiles in use by law societies across the country as their starting point, creating an outline that organized the competencies into substantive knowledge, skills, and tasks categories. A Competency Development Task Force comprised of 11 practitioners in their first 10 years of practice from every region in the country then fleshed out the profile. Members of the task force drafted a profile intended to reflect the tasks actually performed and the knowledge and skills actually required of general practitioners at the point of admission to the profession.

6. This draft was then reviewed by 30 practitioners identified and recruited with the assistance of law societies. The draft profile was also reviewed by a small working group of representatives of the Barreau du Québec and the Chambre des notaires du Québec to ensure that it is reflective of the nature of legal practice in Quebec.

7. In accordance with best practices, the revised draft profile was then validated through a survey of entry-level lawyers and Quebec notaries. Survey respondents were asked to rate each individual competency on two scales: how frequently they performed or used the competency; and how serious the consequences would be if an entry-level practitioner in their area of practice did not possess or was unable to perform the competency. Information was also gathered on the respondents’ practice area, practice setting and year of call to the bar. The data from the survey was used to refine the competency profile to ensure that it accurately reflected the competencies required of new practitioners today.

8. The work on the National Competency Profile was carried about between 2010 and 2012. The Council of the Federation approved the National Competency Profile in 2012. Between 2012 and 2013, thirteen law societies adopted the National Competency Profile.

Development of a National Good Character (suitability to practise) Standard

9. As part of the National Admissions Standards Project, the Federation has worked on developing a common good character standard. A Working Group comprised of staff from various law societies was established to develop a draft good character standard based on the principle that the standard must be clear, consistent, fair and defensible.

10. In July 2013, the Working Group presented its preliminary views in a Consultation Report and sought input from law societies and other interested stakeholders.

11. The Working Group received responses from most law societies, as well as from the Canadian Bar Association, several law professors and law students. Responses raised both policy considerations and operational concerns. Work on the good character standard is on hold while we focus on the assessment plan, and is expected to resume in due course.

Implementing National Admission Standards

12. The second phase of the project is focused on how law societies will assess the competencies in the National Competency Profile. Identification and assessment of the competencies required of applicants, appropriately focused professional training, and experiential learning are all important elements of national admission standards.

13. The Federation engaged ProExam to identify a range of options for assessment of the competencies in the National Competency Profile. ProExam's work was informed by advice from a newly composed seven-member Technical Advisory Committee (TAC) comprised of law society senior admission staff. The TAC and ProExam worked together throughout the spring and summer of 2013.

14. In the fall of 2013, the Federation circulated a Discussion Paper and a report prepared by ProExam that reviewed a range of possible methods for assessing the competencies.

15. Meetings were held with ten law societies in 2014 to consider ProExam's report and discuss options for assessment, including the need for a high level of consistency in assessment. The feedback from law societies provided direction on areas of common agreement.

16. The National Admission Standards Project Steering Committee drew from the feedback provided by law societies in developing a proposal on assessment and a detailed Business Plan.

17. The proposal and Business Plan will be shared with law societies in the summer of 2015. The goal is to discuss the proposal with each law society in the fall and winter of 2015, so that law societies are in a position to decide whether they will sign on to the plan by early 2016, recognizing that the timing will ultimately depend on when law societies are ready to move forward.

Engaging with Law Societies

18. Throughout the project, law societies have been kept informed about progress through various means including: targeted written communiqués; the Federation e-Briefing (electronic newsletter); teleconferences with admissions staff and CEOs, in-person meetings with elected leaders, staff, CEOs and other law society volunteers, and presentations to law society groups. Reports, papers and project updates have been distributed by email and made available on the Federation intranet. Some project documents are also available on the Federation's public website.

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November 12, 2015

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Dear Mr Conway,

I write, on behalf of the Council of Canadian Law Deans, in response to the August 2015 report of the National Admission Standards Project Steering Committee of the Federation of Law Societies of Canada on "Assessing Candidates to Ensure They Meet the National Standard" which you forwarded to me by letter dated 10 September 2015.

That report has been discussed at our meeting of 6 November 2015. There have also been initial discussions within several Faculties of Law across the country and among our students. It is fair to say, however, that those discussions have only just started.

We write now to urge that more time be permitted for consideration of the proposal. The proposal only reached us in mid-September. It is not available on the Federation's website, at least not to our knowledge, and thus has not had wide consideration. The proposal's impact would be substantial on students' accession to the profession and, indirectly, on the whole course of students' formation. It is important that the overall direction of the proposal be carefully considered before that direction is locked in. And yet the proposal states that "Law societies are being asked to make a decision by the end of 2015 to commit to the direction for moving forward outlined in this proposal," with "the technical work required to develop the assessment program" starting in "early 2016".

We do not want to take a firm position on any of the issues involved at this time. As stated above, our discussions within our faculties are at an early stage. But we do see the following issues as requiring careful consideration:

1. The national exams proposed here would take place within an evolving and complex system for students' preparation for the practice of law. It is unclear how the proposed exams would relate to the other components of the system.

In particular, while the proposal states that "Candidates will not be directly tested on those knowledge competencies ... that are also included in the common law degree national requirement" and much of the discussion of the exams focuses on skills, the multiple-choice form of the first of the two exams – the form, then, of half of the proposed new examination

regime – would appear to be adapted to the testing of knowledge rather than skills, and knowledge also bulks large in the description of the second exam. There appears to be substantial duplication, then, between the competencies taught in law schools and the expected scope of these exams. Does it make sense to have such an elaborate apparatus for the approval of law schools if the exams are then to be used to test the same competencies?

2. If indeed the purpose of the exams is to test skills, is the form of the assessment adapted to the purpose? One constant theme in theories of assessment is that form and content are not independent. If a specific form is chosen, that form will drive what can be tested. The forms specified here are not those typically considered appropriate to testing skills. As the discussion of OSCE assessment makes clear, cost has been a major consideration in the choice of form. Cost and efficiency are certainly legitimate concerns, but one nevertheless needs to ask whether, in the proposed system, one would be getting what one was paying for. Might one get better assessment of skills at less cost by improving skills assessment in articling and its alternatives? Those, after all, are the elements in the system where students take the skills that have been taught in law schools and apply them in concentrated fashion in professional settings.

3. Given the need for a foundation in substantive law for any skills exercises, and given that at least two subjects required by the competency profile have not been specified as mandatory in the common-law degree requirements (family law; wills and estates), what constitutes the subject matter of a national exam when the areas in question are provincial? The proposal contemplates a combination of national material and local exams, but the latter are voluntary to the different law societies and some areas of the competency profile would appear to have no truly "national" expression. In what sense is a non-jurisdictional approach to those areas an assessment of the law of Canada? One merit of dealing with assessment through the existing law-schools regime and through articling/LPP is that appropriate attention to variation among jurisdictions is built into the system.

4. It is unclear to us what precise issue or problem this proposal is designed to answer. Is it a failure of articling and the LPP to assess skills adequately? Is it something else? This proposal advances an elaborate and expensive system of examinations and testing centres. It is important that that system be adapted to a mischief has been clearly identified and assessed. Otherwise, one risks both a mismatch of problem and response, and an undirected expansion of the mission.

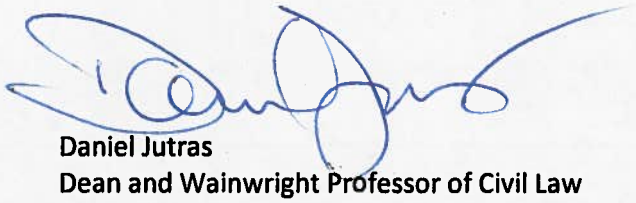
5. This is especially so when the proposed structure as a whole – law schools, articling/LPP, practical legal training in some jurisdictions, national examinations, local examinations – is going to be expensive, with implications both for law firm recruitment budgets and questions of equitable access to the profession. Clarity of focus will pay dividends in both these areas.

6. Finally, it would be wise to address more fully the governance of this system. The Federation's governance mechanisms are currently under review. Two themes in that review are a) the extent to which the mechanisms for decision-making in the Federation have secured sufficient participation and oversight by those bodies that hold the legal authority to regulate the law profession (the law societies); and b) the extent to which the committee structure of the Federation results in insufficient coordination among the Federation's elements. This proposal envisages the establishment of another "independent and skills based" governance body and

(perhaps a separate?) "independent assessment agency". How will the control and coordination of this initiative with other elements of the system be assured?

We very much want the arrangements for training for the profession to be robust. That, after all, is a central mission of each of our faculties. We are expressing our views now so that there can be a full discussion – and, we hope, resolution – of these issues. In this spirit, we are copying this letter to the leaders of the different law societies across Canada. In our view, it would be wise to consider and resolve these questions before the direction in the report is locked in. We urge that sufficient time be permitted for that to happen.

Sincerely,



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November 17th, 2015

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RE: LSBC Participation in the FLSC Proposed National Assessment Regime

Dear Mr. Walker,

I write to you as the President of the University of Victoria Law Students' Society (" UVic LSS"). It has come to our attention that the Federation of Law Societies of Canada ("FLSC") has asked the LSBC to indicate by mid-December 2015 whether or not they will participate in the proposed national assessment regime. It is our understanding that the LSBC is currently engaging in discussion on the matter. This proposal, if implemented, would significantly impact student admission to the legal profession. Therefore it is a matter of serious concern to law students across the province, and the UVic LSS wishes to convey our opinion with respect to your participation:

The University of Victoria Law Students' Society, speaking on behalf of the law student body, is opposed to the LSBC participating in the FLSC national assessment regime.

Our primary concerns regarding LSBC participation in the regime are threefold. First, students are concerned about the cost of administering the national exam. The FLSC proposal does not expressly state where the funds for implementing and administering this assessment test will come from, outside of indicating they "will largely be paid for by student fees". The cost of admission to the legal profession is already a significant burden on law students; we are worried about additional economic barriers for law students to enter the legal profession. Second, students are concerned about both the subject matter and format of the exam. The law varies greatly from province to province, for example, in wills and estates, making it difficult to assess on a national level. In addition, law students don't write multiple choice exams during law school. Third, students wonder what a national exam actually accomplishes. Law schools are already required to teach in accordance with the FLSC national competency profile and are subject to reporting requirements. Essentially, if law schools must affirm that their graduating students have attained the competencies required by the national profile, what would an additional exam add? Furthermore, there are already mobility agreements in place between the provinces to ensure that lawyers are competent in the jurisdiction they are practicing in. We have been unable to find a possible positive outcome that would result from this proposed national assessment regime.

In addition to the above concerns, we note the extremely short period of time granted to law societies for consideration of the proposal. The FLSC's request to have law societies indicate whether or not they will participate by mid-December of this year runs the risk of inadequate consultation with affected parties in addition to inadequate consideration of the proposal itself.

Sincerely,

Sandra Town

President | University of Victoria Law Students' Society
president.uviclss@gmail.com
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BY EMAIL

November 18, 2015

Dean Daniel Jutras
President
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RE: Federation of Law Societies of Canada National Assessment Proposal

Dear Dean Jutras,

I am writing further to Tom Conway's letter dated September 10, 2015 regarding the National Admission Standards Project Steering Committee's assessment proposal.

