The Law Society of British Columbia

Agenda

Benchers

Date: Friday, April 8, 2016

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

Location: Room 204, 2nd Floor, Law Society Building

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

CONSENT AGENDA:

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

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1	Consent Agenda	1	President		
	• Minutes of March 4, 2016 meeting (regular session)			Tab 1.1	Approval
	• Minutes of March 4, 2016 meeting (*in camera* session)			Tab 1.2	Approval
	• Rule 3-44 Insurance Reimbursement			Tab 1.3	Approval
	• Rule 5-24.1 (proposed) Record for Review of Hearing Decision			Tab 1.4	Approval
	• Rules 2-96, 2-98, 5-25 and 5-26 Adjournment of Hearings			Tab 1.5	Approval

The Law Society of British Columbia

Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
EXECUTIVE REPORTS					
2	President's Report	10	President	Oral report (update on key issues)	Briefing
3	CEO's Report	10	CEO	Tab 3	Briefing
4	Briefing by the Law Society's Member of the Federation Council	5	Gavin Hume, QC		Briefing
GUEST PRESENTATIONS					
5	Unbundling of Legal Services: Presentation by former Self-represented Litigant, Member of Access to Justice BC Executive and Leadership Group Jennifer Muller	30	Jennifer Muller	Tab 5.1 Tab 5.2	Presentation
DISCUSSION/DECISION					
6	2016 First Quarter Financial Report	10	Miriam Kresivo, QC & CFO	Tab 6	Discussion
REPORTS					
7	Lawyers Insurance Fund: Program Report for 2015	20	Director of Insurance		Briefing
8	Report on Proposed Young Lawyers Initiative	5	Nancy Merrill, QC		Briefing
9	Report on Legal Aid Task Force	5	Nancy Merrill, QC		Briefing

The Law Society of British Columbia

Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
10	2015-2017 Strategic Plan Implementation Update	10	President		Briefing
11	Report on Outstanding Hearing & Review Decisions	5	Herman Van Ommen, QC	(*To be circulated at the meeting*)	Briefing
FOR INFORMATION					
12	Report on Activities of the Tribunal at Year End			Tab 12	Information
13	Letter from Vancouver Airport Authority to Tim McGee, QC: YVR 2057 Master Plan			Tab 13	Information
14	Ben Meisner Memorial Bursary: • Student recipient biographies • Email from Elaine Meisner			Tab 14	Information
IN CAMERA					
15	Notaries Qualifications Working Group: Status Update		Maria Morellato, QC		Discussion
16	*In camera* • Bencher concerns • Other business		President/CEO		Discussion/ Decision

The Law Society of British Columbia

Minutes

Benchers

Date: Friday, March 04, 2016

Present:
David Crossin, QC, President
Herman Van Ommen, QC, 1st Vice-President
Miriam Kresivo, QC, 2nd Vice-President
Satwinder Bains
Jeff Campbell, QC
Pinder Cheema, QC
Lynal Doerksen
Thomas Fellhauer
Craig Ferris, QC
Martin Finch, QC
Brook Greenberg
Lisa Hamilton
J.S. (Woody) Hayes, FCPA, FCA
Dean P.J. Lawton
Jamie Maclaren
Sharon Matthews, QC
Steven McKoen
Nancy Merrill, QC
Maria Morellato, QC
Lee Ongman
Greg Petrisor
Claude Richmond
Phil Riddell
Elizabeth Rowbotham
Mark Rushton
Carolynn Ryan
Michelle Stanford
Sarah Westwood
Tony Wilson

Excused: Christopher McPherson

Staff Present:
Tim McGee, QC
Deborah Armour
Taylore Ashlie
Lynn Burns
Renee Collins
Lance Cooke
Charlotte Ensminger
Su Forbes, QC
Andrea Hilland
Jeffrey Hoskins, QC
David Jordan
Michael Lucas
Jeanette McPhee
Doug Munro
Lesley Small
Alan Treleaven
Adam Whitcombe
Vinnie Yuen

Guests:	Dom Bautista	Executive Director, Law Courts Center
	Johanne Blenkin	CEO, Courthouse Libraries BC
	Kari Boyle	Director of Strategic Initiatives, Mediate BC Society
	Ian Burroughs	Lawyers Assistance Program Guest
	Michael Welsh	Vice-President, Canadian Bar Association, BC Branch
	Dr. Catherine Dauvergne	Dean of Law, University of British Columbia
	Les Dellow	Lawyers Assistance Program Guest
	Aseem Dosanjh	President, Trial Lawyers Association of BC
	Susan Munro	Director of Publications, Continuing Legal Education Society of BC
	Gavin Hume, QC	Law Society of BC Member, Council of the Federation of Law Societies of Canada
	Arsen Krekovic	Lawyers Assistance Program Guest
	Derek LaCroix, QC	Executive Director, Lawyers Assistance Program
	Carmen Marolla	Vice President, BC Paralegal Association
	Prof. Bradford Morse	Dean of Law, Thompson Rivers University
	Caroline Nevin	Executive Director, Canadian Bar Association, BC Branch
	Wayne Robertson, QC	Executive Director, Law Foundation of BC
	Shannon Salter	Chair, Civil Resolution Tribunal
	Monique Steensma	Chief Executive Officer, Mediate BC
	Prof. Jeremy Webber	Dean of Law, University of Victoria

OATH OF OFFICE

1. Administer Oath of Office

Mr. Crossin administered oaths of office to Sharon Matthews, QC and Satwinder Bains, both of whom were absent from the January Bencher meeting.

CONSENT AGENDA

2. Minutes

a. Minutes

The minutes of the meeting held on January 29, 2016 were approved as circulated.

The *in camera* minutes of the meeting held on January 29, 2016 were approved as circulated

b. Resolutions

The following resolutions were passed unanimously and by consent.

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 (5) and substituting the following:

(3) A panel must

(a) be chaired by a lawyer, and

(b) include at least one Bencher or Life Bencher who is a lawyer.

(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 a hearing already scheduled or begun.

(5.1) If a member of a panel ceases to be a Bencher and does not become a Life Bencher, the panel may, with the consent of the President, complete a hearing already scheduled or begun.

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. By rescinding Rule 5-4 (1) (b) and (c) and substituting the following:

(b) a Bencher who made an order under Rule 3-10 *[Extraordinary action to protect public]*, 3-11 *[Medical examination]* or 4-23 *[Interim suspension or practice conditions]* regarding a matter forming the basis of the citation;

(c) a member of a panel that heard an application under Rule 4-26 *[Review of interim suspension or practice conditions]* to rescind or vary an interim suspension or practice condition or limitation in respect of a matter forming the basis of the citation.

4. In Rule 5-16 as follows:

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

(2) 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***".***

5. 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 review board.

BE IT RESOLVED that the Law Society Strategic Plan 2015 – 2017 be amended to add Strategy 2-3: Respond to the Calls to Action in the Report of the Truth and Reconciliation Committee, 2015.

EXECUTIVE REPORTS

3. President's Report

Mr. Crossin briefed the Benchers on matters considered by the Executive Committee at its last meeting. Members were given an update on the progress of the Truth and Reconciliation Commission (TRC) steering committee. Mr. McGee provided an update on the restoration efforts being made following the recent flooding of floors 9-6 of the Law Society building, as well as a briefing on the upcoming Federation Council meeting.

The Executive Committee also discussed the policy around distribution of Executive committee materials, referring to the Governance committee the question of whether committee materials generally should have any distribution beyond the committee members themselves. The prospect of a young lawyers' working group was also discussed, as was the Governance report regarding committee evaluations, about which Ms. Kresivo will report to the Benchers later this meeting.

4. CEO's Report

Mr. McGee provided highlights of his monthly written report. He briefed the Benchers on the recent flood of several floors of the Law Society, caused by the failure of the water connection to a coffee machine on the 10th floor; the resultant water leak caused extensive damage to floors 9-6. Operations have continued with the relocation of staff and the reorganization of meetings in the building and offsite. He anticipated restoration may not be complete until May, thanked staff for their efforts, and thanked the Benchers for their patience with alterations to their schedules and meeting spaces.

Mr. McGee commented on the year-end financial information, noting that the efforts of staff to mitigate cost increases associated with external counsel helped reduce the budget shortfall. He also briefed the Benchers on the addition of discipline history, practice restrictions and current regulatory proceedings to the information available on Lawyer Look-up, to comply with National Discipline standard 19. In answer to questions, he clarified that the digital information available since 2003 is available in perpetuity.

Mr. McGee also provided a report on Communications activities at the Law Society, noting a shift towards more proactive outreach with the public, with lawyers and with the media to promote a broader understanding of justice and the rule of law.

He noted his attendance with Mr. Crossin and Mr. Van Ommen at the annual Tecker Symposium, the focus of which is the governance relationship between chief staff, chief elected officers and their boards and committees.

On the issue of non-lawyer legal service providers, he referenced the recent American Bar Association resolution to guide states in the regulation of non-lawyer service providers. That the world's single largest lawyers' advocacy group is encouraging such measures to increase access to justice underscores the significance of the Law Society's own strategic initiatives.

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

Gavin Hume, QC briefed the Benchers as the Law Society's member of the Federation Council, highlighting the business to be discussed at the upcoming Council meeting in Banff.

Amongst the items to be discussed are the TRC's recommendations, with specific regard to the Federation's national role in the context of initiatives of the individual law societies. The proposed Governance Report will be reviewed for approval, as will the Finance and Audit Committee's recommendations on the budget and fees. Also to be reviewed are recommended changes to the Model Code.

Additional topics for discussion will include the proposed scope of review of processes of the National Committee on Accreditation, improvement of the National Mobility database, and strengthening the process for communication between the Federation Council and the CanLII Board.

GUEST PRESENTATIONS

6. Civil Resolution Tribunal Update

Shannon Salter, Chair of the Civil Resolution Tribunal (CRT) briefed the Benchers on the background surrounding the development of the CRT, as well as progress made to date.

The CRT, which will be the first online tribunal in Canada integrated into the justice system, will have jurisdiction over claims under $25,000 and will handle consumer disputes, debt and contract, personal injury claims, orders on agreements and strata disputes. It will not handle claims for defamation or matters regarding an underlying interest in land.

Focus for development is on creating a system designed by the ultimate user to be as accessible as possible. Developers have consulted widely to elicit information on the public's current wants and needs. What has emerged clearly is that the vast majority of people use the internet daily for everything from texting to banking, want a justice system that is as accessible, and want to be empowered to actively participate in the resolution of their claims.

With this in mind, the CRT is being developed to bring dispute resolution services to the public through computers and mobile devices in as quick and efficient a way as possible. The process will be "frontloaded" with ADR services and legal information and users will be given choice regarding resolution method. Costs will be staged and similar to small claims, with fee exemptions for financial hardship. Timelines and deadlines will be tailored to the nature of the case, communication will be in plain language and forms will be user-friendly and easy to fill.

Ms. Salter then described the four stages of the CRT process, which include initial questionnaire and guided pathway stages, a facilitator stage and an ultimate adjudicator stage if required. Focus at each stage is on early and facilitated resolution and the presumption will be that all will be self-represented. Every stage will be tested before implementation; it is hoped the CRT will open later this year.

7. Lawyers' Assistance Program (LAP)

Derek Lacroix, QC, Executive Director of LAP, introduced two members, Arsen Krekovic and Ian Burroughs, who attended to share their stories of challenge and then success with the caring support of LAP. Mr. Lacroix himself then briefed the Benchers on the importance of openly addressing the issue of addiction and removing the stigma attached to it and other mental health issues. He related disturbing statistics illustrating the prevalence of alcohol and substance abuse in the legal profession, and the culture that perpetuates the disease. He cited education as one of the most important factors in reversing this trend, and encouraged Benchers as influential community members to consider their own views on mental health and addiction.

The Benchers expressed their heartfelt thanks to Mr. Krekovic and Mr. Burroughs for their courage in sharing their stories, and their gratitude to Mr. Lacroix and LAP for its valuable service to the profession.

DISCUSSION/DECISION

8. Lawyer Education Advisory Committee Final Report

Mr. Wilson, Chair of the Lawyer Education Advisory Committee, presented the Committee's Admission Program Review Report in its final form to the Benchers for approval of the 22 recommendations contained therein. He recalled his presentation to Benchers at the December 2015 meeting, noting that the report had been presented at that time for Benchers' consideration and review rather than their decision.

He reiterated that the Committee's surveys of PLTC students, newly called lawyers and law firms showed strong support for the existing PLTC program. He also noted that, despite the support, the Committee undertook a critical review of the program, comparing it to other programs both nationally and internationally.

In the midst of this review, the Law Society received the National Admissions Standards Assessment Proposal from the Federation of Law Societies. The Committee and the Law Society have taken the position that the proposal in its current form is not in the public interest. Support for the proposal is divided nationally. Mr. Wilson stressed that the Committee's report does not preclude the possibility of a national assessment program. It recommends endorsement of the current PLTC model, with the ability to consider variations to the national proposals moving forward.

Finally, Mr. Wilson noted the Committee's review of online alternatives, and the Committee's conclusion that there are no current technologies that are effective to deliver the caliber of legal

education currently provided through the in-person PLTC program. However, he did not preclude the possibility of future developments that might be suitable.

Some concern was expressed regarding recommendation 17 to reduce the requisite years of experience required for principals. This topic is currently being considered by the Credentials Committee. Concern was also expressed about voting on the recommendations collectively, rather individually with discussion of each. The Benchers agreed that the recommendations would be voted on collectively.

Mr. Wilson moved (seconded by Mr. Finch) that the Benchers adopt the report and its recommendations. Motion passed, with 27 in favour, 2 opposed.

9. Governance Committee Report on 2015 Bencher and Committee Evaluations

Ms. Kresivo provided the report to the Benchers as the Chair of the 2015 Governance Committee which was responsible for compiling the evaluation results. She thanked the members of the committee as well as current Chair Mr. Van Ommen.

Ms. Kresivo reviewed the survey questions with the Benchers, including positive results as well as areas for improvement. The Governance Committee's recommendations flowing from the survey results will be reviewed with the Executive Committee to address specific Bencher concerns.

10. Review of the Law Society's 2015 Audited Financial Statements and Financial Reports

Finance and Audit Committee Chair Miriam Kresivo, QC introduced the report, and provided her thanks to the Committee members, and particularly to CFO Jeanette McPhee and her staff for their hard work on this report and throughout the year.

Ms. McPhee reviewed her report with the Benchers, noting that the results were more positive than originally forecast. As a result of staff efforts to reduce expenses wherever possible, and because of a greater than forecast increase in revenue, we achieved a positive variance of $640,000.

In her review of the 2015 General Fund, she noted that the numbers of both fee paying members and PLTC students has increased from the previous year, and electronic filing revenues have increased due to the real estate market conditions. Operating expenses were approximately .5% under the projected amount due to the savings found in a number of areas including forensic accounting fees, building occupancy, property taxes and PLTC rental costs.

Additionally, there were three items funded from reserves, but the amount coincidentally corresponded to the savings achieved, with the result that we ended on budget.

Reviewing the area of Trust Assurance, Ms. McPhee noted a significant increase in revenue, largely due to real estate market conditions. Operating costs were slightly below budget.

She reported little activity on the Special Compensation Fund. We are currently assessing viability of certain recoveries; once that is completed, we will transfer the remaining $1.3 million to the Lawyers Insurance Fund (LIF).

Regarding LIF, she reported being 1.4% over budget in revenue and 9% below budget in expenses. Though we experienced a lower rate of return on our long term portfolio than in 2014, the sale of the building at 750 Cambie put our investment revenue higher overall than the previous year. However, we are still slightly ahead of the benchmark for long term portfolio return. We are also maintaining an adequate level of reserves for the insurance program.

For the year ahead, both membership numbers and PLTC appear to be on budget, we continue to manage costs associated with external counsel fees and the remaining expenses appear to be on track.

Ms. Kresivo moved (seconded by Mr. Ferris) that the Benchers approve the Law Society's 2015 combined financial statements for the general and special compensation fund and the 2015 consolidated financial statements for the Lawyers Insurance Fund.

Motion was passed unanimously.

11. Rule Allowing Executive Director to Set Hearing Dates

As the President's designate for Tribunal matters, Mr. Van Ommen recommended that the Benchers approve in principle changes to the Rules to shift the authority to set hearing dates unilaterally in the case of disagreement from the Executive Director to the President, thereby further separating the prosecutorial and adjudicative roles. Other proposed changes would simplify the procedure for interlocutory applications by allowing a party to apply directly to the President. Mr. Van Ommen noted that the proposed changes to the Tribunal processes were consistent with the larger changes approved by the Benchers last year, but not captured by the package voted on. If approved, the proposed changes will be referred to Act and Rules for drafting.

Benchers agreed by consensus that the recommended changes be referred to Act and Rules.

REPORTS

12. Lawyers Insurance Fund: Program Report for 2015

Due to timing issues, Mr. Crossin confirmed this item would be carried over to the next Bencher meeting.

13. Access to Justice BC: Update

Mr. McLaren provided a brief report on the Access to Justice BC committee chaired by Chief Justice Bauman, noting that the committee had been formed in response to Mr. Justice Cromwell's National Action Committee on access to justice in civil and family matters. Access to Justice BC is a large, diverse and inclusive committee that encourages open dialogue to help achieve its goal of reviewing the justice system from a user perspective. It employs a triple aim approach to make changes to the system that balance improved justice outcomes and user experiences while minimizing per capita costs. Mr. McLaren noted that the committee relies on the considerable volunteer efforts of all of its members, but to continue its important work will likely require additional funding.

Mr. Crossin thanked Mr. McLaren, and underscored the importance of this committee as a facilitator of ideas and thoughts on the justice system in this province.

14. 2015-2017 Strategic Plan Implementation Update

Ms. Morellato briefed the Benchers on the formation of a committee to assist the Law Society on its path toward fulfillment of the TRC's recommendations. Several respected aboriginal leaders and lawyers have enthusiastically agreed to engage with the Law Society, including Grand Chief Ed John, Judge Steven Point, Judge Marian Buller and Judge Len Marchand. All have stressed the importance of developing relationships which begins with listening and learning.

Mr. Van Ommen noted that listening to and learning from this esteemed group of aboriginal leaders will be the focus of this year's Retreat, which will differ in tone and substance from past Retreats.

Mr. Crossin thanked both Ms. Morellato and Mr. Van Ommen, and Andrea Hilland for her collaborative work to facilitate this group and its discussions.

14. National Discipline Standards

Chief Legal Officer Deb Armour reported on the Law Society's compliance with National Discipline Standards, the country-wide standards set for discipline processes from the beginning of a complaint to the end of a hearing. This Federation initiative, which organizes the standards

into categories of important regulatory principles such as timeliness, openness and public participation, has led to improvements at every law society across the country.

In the last year, the Law Society of BC has met 15 out of the 21 standards set as compared with 17 out of 21 last year. Areas of challenge remain, particularly in the category of timeliness of hearing panel decisions. Ms. Armour noted the significant increase recently in the number of hearings and reviews and acknowledged the challenges associated with reaching consensus amongst 7 review board members. She will be providing that feedback to the National Discipline Standards Committee.

15. Report on the Outstanding Hearing & Review Decisions

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

RTC
2016-03-04

REDACTED MATERIALS

REDACTED MATERIALS

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: March 11, 2016
Subject: **Rule 3-44 — Insurance reimbursements**

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1. The Lawyers Insurance Fund asked for a minor amendment to the rule that requires lawyers to reimburse LIF for payments made on behalf of the lawyer under the insurance policy. The Act and Rules Committee has considered the request and recommends the attached amendment to the rule to the Benchers for adoption.

Background

2. Here is the current Rule 3-44 (note the heading):

Deductible, surcharge and reimbursement

3-44(1) If a deductible amount has been paid under the Society's insurance program on behalf of a lawyer, the lawyer must reimburse the Society in full.

(2) If indemnity has been paid under the Society's insurance program, the lawyer on whose behalf it is paid must

(a) pay the insurance surcharge specified in Schedule 1 for each of the next 5 years in which the lawyer is a member of the Society and not exempt from the insurance fee, and

(b) if the payment was made under Part B of the policy of professional liability insurance, reimburse the Society in full on demand, for all amounts paid under Part B.

(3) The Executive Director may, in the Executive Director's discretion, extend the time for a lawyer to reimburse the Society under subrule (1) or (2), or pay a surcharge under subrule (2) or, in extraordinary circumstances, waive payment altogether.

3. Subrule (1) deals with deductible amounts that are advanced by LIF to a claimant but are the responsibility of the insured lawyer. Subrule (2)(a) deals with the surcharge that is imposed when an indemnity is paid as a result of a claim under Part A, the errors and omissions

coverage. Subrule (2)(b) requires reimbursement of an indemnity paid under Part B, the defalcation coverage.

4. Subrule (2)(b) requires payment "in full on demand, for all amounts paid under Part B."

5. There are other amounts that LIF sometimes pays in order to make a claimant whole that are the responsibility of the insured lawyer under the policy of insurance. For example, if the lawyer has failed to report a claim in a timely way, coverage may be lost and/or the opportunity to repair damage caused by the lawyer may be lost. LIF may find that it is in the public interest to make a payment to a claimant that is not strictly required.

6. Under the policy of insurance, the insurer is entitled to be reimbursed for those payments. From the heading, the rule appears to be intended to require lawyers to repay those amounts to the Law Society. The text of the rule, however, only deals with deductibles and surcharges and is silent on other reimbursements.

Draft amendments

7. The attached draft amendment adds other reimbursements to subrule (1) by tabulating the current "deductible amount" as paragraph (a) and adding paragraph (b) for "any other amount," but limiting the liability of the lawyer to repaying amounts required under the insurance policy.

8. The proposed amendment changes what becomes the preamble to subrule (1) to incorporate the requirement to pay "on demand" and "in full," which is consistent with subrule (2) of the rule. The language of paragraph (b) is drafted for consistency with the insurance policy.

9. The Committee recommends the amendment to the Benchers for adoption. I attach clean and redlined versions of the rule and a suggested resolution to give effect to the changes.

Attachments: draft
suggested resolution

JGH

LAW SOCIETY RULES 2015

PART 3 – PROTECTION OF THE PUBLIC

Division 5 – Insurance

Deductible, surcharge and reimbursement

3-44 (1) ~~If a deductible amount has been paid under the Society's insurance program on behalf of a lawyer, the~~On demand, a lawyer must ~~reimburse~~ pay in full to the Society ~~in full~~any of the following amounts paid under the Society's insurance program on behalf of the lawyer:

(a) a deductible amount;

(b) any other amount that the lawyer is required to repay or reimburse the insurer under the policy of professional liability insurance.

(2) If indemnity has been paid under the Society's insurance program, the lawyer on whose behalf it is paid must

(a) pay the insurance surcharge specified in Schedule 1 for each of the next 5 years in which the lawyer is a member of the Society and not exempt from the insurance fee, and

(b) if the payment was made under Part B of the policy of professional liability insurance, reimburse the Society in full on demand, for all amounts paid under Part B.

(3) The Executive Director may, in the Executive Director's discretion, extend the time for a lawyer to reimburse the Society under subrule (1) or (2), or pay a surcharge under subrule (2) or, in extraordinary circumstances, waive payment altogether.

LAW SOCIETY RULES 2015

PART 3 – PROTECTION OF THE PUBLIC

Division 5 – Insurance

Deductible, surcharge and reimbursement

3-44 (1) On demand, a lawyer must pay in full to the Society any of the following amounts paid under the Society's insurance program on behalf of the lawyer:

(a) a deductible amount;

(b) any other amount that the lawyer is required to repay or reimburse the insurer under the policy of professional liability insurance.

(2) If indemnity has been paid under the Society's insurance program, the lawyer on whose behalf it is paid must

(a) pay the insurance surcharge specified in Schedule 1 for each of the next 5 years in which the lawyer is a member of the Society and not exempt from the insurance fee, and

(b) if the payment was made under Part B of the policy of professional liability insurance, reimburse the Society in full on demand, for all amounts paid under Part B.

(3) The Executive Director may, in the Executive Director's discretion, extend the time for a lawyer to reimburse the Society under subrule (1) or (2), or pay a surcharge under subrule (2) or, in extraordinary circumstances, waive payment altogether.

INSURANCE REIMBURSEMENT

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 3-44 (1) and substituting the following:

(1) On demand, a lawyer must pay in full to the Society any of the following amounts paid under the Society's insurance program on behalf of the lawyer:

(a) a deductible amount;

(b) any other amount that the lawyer is required to repay or reimburse the insurer under the policy of professional liability insurance.

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:	March 28, 2016
Subject:	**Responsibility for producing "the record" on reviews of hearing decisions – Proposed new Rule 5-24.1**

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1. The Act and Rules Committee recommends the adoption of a new rule providing that the party initiating a review on the record of a hearing decision under section 47 of the *Legal Profession Act* should be responsible for producing and copying the record to be reviewed.

2. There has been a recent sharp increase in the number of reviews of hearing panel decisions. The Law Society Tribunal has historically accepted responsibility for producing and paying for the record on which the review is based. The recent increase in demand has put a strain on the Tribunal's staff resources and budget. There is some concern that excessive delay caused by the added workload could become an issue in an application to quash a citation for unfairness.

3. In a memorandum addressed to the Executive Committee, I asked the Committee to consider whether a change in policy and/or rules should be adopted so that the party initiating a review is responsible for collecting and producing the materials that comprise the record and for making copies for the review board and other party. The Committee's decision was to refer the question to the Act and Rules Committee to propose this rule amendment to implement that change.

4. The Benchers were not involved in the original decision, if there was a conscious decision, for Tribunal staff to produce the record. Making the applicant responsible for the record would not be inconsistent with any existing policy. It is arguably operational in nature. However, it does make a significant change from practice that will surely be noticed in some quarters.

5. The rules require that there be a record; they do not say who should produce it. If the Tribunal declines to produce it, the review cannot go ahead unless someone else does.

However, transparency is better served by amending the rule and issuing a notice of the change.

Background

6. The *Legal Profession Act* mandates a review by a review board of a decision of a hearing panel on either disciplinary or credentials matters:

> **Review on the record**
>
> **47** (1) Within 30 days after being notified of the decision of a panel under section 22 (3) or 38 (5), (6) or (7), the applicant or respondent may apply in writing for a review on the record by a review board.
>
> (2) Within 30 days after the decision of a panel under section 22 (3), the credentials committee may refer the matter for a review on the record by a review board.
>
> (3) Within 30 days after the decision of a panel under section 38 (4), (5), (6) or (7), the discipline committee may refer the matter for a review on the record by a review board.
>
> (3.1) Within 30 days after an order for costs assessed under a rule made under section 27 (2) (e) or 46, an applicant, a respondent or a lawyer who is the subject of the order may apply in writing for a review on the record by a review board.
>
> (3.2) Within 30 days after an order for costs assessed by a panel under a rule made under section 46, the credentials or discipline committee may refer the matter for a review on the record by a review board.
>
> (4) If, in the opinion of a review board, there are special circumstances, the review board may hear evidence that is not part of the record.
>
> (5) After a hearing under this section, the review board may
>
> (a) confirm the decision of the panel, or
>
> (b) substitute a decision the panel could have made under this Act.
>
> (6) The benchers may make rules providing for one or more of the following:
>
> (a) the appointment and composition of review boards;
>
> (b) establishing procedures for an application for a review under this section;
>
> (c) the practice and procedure for proceedings before review boards.

7. Part 5 of the Law Society Rules contains rules that give effect to this provision. Rule 5-19 provides that a review can be initiated by a party by means of a notice to the Executive Director and the other party.

