



Agenda

Benchers

Date: Friday, December 9, 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.*

CONSENT AGENDA:

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

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1	Consent Agenda <ul style="list-style-type: none"> Minutes of November 4, 2016 meeting (regular session) Minutes of November 4, 2016 meeting (<i>in camera</i> session) External Committee Appointments: Legal Services Society and Land Title & Survey Authority an “Introduction” to the Code of Professional Conduct for BC Amendments to the Code of Professional Conduct for British Columbia: Language Rights – Rules 3.2-2.1 and 3.2-2.2 	1	President	Tab 1.1 Tab 1.2 Tab 1.3 Tab 1.4 Tab 1.5	Approval Approval Approval Approval Approval



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ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
	<ul style="list-style-type: none"> Amendments to the Code of Professional Conduct for British Columbia: Incriminating Physical Evidence – Rule 5.1-2.1 			Tab 1.6	Approval
EXECUTIVE REPORT					
2	President's Report	5	President	Oral report (update on key issues)	Briefing
GUEST PRESENTATION					
3	"A Judge's Perspective on the TRC Report and Recommendations"	25	The Honourable Judge Len Marchand		Presentation
EXECUTIVE REPORTS					
4	CEO's Report	10	CEO	Tab 4	Briefing
5	Briefing by the Law Society's Member of the Federation Council	5	Herman Van Ommen, QC		Briefing
GUEST PRESENTATION					
6	UVic's Proposed Common Law/Indigenous Legal Orders Joint Degree Program	20	Jeremy Webber, Dean of Law, and Professor Val Napoleon, Law Foundation Chair in Aboriginal Justice and Governance at UVic		Presentation



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ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
DISCUSSION/DECISION					
7	Legal Aid Task Force: Status Report	10	Nancy Merrill, QC		Discussion
8	Proposed Amendments to the Rules Regarding Benchers Candidate Eligibility	10	Satwinder Bains	Tab 8	Discussion / Decision
9	A2JBC - Funding Proposal	10	President/CEO	Tab 9	Discussion / Decision
10	Submissions on National Security Consultation: Report from Rule of Law and Lawyer Independence Advisory Committee	5	Craig Ferris, QC	Tab 10	Discussion / Decision
11	Governance Committee Year-End Report	5	Herman Van Ommen, QC	Tab 11	Discussion/ Decision
REPORTS					
12	Year-End Reports from the 2016 Advisory Committees				Briefing
	<ul style="list-style-type: none"> Access to Legal Services Advisory Committee 	5	Herman Van Ommen, QC	Tab 12.1	Briefing
	<ul style="list-style-type: none"> Equity and Diversity Advisory Committee 	5	Satwinder Bains	Tab 12.2	Briefing
	<ul style="list-style-type: none"> Rule of Law and Lawyer Independence Advisory Committee 	5	Craig Ferris, QC	Tab 12.3	Briefing
	<ul style="list-style-type: none"> Lawyer Education Advisory Committee 	5	Tony Wilson	Tab 12.4	Briefing



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ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
13	Report on Outstanding Hearing & Review Decisions	5	Herman Van Ommen, QC	(To be circulated at the meeting)	Briefing
FOR INFORMATION					
14	Letter from Robert D. Holmes, QC to David Crossin, QC & Tim McGee, QC: Constance D. Isherwood, QC – Law Society of BC and CBABC Bench and Bar Dinner 2016			Tab 14.1	Information
	Letter from Jeremy Webber, Dean of Law, UVic, to Tim McGee, QC: The Pamela Murray, QC Entrance Scholarship Awarded to Makaela Peters			Tab 14.2	Information
	Federation of Law Societies of Canada President’s Report to Council and the Law Societies – November 2016			Tab 14.3	Information
IN CAMERA					
15	<i>In camera</i> <ul style="list-style-type: none">• Benchers concerns• Other business		President/CEO		Discussion/ Decision



Minutes

Benchers

Date: Friday, November 04, 2016

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

Excused: Satwinder Bains
Christopher McPherson
Claude Richmond
Daniel P. Smith
Lee Ongman

Staff Present: Deborah Armour
Taylore Ashlie
Renee Collins
Lance Cooke
Su Forbes, QC
Andrea Hilland
Jeffrey Hoskins, QC
David Jordan
Michael Lucas
Alison Luke
Jeanette McPhee
Doug Munro
Alan Treleaven
Adam Whitcombe
Vinnie Yuen
Kerryn Garvie

<p>Guests: Dom Bautista Mark Benton, QC Johanne Blenkin Dr. Catherine Dauvergne Gavin Hume, QC Claire Hunter Caroline Nevin Michele Ross Prof. Jeremy Webber Michael Welsh</p>	<p>Executive Director, Law Courts Center Executive Director, Legal Services Society CEO, Courthouse Libraries BC Dean of Law, University of British Columbia Law Society of BC Member, Council of the Federation of Law Societies of Canada Partner, Hunter Litigation Chambers Executive Director, Canadian Bar Association, BC Branch Education Chair, BC Paralegal Association Dean of Law, University of Victoria President, Canadian Bar Association, BC Branch</p>
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CONSENT AGENDA

1. Minutes

a. Minutes

The minutes of the meeting held on September 30, 2016 were approved as circulated.

The *in camera* minutes of the meeting held on September 30, 2016 were approved as circulated

b. Resolutions

The following resolution was passed unanimously and by consent.

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

- (a) rescinding rules 3.4-17 to 3.4-26, their associated Commentaries, and Appendix D;
- (b) adopting new rules 3.3-7 and 3.4-17 to 3.4-23, and their associated Commentaries, as recommended by the Ethics Committee; and
- (c) replacing the words “The guidelines at the end of Appendix D” in Commentary [1] to rule 3.4-11 with the words “The guidelines following Commentary [3] to rule 3.4-20.”

BE IT RESOLVED that the Benchers ratify the appointment of Second Vice-President Miriam Kresivo, QC as the Law Society’s representative on the 2016 QC Appointments Advisory Committee.

BE IT RESOLVED to amend the Law Society Rules, effective January 1, 2017, as follows:

- 1. In Schedule 1, by striking “\$2,057.09” at the end of item A 1 and substituting “\$2,125.57”, and
- 2. In Schedule 2, by revising the prorated figures in each column accordingly; and
- 3. In the headings of schedules 1, 2 and 3, by striking the year “2016” and substituting “2017”.

EXECUTIVE REPORTS

2. President's Report

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

He attended and spoke at the American Bar Association's Commission on Legal Assistance Programs (CoLAP) National Conference being held in Vancouver. On behalf of the Benchers he noted the Law Society's support for the LAP in BC, both the institution and the individuals committed to it, commending them for their efforts of outreach and openness which have created a culture of early intervention in BC. More people are now reaching out before it's too late, before irreparable damage has been done in their lives.

He regretted his inability to attend the recent Federation Conference and meetings, but noted that reports would be provided to Benchers by both Gavin Hume, QC and Tony Wilson, who will report on the conference topic of legal education.

He also attended and spoke at the Indigenous Bar Association's (IBA) national conference being held in Vancouver, the theme of which was "Redefining Relationships – With or Without You". In his remarks he emphasized the Law Society's continuing engagement and commitment to discovering and building new relationships, and was humbled by the expressions of gratitude he received from a wide variety of participants who applauded the legal profession for its public commitment to these important justice issues. Of note, Law Society staff lawyer Andrea Hilland was singled out by IBA leaders for her excellent work in support of that commitment. Mr. Crossin added his own commendations for Ms. Hilland's work, noting that the Law Society is fortunate to have such a talented person in its midst.

Finally, Mr. Crossin reminded Benchers of the upcoming deadline for submission of nominations to the Executive Committee for 2017, as well as the deadline for submission of expressions of interest for 2017 committees generally.

3. CEO's Report

Mr. McGee, who was attending the International Institute of Law Association Chief Executives, provided his monthly written report to the Benchers prior to the meeting. As that report consisted solely of in camera matters, Adam Whitcombe, Chief Information Officer and Acting CEO, provided highlights of that report to Benchers during the in camera session.

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

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

Reporting on the recent Federation Conference and Council meetings, he began by briefing Benchers on the third day of the gathering which was a day of strategic planning led by Allan Fineblit and Joanne Brodeur. The interesting session was a review of 18 functions the Federation engages in on behalf of law societies, including ownership of CanLII, administration of national mobility, and approval of common law degrees, to name a few. The session involved both larger presentations and small group discussions regarding the current activities and possible directions for moving forward. The next steps will involve collating the various small group discussion details with a view to producing a draft strategic plan for input at the December 13th Council meeting. Mr. Hume noted that a consistent emerging theme was the role of the Federation as a facilitative, coordinating organization rather than a regulatory one, and a representative voice once consensus is reached.

At the council meeting, Richard Scott, former President of the Nova Scotia Barristers Society, was elected as the 2nd Vice-President of the Federation. Additionally discussed were the processes to be adopted by the Public Affairs and Government Relations Committee, whose role it is to look at issues of interest to the Federation and law societies and work towards developing common positions. Discussions involved defining an approach for building consensus and seeking approval in the development of those positions. Included in the consultation will be Federation Council members, Presidents and CEOs to ensure full disclosure and consensus. One challenge that was identified was a suitable process for matters involving a shortened response period. It was agreed that, when the response time required is too short to allow for consensus to be reached, the Federation will provide no response, unless it is a topic upon which the Federation and law societies have already reached agreement.

Also discussed at the Council meeting was the topic of anti-money laundering and the Federal Government's apparent focus on lawyers. The review of the National Committee of Accreditation (NCA) also moved forward, with a decision made to retain a consulting firm to facilitate the process. A topic of focus in that discussion was the challenge of NCA candidates not meeting law societies' expected standards.

The National Requirement Working Group tabled a discussion paper on non-discrimination as a factor in law degree approvals, but the decision was made to defer any further discussion until after the Supreme Court of Canada's hearing of the appeal in the TWU action.

The TRC Working Group presented its report and action plan that mirrored BC's, but approval was deferred until after the strategic plan is settled, given the potential role of the Federation as a coordinator, rather than a regulator.

A new Board for CanLII was approved, which included CRT Chair Shannon Salter. The budget for CanLII will be discussed at the December meeting with few expected changes.

Reports were received on the progress being made by the national criminal law and family law programs. The reports showed that the programs are well received and successful, but there remains debate regarding whether the Federation's continued engagement in such programs is inconsistent with its coordinating role amongst law societies. It was Mr. Hume's opinion that the Federation's continued engagement is valuable.

Following Mr. Hume's report, Mr. Crossin recognized Mr. Hume's last meeting as the Law Society representative on the Federation Council, thanking him for his tireless efforts and his unfailing dedication. Alan Treleaven, Director, Education and Practice, also paid tribute, noting particularly Mr. Hume's invaluable contributions to the design, implementation and ongoing amendments of the Federation Model Code of Professional Conduct. He presented Mr. Hume with a certificate of service, and his heartfelt thanks on behalf of the Law Society.

In his gracious response, Mr. Hume provided thanks of his own, noting simply that he has received far more than he has put in.

DISCUSSION/DECISION

5. Law Firm Regulation Task Force: Interim Report

Mr. Van Ommen reported as Chair of the Task Force. He began by thanking Task Force members Jan Christiansen, Martin Finch, QC, Peter Lloyd, FCPA, FCA, Lori Mathison, Sharon Matthews, QC, Angela Westmacott, QC, Henry Wood, QC, and Michael Lucas for his invaluable staff support.

The Task Force began its mandate by conducting two consultations with the profession, travelling to 11 different locations in BC and meeting with members directly. During these consultations, Mr. Van Ommen outlined the benefits of regulating law firms. Most firms have systems in place to standardize such practices as file choice, file intake, conflicts, accounting and billing. Under our current regulatory system, individual members are held responsible for these decisions and these practices that, for the most part, are largely controlled by their firm. Law firm regulation aims to hold firms responsible for conduct they control.

In his consultations, Mr. Van Ommen also noted for members that law firms generally influence behavior as well, and are well placed to encourage a culture of ethical and responsible practice. Firms are also uniquely positioned to help lawyers experiencing challenge. Engaging at the law firm level may help remedy difficulties before they reach a level warranting complaint or discipline.

Having its origins in Australia, law firm regulation is occurring around the world; in Canada Nova Scotia's proposals are most fully developed, while task forces continue at work in Ontario, the three prairie provinces and here in BC. The prospect of regulation at the law firm level is particularly important for national firms, and presents the opportunity to standardize practices across the country. To date, the various provincial law societies have worked well in collaboration; moving forward, collaboration with the Federation isn't precluded given the national implications.