We understand that some law schools have questions about the assessment proposal. The National Admission Standards Project Steering Committee's thinking about the process for moving forward with the national assessment has evolved over the past few months based on feedback from law societies. We have prepared Frequently Asked Questions to provide up-to-date information on the National Admission Standards project. We hope that the FAQs will go some distance to addressing the questions raised by law school deans, faculty and students.

The three-phased assessment system outlined in the sample Business Plan attached to the proposal provides a model to help law societies conceptualize what the national assessment might look like. The sample plan incorporates the foundational elements of a national assessment system, although the form of the final assessment activities may change.

The foundational elements include a focus on skills assessment, the decision not to reassess any knowledge competencies that are already included in the common law degree National Requirement and the fact that the assessment stands alone: law school and NCA graduates who have studied the materials provided will be sufficiently prepared for the assessment.

The national assessment framework is not intended or expected to change the nature of current law school education in Canada or the relationship between law schools and legal regulators.

We request that you share this letter and the FAQs with your members at your earliest convenience. I invite you to contact me, Don Thompson, Chair of the National Admission Standards Project Steering Committee (Don.Thompson@lawsociety.ab.ca), or Stephanie Spiers (sspiers@flsc.ca) at any time to discuss the proposal.

Best Regards,

President

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

National Admission Standards Project
Frequently Asked Questions
(November, 2015)

On September 3, 2015, the National Admission Standards Project Steering Committee provided law societies with a document, Assessing Candidates to Ensure They Meet the National Standard: A Proposal for Moving Forward ("Proposal"), outlining a model for a national assessment system. At Appendix 2 of the proposal is the National Law Practice Qualifying Assessment Business and Implementation Plan ("Business Plan").

1. What is the proposal about?

The proposal is about the next steps in the development of national admission standards. Law societies across Canada have already agreed on the competencies required of new lawyers and Quebec notaries. The National Competency Profile has been adopted by 13 law societies subject to the development and approval of a plan for implementation.

The proposal sets out a plan for moving forward with the development of a national qualifying assessment system for admission to the legal profession in Canada. The proposal and accompanying Business Plan set out a possible model that is intended to reflect the foundational elements of a national assessment system. The precise details, including methods of assessment, the cost, the governance structure, etc. will be determined by participating law societies.

2. What is the Business Plan?

The Business Plan is developed as a sample to help law societies conceptualize what a national assessment system might look like. The model it presents contains the foundational elements of a final assessment system, including a focus on skills and reliance on law schools to assess knowledge. The final assessment system may be different from the model set out in the sample Business Plan.

3. Who are the proposal and Business Plan written for?

The proposal and Business Plan were written with law societies in mind. They are intended as a starting point for in-depth discussions with law societies to develop a mutually acceptable plan for achieving a national assessment system.

4. Will the assessment retest material from law school?

Law school programs must meet a common standard for their graduates to enter a law society admission program in Canada. The standard (called the National Requirement) requires that students demonstrate competency in relation to specified substantive legal knowledge, skills, and ethics and professionalism.

Teaching and assessing substantive legal knowledge is what law schools do best. The national assessment will not retest any of the substantive legal knowledge areas that have already been assessed in law school.

The national assessment will test skills, and ethics and professionalism, and there may be some overlap with the competencies in these areas that are assessed in law school as part of the National Requirement. The focus on assessing skills reflects their importance for competent legal practice. Given the breadth and depth of the skills and tasks in the National Competency Profile some duplication of testing may be necessary and appropriate.

5. Why is the focus on assessing skills?

Law societies consistently report that skills are the most important competency for success as a new lawyer or Quebec notary and the area in which new legal professionals experience the most difficulty.

Our experts prioritized the competencies in the National Competency Profile based on a survey of entry level legal professionals about the frequency of use of each competency and the consequences of a lawyer or Quebec notary not having the competency. This exercise confirmed that skills are the highest priority category of competencies to be assessed.

Candidates must be able to demonstrate that they have acquired the skills in the National Competency Profile. This is consistent with the approach of most law societies to assessment.

6. How will skills be assessed?

Our experts have confirmed that most skills can be effectively assessed through written tests that permit a wide sampling of cognitive abilities. For more complex skills, live demonstrations or simulations are preferable.

The proposal suggests four methods of assessment. The first method involves scenario-based multiple choice and single multiple choice questions. The second method includes questions requiring long answers using information supports (e.g. facts, case law), through to assessments requiring completion of a task, e.g., drafting an opinion, pleading, or case analysis. The third method involves simulated practice scenarios with interactive, audiovisual components in which candidates must apply more complex critical and analytical thinking skills. The fourth form of assessment involves demonstrated experience in the legal workplace (e.g., articling) or alternative environments.

These methods are subject to further discussion and agreement by law societies.

7. Does focusing on skills mean that substantive legal knowledge will not be assessed?

Although skills will be targeted for assessment, the knowledge competencies will serve as the foundation and context for all assessment activities.

There are some knowledge competencies specified in the National Competency Profile that are not included in the National Requirement, e.g., evidence, wills and estates, and the rules of civil procedure. Some of these knowledge competencies could also be assessed where they are considered critical to legal practice.

8. Will candidates have to pass two exams in order to practice law – one local and one national?

The model in the proposal is for one comprehensive, nationally developed and administered assessment system that would replace all existing law society exams and testing regimes.

If a law society considered it necessary to add a local law exam, it is likely that the local exam would be narrow in scope, addressing only the jurisdiction-specific concerns and avoiding duplication with the national assessment.

9. How will a national assessment address provincial or territorial law?

It is possible to assess skills in the context of national law. Where the assessment involves provincial or territorial law (e.g., the possible assessment of the knowledge competencies that are not in the National Requirement, or assessment of skills in the context of provincial or territorial law), the assessment will use questions that apply nationally but require jurisdiction-specific knowledge to answer. In this case, the answer key would vary from law society to law society. Using the same questions with differing answers is an accepted practice in the assessment field.

10. What will the national assessment cost and who is paying?

The precise cost will vary based on the assessment system eventually agreed upon and how many law societies participate. These details are yet to be finalized.

Some of the cost will be borne by law societies. Law societies will realize savings in the long term through economies of scale. It is anticipated that these savings will partially offset the cost of the national assessment and will be passed on to candidates.

Our expectation is that participating law societies will work hard to keep the overall costs to candidates manageable and as close as possible to current bar admission fees.

11. Will the national assessment apply to candidates who apply for admission to a law society in 2018?

The goal is to have the first phase of the assessment ready for implementation by 2018. This timeline is subject to what law societies decide about the final assessment time line and how quickly progress can be made.

12. How will the national assessment affect law society training programs?

A national approach to professional training will be addressed at a later stage of the project. Training is a significant issue and we divided the project in this manner to make it manageable. An iterative approach also ensures that the project maintains momentum and that the necessary time and resources can be dedicated to a national dialogue on training once the assessment phase is underway.

In the meantime, it is expected that law societies will align their training programs with the National Competency Profile. Modifications to training programs will be at the discretion of each society and a number of law societies have already begun to align their bar admission courses with the National Competency Profile.

The national assessment is designed so that candidates will be able to rely on their academic studies in law school and on any preparatory materials provided in relation to the assessment to succeed.

13. Will candidates get credit for skills-focused courses taken in law school?
Where skills-focused training is offered at a law school, it is conceivable that law societies will create exceptions to their admission requirements in recognition of the training; much as the Law Society of Upper Canada has agreed to do for candidates who will complete Lakehead's Integrated Practice Curriculum ("IPC"). Candidates who have successfully completed the IPC will be exempt from the Law Society of Upper Canada's experiential training requirement.

14. Will law school curriculum change as a result of the national assessment?
Law schools will not be obliged to offer additional courses or otherwise alter their curricula as a result of the national assessment.

Law students needn't take law school courses in the subject areas specified in the National Competency Profile in order to succeed in the assessment.

15. Will the National Requirement be expanded?
The National Admission Standards Project Steering Committee does not intend to recommend the addition of any of the knowledge competencies from the National Competency Profile not already included in the National Requirement.

The Federation recently established the National Requirement Review Committee ("NRRC") to undertake two primary tasks: 1) perform an initial review of the national requirement that graduates of all Canadian common law programs must meet to be eligible to enter law society bar admission programs; and 2) consider whether a non-discrimination provision should be added to the national requirement and if so in what form.

That committee has just begun its work. Consultation with the Council of Canadian Law Deans and those law school faculty or staff engaged in the compliance process of the National Requirement and with the Approval Committee is built into the committee's review and recommendation process.

The NRRC has already determined that its initial review will not result in changes to the competencies in the National Requirement. Possible changes to the competencies could be identified at this stage for future consideration.

16. How can students prepare for the national assessment?
Comprehensive study materials and tools for each phase of the assessment will be provided. The materials will cover all competencies addressed by the assessment, including those that form the basis of the skill and task assessment but are not tested directly (i.e., the knowledge competencies).

The study materials and tools will stand alone. In other words, students can rely on the materials and tools provided as the sole source for preparation for the assessment.

17. Will the national assessment apply to candidates with a Certificate of Qualification (CQ) from the National Committee on Accreditation (NCA)?

Yes. Persons with a CQ from the NCA are in the same position as a graduate of any common law program of a Canadian law school. They have met the National Requirement and are eligible to apply to a Canadian law society for admission to practice. The same requirements will apply to CQ holders as apply to all other candidates seeking admission to a law society.

18. What is the process for moving forward?

We have asked law societies to decide by December 15, 2015 whether they will participate in discussions about the details of the assessment system.

After this date, the law societies that wish to participate will develop a detailed assessment system together, including what will be evaluated and how, the schedules and timelines, the governance mechanisms, and the costs associated with developing and implementing a national assessment. We expect to have a clearer sense of the final assessment system by the end of March, 2016.

Each law society is being asked to decide whether to participate in the development and implementation of the new national assessment system by May 1, 2016.

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President Kenneth M. Walker, QC
Law Society of British Columbia
845 Cambie Street
Vancouver, BC
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24 November 2015

Dear President Walker,

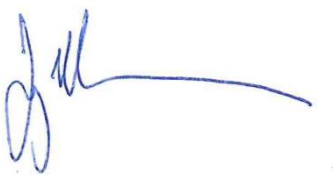
Please find attached a letter from the Council of Canadian Law Deans with respect to the assessment regime proposed by the National Admissions Standards Project Steering Committee of the Federation of Law Societies of Canada. You should be receiving a copy of this letter directly from the President of the Council, but I have taken the liberty of enclosing an electronic copy that can be circulated with the papers for the Benchers' meeting of December 4. In addition I have enclosed a letter from UVic's Law Students' Society for circulation.

In discussions within UVic Law following the preparation of the draft letter from the Deans, it became clear that we should also have directed our attention to the effect of Recommendation 27 of the Truth and Reconciliation Commission. We therefore developed the following addition to the points set out in the letter. Unfortunately it was developed too late for inclusion in the Deans' letter.

