The Law Society of British Columbia

Agenda

Benchers

Date: Friday, July 8, 2016

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

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

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

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1	Presentation of Law Society Scholarship	5	President		Presentation
CONSENT AGENDA: The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Executive Support (Renee Collins) prior to the meeting.					
2	Consent Agenda • Minutes of June 4, 2016 meeting (regular session) • Minutes of June 4, 2016 meeting (*in camera* session) • Proposed Resolution Authorizing Benchers to Amend the Rules Regarding Electronic Voting at General Meetings • National Discipline Standards Recommendation: Information Sharing with other Law Societies • Proposed Resolution to Create a Truth and Reconciliation Advisory Committee	1	President	Tab 2.1 Tab 2.2 Tab 2.3 Tab 2.4 Tab 2.5	Approval Approval Approval Approval Approval

The Law Society of British Columbia

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ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
EXECUTIVE REPORTS					
3	President's Report	10	President	Oral report (update on key issues)	Briefing
4	CEO's Report	10	CEO	Tab 4	Briefing
5	Briefing by the Law Society's Member of the Federation Council	5	Gavin Hume, QC		Briefing
DISCUSSION/DECISION					
6	Proposed New Rule Addressing Juricert Use	15	Mark Bussanich, Discipline Counsel	Tab 6	Discussion/ Decision
7	Financial Report – May YTD 2016	20	Miriam Kresivo, QC/ CFO	Tab 7	Discussion
REPORTS					
8	Mid-Year Reports from the 2016 Advisory Committees				Briefing
	• Access to Legal Services Advisory Committee	10	Herman Van Ommen, QC	Tab 8.1	Briefing
	• Equity and Diversity Advisory Committee	10	Satwinder Bains	Tab 8.2	Briefing
	• Rule of Law and Lawyer Independence Advisory Committee	10	Craig Ferris, QC	Tab 8.3	Briefing
	• Lawyer Education Advisory Committee	10	Tony Wilson	Tab 8.4	Briefing

The Law Society of British Columbia

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ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
9	Report on Outstanding Hearings	4	Herman Van Ommen, QC		Briefing
10	Truth and Reconciliation Commission Steering Committee Update	10	President		Briefing
FOR INFORMATION					
11	Report of the Special Committee to Review FIPPA			Tab 11	Information
12	Federation President's Council Update			Tab 12	Information
IN CAMERA					
13	Notaries Qualifications Working Group Report	20	Craig Ferris, QC	Tab 13	Discussion/ Decision
14	Litigation Report	10	CLO	Tab 14	Briefing
15	Freshfields Proposal	10	CEO	Tab 15	Discussion/ Decision
16	Lawyers Insurance Fund Exemption Update	5	CEO		Briefing
17	Other business		President/CEO		Discussion/ Decision

The Law Society of British Columbia

Minutes

Benchers

Date:	Saturday, June 04, 2016	
Present:	David Crossin, QC, President	Christopher McPherson
	Herman Van Ommen, QC, 1st Vice-President	Nancy Merrill, QC
	Miriam Kresivo, QC, 2nd Vice-President	Maria Morellato, QC
	Jeff Campbell, QC	Lee Ongman
	Lynal Doerksen	Greg Petrisor
	Thomas Fellhauer	Claude Richmond
	Craig Ferris, QC	Phil Riddell
	Martin Finch, QC	Elizabeth Rowbotham
	Brook Greenberg	Mark Rushton
	Lisa Hamilton	Carolynn Ryan
	J.S. (Woody) Hayes, FCPA, FCA	Daniel P. Smith
	Dean P.J. Lawton	Michelle Stanford
	Jamie Maclaren	Sarah Westwood
	Sharon Matthews, QC	Tony Wilson
	Steven McKoen	
Excused:	Satwinder Bains	Claude Richmond
	Pinder Cheema, QC	
Staff Present:	Tim McGee, QC	Jeffrey Hoskins, QC
	Deborah Armour	Michael Lucas
	Taylore Ashlie	Jeanette McPhee
	Renee Collins	Alan Treleaven
	Su Forbes, QC	Adam Whitcombe
	Andrea Hilland	

Guests:	The Honourable Chief Justice Christopher Hinkson	Supreme Court of BC
	Anne Kirker, QC	President, Law Society of Alberta
	Ardith Walkem	Nlaka'pamux Lawyer, Retreat Co-Chair
	Cori Ghitter	Director, Professionalism & Policy, Law Society of Alberta
	Gavin Hume, QC	Council Member representing the Law Society of BC, Federation of Law Societies of Canada
	Gillian Marriott, QC	President-Elect, Law Society of Alberta
	Jan Lindsay, QC	Past President 2014
	Jeff Hirsch	President, Federation of Law Societies
	Jonathan Herman	CEO, Federation of Law Societies
	Karen Wilford	Treasurer, Law Society of the Northwest Territories
	Ken Walker, QC	Past President 2015
	Kristin Dangerfield	CEO, Law Society of Manitoba
	Luc Marcoux	Treasurer, Law Society of New Brunswick
	Marc L. Richard, QC	Executive Director, Law Society of New Brunswick
	Michael McDonald	Treasurer, Indigenous Bar Association
	Perry Erhardt, QC	President, Law Society of Saskatchewan
	Susan LeDrew	President, Law Society of Newfoundland & Labrador
	Tom Schonhoffer, QC	Executive Director, Law Society of Saskatchewan
	Michael Welsh	Vice-President, Canadian Bar Association, BC Branch

INTRODUCTION

1. Introduction of Guests

Mr. Crossin began the meeting by acknowledging the traditional territories and hospitality of the Okanagan Nation. He then introduced the Honourable Mr. Justice Christopher Hinkson, Chief Justice of the Supreme Court of British Columbia, and the President and the CEO of the Federation of Law Societies of Canada, Mr. Jeff Hirsch and Mr. Jonathan Herman, respectively.

Chief Justice Hinkson thanked the Benchers for the invitation to their annual Retreat, and extended the regrets of Chief Justice Bauman and Associate Chief Justice Cullen. Acknowledging the Retreat Conference Agenda, he underscored the importance of the work of the Truth and Reconciliation Commission to the fabric of Canadian Society.

The Chief Justice also conveyed his respect for the time and efforts of those who run for Bencher, whose pro bono work giving back to the Bar sets an excellent example to members. He lauded Access Pro Bono as another example of members stepping into the breach to give of their time and expertise, and expressed his concern for the capacity of the Bar to meet the need moving forward. Additionally, he applauded the President and the Benchers for revisiting the issue of adequate legal aid funding with the new Legal Aid Task Force.

Noting the importance of Inns of Court to the members, he encouraged Benchers and members to provide support for the Inns of Court in Vancouver which is experiencing difficulty.

Finally, he also acknowledged the difficult task of the governors of the Law Society, and asked that they approach their governance work with compassion for the weaker members of the Bar.

He concluded his remarks by noting his sadness at seeing many senior members of the Bar passing away, adding that he is heartened as well by the addition to the Bar of so many capable young lawyers.

CONSENT AGENDA

2. Minutes

a. Minutes

The minutes of the meeting held on May 6, 2016 were approved as circulated.

The *in camera* minutes of the meeting held on May 6, 2016 were approved as circulated

b. Resolutions

The following resolution was passed unanimously and by consent.

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

1. ***In Rule 3-55, by adding the following subrule:***

   (6) A lawyer may deposit funds that are fiduciary property to a pooled or separate trust account, provided that the lawyer complies with the rules pertaining to trust funds with respect to the fiduciary property."

2. ***In Rules 3-60 (4) and 3-61 (3), by striking*** "funds other than trust funds" ***and substituting*** "funds other than trust funds or funds that are fiduciary property".

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

BE IT RESOLVED to amend the *Code of Professional Conduct for British Columbia:*

1. By deleting the title "Limited representation" and the existing rules 3.4-11.1 to 3.4-11.4; and

2. By inserting instead:
   a. the proposed Commentary [7.2] to rule 3.1-2,
   b. the title "Short-term summary legal services" and
   c. the new rules 3.4-11.1 to 3.4-11.4, including Commentary [1] to [4],

   as proposed and recommended by the Ethics Committee.

BE IT RESOLVED that the Benchers ratify the Credentials Committee's recommendation to award the 2015 Law Society Scholarship to Sarah Pike.

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

1. In Rule 2-91:

(a) by rescinding subrule (1) (b), and

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

(1.1) The date, time and place for the hearing to begin must be set

(a) by agreement between counsel for the Society and the applicant, or

(b) on the application of a party, by the President or by the Bencher presiding at a pre-hearing conference.

(1.2) When a date is set under subrule (1.1), the President must notify the parties in writing of the date, time and place of the hearing.

(2) The notice referred to in subrule (1) or (1.2) must be served

(a) in accordance with Rule 10-1 *[Service and notice]*, and

(b) not less than 30 days before the date set for the hearing, unless the applicant consents in writing to a shorter period.

2. In Rule 2-94:

(a) in subrule (1), by striking "to the Executive Director***" and substituting "***to the President***",***

(b) by rescinding subrule (2), and

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

(b) refer the question to a pre-hearing conference;

3. In Rule 2-95:

(a) in subrule (1), by striking "to the Executive Director***" and substituting "***to the President***", and***

(b) by rescinding subrule (2).

4. In Rule 2-98, by rescinding subrules (1) and (2) and substituting the following:

(1) Before a hearing commences, the applicant or counsel for the Society may request that the hearing be adjourned by delivering written notice setting out the reasons for the request to the President and to the other party.

5. In Rule 2-101, by rescinding subrule (5) and substituting the following:

(5) A copy of the panel's reasons prepared under subrule (4) must be delivered promptly to the applicant and counsel for the Society.

6. In Rule 2-102, by rescinding subrule (3) and substituting the following:

(3) An application under subrule (2) is made by written notification of the following:

(a) the applicant;

(b) the President.

7. In Rule 4-21 (1) (a), by striking "and the Executive Director,***" and substituting "***and the President,***"***

8. In Rule 4-22:

(a) in subrule (1), by striking "to the Executive Director***" and substituting "***to the President***",***

(b) by rescinding subrule (3), and

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

(c) refer the application to a pre-hearing conference**.**.

9. In Rule 4-32, by rescinding subrules (1) and (2) and substituting the following:

(1) The date, time and place for the hearing to begin must be set

(a) by agreement between discipline counsel and the respondent, or

(b) on the application of a party, by the President or by the Bencher presiding at a pre-hearing conference.

(2) When a date is set under subrule (1), the President must notify the parties in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the respondent consents to a shorter notice period.

10. In Rule 4-35:

(a) in subrule (1), by striking "to the Executive Director***" and substituting "***to the President***",***

(b) by rescinding subrule (2), and

(c) by rescinding subrule (5) (b) and substituting the following:

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

11. In Rule 4-36:

(a) in subrule (1), by striking "to the Executive Director***" and substituting "***to the President***",***

(b) by rescinding subrule (2), and

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

(b) refer the question to a pre-hearing conference.

12. In Rule 4-37:

(a) in subrule (1), by striking "to the Executive Director***" and substituting "***to the President***", and***

(b) by rescinding subrule (2).

13. In Rule 4-38:

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

(a) set the date, time and place of the conference, and notify the parties, and***, and***

(b) by rescinding subrule (3).

14. In Rule 4-40:

(a) in subrule (1), by striking "to the Executive Director***" and substituting "***to the President***",***

(b) by rescinding subrules (2) and (6), and

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

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

15. By rescinding Rule 4-43 (3) and substituting the following:

(3) A copy of the panel's reasons prepared under subrule (2) (b) must be delivered promptly to each party.

16. By rescinding Rule 4-44 (4) and substituting the following:

(4) A copy of the panel's reasons prepared under subrule (1) (d) must be delivered promptly to each party.

17. In Rule 5-12:

(a) in subrule (1), by striking "to the Executive Director***" and substituting "***to the President***", and***

(b) by rescinding subrule (3).

18. In Rule 5-19 (1), (2), (5) and (6), by striking "to the Executive Director***" and substituting "***to the President***"***

19. In Rule 5-24.1:

(a) in subrules (1) and (4), by striking "to the Executive Director***" and substituting "***to the President***", and***

(b) by rescinding subrule (5) and substituting the following:

(5) When an application is made under subrule (4), the President must decide whether to grant all or part of the relief sought, with or without conditions, and must notify the parties accordingly.

20. By adding the following rule:

Notice of review hearing

5-24.2(1) The date, time and place for the hearing on a review to begin must be set

(a) by agreement between the parties, or

(b) on the application of a party, by the President or by the Bencher presiding at a pre-review conference.

(2) When a date is set under subrule (1), the President must notify the parties in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the parties agree to a shorter notice period.

21. In Rule 5-25:

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

(a) set the date, time and place of the conference and notify the parties, and***, and***

(b) by rescinding subrule (4).

22. In Rule 5-26:

(a) in subrule (1), by striking "to the Executive Director***" and substituting "***to the President***", and***

(b) by rescinding subrule (2).

23. By rescinding Rule 5-27 (4) and substituting the following:

(4) A copy of the review board's written reasons prepared under subrule (2) must be delivered promptly to the applicant or respondent and counsel for the Society.

24. In Rule 5-28:

(a) in subrule (1), by striking "to the Executive Director***" and substituting "***to the President and the other party***", and***

(b) by rescinding subrule (2).

25. In Rule 10-1 by adding the following subrule:

(4.1) A document required under the Act or these rules to be delivered to the President or the Executive Director must be left at or sent by registered mail or courier to the principal offices of the Society.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

DISCUSSION/DECISION

3. TRC Retreat Agenda: Discussion

Mr. Crossin expressed his thanks and appreciation for the presenters who engaged the Benchers so thoughtfully at the Retreat Conference the day before. In reference to the metaphor provided by Grand Chief Ed John (quoting Truth and Reconciliation Commissioner Murray Sinclair), he invited the Benchers to offer their thoughts and views on what steps the Law Society might take in the coming months to keep going "up the mountain."

The Benchers were united in offering their sincere thanks to the presenters for leading a day of helpful and informative dialogue. Several Benchers offered suggestions for moving forward, including the prioritization of one or two specific issues, such as child welfare, the creation of resource tools for the Bar, such as culturally specific practice guidelines or checklists, or the engagement of local First Nations to help give voice to their specific needs. There was also a consensus that a permanent advisory committee should be created, with the guidance and participation of Indigenous leaders, to help Benchers engage in issues and facilitate discussions at the Bencher table. Mr. Crossin confirmed that the formation and framework of the committee will be considered by the Steering Committee at its next meeting, and will report to Benchers thereafter.

Benchers also expressed their interest and desire to remain regularly engaged in these issues at the Bencher table.

4. Selection of Benchers' Nominee for 2017 Second Vice-President

Mr. Crossin announced the upcoming election of the nominee for Second Vice-President, noting the receipt of Nancy Merrill's candidacy, and called for any other candidates. Hearing none, Mr. Crossin confirmed Ms. Merrill as the Benchers' nominee for Second Vice-President, with the formal election to take place at the Annual General Meeting in October.

FOR INFORMATION

5. Briefing by President of the Federation of Law Societies

Jeff Hirsch, President of the Federation of Law Societies (the "Federation"), also acknowledged the traditional territories and hospitality of the Okanagan Nation, and expressed his appreciation for what he described as the outstanding program the day before.

He noted that the Federation is a vehicle for all law societies to work collaboratively toward consensus on issues germane to the public interest. Characterizing reconciliation as a clear issue of public interest, he underscored Grand Chief Ed John's comments that the law societies should collaborate with each other on reconciliation, and continue to share discussions regarding individual approaches so that all can benefit. He also observed that reconciliation is tied to other important issues such as access to justice. The Federation and the law societies should continue to listen to each other and learn, to work together on these issues and build relationships with indigenous peoples. There exists now an historic opportunity to help shape the future through these relationships.

Mr. Hirsch closed by thanking the Law Society of BC for the initiative and leadership it has demonstrated through the Retreat Conference discussions, and through its contributions to the Federation's advisory group on reconciliation.

6. Federation Council Representative Selection Process

Mr. Crossin noted that the term of Federation Council representative Gavin Hume, QC will expire later in the year. A call for nominations will go out in the coming weeks, to be considered by the Executive Committee and brought to the Benchers for selection in September.

7. CEO Report

Mr. McGee advised the Benchers of the retirement of Deputy Director of PLTC Lynn Burns, thanking her for her many years of service to the Law Society and dedication to the education of new lawyers in this province. He was also pleased to announce the hiring of Ms. Annie Rochette to assume the position.

Further, he confirmed that Retreat attendees will receive 6.5 CPD credits for this conference.

RTC
2016-06-04

REDACTED MATERIALS

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The Law Society of British Columbia

Memo

To:	Benchers
From:	Renee Collins
Date:	June 30, 2016
Subject:	Proposed resolution authorizing Benchers to amend the Rules regarding electronic voting at General Meetings

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At the July 10, 2015 Bencher meeting, the Governance Committee briefed the Benchers on proposals to increase the accessibility of the AGM for members in communities outside of Vancouver, which included electronic distribution of material, webcasting and electronic voting. The Committee recommended that the 2015 AGM be webcast, as a transition step toward full electronic participation, and that staff would continue to explore workable options for electronic voting at general meetings.

Benchers approved the proposal to webcast the AGM in 2015, and approved a proposed member resolution authorizing Benchers to revise the Rules to allow for electronic distribution of AGM materials in 2016. Members approved the resolution at the 2015 AGM; AGM materials will be distributed electronically in advance of the 2016 meeting.

Staff is now satisfied that there are workable options for electronic voting at general meetings that meet the Law Society's privacy, security, technological and governance requirements. As a result, the Benchers are asked to approve a resolution for consideration and approval by the members at the upcoming 2016 AGM that will authorize the Benchers to amend the Rules to allow for electronic voting at general meetings. The proposed language is:

***"BE IT RESOLVED** to authorize the Benchers to amend the Rules respecting general meetings to provide for voting at a general meeting either partly or fully by electronic means"*

If the members pass this resolution at the 2016 AGM, we expect that electronic participation and voting would be possible at the 2017 AGM.

The Law Society of British Columbia

Memo

To: Benchers
From: Deborah Armour
Date: June 15, 2016
Subject: **Approval by LSBC of proposed National Discipline Standards revisions**

Action Required

1. **Resolved** that the revisions to the National Discipline Standards outlined in proposed Standard 3 and 9 below be adopted by the Law Society of BC.

Background

2. At the Bencher meeting in March, I provided the Benchers with the LSBC's annual report on performance on the National Discipline Standards as required by Standard 9.

3. The Federation of Law Societies' Standing Committee on National Discipline Standards is charged with identifying needed refinements to the standards as law societies gain experience with them. The standards are intended to be living and it is expected that they will be revised from time to time as needed.

4. The Standing Committee met on April 11, 2016 and reviewed the performance of Canadian law societies for 2015, the first year of official implementation of the standards. Status reports from 13 law societies were received. Collectively, law societies met 72% of the standards on average. Reasons given for standards that were either not met or partially met include legislative or regulatory prohibitions, insufficient resources, volume of matters received and operational delays.

5. Also during that meeting, the Standing Committee determined that certain revisions (the "Revisions") should be made to the standards as follows:

- Standard 3, which deals with the timeline to resolve or refer a complaint, be revised to include situations in which the complainant initiates an internal review or internal appeal of the complaint, and situations in which a complaint has been referred back to the investigation stage from an internal review or internal appeal process.

Current Standard 3

Timeline to resolve or refer complaint:

80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months.

90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months.

Proposed Standard 3

Timeline to resolve or refer complaint:

3(a) 80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months.

90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months.

3(b) Where a complaint is resolved and the complainant initiates an internal review or internal appeal process:

80% of all internal reviews or internal appeals are decided within 90 days.

90% of all internal reviews or internal appeals are decided within 120 days.

3(c) Where a complaint has been referred back to the investigation stage from an internal review or internal appeal process:

80% of those matters are resolved or referred for a disciplinary or remedial response within a further 12 months.

90% of those matters are resolved or referred for a disciplinary or remedial response within a further 18 months.

- Standard 9, which sets out how frequently each law society must report to its governing body on the status of standards 1 to 8, be revised so that reporting on all standards occurs annually.

Current Standard 9

Each law society will report annually to its governing body on the status of standards 3, 4 and 5. For standards 6, 7 and 8, each law society will report quarterly to its governing body on the status of the standards.

Proposed Standard 9

Each law society will report annually to its governing body on the status of the standards.

6. The revised standards are captured in Appendix A.

7. At its meeting on June 14, 2016, Federation Council approved the Revisions.

8. The Benchers are asked to approve the Revisions passing the resolution above.

APPENDIX A

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

NATIONAL DISCIPLINE STANDARDS

(Revised April, 2016)

Timeliness

1. **Telephone inquiries:**
   75% of telephone inquiries are acknowledged within one business day and 100% within two business days.

2. **Written complaints:**
   100% of written complaints are acknowledged in writing within three business days.

3. **Timeline to resolve or refer complaint:**
   (a) 80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months.

   90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months.

   (b) Where a complaint is resolved and the complainant initiates an internal review or internal appeal process:
   80% of all internal reviews or internal appeals are decided within 90 days.

   90% of all internal reviews or internal appeals are decided within 120 days.

   (c) Where a complaint has been referred back to the investigation stage from an internal review or internal appeal process:
   80% of those matters are resolved or referred for a disciplinary or remedial response within a further 12 months.

   90% of those matters are resolved or referred for a disciplinary or remedial response within a further 18 months.

4. **Contact with complainant**
   For 90% of open complaints there is contact with the complainant at least once every 90 days during the investigation stage.

5. **Contact with lawyer or Québec notary:**
   For 90% of open complaints there is contact with the lawyer or Québec notary at least once every 90 days during the investigation stage.

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NATIONAL DISCIPLINE STANDARDS

(Revised April, 2016)

Hearings

6. 75% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 60 days of authorization.

   95% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 90 days of authorization.

7. 75% of all hearings commence within 9 months of authorization.

   90% of all hearings commence within 12 months of authorization.

8. Reasons for 90% of all decisions are rendered within 90 days from the last date the panel receives submissions.

9. Each law society will report annually to its governing body on the status of the standards.

Public Participation

10. There is public participation at every stage of discipline; e.g. on all hearing panels of three or more; at least one public representative; on the charging committee, at least one public representative.

11. There is a complaints review process in which there is public participation for complaints that are disposed of without going to a charging committee.

Transparency

12. Hearings are open to the public.

13. Reasons are provided for any decision to close hearings.

14. Notices of charge or citation are published promptly after a date for the hearing has been set.

15. Notices of hearing dates are published at least 60 days prior to the hearing, or such shorter time as the pre-hearing process allows.

16. There is an ability to share information about a lawyer or Québec notary who is a member of another law society with that other law society when an investigation is underway in a manner that protects solicitor-client privilege, or there is an obligation on the lawyer or Québec notary to disclose to all law societies of which he/she is a member that there is an investigation underway.

17. There is an ability to report to police about criminal activity in a manner that protects solicitor/client privilege.

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NATIONAL DISCIPLINE STANDARDS
(Revised April, 2016)

Accessibility

18. A complaint help form is available to complainants.

19. There is a directory available with status information on each lawyer or Québec notary, including easily accessible information on discipline history.

Qualification of Adjudicators and Volunteers

20. There is ongoing mandatory training for all adjudicators, including training on decision writing, with refresher training no less often than once a year and the curriculum for mandatory training will comply with the national curriculum if and when it is available.

21. There is mandatory orientation for all volunteers involved in conducting investigations or in the charging process to ensure that they are equipped with the knowledge and skills to do the job.

The Law Society of British Columbia

Memo

To:	The Benchers
From:	Truth and Reconciliation Steering Committee
Date:	June 28, 2016
Subject:	Proposed Resolution to Create an Advisory Committee

Following on the very successful Retreat in Penticton, the Truth and Reconciliation Steering Committee met on June 22nd to consider how to provide some guidance regarding how to keep the good work and good will generated at the Retreat moving forward.

The Steering Committee reached a consensus to recommend the creation of a permanent advisory committee to address how the Law Society could work to reconcile, in the public interest, the relationship between the justice system and the Indigenous population in British Columbia, including address and recommendations that arise in the report of the Truth and Reconciliation Commission. The Steering Committee recommends that the new advisory committee be named the "Truth and Reconciliation Advisory Committee" to capture the importance of the commission's work, recognizing that the advisory committee so created might find other ways of addressing the public interest in the administration of justice by advancing Indigenous issues in the justice system.

Therefore, the Steering Committee proposed the following resolution:

> **BE IT RESOLVED** that the Benchers create the "Truth and Reconciliation Advisory Committee" to be appointed by the President. The Committee will, at its first meeting, consider a draft mandate. The Committee will present its proposed mandate as agreed by the Committee at the Benchers meeting next following the first meeting of the Committee.

MDL/al

The Law Society of British Columbia

CEO's Report to the Benchers

July 2016

Prepared for: Benchers

Prepared by: Timothy E. McGee, QC

Introduction

We have had a very busy first half of the year on many fronts. In this report I provide mid-year updates on a number of our operational priorities as well as progress against the various initiatives in our current 2015 – 2017 Strategic Plan. We will also be reporting at the meeting on our year to date financial results and updated year end forecast.

Operational Updates

Key Performance Measures (KPM's)

As you know the Benchers have established key performance measures for each of our core regulatory functions. This is the dashboard which allows us to measure how we are doing against a set of defined outcomes for our regulatory operations. The KPMs serve a number of useful purposes including enhancing our transparency as a public interest regulator (the KPMs including our results are posted on our website) and as a tool for management to gauge how resources and operational decision making influences results.

At mid-year we do not have data to report on all of our KPMs. However, for those that we track throughout the year (versus only at year end) we are doing well and are on track. A few areas are worth highlighting:

In Professional Conduct and Discipline our complainant satisfaction surveys are showing strong results for the timeliness, fairness, courtesy, and thoroughness with which our staff are handling and responding to matters. We are also seeing strong support among users of our process to recommend it to others.

Another area where we are seeing encouraging results is in Custodianships. There we are continuing to reduce the average time it takes to complete a custodianship whether it has arisen because of death/disability or is discipline related. This is particularly meaningful because we are seeing a significantly increased year on year demand for custodial appointments. This may finally be the impact which we have been expecting for several years because of the greying of the profession.

Another area worthy of note at mid-year is Trust Assurance. The stated goal for the Trust Assurance group is that "All law firms scrupulously follow the rules relating to the proper receipt and handling of trust funds". The KPMs for this group focus on high levels of compliance by firms as measured by the need for the department to

take corrective action. Accordingly, the KPMs for this department include reducing (continually over the long term) the need to impose financial suspensions because of trust accounting issues as well as reducing the need for referrals to Professional Conduct. So far this year we continue to be on track for those KPMs with modest reductions forecast on both counts.

Redesign of LSBC Website

A new and improved LSBC website is currently under design and development and will be launched by year end. The design group chosen after a competitive RFP process will emphasize a simpler and more intuitive user experience and improved content. We are incorporating feedback we received from a number of user groups including staff and select third party users. I would like to thank all those Benchers who responded to the survey. It may interest you to know that over 75% of Benchers use the website weekly and most strongly support the improvements and enhancements which are now underway.

Google Search Tool for LSBC

One of the initiatives of our Knowledge Management Project is to assess the feasibility and cost of acquiring a “Google” like search engine for all Law Society documents, records and information. We are an organization whose success is tied directly to our ability to effectively and efficiently search for, retrieve and frequently share knowledge and information. Today we have almost a million documents stored in our document management system but no tool to access those in the way that one would using a “Google” search type capability. The advantages of acquiring such a tool are many not only in terms of efficiencies through time savings (even shaving a few minutes off every document or information search by staff translates into significant time savings over a year) but also effectiveness because we would acquire the ability to hone in on the information or document that we need with much greater precision and reliability. We are in the final stages of a vendor RFP process to determine whether there is a vendor that can meet our specific needs and at what cost. Following that process we hope to be able to incorporate a proposal in our 2017 Budget planning and review sessions with the Finance and Audit Committee.

Skills Enrichment Program

This project was launched at the start of the year and is designed to ensure that all of our staff have the tools and training necessary to achieve a high minimum standard of computer literacy and technology skill. So far every staff member has participated in a skills evaluation assessment to help determine their personal

starting point for skills upgrading. This was followed by the creation of a personalized development plan for each employee taking into account not only the basic mandatory skill level we are seeking but also any job specific skills which should be expected.

At the mid- point of the year roughly half the staff are well into the completion of their prescribed training. This represents over 250 hours of on-line skills training in addition to in house workshop sessions and video instruction. For convenience much of the training is available online 24/7 and can be worked on remotely. Our goal is for all staff to have either completed the training by year end or have a plan to complete the training within a short time thereafter. I have been very impressed with the willingness and commitment of everyone to accept the challenge no matter what their individual comfort level or current competency in computer and technology skills may be.

Strategic Plan Progress – Mid-Year Report

I am attaching a copy of our 2015 -2017 Strategic Plan which has been annotated to describe progress under the various initiatives.

In some areas we are on track and progressing well. Those areas would include the work of the Law Firm Regulation Task Force, the Legal Aid Task Force and the work being spearheaded by the Truth and Reconciliation Steering Committee.

The work being undertaken by the Qualifications Working Group in connection with our discussions regarding a possible merger with the Society of Notaries Public will come before the Benchers at the next meeting for review and direction. An assessment by the Benchers of the prospects for proceeding (or not) with the broader merger initiative will need to be made soon.

One area where we are not on track is Strategy 1-1 in the plan which is to “Increase the availability of legal service providers”. The recommendations set out in the Legal Services Regulatory Framework Task Force report committed the organization to developing a framework for regulating non-lawyer legal service providers. This is the Law Society’s major (if not only) initiative designed to address the pressing need for ensuring that the public has better access to affordable legal services. It is sometimes referred to as the “feet on the street” solution, that is, enabling non-lawyers, appropriately qualified, to help bridge the significant gap between the demand for and the supply of affordable legal services in several areas of need. This approach has been embraced and is being pursued in a number of jurisdictions including in North

America, Australia and the UK as described in several of my CEO reports this year.

While we are currently at a standstill on this initiative we are not starting from scratch. We have done extensive work in prior months at the staff level in addressing legislative amendment issues with officials in Victoria. That work was more or less put on hold while we focused on our efforts to reach agreement with the Notaries on the merger initiative. But in my view and whatever the decision our two respective organizations come to regarding that proposal, we ought not to delay now in pursuing the “feet on the street” solution to enhancing access. I my view it was the right decision when the Benchers unanimously decided to pursue that option and it remains the right decision now perhaps even more so given the evaporating interest among Canadian law societies of pursuing alternative business structures as the strategy of choice for enhancing access. We need to restart and redouble our efforts on the legal services provider initiative and lay out a plan and a timeline to achieve our goal.

Financial Update

2016 Budget & Forecast

The most current year to date financial results and year end forecast will be reviewed at the Bencher meeting by Miriam Kresivo QC, Chair of the Finance and Audit Committee and by our CFO Jeanette McPhee.

In most areas we are seeing both revenue and expense tracking to budget. There are timing issues for both revenue and expense but these are taken into account when presenting the up to date year end forecast. External counsel expense is always our single biggest budgeted expense apart from staff costs and we are once again seeing pressure on that item due to continued heavy demand for legal services in the regulatory area. That topic will be specifically addressed at the upcoming Finance and Audit Committee meetings to review the 2017 Budget and fees proposals. To assist in that review, staff have prepared a detailed report analyzing and forecasting demand for counsel work over a 3 year period together with a cost benefit analysis of what type of resources i.e. staff lawyers versus external counsel, can most effectively and efficiently meet that demand.

External Relationships

Over the course of the year I meet with and attend briefings and events with a wide range of stakeholder organizations. So far this year these organizations include: the Canadian Bar Association BC Branch, the Federation of Law Societies of Canada, the Paralegal Association of BC, the Victoria Bar Association, the Law Foundation of BC, Courthouse Libraries BC, Access Pro Bono, the Land Title Survey Authority, the Vancouver Bar Association, YVR Board of Governors, Access to Justice BC, Legal Services Society and the Lawyers Assistance Program. In addition, as part of our government relations activities, I have met this year with the Attorney General and members of her staff, Finance Minister Michael de Jong and members of his staff as well as Opposition Justice Critic Leonard Krog.

Law Society Building Flood Repairs Update

I am pleased to say that at the time of writing we were on schedule to hold the July Bencher meeting in the main boardroom on the 9th floor. All other affected areas in the Law Society are similarly coming back on stream and we expect to be back to "normal" by early July. This has been an intensive 5 month remediation process following the flooding on Valentine's Day earlier this year. I would like to extend my thanks to all staff and Benchers who have put up with varying degrees of disruption and inconvenience as we did the necessary repairs. Your patience and good humor throughout is much appreciated. I think you will also find that the repairs to the 9th floor bring a modestly fresh new look and feel to much of the area, including the hallways, Hearing Room and the Bencher Lounge.

Bencher Participation at PLTC

On behalf of staff and students at PLTC I would like to acknowledge and thank the following Benchers, Life Benchers and former Benchers who offered their time to teach PLTC Professional Ethics on Wednesday June 1, 2016:

Jeff Campbell, QC
Brook Greenberg
Jan Lindsay, QC

Jim Vilvang, QC
Terence La Liberte, QC
Edmund Caissie
Kathryn Berge, QC
Richard Margetts, QC
Ken Walker, QC
John Hogg, QC

Timothy E. McGee
Chief Executive Officer

The Law Society of British Columbia

2015 – 2017 Strategic Plan

Our Mandate

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

> (a) preserving and protecting the rights and freedoms of all persons,
>
> (b) ensuring the independence, integrity, honour and competence of lawyers,
>
> (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
>
> (d) regulating the practice of law, and
>
> (e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

Our Goals

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

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

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

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

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

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

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

1. The public will have better access to justice.

Strategy 1–1

Increase the availability of legal service providers

Initiative 1–1(a)

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

Status – June 2016

The Legal Services Regulatory Framework Task Force made recommendations in December 2014 that outlined seven areas of law in which new classes of legal service providers could be permitted to practice.

The Task Force recommended that the Benchers seek a legislative amendment to permit the Law Society to establish new classes of legal service providers and there have been discussions with the Ministry of Justice and Attorney General to that end. This initiative has been linked to, and is currently awaiting resolution of, the continuing discussions concerning regulatory merger with the Society of Notaries Public described at Initiative 2-2(c) below.

Initiative 1–1(b)

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

Status - June 2016

Gender initiatives continue through the Justicia Program. The Justicia model policies and best practice resources are now available on the Law Society's website, and outreach is now underway to encourage smaller and regional firms to adopt and implement them. The Law Society continues to administer the Aboriginal Lawyers Mentoring Program to support Aboriginal lawyers.

Work is underway to consider ways to encourage more involvement of equity seeking groups in Law Society governance. The Truth and Reconciliation Steering Committee has facilitated an increase of Indigenous interest and participation in Law Society governance.

Strategy 1–2

Increase assistance to the public seeking legal services

Initiative 1–2(a)

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

Status - June 2016

The Access to Legal Services Advisory Committee determined that the Manitoba project was not viable to duplicate in BC. It preferred a proposal by Mediate BC to set up a roster to match family law mediators with lawyers prepared to provide unbundled independent legal advice to participants in mediation. The Mediate BC proposal received $60,000 and the project is being developed. A working group of practitioners is developing practice resources to aide lawyers who wish to provide limited scope services through the roster. A Law Society practice advisor has been assigned to review materials generated by the working group. The project is funded through the end of 2016.

Initiative 1–2(b)

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

Status - June 2016

Staff wrote to the Deputy Attorney General following up on issues and a substantive reply has not yet been received. Further work will depend on the nature of the reply. In the meantime, staff continues to monitor activities concerning development of JACs. The Access to Legal Services Advisory Committee has held two meetings with the CEO of Courthouse Libraries. Courthouse Libraries and the Ministry of the Attorney General are exploring the potential for libraries throughout BC to act as "hubs" that will connect to the JACs via technology. This approach is consistent with the concept

identified by the Committee in prior years of establishing community based "franchises" of the JAC model. The Committee remains available for input from Courthouse Libraries and the Ministry as to whether there is anything the Law Society can do to facilitate the expansion of JACs in this manner.

Initiative 1–2(c)

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

Status - June 2016

The Legal Aid Task Force has been created by the Benchers. A mandate has been approved, and the task force has met on a number of occasions to discuss the mandate items. It is currently aiming to complete a preliminary draft report in the fall, with a view to having a "Dialogue on Legal Aid" on November 26, 2016 with select stakeholders to discuss the draft before it is finalized. .

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

Strategy 2–1

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

Initiative 2–1(a)

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

Status - June 2016

The Lawyer Education Advisory Committee report and recommendations were presented and approved at the January 2016 Benchers' meeting.

Initiative 2–1(b)

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

Status - June 2016

The Federation's National Admission Standards Project Steering Committee recently circulated a proposal concerning proposed national assessments. The Lawyer Education Advisory Committee's Report to the Benchers under Initiative 2-1(a) includes an analysis and recommended response, which was approved at the Benchers' January 2016 meeting.

Initiative 2–1(c)

Conduct a review of the Continuing Professional Development program.

Status - June 2016

This topic is currently under consideration by the Lawyer Education Advisory Committee and a report is planned for later this year.

Initiative 2–1(d)

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

Status - June 2016

Work on this project is underway. To date we have gathered evidence on the impact of remediation and its duration, and the effectiveness of remediation in reducing lawyer complaints and increasing competence. The data analysis is substantially complete, and in 2016 work will continue on gathering and analyzing a series of recommendations.

Initiative 2–1(e)

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

Status - June 2016

The Lawyer Education Advisory Committee conclusions on this subject were presented and approved at the January 2016 Benchers' meeting.

Strategy 2–2

Expand the options for the regulation of legal services

Initiative 2–2(a)

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

Status - June 2016

The Law Society has done a preliminary report, and information has been gathered from Ontario, which is undertaking its own analysis of ABSs, and the UK and Australia, which have permitted ABSs. The Law Society is monitoring consideration of ABSs currently taking place in the Prairie provinces and through the Rule of Law and Lawyer Independence Advisory Committee and the Law Firm Regulation Task Force, reviews the discussion

of the initiative from time to time in other jurisdictions, particularly in the USA However, no specific consideration is underway at this time and no task force has yet been created to examine the subject independently in BC.

Initiative 2–2(b)

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

Status - June 2016

The Law Firm Regulation Task Force has been created. A consultation paper and survey were prepared and undertaken and consultations with the profession took place around the province in February. As a result of the information gathered, staff prepared further materials for consideration by the Task Force, which met most recently on June 13. The Task Force is currently aiming to provide a report before the end of the year.

Initiative 2–2(c)

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

Status - June 2016

Discussion on this topic continues. Working Groups have been created to (1) examine educational requirements for increased scope of practice for notaries (as proposed by the notaries) and (2) examined governance issues that would arise in a merged organization. Governance issues have been considered by the benchers in a preliminary manner in camera at their June 2015 meeting, and a report from the group examining educational requirements seeking direction from the Benchers is expected for the July 2016 meeting.

Strategy 2-3

Respond to the Calls to Action in the Report of the Truth and Reconciliation Committee, 2015

Initiative 2-3(a)

The Benchers will:

1. Seek opportunities to collaborate with Aboriginal groups and other organizations to further examine the Recommendations and identify strategic priorities;
2. Embark upon the development of an action plan to facilitate the implementation of relevant Recommendations;
3. Encourage all lawyers in British Columbia to take education and training in areas relating to Aboriginal law (the Law Society's mandatory continuing professional development program recognizes and gives credit for education and training in areas relating to Aboriginal issues); and
4. Urge all lawyers in British Columbia to read the TRC Report and to consider how they can better serve the Indigenous people of British Columbia.