Mr. Van Ommen then briefed Benchers on the 10 Task Force recommendations, noting that the approach recommended is to require firms to have in place professional infrastructures to ensure lawyers are competent, ethical and not acting in conflict. The recommendations emphasize proactivity and are outcomes based, rather than prescriptive. In other words, a firm will be expected to have in place policies and procedures to avoid conflict, for example, but the specific methods will be left to the firm to best determine. Additionally, the recommendations acknowledge the differences between traditional law firm structures and sole practitioners. During the consultations, we received important input from sole practitioners who resisted the imposition of additional administration, but who also expressed interest in receiving training and education around office procedures and office management. Further, the recommendations do not include regulation for in house counsel, crown counsel and lawyers acting in a pro bono capacity.

He referred Benchers to the Interim Report for the proposed elements of structure which include:

- Competence
- Practice management
- Client relations
- Confidentiality
- Conflict of interest
- File management
- Appropriate fees and disbursements
- Financial management
- Compliance with legal obligations

He noted that the proposed structure is a registration rather than a licensing scheme; the Task Force does not propose duplication of our current individual licensing of each lawyer. Firms will be required to designate a person who will have contact with the Law Society. Unlike the securities industry, there will be no personal liability imposed on this person. Regulation will be through self-assessment, with firms being responsible for determining if the necessary policies and procedures are in place.

Data has shown that implementation of a self-assessment process alone has produced an important shift in behavior. In Australia, complaints dropped by one third. Nova Scotia has begun the development of a toolkit which contains model policies and useful suggestions for implementing the infrastructure elements. The goal is not necessarily to have information flow back to the Law Society; rather it is to focus attention on the structural elements at the firm level, and change behaviors before they result in complaints.

Mr. Van Ommen did note that rules and policies to address non-compliance will need to be developed. Compliance reviews, which could be akin to periodic trust audits, are one possibility for addressing non-compliance, but more work on this area remains.

He also stressed that implementation will require resources and time to develop model policies and toolkits, and to assist firms with their own implementation. If the recommendations are approved, the next steps involve further consultation with the profession, including work with focus groups such as sole practitioners, large firms, and space sharing professionals. He asked Benchers for their input and guidance. Mr. Crossin noted that no motion was before them, but sought consensus on the recommended approach.

It was observed by a Bencher that, in the financial services industry, the presence of a compliance officer actually served to distance individuals from their professional obligations. The concern was expressed that something similar could occur with the current proposals. Mr. Van Ommen emphasized that the Code of Professional Conduct would remain and individuals would still retain professional obligations.

The importance of focus groups of sole practitioners and those sharing space was stressed by others, who observed that these lawyers often provide services that increase access to justice for very little money. Increased administrative burden could have a deleterious effect. Mr. Van Ommen reiterated the intention to provide ongoing support with both implementation and self-assessment tools.

Following discussion. Mr. Crossin confirmed with the Benchers that there was consensus to move forward with the Task Force's recommended approach.

6. Access to Legal Services Advisory Committee - Policy Discussion: Lawyers' professional responsibility to promote access to legal services

Mr. Crossin introduced committee member Claire Hunter to facilitate the discussion on lawyers' professional responsibility to promote access to legal services. Ms. Hunter, who clerked at the Supreme Court of Canada prior to her call to the Bar, is actively involved in community work, including as a provider of pro bono legal services. She was recently elected Chair and President of the Access Pro Bono Society of BC, represents BC on the CBA's national pro bono committee, and has won numerous awards for her pro bono service.

Ms. Hunter framed the discussion by noting that the Access to Legal Services Advisory Committee, which customarily looks at discreet projects, took a "step back" this year to consider foundational questions such as "what do we mean by access?" and "what is our role in the provision of access?" One proposition that has been advanced is there exists a collective professional responsibility on the legal profession, given its monopoly on legal services. If it is indeed our responsibility to ensure access to legal services, what is the scope of need? There is little data on whose needs are not being met, who chooses self-representation and who is most affected by the lack of affordability of legal services. It is difficult to claim responsibility for something that is hard to define.

Currently, there are no jurisdictions mandating pro bono services, although the American Bar Association has an aspirational rule suggesting 50 hours per year of service. Caveats include the recognition that individual states can choose a higher or lower limit, and those unable to perform service can provide monetary donations to service organizations. The CBA adopted a similar aspirational goal of 50 hours in 1998. To date, only 15% of lawyers are providing at least 50 hours of pro bono service.

In light of this, the Committee discussed whether pro bono work alone was the best way for lawyers to discharge their responsibility, and queried whether other mechanisms could be more effective. She invited discussion of other models or innovations that could meet unmet needs and help facilitate increased access to legal services, and posed the questions:

- Is there a collective obligation to make legal services accessible and available?
- If so, what if anything is required of individual lawyers?
- Do we have the information we need to answer questions, and if not, what do we need?

As Chair of the Committee, Mr. Van Ommen encouraged Benchers to consider systemic changes to effect change and create institutions able to resolve disputes in ways that work, rather than simply debating the merits of mandating pro bono services.

Many Benchers expressed their appreciation for Ms. Hunter's remarks, thanking her for her many contributions.

Some observed that any discussion of lawyers providing pro bono services should include the recognition that lawyers experiencing emotional or mental health challenges may not be best able to provide pro bono services. Others noted that "pro bono" work takes many forms, including providing initial consultations free of charge, that often go unrecognized.

Ms. Hunter clarified the Committee's perspective, that discussion of the profession's responsibility to facilitate access to legal services should be framed to include a wide variety of mechanisms beyond just the provision of pro bono services. Many Benchers agreed, and endorsed the notion of a collective responsibility, but struggled with how some types of specialized lawyers could contribute.

Still others emphasized the need for differing models and mechanisms to reflect differences in the profession, such as urban versus rural, and large firm versus sole practitioner. Others noted the importance of changing the culture to embrace such responsibility, and work with our moral authority rather than our regulatory one. The Law Society has the opportunity to be a leader in this area, and should help facilitate access as well as promote public awareness of the programs and services that exist.

One Bencher applauded the notion of a broadened concept of increased access to legal services, and provided various examples of innovative solutions found in the family law Bar such as becoming trained parenting coordinators, or sitting on Rules revision committees. Another suggested that, if the responsibility flows from being the sole provider of legal services, a possible solution might be to allow others to provide legal services as well, particularly at a level of service that is not currently being met by lawyers.

Other suggestions included: the importance of law reform initiatives, including statutory and Rules reform on practical levels, such as permitting review of builders' liens in Provincial Court rather than Supreme Court; the more widespread use of unbundling as a highly effective mechanism to meet need; and, public recognition of those already providing pro bono work, to applaud their efforts and hopefully act as a catalyst for others to do the same.

It was also recognized that the current social services tax was meant to provide funding in this area, but in fact has not. The suggestion was made that we should take the position that the provincial government should be directing the proceeds of that tax towards its originally intended purpose. Another suggestion was made that the public expects action on this issue, rather than more study or incremental changes; further, that the Law Society already mandates a "tax" to increase access to legal services, in the form of an annual levy on members for Access

Pro Bono. The lack of “pushback” indicates a tacit acknowledgment that such measures are necessary.

Mr. Van Ommen thanked the Benchers for a fruitful and productive discussion. He also asked for approval of the Committee recommendation to include a new question on the Annual Practice Declaration (APD) regarding types of pro bono activities lawyers are currently engaged in. He noted it would also be helpful to engage with law firms to see how they can collaborate towards increased access.

Mr. Crossin advised that the Executive Committee would be charged with approval of a revised APD, but noted no opposition to the recommendation. One Bencher did note that an APD question on access could be expanded beyond pro bono to include all activities lawyers are engaged in to increase access.

Mr. Crossin thanked Ms. Hunter for her helpful contributions to the discussion.

REPORTS

7. Report on the Outstanding Hearing & Review Decisions

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

8. Financial Report – September YTD 2016

Miriam Kresivo, QC, Chair of the Finance and Audit Committee, began her report by thanking the hard working committee members and staff.

She briefed Benchers on the review of the Lawyers Insurance Fund (LIF) investments, for which outside consultants are retained. The \$156,000,000 fund investments returned 6% which exceeds the benchmark. Investment managers are required to report annually; following last year’s building sale, two new managers were hired to oversee investments of the proceeds in the areas of real estate and mortgages.

Ms. Kresivo also reported on the commencement of the audit by the firm PriceWaterhouseCoopers, whose fee will increase this year from \$90,000 to \$91,000.

Jeanette McPhee, Chief Financial Officer, noted that the finance report generally is positive. The General Fund is currently \$1 million above budget; but some of that is timing of revenue and expenses. The year-end projection is to have a positive variance of \$765,000 (3%), which is mainly due to revenue. Member numbers are projected to be 2% over 2015, and although PLTC student numbers are projected below the 2016 budget at 470, electronic filing revenues are over

due to the real estate market. It should be noted that the real estate market is projected to slow down to the end of the year. Operating expenses currently have a positive variance of 1% mainly due to savings in credentials and forensic external fees. She noted that there are a large number of files currently out in the regulation area, so potentially those costs could carry over to next year, resulting in additional corresponding savings in this year.

She also noted that TAF has a positive variance of \$700,000 with 6 months of receipts in, mainly due to real estate transactions. As mentioned, this has been declining recently but we are still projecting a positive variance at year end. Operating expenses in Trust is below budget due mainly to travel savings.

LIF is on track; fees are over by 3% and expenses are under by 10% mainly due to vacancy savings.

9. Lawyer Education Advisory Committee: Update on Federation Conference

Chair Tony Wilson briefed Benchers on the Federation Conference topic of “Legal Education: Building a Continuum”, one aim of which was to develop a continuing collaborative relationship between academia and the law societies. Paula Littlewood, Executive Director of the Washington State Bar Association, spoke to the conference on what the profession and the judiciary will look like in 20 years, and how we should be preparing for the future. She noted that unmet needs, together with internet legal service providers and a changing demographic, will present increasing challenges to the profession. In Washington State, they have begun to address these factors by regulating limited scope practices in which practitioners are trained through law schools and can offer limited areas of practice at reduced rates. The first limited licensing program is for family law practitioners.

Ms. Littlewood’s address was followed by presentations and small group discussions, during which law school representatives and law society regulators discussed various perspectives; some emphasized the autonomy of law schools to shepherd legal education through these challenges, while others stressed collaboration, saying that there should be an effective continuum of legal education through law schools and law societies, who have a joint responsibility to educate future lawyers. Implementing the TRC calls to action will require effective co-operation.

Jeremy Webber, Dean of the University of Victoria Faculty of Law, commented that the conference was excellent for helping to bridge tensions that have developed in recent years between law societies and law schools. In his observation, it has been difficult historically for law schools to engage with the Federation given the relatively few Federation meetings and the lack of regular direct communication. The conference was successful in gathering diverse voices across the table and allowing for meaningful discussion of important issues, amongst which were

the diversity of roles lawyers fill, and the obligation of all participants to prepare for new directions for the profession. He added that the Deans of the BC law schools have appreciated the collaborative relationship and openness that exists between the Law Society of BC and the three BC law schools.

Mr. Hume also noted that the area of ethics, and the Model Code of Conduct, is proving to be an area of improving communication between educators and law societies.

10. TRC Advisory Committee Update

Mr. Crossin invited staff lawyer Andrea Hilland to report to Benchers on behalf of the committee, noting his appreciation for her extraordinary contributions and the excellence of her work for the Law Society.

Ms. Hilland reported that the committee last met on October 31 and discussed the implementation of an outreach strategy that had been devised following the previous meeting. Key to this will be the development of a direct relationship with Indigenous lawyers and community members.

To that end, she noted that Mr. Crossin had been invited to speak at the upcoming Indigenous Bar Association national conference. The First Nations Summit, which represents those First Nations engaged in treaty negotiations, also extended an invitation to the Law Society to speak at its recent meeting; Appointed Bencher Dan Smith spoke on behalf of the Law Society.

Also discussed at the recent meeting of the TRC Advisory Committee were different educational options available to improve cultural competency. It was noted that the TRC calls to action were helping inform review of the PLTC curriculum efforts. CLE is also reviewing their current course list and seeing where they need to develop courses to fill in gaps. The Committee also discussed how to provide training and education to those senior lawyers who may not have had any educational background in this area. Ms. Hilland noted that future training could focus on providing basic historical information on colonization in BC, as well as types of effective communication styles that work best.

Mr. Crossin noted that there is a consensus at the Committee that the work to date has created optimism, excitement and a momentum for the work ahead in years to come. He thanked Ms. Hilland once again for helping to lead the way.

RTC
2016-11-04

REDACTED MATERIALS

REDACTED MATERIALS



Memo

To: Benchers
From: Executive Committee
Date: November 28, 2016
Subject: **Legal Services Society (LSS) and Land Title & Survey Authority (LTSA)**

This memo provides background and advice on two matters for the Benchers' consideration:

1. Legal Services Society: requires one re-appointment by the Benchers, after consulting with CBABC.
2. Land Title & Survey Authority: request for Law Society nominees to the LTSA Board of Directors. Benchers' nomination, on advice of the Executive Committee.