7. We are also surprised by the absence of reference to Recommendation 27 of the Truth and Reconciliation Commission, indeed of any reference to Indigenous content or involvement in the assessment regime. That recommendation specifically charges the Federation with ensuring that lawyers receive "appropriate cultural competency training" and specifies certain elements that the training should include. It would seem to make sense that the Federation's responsibility in that regard would be addressed in the assessment regime.

I know I speak for my colleagues at UBC and TRU when I say that we look forward very much to participating in the discussion at December 4's Benchers' meeting.

Sincerely,



Jeremy Webber
Professor and Dean of Law

The Law Society of British Columbia

Truth and Reconciliation Report: Call to Action #27

Lawyer Education Advisory Committee

December 4, 2015

Prepared for: Benchers

Prepared by: Alan Treleaven

Purpose: For Decision

Recommendation to the Benchers

The Lawyer Education Advisory Committee recommends that the CPD requirements, approved by the Benchers on September 9, 2011, be amended to include Aboriginal law and practice skills in the special two hour component, as follows:

> At least 2 of the 12 hours must pertain to any combination of professional responsibility and ethics, client care and relations, practice management, and Aboriginal law and practice skills, including the Truth and Reconciliation Commission's recommended "appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations," and "skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism."
>
> Stand alone as well as embedded content satisfy the 2 hour requirement.

Brief Background

The purpose of the proposed amendment is to encourage BC lawyers to obtain training as recommended by the Truth and Reconciliation Commission:

> 27. We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

The proposed CPD requirement would amend the current requirement:

> At least 2 of the 12 hours must pertain to any combination of professional responsibility and ethics, client care and relations, and practice management. Stand alone, as well as embedded professional responsibility and ethics, client care and relations, and practice management content satisfy the 2 hour requirement.

The subject matter covered by recommendation #27, without the proposed amendment, is nonetheless eligible for CPD credit. The proposed amendment is intended to add additional impetus.

The recommendation to add Aboriginal law and practice skills to the special two hour

component would serve as a bridge to fuller Committee consideration in 2016, when the Committee will review the CPD program pursuant to the Strategic Plan, and more fully consider recommendation #27.

The Lawyer Education Advisory Committee is also recommending in its Admission Program Review Report that the PLTC curriculum and assessments be strengthened by enhancing cultural competency content, including by integrating cultural competency into the curriculum in areas such as professional responsibility, interviewing and dispute resolution. However, recommendation #27 extends beyond bar admission training requirements by urging that that all lawyers, not only newly called lawyers, receive appropriate cultural competency training.

The Law Society of British Columbia

Access to Legal Services Advisory Committee – Year End Report 2015

Phil Riddell, Chair
Nancy Merrill, Vice-Chair
Joe Arvay, QC
David Mossop, QC
Lawrence Alexander
Claire Hunter
Raymond Phillips, QC

December 4, 2015

Prepared for:	Benchers
Prepared by:	Access to Legal Services Advisory Committee / Doug Munro
Purpose:	Information

Contents

Introduction

1. The purpose of this report is to advise the Benchers about the work the Committee has undertaken since its July 2015 report, and provide an overview of work that remains.

2. In the first half of the year the Committee engaged in an analysis of the Manitoba Family Law Access Centre Pilot. As was reported to the Benchers in July, the Committee concluded that the Manitoba project should not be duplicated in British Columbia. However, the analysis led to the Committee considering a proposal by Mediate BC that would establish a roster of lawyers to provide unbundled independent legal advice ("ILA") to people engaged in family law mediation.[1]

3. The Committee was advised that one key thing that is often missing in family law mediation is independent legal advice for the participants. There is a perceived need for some ILA before, during and after mediations to help people properly engage the process. Mediate BC is interested in establishing a roster of lawyers who would be amenable to providing unbundled ILA during family law mediations. In its initial phase, the project is exploratory, but is ultimately envisioned to link lawyers and mediators and establish (with the assistance of the Law Society Professional Development and Practice Advice Department), some "how to" type resources. Lawyers are often hesitant to provide ILA in family matters, and the thought is a coordinated roster with some supporting resources from the Law Society might foster greater participation.

4. The Committee concluded that the Mediate BC project was the sort of initiative that the Law Foundation might fund, and encouraged Mediate BC to make a funding proposal to the Law Foundation. In support of this, the Committee met with Wayne Robertson, QC and indicated that the Committee thought the concept had merit and would be an appropriate project to receive funding from the $60,000 access to justice funding the Law Society provides to the Law Foundation on an annual basis.[2]

5. The Law Foundation will be making funding decisions at its November 21, 2015 meeting. If that project is adopted, the Law Society will be called upon to generate some practice advice materials for lawyers providing unbundled legal services in support of family law mediation. The implementation or rejection of the project will

[1] Particulars are detailed in the July 2015 report of the Committee to the Benchers.

[2] For greater context: each year the Law Society provides $340,000 to the Law Foundation to support organized pro bono and access to justice initiatives. Approximately $280,000 of that fund is earmarked for pro bono (including a rental subsidy for Access Pro Bono) and the remainder goes to an access to justice fund. The Benchers have delegated to the Committee the task of meeting with representatives of the Law Foundation each year to discuss where the $60,000 might be usefully spent. The meetings are intended to be a good faith dialogue where ideas are shared. Ultimately, the Law Foundation determines where the funding is allocated.

reflect the completion of Strategic Plan Initiative 1-2(a).[3] An oral update should be available on this issue in time for the December Benchers meeting.

6. In the second half of 2015, the Committee explored the topic of contingency fee agreements in matrimonial disputes, and met with Johanne Blenkin, CEO of Courthouse Libraries BC to discuss several initiatives that organization is involved in. Work that had been identified by the Committee earlier in the year, such as the question of how to improve Aboriginal access to justice, and what to do to facilitate retired lawyers and judges providing pro bono legal services and/or mentoring, is still in progress.

Contingency Fee Agreements in Matrimonial Disputes

7. The Committee considered whether the requirement for court approval of a contingent fee agreement in matrimonial disputes relating to property is a barrier to access to justice, and ought to be modified. For this discussion the Committee met with Life Benchers Kathryn Berge, QC, Carol Hickman, QC and Gordon Turriff, QC, and received a written submission from Richard Stewart, QC.

8. The *Legal Profession Act* and Law Society Rules establish certain requirements for contingent fee agreements. In family law matters: "a contingent fee agreement for services relating to a child guardianship or custody matter, or a matter respecting parenting time of, contact with or access to a child is void" (s. 67(3)). The Committee was not considering whether these restrictions should change. Instead, the Committee was simply considering whether the provision relating to matrimonial disputes involving property ought to be modified.

9. Legal *Profession Act*, s. 67(4) states that "a contingent fee agreement for services relating to a matrimonial dispute is void unless approved by the court." The Committee considered whether this is a barrier to accessing justice, particularly for people who are in a relationship where the wealth and property is structured in such a manner that one person does not have the means to retain a lawyer. The question was whether the requirement for approval created further costs and presented an impediment to lawyers offering the contingent fee agreement in matrimonial disputes.

10. The Committee considered case law and public policy, and discussed with its guests – based on their professional experience – whether s. 67(4) of the Act constitutes a barrier to access to the services of a lawyer that ought to be modified or removed.

[3] Strategic Plan, Initiative 1-2(a) states: "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."

11. Based on its discussion, the Committee's preliminary conclusion is that, absent empirical evidence demonstrating the need to eliminate or modify s. 67(4), there is no compelling basis for changing the provision in the Act.

12. Particularly with respect to property division cases, the Committee questioned whether contingency fee agreements were necessary in order to obtain legal representation. It was observed that family law lawyers will usually finance litigation by not requiring payment of fees on a regular basis provided there are assets available to pay at the end of litigation, or in circumstances where there are assets the client can borrow against to pay a fee.

13. In arriving at its preliminary decision, the Committee discussed the several methods available to lawyers to secure payment of fees. This includes the ability to get a mortgage on property (in cases where property exists), assert a common law lien, or seek a charging order under s. 79 of the Act. It was observed that the technical issues surrounding the law of common law liens and charging orders is not well known and is fairly complex. This lack of knowledge acts as an impediment to lawyers representing disadvantaged people, confident the lawyer will receive reasonable remuneration for his or her work.

14. The Committee concluded that if lawyers better understood these options for securing payment, they might be more inclined to take on cases for clients who would not be able to pay fees until later in the process.

15. From this discussion, the Committee determined there are several complimentary courses of action that should be considered:

    a. The Law Society, perhaps in concert with the CBA and/or CLEBC, could create a half-day course designed to better educate lawyers as to the methods of securing payments in order to be able to take on cases from people who are not able to pay upfront retainers or on an hourly basis. The concept would be to develop the course to be delivered free of charge, perhaps through a webinar or other form of recorded content.

    b. Should discrete training be provided to the Law Society Practice Advisors from individuals who are knowledgeable about the technical and legal elements of common law liens and charging orders, so staff can have the proper background in giving practice management and ethical advice?

    c. Law Society resources that are aimed at how to operate a practice might also include materials relating to common law liens and charging orders, covering off the technical and legal elements.

d. With respect to contingency fee agreements in matrimonial disputes, the Committee proposes to consult with CBA family law chairs to get feedback as to whether s. 67(4) is a barrier to providing family law services. It may be that by casting a wider net regarding consultation, the Committee might gain valuable insight as to what role contingent fee agreements do, and might, play in matrimonial disputes. Those consultations might confirm the Committee's preliminary decision, or lead to a new perspective.

16. The Committee is seeking guidance from the Benchers as to whether this is a topic that the Benchers wish for the Committee to continue exploring, specifically in the terms set out above.

Meeting with Courthouse Libraries BC

17. At its October 29th meeting the Committee met with Ms. Blenkin to discuss the potential for the Law Society to partner with the Courthouse Libraries BC to support that organizations efforts to develop civil justice hubs at libraries throughout British Columbia. Courthouse Libraries is not seeking financial contributions from the Law Society. Rather, they are looking for opportunities to brainstorm how to build out the hub model and, perhaps explore what the Law Society can do with respect to policies, rules and precedents to support the work.

18. Courthouse Libraries BC and the Ministry of Justice have been in discussions about how to extend the reach of Justice Access Centres ("JACs"). At present there are JACs in Vancouver, Nanaimo and Victoria. The government is interested in trying to expand the reach of JACs but, as was explored in discussions between the Ministry and the Committee in prior years, it is not feasible to put JACs as presently conceived in every community. Courthouse Libraries provides legal information services through 30 libraries across British Columbia. They are exploring how those locations might be used to provide civil access "hubs" that leverage the foundational work of JACs.

19. At an exploratory level, the Committee discussed with Ms. Blenkin the possibility of the Law Society helping provide education resources and materials to encourage lawyers to provide unbundled legal services through the civil hubs. The Committee invited Mr. Blenkin to liaise with Mr. Munro to provide more details for the Committee to consider so it might ultimately make a recommendation to the Benchers.