Status - June 2016

A Steering Committee was created early in 2016 to assist in determining how best to engage in appropriate consultation with Aboriginal communities and representatives and to assist in developing the agenda and substantive program for the Benchers' 2016 Retreat that took place in early June. Consideration is currently being given as to how to follow up from the initiatives undertaken at the retreat, with a view to creating a more permanent Committee.

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

Strategy 3–1

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

Initiative 3–1(a)

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

Status - June 2016

The Communications department has developed a communications plan, and it is being engaged to, for example, obtain interviews on local radio stations on relevant issues. The Rule of Law and Lawyer Independence Advisory Committee is proposing an annual evening lecture series on rule of law topics to begin in 2017.

Initiative 3–1(b)

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

Status - June 2016

Work on this initiative has not yet formally commenced, although the Rule of Law and Lawyer Independence Advisory Committee, in connection with the 800th anniversary of Magna Carta, completed a successful essay contest for high school students in 2015 and plans are underway to follow up on this successful initiative with an annual contest for high schools. The Committee has developed a question and is currently undertaking communication efforts with school districts for next year's contest, which will take place in the 2016 - 2017 school year. .

Initiative 3–1(c)

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

Status - June 2016

Some work has begun by, for example, creating the high school essay competition referred to above. Work on engaging directly with the Ministry of Education has not yet begun.

Strategy 3–2

Enhance the Law Society voice on issues affecting the justice system

Initiative 3–2(a)

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

Status - June 2016

This topic was introduced for discussion at the Bencher Retreat in May, 2015. The information gathered at that retreat is being considered by the Rule of Law and Lawyer Independence Advisory Committee with a view as to how it can be incorporated into Law Society policy.

Initiative 3–2(b)

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

Status - June 2016

A proposal from the Rule of Law and Lawyer Independence Advisory Committee was approved by the Benchers in July 2015. The Committee prepared its first comment – a commentary for *The Advocate* on the issues that pervasive surveillance raised for lawyers, and the Committee has written articles that have been published on the Law Society website and in the Benchers Bulletin. The Committee has also developed a Twitter account through which it identifies rule of law issues on which it wishes to comment more publicly.

A staff working group has been struck by the Chief Executive Officer in order to engage staff on how the Law Society may express a public voice on issues, which reported to the Management Group in January 2016.

The Law Society of British Columbia

Memo

To: Benchers
From: Policy staff
Date: June 9 2016
Subject: Proposed New Rule Addressing Juricert Use

Purpose of this Memo

1. Staff in the Professional Conduct department have raised concerns about the absence of a general Law Society Rule prohibiting lawyers from disclosing to others (including their staff), or allowing others to use, their Juricert passwords, and have suggested an amendment to the Rules to include such a provision.

2. The matter was considered by the Act and Rules Committee late last year, but the Committee noted that the Benchers had made no policy decision to amend the rule. The Committee suggested that some preliminary policy analysis should be undertaken prior to referring the matter to the Benchers for a decision in principle on whether to amend the rules.

Background

3. Juricert is a certification authority operated by the Law Society. The system is designed to prevent title fraud and ensure the integrity of the *Land Title Act's* electronic filing system by ensuring only a lawyer has signing authority over critical land title documents.

4. A lawyer who wishes to file documents electronically in the Land Title Office ("LTO") must register with the Juricert service to obtain the necessary digital certificate. This is a two-step process. First, a lawyer must register with Juricert for authentication of his or her identity. Second, the lawyer must apply for a password protected digital certificate.

The certificate enables the lawyer to attach their personal electronic signature to documents submitted to the LTO.

5. When signing up for Juricert, a lawyer enters into a covenant to hold their electronic signature's password in strict confidence.

6. Given the import of the security of the land title system, and the role Juricert plays in that security, staff in the Professional Conduct department are concerned about the increasing incidences of password misuse. The matter has been the subject of multiple conduct reviews and has prompted practice publications, internal emails and memos.

7. Two factors have been identified as contributing to Juricert password misuse. The first relates to technology, which is outside the scope of a rule change, and thus, this memo.[1] The second factor is the lack of a general Law Society Rule regulating password use.

8. Notwithstanding the absence of such a Rule, the Benchers have clearly established, through the *BC Code*, that the sharing of Juricert passwords is prohibited. Specifically, the intent of the Juricert covenant has been built into the *BC Code* at 6.1-5 [*Electronic registration of documents*], which prohibits lawyers from allowing others to use their personalized encrypted electronic access or disclosing their Juricert password.

Analysis

9. In evaluating the advisability of creating a new Rule, it is important to consider whether the existing measures regulating Juricert password use are adequate.

10. The use of Juricert passwords is currently governed by the following:

[1] A full briefing on the technology issue is found in a Memo entitled "Juricert Digital Signature" by Mark Bussanich, September 2, 2014. Two main concerns arise: 1) In agreeing to Juricert's registration conditions, the 'accept' button can be clicked without reading the portion of the covenant pertaining to password protection. Further, the covenant is not attached to the form that must be notarized as part of the application process. 2) If a Juricert certificate is loaded onto a computer in Windows, rather than Acrobat, an e-file form will not prompt for a password before the digital signature is attached and the document is filed with the LTO. Consequently, it is possible staff may have access to the system without the lawyer having ever provided them with a password.

a. **Juricert Terms and Conditions**, in which all registrants enter into a covenant to prevent others from accessing their password.

> 11. covenant to take all reasonable steps to prevent any third party access to any software application that relies on your Trusted Digital Credentials to establish your identity. Such reasonable steps shall include at a minimum, maintaining in strict confidence any password that limits access to the software application, restricting access to the computer on which it is installed and turning off or disabling any such software application when you are not in attendance or making use of it. In addition to the foregoing you agree to maintain in strict confidence any password (including any challenge question and response) used to establish your identity in communications with Juricert.

b. **Rule 6.1-5 of the *BC Code*,** prohibiting lawyers from allowing others to use their personalized encrypted Juricert access or disclosing their password.

> **Electronic registration of documents**
>
> 6.1-5 A lawyer who has personalized encrypted electronic access to any system for the electronic submission or registration of documents must not
>
> (a) permit others, including a non-lawyer employee, to use such access; or
>
> (b) disclose his or her password or access phrase or number to others.

The associated *BC Code* Commentary further emphasizes the importance of the security and exclusive personal use of the password.[2]

c. **Law Society Rule 3-64(8)(b),** requiring compliance with the Juricert covenant, but only when involved in an electronic transfer for the payment of Property Transfer Tax.

> (8) A lawyer may make or authorize the withdrawal of funds from a pooled or separate trust account by electronic transfer using the Electronic Filing System of the Land Title Branch for the purpose of the payment of Property Transfer Tax on behalf of a client, provided that the lawyer…
>
> (b) digitally signs the Property Transfer Tax return in accordance with the requirements of the Electronic Filing System, and

[2] Commentary: [1] The implementation of systems for the electronic registration of documents imposes special responsibilities on lawyers and others using the system. The integrity and security of the system is achieved, in part, by its maintaining a record of those using the system for any transactions. Statements professing compliance with law without registration of supporting documents may be made only by lawyers in good standing. It is, therefore, important that lawyers should maintain and ensure the security and the exclusively personal use of the personalized access code, diskettes, etc., used to access the system and the personalized access pass phrase or number.

d. ***Land Title Act***, which makes it an offence for anyone other than the authorized person to access Juricert.

> 168.9 A person commits an offence if the person
>
> (a) incorporates his or her electronic signature into an electronic application, electronic instrument, electronic plan application or electronic plan without first complying with the provisions of this Part, or
>
> (b) incorporates the electronic signature of another person into an electronic application, electronic instrument, electronic plan application or electronic plan.

e. Publications to the Profession and Conduct Reviews

Lawyers have repeatedly been reminded that Juricert password sharing is not permitted and that doing so could subject them to disciplinary action. Advisories emphasizing the consequences of failing to protect Juricert passwords have been issued in Fall 2015, Fall 2012, Spring 2011 and Spring 2007. Summaries of ten conduct reviews related to the improper use of Juricert digital signatures have also been published in the *Bencher's Bulletin* in the last several years. Three additional conduct reviews relating to Juricert password use have recently been ordered.

Challenges with Reliance on the *BC Code*

11. A key difference between a violation of the *BC Code* and a breach of the Rules is that a violation of the *Code* is not, in and of itself, a discipline violation, as defined by the Rules.[3] This is relevant for the reasons outlined in the following paragraphs.

12. Once an investigation into a Juricert password misuse is complete and staff lawyers feel the public interest warrants further action, they draft an opinion to the Discipline Committee. The opinion addresses whether the 'citation threshold' is met. The threshold has two parts: a) whether the alleged conduct amounts to a discipline violation; and b) whether there is a reasonable prospect that a lawyer would receive an adverse determination at a hearing.

13. Therefore, to meet the citation threshold, staff lawyers must first demonstrate a reasonable likelihood that a hearing panel would find that a violation of the *Code* (such as Juricert password misuse) amounts to a discipline violation, namely professional misconduct. This is not a low standard. The test for professional misconduct is a marked

[3] Discipline violations are defined in Rule 1, Law Society Rules.

departure from the standard expected of a reasonable lawyer in the circumstances. It has also been defined as gross culpable neglect.

14. A new Rule would remove the initial hurdle of finding that the conduct amounts to professional misconduct (a discipline violation), as a Rule breach is, by definition, a discipline violation. This simplifies the analysis for staff lawyers drafting opinions at the referral stage.

15. The hurdle also exists if the Discipline Committee authorizes a citation. The hearing panel currently makes a two-step determination: whether the *BC Code* was violated, and if so, whether the violation amounts to professional misconduct (a discipline violation). As a Rule breach is a direct, defined type of discipline violation, a new Rule would remove the step of the hearing panel having to find that a lawyer's violation of the *Code* through password misuse amounts to professional misconduct.

16. It should be noted that most "Juricert breaches" result in conduct reviews, not citations. Therefore, for the vast majority of cases a new Rule would benefit staff lawyers drafting opinions at the referral stage, not the hearing panel or hearing process more generally. However, a new Rule may have additional value in acting both as a notification and deterrent to the profession, thereby reducing or eliminating Juricert password misuse at the outset.

<u>Challenges with Reliance on Rule 3-64(8)</u>

17. Existing Law Society Rule 3-64(8) requires compliance with Juricert's covenant, but its utility is limited in two respects.

18. First, the Rule *only* applies to transactions involving Property Transfer Taxes and therefore, is not sufficiently expansive to cover all situations in which there is a risk of fraud. For example, the *Land Title Act* requires digital signatures on many other transactions, including Form A transfers and Form C mortgages. Although these transactions do not involve the transfer of funds, they are essentially financial in nature.

19. Second, the primary conduct that Rule 3-64(8) is designed to regulate is the withdrawal of trust funds, not improper password use. Adding a more general Rule that specifically

prohibits the disclosure or sharing of Juricert passwords *in all circumstances* would send a strong signal as to how seriously the Law Society takes this issue.

Challenges with Reliance on the *Land Title Act* offence provisions

20. Although the *Land Title Act* makes it an offence for anyone other than an authorized lawyer to access Juricert, it is not an offence for a lawyer to share their password. The *Act* is therefore of limited value in directly regulating lawyer's password use.

Challenges with Reliance on Practice Publications

21. Practice publications, including practice advisories, appear to have had a limited impact on curtailing Juricert password misuse. The increasing number of conduct reviews dealing with Juricert password sharing suggests the problem is becoming more widespread.

22. Analysis to date has focused on whether existing measures to prevent the improper use of Juricert passwords are sufficient. If the Benchers decide that existing measures are insufficient, the next stage will be to discuss the scope of a new Rule.

Conclusion

23. The advisability of creating a new Rule requires careful consideration of whether existing measures aimed at preventing Juricert password misuse, including Juricert Terms and Conditions, Rule 6.1-5 of the *BC Code,* Law Society Rule 3-64(8)(b), prohibitions in the *Land Title Act*, publications to the profession and conduct review summaries, are adequate. If this collection of measures is deemed sufficient to address the issue of lawyers sharing their Juricert passwords, there is limited value in creating a new Rule. However, if the existing measures are considered to be unsatisfactory in regulating Juricert password use *and* a new Rule is viewed as having the potential to serve as an effective deterrent to password sharing, an amendment may be advisable.

24. Staff from the Professional Conduct Department would prefer to see a new rule in place.

Next Steps

25. Following a review of the analysis above, and based on their conclusions about the adequacy of existing measures to prevent Juricert misuse, the Benchers are asked to make a decision in principle as to whether or not to proceed with a rule change. If the Benchers support an amendment, the matter will be referred to the Act and Rules Committee to draft a rule for approval by the Benchers at a later date.

The Law Society of British Columbia

Financial Report

May 31, 2016

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

Bencher Meeting – July 8, 2016

Prepared by: Jeanette McPhee, CFO & Director Trust Regulation

The Law Society of British Columbia

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

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

	Actual*	Budget	$ Var	% Var
Revenue (excluding Capital)				
Membership fees	7,561	7,477	84	1%
PLTC and enrolment fees	388	394	(6)	-2%
Electronic filing revenue	369	319	50	16%
Interest income	228	192	36	19%
Credentials & membership services	197	232	(35)	-15%
Fines, penalties & recoveries	321	301	20	7%
Other revenue	2,082	2,059	23	1%
Building revenue & tenant cost recoveries	487	488	(1)	0%
	11,633	11,462	171	1%
Expenses (excl. dep'n)	8,410	8,743	333	4%
Results before spending on reserve items	**3,223**	**2,719**	**504**	
Approved spending from Reserves	44	-	44	
	3,179	2,719	460	

* Note: Actuals include $44,000 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 Forecast	11,550
2016 YTD Actual	**11,537**

	Actual Variance
Revenue	
Membership revenue projected to be above budget by 50 members	74
PLTC - 29 student less than budget of 500	(80)
Electronic Filing Revenue - overage to date	185
Miscellaneous	21
	200
Expenses	
External Counsel Fees - Legal Defence	(230)
Credentials/Forensic Fees	100
Electronic voting	65
Miscellaneous savings - various areas	65
	-
2016 General Fund Variance (excl. reserve funded items)	200

Reserve funded amounts (Bencher approved):	Approved	Spent
2016 - Proactive practice standards project ($55K approved)	55	20
2015 - Year 2 - Articling student ($28K approved & remaining)	28	24
	83	44

Trust Assurance Program Actual

	2016 Actual	2016 Budget	Variance	% Var
TAF Revenue **	943	694	249	0.0%
Trust Assurance Department	936	1,006	70	7.0%
Net Trust Assurance Program	7	(312)	319	

** Q2 revenue not due until July 31st

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

Performance	1.81%
Benchmark Performance	1.72%

Financial Report – To May 31, 2016

Attached are the financial results and highlights to May 31, 2016.

General Fund

General Fund (excluding capital and TAF)

The General Fund operations resulted in a positive variance to budget of $504,000 to May 31, 2016.

Revenue

Revenue is $11,633,000, $171,000 (1%) ahead of budget due to additional membership revenue and electronic filing revenue, offset by lower than expected PLTC student numbers.

Operating Expenses

Operating expenses for the first five months were $8,410,000, $333,000 (4%) under budget due to the timing of various operating expenses.

2016 Forecast - General Fund (excluding capital and TAF)

The General Fund results are expected to be ahead of budget for the year, projecting a positive variance of $200,000 due primarily to additional membership fees and electronic filing revenue.

Operating Revenue

Practicing membership revenue is budgeted at 11,500 members and the projection is 11,550, an additional $75,000. PLTC revenue will be lower than budgeted, with 471 students, compared to a budget of 500. Electronic filing revenues are over budget $185,000 to date, which is expected to continue as real estate unit sales continue to increase.

Operating Expenses

At this time, operating expenses are projected to be at budget for the year.

Legal defense external counsel fees are projected to be higher than budget by $230,000, with additional costs related to TWU and other significant litigation matters. Savings are expected in other areas, including credentials and forensic accounting external fees, and savings related to electronic voting.

TAF-related Revenue and Expenses

The first quarter TAF revenue has been received and was over budget $249,000. This is due to increasing real estate unit sales, up 35% year-to-date, so we are anticipating that TAF revenue will exceed budget in 2016.

Trust assurance program costs are under budget $70,000, due to the timing of travel costs.

Special Compensation Fund

There has been no activity in the Special Compensation Fund.

Lawyers Insurance Fund

LIF operating revenues were $6.3 million, ahead of budget by $101,000.

LIF operating expenses were $2.5 million, $228,000 below budget, mainly due to staff vacancies.

The market value of the LIF long term investments held by the investment managers is $150 million, an increase of $2.7 million in the first five months. The year to date investment returns were 1.81%, compared to a benchmark of 1.72%.

The Law Society of British Columbia
General Fund
Results for the 5 Months ended May 31, 2016
($000's)

	2016 Actual	2016 Budget	$ Variance	% Variance
Revenue				
Membership fees **(1)**	9,581	9,489		
PLTC and enrolment fees	388	394		
Electronic filing revenue	369	319		
Interest income	228	192		
Other revenue	581	580		
Building Revenue & Recoveries	487	487		
Total Revenues	11,634	11,461	173	1.5%
Expenses				
Regulation	3,108	3,235		
Education and Practice	1,313	1,406		
Corporate Services	1,068	1,136		
Bencher Governance	480	357		
Communications and Information Services	916	818		
Policy and Legal Services	874	976		
Occupancy Costs	915	1,062		
Depreciation	135	117		
Total Expenses	8,809	9,108	299	3.3%
General Fund Results before TAP	**2,825**	**2,353**	**472**	
Trust Administration Program (TAP)				
TAF revenues	943	694	249	0%
TAP expenses	936	1,006	70	7%
TAP Results	**7**	**(312)**	**319**	
General Fund Results including TAP	**2,830**	**2,041**	**789**	

(1) Membership fees include capital allocation of $2.02m (Capital allocation budget = $2.01m)

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

	May 31 2016	Dec 31 2015
Assets		
Current assets		
Cash and cash equivalents	554	82
Unclaimed trust funds	1,674	1,709
Accounts receivable and prepaid expenses	460	1,711
B.C. Courthouse Library Fund	1,987	676
Due from Lawyers Insurance Fund	18,577	28,065
	23,252	32,243
Property, plant and equipment		
Cambie Street property	12,676	12,810
Other - net	1,069	1,221
	36,997	46,273
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	1,799	5,657
Liability for unclaimed trust funds	1,674	1,709
Current portion of building loan payable	500	500
Deferred revenue	11,121	20,142
Deferred capital contributions	19	23
B.C. Courthouse Library Grant	1,987	676
Deposits	28	27
	17,128	28,734
Building loan payable	2,100	2,600
	19,228	31,334
Net assets		
Capital Allocation	3,326	2,011
Unrestricted Net Assets	14,443	12,928
	17,769	14,939
	36,997	46,273

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
Results for the 5 Months ended May 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	10,930	(652)	10,278	2,650	2,011	14,939	11,614
Net (deficiency) excess of revenue over expense for the period	(489)	1,293	804	6	2,020	2,830	3,325
Repayment of building loan	500	-	500	-	(500)	-	-
Purchase of capital assets:						-	
LSBC Operations	10	-	10	-	(10)	-	-
845 Cambie	194	-	194	-	(194)	-	-
Net assets - At End of Period	**11,145**	**641**	**11,786**	**2,656**	**3,327**	**17,769**	**14,939**

The Law Society of British Columbia
Special Compensation Fund
Results for the 5 Months ended May 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	32	-	
Administrative and general costs	1	-	
Loan interest expense	(10)	-	
Total Expenses	**22**	**-**	22
Special Compensation Fund Results	**(22)**	**-**	**(22)**

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

	May 31 2016	Dec 31 2015
Assets		
Current assets		
Cash and cash equivalents	1	1
Accounts receivable		
Due from General Fund		
Due from Lawyers Insurance Fund	1,329	1,352
	1,330	1,352
	1,330	**1,352**
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities		
Deferred revenue		
Net assets		
Unrestricted net assets	1,330	1,352
	1,330	1,352
	1,330	**1,352**

The Law Society of British Columbia
Special Compensation Fund - Statement of Changes in Net Assets
Results for the 5 Months ended May 31, 2016
($000's)

	2016 Total $	2015 Total $
Unrestricted Net assets - At Beginning of Year	1,352	1,335
Net excess of revenue over expense for the period	(22)	17
Unrestricted Net assets - At End of Period	**1,330**	**1,352**

The Law Society of British Columbia
Lawyers Insurance Fund
Results for the 5 Months ended May 31, 2016
($000's)

	2016 Actual	2016 Budget	$ Variance	% Variance
Revenue				
Annual assessment	6,277	6,176		
Investment income	2,486	1,629		
Other income	76	60		
Total Revenues	8,839	7,865	974	12.4%
Expenses				
Insurance Expense				
Provision for settlement of claims	6,126	6,126		
Salaries and benefits	1,032	1,244		
Contribution to program and administrative costs of General Fund	537	521		
Provision for ULAE	-	-		
Insurance	101	134		
Office	124	220		
Actuaries, consultants and investment brokers' fees	288	152		
Allocated office rent	121	121		
Premium taxes	-	5		
Income taxes	-	-		
	8,329	8,523		
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	336	372		
Total Expenses	8,665	8,895	230	2.6%
Lawyers Insurance Fund Results	**173**	**(1,029)**	**1,202**	

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

	May 31 2016	Dec 31 2015
Assets		
Cash and cash equivalents	10,493	28,216
Accounts receivable and prepaid expenses	462	169
Prepaid Taxes	4,131	4,131
Due from members	209	159
General Fund building loan	2,600	3,100
Investments	146,850	144,174
	164,745	**179,949**
Liabilities		
Accounts payable and accrued liabilities	345	1,154
Deferred revenue	1,184	7,331
Due to General Fund	18,577	28,065
Due to Special Compensation Fund	1,329	1,352
Provision for claims	59,328	58,240
Provision for ULAE	7,920	7,920
	88,684	104,060
Net assets		
Unrestricted net assets	17,500	17,500
Internally restricted net assets	58,561	58,388
	76,061	75,888
	164,745	**179,949**

The Law Society of British Columbia
Lawyers Insurance Fund - Statement of Changes in Net Assets
Results for the 5 Months ended May 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	173	-	173	10,078
Net assets - At End of Period	**58,561**	**17,500**	**76,061**	**75,889**

The Law Society of British Columbia

Mid-Year Report 2016

Committee: Access to Legal Services Advisory Committee

Herman Van Ommen, QC (Chair)
Martin Finch, QC (Vice-Chair)
Nancy Merrill, QC
Mark Rushton
Kelly Connell
Claire Hunter
Ray Phillips, QC

July 8, 2016

Prepared for: Benchers

Prepared by: Access to Legal Services Advisory Committee

Purpose: Information

Table of Contents

Introduction

1. The purpose of this report is to provide the Benchers with an update on the topics the Committee has been considering in 2016.

2. The Committee is an advisory committee. Its purpose is to monitor matters within its mandate that are relevant to the work of the Law Society. The Committee can also carry out discrete tasks the Benchers assign it.

3. In 2015 the Committee submitted a mandate to the Governance Committee (**Appendix 1**). The Committee carries out its work in accordance with that mandate. In addition, in December 2015 the Benchers adopted the final report of the Family Law Task Force, which provided a policy directive to the Committee to consider, as appropriate, family law access to justice and legal services issues.

4. The Committee is carrying on some topics identified by last year's Committee, and as well as exploring some new topics.

Limited Scope Legal Services[1]

5. Limited scope legal services is a topic the Committee identified as a point of interest at its first meeting. It is also a topic carried over from last year.[2]

6. In 2008 the Law Society became the first law society to adopt rules to facilitate lawyers providing limited scope services. Since that time, some Benchers and staff have participated in legal education courses about limited scope retainers. However, we know little about how many lawyers provide these services or the extent to which the services improve access to justice. In recent years there have been calls from more sources to promote limited scope legal services.

7. The Committee held preliminary discussions about the topic. It considered that the profession might benefit from courses led by practitioners who provide limited scope legal services successfully, with a focus on how to integrate such services into a profitable practice. To date, much of the educational material has focused on Law Society policy, rules and insurance risk. There is a general perception that lawyers remain cautious about unbundled services out a fear they will run afoul of the Law Society. In order to realize the potential of limited scope legal services and the investment the Law Society has made in the concept, some better education and communication is likely required.

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[1] Also called "unbundled legal services".

[2] For a cogent articulation of the need for limited scope retainers, see the May 17, 2016 President's Blog: https://www.lawsociety.bc.ca/newsroom/president.cfm?quaternary_id=90#c4232.

8. In addition to its general discussion, the Committee has considered two concepts identified in 2015 that involve the topic.

9. The access to justice fund operated by the Law Foundation, and funded by the Law Society (described below), is supporting the creation of a roster of family law lawyers who are prepared to provide limited scope independent legal advice during family mediations. Kari Boyle oversees this Family Legal Services Unbundling Project. Ms. Boyle has provided some status updates on that work. When the Committee reported to the Benchers in 2015 about the project it observed that the Law Society would need to provide practice advice resources to support the initiative. The Practice Advice Group has agreed to provide some support to a working group Ms. Boyle will be establishing, by reviewing precedents and practice management documents it generates. The Committee will continue to monitor the initiative and keep the Benchers apprised of future developments.

10. On April 7, 2016 the Committee met with Johanne Blenkin, CEO of Courthouse Libraries. The primary purpose of the meeting was to carry on a discussion about justice access centres (JACs) and the potential for the Ministry of Justice and Courthouse Libraries to partner in a way where courthouses throughout BC connect to the JACs infrastructure to provide local services where there are no JACs (a community hub model).[3]

11. Over the years, one of the questions that always arises is how to get lawyers involved so people who access JACs can get legal advice. Limited scope legal services might facilitate the provision of legal advice at JACs. The discussion was preliminary, and Ms. Blenkin will be providing the Committee with some reference material from other jurisdictions as well as an update on how talks are developing so that the Committee may consider whether there is anything the Law Society can do to better support limited scope services in JACs (or civil hubs at libraries). The Committee also discussed the concept of the Law Society creating templates and resources that would be available to promote limited scope legal services.

12. The overview on limited scope retainers will continue in the second half of 2016.

Contingent Fee Agreements in Family Law Matters

13. In 2015 the Committee held a preliminary discussion as to whether s. 67(4) of the Legal Profession Act creates an unnecessary impediment to access to justice by requiring the court to pre-approve contingency fees in matrimonial disputes. The Committee felt it would be worthwhile consulting with the CBA BC Branch family law section for input.

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[3] The concept is similar to what the Committee recommended to the Benchers regarding establishing franchises in communities that access the infrastructure of JACs.

14. On June 18th, Herman Van Ommen, QC, Nancy Merrill, QC and Doug Munro attended the meeting of family law section Chairs in Vancouver. The feedback was consistent with the preliminary findings of last year's Committee, namely, that modifying s. 67(4) will not have a meaningful access to justice benefit. Two alternative concepts were suggested.

15. First, it was observed that the rules that permit interim distribution of property can aide in funding litigation and provide a better solution than modifying the contingent fee rules. The family law chairs advised that this is common in Manitoba, and should be in British Columbia as well. Secondly, it was suggested that limited scope legal services need to be part of the solution. With respect to limited scope retainers, the feedback is consistent with the findings of the 2008 report of the Unbundling of Legal Services Task Force. The key things that have to happen are for the courts to develop a simplified process (forms and practice directives) for lawyers to easily get on and off the record for the purposes of the limited scope service, and for the Law Society to have approved retainers and checklists for lawyers to use when providing limited scope services.

16. The Committee will continue its exploration of limited scope services in the second half of the year. In addition, David Crossin, QC has written to The Honourable Chief Justice Hinkson to see if the Court is available to discuss how to facilitate limited scope appearances by lawyers. If such a meeting takes place, it provides an opportunity to revisit the recommendations of the Unbundling Task Force and share the concerns lawyers have about their limited scope retainer being transformed into a full service retainer as a result of appearing on the record.

Discussion with the Law Foundation Regarding the Access to Justice Fund

17. Each year the Law Society allocates $340,000 to the Law Foundation of British Columbia to support organized pro bono and promote access to justice. $60,000 of the funding goes into an access to justice fund ("The Fund"), and the remainder goes to support pro bono organizations. The Benchers delegated to the Committee the task of meeting with the Law Foundation each year to share its ideas of how to allocate The Fund.

18. The purpose of the annual meeting is to engage in good faith discussions about worthwhile access to justice initiatives. The Law Foundation then takes into consideration the recommendations of the Committee as part of its internal process for determining where to allocate The Fund in a given year.

19. In its first year, The Fund went to support a two year family law pilot project in Kelowna and Quesnel, where family law advocates support the work of duty counsel. In its second year, The Fund went to support a pilot project by Mediate BC to create a roster of lawyers

who are prepared to provide unbundled ILA in family law mediation. Both pilot projects are underway.

20. This year the Committee discussed a range of possible concepts with Wayne Robertson, QC, Executive Director of the Law Foundation. The concept the Committee favoured was one that the Law Foundation is keen to advance. The final form of the project has yet to be determined, but the concept is set out below.

21. The Law Foundation is exploring a three year pilot project to create a children's lawyer office in British Columbia. The goal is to raise $900,000 to support the project. The Law Foundation has $300,000 ear-marked and is exploring matching funding from Ontario. It is envisioned the role will be to support children in situations where:

    a. Hotly contested battles between parents where the child's voice is not being heard;

    b. Child protection matters.

22. It is possible the project might provide some resources directed at bullying, children at risk in their communities, schools, etc. The exact scope and delivery model are being determined.

23. Although the project is in early developmental stage, the Committee thinks it is an important area that merits support. The Law Foundation would like a two year commitment (i.e. $60,000 for two years, totaling $120,000). The Committee recommended to the Law Foundation support of the project for this year, with a contingent commitment for a second year's funding depending on the particulars of the project. The Committee will liaise with the Law Foundation as the project develops and provide feedback on the concept as it takes shape. The ultimate discretion as to the project and allocation of The Fund lies with the Law Foundation.

24. Because the Committee cannot bind next year's Committee to its decision, it seeks a direction from the Benchers to direct next year's Committee to support continued funding for the project unless the Committee has doubts based on the development of the project that it merits the second tranche of funding. However, continued funding should be the presumptive base-line for its inquiry.

Forecast of Work from July-December 2016

25. In addition to continuing to work through the items detailed above, the Committee intends to explore the relationship between lawyers' professional responsibilities and the imperative to make services accessible to the public. The Committee anticipates its discussion might form the basis for a broader dialogue about the role of lawyers in facilitating access to justice in society. The Committee anticipates the discussion will

contrast the notion of lawyers as professionals with the more recent concept of lawyers are mere business people, as well as consider if the privilege to practice law comes with a concomitant social responsibility to ensure legal services are available to people in need.

/DM

/Appendix

Appendix 1:

Access to Legal Services Advisory Committee (the "Committee")

TERMS OF REFERENCE / MANDATE

The Committee monitors and advises the Benchers about key access to justice and legal services issues in British Columbia and other jurisdictions. This advisory function supports the Law Society's strategic planning process and ensures the Society is discharging its public interest mandate. This may include proposing initiatives to improve the public's access to justice and legal services. The Benchers may assign tasks to the Committee to perform. The Committee may consult with third parties for the purpose of better understanding issues. Any projects or initiatives the Committee proposes are subject to approval by the Benchers.

COMPOSITION

The Committee is appointed by the incoming President or his or her designate. At least half of the Committee members should be Benchers, and the Chair of the Committee must be a Bencher. Composition of the Committee should reflect best practices for diversity.

MEETING PRACTICES

1. The Committee shall operate in a manner that is consistent with the Bencher's governance policies.
2. The Committee shall meet as required.
3. At least half the members of the Committee constitutes a quorum.
4. The Committee may invite guests to participate in discussion of topics, but the meetings are not "public".

ACCOUNTABILITY

The Committee is accountable to the Benchers. If the Benchers assign specific tasks to the Committee, the Committee is responsible for discharging the work assigned. If a matter arises that the Committee believes requires immediate attention by the Benchers, the Committee will advise the Executive Committee.

REPORTING REQUIREMENTS

With respect to its general monitoring and advisory function, the Committee is to provide status reports to the Benchers twice a year. Otherwise, the Committee is required to perform tasks assigned to it by the Benchers according to the terms of the specific referral.

DUTIES AND RESPONSIBILITIES

- Advise the Benchers about access to justice and legal services matters that require consideration of the Benchers. This can either be to keep the Benchers informed of key matters, to assist in setting policy, or to recommend that specific action be taken by the Benchers;
- Committee members are required to discharge their work in a manner consistent with the Law Society's public interest mandate, as set out in s. 3 of the *Legal Profession Act*;
- Explore opportunities for collaboration with third parties to advance the Law Society's Strategic Plan Goal relating to access to justice and legal services, and to better understand issues for potential inclusion on future Strategic Plans;
- The Committee must discharge specific tasks the Benchers have delegated to it. This includes:
    - Meeting with representatives of the Law Foundation annually to discuss the potential allocation of the access to justice funding the Law Society provides to the Law Foundation;
    - Reporting to the Benchers twice a year to provide updates as to the monitoring and advisory work of the Committee.

STAFF SUPPORT

The Manager of Policy & Legal Services will assign staff to support the Committee. As of 2015, staff support for the Committee are:

Staff Lawyer: Doug Munro

Administrative Support: Ingrid Reynolds

The Law Society of British Columbia

Mid-Year Report

Equity and Diversity Advisory Committee

Maria Morellato, QC (Chair)
Satwinder Bains, Vice Chair
Jamie Maclaren
Sharon Matthews, QC
Christopher McPherson
Daniele Poulin
Michelle Stanford
Lisa Vogt, QC

June 21, 2016

Prepared for: Benchers

Prepared by: Equity and Diversity Advisory Committee / Andrea Hilland

Purpose: For Information

Introduction

1. The Equity and Diversity Advisory Committee ("Committee") is one of the four advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers in connection with those issues.

2. From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and maybe asked to develop the recommendations or policy alternatives regarding such initiatives.

3. The purpose of this report is to advise the Benchers about the work the Committee has undertaken since its December 2015 report.

Topics of Discussion: January to June 2016

4. The Committee met on January 28, March 4, April 8, May 6, and June 1, 2016. The Committee has discussed the following initiatives between January and June, 2016.

Justicia in BC

5. The Justicia Project (facilitated by the Law Society of British Columbia and undertaken by law firms) has been actively underway in British Columbia since 2012. Recommendations for enhancing flexible work arrangements, improving parental leave policies, and tracking gender demographics, fostering business development, promoting leadership skills, and developing paths to partnership for women lawyers are now complete, and are accessible on the Law Society's website.

6. Representatives from the Justicia working groups are collaborating with the Continuing Legal Education Society to develop brief online modules which will highlight the Justicia resources. Currently, a module on parental leave is in production, and a module on flexible work arrangements is being drafted.

7. Outreach is now underway to encourage smaller and regional firms to adopt and implement the model policies and best practices that have been developed through the Justicia Project. The Justicia resources were presented to the New Westminster Bar Association on April 12, 2016, and to the Canadian Bar Association BC Women Lawyers Forum annual general meeting on May 26, 2016.

8. The Committee is continuing its work on an outreach strategy which will involve consulting with regional firms regarding the relevance and utility of the Justicia resources in the smaller firm context.

Justice Education Society Collaboration

9. In 2014, the Justice Education Society (JES) approached the Law Society of BC to bring the best practices from the Justicia Program to smaller and more regional firms. In October of 2014, Jan Lindsay, QC (then President of the Law Society of BC) signed a letter of support for the JES's collaborative approach to improving the status of women in the legal profession. The JES's collaborative partners include the Law Society of BC, the Canadian Bar Association Women Lawyers Forum (National and BC Branches), and law schools in British Columbia.

10. The JES conducted a needs assessment survey of lawyers in British Columbia in the fall of 2015 and produced a report of the findings on March 29, 2016 which identifies five priorities: 1) training for newly called lawyers in business development, career planning, and transitions; 2) preparation of law students and newly called lawyers for better decision making as they enter the profession; 3) integration of mentoring opportunities for women in practice; 4) awareness of sexual harassment within legal workplaces, including coordination of educational and model policy programs; and 5) investigation of alternative business models for private practice. The JES and its collaborative partners will implement pilot projects which build upon previous Law Society of BC initiatives (such as the Justicia Project and the Law Society's respectful workplace model policy), and will facilitate the dissemination and on-the-ground use of resources produced by the Law Society of BC.

Newly Called Lawyers

11. The Executive Committee has tasked the Equity and Diversity Advisory Committee with considering how the Law Society might better engage with newly called lawyers. The Committee has considered a number of options, and is working towards a consensus on a recommendation to present to the Benchers for consideration in September of 2016.

Lawyers with Disabilities

12. In 2004, the Law Society of BC generated a report entitled "Lawyers with Disabilities: Overcoming Barriers to Equality" which contains a number of recommendations, and a "Resource Guide for Lawyers with Disabilities and Employers". The Committee is revisiting the report to identify which recommendations have been implemented, which remain outstanding, whether additional recommendations are required, and how to effectively support lawyers with disabilities. The Committee has tasked Law Society staff with updating the Resource Guide.

Aboriginal Mentorship

13. The Aboriginal Lawyers Mentorship Program was launched in 2013, and has matched 50 mentorship pairs since then. The Committee continues its work to support existing mentorship pairs, and to further promote the Program so that it can be readily accessed by members throughout the province.

Supporting Aboriginal Law Students and Lawyers

14. In 2000, the Law Society of BC generated a report entitled "Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers," which contains a number of recommendations. The Committee is reconsidering the recommendations from the report in light of the Truth and Reconciliation Commission's calls to action.