1. Legal Services Society

Law Society member, appointed by: Benchers, after consulting with CBABC

Current Appointments	Term Allowance	Number of Terms Already Served	Date First Appointed	Expiry Date
Alison MacPhail	3 years per term, maximum of 2 terms	0	1/1/2014	12/31/2016
Jean Whittow, QC	3 years per term, maximum of 2 terms	0	9/7/2015	9/6/2018
Dinyar Marzban, QC	3 years per term, maximum of 2 terms	0	1/1/2015	12/31/2017
Suzette Narbonne	3 years per term, maximum of 2 terms	1	5/1/2011	4/30/2017

Background

The objects of the Legal Services Society (LSS) are to assist individuals with their legal problems and facilitate their access to justice, administer an efficient and effective system for providing legal aid to BC individuals, and to provide advice to the Attorney General respecting legal aid and access to justice for individuals in BC. Under the terms of the *LSS Act*, the Law Society appointments are subject to consultation with the CBABC.

Re-appointments

Ms. MacPhail is eligible for re-appointment, having come to the completion of her first term, and has confirmed to LSS her willingness to continue to serve. Attached is the letter from current LSS Board Chair Suzette Narbonne dated October 4, 2016 at Tab 1. Ms. Collins has also confirmed that the CBABC is agreeable to her reappointment. We recommend the Benchers to re-appoint Ms. MacPhail for a second two-year term commencing January 1, 2017.

2. Land Title & Survey Authority (LTSA)

Law Society member, appointed by: Benchers nomination, on advice of the Executive Committee

Current Appointments	Term Allowance	Number of Terms Already Served	Date First Appointed	Expiry Date
Geoff Plant, QC	3 years per term, maximum of 2 terms	2	4/1/2008	3/31/2017
William Cottick	3 years per term, maximum of 2 terms	1	4/1/2012	3/31/2018

Background

The purposes of the LTSA are:

- To manage, operate and maintain the land title and survey systems of BC
- To facilitate the execution of Crown grants, and
- To carry out other necessary or advisable activities related to land title or survey systems.

In his letter to us of October 1, current Chair Geoff Plant (Tab 2) notes that “the LTSA is established pursuant to the Land Title Survey Authority Act and its self-generated 11 member Board of Directors is selected from nominations of the LTSA’s stakeholders”, of which the Law Society is one. Mr. Plant’s term expires March 31, 2017; as Mr. Plant is ineligible for re-nomination, having served 3 consecutive 3 year terms, the LTSA is seeking 3-5 nominations from the Law Society for a new directorial appointment.

The LTSA seeks nominees who have practice experience relevant to the operations and administration of the LTSA, and ideally also has Board or government relations experience. It also asks that we give consideration to geographic and diversity representation.

Candidates

To source possible qualified candidates, we posted Highlights on our website and included references in E-brief to this upcoming volunteer opportunity. Ms. Collins also canvassed Benchers here in Vancouver and in Victoria to see if they could publicize the opportunity. In the result, we have received a number of qualified applications. Though the applicants were diverse in experience, we have only listed those that have relevant qualifications and experience:

Lorena Staples, QC:

Ms. Staples, who practices in Victoria, is a highly qualified municipal lawyer with decades of experience in property acquisitions, zoning by-laws, official plans, subdivision appeals, leases and land use planning. She has served in local government, in the Ontario Ministry of Housing, on hearing panels, on the Ontario Municipal Board tribunal panel and as managing partner of her own firm with a primarily commercial law practice. Currently she is also corporate counsel to the Building Officials Association of BC, serves on the Saanich Police Board and has served on the Board of the United Way. For a more complete recitation of her qualifications, accomplishments and interests, I have attached her Expression of Interest form and CV at Tab 3.

In her words “[p]roperty ownership is one of the elements that underpin our economy. Fundamental to that underpinning element is confidence in the security of title and veracity of surveys that support the title. I would be pleased and honored to play a role in the continuance of that confidence.”

Scott Smythe:

Mr. Smythe is the leader of the Real Property and Planning Group in McCarthy Tetrault’s Vancouver office and has focused his practice on commercial real estate, including commercial leasing, and strata development, for over 20 years. He is a past Chair of the Real Property Subsection of the CBABC and is a recognized authority on real property development and leasing matters. He is the co-author of McCarthy’s *Annotated British Columbia Strata Property Act* and has co-authored or co-edited numerous CLE publications, including the Real Estate Practice Manual. I have attached Mr. Smythe’s Expression of Interest form and CV at Tab 4.

In his application, Mr. Smythe notes “[he is] acutely aware of the critical role that a superior land title registry plays in our economy. [He] would be honored to assist in ensuring the continued financial stability of the LTSA and its sterling reputation as a trustworthy organization committed to maintaining the integrity of our land title and survey systems.”

Trevor Dungate:

Mr. Dungate is a Prince George solicitor whose practice focusses on conveyancing and real estate, with additional work in business law, foreclosures and estate planning. His work involves daily connection with the LTSA in a very practical way.

Additionally, having received his LLB in Australia, Mr. Dungate has experience with the Australian Land Title system. With this experience, and as a northern BC practitioner, Mr. Dungate feels he brings a unique and important perspective and is keen to serve. His Expression of Interest Form and CV are attached at Tab 5.

Anna Fung, QC:

Ms. Fung is a former President of the Law Society, and is currently our appointee on the Vancouver Airport Authority Board and The Vancouver Foundation Board. She was reappointed for a second term to the former in May of this year, and her appointment on the latter will expire April 30, 2017.

Ms. Fung is a highly accomplished and recognized business lawyer, having served as the Chief Legal Officer of TimberWest Forest Corp., BC's largest private landowner, Counsel and Chief Privacy Officer of Intrawest ULC, and Senior Counsel and Privacy Officer of Terasen Inc. (now FortisBC Inc.). She has served as a Governor of the Law Foundation of BC, as a member of UBC's Centre for Business Law Dean's Advisory Committee, and as a Director of Association of Chinese Canadian Professionals, among others. She is fluent in English and French and conversant in Cantonese, Mandarin and Spanish. Her Expression of Interest Form and CV are attached at Tab 6.

Recommendations

Based upon their experience, qualifications and geographic diversity, we would recommend to Benchers the nominations of Lorena Staples, QC, Scott Smythe and Trevor Dungate. Ultimately, the Benchers' recommended nominees will be considered by the LTSA for its appointment of one Director to fill the spot to be vacated in April, 2017.

Though highly qualified, we have not recommended the nomination of Anna Fung given the following considerations: the Law Society's appointment policy promotes diversity of appointments. In recent years, that policy has been interpreted to include a focus on applicants beyond those who have previously received Law Society appointments. Ms. Fung currently serves as a Law Society appointee to both the Vancouver Airport Authority and the Vancouver Foundation. Additionally, Ms. Fung's extensive experience is less specifically focused on real estate matters than the other applicants.



**Legal
Services
Society**

Providing legal aid
in British Columbia
since 1979

Suite 400
510 Burrard Street
Vancouver, BC V6C 3A8

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

Executive Office

October 4, 2016

David Crossin, QC
President
THE LAW SOCIETY OF BRITISH COLUMBIA
845 Cambie Street
Vancouver, BC V6B 4Z9

Dear Mr. Crossin:

Re: Renewal of Alison MacPhail's appointment for a further three year term to the Legal Services Society ("LSS") Board of Directors

As you may be aware, Alison MacPhail's appointment as a member of the board of the Legal Services Society ("LSS") is up for renewal on December 31, 2016. I have spoken to Ms. MacPhail and she has advised me that she is prepared to accept a further three year appointment to the LSS Board. I am pleased to recommend that Ms. MacPhail's appointment be renewed.

Ms. MacPhail is an active member of the board, she was appointed Vice-Chair of the Board in 2015 and Chair of the Stakeholder Engagement Committee. Ms. MacPhail has extensive experience with both the federal and provincial governments and has been involved in justice reform for a decade. She has demonstrated the commitment and has the experience necessary for the Society's success.

As you know the Legal Services Society is at a pivotal stage of its evolution with several innovative services underway, is involved and working collaboratively with a number of partners on justice reform, and faces challenges with demand for increased services with little prospect for increased government funding to meet these challenges. The LSS board needs strong leadership and continuity in membership. In these circumstances the board feels that the reappointment of Ms. MacPhail would add an element of continuity that will support the board's commitment to effective governance of the Legal Services Society.



I would be pleased to discuss this request with you further and trust that Law Society officials will not hesitate to contact me directly at narbonnelaw@telus.net ; cell phone: +778.884.5440 or Mark Benton at mark.benton@lss.bc.ca; phone: 604.601.6137 with any questions they might have.

As you may be aware, my own six year term comes to an end on April 30, 2017 and the Board is currently reviewing competencies and will be in touch in due course. Attached is the LSS board competency matrix.

Thank you for your ongoing support and encouragement.

Yours truly,

Suzette Narbonne
Chair – LSS Board of Directors

Attachments: Resume for Alison MacPhail
 LSS Board competency matrix

Cc: Caroline Nevin, Executive Director, CBA
Mark Benton, Chief Executive Officer
Renee Collins-Gault, Manager, Executive Support, The Law Society of BC
Gulnar Nanjijuma, Corporate Secretary

LSS BOARD OF DIRECTORS' COMPETENCY MATRIX - UPDATED JANUARY 2016

Board Members	A. McPhee*	A. MacPhail*	C. Haldane*	S. Narbonne	D. Crawford*	D. Marzban*	P. Sandhar	K. Christiansen*	J. Whittow*
Government/Law Society appointment	Government	Law Society	Government	Law Society	Government	Law Society	Government	Government	Law Society
Current term	22/06/2015 - 22/06/2016	01/01/2014 - 31/12/2016	17/12/2015 - 31/12/2016	01/05/2014 - 30/04/2017	20/08/2015 - 20/08/2017	01/03/2015 - 31/12/2017	31/07/2015 - 31/07/2018	20/08/2015 - 20/08/2018	07/09/2015 - 06/09/2018
Knowledge of the social and economic circumstances associated with the special legal needs of low income individuals and to the cultural diversity of BC (e.g. work/ life experience that has exposed board members to the special needs of low-income individuals and knowledge of how the Aboriginal cultural and geographical diversity of BC affects delivery of legal aid)									
Organizational Leadership experience and systems rethinking expertise (e.g. Work experience as CEO/ Senior Manager in a complex systems environment)									
Financial expertise (e.g. Holds a financial designation preferably with CFO experience)									
Respected member of the legal profession (e.g. Recognized as a leader or prominent member of the legal profession)									
Knowledge of government decision-making (e.g. significant work experience with senior government decision makers)									
Knowledge of justice system operations (e.g. in-depth knowledge of one or more areas of the justice system, exposure to or knowledge of conflict resolution alternative)									
Leadership experience in Aboriginal communities (e.g. significant experience in leading an Aboriginal organization or agency)									
Experience with provision of legal aid (e.g. delivery of legal aid services)									

* eligible for renewal

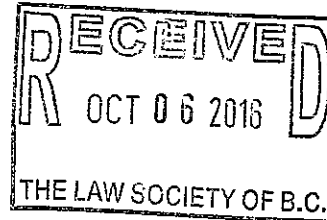
COMPETENCY CRITERIA

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS



File 610-20

VIA EMAIL: tmcgee@lsbc.org

October 1, 2016

Mr. Tim McGee
CEO and Executive Director
Law Society of British Columbia
845 Cambie Street
Vancouver, BC V6B 4Z9

Dear Mr. McGee:

Re: Land Title and Survey Authority of British Columbia - Board of Directors

I am writing to request the Law Society of British Columbia's (LSBC) participation in the 2016/17 nomination process for appointment to the Board of Directors of the Land Title and Survey Authority of British Columbia (the LTSA). This request is in respect of the upcoming expiry of the term of the appointed Director (myself) who was previously selected from the nominees of the LSBC.

The LTSA is established pursuant to the *Land Title and Survey Authority Act* (the Act) and its self-generated 11-member Board of Directors is selected from nominations of the LTSA's stakeholders. For the 2016/17 renewal process, and in respect of the requirements for the LSBC as defined stakeholder entities established in the Act, the LTSA is seeking between 3 and 5 nominations from the LSBC with respect to my final Director term which is expiring on March 31, 2017; I will not be eligible for re-nomination as I have already served the maximum of three consecutive three-year terms as Director of the LTSA.

A listing of the current LTSA Board members and their nominating entities is attached; as noted, I currently serve as the Board-appointed LTSA Board Chair.