8. Since section 47 mandates a review on the record, rather than an appeal or a trial de novo, Rules 5-22 and 5-23 establish the content of the record for credentials and discipline reviews, respectively:

> **Record of credentials hearing**
>
> **5-22** (1) Unless counsel for the applicant and for the Society agree otherwise, the record for a review of a credentials decision consists of the following:
>
> (a) the application;
>
> (b) a transcript of the proceedings before the panel;
>
> (c) exhibits admitted in evidence by the panel;
>
> (d) any written arguments or submissions received by the panel;
>
> (e) the panel's written reasons for any decision;
>
> (f) the notice of review.
>
> (2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.
>
> **Record of discipline hearing**
>
> **5-23** (1) Unless counsel for the respondent and for the Society agree otherwise, the record for a review of a discipline decision consists of the following:
>
> (a) the citation;
>
> (b) a transcript of the proceedings before the panel;
>
> (c) exhibits admitted in evidence by the panel;
>
> (d) any written arguments or submissions received by the panel;
>
> (e) the panel's written reasons for any decision;
>
> (f) the notice of review.
>
> (2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

9. The rules are silent on who is responsible for producing, copying and distributing the record of the hearing. Since the number of reviews historically has been very low and a significant proportion of them have been initiated by the Law Society, the practice has been that the Law Society would produce the record regardless of who initiated the review. Since the Tribunal was in possession of most of the documents and had a relationship with the court reporters who produce the transcript, it was natural for the hearing administrator to be responsible for the record, and that is the practice that continues in effect.

10. Rule 5-24 also sets out the prescribed contents for the record for a review of a costs order made by the Practice Standards Committee. There is no transcript of proceedings, so the cost

of producing the record would not be so onerous. No one has ever applied for such a review. However, the same procedure for producing the record would apply.

Increased volume

11. The table below shows the number of review hearings over the past few years. From 2010 to 2015, the number represents the number of concluded review hearings in each year. For 2016, the numbers include reviews commenced to date, which are likely to be heard in 2016. That number, of course, will very likely increase before the end of the year. I have indicated in square brackets the number of reviews each year initiated by the appropriate Law Society committee.

YEAR	Discipline reviews [committee initiated]	Credentials reviews [committee initiated]	Total reviews
2010	3 [2]	0	3
2011	1 [1]	0	1
2012	1 [0]	2 [2]	3
2013	1 [1]	1 [0]	2
2014	3 [0]	1 [1]	4
2015	4 [2]	1 [1]	5
2016 [YTD]	11 [2]	1 [1]	12

12. As you can see, in recent years the number of reviews has been relatively small, with a significant proportion initiated by the Law Society, rather than the respondent or applicant. More recently, the number of reviews initiated by respondents has increased significantly. That may or may not be a trend that endures, but it does raise the question of who is responsible for the cost of the increase.

Cost

13. The increased number of reviews has created pressure on the Tribunals Costs budget, in particular on the cost of ordering transcripts, which are a required part of the record to be reviewed by the review board. The list below shows the amount spent each year for transcription services. This includes transcripts for all purposes of the Tribunal, but the main component, at lease in 2014 and 2015, is for production of review records.

2012	$7,154
2013	6,328
2014	16,530
2015	28,973

Court of Appeal

14. The BC Court of Appeal Rules require that the appellant prepare, file and serve copies of an Appeal Record in the prescribed form within 60 days of bringing an appeal. The proposed rule includes the same time limit, with a provision for the parties to agree to extend the time or for an application to be brought to the President for extension.

15. The Committee was concerned that financial considerations not prevent a person of limited financial resources from bringing an arguable review. The Court of Appeal Rules allow for an application to waive court fees that must be accompanied by an affidavit as to the financial circumstances of the applicant. The proposed rule includes a provision for an application to the President for full or partial relief from the cost of producing the record for review. It too requires that the application be supported by financial disclosure in the form of an affidavit with supporting documentation.

Amendments

16. I attach redlined and clean versions of the amendments to effect the proposed changes. They comprise a new rule on the preparation and delivery of the record and consequential changes to the rule on pre-review conferences.

17. The proposed rule requires the filing of eight copies of the record, one each for members of the review board and one for the Tribunal file. It also requires delivering a copy to the other party. The consequence of not providing the record as required has to be that the review cannot proceed and no hearing date can be set.

18. Some respondents and applicants who seek a review may have financial difficulty in producing nine or more copies of a record. As mentioned above, the proposed rule provides for an application for relief from some or all of the cost of production and delivery.

19. The process for making and deciding the applications is modelled on the provision for adjournment applications, and a number of others.

20. The provision in Rule 5-25 *[Pre-review conference]* authorizing the Bencher presiding at a pre-review conference to set a date for a hearing of the review, must be made subject to the provision that a date cannot be set until the record is produced and delivered.

21. Also in that rule, the chambers Bencher's general power to make orders is restated to encompass orders consistent with Part 5, and not just the pre-review conference rule. This allows an order under the proposed rule on producing the record.

22. Rule 5-15(3) *[Review by review board]* is amended to correct an error in the cross-reference. The reference should be the same as in subrule (1).

23. The Act and Rules Committee recommends the adoption of the attached suggested resolution.

JGH

LAW SOCIETY RULES 2015

PART 5 – HEARINGS AND APPEALS

Reviews and appeals

Review by review board

5-15 (1) In Rules 5-15 to 5-28, **"review"** means a review of a hearing panel decision by a review board under section 47 *[Review on the record]*.

(3) Delivery of documents to a respondent or applicant under Rules 5-~~14~~ 15 to 5-~~26~~ 28 may be effected by delivery to counsel representing the respondent or the applicant.

Preparation and delivery of record

5-24.1 (1) Within 60 days of delivering a notice of review, the party initiating the review must prepare the record for the review in accordance with the relevant rule and deliver

(a) 8 copies to the Executive Director, and

(b) 1 copy to the other party.

(2) The time for producing the record may be extended by agreement of the parties.

(3) No date may be set for the hearing of a review unless the party initiating the review has delivered all copies of the record required under subrule (1).

(4) By delivering to the Executive Director and to the other party written notice setting out the grounds for the application, the party initiating the review may apply for

(a) an extension of time to prepare and deliver the record, or

(b) an order that the Society bear all or part of the cost of obtaining and copying all or part of the record.

(5) An application under subrule (4) (b) must be accompanied by an affidavit attaching supporting materials fully disclosing all financial circumstances of the party making the application.

(6) The Executive Director must promptly notify the President of an application under subrule (4), and the President must decide whether to grant all or part of the relief sought, with or without conditions, and must notify the parties accordingly.

(7) The President may

(a) designate another Bencher to make a determination under subrule (6), or

(b) refer the application to a pre-review conference.

(8) A determination under subrule (6) is without prejudice to an order of the review board under Rule 5-11 *[Costs of hearings]*.

LAW SOCIETY RULES 2015

Pre-review conference

5-25 (9) The Bencher presiding at a pre-review conference may

(c) set a date for the review, subject to Rule 5-24.1 (3) *[Preparation and delivery of record]*, and

(d) make any order or allow or dismiss any application consistent with this ~~Rule~~part.

LAW SOCIETY RULES 2015

PART 5 – HEARINGS AND APPEALS

Reviews and appeals

Review by review board

5-15 (1) In Rules 5-15 to 5-28, **"review"** means a review of a hearing panel decision by a review board under section 47 *[Review on the record]*.

(3) Delivery of documents to a respondent or applicant under Rules 5-15 to 5-28 may be effected by delivery to counsel representing the respondent or the applicant.

Preparation and delivery of record

5-24.1 (1) Within 60 days of delivering a notice of review, the party initiating the review must prepare the record for the review in accordance with the relevant rule and deliver

(a) 8 copies to the Executive Director, and

(b) 1 copy to the other party.

(2) The time for producing the record may be extended by agreement of the parties.

(3) No date may be set for the hearing of a review unless the party initiating the review has delivered all copies of the record required under subrule (1).

(4) By delivering to the Executive Director and to the other party written notice setting out the grounds for the application, the party initiating the review may apply for

(a) an extension of time to prepare and deliver the record, or

(b) an order that the Society bear all or part of the cost of obtaining and copying all or part of the record.

(5) An application under subrule (4) (b) must be accompanied by an affidavit attaching supporting materials fully disclosing all financial circumstances of the party making the application.

(6) The Executive Director must promptly notify the President of an application under subrule (4), and the President must decide whether to grant all or part of the relief sought, with or without conditions, and must notify the parties accordingly.

(7) The President may

(a) designate another Bencher to make a determination under subrule (6), or

(b) refer the application to a pre-review conference.

(8) A determination under subrule (6) is without prejudice to an order of the review board under Rule 5-11 *[Costs of hearings]*.

LAW SOCIETY RULES 2015

Pre-review conference

5-25 (9) The Bencher presiding at a pre-review conference may

(c) set a date for the review, subject to Rule 5-24.1 (3) *[Preparation and delivery of record]*, and

(d) make any order or allow or dismiss any application consistent with this part.

RECORD FOR REVIEW

SUGGESTED RESOLUTION:

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

1. By rescinding Rule 5-15 (3) and substituting the following:

(3) Delivery of documents to a respondent or applicant under Rules 5-15 to 5-28 may be effected by delivery to counsel representing the respondent or the applicant.

2. By adding the following Rule:

Preparation and delivery of record

5-24.1(1) Within 60 days of delivering a notice of review, the party initiating the review must prepare the record for the review in accordance with the relevant rule and deliver

(a) 8 copies to the Executive Director, and

(b) 1 copy to the other party.

(2) The time for producing the record may be extended by agreement of the parties.

(3) No date may be set for the hearing of a review unless the party initiating the review has delivered all copies of the record required under subrule (1).

(4) By delivering to the Executive Director and to the other party written notice setting out the grounds for the application, the party initiating the review may apply for

(a) an extension of time to prepare and deliver the record, or

(b) an order that the Society bear all or part of the cost of obtaining and copying all or part of the record.

(5) An application under subrule (4) (b) must be accompanied by an affidavit attaching supporting materials fully disclosing all financial circumstances of the party making the application.

(6) The Executive Director must promptly notify the President of an application under subrule (4), and the President must decide whether to grant all or part of the relief sought, with or without conditions, and must notify the parties accordingly.

(7) The President may

(a) designate another Bencher to make a determination under subrule (6), or

(b) refer the application to a pre-review conference.

(8) A determination under subrule (6) is without prejudice to an order of the review board under Rule 5-11 *[Costs of hearings]*.

3. By rescinding Rule 5-25 (9) (b) and (c) and substituting the following:

(c) set a date for the review, subject to Rule 5-24.1 (3) *[Preparation and delivery of record]*, and

(d) make any order or allow or dismiss any application consistent with this part.

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: March 11, 2016
Subject: **Rules 2-96, 2-98, 5-25 and 5-26: Adjournment of hearings**

---

1. The Act and Rules Committee recommends amending the rules governing the adjournment of credentials hearings and review hearings to conform to the current rules for discipline hearings.

2. In October 2010 the Benchers adopted a major revision to the rules governing discipline hearings. One of the changes was to allow a chambers bencher or the chair of a hearing panel to order that a hearing is adjourned generally. The previous rules had required that a specific new date be named when a hearing was adjourned. The discipline rules were changed to allow for more flexibility in scheduling and re-scheduling hearings.

Credentials hearings

3. The Act and Rules Committee was aware at the time that the rules governing credentials hearings would not be affected by changes to discipline hearing rules. Since the extensive exercise at hand was revision of discipline hearing rules, amending the credentials hearing rules was left to another day.

4. The rule originally precluded adjourning a hearing generally on the theory that that would encourage the timely setting and conclusion of hearings. In practice, it was found that it led to setting hearing dates hastily, resulting in more adjournments that would not otherwise have been necessary.

5. The dynamic is different in credentials hearings in that the applicant who is the subject of the hearing is more motivated to bring the hearing on early and continue it without interruption. However, I do not think that there is any principled reason to continue the present rule

against adjourning credentials hearings generally. Arguably there is less reason because the applicant has less interest in delaying matters.

Review hearings

6. The rules pertaining to adjournment of review hearings are more difficult to explain. Rule 5-25(9)(a) allows the Bencher presiding at a pre-review conference to adjourn the conference generally or to a specific date. That rule, however, does not mention the adjournment of the review hearing. I suggest that it should provide for adjournment of the hearing on the same terms. That would be consistent with Rule 5-26(4)(b), which allows the President to refer an adjournment application to the pre-review conference.

7. Rule 5-26(5) allows the "President or other Bencher presiding" at a review hearing to adjourn the hearing, but only to a specific date. For the reasons discussed above, I suggest that that rule should also allow for the review hearing to be adjourned generally. Under the new regime for chairing hearings, where in the absence of an experienced Bencher, a non-Bencher could be chair, the reference should simply be to the chair of the review board.

8. I attach redlined and clean version of the amendments and a suggested resolution recommended by the Act and Rules Committee.

Attachments: draft amendments
resolution

JGH

LAW SOCIETY RULES 2015

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Credentials hearings

Pre-hearing conference

2-96 (6) The Bencher presiding at a pre-hearing conference may

(a) adjourn the conference generally or to a specified date, time and place,

(b) order discovery and production of documents,

(c) set a date for the hearing, and

(d) allow or dismiss an application under subrule (5) (f).

Adjournment of hearing

2-98 (5) After a hearing has commenced, the chair of the panel may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

PART 4 – DISCIPLINE

Pre-hearing conference

4-38 (10) The Bencher presiding at a pre-hearing conference may

(a) adjourn the conference generally or to a specified date, time and place,

(b) set a date for the hearing to begin, and

(c) allow or dismiss an application made under subrule (9) or referred to the conference under this part.

Adjournment

4-40 (5) After a hearing has begun, the chair of the panel may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

LAW SOCIETY RULES 2015

PART 5 – HEARINGS AND APPEALS

Pre-review conference

5-25 (9) The Bencher presiding at a pre-review conference may

(a) adjourn the conference or the hearing of the review generally or to a specified date, time and place,

Adjournment

5-26 (5) After a hearing has commenced, the ~~President or other Bencher presiding~~chair of the review board may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

LAW SOCIETY RULES 2015

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Credentials hearings

Pre-hearing conference

2-96 (6) The Bencher presiding at a pre-hearing conference may

(a) adjourn the conference generally or to a specified date, time and place,

(b) order discovery and production of documents,

(c) set a date for the hearing, and

(d) allow or dismiss an application under subrule (5) (f).

Adjournment of hearing

2-98 (5) After a hearing has commenced, the chair of the panel may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

PART 4 – DISCIPLINE

Pre-hearing conference

4-38 (10) The Bencher presiding at a pre-hearing conference may

(a) adjourn the conference generally or to a specified date, time and place,

(b) set a date for the hearing to begin, and

(c) allow or dismiss an application made under subrule (9) or referred to the conference under this part.

Adjournment

4-40 (5) After a hearing has begun, the chair of the panel may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

LAW SOCIETY RULES 2015

PART 5 – HEARINGS AND APPEALS

Pre-review conference

5-25 (9) The Bencher presiding at a pre-review conference may

(a) adjourn the conference or the hearing of the review generally or to a specified date, time and place,

Adjournment

5-26 (5) After a hearing has commenced, the chair of the review board may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

HEARING ADJOURNMENTS

SUGGESTED RESOLUTION:

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

1. By rescinding Rule 2-96 (6) (a) and substituting the following:

(a) adjourn the conference generally or to a specified date, time and place,

2. By rescinding Rule 2-98 (5) and substituting the following:

(5) After a hearing has commenced, the chair of the panel may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

3. By rescinding Rule 5-25 (9) (a) and substituting the following:

(a) adjourn the conference or the hearing of the review generally or to a specified date, time and place,

4. By rescinding Rule 5-26 (5) and substituting the following:

(5) After a hearing has commenced, the chair of the review board may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

CEO's Report to the Benchers

April 2016

Prepared for: Benchers

Prepared by: Timothy E. McGee

Operational Updates

Update on Plans for a new Law Society Website

We are continuing our preparations for development of a new website. Several website agencies responded to our request for proposal, and we are considering the alternatives put forward. As we do this, we will start to gather feedback from our various audiences on the user experience on our existing site, and find out what our audiences would find useful on a new site. To this end, Benchers will be invited to respond to an online survey over the next few weeks. I hope each of you will take the time to fill out the survey – your feedback will be most helpful in this process.

Law Society Building Remediation

As of March 9, all water damage areas have been identified. For the past few weeks, staff have been meeting with our insurance company and their specialists to prepare the documents for the scope of the restoration work on the 6th, 7th, 8th and 9th floors. Extensive work will be required on all of the affected floors, including the main reception area -- carpets to be replaced, walls and ceilings to be patched and mended, and new paint and wall paper to be applied.

In mid-March, the scope of work documents were put out to tender and contractors submitted their bids on Wednesday, March 30. Once a general contractor is selected, a project plan will be developed to limit the amount of disruption in the offices and to ensure a timely repair of the damaged areas. We expect repairs to start around mid-April and the work will require several weeks to complete.

Committee and Bencher meetings for April and May will continue to be on the 2nd floor until the repairs are completed. Our staff have arranged alternate meeting sites (within walking distance) when meeting or hearing space is unavailable in our building. The alternate locations will be provided by staff contacts for the respective committees.

Skills Enrichment Program

As you know we are undertaking an ambitious project directed at ensuring that all of our staff have the tools and training necessary to achieve a high minimum standard of computer literacy and technology skill. Our first step is providing all staff with access to courses available on Lynda.com, a prominent online education website with more than 3,500 online courses. This access has been coupled with a skills evaluation assessment for every employee together with a personalized curriculum development

plan. In the first few weeks of the program we are seeing good take up; over half of all staff have logged into their Lynda.com accounts and over one third have started work on their training courses representing over 95 hours in aggregate training logged to date. We expect this participation rate to grow steadily throughout the year.

Some Benchers have expressed interest in participating in this training and we would be happy to set up an access account and to provide guidance if you wish. Please let Adam Whitcombe or me know if you are interested.

Internal/External Counsel – Cost Benefit Assessment Project

In view of the increasing demand on counsel work at all levels of our professional conduct processes, management have embarked on a detailed cost/benefit assessment project to determine the optimum mix of internal versus external counsel for our current and future needs. This work is examining all aspects of our counsel work and the factors driving the current mix including conflicts, specific expertise and workload considerations. Work is progressing well and we are planning to review our findings with the Executive Committee in the May timeframe and to ensure that this work is factored into the budget planning process for 2017 and the work of the Finance and Audit Committee in the spring.

Law Society/PEA Recognized at United Way Awards Gala

The Law Society has for many years been a very active participant in the Greater Vancouver United Way campaign. Our staff have consistently embraced the challenge of helping others through the auspices of the United Way and we regularly meet or exceed our targets for giving through many different fundraising activities. The United Way has often expressed to me its gratitude for the Law Society “punching above” our weight in fundraising efforts.

Those efforts for 2015 were publically recognized by the United Way in its recent Community Spirit Awards Gala. Out of 15 nominees in the category “Teamwork Award” the Law Society and our union the PEA were jointly chosen as top 5 finalists. The Teamwork Award recognizes “… the workplace campaign that recruits the most diverse campaign team – one including management, union and others – across various levels of the organization. This team works together to develop strategies that increase donors or dollars given directly to United Way”.

We are all proud of the great efforts of our staff who give so much of their time and effort to help others who are less fortunate.

2016 First Quarter Financial Report

Our first quarter financial report will be presented at the meeting by the Chair of the Finance and Audit Committee Miriam Kresivo QC and by our CFO Jeanette McPhee. While it is still early in the year, we are tracking to our budget.

TWU Appeal – Update

The appeal by the Law Society of the judgment rendered in the Supreme Court of British Columbia in the Trinity Western University case is set for June 1 – 3. Mr. Justice Wilcock recently heard 10 applications for intervenor status all of which were granted. Of that number all were intervenors at the BCSC level except The Canadian Secular Alliance and The BC Humanist Association. The Attorney General of Canada was an intervenor at the BCSC level but did not apply for intervenor status at the BCCA level. The Advocates Society's application for intervenor status is scheduled to be heard on April 4. We are also informed that the Court of Appeal will sit a 5 member panel for this case.

The appeal by the Nova Scotia Barristers Society of the decision in the Nova Scotia proceeding is set for April 6 - 8 and the appeal by Trinity Western University of the decision in the Ontario proceeding with the Law Society of Upper Canada is set for June 6 and 7.

Federation CEOs Forum – Report

Under the new governance regime established for the Federation of Law Societies there is formal recognition of the importance to be played by the Presidents and the CEOs of the respective Law Societies in addition to the role of Council as the key decision making body. To capture the value add of these 2 groups the governance policies formally recognize and encourage the establishment of a Presidents Forum and a CEOs Forum. While there has been discussion and collaboration among these two groups in the past this formal recognition will help to bring their contributions more to the fore. I will take a few minutes at the meeting to describe the intended roles for these two forums and a brief outline of the topics and items that are on the agenda for an upcoming meeting of the CEOs Forum.

Timothy E. McGee
Chief Executive Officer

Self represented Litigants and Unbundled Legal Services

There has been a significant amount of dialogue in recent times regarding the current accessibility of the legal system. Reports have been written and committees struck to discuss and debate the issue of access to justice. It is a fact that unrepresented litigants are now outnumbering those with legal counsel in our courts, as 57% of parties are self-represented in proceedings under the Family Law Act. Yet the current legal system has remained fundamentally unchanged in procedure and process.

Recent research on self represented litigants (SRLs) indicates that SRLs are most likely to be middle aged with a post secondary education. They are ordinary citizens, most of who are not poor enough to qualify for legal aide and yet are unable to afford legal counsel for protracted periods of time and almost all would choose to have a lawyer represent or continue to represent them if they could afford to do so. The majority of SRLs begin their legal matter with counsel but are unable to continue with legal representation due to cost. Many can afford to pay a lawyer for specific legal services. Research indicates that most SRLs seek unbundled legal services however very few are successful in finding anyone to provide this invaluable service.

As a self represented litigant the current legal system is extremely difficult to navigate without counsel. For the SRL, virtually every aspect of attempting to prepare for court is riddled with confusion and painstaking difficulty given the intrinsic barriers within the current legal system. Complex legal language, unchanged protocols and the Rules of Court disadvantage all outside the legal circle of lawyers, judges and clerks. In order to properly meet the needs of ordinary citizens who are facing the dilemma of representing themselves, the current system must go far beyond streamlining forms and creating user friendly templates.

Although there are a growing number of resources available online it is very difficult for individuals without legal training to put generalized information into context of their own case. Improving access to justice would mean for our current legal system to evolve current practices to include the use of limited scope retainers and the unbundling of services. There are many possibilities of how expert legal counsel can support and guide the needs of SRLs such as providing information on procedural matters, giving an overview of what case law may be of importance, attending court or reviewing documents.

Meaningful systemic change to our justice system is imperative in order to meet the needs of the Canadian public. Our legal system has evolved to include a new group of participants, self-represented litigants, who are flooding our courts for no reason other than desperate need. Collectively, we need to understand that our system is broken when it can only serve a percentage of users and is unable to offer options that are just, to compensate the users for whom it is unable to serve. Evolving current practices, thinking creatively, and embracing new models of how the legal system may serve all individuals in our communities, whether they are represented by counsel, or not, may prove to increase access to justice for all citizens.

The Law Society of British Columbia

Report of the Unbundling of Legal Services Task Force

LIMITED RETAINERS: PROFESSIONALISM AND PRACTICE

For: The Benchers
Date: April 4, 2008

Purpose of Report: **Discussion and Decision**

Prepared on behalf of: **Unbundling of Legal Services Task Force**

Policy and Legal Services Department
Doug Munro 604-605-5313

TABLE OF CONTENTS

EXECUTIVE SUMMARY

The civil justice reform that is underway in British Columbia and other jurisdictions is spurred, in large part, by the high cost of civil litigation and the delay litigants face in obtaining access to justice. Cost, delay and complexity are often cited as endemic problems in the civil justice system. These problems fuel the rise in self-representation, and the result feeds back into the cause to create a situation Chief Justice McLachlin has described as an "epidemic of lack of representation."

In response to these concerns, on March 4, 2005 the Unbundling Legal Services Task Force ("Task Force") was struck. "Unbundling" refers to a situation where a lawyer provides limited scope services to a client, rather than providing full scope legal services. In this Report, we have defined "unbundling" as **"limited scope" legal or litigation services.**

Limited scope litigation services can take many forms, including assisting with the drafting of a document or appearing in court to assist an otherwise self-represented litigant in arguing a particularly nuanced part of a case. From its consultations and research, the Task Force recognized that limited scope legal services are presently being provided in British Columbia. Limited scope legal services have increased over the years, but the rules that govern professional responsibility and the various rules of court have not kept pace with these changes. The challenge is that there are insufficient ethical or procedural guidelines for lawyers providing limited scope legal services, particularly in the litigation context. From both a regulatory and an educational perspective, it is important that guidelines be established to help ensure limited scope legal services are enhancing, and not hindering, access to justice.

Traditionally a client, particularly a litigant, would retain a lawyer for full service representation. This is no longer the case and, increasingly, many litigants are representing themselves before the courts. For some litigants self-representation is a conscious choice. For many, it is a necessity. There are a number of factors that contribute to the rise in the number of self-represented litigants, and the range of causes for the rise in self-representation suggest that there is not a simple solution to the phenomenon.

For those who choose to self-represent, they might be able to afford a lawyer for full service representation, or they might only be able to afford one at a cost that is beyond what they are willing to pay in pursuing or defending a claim. For these individuals, limited scope legal services present a mid-way option between full service representation and no representation. They have enough money to afford some legal assistance, and from a cost/benefit analysis many will see the value in receiving some legal services, whether in the form of drafting assistance, coaching, or a limited appearance.

We must also recognize that part of the rise in self-representation reflects a cultural shift that is taking place in the information age. The Internet and related technologies are transforming the way information is collected, disseminated, and used. Legal information is now easily available to those with access to the Internet. Soon the justice system will be faced with a generation of litigants, the vast majority of whom will be

computer literate and used to collecting and processing information without recourse to an intermediary. It will be a generation that understands information-based services in a very different way than previous generations and has different expectations regarding how those services are to be delivered. Many of these litigants will not see the value in hiring a lawyer to collect and process information they might easily collect themselves. Some will feel they need little or no help from a lawyer when it comes time to advance their case in court. Limited scope legal services provide an opportunity for lawyers to assist this growing demographic in synthesizing information and refining legal arguments. In short, the regulation of limited scope legal services demonstrates the adaptation of the legal profession to an evolving marketplace.

Early in its work the Task Force recognized that solicitors have, for many years, been providing limited scope services without uncertainty regarding how those services might be delivered. Although a limited scope retainer in litigation is different than a limited retainer for solicitors' work, the Task Force believes that solicitors provide an excellent example that limited scope services can be performed ethically and competently. While many of the recommendations in this Report are directed to litigators, the Task Force believes challenges can arise in all areas of practice and that the report has broader application than to barristers alone. The Recommendations are not intended to suggest that solicitors need to modify existing practices that meet the standard of competence and professionalism expected of solicitors and, more generally, of lawyers overall.

This Report describes the environment that has given rise to the need for limited scope legal services, identifies the gaps that exist in ethical and procedural rules, and describes various issues that can arise in the provision of limited scope legal services. The Task Force believes that limited scope legal services can be a valuable tool for enhancing access to justice by allowing people to retain lawyers for discrete services, and in accordance with their means. While limited scope legal services will not stem the rising tide of self-representation before the courts, the Task Force believes that if properly delivered, these services will lead to concrete benefits. First, such services will provide people who cannot afford full service representation with targeted legal assistance that improves their case. Increasing the availability of legal advice and services will enhance access to justice. Second, limited scope legal services can assist the court by better preparing self-represented, or partially represented litigants to advance their case. Third, by presenting only a "full service" or "no service" dichotomy, many lawyers are failing to access and serve a growing market. For some lawyers, the choice not to provide such services stems from uncertainty regarding how limited scope legal services are to be regulated, and whether the courts will respect the limited scope of the retainer, or expect the lawyer to provide services beyond the agreed scope of the retainer.