Equity Ombudsperson Program Review

15. Work on a formal review of the Equity Ombudsperson Program continues.

Enhanced Demographic Question

16. On the recommendation of the Committee, the Executive Committee amended the Annual Practice Declaration to include a question that seeks further information on the demographic make-up of the legal profession in BC. As of January, 2013, the Annual Practice Declaration includes the enhanced demographic question. The results from 2013 to 2015 are:

Response	2013	2014	2015
I do not identify with any of these characteristics	6887	6578	6794
I choose not to answer this question	2439	2383	2470
Visible Minority/Racialized/Person of Colour	1291	1304	1450
Lesbian/Gay/Bisexual/Transgender	273	287	305
Aboriginal/Indigenous – First Nations, Metis, Inuit	256	249	287
Person with a Disability	170	164	191
N/A LSBC	3	27	19
Total Number of Lawyers	13195	13520	13945
Total Responses	11319	10992	11516

The Law Society of British Columbia

Annual Report of the Law Society of British Columbia Equity Ombudsperson Program for the Period January 1, 2015 to December 31, 2015

For: The Benchers
Dated: April 22, 2016

Purpose of Report: For Information

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

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PREFACE

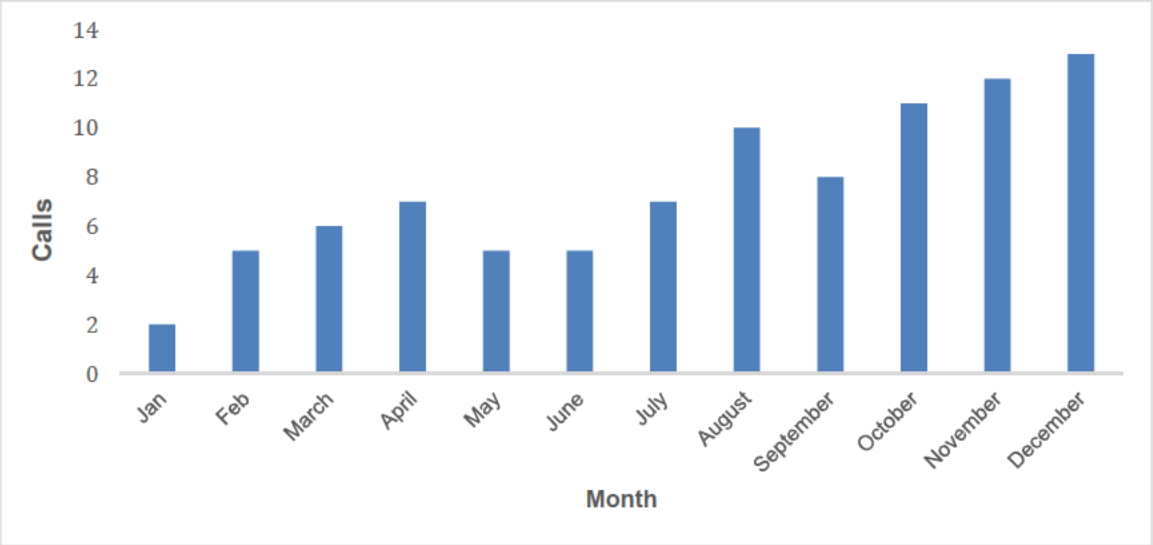
The following report is prepared by Anne B. Chopra, the Equity Ombudsperson (the "Ombudsperson") on an annual basis and disseminated to the Law Society of British Columbia for informational purposes. Should the reader have any questions about the report and/or comment contained in same, please feel free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

A. OVERVIEW OF NEW CONTACTS

1. The Law Society of British Columbia (the "LSBC") Equity Ombudsperson Program (the "Program") reports there were 91 new contacts made by individuals during the reporting period January 1 to December 31, 2015 (the "Reporting Period or Period"). These were contacts made by individuals with a new matter. Of the 91 new contacts, 69 of these contacts were within the Mandate (as defined below) of the Program and 22 outside the Mandate. Further, each individual who made contact with the Ombudsperson may have contacted the Program on the new matter on a number of occasions. As a result, the total number of contacts made with the Program during the Period was 282.

2. Table 1 displays the distribution of the 91 new contacts made with the Program during the Reporting Period:

TABLE 1: 91 New Contacts—2015 (Including outside the Mandate)



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

3. The means of initial contact used by these individuals is distributed as follows: 40 (44%) made in person, 26 (29%) used the telephone, 24 (26%) used email; and 1 (.01%) used regular mail. The Ombudsperson notes that email and phone continue to be the form of

contact used by the Caller as the initial means. The exception to the foregoing is where contact is made by an attendee at a presentation with the Ombudsperson, the initial means of contact is recorded as "in-person". The Ombudsperson notes that the increase of initial contact being made in-person is a result of the Ombudsperson's presentations and attendance at events/conferences in 2015 (see education section, page 12). For the purposes of this report, the Ombudsperson may refer to the individual who makes contact as the "Caller" regardless of how the individual made initial contact.

4. Further, of the 91 new contacts with the Program, 77 (85%) were made by women and 14 (15%) were made by men. There is no significant change in the percentage of contacts made by either gender.

5. Table 2 notes the total new contacts made with the Program for the last 5 years, since 2011 and the geographic distribution throughout the Province of British Columbia:

TABLE 2: Geographic Distribution of the Contacts—2011- 2015

	2011	**2012**	**2013**	**2014**	**2015**
Total Contacts:	256	261	245	248	282
Vancouver (GVRD[2]):	140	133	122	142	155
Victoria:	60	58	54	60	55
Rest of BC	24	31	39	30	50
Outside the Mandate[3]:	32	39	30	16	22

NOTE:

[1]Contacts = All email, phone, in person (meeting and/or after a presentation), fax and mail contacts made with the Program. Some contacts may have resulted in more than one issue.

[2]Greater Vancouver Regional District (GVRD) = the municipalities and cities that make up the GVRD of Vancouver, West Vancouver, North Vancouver, the District of North Vancouver, Burnaby, Richmond, New Westminster, Surrey, Delta, White Rock, the City of Langley, Coquitlam, Port Coquitlam, Port Moody, Anmore, Pitt Meadow, Maple Ridge and the University Endowment Lands.

[3]Outside Mandate = Callers are from the public and/ or lawyers dealing with issues not within the Mandate of the Program.

6. Table 3 identifies the profile of the 260 contacts (282 total calls – 22 calls outside the Mandate) made within the Mandate by the 69 Callers, based on position, gender and size of firm:

TABLE 3: Profile Distribution of total contacts made by Callers in the Mandate—2011- 2015

Profile Distribution:	2011	2012	2013	2014	2015
Position					
Associates	56	54	51	56	58
Partners	21	23	16	19	22
Students	19	20	17	20	34
Articling Students	52	56	58	68	78
Support Staff	76	69	73	69	68
Gender					
Females	189	179	176	186	205
Males	35	43	39	46	55
Size of Firm in (Percent %)					
Small (1-10)	42%	40%	43%	36%	46%
Medium (10-50)	28%	35%	36%	35%	32%
Large (50+)	30%	25%	21%	29%	22%

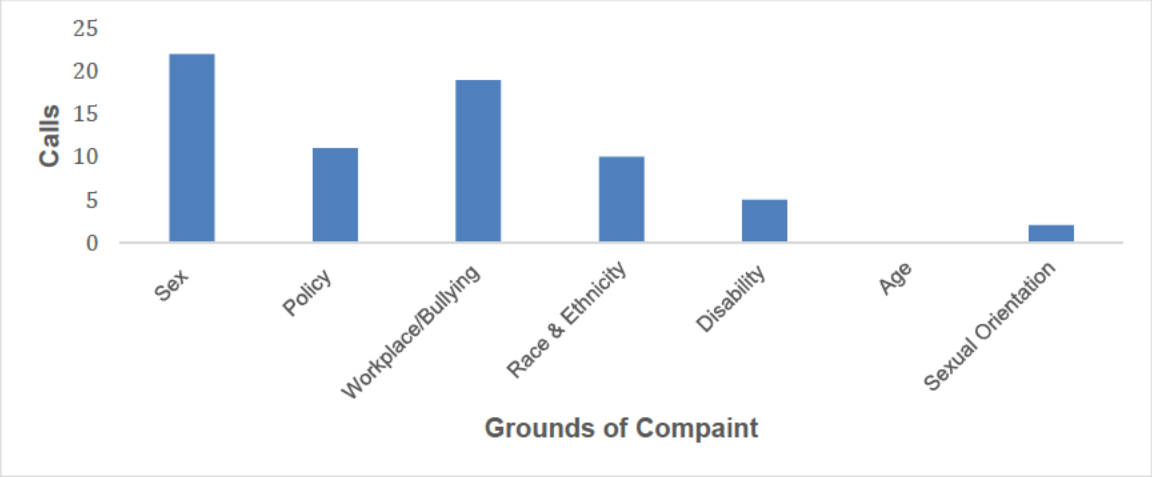
7. The Ombudsperson notes that compared to 2014, there has been: a 10% increase in Callers from small sized firms; a 3% decrease in Callers from medium sized firms;and a 7% percent decrease in Callers from large sized firms. The Ombudsperson is not aware of any specific reason for the 10 % increase in calls from small sized firms and the 7% decrease in calls from large sized firms.

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

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

a) The following Table 4 displays the various grounds of discrimination raised by the Callers and the number of complaints in each category:

TABLE 4: Grounds of Discrimination raised by the Caller—2015



b) The Ombudsperson provides the following narrative examples:

Based on sex/gender:

- One female lawyer complained that a senior partner insisted that she meet a male client at his home. When she advised the partner of the firm that she was uncomfortable with attending to the client at his home, her employment was threatened by the partner;

- One female lawyer complained that when she requested maternity leave, an entitlement of the firm, she was denied the same. She indicated that there were significant barriers in her taking the maternity leave as stipulated in the firm's policy;

- One female lawyer complained that she had to work for a partner who had various sexually provocative materials in his office. She tried to relay to him that the "material" in his office was making her uncomfortable and she was told: *"it was not there to offend her, it was his and personal"*; and

- One female support staff complained that a senior partner was hovering over her and hugged her when he greeted her. She provided him with various non-verbal clues of her discomfort and disapproval on various occasions. He did not change his behaviour after her attempts to relay this to him non-verbally. She found her environment difficult to work in and was intimidated by him, so she resigned.

Policy:

- One female lawyer asked that her firm comply with WorkSafeBC legislation and adopt an anti-bullying policy. When she made this request to her employer, he advised her that he did not have time to deal with such stuff, and stated: *"if you want it, you should look into it".* This responsibility fell on the employee when it should have been borne by the employer. She reported that the firm did not support her in the process and made her feel completely responsible for the implementation.

Based on disability:

- One male lawyer asked for accommodation for his disability and the firm agreed to assist him on various occasions. However, the firm did not follow through on its responsibility. The lawyer assumed the full cost of accommodation. The lawyer was calling with respect to this financial hardship.

Based on race and ethnicity:

- One female articling student complained that during an interview, she was asked various questions related to her culture and background that were not related to her qualifications and which were personal, and inappropriate.

Based on bullying/workplace harassment:

- One legal assistant was harassed and bullied by another lawyer in a small firm. When she tried to address the situation with the partner of the firm, the lawyer said: *"You can deal with it, or you can leave"*.

(Please see previous reports for further examples.)

c) Observations made by the Ombudsperson for the Period:

- There was a 1% increase in calls from the public;
- There was a 5% increase in calls from students as compared to 2014. This increase can be attributed to the Ombudsperson's visit at Thompson River University orientation and a panel discussion for University of British Columbia on sexual harassment;

- The calls from articling students in 2014 accounted for 29% of the Callers and 30% in 2015. There is no significant trend observed.
- There has been a 10% increase in 2015 with regards to inappropriate questions being posed to articling students in the articling interview process compared to 2014. Based on the Ombudsperson's experience, she notes that when there is severe competition for articles, as the case was in 2015, there is a possibility for a paradigm shift towards depersonalization of the individual in the interview process and in the articling term. This in turn can result in firm's asking inappropriate questions during the interview process.
- Discrimination based on sex/gender continues to be the greatest source of complaints. The issue of sexual harassment has received significant attention in 2015: i) at UBC, faculty of law; ii) in the media, at large; and iii) among female lawyers in British Columbia (by the national WLF initiative). The Ombudsperson believes that Callers are more aware of the issue and their own boundaries as a result of the foregoing. There has not been a significant increase in the volume of calls or any notable change in the tone, or in nature of the calls, to support this conclusion. However, the Ombudsperson has consistently, in 2015 witnessed greater discussion related to these issues when she attended events and functions to market the Program;
- Table 4 notes the grounds of discrimination. It is important to note that of the 27 calls noted in the category labelled as sex, 85% of those calls were where the Caller was dealing with an issue of sexual harassment;
- Discrimination based on workplace bullying continues to be the second greatest source of complaints;
- There was an increase in the request of general information and/or referrals to other resources, see Table 6 below. The Ombudsperson attributes this increase to her outreach initiatives: i) attendance at the networking session for law students at Thompson University; ii) presentation at the Kelowna Bar's luncheon; and iii) attendance and networking at the WLF Leadership Conference for lawyers in Vancouver;
- The Ombudsperson continues to receive referrals from the Benchers, LAP and Employee Assistance Program (OPTUM) to the Program; and

- No other significant or tangible change, in the nature and number of the complaints is noted, as compared to 2014, other than as noted above. The narrative examples above continue to be quite similar in factual pattern to the previous years.

C. SERVICES PROVIDED TO CALLERS

Table 5 denotes the services provided to the Caller. These services are advertised on the LSBC website and in the Ombudsperson pamphlet. Pamphlets and or web-based printouts of the Program are provided to articling students, lawyers and support staff by the Ombudsperson at presentations, training sessions, conferences, events, and at information tables.

TABLE 5: Services Provided—2004 - Present

CALLERS:	SERVICES:
LAW FIRMS	• Advise parties of their obligations under the Human Rights Act, the LSBC Code of Conduct and Workers Compensation Act • Confidentially assist them with the particular problem, including discussing strategies, obligations and possible training • Provide information to firms on education seminars or training workshops
COMPLAINANTS	• Listen to the complainant and provide safe haven for their personal story • Assist in identifying and clarifying the issues for the complainant • Provide the complainant with his or her options, such as: 1) internal complaints process in their firm (as applicable), 2) formal complaint process at the LSBC, 3) mediation, 4) civil litigation, 5) Work Safe BC; and 6) the BC Human Rights Tribunal including any costs, references for legal representation, remedies that may be available and time limits for the various avenues, as relevant • Mediation is offered to the complainant, where feasible. To date, only informal mediation sessions have taken place

	• Provide the complainant information on resources, such as OPTUM (Employee Assistance Program) and Lawyers Assistance Program (LAP) • Direct them to relevant resource materials available from other organizations, including the LSBC, the BC Human Rights Tribunal and Work SafeBC
GENERAL INQUIRER	Providing the inquirer with information about the: • The Program Mandate • Services offered by the Program • An information seminar on the Program • Reporting statistics gathered by the Program
CALLER (outside Mandate)	• All Callers outside the Mandate are re-directed. Minimum time is spent by the Ombudsperson on these callers • The Program has a detailed telephone voice mail, in order that calls outside the Mandate are properly screened • The Ombudsperson does not assist the Callers beyond the initial contact

D. SUMMARY OF THE CALLS

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

TABLE 6: Issue Distribution—2011 - 2015

Issues addressed	2011	2012	2013	2014	2015
1. Information, direction or referral:					
a) General Information	24	20	24	28	40
b) Office Policy Concerns	15	14	18	24	27
2. Discussion/Request:					
a) Article, Training or Presentation	21	25	18	15	9
3. Discuss specific issue or concern:					
Discrimination:					
a) Gender	20	21	29	29	27
b) Race/Ethnicity	14	9	13	15	12
c) Disability	10	14	12	7	12
d) Sexual Orientation[1]	4	0	9	12	3

e) Age[2]	n/a	4	0	0	0
Harassment:					
a) Sexual harassment	55	59	51	57	67
b) Workplace/Personal harassment (Bullying)	37	33	38	42	39
Specific Policy Concern:					
a) Maternity leave policy	13	14	12	13	9
b) Other policies	1	3	2	6	12
Inappropriate questions asked in the interview process[1]	10	6	7	5	13

[1] New Category in 2009

[2]New Category in 2012

E. OUTREACH AND EDUCATION:

1. In 2015, the Ombudsperson travelled to:

   - Kelowna, BC, attended and presented at the CBA Kelowna Bar luncheon: over 55 lawyers participated. This provided the Ombudsperson with the opportunity to market and network, and to expose the Kelowna Bar to the Program; and

   - Kamloops, BC, Thompson River University, attended, presented and networked with over 100 first year students. Presented with the Dean to first year students and attended the orientation network session for new students. Further, presented to ten second year law students. These students were presented with the opportunity to learn about the Program and the LSBC resources prior to applying for summer positions at firms and articling. The Ombudsperson understands that the poor attendance at the session for second years was due to last minute marketing of the session at the University. Students that attended indicated that there would have been better attendance if they were provided with advance notice of the session.

2. In Vancouver, the Ombudsperson attended, networked, delivered pamphlets and/or presented at the following:

   - Women's Lawyer Forum/CBA (the "WLF") members at the WLF launch;

   - WLF members at their AGM;

   - WLF members at a networking potluck dinner (*these listed WLF events are predominately attended by female lawyers and each event has 50-100 attendees.*

They are a great venue for the Ombudsperson to market the Program and the resources);

- Federation of Asian Canadian Lawyers, FACL annual dinner, (*great venue to market the Program to the Asian Community, over 75 attendees);*
- PLTC students in Vancouver at the LSBC; and
- WLF Leadership Conference, Vancouver, (2 days).

3. The Ombudsperson has continued to work with the Continuing Legal Education Society of British Columbia (CLE) to develop and conclude the eLearning module on harassment for the Program (the "Module"). CLE, the actors and the Ombudsperson have re-taped the Module. In Feburary 2016 the participating parties reviewed the final product and provided feedback to CLE, in order for CLE to finalize the product for use. It is the intention of CLE and the Ombudsperson to finalize the Module for use in fall 2016.

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

F. LSEN - TRANING AND EDUCATION FOR OMBUDSPERSON:

1. The Law Societies Equity Network, (the "LSEN") group met in May 2015 in Winnipeg to share their knowledge, information and experiences. This conference and the LSEN continue to be of great value to the participants, as the formalized group is very effective in exchanging ideas, information and knowledge. It provides these similar types of positions in the various jurisdictions, the benefit of the experience from their colleagues. It also assists the incumbents in these isolated positions develop their skills to deal with the sensitive and challenging issues, which these types of positions face on a daily basis.

G. OBJECTIVES ACHIEVED DURING 2015:

1. The Ombudsperson achieved the following objectives during the Period:

   - Raised awareness and knowledge of the Program;

- Assisted the Callers with their issues when within the Mandate. On occasions, the Callers have decided to leave the practice of law and the Ombudsperson has assisted them through coaching to keep them in the profession and seek another environment to practice law;

- Provided general support/education to the legal profession in British Columbia about respectful workplace issues;

- Provided consultation on workplace policies and initiatives, as requested;

- Continued to disseminate the Ombudsperson informational brochure;

- Followed up on contacts made through seminars, presentations, the confidential phone line, e-mail and mail;

- Exchanged information with provincial Equity Ombudsperson counterparts and other equity experts with the other law societies;

- Worked on developing the Module (an e-learning CLE anti- harassment module) focused on respectful workplace behaviour;

- Developed and maintained a relationship with the Equity Staff Lawyer, Policy and Legal Services, so there is enhanced communication between the Ombudsperson and the LSBC;

- Served as liaison/resource for the LSBC's Equity and Diversity Advisory Committee so as to ensure and encourage exchange of information; and

- Engaged in outreach by delivering information sessions to different law groups in British Columbia (outside of the GVRD) as time and the budget permitted.

H. CONCLUSIONS:

1. The Ombudsperson has been proactive in contacting various CBA sections and law related groups to provide them with information, resources and knowledge of the CPD information session on the Program. She believes these initiatives are enhancing Program awareness and encouraging lawyers to implement respectful workplace policies. Further, the Ombudsperson was given feedback (from some attendees at a luncheon presentation) that the Ombudsperson's presentations regarding the LSBC's Program and its commitment to supporting a respectful workplace free of discrimination, assist junior lawyers in their firms. For example, they feel they are able to point to the LSBC resource and presentation when speaking up about a challenging issue about their working conditions at their firms.

2. The Ombudsperson (along with LAP and OPTUM) no longer has the opportunity to present to PLTC students, due to a financial decision made by PLTC. Accordingly, the Ombudsperson has been focusing on delivering information sessions to the universities and

young lawyer groups to target students and young lawyers. It is essential for the Ombudsperson to capture the attention of this group, as they are particularly vulnerable (due to their lack of power in their position at their firms) to discrimination and harassment.

The Ombudsperson has been asked to tape a presentation that could be delivered to PLTC students. She has been working with CLE to consider whether some portion of the Module may be used for information purposes for the PLTC students. Feedback, to date from articling students indicates that an in-person presentation gives them an opportunity to develop trust towards the Program and the incumbent in the role of the Ombudsperson.

3. The Ombudsperson's attendance at the WLF Leadership Conference was an effective means to target and network with female lawyers. Further, the conference provided her with pertinent information and knowledge, directly related to the Ombudsperson role.

4. The Ombudsperson attempted, on various occasions to have one of the Callers write an article for the profession about his or her experience in a law firm with respect to an issue of harassment or discrimination. These articles were to be anonymous and written from the perspective of the Caller. Three Callers were very interested, and the Ombudsperson was encouraged by their correspondence with the Ombudsperson. However, none of the Callers to date have felt comfortable submitting anything to the Ombudsperson formally for publishing. Attempts to secure the attention of Callers to relay their stories have been unsuccessful. Callers find their stories too personal, difficult and want to put them behind them in an attempt to move on. Also, they have indicated that they have a fear of being identified in the profession as a, *troublemaker*. This fear is instilled in the Callers from various individuals who are senior at the bar and or lawyers who are in a position of power, who they meet on their course when dealing with their challenging issue.

5. At this time, the Ombudsperson reports that she is committed to work on the goals as noted in section G of this report and will continue to travel to a minimum of two geographic locations outside the GVRD on an annual basis.

6. The Ombudsperson reports she has participated in a confidential review of the Ombudsperson Program and is looking forward to receiving the feedback of the results, so

that she can learn from the same and make any changes that are recommended to enhance the Program.

7. She will continue to attend and support the Equity Diversity Advisory Committee and members by working with them on their annual initiatives.

8. The Ombudsperson continues to liaise with the various departments of the LSBC, such as: credentials, reception, marketing, complaints, member services, human resources, practice management and PLTC, as required.

9. The Ombudsperson anticipates CLE launching the Module in 2016 and anticipates that the Module will be an effective tool to assist and educate law firms and individuals with regards to respectful workplace practices and enhance the awareness of the Program to members. As the Module is to be provided to all members without any cost, the Ombudsperson will be directing law firms and/or individual lawyers to watch the Module, as and when relevant to the Caller.

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

Background

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

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

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

1. Intake and Counseling: receiving complaints from, providing information to, and discussing alternative solutions regarding complaints with members, articled students, law students and support staff working for legal employers;

2. Mediation: resolving complaints informally with the consent of both the complainant and the respondent;

3. Education: providing information and training to law firms about issues of harassment in the workplace;

4. Program Design: at the request of a law firm, assisting in the development and implementation of a workplace or sexual harassment policy; and

5. Reporting: collecting statistics on the types of incidences and their distribution in the legal community, of discrimination or harassment and preparing a general statistical report to the Law Society, on an annual basis.

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

A. The Ombudsperson would be responsible for: 1. Intake and Counselling and 5. Reporting

B. A Panel of Independent Mediators would be responsible for: 2. Mediation

C. The Law Society and the Ombudsperson would both be responsible for: 3. Education and 4. Program Design

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

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

Description of Service since 2006

The Equity Ombudsperson:

- Provides confidential, independent and neutral assistance to lawyers, support staff working for legal employers, articling students and clients who have concerns about any kind of discrimination or harassment. The Ombudsperson **does not** disclose to anyone, including the Law Society, the identity of those who contact her about a complaint or the identity of those about whom complaints are made;

- Provides mediation services to law firms when required to resolve conflict or issues on an informal and confidential basis;

- Is available to the Law Society as a general source of information on issues of discrimination and harassment as it relates to lawyers and staff who are engaged in the practice of law. From a practical perspective, the Ombudsperson is available to provide information generally, where relevant, to any Law Society task force, committee or initiative on the forms of discrimination and harassment;

- Delivers information sessions on the Program to PLTC students, law students, target groups, CBA sub-section meetings and other similar events;

- Provides an annual report to the Law Society. The reporting consists of a general statistical nature in setting out the number and type of calls received;

- Liaises with the Law Society policy lawyer in order to keep her informed of the issues and trends of the Program; and

- Provides feedback sheets for the Program to callers who have accessed the service.

Objective of the Program

The objective of the Program is to resolve problems. In doing so, the Equity Ombudsperson maintains a neutral position and does not provide legal advice. She advises complainants about the options available to them, which include filing a formal complaint with the Law Society or with the Human Rights Tribunal; commencing a civil action, internal firm process, or having the Ombudsperson attempt to resolve informally or mediate a discrimination or harassment dispute.

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

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

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

The Law Society of British Columbia

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

Craig Ferris, QC, Chair
Jeff Campbell, QC
Jon Festinger, QC
Leon Getz, QC
Mariam Kresivo, QC
Jan Lindsay, QC
Mark Rushton
Tony Wilson

July 8, 2016

Prepared for:	Benchers
Prepared by:	Rule of Law and Lawyer Independence Advisory Committee/ Michael Lucas, Manager, Policy and Legal Services
Purpose:	Information

Introduction

1. The Rule of Law and Lawyer Independence Advisory Committee is one of the four advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers on matters relating to those issues. From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and may be asked to develop the recommendations or policy alternatives regarding such initiatives.

2. The lawyer's duty of commitment to his or her client's cause, and the inability of the state to impose duties that undermine that prevailing duty, has been recognized as a principle of fundamental justice.[1] The importance of lawyer independence as a principle of fundamental justice in a democratic society, and its connection to the support of the rule of law, has been explained in past reports by this Committee and need not be repeated at this time. It will suffice to say that the issues are intricately tied to the protection of the public interest in the administration of justice, and that it is important to ensure that citizens are cognizant of this fact.

3. The Committee's mandate is:

    - to advise the Benchers on matters relating to the Rule of Law and lawyer independence so that the Law Society can ensure

        - its processes and activities preserve and promote the preservation of the Rule of Law and effective self-governance of lawyers;

        - the legal profession and the public are properly informed about the meaning and importance of the Rule of Law and how a self-governing profession of independent lawyers supports and is a necessary component of the Rule of Law; and

    - to monitor issues (including current or proposed legislation) that might affect the independence of lawyers and the Rule of Law, and to develop means by which the Law Society can effectively respond to those issues. The Committee was particularly concerned about the provisions of Bill C-51 (the *Anti-Terrorism Act, 2015*) and was pleased to see the Law Society make an effort to engage in the debate on that Bill.

4. The Committee has met on January 27, March 2, April 4, and May 4, 2016.

[1] Canada (Attorney General) *v.* Federation of Law Societies of Canada, 2015 SCC 7, [2015] 1 S.C.R. 401

5. This is the mid-year report of the Committee, prepared to update the Benchers on its work in to date in 2016 and to identify issues for consideration by the Benchers in relation to the Committee's mandate.

Topics of Discussion in 2016

Public Commentary on the Rule of Law

6. In mid-2015, the Benchers approved the Committee's proposal that it publicly comment on issues relating to the Rule of Law. The recommendation was focussed on Strategy 3.1 of the Strategic Plan, to "increase public awareness of the importance of the rule of law and the proper administration of justice," and results from the Committee's conclusion that, in the course of undertaking its monitoring function, it often identifies news stories or events that bring attention to the rule of law, or lack thereof, and exemplify the dangers to society where it is either absent, diminished or, perhaps, threatened, from which the Committee could usefully select appropriate instances for comment.

7. Following on work in the latter part of 2015, a great deal of the Committee's focus in the first part of this year has been on developing this strategy.

8. As noted in its year end report for 2015, the Committee first identified the issue of government surveillance and its effect on the Rule of Law. The Committee prepared an article that was published in the January 2016 edition of the Advocate (Vol. 74, Part 1, p. 21).

9. In the early part of this year, the Committee prepared an article entitled "Attacks on the Access to Legal Advice and what it means to the Rule of Law" in which the Committee noted instances in China and the United Kingdom where governments were criticising lawyers for the representation of certain clients whose interests were contrary to those of the state.

10. Recognising the time lag in getting an article published in the Advocate or other print publications could work to defeat the immediacy of the Committee's work, the Committee created a link on the Law Society home webpage that would take interested readers to articles or other commentary created by the Committee. The article on "Attacks on the Access to Legal Advice" was published there, and the Advocate article was republished with the permission of the Advocate.

11. At the same time, the Committee developed a social media presence through Twitter (@RuleofLawBC) in order to be able to comment on or draw attention to Rule of Law issues in a more immediate way. To date, the Committee has composed 75 "tweets" and has 35 followers. Several tweets have brought attention to deteriorating conditions affecting the Rule of Law in places such as Poland, Indonesia and China. The Committee also commented on Twitter about rule of law issues arising in the facts recited in the judgment in the trial of

Senator Duffy, drawing attention to issues in Canada. A number of the Committee's tweets have been retweeted a number of times.

12. Overall, the Committee is satisfied with its initial foray into social media and will work to identify more issues on which it can write and comment.

Judicial Appointments to the Supreme Court of Canada

13. Judicial independence, and particularly the process by which judges are appointed to the court, is a matter that strikes at the heart of the rule of law. The rule of law requires independent courts and judges, and yet these judges are appointed ultimately by the Executive branch of government. Developing a process to ensure that judges can remain independent has always been of prime importance to the rule of law. The Committee had therefore planned at some point in the near future to examine judicial appointments processes, and particularly the process of appointments to the Supreme Court of Canada.

14. The importance of the topic increased with Mr. Justice Cromwell's announcement that he would resign from the Supreme Court of Canada effective September 1, 2016. The Committee consulted with the President, and the President, through the Executive Committee, confirmed that the Committee should report to the Benchers with an outline of principles that the Law Society could consider and, if appropriate, submit to the Minister of Justice for consideration, concerning future Supreme Court of Canada appointment processes.

15. The Committee struck a subcommittee comprised of Mr. Ferris, Mr. Campbell, and Mr. Festinger to examine the subject and draft a report for consideration by the full Committee. That was done, and the report is appended to this mid-year Report as **Appendix 1** for consideration by the Benchers.

High School Essay Contest

16. The Committee ran a successful high school essay contest focused on the Magna Carta and its relevance to the Rule of Law in the 21st century. The contest was extended into 2016. 16 entries were received. A judging panel was created that comprised Leon Getz, QC, Ken Walker, QC, Satwinder Bains, Linda Locke and Prof. Arlene Sindelar, and a winner and runner-up were selected. The winner received a $1,000.00 prize, while the runner up received $500.00. These awards were presented at the May 2016 Benchers meeting and the two essays were published in the Benchers Bulletin.

17. The Committee considered the contest to be a successful first effort at engaging high school students on the subject, and plans to continue the contest from year-to-year on general rule of law topics for students in enrolled in Grade 12 in BC, or for any BC high school student enrolled in Law 12 or Civic Studies 11.

18. The Committee spent some time in the spring developing a subject for the next contest. It eventually settled on the following:

> How would you explain the rule of law in Canada to a new student who has recently moved here from another country? You might discuss why the rule of law is important, and how it impacts our daily lives. You might also discuss any current events where the rule of law in Canada needs to be upheld or protected.

19. Efforts are now underway to communicate with school districts and to publicise the contest for the next school year. Entries will be due April 10, 2017.

Rule of Law Lecture Series

20. Further considering how to increase public awareness of and confidence in the rule of law, the Committee examined the feasibility of creating an annual lecture series on rule of law topics.

21. The Committee has examined the proposal with a view to having an inaugural evening lecture, likely in the spring of 2017 with a maximum of two presenters, followed by questions, that will be free to attendees. The event would be aimed at the general public, though it will also be "marketed" toward lawyers.

22. A memorandum from the Committee more fully explaining its proposal with a recommendation for consideration by the Benchers is attached to this Report as **Appendix 2**.

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

23. The Committee has previously identified that section 3 of the *Act* engages the Rule of Law. The Committee believes that a statement of principle could clarify the meaning and practical implications of Section 3, while also taking adequate account of the relationship between the Law Society's mandate and the Rule of Law. The topic was discussed at the May 2015 Benchers Retreat, particularly in the context of how the provisions of section 3 – and particularly s. 3(a) – inform the Law Society's activities, by examining developments in access to justice, exploring the scope of directives that the section presents, and discussing opportunities to advance the objectives of the section.

24. Improving the Law Society's public communication on the importance of the rule of law is one aspect of advancing the public interest in the administration of justice and thereby discharging the object and duty of section 3. There are, however, other considerations that can be given to this section and the Committee will therefore continue to work with a view toward creating a working definition of the section to inform the future work of the Law Society

Professional Independence and Client Demands

25. The Committee reviewed a report prepared for the Solicitors Regulation Authority by the University of Birmingham, entitled "Independence, Representation and Risk: An Empirical Exploration of the Management of Client relations by Large Law Firms." The Report specifically addressed the risks to lawyer independence framed on the context of the changing nature of what clients demand from their counsel, how lawyers understand independence, and, in light of the lawyer-client relationship and the influence that large clients in particular can have over representation, whether the independence of lawyers is, or has the potential to be, compromised.

26. In examining lawyer independence in the past, the Committee has focused on the independence of the bar from the state. However, it has always recognised that this is but one manifestation of lawyer independence. Independence from clients is another branch of lawyer independence identified in the literature that is not given as much attention.

27. The Committee gave some preliminary consideration to the report and the issues it raised in the BC context.

28. The Committee ultimately reached a consensus that it would be worthwhile to undertake some further study to determine the extent of the concern about how client representation affects lawyer independence in BC, if at all, and once it has assessed the magnitude of the issue, to prepare some guidance as to how lawyers may approach it. Work on this subject will continue into the fall.

Alternate Business Structures

29. The Committee continues to monitor the general development of and debate surrounding alternate business structures in England, Australia, and the debates in other parts of the world.

30. The Committee is also aware of efforts being undertaken through the Law Society of Upper Canada and by the law societies of the three prairie provinces to begin some discussion on the topic and it will continue to monitor and participate in those discussions as it is able to do. It has noted that the Law Society of Upper Canada appears to have rejected for the time being the concept of "full" ABSs.

31. While the issue appears to be less immediate than was perhaps the case when the Strategic Plan was developed, the Committee will continue to monitor the subject and will assist in its development as required.

The Law Society of British Columbia

Principles for the Appointment of Justices to the Supreme Court of Canada:

Report of a Subcommittee of the Rule of Law and Lawyer Independence Advisory Committee

Craig Ferris, QC (Chair)
Jeff Campbell, QC
Jon Festinger, QC

June 2016

Prepared for: Benchers

Prepared by: Rule of Law and Lawyer Independence Advisory Committee

Purpose: Information

DM1182268

I. Background

1. The Rule of Law and Lawyer Independence Advisory Committee (the "Committee") has been asked to report to the Benchers with respect to a proposal that the Law Society of British Columbia forward a submission to the Minister of Justice concerning the process for judicial appointments to the Supreme Court of Canada.

2. In March, 2016, it was announced that Mr. Justice Cromwell will resign from the Supreme Court of Canada (the "Court") effective September 1, 2016. The current Government has stated its intention to review and renew the process for judicial appointments to the Court.

3. The Court is a vital component of our constitutional democracy. It plays a key role in maintaining the rule of law and in the legal fabric of Canada. There is accordingly a great public interest in the process by which Supreme Court Justices are appointed. Notwithstanding this public interest, the process by which candidates are evaluated and selected has been largely unknown. For a number of recent appointments to the Court, the appointment process has often changed from one appointment to the next. This has engendered significant debate about how candidates for the Court should be identified, assessed and selected.

4. The Law Society has in the past contributed to this debate through the Federation of Law Societies. In 2004, the Federation forwarded a submission to the Government recommending principles for the appointment process. This issue was subsequently examined by our Benchers in February 2005, who ultimately resolved to refer the matter to the Federation. In 2008, the Federation wrote to the Minister of Justice with its recommendations.

5. Given that the Government is now reviewing the appointment process, there is an opportunity for the Law Society of British Columbia to contribute to this important dialogue. The Law Society of British Columbia is statutorily mandated to uphold and protect the public interest in the administration of justice. The appointment of federal judges, and in particular, Justices of the Supreme Court of Canada, is a matter of great importance to the Canadian justice system.

6. In consultation with the President and the Executive Committee, the Committee has been asked to report to the Benchers regarding this issue. A Subcommittee was formed in the spring of 2016, consisting of Craig Ferris, QC, Jeff Campbell, QC, Jon Festinger, QC, and assisted by Michael Lucas. The Subcommittee reviewed a number of articles and other writings with respect to the appointment process. The Subcommittee also met and consulted with Professor Adam Dodek of the University of Ottawa, a leading scholar on Supreme Court of Canada appointments.

7. This report sets out the core values and principles that, in the Committee's view, are essential to the process of appointing Justices to the Court. The Committee recommends that the Benchers resolve that the Law Society make a submission to the Minister of Justice with respect to these principles and the process for judicial appointments.

II. Statement of Principles

1. Transparency

8. The process by which Justices are appointed should be transparent, open and publicly available in written policy. A transparent appointment process allows Canadians to understand how Justices are appointed. This includes explaining the criteria upon which Justices are selected.

9. Transparency is linked to accountability for both the selection of the best candidate and for the appointment process itself. An appointment process based on undisclosed criteria and unknown procedures will be perceived as less legitimate than a process that is publicly explained and transparent. Public confident in the legal system will be enhanced by openness and transparency.

10. Making the process transparent should not interfere with the discretion of the Executive to decide who should be appointed. It would, however, lead to a greater understanding of how the discretion is exercised. It would foster greater confidence in both the appointment process and the Court as a vital institution of our constitutional democracy.

2. Judicial Independence

11. The appointment process must protect and uphold the constitutional principle of judicial independence. The integrity of the justice system depends on the independence of the judiciary. Judges must be impartial in carrying out their duties, and must be seen to be impartial. Judicial independence is integral to the role of the Court in protecting constitutional values.

3. Merit and Diversity

12. The primary criterion for appointments to the Court should be merit. In order to maintain confidence in the institution of the Court, the appointment process should avoid any appearance of partiality or partisanship. Politicizing the appointment process threatens the legitimacy of the Court and the principle of judicial independence.

13. Candidates should be assessed against known criteria that are set out in writing and publicly available, so that it will be understood that the selection of candidates is based primarily on characteristics such as intellectual ability, professionalism, integrity, work ethic, interpersonal skills, and sound judgment. An appointment process based primarily on merit encourages the selection of candidates of the highest calibre, and enhances public confidence in the Court.

14. In addition to the well-established custom of regional representation and bilingualism, the Justices of the Court should otherwise reflect the diversity of Canadian society.

4. Public Participation

15. While the authority appoint Justices to the Court is within the discretion of the Executive, it is the Committee's view that some degree of public participation is important to the appointment process.

a. Advisory Committee

16. In the past, the appointment process has involved an independent Advisory Committee which reviews potential candidates and make recommendations to the Executive.

17. An Advisory Committee comprised of elected representatives, the public and the legal profession is an important opportunity for public participation. The membership of the Advisory Committee should be diverse, balanced and composed in a manner that focuses on identifying the best candidate. In this regard, the Committee should be structured in a way to avoid any unbalanced influence by any particular Party or interest group. In addition to Members of Parliament, the Advisory Committee should properly include representatives from the judiciary, the legal profession (such as the Federation of Law Societies, the Law Societies of the region and the Canadian Bar Association), the Attorney(s) General, and non-legal representatives from the region. It is also important that the Advisory Committee reflect the diversity of the region.

18. While greater transparency is an important objective, the deliberations of the Advisory Committee should be confidential in order to ensure open discussion and full, frank and fair consultation regarding the candidates for appointment.

19. As noted above, it is our respectful view that the participation of the legal profession is a critical part of the appointment process. The legal profession is a key stakeholder and has made significant contributions to the work of Advisory Committees in the past. It is important that the legal profession continue to participate in the appointment process in the future.

b. Public Hearing

20. Several recent appointments have involved a Parliamentary hearing. For some appointments, the Supreme Court nominees appeared in person at the hearing. In one case, the Minister of Justice appeared before the Committee to explain the appointment process and the reasons for selecting the candidate. The public hearing process was abandoned for the two most recent appointments to the Court.