To be selected and to serve as a LTSA Director, individuals must meet the qualifications set out in part 9 of the Act and are expected to demonstrate personal attributes and competencies outlined in Schedule A (Skills and Experience Profile) of the Bylaws of the LTSA (see attached backgrounder for additional information).

.../2

- 2 -

For the 2016/17 nomination process, the LTSA Board is seeking from the LSBC 3-5 nominees who possess practice experience relevant to the operations and administration of the LTSA, along with Board experience, Board leadership and government relations experience.

Additionally, the Board has an interest in ensuring that its composition reflects the geographic representation and diversity of the people and interests served by the land title and survey systems of British Columbia.

In support of the nomination(s) submitted by the LSBC, we would ask that a nomination form (enclosed) be completed and signed by each candidate, and be submitted together with each candidate's resume. Please provide this information to Kelly Orr, Director of Corporate Strategies at your earlier convenience and **no later than December 31, 2016**. The Board selection process will result in a Director appointment to take effect as of April 1, 2017. Please note that if the LTSA does not receive nominations of qualified individuals from a stakeholder entity within the specified time, the Board must proceed to make an appointment and that individual will be deemed to be appointed from the stakeholder entity.

In my role as Board Chair I am scheduled to meet with you, along with Connie Fair (President and CEO), to discuss the LSBC's participation in the LTSA's Director nomination process on Wednesday, October 5, 2016 at 2:00 pm. Additionally, I can make myself available to discuss further as required.

Should you have any questions respecting the nomination submission process and materials, please do not hesitate to contact Kelly Orr at (250) 410-0575 or via email at Kelly.Orr@ltsa.ca.

Thank you for your assistance.

Yours truly,



Geoff Plant, Q.C.
Chair, Board of Directors

KO:kr

Attachments (3)

- Listing of LTSA Board of Directors
- LTSA Nomination Process Backgrounder
- LTSA Nomination Form

pc: Ms. Connie Fair, President and Chief Executive Officer, LTSA
Ms. Leslie Hildebrandt, Vice President, Regulatory and Corporate Affairs, LTSA
Ms. Kelly Orr, Director, Corporate Strategies, LTSA



Background Information

LTSA's Request for Board Director Nominations

What is the Land Title and Survey Authority?

The Land Title and Survey Authority Act established the Land Title and Survey Authority of British Columbia (the "LTSA") in 2005 as a publicly accountable, statutory corporation which operates and administers British Columbia's land title and survey systems. These systems, established through a comprehensive set of legislative requirements, have been in place since the 1860's and are today reliant on modern technology.

The LTSA maintains secure land title and survey systems through the timely, efficient registration of land title interests and survey records. These services are an essential underpinning to British Columbia's private property market and the civil justice system, and to BC's civic governance, taxation and Crown land management frameworks.

The LTSA collaborates with the Province on administration of the systems, and reports on achievement of performance requirements established by the Province in an Operating Agreement. As a corporate entity, the LTSA operates within mandatory financial and governance reporting requirements, regulated fee structure, and is subject to British Columbia's Freedom of Information and Protection of Privacy Act and Ombudsperson Act.

The LTSA earns its income from the services fees it charges customers (other than government, which is fee exempt). Its net earnings, achieved through prudent financial management, continue to be re-invested to achieve land title and survey public policy objectives and sustainable, cost-effective operations.

The LTSA has a reputation for accountable, reliable and trusted public administration. It is a progressive, responsive organization that enjoys excellent customer satisfaction.

For further information, please visit: www.ltsa.ca.

How is the Board of Directors structured?

The LTSA is governed by an eleven-member Board of Directors. The Board's role, composition, and the processes for Board member appointment, are all established by the Act. The Board is responsible for overseeing the strategic direction and governance of the LTSA.

The Board is composed of members selected from nominees submitted by the following stakeholder entities:

- The Province of British Columbia
- The Law Society of British Columbia
- The Association of British Columbia Land Surveyors
- The First Nations Summit
- The Society of Notaries Public of British Columbia
- The British Columbia Real Estate Association
- The British Columbia Association of Professional Registry Agents
- The Union of British Columbia Municipalities



Appointments to the Board are made by the Board of Directors of the LTSA for terms of three years, with three to four new Board appointments required on April 1st of each year. The Act provides for Directors to serve up to three consecutive terms.

Who are the current Directors of the LTSA?

A list of the current Board Directors for the LTSA and brief biographies for each are available at the LTSA website at:

<https://www.ltsa.ca/about-ltsa/board-directors>

What will be the obligations of members appointed to the Board?

Directors owe a fiduciary duty to the LTSA itself, which means that they must make decisions in the best interest of the LTSA. They are not appointed to the Board in order to be delegates to the LTSA or advocates of a particular stakeholder or constituent group and do not represent any other entity when they are acting as board members.

Every Director must uphold the objectives of the LTSA and comply with its Bylaws. Members of the Board are also required to comply with LTSA's Code of Business Conduct and Ethics. Directors are required to review the LTSA's Code of Business Conduct and Ethics (the "Code") and acknowledge their support and understanding of the Code by signing annual Declaration Statements. As well, each Director will sign a form consenting to act as Director, in which the qualifications for being a Director as specified in the *Land Title and Survey Authority Act* are confirmed by the individual as being satisfied.

How often does the Board of Directors meet?

The Directors meet together at such time and place as necessary for the conduct of business, subject always to the Bylaws of the LTSA. (A copy of the Bylaws is available for viewing on the LTSA's website: <https://www.ltsa.ca/about-ltsa/governance>)

The Directors meet at least once each quarter to conduct regular business and hold other meetings as necessary. Meetings are generally held in Victoria, British Columbia, but meetings may be held at other locations throughout the province. The LTSA also holds an Annual General Meeting in British Columbia, open to the public.

What is the remuneration for Directors?

Compensation levels for Directors are reviewed annually. Currently, Directors are entitled to an Annual Director Fee of \$12,210, while Directors who serve as Committee Chairs of the Board are entitled to an additional Annual Director Fee of \$9,157.50 (for a total Annual Director Fee of \$21,367.50). The Chair of the Board receives an annual fee of \$61,050.

Directors, other than the Chair of the Board, are also entitled to a daily Meeting Fee of \$763.13 for Board meetings attended (and a Reduced Meeting Fee of \$381.56 for meetings held by teleconference). All Directors are reimbursed for reasonable travel-related expenses incurred on LTSA business.

The LTSA indemnifies Directors consistent with section 23 of the *Land Title and Survey Authority Act*.



How will nominees be identified?

Each year, and in compliance with Section 7 of the Land Title and Survey Authority Act, the stakeholder entities whose nominees to the Board of Directors of the LTSA have terms expiring March 31 (fiscal year end) are asked to submit between three to five nominations of qualified individuals by December 31 to serve on the Board of Directors the LTSA commencing April 1 (fiscal year start).

Each stakeholder entity will determine their own processes for identifying their nominees to the Board.

How are Directors selected?

Directors of the LTSA must meet the basic requirements established in the *Land Title and Survey Authority Act*. Specifically this means an individual who:

- Is qualified to act as an LTSA Board Director in accordance with section 9 of the *Land Title and Survey Authority Act*
- Satisfies the requirements under section 124 of the *Business Corporations Act (British Columbia)*;
- Is not an elected official or employee of any government; and
- Is not a member of the Board of Directors, an officer or an employee of any of the stakeholder entities which nominate individuals to serve as Directors of the LTSA (i.e. Law Society of British Columbia, Association of British Columbia Land Surveyors, British Columbia Real Estate Association, British Columbia Association of Professional Registry Agents, First Nations Summit, Society of Notaries Public of British Columbia, Union of British Columbia Municipalities).

The Board of Directors of the LTSA select the individuals to be appointed as Directors from the nominations submitted by the stakeholder entities. If the LTSA does not receive the nominations of qualified individuals from a stakeholder entity within the specified time, the Board must proceed to make an appointment and that individual will be deemed to be appointed from the stakeholder entity. The Governance Committee, comprised of members of the Board of Directors, oversees the selection process.

The objective of the selection process is two fold. Firstly, it ensures that the Board of the LTSA meets the composition requirements as set out in the *Land Title and Survey Authority Act*. Secondly, it ensures that collectively, the Board contains the skills and experience necessary to enhance the sound performance of the LTSA, and the effective interaction and operation of the Board.

The Governance Committee conducts a review of all nominees against the approved Skills and Experience Profile (Schedule A of the Bylaws of the LTSA – see attached) in order make a recommendation to the full Board for appointment. When appointing Directors, the LTSA Board must be in compliance with section 13 of the LTSA Act such that “as a group, the Directors hold all of the skills, and all of the experience, identified in the skills and experience profile set out in the Bylaws.”

What information will be required to support each nomination?

Each of the nominating stakeholder entities is asked to submit a list of three to five nominees. For each nominee, a completed Nomination Form (attached) must be signed by the nominee and submitted to the LTSA, together with the nominee’s current resume. The information provided on the Nomination Form should be as fulsome as possible.



Once nominees have been short-listed by the LTSA for appointment to the Board, a due diligence process will be conducted that will include an interview and may include referee and other background checks.

All parties involved in the selection process are obligated to respect the privacy interests of any individual who may be identified as a potential nominee. Information about potential nominees is confidential and may not be disclosed for purposes outside the nomination process.

What is the deadline for submitting nominations?

Nominations from stakeholder entities must be received by the LTSA by December 31.

When will a decision be made?

The LTSA will advise the nominating entities, as well as the successful nominees, of the appointments to the Board by no later than March 31. Nominating entities will be requested to inform their respective individual nominees whose names were submitted to the LTSA for consideration.

Additional information on the Land Title and Survey Authority of British Columbia is available at www.ltsa.ca.



LAND TITLE AND SURVEY AUTHORITY OF BRITISH COLUMBIA

BOARD OF DIRECTORS AND THEIR STAKEHOLDER NOMINATING ENTITIES *(Effective April 1, 2016)*

Law Society of British Columbia

Geoff Plant, Q.C.

(Board Chair)

William (Bill) Cottick

Province of British Columbia

Janice Comeau

Ron Cannan

Association of British Columbia Land Surveyors

Gordon (Bert) Hol

O'Brian Blackall

British Columbia Real Estate Association

Eugen Klein

British Columbia Association of Professional Registry Agents

Diane Friedman

(Board Vice-Chair)

First Nations Summit

Roderick Naknakim

Society of Notaries Public of British Columbia

Brent Atkinson

Union of British Columbia Municipalities

Victoria Kuhl

SCHEDULE A

SKILLS AND EXPERIENCE PROFILE

The *Land Title and Survey Authority Act* (the “LTSA Act”) establishes formal procedures by which:

- nominating entities identify nominees to the LTSA (s.7); and
- the LTSA Board selects and appoints Directors from the nominees (s.7 and s.13).

In addition to meeting statutory requirements set out at LTSA Act s.9 for eligibility to be appointed and remain eligible for appointment, Director appointments must reflect the following Board-authorized personal qualifications (described generally as the “skills and experience”).

Personal Attributes

1. All directors should possess the following personal attributes:
 - (a) High ethical standards and integrity in professional and personal dealings;
 - (b) Ability and willingness to raise potentially controversial issues in a manner that encourages constructive dialogue;
 - (c) Flexibility, responsiveness and willingness to consider change;
 - (d) Ability and willingness to listen to others;
 - (e) Capability for a wide perspective on issues; and
 - (f) Ability to work as a team member.

Core Competencies

2. All directors should possess the following core competencies:
 - (a) Strategic Thinking – Understands the level of strategic management needed to achieve results and mitigate risk; demonstrates an appreciation of the unique role of the Authority as the entity responsible for managing, operating and maintaining the land title and survey systems of British Columbia;
 - (b) Analytical and Technical Skills – Well-developed faculty for critical analysis; financial literacy, including an ability to read financial statements and ability to understand the use of financial ratios and other indices to measure performance; the capacity to articulate penetrating questions respecting strategic issues, while maintaining positive support for Board decision-making processes and management;

- (c) Knowledge – Understands basic responsibilities, accountabilities and liabilities as a Director and Board member; ability to distinguish corporate governance from management;
- (d) Personal Style – Can tolerate ambiguity; has the ability to balance the need to acquire information with the cost of acquiring it; trustworthy and conscientious and can be relied upon to act and speak with consistency and honesty;
- (e) Social Style – values diverse opinions and builds innovation on the foundation of other people's views; experienced level of acumen/"saviness" at Board/ stakeholder/company levels; personal business profiles that include demonstrated networks at the national and international level.

Representation

- 3. The board should attempt, in its composition, to reflect the geographic representation and diversity of the people and interests served by the land title and survey systems of British Columbia.