Aboriginal Access to Justice

20. In its July 2015 report to the Benchers the Committee provided an update regarding its meetings with Mark Benton, QC, Executive Director of the Legal Services

Society, about what role the Law Society might take to improve Aboriginal access to justice.

21. As the Benchers will recall, based on the presentation by Suzette Narbonne and Tom Christensen (respectively, the Acting Chair and Former Chair of the Legal Services Society) at the September Benchers meeting, improving access to justice for Aboriginals is a top priority for the Legal Services Society. The Committee is waiting to receive further particulars from Mr. Benton regarding the Legal Services Society's proposed approach to consulting with Aboriginal peoples in BC.

22. The Committee is also aware that the Legal Aid Task Force might reasonably be expected to consider issues relating to how to improve legal aid for Aboriginal peoples. In addition, the follow-up work arising from the Truth and Reconciliation Commission report will likely occupy some of the Law Society's focus going forward.

23. The Committee stands ready, perhaps in concert with the Equity and Diversity Advisory Committee, to assist the Benchers in developing a unified approach to these various issues. Developing a consistent vision as to what the Law Society might usefully do to improve access to justice for Aboriginals is an important part of ensuring our work on discrete projects advance in a principled manner.

Retired Lawyers and Judges Providing Pro Bono and/or Mentoring

24. One topic the Committee identified earlier in the year was finding ways to engage retired lawyers and judges to do pro bono and/or act as mentors. At the October 29th meeting the Committee invited Margrett George, Deputy Director of Insurance for the Lawyers Insurance Fund (LIF) and Coran Cooper-Stephenson, Claims Counsel with LIF, to discuss the scope of coverage for retired lawyers engaged in pro bono. This was done in order to get a better sense of the origin of the coverage and the extent of coverage so the Committee could determine whether there are any barriers to greater participation.

25. Retired, non-practising and practising but insurance - exempt lawyers who are in good standing are able to provide various pro bono legal services through approved pro bono programs and enjoy the benefits of insurance coverage at no cost. Lawyers providing these services also avoid the usual financial consequences of a paid claim, if one arises. Part time practicing lawyers need not include their hours spent providing these services in the calculation of hours for eligibility for the part time discount. Retired members (and judges) can apply to have the application fee waived if all they are going to do is pro bono work.

26. The program of coverage arose from work the Law Society did in conjunction with the CBA BC Branch in the late 1990s to encourage greater participation in pro bono. In the early 2000s the Benchers adopted a model where the current insurance coverage would be extended at no cost to certain pro bono work of retired, non-practising and practising but insurance-exempt members.

    The program has worked well and have very few requirements. Details about the program are available on the Law Society website. In brief, lawyers who wish to avail themselves of the insurance coverage must provide the pro bono services through an approved program and to clients who fall below an economic threshold of need. And the lawyers must not be providing pro bono to someone previously known to them.

27. The programs are required to enter into a contract with LIF. There are three core requirements in the contract:

    a. The program uses the pro bono lawyer to provide free services to individuals who fall below a low-income threshold;

    b. The program is required to keep basic records to facilitate defending a claim. This includes the name of the lawyer, the client, the date, and a brief description of the matter. The program must also determine that the lawyer is a member in good standing. Record keeping allows LIF to verify coverage and defend claims;

    c. Lawyers are provided an information sheet that sets out what is covered and what is not covered. The limits of the program are clearly defined.

28. Beyond this, lawyers are provided best practices to avoid a claim arising and managing the relationship with the client.

29. Access Pro Bono is the main conduit between LIF and the pro bono programs. APB helps LIF determine that the proposed programs in fact fall within the criteria of coverage established. APB also posts information about approved programs on its website. Approved programs also report compliance with the contract terms once a year to LIF. APB is also involved with the initiative as the provider of a number of programs that are approved for the free insurance.

30. The contract is between LIF and the programs. In its facilitator role, APB is not a party to the contracts and lawyers who do pro bono through approved programs are not required to report to APB. To date, no eligible programs that have applied for approval have been refused.

31. What the Committee took from this discussion is that a working system of insurance coverage is in place to facilitate retired and other insurance-exempt lawyers to do pro

bono. The Committee considered that what might be required is the Law Society finding ways to better alert retired lawyers and judges who are members in good standing that there is insurance coverage for pro bono provided through approved programs. This might involve providing information to lawyers at the time they go on non-practicing status, part-time status or retired status and to judges who reapply for membership.

Mandate and Terms of Reference

32. The Governance Committee asked each Advisory Committee to submit a draft mandate and terms of reference, in order to develop a more unified approach. The Committee developed a proposed Mandate and Terms of Reference, referring it to the Governance Committee in September.

Broad Themes that Informed Discussion

33. As is the case every year, there are some perspectives that get articulated at meetings that do not necessarily lead to the creation of a project or recommendation. A few themes that have arisen from time to time are captured in this section.

    a. *How should the Law Society go about deciding where to focus its energy with respect to improving access to justice?*

34. This question arises most years, and speaks to a fundamental challenge. The Law Society recognizes the importance of improving access to justice. It is central to our mandate and is reflected in the Strategic Plan. However, often what appears to take place is that projects are proposed or solutions are suggested, and the Committee (or a Task Force) then essentially works backwards to determine whether to recommend the concept or decide how to implement it.

35. This approach presents several challenges. It is acknowledged that there is a broad and complex access to justice problem in our society. It is also acknowledged that the Law Society has a role to play, though what exactly that role ought to be is not well defined. It is also acknowledged that the Law Society has limited resources, including money, to tackle the problems.

36. The concern that gets raised is how do we know we are focusing on the right concepts? What evidence are we using to make our decisions? What steps should we take to measure whether our efforts make a difference?

37. These discussions are always challenging for the Committee, because it recognizes there is considerable need and that something needs to be done beyond sitting around and talking about problems. At the same time, the Committee recognizes focusing the Law Society's attention on meaningful reform is important and in the public

interest. How we go about deciding what we do can be as important as what we in fact choose to do.

38. As the Benchers commit to future, transformative projects involving the justice system and the practice of law, the Committee recommends such projects start with a grounded discussion of what the problem is that the project seeks to address. What measures can we identify to demonstrate our efforts are directed in the right place, what evidence do we have to support our initiatives, and what systems can we put in place to determine if our efforts have made a difference?

    b. What are we doing to help the poor and people of modest means to achieve access to justice?

39. Though the question is not necessarily asked in these terms, a recurring theme each year is whether the Law Society's efforts to improve access to justice focus on the right recipients. This question is different than the question of what logical foundation we use to support projects.

40. The Law Society's efforts to support pro bono, particularly through the funding it provides to the Law Foundation, clearly are intended to help facilitate access to justice for financially disadvantaged people. Other initiatives, such as unbundled legal services and the creation of Designated Paralegals, were more expressly designed to help people in the economic middle class.

41. Because the Law Society has not articulated a clear vision as to what its role is with respect to advancing access to justice, or ensuring the rights and freedoms of all people, the Committee struggles on occasion to know whether enough is being done to support access to justice for the most economically vulnerable members of our society.

42. Over the years, the pendulum can swing fairly far between two view points on access to justice, where at the extreme ends lie two philosophies: 1) the Law Society's efforts should be directed at the poor and working poor, and 2) the Law Society's efforts should be directed at people who can afford to pay something for a lawyer, but not the market rate. Because the Committee does not have guidance on this, the views tend to change from year to year depending on the constituency of the Committee. To an outside observer, this coupled with the prior observation, can appear to make various approaches to access to justice seem arbitrary and not aligned to an underlying vision.

    a. Collaboration and Consultation

43. A recurring theme in current access to justice literature is the need for broad-based collaboration and consultation to take place. Justice Cromwell's Action Committee

on Access to Justice in Civil and Family Matters highlighted the importance of collaborative and coordinated efforts in its October 2013 report, *Access to Civil & Family Justice: A Roadmap for Change.* The concern addressed by Justice Cromwell's committee is that if everyone continues to tackle problems in silos, we will have a fractured landscape of access to justice initiatives and reforms.

44. The Committee is mindful of this in its discussions and has suggested its Mandate and Terms of Reference include: *Explore opportunities for collaboration with third parties to advance the Law Society's Strategic Plan Goal relating to access to justice and legal services, and to better understand issues for potential inclusion on future Strategic Plans.*

45. Of necessity, the Committee is required to be of a size that is functional and be constituted in such a manner that there is a strong representation of Benchers. This structure is important in order to have manageable meetings and to be able to ensure the Benchers are invested in the work of the Committee. What this requires, however, is the need to consult and collaborate with individuals and organizations whose perspectives need to be heard and who may not be present in the Committee structure.

46. The Committee is of the view that Access to Justice will only be improved if the efforts of individual organizations take place within a broader framework and understanding of society's needs, and that requires consultation and collaboration.

47. With respect to collaboration and consultation, the Committee also recognizes the need to avoid having collaboration and consultation turn into a series of petitions to the Committee to have the Law Society provide funding for access to justice projects and initiatives. This is particularly important in light of the prior two observations. Optimally, the collaboration and consultation will lead to a better informed Committee and better informed Benchers table when it comes to establishing strategic priorities and allocating Law Society resources.

48. In 2015 the Committee engaged in extensive consultations. We reached out to invite external participants to attend discrete meetings, join in the discussion and share their views. At the March 5, 2015 meeting, CBA BC branch President Alex Shorten attended to participate in the discussion about the Manitoba Family Law Pilot. At the October 29th meeting, Richard Fowler, QC attended on behalf of the Trial Lawyers Association to participate in the discussion about a wide range of projects Courthouse Libraries BC is involved in.

49. For its work on reviewing the Manitoba Project, the Committee consulted directly with staff at the Law Society of Manitoba to develop a more detailed understanding of the project. As noted, this ultimately led to meetings with Kari Boyle and Carol W. Hickman, QC (life-bencher) to discuss the ILA mediation proposal. As part of its

annual meeting to discuss the access to justice fund, it met with Wayne Robertson, QC. In July the Committee consulted with Mark Benton, QC to discuss what role the Law Society might play in improving access to justice for Aboriginals, particularly in conjunction with efforts of the Legal Services Society. In October, the Committee consulted with Ms. Blenkin of Courthouse Libraries.

50. The process of consultation and collaboration is not new for the Committee. Every year it meets with individuals and organizations in order to better fulfill its monitoring function and advise the Benchers. It is important to continue to develop these relationships and to work collaboratively to improve access to justice for British Columbians.

Conclusion & Request for Bencher Input

51. As detailed in this report, the Committee seeks guidance as to whether the Benchers want it to explore with Law Society staff (and other committees as required) the following:

    a. Should the Law Society, perhaps in concert with the CBA and/or CLEBC, create a half-day course designed to better educate lawyers as to the methods of securing payments in order to be able to take on cases from people who are not able to pay upfront retainers or on an hourly basis? The concept would be to develop the course to be delivered free of charge, perhaps through a webinar or other form of recorded content.

    b. Should discrete training be provided to the Law Society Practice Advisors from individuals who are knowledgeable about the technical and legal elements of common law liens and charging orders, so staff can have the proper background in giving practice management and ethical advice?

    c. Should Law Society resources that are aimed at how to operate a practice, such as the eBook practice manual that is under development, also include materials relating to common law liens and charging orders, covering off the technical and legal elements?

    d. With respect to contingency fee agreements in matrimonial disputes, should the Committee consult with CBA family law chairs to get feedback as to whether s. 67(4) is a barrier to providing family law services?

    e. With respect to encouraging pro bono by retired lawyers and judges, should the Law Society provide information about pro bono insurance coverage to lawyers at the time they go on non-practicing, part time and retired status, as well as to retired judges who are reapplying for membership?