21. The value of a public hearing process is that it allows Canadians to know more about the appointment process and the candidate who has been selected. It is grounded in the democratic ideal that important decisions should be open and transparent. The public hearings for recent appointments have likely enhanced public confidence in both the Justice and in the Court itself. It is the Committee's view that some form of public hearing is a valuable opportunity for public participation. A public hearing also ensures that the Minister is accountable for the process through which the candidate was nominated. In this regard, the hearing should include an appearance by the Minister of Justice to explain the appointment process and the qualifications of the candidate.

22. In the past, both the Law Society of British Columbia and the Federation of Law Societies have been cautious with respect to public involvement in the appointment process. The concern was that increased public involvement could lead to partisan or unseemly tactics which would undermine the institution of the Court. Although there are legitimate concerns with respect to the risks of a public hearing process, these concerns focus more on the type of hearing that should take place as opposed to whether there should be a hearing at all. In the Subcommittee's view, the Parliamentary hearings to date demonstrate that they can be conducted in a responsible and dignified manner.

III. Conclusion

23. The review of the appointment process by the current Government represents an opportunity for the Law Society to contribute to a matter of great importance for the Canadian legal system. It is submitted that engaging with the Minister of Justice on this issue would be consistent with the Law Society's mandate to act in protection of the public interest in the administration of justice.

24. The principles set out in this memorandum are intended to promote a process for judicial appointments that enhances public confidence in the Court and in the legal system. An appointment process that incorporates these principles would strengthen the tradition of appointing candidates of the highest quality to the Court and ultimately promote and protect the rule of law.

The Law Society of British Columbia

Memo

To: The Benchers
From: The Rule of Law and Lawyer Independence Advisory Committee
Date: April 11, 2016
Subject: Proposal for a Lecture Series on the Rule of Law and Related Topics

Purpose

In this memorandum, the Rule of Law and Lawyer Independence Advisory Committee (the "Committee") proposes that the Law Society of BC (the "Law Society") institute an annual lecture series focusing on topics related to the Rule of Law.

Introduction

In 2015, the Rule of Law and Lawyer Independence Advisory Committee began discussing the idea of holding an annual Law Society lecture series focused on topics related to the Rule of Law. Impetus for the idea came from a Committee member's participation in the Pitblado Lectures, held annually in Winnipeg. The tradition of the Pitblado Lectures, which are hosted by the Law Society of Manitoba in conjunction with the Canadian Bar Association (Manitoba Branch) and the Law School at the University of Manitoba, goes back to 1960 when they were first established to recognize the significant contributions of lawyer and Bencher Isaac Pitblado. The Pitblado lectures are very popular and well attended. Their intended audience is the legal community.

During the course of its discussions, the Committee explored a number of different lecture series models, as well as various partnership possibilities, funding sources, delivery formats, and timing considerations. Details of the proposed lecture series the Committee is recommending to the Benchers are set out below.

Proposal

Rationale

Part of the Committee's mandate is to ensure that the legal profession and the public are properly informed about the meaning and importance of the Rule of Law. The Law Society's Strategic Plan also includes, as an objective, the enhancement of the Law Society's voice on issues affecting the justice system. Additionally, the Benchers have approved a proposal by the

Committee to find ways to communicate more broadly on the topic of the Rule of Law and its importance to the justice system.

The Committee considers that the Proposal outlined below addresses the goals of the Strategic Plan, together with the mandate of the Committee itself. It aims to engage the public and the profession about the Rule of Law and its role in society generally. It is consistent with the goal the Law Society has set that, as a result of the Law Society's work, the public will have greater confidence in the administration of justice and the Rule of Law.

Format

In its examination of various formats for a lecture series, the Committee looked closely at the Pitblado Lectures, which are structured somewhat like a conference. That annual event routinely runs for a day and half – a full day Friday session, and half a day on Saturday. A slate of speakers present their papers, and attendees pay a registration fee for the event. The event runs mostly on a volunteer basis and is aimed at a legal audience.

The Committee concluded it preferred a simpler, more accessible format: an evening public lecture consisting of a maximum of two presenters, followed by a question and answer period. Rule of Law related topics would be selected based on a public audience, while still of particular interest to the legal community. The rationale for choosing this approach is that it will help in educating the public about the meaning and importance of the Rule of Law, as well as increase the Law Society's level of public engagement.

If, as proposed, the lecture series is intended to be widely accessible to the public, it will likely need to be a free event.

Potential Partners

The Committee spent time discussing whether the lecture series should be a joint effort of the Law Society and others, such as the Canadian Bar Association and one or more of the law faculties, or whether it was more feasible for the Law Society to organize the initiative on its own. There are advantages to coordinating with at least one other partner, such as sharing responsibility for organizing and funding an event, and fostering collegiality with a partner organization. The Law Society has some experience working cooperatively with other organizations on a number of projects.

There are also some persuasive reasons to go it alone, at least initially. Depending on the nature of the initiative, one challenge that may arise is ensuring that the event or project, in development and on implementation, continues to reflect the Law Society's vision for it.

The Committee concluded that the Law Society should operate the lecture series on its own, at least initially. Even with that in mind, it might be worth considering the feasibility of partnering

with the Law Foundation of BC, to see if it might be interested in co-sponsoring a lecture series. The Committee recommends that any approach made to the Law Foundation not include a funding request. Rather, it would be to ask that it lend its gravitas and outreach capabilities to help support the event. Another possible partner might be the People's Law School, because it has extensive experience in engaging and educating the public about the law.

Budget and Operational Considerations

An annual evening lecture series should be relatively inexpensive to host, particularly if, where possible, it can be run with the assistance of volunteers. Budgeting for the event would need to include, at minimum, the following line items: renting an appropriately sized venue; basic refreshments; speakers' expenses, including accommodation and travel; and publicity costs. An estimated annual budget for these hard costs would likely run in the range of a $10,000-$15,000. These figures are based on our preliminary research. A proposed draft budget with estimated line item costs is attached to this memorandum.

In addition to the costs outlined in the draft budget, there will be significant Law Society staff time required to support a lecture series, particularly at the development stage, as well as in the inaugural year. It is hoped that, with time, the Law Society will be able to build a volunteer contingent to help support the event annually, which would reduce the time commitment required from staff.

Recommendation

The Committee recommends that Law Society sponsor a lecture series on the Rule of Law and related topics. Specifically, it proposes that:

- The event will be an annual one, to be held in Vancouver;
- The event will be a public evening lecture with a maximum of two presenters, followed by a Q&A;
- The event will be free to the attendees;
- The event will be scheduled so as not to conflict with other related events;
- The inaugural lecture will be held in 2017 to allow sufficient time for development and planning.

CE/

RULE OF LAW LECTURE SERIES - DRAFT BUDGET

The line item amounts are based on the following assumptions:

- The inaugural lecture will be in 2017;
- The intended audience is the general public, as well as members of the justice community;
- The lecture will be an evening event with a maximum attendance of 180;
- The preferred venue is the UBC downtown Robson Square auditorium;
- 1-2 speakers maximum, who may need to travel to Vancouver to participate, plus a local moderator;
- Speakers will be offered an honorarium, not full speakers' fees. This assumes an out of town speaker would be willing to participate in an event hosted by the Law Society if their travel and accommodation costs are covered, and they receive an honorarium.
- Law Society staff and resources will be made available to develop and implement the project and assist with its promotion.
- The Law Society will explore whether the Law Foundation of BC and/or the People's Law School might wish to endorse the project and use their networks and outreach capabilities to help promote it.

EXPENSES

Venue rental	$700-1200
Venue audio visual/tech support	$600
Speakers' travel, accommodation, per diem	$5000 ($2500 per speaker)
Speakers' honoraria	$2000 ($1000 each)
Moderator fee	$500-750
Catering: coffee/tea service only	$1000
Advertising/other promotional costs	$1000-1500

(low)$10,800 - $12,050(high)

The Law Society of British Columbia

Lawyer Education Advisory Committee 2016 Mid-Year Report

Tony Wilson, Chair
Sarah Westwood, Vice-Chair
Pinder Cheema, QC
Dean Lawton
Jamie Maclaren
Micah Rankin

July 8, 2016

Prepared for: Benchers

Prepared by: The Lawyer Education Advisory Committee

Purpose: Information

Introduction

1. The Lawyer Education Advisory Committee's Mid-Year Report to the Benchers summarizes the Committee's work to-date and outlines the Committee's plans for the balance of the year pursuant to the 2015-17 Law Society Strategic Plan.

Committee Strategic Priorities

2. The Strategic Plan includes the following.

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

   Strategy 2-1
   Improve the admission, education and continuing competence of students and lawyers.

   Initiative 2-1(a)
   Evaluate the current admission program (PLTC and articles), including the role of lawyers and law firms, and develop principles for what an admission program is meant to achieve.

   Initiative 2-1(b)
   Monitor the Federation's development of national standards and the need for a consistent approach to admission requirements in light of interprovincial mobility.

   Initiative 2-1(c)
   Conduct a review of the Continuing Professional Development [CPD] program.

   Initiative 2-1(e)
   Examine alternatives to articling, including Ontario's new law practice program and Lakehead University's integrated co-op law degree program, and assess their potential effects in BC.

Admission Program Review Report

3. Pursuant to Strategic Plan Initiative 2-1(a), the Committee completed its admission program work in 2015, and provided its Admission Program Review Report to the Benchers on December 4.

4. The Report contained 22 recommendations that focus on PLTC, articling, the Truth and Reconciliation Commission Report, and the Federation's national admission standards proposals.

5. The Report and recommendations were adopted by the Benchers on March 4, 2016, including recommendations touching on specific areas of the Committee's ongoing work, detailed below.

The Federation's National Standards Project

6. Pursuant to Strategic Plan Initiative 2-1(b), the Committee assessed the Federation's National Assessment Proposal, culminating in recommendation 22: *Not endorse the Federation's current form of National Assessment Proposal*, which was adopted by the Benchers on March 4.

7. On June 14, the Federation Council decided that work would cease on the National Assessment Proposal. The Committee will assess and report on future developments.

Articling Issues

8. Pursuant to Strategic Plan Initiative 2-1(a), the Admission Program Review Report includes articling-related recommendations that are the subject of further work by the Committee. These include monitoring the availability of articling positions and examining the issue of articling remuneration.

Recommendation #16
Monitor the availability of articling positions on an ongoing basis, and:

a) Co-ordinate with and promote the work of law school career service offices as a means of assisting students to find articles suited to their career goals;
b) Be current on an ongoing timely basis on whether the number of available articling positions is likely to meet the needs of students seeking articles, including out of province and National Committee on Accreditation (NCA) students, and be prepared to respond if a problem arises;
c) Endeavour, in co-operation with the NCA, to ascertain the number of NCA qualified students who are seeking articles in BC, and consider appropriate support mechanisms;
d) Encourage joint and shared articles.

Recommendation #18
a) Actively encourage potential articling principals to provide remuneration that is reasonable according to the circumstances of the proposed articling placement.
b) Continue to gather information on articling remuneration, and then determine whether to develop a policy on minimum articling remuneration.

9. The Committee has held preliminary discussions on developing an articling remuneration policy, and has determined that further policy work should be undertaken to gain a full understanding of the issues.

CPD Program Review

10. The Committee's principal focus in 2016 has been a comprehensive review of the CPD program, pursuant to Strategic Plan Initiative 2-1(c).

11. The Committee has concluded that there is considerable public interest in continuing to have a CPD requirement for BC lawyers. Following a comprehensive review of CPD purpose statements in other jurisdictions, the Committee endorsed a CPD purpose statement for inclusion in the Committee's final recommendations to the Benchers.

The purpose of the mandatory CPD program is to uphold and protect the public interest in the administration of justice by actively supporting the Law Society's members in achieving and maintaining high standards of competency, professionalism and learning in the practice of law.

12. The Committee email survey of practicing members elicited feedback about the value of, and potential changes to the CPD program. A *BarTalk* article written by Committee Chair Tony Wilson, was published in June, encouraging responses to the survey and inviting comments on the CPD program. An analysis of the survey responses will assist the Committee in developing CPD recommendations for consideration by the Benchers.

13. In addition to the survey, the Committee plans to consult with BC legal organizations, including CPD providers and BC's law schools.

14. The Committee is considering the following matters:

    a) continuation of or changes to the credit hour requirement,
    b) carry forward of CPD credits from year to year,
    c) exemptions from the CPD requirements, including interjurisdictional reciprocity and comity,
    d) potential change to a two or three year reporting cycle,
    e) mobile recording of CPD course credits,
    f) continuation of the accreditation system for courses and other approved CPD modes,
    g) introduction of a learning plan and / or testing requirement,
    h) determining what subject matter is eligible and ineligible for CPD credit, including expanding the categories of eligibility for CPD credit to include lawyer wellness,
    i) incorporating the Truth and Reconciliation Commission Call to Action 27,
    j) determining the modes of CPD that are eligible or ineligible for CPD credit, including
        - courses, both in-person and delivered through technology,
        - self-study,
        - study groups,
        - mentoring,
        - teaching,
        - writing,
        - blogging,
        - pro bono,
        - Legal Aid.

15. The Committee plans, following a review and analysis of each of these elements, to present its report and recommendations to the Benchers by year-end.

The Law Society of British Columbia

Memo

To: Benchers

From: Michael Lucas and Jackie Drozdowski

Date: June 16, 2016

Subject: Statutory Review of the *Freedom of Information and Protection of Privacy Act*

The Special Committee to Review the *Freedom of Information and Protection of Privacy Act* ("FIPPA") submitted its report ("Report") to the Legislative Assembly on May 11, 2016. Copies of the Report and the Law Society's January 20, 2016 submission to the Special Committee are attached. The Special Committee made 39 recommendations in its Report.

The Law Society's submission included four recommendations. Two of the recommendations were on the subject of solicitor client privilege and related to section 14 of FIPPA (Legal Advice) and section 44 (Powers of commissioner in conducting investigations, audits or inquiries). The third recommendation related to Section 15 (Disclosure harmful to law enforcement) and the definition of "law enforcement" in Schedule 1 of FIPPA. The fourth recommendation was on the subject of fees chargeable by public bodies under section 75 (Fees) and the Schedule of Maximum Fees found in FIPPA Regulation 155/2012.

Solicitor client privilege

The Special Committee accepted the Law Society's recommendation that section 14 be made mandatory except when the public body is the client and can choose to waive privilege, or when the client is a third party who has agreed to waive privilege. (Report, p. 53; Law Society submission, p. 4)

The Special Committee also considered the recommendation regarding section 44(3), the production of privileged records to the Office of the Information and Privacy Commissioner (the "OIPC"), and whether decisions about privilege should be made by the Supreme Court rather than the OIPC. The Special Committee did not accept the recommendation and is satisfied with the status quo with the OIPC making the decisions about the validity of a claim of privilege. (Report, p. 52; Law Society submission, p. 8). The issue is currently the subject of an appeal before the Supreme Court of Canada and was argued on April 1. The Federation of Law

Societies intervened in the appeal. Staff will monitor the case and review the decision when it is released.

Law Enforcement

The Special Committee considered the Law Society's recommendation to amend the definition of "law enforcement" found in Schedule 1 (Definitions) of FIPPA. The Committee concluded the definition is not entirely clear and recommended that the Legislative Assembly consider adding an explicit reference to investigations within the mandate of a professional regulatory body to the definition. (Report, p. 54; Law Society submission, p. 9)

Fees

The Special Committee considered the Law Society's recommendation regarding fees and noted in its Report that it received a number of submissions that included the subject of fees. The Committee recommended, along with other fee-related recommendations, that the schedule of fees should be reviewed to set a level that does not create barriers to access and provides some cost recovery for public bodies responding to complex requests. (Report, p. 60; Law Society submission, p. 13)

Other recommendations made by the Special Committee

The Report includes a summary of the 39 recommendations made by the Special Committee at pages 85 - 91. A number of the recommendations, should they be implemented by the government as recommended by the Special Committee, will have an impact on privacy compliance requirements and how the Law Society will be required to respond to requests made under FIPPA for access to records. The recommendations include proactive disclosure requirements, a duty to document, mandatory breach notification and reporting, and reducing the timeline for responding to access requests. There is also a recommendation for a review of provisions in other legislation that prevail over FIPPA, which would presumably include a review of the provisions in the *Legal Profession Act* should the government accept and implement this recommendation of the Special Committee.

There is no formal procedure in place for making reply submissions to the Report of the Special Committee. Should the government proceed with implementing any of the recommendations made by the Special Committee by amending FIPPA, there may be further consultation with interested parties.

Report of the Special Committee to Review the Freedom of Information and Protection of Privacy Act

LEGISLATIVE ASSEMBLY
PROVINCE OF BRITISH COLUMBIA

MAY 2016

May 11, 2016

To the Honourable
Legislative Assembly of the
Province of British Columbia

Honourable Members:

I have the honour to present herewith the Report of the Special Committee to Review the *Freedom of Information and Protection of Privacy Act*.

The Report covers the work of the Committee in the Fourth and Fifth Sessions of the 40th Parliament and was approved unanimously by the Committee.

Respectfully submitted on behalf of the Committee,

Don McRae, MLA
Chair

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Composition of the Committee

Members

Don McRae, MLA	Chair	Comox Valley
Doug Routley, MLA	Deputy Chair	Nanaimo-North Cowichan
Kathy Corrigan, MLA		Burnaby-Deer Lake
David Eby, MLA		Vancouver-Point Grey
Eric Foster, MLA		Vernon-Monashee
Sam Sullivan, MLA		Vancouver-False Creek
Jackie Tegart, MLA		Fraser-Nicola
John Yap, MLA		Richmond-Steveston

Committee Staff

Susan Sourial, Clerk Assistant, Committees and Interparliamentary Relations

Helen Morrison, Committee Research Analyst

Terms of Reference

On February 17, 2016,[1] the Legislative Assembly agreed that a Special Committee be appointed to review the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 pursuant to section 80 of that Act, and that the Special Committee so appointed shall have the powers of a Select Standing Committee and is also empowered:

(a) to appoint of their number one or more subcommittees and to refer to such subcommittees any of the matters referred to the committee and to delegate to the subcommittee all or any of its powers except the power to report directly to the House;

(b) to sit during a period in which the House is adjourned, during the recess after prorogation until the next following Session and during any sitting of the House;

(c) to adjourn from place to place as may be convenient;

(d) to conduct public consultations by any means the committee considers appropriate, including but not limited to public meetings and electronic means; and

(e) to retain personnel as required to assist the committee;

and shall submit a report, including any recommendations respecting the results of the review, to the Legislative Assembly by May 26, 2016; and shall deposit the original of its reports with the Clerk of the Legislative Assembly during a period of adjournment and upon resumption of the sittings of the House, the Chair shall present all reports to the Legislative Assembly.

[1] The Legislative Assembly originally adopted the Committee's Terms of Reference on May 27, 2015, which were renewed on February 17, 2016, for the Fifth Session of the 40th Parliament.

Executive Summary

In May 2015, the Legislative Assembly established a special committee to conduct the fourth statutory review of the *Freedom of Information and Protection of Privacy Act* ("FIPPA") as required by s. 80 of FIPPA. The Special Committee to Review the *Freedom of Information and Protection of Privacy Act* ("the Committee") was briefed by government and the Information and Privacy Commissioner for British Columbia and launched a public consultation process. The Committee heard 24 oral presentations and received 169 written submissions.

The Committee agreed with many of the submissions that, overall, FIPPA is a leading model, both in Canada and internationally, for access to information rights and the protection of informational privacy. The Committee also recognized that specific reforms are needed to address concerns about the freedom of information process and the heightened need for stronger privacy protection in the digital age. The Committee thought that several new provisions should be added to FIPPA, many of which are already in access and privacy laws in other jurisdictions in Canada because of the need to address similar issues.

The Committee made eleven major recommendations covering the following areas:

- measures to enhance proactive disclosure, including a publication scheme;
- a duty to document key decisions and actions of public bodies;
- a cohesive and robust information management framework in government with archiving as a high priority;
- retention of the data sovereignty requirement;
- extending the application of FIPPA to cover subsidiary entities of public bodies;
- changes to timelines and the right to anonymity to support a fair, efficient, and responsive freedom of information process; and
- mandatory notification to affected individuals and reporting to the Information and Privacy Commissioner about significant privacy breaches in order to mitigate risks to privacy.

The Committee made 28 other recommendations in response to submissions received during its consultation process, including with respect to access, privacy, oversight of the Information and Privacy Commissioner, and enforcement. Principal among these are proposed amendments to FIPPA that would:

- require public bodies to have a privacy management program;

- expand the oversight powers of the Information and Privacy Commissioner to include investigations of the destruction of documents contrary to information management rules;
- make the unauthorized destruction of documents with the intention to evade access rights under FIPPA an offence under FIPPA; and
- make the unauthorized collection, use, and disclosure of personal information an offence under FIPPA.

The Committee also recommended that government enact new stand-alone health information privacy legislation.

The Statutory Framework

Modern democracies around the world have public sector access to information and privacy laws. They reflect fundamental democratic values, including openness, transparency, and accountability as well as informational privacy. In Canada, rights created by access to information and privacy laws have been recognized by the courts as quasi-constitutional in nature.

British Columbia's *Freedom of Information and Protection of Privacy Act* ("FIPPA") was passed unanimously by the Legislative Assembly in 1992. Access provisions in Part 2 give information rights to individuals and require public bodies to respond to their requests for information. Protection of privacy measures in Part 3 impose limits on the collection, use, and disclosure of personal information by public bodies and require data security. Parts 4 and 5 of the Act set out an oversight framework that includes the appointment of an Information and Privacy Commissioner as an independent statutory officer of the Legislature with the authority to monitor the administration of FIPPA.

FIPPA applies to some 2,900 public bodies in British Columbia, including ministries, Crown corporations, health authorities, professional regulatory bodies, school boards, municipalities, universities, and municipal police boards.

Pursuant to s. 80 of FIPPA, a special committee of the Legislative Assembly must undertake a comprehensive statutory review of FIPPA at least once every six years, and submit a report to the Legislative Assembly within one year. Previous statutory reviews were conducted in 1998-99, 2004, and 2009-10.

On May 27, 2015, the Legislative Assembly established the Special Committee to Review the *Freedom of Information and Protection of Privacy Act* to conduct the fourth statutory review of FIPPA, and to submit a report to the Legislative Assembly by May 26, 2016. The Committee was re-activated in the Fifth Session of the 40th Parliament on February 17, 2016.

Developments since the 2009-10 Statutory Review

2011 Amendments to FIPPA (Bill 3)

The *Freedom of Information and Protection of Privacy Amendment Act, 2011* (Bill 3) was passed by the Legislative Assembly in October 2011. Among other things, it authorized greater data sharing, including for the purposes of issuance of the BC Services Card, for planning or evaluating government programs, and for common or integrated programs or activities. It expanded oversight by the Information and Privacy Commissioner through mandatory review of privacy impact assessments by her office with respect to common or integrated programs and data-linking initiatives and consultations on an information-sharing code of practice and data linking regulations. The Bill also included new measures in relation to proactive disclosure.

Several amendments recommended by the previous statutory review committee in relation to both access and privacy were implemented. These include a requirement that public bodies provide electronic copies of records to applicants where the records can reasonably be reproduced in electronic form, making the death of an individual for over 20 years a relevant consideration in a determination as to whether disclosure would be an unreasonable invasion of privacy, and allowing an individual to consent to the collection, use, and disclosure of their personal information by a public body.

Access to Information in Government

Government receives 8,000 to 10,000 access requests per year. The cost to government of processing these requests in 2015/16 was estimated at $20 million. This included direct costs to support the operations of government's centralized Information Access Office (an $8 million budget allocation) and indirect costs of processing access requests across central agencies and ministries (an estimated $12 million). The cost to process an average request in 2015/16 was $2,250. In addition, the 2015/16 budget of the Office of the Information and Privacy Commissioner (excluding lobbyist registration) was $5 million.

In a December 16, 2015 statement, government announced that responsibility within government for the Chief Records Officer and information access, policy and operations was being transferred from the Minister of Technology, Innovation and Citizens' Services to the Minister of Finance, and that the transfer would "provide corporate oversight and guidance to all ministries and … begin work to develop service enhancements aimed at improving our duty to assist freedom of information applicants."

During the past six years, the Information and Privacy Commissioner has released five reports regarding government's responsiveness to access requests. These include evaluations of the timeliness of government's responses, as well as investigations of complaints regarding an increase in the number of instances where there were no responsive records and the unauthorized destruction of records.

In these reports, the Information and Privacy Commissioner recommended improvements to government's freedom of information ("FOI") process and amendments to FIPPA. The recommendations include specific measures that would assist applicants and facilitate greater responsiveness, routine proactive disclosure of calendars of senior executives, training for government employees, a duty to document within FIPPA, and independent oversight of information management requirements.

Government's Open Government Initiative

In 2011, government announced an open government (or proactive disclosure) initiative with the following three components: open information, a disclosure log, and open data.

Under the open information policy, travel expenses of ministers and deputy ministers are posted on government's Open Information website one month after the expenses are claimed. Separate amounts are shown for in-province flights, other in-province travel, out-of-province travel, out-of-country travel, monthly total, and fiscal year-to-date total. The information can be downloaded in PDF format.

Other documents that have been posted on the Open Information website include documents related to the Review of the Draft Multicultural Strategic Outreach Plan which were posted in June 2013.

Government's disclosure log can be accessed through the Open Information website by clicking on "Find Information Releases." With some exceptions, government's responses to access requests are posted together with a summary of the applicant's request and its response letter. Among the exceptions are records that contain personal information.

In terms of open data, government's DataBC program is responsible for publishing dataset information from ministries on a DataBC website. There are currently over 2,000 datasets on the DataBC site. Ministries are responsible for de-identification and privacy assessments of their data before submitting it as open data. Users can search the data by ministry or by subject matter.

Privacy Breaches

Privacy breaches in today's digital environments have the potential to be much more far-reaching and damaging than in the paper-based world of what is practically a bygone era. Public bodies are storing massive amounts of data in mega databases that are vulnerable to hackers, snooping, and other unauthorized disclosures. Portable storage devices for data can be easily lost or stolen. For these reasons, compliance with privacy protective obligations under FIPPA is becoming increasingly important. Compliance challenges are also greater given that the vast quantities of data are being collected in an environment of rapidly evolving technology, new security threats and risks, and high employee turnover rates.

Since the last statutory review, there have been a number of significant privacy breaches within the public sector. The following examples are illustrative of their nature and scope:

- the loss of a portable hard drive containing the personal information of 3.4 million British Columbia and Yukon teachers and students;
- snooping of the personal information of 112 individuals within an electronic health record system;
- personal information on portable storage devices disclosed externally without proper authority to a contracted service provider and researchers;
- the theft of a portable storage device containing personal identity and financial information of almost 12,000 current and former employees; and
- data crossover of personal identity and financial information in customer accounts on an online gaming platform.

Among the lessons learned from these occurrences is the critical importance of public bodies having policies and procedures in place, that are up to date and well understood by every employee, on how to prevent and mitigate privacy breaches, when to notify affected individuals, and how to do so appropriately. British Columbians expect public bodies to have a strong commitment to, and a proper investment in, privacy protection throughout every level of the organization. Preventable privacy breaches are symptomatic of a failure on the part of a public body to guard personal information adequately.

Recent Legislative Reviews in Other Canadian Jurisdictions

Three reports on the results of reviews of other access and privacy laws in Canada were published in 2015. They are the report of an independent statutory review committee in

Newfoundland and Labrador, a special report of the Information Commissioner of Canada, and a position paper of the Government of Quebec.

Newfoundland and Labrador Review (2014-15)

A committee was appointed by the Premier of Newfoundland and Labrador in March 2014 to conduct an independent statutory review of the Newfoundland and Labrador *Access to Information and Protection of Privacy Act* (ATIPPA). This review was conducted two years ahead of the mandatory 5-year review because of widely expressed concern about amendments made to ATIPPA in 2012 (Bill 29) which resulted in a lack of confidence in the integrity of the access to information system.

The three members of the 2014 Review Committee were Clyde Wells, Q.C., (lawyer, former Chief Justice, and former Premier), Jennifer Stoddart (former Privacy Commissioner of Canada), and Doug Letto (journalist). The 2014 Review Committee presented a lengthy and comprehensive report to government in March 2015. The 480-page report includes a discussion of the stature of access and privacy laws, summaries of presentations made during the public consultation process, comparative information regarding access and privacy laws elsewhere, analyses of possible reforms, and a draft bill.

The 2014 Review Committee recommended a major overhaul of ATIPPA and made 96 specific recommendations. In April 2015, a proposed new statute based on its recommendations was introduced in the House of Assembly of Newfoundland and Labrador. It received Royal Assent and came into force in June 2015 as the *Access to Information and Protection of Privacy Act, 2015*. The new law has been ranked as the best access and privacy law in Canada by the Centre for Law and Democracy (FIPPA is ranked second).

Recommendations made by the 2014 Review Committee include the following:

- Mandatory breach notification
    - Public bodies should be required to notify the Commissioner of privacy breaches and notify affected individuals where there is a risk of significant harm created by the privacy breach.
- Duty to document
    - A duty to document decisions should be added to information management legislation.

- Proactive disclosure and Open Government / Open Data
    - The definition of "records" should include datasets and other machine readable records and there should be a requirement for datasets to be released in a re-usable format.
    - Public bodies should be required to publish information on a proactive basis in accordance with a model publication scheme.
- Powers of the Information and Privacy Commissioner
    - The Office of the Information and Privacy Commissioner should remain as an ombuds oversight model.
- The Act should provide for a banking system in the Commissioner's office where there are multiple complaints by one individual.
- The Commissioner's powers should be expanded to explicitly include authority to:
    - monitor or audit compliance with the duty to document,
    - develop a model publication scheme for public bodies, and
    - review proposed bills for access and privacy implications.
- Offence provision
    - The offence provision should be strengthened, including making it an offence for a person to destroy a record, erase information in a record, and alter/falsify/conceal a record or directing another person to do so.
- Provisions that prevail over FIPPA
    - A review of legislative provisions that prevail over ATIPPA must be part of a statutory review.

Special Report of the Information Commissioner of Canada (2015)

In March 2015, the Information Commissioner of Canada, Suzanne Legault, submitted a special report to Parliament proposing a comprehensive modernization of the federal *Access to Information Act***.** The 85 recommendations contained in her 104-page report titled, *Striking the Right Balance for Transparency*, are based on the experience of her office, as well as comparisons to leading access to information provincial, territorial, and international laws. Many of the recommendations emulate existing provisions of FIPPA, particularly with respect to the oversight authority of the Information and Privacy Commissioner for British Columbia. Other proposals include establishing a duty to document; eliminating all fees related to access requests; the inclusion of a general public interest override; open information requirements; and new offence provisions.

Government of Quebec Position Paper (2015)

A 190-page position paper titled, *Government policy directions for a more transparent government, respectful of a person's right to privacy and the protection of personal information (Orientations Gouvernementales pour un Gouvernement Plus Transparent, dans le Respect du Droit à la Vie Privée et la Protection des Renseignements Personnels*), outlines the Quebec government's intention to reform access and privacy law in order to promote a culture of transparency, and strengthen access to information requirements. Among other things, government would require more documents and more information on government activities and expenditures to be made public and datasets to be released in a format that permits re-use. Government also wishes to adopt a new organizational model for the Commissioner's office where judicial rulings in response to requests for review of decisions of public bodies would be handled by another body such as the Administrative Tribunal of Quebec. The Commissioner's office would retain responsibility for monitoring, mediation, advocacy, and providing information. The National Assembly of Quebec's Committee on Institutions held general consultations and public hearings on the position paper in the fall of 2015.

The Consultation Process

The Committee met on May 28, 2015 and July 16, 2015 to plan and organize its work. The Committee agreed to request initial briefings from government and the Information and Privacy Commissioner for British Columbia on the history and administration of FIPPA, before launching public consultations on the effectiveness of FIPPA.

Initial Briefings

Ministry of Technology, Innovation and Citizens' Services

On July 16, 2015, the Ministry of Technology, Innovation and Citizens' Services provided the Committee with an overview of government's activities with respect to the application of FIPPA.

The Ministry provided the following statistical information regarding access requests to government:

- government receives 8,000 to 10,000 requests per year (two to three times as many requests per capita as Ontario);
- the on-time rate of government responses to requests increased to 79 percent in 2014-2015, up from 74 percent in 2013-2014;
- the percentage of no responsive records in government fell from 25 percent in 2012-2013 to 17 percent in 2014-2015;
- approximately one to two percent of all requests made to public bodies result in a request for a review by the Information and Privacy Commissioner;
- the number of general requests made to government has increased more than twofold since 2008-09, when government centralized its FOI services;
- in 2014-2015, 99 percent of all complaints received by the Office of the Information and Privacy Commissioner were resolved without hearing or inquiry;
- 70 percent of the general requests received by government over the past two years were from political parties and media applicants; and
- fees were paid by an applicant in less than two percent of requests made to government.

Government recovers only a very limited portion of the costs associated with processing access requests. BC does not have an application fee such as exists in other jurisdictions, but public bodies may charge fees for searching for records, preparing records, and for shipping (except in the case of requests from individuals for their own personal information). Fees can be waived by a public body.

The Ministry provided the Committee with a document on the disposition of the 35 recommendations made by the previous committee in 2010. The Committee was advised that 16 recommendations were addressed in the amendments made in 2011, one was addressed in an amendment to the regulation, six were fully or partly addressed through policy, seven were reviewed and no amendments were deemed necessary, one will be implemented when a proposed amendment receives approval to proceed, and four remain under consideration.

Information and Privacy Commissioner

In her presentation to the Committee on July 21, 2015, the Information and Privacy Commissioner discussed FIPPA in the global context, and external trends affecting access and privacy.

She noted that access to information laws exist in over 100 countries, and 109 jurisdictions have privacy or data protection laws. External trends include the rapid acceleration in the use of technology and law reform in the areas of accountability and effective oversight. With respect to the use of technology, the Commissioner highlighted its impact on the health sector, and submitted that because health information is increasingly part of an integrated system that operates across the public and the private sectors, specific rules are needed for personal health information.

In terms of law reform and accountability, the Commissioner outlined elements of a framework that would include privacy training, privacy policies, transparency reporting for disclosures to law enforcement, audit controls to monitor access, data breach response plans, and mandatory breach notification. The Commissioner also applied the principle of accountability to access to information and said that it means proactive disclosure, a duty to document key actions and decisions of government, proper records management and archiving regimes, and ensuring that information is not deleted or destroyed in an unauthorized manner. New measures in relation to effective oversight could include having legislative authority to ensure proper information management systems are in place and providing administrative penalties and sanctions for deliberate destruction of records.

The Commissioner identified trust, transparency, and accountability as values that should continue to underpin any recommended changes the Committee may make. In the Commissioner's view, the current law is a solid framework.

The Commissioner was asked about the delay in implementation of a previous recommendation made in the third statutory review regarding the application of FIPPA to subsidiary corporations of educational bodies. She expressed concern about this accountability gap in FIPPA, and advised that she has written to the responsible ministers twice asking for an update on government's consultation process in relation to the recommendation. In response to Members' questions about possible barriers to access to data for health research, the Commissioner indicated that she has proposed a secure research platform so that health information may be accessed more readily by public interest researchers.

Briefings on the Loukidelis Report

On March 16, 2016, the Committee received briefings from officials in the Ministry of Finance and the Information and Privacy Commissioner on government's response to recommendations made to government in December 2015 by David Loukidelis, Q.C.,(former Information and Privacy Commissioner), regarding implementation of Investigation Report F15-03.

Investigation Report F15-03, titled *Access Denied: Record Retention Practices of the Government of British Columbia*, was released by the Information and Privacy Commissioner in October 2015. In the report, the Information and Privacy Commissioner made findings in relation to three specific complaint investigations involving political staff in three executive branch offices and recommended amendments to FIPPA, including adding a duty to document and independent oversight of government information management.

In his report, Mr. Loukidelis made 27 recommendations to government for reform and improvement of its information management practices. These include improvements to the FOI process, measures to enhance training for political staff in ministers' offices and staff in the Premier's office, updating government's transitory records policy, ensuring early compliance with the new *Information Management Act*, mandatory training for public servants on records management, and legislative amendments for a duty to document and the unauthorized destruction of records.

In her presentation to the Committee, government's Chief Records Officer indicated that government is taking action on all 27 recommendations in the Loukidelis report. It is

revitalizing the service culture in regard to FOI processes in accordance with the following key principles: transparency, accountability, subject matter expertise, timeliness, fairness, and improved service orientation. Specific commitments include improving timeliness in responding to access requests, reducing the number of "no records" responses, and advancing the duty to assist. Government is considering significant changes to FOI processes in minister's offices, including designating a contact within each deputy minister's office who will be responsible for coordinating and overseeing searches for records and for supporting records management practices. Government has a compliance program that includes mandatory training for all public servants. It is emphasizing duty to document principles in updating records management policies.

In her presentation, the Information and Privacy Commissioner stated that the Loukidelis report provides a clear path to implementing key aspects of her recommendations in Investigation Report F15-03. These include recommendations to create a duty to document, independent oversight over the unauthorized destruction of records, and an offence for the destruction of records.

Privacy and Access Conference

The Chair and Deputy Chair attended a privacy and access conference hosted by the Information and Privacy Commissioner, titled *Privacy and Access 20/20: The Future of Privacy*, from November 12 to 13, 2015, in Vancouver. Conference sessions focused on emerging privacy issues and the nature of the discourse among regulators, the public sector, organizations, and privacy experts about the risks to privacy they present and how they should be addressed. Many areas of concern raised during the Committee's public consultations were discussed at the conference, including health privacy, big data, and online digital identities. A final session on the future of privacy highlighted the need to ensure that the Committee's recommendations are forward-looking, and that they remain relevant in the face of rapidly evolving technology.

Public Consultation

On July 25, 2015, the Committee issued a province-wide media release announcing that the Committee was conducting a public consultation process as part of its review of FIPPA and inviting oral presentations and written submissions. A Committee webpage was created with information on how to participate in the public consultations. Participants in previous reviews and experts were contacted to invite them to make submissions. Ads were placed in newspapers across the province in September 2015 inviting individual British Columbians to participate.

The Committee held public hearings in Vancouver and Victoria on October 16, 2015, November 9, 2015, and November 18, 2015, with presentations from a total of 24 public bodies, advocacy groups, stakeholders, and individual citizens. A further 169 written submissions were received. The names of the 193 individuals and organizations that presented or provided a written submission are listed in Appendix A.

On March 8, 2016, the Information and Privacy Commissioner provided the Committee with a written response to recommendations the Committee had received during its consultations.

During its public consultation process, the Committee received many thoughtful and insightful recommendations to modernize and improve the effectiveness of FIPPA. Some of these came from individuals and organizations who had concerns with how public bodies fulfilled, or failed to fulfill, their obligations to respond to access requests. The Committee also heard from public bodies who were experiencing difficulties in responding to access requests and/or in complying with the privacy protective provisions of FIPPA. Some submissions reflected different perspectives on whether FIPPA is achieving its public policy goals. A number of submissions were prompted by recommendations in the Information and Privacy Commissioner's October 2015 investigation report (Investigation Report F15-03).

Members of the Committee wish to thank all those who participated in its consultation process. The experiences, expertise, and advice shared with the Committee were invaluable and greatly assisted the Committee in its work. The Committee was impressed with the quality and range of recommendations it was asked to consider, and is very grateful to have had that input as a foundation for its deliberations and recommendations.