Key Skills and Experience

- 4. The board, as a whole, must possess all of the following skills and experience, while individual directors must demonstrate achievements in more than one of the skills or experience.
 - (a) Leadership – executive/senior level leadership of a complex commercial or regulated entity.
 - (b) Business Acumen – strategic planning and oversight of strategy/control functions of a complex commercial or regulated entity.
 - (c) Board Experience – participation as a member of a board of directors of a commercial, regulated and/or charitable organization.
 - (d) Accounting and Finance – an accounting or CFA designation or post graduate degree in finance, accounting or business administration or senior level experience in performing or overseeing a financial or accounting function in a complex commercial or non-profit entity.
 - (e) Legal – a law degree or senior-level experience in managing legal issues of a complex regulatory/constitutional, corporate/commercial nature; additionally, relevant experience in law reform.
 - (f) Marketing – developing and/or leading marketing or customer service initiatives for an organization in a regulated environment or start-up business.
 - (g) Labour Management - human resources for a public, private, or not-for-profit organization and knowledge of labour relations practices in British Columbia.

- (h) Executive HR Strategies – strategic human resources policies related to senior executive recruitment, succession planning and compensation.
- (i) Regulatory Governance and Compliance – demonstrated understanding of the principles of administrative law (justice, fairness, transparency); experience in strategic oversight and compliance within a highly regulated business environment;
- (j) Land Information – applying land information products and services in a regulated entity.
- (k) Information Technology – experience working in the information technology field with a demonstrated understanding of how information technology is applied to business processes.
- (l) Land Survey – a British Columbia Land Surveyor or experience in managing legal survey issues of a complex nature.
- (m) Communications and Public Relations – strategic communications and public relations for a public, private, or not-for-profit organization.
- (n) Political Acumen and Government Relations – political or senior level experience in directing or influencing public policy agendas and the demonstrated ability to effectively engage with senior political and government staff;
- (o) Real Estate Lending and Banking – knowledge and experience in the lending and banking industries.
- (p) Insurance – knowledge and experience in the insurance industry.

Land Title and Survey Authority of British Columbia
Board of Directors
Nomination Form



TO BE COMPLETED BY NOMINEE

The information on this Nomination Form is collected because you wish your name to be considered for appointment to the Board of Directors of the Land Title and Survey Authority of British Columbia. The information obtained on this form will be used to assess your candidacy.

Part I - PERSONAL INFORMATION

*This section **MUST** be completed by all nominees.*

Your Name:

Home Address:

Delivery Address:

Telephone: Work

Home

Cell

Email Address:

Date of Birth:

What is your gender?

Male ☐

Female ☐

Are you a Canadian Citizen?

Yes ☐

No ☐

Part II – GOVERNMENT AND STAKEHOLDER AFFILIATIONS

To be eligible for appointment to the Board of Directors of the Land Title and Survey Authority of British Columbia, an individual must not be an elected official or employee of any government and must not be a member of the Board of Directors, an Officer or an employee of any of the organizations which nominate directors to the Authority

*All nominees **MUST** answer Yes or No to both of the following questions. An affirmative answer to either of the questions in this section disqualifies a nominee from appointment to the Board.*

1. I am an elected official or employee of a government (any type)

Yes ☐

No ☐

2. I am a member of the Board of Directors, an Officer or an employee of any of the following organizations: Law Society of BC, Association of British Columbia Land Surveyors, BC Real Estate Association, BC Association of Professional Registry Agents, First Nations Summit, Society of Notaries Public of BC, Union of BC Municipalities

Yes ☐

No ☐



Part III - BACKGROUND INFORMATION

This section MUST be completed by all nominees.

(If you require more room than the space provided, please use a separate piece of paper)

1. Educational Background

Name & Location of University, College or Institution	Course, Program, Major field	Credits, Diploma, Degree attained	Dates Started	Completed
Special Courses	Course Content, Duration, etc.			Year Completed

2. Current Membership in Professional Organizations (List):

Land Title and Survey Authority of British Columbia
Board of Directors
Nomination Form



3. The following is a list of every organization (e.g. company, non-profit organization) of which I am currently a director or officer:

Organization	Position Held

4. Please describe why you are interested in being a Director of the LTSA and how your personal attributes and core competencies would be applied to benefit the LTSA. (Note: Schedule A of the Bylaws of the LTSA suggests that all directors should possess the following personal attributes and core competencies.)

Personal Attributes

- High ethical standards and integrity
- Ability and willingness to raise controversial issues constructively
- Flexible, responsive and open to change
- Ability and willingness to listen to others
- Capability for a wide perspective on issues
- Ability to work as a team member

Core Competencies

- Strategic Thinking
- Analytical and Technical Skills
- Knowledge (governance, accountability)
- Personal Style (trustworthy, conscientious, acts and speaks with consistency and honesty)
- Social Style (values diverse opinions, experienced level of acumen/'savviness' at various levels; personal business profiles).

NOTE: A more fulsome description of the personal attributes and core competencies can be found at Schedule A of the LTSA Bylaws which is available at the LTSA website: <https://ltsa.ca/about-ltsa/governance>

**Land Title and Survey Authority of British Columbia
Board of Directors
Nomination Form**



Part IV - KEY ATTRIBUTES

The Board of Directors of the Land Title and Survey Authority of British Columbia, as a whole, must possess skills and experience that will contribute to good governance of the LTSA. The skills and experience which the directors, collectively, should have are set out at Schedule A of the Bylaws and are listed below. An individual director is not expected to have each of the attributes, but should possess more than one. Please describe how you meet one or more of the following attributes.

*This section **MUST** be completed by all nominees.*

(If you require more room than the space provided, please use a separate piece of paper)

1. **Leadership** – executive/senior level leadership of a complex commercial or regulated entity (please describe)

2. **Business Acumen** – strategic planning and oversight of strategy/control functions of a complex commercial or regulated entity (please describe)

3. **Board Experience** – participation as a member of a board of directors of a commercial, regulated and/or charitable organization (please describe)

Land Title and Survey Authority of British Columbia
Board of Directors
Nomination Form



4. **Accounting and Finance** – an accounting or CFA designation or post graduate degree in finance, accounting or business administration or senior level experience in performing or overseeing a financial or accounting function in a complex commercial or non-profit entity (please describe)

5. **Legal** – a law degree or senior-level experience in managing legal issues of a complex regulatory/constitutional, corporate/commercial nature; additionally, relevant experience in law reform (please describe)

6. **Marketing** – developing and/or leading marketing or customer service initiatives for an organization in a regulated environment or start-up business (please describe)

7. **Labour Management** – human resources for a public, private, or not-for-profit organization and knowledge of labour relations practices in British Columbia (please describe)

8. **Executive Human Resources Strategies** –strategic human resources policies related to senior executive recruitment, succession planning and compensation (please describe)

9. **Regulatory Governance and Compliance** –demonstrated understanding of the principles of administrative law (justice, fairness, transparency); experience in strategic oversight and compliance within a highly regulated business environment; (please describe)

10. **Land Information** – applying land information products and services in a regulated entity (please describe)

11. **Information Technology** – experience working in the information technology field with a demonstrated understanding of how information technology is applied to business processes (please describe)

**Land Title and Survey Authority of British Columbia
Board of Directors
Nomination Form**



12. **Land Survey** – a British Columbia Land Surveyor or experience in managing legal survey issues of a complex nature (please describe)

13. **Communications** – strategic communications and public relations for a public, private, or not-for-profit organization (please describe)

14. **Political Acumen and Government Relations** – political or senior level experience in directing or influencing public policy agendas and the demonstrated ability to effectively engage with senior political and government staff (please describe)

15. **Real Estate Lending and Banking** – knowledge and experience in the lending and banking industries (please describe)

16. **Insurance** – knowledge and experience in the insurance industry (please describe)

Part V – DIRECTOR QUALIFICATIONS

To be a director of the Land Title and Survey Authority of British Columbia, a potential nominee must satisfy the requirements of section 124 of the Business Corporations Act (British Columbia). All nominees MUST answer Yes or No to the following four questions. An affirmative answer to questions (1), (2), or (3) and/or a negative answer to question (4)(b) in this section disqualifies a nominee from appointment to the Board of Directors.

1. Are you under the age of 18 years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
2. Have you been found by a court, in Canada or elsewhere, to be incapable of managing your own affairs?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
3. Are you an undischarged bankrupt?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<p>4. (a) Have you been convicted in or out of British Columbia of an offence in connection with the promotion, formation or management of a corporation or unincorporated business, or of an offence involving fraud?</p> <p style="text-align: center;">Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>(b) If Yes, Unless the court has ordered otherwise: (please specify)</p> <p>_____</p> <p>Have 5 years elapsed since the last to occur of:</p> <ol style="list-style-type: none"> 1. the expiration of the period set for suspension of the passing of sentence without a sentence having been passed; 2. the imposition of a fine; 3. the conclusion of the term of any imprisonment; and 4. the conclusion of the term of any probation imposed <p>OR</p> <p>Has a pardon been granted or issued, or a record suspension ordered, under the <i>Criminal Records Act (Canada)</i> and the pardon or record suspension, as the case may be, has not been revoked or ceased to have effect.</p> <p style="text-align: center;">Yes <input type="checkbox"/> No <input type="checkbox"/></p>		

Land Title and Survey Authority of British Columbia
Board of Directors
Nomination Form



Part VI – INTEGRITY AND CONFLICT OF INTEREST

All nominees MUST answer Yes or No to all of the following questions. An affirmative answer to any of the questions in this section does not automatically disqualify a nominee from appointment to the Board.

1. In your current or previous employment, business or personal affairs have you, or your company in which you have a direct or indirect controlling interest, in British Columbia or elsewhere:

i. Been convicted of an offence under the Criminal Code of Canada?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
ii. Been convicted of an offence under any other federal statutes or regulations?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
iii. Been convicted of any offence under any provincial statutes or regulations?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
iv. Been disciplined by any professional association or body?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
v. Been involved in any issue or controversy that has gone or is now likely to go to litigation or public review?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

If you have answered yes to any of questions (i) to (v) in this section, please provide details below:

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2. Generally, are you aware of any conflicts, facts or matters which, if publicly disclosed, could cause the Land Title and Survey Authority of British Columbia embarrassment or hinder the performance of your duties as a Board member?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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If Yes, describe:

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Part VII – PROFESSIONAL REFERENCES:

All nominees MUST provide a minimum of three professional references.

Name:	Occupation:
Address:	Business Telephone:
Home Telephone:	Email:
Name:	Occupation:
Address:	Business Telephone:
Home Telephone:	Email:
Name:	Occupation:
Address:	Business Telephone:
Home Telephone:	Email:

Part VIII - ATTESTATION AND CONSENT:

I, _____ (print name) attest to the veracity of the information provided by me in this nomination form.

I understand that the Land Title and Survey Authority of British Columbia has a requirement to verify information with respect to all potential appointments, including myself, to evaluate their suitability for appointment to its Board of Directors. I acknowledge that should I be short listed as a candidate for appointment to the Board of Directors of the Land Title and Survey Authority of British Columbia, I will be required to undergo background checks, possibly including a criminal record and/or credit check.

By signing below, I give consent to the Land Title and Survey Authority of British Columbia to obtain any personal information about me, either from me directly or from others. The references that I provide may be contacted and the information provided by me in relation to my request to be considered for appointment to the Board of the Land Title and Survey Authority of British Columbia will be verified. I also consent to the disclosure of my personal information where such is necessary in order to obtain the information required to evaluate my suitability.

Signature

Date

REDACTED MATERIALS

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Memo

To: The Benchers
From: The Ethics Committee
Date: November 14, 2016
Subject: *Code of Professional Conduct for British Columbia* (“BC Code”) – Introduction

The purpose of this memorandum is to recommend that the Benchers amend the *BC Code* by adopting an Introduction, which the Ethics Committee has developed to introduce the Code.

Background

At the time the *BC Code* was adopted, embodying many of the provisions of the Federation of Law Societies’ *Model Code of Professional Conduct*, the *Model Code*’s “Preface” (and the introduction provided therein) was not adopted by the Benchers. There were aspects of the Preface that were specific to the *Model Code*, as opposed to any provincial law society’s code of professional conduct, and there were aspects of the Preface language that were recognized as allowing for improvement. As part of its ongoing review of the *Model Code*’s provisions and amendments, the Ethics Committee has worked on revising the text of the Preface to produce the Introduction to the *BC Code*, in order to have the Code introduced in a manner that is more appropriate to the regulation of lawyers in British Columbia. That Introduction is now provided below and recommended by the Ethics Committee for adoption by the Benchers.

In presenting this Introduction, the Ethics Committee takes specific note of paragraph (4), which recognizes the rules, the commentary, and the appendices as the three components of the *BC Code*, and indicates that the language of the Code is of equal force regardless of which component is speaking. The opinion of the Committee is that this indication is made necessary by the presence of at least some instances of mandatory language in each of those three components of the Code.