52. Based on the Benchers decision regarding the questions above, materials will be created for the 2016 Committee to carry on the work that remains on these issues.

/DM

The Law Society of British Columbia

Year-End Report

Equity and Diversity Advisory Committee

Satwinder Bains (Acting Chair)
Jamie Maclaren (Acting Vice-Chair)
Linda Locke, QC
Daniele Poulin
Michelle Stanford
Elizabeth Vogt, QC
Sarah Westwood
A. Cameron Ward (in abstentia)

December 4, 2015

Prepared for: Benchers

Prepared by: Equity and Diversity Advisory Committee / Andrea Hilland

Purpose: For information

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Introduction

1. The Equity and Diversity Advisory Committee ("Committee") is one of the four advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers in connection with those issues.

2. From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and maybe asked to develop the recommendations or policy alternatives regarding such initiatives.

3. The purpose of this report is to advise the Benchers about the work the Committee has undertaken since its July 2015 report.

Topics of Discussion: June to December 2015

4. The Committee met on July 9, September 24, October 30, and December 3, 2015. The following initiatives have been discussed by the Committee between July and December, 2015.

Aboriginal Lawyers Mentorship Program

5. The Aboriginal Lawyers Mentorship Program was launched in 2013 and entered its third cycle in September, 2015. The Committee continues to support, monitor and assess the Program. Notices about the Mentorship Program have gone out via the Benchers Bulletin, and the CBA Aboriginal Lawyers Forum also sent out a recruitment notice through its online publication.

Truth and Reconciliation Recommendations

6. The Committee has also been discussing the Truth and Reconciliation Commission's Recommendations, which were unanimously supported by the Benchers at the October 30, 2015 Benchers meeting. Recommendation 27 was specifically directed at law societies and lawyers, and a number of additional Recommendations are also pertinent to the legal profession. The Committee will continue to support the work of the Benchers in the development and implementation of strategies to actualize relevant Recommendations.

Supporting Aboriginal Law Students and Lawyers

7. In 2000, the Law Society of BC generated a report entitled "Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers," (the "2000 Report") which contains a number of recommendations. In 2015, the Law Society revisited the 2000 Report to identify which recommendations have been implemented, which remain outstanding, and

whether additional recommendations are required. In 2016, the Committee will do additional work to reconsider the recommendations from the 2000 Report in light of the Truth and Reconciliation Commission's Recommendations.

Justicia in BC

8. The Justicia Project (facilitated by the Law Society of British Columbia and undertaken by law firms) has been actively underway in British Columbia since 2012. Recommendations for enhancing flexible work arrangements, improving parental leave policies, and tracking gender demographics were approved by the Benchers in December, 2014. Recommendations for fostering business development, promoting leadership skills, and developing paths to partnership for women lawyers are now complete, and will be presented to the Benchers for consideration in January of 2016.

9. The next stage of Justicia will encourage smaller and regional firms to adopt and implement the model policies and best practices that have been developed. A communications strategy has been developed to encourage the implementation of the recommendations in the smaller firm and regional context. This outreach will begin in January, 2016.

Justicia Education Society Collaboration

10. In 2014, the Justice Education Society (JES) approached the Law Society of BC with an idea to bring the best practices from the Justicia Program to smaller and more regional firms. In October of 2014, Jan Lindsay, QC (then President of the Law Society of BC) signed a letter of support for the JES's application for funding from Status of Women Canada to improve the economic prosperity of women. This funding application was successful, and JES met with representatives from the Equity and Diversity Advisory Committee to provide an update in July, 2015.

11. The JES held a meeting on September 20, 2015 to discuss their progress. Attendees at the meeting included representatives from the JES, the Law Society of BC, the CBA Women Lawyers Forum (BC and National Branches), the University of British Columbia Faculty of Law, and the University of Victoria Faculty of Law. This working group has prepared and distributed a survey regarding gender issues in private practice as part of a needs assessment. Survey results are expected on November 30, 2015, and the next working group meeting is scheduled for December 10, 2015.

Maternity Leave Benefit Loan Program Review

12. An initial review of the maternity leave benefit loan program is now complete. Based on that review, the Committee is proposing a major shift from the originally envisaged program. The original program was developed by the Women in Law Task Force, and was intended as a direct response to the disproportionate number of women who leave practice after having

children. The Committee would like to pursue a new approach: making the benefit available to all parents. This approach would be aimed at increasing accommodation of parenthood in the legal profession overall, which is inclusive and supportive of women because it assumes parental responsibilities should not be gender specific.

13. The Committee has tasked Law Society staff with redesigning the program in 2016.

Diversity and Inclusion Award

14. The Committee developed a description and criteria for an award to honour a lawyer who has made positive contributions to diversity and inclusion in the legal profession in British Columbia. The award will be given in acknowledgement of individuals and groups who were historically excluded from the practice of law due to discriminatory barriers. The Benchers unanimously approved the award description and criteria at the September 25, 2015 Benchers meeting. The Diversity and Inclusion Award will be awarded in 2016. Law Society staff is now coordinating the logistics required to implement the award.

Equity Ombudsperson Program Review

15. Work on a formal review of the Equity Ombudsperson Program continues.

Mandate and Terms of Reference

16. The Governance Committee asked each Advisory Committee to submit a draft mandate and terms of reference, in order to develop a more unified approach. The Committee developed a proposed Mandate and Terms of Reference, referring it to the Governance Committee in October.

The Law Society of British Columbia

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

David Crossin, QC, Chair
Leon Getz, QC, Vice Chair
Craig Ferris, QC
Jon Festinger, QC
Jan Lindsay, QC
Gregory Petrisor
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December 4, 2015

Prepared for:	Benchers
Prepared by:	Rule of Law and Lawyer Independence Advisory Committee/ Michael Lucas, Manager, Policy and Legal Services
Purpose:	Information

Introduction

1. The Rule of Law and Lawyer Independence Advisory Committee is one of the four advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers on matters relating to those issues. From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and may be asked to develop the recommendations or policy alternatives regarding such initiatives.

2. The lawyer's duty of commitment to his or her client's cause, and the inability of the state to impose duties that undermine that prevailing duty, has been recognised as a principle of fundamental justice.[1] The importance of lawyer independence as a principle of fundamental justice in a democratic society, and its connection to the support of the rule of law, has been explained in past reports by this Committee and need not be repeated at this time. It will suffice to say that the issues are intricately tied to the protection of the public interest in the administration of justice, and that it is important to ensure that citizens are cognizant of this fact.

3. The Committee's mandate is:

    - to advise the Benchers on matters relating to the Rule of Law and lawyer independence so that the Law Society can ensure

        - its processes and activities preserve and promote the preservation of the Rule of Law and effective self-governance of lawyers;

        - the legal profession and the public are properly informed about the meaning and importance of the Rule of Law and how a self-governing profession of independent lawyers supports and is a necessary component of the Rule of Law; and

    - to monitor issues (including current or proposed legislation) that might affect the independence of lawyers and the Rule of Law, and to develop means by which the Law Society can effectively respond to those issues. The Committee was particularly concerned about the provisions of Bill C-51 (the *Anti-Terrorism Act, 2015*) and was pleased to see the Law Society make an effort to engage in the debate on that Bill.

4. The Committee has met on January 28, March 4, April 8, June 12, 2015, July 8, October 8 and December 9.

[1] Canada (Attorney General) *v.* Federation of Law Societies of Canada, 2015 SCC 7, [2015] 1 S.C.R. 401

5. This is the year-end report of the Committee, prepared to update the Benchers on its work in 2015 and to identify issues for consideration by the Benchers in relation to the Committee's mandate.

Topics of Discussion in 2015

Public Commentary on the Rule of Law

6. Following on its discussions in 2014, the Committee made recommendations to the Benchers that it be authorised to identify appropriate topics on the rule of law and to post or publish a brief article, commentary, or other form of public comment, as appropriate. After discussion, the Benchers approved the proposal at their July meeting

7. The recommendation was focussed on Strategy 3.1 of the Strategic Plan, to "increase public awareness of the importance of the rule of law and the proper administration of justice," and results from the Committee's conclusion that, in the course of undertaking its monitoring function, it often identifies news stories or events that bring attention to the rule of law, or lack thereof, and exemplify the dangers to society where it is either absent, diminished or, perhaps, threatened, from which the Committee could usefully select appropriate instances for comment.

8. The Committee spent some time at its meetings in the fall discussing how it could address the proposal that the Benchers had approved.

9. In the late summer, and following a further discussion on how pervasive surveillance may affect the legal profession and the rights or expectations of clients who require legal assistance, the Committee prepared a commentary on the issue. It has been submitted to the Advocate, and it is expected to be published in the next issue.

10. Other issues require a more expeditious response. For example, a column in the Law Society Gazette (UK) drew attention to the treatment of a lawyer, Li Heping, one of approximately 200 lawyers and their staff who were detained by the Chinese government. Mr. Li was a prominent human rights lawyer. Some press reports noted that perhaps one of the reasons for the Chinese government's action was that human rights lawyers had begun to become "folk heroes" in China for standing up to corruption or the dictatorship of local authorities. The crux of the issue was that Mr. Li had simply disappeared. No-one could find him. Whether or not he was actually guilty of anything the government may have attributed to him, concerns about his disappearance without trace in a country that (as noted in the column) "has the pretence of being subject to the rule of law" should raise concerns. People should not just disappear.

11. The columnist in the Gazette wanted to know where Mr. Li was. He asked those in the profession who could – those who used social media, or other publicity - to do what they could to raise the issue.

12. It struck the Committee that were it organised itself to utilise social media such as Twitter to be able to "re-tweet" columns such as this, more could be done to raise issues of concern about the rule of law. No commentary would necessarily need to be made, but issues could be drawn to the attention of those using social media who may follow it. The use of such media would, perhaps, meet the desired outcomes of the proposal approved by the Benchers in July. The Committee could publicise issues important to its mandate, while raising public awareness on important issues.

13. The Committee therefore agreed to investigate developing a social media presence in its own name to that end. It expects to further this discussion at its December meeting.

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

14. The Committee discussed in some detail the objects and duties of the Law Society as set out in Section 3 of the *Legal Profession Act* in connection with the Rule of Law in order to assist in the preparation of materials for the Benchers Retreat in May 2015.

15. The Committee has previously identified that section 3 of the *Act* engages the Rule of Law. The Committee believes that a statement of principle could clarify the meaning and practical implications of Section 3, while also taking adequate account of the relationship between the Law Society's mandate and the Rule of Law.