The Committee undertook deliberations respecting its statutory review of FIPPA in March, April, and May 2016. On May 3, 2016, the Committee adopted its report.

Meeting Schedule

May 28, 2015	Organization meeting
July 16, 2015	Briefing and Planning
July 21, 2015	Briefing
October 16, 2015	Public hearing, Vancouver
November 9, 2015	Public hearing, Vancouver

November 18, 2015	Public hearing, Victoria
February 24, 2016	Organization meeting
March 2, 2016	Deliberations
March 10, 2016	Deliberations
March 16, 2016	Briefing
March 24, 2016	Deliberations
April 5, 2016	Deliberations
April 13, 2016	Deliberations
April 21, 2016	Deliberations
April 27, 2016	Deliberations
May 3, 2016	Adoption of Report

Conclusions and Recommendations

Key Principles

To guide its deliberations, the Committee adopted the following key principles:

- The routine proactive disclosure of records supports the underlying principles and objectives of FIPPA, namely openness, transparency, and accountability.
- Solid information management practices are essential for good governance and foundational to the right of citizens to access public sector information.
- The personal information of British Columbians must continue to be protected in the face of technological change.
- FIPPA should apply broadly to the whole of the public sector.
- The FOI process should be user-friendly, fair, efficient, and responsive.
- Citizens must be protected from unauthorized disclosures of their personal information.

Main Findings

The Committee's main findings are based on the presentations and submissions the Committee received during its public consultation process. They are organized under several broad themes:

- The Committee agreed that proactive disclosure is preferable to the FOI process because it avoids the delays and costs involved in making and responding to access requests. It promotes openness and transparency, keeps the public informed about the decisions and actions of public bodies, and enhances public trust and confidence in the public sector.
- The Committee considered that a duty to document and proper archiving are critical aspects of information management. They are needed for good governance, openness, and transparency. There should be legal and policy requirements within public bodies with respect to each.
- The Committee concluded that data sovereignty is important in order for personal information to be properly protected under Canadian law. While the Committee recognized that public bodies may wish to take advantage of the latest advances in technology, including cloud-based solutions, those solutions are becoming

increasingly available in Canada and they should be relied upon exclusively in order to protect the personal information of British Columbians.

- The Committee maintained that any board, committee, commission, panel, agency or corporation that is created or owned by a public body, and all the members or officers of which are appointed or chosen by or under the authority of that public body, should be subject to FIPPA.
- The FOI process is functioning fairly well but the Committee heard concerns with respect to delays in receiving responses to access requests. The Committee thought that the FOI process could be improved by reducing the timelines in which public bodies must respond to access requests and by protecting the anonymity of applicants.
- The Committee accepted that mandatory breach notification and reporting is best practice, and is in the public interest. It helps to mitigate the risks to British Columbians in the event of a privacy breach, and prevent future ones from occurring.

Major Recommendations

The Committee identified the following issues as being significant in the context of its review:

- Proactive disclosure;
- Duty to document;
- Information management in government;
- Data sovereignty;
- The application of FIPPA to subsidiary corporations and other entities;
- The FOI process, including timelines to respond to access requests, and anonymity of applicants; and
- Mandatory breach notification.

Major Recommendations

Proactive Disclosure (Open Government)

The process of making and responding to an access request can be costly and time-consuming for both individuals and public bodies. Right to know advocates prefer open government initiatives where information is pushed out on a proactive basis, in a timely manner, and as a matter of course, rather than only in response to an access request. The Committee received a number of recommendations with respect to proactive disclosure requirements in FIPPA.

Laura Millar, an information, records and archives consultant, made the case for a greater emphasis on proactive disclosure in her testimony before the Committee on November 9, 2015:

> Why not routinely make available as much evidence as possible rather than wait for the public to seek specific records through a limited routine-release policy and an increasingly and sometimes unnecessarily backlogged regime of access only when requested?

As she went on to state, "Open government can save time and money as well as improve trust in government if the processes for creating records in the first place are designed to support both accountability and access."

The Committee believes all public bodies should view their information responsibilities in that light. Open and easy access to records and archives should be the norm. In principle, public bodies should be proactively disclosing records whenever disclosure is in the public interest. To the extent possible, documents should be created and structured in such a way that they can be proactively released, either in whole or in part, on a routine basis. Records for proactive disclosure should include datasets and other machine readable records and there should be a requirement for datasets to be released in a re-usable format.

Strengthen Public Interest Disclosure (s. 25)

Section 25 of FIPPA requires public bodies to disclose to the public, to an affected group of people, or to an applicant, information about a risk of significant harm to the environment, or to the health or safety of the public or a group of people or information the disclosure of which is, for any other reason, clearly in the public interest.

This disclosure is mandatory and overrides the ability of a public body to withhold information based on exceptions from disclosure that might otherwise apply. This public interest override provision has been interpreted to require some degree of temporal urgency to the risk because of the requirement to disclose the information "without delay."

The BC Freedom of Information and Privacy Association and Stanley Tromp advocated removing the requirement of temporal urgency. The BC Civil Liberties Association suggested that a clarifying amendment should be inserted to the effect that the disclosure obligation does not only pertain to situations of emergency, but to any situation in which the disclosure of the information is, for any reason, clearly in the public interest.

The Environmental Law Centre of the University of Victoria proposed a number of amendments that would strengthen the public interest disclosure requirement in s. 25 of FIPPA. They are as follows:

(a) Explicitly require public bodies to proactively disclose information whenever a disinterested and reasonable observer would conclude that disclosure is in the public interest and include two more categories of public interest information (information about a topic inviting public attention, or about which the public has a substantial concern, or that promotes government accountability);

(b) Require proactive disclosure of specific categories and classes of records;

(c) Require the proactive disclosure of environmental information; and

(d) Require that proactively released information be posted online.

The Environmental Law Centre also suggested that government consider making certain policy information a category of records that must be proactively disclosed and permitting the minister to prescribe additional categories or records of information that must be proactively disclosed.

The Committee considered the recommendation made with respect to s. 25 by the previous statutory review committee in 2010. The recommendation was to review s. 25(1) in light of the Supreme Court of Canada decision in *Grant* v. *Torstar Corp* [2009] 3 SCR. In that 2009 defamation case, the Supreme Court held that the law of defamation should be modified to recognize a defense of responsible communication on matters of public interest. Chief Justice McLachlin, writing for the majority, stated that for a given subject matter to be considered as being in the public interest, "It is enough that some segment of the community would have a genuine interest in receiving information on the subject."

The Committee felt that this broader interpretation of the public interest may not be appropriate in terms of the public interest override in s. 25(1). It is, however, an appropriate standard in terms of proactive disclosure generally where exceptions to disclosure could be applied when necessary for good governance and for the protection of personal information.

The Committee concluded that it would be in the public interest to remove the requirement of temporal urgency in s. 25 to require more public interest disclosures. Public bodies should be required to proactively disclose any information about a significant risk of harm to the environment or health or safety, even in non-urgent situations.

Expand Proactive Disclosure Requirements (ss. 13, 71 and 71.1)

Section 71 of FIPPA requires public bodies to establish categories of records in their custody or control that must be made available to the public on a proactive basis. With limited exceptions, a category of records must not contain personal information. Section 71.1 of FIPPA permits the minister responsible for FIPPA to establish categories of records that are in the custody or control of ministries.

The Information and Privacy Commissioner recommended that public bodies and ministries be required to publish a list of the categories of records they establish under this provision, with links to the relevant information or records. This would achieve greater transparency in the implementation of ss. 71 and 71.1.

The Environmental Law Centre of the University of Victoria had a number of recommendations in relation to categories of records. It suggested establishing a category for environmental compliance orders, authorizations, convictions, contraventions, penalties and assessments; environmental quality reports; inspection reports; and penalties under all administrative schemes; contracts over $10,000; final audit reports; and budget and expenditure information. It also submitted that s. 71 should be amended so that it more closely matches the publication scheme requirement in the UK, and requires that the lists be produced and posted within a legislated timeframe.

Both the Canadian Centre for Policy Alternatives and the Canadian Union of Public Employees ("CUPE") BC Division recommended the proactive disclosure of calendar information because of the high volume of requests for it. They endorsed a recommendation previously made by the Information and Privacy Commissioner regarding this in a 2014 investigation report about the timeliness of government's responses to access requests. Their position is that government should develop a system to proactively disclose calendar information of ministers and senior executives.

The Regional District of Kootenay thought that there should be a list of classes of information that all public bodies should proactively disclose to ensure consistency. The City of Surrey recommended defining "proactively disclose" to mean posting on the website of the public body.

Both the Environmental Law Centre and CUPE BC Division maintained that FIPPA should not only mandate disclosure but proactive disclosure of the types of records enumerated in s. 13(2)(a)to (n) of FIPPA. That section mandates the disclosure of certain types of records, including factual material, a public opinion poll, a statistical survey, and a final audit.

In terms of proactive disclosure, government stated in its written submission that the minister has not officially issued a direction under s. 71.1 of FIPPA but that there are categories of government information currently designated for proactive disclosure by policy. Government acknowledged that transparency could be enhanced by formalizing existing proactive releases with a minister's designation and advised that as government re-initiates its proactive disclosure efforts, and designates new categories of information for proactive disclosure the Committee can expect to see the minister use their direction-making authority to formalize the requirement to release information on a proactive basis. The directions will be published on government's Open Information site.

In her presentation to the Committee on March 16, 2016, the Chief Records Officer advised that government is considering a number of options in terms of proactive release, including purchase card information; deputy ministers' and ministers' calendars; government contract information; and direct-award summaries. A deputy ministers committee is also considering other opportunities for open government.

Two previous statutory review committees made the following recommendation in relation to proactive disclosure and s. 13(2):

> Amend section 13(2) to require the head of a public body to release on a routine and timely basis the information listed in paragraphs (a) to (n) to the public.

Government advised the Committee during its review that it was addressing this recommendation through a change to its policy and procedures manual and to its FOI training to make sure that public bodies understand that exceptions to disclosure would still need to be applied.

The Committee was not convinced that this is the best approach. A mandated publication scheme, with the records listed in s. 13(2)(a) to (n) as a starting point, should be added to FIPPA in order to effect a cultural shift. Proactive disclosure on websites in accordance with a

standard publication scheme should be prioritized as the principal mechanism by which public bodies provide access to information. The Information and Privacy Commissioner should be consulted with respect to the type of records that should be included in the publication scheme.

Members were also in favour of government disclosing calendar information of ministers and senior officials because of the volume of access requests for that information, and previous recommendations made by the Information and Privacy Commissioner in relation to calendar information.

Recommendation

The Committee recommends to the Legislative Assembly that the provincial government:

1. Amend FIPPA and initiate proactive disclosure strategies that reflect the principle that information that is in the public interest should be proactively disclosed, subject to certain limited and discretionary exceptions that are necessary for good governance and the protection of personal information. Among other things, this could be accomplished by:

    - strengthening s. 25(1) to remove the requirement of temporal urgency;
    - establishing a publication scheme that would apply to all public bodies, that includes mandatory proactive disclosure of those records listed in s. 13(2)(a) to (n); and
    - developing a system within government to proactively disclose the calendar information of ministers and other senior officials that would be disclosed in response to an access request.

Duty to Document

The "duty to document" was raised by both government and the Information and Privacy Commissioner in their submissions to the Committee. It was also a recommendation made by the Information and Privacy Commissioner in her October 22, 2015 investigation report *Access Denied: Record Retention and Disposal Practices of the Government of British Columbia* (Investigation Report F15-03).

Recommendation 11 in Investigation Report F15-03 reads as follows:

> Government should create a legislative duty to document within FIPPA as a clear indication that it does not endorse "oral government" and that it is committed to be accountable to citizens by creating an accurate record of its key decisions and actions.

In her November 18, 2015 written submission to the Committee, the Information and Privacy Commissioner stated that in investigation reports of her office, including Investigation Report F15-03, she has recommended that government adopt a duty to document to demonstrate its commitment to public accountability, in order to preserve the historical legacy of government decisions, and as a key records management component of proactive disclosure programs.

The duty to document was also recommended in a number of other submissions to the Committee. The BC Freedom of Information and Privacy Association, along with other public interest advocacy organizations, unions, and individuals recommended that a duty to document be added to FIPPA so that there are records of decisions and actions of public bodies that may be released in response to access requests.

In his December 2015 report to government, Mr. Loukidelis encouraged government to consider the duty to document after a period of careful study. He suggested that government adopt a risk-based approach, with the nature and significance of decisions, actions, and transactions being used to determine which records have to be created and in what manner.

In its submission to the Committee, the Canadian Bar Association agreed that the issue merits careful study as well as consultations prior to being implemented within government and in public bodies. Questions that would need to be answered include whether the duty should be embedded in legislation and/or policy that deals with information management more generally, and what are the most appropriate consequences for non-compliance.

Submissions to the Committee stressed that solid information management practices are the foundation for access to information. As stated by the Regional District of Kootenay in its submission, "Complete and timely responses to freedom of information requests are

dependent on proper records management practices." The creation of a record is the first critical piece in the capture of information. As the BC Freedom of Information and Privacy Association said in its submission, "There can be no public access to records if records are not created." Records must be created, in the format requested and in machine-readable format, retained, and be retrievable in order for public bodies to be in a position to respond appropriately to access requests.

While information management is essential to the exercise of access rights, it is also essential for a number of other reasons. In his report, Mr. Loukidelis explained the linkage as follows:

> …while information management and freedom of information share common ground they are not the same thing. Good information management rules and practices can foster and support openness and accountability through freedom of information laws, but freedom of information is not – and should not be – the sole aims of records and information management. Put another way, while good records management laws and practices can enhance the functioning of freedom of information laws, that is not, and should not be the sole objective of records and information management.

Records and information laws, policies and practices serve a variety of other important public interest objectives. These include ensuring that the administration of public affairs is in accordance with the law, enhancing the quality and efficiency of public administration, supporting prudent operation of institutions, protecting the legal interests of institutions and the legal rights of citizens, and preserving the historical record. While accountability, an objective of freedom of information, is linked with many of these public interest objectives, accountability does not exhaust the public interest in good records and information management.

Later in his report, he enumerated the following significant risks raised by a failure to keep adequate records:

1. Diminishment or elimination of accountability of elected or appointed officials for their actions and decisions

2. Reduced openness and transparency of government activities, notably through freedom of information requests

3. Harm to sound management and administration of government due to failure to document processes, deliberations and actions (the risk of unrecorded or lost corporate knowledge, experience and learning from mistakes and successes)

4. Litigation risk flowing from government not being able to rely on proper documentation to demonstrate lawful actions and decisions, unnecessarily exposing it to damages and judicial censure

5. Government not being able to rely on proper documentation in response to internal or external audits, exposing government to censure by auditors

6. Loss to the historical record because documents do not exist that have archival and historical importance (with links to the immediately preceding risk)

7. Loss of public confidence in government over time due to the perception that the absence of documentation reflects a deliberate tactic to hide, among other things, wrongdoing (including corruption or favouritism)

Thus, solid information management is not only foundational to freedom of information, but also to sound public administration within a democratic system of government.

There are existing policy and legislative requirements regarding recordkeeping within government. Pursuant to section 12.3.3, Part III of the Core Policy and Procedures Manual, government policy is to create and retain a full and accurate record documenting decisions and actions. Government provided the Committee with a document that sets out provisions in 419 different statutes that contain at least one authority to create a record. For example, the *Budget Transparency and Accountability Act* requires the preparation of the main estimates for a fiscal year and specifies the information they must include; the *Mines Act* requires the Chief Inspector to publish an annual report; and the *Regulatory Reporting Act* requires the minister to publish a report that includes information required by regulations. Many of the statutes listed in the document do not impose obligations in relation to record keeping within government, but rather within municipalities, professional regulatory bodies, or strata corporations.

It would appear that these provisions requiring the creation of specific types of records, while important, do not amount to a duty to document. Although they may require certain reports or other documentation to be prepared for certain purposes, and in most cases, made publicly available, they do not impose a general obligation to create a record of key government decisions or actions.

A statutory duty to document does not currently exist in Canada. It was considered during the Newfoundland and Labrador review and the independent committee recommended that government take the necessary steps to impose a duty to document, and that the proper legislation to express that duty would be the information management statute and not the access and privacy law. There are precedents for a duty to document in information

management statutes in New Zealand (the *Public Records Act*) and in New South Wales (*State Records Act*).

In her written submission, the Commissioner indicated that she would prefer that a duty to document be added to FIPPA rather than to the *Information Management Act*:

> While I have previously stated that a duty to document could be placed in information management legislation there are compelling reasons why FIPPA should contain this requirement. The IMA only applies to ministries and designated government agencies whereas FIPPA applies to all public bodies. Further, there is an integral connection between the duty to document and access rights. Last, FIPPA contains the oversight framework that is needed to ensure that the duty to create and retain records has the appropriate oversight.

In its written submission to the Committee dated March 16, 2016, government said that it is considering the implications of adding a broadly-stated, legislative "duty to document" in addition to the existing policy requirements and other legislative requirements to create records. In its view, given the direction other jurisdictions in Canada and globally have taken around implementing a "duty to document," FIPPA may not be the appropriate legislation in which to add such a duty. It may be more appropriate and consistent to add this duty to information management legislation. Government's position is to "consider adding a broadly-worded, legislated "duty to document" to the *Information Management Act*, with the details to be implemented through policy."

British Columbia's new *Information Management Act* applies to ministries, a government agency designated as a government body by regulation and the courts. It does not apply to local governments. A "government agency" is defined as follows:

> "government agency" means an association board, commission, corporation or other body, whether incorporated or unincorporated, if
>
> (a) the body is an agent of the government,
>
> (b) in the case of a corporation with issued voting shares, the government owns directly or indirectly, more than 50% of the issued voting shares of the corporation, or
>
> (c) a majority of the members of the body or of its board of directors or board of management are one or both of the following:

i. appointed by the Lieutenant Governor in Council, by a minister or by an Act

ii. ministers or public officers acting as minister or public officers.

Members discussed the need for a duty to document key government actions and decisions and considered the precedents in Australia and New Zealand where it is a statutory requirement in information management law. In the Committee's view it is important that the duty be imposed on all public bodies, including local governments. It therefore accepted the recommendation of the Information and Privacy Commissioner that the duty to document should be added to FIPPA, rather than to the *Information Management Act*, because of the breadth of its coverage.

Recommendation

The Committee recommends to the Legislative Assembly that the provincial government:

2. Add a duty to document to FIPPA.

Information Management in Government

The *Information Management Act*, passed by the Legislative Assembly in May 2015, repealed and replaced an antiquated *Document Disposal Act*, and set out new rules for record keeping within government. It authorizes the Chief Records Officer to approve information schedules for the disposal and holding of government information. Government information to which an information schedule applies must be held, transferred, archived, or disposed of, in accordance with the information schedule. Government information is defined as including, among other things, information that documents a decision by a government body respecting a course of action that directly affects a person or the operations of the government body, and information that documents or supports the government body's organization, policies, procedures, transactions, or operations.

With respect to court information, the Deputy Attorney General and the Chief Judge or Chief Justice of a court may approve a court information schedule and court information must be held, transferred, archived or disposed of in accordance with the court information schedule.

The Act provides that the minister responsible may establish an information management advisory committee to advise the Chief Records Officer in relation to the approval of information schedules applying to a class of government information.

When the Chief Records Officer appeared before the Committee on March 16, 2016, she indicated that the most important thing the *Information Management Act* will do is that it will allow government to be more adaptive and more flexible, respond to new needs around information management and bring those up to date so that the public service at large has very clear direction around what records they should be developing and retaining. She also stated that government is now looking at information as a unified whole over the life cycle of records rather than in the siloed and piecemeal approach it had before.

In her presentation to the Committee, Laura Miller articulated very well what should be the overarching vision and goals for information management in government:

> My vision is that I will live in an enlightened, civilized society, one that is democratic, respectful and self-aware. For my society to be civilized, democratic, respectful and self-aware it needs a memory, a collective consciousness born out of unencumbered access to the evidence of the communications, actions and transactions of its members, from the government to the governed, from formal institutions to people on the street.

> In the society of my dreams, my government recognizes that open and easy access to records and archives – to evidence – supports democracy, transparency and accountability and helps foster a sense of personal and collective identity. My government, therefore, protects and makes available documentary evidence, information, records and archives in order to support accountability, identity and memory.

In its deliberations, the Committee affirmed Laura Millar's vision for an information management regime within government. It also saw government as moving in the right direction with its intended implementation of the new *Information Management Act*.

The Committee agreed there is a need for a cohesive and robust set of requirements that apply to the whole of government throughout the entire life-cycle of records – from a duty to document through to archiving. The Committee emphasized the importance of archiving, in particular, because it provides convenient access to historical records for researchers and institutional memory for decision-makers. Archiving is a key enabler of good and accountable government in a democratic society, and should be seen as a priority within government's information management scheme.

Recommendations

The Committee recommends to the Legislative Assembly that the provincial government:

3. Make all obligations related to the entire life-cycle of government records part of a cohesive and robust information management scheme; and

4. Ensure that archiving is a high priority.

Data Sovereignty (s. 30.1)

Section 30.1 of FIPPA requires public bodies to ensure that personal information in their custody or control is stored and accessed only in Canada unless certain exceptions apply. Those exceptions are (a) where the individual the information is about has consented to it being stored in or accessed from another jurisdiction, (b) if the personal information is stored in or accessed from another jurisdiction for the purpose of a disclosure authorized under FIPPA, or (c) if the personal information was disclosed for the purposes of a payment made to or by government or a public body.

This data sovereignty, or data residency, requirement ensures that all personal information is protected in accordance with Canadian law, and therefore not at risk of being subject to a lesser degree of privacy protection because of lower standards that may exist in other jurisdictions. One consequence of this requirement, among other things, is that it may prevent public bodies from using cloud-based solutions and other information technologies that are only available outside Canada. During its public consultation process, the Committee heard opposing views as to whether s. 30.1 should be amended to permit storage or access outside Canada under certain conditions.

A number of public bodies, including health authorities, post-secondary institutions, school districts, TransLink, the Insurance Corporation of British Columbia ("ICBC"), BCNET, and the College of Registered Nurses of BC all voiced concerns about how the existing data sovereignty requirement affected their business activities, and day to day operations.

In a joint submission, Vancouver Coastal Health Authority, Vancouver Island Health Authority, Fraser Health Authority, Northern Health Authority, and Providence Healthcare Society described challenges it presents for them, including impairing their ability to use technologies, global expertise, and data services; and negative impacts such as costs, staff and patient frustration, reduced functionality in IT systems, and having to respond to breaches.

Similarly, the Research Universities' Council of BC, speaking on behalf of the University of British Columbia, Simon Fraser University, University of Victoria, University of Northern British Columbia, Royal Roads University, and Thompson Rivers University, identified negative impacts on administrative efficiency and security, international engagement and student recruitment, online learning offerings, and academic integrity.

In essence, both health authorities and the Research Universities' Council thought s. 30.1 lacks proportionality. In their view, public bodies should be permitted to store and disclose personal information outside Canada for limited purposes and under certain conditions that would mitigate risks to privacy. The health authorities recommended amending s. 30.1 to authorize

public bodies to store and disclose personal information outside Canada when (a) it relates directly to and is necessary for a program or activity of the public body; (b) security measures proportional to the risk posed by the type(s), sensitivity, volume and location of personal information are in place; and (c) the Commissioner is provided with the privacy impact assessment for information. The Research Universities' Council recommended slightly different conditions: (a) it relates directly and is necessary for a public program or activity; (b) there is no reasonable alternative in Canada; (c) security measures are in place depending on the type of information; (d) it is impractical to obtain consent; and (e) the privacy impact assessment is shared with the Commissioner for review and comment.

The Canadian Bar Association agreed that s. 30.1 should be amended to give public bodies the discretion to store or access personal information outside Canada under limited circumstances where the benefit of doing so clearly outweighs the potential harm. The Association's position is that this would allow public bodies to perform their mandates more effectively, in the spirit of the Act, and would ensure compliance with international standards and treaty obligations.

Public advocacy organizations were not in favour of amending s. 30.1. The Canadian Centre for Policy Alternatives, the BC Civil Liberties Association, and the BC Freedom of Information and Privacy Association believe that the prohibition against storage and access outside Canada should be retained. As stated by the BC Civil Liberties Association, it provides necessary and critically important protection for the personal information of British Columbians.

In response to a query from a Committee Member at her appearance before the Committee on November 18, 2015, the Information and Privacy Commissioner indicated that she wished to see the prohibition remain as is. She said:

> The Maple Leaf constitutional protection does not follow our data when it leaves the country, whether it goes to the US and it's in the hands of the cloud provider or elsewhere. Essentially, the concerns that led the Legislature to make the data localization provision remain unchanged. When I talk to British Columbians, they tell me that their privacy is really important to them and that they don't want their sensitive personal information to be compelled to be produced under a foreign law.

In her written response to recommendations made to the Committee during its public consultation process, the Information and Privacy Commissioner responded to concerns that were raised by public bodies regarding the impacts of s. 30.1 on their operations. She stated that:

> Several submissions noted the limited options available to public bodies for cloud services hosted within Canada, but recently we have seen the market respond to the

> demand for storage in Canada. Last year Microsoft and Adobe announced they will be offering cloud-based storage and software applications within Canada and this year Amazon, the largest cloud services provider in the world, made a similar announcement. Developments like these will make it increasingly easier and more affordable for public bodies to access cloud solutions in compliance with FIPPA.

In its submission, government acknowledged the challenges that public bodies face because of the data sovereignty requirement, but maintained that retention of the provision is likely the right approach. It cited a recent decision of the European Court of Justice to invalidate the US-EU Safe Harbor Framework as an example that strengthens the case for data sovereignty in BC. Government wishes to continue to monitor changes to privacy laws in other jurisdictions, especially the European Union General Data Protection Regulations, to ensure that its approach remains harmonized and that it also monitors emerging technology solutions to ensure that the data residency requirements remain relevant and practical in a changing technical environment.

The Committee is in agreement with privacy advocates that the personal information of British Columbians should be protected in accordance with Canadian law. Should it be stored or access outside Canada, there is a risk that it could be subject to a lower standard of privacy protection. Committee Members discussed the use of encryption, tokenization, and other technological solutions to de-identify data so that it is no longer personal information, and noted that the Information and Privacy Commissioner has provided guidance to public bodies on how to deploy tokenization in such a way that it complies with the restriction in s. 30.1. The Committee also noted that s. 30.1 is not an absolute prohibition, and that public bodies may store or allow access outside Canada with the consent of the individual the information is about, if the disclosure is permitted under FIPPA, and for the purposes of a payment made to or by government or a public body.

While the Committee appreciates the concerns expressed by health authorities, universities, schools, and other public bodies regarding their inability to use new innovative technology in their operations, the Committee is not persuaded that there are no available or adequate alternatives that do not involve storage or access outside Canada. The Committee agrees with government that it should continue to monitor changes in privacy laws and in technology solutions to ensure that the provision remains harmonized and that it is relevant and practical.

Recommendation

The Committee recommends to the Legislative Assembly that the provincial government:

5. Retain the data sovereignty requirement in s. 30.1 of FIPPA.

The Application of FIPPA to Subsidiary Corporations and Other Entities

The Committee received 18 submissions from individuals and organizations advocating that FIPPA apply to subsidiary corporations and other entities that are publicly funded. In some cases, they referenced particular subsidiary corporations or entities that should be subject to FIPPA. The AMS Student Society of UBC Vancouver focused on the "corporate veil" problem at universities and school boards where it appears the public body established a wholly-owned and controlled subsidiary for the purpose of withholding records. The Ubyssey and Devin Todd specifically named wholly-owned subsidiaries of the University of British Columbia (UBC Properties Trust and/or UBC Investment Management Trust). Adam Waitzer also said that the public deserves access to documents of a privately held subsidiary of the University of British Columbia. Rob Wipond specifically named the BC Association of Chiefs of Police and the BC Association of Municipal Chiefs of Police. Owen Munro and James Smith from Langara College were of the view that student governments and student unions should be covered under FIPPA.

Other submissions set out criteria for the application of FIPPA to subsidiary entities. CUPE BC Division and the Canadian Centre for Policy Alternatives stated that:

> FIPPA should cover any board, committee, commission, panel, agency or corporation that is created, controlled or owned by a public body or group of public bodies.

The Canadian Bar Association suggested that any amendments intended to capture subsidiary agencies of public bodies should apply only to legal entities rather than boards, committee, or panels and it should not apply to corporations owned exclusively for investment purposes.

Several submissions recommended a wider application of FIPPA beyond only subsidiary entities. The Centre for Law and Democracy stated that FIPPA should apply to any organization which either receives public funding or performs a public function to the extent of that funding or function. The BC Government and Service Employees' Union expressed this concept as the need to clarify the definition of "public bodies" in order to make sure no public or government-related services, bodies, associations, or subsidiaries are beyond the reach of the legislation and its provisions.

In his presentation to the Committee on November 9, 2015, Stanley Tromp recommended amending FIPPA to state that its coverage extends to:

> any institution that is established by the Legislature or by any public agency that is publicly funded or publicly controlled, or 50 percent or more owned, or performs a

> public function is vested with public powers or has a majority of its board appointed by it.

The Information and Privacy Commissioner recommended a specific change to the wording of the definition of "public body" in FIPPA in order to extend its coverage to subsidiary entities, including corporations, panels, or agencies. This is to replicate paragraph (n) of the definition of "local government body" and add it to the definition of "public body" in Schedule 1. Paragraph (n) reads as follows:

> any board, committee, commission, panel, agency or corporation that is created or owned by a body referred to in paragraphs (a) to (m) and all the members or officers of which are appointed or chosen by or under the authority of that body.

The definition of public body in FIPPA would then read as follows:

> "public body" means
>
> (a) a ministry of the government of British Columbia,
>
> (b) an agency, board, commission, corporation, office or other body designated in, or added by regulation to, Schedule 2,
>
> (c) a local public body, or
>
> (d) any board, committee, commissioner, panel, agency or corporation that is created or owned by a body referred to in paragraphs (a) to (c) and all the members or officers of which are appointed or chosen by or under the authority of that body,
>
> but does not include
>
> (e) the office of a person who is a member or officer of the Legislative Assembly, or
>
> (f) the Court of Appeal, Supreme Court or Provincial Court.

The Commissioner's position with respect to subsidiary entities was echoed by CUPE Local 116 in its presentation to the Committee on November 9, 2015.

In her response to submissions to the Committee, the Commissioner went further and indicated that she supported the recommendation of the Centre for Law and Democracy that FIPPA be extended to cover any entity that is performing a public function:

> Apart from the subsidiary issue, there will be other cases where a question arises as to whether an entity should be considered a public body within the meaning of the Act. An entity could be created by more than one public body, or it may be a mix of public and private bodies. An entity could have members or officers that are appointed by more than one public body or represent a mix of public and private body appointments. It could also be an entity that is clearly carrying out a public function but that does not meet the definition of public body.

She suggested that this broader application could be achieved by amending s. 76.1 of FIPPA to authorize the minister to add to Schedule 2 a body that is performing a public function.

Government spoke to the application of FIPPA during its presentation to the Committee on November 18, 2015. Government advised the Committee that it intends to make the BC Association of Chiefs of Police subject to FIPPA. Government is drafting an amendment that will change the definition of a "local public body" to include a police association. This change would include the BC Association of Chiefs of Police and would allow the BC Association of Municipal Chiefs of Police to be covered if it were to become a legal entity. In response to a question from a Committee Member, government advised the Committee that government intends to extend the application of FIPPA to subsidiary corporations but that it is a complex task, and government is in the process of consulting with public bodies on developing a set of criteria on how that should be accomplished.

The previous statutory review committee recommended in its 2010 report that government expand the definition of "public body" in Schedule 1 to include any corporation that is created or owned by a public body, including an educational body.

The Committee endorsed that recommendation. It agreed that subsidiaries and other entities created or owned by public bodies should be subject to FIPPA and accepted the Commissioner's specific recommendation on how the definition of "public body" in Schedule 1 should be amended to accomplish that. The Committee did not, however, support a broader scope of application.

During their deliberations, Members also discussed whether certain specific entities should be designated as public bodies. They were in favour of government's proposed amendment that would include the BC Association of Chiefs of Police and the BC Association of Municipal Chiefs of Police as local public bodies. They noted that Providence Health Care and the First Nations Health Authority are not public bodies under FIPPA. The Committee also noted that Tsawwassen Institutions are subject to the 2009 Tsawwassen First Nation *Freedom of Information and Protection of Privacy Act*.

Recommendations

The Committee recommends to the Legislative Assembly that the provincial government:

6. Extend the application of FIPPA to any board, committee, commissioner, panel, agency or corporation that is created or owned by a public body and all the members or officers of which are appointed or chosen by or under the authority of that public body; and

7. Consider designating all publicly-funded health care organizations as public bodies under FIPPA.

The FOI Process

The access to information provisions in FIPPA give individuals the right to make an access request and mandate how public bodies respond. This is commonly known as the FOI process. The principle behind the FOI process is that information should be released unless there is a good reason not to release.

FIPPA sets out an administrative process that public bodies must follow in responding to an access request. That process includes time limits and extensions, a duty to assist, fees and fee waivers, and a complaints mechanism. Public bodies are also permitted, or in some cases required, to refuse to release certain types of information.

Some public bodies post on their websites all or some of their responses to access requests that do not contain personal information. For example, as previously discussed, government has "information releases" available on the open information page of its website. Through this mechanism, responses to access requests are made available to the public.

Time limit for responding to access requests (s. 7)

Section 7 of FIPPA requires public bodies to respond to an access request within 30 business days of receiving it. A 30 day time limit is relatively standard across Canada but "day" is defined in Schedule 1 to not include a holiday or a Saturday, resulting in a longer time limit than in most Canadian jurisdictions. The Committee heard different opinions about a timeline of 30 business days.

Several participants in the Committee's public consultation process, including the Canadian Centre for Policy Alternatives, Stanley Tromp, the Centre for Law and Democracy, CUPE BC Division, and Stephen Bohus, thought this time limit should be reduced from 30 to 20 or even 14 calendar days to ensure public bodies are responding to requests in a timely manner. CUPE BC Division pointed out that requests are very often time sensitive, dealing with current issues or those in the very recent past. It stated:

> CUPE's use of FOI requests almost always involves the need to obtain information involving matters of current or imminent public concern – this is true whether they pertain to considerations of broad community concern or very specific labour related issues. It is evident that the same would be true for community groups, academics and certainly the media.

Public bodies had other views. The Regional District of Kootenay thought the time limit should remain as 30 business days. TransLink asked that public bodies be permitted to postpone

responding to access requests when the same individual has submitted more than five access requests. The City of Surrey raised the issue of abandoned requests and suggested that a public body should be able to declare a request abandoned if the applicant fails to respond within 30 days.

In its deliberations, the Committee agreed that the FOI process should be as efficient as possible, and that individuals deserve timely responses to their access requests. It therefore concluded that the time public bodies have to respond to access requests should be reduced from 30 business days to 30 calendar days.

Time extensions (s. 10)

Section 10 of FIPPA allows a public body to extend the time for responding to an access request for up to 30 days if certain conditions are met, such as when the applicant consents to the extension. The public body may further extend that deadline with the permission of the Information and Privacy Commissioner.

The Committee received seven different submissions regarding time extensions. Most expressed concerns about delays and recommended that either the length of time should be reduced or that all extensions require the approval of the Information and Privacy Commissioner. The Canadian Centre for Policy Alternatives thought that public bodies should be required to keep applicants informed of decisions in relation to extensions. The BC Lottery Corporation was of the view that public bodies should be allowed to take an extra time extension in the event of unusual or catastrophic circumstances.

Time permitted for transferring a request (s. 11)

Section 11 of FIPPA permits a public body to transfer an access request to another public body within 20 days of receiving the request if the record is under the custody or control of the other public body. Two public interest advocacy organizations suggested changes to the 20-day transfer period. The Centre for Law and Democracy said that the 20-day period is longer than necessary. The BC Freedom of Information and Privacy Association thought that the 20-day transfer period should be eliminated because government has a centralized system for handling access requests.

In 2010, the previous statutory review committee recommended that s. 11 be amended to reduce the time allowed for file transfers to ten business days. The Committee was not prepared to make a recommendation as to the exact number of days that would be appropriate but urges government to review the timelines for extensions and transfers with a view to reducing them in order to ensure an efficient, timely, and responsive FOI process.

Recommendations

The Committee recommends to the Legislative Assembly that the provincial government:

8. Reduce the timeline in which a public body must respond to an access request from 30 business days to 30 calendar days.

9. Review other timelines established in FIPPA with a view to reducing them in order to ensure the efficiency and timeliness of the FOI process.

Protect anonymity of applicants

The Information and Privacy Commissioner recommended that public bodies be required to ensure that the name and type of applicant is only disclosed to the employee of the public body who receives the access request, subject to limited exceptions. She argued that in the absence of such a requirement, it opens the applicant to possible discrimination and appears to negatively influence response times. The BC Civil Liberties Association agreed that there should be a legislative requirement for the anonymity of requesters, as did Stanley Tromp.

In response to questions from Members as to how public bodies would be able to continue to collect statistical information about applicants, the Commissioner advised that this could be done by having the first point of contact for the public body specifically tasked with processing access requests to be responsible for those statistics without the involvement of the program area that is responsible for processing access requests.

The Information and Privacy Commissioner identified s. 12 of the Newfoundland and Labrador *Access to Information and Protection of Privacy Act* as a good precedent for such a provision. It reads as follows:

12. (1) The head of a public body shall ensure that the name and type of the applicant is disclosed only to the individual who receives the request on behalf of the public body, the coordinator, the coordinator's assistant and, where necessary, the commissioner.

(2) Subsection (1) does not apply to a request

(a) respecting personal information about the applicant; or

(b) where the name of the applicant is necessary to respond to the request and the applicant has consented to its disclosure.

(3) The disclosure of an applicant's name in a request referred to in subsection (2) shall be limited to the extent necessary to respond to the request.

(4) The limitation on disclosure under subsection (1) applies until the final response to the request is sent to the applicant.

Previous statutory review committees in 2004 and 2010, recommended such a provision:

> Amend section 4(1) to establish that an applicant who makes a formal access request has the right to anonymity throughout the entire process.

Government advised the Committee that its response to the 2010 recommendation was to address this issue through policy and training because this would accomplish the goal more directly and completely.

In its March 16, 2016 written submission, government elaborated on its position:

> Current privacy provisions in FOIPPA already protect the identities of individuals who make FOI requests, ensuring that the names of applicants are only shared on a "need to know" basis. Further protection would add little value and could limit public bodies' ability to provide the best service to applicants.
>
> To ensure that knowledgeable employees are able to assist applicants with their requests, specific criteria for the protection and provision of an applicant's identity for the purpose of processing an FOI request should continue to be governed by policy.

The Committee does not agree with government's position. The right to anonymity during the FOI process should be entrenched in legislation, as it is in the Newfoundland and Labrador statute, in order to properly protect the name and type of applicant.

Recommendation

The Committee recommends to the Legislative Assembly that the provincial government:

10. Amend s. 4(1) of FIPPA to establish that an applicant who makes a formal access request has the right to anonymity.

Mandatory Breach Notification and Reporting

Mandatory breach notification and reporting would require public bodies to notify affected individuals about an unauthorized disclosure of personal information (a "privacy breach") where there is a risk of significant harm. Public bodies would also be required to report the privacy breach to the Office of the Information and Privacy Commissioner so that the office can assist public bodies to manage the breach, address its root cause, and help to prevent future occurrences.