Resolution: Be it resolved to amend the *Code of Professional Conduct for British Columbia* by inserting before Chapter 1 the following Introduction:

Introduction

- (1) One of the hallmarks of civilized society is the rule of law. Its importance is reflected in every legal activity in which citizens engage. As participants in a justice system that advances the rule of law, lawyers hold a unique and important role in society. Self-regulatory powers have been granted to the legal profession in Canada on the understanding that the profession will exercise those powers in the public interest. Part of that responsibility is ensuring the appropriate regulation of the professional conduct of lawyers. Members of the legal profession who draft, argue, interpret and challenge the law of the land can attest to Canada's robust legal system. They also acknowledge the public's reliance on the integrity of the people who work within the legal system and the authority exercised by the governing bodies of the profession. While lawyers are consulted for their knowledge and abilities, more than mere technical proficiency is expected of them. A special ethical responsibility comes with membership in the legal profession. This *Code of Professional Conduct for British Columbia* attempts to define and illustrate that responsibility in terms of a lawyer's professional relationships with clients, the justice system and other members of the profession.
- (2) The *Legal Profession Act* provides that it is the object and duty of the Law Society of British Columbia to uphold and protect the public interest in the administration of justice. A central feature of that duty is to ensure that lawyers can identify and maintain the highest standards of ethical conduct. This Code attempts to assist lawyers to achieve that goal. While the Code should be considered a reliable and instructive guide for lawyers, the obligations it identifies are only the minimum standards of professional conduct expected of members of the profession. Lawyers are encouraged to aspire to the highest standards of competence, integrity and honour in the practice of their profession, whether or not such standards are formally addressed in the Code.
- (3) The Code is published under the authority of the Benchers of the Law Society of British Columbia for the guidance of BC lawyers. It is significantly related to the Federation of Law Societies' *Model Code of Professional Conduct*, though there are points of variance from the Model Code that the Benchers have considered to be appropriate for guiding practice in British Columbia. Where there is a corresponding provision in the Model Code, the numbering of the *BC Code* is similar to that of the Model Code. The *BC Code* is not a formal part of the Law Society Rules but, rather, an expression of the views of the Benchers about standards that British Columbia lawyers must meet in fulfilling their professional obligations.
- (4) The Code is divided into three components: rules, commentary and appendices. Each of these components contain some statements that are mandatory, some that are advisory and

others with both mandatory and advisory elements. Some issues are dealt with in more than one place in the Code, and the Code itself is not exhaustive of lawyers' professional conduct obligations. In determining lawyers' professional obligations, the Code must be consulted in its entirety and lawyers should be guided in their conduct equally by the language in the rules, commentary and appendices. Mandatory statements have equal force wherever they appear in the Code.

- (5) A breach of a provision of the Code by a lawyer may or may not be the basis of disciplinary action against that lawyer. A decision by the Law Society to take such action will include a consideration of the language of the provision itself and the nature and seriousness of the conduct in question.
- (6) The correct or best answer to ethical questions that arise in the practice or lives of lawyers may often be difficult to discern, whether or not the Code addresses the question directly. Lawyers should always be aware that discussion of such questions with Benchers, Law Society practice advisors, the Law Society's Ethics Committee or other experienced and trusted colleagues is the approach most likely to identify a reasonable course of action consistent with lawyers' ethical obligations. This Code is intended to be a valuable asset for lawyers in the analysis, discussion and resolution of such issues.



Memo

To: The Benchers
From: The Ethics Committee
Date: November 8, 2016
Subject: Amendments to the *Code of Professional Conduct for British Columbia* (“*BC Code*”): Language Rights – rules 3.2-2.1 and 3.2-2.2

The purpose of this memorandum is to recommend that the Benchers amend the *BC Code* to incorporate new language rights provisions, drawn from the Federation of Law Societies’ *Model Code of Professional Conduct*.

Background

The language rights provisions of the *Model Code* state:

Language Rights

3.2-2A A lawyer must, when appropriate, advise a client of the client’s language rights, including the right to proceed in the official language of the client’s choice.

3.2-2B Where a client wishes to retain a lawyer for representation in the official language of the client’s choice, the lawyer must not undertake the matter unless the lawyer is competent to provide the required services in that language.

Commentary

[1] The lawyer should advise the client of the client’s language rights as soon as possible.

[2] The choice of official language is that of the client not the lawyer. The lawyer should be aware of relevant statutory and Constitutional law relating to language rights including the Canadian Charter of Rights and Freedoms, s.19(1) and Part XVII of the Criminal Code regarding language rights in courts under federal jurisdiction and in criminal proceedings. The lawyer should also be aware that provincial or territorial legislation may provide additional language rights, including in relation to aboriginal languages.

[3] When a lawyer considers whether to provide the required services in the official language chosen by the client, the lawyer should carefully consider whether it is possible to render those services in a competent manner as required by Rule 3.1-2 and related Commentary.

In his memo of November 6, 2014 Gavin Hume, QC (in his capacity as Chair of the Standing Committee on the *Model Code*) made the following comments about the language rights provisions:

4. In response to suggestions from both the *Fédération des associations de juristes d'expression française* de common law inc. (the “FAJEF”) and the Law Society of New Brunswick (“LSBN”), Council of the Federation adopted two new rules requiring lawyers, when appropriate, to advise clients of their of the right to proceed in the official language of their choice.

5. In drafting the rule, the Standing Committee reviewed provisions in the codes of conduct of the LSBN, the Law Society of Upper Canada (“LSUC”), and the CBA. The *Model Code* rules are simple, to account for varying local legislative schemes, and broad, to account for a variety of linguistic groups that may be afforded special rights in different Canadian jurisdictions.

With minor variations to reflect local circumstances, the substance of the *Model Code* language rights provisions has been adopted by law societies across Canada (except in P.E.I., as of this writing). The Ethics Committee recommends the adoption of the attached language rights provisions into the *BC Code*. With the exception of commentary [4], which has been added to assist British Columbia practitioners, proposed rules 3.2-2.1 and 3.2-2.2 are unchanged from the *Model Code* rules 3.2-2A and 3.2-2B.

Resolution: Be it resolved to amend the *Code of Professional Conduct for British Columbia* by adopting rules 3.2-2.1 and 3.2-2.2, and commentary, concerning language rights as follows:

Language Rights

3.2-2.1 A lawyer must, when appropriate, advise a client of the client’s language rights, including the right to proceed in the official language of the client’s choice.

3.2-2.2 Where a client wishes to retain a lawyer for representation in the official language of the client’s choice, the lawyer must not undertake the matter unless the lawyer is competent to provide the required services in that language.

Commentary

- [1] The lawyer should advise the client of the client's language rights as soon as possible.
- [2] The choice of official language is that of the client not the lawyer. The lawyer should be aware of relevant statutory and Constitutional law relating to language rights including the *Canadian Charter of Rights and Freedoms*, s.19(1) and Part XVII of the *Criminal Code* regarding language rights in courts under federal jurisdiction and in criminal proceedings. The lawyer should also be aware that provincial or territorial legislation may provide additional language rights, including in relation to aboriginal languages.
- [3] When a lawyer considers whether to provide the required services in the official language chosen by the client, the lawyer should carefully consider whether it is possible to render those services in a competent manner as required by rule 3.1-2 and related commentary.
- [4] Civil Trials in British Columbia must be held in English: *Conseil scolaire francophone de la Colombie-Britannique v British Columbia* 2013 SCC 42. Under [Section 530 of the Criminal Code, R.S.C 1985, c. C-46 an accused has the right to a criminal trial in either English or French.](#)



Memo

To: The Benchers
From: The Ethics Committee
Date: November 15, 2016
Subject: Amendments to the *Code of Professional Conduct for British Columbia*
("BC Code"): Incriminating Physical Evidence – rule 5.1-2.1

The purpose of this memorandum is to recommend that the Benchers amend the *BC Code* by adopting a new rule, rule 5.1-2.1 and commentary, regarding *incriminating physical evidence*.

Background

The proposed rule 5.1-2.1 is drawn substantially from Rule 5.1-2A of the Federation of Law Societies' *Model Code of Professional Conduct*. *Model Code* Rule 5.1-2A was adopted by Federation Council in 2014 and commentary [5] to the Rule was amended in 2016.

Gavin Hume, QC, the Chair of the Federation Standing Committee on the *Model Code*, made comments including the following, about the final 2014 version of the rule, in his memo to the Law Societies of November 6, 2014:

39. New rule 5.1-2A prohibits the concealment, destruction or alteration of incriminating physical evidence. The commentary following the rule provides detailed guidance on the scope and application of the rule. The rule was drafted broadly to ensure that any conduct relating to the obstruction or attempted obstruction of the course of justice would also be caught.

...

41. ... The commentary to rule 5.1-2A elaborates on the types of evidence covered by the rule, addresses the tension between the lawyer's duties to the client and the administration of justice in these circumstances, provides options drawn from case law (specifically those prescribed in *R. v. Murray*) for the manner in which a lawyer might deal with such evidence, and discusses issues relating to protection of client confidentiality and privilege. ...

42. Based on consultation feedback, the Standing Committee added language to paragraph [6] of the commentary to rule 5.1-2A concerning the non-destructive testing of evidence. This commentary advises lawyers to proceed with caution to ensure there is no concealment, destruction or alteration of the evidence. In addition, the Standing

Committee added language reminding lawyers that the very act of opening or copying electronic materials could alter them.

Since the incriminating physical evidence rule's adoption into the *Model Code*, versions of the rule (allowing for some local modification) have been adopted by a number of law societies across Canada. Work toward the proposed *BC Code* version of the rule has been conducted in prior years both by the Ethics Committee and by a working group appointed by the Ethics Committee. The version of the rule recommended below is the result of that dedicated effort and of the most recent review and assessment of the relevant materials by the 2016 Ethics Committee.

The Ethics Committee's process in 2016 has included a general consultation effort. The consultation materials on the proposed incriminating physical evidence rule and commentary were posted on the Law Society's website from September 12 until November 17, 2016. Both the posting of the consultation materials and the closing of the consultation period were announced in e-briefs distributed electronically to Law Society members and flagged in highlights posted on the Law Society's home page. In addition, a presentation and discussion of the proposed rule and commentary was led by a current Ethics Committee member, Greg DelBigio, QC, at a CBA criminal justice subsection meeting on November 16, 2016.

In substance, the differences between proposed rule 5.1-2.1 and *Model Code* rule 5.1-2A are most evident in the commentary, where the Ethics Committee has concluded that some additional guidance and encouragement for lawyers makes for a more helpful and more valuable rule. However, the proposed rule might best be described as enlarging to some extent on the *Model Code* provision. If adopted as presented, the recommended new incriminating physical evidence rule would bring the *BC Code* into closer alignment with the *Model Code*. This development serves the objective of moving toward more transparently uniform ethical codes and standards across the country. Further, in the view of the Ethics Committee, the adoption of proposed rule 5.1-2.1 will fill a significant need for guidance, which other Canadian law societies have already addressed with similar provisions in their provincial codes of conduct.

Resolution

Be it resolved to amend the *Code of Professional Conduct for British Columbia* by adopting new rule 5.1-2.1 and commentary, as follows:

Incriminating Physical Evidence

5.1-2.1 A lawyer must not counsel or participate in the concealment, destruction or alteration of incriminating physical evidence so as to obstruct or attempt to obstruct the course of justice.

Commentary

[1] In this rule, "evidence" does not depend upon admissibility before a tribunal or upon the existence of criminal charges. It includes documents, electronic information, objects or substances relevant to a crime, criminal investigation or a criminal prosecution. It does not include documents or communications that are solicitor-client privileged or that the lawyer reasonably believes are otherwise available to the authorities.

[2] This rule does not apply where a lawyer is in possession of evidence tending to establish the innocence of a client, such as evidence relevant to an alibi. However, a lawyer must exercise prudent judgment in determining whether such evidence is wholly exculpatory and therefore falls outside of the application of this rule. For example, if the evidence is both incriminating and exculpatory, improperly dealing with it may result in a breach of the rule and also expose a lawyer to criminal charges.

[3] A lawyer is never required to take or keep possession of incriminating physical evidence or to disclose its mere existence. A lawyer's possession of illegal things could constitute an offence and may require that the client obtain new counsel or disadvantage the client in other ways. It is imperative that a lawyer consider carefully the implications of accepting incriminating physical evidence. A lawyer should obtain the advice of senior criminal counsel or a Law Society practice advisor before agreeing to take possession. Where a lawyer already has possession this advice should be promptly obtained with respect to how the evidence should be handled.