16. Consequently, an object of the Retreat was to build a common understanding of how the provisions of section 3 – and particularly s. 3(a) – inform the Law Society's activities, by examining developments in access to justice, exploring the scope of directives that the section presents, and discussing opportunities to advance the objectives of the section.

17. So far, it has identified that the relationship between the Law Society and the various levels of government is an underlying principle of importance. The government has an overall responsibility for the justice system and the Law Society has a particular responsibility for the protection of the public interest in the system. It is evident to the Committee that each must work to the same end and that requires open communication, and that may be a general principle. A better understanding of government proposals or initiatives and how these affect the public interest, including core tenets of the profession that exist to protect public rights may be an important underlying principle.

18. The Committee has begun to identify principles that would assist in synthesising the relationship between the Society's mandate and the rule of law. It will continue with its work with a view toward creating a working definition of the section to inform the future work of the Law Society.

National Security Agency (US) and Communications Security Establishment Canada

19. As the result of an enquiry from a lawyer about a lawyer's duty with respect to communications with a client in the face of revelations that most electronic communication appears to be open to review by the National Security Agency in the United States and the Communications Security Establishment in Canada, the Committee obtained direction from the Executive to consider the topic.

20. The Committee devoted some time last year to a preliminary consideration of the matter, agreeing that for lawyers, two issues are raised by the matter:

    - section 3 and the public interest in balancing privilege and *Charter* values against the need for state surveillance for public safety; and

    - professional obligations to preserve confidences and privilege. If a state is capturing such documents but one doesn't know the parameters under which the state is viewing them, how can one advise a client about the security of information provided to a lawyer?

21. Recognising, however, that it was not expert in understanding the issues or complications that electronic monitoring of communications raised, the Committee sought some guidance from an expert.

22. To that end, Professor Michael Geist (currently the Canada Research Chair in Internet and E-Commerce Law at the University of Ottawa) attended a meeting by conference call to give the Committee an overview of issues raised.

23. The Committee's initial intention was to develop and recommend to the Benchers guidelines for lawyers to follow in order to best protect professional obligations, as well as the possibility of undertaking some education or training about risks.

24. While the intention expressed above still remains important, the issues raised in Professor Geist's presentation vividly drew to the Committee's attention how pervasive and serious unlimited or unchecked surveillance can be. The Committee wanted to do more to draw the threat that surveillance can have on the rule of law to the profession and the broader public's attention. To that end, it focussed its initial public communication task on the subject of surveillance by writing a commentary for publication in the Advocate. It is also investigating hosting a public presentation that would include Professor Geist.

Alternate Business Structures

25. This Committee continues to monitor in general the development of alternate business structures in England, Australia, and the debates in other parts of the world concerning whether or not to implement such proposals.

26. The Committee is also aware of efforts being undertaken through the Law Society of Upper Canada and by the law societies of the three prairie provinces to begin some discussion on the topic and it will continue to monitor and participate in those discussions as it is able to do. It has noted that the Law Society of Upper Canada appears to have rejected for the time being the concept of "full" ABSs.

27. The Committee is encouraged that this topic has been identified as an issue for consideration on the Law Society's Strategic Plan and will assist in its development as required.

Judicial Appointment Process to the Supreme Court of Canada

28. The Committee discussed briefly, at its January meeting, the issue of Judicial Appointments to the Supreme Court of Canada, noting that the current approach seems to lack in process and, insofar as there is any stated process, it is not always followed.

29. It noted that the issue has not been advanced since some efforts were undertaken with the Federation of Law Societies in 2008.

30. The Committee would like to give further consideration to this issue in the future with a view to developing, for consideration by the Benchers, a position on a constitutionally sound process for submission to the government.

Magna Carta – 800th Anniversary

31. The Committee itself, as well as through staff, has been involved in planning two events to commemorate the 800th anniversary of the Magna Carta. As part of its mandate, the Committee had been considering ways to celebrate that anniversary.

32. Events at Government House in Victoria and at the Law Courts Great Hall in Vancouver on, respectively, July 28 and July 29 were planned principally through the Attorney General's Ministry, but with the support of the Law Society and with some involvement through Law Society staff member Charlotte Ensminger.

33. With the approval of the Executive Committee, the Committee created an essay contest for high school students writing on Magna Carta, the rule of law, and its importance to Canadian society and values. Unfortunately, response to the contest in the time planned was not sufficient, and the deadline was extended to December 31.

Rule of Law Index

34. Each year, the World Justice Project publishes a "Rule of Law Index." Canada is ranked 14th out of 102 countries in the 2015 index. While this overall rank may appear high, in the context of the other developed countries on the list, it is relatively low. The developed Commonwealth

countries (UK, Australia, New Zealand) all rank higher, as do several European countries. Singapore, Republic of Korea, and Japan also rank higher than Canada.

35. While recognizing that an index such as this is somewhat imprecise as it is based on a limited sample from three cities within each country, it is somewhat dispiriting that Canada has been ranked below other countries against which we might like to presume we should rank higher. The Committee plans to give this outcome some further consideration, perhaps with a view to challenging the profession to work to improve the perception of the rule of law in Canada generally.

The Law Society of British Columbia

2015 – 2017 Strategic Plan Update and Review

December 4, 2015

Prepared for:	Benchers
Prepared by:	
Purpose:	Review and recommendations for the Strategic Plan moving into 2016

Strategic Plan Update and Review

I. Introduction

The Benchers approved the 2015 -2017 Strategic Plan earlier in 2015. The Plan is premised around three goals: that the public will (1) have better access to legal services; (2) be well-served by an innovative and effective Law Society; and (3) have greater confidence in the rule of law and the administration of justice. These three goals have been called "aspirational" and likely will form the backbone of strategic plans for a number of years.

Each of the goals are broken down into a number of strategies and initiatives. These were identified by the Benchers on the information available at the time the plan was instituted. From time to time, both need to be reported on and reviewed. Generally, reporting is done in July and December, while a review is usually undertaken in December. The purpose of the report and review is to assess how the Law Society is coming along in implementing the strategies and initiatives to achieve the goals, to determine whether any of the current work needs to be recalibrated, and to decide whether anything has happened that warrants the creation of a new goal, strategy or initiative (which will usually mean postponing the work on, or removing, some other strategy or initiative).

II. Report on and Update of the 2017 – 2015 Plan

Attached to this report is the Update of the current Strategic Plan. It outlines what work has been undertaken on the various initiatives, and what work has not yet started.

III. Review of the 2015 – 2017 Strategic Plan – Current Initiatives

1. Better Access to Legal Services

(a) Legal Service Providers

Strategy 1-1 is to increase the availability of legal service providers, and the first initiative is to follow up the recommendations of the two task force reports (the "Final Report of the Legal Service Providers Task Force" (2013) and the "Report of the Legal Services Regulatory Framework Task Force" (2014)), both of which were unanimously approved by the Benchers. Combined, the reports envision an expansion of properly trained and regulated legal service providers (in addition to lawyers), to help address the need for access to affordable legal services. The vision adopted was for a unified regulatory regime for all legal service providers under the Law Society.

The 2014 report recognised the need for legislative amendments in order to permit the Law Society to regulate groups of service providers who were not "lawyers." A request for a legislative amendment was made and discussions have been undertaken with the government to that end.

The recommendations for the creation of newly credentialed and regulated legal service providers stand unimplemented today. A considerable amount of work has, however, been undertaken concerning discussions toward a possible merger of regulatory (including credentialing) functions with Notaries Public in BC as was recommended in the 2013 report, coupled with a possible expansion of notarial scope of practice. Examining how to qualify notaries in areas of expanded scope of practice that notaries have sought in the last years has fallen to the Qualifications Working Group, chaired by Maria Morellato. This work all directs itself to Initiative 2-2c, under the heading of the goal of creating an innovative and effective regulatory body. It is of course also relevant to Initiative 1-1 a, but has a much narrower focus. The focus of the work on merging regulatory functions with the notaries has therefore come at the cost of working on credentialing and regulating new categories of legal service providers – an initiative that the Benchers considered was important to improve access to legal services.

Some thought needs to be given on where to focus Law Society resources as we move into 2016 because the initiatives are of considerable importance. For example, while not mentioning our work directly, the Chief Justice of Canada in her speech at the CBA Convention in August noted that the assumptions that only lawyers are permitted to provide legal services to clients through specific types of organisations no longer prevail. New demands and expectations for meaningful access to justice are being created, eroding the fundamental assumptions upon which the legal profession of the past was built. The trick, she noted, is to provide services better and more efficiently while maintaining professional standards. She cautioned "(f)lexibility and innovation, yes. Abandonment of core professional values, never." Initiatives such as those under examination through Initiative 1-1 speak to the Chief Justice's comments directly. They are trying to find ways to provide legal services, through new sorts of providers, without sacrificing professional standards and values.

What should be the strategic intent of the initiative moving into 2016? Should we continue only to focus on regulatory merger with another existing group of legal service providers, or should we recalibrate and re-invigorate the work remaining from the Legal Services Regulatory Framework Task Force?

The outcome that needs to be kept in mind is the Attorney General's stated view that, in order to be considered for the legislative calendar for 2018, she would like the details of a proposal for legislative amendment by the end of 2016.

The Executive Committee considered the topic at its November 18 meeting, and recommends that the Law Society should re-invigorate its work on developing a framework for the regulation of existing or new stand-alone groups of legal service providers who are neither lawyers nor notaries, as recommended in the Final Report of the Legal Service Providers Task Force in December 2013.

The Committee acknowledged that considerable efforts have been made through the Qualifications Working Group to address issues relating to scope of practice discussions with the notaries, which have been related to the initiative of regulatory merger. The Committee therefore recommends that the Qualifications group should continue its work and have a report to the Benchers by mid-January, regardless of completion. The newly constituted Benchers should then be given sufficient background on the subject, together with the report, to enable a decision to be made on how to proceed.

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

(a) Monitoring the Federation's development of national standards for admission requirements

This matter is reflected as Initiative 2-1b of the current plan. Work was not scheduled to be underway on the initiative as it awaited the completion by the Federation of its work on the subject. It has raised itself to a higher level of prominence recently by reason of the Federation's release of its National Admissions Standards Assessment Proposal Report, which outlines a proposal for national exams as a precondition of bar admission across the country. The Lawyer Education Advisory Committee has been giving the matter its consideration.

The Benchers will have seen the letter to the Federation, signed by the President, outlining concerns about the process undertaken by the Federation Steering Committee and with the proposal itself. Further work will need to be undertaken that was not initially contemplated when the Strategic Plan was created in order to further evaluate what the proposal might mean for the Law Society's current Admission Program, including PLTC, together with the work currently being undertaken for the review of the Admission Program (Initiative 2-1a).

Whether or not the Law Society ultimately supports with the Federation proposal, the Executive Committee recommends that necessary resources be identified to ensure that it is thoroughly considered.

3. New item – Calls to Action from the report of the Truth and Reconciliation Commission

This issue does not appear anywhere on the current Strategic Plan, and is one of those examples of things happening after a plan is set that require reconsideration of the plan.