Where the word "court" has been used in this report, the Task Force intends, where applicable, for the recommendations to apply to matters involving tribunals as well. A lawyer may provide limited scope legal services to a client with regard to a matter before a tribunal, or that is within the jurisdiction of a tribunal to resolve.

The recommendations in this Report are intended to encourage reform that will provide guidelines for the delivery of limited scope legal services, and thereby enhance access to

justice by providing certainty and structure to their provision for clients, lawyers, the courts and the overall community.

SUMMARY OF RECOMMENDATIONS

The recommendations in this report can be categorized as follows:

- GENERAL PROFESSIONAL CONDUCT
- CONFIDENTIAL DRAFTING ASSISTANCE
- COMMUNICATIONS
  - General
  - With Limited Scope Parties
  - With the Courts and Other Parties
  - With the Client
- CONFLICTS OF INTEREST
- EDUCATION AND TRANSITION

❑ GENERAL PROFESSIONAL CONDUCT

Recommendation 1:

Because limited scope legal services can enhance access to justice for people who will not retain a lawyer for full service representation, rules that govern professional conduct, and procedure before the courts, should be amended as required to facilitate the proper, ethical provision of limited scope legal services.

Recommendation 2:

Amendments to the *Professional Conduct Handbook* providing guidelines for limited scope legal services should, as a general rule, not create a lesser standard of professional responsibility than is otherwise expected of a lawyer. While the scope of services may be limited, the lawyer should provide those services to the level expected of a competent lawyer in a similar situation, taking into account the factors set out in the *Professional Conduct Handbook* for professionalism and ethics.

Recommendation 3:

If the lawyer does not feel the professional services contemplated by the limited retainer can be performed in a competent and ethical manner, the lawyer should decline the retainer.

❑ CONFIDENTIAL DRAFTING ASSISTANCE

Recommendation 4:

It is not improper for a lawyer to provide confidential drafting assistance to clients. Unless otherwise required by law or a court, the discretion to divulge the identity of the lawyer who provided drafting assistance should lie with the client.

Recommendation 5:

In order to best assist the client and the court, the lawyer who provides drafting assistance should draft the documents using clear, plain language, and ensure that the client understands the meaning and possible consequences of the documents. The lawyer should also ensure the client understands the limited scope of the retainer, and should confirm this understanding, where reasonably possible, in writing.

Recommendation 6:

The *Rules of Court* should not require a lawyer to file an appearance simply because the lawyer drafted or assisted in drafting documents (ultimately) filed in court.

Recommendation 7:

A lawyer who provides drafting assistance to an otherwise self-represented litigant should be allowed to rely on that litigant's representation of the facts, unless the lawyer has reason to believe the representations are false or materially insufficient.

❑ COMMUNICATIONS

General

Recommendation 8:

The Ethics Committee should consider making an annotation or footnote for *Professional Conduct Handbook*, Chapter 10, Rule 10, to make it clear that a lawyer providing anonymous drafting assistance is not inconsistent with the scope and purpose of that rule.

With Limited Scope Parties

Recommendation 9:

A lawyer may communicate directly with a client who has retained another lawyer to provide limited scope legal services, except if all three of the following factors exist:

1. The lawyer has been notified of the limited scope lawyer's involvement;
2. The communication concerns an issue within the scope of the limited scope lawyer's involvement; and
3. The limited scope lawyer or his or her client has asked the lawyer to communicate with the limited scope lawyer about the issue in question.

With the Courts or other Litigation Parties

Recommendation 10:

For consistency and certainty the British Columbia Court of Appeal and British Columbia Supreme Court should be asked to draft orders of the court in circumstances the court deems appropriate.

Recommendation 11:

In order to facilitate the delivery of limited scope legal services, new court rules and court forms, drafted in plain and concise language, are required to allow a lawyer providing limited scope legal services to go on and off the record in an expedited manner, thereby communicating the scope of that lawyer's involvement to the court, the court registry and interested parties.

Recommendation 12:

The rules regarding service and delivery of documents should be amended to make it clear when service or delivery on a lawyer who is providing limited scope legal services is permissible.

With the Client

Recommendation 13:

A lawyer who provides limited scope legal services should inform the client about the scope of services and the limits and risks associated with the limited services provided.

❑ CONFLICTS OF INTEREST

Recommendation 14:

Save as described in Recommendation 15, the regular rules governing conflicts of interest and duty of loyalty should apply to limited scope legal service retainers.

Recommendation 15:

Because the current conflict of interest rules, and rules regarding duty of loyalty, can create impediments to lawyers providing legal services at court-annexed and non-profit legal clinics or programs, and because of the summary nature of those services and the importance of those service for enhancing access to justice, the *Professional Conduct Handbook* should be amended to encompass the following principles:

1. The recommendations for modifying the conflicts of interest rules apply only to circumstances where a lawyer, under the auspices of a program operated by a court or a nonprofit organization, provides short term limited legal services to a client in circumstances where neither the lawyer or client expect that the lawyer will provide continuing representation in the matter (the "Exempted Services").

2. In circumstances where it is practicable to do so, a lawyer should conduct a conflict of interest search prior to providing Exempted Services;

3. If the lawyer is providing legal services other than Exempted Services, the regular conflicts rules apply;

4. If a lawyer provides Exempted Services the following principles apply:

    a. The scope of the Exempted Services retainer is limited to the summary services provided through the court-annexed or non-profit program. While the duty of confidentiality and loyalty endure, the lawyer-client relationship terminates at the end of the provision of the Exempted Services;

    b. If a lawyer is aware of a conflict, the lawyer may not provide legal advice to the limited scope client ("LSC"), but may assess the LSC's suitability for services provided through the court-annexed or non-profit program and refer the LSC to another lawyer at the program or clinic;

    c. If a lawyer is not aware of a conflict, the lawyer may provide Exempted Services. As the services are summary in nature and the risk associated with not performing the conflicts search is outweighed by the social benefit of the Exempted Services, the lawyer is not required to check for conflicts prior to, or following, providing the Exempted Services;

    d. If, at any time during provision of the Exempted Services, a lawyer becomes aware of a conflict, the lawyer must immediately cease providing legal advice or services and refer the LSC and the notes taken to another lawyer at the clinic or program. If no lawyer is available, the LSC should be put in touch with a program staff person to coordinate the appointment of a new lawyer;

    e. A lawyer who provides Exempted Services may not divulge the LSC's confidential or privileged information to anyone including other lawyers at

the lawyer's firm, save as provided by law. Maintaining the LSC's confidences is an important safeguard in protecting the LSC's information and guarding against the inference that other people at the lawyer's firm possess the confidential information;

f. A lawyer who provides Exempted Services should not personally retain notes of the advice given; rather, the court-annexed program or non-profit clinic should be responsible for record keeping.

5. Because the exemption from performing a conflicts search is predicated, in part, on the concept that the Exempted Services are summary in nature, the following rules apply to circumstances where a lawyer has contact with the LSC on subsequent occasions:

   a. If the LSC contacts the lawyer, the lawyer must conduct a conflicts search prior to engaging the LSC in a new retainer;

   b. If the lawyer has advance notice that the lawyer will be speaking with the LSC on a subsequent occasion, the lawyer must conduct the conflicts search prior to that meeting;

   c. If the lawyer happens to be assigned the LSC a subsequent time while providing Exempted Services, and in circumstances not captured in 5(b), the lawyer may provide summary legal advice on that occasion but must conduct a conflicts search upon returning to the lawyer's firm.

6. If, following the provision of the Exempted Services, a lawyer becomes aware of a conflict between the LSC and a firm client:

   a. The regular rules for determining whether the lawyer may act for or against the existing client, the LSC, or a future firm client, apply. The Exempted Services will be treated as an isolated event that do not require prior informed consent;

   b. Despite the duty the lawyer owes to his or her clients, the lawyer must not divulge the confidential information received by the LSC during provision of Exempted Services, and the lawyer must not divulge the existing client's confidential information to the LSC.

7. No conflict of interest that arises as a result of a lawyer providing Exempted Services will be imputed to the lawyer's firm, and the firm may continue to act for its clients who are adverse in interest, or future clients who are adverse in interest, to the LSC.

8. In order to enhance access to justice, individuals who are adverse in interest should be able to obtain legal advice from the same court-annexed or non-profit program regarding their common dispute, provided the program has sufficient safeguards in place to ensure that lawyers who provide Exempted Services to

clients opposed in interest do not obtain confidential information arising from the opposing client's consultation. If the lawyers become aware of a conflict within the court-annexed or non-profit program, the clients must be advised of the conflict and the steps that will be taken to protect the clients' confidential information.

❑ EDUCATION AND TRANSITION

Recommendation 16:

In light of the rise in self-represented litigants before the court, court rules should be written in plain language and should strive for consistency between the various levels of court. The various rules of court should create definitions that make it clear which provisions apply to limited retainer lawyers, full service lawyers, and lawyers of record. Nomenclature should be consistent at all levels of court, and if distinctions are to be made between "lawyer", "solicitor", "counsel", and those "of record", these distinct usages should be defined.

Recommendation 17:

In order to facilitate the delivery and use of limited scope legal services, plain language educational material regarding limited scope legal services, self-representation, and partial representation, should be made available to:

(a) Members of the public;
(b) Lawyers; and
(c) Judges, masters and court staff.

1. LIMITED SCOPE LEGAL SERVICES

GENERAL PROFESSIONAL CONDUCT

Recommendation 1:

Because limited scope legal services can enhance access to justice for people who will not retain a lawyer for full service representation, rules that govern professional conduct, and procedure before the courts, should be amended as required to facilitate the proper, ethical provision of limited scope legal services.

Recommendation 2:

Amendments to the *Professional Conduct Handbook* providing guidelines for limited scope legal services should, as a general rule, not create a lesser standard of professional responsibility than is otherwise expected of a lawyer. While the scope of services may be limited, the lawyer should provide those services to the level expected of a competent lawyer in a similar situation, taking into account the factors set out in the *Professional Conduct Handbook* for professionalism and ethics.

Recommendation 3:

If the lawyer does not feel the professional services contemplated by the limited retainer can be performed in a competent and ethical manner, the lawyer should decline the retainer.

1.1 What are limited scope legal services and why are they an issue?

Limited scope legal services refers to a situation where a lawyer performs discrete tasks for a client, and the client handles other matters that, in a full service retainer, would form part of the services the lawyer would provide. Limited scope legal services are already being provided in British Columbia and other jurisdictions. In the United States, such services are often referred to as "unbundling", and the topic has received a great deal of attention: symposiums have been held, articles as well as ethics opinions from state Bars have been written, and several states have amended their rules of professional conduct to deal with issues that arise in the provision of unbundled legal services.

While it is possible for a lawyer to provide limited scope litigation services to a client, for the most part the rules that govern professional conduct are not drafted with this in mind, nor are the various rules of court. The typical model for litigation services is one of full representation or no representation.

Solicitors, on the other hand, have been providing limited scope services to clients for some time. A lawyer or firm providing legal services regarding a corporate acquisition might refer the tax aspects of the transaction to a specialist; a client might send its intellectual property work to one firm and its employment law work to another; a corporate client might refer some aspects of a transaction to outside counsel, while

handling other matters in-house. These situations reflect the freedom to contract for discrete services and are not, in the ordinary course of events, problematic.

Part of the reason limited scope retainers work well in solicitors' practice is because of the certainty that exists in the scope of most forms of solicitors' work: a lawyer who enters a retainer to draft a trademark licence will not suddenly find himself or herself conscripted into providing an opinion on the viability of geothermal energy, or appearing before the Workers Compensation Board. The success of solicitors providing limited scope legal services stands as a reminder that the concept is not antithetical to the practice of law, and that the challenges to providing limited scope litigation services are not insurmountable.

In contrast, limited scope services in litigation can create complications because the extent of a lawyer's obligations is not always clear. A lawyer who is retained to provide limited scope services in a litigation matter may find him or herself conscripted into a broader retainer than was originally contemplated. Other litigants, opposing counsel and the court, may be uncertain about the role the lawyer acting under a limited retainer is performing. Whereas solicitors' work often deals with prospective matters where parties are seeking to arrive at a mutually acceptable bargain, litigation usually starts from a situation where something has gone wrong and rights and obligations are being disputed. As such, litigation has the potential to drag people into the legal process unwillingly, and the adversarial model can polarize positions.

Litigation is a different legal environment than solicitor's work, with its own unique features and challenges. For solicitors to understand the challenges a litigator faces in delivering limited scope legal services it might be useful to consider what would happen if a client were to ask a solicitor to only advise on the portions of a contract that deal with one party's obligations, or only draft the portions that deal with a payment schedule. Thought of in this manner, solicitors can readily see that many questions about the scope of professional duty come to mind:

- Having read the portions of the contract drafted by the client, what obligation does the solicitor have to advise of problems?
- How do the clauses drafted by the solicitor interact with clauses drafted by the client?
- What liability issues arise from taking on the retainer?
- How much time and effort, beyond that contemplated in the limited retainer, will have to be expended to meet the expected standards of professional conduct?
- What if the client says he or she will draft the remainder of the contract based on the clauses the solicitor provides?
- Is the solicitor required to revise the work based on future negotiations?
- Is it even possible to deliver the requested services in a competent manner?

These are just a few concerns. To better understand limited scope legal services, it is important to look at the forces that have fostered it.

1.2 Forces leading to the rise in limited scope legal services

There are a number of forces that have given rise to the increase in limited scope legal services. Although the forces are not independent, they can be divided into two broad categories: economic forces, and cultural forces.

Economic forces

In 1996, the Canadian Bar Association ("CBA"), Systems of Civil Justice Task Force tabled its report ("CBA Report") setting forth 53 recommendations for modernizing the Canadian civil justice system.[1] The CBA Report found, at page 12, that the public, and those in the legal profession, identified the top three issues impacting access to justice as:

Issue	Priority to Public	Priority to Lawyers
The speed with which disputes are resolved in the civil courts	1	2
Public understanding of the work in the civil courts	2	3
Affordability of dispute resolution in the civil courts	3	1

These problems and concerns are as relevant today as they were a decade ago.

Many litigants cannot afford full service representation, and there is no guaranteed right to government-funded counsel in civil litigation. A litigant must qualify for legal aid, find funds through other channels, or receive *pro bono* assistance or the assistance of counsel operating on a contingent fee basis (where contingent fees are permitted), or a reduced fee retainer. Absent such options, the litigant must self-represent, or not engage the legal system (which is not an option for some). There is plenty of anecdotal evidence about the rise in self-represented litigants in Canadian courts, but comprehensive, empirical studies are not yet available.[2] The cost of litigation seems to be an important driver in the phenomenon of self-representation, but it is difficult to assess the weight to be given to any particular factor in the cost of litigation, and the quality of justice received by self-represented litigants is difficult to measure.

It is worth noting that there is a disparity in the economic resources of the typical client who requires litigation services and the typical client who requires discrete task

[1] Canadian Bar Association, *Report of the Task Force on Systems of Civil Justice*. Ottawa, ON: Author, 1996.
[2] See, Alberta Law Reform Institute, *Alberta Rules of Court Project: Self-Represented Litigants,* Consultation Memorandum No. 12.18, March 2005, Chapter 1, Part D.

solicitors' services. The former contains a much larger pool of people of modest means, and the costs of engaging an adversarial litigation system is prohibitive. In contrast, the solicitors' services required by individuals of modest means, often have, for a variety of reasons, a correspondingly modest cost. In making its recommendations, the Task Force has tried to be mindful of the growing economic necessity of limited scope litigation services.

One study in the criminal law context found that unrepresented accused take less time moving through the system than represented accused. [3] While this militates against the argument that unrepresented accused place a greater burden on the justice system than represented accused, it raises the question of the quality of access to justice unrepresented defendants are receiving. It is possible a similar pattern exists in civil litigation, but it is also possible that some of the factors that lead to shorter trials in a criminal context are less prevalent in the civil context. For example, a repeat criminal offender might plead guilty to get matters over with, whereas a civil litigant might assiduously pursue a claim or defense. In addition, Crown lawyers conduct criminal prosecutions, whereas a civil matter may have one or both parties acting without counsel. That having been said, in a superior court the presence of counsel may drag out the litigation process through use of discoveries, expert witnesses, and interlocutory applications. More research is required to transform speculation into principled thought, but if the reforms proposed by the BC Justice Review Task Force, Civil Justice Reform Working Group, *Effective and Affordable Civil Justice*, (November 2006), have the desired effect, the latter concern will likely be addressed. The authors of that report note unbundled legal services, as well as changes to the conflict of interest rules to facilitate lawyer participation in *pro bono* legal work through a clinic, are important elements of successful civil justice reform.

Cultural forces

Our present civil justice system and model for delivery of legal services was refined in the Industrial Age. The architecture for delivery of legal services and the administration of the justice system is being strained by the emergence of new technologies in the Information Age. The Internet and related computer technology have changed the way law is being practiced, but it is also changing the way people obtain information. A lawyer is no longer the gatekeeper or intermediary between the layman and legal information. Modern technology allows people to find legal information without the assistance of a lawyer, and the self-help culture that pervades society is influencing how people view the information services a lawyer provides. Many businesses that are set on delivering services on an antiquated model are struggling to deal with modern technology and the expectations of today's customers. The legal profession must learn how to adapt in order to keep pace with the public's demands and expectations for how information-based services are delivered.

The economic and cultural forces that have given rise to an increase in limited scope legal services, have also given rise to the increase in self-representation before the courts.

[3] Ab Currie, "A Burden on the Court? Self-Representing Accused in Canadian Criminal Courts", *JustResearch* No. 11 (2004), online: http://www.justice.gc.ca/en/ps/rs/rep/justresearch/jr11/jr11_005a.html.

The phenomenon of self-represented litigants is important to understand in order to see how limited scope legal services might enhance access to justice.

1.3 The rise of self-representation before the courts

There are a number of reasons why a litigant might proceed without representation. Two core distinctions are between those litigants who want representation, but for various reasons do not secure it, and those litigants who do not want to be represented. A number of commentators label the former as "unrepresented litigants" and the latter as "self-represented litigants". In this Report, the term self-represented litigant is intended to encompass any individual who acts without the assistance of counsel.

Any of the following might apply to the self-represented litigant, including a combination of characteristics:[4]

- The litigant might not be able to afford a lawyer;
- The litigant might not qualify for legal aid;
- The litigant might not take advantage of legal resources due to a lack of understanding of what resources are available, and/or because of an inability to access those resources;
- The litigant might believe it is not worth the money to hire a lawyer;
- The litigant might not believe a lawyer will improve his or her case;
- The litigant might believe he or she has sufficient knowledge and/or skill to conduct the litigation without representation.

There are many types of self-represented litigants, and trying to assign a singular motivation or set of needs to self-represented litigants is not desirable.

During an August 2006 speech to the CBA, Chief Justice McLachlin called the number of self-represented litigants in Canadian courts an "epidemic of lack of representation." The Chief Justice asked: "Can more creative ways be found to bill clients proportionate to the complexity and the value of the proceedings?" The media reported the Chief Justice's observations in different ways: a CBC News article appeared under the title "Self-representation creating chaos in courts: chief justice",[5] whereas The National Post proclaimed: "SCOC judge want's [sic] lawyer's [sic] fees lowered".[6] The issue that can easily be lost in headlines is the relationship between the self-represented litigant and

[4] The reasons for self-representation are canvassed in many sources, and other reasons exists. See, for example: Canadian Bar Association, *The Future of the Legal Profession: The Challenge of Change* (August 2000; American Bar Association, Report of the Modest Means Task Force, *Handbook on Limited Scope Legal Assistance* (2003); National Center for State Courts, *The Future of Self-represented Litigation: Report from the March 2005 Summit.*

[5] CBCnews Canada, at URL: http://www.cbc.ca/canada/story/2006/08/12/court-representation.html.

[6] National Post, at URL: http://www.canada.com/nationalpost/news/story.html?id=1bc6c33f-90d6-45a0-9b7d-398110ca22e8&k=38659.

access to justice. This is a problem that lends itself to sound bites, but not simple solutions.

This report is not about legal fees, but it is worth noting that the relationship between lawyers' fees and the client's capacity to pay requires more thought than merely looking at fees alone. At a minimum, it requires an analysis of the various factors in why a growing number of litigants might not be able to afford the fee. The market may have set lawyers fees high, but to the extent that Canadians shoulder more debt and save less income today than they did 20 years ago,[7] and to the extent that court processes consume more time and resources than they did 20 years ago, we can see that there is an interrelation of agencies at play in the rising trend of self-represented litigation. Litigation is complex, time consuming, costly, and litigants have less money than they did in the past to risk engaging the legal system, or when they do engage it, to retain counsel for full service representation. The Chief Justice raises the important concept of proportionality. Proportionality in process is a critical element of the proposed reforms of the Civil Justice Reform Working Group. The Task Force believes that limited scope legal services may provide representation that is proportionate to the value of the proceedings, and the nature of the proceedings, taking into account the means and values of the client when he or she engages in the legal system.

Limited scope legal services can also provide self-represented litigants with an adequate knowledge base upon which to understand the litigation process. The Canadian Judicial Council suggests:

> Equal access to justice depends on awareness of procedural and substantive law: thus, representation by qualified counsel is virtually indispensable. The fact that more and more litigants are choosing to represent themselves in court means that judges and courts face new challenges in the fair, timely and efficient delivery of justice. Even the simplest of court procedures can be overwhelming for the non-specialist. Self-represented litigants are often unaware of their rights and the consequences of legal decisions.[8]

In tackling its work, the Task Force started from the premise that creating clear rules for limited scope legal services is an access to justice issue, and that any recommendations arising from the Task Force's work should enhance, and not hinder, meaningful access to justice. In order to better understand the issues that arise when lawyers provide limited scope services to litigants, it was important to obtain an understanding of the sort of the reasons a litigant might be self-represented.

What is needed is a flexible approach that enhances access to justice, provides guidelines for lawyers, clients and the judiciary, and doesn't compromise important values, such as the rule of law or the public confidence in the administration of justice. It must be borne in mind, however, that "access to justice" is a complex concept that shifts and evolves

[7] Various reports documenting these trends are available through Statistics Canada's website, URL: http://www.statcan.ca/menu-en.htm.
[8] Canadian Judicial Council, *2004-2005 Annual Report*, page 20.

with society. Therefore, the use of "access to justice" in this report should not be read as referring to a fixed concept. For unbundling to provide meaningful access to justice, the rules governing the provision of unbundled services must be flexible and responsive to our evolving understanding of what access to justice means.

1.4 Increasing access to justice: the practical necessity of limited scope legal services

A litigant is entitled to expect access to justice – the expectation is of an ideal, and practical barriers can frustrate the realization of the ideal. Because access to justice involves both an articulation of our societal aspirations and ideals for how the justice system should operate, and our knowledge of the limitations placed on the realization of the ideal, it is difficult to speak of access to justice in absolute terms. We live in a world of ideals, but not an ideal world, and the pragmatic truth is that the administration of justice costs money.

The infrastructure that supports the justice system comes at a cost, and the professional services necessary for the effective operation of the justice system require an expenditure of time and the application of skill and knowledge. The real costs in the system must be supported by funds, and in some instances by cash substitutes (e.g. *pro bono* services, volunteer services). The government must pay the civil servants involved in the justice system. Taxes pay for this aspect of access to justice. Taxes, charitable donations, and permissible investment and revenue streams pay for funding of available legal aid services. Lawyers contribute to the economic aspect of access to justice in numerous ways, including providing services for flat rate fees, discounting their time, providing services on a contingent fee basis, providing *pro bono* assistance, etc.

As the Canadian Judicial Council notes, access to justice is about more than access to the machinery of the justice system: it requires that the litigant (or his or her counsel) has an understanding of both procedural and substantive law. By virtue of this, represented litigants often fare better than self-represented litigants. In exploring the issue of limited scope legal services, the Task Force considered both procedural and substantive legal issues, as well as issues relating to geography, culture, language, and economics.

The Task Force recognizes that, just as the reasons why a litigant may be self-represented are diverse, the possible ways of reducing strain on the judicial system and providing litigants meaningful access to justice are diverse. Providing limited scope legal services is one of many possible ways of helping litigants receive improved access to justice. There may not be a miracle cure for the "epidemic" of self-represented litigants, and the Task Force does not suggest limited scope legal services are the *solution* to a complex phenomenon. The Task Force does believe, however, that limited scope legal services can be part of a broader solution, and an important tool in enhancing meaningful access to justice.

2. KEY ISSUES IN PROVIDING LIMITED SCOPE LEGAL SERVICES

The Task Force considered the issues that arise in provision of limited scope legal services in relation to four main topics:

1. Lawyers providing confidential drafting assistance;
2. Lawyers making limited appearances in court as part of the limited scope retainer;
3. Lawyers providing legal information and advice under a limited scope retainer; and
4. Lawyer providing legal services at a court-annexed program, or at a non-profit legal service program.

In considering these thematic topics, the Task Force explored issues relating to: communications between lawyers, clients, and the court; conflicts of interest and the duty of loyalty; whether the limited retainer rule in *Professional Conduct Handbook*, Chapter 10 requires revision; the ethical and professional standards issues that arise in the provision of limited scope legal services; whether limited scope legal services expose lawyers to greater liability and the insurance issues involved in providing limited scope services; and the role education can play in ensuring unbundled legal services enhance access to justice.

2.1 CONFIDENTIAL DRAFTING ASSISTANCE

Recommendation 4:

It is not improper for a lawyer to provide confidential drafting assistance to clients. Unless otherwise required by law or a court, the discretion to divulge the identity of the lawyer who provided drafting assistance should lie with the client.

Recommendation 5:

In order to best assist the client and the court, the lawyer who provides drafting assistance should draft the documents using clear, plain language, and ensure that the client understands the meaning and possible consequences of the documents as well as the limited scope of the retainer and confirm this understanding, where reasonably possible, in writing.

Recommendation 6:

The *Rules of Court* should not require a lawyer to file an appearance simply because the lawyer drafted or assisted in drafting documents (ultimately) filed in court.

Recommendation 7:

A lawyer who provides drafting assistance to an otherwise self-represented litigant should be allowed to rely on that litigant's representation of the facts, unless the lawyer has reason to believe the representations are false or materially insufficient.

2.1.1 Principles that should govern the provision of confidential drafting assistance

Based on its research and consultation, the Task Force is of the view that the topic of confidential drafting assistance is relatively non-controversial in the British Columbia context. As such, the detailed overview of the topic is contained in Appendix B.

During its consultations the Task Force discovered that confidential drafting assistance is a common service being offered in British Columbia, although there is a modest degree of uncertainty regarding how it fits within the rules of professional conduct. Much of the debate on this topic in the US stems from a variety of views as to whether it is ethical to provide anonymous drafting assistance to a litigant. The prevailing, though not unanimous, view of the Masters the Task Force spoke with was that anonymous drafting assistance was not a problem. From the perspective of practitioners, the prevailing view was that a lawyer should be able to provide anonymous drafting assistance, and even if the lawyer's identity was disclosed to the court or a third party, such disclosure should not operate to increase the scope of the retainer.

The Task Force believes that confidential drafting assistance can be of value to both litigants and the court by improving the quality of documents placed before the court.