[3.1] Unless a lawyer's handling of incriminating physical evidence is otherwise prescribed by law, the options available to a lawyer who has taken possession of such evidence include, as soon as reasonably possible:

- (a) delivering the evidence to law enforcement authorities or the prosecution, either directly or anonymously;
- (b) delivering the evidence to the tribunal in the relevant proceeding, which may also include seeking the direction of the tribunal to facilitate access by the prosecution or defence for testing or examination;
- (c) disclosing the existence of the evidence to the prosecution and, if necessary, preparing to argue before a tribunal the appropriate uses, disposition or admissibility of it; or
- (d) returning the evidence to its source, provided doing so will not cause the evidence to be concealed, destroyed or altered.

[4] A lawyer should balance the duty of loyalty and confidentiality owed to the client with the duties owed to the administration of justice. When a lawyer discloses or delivers incriminating physical evidence to law enforcement authorities or the prosecution, the lawyer has a duty to protect client confidentiality, including the client's identity, and to preserve solicitor-client privilege. This may be accomplished by the lawyer retaining independent counsel, who is not informed of the identity of the client and who is instructed not to disclose the identity of the instructing lawyer, to disclose or deliver the evidence.

[5] A lawyer has no obligation to assist the authorities in gathering physical evidence of crime but cannot act or advise anyone to hinder an investigation or a prosecution. The lawyer's advice to a client that the client has the right to refuse to divulge the location of physical evidence does not constitute hindering an investigation. A lawyer who becomes aware of the existence of incriminating physical evidence or declines to take possession of it must not counsel or participate in its concealment, destruction or alteration.

[6] A lawyer may determine that non-destructive testing, examination or copying of documentary, electronic or other evidence is needed. A lawyer should ensure that there is no concealment, destruction or any alteration of the evidence and should exercise caution in this area. For example, opening or copying an electronic document may alter it. A lawyer who has decided to copy, test or examine evidence before delivery or disclosure should do so without delay.

[7] A lawyer must never take possession of an item the mere possession of which is illegal, such as stolen property, unless specific dispensation is afforded by the law, such as under the "innocent possession" exception, which allows a person to take possession of such an item for the sole purpose of promptly turning it over to the police.



CEO's Report to the Benchers

December 2016

Prepared for: Benchers

Prepared by: Timothy E. McGee

Best Wishes and Thanks

As this is the last Benchers meeting for 2016 I would like to take this opportunity on behalf of all staff to wish you all a very happy holiday season and to thank you for your many contributions and hard work throughout the year. I would also like to extend congratulations and a special welcome to the newly elected Benchers. We look forward to working with you in the months ahead.

As this is also the final meeting for David Crossin, QC as President I would like to take this opportunity on behalf of all staff to thank him for his outstanding leadership and support. On a personal level it has been a real pleasure to work and learn from David and to witness how deeply he cares about the welfare of people both close at hand and the public at large.

2015 – 2017 Strategic Plan Update

I am attaching a copy of our current Strategic Plan which has been updated to show the status and progress to date of our various strategic initiatives. As is our practice the Benchers will conduct an annual review of the plan at the first meeting of the year in January. The purpose of the annual review is to assess whether to make any modifications or changes to the plan and to generally assess progress against the stated objectives. The current update is to help give you the bigger picture of our activities as we head into 2017, which is the third and final year of the current plan.

Seventh Justice Summit

I attended the 7th Justice Summit at UBC Law School on Friday, November 25 together with President Crossin, QC and Michael Lucas. The summits were established under the auspices of the Ministry of Justice and Attorney General to bring together leaders from the profession, the Courts, policing, health care and social agencies, indigenous organizations, government and others to establish a collaborative framework for information sharing and strategizing on how best to address the major justice system issues of the day. The inaugural justice summit was held in 2013 and under the terms of the Justice Reform and Transparency Act one is required to be held at least annually.

The focus of this summit was on the impacts of mental health issues in the justice system and the interplay between mental health and our criminal and civil processes.

It was clear from the panel discussions and workshops that a lack of coordination and emphasis on “upstream” identification and addressing of mental health issues was causing “downstream” problems with both cost and access to justice implications. For example, data was presented which showed rehabilitation as being more cost effective and sustaining than prosecution but the choices are not always as simple. The summit planning group took away a lengthy list of ideas and suggestions from the diverse gathering of leaders on ways these problems might be overcome.

I think it is also fair to say that the highlight of the day for many was the key note address by the Right Honourable Beverley McLachlin, Chief Justice of Canada. A copy of her remarks is being prepared for distribution and we will share it with you as soon as it is available. Suffice to say at this stage that her message was a powerful one about the challenges and impacts posed by delays in our justice processes, their complexity and the overwhelming impact of mental health issues across many levels. The Chief Justice also illustrated very effectively how the access justice imperative arises not only from the needs of the indigent to proper representation but also cuts across many aspects of daily life for Canadians of all means and backgrounds. She also reiterated the unacceptable, disproportionate representation of the indigenous community in the justice system and left no doubt in the room as to the urgency of addressing that issue.

Access to Justice BC (A2JBC) Leadership Meeting

I attended the A2JBC Leadership Group Meeting at the Law Foundation on Wednesday, November 23 together with President Crossin, QC. The all-day session was chaired by Chief Justice Robert Bauman and featured panel discussions and small group work sessions focused on the challenges and opportunities of ensuring our collective efforts to address access to justice needs across the province are designed and coordinated to achieve the greatest positive impact. An important take away for the group which was well articulated by the Chief Justice is that the real opportunity before A2JBC is to create a sustaining movement in the province around access to justice which harnesses the resources and skills of the many stakeholders and also effectively engages public interest and support.

The Legal Aid Task Force Colloquium

I attended the Law Society’s Legal Aid Task Force Colloquium at the Wosk Center for Dialogue on Saturday, November 26 together with several Law Society representatives

and a diverse and talented group of participants. The Benchers will hear more about the event from President Crossin, QC and Task Force Chair Nancy Merrill QC, but I would simply say that it was a very good day for the Law Society judging by the frankness of the feedback and the appreciation expressed by so many of the participants with whom I spoke.

International Institute of Law Association Chief Executives – 2016 Annual Conference

I recently attended the 2016 IILACE Annual Conference in Wellington NZ. This was my second and final year as President of the organization and in that role I acted as Chair of the conference. The stated purpose of IILACE is to bring together chief executives of law regulatory and representative bodies from around the world to share information and to discuss issues of both strategic and operational importance. This year's conference was entitled "Preparing for the Future – Demographics, Trends and New Realities". Each day had a specific theme; "Professional Standards and Core Values", "Disruptions and Innovations" and "Management and Governance". The Chair of the program committee was Paula Littlewood the CEO of the Washington State Bar and a frequent collaborator with LSBC and the Federation of Canadian Law Societies on a wide range of topics including legal education and alternative legal service providers.

There were 3 sessions at the conference during the "Disruptions and Innovations Day" which were particularly thought provoking and which in different ways relate to our own strategic goals. I have chosen to describe the highlights of those sessions in the attached Appendix A and I would be happy to expand on these or any of the other conference sessions at your convenience.

Welcoming Ceremony for Madame Justice Maria Morellato

I was honoured to speak on behalf of the Law Society at the recent welcoming ceremony for Madame Justice Maria Morellato of the Supreme Court of British Columbia. As Benchers will know Justice Morellato was a Bencher from 2012 – 2016 and while we were thrilled with her appointment to the Bench we were sad to lose her as a colleague and strong contributor in many areas. I am attaching a copy of my remarks for your interest.

Operational Updates

Staff Performance Management Process

A key ingredient in ensuring we have an engaged and skilled work force at the Law Society is an effective performance management system. In 2015 we instituted a new performance evaluation program for all employees which moves away from filling out a form about what you did in the year towards facilitating a conversation between managers and staff about what is going well, what can be done better and what the expectations are for the coming year. At the time of writing we are right in the middle of this important process which will be complete for all staff within the coming week.

2016 Annual Employee Survey

Our eleventh annual employee engagement survey has recently concluded and in the coming weeks we will be receiving the results from TWI Surveys Inc. the survey administrator. Our participation rate this year was 75% which while lower than last year is still a strong enough response to use the results to develop action plans and initiatives for better employee engagement and job satisfaction. We will be providing a report to the Benchers on the survey at the meeting in January.

RRex Day

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

So far in 2016 staff have used the RRex program to thank their peers for assistance and support through our “on-the-spot” recognition card program over 200 times. What I find particularly gratifying about that is that 60% of those cards (e.g. Starbucks, Tim Horton’s cards) were given by staff in one department to a colleague in a different department. To me this shows collaboration and teamwork across departments in action. Similarly, managers used the “on-the-spot” recognition card program over 150

times so far this year to recognize staff and 55% of those cards were given by managers to staff outside their departments.

On RRex day (held on Thursday, November 10 in the Bencher room) staff come together for lunch to celebrate some special individual awards. The RRex Award is given each year to an employee nominated by their peers who has demonstrated an outstanding commitment to excellence in their work. The nominations are carefully reviewed and the winner selected by the RRex awards committee, which is made up of a diverse cross section of staff. This year's RRex Award winner was Debra DeGaust, a Paralegal in our Practice Standards department for her outstanding work ethic and positive attitude.

We also have an outstanding teamwork award, "The Inspired Lion Award", which this year was awarded to the staff team that responded to the Valentine's Day flood in the Bencher's Room and who worked tirelessly for many weeks thereafter to ensure we maintained regular operations to the maximum extent possible.

Timothy E. McGee
Chief Executive Officer



2015 – 2017 Strategic Plan

Our Mandate

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

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

Our Goals

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

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

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

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

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

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

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

1. The public will have better access to justice.

Strategy 1–1

Increase the availability of legal service providers

Initiative 1–1(a)

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

Status – December 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 was paused for discussions with the Society of Notaries Public concerning merger as described at Initiative 2-2(c) below, but given the status of that initiative (as described below) is ready to be pursued again..

Initiative 1–1(b)

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

Status - December 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, online modules to promote the materials are being developed, 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 Advisory 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 - December 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 - December 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 - December 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. A “draft vision” and discussion paper have been prepared by the Task Force, which formed the basis of discussion at a Colloquium on Legal Aid organized by the Task Force and held on November 26, 2016 that was attended by senior levels of government, the courts and invited members of the profession. The Task Force will be reviewing the feedback obtained at the Colloquium with a view to providing a final report early in 2017.

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

Strategy 2–1

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

Initiative 2–1(a)

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

Status - December 2016

The Lawyer Education Advisory Committee report and recommendations were presented and approved at the March 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 - December 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' March 2016 meeting.

Initiative 2–1(c)

Conduct a review of the Continuing Professional Development program.

Status - December 2016

This topic is currently under consideration by the Lawyer Education Advisory Committee and a report is planned for 2017.

Initiative 2–1(d)

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

Status - December 2016

Evidence has been assembled that examines the impact of remediation and its duration, and the effectiveness of remediation in reducing lawyer complaints and increasing competence. A task force has been created to review the data gathered and to make recommendations concerning its use. It is expected to start its work in 2017.

Initiative 2–1(e)

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

Status - December 2016

The Lawyer Education Advisory Committee conclusions on this subject were presented and approved at the March 2016 Benchers' meeting. Ontario's Benchers decided in November 2016 to review the licensing processes, including articling and alternatives to articling, and plan to complete the review in 2017. The Lawyer Education Advisory Committee continues monitor developments in Ontario and assess the potential effects in BC.

Strategy 2–2**Expand the options for the regulation of legal services*****Initiative 2–2(a)***

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

Status - December 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 - December 2016

A consultation paper and survey were prepared and undertaken by the Law Firm Regulation Task Force and consultations with the profession took place around the province in February. The Task Force presented its interim report to the Benchers in November, and will be following up on its work with further consultations early in 2017 with a view to presenting a final report by the Fall of 2017 at the latest

Initiative 2–2(c)

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

Status - December 2016

Working Groups were created to (1) examine educational requirements for increased scope of practice for notaries (as proposed by the notaries) and (2) examine governance issues that would arise in a merged organization. Governance issues were considered by the benchers in a preliminary manner in camera at their June 2015 meeting. The Qualifications Working Group reported on their efforts to examine educational requirements at the July 2016 benchers meeting. After consideration, the Benchers elected to keep open the possibility of merging regulatory operations with the Society of Notaries Public, while re-engaging with the Ministry of Justice concerning legislative amendments to permit the Law Society to regulate new classes of legal service providers.

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 - December 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. Following the retreat, the "Truth and Reconciliation Advisory Committee" was created, and terms of reference for the Committee were established in the Fall of 2016. The Committee is now working to address its mandate.

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

Strategy 3–1

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

Initiative 3–1(a)

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

Status - December 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 proposed an annual evening lecture series on rule of law topics to begin in 2017, which was approved by the Benchers in July. Work on this initiative is underway.

Initiative 3–1(b)

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

Status - December 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 has followed up on this successful initiative by establishing an annual contest for high schools. . . .