The Benchers have endorsed the calls to action in the Report. A news release has been issued saying that "the challenges arising from the [Truth and Reconciliation Commission's] findings and recommendations is one of the most important and critical obligations facing the country and the legal system today" and that "the Benchers will embark upon a consideration of an action plan to facilitate the implementation of the report's recommendations" which "include a number of legal issues currently impacting Aboriginal communities [such as] child welfare, overrepresentation of

Aboriginal people in custody and the need for enhanced restorative justice programs, the disproportionate victimization of Aboriginal women and girls, Aboriginal rights and title (including treaty rights), the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*, unresolved residential school claims, and issues concerning jurisdictional responsibility for Aboriginal peoples."

Having made these assurances, it is self-evident that they must form part of the organisation's Strategic Plan.

The initiative could logically fit as a new initiative under the Plan's third goal that the public will have greater confidence in the administration of justice and the rule of law, as the calls to action involve actions that will reconcile Aboriginal people and the rest of the population by resolving or ameliorating historical injustices. While the calls to action may not all be directly aimed at the legal profession, their implementation will largely depend on the engagement of lawyers.

Alternatively, the issue may be of sufficient overall importance to warrant adding a fourth goal to the Strategic Plan of "Addressing Calls to Action from the Report of the Truth and Reconciliation Commission."

The Executive Committee recommends that the TRC initiative be recognised in the Law Society Strategic Plan and that resources be identified to address it as a priority item in 2016.

IV. Priorities Moving Into 2016

Overall, taking into consideration the matters raised above together with matters the benchers have identified as important, five strategic priority items are recommended by the Executive Committee for 2016:

1. Addressing the Calls to Action form the report of the Truth and Reconciliation Commission;
2. Settling on the direction of work for Legal Service Providers with an aim to developing a proposal for the government by the end of 2016 in connection with our request for legislative amendments;
3. Pursuing the work of the Law Firm Regulation Task Force (the description of the Task Force's current work is found in the Update attached);
4. Undertaking the work of the Legal Aid Task Force that was recently created by the Benchers to develop a principled vision for the Law Society on publicly funded legal aid;
5. Addressing the Federation's National Admissions Standards Assessment Proposal in connection with the Law Society's examination of its own Admission Program.

MDL/al

The Law Society of British Columbia

2015 – 2017 Strategic Plan

Our Mandate

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

> (a) preserving and protecting the rights and freedoms of all persons,
>
> (b) ensuring the independence, integrity, honour and competence of lawyers,
>
> (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
>
> (d) regulating the practice of law, and
>
> (e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

Our Goals

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

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

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

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

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

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

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

1. The public will have better access to 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.

Status – December 2015

The Legal Services Regulatory Framework Task Force made recommendations in December 2014 that outlined seven areas of law in which new classes of legal service providers could be permitted to practice.

The Task Force recommended that the Benchers seek a legislative amendment to permit the Law Society to establish new classes of legal service providers and there have been discussions with the Ministry of Justice and Attorney General to that end. Further information on this initiative is contained in the memorandum attached to this Update.

Initiative 1–1(b)

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

Status - December 2015

Initiatives on both Aboriginal and Gender continue through the Aboriginal Mentoring Program and the Justicia Program. Efforts have been made to improve diversity on the bench and work is underway to consider ways to encourage more involvement of equity seeking groups in Law Society governance.

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.

Status - December 2015

The Access to Legal Services Advisory Committee determined that the Manitoba project was not viable to duplicate in BC. It preferred a proposal by Mediate BC to set up a roster to match family law mediators with lawyers prepared to provide unbundled independent legal advice to participants in mediation. Mediate BC has sought funding from the Law Foundation to support the creation of the project and the Committee, as part of its annual meeting with the Law Foundation to discuss the $60,000 access to justice fund, supported the proposal. The Committee's December 2015 report to the Benchers provides greater detail, and it is anticipated we will know whether the proposed project has been granted funding at that time.

Initiative 1–2(b)

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

Status - December 2015

Staff wrote to the Deputy Attorney General following up on issues and a substantive reply has not yet been received. Further work will depend on the nature of the reply. In the meantime, staff continues to monitor activities concerning development of JACs.

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.

Status - December 2015

The Legal Aid Task Force has been created by the Benchers. A mandate has been approved, and the task force members have been appointed. The first meeting is expected shortly.

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.

Status - December 2015

A report with recommendations has been prepared by the Lawyer Education Advisory Committee and will be considered at the December 4 meeting of the Benchers.

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.

Status - December 2015

The Federation's National Admission Standards Project Steering Committee recently circulated a proposal concerning proposed national assessments. The Lawyer Education Advisory Committee's Report to the Benchers under Initiative 2-1(a) includes an analysis and recommended response.

Initiative 2–1(c)

Conduct a review of the Continuing Professional Development program.

Status - December 2015

This topic will be considered by the Lawyer Education Advisory Committee in 2016.

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.

Status - December 2015

Work on this project is underway. To date we have gathered evidence on the impact of remediation and its duration, and the effectiveness of remediation in reducing lawyer complaints and increasing competence. The data analysis will be completed in late January 2016. In 2016 work will be undertaken on gathering / analyzing a series of recommendations.

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.

Status - December 2015

The Lawyer Education Advisory Committee's discussions about these programs are underway as part of its examination of the current admission program. The Committee's conclusions will form part of its Report under Initiative 2-1(a).

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.

Status - December 2015

The Law Society has done a preliminary report, and information has been gathered from Ontario, which is undertaking its own analysis of ABSs, and the UK and Australia, which have permitted ABSs. The Law Society is monitoring consideration of ABSs currently taking place in the Prairie provinces.

No task force has yet been created to examine the subject independently in BC.

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.

Status - December 2015

The Law Firm Regulation Task Force has been created. A consultation paper and survey have recently been completed.

Initiative 2–2(c)

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

Status - December 2015

Discussion on this topic continues. Working Groups have been created to (1) examine educational requirements for increased scope of practice for notaries (as proposed by the notaries) and (2) examined governance issues that would arise in a merged organization. Further information on this initiative is discussed in the memorandum attached to this Update.

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.

Status - December 2015

The Communications department has developed a communications plan, and it is being engaged to, for example, obtain interviews on local radio stations on relevant issues.

Initiative 3–1(b)

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

Status - December 2015

Work on this initiative has not yet commenced.

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.

Status - December 2015

Some work has begun by, for example, creating the high school essay competition on Magna Carta as developed by the Rule of Law and Lawyer Education Advisory Committee and promoted through the Communications Department. Work on engaging directly with the Ministry of Education has not yet begun.

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.

Status - December 2015

This topic was introduced for discussion at the Bencher Retreat in May, 2015. The information gathered at that retreat is being considered by the Rule of Law and Lawyer Independence Advisory Committee with a view as to how it can be incorporated into Law Society policy.

Initiative 3–2(b)

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

Status - December 2015

A proposal from the Rule of Law and Lawyer Independence Advisory Committee was approved by the Benchers in July 2015. The Committee prepared its first comment – a commentary for The Advocate on the issues that pervasive surveillance raised for lawyers.

A staff working group has been struck by the Chief Executive Officer in order to engage staff on how the Law Society may express a public voice on issues, which will report to the Management Group in December 2015.

The Law Society of British Columbia

Memo

To: **Benchers**

From: **The Complainants' Review Committee:**

- Peter Lloyd, Chair
- David Corey, Vice-Chair
- Edmund Caissie, QC, Bencher
- Sarah Westwood, Bencher
- Julie Lamb, non-Bencher
- Amrik Narang, non-Bencher

Date: **November 2, 2015**

Subject: **Progress Report – 2015 to date**

INTRODUCTION

The Complainants' Review Committee ("CRC") was established in 1988 "to give unhappy complainants a procedure to have their complaints reviewed by an impartial body". The CRC reviews complaints that have been closed under Law Society Rule 3-8 (not valid; cannot be proved; or not serious enough to warrant further action). The CRC reviews the file materials to determine whether an adequate investigation was conducted and whether the decision to close the file was appropriate. If the CRC disagrees with the decision to close the file, it may refer the complaint to the Discipline Committee or the Practice Standards Committee. The CRC Terms of Reference are set out at **Attachment 1**.

PROGRESS

In 2012, the CRC decided to conduct its meetings reactively as file review requests were received. Consequently, if a large number of CRC requests were received in a given month, two meetings were scheduled for the following month, rather than one. This procedure continues to be followed and, as a result, there is no longer any backlog of files.

STATISTICS

Below is a snapshot of the CRC statistics to date.

Outcome of Reviews	2012	2013	2014	2015
Total # of Files Reviewed	58	60	66	34
No Further Action	55	58	65	32
Additional Information Requested	1[1]	1[2]	2[3]	1[4]
Referral to Discipline Committee	2	2	1	2
Referral to Practice Standards Committee	0	0	0	0
Remaining # Files to be Reviewed	0	3	2	9[5]

1 After receiving and reviewing the additional information, the CRC ordered that no further action be taken.

2 After receiving and reviewing the additional information, the CRC referred the matter to the Discipline Committee.

3 After receiving and reviewing the additional information, the CRC ordered that no further action be taken.

4 After receiving and reviewing the additional information, the CRC referred the matter to the Discipline Committee.

5 All 9 matters are scheduled to be reviewed at the CRC's December meeting.

As set out in the following table, the percentage of closed files resulting in CRC requests has ranged from a high of 14.7% in 2014 to a low of 10.4% in 2012.

Year	# of Files Closed under Rule 3-8 (with a right of review)	% of Closed Files Resulting in CRC Request
2012	559	10.4%
2013	493	12.8%
2014	463	14.7%
2015	375	11.5%

The Law Society of British Columbia

November 20, 2015

Jeff Hirsch
President
Federation of Law Societies of Canada
World Exchange Plaza
1810 - 45 O'Connor Street
Ottawa, Ontario K1P 1A4

Ken Walker, QC
President

Dear Jeff:

Re: National Admission Standards Assessment Proposal - Position of the Law Society British Columbia

I am writing in response to the National Admission Standards Project Assessment Proposal circulated by the Federation National Admission Standards Steering Committee ("Steering Committee") on September 3, 2015.

The Benchers of the Law Society of British Columbia will consider the assessment proposal on Friday, December 4th at their monthly meeting. Although the Law Society of British Columbia is a strong proponent of effective national admission standards, and has been an active participant on the Steering Committee, it is unlikely that our Benchers will endorse the assessment proposal in its current form.

We have two significant concerns:

1. First, we have significant concerns with respect to the content of the proposal, and our view that the proposal does not adequately deal with matters of provincial law, attempts to duplicate by online testing the in-person skills assessments that are done in the Law Society of British Columbia's Professional Legal Training Course ("PLTC"), relies far too heavily on multiple-choice testing as a method for assessing the competency of lawyers, and is unduly expensive;

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2. Secondly, we are concerned about the governance process itself, and our view is that the Steering Committee lacks the authority to set the terms on which the Law Society of British Columbia and other law societies are to be included in or excluded from the project.