As defined in the 2015 federal *Digital Privacy Act*, and the 2015 Newfoundland and Labrador statute, "significant harm" may include bodily harm, humiliation, damage to reputation or relationships, loss of employment or business opportunities, financial loss, identity theft, negative effects on the credit record, and damage to or loss of property.

The Information and Privacy Commissioner submitted that FIPPA should mandate breach notification and reporting for the following reason:

> FIPPA requires public bodies to be responsible for protecting personal information against such risks as loss or unauthorized access, collection, use, disclosure, or disposal. Every public body should have breach protocols in place to uphold this responsibility. Breach notification and reporting should be an explicit requirement under FIPPA when a privacy breach occurs, because it supports individuals in taking measures to mitigate the harm that can arise from a breach, provides clarity about when to notify and report, and reduces the incidents of breaches going forward.

The Information and Privacy Commissioner recommended that the reporting framework include:

- A definition of a privacy breach: includes the loss of, unauthorized access to or unauthorized collection, use, disclosure or disposal of personal information;
- A requirement to notify individuals when their personal information is affected by a known or suspected breach, if the breach could reasonably be expected to cause significant harm to the individual;
- A requirement that a public body report to the Commissioner any breach involving personal information under the custody or control of that public body, if the breach or suspected breach could reasonably be expected to cause harm to an individual and/or involves a large number of individuals;
- A timing requirement that the process of notification and reporting must begin without unreasonable delay once a breach is discovered;

- Authority for the Commissioner to order notification to an individual affected by a breach; and
- A requirement that public bodies document privacy breaches and decisions about notification and reporting.

The new Newfoundland and Labrador *Access to Information and Privacy Act, 2015* and recent amendments to the federal *Personal Information Protection and Electronic Documents Act* (not in force) include mandatory breach notification and reporting. The Alberta *Personal Information Protection Act*, the Nunavut *Access to Information and Protection of Privacy Act*, and several health information privacy laws in other provinces also mandate breach notification and reporting.

In addition to the Information and Privacy Commissioner, four advocacy organizations, namely the BC Freedom of Information and Privacy Association, the BC Civil Liberties Association, the Canadian Bar Association, and the National Association for Information Destruction – Canada, proposed that mandatory breach notification and reporting be added to FIPPA. The BC Civil Liberties Association said that notification is the only effective means by which individuals can take steps to mitigate the harms of a breach; and reporting is needed to bring the expertise of the Office of the Information and Privacy Commissioner to bear on reducing incidents of future breaches. The Canadian Bar Association recommended adding to FIPPA a provision similar to s. 37.1 of the Alberta *Personal Information Protection Act*, and that the form and content of notices in the event of breaches should be in regulations.

One public body spoke of internal reporting mechanisms. The City of Surrey stated that it should be a requirement to notify the head of the public body and the head of the IT department of a potential privacy breach, and that the obligation to notify affected individuals should be the responsibility of the head.

In its written submission to the Committee, government indicated that comprehensive consultation should be conducted with impacted public bodies on the scope, wording and timing of any proposed amendment to FIPPA that requires the mandatory notification and reporting of privacy breaches.

In the view of the Committee, mandatory breach notification and reporting by public bodies is in the public interest. It reflects best practices that are entrenched in other privacy laws in Canada, and are being increasingly recognized internationally. Its inclusion in the statutory framework of FIPPA would help to mitigate the risks to British Columbians in the event of a privacy breach, and prevent future ones from occurring. The Committee accepts the proposed framework for mandatory breach notification as recommended by the Information and

Privacy Commissioner with the additional authority for the Information and Privacy Commissioner to order notification to the public when it is appropriate to do so.

Recommendation

The Committee recommends to the Legislative Assembly that the provincial government:

11. Add a mandatory breach notification and reporting framework to FIPPA that includes:

    - a definition of a privacy breach (includes the loss of, unauthorized access to or unauthorized collection, use, disclosure or disposal of personal information);
    - a requirement to notify individuals when their personal information is affected by a known or suspected breach, if the breach could reasonably be expected to cause significant harm to the individual;
    - a requirement that a public body report to the Commissioner any breach involving personal information under the custody or control of that public body, if the breach or suspected breach could reasonably be expected to cause harm to an individual and/or involves a large number of individuals;
    - a timing requirement that the process of notification and reporting must begin without unreasonable delay once a breach is discovered;
    - authority for the Commissioner to order notification to an individual affected by a breach or the public; and
    - a requirement that public bodies document privacy breaches and decisions about notification and reporting.

Other Recommendations

Access

Duty to Assist (s. 6)

Section 6 of FIPPA requires public bodies to make every reasonable effort to assist applicants. Sara Levine, Q.C., suggested that s. 6 be amended to require public bodies to make available basic contact information about the person responsible for receiving requests for access to information and other inquiries about access and privacy rights. She noted that there is such a requirement in BC's private sector privacy law. Pursuant to s. 4(5) of the *Personal Information Protection Act*, organizations must make the contact information of the person responsible for ensuring compliance available to the public.

The Committee discussed concerns regarding compliance within government and other public bodies with the duty to assist under FIPPA and concluded that adding this specific concrete measure as a statutory requirement would enhance the FOI process.

Recommendation

The Committee recommends to the Legislative Assembly that the provincial government:

12. Amend s. 6 of FIPPA to add a specific requirement for public bodies to make the contact information of the person responsible for ensuring compliance available to the public.

Exceptions to Access to Information

Access laws generally either require or permit public bodies to refuse to disclose certain types of information. These are known as mandatory and discretionary exceptions and reflect a balancing of access to information with the protection of other interests that would be adversely affected by disclosure of such information.

Mandatory exceptions in FIPPA include cabinet confidences, tendering or other information that may cause harm to the business interests of a third party, and personal information if the

disclosure would be an unreasonable invasion of a third party's personal privacy. Discretionary exceptions include policy advice and recommendations, legal advice subject to solicitor-client privilege, and information the disclosure of which would be harmful to law enforcement, intergovernmental relations, or the financial or economic interests of a public body.

Many participants in the Committee's public consultation process spoke to the need for changes to focus and narrow exceptions to disclosure and better serve the goal of freedom of information and accountability. Other participants thought that the exceptions should either be retained as is, or broadened to permit public bodies to withhold certain types of information in order to serve other important public policy purposes. The Committee also heard proposals to change a mandatory exception to a discretionary exception and vice versa. The diverse recommendations the Committee received with respect to exceptions to access to information are set out below together with the Committee's conclusions and recommendations.

Mandatory Exceptions

Cabinet Confidences (s. 12)

Section 12 of FIPPA prohibits the disclosure of information that would reveal the substance of deliberations of cabinet or any of its committees. This prohibition does not apply to records that have been in existence for 15 or more years.

The BC Freedom of Information and Privacy Association, the Canadian Centre for Policy Alternatives, CUPE BC Division, and Stanley Tromp submitted that the provision should be discretionary rather than mandatory. The BC Freedom of Information and Privacy Association and the Centre for Law and Democracy also submitted that the exception be shortened to records that have been in existence for ten years.

The Information and Privacy Commissioner indicated that she supports the recommendation to make the exception of cabinet confidences discretionary rather than mandatory provided that only cabinet, and not the head of a public body, is able to exercise this discretion. She noted the precedent for cabinet exercising this discretion under s. 16 in relation to information which could reasonably be expected to harm inter-governmental relations or disclose inter-governmental confidences.

In 2010, the previous statutory review committee considered whether to amend the mandatory exception in s. 12, and concluded that it was undesirable to make confidential records more accessible at this time.

Committee Members discussed whether the exception for cabinet confidences should be a discretionary exception in order to permit cabinet to disclose cabinet confidences in a case where cabinet believes that the public interest in the disclosure of the information outweighs the need to protect the cabinet confidence. For example, cabinet may wish to disclose records in order to address a public controversy regarding one of its decisions.

Committee Members noted that, while the protection of cabinet confidences is generally a mandatory exception in Canadian jurisdictions, the 2015 Newfoundland and Labrador access to information statute permits the Clerk of the province's Executive Council to disclose a record or information that would reveal the substance of deliberations of cabinet where the Clerk is satisfied that the public interest in the disclosure of the information outweighs the reason for the exception. The Committee concluded that s. 12 should be amended along these lines to permit cabinet to disclose records if it is in the public interest to do so. This amendment would allow government to recognize the overall public interest as a basis for waiving the protection of confidentiality of cabinet decisions.

Recommendation

The Committee recommends to the Legislative Assembly that the provincial government:

13. Amend s. 12 of FIPPA to permit the Cabinet Secretary to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or any of its committees where the Cabinet Secretary is satisfied that the public interest in the disclosure of the information outweighs the reason for the exception.

Disclosure Harmful to Business Interests of a Third Party (s. 21)

Section 21 of FIPPA prohibits a public body from disclosing information that would significantly harm the competitive position or interfere significantly with the negotiating position of a third party if certain conditions are met.

ICBC and BC Lottery Corporation made submissions with respect to this provision. ICBC proposed that the exception should include information that was provided in the capacity of a customer because the current three part test for financial harm in s. 21 does not adequately

protect commercial customers given not every release of their confidential information meets the financial harm test. ICBC advised that it receives access requests for information about corporate customers' insurance and vehicle registration information and argues that a business should not be exposed to disclosures of its confidential information simply because it is a customer of a public body.

BC Lottery Corporation submitted that third party business interests should be protected where the information is inaccurate or unreliable and its disclosure may unfairly damage the reputation of a business referred to in the requested records.

Committee Members were sympathetic to the concerns of ICBC and BC Lottery Corporation regarding the application of s. 21 in the context of their particular corporate activities. However, they questioned whether the concerns were so serious and widespread that they warranted amendments to FIPPA.

Disclosure Harmful to Personal Privacy (s. 22)

Section 22 of FIPPA prohibits public bodies from disclosing personal information if the disclosure would be an unreasonable invasion of a third party's personal privacy. A public body must consider all of the relevant circumstances in determining whether the disclosure constitutes an unreasonable invasion including whether the information is about a deceased person, and if so, whether the length of time the person has been deceased indicates the disclosure is not an unreasonable invasion of the deceased person's personal privacy.

Lisa Fraser, a parent, submitted that there needs to be a better balance between the rights of the recently deceased and the need for public scrutiny of the decisions of the Ministry of Children and Family Development in order to prevent deaths of youth in care.

The Committee recognized the competing public policy concerns at issue, and concluded that government should consider initiating a review of whether a parent of a child who was in care should have access to personal information about their deceased child.

Recommendation

The Committee recommends to the Legislative Assembly that the provincial government:

14. Consider initiating a review of whether a parent of a child who was in care should have access to personal information about their deceased child.

Disclosure of Information Relating to Abortion Services (s. 22.1)

Section 22.1 of FIPPA prohibits the disclosure of information relating to abortion services except information about abortion services that were received by the applicant; statistical information relating to the total number of abortion services provided in BC or a designated region; and information about a public body's policies on the provision of abortion services.

The Committee received submissions from WeNeedaLAW, United for Life Advocacy Association, the Christian Heritage Party, and individuals advocating the repeal of s. 22.1 of FIPPA. Most argued that the provision unnecessarily limits access to information regarding the expenditure of public funds on a medical procedure. It was also submitted that information related to abortion services is already protected by other exemptions and a letter from former Information and Privacy Commissioner David Loukidelis at the time the provision was added to FIPPA in 2001 was cited in support of that view. In his letter, Mr. Loukidelis objected to the provision as a subject-matter exception that was unnecessary.

The previous statutory review committee stated in its 2010 report that the majority of Committee Members did not support the call to repeal the ban on hospital abortion statistics.

During its deliberations, the Committee recognized the extreme sensitivity of abortion related information. The Committee unanimously decided not to recommend any amendments to s. 22.1.

Discretionary Exceptions

Policy Advice or Recommendations (s. 13)

Section 13 of FIPPA permits a public body to withhold information that would reveal advice or recommendations developed by or for a public body or minister. It does not apply to information in a record that has been in existence for ten or more years.

In 2004, a previous statutory review committee made the following recommendation:

> Amend section 13(1) to clarify the following:
>
> (a) "advice" and "recommendations" are similar terms often used interchangeably that set out suggested actions for acceptance or rejection during a deliberative process,
>
> (b) the "advice" or "recommendations" exception is not available for the facts upon which advised or recommended action is based; or for factual, investigative or background material; or for the assessment or analysis of such material; or for professional or technical opinions.

In 2010, the majority of members of the previous statutory review committee concluded that it was prudent to maintain the advice exception for evidence-based interpretations, analyses and recommendations and did not endorse the 2004 recommendations.

In their submissions to the Committee, the Information and Privacy Commissioner, the Canadian Centre for Policy Alternatives, the BC Civil Liberties Association, and CUPE BC Division indicated they endorse the 2004 recommendation as a necessary clarification that the exception does not extend to the facts upon which the advice or recommendation is based.

In her written submission, the Information and Privacy Commissioner advised that since the 2010 recommendation was made, "advice" and "recommendations" have been interpreted by the courts as having different meanings. This has broadened the application of s. 13 to any document compiled in the course of considering alternative options, including factual material and expert opinions. The Information and Privacy Commissioner argued this is contrary to the original intent of this provision, and essentially reiterated the 2004 recommendation as follows:

> Section 13(1) of FIPPA should be amended to clarify the following:
>
> - "advice" and "recommendations" are similar and often interchangeably used terms, rather than sweeping and separate concepts;

- "advice" or "recommendations" set out suggested actions for acceptance or rejection during a deliberative process;
- the "advice" or "recommendations" does not apply to the facts upon which the advice or recommendation is based; and
- the "advice" or "recommendations" does not apply to factual, investigative, or background materials, for the assessment or analysis of such material, or for professional or technical opinions.

The BC Freedom of Information and Privacy Association proposed narrowing the provision to include only information which recommends a decision or course of action by a public body, minister, or government. Stanley Tromp advocated adding a harms tests (i.e. the record could only be withheld if disclosing it would cause serious or significant harm to the deliberative process) and that the exception would not apply after a final decision on the matter is completed and made public.

The Canadian Centre for Policy Alternatives also suggested reducing the time limit for withholding the records from ten to five years.

Committee Members affirmed that the exception of s. 13(1) is necessary because of the need for officials to be able to give advice and make recommendations to senior executive and ministers freely and frankly. In considering whether that exception should apply to the facts upon which the advice or recommendations are based, the Committee took note of the intention of the Legislative Assembly as evidenced by s. 13(2)(a), which requires public bodies to disclose factual material and the Information and Privacy Commissioner's submission that s. 13(1) should be clarified to address court rulings. The Committee concluded that the facts upon which the advice or recommendations are based should not come within the exception of s. 13(1) (although this may be covered by other exception such as cabinet confidences). The Committee recommends that s. 13(1) be amended to the extent that is necessary to provide clarification as recommended by a previous statutory committee in 2004.

Recommendation

The Committee recommends to the Legislative Assembly that the provincial government:

15. Amend s. 13(1) of FIPPA to clarify that the discretionary exception for "advice" or "recommendations" does not extend to facts upon which they are based; or for factual, investigative or background material; or for the assessment or analysis of such material; or for professional or technical opinions.

Legal Advice [Solicitor-Client Privilege] (s. 14)

Section 14 of FIPPA permits a public body to refuse to disclose information in response to an access request that is subject to solicitor-client privilege. The Committee heard a range of views on whether the provision should be amended.

Ryan Berger suggested that the exception be broadened to ensure that all types of legal privilege are protected (litigation privilege and settlement privilege). The Centre for Law and Democracy, on the other hand, stated it should be limited to litigation privilege. Robert Botterell maintained that the provision does not need to be amended.

The Law Society of BC told the Committee that the provision should be made mandatory except when the public body is the client and can choose to waive privilege, or if the client is a third party, the client agrees to waive privilege. The Law Society stated that its concern is that, by giving the head of a public body the discretion to refuse to disclose information that is subject to solicitor-client privilege, it appears by implication to give discretion to disclose privileged information. It submitted that "The confidential relationship takes precedence over the rights of third parties to information, and only the client has the option of releasing privileged information arising from that relationship."

The Law Society also suggested amending s. 44(3) to exclude from disclosure to the Commissioner all records that are subject to solicitor-client privilege.

J.C. Hunter suggested a deeming provision such that where a public body official acted contrary to legislation, and where the official revealed a portion or gist of a legal opinion publicly to defend himself, the official should be deemed to have waived privilege over the entire legal opinion.

The Information and Privacy Commissioner indicated that she does not support the Law Society's recommendation because she is not aware of any instance where a public body has disclosed information that was subject to solicitor-client privilege but where the client was not the public body or did not consent to the disclosure. She also questions whether there is, in fact, a problem that needs to be fixed.

> This is to some extent a situation that is unique to the Law Society, as its oversight over the legal profession makes it the only public body that is likely to have custody of records that are subject to solicitor-client privilege but to which it is not a party. However, we generally do not support amendments to FIPPA that are tailored to the needs of a single public body, particularly in this case, where the public body is able to address the issue itself by exercising its discretion to not provide access.

In 2010, the previous statutory review committee supported the position of the Law Society and made the following recommendation:

> Make section 14 a mandatory exception, by changing "may refuse" to "must refuse" except when the public body is the client and can choose to waive privilege, or if the client is a third party, the client agrees to waive privilege.
>
> Amend section 14 of the Act to state that decisions on the privileged status of materials when FOI requests are made must be referred to the Supreme Court of British Columbia.

The Committee endorsed the 2010 recommendation to make s. 14 a mandatory exception for reasons of clarity, certainty, and consistency with case law. There appears to be no basis for solicitor-client privilege to be a discretionary exception. The public body has a duty to protect privileged information in all cases unless privilege is waived by the client.

With respect to the recommendation that decisions as to whether or not records are privileged should be made by the Supreme Court rather than the Office of the Information and Privacy Commissioner, the Committee is satisfied with the status quo and believes it is appropriate that those decisions be made by the Office of the Information and Privacy Commissioner.

Recommendation

The Committee recommends to the Legislative Assembly that the provincial government:

16. Amend s. 14 of FIPPA to make it a mandatory exception unless the public body is the client and can choose to waive privilege, or if the client is a third party, the client agrees to waive privilege.

Disclosure Harmful to Law Enforcement (s. 15)

Section 15 of FIPPA permits a public body to refuse to disclose information if the disclosure could reasonably be expected to harm a law enforcement matter. The Committee heard two different perspectives on how this provision should be amended.

The BC Freedom of Information and Privacy Association suggested narrowing the exception by adding the word "active" before law enforcement. From its perspective as a professional regulatory body, the Law Society of BC proposed that the definition of "law enforcement" in Schedule 1 be expanded because investigations about credentials, investigations leading to voluntary remediation, and audits of trust accounts that do not lead to disciplinary proceedings involving a penalty or sanction may not fall within the definition of "law enforcement."

The Law Society recommended that "law enforcement" be defined to include proceedings or investigations conducted by a professional governing body in furtherance of its duties and obligations in the public interest. Alternatively, the Law Society recommended using more specific and restrictive language to define "law enforcement" as it applies to professional governing bodies:

> Proceedings or investigations conducted by a professional governing body in furtherance of its duties and obligations in the public interest, including but not limited to investigations or audits regarding:
>
> i. the qualifications, character and fitness of an individual to become a member of the professional governing body or to be enrolled as a student under the authority of the professional governing body,

ii. the ability of a member of a professional governing body to practise and continue to practise a profession,

iii. a complaint or allegation or other information concerning the conduct of a member or former member of a professional governing body or a student under the authority of the professional governing body, and

iv. compliance with rules or regulations governing the professions.

The Information and Privacy Commissioner was of the view that the Law Society's proposed expansion of the definition of law enforcement is unnecessary because the definition includes investigations or proceedings that lead, or could lead, to a penalty or sanction being imposed and confidentiality concerns are addressed in s. 22 of FIPPA where disclosure may be harmful to personal privacy.

Committee Members concluded that it was not entirely clear whether s. 15 and the existing definition of "law enforcement" or s. 22 adequately address the concerns of the Law Society that it could not refuse to disclose certain information during the conduct of an investigation that could conceivably harm that investigation. The Committee recommended that government consider whether an explicit reference to an investigation of a professional regulatory body should be added to the definition of "law enforcement" for greater certainty.

Recommendation

The Committee recommends to the Legislative Assembly that the provincial government:

17. Consider whether an explicit reference to investigations that are within the mandate of a professional regulatory body should be added to the definition of "law enforcement" in Schedule 1 so that a professional regulatory body may refuse to disclose information that may harm an investigation.

Disclosure Harmful to Intergovernmental Relations or Negotiations (s. 16)

Section 16 of FIPPA permits a public body to refuse to disclose information that could harm the conduct of intergovernmental relations or negotiations. The Centre for Law and Democracy submitted that this exception is unnecessary because it is already covered by the exception from disclosure of information harmful to commercial or financial interests and information about negotiations (s. 17).

The Committee noted that the protection of intergovernmental relations or negotiations is widely recognized as being important for the broad economic and political interests of the province, and concluded that sufficient evidence had not been presented to demonstrate clearly that the exception for information harmful to intergovernmental relations is redundant.

Disclosure Harmful to the Financial or Economic Interests of a Public Body (s. 17)

Section 17 of FIPPA permits a public body to refuse to disclose information if the disclosure could reasonably be expected to harm the financial or economic interests of a public body or government or the ability of government to manage the economy. Under s. 17(1)(d), this includes information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party.

The BC Lottery Corporation recommended amending s. 17(1)(d) to replace the word "undue" with the word "any" in order to lessen the burden of proof and better protect commercially sensitive information of public bodies, and commercial Crown corporations in particular, as primarily revenue-generating public bodies.

The Information and Privacy Commissioner advised that she does not support a special accommodation for Crown corporations, or a lowering of the threshold for applying s. 17. She stated:

> As public bodies, Crown corporations should be held to the same level of accountability and transparency as public bodies in general under FIPPA. In addition, s. 17 contains an open list of kinds of information that public bodies can refuse to disclose if the disclosure could reasonably be expected to harm their financial or economic interests. The test for applying this exception includes a consideration of the mandate and activities of the public body, including Crown corporations.

The Committee accepts the Commissioner's position that the test of reasonableness addresses BC Lottery Corporation's concern, and that it is not necessary to lower the threshold from undue financial loss or gain to any financial loss or gain.

Information That Will Be Published or Released Within 60 days (s. 20)

Section 20 of FIPPA permits a public body to refuse to disclose information that is to be published or released to the public within 60 days of receiving the access request.

ICBC advocated expanding this section to permit public bodies to refuse to disclose documents which have not already been provided and are not otherwise available to the applicant. This would permit ICBC to refuse to disclose records which could be obtained by other means such as through the production of documents during litigation.

The Information and Privacy Commissioner indicated that she does not support this recommendation because the amendment is unnecessary and would limit the right of access. She advised that orders made by her office have said that the availability of records through the Rules of Court or some other process does not displace or prevent the exercise of access rights under FIPPA.

The Committee concluded that public bodies should not have the ability to refuse access requests because there may be other ways for applicants to obtain information. The FOI process should not be a process of last resort, and the fundamental and important information rights under FIPPA should not be undermined by, or considered as being secondary to, other means to obtain information. Such an amendment could undermine access rights in British Columbia, and is therefore not in the public interest.

Redefine Contact Information of Employees of Public Bodies

Schedule 1 of FIPPA defines contact information as, "information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual." Contact information is not personal information. The definition of "personal information" in Schedule 1 is "recorded information about an identifiable individual other than contact information."

ICBC expressed a concern that its employees are frequently contacted for non-work related purposes. It submitted that contact information should be redefined as business contact information along the lines of the definition in the federal *Personal Information Protection and Electronic Documents Act*. That definition reads as follows: "any information that is used for the purpose of communicating or facilitating communication with an individual in relation to their employment, business or profession such as the individual's name, position name or title, work address, work telephone number, work fax number or work electronic address."

The Information and Privacy Commissioner advised that she does not support this proposed amendment because it is unnecessary. The issue raised by ICBC has been addressed in orders of her office stating that information sought for reasons other than a business purpose is not "contact information."

Based on the response of the Information and Privacy Commissioner to this proposed amendment, the Committee concluded that no amendment is necessary.

Fees

Section 4(3) of FIPPA provides that the right of access to a record is subject to the payment of any fee required under s. 75. Section 75 specifies that applicants must pay for certain services, including locating, retrieving and producing the record; preparing the record for disclosure; shipping and handling the record; and providing a copy of the record. Pursuant to s. 75(5), a public body may waive fees at the request of an applicant, if the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or the record relates to a matter of public interest, including the environment or public health or safety. An applicant may make a complaint to the Information and Privacy Commissioner that a fee is inappropriate and the Commissioner may investigate and attempt to resolve the complaint. Schedule 1 of the FIPPA Regulation sets out the amounts of fees.

The Committee received 12 different submissions from individuals, organizations, public bodies, and public interest advocacy organizations that touched on the matter of fees.

Amounts of Fees

In terms of the amounts of fees, Rob Botterell suggested an affordable flat fee that includes up to 200 pages of photocopying. The Canadian Centre for Policy Alternatives proposed increasing the hours of free search time. The Centre for Law and Democracy said that charging for employee time in responding to an access request is not in line with international standards. It recommended amending the fee schedule to reflect the actual costs incurred by public bodies in reproducing or delivering information. Stephen Bohus commented that there should be reasonable fees or no fees at all and that seniors and low-income people should be exempt.

The Committee also heard from public bodies on the matter of fees. The Law Society suggested that public bodies be permitted to charge for all services that are useful or reasonable in the processing of a request made by a commercial applicant. TransLink proposed that the schedule of fees be updated to reflect inflationary increases in the costs of reviewing records, and the current reality that records are increasingly in electronic form.

The Local Government Management Association recommended that the schedule of fees be reviewed to determine whether it is still consistent with the original objectives of the legislation. This recommendation aligns with the 2010 recommendation of the previous statutory review committee that government review the Schedule of Maximum Fees with an emphasis on meeting the original objectives of the legislation, and use the criterion of reasonableness throughout the whole process.

During their deliberations, Committee Members affirmed that fees should not be a barrier to access nor are they intended to provide full cost recovery. They should be set at a reasonable level so that the public body can have some assurance that the request is focused and not frivolous, and with the benefit of a modicum of cost recovery, particularly when responses are voluminous and not straightforward. Committee Members discussed the challenges that some public bodies are experiencing in having to respond to multiple access requests from a few individuals. For example, government advised the Committee that a single applicant made over 1,900 access requests to government between April 1, 2011 and March 31, 2016 and the estimated provincial expenditures incurred to provide their requested records during that period totaled approximately $4.3 million. In addition to cost implications, multiple requests may have a negative impact on the ability of public bodies to respond to requests from other individuals in a timely manner. The Committee felt, however, that any limit on the number of legitimate access requests that an individual can make would impair information rights.

The Committee concluded that the schedule of fees should be reviewed with a view to setting them at a level that (a) would not create a barrier to individuals exercising their right to access records, and (b) provides some cost recovery for substantial costs incurred by public bodies in responding to complex requests.

Fee Waivers

As previously discussed, s. 6 of FIPPA requires a public body to make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely. Section 7 of FIPPA requires public bodies to respond to an access request within 30 business days.

Several submissions included a recommendation that penalties be added to FIPPA for flagrantly breaching the duty to assist applicants. These included submissions from the BC Freedom of Information and Privacy Association, the BC Civil Liberties Association, CUPE BC Division, the BC Public Interest Advocacy Centre, the Regional District of Central Kootenay, and Larry Lloyd.

The AMS Student Society of UBC Vancouver said that non-compliance could also be addressed through automatic fee waivers. The BC Public Interest Advocacy Centre said that an automatic fee waiver or some other type of penalty would provide a stronger incentive to adhere to FIPPA provisions. It maintained that time limits, extensions, grounds on which a request can be denied, and duty to assist are routinely ignored, and that the current remedy of a complaint or request for review is not sufficient.

The BC Freedom of Information and Privacy Association, the Canadian Centre for Policy Alternatives, and the BC Government and Service Employees' Union also said that there should be an automatic fee waiver for non-compliance with requirements of the FOI process. In addition, BC Government and Service Employees' Union and the Canadian Centre for Policy Alternatives said that fees should be waived if a significant portion of the records have been redacted or blacked out.

The BC Freedom of Information and Privacy Association, the BC Civil Liberties Association, and the BC Public Interest Advocacy Centre suggested that information and assistance be provided to applicants that would facilitate requests for fee waivers. The AMS Student Society of UBC Vancouver and Ubyssey advocated automatic fee waivers for records requested in the public interest.

The Information and Privacy Commissioner was in support of an amendment that would require public bodies to automatically waive fees when a public body fails to meet its legislated timeline for responding to an access request.

The Committee concluded that there should be more opportunities for fees to be waived in order to promote the efficiency of the FOI process and compliance with the timelines established in FIPPA. Committee Members also discussed whether it would add some measure of fairness to the FOI process if there was a fee waiver when all of the records an applicant is seeking are completely severed such that the applicant receives none of the information s/he is seeking. In essence, it amounts to a public body providing no responsive records and Members thought it should be viewed as such and fees reduced accordingly.

Consideration should also be given to making a fee waiver available automatically when responses to access requests disclose records that relate to the public interest. This would mean the applicant would not have to make a specific request for a fee waiver.

Recommendations

The Committee recommends to the Legislative Assembly that the provincial government:

18. Review the Schedule of Fees with a view to ensuring that fees are not a barrier to individuals' right of access and that they provide reasonable compensation for substantial costs incurred by public bodies in responding to complex requests.

19. Amend s. 75 of FIPPA to provide an automatic fee waiver for applicants when a public body has failed to meet the statutory timeline for responding to access requests.

20. Consider reducing or eliminating fees when records have been completely severed such that, in essence, there are no responsive records because none of the information the applicant is seeking is disclosed.

21. Make fee waivers available as a matter of course, without the applicant having to make a specific request, when there is significant public interest in disclosure.

Privacy

Privacy Management Program

The Information and Privacy Commissioner recommended that new provisions be added to FIPPA that would require public bodies to have essential elements of a privacy management program in place. These elements were characterized as accountability measures that demonstrate the responsible management of personal information.

In her presentation to the Committee on November 18, 2015, the Commissioner identified the following core features of a privacy management program that should be prescribed under FIPPA: appointing somebody to be in charge of privacy within a public body, staff training, privacy policies, and privacy breach response plans.

In her written submission, the Commissioner asserted that such requirements would "set clear expectations for public bodies, establish defined criteria for oversight, and, most importantly, safeguard the personal information of British Columbians by proactively requiring a minimal set of privacy controls." Her specific recommendation reads as follows:

> Add to FIPPA a requirement that public bodies have a privacy management program that:
>
> - designates one or more individuals to be responsible for ensuring that the public body complies with FIPPA;
> - is tailored to the structure, scale, volume, and sensitivity of the personal information collected by the public body;
> - includes policies and practices that are developed and followed so that the public body can meet its obligations under FIPPA, and makes policies publicly available;
> - includes privacy training for employees of the public body;
> - has a process to respond to complaints that may arise respecting the application of FIPPA; and
> - is regularly monitored and updated.

The Commissioner made a similar recommendation with respect to privacy management program elements to the Special Committee to Review the *Personal Information Protection Act* and it was supported by that committee. In its 2015 report, it recommended that certain additional elements be added to pre-existing ones already in ss. 4 and 5 of the private sector privacy law. The Commissioner argued that requirements in FIPPA "should meet or exceed the

recommended requirements in PIPA" because citizens often have little to no choice about providing their personal information to public bodies.

Government made a recommendation with respect to a privacy management program in its written submission to the Committee. It submitted that comprehensive consultation should be conducted with impacted public bodies on the implications of a legislated requirement to implement a privacy management program. In particular, consideration should be given to the level of specificity of the amendment and that a higher-level requirement that permits different implementation options may be preferable to a one-size fits all approach.

In a letter to the Chair of the Committee dated March 21, 2016, the Information and Privacy Commissioner explained the scalability of a privacy management program. She stated that the scope of a privacy management program would necessarily shift depending on the nature of the public body, the volume of personal information under its control, and the sensitivity of that information.

Committee Members discussed the Information and Privacy Commissioner's recommendation with respect to a privacy management program. Committee Members considered that such a program would enhance privacy protection and that it would not be unduly onerous or costly for public bodies to implement because it would be scalable depending on the volume and sensitivity of the personal information that a public body has in its custody or control. The Committee agreed with government that it should consult with public bodies regarding the impacts of statutory requirements in relation to a possible privacy management program before bringing forward the necessary amendments to FIPPA.

Recommendation

The Committee recommends to the Legislative Assembly that the provincial government:

22. Add to FIPPA a requirement that public bodies have a privacy management program that:
    - designates one or more individuals to be responsible for ensuring that the public body complies with FIPPA;
    - is tailored to the structure, scale, volume, and sensitivity of the personal information collected by the public body;

- includes policies and practices that are developed and followed so that the public body can meet its obligations under FIPPA, and makes policies publicly available;
- includes privacy training for employees of the public body;
- has a process to respond to complaints that may arise respecting the application of FIPPA; and
- is regularly monitored and updated.

Notification for Collection of Employee Information [s. 27(4)]

Section 27 of FIPPA requires public bodies to collect personal information directly from the individual the information is about unless an exception applies. One exception is that indirect collection is permitted where the information is about an employee and the information is necessary for the purposes of managing or terminating an employment relationship between a public body and the employee. Because the collection is indirect, the public body must give notice to the employee unless notification would compromise the availability or accuracy of the information, or an investigation or a proceeding related to the employment of the employee.

In its submission to the Committee, the Canadian Bar Association pointed out that there appears to be a drafting error in that notice is required for indirect collection of employee information, but is not required for direct collection of employee information. In its view, this inconsistency can make it impossible for public bodies to conduct an investigation. For example, the employer would not have to notify the employee when it is interviewing witnesses but would have to notify the employee when it is reviewing internet logs (which could give the employee an opportunity to tamper with them).

The Information and Privacy Commissioner indicated that she does not agree that the provision needs to be amended. In her view, the appropriate means to address the concern raised by the Canadian Bar Association is to prospectively notify all employees that covert collection may occur in certain limited circumstances where it is necessary. Employers should advise all employees that, during the course of their employment, personal information may be collected covertly during an employer investigation into alleged employee wrongdoing. This prospective notification would satisfy the requirements of FIPPA without compromising any specific investigation.

The Committee carefully considered the submission of the Canadian Bar Association and agreed with its proposal that FIPPA be amended to permit a public body to not notify the employee that it is collecting their personal information, either indirectly or directly, for the purposes of managing or terminating the employment relationship where it is reasonable to expect that doing so would compromise (a) the availability or the accuracy of the information, or (b) an investigation or a proceeding related to the employment of the employee.

Recommendation

The Committee recommends to the Legislative Assembly that the provincial government:

23. Amend FIPPA to permit a public body to not notify the employee that it is collecting their personal information, either indirectly or directly, for the purpose of managing or terminating the employment relationship, where it is reasonable to expect that doing so would compromise (a) the availability or the accuracy of the information, or (b) an investigation or a proceeding related to the employment of the employee.

Data Security Requirements (s. 30)

Section 30 of FIPPA requires a public body to protect personal information in its custody or under its control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, or disposal.

The College of Registered Nurses of BC suggested that a higher standard than reasonableness should be imposed in a regulation. The Committee also received recommendations to impose and define certain aspects of security arrangements. The National Association for Information Destruction – Canada suggested that FIPPA should specifically require destruction of information when it is no longer needed and that "destruction" be defined. Similarly, the City of Surrey suggested adding a definition of "securely destroyed."

The Committee concluded that the reasonableness standard in terms of security arrangements is appropriate given rapidly evolving technology and industry standards and that what is reasonable depends on the circumstances. The standard varies depending on the amount and sensitivity of personal information being protected and the best security

measures, such as encryption, that are available at the time. It would therefore be difficult to specify this variable and fluid standard of reasonableness in a regulation.

In terms of requirements and definitions in relation to destruction, the Committee concluded that secure destruction is an essential aspect of reasonable security arrangements and that a specific requirement is not necessary.

Limits on Disclosure

Disclosure Outside Canada (s. 33.1)

Section 33.1 of FIPPA authorizes public bodies to disclose certain personal information inside or outside Canada under certain conditions. For example, disclosure is permitted with the consent of the individual the personal information is about when the consent is given in the prescribed manner. Pursuant to s. 33.1(3) of FIPPA, disclosure outside Canada may also be permitted in specific cases or specified circumstances by ministerial order.

The Committee received two recommendations for additional permitted disclosures outside Canada. The Information and Privacy Commissioner recommended that public bodies be permitted to post non-statutory investigation or fact-finding reports on-line where the public interest in disclosure outweighs the privacy interests. FutureBook Printing Inc. recommended that public bodies be permitted to temporarily disclose limited, non-sensitive student information outside Canada for the sole purpose of yearbook production and printing through a ministerial order under s. 33.1(3).

The College of Registered Nurses of BC made a general recommendation that ss. 33.1 and 33.2 be simplified. They are long, complex, and difficult to understand and interpret, resulting in costly fees for legal advice.

In considering these recommendations, the Committee noted that it was only the recommendation of the Information and Privacy Commissioner that would require adding a new provision to FIPPA. In keeping with its other recommendations with respect to proactive disclosure earlier in this report, the Committee agreed that there should be proactive disclosure of non-statutory investigations and fact-finding reports, and that any provision that prohibits such disclosures should be amended to permit them.

Recommendation

The Committee recommends to the Legislative Assembly that the provincial government:

24. Amend s. 33.1(1) to permit public bodies to post non-statutory investigation or fact-finding reports on-line where the public interest in disclosure outweighs the privacy interests.

Disclosure Inside Canada (s. 33.2)

Section 33.2 of FIPPA permits public bodies to disclose personal information inside Canada in certain circumstances. Sara Levine, Q.C., advocated an amendment that would permit hospitals to disclose patient names to representatives of religious organizations on the basis of implied consent where patients have provided information about religious affiliation.

Section 33.2(l) of FIPPA permits a public body to disclose personal information to another public body if the information is necessary for the purposes of planning or evaluating a program or activity of a public body.

The Information and Privacy Commissioner recommended adding a de-identification requirement to this authorization so that only de-identified personal information could be disclosed for the purposes of planning or evaluating a program or activity of a public body. The Commissioner pointed out that this would be consistent with a recommendation of the previous statutory review committee in 2010 that only de-identified data would be used. In the Commissioner's view, the authorization as is potentially creates unnecessary privacy risks for the individuals whose personal information is used.

The previous statutory review committee recommended that government amend FIPPA to include language confirming a broader approach to research so that applied research into issues, facts, trends, etc. for the purpose of program planning and/or evaluation can be undertaken, provided that only de-identified data are used.

In their deliberations, Committee Members considered the thoughtful recommendation to amend s. 33.2 but felt that a new provision regarding implied consent may not be necessary in this instance when patients could presumably give their express consent to the disclosure in most cases. The Committee concluded that such a narrow and specific exception in FIPPA may not be warranted.

In relation to the disclosure of personal information for the purpose of planning or evaluating a program or activity of a public body under s. 33.2(l), Committee Members recognized the importance of planning or evaluating a program or activity of a public body as well as the importance of minimizing privacy risks in doing so. The Committee thought that planning or evaluating could be accomplished by using de-identified data, and therefore concluded that FIPPA should be amended to permit only the disclosure of de-identified data for that purpose.