For this benefit to be realized, the Task Force believes the documents must be written in clear, plain language. In addition, the client needs to understand what the documents mean, because the client may be required to speak to the document before the court. If the self-represented litigant is asked what a document means, and answers "I don't know, my lawyer wrote it", it is natural for the court to ask why the lawyer is not present. Therefore, it is incumbent on the lawyer to explain the scope of the services to the client and to ensure the client understands the document and its relevance to the context of the client's case, as well as the possible consequences[9] of the document.

In keeping with Recommendation 2, a lawyer who provides confidential drafting assistance services must understand that in some circumstances it is not sufficient to rely on the client's representation of the facts. A lawyer is not permitted to take a relaxed approach to professional or ethical standards merely because he or she is providing behind-the-scenes assistance. A lawyer providing confidential drafting services must be alert to fraud, and remain mindful of his or her obligation to the courts. When the client's version of the facts does not ring true, a lawyer is expected to perform additional reasonable inquiries before providing the client with drafting assistance, or decline the retainer.

[9] For example: if the client wishes the lawyer to assist in drafting a Statement of Claim alleging fraud, advising of the possible consequences might include alerting the client to the potential ramifications of failing to make the case for fraud.

2.2 COMMUNICATIONS BETWEEN LAWYERS, PARTIES AND THE COURTS

Recommendation 8:

For purposes of greater clarity, the Ethics Committee should consider making an annotation or footnote for *Professional Conduct Handbook*, Chapter 10, Rule 10, to make it clear that a lawyer providing anonymous drafting assistance is not inconsistent with the scope and purpose of that rule.

Recommendation 9:

A lawyer may communicate directly with a client who has retained another lawyer to provide limited scope legal services, except if all three of the following factors exist:

1. The lawyer has been notified of the limited scope lawyer's involvement;
2. The communication concerns an issue within the scope of the limited scope lawyer's involvement; and
3. The limited scope lawyer or his or her client has asked the lawyer to communicate with the limited scope lawyer about the issue in question.

Recommendation 10:

For consistency and certainty the British Columbia Court of Appeal and British Columbia Supreme Court should be asked to draft orders of the court in circumstances the court deems appropriate.

Recommendation 11:

In order to facilitate the delivery of limited scope legal services, new court rules and court forms, drafted in plain and concise language, are required to allow a lawyer providing limited scope legal services to go on and off the record in an expedited manner, thereby communicating the scope of that lawyer's involvement to the court, the court registry and interested parties.

Recommendation 12:

The rules regarding service and delivery of documents should be amended to make it clear when service or delivery on a lawyer who is providing limited scope legal services is permissible.

Recommendation 13:

A lawyer who provides limited scope legal services should inform the client about the scope of services and the limits and risks associated with the limited services provided.

2.2.1 Overview of communication issues in the provision of limited scope legal services

The general rule regarding communications is that lawyers communicate with each other, and not directly with a represented individual. Service and delivery rules generally allow for, or require, service or delivery on the party or the party's lawyer. When a lawyer is involved in a matter for a limited purpose, problems can arise around the rules for communication with other lawyers, litigants, and the court.

2.2.2 Limited appearances by a lawyer in court

The *Professional Conduct Handbook*, Chapter 10, Rule 10, reads:

> A lawyer who acts for a client only in a limited capacity must promptly disclose the limited retainer to the court and to any other interested person in the proceeding, if failure to disclose would mislead the court or that other person.

This provision makes it clear that a limited litigation retainer is permissible. Some of the problems that arise, however, are that the rule can be inconsistent with providing confidential drafting assistance, it is unclear what is meant by "any other interested person in the proceeding", there is no indication if misleading is linked to any sort of severity test, and the rule clearly provides no guidelines for solicitors engaged in limited scope retainers.

It should be noted that limited appearances already occur in British Columbia courts: the availability of duty counsel is but one instance of this. The Task Force discussed limited appearances at a meeting with Masters of the British Columbia Supreme Court. The Masters indicated that lawyers are already making limited appearances before the court, informing the court that the scope of their retainer is limited. However, on occasion the court is not aware that the retainer is limited until later in the proceeding. The general perspective was that it is preferable to have a lawyer involved, even for limited purposes. The preferred approach is that it be made clear that the retainer is limited. Some of the complexities raised by the Masters included:

- the difficulty of assessing a Bill of Costs;
- the lawyer may not be able to explain to the court the history of the matter; and
- in what circumstances should the lawyer be required to draft and/or sign the order.

Commentators note that there are advantages and disadvantages to limited appearances by a lawyer. Some advantages of establishing clear rules for limited appearances include:

- Partial representation by counsel may be affordable to a client who cannot afford full representation;
- Lawyers need certainty that the court will respect the scope of the retainer the lawyer and client have agreed upon;

- Absent clear guidelines, a limited retainer lawyer may have ongoing obligations that transform the retainer into a full service retainer;
- It enhances and improves the quality of access to justice.

Arguments against limited retainers include:

- It might prevent the lawyer from providing competent representation;
- Limited retainers can create uncertainty for the parties involved if they do not know the scope of the retainer;
- Limited retainers could create a chain of unbundled lawyers acting in a matter.

The Task Force believes the Ethics Committee should consider making an annotation or footnote to Chapter 10, Rule 10 to indicate it is not inconsistent with the provision of anonymous drafting assistance.

2.2.3 Lawyer communications with partially represented litigants?

The *Professional Conduct Handbook,* Chapter 4, Rules 1 & 1.1, Chapter 5, and Chapter 8 are relevant to the topic of communication in limited scope litigation scenarios. When a lawyer is providing limited scope legal services, the traditional communication rules can become blurred. The Task Force is of the opinion that clear communication between the limited scope lawyer and the client is essential, and that the nature and scope of the retainer must be established and agreed upon in order for proper communication to occur. Having a clear framework for the relationship simplifies the task of informing interested parties of the involvement of the lawyer. To eliminate confusion, it is important to determine the scope of the lawyer's authority.

The Task Force believes that the onus should lie with the lawyer who is providing limited scope legal services to notify opposing counsel of the existence and scope of the limited retainer, as well as setting out the communication guidelines. The current wording of the *Professional Conduct Handbook,* Chapter 4, Rule 1.1 does not require such efforts. The current rules do not distinguish between full representation and limited scope services.

2.2.4 Who should be responsible for drafting and entering a court order?

One of the areas of concern raised by Masters of the BC Supreme Court related to orders. The Masters indicated that potential for confusion exists regarding who is responsible for preparing the order in circumstances where limited scope legal services are provided. The Task Force considered the various court rules to determine whether a lawyer providing limited scope legal assistance is required to enter the order, might be required to enter the order, or can choose to enter the order.

Part of the problem is one of interpretation. The various court rules acts refer to lawyer, lawyer of record, solicitor, solicitor of record, or qualify the term lawyer by indicating the lawyer is acting for or representing a party. Court rules in general are internally

inconsistent in the use of "lawyer of record" and "lawyer". Without clear definitions, a lawyer who is providing limited scope legal services may be a lawyer for the purposes of court rules without the lawyer or the client ever intending that to be the case.

The status of lawyers appearing before the court in a limited capacity, and their obligations regarding orders requires clear, comprehensible rules. Case law exists for the proposition that a lawyer making a limited appearance before the court does not attract the obligations of a solicitor of record,[10] but clear rules and procedures would go a long way to establishing certainty.

One possible solution, at any level of court, is having forms that would allow the lawyer to communicate to the court the limited scope of the retainer, and whether or not the retainer contemplated the lawyer being responsible for entering the order. The BC Supreme Court Self-Help Information Centre ("SHC"), *Final Evaluation Report,* August 2006, indicates that, "the Centre's work has served to highlight the need for plain language precedents and documents, based on more accessible rules" (p. 49). The Task Force believes that clear language court rules that allow for limited scope legal services and provide a framework for those services is important. If the recommendation of the Civil Justice Reform Working Group that the Supreme Court Rules be rewritten is adopted, clear definitions and rules regarding lawyers providing limited scope legal service should form part of the new rules.

For consistency and certainty the British Columbia Court of Appeal and British Columbia Supreme Court should be asked to draft orders of the court in circumstances the court deems appropriate. Further, the Task Force understands that in the Supreme Court there is not a consistent protocol regarding parties obtaining access to the Clerk's notes. The Task Force believes that at a minimum the Supreme Court should establish a protocol whereby parties can have access to the Clerk's notes to assist with drafting orders. Having a uniform approach through all registries will improve public understanding and perception of the justice system.

2.2.5 Getting on and off the record.

During its consultations, the Task Force became aware that lawyers were concerned about the difficulty of getting off the record at the end of a limited appearance. Lawyers said that having simple procedures to allow for this would be helpful. The courts, on the other hand, are justified in being concerned about having lawyers speak to matters without going on the record. The Task Force believes that lawyers who make limited appearances should go on the record, but that there needs to be simplified rules and procedures for getting on and off the record. The Task Force believes having a court form that both the lawyer and client sign, that sets out the scope of the lawyer's appearance before the court would eliminate confusion. It is important that this not add a layer of cost and complexity to the proceedings. The Task Force does not believe duty counsel should be subject to this requirement given the nature of their work.

[10] *Logan* v. *Logan* (1993), 15 O.R. (3d) 411 at para. 8(1) (Gen. Div.)

2.2.6 What are the service issues in an unbundled litigation scenario?

In considering what service issues exist in a limited scope litigation retainer, the Task Force was confronted with similar interpretation problems as arose in the context of confidential drafting assistance. The question of whether an unbundling lawyer is acting for the client or representing the client is difficult because the lawyer will be doing this for part of the litigation, but not all of the litigation. As such, the various court rules contemplate service on the lawyer who is providing limited scope legal services, but it is unclear whether that service would still be permissible following the limited appearance, at which time the client would have resumed conduct of the litigation. Following the completion of a limited appearance can a lawyer still be said to be acting for or representing the client?

It would be helpful to have a better definition of what "lawyer" means and how that definition applies to limited scope legal services in order to help reduce confusion.

2.3 CONFLICTS OF INTEREST

Recommendation 14:

Save as described in Recommendation 15, the regular rules governing conflicts of interest and duty of loyalty should apply to limited scope legal service retainers.

Recommendation 15:

Because the current conflict of interest rules, and rules regarding duty of loyalty, can create impediments to lawyers providing legal services at court-annexed and non-profit legal clinics or programs, and because of the summary nature of those services and the importance of those service for enhancing access to justice, the *Professional Conduct Handbook* should be amended to encompass the following principles:

1. The recommendations for modifying the conflicts of interest rules apply only to circumstances where a lawyer, under the auspices of a program operated by a court or a nonprofit organization, provides short term limited legal services to a client in circumstances where neither the lawyer or client expect that the lawyer will provide continuing representation in the matter (the "Exempted Services").

2. In circumstances where it is practicable to do so, a lawyer should conduct a conflict of interest search prior to providing Exempted Services;

3. If the lawyer is providing legal services other than Exempted Services, the regular conflicts rules apply;

4. If a lawyer provides Exempted Services the following principles apply:

    a. The scope of the Exempted Services retainer is limited to the summary services provided through the court-annexed or non-profit program. While the duty of confidentiality and loyalty endure, the lawyer-client relationship terminates at the end of the provision of the Exempted Services;

    b. If a lawyer is aware of a conflict, the lawyer may not provide legal advice to the limited scope client ("LSC"), but may assess the LSC's suitability for services provided through the court-annexed or non-profit program and refer the LSC to another lawyer at the program or clinic;

    c. If a lawyer is not aware of a conflict, the lawyer may provide Exempted Services. As the services are summary in nature and the risk associated with not performing the conflicts search is outweighed by the social benefit of the Exempted Services, the lawyer is not required to check for conflicts prior to, or following, providing the Exempted Services;

d. If, at any time during provision of the Exempted Services, a lawyer becomes aware of a conflict, the lawyer must immediately cease providing legal advice or services and refer the LSC and the notes taken to another lawyer at the clinic or program. If no lawyer is available, the LSC should be put in touch with a program staff person to coordinate the appointment of a new lawyer;

e. A lawyer who provides Exempted Services may not divulge the LSC's confidential or privileged information to anyone including other lawyers at the lawyer's firm, save as provided by law. Maintaining the LSC's confidences is an important safeguard in protecting the LSC's information and guarding against the inference that other people at the lawyer's firm possess the confidential information;

f. A lawyer who provides Exempted Services should not personally retain notes of the advice given; rather, the court-annexed program or non-profit clinic should be responsible for record keeping.

5. Because the exemption from performing a conflicts search is predicated, in part, on the concept that the Exempted Services are summary in nature, the following rules apply to circumstances where a lawyer has contact with the LSC on subsequent occasions:

   a. If the LSC contacts the lawyer, the lawyer must conduct a conflicts search prior to engaging the LSC in a new retainer;

   b. If the lawyer has advance notice that the lawyer will be speaking with the LSC on a subsequent occasion, the lawyer must conduct the conflicts search prior to that meeting;

   c. If the lawyer happens to be assigned the LSC a subsequent time while providing Exempted Services, and in circumstances not captured in 5(b), the lawyer may provide summary legal advice on that occasion but must conduct a conflicts search upon returning to the lawyer's firm.

6. If, following the provision of the Exempted Services, a lawyer becomes aware of a conflict between the LSC and a firm client:

   a. The regular rules for determining whether the lawyer may act for or against the existing client, the LSC, or a future firm client, apply. The Exempted Services will be treated as an isolated event that do not require prior informed consent;

   b. Despite the duty the lawyer owes to his or her clients, the lawyer must not divulge the confidential information received by the LSC during

provision of Exempted Services, and the lawyer must not divulge the existing client's confidential information to the LSC.

7. No conflict of interest that arises as a result of a lawyer providing Exempted Services will be imputed to the lawyer's firm, and the firm may continue to act for its clients who are adverse in interest, or future clients who are adverse in interest, to the LSC.

8. In order to enhance access to justice, individuals who are adverse in interest should be able to obtain legal advice from the same court-annexed or non-profit program regarding their common dispute, provided the program has sufficient safeguards in place to ensure that lawyers who provide Exempted Services to clients opposed in interest do not obtain confidential information arising from the opposing client's consultation. If the lawyers become aware of a conflict within the court-annexed or non-profit program, the clients must be advised of the conflict and the steps that will be taken to protect the clients' confidential information.

2.3.1 Conflicts of interest in limited scope retainers

A lawyer may provide limited scope legal services as part of the lawyer's regular practice, or through a court-annexed or non-profit legal service provider. The Task Force considered whether:

> In order to enhance the delivery of limited scope legal services as a means of increasing access to justice, should the Law Society's Conflicts of Interest Rules be amended for situations where it may not be feasible for a lawyer to systematically screen for conflicts of interest while providing legal services at a court-annexed or non-profit program?

Most jurisdictions that have amended rules to allow for unbundled legal services have relaxed their conflicts of interest rules to facilitate lawyers providing legal services through non-profit and court-annexed limited legal advice programs. The SHC, *Final Evaluation Report,* found that "the availability of legal advice is the area of greatest unmet need identified by the evaluation" (p.74), and that:

> The provision of legal advice at the Centre is not possible under the current Law Society Rules concerning professional liability. In addition, it would be necessary to do a conflict check for each client. (p. 61)

As noted, Civil Justice Reform Working Group identified changes to the conflict of interest rules as an important component of encouraging lawyers to engage in *pro bono* work with clinics.

The Task Force believes that a lawyer who, as part of his or her regular practice, provides limited scope legal services is required to conduct the regular searches for conflicts of interest. This is not difficult, as the lawyer should have a conflicts checking system in place that captures conflicts both at the beginning of the representation, and as they arise

throughout the course of the retainer. The lawyer in this scenario is presumed to have access to his or her conflicts database when approached by a potential client.

A lawyer who is providing legal services through a court-annexed or non-profit legal services provider will not likely have access to his or her conflict's database at the time of initial contact with the client. Contact may occur over the phone, and/or at an external facility and it is also possible for clients to drop-in. The Task Force has heard from representatives of the Legal Services Society and the SHC, amongst others, that there is a need to relax the current conflicts rules in circumstances where it is not feasible for a lawyer to systematically screen for conflicts of interest (e.g. at a drop-in centre where the lawyer provides limited, summary legal advice, or where the lawyer provides limited legal advice through a duty counsel program). A distinguishing feature of these services is that neither the lawyer nor the client expects that the legal services will be ongoing, although it is possible for a client to be a repeat user of a facility through which the services were provided and this should be taken into account.

2.3.2 American models for conflicts of interest in unbundled matters

ABA Model Rule 6.5 has the effect of excusing a lawyer who is participating in a non-profit or court-based program offering limited services from the obligation to check for conflicts of interest prior to providing the limited legal services. However, if the lawyer has actual knowledge of a conflict he or she may not act and the general conflict of interest rules apply, including the rules for imputed conflicts of interest. The rationale behind this approach was a desire to make it less onerous for lawyer to provide services through these programs.

The Task Force considers the approach taken by Washington State to be the most flexible and principled. The Washington State Court Rules: Rules of Professional Conduct, Rule 6.5 reads:

> (a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter and without expectation that the lawyer will receive a fee from the client for the services provided:
>
> > (1) is subject to Rules 1.7, 1.9(a), and 1.18(c) only if the lawyer knows that the representation of the client involves a conflict of interest, except that those Rules shall not prohibit a lawyer from providing limited legal services sufficient only to determine eligibility of the client for assistance by the program and to make an appropriate referral of the client to another program;
> >
> > (2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter; and
> >
> > (3) notwithstanding paragraphs (1) and (2), is not subject to Rules 1.7, 1.9(a), 1.10, or 1.18(c) in providing limited legal services to a client if:

> (i) the program lawyers representing the opposing clients are screened by effective means from information relating to the representation of the opposing client;
>
> (ii) each client is notified of the conflict and the screening mechanism used to prohibit dissemination of information relating to the representation; and
>
> (iii) the program is able to demonstrate by convincing evidence that no material information relating to the representation of the opposing client was transmitted by the personally disqualified lawyers to the lawyer representing the conflicting client before implementation of the screening mechanism and notice to the opposing client.
>
> (b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

The Washington State approach allows for lawyers who work at, or volunteer their time to, non-profit and court-annexed legal service providers to give limited term legal advice to clients without performing the standard conflicts of interest search. A lawyer who is aware of a conflict may not act for the client, but may still provide limited services sufficient to determine whether the client is eligible under the program and to refer the client to another lawyer. The rule also establishes a framework for determining whether two lawyers providing legal advice through a program can represent clients with conflicts of interest. If, during the course of providing legal advice to the client, the lawyer becomes aware of a conflict of interest the regular conflict rules apply, save that the lawyer could refer the client to a suitable lawyer within the program. If, after the initial consultation, the client desires to retain the lawyer, the lawyer will be required to perform the regular conflicts check.

The Washington State approach, the ABA Model Rule, and other models are intended to encourage lawyers to participate in non-profit and court-annexed legal service programs. The present conflict of interest rules create a barrier to lawyers providing assistance through these programs, and can frustrate access to justice. The Task Force recognizes, however, that it is not sufficient to put a rule in place that only deals with whether the lawyer is aware of a conflict at the time the limited scope legal services are being provided at the court-annexed or non-profit service. The conflicts rules have to address what happens when the lawyer returns to his or her firm and discovers that the firm is representing a client in circumstances that create a conflict between the existing client and the clinic/program client. The rules also have to address what happens in circumstances where the lawyer or his or her firm later wish to act for a person, and such a representation would create a conflict based on the prior limited scope legal work provided through the court-annexed or non-profit service.

2.3.3 Examples of how non-profit and court-annexed service providers in British Columbia deal with conflicts

The delivery of limited scope legal services is already a reality for non-profit and court-annexed legal service providers. The Legal Services Society ("LSS") has, as a result of budget cuts, had to reduce its services from prior levels. This has required providing services and programs that are limited in scope. The LSS provides legal information, legal advice and legal representation. An individual who is applying for legal aid or receiving legal information is not deemed to be a client. An individual who is receiving legal advice or legal representation is deemed to be a client. Once an individual is a client, no individual adverse in interest may receive legal information (save for written material on display or at hand), legal advice, or legal representation from that office. The individual may seek legal assistance through another office. Each legal aid office is treated as a distinct unit for these purposes.

Criminal duty counsel also provide limited scope legal services. It is less likely, but not unheard of, for a conflict of interest to arise (e.g. co-accused). The Task Force heard from duty counsel, and was advised that the standard practise is to deal with conflicts based on having actual knowledge of the conflict. While duty counsel do not wish to run afoul of the Law Society's conflicts rules, they believe their approach provides a practical method that balances the duty to protect a client's interest with making sure as many accused as possible have access to justice.

2.3.4 Justification for amending the conflicts of interest rules for lawyers providing pro bono services at court-annexed and non-profit programs

The Task Force believes that if firms were to be disqualified from continuing to represent existing clients, or would be shutting the door on potential future retainers that may be lucrative, based on a lawyer of the firm providing legal advice at court-annexed or non-profit clinics, the objectives of increasing access to limited scope legal services could be frustrated. However, the duty of loyalty to a client is a core principle of the lawyer/client relationship, and rules protecting the interest and expectations of clients regarding confidentiality and a duty of loyalty are not to be cast aside or transformed to favour expeditiousness over ethics.

The Task Force considered the potential use of waivers for conflicts of interest, but concluded that such an approach presents several problems. For the waiver to be valid, it would require both the existing client and the new client to waive the conflict, and with informed consent. This would be administratively impractical, and there are some conflicts that cannot be waived in any event. Having a waiver that was only signed by one party would not amount to a true waiver, and while it would serve to alert the client to the concept of conflicts it would do little to resolve the concern. The Task Force is of the view that the better approach would be to clearly limit the scope of the retainer, and to have a mechanism for alerting the client to the concept of conflicts of interest and how conflicts would be handled should they arise. Providing the client with a clear and comprehensible limited retainer form is only part of the equation, however, and the Task Force recognizes that the conflicts of interest rules would have to be amended to create a narrow exemption for the conflict of interest rules. This exemption should seek to

balance the competing demands of the duty of loyalty to a client with the increasing need for limited scope legal services at court-annexed and non-profit programs, to assist litigants who may otherwise be self-represented.

The Task Force acknowledges that modifying the Law Society rules that govern conflicts of interest in order to facilitate limited scope legal services at court-annexed and non-profit programs is only part of the equation. The courts have inherent jurisdiction over conflicts before the court. As such, the concern remains that a lawyer who complies with the modified conflict of interest rules will be at risk of being found in conflict when appearing before the court, or that a lawyer from that lawyer's firm will have the conflict imputed to him or her. The Task Force hopes that the judiciary will be mindful of this risk and give due weight to the important public value in litigants of modest means receiving legal advice through court-annexed and non-profit programs, and that some firms will be wary of allowing lawyers to provide such services if the firm risks disqualification with respect to present and future paying clients.

The Task Force limits its recommendations regarding conflicts of interest to situations governing lawyers providing short-term legal advice and/or representation at court-annexed and non-profit programs. The recommendations should not be taken to mean the Task Force approves of a general relaxation of the conflicts of interest rules.

2.4 EDUCATION AND TRANSITION

Recommendation 16:

In light of the rise in self-represented litigants before the court, court rules should be written in plain language and should strive for consistency between the various levels of court. The various rules of court should create definitions that make it clear which provisions apply to limited retainer lawyers, full service lawyers, and lawyers of record. Nomenclature should be consistent at all levels of court, and if distinctions are to be made between "lawyer", "solicitor", "counsel", and those "of record", these distinct usages should be defined.

Recommendation 17:

In order to facilitate the delivery and use of limited scope legal services, plain language educational material regarding limited scope legal services, self-representation, and partial representation, should be made available to:

(a) Members of the public;
(b) Lawyers; and
(c) Judges, masters and court staff.

2.4.1 Additional Matters: Education

In order for limited scope legal services to fulfill their promise to enhance access to justice, and to assist the courts, it is essential that lawyers, the judiciary and court staff, have access to education and training to deal with such services and self-represented litigants, and that members of the public have access to plain language resources to assist them in navigating the civil justice system. Such education might take the form of courses that instruct on best practices for providing limited scope legal services, how to deal with self-represented or partially represented litigants, as well as guides to educate the public to the role limited scope legal services might provide.

APPENDIX "A"
THE TASK FORCE'S MANDATE

In recent years, unbundled legal litigation services have received increased attention from lawyers and legislators. Unbundling refers to a retainer in which a lawyer provides limited scope services to a client, with the client managing those matters not performed by the lawyer. In 2004, the Access to Justice Committee considered the role unbundling might play in enhancing access to justice, and in December 2004 recommended to the Benchers that a Task Force be struck to examine unbundling in British Columbia. The Benchers, at their March 4, 2005 meeting, approved the following mandate for the Unbundling Legal Services Task Force ("Task Force"):

> "The mandate of the Unbundling of Legal Services Task Force is to:
>
> (i). clarify the concept of "unbundling"* and its application to the practice of law in British Columbia by examining the various forms and ways in which "unbundled" legal services are, or might be offered,
>
> (ii). determine which forms and ways of offering unbundled legal services serve the public interest by increasing the public's access to justice;
>
> (iii). review and analyze a range of topics related to the provision of "unbundled" legal services including ethical issues, professional conduct issues, possible revisions to the Law Society Rules and the Professional Conduct Handbook, relations with the Courts, liability and insurance issues, possible revisions to Law Society practice materials, and making information on unbundling available to lawyers, clients and the public;
>
> (iv). make recommendations to the Benchers based on the examination and review of the topics outlined in (i), (ii), and (iii).
>
> *Some other terms that have been used to describe "unbundling" include limited retainers, discrete task representation, limited scope representation, and limited services representation."

The Task Force members are:

Carol Hickman, Chair
Mark Benton, QC
Kathryn Berge, QC
Douglas Harrison
Marjorie Martin
David Mossop, QC
Patricia Schmit, QC
Judy Williams

Master Caldwell, Master Taylor, Judge O'Byrne, and Christine Elliott are former members of the Task Force. The Task Force is indebted to its former members, and all those who gave their time and shared their perspectives on this important topic. The Task Force received staff support from Charlotte Ensminger, Jeff Hoskins, Doug Munro and Ingrid Reynolds.

APPENDIX "B"
CONFIDENTIAL DRAFTING ASSISTANCE

2.1 CONFIDENTIAL DRAFTING ASSISTANCE

As part of a limited scope retainer a lawyer might assist a client by drafting certain documents. In some circumstances, the client might wish for the lawyer's assistance to remain anonymous (referred to in this Report as "confidential drafting assistance"). A lawyer might provide drafting assistance to a litigant who is self-representing at court. These documents might include pleadings, affidavit materials or any other court documents required in the course of litigation. The lawyer may draft the documents him or herself, assist the client with drafting the documents, or merely review them and suggest changes.

Nothing in the *Professional Conduct Handbook* prohibits confidential drafting assistance, and most US jurisdictions allow for it (in the US it is typically referred to as "ghostwriting"). The three main approaches to ghostwriting in the US are:

- "Some states require lawyers who draft pleadings as a discrete function to certify those pleadings, but allow the lawyer to primarily rely on the factual representation of the litigant rather than to conduct an independent inquiry.

- Some states are concerned that the courts will be misled if the role of the lawyer in drafting is not revealed to the court. In some jurisdictions, the lawyer's name and contact information must be disclosed. In others, the court must merely be advised that the litigant had the assistance of a lawyer.

- The obligation to sign pleadings may result in an appearance and where it does, at least one state has recognized the need to create an exception and preclude the lawyer who is providing limited services from an obligation to provide more expanded services than he or she agreed to provide."[11]

There exists a large body of commentary out of the US on the topic of ghostwriting, as well as state Bar rules, ethics opinions, and court rules. The Task Force surveyed the American landscape, comparing the approaches taken with the rules and practice in British Columbia. Tentative findings on the topic were discussed with members of the BC Bar, and the courts.