Content of the Proposal

The Benchers' Lawyer Education Advisory Committee has been carefully considering the assessment proposal in the context of a concurrent review of BC's PLTC program, pursuant to our own strategic plan.

In the course of our extensive review of PLTC, we have consulted with the profession at large, newly called law lawyers, two and three year call lawyers, and the Deans of the BC Law Schools with respect to the form, teaching and assessment methodology and content of PLTC.

With respect to the Federation's Assessment Proposal, we received the proposal at the same time that our Committee was examining PLTC and the Admission Program in BC as a whole. Accordingly, our review of the Federation's Assessment Proposal was done in conjunction with the review of our own program.

As part of our review of the National Admission Standards Assessment Proposal, our Committee consulted with the BC Law School Deans on September 24th, and has been following up with meetings at each of BC's three law schools.

On October 29th our Committee met by telephone with Frederica Wilson and Stephanie Spiers to discuss the proposal, including concerns and suggestions for other practical options.

The major points of contention that have emerged include the following:

1. The absence of an opportunity to propose options outside the three phase assessment model advanced by the Steering Committee;

2. The significant costs involved. In British Columbia's case, this would be in addition to Law Society costs for administering an articling program, operating our own PLTC program and, particularly, testing

provincial law and practice, which we believe to be absolutely essential for persons seeking to practice law in BC;

3. That in British Columbia's case, knowledge of several areas law, such as Family, Commercial, Wills and Estates, Rules of Procedure, and Real Estate, cannot be assessed adequately without reference to provincial law. (For example, how can a "national assessment" adequately assess students who practice in a Torrens land registration system? As rules of procedure and laws with respect to wills and estates differ throughout Canada, how can they be examined nationally?)

4. The dominant focus on 10 to 12 hours of online testing, with an overreliance on multiple choice examinations;

5. That much of the Phase One testing duplicates the skills already required for the law degree competencies (application of knowledge, including analytical reasoning, fact analysis, legal analysis and reasoning, problem solving), and is therefore unnecessary and needlessly expensive;

6. The inadequate assessment of the highest priority skills (e.g. advocacy, interviewing) by relegating them to online testing and to articling principals, who are not professional legal educators, where the possibility of bias cannot be eliminated, and where there would be no assurance of quality standards or psychometric defensibility;

7. The lack of specific information and planning about the critically important and interrelated roles of bar admission training, articling, student assessment and law school education.

The Law Society of British Columbia has identified other options that should be considered, and we are of the view that the Steering Committee should not on its own decide to close the door on an important broader discussion. Other options worthy of consideration could include:

1. accrediting provincial and territorial bar admission programs on the basis of the national competencies;

2. asking individual law societies to commit each in their own way to implementing the national competencies in their training and testing programs;

3. permitting individual law societies to utilize some, but not all of the elements of the planned assessment model.

Governance

As a matter of governance, it is essential that Council first determine whether to authorize the Federation Steering Committee's request to law societies to decide whether to participate in, or otherwise be deemed to withdraw from, the next step in the national admission standards project.

The Steering Committee does not have this authority on its own, and in terms of proper governance, will be exceeding its authority as a committee. A Federation committee cannot be permitted, without express direction from Council, to set the terms on which individual law societies are to be included in or excluded from the project and, moreover, cannot unilaterally put in motion a process that leads to asymmetry among law societies, including asymmetry in funding and Federation resourcing.

This governance matter is of critical importance, and must be addressed by Council before the project is permitted to move forward.

In the interests of achieving a true national solution, this Law Society asks Council to direct that the Federation work together with all law societies and the Council of Canadian Law Deans to consider options in addition to the three phase assessment model advanced by the Steering Committee.

Surely the Federation and all law societies have an obligation to make every effort to seek consensus before even considering a process that would invite law societies to simply declare themselves either in or out of the project. There is no imperative that requires law societies to make a commitment in a hurried manner, particularly because the proposal was only circulated to the law societies on September 3rd. It would be very unfortunate if we do not take the necessary time to collaborate on the critical next steps in the process.

In conclusion

We in BC ask Council first to put this aspect of the governance process back on track, and then to ensure that the Federation takes whatever time is necessary for law societies to consult and work together in a process that is open, practical, visionary, and which also recognizes the differences in each law society's approach to professional training.

Yours truly,

Ken Walker, QC

cc: Law Society Presidents
cc: Law Society CEOs

BY EMAIL

November 26, 2015

Ken Walker, QC
President
Law Society of British Columbia
845 Cambie Street
Vancouver, BC
V6B 4Z9

Re: National Admission Standards – Letter of November 20, 2015

Dear Ken,

I am writing to acknowledge receipt of your letter of November 20, 2015 regarding the National Admission Standards Project Assessment Proposal recently provided to the law societies by the project Steering Committee.

The upcoming meeting of the Federation Council, scheduled for December 17, 2015 in Ottawa, will provide a good opportunity to discuss the concerns you have raised on behalf of your law society. I have asked that the matter be added to the agenda for that meeting.

Thank you for bringing your concerns to my attention.

Sincerely,

Jeff Hirsch
President

The Law Society of British Columbia

November 5, 2015

Sent by email

Board Resourcing and Development Office
730 – 999 Canada Place
Vancouver, BC V6C 3E1

Attention: Natalya Brodie, Director

Ken Walker, QC
President

Dear Ms. Brodie:

Re: Appointment of Benchers

I write further to my letter to your office of June 30 regarding the appointment of four new Benchers.

As described in our Notice of Position, diversity of gender, cultural heritage and knowledge of the communities served by the Law Society are considerations in seeking appointees and we appreciate that the Board Resourcing and Development Office takes these considerations into account in its work.

While your office may have already considered the appointment of someone from the aboriginal community as a Bencher, we would like to emphasize that this is a community which we would very much like to see represented at the Bencher table, particularly as the Benchers undertake their review and implementation of the Truth and Reconciliation Commission's Report and Recommendations. If there is an opportunity to appoint a member of the aboriginal community as one of the four new Benchers, we would encourage that appointment.

Thank you for your consideration. Should you have any additional questions, please contact Ms. Collins Goult at 604 443-5706.

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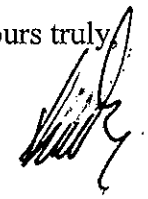
Yours truly,



Ken Walker, QC
President, Law Society of BC

c Timothy E. McGee, QC
Chief Executive Officer, Law Society of BC

The Law Society of British Columbia

November 5, 2015

Sent via email and post

The Honourable Jody Wilson-Raybould
Minister of Justice and Attorney General of Canada
284 Wellington Street
Ottawa, ON K1A 0H8

Ken Walker, QC
President

Dear Minister:

On behalf of the Law Society of British Columbia, I wish to extend our congratulations on your recent appointment as Minister of Justice and Attorney General for Canada. It is a pleasure to see a practising member of the British Columbia Bar in the position, and we wish you the best of success in your new portfolio.

The Law Society of British Columbia would like to bring to your particular attention concerns that we had expressed to the previous government about the *Anti-Terrorism Act 2015* (Bill C-51). These concerns were outlined in our submissions to the Standing Committee on Public Safety and National Security. We would welcome an opportunity to discuss our concerns with you, or your Ministry in general, more fully, and are available at your convenience to do so.

We would also like to advise you that on October 30, 2015, the Benchers unanimously agreed that addressing the challenges arising from the Truth and Reconciliation Commission of Canada's Findings and Recommendations is one of the most important and critical obligations facing the country and the legal system today. We have read the Truth and Reconciliation Commission's, including recommendations 27 and 28 that speak specifically to the legal profession. We recognize however that reconciliation goes beyond those two recommendations, and include a number of legal issues that currently impact Aboriginal communities. Many

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of the report's recommendations are not directly aimed at lawyers, but their implementation largely depends on the engagement of lawyers. We intend to begin immediately to develop initiatives to effect such engagement, and look for an opportunity to assist your Ministry in ensuring that the recommendations of the Commission are acted upon.

We would welcome your attendance at any of our Benchers meetings as your schedule permits. Please do not hesitate to contact me, or my successor, E. David Crossin, QC, who will take office on January 1, 2016.

Again, we wish to extend our congratulations to you.

Yours truly,

Ken Walker, QC
President

KW/al

cc. E. David Crossin, QC

→ RENEE
BENCHLEY
FYI

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October 23, 2015

Mr. Tim McGee
Executive Director
The Law Society of British Columbia
845 Cambie St
Vancouver, BC V6B 4Z9

Dear Mr. McGee,

It is my great pleasure to inform you that the Faculty of Law has recommended to the University of Victoria Senate that the The Pamela Murray, Q.C. Entrance Scholarship be awarded to:

Sylvie Vigneux

Your gift directly benefits UVic Law students, making their diverse academic and professional achievements possible. On behalf of the students, faculty, and staff of UVic Law, thank you for your continued generosity. Enclosed is a personal thank you letter from Sylvie.

In thanks for your support, you and your guests will be invited to the **Student Awards Celebration** in honour of the academic achievements of UVic Law students. It will be held in January 2016, and you will receive an invitation with details closer to the date of the event.

I look forward to thanking you personally at the Student Awards Celebration in 2016.

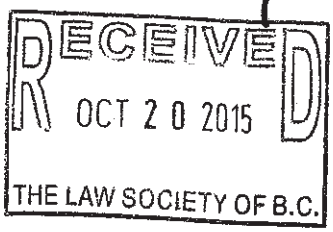
Sincerely,

Jeremy Webber
Dean

REDACTED MATERIALS

ACCESS PRO BONO / INCREASING ACCESS TO JUSTICE IN BC

Renee Bauhaus FYI



October 20, 2015

Mr. Timothy E. McGee, QC
Executive Director
The Law Society of BC
845 Cambie Street
Vancouver, BC V6B 4Z9

On behalf of the directors and staff at Access Pro Bono (APB), I extend a heartfelt thank you to The Law Society of BC for its continued support as a Supreme Court Sponsor of our Pro Bono Going Public legal advice-a-thon. The annual legal service, awareness and fundraising event would not be possible without the generous financial support of organizations like yours.

This year, over the course of four days in September, a total of 94 volunteer lawyers provided free legal advice and assistance to over 140 pre-booked and walk-up clients. As always, our clients were overwhelmingly appreciative of the opportunity to receive free legal advice at a time and place where they did not necessarily expect it.

Pro Bono Going Public 2015 received publicity in several local radio stations and newspapers. We feel that we were able to raise considerable awareness in each host city concerning the widespread availability of our free legal clinics and services.

Last and far from least, participating lawyers raised $49,592 in support of our direct pro bono services. Together with $21,500 in corporate sponsorships (including yours), the event raised $71,092 for the maintenance and expansion of our vital pro bono programs as we forge ahead into 2016.

Please visit our website at www.accessprobono.ca for more information on our pro bono programs, and our event website at www.advice-a-thon.ca/sponsors.php for acknowledgment of your support.

Thank you for your continued support and we look forward to working with you again next year.

Sincerely,

for Jamie Maclaren
Executive Director

300–845 Cambie St.
Vancouver, BC V6B 4Z9

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F 604.893.8934

ACCESSPROBONO.CA

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