Recommendation

The Committee recommends to the Legislative Assembly that the provincial government:

25. Amend s. 33.2(l) of FIPPA to permit only de-identified personal information to be disclosed for the purposes of planning or evaluating a program or activity of a public body.

Privacy Impact Assessments (s. 69)

Section 69 of FIPPA requires a public body to conduct a privacy impact assessment during the development of a proposed enactment, system, project, program, or activity. The head of a ministry must conduct a privacy impact assessment in accordance with the directions of the minister responsible for FIPPA.

In its written submission to the Committee, government recommended that s. 69 be amended to clarify when and how a privacy impact assessment must be completed and to provide clearer authority for the minister to issue directions on conducting and submitting privacy impact assessments.

The Information and Privacy Commissioner indicated that she would support such amendments.

The Committee discussed the importance of completing privacy impact assessments in the early stages of all proposed initiatives that involve the collection, use, or disclosure of personal information. A privacy impact assessment identifies the privacy risks of the proposed initiative and the steps that will be taken to mitigate them. The Committee supported strengthening provisions in FIPPA that require public bodies to complete privacy impact assessments.

Recommendation

The Committee recommends to the Legislative Assembly that the provincial government:

26. Amend s. 69 of FIPPA to clarify and strengthen requirements with respect to privacy impact assessments.

Oversight of the Information and Privacy Commissioner

Destruction of Records

Section 42(1) of FIPPA gives the Commissioner the authority to conduct investigations and audits to ensure compliance with any provision of FIPPA. In her written submission to the Committee, the Information and Privacy Commissioner recommended expanding this authority by granting her office legislative authority to investigate whether a record has been destroyed contrary to records management rules. This recommendation was supported by the BC Civil Liberties Association, CUPE BC Division, and the Local Government Management Association.

Currently, the Information and Privacy Commissioner has the authority to investigate if the alleged destruction of records occurred after an access request was made but has no authority in the absence of an access request.

The Alberta Information and Privacy Commissioner has this broader oversight authority with respect to the destruction of records pursuant to s. 53 of the Alberta *Freedom of Information and Protection of Privacy Act*. It gives the Information and Privacy Commissioner the power to:

> conduct investigations to ensure compliance with any provision of this Act or compliance with rules relating to the destruction of records
>
> i. set out in any other enactment of Alberta, or
>
> ii. set out in a bylaw, resolution or other legal instrument by which a local public body acts or, if a local public body does not have a bylaw, resolution or other legal instrument setting out rules related to the destruction of records, as authorized by the governing body of a local public body.

The Loukidelis report includes a recommendation that government should give serious consideration to introducing legislation consistent with s. 53 of the Alberta *Freedom of Information and Protection of Privacy Act*.

In British Columbia, the adoption of such a provision would give the Information and Privacy Commissioner oversight over compliance with rules related to the destruction of records in the *Information Management Act*, any other Act, and in rules governing local public bodies (i.e. municipalities, health authorities, Community Living BC, universities, school boards, and professional regulatory bodies). Presumably the intent is to ensure compliance with information schedules made pursuant to the *Information Management Act* that apply to a class

of government information or any other analogous recordkeeping requirements that apply to local public bodies insofar as they prohibit the destruction of records.

Under s. 19(5) of the *Information Management Act* the head of each government body must ensure that no government information held by the government body is disposed of, except in accordance with an information schedule or an approval by the Chief Records Officer where no information schedule exists. In its submission, government said that independent oversight could create confusion and potential conflict, as it would result in two officers responsible for overseeing different or overlapping aspects of information management. In its view, oversight of the destruction of records would fit better in the *Information Management Act*, which governs the entire life-cycle of information, including its eventual destruction.

In their deliberations, Committee Members discussed the merits of independent oversight and the need to maintain public trust and confidence in information management and in the FOI process. The Committee therefore felt that the Information and Privacy Commissioner should have the authority to investigate allegations of unauthorized destruction of records within public bodies.

Recommendation

The Committee recommends to the Legislative Assembly that the provincial government:

27. Amend s. 42 of FIPPA to expand the Information and Privacy Commissioner's oversight by granting the Commissioner the jurisdiction to review matters or allegations of unauthorized destruction of records within public bodies.

Data-linking Initiatives

Specific provisions with respect to data linking were added to FIPPA as part of the 2011 package of amendments. Section 69 of FIPPA was amended to include, among other things, a requirement that privacy impact assessments in relation to data-linking initiatives must be submitted to the Information and Privacy Commissioner for review and comment. Data-linking initiatives within the health sector are excluded from this requirement.

The Information and Privacy Commissioner submitted that her oversight of data-linking initiatives needs to be expanded because the definition of data-linking initiatives is too narrow and because privacy risks associated with the carve-out for the health sector have not been addressed by government. She made the following recommendation as to how the definition of "data-linking" should be amended:

> Amend the definition for "data-linking" in Schedule 1 of FIPPA to define data-linking as the linking or combining of data sets where the purpose of linking or combining the information is different from the original purpose for which the information in at least one of the data sets that was originally obtained or compiled, and any purposes consistent with that original purpose.

With respect to the carve out from data linking requirements for the health sector, the Information and Privacy Commissioner recommended the repeal of s. 36.1(2) to remove the exemption of the health care sector from the data-linking oversight provisions of FIPPA.

In their presentation to the Committee on November 18, 2016, government officials stated that they recognized that the narrow definition of "data-linking initiative" failed to capture the types of activities which should be subject to the Information and Privacy Commissioner's oversight. Government advised that it has identified data-linking provisions as a key legislative amendment and that it had embarked on extensive consultation with the Office of the Information and Privacy Commissioner, and had developed a new legislative scheme that will meet the needs of all stakeholders.

The Committee recognized the intention of the Legislative Assembly in 2011 to have independent oversight of data-linking initiatives except with respect to data-linking initiatives within the health sector. The Committee endorsed government's proposal to correct the narrow definition that prevented the Information and Privacy Commissioner from exercising the level of oversight that was intended.

With respect to the carve-out for the health sector, the Committee concluded that government should address the privacy risks associated with data-linking initiatives within the health sector and consult with the Information and Privacy Commissioner on how best to do so.

Recommendations

The Committee recommends to the Legislative Assembly that the provincial government:

28. Amend the definition for "data-linking" in Schedule 1 of FIPPA to define data-linking as the linking or combining of datasets where the purpose of linking or combining the information is different from the original purpose for which the information in at least one of the datasets that was originally obtained or compiled, and any purposes consistent with that original purpose.

29. Address the privacy risks associated with data-linking initiatives within the health sector in consultation with the Information and Privacy Commissioner.

Processes

Parts 4 and 5 of FIPPA provide for two types of public appeals to the Office of the Information and Privacy Commissioner – complaints and requests for review. Under s. 42(2), a person may file a complaint that a public body is in contravention of FIPPA, and under s. 52(1), a person can request that the Information and Privacy Commissioner review the outcome of a request made to a public body.

The Information and Privacy Commissioner submitted that the distinction between complaints and requests for review is unnecessary, confusing, and burdensome because individuals require assistance to navigate them. She therefore brought forward the same recommendation that had been made in the past by her predecessors in two previous statutory reviews, and that had been endorsed by both statutory review committees. In reports in 2004 and 2010, the two previous statutory review committees recommended that FIPPA be amended to combine the complaint process and the review and inquiry process into a unitary process for the Commissioner to investigate, mediate, inquire into, and make orders about complaints respecting decisions under FIPPA or other allegations of non-compliance with FIPPA.

In their presentation to the Committee on November 18, 2016, government officials identified one of its key legislative amendments as proposed changes that would aim to resolve

ambiguities stemming from terminology for dealing with complaints, reviews and investigations where these respective terms appear to be interchangeable, overlapping, and inconsistent. Amendments to the legislation would resolve these issues by clarifying and consolidating the Commissioner's processes for investigating complaints and conducting reviews and the terminology used to describe those processes.

In their deliberations, Committee Members noted that the Information and Privacy Commissioner and her predecessors, as well as two previous statutory review committees, had recommended amendments to FIPPA that would create a unitary process and harmonize the complaint, review, and inquiry process, and that government is prepared to bring forward the necessary amendments. Members recognized that the problems experienced by the Office of the Information and Privacy Commissioner as a result of two separate avenues for public appeals were longstanding, and concluded that the proposed changes would create a more efficient overall process.

Recommendation

The Committee recommends to the Legislative Assembly that the provincial government:

30. Amend Parts 4 and 5 of FIPPA to combine the complaint process and the review and inquiry process into a unitary process for the Commissioner to investigate, review, mediate, inquire into and make orders about complaints respecting decisions under FIPPA or other allegations of non-compliance with FIPPA.

Enforcement of FIPPA

Unauthorized Destruction of Records

The Committee received a number of submissions on the issue of offences and penalties for the unauthorized destruction of records, including from the Information and Privacy Commissioner, the BC Freedom of Information and Privacy Association, Stanley Tromp, BC Civil Liberties Association, the Centre for Law and Democracy, CUPE BC Division, Douglas Ash, and Greig Hull. The Canadian Taxpayers Federation, supported by separate submissions from 126 individuals, advocated tougher penalties to ensure that government agencies follow the law and provide information in a timely fashion, including fines and/or incarceration, for willfully hiding information from the public.

The Information and Privacy Commissioner recommended that an explicit offence of the willful unauthorized destruction of records should be written into FIPPA. In her written submission, she identified precedents in Alberta and Ontario where the unauthorized destruction of records is an offence.

The Loukidelis report included a recommendation that government give serious consideration to introducing legislation, consistent with s. 92(1) of the Alberta *Freedom of Information and Protection of Privacy Act*, that would make it an offence to destroy a record, or direct or assist anyone else in doing so with the intent to evade a request for access to the records.

Sections 92 (e) and (g) of the Alberta statute provide that the unauthorized alteration or destruction of records with the intent to evade a request for access is an offence. The provisions read as follows:

> 92. A person must not willfully
>
> (e) alter, falsify or conceal any record, or direct another person to do so, with the intent to evade a request for access to the record,
>
> (g) destroy any records subject to this Act, or direct another person to do so, with the intent to evade a request for access to the records.

Ontario's Act was recently amended to add a similar provision:

> 61 (1) No person shall,

(c.1) alter, conceal or destroy a record, or cause any other person to do so, with the intention of denying a right under this Act to access the record or the information contained in the record.

BC's private sector privacy law, the *Personal Information and Protection of Privacy Act*, includes the offence of destruction of personal information with the intent to evade an access request. It reads as follows:

56 (1) an organization or person commits an offence if the organization or person …

(b) disposes of personal information with an intent to evade a request for access to the personal information.

In its written submission to the Committee, government advised that its position with respect to the destruction of records is that government should monitor and evaluate the efficacy of existing training and compliance programs and consider increased oversight and penalties in the *Information Management Act* if needed. Requirements for government employees respecting information management practices are set out in the *Appropriate Use of Government Information and Information Technology Policy* which is supported by the Standards of Conduct.

The Committee carefully considered the recommendations of the current and former Information and Privacy Commissioner that it should be an offence to destroy a record with the intention to evade an access request. Members noted there was a measure of public support for such a provision as evidenced by the number of submissions it had received from individuals on this issue. The Committee agreed that it should be an offence under FIPPA to destroy a record with the intention to evade an access request as it is under Alberta and Ontario access to information laws.

Recommendation

The Committee recommends to the Legislative Assembly that the provincial government:

31. Amend FIPPA to make the alteration, concealment, or destruction of records with the intention of denying access rights under FIPPA an offence under FIPPA.

Privacy Protection Offence (s. 74.1)

Section 74.1 of FIPPA sets out a number of offences under FIPPA, including the unauthorized disclosure of personal information. The Information and Privacy Commissioner recommended making the unauthorized collection and use of personal information also an offence under FIPPA. In her presentation to the Committee on November 18, 2015, she characterized such an offence as the "snooping offence." It would mean that sanctions are available for improper access to personal information in any electronic database system held by a public body.

Public sector privacy laws, including health information privacy laws, in several provinces in Canada contain a general offence for the unauthorized collection, use, or disclosure of personal information. For example, s. 92(1)(a) of Alberta's *Freedom of Information and Privacy Act* reads as follows:

> 92 .(1) A person must not willfully
>
> (a) collect, use or disclose personal information in contravention of Part 2

The Committee agrees that the collection, use, and disclosure of personal information contrary to the privacy protective provisions of FIPPA should be an offence. This would provide an incentive for compliance as well as an appropriate sanction for an intentional breach of privacy.

Recommendation

The Committee recommends to the Legislative Assembly that the provincial government:

32. Amend s. 74.1 of FIPPA to make the unauthorized collection, use, and disclosure of personal information in contravention of Part 3 of FIPPA an offence under FIPPA.

Penalties (ss. 74 and 74.1)

Sections 74(5) and 74.1(5) of FIPPA set out penalties for general and privacy protection offences under FIPPA. Section 74(5) provides for a fine of up to $5000 where a person makes a false statement, misleads, or obstructs the Information and Privacy Commissioner in the

performance of her duties or fails to comply with an order of the Information and Privacy Commissioner. Section 74.1 sets out a number of privacy offences, including unauthorized disclosure (a contravention of s. 30.4), failure to notify the head of the public body of an unauthorized disclosure (a contravention of s. 30.5), and storing or accessing personal information outside Canada (a contravention of s. 30.1). An individual is liable to a fine of up to $2000, a service provider to a fine of up to $25,000, and a corporation to a fine of up to $500,000.

A number of participants in the Committee's consultation process recommended increasing the maximum amount of fines that may be levied against individuals. The Information and Privacy Commissioner recommended that penalties for offences committed by individuals should be raised to a maximum of $50,000 for both general and privacy offences. She argued that:

> British Columbia has some of the weakest penalties in Canada for individuals who commit offences under public sector privacy law. This undermines the role that penalties play as an incentive for compliance, suggesting that the government does not take access and privacy seriously.

The following comparative information was included in her written submission:

> Penalties are up to $50,000 in Alberta's *Health Information Act*, Saskatchewan's *Health Information Protection Act*, and both Manitoba's *Freedom of Information and Protection of Privacy Act* and its *Personal Health Information Act*. Penalties are up to $25,000 in the Yukon's *Health Information Privacy and Management Act* and up to $10,000 in Alberta's *Freedom of Information and Protection of Privacy Act*, PEI's *Freedom of Information and Protection of Privacy Act*, and Newfoundland and Labrador's *Access to Information and Protection of Privacy Act* and its *Personal Health Information Act*.

The BC Civil Liberties Association pointed out that a fine of up to $5000 is far below what other jurisdictions have implemented as a meaningful deterrent, and that fines of up to $50,000 are permitted in Alberta, Saskatchewan, and Manitoba. Stanley Tromp said that the amount of fines should be raised to a maximum of $50,000, and that the fine for obstructing the Information and Privacy Commissioner should be $10,000. Many individuals who made submissions to the Committee also advocated tougher penalties for not complying with FIPPA requirements.

Stanley Tromp's position is that the penalties should be the same as in the federal *Access to Information Act* -- a maximum fine of $10,000 and a 2 year prison term for any person destroying, altering, or concealing a record. The Canadian Taxpayers Federation, and the many

individuals supporting its position, stated there should be penalties, fines, and/or prison time for willfully hiding information from the public. However, the Centre for Law and Democracy was of the view that jail terms are usually not necessary.

Another aspect to the penalties that should be in place is the discipline of government employees for the unauthorized destruction of records. The recommendation was made in the Loukidelis report that government should make such policy and practice changes as are necessary to ensure that any employee appointed under the *Public Service Act* who destroys a record, or directs or assists anyone else in doing so, with the intent to evade a request for access to the record is subject to discipline up to and including dismissal for cause.

In its written submission to the Committee, government said its employees who fail to comply with information management standards may be subject to disciplinary action up to and including dismissal. This includes employees who willfully destroy government information that should not be destroyed (whether or not the information is the subject of an access request). As previously mentioned, government said that it will consider whether increased oversight and penalties are needed, including adding increased oversight authority and penalties to the *Information Management Act*.

Recommendations

The Committee recommends to the Legislative Assembly that the provincial government:

33. Increase the maximum amount of fines for general offences from $5000 to $10,000 and increase the maximum amount of fines for privacy offences committed by individuals to $25,000.

34. Institute a fine of up to $10,000 for the offence of destroying, altering, or concealing a record with the intention of denying access rights under FIPPA.

General

Require Corrections to be Made (s. 29)

Pursuant to s. 29 of FIPPA, individuals have the right to request public bodies to make corrections to the personal information about them that public bodies have in their custody or control. The Information and Privacy Commissioner recommended that public bodies be required to correct personal information of an individuals at his/her request if the public body is satisfied on reasonable grounds that the personal information should be corrected.

The Committee considered that an amendment to FIPPA that would require public bodies to correct personal information at the request of an individual that the information is about, if there are reasonable grounds for the public do so, is in the public interest. It would strengthen the right to request a correction and make it more effective and meaningful.

Recommendation

The Committee recommends to the Legislative Assembly that the provincial government:

35. Amend FIPPA to require public bodies to correct personal information at the request of an individual the information is about if there are reasonable grounds for the public body to do so.

Provisions that Prevail Over FIPPA

Section 80(2) of FIPPA provides that a report submitted by a special committee to review FIPPA may include any recommended amendments to FIPPA or any other Act.

In British Columbia, there are 43 separate pieces of legislation that contain provisions that override FIPPA. These range from the *Child, Family and Community Service Act* to the *Local Government Act* and the *Representative for Children and Youth Act*.

In their submissions, the Information and Privacy Commissioner, the BC Freedom of Information and Privacy Association, the BC Civil Liberties Association, the Centre for Law and Democracy, and the BC Public Interest Advocacy Centre expressed concerns regarding the number of provisions that prevail over FIPPA, and recommended that they be reviewed. As stated in the submission of the Information and Privacy Commissioner, "Growth in the list of

provisions in statutes that prevail over FIPPA diminishes the access rights of individuals in BC." The Centre for Law and Democracy said that government should make sure that the exceptions protect legitimate interests and are subject to a harms test and a public interest override. The BC Public Interest Advocacy Centre suggested aligning the exemptions with the objectives of FIPPA in order to reduce the disparity between the accessibility of public records subject to, or exempt from, FIPPA.

The Information and Privacy Commissioner recommended that the statutory review of FIPPA by a special committee of the Legislature include a review of those provisions that prevail over FIPPA. As a mechanism for that regular statutory review, she recommended that the provisions be listed in a schedule to FIPPA.

In their deliberations, Committee Members recognized the need to review the significant number of provisions in other legislation that prevail over FIPPA and thought that such a review was in the Committee's mandate pursuant to s. 80(2) of FIPPA. However, given the complexity of that task and the amount of time that would be required to conduct a thorough review, the Committee concluded that the review should be conducted by a separate committee of the Legislature struck for that specific purpose. The Committee agreed that it could be part of the next statutory review provided that an adequate amount of time is allocated by the Committee for that specific task and consultations are expanded as necessary to focus on the access and privacy issues raised by each of the overrides.

Recommendation

The Committee recommends that the Legislative Assembly:

36. Appoint a special committee to conduct a review of the existing overrides of FIPPA and make recommendations to the Legislative Assembly as to whether they should be amended or repealed.

Sector-Specific Privacy Legislation

Currently in BC, personal information in the custody or control of the Ministry of Health and health authorities is generally governed under FIPPA, while personal information in the custody or control of private practices of health professionals is generally governed under the

Personal Information Protection Act. There are also other pieces of health legislation that apply to specific types of personal health information, such as the *E-Health (Personal Health Information Access and Protection of Privacy) Act* which applies to personal health information of the ministry or health authorities contained in designated databases and provisions in the *Public Health Act* that apply to personal health information related to public health matters such as the reporting of disease.

The Information and Privacy Commissioner recommended to the Committee that government enact new comprehensive health information privacy law and referred to previous recommendations she had made in that regard in a 2014 report titled *Prescription for Legislative Reform: Improving Privacy Protection in BC's Health Sector*. In that report, she described the existing patchwork of health information legislation that applies to personal information collected for the purpose of delivering health care, and recommended that it be replaced with a stand-alone health information privacy law such as exists in other provinces. In the Commissioner's view, the patchwork is opaque and complex and is challenging for individuals, health care professionals, administrators, and researchers to navigate. In her submission to the Committee, she said that, "This is administratively inefficient for the health sector, is unnecessarily cumbersome for researchers, and ultimately puts the privacy of individuals at potential risk of harm."

The Information and Privacy Commissioner made a similar recommendation to the Special Committee to Review the *Personal Information Protection Act* in 2014. In its 2015 report, that Committee recommended that "the provincial government develop a new health information privacy law that is consistent with laws in other jurisdictions in Canada."

Surrey School District #36 recommended education-specific privacy protective provisions. It submitted that the education sector requires more robust and distinct language and that the storage of personal data by educational bodies warrants separate legislation, or the addition of sector-specific clauses or sections to the existing legislation.

In their deliberations, Committee Members recognized that the health sector is unique and discussed the complexities of preparing a new stand-alone health information privacy law. It would involve a considerable amount of time, expertise, and resources given that it would require extensive consultations within the health sector, including internally within the Ministry of Health, with health authorities, health professionals, health researchers, and other organizations delivering health care, as well as with patients, privacy advocates, and the Information and Privacy Commissioner. Difficult decisions would need to be made on many significant health privacy issues such as statutory requirements for privacy and security frameworks for electronic health record systems, authorities for data flows among health care

providers, and appropriate access to data for health research. Committee Members agreed, however, that given that the delivery of health care in a publicly-funded system involves the collection, use, and disclosure of highly sensitive personal health information about almost every individual in BC, it is essential that it be protected adequately and that there are proper authorities for necessary data flows within the system, to health researchers, and for other health-related purposes.

The Committee concluded that a stand-alone health privacy law is a critically important initiative that should be considered by government as a priority.

Identifying whether there is a need for special provisions in FIPPA that would apply to the education sector should also be a priority. This would require extensive consultations with stakeholders within the education sector, including internally within the Ministry of Education as well as with teachers, administrators, school trustees, and parents.

Recommendations

The Committee recommends to the Legislative Assembly that the provincial government:

37. Enact new stand-alone health information privacy law at the earliest opportunity.

38. Consult with stakeholders in the education sector as to whether there is a need for special provisions in FIPPA that are tailored to the education sector.

Establish Provincial Oversight

As previously discussed in this report, the Information and Privacy Commissioner, an independent statutory officer of the Legislature, has oversight responsibilities for the implementation of FIPPA. Stephen Bohus advocated that there also be provincial oversight so that government could audit public bodies and appoint teams to rectify issues where there are systemic problems.

The Committee was of the view that provincial oversight would overlap with the mandate of the Office of the Information and Privacy Commissioner and therefore is not necessary.

Create the Role of a Chief Privacy and Access Officer in Government

In their joint written submission, Ryan Berger and Sara Levine, Q.C., recommended that the position of a single, senior chief privacy and access officer in government be established under FIPPA.

> We submit that the creation of the role of a Chief Privacy and Access Officer who is granted some authority and reports to the minister, would promote advancement of internal compliance programs enabling government to take into account their particular operational realities, facilitate flexibility and better ensure compliance.
>
> It is a cliché that what gets measured, gets done but there is no doubt that measuring, prioritizing and ensuring senior level oversight, public reporting, and accountability, would promote government's understanding, and compliance with, consistent standards of privacy and information access management. A Chief Privacy and Access Officer, responsible for acting independently but reporting to the minister, would ensure that government demonstrates its intention to be accountable for information access and privacy governance. Demonstrable efforts to increase accountability would promote and enhance public trust.

The previous statutory review committee recommended the appointment of a government Chief Privacy Officer because of the need to educate ministries about what they can and cannot do in regard to privacy matters.

The Committee noted that the position of Chief Records Officer has been established under the *Information Management Act*. The position of a chief privacy and access officer could complement that position by ensuring that there would be similar corporate oversight and guidance to all ministries in relation to access to records. Committee Members felt that a senior level Chief Privacy and Access Officer would provide leadership and accountability for improving the FOI process. Given the potential scope of privacy breaches involving electronic records and rapidly evolving industry standards for data security, privacy protection should be a high priority in government.

Recommendation

The Committee recommends to the Legislative Assembly that the provincial government:

39. Establish the position of Chief Privacy and Access Officer within government.

Summary of Recommendations

Major Recommendations

Proactive Disclosure

1. Amend FIPPA and initiate proactive disclosure strategies to reflect the principle that information that is in the public interest should be proactively disclosed, subject to certain limited and discretionary exceptions that are necessary for good governance and to protect personal information. Among other things, this could be accomplished by:
   - strengthening s. 25(1) to remove the requirement of temporal urgency;
   - establishing a publication scheme that would apply to all public bodies, that includes, among other things, mandatory proactive disclosure of those records listed in s. 13(2)(a) to (n); and
   - developing a system within government to proactively disclose the calendar information of ministers and senior officials that would be disclosed in response to an access request.

Duty to Document

2. Add a duty to document to FIPPA.

Information Management in Government

3. Make all obligations related to the entire life-cycle of government records part of a cohesive and robust information management scheme; and

4. Ensure that archiving is a high priority.

Data Sovereignty

5. Retain the data sovereignty requirement in s. 30.1 of FIPPA.

Application of FIPPA

6. Extend the application of FIPPA to any board, committee, commissioner, panel, agency or corporation created or owned by a public body and all the members or officers of which are appointed or chosen by or under the authority of that public body; and

7. Consider designating all publicly-funded health care organizations as public bodies under FIPPA.

FOI Process

8. Reduce the timeline in which a public body must respond to an access request from 30 business days to 30 calendar days.

9. Review other timelines established in FIPPA with a view to reducing them in order to promote the efficiency and timeliness of the FOI process.

10. Amend section 4(1) of FIPPA to establish that an applicant who makes a formal access request has the right to anonymity.

Mandatory Breach Notification and Reporting

11. Add a mandatory breach notification and reporting framework to FIPPA that includes:
    - a definition of a privacy breach (includes the loss of, unauthorized access to or unauthorized collection, use, disclosure or disposal of personal information);
    - a requirement to notify individuals when their personal information is affected by a known or suspected breach, if the breach could reasonably be expected to cause significant harm to the individual;
    - a requirement that a public body report to the Commissioner any breach involving personal information under the custody or control of that public body, if the breach or suspected breach could reasonably be expected to cause harm to an individual and/or involves a large number of individuals;
    - a timing requirement that the process of notification and reporting must begin without unreasonable delay once a breach is discovered;
    - authority for the Commissioner to order notification to an individual affected by a breach or the public; and
    - a requirement that public bodies document privacy breaches and decisions about notification and reporting.

Other Recommendations

Access

Duty to Assist

12. Amend s. 6 of FIPPA to add a specific requirement for public bodies to make the contact information of the person responsible for ensuring compliance available to the public.

Cabinet Confidences

13. Amend s. 12 of FIPPA to permit the Cabinet Secretary to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or any of its committees where the Cabinet Secretary is satisfied that the public interest in the disclosure of the information outweighs the reason for the exception.

Personal Privacy

14. Consider initiating a review of whether a parent of a child who was in care should have access to personal information about their deceased child.

Policy Advice or Recommendations

15. Amend s. 13(1) of FIPPA to clarify that the discretionary exception for "advice" or "recommendations" does not extend to facts upon which they are based; or for factual, investigative or background material; or for the assessment or analysis of such material; or for professional or technical opinions.

Legal Advice

16. Amend s. 14 of FIPPA to make it a mandatory exception unless the public body is the client and can choose to waive privilege, or if the client is a third party, the client agrees to waive privilege.

Law Enforcement

17. Consider whether an explicit reference to investigations that are within the mandate of a professional regulatory body should be added to the definition

of "law enforcement" in Schedule 1 so that a professional regulatory body may refuse to disclose information that may harm an investigation.

Fees

18. Review the Schedule of Fees with a view to ensuring that fees are not a barrier to individuals' right of access, and that they provide reasonable compensation for substantial costs incurred by public bodies in responding to complex requests.

19. Amend s. 75 of FIPPA to provide an automatic fee waiver for applicants when a public body has failed to meet the statutory timeline for responding to access requests.

20. Consider reducing or eliminating fees when records have been completely severed such that, in essence, there are no responsive records because none of the information the applicant is seeking is disclosed.

21. Make fee waivers available as a matter of course, without the applicant having to make a specific request, when there is significant public interest in disclosure.

Privacy

Privacy Management Program

22. Add to FIPPA a requirement that public bodies have a privacy management program that:
    - designates one or more individuals to be responsible for ensuring that the public body complies with FIPPA;
    - is tailored to the structure, scale, volume, and sensitivity of the personal information collected by the public body;
    - includes policies and practices that are developed and followed so that the public body can meet its obligations under FIPPA, and makes policies publicly available;
    - includes privacy training for employees of the public body;
    - has a process to respond to complaints that may arise respecting the application of FIPPA; and
    - is regularly monitored and updated.

Notification for Collection of Employee Information

23. Amend FIPPA to permit a public body to not notify the employee that it is collecting their personal information, either indirectly or directly, for the purpose of managing or terminating the employment relationship, where it is reasonable to expect that doing so would compromise (a) the availability or the accuracy of the information, or (b) an investigation or a proceeding related to the employment of the employee.

Disclosure Outside Canada

24. Amend s. 33.1(1) of FIPPA to permit public bodies to post non-statutory investigation or fact-finding reports on-line where the public interest in disclosure outweighs the privacy interests.

Disclosure for Planning or Evaluating a Public Body

25. Amend s. 33.2(l) of FIPPA to permit only de-identified personal information to be disclosed for the purposes of planning or evaluating a program or activity of a public body.

Privacy Impact Assessments

26. Amend s. 69 of FIPPA to clarify and strengthen requirements with respect to privacy impact assessments.

Oversight of the Information and Privacy Commissioner

Unauthorized Destruction of Records

27. Amend s. 42 of FIPPA to expand the Information and Privacy Commissioner's oversight by granting the Commissioner the jurisdiction to review matters or allegations of unauthorized destruction of records within public bodies.

Data-Linking Initiatives

28. Amend the definition for "data-linking" in Schedule 1 of FIPPA to define data-linking as the linking or combining of datasets where the purpose of linking or combining the information is different from the original purpose for which the information in at least one of the datasets that was originally obtained or compiled, and any purposes consistent with that original purpose.

29. Address the privacy risks associated with data-linking initiatives within the health sector in consultation with the Information and Privacy Commissioner.

Unitary Process

30. Amend Parts 4 and 5 of FIPPA to combine the complaint process and the review and inquiry process into a unitary process for the Commissioner to investigate, review, mediate, inquire into and make orders about complaints respecting decisions under FIPPA or other allegations of non-compliance with FIPPA.

Enforcement of FIPPA

Unauthorized Destruction of Documents

31. Amend FIPPA to make the alteration, concealment, or destruction of records with the intention of denying access rights under FIPPA an offence under FIPPA.

Privacy Protection Offence

32. Amend s. 74.1 of FIPPA to make the unauthorized collection, use, and disclosure of personal information in contravention of Part 3 of FIPPA an offence under FIPPA.

Penalties

33. Increase the maximum amount of fines for general offences from $5000 to $10,000 and increase the amount of fines for privacy offences committed by individuals to up to $25,000.

34. Institute a fine of up to $10,000 for the offence of destroying, altering, or concealing a record with the intention of denying access rights under FIPPA.

General

Correction

35. Amend FIPPA to require public bodies to correct personal information at the request of an individual the information is about if there are reasonable grounds for the public body to do so.

Review of Provisions that Prevail over FIPPA

36. Appoint a special committee to conduct a review of the existing overrides of FIPPA and make recommendations to the Legislative Assembly as to whether they should be amended or repealed.

Sector-Specific Privacy Legislation

37. Enact new stand-alone health information privacy law at the earliest opportunity.

38. Consult with stakeholders in the education sector as to whether there is a need for special provisions in FIPPA that are tailored to the education sector.

Chief Privacy and Access Officer

39. Establish the position of Chief Privacy and Access Officer within government.

Appendix A: List of Witnesses and Written Submissions

Witnesses

AMS Student Society of UBC Vancouver, Jude Crasta (Oct 16, 2015, Vancouver)
BC Freedom of Information and Privacy Association, Vincent Gogolek (Oct 16, 2015, Vancouver)
Stephen Bohus (Oct 16, 2015, Vancouver; Nov 9, 2015, Vancouver)
Robert Botterell (Nov 9, 2015, Vancouver)
Canadian Internet Policy and Public Interest Clinic (CIPPIC), Tamir Israel (Nov 18, 2015, Victoria)
Canadian Union of Public Employees Local 116, Roger De Pieri, David Lance, Rachel Champagne (Nov 9, 2015, Vancouver)
Centre for Law and Democracy, Michael Karanicolas (Oct 16, 2015, Vancouver)
College of Registered Nurses of BC, Cynthia Johansen, Orvin Lau
David DeCosse (Nov 9, 2015, Vancouver)
Lisa Fraser (Nov 9, 2015, Vancouver)
FutureBook Printing, Inc., Dana Felske (Nov 9, 2015, Vancouver)
Sara Levine, Q.C., Ryan Berger (Nov 9, 2015, Vancouver)
Laura Millar (Nov 9, 2015, Vancouver)
Owen Munro, James Smith (Nov 18, 2015, Victoria)
Regional District of Central Kootenay, Bronwen Bird (Nov 18, 2015, Victoria)
Joan L. Rush (Nov 9, 2015, Vancouver)
Paul Schwartz (Nov 9, 2015, Vancouver)
The Ubyssey, Will McDonald (Nov 9, 2015, Vancouver)
Stanley Tromp (Nov 9, 2015, Vancouver)
University of British Columbia; Research Unversities' Council of British Columbia, Paul Hancock, Larry Carson (Nov 9, 2015, Vancouver)
Vancouver Coastal Health Authority, Steven Tam (Nov 9, 2015, Vancouver)
Gordon Watson (Oct 16, 2015, Vancouver)
West End Neighbours, Virginia A. Richards (Nov 9, 2015, Vancouver)
Rob Wipond (Nov 18, 2015, Victoria)

Written Submissions:

L.A. Abraham
James Allen
James Andrews
Timo Annala
Bruce Apperloo
Chris Armstrong
Douglas Ash
Mike Bacinschi
Gordon Ballard
BC Government and Service Employees' Union (BCGEU), Simon Kelly
BC Public Interest Advocacy Centre, Tannis Braithwaite
BC School Superintendents Association; BC Association of School Business Officials, Sherry Elwood, Kelvin Stretch
BCNET, Bala Kathiresan
Celena Benndorf
Board of Education, School District No. 46 (Sunshine Coast), Betty Baxter
John Boer
Blain Borneman
Dan Bowes
BC Civil Liberties Association, Micheal Vonn
BC Lottery Corporation, Robert Connolly
Diane Brown
Ron Bruce
Andrew Bryant
Mike Butterfield and Julia Vertone
Canadian Centre for Policy Alternatives, BC Office, Keith Reynolds
Canadian Taxpayers Federation, Jordan Bateman
Canadian Union of Public Employees, BC Division, Paul Faoro
Ron Chambers
Mark Choynowski
Christian Heritage Party of BC; Christian Heritage Party of Canada, Rod Taylor
College of Registered Nurses of BC, Cynthia Johansen
Margriet Coolsma
Sue Cosquer
William Costain
Ken Daniels
Don Davidson
Peter Derviller
Marvin and Pat DeSchryver
Garry Dietrich
Victoria Dobson
Jasbir Singh Dulai
Jeff Durham
John Edwards
Robert Fair
Paul Faoro
Gino Ficociello
Roszan Fiddler
Rick Fijal
Fred Forman
Ray Fortier
Richard Gee
Glen Gerow
Kenneth Godwin
Douglas Golding
Doreen Gowans
Kevin and Mrs Granger-Brown
Aaron Grim
Jim Guillaume
Edward Gullickson
John Hackett
Bruce Hallquist
James Hannah
C. Douglas Henning
Don Herner
Beverley Highton
Gary Hill
Cecile Hilts
Ken Hinton
John Hof

Greig Hull
J.C. Hunter
JoAnn Ingeberg
Insurance Corporation of British Columbia, David Joyce
IntegrityBC, Dermod Travis
Michael James
Cynthia Johansen
Richard Jones
Frederik Jurock
Bala Kathiresan
Rodney Katz
Michael Kelly
Kevin Kerney
Dale Kerr
Judi Kirkland
Lynn Kisilenko
Bernadette Klaibert
Curby Klaibert
Candy Klaudeman
Cassandra Knegt
Olaf Knexevic
Jennifer Kotteleberg
Hilmar Krocke
Ma Kudo
Marilyn Kuss
Dora Kwok
Len and Marlyn Lakes
Ryan LaPalm
Law Society of BC, David Crossin, Q.C.
Douglas Leard
Lisa Lewko
Shannon Leyenhorst
Larry Lloyd
Shaun Lockwood
Sophie Loehrich
Peter Loppe
David Low
Bob Mackin, Jr.
Dan Mancuso
Dale Marcellus
Greig Marshall
Michael McDonald
Neil McGill
Diana McGraw
Callum McGregor
Cathy McLay
Jim McNeil
Gord McOrmond
Richard Meagher
Michelle Menard
James Messmer
Microzip Data Solutions Inc., Axel Krieger
Luanne Morris
National Association for Information Destruction - Canada, Duncan Rayner
Barry Nauss
Norbert Neumann
Vic Nielsen
Michelle Nordeman
Robert Odynski
Terry O'Neill
Deborah Oosterhoff
Bud Oujla
Robert Overland
Colin Parker
Heinz Patzke
Ritchie Po
Charlene Ratzinger
Richard Rickard
Malcolm Roberts
Peter Robson
John Ryan
Joanne Sager
Mark Salter
Sylvia Schell
Barrie Seed
Bill Shumborski
John Smart
Jeannette St. Pierre
Peter Stornebrink
Surrey School District No. 36, Jordan Tinney
Robyn Thornton
Devin Todd

TransLink, Cathy McLay
Stan Turner
United for Life Advocacy Association of BC, John Hof
Larry Uzelman
Valerie van de Wint
Kors van Kreuningen
Vancouver Coastal Health Authority; Fraser Health Authority; Vancouver Island Health Authority; Northern Health Authority; Providence Health Care, C.C. (Kip) Woodward
Celia Vandergugten
Sid Veenbaas
Michael Volansky
Adam Waitzer
WeNeedaLaw.ca, Anna Nienhuis
Greg Wenger
Gordon Widsten
Larry Wierenga
Paul Williams
John F Wilson
Neil Yonson

The Law Society of British Columbia

January 21, 2016

Special Committee to Review the *Freedom of Information and Protection of Privacy Act*
Room 224, Parliament Buildings
Victoria, BC V8V 1X4

David Crossin, QC
President

Dear Sirs/Mesdames:

Re: Submission to the Special Committee – Review of the *Freedom of Information and Protection of Privacy Act*

We enclose the Law Society of British Columbia's submission to the Special Committee of the Legislative Assembly on the Review of the *Freedom of Information and Protection of Privacy Act.*

If the Special Committee has any questions or would like further information concerning the Law Society's submission, we would be pleased to provide answers or discuss it. We look forward to the subsequent report to the Legislative Assembly.

Yours truly,

David Crossin, QC
President

Encl.