The Task Force identified and explored the following issues relating to confidential drafting assistance:

[11] American Bar Association, Standing Committee on the Delivery of Legal Services, *An Analysis of Rules that Enable Lawyers to Serve Pro Se Litigants*, April 2005, pp. 14-15. Self-represented litigants are also known as *pro se* litigants or *pro per* litigants.

1. Should a lawyer be permitted to draft court documents on behalf of a self-represented litigant?

2. Must a lawyer's role in providing drafting assistance be disclosed to the court?

3. Should or does confidential drafting assistance, if disclosed to the court, constitute an entry of an appearance by the lawyer? And, is there a need for a rule regarding confidential drafting assistance and entries of appearance?

4. Should there be a rule to the effect that a lawyer who provides drafting assistance under a limited scope retainer can rely on the client's representation of the facts?

2.1.2 Should a lawyer be permitted to draft court documents on behalf of a self-represented litigant?

There are arguments both for and against confidential drafting assistance. Proponents believe it allows individuals who cannot afford to be represented by a lawyer to receive some assistance from a lawyer, and have some of their court documents crafted by a lawyer. The value being espoused is that access to justice should not be contingent on being represented by a lawyer. It is also argued that properly drafted documents will assist the courts: the theory is that documents drafted by a lawyer are easier to understand and more relevant than documents drafted by lay litigants. Some arguments against the practice include that it may mislead the court or other parties into thinking the self-represented litigant drafted the document. Some believe that confidential drafting assistance can give the self-represented litigant an unfair advantage if the litigant receives preferential treatment on account of being self-represented. Many commentators note that a flaw in these arguments is that the efficacy of confidential drafting assistance has to be assessed in a factual context, and that blanket statements lauding or condemning the practice are overly simplistic.

Consultations with members of the BC Bar reveal that confidential drafting assistance is common among solicitors, and is also occurring in the litigation context. The Task Force believes that confidential drafting assistance is a valuable service, and endorses the practice if it is provided in appropriate circumstances and for no improper purpose. The Task Force believes that, for confidential drafting assistance to live up to its promise in assisting self-represented litigants, the lawyer performing the services must draft the document using clear, plain language and ensure the client understands the document and its relevance to the context of the client's case, as well as the possible consequences of the document. It is important that the litigant be able to answer questions about the document without having to contact the lawyer to ask what the document means.

2.1.3 Must a lawyer's role in providing drafting assistance be disclosed to the court?

The issue of whether a lawyer must disclose to the court his or her role in drafting documents presents interpretation problems. As noted, nothing in the *Professional Conduct Handbook* prohibits confidential drafting assistance, and at present the better view is that there is no requirement for the lawyer to identify him or herself as the drafter

of documents if the drafting occurred as part of a limited retainer, the lawyer is not on record as acting for the client, and the lawyer and client have agreed that the lawyer will not be identified. However, determining how confidential drafting assistance fits within the current provisions for a limited retainer is not simple.

The *Professional Conduct Handbook,* Chapter 10, Rule 10 reads:

> A lawyer who acts for a client only in a limited capacity must promptly disclose the limited retainer to the court and to any other interested person in the proceeding, if failure to disclose would mislead the court or that other person.

The Task Force considered the applicability of this rule with respect to confidential drafting assistance. Part of the difficulty in comparing this rule to the various rules of court relates to definitions. Because "lawyer" is not defined in the various court rules acts, the definition in the *Interpretation Act,* R.S.B.C. 1996, Chapter 238 brings one back to the definition of practising lawyer in the *Legal Profession Act,* which refers to membership status and not the capacity in which the lawyer is acting. While the *Professional Conduct Handbook,* Chapter 10, Rule 10 qualifies the status of the lawyer with the descriptor "acts for a client only in a limited capacity," the various rules of court do not contain modifiers to indicate whether a lawyer is acting in a limited capacity. Modifiers in the court rules' context are usually limited to "lawyer of record" or a lawyer acting for or representing a client. The closest the rules of court come to addressing limited retainers is through the procedures for withdrawal. Providing clear definitions and guidelines for how limited retainer lawyers fit within the existing regulatory and court procedure framework is important.

The core regulatory issue is: if drafting assistance is to be anonymous, how can a lawyer providing confidential drafting assistance comply with *Professional Conduct Handbook,* Chapter 10, Rule 10? If the answer is that the rule does not apply to a retainer for confidential drafting assistance, because such services do not constitute *acting* for a client, then how are such services to be reconciled with other provisions in the *Professional Conduct Handbook* where it might be desirable to have confidential drafting assistance amount to acting for a client? If, on the other hand, confidential drafting assistance is acting for a client, how can confidential drafting assistance not mislead an interested person (i.e. at the very least confidential drafting assistance misleads people into thinking the self-represented litigant is the author)? It is not clear who constitutes an "interested person", nor whether misleading is linked to a severity test.

The main approaches in the US are:[12]

1. the face of the document must disclose the lawyer's name;
2. the face of the document must disclose it has been prepared by or with the assistance of counsel, or reviewed by counsel, but the name of the lawyer is not required;

[12] For a more detailed discussion, see, ABA Standing Committee on the Delivery of Legal Services, *An Analysis of the Rules that Enable Lawyers to Serve Pro Se Litigants* (April 2005).

3. there is no requirement to disclose the lawyers involvement if he or she is not appearing as counsel of record.

The dominant, though not unanimous, view arising from consultations with the BC Supreme Court Masters is that confidential drafting assistance does not present a problem. The lawyer providing such services is still bound by professional duties. This includes *Professional Conduct Handbook,* Chapter 1, Canon 2(3):

> A lawyer should not attempt to deceive a court or tribunal by offering false evidence or by misstating facts or law and should not, either in argument to the judge or in address to the jury, assert a personal belief in an accused's guilt or innocence, in the justice or merits of the client's cause or in the evidence tendered before the court.

The word "attempt" suggests a conscious effort to mislead. The negligence standard covers the lawyer who falls below the level of a competent lawyer in a similar situation. Combined, these guiding principles establish a framework for drafting assistance under a limited scope retainer, and the vast majority of lawyers providing these services will fall within an acceptable range of practice. If the court finds that the document is improper, the court can advise the litigant and the litigant has the discretion to reveal the identity of the lawyer and/or file a complaint with the Law Society. As such, the Task Force endorses the concept that there be no requirement to disclose a lawyer's involvement in drafting documents for a client as part of a limited scope retainer. The Task Force recognizes, however, that the present wording of the *Professional Conduct Handbook*, Chapter 10, Rule 10 may be insufficient to make it clear that confidential drafting assistance is permissible, and that it may be desirable to place an annotation or footnote to the rule clarifying the relation of the rule to the provision of confidential drafting assistance.

2.1.4 Should or does confidential drafting assistance, if disclosed to the court, constitute an entry of an appearance by the lawyer? And, is there a need for a rule regarding confidential drafting assistance and entries of appearance?

Even in US jurisdictions where there is a duty to disclose a lawyer's "behind the scenes" involvement in preparation of a document, such disclosure does not generally constitute an entry of an appearance by the lawyer. However, signing pleadings does amount to an entry of an appearance in most jurisdictions, and many jurisdictions take the position that having entered an appearance, a lawyer has a duty to see the matter through to completion.

In its consultations, the Task Force asked members of the Bar if they would provide drafting services under a limited scope retainer if doing so could result in an entry of an appearance. The prevailing opinion was that lawyers would not provide such services. A recurring concern of lawyers the Task Force spoke with was the risk of being conscripted into a retainer that was broader than the one bargained for. This concern is particularly acute given that many of the clients who seek limited scope legal services are not able to afford legal services beyond the limited scope contracted for, and as a consequence, the lawyer is left shouldering the economic risk in circumstances where the lawyer is

required to provide ongoing legal services. The reality is that many lawyers face the same economic hardships as their clients, and it would be unfair to require these lawyers to bear the financial burden of subsidizing another individual's litigation. Lawyers indicated to the Task Force that they wanted to help litigants, but need clarity in the rules regarding the scope of obligations that are created when a lawyer provides limited scope services.

Recommendation #4 of the ABA Section of Litigation, *Handbook on Limited Scope Legal Assistance: A Report of the Modest Means Task Force,* 2003 ("Modest Means Report") reads:

> Allow lawyers to help otherwise pro se litigants to prepare pleadings, or allow lawyers to prepare those pleadings themselves, without requiring disclosure that a lawyer provided the assistance. Alternatively, require that the pleading reflect that a lawyer helped the litigant to prepare it without personally identifying the lawyer. *In any event, make it clear that, solely by providing such document-preparation assistance, a lawyer does not make an appearance in the case in which the pleading is filed.*[13] [Emphasis added]

The authors of the Modest Means Report "recommend that jurisdictions that have not yet addressed this issue make it clear that courts should respect the limits of limited-representation agreements", and that models that allow for anonymous drafting assistance "implicitly preclude full-service conscription" (p. 77).

The Task Force is of the opinion that confidential drafting assistance, if disclosed to the court, should not constitute an entry of an appearance by the lawyer who provided the services. The Task Force also believes, that a new rule or policy statement is required to clarify that preparation of court documents under a limited scope retainer, absent more, does not constitute an entry of an appearance by the lawyer who prepared the documents.

2.1.5 Should there be a rule to the effect that a lawyer who provides drafting assistance under a limited scope retainer can rely on the client's representation of the facts?

The *Professional Conduct Handbook*, Chapter 1, Canon 3(1) states:

> A lawyer should obtain sufficient knowledge of the relevant facts and give adequate consideration to the applicable law before advising a client, and give an open and undisguised opinion of the merits and probable results of the client's cause. The lawyer should be wary of bold and confident assurances to the client, especially where the lawyer's employment may depend on such assurances. The lawyer should bear in mind that seldom are all the law and facts on the client's side, and that *audi alteram partem* is a safe rule to follow.

[13] American Bar Association, Modest Means Task Force, *Handbook on Limited Scope Legal Assistance: A Report of the Modest Means Task Force.* Chicago: American Bar Association, 2003, at p. 144.

Canon 3(1) raises interpretive problems for lawyers providing drafting assistance under a limited scope retainer. It requires the lawyer obtain sufficient knowledge of the relevant facts and law before advising the client as to the merits and probable results of the client's cause. The language appears to be drafted with the assumption that the lawyer is operating under a full retainer. The facts that are relevant to a discrete issue will likely be fewer than the facts that are relevant to the matter as a whole. If the client's cause refers to the larger matter, then the Rule can be inconsistent with the idea of drafting assistance under a limited retainer. If the client's cause refers to the limited services for which the lawyer was retained, then the scope of the factual inquiry is restricted. However, "sufficient knowledge" suggests more than mere reliance on the client's representation of the facts; it suggests that in certain circumstances some digging will have to be done by the lawyer. This approach is bolstered by the CBA, Code of Professional Conduct, Chapter III, Comment 3, which reads:

> The lawyer should clearly indicate the facts, circumstances and assumptions upon which the lawyer's opinion is based, particularly where the circumstances do not justify an exhaustive investigation with resultant expense to the client. However, unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than merely make comments with many qualifications.

This is echoed in the Alberta *Code of Professional Conduct*, Chapter 9, Rule 3, Comment 2:

> Occasionally, a client will specifically request that a lawyer provide an opinion based only on limited facts or assumptions or without the benefit of legal research. While it may be proper in some cases to agree, the lawyer must ensure that the client understands the limitations of such advice. Not infrequently, a legal opinion based on limited facts or assumptions will be so restricted and qualified as to be practically worthless. Similarly, advice given without research in an area in which the lawyer lacks knowledge or experience is likely to be unreliable.

It is essential to communicate to a client the limitations that arise as a direct result of the scope of the retainer, and to honestly assess the ability to provide the client a worthwhile service under a limited retainer. The best practice will always be to confirm this in writing. There may be some situations where it is not possible to provide competent legal services under a limited retainer, and in such instances the lawyer should either decline to act, or accept that a certain number of uncompensated hours will have to be expended in order to provide competent legal services.

The extent to which a lawyer should be able to rely on the client's version of the facts is influenced by the quality of service expected of a lawyer. The *Professional Conduct Handbook*, Chapter 3, Rule 3 indicates:

> A lawyer shall serve each client in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which

> would be expected *of a competent lawyer in a similar situation*. Without limiting the generality of the foregoing, the quality of service provided by a lawyer may be measured by the extent to which the lawyer:
>
> > (k) discloses all relevant information to the client, and candidly advises the client about the position of a matter, whether such disclosure or advice might reveal neglect or error by the lawyer. [Emphasis added]

These provisions indicate that the standard of competence is considered in the context of what is expected of a competent lawyer in a similar situation. The standard appears to require a situation specific analysis: in the case of drafting assistance under a limited retainer the situation, in broad terms, is that the lawyer is not providing full service. Sub-rule 3(k) requires the lawyer to disclose all relevant information to the client. There are two main ways to read this. The expansive reading would require the lawyer to disclose all information relevant to the client's cause; the restrictive reading would read the provision in the context of the phrase "of a competent lawyer in a similar situation", and therefore suggest that information which is relevant is contingent on the situation (i.e. a limited retainer to provide drafting assistance and the factual context of the client's situation). The standard of quality is based on what would be expected of *a competent lawyer in a similar situation*. The "situation", therefore, would appear to refer to the lawyer's situation vis-à-vis the retainer, not to the client's situation in the broader sense. This does not mean that the lawyer can compartmentalize his or her services to such an extent that no thought is given to the client's situation as a whole, and the risks the client faces. To give meaningful advice about a particular matter will require understanding how that matter is situated within a broader context, and therefore require some consideration be given to the broader context.

The difficult question then, is whether the standard of care of the lawyer expands or contracts in relation to the scope of the retainer. The Modest Means Report suggests:

> The general consensus that emerges from ethics opinions and recent rule revisions is that a lawyer who prepares documents for an otherwise pro se litigant can not knowingly make frivolous allegations, but need not conduct an independent investigation of the facts beyond what the client tells the lawyer, unless the lawyer knows, or has good reason to know, that what the client is saying is false. In that case, the lawyer should conduct the additional investigation that the lawyer reasonably believes is warranted. (pp. 77-78)

The Task Force believes that a rule similar to the ABA recommended rule be adopted:

> Allow an attorney who provides drafting assistance to an otherwise *pro se* litigant to rely on that person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney should make an independent reasonable inquiry into the facts.

The sufficiency of such an approach requires an analysis of various provisions of the *Professional Conduct Handbook.* For example, the *Professional Conduct Handbook*, Chapter 3, Rule 6 requires that:

> A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud, including a fraudulent conveyance, preference or settlement.

The Task Force recognizes that importing new rules creates interpretation challenges, such as how the "knows or ought to know" standard meshes with a "has reason to believe" standard. A change to the limited retainer rule to encompass language similar to the ABA approach will have a ripple effect in the *Professional Conduct Handbook*, and care should be taken to ensure consistent standards are developed.

In order to facilitate delivery of limited scope legal services, it is essential that the various Court Rules Acts allow lawyers to provide limited scope services in a fashion that respects the bargain made between lawyer and client. Because a lawyer providing limited scope services may be required to make further inquiries into the facts, it is important that the lawyer be able to have access to the registry file. An example of interpretation problems that exist, at present, is Rule 20(10) of the Court Rules Act, Provincial Court (Family) Rules. Although a party's lawyer may have access to the registry file, there is no definition of who the party's lawyer is, and while it might be desirable to have the ghostwriting lawyer be "a party's lawyer" for the purpose of Rule 20(10)(c), it will not be desirable to have the ghostwriting lawyer be the party's lawyer for other sections of the rules.

APPENDIX "C"
CONSULTATIONS

The Task Force conducted consultations both internal to and external to the Law Society.

3.1 Internal Consultations

The Task Force engaged in consultations with the various departments within the Law Society, including the Lawyers Insurance Fund to assess whether its recommendations raised concerns. In addition, the Task Force sought feedback from the Ethics Committee on its proposals. These consultations were important to ensure that the recommendations of the Task Force operate effectively within the policies and practices of those groups.

3.2 External Consultations

The Task Force conducted two major consultations with members of the Bar. The first consultation occurred on May 7, 2005 in Vancouver, and the second took place September 22, 2006 at 108 Mile House.

The Vancouver Consultation

Participants at the May 7, 2005, Vancouver consultation included representatives of community agencies, government, law libraries, lawyers in private practice and those practising public interest law, lay and elected Benchers, members of the Task Force on Unbundling Legal Services, and Law Society staff. The consultation provided feedback on what limited scope legal services were occurring, how they were being provided, and why it was taking place. The consultation also explored the challenges practitioners face in providing limited scope legal services. The first consultation provided a broad view of the topic that was useful to the Task Force in setting priorities and identifying issues.

The participants indicated that limited scope legal services were occurring in criminal, family, civil litigation, solicitors' work, and areas that did not fall conveniently into a particular heading. With respect to why lawyers were providing such services, the answers varied, and included that providing limited scope legal services allowed a lawyer to assist a client who would otherwise go without legal assistance, that it increases access to justice, and that the legal system is so complex that providing limited scope legal services can, to some extent, help simplify matters for the client.

Participants were also asked to discuss the risk, challenges and other issues associated with providing limited scope legal services. The principal headings identified by participants were: liability concerns, access and process concerns, Law Society regulatory concerns, and general concerns (e.g. regarding lack of research into the issue). Participants were asked to discuss the benefits of limited scope legal services, and identified that it provides greater freedom to the client, reduces costs, and can enhance access to justice. Further, the justice system benefits by having better informed litigants, and lawyers benefit by providing needed services to litigants in a framework that is responsive to the litigants' circumstances. Participants felt that the rules needed to be simplified, rather than complicated, when it comes to clarifying obligations in limited

scope retainers. Opinion as to the need for more forms or precedents varied: some felt it was not desirable to create more paperwork, whereas others felt simplified court forms and limited retainer forms would be useful. Concerns included avoiding having limited scope representation turn into *de facto* full representation, managing expectations, and standard of care issues.

The 108 Mile House Consultations

The second consultation took place on September 22, 2006 at 108 Mile House, where representatives from the Task Force met with members of the Cariboo Bar to discuss the Task Force's work. The consultation at 108 Mile House afforded an opportunity to dig deeper into limited scope retainers than the Vancouver consultation because participants were invited to discuss discrete issues the Task Force was exploring, such as limited appearances before the court, conflicts of interest, and communications issues in limited scope legal services. The discussion revealed that limited scope legal services were being performed in the Cariboo, but there is variance between what is permissible at various court registries. The most common concerns raised by participants were:

1. The lack of guidelines for lawyers to follow in providing limited scope legal services in a manner that protects against being the subject of complaints to the Law Society; and

2. How to provide limited scope legal services and not become subject to the requirement to provide a large number of unpaid hours of service to the otherwise self-represented client. Lawyers also had uncertainty about the extent to which a lawyer is required to advise the client about peripheral, yet important, aspects of the legal issue the lawyer was retained to address.

Lawyers practising in the Cariboo indicated that the geography of the region creates unique problems: individuals can travel for several hours by car to attend court, and this can make the cost of hiring a lawyer to engage in limited appearances prohibitive. Some lawyers questioned whether technology might facilitate limited scope legal services in circumstances where the client could appear and the court could call up the lawyer as or if needed.

Consultations with the Courts

The Task Force undertook several consultations with the courts. In its initial consultations, the Task Force spoke with Masters of the British Columbia Supreme Court to ascertain what their views were regarding limited scope legal services (discussed in the body of the Report). Subsequent consultations with the Courts followed the Task Force's consultation with members.

<u>British Columbia Supreme Court</u>:

The Task Force met with Chief Justice Brenner and Ms. Jill Leacock on July 12, 2007. The Chief Justice expressed his support of the work of the Task Force, and indicated that the Court always prefers to have counsel involved in a case, and that steps that can be

taken to increase representation before the Court would be appreciated. The Task Force discussed the concerns that had been identified in its discussion with lawyers, specifically, conflicts of interest and creating mechanisms to ensure that the limited scope of a retainer would be respected. The Task Force canvassed the idea of rules and forms being created to facilitate the provision of limited scope legal services, including expedited procedures for getting on and off the record, processes for drafting court orders, and clarifying matters relating to service and delivery of documents. The Chief Justice explained the time frame for the revision of the *Rules of Court*, and that the timing appeared to be good for discussing such issues. While the Chief Justice would be prepared to encourage justices to respect the modified conflicts of interest rules, should issues arise from the provision of Exempted Services, he suggested that the best approach would be to have legislative amendments.

Provincial Court of British Columbia:

Members of the Task Force met with Chief Judge Stansfield Associate Chief Judge Schmidt on October 17, 2005, and the Chief Judge met with the Task Force again on January 24, 2008. At the earlier meeting, it was observed that the Court has a fairly high degree of comfort that its processes work well for self-represented litigants in civil matters. Self-represented litigants in criminal matters presented a greater concern, however. It was pointed out that the system has to be viewed in two phases: 1) the settlement conference, and 2) the trial. It was noted that limiting what is required of a lawyer providing limited scope assistance would allow lawyer to feel they needn't take an overly defensive approach to the case.

At the second meeting the Chief Judge reiterated that while it is always beneficial to have represented litigants, the processes in Provincial Court are more amenable to self-representation. He did not feel there would be a principled, institutional opposition to lawyers providing limited appearances or behind the scenes assistance to self-represented litigants. The Task Force discussed the idea of the Court having a simplified, limited appearance form that would allow the court and the parties and counsel to know the scope of services the lawyers would be providing. The Chief Judge said such a form made sense, and suggested that it should be signed by both the lawyer making the limited appearance and the client. The Chief Judge said discussions would be required to ascertain its anticipated use, and observed that the *Professional Conduct Handbook* rules regarding withdrawal of legal services should still govern the provision of limited scope services.

British Columbia Court of Appeal:

Members of the Task Force met with Chief Justice Finch, Mr. Justice Donald and Mr. Justice Low on October 11, 2007. The Task Force discussed unbundling in the context of limited assistance before the Court of Appeal. The Justices indicated that it is preferable that a litigant receives representation, and that partial representation is preferable to none. The Justices did not feel that confidential drafting assistance presented a problem, though raised the concern that a litigant might alter the document and depending on the nature of those amendments it might raise concerns. Members of the Task Force suggested that a lawyer might be able to protect himself or herself by having a client sign off on a copy of

the document as provided, and to keep this on file for purposes of comparison should issues arise.

The Justices indicated that there are service issues regarding counsel of record, and the members of the Task Force indicated that they hoped simplified rules and precedents could be created for dealing with these issues. The members of the Task Force explained that it was the hope of the Task Force that the various levels of court would create rules and directives to facilitate limited appearances be counsel, and that the Law Society would create guidelines regarding how unbundled services can be delivered in a professional manner.

APPENDIX "D"
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[14] This is a non-exhaustive list of materials the Task Force considered. Material, such as the various provincial Codes and Rules of Professional Conduct and the Canadian Bar Association, *Code of Professional Conduct* are not listed. Nor are all the US State Rules of Professional Conduct and Ethics Opinions that were considered listed. In addition, the Task Force considered the various British Columbia rules of court and case flow management rules.

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The Law Society of British Columbia

Quarterly Financial Report

March 31, 2016

Prepared for: Finance & Audit Committee Meeting – April 7, 2016

Bencher Meeting – April 8, 2016

Prepared by: Jeanette McPhee, CFO & Director Trust Regulation

Quarterly Financial Report – First Quarter 2016

Attached are the financial results and highlights for the first quarter of 2016.

General Fund

General Fund (excluding capital and TAF)

The General Fund operations resulted in a positive variance of $304,000 to March 31, 2016.

Revenue

Revenue for the first quarter was $5,592,000, $40,000 (1%) above budget, which is mainly due to the timing of revenues received.

Operating Expenses

Operating expenses for the first quarter were $4,709,000, $264,000 (5%) below budget mainly due the timing of expenditures.

2016 Forecast - General Fund (excluding capital and TAF)

While it is still early in the year, we are tracking to budget in the first quarter.

Operating Revenue

At this time, revenues are projected at budget. Practicing membership revenue is budgeted at 11,500 members, and PLTC revenue is budgeted at 500 students.

Operating Expenses

At this time, operating expenses are projected at budget and we will continue to closely monitoring costs throughout the year.

TAF-related Revenue and Expenses

The first quarter TAF revenue is not received until the April/May time period, so no first quarter TAF revenue is recorded at this time. Trust assurance program costs are under budget $38,000, due mainly to the timing of travel costs.

Special Compensation Fund

The transfer of the Special Compensation Fund reserve to the Lawyers Insurance Fund is pending a review of any future recoveries from Special Compensation Fund claims.

Lawyers Insurance Fund

LIF operating revenues were $3.9 million in the first quarter, slightly ahead of budget.

LIF operating expenses were $1.6 million, $76,000 below budget, relating primarily to staff salary savings of $97,000 due to vacancies.

The market value of the LIF long term investments held by the investment managers is $143.4 million, an decrease of $4.3 million in the first two months to the end of February (March, 2016, investment results not yet available). The related year to date investment returns were -2.9%, below the benchmark of -1.8%.

The Law Society of British Columbia

Summary of Financial Highlights - March 2016
($000's)

2016 General Fund Results - YTD March 2016 (Excluding Capital Allocation & Depreciation)

	Actual*	Budget	$ Var	% Var
Revenue (excluding Capital)				
Membership fees	4,584	4,569	15	0%
PLTC and enrolment fees	32	33	(1)	-3%
Electronic filing revenue	180	166	14	8%
Interest income	156	130	26	20%
Credentials & membership services	99	122	(23)	-19%
Fines, penalties & recoveries	250	212	38	18%
Other revenue	-	29	(29)	-100%
Building revenue & tenant cost recoveries	291	291	-	0%
	5,592	5,552	40	1%
Expenses (excl. dep'n)	4,709	4,973	264	5%
Results before spending on reserve items	**883**	**579**	**304**	
Approved spending from Reserves	24	-	24	
	859	579	280	

* Note: Actuals include $24,000 in costs related to Bencher approved items to be funded from the reserve

2016 General Fund Year End Forecast (Excluding Capital Allocation & Depreciation)

Practice Fee Revenue	**Avg # of Members**
2011 Actual	10,564
2012 Actual	10,746
2013 Actual	10,985
2014 Actual	11,114
2015 Actual	11,378
2016 Budget	11,500
2016 YTD Actual	**11,419**

	Actual Variance
Revenue	
Membership revenue projected to be at budget	-
PLTC revenue projected to be at budget	-
	-
Expenses	
Projected to be at budget for the year	-
	-
2016 General Fund Variance (excl. reserve funded items)	-

Reserve funded amounts (Bencher approved):	**Approved**	**Spent**
2016 - Proactive practice standards project ($55K approved)	55	10
2016 - External review of potential notaries merger ($75K approved)	75	-
2015 - Year 2 - Articling student ($28K approved & remaining)	28	14
2014 - Knowledge Management program costs - ($235K approved - $nil spent)	235	-
	393	24

Trust Assurance Program Actual

	2016 Actual	2016 Budget	Variance	% Var
TAF Revenue **	23	-	23	0.0%
Trust Assurance Department	528	624	96	15.4%
Net Trust Assurance Program	(505)	(624)	119	

** Q1 revenue not due until April 30th - small amount relating to Q4, 2015, received after completion of audit

2016 Lawyers Insurance Fund Long Term Investments - YTD February 2016* *Before investment management fees*

Performance	-2.9%
Benchmark Performance	-1.8%

* March investment results not yet available

The Law Society of British Columbia
General Fund
Results for the 3 Months ended March 31, 2016
($000's)

	2016 Actual	2016 Budget	$ Variance	% Variance
Revenue				
Membership fees **(1)**	6,592	6,578		
PLTC and enrolment fees	32	33		
Electronic filing revenue	180	166		
Interest income	156	130		
Credentials & membership services	99	122		
Fines, penalties & recoveries	250	212		
Other revenue	-	29		
Building revenue & recoveries	291	292		
Total Revenues	7,600	7,562	38	0.5%
Expenses				
Regulation	1,738	1,791		
Education and Practice	681	750		
Corporate Services	615	647		
Bencher Governance	298	338		
Communications and Information Services	494	493		
Policy and Legal Services	509	494		
Occupancy Costs	531	630		
Depreciation	81	70		
Total Expenses	4,947	5,213	266	5.1%
General Fund Results before TAP	**2,653**	**2,349**	**304**	
Trust Administration Program (TAP)				
TAF revenues	23	3	20	0%
TAP expenses	528	624	96	15%
TAP Results	**(505)**	**(621)**	**116**	
General Fund Results including TAP	**2,148**	**1,728**	**420**	

(1) Membership fees include capital allocation of $2.01m (Capital allocation budget = $2.01m)

The Law Society of British Columbia
General Fund - Balance Sheet
As at March 31, 2016
($000's)

	Mar 31 2016	Dec 31 2015
Assets		
Current assets		
Cash and cash equivalents	73	82
Unclaimed trust funds	1,694	1,709
Accounts receivable and prepaid expenses	1,215	1,711
B.C. Courthouse Library Fund	2,341	676
Due from Lawyers Insurance Fund	21,402	28,065
	26,725	32,243
Property, plant and equipment		
Cambie Street property	12,679	12,810
Other - net	1,133	1,221
	40,537	46,273
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	2,708	5,657
Liability for unclaimed trust funds	1,694	1,709
Current portion of building loan payable	500	500
Deferred revenue	14,059	20,142
Deferred capital contributions	21	23
B.C. Courthouse Library Grant	2,341	676
Deposits	27	27
	21,349	28,734
Building loan payable	2,100	2,600
	23,449	31,334
Net assets		
Capital Allocation	3,443	2,011
Unrestricted Net Assets	13,644	12,928
	17,087	14,939
	40,536	46,273

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
Results for the 3 Months ended March 31, 2016
($000's)

	Invested in Capital	*Working Capital*	Unrestricted Net Assets	Trust Assurance	Capital Allocation	2016 Total	2015 Total
	$	$	$	$	$	$	$
Net assets - At Beginning of Year	10,931	(653)	10,278	2,649	2,011	14,939	11,614
Net (deficiency) excess of revenue over expense for the period	(296)	940	644	(505)	2,009	2,148	3,325
Repayment of building loan	500	-	500	-	(500)	-	-
Purchase of capital assets:						-	
LSBC Operations	9	-	9	-	(9)	-	-
845 Cambie	68	-	68	-	(68)	-	-
Net assets - At End of Period	**11,212**	**287**	**11,499**	**2,144**	**3,443**	**17,087**	**14,939**

The Law Society of British Columbia
Special Compensation Fund
Results for the 3 Months ended March 31, 2016
($000's)

	2016 Actual	2016 Budget	$ Variance
Revenue			
Annual assessment	-	-	
Recoveries	-	-	
Interest income	-	-	
Other income	-	-	
Total Revenues	**-**	**-**	**-**
Expenses			
Claims and costs, net of recoveries	9	-	
Administrative and general costs	1	-	
Loan interest expense	(8)	-	
Total Expenses	**2**	**-**	2
Special Compensation Fund Results	**(2)**	**-**	**(2)**

The Law Society of British Columbia
Special Compensation Fund - Balance Sheet
As at March 31, 2016
($000's)

	Mar 31 2016	Dec 31 2014
Assets		
Current assets		
Cash and cash equivalents	1	1
Accounts receivable		
Due from General Fund		
Due from Lawyers Insurance Fund	1,349	1,352
	1,350	1,352
	1,350	**1,352**
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities		
Deferred revenue		
Net assets		
Unrestricted net assets	1,350	1,352
	1,350	1,352
	1,350	**1,352**

The Law Society of British Columbia
Special Compensation Fund - Statement of Changes in Net Assets
Results for the 3 Months ended March 31, 2016
($000's)

	Actual $	Budget $
Unrestricted Net assets - At Beginning of Year	1,352	1,335
Net excess of revenue over expense for the period	(2)	17
Unrestricted Net assets - At End of Period	**1,350**	**1,352**

The Law Society of British Columbia
Lawyers Insurance Fund
Results for the 3 Months ended March 31, 2016
($000's)

	2016 Actual	2016 Budget	$ Variance	% Variance
Revenue				
Annual assessment	3,924	3,837		
Investment income *	(4,362)	(31)		
Other income	76	60		
Total Revenues	(362)	3,866	(4,228)	-109.4%
Expenses				
Insurance Expense				
Provision for settlement of claims	3,676	3,676		
Salaries and benefits	619	746		
Contribution to program and administrative costs of General Fund	321	312		
Provision for ULAE	-	-		
Insurance	131	42		
Office	72	140		
Actuaries, consultants and investment brokers' fees	131	131		
Allocated office rent	73	73		
Premium taxes	-	3		
Income taxes	-	-		
	5,023	5,123		
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	247	223		
Total Expenses	5,270	5,346	76	1.4%
Lawyers Insurance Fund Results	**(5,672)**	**(1,480)**	**(4,192)**	

* Investment income reflects results to the end of February, 2016, as the March, 2016, results are not yet available

The Law Society of British Columbia
Lawyers Insurance Fund - Balance Sheet
As at March 31, 2016
($000's)

	Mar 31 2016	Dec 31 2015
Assets		
Cash and cash equivalents	17,025	28,216
Accounts receivable and prepaid expenses	444	169
Prepaid Taxes	4,131	4,131
Due from members	174	159
General Fund building loan	2,600	3,100
Investments	139,906	144,174
	164,281	**179,949**
Liabilities		
Accounts payable and accrued liabilities	1,011	1,154
Deferred revenue	3,481	7,331
Due to General Fund	21,402	28,065
Due to Special Compensation Fund	1,349	1,352
Provision for claims	58,901	58,240
Provision for ULAE	7,920	7,920
	94,064	104,060
Net assets		
Unrestricted net assets	17,500	17,500
Internally restricted net assets	52,716	58,388
	70,216	75,888
	164,281	**179,949**

The Law Society of British Columbia
Lawyers Insurance Fund - Statement of Changes in Net Assets
Results for the 3 Months ended March 31, 2016
($000's)

	Unrestricted $	Internally Restricted $	2016 Total $	2015 Total $
Net assets - At Beginning of Year	58,388	17,500	75,888	65,811
Net excess of revenue over expense for the period	(5,672)	-	(5,672)	10,078
Net assets - At End of Period	**52,716**	**17,500**	**70,216**	**75,889**

The Law Society of British Columbia

Law Society of British Columbia Tribunal
2015 Annual Report

March 2016

Table of Contents

Message from the 2015 Tribunal Chair

It has been a pleasure and honour to assist with the work of the tribunal, and I want to thank all those who sat on the hearing tribunals and reviews. Like most recent years, 2015 was a busy year for the Law Society Tribunal. Panels continue to apply the concept of progressive discipline, and in the summer, hearing panels disbarred two former lawyers as ungovernable. Later, a review board found that, in certain cases, the time for initiating a review from a hearing panel decision can be extended beyond the 30 days mandated in the *Legal Profession Act*.

Under our current tribunal system each hearing panel usually includes one person drawn from each of three pools: a sitting Bencher, a lawyer, and a public representative. The public representatives, although not formally trained in law, often adjudicate in their own professions or vocations and bring a strong public but external influence to the tribunals. This panel composition ensures that the process is seen to be fair both to the public and to lawyers.

In 2015 the Benchers reviewed our tribunal system, after four years in its current form. The Benchers confirmed that, with some clarification and efficiencies, panels with representation from each the three pools will continue. That process is rooted in principles of fairness and transparency.

The efficiencies include reducing the size of the public and lawyer pools from 25 people to between 16 and 18 people. The aim is to ensure that each pool member puts his or her training to better use by participating in one or two more hearings a year, resulting in three to five days of hearings for most adjudicators. The principle here is that experience results in efficiencies.

2015 was a busy year, not because we conducted more hearings but because the hearings we conducted took more time. In 2015, the Law Society conducted 46 hearings and reviews, 26 fewer than the previous year. However, the number of hearing days was almost unchanged, at 80, compared to 82 in 2014.

There are a number of reasons why hearings are taking longer. Hearings are more complicated, and respondent lawyers are often self-represented. In other instances, we are seeing new counsel representing respondent lawyers.

It might be worth asking whether hearings are too long, and whether there is anything we can do to better manage or shorten them. One thing tribunal members might consider is more active pre-hearing management. Our rules permit some limited management to obtain or to simplify a statement of facts. Those doing these pre-hearing conferences could ask a number of questions:

- Is the respondent represented? If not, the respondent could be directed to a list of counsel prepared to assist them, which is available for download on the Law Society website (*https://www.lawsociety.bc.ca/docs/discipline/counsel.pdf*).

- When is the hearing scheduled, how long is it expected to take, and what is the estimated cost?

- Is there an agreed statement of facts and exhibit list? If not, can agreed-upon facts be separated from those under contention?

- Is there an issue of law that needs addressing, for example, involving professional misconduct or a breach of rules?

- What is the position of the Law Society on a penalty in the event of an admission?

- Are there are any procedural issues that need be reviewed?

In another area, our tribunal might find efficiency is in the use of chambers Benchers. These are currently sitting lawyer Benchers who are designated to conduct pre-hearing and pre-review conferences and to hear and decide preliminary questions before a hearing on a citation, credentials application or a review. Under our current tribunal system, a chambers Bencher is appointed for three months. It might be more efficient to instead to appoint three or four chambers Benchers for the entire year. Then they could meet regularly (perhaps three or four times during the year) to discuss what is working, and to look for common themes in hearing management.

The chair of the tribunal body, I have noticed, is not full-time work, but it requires some concentration and willingness. However, there are efficiencies gained by knowledge. Knowledge, however, requires both time and effort.

I have very much enjoyed the work. Working with Jeff Hoskins, QC and with Michelle Robertson at the tribunal administration end is enjoyable and fulfilling. I wish the very best to Herman Van Omen, QC, who, as the President's designate, is taking over tribunal chair for 2016.

I hope the chair position somehow evolves naturally into something more than an annual Bencher appointment. I can say there was a bit of a learning curve, and it may make some sense to have two-year appointments with a vice-chair. However, that is for the future policy-makers when they think about this. I am grateful to all who have acted as adjudicators (Benchers, lawyers and the public). They serve the public in this important work. Good adjudication work is critical to the rule of law and an independent bar."

Kenneth M. Walker, QC
Life Bencher
President, 2015

The Law Society of British Columbia Tribunal

Before the *Legal Profession Act* of 1987, the final decision in disciplinary matters, or at least serious ones, was with the Benchers. A hearing was held before a panel, usually three Benchers, who made a finding and recommendation to the Benchers as a whole. It was the Benchers who imposed the penalties.

The 1987 Act, which took effect June 1, 1988, gave panels of three Benchers the power to impose their own discipline. Hearing panels also began adjudicating on applications for enrolment in articles, call and admission and reinstatement as a member of the Law Society. At the same time, the Benchers were empowered to review the decisions of hearing panels. While all Benchers were eligible to sit on a review hearing unless they were otherwise involved in the case (as a member of the hearing panel whose decision was being reviewed or as a member of the Committee that ordered the hearing), Bencher review panels typically consisted of the quorum of seven Benchers, or one or two more.

A further reform in the 1987 Act allowed the provincial Attorney General to appoint up to three non-lawyers as Benchers of the Law Society. These Appointed Benchers were eligible to sit as members of hearing panels. As they were only three out of 28 eligible Benchers, their participation was more occasional than regular, but it was the first time that non-lawyers sat with lawyer-Benchers to make judgments affecting lawyers in BC. By 1999, the number of Appointed Benchers had increased to six out of 31 Benchers, but the majority of hearing panels continued to be composed only of lawyers.

In 2011 the Benchers decided that the legal profession as a whole and the general public ought to have a role, along with Benchers, in the Law Society Tribunal. Since that time, each hearing panel comprises one Bencher, one lawyer who is not currently a Bencher and one non-lawyer public representative. The Law Society Tribunal maintains a pool of 15 to 18 lawyers and another pool of 15 to 18 non-lawyers, all of whom are fully trained to act as adjudicators in the Law Society context. Both pools draw from all parts of British Columbia and comprise a diverse group of highly qualified individuals.

Benchers are eligible to sit on panels and review boards once they have received the appropriate training and for as long as they remain Benchers. Non-Bencher lawyers and public representatives are appointed for four-year terms and are eligible to be re-appointed only once. The terms of half of the adjudicators in each pool expire every two years to allow for both continuity while there is renewal regularly, but not too frequently.

All lawyer adjudicators are volunteers receiving only reimbursement for reasonable expenses incurred. Non-lawyer adjudicators receive a modest per diem in addition to the reimbursement for expenses incurred.

A list of the members of the two pools is attached as Appendix A.

Effective January 1, 2013, the *Legal Profession Act* was amended to provide for review of hearing panel decisions by a review board of Benchers, non-Bencher lawyers and public representatives. Review boards replaced reviews by the Benchers as a whole. Review boards consist of three Benchers, which

may include a non-lawyer Bencher, two lawyers who are not currently Benchers and two non-lawyer public representatives.

The Protocol for the appointment of Law Society hearing panels and review boards is attached as Appendix B.

Hearings before Law Society Tribunal hearing panels and review boards are open to the public, subject to limited exceptions primarily to preserve confidentiality between lawyers and clients. All decisions of panels and review boards are published by posting on the Law Society website, although in some cases the Law Society Rules require that the name of the applicant or respondent not be published.

Under section 48 of the *Legal Profession Act*, all decisions of the Law Society Tribunal are subject to appeal directly to the British Columbia Court of Appeal.

Law Society Tribunal Developments 2015

In September 2015 the Benchers received the final report of the Tribunal Program Review Task Force. While not accepting all of the recommendations of the task force, the Benchers approved the following modifications to the Tribunal program:

- The Law Society Tribunal needs its own Code of Conduct for Adjudicators. Work on that document is expected to get underway in 2016;
- Two sets of criteria for appointment of non-Bencher and non-lawyer adjudicators were reviewed and adjusted slightly;
- The size of each pool of adjudicators was reduced to 15 to 18 to allow individual adjudicators to participate in hearings more often;
- Chairs of hearing panels and review boards will be an appropriately trained and experienced lawyer, usually a Bencher but sometimes another lawyer when the Bencher is new;
- Benchers who complete their term limits as Benchers and become Life Benchers will continue for two years in the hearing pool as spares, sitting on hearings only when no Bencher is available, in the case of lawyers, or when no public representative is available, in the case of Appointed Benchers;
- Members of the non-Bencher lawyer and the public pool will be appointed for four-year terms, renewable once only. Terms will be staggered so that half of each pool expires every two years.

The Benchers declined to approve a recommendation that would have combined the Bencher-lawyers with the non-Bencher lawyer pool, making it easier to ensure that there are two lawyers available for each hearing panel. As well, the Benchers were not in favour of creating the position of independent chair of the Tribunal to fulfill the functions now done by the president and executive director or their designates.

In December the executive committee re-appointed members of the hearing panel pools who indicated that they would like to continue. The reduction in the size of the pools was accomplished by attrition. The executive committee also approved the appointment of two new non-Bencher lawyer adjudicators, Carol Roberts and Gillian Dougans. Once they have completed the training required of all adjudicators, they will begin sitting on hearing panels in 2016.

Law Society Tribunal 2015 Performance

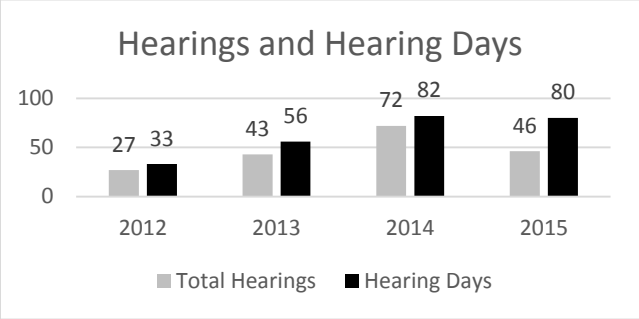


Figure 1: Hearing Days

Although there were fewer hearings in 2015 compared to the previous year, the total number of hearing days remained relatively constant due to the increased complexity of hearings.

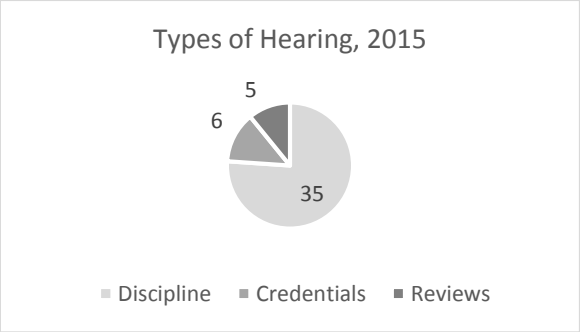


Figure 2: Types of Hearing

Discipline hearings accounted for the majority of hearings and reviews in 2015.

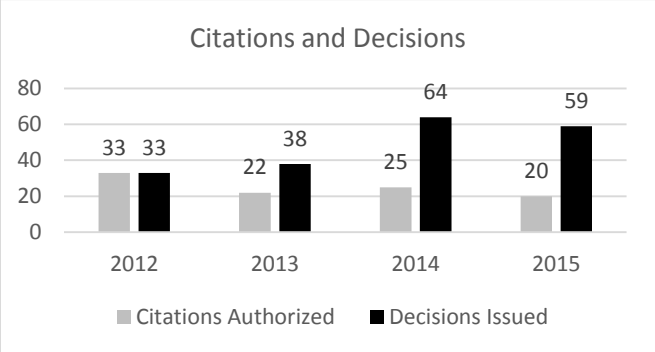


Figure 3: Citations and Decisions

The number of decisions issued has increased in recent years, while the number of citations issued has remained relatively constant.

Appendix A: Tribunal Members 2015

Hearing panel pools demonstrate the Law Society's commitment to maintaining public confidence and transparency. Lawyers and members of the public from around the province volunteer to be part of the Law Society's hearing panel pools. Panel members are selected, based on established criteria, from a public (non-lawyer) pool and a lawyer (non-Bencher) pool to help adjudicate all discipline and credentials hearings.

In addition to a public representative and a non-Bencher lawyer, each panel includes a current Bencher lawyer, who is usually the chair of the panel.

Public Representatives

Donald Amos, Sidney

Dr. Gail Bellward, Vancouver

Glenys Blackadder, Victoria

Paula Cayley, Lions Bay

Dennis Day, Langley

Adam Eneas, Penticton

Jory Faibish, Vancouver

Carol Gibson, Vancouver

Dan Goodleaf, Vancouver

J.S. "Woody" Hayes, Duncan

Patrick Kelly, Victoria

John Lane, Cobble Hill

Linda Michaluk, North Saanich

Laura Nashman, Victoria

Lance Ollenberger, Fort St. John

June Preston, Victoria

Graeme Roberts, Brentwood Bay

Lois Serwa, Kelowna

Clayton Shultz, Surrey

Thelma Siglos, New Westminster

Robert Smith, Surrey

Non-Bencher Lawyers

Jasmin Ahmad, Vancouver
Ralston Alexander, QC, Victoria
James Dorsey QC, North Vancouver
William Everett, QC, Vancouver
Carol Hickman, QC, New Westminster
John Hogg, QC, Kamloops
Gavin Hume, QC, Vancouver
David Layton, Vancouver
Bruce LeRose, QC, Trail
Richard Lindsay, QC, Vancouver
Shona Moore, QC, Vancouver
Karen Nordlinger, QC, Vancouver
Donald Silversides, QC, Prince Rupert
William Sundhu, Kamloops
John Waddell, QC, Victoria
Brian J. Wallace, QC, Victoria
Peter Warner, QC, Peachland
Sandra Weafer, Vancouver

Benchers

Haydn Acheson, Richmond
Joseph Arvay, QC, Vancouver
Satwinder Bains, Abbotsford
Pinder Cheema, QC, Victoria
Lynal Doerksen, Cranbrook
Thomas Fellhauer, Kelowna
Craig Ferris, QC, Vancouver
Martin Finch, QC, Chilliwack
Miriam Kresivo, QC, Vancouver
Dean Lawton, Victoria

Jan Lindsay, QC, Vancouver*

Jamie Maclaren, Vancouver

Sharon Matthews, QC, Vancouver

Ben Meisner, Prince George

Nancy Merrill, QC, Nanaimo

Maria Morellato, QC, Vancouver

David Mossop, QC, Vancouver

Lee Ongman, Prince George

Greg Petrisor, Prince George

Philip Riddell, Port Coquitlam

Elizabeth Rowbotham, Vancouver

Alan Ross, Vancouver*

Herman Van Ommen, QC, Vancouver

Ken Walker, QC, Kamloops

Cameron Ward, Vancouver

Tony Wilson, Vancouver

*Former Bencher completing a hearing in progress

Appendix B: Protocol for the appointment of Law Society hearing panels and review boards

Under the Law Society Rules, the appointment of hearing panels and review boards is in the discretion of the president. This protocol sets out guidelines for the exercise of that discretion, based on Benchers resolutions and operational practice.

1. Each hearing panel comprises

   - a Bencher who is a lawyer,
   - one lawyer who is not a current Bencher, and
   - one person who is not a lawyer.

2. Each review board comprises

   - three Benchers, at least two of whom are lawyers,
   - two lawyers who are not current Benchers, and
   - two people who are not lawyers or Benchers.

3. A hearing panel is chaired by a lawyer who has completed at least two hearings as a member of the panel and the hearing skills workshop. When the Bencher on a panel meets those criteria, the Bencher acts as chair.

4. A review board is chaired by a lawyer Bencher who has completed at least two reviews as a member of the review board and the hearing skills workshop. In the event that no Bencher on the review board meets those criteria, another lawyer may act as chair.

5. The hearing administrator maintains three rosters:

   - a roster of current lawyer Benchers;
   - a roster of non-Bencher lawyers who are members of the hearing panel pool; and
   - a roster of non-lawyer members of the hearing panel pools, including current Appointed Benchers.

6. When a member of the hearing panel pool or a lawyer-Bencher completes the required training courses, his or her name is added to the bottom of the appropriate roster.

7. The required courses are as follows:

   - for all panellists, the introductory course on administrative justice and any annual updates

required by the Benchers;

- for all lawyers, the decision-writing workshop; and
- for all lawyers to qualify to chair a hearing panel or review board, the hearing skills workshop;

8. When a hearing panel or review board is to be appointed, the hearing administrator determines the highest member(s) on each roster who

- is not disqualified under Rule 5-3(1) or (2);
- is not a member of the Committee that ordered the hearing, either at the time the hearing was ordered or at the time of the hearing;
- where possible, has not had previous dealings with the respondent or applicant that could give rise to a reasonable apprehension of bias;
- is not the subject of a complaint investigation or discipline matter;
- in the case of lawyers, is a practising lawyer;
- is available on the hearing dates.

9. For a period of two years after becoming a Life Bencher,

- a lawyer who is otherwise qualified may be appointed to a hearing panel or review board when no current Bencher is available, and
- a person who is not a lawyer may be appointed to a hearing panel when no other non-lawyer is available.

10. Before being appointed to a review board, a member of the hearing panel pool or a Bencher must have completed at least one hearing as a member of the hearing panel.

11. The president establishes hearing panels composed of the three pool members under clause 1, and review boards composed of seven pool members under clause 2.

12. The president may appoint members of the pool out of order in a case that, in the president's opinion, requires special skill, expertise or experience.

13. When a member of the pool is appointed to a hearing panel or review board, his or her name goes to the bottom of the appropriate roster. If the hearing or review does not proceed, or if the pool member does not begin the hearing or review, for any reason, he or she may request that his or her name be returned to the top of the roster.

14. If a pool member at the top of a roster is not available for three or more consecutive hearings

panels or review boards, the president may direct the hearing administrator to place the pool member's name at the bottom of the appropriate roster.

15. The hearing administrator keeps a complete record of the appointment process for each hearing panel or review board.

16. Pool members and Benchers may enquire of the hearing administrator as to where they stand on the applicable roster.

17. The discretion of the president may be exercised by another Bencher designated by the president under the Law Society Rules.

VANCOUVER AIRPORT AUTHORITY

→ RONCE: FOR BOARDROOM INFO (TW).

February 24, 2016

Mr. Timothy McGee, QC, CEO and Executive Director
LAW SOCIETY OF BRITISH COLUMBIA
845 Cambie Street
Vancouver, BC V6B 4Z9

Dear Mr. McGee:

At our May 14, 2015 Annual Meeting with the Nominating Entities and in a follow up e-mail dated June 23, 2015, Craig Richmond announced the launch of a multi-year planning process that is an integral part of creating our next airport long term development plan, the 2017-2037 Master Plan.

It is our pleasure to provide you with a copy of the report on Phase I of our public consultations. The report can also be found on our engagement platform, yvr2057.ca. Should you have any questions, you are welcome to get in touch with me at 604.276.6529 or meg_comiskey@yvr.ca.

Yours very truly,

Meg Comiskey
Manager, Policy & Research

Enclosure: 1

P.O. BOX 23750
AIRPORT POSTAL OUTLET
RICHMOND, BC CANADA V7B 1Y7
WWW.YVR.CA

YVR 2057

YVR 2057 Master Plan
Phase 1 - Our World in 2057

Consultation Summary Report

May to September 2015

PREPARED BY:

LUCENT QUAY CONSULTING

About this Report

Lucent Quay Consulting Inc. (Lucent Quay) prepared this report for Vancouver Airport Authority (YVR). Lucent Quay is a Vancouver-based consulting firm specializing in community and stakeholder engagement. YVR retained Lucent Quay to develop, plan and implement YVR 2057, a multi-phase and multi-year consultation in support of YVR's new Master Plan. As part of its scope of work, Lucent Quay is to report on findings including analysis of all survey feedback and consultation input received. This consultation summary report includes survey responses from the public and stakeholders during Phase 1 consultation, from May 14 through to September 30, 2015. This report also provides a description of YVR outreach activities to engage the public and encourage participation.

Feedback and input was sourced from email responses, YVR 2057's consultation website, and its accompanying online survey. The website and online survey were hosted by EngagementHQ, a third-party online community engagement platform designed to help organizations connect with the public while protecting response anonymity. Personal information collected in connection with responses to the survey is stored by EngagementHQ, not by YVR.

EngagementHQ stores all of its data in Canada and uses the latest firewall and encryption technology to protect private information. YVR's collection, use and disclosure of personal information is regulated by the Personal Information Protection and Electronic Documents Act (Canada), or similar privacy legislation applicable in the user's Province, as amended from time to time.

Table of Contents

1. OVERVIEW

Vancouver International Airport (YVR) is Canada's second busiest airport and is managed by Vancouver Airport Authority, a community-based, not-for-profit organization. Vancouver Airport Authority is responsible for developing and maintaining YVR infrastructure and overseeing day-to-day operations.

YVR is located on Sea Island in Richmond, B.C. YVR had a record-setting year in 2014 with 19.4 million people passing through the airport's doors to fly on 53 airlines to more than 90 destinations around the world.

The airport is a primary economic contributor in the region and is influential in global transportation. More than 20,000 people work at YVR, making it the largest employer in Richmond.

YVR has earned its reputation as a world class airport and has been named the *"Best Airport in North America"* six years in a row by the Skytrax World Airport Awards.