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The Law Society
of British Columbia

Submission to
the Special Committee of the
Legislative Assembly of British Columbia
on the Review of the
Freedom of Information and Protection of Privacy Act

January 20, 2016

The Law Society of British Columbia
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INTRODUCTION

The Law Society of British Columbia is the governing body of the legal profession in British Columbia. It was recognized and given statutory authority in legislation enacted in 1884. Today, the Law Society continues under the authority of the *Legal Profession Act*, which was enacted in 1998. The object and duty of the Law Society, as stated in s. 3 of the *Legal Profession Act*, is to uphold and protect the public interest in the administration of justice by, amongst other things, preserving and protecting the rights and freedoms of all persons.

The Law Society supports the principles of openness and accountability that the *Freedom of Information and Protection of Privacy Act* (the "*FOI Act*") is intended to promote. However, there are some concerns in connection with how the public interest in the administration of justice is affected by the *FOI Act* as well as about its application to a professional governing body such as the Law Society that we wish the Special Committee of the Legislative Assembly to consider. We have focused our attention on four points that we consider to be particularly important. The four points are set out in some detail below; however, they are best understood in the context of the Law Society's statutory mandate.

We start from the premise that both the *FOI Act* and the *Legal Profession Act* are intended to protect the public interest. The purposes of the *FOI Act* as set out in section 2(1) are to make public bodies more accountable to the public and to protect personal privacy by

- giving the public a right of access to records,
- giving individuals a right of access to, and a right to request correction of, personal information about themselves,
- specifying limited exceptions to the rights of access,

- preventing the unauthorized collection, use or disclosure of personal information by public bodies, and

- providing for an independent review of decisions made under the Act.

The paramount duty of the Law Society under section 3 of the *Legal Profession Act* is to uphold and protect the public interest in the administration of justice by

- preserving and protecting the rights and freedoms of all persons,

- ensuring the independence, integrity and honour of its members, and

- establishing standards for the education, professional responsibility and competence of its members and applicants for membership.

In many respects the requirements of both Acts are congruent and the public is well served. However, in some respects the public interests served by the Acts are at crossed purposes. The Law Society's concerns arise from these points of tension. Dealing with information that is subject to solicitor-client privilege (a civil right of supreme importance in Canadian law) is one place where such tension can arise; investigating allegations of lawyer misconduct or incompetence is another.

Some of the recommendations submitted by the Law Society in these submissions mirror recommendations made in 2004 (see recommendations 1 and 3 below). The balance of the recommendations are made as the result further developments in the law that we

consider affect the premises underlying the statute and therefore need to be addressed in the legislation.

I. SOLICITOR-CLIENT PRIVILEGE

1. Legal Advice

Section 14 of the *FOI Act* provides:

Legal Advice

> **14** The head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege.

In the *Lavallee* case (*Lavallee, Rackel & Heintz v. Canada (Attorney General); White, Ottenheimer & Baker v. Canada (Attorney General); R. v. Fink*, [2002] 3 S.C.R. 209, 2002 SCC 61) Madam Justice Arbour described solicitor-client privilege as a "*principle of fundamental justice and civil right of supreme importance in Canadian law*". The paramount duty to protect the public interest in the administration of justice by preserving and protecting the rights and freedoms of all persons means the Law Society's duty to protect the privilege of clients applies in all cases, not only in those where the Law Society is the custodian of the privilege as a result of its involvement with its members. The confidential relationship takes precedence over the rights of third parties to information, and only the client has the option of releasing privileged information arising from that relationship.

The Law Society's concern with section 14 of the *FOI Act* is that, by giving the head of a public body the discretion to refuse to disclose information that is subject to solicitor client privilege, it appears by implication to give discretion to disclose privileged information. In the *Lavallee* case Madam Justice Arbour concluded "*solicitor-client privilege must be as close to absolute as possible to ensure public confidence and retain relevance. As such, it will only yield in certain clearly defined circumstances, and does*

not involve a balancing of interests on a case-by-case basis." In our view, there is no basis for a discretion to release privileged information. Disclosure must be refused.

We note that this recommendation was accepted by the Special Committee in 2010, but it has not been acted upon.

RECOMMENDATION #1

The Law Society recommends that section 14 be made mandatory except when the public body is the client and can choose to waive privilege or, if the client is a third party, the client agrees to waive privilege.

2. Production to the Commissioner of information subject to solicitor-client privilege

Sections 44(1) and 44(3) of the *FOI Act* require production of any record to the Commissioner during an investigation or an inquiry under the *FOI Act*, and permit the Commissioner to examine such records, despite any privilege of the law of evidence. Subsection 44(2.1) provides that disclosure of a privileged document to the Commissioner at the Commissioner's request under subsection (1) does not affect the privilege. Although subsection 44(2.1) goes some way to limit the potential harm done by disclosure, in our respectful opinion, it does not go far enough.

The Law Society has a statutory obligation to investigate complaints made against lawyers, and in so doing may obtain privileged or confidential information of a lawyer's client. The Law Society can also be a party to litigation itself and, like other entities from time to time is required to seek advice and instruct counsel in connection with matters affecting its legal rights and obligations.

In the *Cypress Bowl* case (*B.C. Minister of Environment, Lands & Parks v. B.C. Information & Privacy Commissioner*, (1995) 16 B.C.L.R. (3d 64)), Mr. Justice Thackray

confirmed that solicitor-client privilege is a principle that cannot be abridged by interpreting it narrowly, as the Commissioner had attempted to do by ordering the severance of certain documents related to giving legal advice. The Court held that s.4(2) of the *FOI Act* (the "severance" provision) does not modify the common law principle of solicitor-client privilege which is incorporated into the *FOI Act* by s.14. Mr. Justice Thackray went on to say that the Commissioner does not need to look at documents that are subject to solicitor-client privilege in order to determine if they should be disclosed:

"*I have not seen Documents 254 and 311 and have no reason to do so. Neither, in my opinion, did the Commissioner. I am not suggesting that there are not cases wherein the Commissioner should not peruse the questioned documents. However, when a question of solicitor-client privilege is the issue that step should be taken only if necessary. It should never become routine.*"

Since the *Cypress Bowl* case, the Supreme Court of Canada has had occasion to review in a significant manner, in a number of cases, the law concerning privilege, and has further and more firmly articulated the limits on disclosure of privileged documents. In the *Lavallee* case, the Supreme Court of Canada stated that solicitor-client privilege must remain as close to absolute as possible to retain its relevance, and that the Court must therefore adopt stringent norms to ensure its protection. In order to pass the scrutiny of the *Charter,* therefore, any statutory provision affecting the privilege must only do so as minimally as possible.

In *Lavallee*, the Court determined that the impugned statutory provision (s. 488.1 of the *Criminal Code)* more than minimally impaired solicitor-client privilege. Three problems identified in the *Lavallee* case included:

- the naming of clients
- the fact that notice may not be given to clients

- the possibility of access by the Attorney General to the information prior to the determination of privilege.

We are concerned that all three of those failings exist in s. 44(1) and (3) of the Act at present should the Commissioner compel a public body (such as the Law Society) to produce information or documents in its possession over which a claim of solicitor-client privilege of a lawyer's client may be made. Production of such information would, at the very least, name clients. There is no statutory provision for notifying the clients that their privileged information is being required to be produced. Should the privileged information disclosed amount to evidence of an offence, the Commissioner by virtue of s. 47(4) may disclose that information to the Attorney General. This provision constitutes a *substantial*, not a minimal impairment of privilege.

Moreover, the Supreme Court of Canada has made clear in *Canada (Privacy Commissioner) v. Blood Tribe Department of Health* [2008] 2 S.C.R. 574 that an adjudication of privilege by the Federal Privacy Commissioner (or presumably anyone delegated by the Commissioner to make the decision), who is an administrative investigator and not an adjudicator, would be an infringement of privilege. While there are some differences between the federal *Personal Information Protection and Electronic Documents Act* and the provincial Act that is the subject of these submissions, in our opinion the decision of the Supreme Court of Canada on this point is apposite. Consequently, the purpose for which s. 44(3) contemplates the production of documents over which a claim of privilege is made would itself be an infringement of the privilege and would apply equally whether the documents were third-party documents in the hands of the public body or of the public body itself.

The Supreme Court of Canada's decisions in *Goodis v. Ontario (Ministry of Correctional Services)* [2006] 2 S.C.R. 32 and in the *Lavallee* case state that any statutory provision permitting access to privileged documents must, in order to pass constitutional scrutiny, be "absolutely necessary" and "no more than minimally impair the privilege." In our submission, access to privileged documents by the Commissioner is not "absolutely

necessary" in these cases. Nor would such access no more than "minimally impair privilege". If the Commissioner were, in error, to determine that the documents were not privileged, that privilege would be absolutely impaired as the documents would ultimately be disclosed to the party seeking them, and the privilege would be lost. This outcome is not "absolutely necessary", as a process that allows the court to make a determination, in a manner that we have in the past suggested, is available. The Law Society therefore urges that a process be developed through which contested claims of privilege can be decided by the Courts, which is the ultimate and proper arbiter of privilege. This recommendation is consistent with a recommendation accepted by the Special Committee in 2010 that s. 14 of the Act be amended to say that the privileged status of records requested under the Act be referred to the Supreme Court of British Columbia for a decision.

Our recommendation is also consistent with the finding of the Alberta Court of Appeal in *University of Calgary v JR*, 2015 ABCA 118. In that case, the Court of Appeal determined that neither the Privacy Commissioner in Alberta nor her delegate has statutory authority to compel production of records over which a public body has asserted solicitor-client privilege. While that issue was raised in British Columbia in *School District No. 49 (Central Coast) v. British Columbia*, 2012 BCSC 427 the Supreme Court of British Columbia concluded that, given the particulars of the matter before it, it need not decide whether the *Freedom of Information and Protection of Privacy Act* gives the Commissioner the power to compel a public body to produce to the Commissioner documents which it refuses to produce because of a claim of solicitor-client privilege, although admittedly the Court seemed to prefer an interpretation of the legislation that would permit the Commissioner to access and review materials over which a claim of privilege is made.

The reasons for judgment in *University of Calgary* support the recommendation below. However, as the Supreme Court of Canada has granted leave to appeal that decision, we recognize that it may be advisable to await the outcome of that appeal before acting on our recommendation.

RECOMMENDATION #2

We recommend that section 44(3) be amended to exclude from disclosure to the Commissioner all records that are subject to solicitor-client privilege. We recommend that where an issue arises about the validity of a claim of privilege, a process be devised that would permit the Court to rule on the issue, on notice to all persons whose privilege may be affected by the order.

II. DISCLOSURE HARMFUL TO LAW ENFORCEMENT – Section 15(1) and Schedule 1: Definition of "law enforcement."

Section 15(1)(a) of the *FOI Act* applies to Law Society investigations leading to disciplinary proceedings involving a penalty or sanction. The Information and Privacy Commissioner confirmed this in Order 163-1997. However, there are several other methods by which the Law Society protects the public that require investigations to which section 15(1)(a) might not apply.

Under Part 2 of the *Legal Profession Act*, the Benchers and the Credentials Committee are responsible for ensuring that no person becomes a lawyer in B.C. who is not of good character and repute or is otherwise unfit. It is common for an extensive Credentials investigation of an applicant to take place when there is a question of character or fitness. Preventing unfit persons from becoming lawyers is obviously a more effective way of protecting the public than attempting to discipline them for transgressions affecting members of the public after they become lawyers.

Credentials investigations should have the same protection as investigations related to disciplinary functions performed by the Law Society. In the course of Credentials investigations, the Law Society frequently receives confidential information, often from confidential sources. Section 15(1) might not apply to protect that confidential

information because the investigation does not or might not lead to the imposition of a penalty or sanction, and therefore, does not fall within the definition of "law enforcement" in Schedule 1 of the *FOI Act*.

Similarly, the Law Society maintains programs to determine competence of individual members and, when they are found wanting, to assist them to achieve a higher level of competence. Again, investigations leading to voluntary remediation are arguably not included in the definition of "law enforcement" because they do not or might not lead to the imposition of a penalty or sanction.

The Law Society is authorized by section 33 of the *Legal Profession Act* to conduct audits to ensure that lawyers are maintaining proper records and following the requirements of the Act and the Law Society Rules concerning accounting for money held in trust. Audits may be initiated on the basis of confidential information, and confidential information is very often obtained during the audit. The purpose of the audit is to enforce the law with respect to lawyers' trust accounts, but it is not always clear that the audit could lead to the imposition of a penalty or sanction. We are concerned that other provisions of the *FOI Act* might not be able to prevent the disclosure of audit reports obtained through section 33 of the *Legal Profession Act* if they could be termed "routine inspections".

Our third recommendation reflects our view that the ability of the Law Society to conduct investigations in order to fulfill its statutory obligations should be the same whether the issue is punishment and possible exclusion from practice of a current member, or preventing an applicant from becoming a member, or some other regulatory function.

RECOMMENDATION #3

We recommend that the definition of "law enforcement" in Schedule 1 be expanded to include:

(d) proceedings or investigations authorized by an Act to be conducted by a professional governing body in furtherance of its duties and obligations in the public interest.

Alternatively, we recommend using more specific and restrictive language to define "law enforcement" as it applies to professional governing bodies:

(d) proceedings or investigations conducted by a professional governing body in furtherance of its duties and obligations in the public interest, including but not limited to investigations or audits regarding

(i) the qualification, character and fitness of an individual to become a member of the professional governing body or to be enrolled as a student under the authority of the professional governing body,

(ii) the ability of a member of a professional governing body to practise and continue to practise a profession,

(iii) a complaint, allegation or other information concerning the conduct of a member or former member of a professional governing body or a student under the authority of the professional governing body, and

compliance with rules or regulations governing the profession.

III. FEES – SECTION 75 AND REGULATIONS

The cost burden that has to be assumed by public bodies, and including in particular professional governing bodies, in complying with the provisions of the *FOI Act* remains of concern to the Law Society. Professional governing bodies receive no public funds.

While the provincial government relies on a sizable tax base of over 3.7 million people, professional governing bodies are financed through assessments on relatively small groups of private individuals. Moreover, most of the applications under the *Act* made to governing bodies, such as the Law Society as an example, are made by persons who are not members of the governing body.

While it is, of course, appropriate for government to make the policy decision to provide certain services to members of the public at little or no cost and finance the cost of providing the services from general revenue, it is another thing to impose this requirement on relatively small organizations such as the professional governing bodies like the Law Society.

The *FOI Act* and the Regulations appear to contemplate that there are two types of persons who make applications under the *FOI Act*: individual applicants and commercial applicants. Policy considerations may militate in favour of ensuring that individuals who want to make applications are not precluded from doing so by reason of the risk of having to bear the costs of the public body in processing the request. Different policy considerations have been expressed, however, where the applicant is a commercial applicant. In such circumstances, where the application is made for information in connection with a business or venture for profit, the "actual cost" of the processing services is more justifiable, and this has been recognized in B.C. Reg. 155/2012.

In light of the Commissioner's Order F09-05, however, the Law Society submits that some statutory clarification is warranted. In that order, fees for certain services that the Law Society undertook in the course of processing an application under the *Act* were disallowed, including

- the cost of making working copies;
- staff time spent making working copies;

- staff time spent severing records;

- staff time spent drafting lists of records.

In many, and perhaps even all, circumstances, these sorts of services are inherent in or ancillary to the nature of activities listed in s. 75(1) of the *FOI Act.* Disallowing a fee for these services means, by necessity, that the public body cannot recover the actual cost of processing a request under the *Act* because some necessary services are, by virtue of the Commissioner's decision, apparently excluded by the *FOI Act.* Applicants, particularly commercial applicants, therefore are *not* having to pay the reasonable cost of their requests, and the public body is having to subsidize the cost of the service. It is not that the Commissioner considers these sorts of services to be necessarily *unreasonable*, just that it is not a s. 75(1)(a) "service."

In the past, a practice appears to have developed whereby a charge of 25¢ per photocopy (the "maximum fee" for photocopying) has been applied by public bodies through which, we expect, public bodies have attempted to recoup some of the ancillary or "overhead" services that may not be specifically provided for in the legislation. The charge of 25¢ per photocopy is the general charge allowed for photocopying services by the courts on costs matters and is generally approved by Registrars in reviews of lawyers' accounts. In Order F09-05, the Commissioner permits only the "actual cost" of photocopying. If this is to be the case, then the Law Society submits that the ancillary costs must be recoverable at their actual cost. Otherwise, applicants, particularly commercial applicants, will receive a benefit at the cost of the public body. If the service is useful or reasonable in processing the application or is necessarily inherent in or ancillary to a service required to process a request, then the Law Society submits that it is reasonable to charge a commercial applicant the actual cost of that service. Statutory instruments should not place limits on the services that can be charged, at least to commercial applicants, provided they are reasonable services that aid in properly responding to the request.

RECOMMENDATION #4

We recommend that s. 75 and Regulation 155/2012 be amended or clarified, in light of the Commissioner's Order F09-05 and particularly with respect to the cost of photocopying and ancillary services related to processing applications. We recommend that public bodies be permitted to charge for *all* services that are useful or reasonable in the processing of a request made under the *FOI Act* by a commercial applicant.

President's Report to the Law Societies
June 2016

From: **Jeff Hirsch, President**
Federation of Law Societies of Canada

To: **All Law Societies**

Date: **June 29, 2016**

INTRODUCTION

1. The June Council meeting of the Federation of Law Societies of Canada marks the halfway point of a presidential year. My focus thus far has been in two areas - to oversee the completion and implementation of the Federation's new governance policies, as well as to engage directly with the leadership of our owners, Canada's law societies. This is my report of the Federation Council meeting held in Ottawa on June 14, 2016.

COUNCIL MEETING

Key Discussion and Decision Items

2. **Federation Governance and Strategic Planning**. The Federation's new governance policies were approved in March. There had been some discussion about further consideration being given to the public nature of Council meetings; however, more work needs to be done prior to continuing that discussion. The issue has been deferred to the Council meeting to be held in October.

3. Good governance practices include implementing a process for evaluating the effectiveness of Council. There was a thorough discussion of this matter and Council agreed to put in place a regular survey to enable Council members to carry out a group evaluation. The goal will be to create opportunities to assess the value and effectiveness of meetings and to ensure that the Council members' responsibilities are being properly discharged.

4. The Council also approved a new strategic planning process for this year. The CEOs' Forum will meet in July and have as part of its agenda the continuation of its earlier discussions about the current environment for legal regulation and the drivers for change in the future. The outcomes of this work will be circulated to law societies later in the summer, with a view to preparing for a strategic planning workshop when law society leaders gather in St. Andrews, New Brunswick in October. The goal will be to arrive at a consensus for a new Strategic Plan to be approved in December 2016.

5. **Interim Financial Statements for the Third Quarter and 2016-17 Budget**. The Federation's Finance and Audit Committee reported that the Federation is poised to finish the year with an overall operating surplus for the general operating fund and the National Committee on Accreditation fund of $48,437 on a combined budget for 2015-16 of $5,277,101. This would be the result of a projected surplus in the general fund of $86,937 and a projected deficit in the NCA fund of $38,500.

6. The Committee had presented its recommended budget for 2016-17 at the Council meeting held in March 2016. Law societies were afforded time to consider the budget and in June the Council voted unanimously to approve it. As a result, there will be a small decrease in the levy from $28.50 to $28.12 per FTE effective July 1, 2016.

7. **National Admission Standards Project**. The Council considered the recommendation of the National Admission Standards Project Steering Committee that work come to an end on the development of a national assessment tool. It was concluded that there was not a critical mass of law societies willing to move forward with this initiative at this time. The Council agreed. Council also considered the suggestion that the National Competency Profile be updated and that work resume on arriving at a national good character standard. Further discussions with the law societies will be required before moving forward with these initiatives.

8. **National Discipline Standards Project**. The Standing Committee on National Discipline Standards brought forward proposed amendments to standards dealing with the timeline to resolve or refer complaints, as well as the frequency for reporting on compliance with the standards. The Council approved these amendments.

9. **National Requirement Review Committee**. Council heard a report on the progress being made by this Committee and its plan to consult with law societies about whether the National Requirement should include a non-discrimination provision. A consultation paper will be circulated in the next several months.

10. **National Committee on Accreditation Program Review**. The Executive will be seeking the advice of a group of knowledgeable individuals drawn from Benchers, Council , staff and the legal academy on how best to carry out a program review of the NCA. Council has indicated that this work ought to be made a priority. For that reason , the Executive wants to ensure it has appropriate input into the process that it will ultimately recommend to Council for approval.

Status of Permanent Committees and National Initiatives

11. At each meeting of Council, the Committees that are responsible for the core work of the Federation provide written updates about their activities. I have attached the summary reports that were provided to Council.

Member, Stakeholder and International Relations

12. The President of the Federation plays an important ambassadorial role, one that is essential to being accountable and responsive to the stakeholders upon whom the Federation derives its purpose and legitimacy. In the last month alone, I have visited with the leaders of several law societies including those in British Columbia, Alberta, Saskatchewan, Ontario, Quebec and New Brunswick. A number of other meetings have been set for the summer and fall.

13. The Federation places a high value on the relationships it has nurtured with other national stakeholders in Canada's justice system. I was pleased to report to Council on the annual meeting that takes place between the Federation President and the Chief Justice of Canada Beverley McLachlin. I was also pleased to be represented by Vice President and President-elect Maurice Piette at an annual dinner hosted by the Supreme Court of Canada and the Board of Directors of the Canadian Bar Association.

14. In May, I represented the Federation at the annual Bar Leaders' Conference of the International Bar Association that was held in Barcelona. I participated on a panel dealing with the regulation of non-lawyer legal service providers and reported on the work and experience of Canadian law societies in this regard.

CONCLUSION

15. To those of you who have rolled out the red carpet for me and our CEO Jonathan Herman, at your recent Bencher retreats or Annual General Meetings, I express my deepest gratitude. I look forward to meeting, reporting to and hearing from many more law society leaders across the country in the coming months. Please do not hesitate to reach out to me with your questions or suggestions for how we can improve on making the Federation the collaborative national forum it was designed to be. I wish all of you a restful and enjoyable summer.

TAB 13(b)(i)

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

FEDERATION COMMITTEE STATUS

Date	**May 11, 2016**
Committee name	**National Committee on Accreditation**
Background	The mandate and background information on the work of the Standing Committee are available on the Federation Intranet here.
Current status, activities and next steps	• The roles of the committee are to set NCA policy and consider appeals of assessments (four to date in 2015/2016) • In January 2015, the committee revised the NCA Assessment Policy, bringing it into compliance with the National Requirement • The NCA has received 1,158 applications for assessment to date in 2015/2016. During the same period, 841 Certificates of Qualification have been issued. • In May 2016, approximately 1,100 exams were written in 27 Canadian cities (includes Vancouver, Calgary, Edmonton, Regina, Winnipeg, & Toronto) and sites abroad. • The NCA Chair is an observer and participant on the National Requirement Review Committee and will be providing input from the perspective of the NCA. While the NCA was planning to review its Canadian Civil Law Assessment Policy and to develop a module to evaluate Canadian Legal Research, these plans are on hold while the National Requirement Review Committee conducts its work. • At its March 2016 meeting, Council decided to undertake a comprehensive program review of the NCA. A steering committee is being formed to direct the review.

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

FEDERATION COMMITTEE STATUS

Date	**June 7, 2016**
Committee name	**Canadian Common Law Program Approval Committee**
Background	The mandate and background information on the work of the Approval Committee are available on the Federation Intranet.
Current status, activities and next steps	1. **Meetings:** The Approval Committee meets in person or by conference call three times a year to evaluate the law school reports and consider policy implementation. 2. **Law Schools:** With the recent approval Lakehead University's JD, there are currently 20 law schools with approved programs, and one (Trinity Western University) with preliminary approval. There are 19 three year JD programs, 54 joint programs, 10 dual programs, and 8 one year civil law programs, for a total of 91 approved programs. It should be noted that the LSUC has decided to exempt Lakehead's graduates from articling given their unique program of supervised work terms and integrated practice curriculum ("IPC"). 3. **New Law Schools:** Several other universities are considering opening law schools including Simon Fraser University, Ryerson University and Memorial University of Newfoundland. The development of the program at Ryerson is progressing and we expect an application by the end of 2016. This program will likely have 120-150 students per year and include an IPC, where legal skills training and experience are integrated into the law school curriculum. The inclusion of IPCs in Ontario law programs presents a challenge to the Approval Committee given that it is required to assess programs in which a law society also has, in part, jurisdiction.

4. **TWU:** The legal challenges related to TWU are continuing through the court system with hearings in Ontario (June 6-8, 2016 at the Ontario Court of Appeal), Nova Scotia (April 6-8, 2016 at the NS Supreme Court) and British Columbia (June 1-3, 2016 at the BC Court of Appeal). TWU has decided to not proceed with the development of its JD program until the legal challenges are settled.

5. **Ethics:** All but two law schools now require all students to complete at least 36 hours of ethics instruction even though the current requirement is 24 hours. The Implementation Committee Report noted that 36 hours was the ultimate goal for ethics instruction, and this will become the official requirement in 2017-18.

6. **Trends:** The Approval Committee noted a number of trends in reviewing the evaluations. These include: budget pressures at some schools, including in some cases the budgets for libraries (both for acquisitions and staff); a continuing increase in enrollment in some schools in some cases without formal announcements of increases (six schools have enrolment increases of 8-20%); there are several new deans recently appointed and several decanal vacancies; and all schools are cooperating with the committee and Federation staff, including providing full and complete reports. Several of these issues may have a negative impact on the learning environment and therefore the Approval Committee is monitoring them. The committee is particularly concerned about the approximately six schools reporting budget cuts of up to 10%. As noted above several schools have increased their student body which is likely in response to budget cuts. To assist the committee in monitoring these trends, members and staff are starting to track data and ratios. Particularly revealing in this exercise was the vast differences in certain areas such as library acquisition budgets, and the similarities in other areas such as the revenue/expenditure ratio.

7. **Joint Programs:** The application of the National Requirement to joint, dual and one year programs for Canadian civil law graduates was deferred until 2017, however, feedback on all programs was provided to the law schools in both 2014 and 2015. All programs will be evaluated in 2016 with a goal of issuing approvals to all programs in the fall.

	8. **National Requirement Review Committee:** The Approval Committee Chair is an ex officio member of the NRRC. The Chair participated in the May NRRC meeting during which the discussions on the early implementation issues with the National Requirement were continued, primarily through the completion of the review of the **March 22, 2016 memo** summarizing the Approval Committee's January meeting discussions. The memo may be found **here.** 9. **Issues Currently under Consideration:** The Approval Committee devoted most of its January 2016 meeting reviewing the early implementation issues with the National Requirement. While some of these issues are on the NRRC's agenda, several remain with the Approval Committee. In particular, we are beginning to struggle with determining the irreducible minima relating to law school resources. These minima could include the library acquisition budget or the minimum number of professors required to offer a JD. Other questions include whether a law program must have a research component and whether the law school review should include an assessment of bar exam failure rates to see if we are able to correlate the Approval Committee's evaluation with graduates' exam performance. 10. **Changes and challenges within Legal Education:** As part of its mandate "to participate in efforts and initiatives to enhance the institutional relationship between law societies and law schools at a national level", the Approval Committee is monitoring changes and challenges within legal education. The committee members see an important role for the Approval Committee in facilitating the flow of communication to and from the law societies and the academy on these issues, and ensuring the issues are on the agendas of both the Federation and the law societies, as required. Fulfilling this role may require specialized staff support and would also benefit from a discussion about the best vehicle for the committee to bring forward the issues and then for the Federation and law societies address them. 11. **Federation Conference:** The fall 2016 Federation conference will focus on legal education; the Approval Committee Chair is on the conference planning committee. The idea for a conference on legal education came in part from a discussion amongst the deans on the Approval Committee.

	12. **<u>Next Meeting</u>**: The Approval Committee will meet next in June to evaluate the 2016 law school reports. During the meeting, the trends noted above will be monitored.

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Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

FEDERATION COMMITTEE STATUS

Date	**May 20, 2016**
Committee name	**National Requirement Review Committee**
Background	The mandate and background information on the work of the NRRC are available on the Federation intranet.
Current status, activities and next steps	• Since the last Council meeting the Committee has met twice, once by teleconference and once in-person for two days in Toronto. A full report on these meetings is included in the materials for the June Council meeting. • The Committee expects to complete by late summer a consultation paper on the question of whether to add a non-discrimination provision in the National Requirement and to engage in public consultations on the options identified in the paper during the fall of 2016.

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Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

FEDERATION COMMITTEE STATUS

Date	**May 19, 2016**
Committee name	**National Admission Standards Project Steering Committee**
Background	The mandate and background information on the work of the Steering Committee are available on the Federation intranet.
Current status, activities and next steps	• The Steering Committee met on March 31, 2016 to discuss additional feedback received from law societies on the assessment proposal. On the basis of this information, the Committee decided to recommend to Federation Council that efforts to develop a national assessment tool stop. In the Committee's view, it is not financially or practically possible to execute a national assessment plan without a critical mass of law societies ready to move forward with the development of the plan. It was a precondition of the assessment phase of the project that commitment from a critical mass of law societies would be required to move forward. • The Steering Committee's recommendation is set out in a memo from Don Thompson to Federation Council dated May 11, 2016. The memo is for discussion and decision at the Council meeting on June 14, 2016. The memo was circulated to Council (copied to law society Presidents and CEOs) on May 11. • In the memo, the Committee recommends that work on the assessment phase of the National Admission Standards Project cease and seeks direction from Council about whether to review the National Competency Profile and continue work on a National Good Character Standard. It is expected that Council will consider these question in light of its overall strategic planning process and individual law society priorities.

TAB 13(b)(v)

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

FEDERATION COMMITTEE STATUS

Date	**May 27, 2016**
Committee name	**Standing Committee on National Discipline Standards**
Background	The mandate and background information on the work of the Standing Committee are available on the Federation Intranet here.
Current status, activities and next steps	• The Standing Committee met in person in Ottawa on April 11, 2016. The Committee reviewed the law society 2015 annual status reports, representing law society performance during the first year of official implementation of the standards. Status reports from 13 law societies were received. Collectively, law societies met 72% of the discipline standards on average. Reasons given for standards that were either not met or partially met include legislative or regulatory prohibitions, insufficient resources, volume of matters received and operational delays. Law societies continue to work toward meeting the standards, including work on reforms to regulations and legislation in some jurisdictions. • In its memo to Council dated May 26, 2016, the Standing Committee is requesting that Council approve a revised set of National Discipline Standards. The Standing Committee is charged with identifying needed refinements to the standards as law societies gain experience with them. The standards are intended to be living and it is expected that they will be revised from time to time as needed. • Once the Federation Council has approved the revised National Discipline Standards, the updated Standards and Implementation Guide will be circulated to law societies for adoption and implementation by the end of 2016. • The Standing Committee is exploring several new Standards including: ○ a standard on interim measures that would give law societies the ability to take interim steps quickly before conviction and while an investigation may be ongoing, to protect the public;

	○ A standard requiring a process for early resolution of appropriate complaints; ○ One or more standards imposing quality measures. • The Standing Committee continues to work on a proposal for a voluntary Peer Support Pilot Project and resources for law societies implementing Standard 16. • The Adjudicator Training Working Group (ATWG) has been working on developing a national curriculum for law society adjudicators in response to Standard 20. The ATWG met by teleconference on February 22 and March 23, 2016. The ATWG will meet in-person in Toronto on June 14, 2016 to complete its mapping and design work for an adjudicator training curriculum. • The next teleconference meeting of the Standing Committee will be held in the summer 2016

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Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

FEDERATION COMMITTEE STATUS

Date	**May 20, 2016**
Committee name	**Standing Committee on the Model Code of Professional Conduct**
Background	The mandate and background information on the work of the Standing Committee are available on the Federation intranet.
Current status, activities and next steps	• The most recent consultation package on proposed amendments to the Model Code was released on January 30. • The package, which includes proposed amendments to the rules on competence, dishonesty/fraud, and incriminating physical evidence, and a new rule addressing responsibilities that arise when a lawyer leaves a law firm, was sent to law societies, the Canadian Bar Association, and the Department of Justice. It was also circulated to the legal ethics community through the listserv operated by the Canadian Association for Legal Ethics and was posted on the Federation's public website. • The consultation is open until June 30, 2016. • In mid-May the Standing Committee circulated a discussion paper on Post-Judicial Return to Practice to the law societies and selected stakeholders including the Canadian Judicial Council, the Canadian Superior Court Judges Association, the Canadian Association of Provincial Court Judges, the Canadian Bar Association and selected legal ethics professors. In a departure from its usual practice, the Standing Committee is consulting on the issues that arise when a judge leaves the bench and returns to legal practice before deciding whether to propose amendments to the Model Code. If the Standing Committee concludes that amendments to the Model Code should be made it will follow its regular consultation process to obtain feedback on the proposed amendments.

	• A second discussion paper, this one on fee sharing, will be circulated to the law societies in early summer. The paper discusses the policy rationale for banning fee sharing and considers the potential effects of amending or repealing the rules. The Standing Committee is consulting only with the law societies on these issues. The paper is intended to stimulate discussion and invite the exchange of ideas, all of which will help to identify next steps. • The Standing Committee is also working on issues related to technological competence.

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Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

FEDERATION COMMITTEE STATUS

Date	**May 20, 2016**
Committee name	**Standing Committee on Access to Legal Services**
Background	The mandate and background information on the work of the Standing Committee are available on the Federation intranet.
Current status, activities and next steps	• The Federation continues to play an active role in the National Action Committee on Access to Justice in Family and Civil Law Matters (the "NAC"), with President Jeff Hirsch continuing to sit as a member of the NAC Steering Committee. • The NAC held two days of meetings in Montreal in March. The first, a meeting of the committee itself, focused on the future of the NAC. A number of challenges were identified including the need for sustainable funding, achieving broader engagement and increasing alignment amongst the initiatives undertaken by different stakeholders. The development of a long-term vision, metrics and evaluation tools and the creation of momentum were identified as goals for the NAC. It was agreed that the NAC would meet annually and would also organize some sort of event each year for representatives of provincial and territorial access to justice committees. • The second day of the Montreal meetings brought together a diverse group of access committee representatives from across Canada. Lawyers, judges, representatives of service organizations, ministers and deputy ministers met to discuss their biggest achievements and greatest challenges and to explore a number of initiatives including the work of the NAC, the Access to Justice Research Network, and the justice development goals. The meeting closed with a discussion about the challenge of securing sustainable funding for the provincial and territorial access initiatives.

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Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

FEDERATION COMMITTEE STATUS

Date	**May 20, 2016**
Committee name	**Litigation Committee**
Background	The mandate and background information on the work of the Standing Committee are available on the Federation Intranet here.
Current status, activities and next steps	• Greg Walen, Council member representing the Law Society of Saskatchewan, has replaced Sheila Greene, Council member for the Law Society of Newfoundland and Labrador as chair of the committee. • The Federation has been granted leave to intervene at the Supreme Court of Canada in the case of *Sidney Green v. Law Society of Manitoba.* The case raises important issues involving the authority of law societies to impose mandatory CPD requirements and to administratively suspend member. • The Federation's factum must be filed by July 8, 2016. The hearing is scheduled for November 9, 2016. A decision on the Federation's request to make oral argument at the hearing will be made closer to the hearing date. • The Federation was granted leave to make oral argument in the case of *Information and Privacy Commissioner of Alberta v. Board of Governors of the University of Calgary* heard by the Supreme Court of April 1, 2016. The Court has reserved its decision in the case.

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Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

FEDERATION COMMITTEE STATUS

Date	**May 17, 2016**
Committee name	**Public Affairs and Government Relations Committee**
Background	The mandate and background information on the work of the Committee are available on the Federation intranet.
Current status, activities and next steps	• The first meeting of the Committee was held by teleconference on April 19, 2016 and a second meeting is being planned for later this spring. • In accordance with its mandate, the Committee is working on guidelines for the development of positions on policy and government relations issues. The guidelines will address consultation and engagement with the law societies, the process for approval of policy positions, and the circumstances in which the Federation may make submissions or provide feedback on an issue without first obtaining the express consent of the law societies. • The Committee has also considered the anti-money laundering and terrorist financing issues referred to it by the Council and is developing a recommendation on a proposed approach to addressing the issues for Council's. • A discussion about the decision of the former government to extend statutory privilege to the communications between intellectual property agents and their clients highlighted the importance of harmonizing the work of the Federation and the law societies on this and other government relations issues. To this end, the Committee has suggested to the Law Society of Upper Canada, which has been very active on this issue, that we arrange a meeting between members of the Committee and members of the LSUC Government and Public Affairs Committee to exchange information and discuss strategies for collaboration.

TAB 13(b)(x)

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

FEDERATION COMMITTEE STATUS

Date	**May 31, 2016**
Committee name	**Working Group on the Truth and Reconciliation Commission Calls to Action**
Background	The mandate and background information on the work of the Working Group are available on the Federation intranet.
Current status, activities and next steps	• The composition of the Working Group was finalized in mid-May. • The Working Group held its inaugural teleconference on May 30, 2016 to discuss its mandate and the importance of engaging with Aboriginal government organizations at the earliest opportunity. The Working Group also discussed its role and scope of work to be done in order to meet the mandate. • Members agreed to individually review the mandate in greater depth and provide input at the earliest opportunity. The Working Group members will begin sharing relevant and/or helpful information to better understand the work being done in each jurisdiction. One of the goals discussed for the second meeting is to develop a work plan for the summer. The date of the second meeting is yet to be determined.

TAB 13(b)(xi)

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

FEDERATION COMMITTEE STATUS

Date	**June 3, 2016**
Committee name	**Federation 2016 Annual Conference Planning Committee**
Background	A new Conference Planning Committee is constituted for each Federation Conference. Through consultation with the law societies and other stakeholders as required, the Conference Planning Committee decides on the overall conference theme and develops the detailed Conference agenda. The CEO of the host law society sits on the Conference Planning Committee. The other members of the committee typically have a particular expertise in the issues being explored during the conference and/or provide regional representation on the committee. Committee members are drawn from Federation Council, law society CEOs and senior staff, law society elected leaders, and occasionally, stakeholder communities.
Current status, activities and next steps	• The Conference Planning Committee for the Federation's 2016 Annual Conference in St. Andrew's-By-The-Sea (October 19-22), met by teleconference on May 6, May 26 and June 2. The committee will meet again on Thursday, June 16 and every second Thursday thereafter for the remainder of the summer. • This year's Annual Conference will focus on legal education and the relationship between law schools and law societies in preparing legal professionals. The conference is being planned in partnership with the law school community. The conference will provide a forum for discussion and an exchange of perspectives on areas of shared interest to the legal academy and law societies. Topics will explore how both groups can work together to prepare new lawyers and notaries for the realities of legal practice today and in the future. • The Conference Planning Committee has developed a draft agenda and will soon invite presenters. It is anticipated that approximately 20% of attendees will hail from the legal academy.

Conference Planning Committee members	The members of the 2016 Annual Conference Planning Committee are: • Thomas G. Conway (Chair), Federation Past-President • Cori Ghitter, Director, Professionalism and Policy, Law Society of Alberta Diana Miles, Executive Director, Organizational Strategy and Professional Competence, Law Society of Upper Canada • Laurie Pawlitza, Council Member representing the Law Society of Upper Canada • Lise Tremblay, Directrice générale, Barreau du Québec • Marc L. Richard, Q.C., Executive Director, Law Society of New Brunswick Alan Treleaven, Director, Education and Practice, Law Society of British Columbia • Lorne Sossin, Dean, Osgoode Hall Law School, York University
Staff Support	• Stephanie Spiers, Director, Regulatory Affairs • Deborah Wolfe, Managing Director, National Committee on Accreditation and Director, Law School Programs

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