In 2015, the Airport Authority embarked on a new journey – developing its new Master Plan to guide land use decision-making and facility development for the next 20 years. As required by its Ground Lease with Transport Canada, the Master Plan must be updated at least every 10 years. It is designed to ensure that YVR meets the needs of stakeholders and communities over the medium-term while supporting the Vancouver Gateway's longer-term viability in meeting future demands for air travel.

YVR's Master Plan includes a comprehensive, multi-phase consultation process and uses a variety of tools and methods to gather information and facilitate meaningful engagement with communities, stakeholders and the public.

This consultation summary report presents the findings from public consultation undertaken by the Airport Authority for the Master Plan Phase 1 (May 14 to September 30, 2015). The findings presented include input received during the consultation period from in-person engagement opportunities, and online and print feedback forms. For more information on the consultation process, please see section 2: ***Consultation Summary Results.***

1.1 About the Master Plan

YVR's previous Master Plan, titled ***YVR: Your Airport 2027 Master Plan***, received approval from the federal Minister of Transport in June 2008. Similar to the last Master Plan, the Airport Authority is undertaking a multi-year stakeholder and public consultation and engagement process for its new Master Plan, ***YVR 2037***. While an airport Master Plan requires a 20-year outlook, YVR has elected to do a 40-year outlook into its future planning.

The Master Plan will help to outline:

- How growth in passenger aircraft and cargo volumes will be accommodated
- How the needs of stakeholders and the communities YVR serves will be met in the future
- How YVR's longer-term viability will be supported
- How YVR's key strategic objectives will be achieved

The consultation plan includes four phases, described below in further detail.

Phase 1 – Our World in 2057

Phase 1 consultation focused on gathering input from stakeholders and the public on their vision of the future, how YVR could help meet that vision, and imagining their ideal airport of the future.

Timeline: Summer – Fall 2015 (Now Complete)

Phase 2 – Building a World Class Sustainable Airport

This phase will develop options to respond to growth and become a world class sustainable gateway to meet the future described in Phase 1. Options will address key components, including land use, terminals, runways and taxiways, ground access, parking and recreational areas.

Timeline: To be determined

Phase 3 – YVR Draft Master Plan

Airport Authority planners will develop a draft final concept for the Master Plan, including selecting a preferred future state for each key element, such as ground access and put forward the draft plan for consultation.

Timeline: To be determined

Phase 4 – Approval of YVR Master Plan

This phase will primarily focus on final consultations with approving entities including the federal Minister of Transport and primary stakeholders, and information sharing with the public. Phase 4 will also focus on determining key milestones for future consultation during the implementation of the Master Plan.

Timeline: To be determined

2. CONSULTATION SUMMARY RESULTS

2.1 Community Outreach

The 2015 YVR Flight Crew, a group of representatives from the Airport Authority responsible for community outreach, attended 34 events from May to September throughout the Lower Mainland, Prince George, Kelowna and Kamloops. The estimated number of people who attended the community events is greater than 2.5 million, with more than 35,000 visitors to YVR's community tent and over 3.5 million YVR 2057 engagement site brand impressions made among the public.

YVR FLIGHT CREW COMMUNITY EVENTS

- Bard on the Beach (Vancouver)
- BC National Exhibition (Prince George)
- Bike to Work Celebration (Vancouver)
- Burkeville Daze (Richmond)
- Caribbean Days Festival (North Vancouver)
- Carnaval del Sol (Vancouver)
- Dragon Boat Festival (Vancouver)
- European Festival (Burnaby)
- Fat Cat Children's Festival (Kelowna)
- FusionFest (Surrey)
- Garlic Festival (Richmond)
- Golden Spike Days (Port Moody)
- Great Canadian Shoreline Cleanup (Vancouver)
- Hat's Off Day (Burnaby)
- Khatsahlano Festival (Vancouver)
- Marpole Community Day (Vancouver)
- Marpole SummerFest (Vancouver)
- Pride Festival (Vancouver)
- Raptor Festival (Richmond)
- RibFest (Kamloops)
- Richmond Maritime Festival (Richmond)
- Richmond World Festival (Richmond)
- Richmond's National Aboriginal Day Celebration (Richmond)
- RiverFest (New Westminster)
- Sapperton Day Street Festival (New Westminster)
- Ships to Shore Steveston (Richmond)
- ShoreFest/Celebration of Light (Vancouver)
- Steveston Salmon Festival / Canada Day Parade (Richmond)
- The Fair at the PNE (Vancouver)
- Thompson Community Picnic (Richmond)
- UPS Plane Pull (Richmond)
- Vancouver Aquarium (Vancouver)
- Walk With the Dragon (Vancouver)
- White Rock Sea Festival (White Rock)

2.2 Advertising and Earned Media

The Airport Authority issued a press release announcing the launch of Master Plan Consultations at its Annual Public Meeting held on May 14, 2015. Approximately 175 people attended the meeting.

YVR also announced the Master Plan in the May and September issues of "YVR Insider", an ongoing YVR advertisement space that runs in the Richmond News and Vancouver Courier newspapers. These advertisements, which informed viewers of upcoming events and ways to participate in YVR 2057 consultation, reached approximately 200,000 members of the public throughout Metro Vancouver.

YVR placed three advertisements in Skytalk in June, July and August. The July and August advertisements were part of the publication's summer festival series calendar.
Following is the Master Plan advertising schedule.

PUBLICATION	TYPE	DATES	IMPRESSIONS
SkyTalk	Newspaper	June, July, August	18,270
Microsoft	Online	July, August	11,651,152
Vancouver Is Awesome	Online	July, August	315,011
VanCity Buzz	Online	July, August	1,020,016
Facebook	Online	July, August	3,035,184
Twitter	Online (promoted tweet)	July, August	1,086,602

The total number of impressions was approximately **17,126,235**.

2.3 Stakeholder Outreach

The Airport Authority sent an email to its stakeholder database announcing the launch of the Master Plan and encouraging them to provide their input through the YVR 2057 online survey. Stakeholders consisted of representatives from various groups that included but were not limited to businesses, industry associations, environmental groups, chambers of commerce and boards of trade, community groups, transportation authorities and local government. YVR also hosted more than 40 meetings with business partners and stakeholders throughout Phase 1 consultation. For a comprehensive list of meetings, please see Appendix A - Consultation Notifications.

Following is a list of groups consulted:

- Agricultural Groups
- Aircraft
- Arts, Heritage & Culture
- Aviation Clubs
- Businesses
- Cargo Airlines
- Community Groups
- Education Providers
- Environmental Groups
- Ethnic Groups
- Government
- Government Agencies
- Ground Handlers
- Industry Associations
- Metro Vancouver Municipalities
- Nominating Entities
- Other Organizations
- Passenger Airlines
- Public Safety Groups
- Regional Airports
- Regional Government
- Residents
- Sea Island Businesses
- Tourism and Recreation
- Transportation
- YVR Advisory Committees
- YVR – Car Service
- YVR – Cargo Sales Agents
- YVR – Customs Brokers
- YVR – Freight Forwarding Companies
- YVR – Integrators
- YVR – Major Tenants
- YVR – Other Businesses
- YVR – Truck Companies
- YVR – Warehouses

During the festival series, the Airport Authority's Flight Crew collected 1,528 email addresses from people who expressed interest in receiving more information about YVR 2057. YVR sent update emails to this group (see "Appendix A – Consultation Notifications" for sample emails).

2.4 Online Presence

The Master Plan was announced on YVR's social media channels (Facebook and Twitter) and additional information was provided on YVR's website. A dedicated website was developed for the Master Plan (YVR2057.ca), and updated on a regular basis to provide information for engagement opportunities for members of the public. The Master Plan website received more than 33,000 visitors throughout Phase 1 consultation, including over 2,000 active online particpants who asked questions, viewed a Festival Series video, or enjoyed one of the many informative tools on the website. Several tools were available to enhance online public engagement on the website as well, including three *Q&A* tabs and six *Your Story* tabs. The *Q&A* tool encouraged visitors to ask questions or share comments about the Master Plan, and the YVR 2057 team provided responses. The *Your Story* tool asked guests to share stories of their past experiences at YVR. The website also hosted a survey, which was designed to gather input from members of the public and stakeholders.

2.5 About the YVR 2057 Survey

A 17-question online survey was developed for the Master Plan, and was available to stakeholders and the public on the Master Plan website, YVR2057.ca. The first five questions were specific to the Master Plan and the remaining questions provided participants with the opportunity to contribute their general comments and basic demographic information. A list of the survey questions is available in Sections 3 and 4. The survey was also translated into French and Mandarin, and both translated surveys were available on the Master Plan website.

The Master Plan survey included a combination of open-ended response and multiple-choice questions. Questions specific to the Master Plan are listed below.

1. **Tell us about your vision of the future and how YVR can help serve that vision.**
   YVR's Master Plan charts a course for future land use decisions to help us achieve our vision. Our vision is to be a world class sustainable gateway between Asia and the Americas. What is your vision for the future 40 years from now? For example, what are your community and business like? How do you connect to the rest of the world?
2. **What do you think is needed to achieve this vision?**
3. **How well does Vancouver International Airport (YVR) serve your vision of the future? Why do you say that?**
4. **What is your ideal airport of the future? For example, how has air travel changed? How does the ideal airport connect people? How is air travel more sustainable?**
5. **YVR is committed to involving stakeholders and the public in developing the YVR 2057 Master Plan.**
   Please take a moment to read about our planning process and our consultation program. Do you have any feedback on this process?

2.6 Contest

An online contest was launched and paired with the YVR 2057 survey. The public was invited to participate in the survey, which would enter them into a grand prize draw for two flights to any destination to which YVR flies. In order to be entered in the draw, contestants were required to be a legal and current resident of Canada (not including Quebec), be 18 years of age or older, and have answered and submitted a minimum of one survey question between July 17 to September 30, 2015.

2.7 YVR 2057 Survey Results

The Airport Authority received 2,630 survey responses during the Phase 1 consultation period.

A high number of respondents completed the primary questions in the survey. A breakdown of the percentage of respondents who answered each of the primary questions is below. Respondents were also provided with opportunities to provide additional information if they were interested. Fewer people provided their input to secondary questions (70 per cent on average) where they could expand on their responses if they chose to.

	QUESTION	PERCENTAGE OF PEOPLE WHO RESPONDED
Question 1	**What is your vision for the future 40 years from now? For example, what are your community and business like? How do you connect to the rest of the world?**	**86%**
Question 2	**What do you think is needed to achieve this vision?**	**85%**
Question 3	**How well does Vancouver International Airport (YVR) serve your vision of the future?**	**92%**
Question 3.1	Why do you say that?	67%
Question 4	**What is your ideal airport of the future?**	**85%**
Question 5	**Do you have any feedback on our planning process and consultation program?**	**63%**
Question 6	Other comments	35%

Similar response trends were noted in the demographic portion of the survey.

A summary of key themes from feedback received follows, as well as respondent demographic profile information. Following is a high-level overview of findings and key themes from Phase 1 consultation.

3. YVR 2057 Questions

QUESTION #1)

What is your vision for the future 40 years from now? For example, what are your community and business like? How do you connect to the rest of the world? (n=2,258)

Key Themes:

- Over one quarter (596) of comments spoke to having increased travel connections, destinations, direct flights and digital connectivity.
- Offer more connectivity and more digital communication and interaction but ensure that YVR still implements a personal touch when communicating with its customers.
- Offer social media, automated services, technology and live translation machines and online shopping.
- Respondents placed an emphasis on sustainability. Some examples included sustainable travel and reduce carbon emissions from air travel, improve green initiatives for Metro Vancouver, and that YVR should become self-sustaining.
- Offer better ground access with recommendations to add high-speed transportation such as trains, and 24/7 accessibility between primary destinations locally including ferries, airports, and within airports.
- More convenience added with shorter security lines and reduced wait times, without comprising safety and security in addition to more efficient and faster travel times.
- Improved cost with more affordable domestic and international flights.
- YVR should have more connections and be a primary connecting point/destination for transoceanic flights and large airlines to become one of the main airports of the world.
- Involve multicultural and multilingual community (globally and locally).
- Focus on increased travel, including adding additional destinations/ direct flights (North America, Asia, Europe, Middle East) to become a world class airport.

"Forty years from now, my hope is society has come to grips with climate change and its impact on our infrastructure. Trade between Canada and the rest of the world will help our economy move in a positive direction. YVR plays a key role given its location to facilitate commerce between ourselves and those nations across the Pacific Ocean."

"My vision for the future is to be able to connect to every part of the world as easily as possible. Social media has helped increase connectivity between all countries and businesses by allowing for easy discussions about issues and problems. If that can continue to succeed, air travel can only benefit from it. I love to fly, and hopefully air travel becomes more convenient and green."

QUESTION #2)

What do you think is needed to achieve this vision? (n=2,239)

The top seven response themes were equally represented (~10 per cent range) and provide a clear picture of the flight path toward the future the public envisions.

Key Themes:

- Public engagement is required and would include community support, involvement and awareness, engagement and developing a sense of multicultural community.
- Strategically using resources, spending money and time responsibly, as well as land use.
- Having strong and innovative leadership was noted, and being open to change and forward thinking through research and planning.
- Provide a better customer experience through increased capacity and/or terminals, modernizing facilities, providing more shopping and extended, later vendor hours, food and restaurant options, showers and comfortable layover facilities, and offering customer service that is welcoming and organized.
- Innovation, particularly with advanced technology and trained professionals.
- Desire for more connections including adding more destinations and direct flights (North America, Asia, Europe, Middle East).
- Add more planes in order to compete with other local airports.
- Achieve sustainability by way of using new fuel sources, environmental planning and community representatives from YVR.

"Openness to new technology and the initiative to have a smaller environmental footprint, while still being innovative and safe."

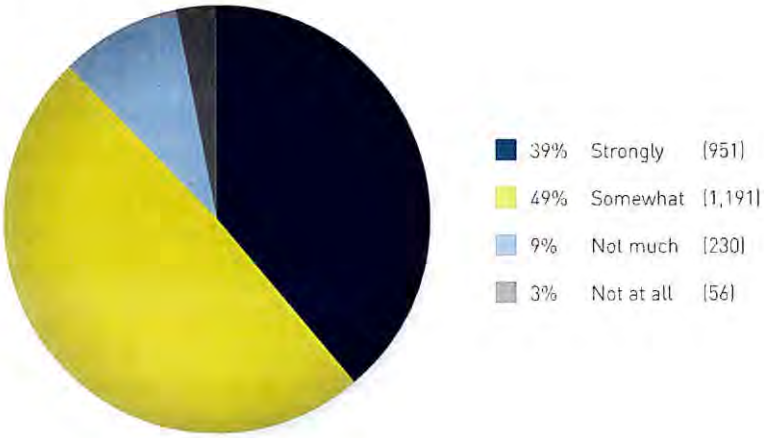
"I believe that innovation is needed to achieve this vision. If we can make travel more cost- and time-efficient then more people will be able to experience new places and learn about our different cultures."

"Runways that will accommodate more larger planes, a terminal that can process the passengers faster, and better parking and transit to the airport."

QUESTION #3)

How well does Vancouver International Airport (YVR) serve your vision of the future? (n=2,428)

The vast majority of respondents (88 per cent) have positive sentiments towards YVR's direction, with 39 per cent strongly in support of the airport. Among the popular response themes, 42 per cent voiced generally positive comments about YVR's existing customer experience. Other themes included more connections and reduced wait times were among the key themes.



RESPONDENTS WERE THEN ASKED:

Why do you say that? (n=1,775)

Key Themes:

- On the right track: No changes, general positive comments about YVR.
- More connections: YVR is already a great airport, adding more connections and direct flights will improve it even more.
- Better customer experience: Reduced wait times at check-in and security is needed, more accessible, additional transit options.
- Facility improvement, expansion and modernization are needed, including more staffing.
- Greater sustainability: YVR has, but needs more environmentally friendly and sustainable initiatives, including quieter planes.
- YVR has many opportunities for community engagement, inclusive and multi-cultural, positive community.
- More affordable flights needed.
- Additional transit options needed to and from the airport.

"As a consistently-ranked five-star airport, YVR is already a favourable connecting location for passengers. Add to this greater connections, and the airport has all of the ingredients of becoming a hub, all the while strengthening our local economy."

"Transportation connectedness is an important element, and YVR helps move people in an efficient manner, and supports the economy. But so much more is needed to reduce our environmental impacts."

"Sustainability is incredibly important in the growth of our country. As well, an even stronger connection to Asia will help facilitate and encourage small business growth (ie. it will make it even easier)."

QUESTION #4)

What is your ideal airport of the future? (n=2,226)

Popular response themes included addressing wait times (38 per cent) and sustainability (21 per cent).

Key Themes:

- An airport that provides better customer experience that includes shorter security lines and baggage wait times and which offers automated security and check-in for quick and easy travel.
- A desire for sustainable travel and reduction in carbon emissions from air travel and more green initiatives.
- Interest in expanded facilities with more shopping, lounge and office space that can be used in between flights. In addition, a desire for better restaurants, entertainment, and comfortable, customer service-oriented services that are available 24/7. Improved greenery in airport spaces was also noted.
- Comments about accessibility and adding high-speed transportation and improved accessibility between primary destinations locally and within the airport.
- Requests for more connections and adding more destinations and direct flights.

"More self-service luxury space (a hotel environment) but with high level of communication services throughout provided on digital devices and smart phones. With main travel services taken care prior to flights, customers can just walk onto a conveyor belt to get to their gate when they arrive and don't have to wait hours prior to boarding. Prior to, and on board, digital or heads-up arrival menus, payment scanning devices and self-driven security screening all to ensure security and safety."

"My ideal airport will concentrate on getting passengers through the security checks faster and allow them to relax in comfort while waiting for their flight. Some of the best airports I have experienced in the world have provided me with the option to shop for local goods on a larger scale, pursue art or technology in a stimulating way. The airport should be a part of the vacation experience and not just the means of slowly and uncomfortably waiting to get to the vacation experience."

QUESTION #5)

Do you have any feedback on our planning process and consultation program? (n=1,650)

A large number of respondents (89 per cent) expressed support and appreciation for the planning process and consultation program. This response mirrors the positive sentiments to "How well does Vancouver International Airport (YVR) serve your vision of the future?" Overall, based on survey responses, YVR holds a positive reputation with the public.

Key Themes:

- Most respondents expressed positive comments about YVR and were grateful for the airport collecting their input, commenting that they are looking forward to public consultation.
- Some comments about the consultation included listen to people's feedback, offer shorter surveys and use language that is easy to understand, and provide the public with regular updates on the process.
- Other comments noted a desire to include youth and First Nations in the design plans.
- Some comments included improving technology, reducing parking costs, and improving runways.

"I appreciate this open dialogue with the community and invitation to participate and offer feedback/insight. It's true that the airport is part of a community. Thank you for realizing this and not operating solely from a business perspective."

"The question is whether the hope or dream of one person will be any influence for change. It is very welcoming that I can do this survey from the comfort of my own home. You will have a computer program pull out the words from my comments and you might even use one of my quotes, but will what I say actually change your plan?"

QUESTION #6)

Other comments (n=915)

The majority of respondents reiterated their support of YVR: 95 per cent of comments were supportive of the airport and its customer experience. Respondents who asked for additional services or resources at the airport such as more flights and facilities represented 21 per cent of comments.

Key Themes:

- No changes, general positive comments about YVR.
- Adding additional and more frequent destinations/direct flights (North America, Asia, Europe, Middle East). Be a primary connecting point for trans-oceanic flights and large airlines.
- Expanded facilities, shopping, more lounge/office space for between flights, better restaurants, public showers.
- Sustainable travel/reduce carbon emissions from air travel, green initiatives.

"It is cool you are doing this survey. Take it a step further and let participants in this survey know the survey results and its key points and what's next in this planning process."

"As we all know technology is evolving day by day. So in near future we may get more eco-friendly flights with less emission of pollutants. The other factors which surely are going to change is the speed of travelling. As in past decades, we have seen speed always increasing and travel time decreasing."

"I think Vancouver has great potential at becoming an A-1 international airport but it needs to really put the mindset of a traveller in the foreground to achieve that goal."

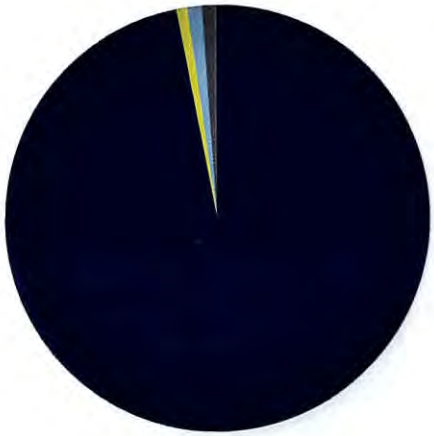
4. Respondent Demographic Profiles

Country of Residence

QUESTION #7)

Please provide the first three characters of your postal code, if you live in Canada. If you don't live in Canada, skip to question 8. (n=2,351)

A breakdown by province is provided below with the majority of respondents residing in B.C.



97%	B.C.	(2,278)
1%	Ontario	(31)
1%	Alberta	(22)
1%	Manitoba	(5)
	Nova Scotia	(3)
	Northwest Territories and Nunavut	(3)
	Yukon	(3)
	Saskatchewan	(2)
	P.E.I.	(1)
	Newfoundland and Labrador	(1)
	Quebec	(1)

Notification

QUESTION #8)

How did you learn about YVR 2057? Please check all that apply. (n=2,728)

Of those who provided this information, online sources were widely used. The combination of YVR Facebook page, YVR Twitter, YVR website and an online ad campaign ("Other") represented more than two-thirds (68%) of the total notification reach.

33%	YVR Facebook page	(887)
13%	YVR booth at community event	(365)
12%	YVR Twitter	(319)
10%	YVR website (yvr.ca)	(267)
6%	Friends/neighbours	(175)
5%	Newspaper advertisements	(143)
3%	YVR Master Plan website (yvr2057.ca)	(88)
3%	Postcard/email	(84)
1%	YVR Annual Public Meeting	(15)
14%	Other (please specify)	(385)

- Online advertisement
- Community events
- Email
- Friends/family
- Newspaper
- YVR employee
- In-flight advertising

Describe Yourself

QUESTION #9)

Which of the following best describes you? Please check only one. (n=2,524)

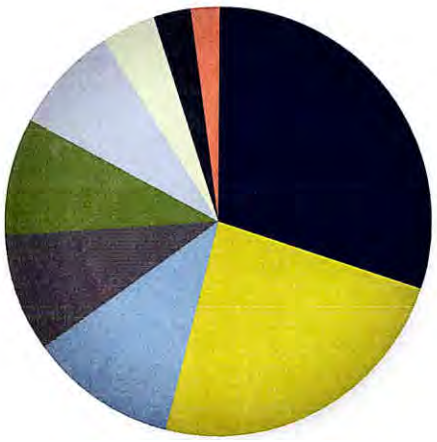
- 38% Member of the public (965)
- 36% YVR customer (912)
- 16% Resident living near the airport (412)
- 6% (33)
  - First Nations:
  - Industry or business association member (30)
  - Aviation industry member (24)
  - Environmental, community or special-interest group representative (20)
  - Community association representative (15)
  - Municipal or regional government representative (8)
  - Federal government or agency representative (7)
  - YVR tenant (6)
- 4% Other (please specify below) (92)
  - YVR customer
  - Community member
  - YVR/airline employee
  - First Nations
  - Aviation enthusiast
  - Student
  - Travel agent
  - N/A

Residence

QUESTION #10)

Where do you live? (n=2,435)

The majority of survey respondents were British Columbians, with most (86%) residing in the Lower Mainland. Of those who provided residence information, the geographic breakdown is as follows.



- 30% Vancouver (727)
- 24% Other Lower Mainland (568)
- 11% Surrey (272)
- 9% Other BC (236)
- 9% Burnaby (231)
- 8% Other Richmond (191)
  - Burkeville (5)
- 4% Delta (90)
- 3% Other Canada (71)
- 2% International (44)

QUESTION #10) WHERE DO YOU LIVE?

Other Lower Mainland:

- Vancouver Island (3)
- Langley (57)
- Port Moody (27)
- New Westminster (51)
- Port Coquitlam (43)
- North Vancouver (81)
- Abbotsford (48)
- Coquitlam (66)
- White Rock (16)
- West Vancouver (18)
- Mission (12)
- Pitt Meadows (8)
- Sunshine Coast (7)
- Maple Ridge (44)
- South Surrey (4)
- Chilliwack (11)
- Victoria (1)
- Fraser Valley (2)
- North Delta (1)
- Aldergrove (1)
- Britannia Beach (1)
- Agassiz (1)
- Canada (1)
- Vancouver (1)
- Sechelt (1)
- Deep Cove (1)
- Gibsons (2)
- Kelowna (1)
- Belcarra (1)
- Squamish (1)
- Aldergrove (1)
- Cloverdale (1)
- North Shore (1)
- Sardis (1)
- Tri-Cities (3)
- Tsawwassen (1)

Other BC:

- Abbotsford (5)
- Terrace (2)
- Victoria (20)
- Prince George (27)
- Kamloops (21)
- Thompson-Okanagan (6)
- Vancouver Island (16)
- Shirley (1)
- Vancouver Island North (1)
- Kelowna (15)
- Sunshine Coast (8)
- Castlegar (2)
- Fort St. John (3)
- Cariboo (1)
- Gibsons (2)
- Rossland (2)
- Langley (1)
- Penticton (1)
- Quesnel (2)
- Fraser Valley (3)
- North Vancouver (1)
- Nanaimo (9)
- Port Alberni (1)
- Campbell River (2)
- Whistler (7)
- Merritt (2)
- Pitt Meadows (1)
- Chilcotin (1)
- Prince Rupert (2)
- Powell River (4)
- Dawson Creek (2)
- Courtenay (4)
- Cranbrook (1)
- West Vancouver (1)
- Cache Creek (2)
- Pemberton (1)
- Chilliwack (3)
- Port Coquitlam (4)
- Comox Valley (3)
- Salt Spring Island (1)

Other Canada:

- Ottawa (5)
- Hagersville, ON (1)
- Oakville, ON (1)
- St. John's, NI (1)
- Winnipeg (1)
- Ontario (6)
- Toronto (8)
- Calgary (9)
- Prince George (1)
- Northern Ontario (1)
- Edmonton (8)
- Manitoba (3)
- Yukon (3)
- Regina (1)
- Alberta (2)
- Petrolia, ON (1)
- Sherwood Park, AB (1)
- Carleton Place, ON (1)
- West Vancouver (1)
- USA (1)
- Singapore (1)
- Thornhill, ON (1)
- Halifax (1)
- Cobourg, ON (1)
- White City, SK (1)
- Cranbrook (1)

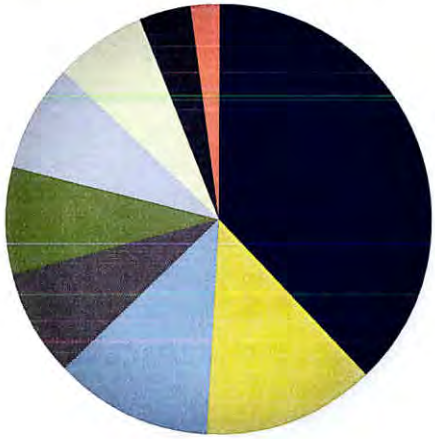
International:

- International:
- North Vancouver (4)
- Dubai (1)
- British Virgin Islands (1)
- West Vancouver (1)
- London, England (1)
- Abbotsford (1)
- Texas (1)
- Richmond (2)
- Marpole (1)
- White Rock (1)
- D'Arcy (1)
- Australia (1)
- Tokyo (1)
- Mexico (1)
- France (2)
- USA (3)
- Portland, OR (1)
- Oregon (1)
- Tri-Cities (1)
- Whistler (1)
- Coquitlam (2)
- Iona Island (1)
- New Westminster (1)
- Philippeans (1)
- California (2)
- Shalalth, BC (1)
- Cobourg, ON (1)
- Vancouver Island (1)
- Telkwa, BC (1)

Visits to YVR

QUESTION #11)

Where do you primarily work? (n=2,298)



38%	Vancouver	(882)
13%	Other Lower Mainland	(296)
12%	International	(284)
8%	Burnaby	(183)
8%	Surrey	(180)
8%	Other Richmond	(138)
	• Sea Island	(50)
7%	Other BC	(166)
4%	Other Canada	(77)
2%	Delta	(42)

QUESTION #11) WHERE DO YOU PRIMARILY WORK?

Other Lower Mainland:

- Coquitlam (14)
- Port Coquitlam (7)
- West Coast (1)
- Langley (25)
- Abbotsford (20)
- Horseshoe Bay (1)
- North Vancouver (15)
- New Westminster (17)
- Pitt Meadows (2)
- Mission (6)
- Retired (4)
- Lower Mainland (7)
- Maple Ridge (11)
- Chilliwack (5)
- Britannia Beach (1)
- Tri-Cities (5)
- Port Moody (3)
- Student (1)
- Sechelt (1)
- Sunshine Coast (2)
- Home (2)
- West Vancouver (4)
- Whistler (1)
- Vancouvr (2)
- Richmond (2)
- Burnaby (2)
- Delta (1)
- Surrey (1)
- Vancouver Island (1)

Other BC:

- Hope (1)
- Kamloops (12)
- Langley (2)
- Prince George (18)
- North Pacific (1)
- Victoria Airport (1)
- Cache Creek (1)
- Victoria (8)
- Home (1)
- Vancouver Island (3)
- Courtenay (1)
- Thompson-Okanagan (4)
- Abbotsford (2)
- Sunshine Coast (1)
- Across B.C. (4)
- Cariboo (1)
- Gibsons (1)
- Retired (3)
- Barriere (1)
- Barkerville (1)
- Parksville (1)
- Merritt (1)
- Kelowna (4)
- Chilcotin (1)
- Powell River (3)
- Dawson Creek (1)
- Nanaimo (3)
- Harrison Hot Springs (1)
- Chilliwack (1)
- Whistler (2)
- Fort St. John (1)
- Salt Spring Island (1)
- Vernon (1)
- Coast Guard (1)
- Western Canada (1)
- Penticton (1)
- Port Moody (1)
- White Rock (1)
- Fraser Valley (1)
- Tri-Cities (1)
- Port Coquitlam (1)
- Fort Nelson (1)

Other Canada:

- Across Canada (1)
- Saskatchewan (2)
- Ottawa (4)
- Ontario (3)
- Winnipeg (2)
- Toronto (1)
- Prince George (1)
- Nova Scotia (1)
- Edmonton (5)
- Calgary (3)
- Manitoba (1)
- Yukon (2)
- Alberta (4)
- Sarnia, ON (1)
- Carleton Place, ON (1)
- Sunshine Coast (1)
- Halifax (1)
- Vancouver (1)
- Monon (1)
- Vancouver Island (1)

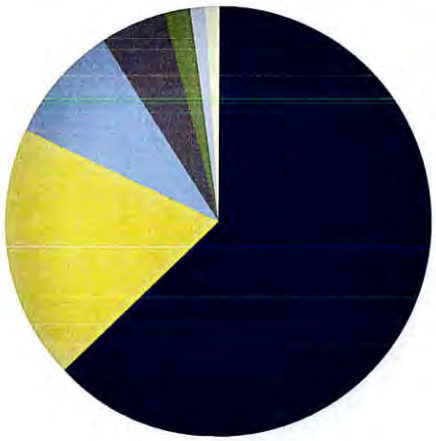
International:

- Retired (99)
- All over B.C. (1)
- All over Lower Mainland (3)
- Dubai (1)
- British Virgin Islands (1)
- London, England (1)
- Texas (1)
- YVR (2)
- Richmond (2)
- White Rock (1)
- Online (2)
- Japan (1)
- Student (6)
- Sechelt (1)
- Abbotsford (1)
- Vancouver Island (1)
- International (5)
- Unemployed (13)
- Myanmar (1)
- Blaine, WA (1)
- Home (10)
- Delta (1)
- Surrey (1)
- Vancouver (2)
- Calgary (1)
- Los Angeles (1)
- Toronto (1)
- Montreal (1)
- Western Canada (1)
- Middle East (1)
- Prince George (1)

Visits to YVR

QUESTION #12)

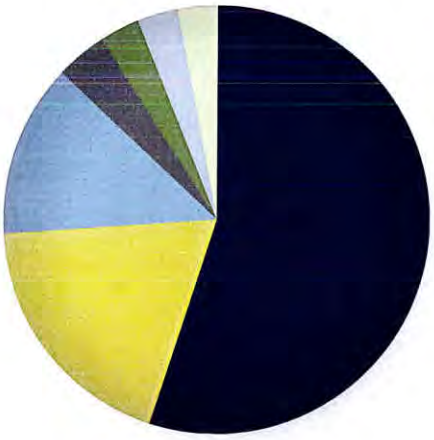
About how often do you visit the Vancouver International Airport (YVR) each year? (n=2,424)



63%	Several times a year	(1,536)
19%	Less than once a year	(450)
9%	At least once a month	(210)
5%	Several times a month	(110)
2%	Several times a week	(49)
1%	I don't go to the airport	(35)
1%	Daily	(34)

QUESTION #13)

If you visited YVR at least once in the past 12 months, what was the most frequent purpose of your trip(s)? (Please check only one) (n=2,446)

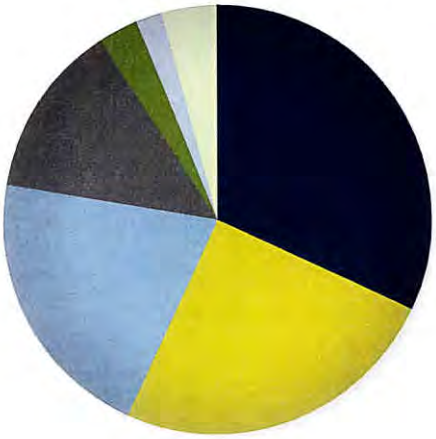


55%	Air travel for pleasure	(1,323)
19%	Personal business, such as picking up friends or relatives	(450)
13%	Air travel for business	(326)
4%	Does not apply	(100)
3%	Commuting to/from work	(77)
	◦ Commercial pick up/delivery	(9)
3%	Entertainment or recreation such as shopping, dining, dog walking, plane watching, etc.	(78)
3%	Other (please specify below)	(83)

- Many of the above (3)
- Business and person (4)
- Business/school (14)
- Personal (86)
- Pick up/drop off family and friends (49)
- Didn't visit (1)
- Work at YVR (5)
- Entertainment (9)

QUESTION #14)

If you visited YVR at least once in the past 12 months, which of the following modes of transportation have you used to travel there? (Please check all that apply*) (n=3,490)



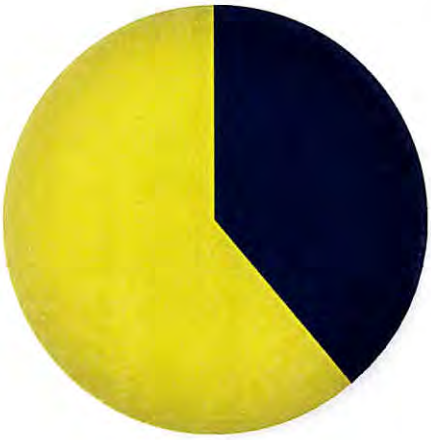
32%	Private vehicle, with other passengers	(1,103)
25%	Private vehicle, alone	(887)
21%	Canada Line rapid transit service	(738)
13%	Taxi	(470)
3%	Other bus/transit	(113)
2%	Cycling or walking	(19)
	Commercial vehicle over 5,500 kg (e.g. semi-trailer)	(15)
	Other commercial vehicle (smaller truck, delivery vehicle, service vehicle)	(15)
4%	Does not apply	(130)

* PARTICIPANTS WERE ALLOWED TO SELECT MORE THAN ONE RESPONSE AND IS REFLECTED IN THE TOTAL NUMBER OF RESPONSES RECEIVED

Gender and Age

QUESTION #15)

Please indicate your gender. (n=2,429)

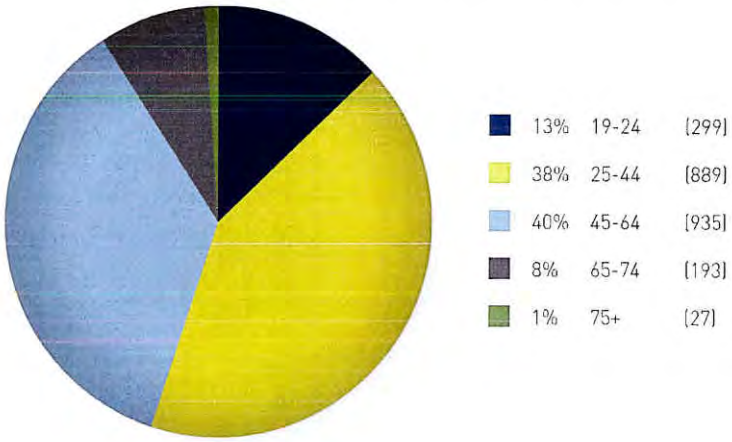


39%	Men	(949)
61%	Women	(1,480)

QUESTION #16)

Please indicate your age range. (n=2,343)

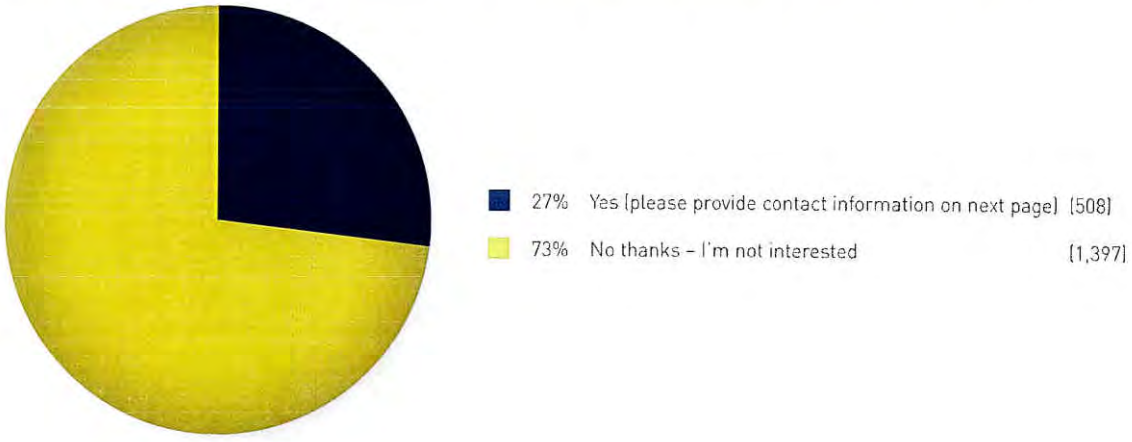
Respondents were mostly weighted to the 25-44 and 45-64 age groups. As a comparison, the median age of B.C. residents in 2011 was 41.9 years old according to Statistics Canada.



Stay In Touch with YVR

QUESTION #17)

Would you like to be added to YVR's database to receive YVR 2057 Master Plan project updates by email? To help ensure that you continue to receive updates, we ask that you provide your consent to receive electronic messages from Vancouver Airport Authority related to YVR developments, activities, events and summer festival appearances. For more information or to withdraw consent, please email YVR2057@yvr.ca (n=1,905)



5. YVR Stakeholder Correspondence

- A total of 52 questions or comments were posted to one of the website's three Q&A pages during Phase 1 consultation. These posts ranged from high level and detailed questions about the Master Plan to general comments about a personal experience. The overall tone of questions and comments posted to the website was neutral.
- Two "Stories" were received from stakeholders to the Master Plan website, where visitors recounted experiences they had at YVR in the past.
- Metro Vancouver submitted a response with staff comments to YVR on October 1, 2015. A copy of the letter and response is included in Appendix B.

Opportunities for Phase 2

Based on what was heard in Phase 1, some key considerations for developing options for Phase 2 of the YVR 2057 Master Plan include:

- How upgraded facilities support the provision of more travel connections and increased destinations offered to and from YVR
- Focusing on sustainability, green initiatives, and reduction in carbon emissions
- Improving flight affordability
- Improving the overall customer experience at YVR by increasing the range of retail, amenities, services and food and beverage options
- Improving and increasing ground transportation options
- Continuing to engage with stakeholders and the public on future plans at YVR

Appendix A – Consultation Notifications

Reply-To: notifications@engagementhq.com
YVR 2057 Master Plan - Contest Closing Soon!

You're receiving this email because you participated in the online discussions or you have opted to receive updates from YVR 2057.

YVR 2057

What is your vision for the future?

Greetings from YVR!

As someone who has expressed interest in our YVR 2057 Master Plan, we thought we would send you an update on our Phase 1 consultation.

This summer, our YVR 2057 Master Plan team visited communities in the Lower Mainland and across the province and had the opportunity to connect with people and gather their input about the future of YVR.

We're nearing the completion of Phase 1 of our YVR 2057 Master Plan consultation! With only a few days left to complete the survey and be entered to **win two free tickets** to anywhere that YVR flies, time is running out. If you haven't already had the chance, we invite you to provide your feedback on Phase 1 consultation today to help us plan for the future and develop our Master Plan. The survey and contest close on September 30.

Your comments, along with all other input received from stakeholders and the public during Phase 1, will be compiled and analyzed, and represented in a consultation summary report, where we will summarize what we heard from you during Phase 1. Information collected will help us develop clear options to present to you during Phase 2. The consultation summary report will be publicly available on the website once complete.

Stay Tuned

We will notify you soon to let you know when we post more information to the website. These updates will include information about additional opportunities for you to participate in developing the Master Plan during Phase 2 of consultation.

Sincerely,

The YVR 2057 Team

Not interested anymore? click here to unsubscribe instantly

From: YVR 2057 [mailto:YVR2057@yvr.ca]
Sent: Tuesday, July 07, 2015 12:35 PM
To: YVR 2057
Subject: Help us Shape YVR's Master Plan - YVR 2057

YVR 2057

What is your vision for the future?

Hello:

At our Annual Public Meeting, Vancouver Airport Authority launched YVR 2057, a two-year planning and consultation process that is an integral part of creating our new Master Plan. We invite you to participate in this process.

The Master Plan will help guide Vancouver International Airport (YVR) to its future destination. To that end we are initially looking out 40 years to ensure that our 20-year plan (to 2037) will continue to meet the needs of British Columbians.

In the first phase of consultation we want to know about your vision for the future and how YVR serves that vision. We're asking:

- What is your vision for the future 40 years from now?
- What do you think is needed to achieve this vision?
- What is the ideal airport of the future?
- How does YVR help meet/serve your vision of the future?

You can provide your thoughts by:

- Completing an **online survey**, available on our Master Plan website at YVR2057.ca.
- Participating in **online discussion forums**, also on our Master Plan website, focusing on key questions that shape our plans.
- **Visiting us at Summer festival events** throughout B.C. – visit YVR2057.ca for dates and locations.
- **Providing a written submission** by email at YVR2057@YVR.ca.

The first phase of consultation will end on September 30, 2015. In the second phase of consultation, we will take a more detailed approach about the future possibilities for the airport and we will ask how they support your future vision.

We've attached a brochure that provides more information about the planning and consultation process, and the opportunities to provide input. If you have any questions about the Master Plan or the consultation process, please contact us at YVR2057@YVR.ca or 604-276-6772. You can also visit our Master Plan website at YVR2057.ca.

Thank you. We look forward to your participation.

You are receiving this email as you have a previous or current relationship or interest with YVR. This is not a marketing email or solicitation of business; we are seeking your input and feedback on YVR's planning for the future. If you do not wish to receive further emails about YVR2057, please email YVR2057@YVR.ca.

YVR_2057_MasterPlan_brochure.pdf

Greetings from YVR!

As someone who has expressed interest in our YVR 2057 Master Plan, we thought we would send you an update on our Phase 1 consultation.

This summer, our YVR 2057 Master Plan team visited communities in the Lower Mainland and across the province and had the opportunity to connect with people and gather their input about the future of YVR.

We're nearing the completion of Phase 1 of our YVR 2057 Master Plan consultation! With only a few days left to complete the survey and be entered to **win two free tickets** to anywhere that YVR flies, time is running out. If you haven't already had the chance, we invite you to provide your feedback on Phase 1 consultation today to help us plan for the future and develop our Master Plan. The survey and contest close on September 30.

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Stay Tuned

We will notify you soon to let you know when we post more information to the website. These updates will include information about additional opportunities for you to participate in developing the Master Plan during Phase 2 of consultation.

Sincerely,

The YVR 2057 Team

Not interested anymore? click here to unsubscribe instantly

Master Plan Phase 1 "Futures and Forecasts" Consultations Held as of 17 November 2015

YVR 2057

Business Partners and Stakeholders

Passenger Airlines

- Air Canada (and Air Canada Cargo)
- Alaska Airlines
- Cathay Pacific
- Harbour Air
- Pacific Coastal
- United
- WestJet
- Airline Consultative Committee (standing airline-airport committee including all airlines serving YVR)

Government

- City of Richmond (staff) (3 meetings)
- Province of BC (staff)
- Municipality of Delta (staff)
- City of Vancouver (planning staff)
- City of Vancouver (engineering staff)
- Metro Vancouver Regional Planners Advisory Group
- Metro Vancouver Major Roads and Transit Advisory Committee

In addition, Craig Richmond reported on our Master Plan engagement program in presentation to the following city councils: Burnaby, Delta, New Westminster, Richmond, Surrey and Vancouver; and to Metro Vancouver's Intergovernment and Finance Committee.

Regional Airports

- BC Aviation Council (BCAC) Regional Airports Committee (2 meetings.) (Group includes Abbotsford, Boundary Bay, Langley Pitt Meadows and Vancouver Harbour)[1]

Cargo Airlines

- CargoJet
- FedEx
- Purolator

Other

- Landmark Aviation
- Canada Business Aviation Association
- Esso Avitat (Interdel Aviation Services)
- YVR Car Rental Companies

Government Agencies

- CATSA
- CBSA
- NAV Canada
- Transport Canada (Local and national - 3 meetings)

Nominating Entities[2]

- Association of Professional Engineers and Geoscientists of BC– joint meeting of Richmond/Delta and Vancouver branches
- Vancouver Board of Trade Regional Transportation and Infrastructure Committee
- Metro Vancouver Senior Managers Group

1 We agreed to use the existing BCAC Regional Airport Committee to discuss regional airport policy and strategy.

2 An invitation for a presentation was extended to all Nominating Entities.

YVR Advisory Committees

- Aeronautical Noise Management Committee and Environmental Advisory Committee (joint and individual sessions)

Internal

- P&P Committee (Airport Authority Staff Directors)
- Vancouver Airport Authority employees (8 employee meetings)

The Public

June 2015

- Marpole Community Day (Vancouver)
- Hats Off Day (Burnaby)
- Doors Open Richmond (YVR)
- Fat Cat Children's Festival (Kelowna)
- Sapperton Day Street Festival (New Westminster)
- Dragon Boat Festival (Vancouver)
- National Aboriginal Day (Richmond)
- Golden Spike Days (Port Moody)
- Burkville Daze (Richmond)
- Ships to Shore Steveston (Richmond)

July 2015

- Steveston Salmon Festival (Richmond)
- Thompson Community Picnic (Richmond)
- Khatsahland Festival (Vancouver)
- Carnival Del Sol (Vancouver)
- Bard on the Beach (Vancouver)
- Marpole Summerfest (Vancovuer)
- Fusion Festival (Surrey)
- Walk with the Dragon (Vancouver)
- Shorefest/Celebration of Light (Vancouver)

August 2016

- White Rock Sea Festival
- Pride Festival (Vancouver)
- Bard on the Beach (Vancouver)
- RibFest (Kamloops)
- Richmond Maritime Festival
- BC Northern Exhibition (Prince George)
- Raptor Festival (Richmond)
- The Fair at the PNE (Vancouver)
- Garlic Festival (Richmond)

September 2015

- Richmond World Festival
- Great Canadian Shoreline Cleanup
- Riverfest (New Westminster)

Appendix B - Stakeholder Correspondence

metrovancouver
SERVICES AND SOLUTIONS FOR A LIVABLE REGION

Planning, Policy & Environment Department
Tel. 604.432-6350 Fax 604.432-6296

File: CR-07-10-VAA

October 1, 2015

Ms. Meg Comiskey, Manager, Policy & Research
Vancouver Airport Authority
P.O. Box 23750
Airport Postal Outlet
Richmond, BC V7B 1Y7

Dear Ms. Comiskey:

Re: Metro Vancouver Comments on Vision for New YVR Airport Master Plan

Metro Vancouver appreciates the early opportunity to comment on YVR's long-term vision for the new Airport Master Plan. We value working with YVR, member municipalities, and other partners to support initiatives that advance common objectives and benefit the wider region.

Metro Vancouver recognizes YVR as an important and growing transportation gateway for the Metro Vancouver region. We applaud ongoing efforts by YVR to balance growth with commitments to reduce impacts of the airport on surrounding areas, including the implementation of a variety of environmental programs regarding noise management, energy efficiency, waste reduction, water consumption, and carbon reduction.

We note the importance of developing different forecast growth scenarios to inform the preparation of land use and transportation plans that can accommodate or adapt to different futures. We also believe that the planning process should give full consideration to the two-way relationship between YVR's activities with land uses, transportation, economy, and employment in the wider region. This planning work should include coordinated land use designations between YVR and neighbouring municipalities that support the goals of *Metro 2040* – the regional growth strategy. Ultimately, more detailed planning would potentially include greater nuancing of YVR land use designations.

This initial phase of consultation seeks to confirm the collective vision for YVR's future. The context for Metro Vancouver staff comments stem from a policy context that includes: *Metro 2040: Shaping Our Future*, Regional Parks Service Review, Draft Regional Parks Plan, Experience The Fraser (ETF) Concept Plan, water and liquid waste utility plans, and overarching sustainability goals. Specific objectives relate to efficient regional land use patterns supporting long-term growth and prosperity, integration with transportation plans, coordination with infrastructure investments, and protection of the region's important natural areas, including regional parks and trails.

Attached are Metro Vancouver's staff comments on YVR's questions, as well as some more specific items for consideration as the Airport Master Plan is developed.

Metro Vancouver looks forward to participating in future phases of consultation. If any questions, please contact: Eric Aderneck, Senior Regional Planner at eric.aderneck@metrovancouver.org / 778-452-2626. Thank you.

With Kind Regards,

Heather McNell
Division Manager, Regional Planning - Planning and Policy Analysis

EC/HM/EA

cc: Terry Crowe, Manager, Policy Planning Department, City of Richmond
Jane Pickering, Deputy Director, Planning, City of Vancouver

Encl: Detailed Metro Vancouver Staff Comments on Vision for New YVR Airport Master Plan

11881459

Attachment

ATTACHMENT – Detailed Metro Vancouver Staff Comments on Vision for New YVR Airport Master Plan

What is your vision for the future 40 years from now?

- Within a wider context applicable to YVR, the world will have switched from a fossil fuel-based economy to a renewables-based economy. Further, the region will have become almost entirely self-sufficient by utilizing local renewable resources and improving energy efficiency.
- YVR is well-knit into the surrounding metropolitan landscape, including transportation, environmental protection, and connections with regional institutions, parks, businesses, and residents.
- YVR manages Sea Island lands with a clear focus on air travel, goods movement by plane and associated businesses.
- YVR lands are effectively and intensively used for airport industrial and commercial related functions.
- A diverse Sea Island community (including Iona Island lands as part of the precinct) is guided by a comprehensive master plan.
- YVR is a world leader in research and innovation in minimizing wildlife-aircraft impacts and on-site biodiversity conservation.

What do you think is needed to achieve this vision?

- YVR-led strategic partnerships with universities, utilities, TransLink, government and non-governmental organizations to advance a common vision for the airport.
- YVR's active participation in, and commitment to, regional planning in collaboration with Metro Vancouver, TransLink, and other agencies.
- YVR's infrastructure investments and land use and transportation plans are supported by clear targets to advance the defined vision for the airport.
- YVR's adoption of ambitious ecological health targets, and support for cutting-edge research and pilot projects.
- YVR's adoption of a mission statement clarifying aeronautical criteria for development of airport lands.
- YVR leverages its tenant contracts and bidding process to create the desired changes in order to phase in new requirements for tenants and service providers.
- YVR considers impacts of land associated with the expansion or creation of new runways and how this might impact Iona Beach Regional Park, the foreshore ecosystems, and habitat.
- YVR addresses climate change, sea level rise, and adaptive management issues on Sea Island and environs.

What is the ideal airport of the future?

- Sustainable, beautiful, culturally and ecologically representative of BC, and supportive of human health.
- Ground service equipment and shuttle buses will be fossil-fuel free.
- Most airport workers and passengers will be arriving by public transit, and the personal vehicles being driven will be almost entirely fossil-fuel free.
- Aviation will at least in part be fueled by biogenic alternative fuels, in place of jet fuel.

- YVR values and considers ecological health and recreational connectivity in development and operational decision-making.
- YVR will be a model of self-sufficiency; organic wastes will be treated onsite and used to support onsite gardens or turned into heat or electricity, energy will be generated from renewable sources, including solar, wind and tidal, and garbage will be minimal, with most items recycled or composted.
- YVR embraces effective and innovative solutions to land-use and natural resource management challenges in collaboration with other agencies.
- YVR offers opportunities to learn about and connect with the natural environment in the region.

How does YVR help meet/serve your vision of the future?

- Engage Metro Vancouver and other agencies in a meaningful dialogue to ensure the delivery of the vision and elements of the vision.
- YVR, as the gateway to this region and Canada, plays a pivotal role in demonstrating what the region aspires to achieve: a fossil fuel-free world, protected environmental lands, sustainable development, a prosperous economy, local food production, etc.

Water Utilities / Infrastructure Comments:

- YVR is not a direct customer of Metro Vancouver for water supply and thus YVR should continue to liaise directly with the City of Richmond for their water supply needs. However, for the purposes of generally improved water supply planning, Metro Vancouver requests that YVR's new long-range plan clearly outline specific long-range projections for water demand that, besides growth in cargo and passenger loading, also take in account water conservation initiatives. These projections in water demand should highlight annual and seasonal demands, as well as consider peak week, day and hour.

Liquid Waste Utilities / Infrastructure Comments:

- Metro Vancouver is in the planning stages for a new secondary wastewater treatment plant (WWTP) to replace the existing primary WWTP at Iona Island. As the plant will come online no later than 2031, there will be a need to consult with customers including YVR.
- YVR currently has a direct sewer line to Iona WWTP which has been in place for many years. With the expansion of the airport facility and the recent (and future) increase in commercial development on the airport lands, extensive discussions with YVR, First Nations, and member municipalities will need to take place over the coming years to ensure that there is sufficient infrastructure capacity to accommodate the future increase in sewer flows.
- Metro Vancouver's Liquid Waste Services Department has had recent discussions with YVR over potential District Energy heat recovery from the sewer system and further discussions will need to occur on that initiative.
- Metro Vancouver would like to see comments in the YVR long range infrastructure plan that outline the expected need for an increase in sewerage services and whether District Energy is in YVR's future plans. Metro Vancouver would also like to receive information on specific flows that are anticipated so as to inform moving forward with long range infrastructure planning.

REDACTED MATERIALS

REDACTED MATERIALS

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