Initiative 3–1(c)

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

Status - December 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 - December 2016

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

Initiative 3–2(b)

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

Status - December 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 several 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 was created 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 Honourable Madam Justice Maria Morellato

Welcoming Ceremony

Thursday November 24, 2016
Remarks by Tim McGee, QC

Chief Justice Hinkson, my Lords, my Ladies.

Good afternoon.

It is my great honour to be here today on behalf of the Law Society of British Columbia to welcome Madame Justice Morellato to the Supreme Court of British Columbia and I bring greetings on behalf of President David Crossin QC, the Benchers and all Law Society staff.

It is often said that you remember where you were when you first hear about important events or things that have great meaning to you or your colleagues.

I remember where I was when I first learned of Justice Morellato's appointment. I was in a meeting with staff at the Law Society and someone who was stealthily checking their iPhone for emails under the table trying to hide that fact suddenly burst out "Maria's been appointed to the Bench!". There was spontaneous cheering and celebration and the meeting completely disintegrated after that point – we had something far more exciting and important to talk about!

To put it mildly, Justice Morellato's appointment was a "popular win" at the Law Society. This was because of the deep respect and abiding affection we have for her.

I would like to share with you some of the qualities of Justice Morellato which were so often on display as she discharged her role as Bencher from 2012 until her appointment earlier this year.

A measure of real success in any undertaking is not just "what" you do but "how" you do it. The "what" for Justice Morellato at the Law Society in addition to her monthly Bencher meeting responsibilities included stellar service on the Discipline, Equity and Diversity, Practice Standards, and Finance and Audit, Committees. She played a lead role on our Task Force dealing with the retention and advancement of women in the profession and she was a key member of the Law Society's newly formed Truth and Reconciliation Advisory Committee.

But while her immense capacity for work and reliability soon became obvious to us all it was "how" she went about her work including, in particular, her inclusive and respectful approach to those she engaged which stood out so prominently.

What I saw was a lawyer with impressive depth of knowledge across a wide range of topics and issues without an ego to match that expertise. Justice Morellato frequently

demonstrated in her contributions that she had mastered the invaluable skill, often all too elusive for many of us lawyers, of “Listening to understand and not simply to respond”.

Her sense of compassion and empathy was also frequently evident in coming to grips with difficult policy issues particularly in the area of equity and diversity and practice standards matters. We frequently benefited from her insights and decisions in situations where neither emotional intelligence nor legal knowledge alone, both of which, by the way, she possesses in spades, would produce the best outcome. Madame Justice Morellato’s ability to apply those two in appropriate measure, when called for, is a special trait that we will long remember.

Perhaps above all we will remember Justice Morellato for her infectious good nature and positive can do outlook on work and life. Knowing of all her many other professional achievements together with her strong commitment and love of family we feel privileged at the Law Society to have had the good fortune of sharing 4 all too short years with her as Bencher.

In closing, I would like you to know Justice Morellato how very proud we are of you at the Law Society, to thank you for all you have done for us in the public interest, and to wish you the very best in your judicial career, one which we know you will undertake with commitment, intelligence and grace.

Thank You.

International Institute of Law Association Chief Executives – 2016 Annual Conference – New Zealand

Highlights from Day 2 “Disruptions and Innovations”

LexisNexis Campaign for Advancing the Rule of Law

We heard from the global Vice President of LexisNexis regarding his firm’s campaigns for advancing the rule of law around the world. LexisNexis was a founding member in 2010 (along with the Gates Foundation the GE Foundation and other major sponsors) of The World Justice Project described as a multidisciplinary, multinational movement to advance the rule of law. That project established a Rule of Law Index which collects data on 10 dimensions of the rule of law including items such as absence of corruption, regulatory enforcement, access to civil justice and effective criminal justice, broken down into 44 key indicators. We were shown a global “heat map” of how countries around the world score based upon these indicators. Canada fared reasonably well but many were better.

What was most interesting was the analysis that demonstrated the connection between, for example, a 1% improvement in the Rule of Law Index, and crime reduction, life expectancy and attainment of other social goals including access to legal services. The analysis was far reaching and is also being used to demonstrate the benefits to businesses of supporting and investing in efforts to enhance the rule of law. For its part, LexisNexis works with legal professional, business leaders, policy makers, academics, NGOs and other stakeholders to find practical applications for advancing the rule of law. For example, LexisNexis UK has developed a free iPhone App entitled “My Legal Place” which allows users to find the nearest police station, citizens advice bureau and community legal aid office, among helpful locations, across the UK.

The main takeaway for our group was that this project and the tools it is developing are demonstrating how the rule of law when presented in practical and pragmatic terms can lead to positive engagement among citizens, businesses and governments alike.

LegalZoom – Innovation and Disruption in the Delivery of Legal Services

We heard from Eddie Hartman the co-founder and Chief Product Officer of LegalZoom the largest online provider of legal services in the world. He shared some astonishing statistics about the rapid growth of his business. Among those was the fact that LegalZoom at last count has over 4 million unique regular customers, every 3 minutes someone starts paperwork online to create a business using LegalZoom and every 4

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minutes someone starts a will using LegalZoom. Hartman estimated that 1 out of every 3 businesses in the State of California were created using LegalZoom.

The original focus of the business was to provide a quick way to acquire some basic legal services through an on line Q&A process resulting in access to written information to guide you. Now LegalZoom’s fastest growing service is legal advice provided by lawyers on line in real time. This strategy was fuelled by the recent ABA report indicating that up to 85% of Americans who need legal advice are not getting it. Hartman described this as the “silent crisis” because it has such a low profile relative the potential harm it creates. LegalZoom has recently acquired a law firm in the UK and is transforming its service delivery model on the basis of the on-line platform on which the company has been built. He reported that in recent independent consumer quality satisfaction surveys in the UK their firm was rated as highly as Apple and other top tier service leaders.

As you might expect, Mr. Hartman’s presentation led to a very lively discussion period afterwards. Somewhat surprisingly, he emphasised over and over again that LegalZoom’s target market is not consumers who are dissatisfied with their lawyer or even those who are looking for a cheaper option. Rather, the target market are those people who do not even know they could benefit from legal advice or service. This untapped market opportunity based upon LegalZoom’s analysis is so prominent that the company will be making major investments in both technological and human capital to pursue the opportunity. He left no doubt, however, that an online service delivery model will never overtake the need for one on one lawyer/client relationships. The disruption of LegalZoom, however, may just accelerate how lawyers choose to offer and promote their services with a particular emphasis on their unique value add.

Salvos Legal - Humanitarian Law Funded by Commercial Practice

We heard from Luke Geary, the Managing Partner of Salvos Legal based in Sydney, Australia. Salvos Legal describes itself as a “revolutionary legal practice”. In a nutshell, Salvos Legal is comprised of two law firms each wholly owned by the Salvation Army. One firm is a commercial law firm that offers commercial and property law advice on a paid basis to the public. All of the fees (less expenses) fund its sister “legal aid” firm called “Salvos Legal Humanitarian”, which is a full service free law firm for the disadvantaged and marginalised. Salvos Law is comprised of experienced lawyers in the areas of commercial and property law who act for “blue- chip clients from the corporate, government and not for profit sectors”. The firm’s pitch to prospective clients is: “By instructing us for your legal work, you will receive top quality legal advice from experienced professionals at competitive rates. In addition, you will get the satisfaction of helping others, without costing you anything extra”. The Mission Statement is “. . . to

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provide holistic justice funded by competitively priced commercial legal service to the general public. We will strive to create systemic change in the availability of access to justice for all people so that no one is without a trusted advisor to provide comfort and counsel in their time of need”.

Mr. Geary said that Salvos is the first commercial law firm where all the profits fund its free humanitarian law sister firm. He described the mission as being a not for profit social enterprise model supported by the corporate responsibility goals of its commercial clients.

Over 20,000 cases a year are handled by the humanitarian sister firm funded by the commercial firm’s profits. Areas covered include, debt matters, family and children’s law, housing law, immigration, refugee and social security assistance. This work is further supported by a very active and well supported in-house pro-bono desk within the commercial firm. We learned that all lawyers in New South Wales have a 35 hour “aspirational” pro bono target, but apparently many find the appropriate pro bono opportunities hard to come by. Lawyers in the commercial firm have access to a “pro bono hot desk” which allows them to take on this work for the humanitarian sister firm without reduction in salary and with full professional liability indemnity coverage. We learned that most of the lawyers in the commercial firm meet or exceed the 35 hour aspirational target. We also heard that interest in career opportunities at the firm among lawyers of all levels of experience and background is very strong. By all accounts the business model is thriving.

It was hard not to be impressed by the degree of commitment and innovation which Salvos has embraced in their efforts to tap into the corporate “for profit” community as a means to fund and support a not for profit access to justice undertaking. There was a strong sense among our group that watching and learning from how Salvos succeeds in this venture would be time and attention well spent for all of us looking for ideas to enhance access to legal services for those in need.

Memo

To: Benchers
From: Equity and Diversity Advisory Committee
Date: June 22, 2016
Subject: Engaging Newly Called Lawyers

Background

The Executive Committee discussed whether the Law Society's current governance structure provides an adequate mechanism through which newly called lawyers can bring forward issues and have them addressed. The Executive Committee thought the issue of "young" lawyers might fall under the mandate of the Equity and Diversity Advisory Committee, and has tasked this Committee with considering how the Law Society might better engage with "young" lawyers.

Based on a number of discussions, it seems as though the term "young lawyer" is intended to describe "newly called" lawyers. The year of call for what constitutes "new" has not been specified, but there is some rationale to support the timeframe for "new lawyers" as being lawyers who have been called for less than 7 years.

According to Law Society Rule 1-22(1)(b):

To be eligible to be a candidate for election as a Benchers, a member of the [Law] Society must...have been in good standing for at least 7 years.

This restriction provides some basis for the concern that lawyers with less than 7 years call may feel alienated from Law Society governance. Because they are ineligible to run for Benchers election, there is no elected representative with less than 7 years call at the Benchers table.

Although newly called lawyers are expressly precluded from election to the Benchers table, other methods of engaging newly called lawyers in Law Society governance currently include: committee work, consultations, surveys, online discussion boards, and in-person discussions (such as Benchers interviews with articulated students). Nevertheless, concerns have been expressed that these methods are insufficient, and improved interaction with newly called lawyers is required.

This memo will analyze options to improve Law Society engagement with newly called lawyers.

Options

A few options have been proposed:

1. Removing the year of call restriction from the Bencher candidacy requirement;
2. Designating a special seat for newly called lawyers at the Bencher table;
3. Creating a “newly called lawyers” working group; and
4. Improving age diversity in Law Society appointments.

Analysis

Option 1: Removing the 7 Year Restriction in order to be elected as a Bencher

Rule 1-22(1)(b) requires candidates for Bencher election to be members in good standing for at least 7 years. There are a few principles underlying this rule.

Benchers are leaders in the legal profession. Implicit in Rule 1-22(1)(b) is some acknowledgement that it takes at least a few years to build up a career that would generate a positive reputation to demonstrate the level of leadership required for this role. This reputational aspect is conveyed in the requirement for members to be “in good standing” for at least 7 years.

This is not to suggest that newly called lawyers are not capable of developing into leadership roles, but the rule indicates that some experience (i.e. at least 7 years) is required to perform the role effectively. Much of the committee work required of Benchers (e.g. discipline, credentials, ethics, practice standards, etc.) assumes that Benchers will have a considerable degree of experience in the practise of law, and will be able to apply their practical knowledge in the Law Society’s core decision-making functions. There is a concern that newly called lawyers may not have sufficient experience to be effective on certain panels.

However, there is discretion in the appointment of panels, and the objective of the Law Society’s Appointments Policy is “to ensure that well-qualified persons with the requisite character, knowledge, expertise, willingness and ability to undertake the responsibilities of the position are appointed.” The Appointments Policy should suffice to prevent underqualified persons from being appointed to committees or panels that are beyond their competence. Moreover, hearing panels consist of three people (a Bencher, a non-Bencher lawyer, and a non-lawyer), so a newly called lawyer would never be making a decision alone.

Notably, no other law society in Canada restricts eligibility for Bencher nomination based on year of call (see Appendix A). Many law societies require candidates to be in good standing. Alberta specifies candidates are ineligible “if, within the 5-year period immediately before the

date of the election” the candidate was sanctioned or suspended for professional misconduct.¹ This prevents the nomination of candidates who have been found guilty of misconduct within the 5 years preceding an election, but does not prevent newly called lawyers from seeking nomination.

Some law societies, including the Law Society of British Columbia, also require candidates to be supported by other lawyers (see Appendix A), and some (including BC) also require the supporting lawyers to be in good standing. Such requirements are likely intended to demonstrate the candidate’s positive reputation and perceived leadership within the legal profession.

There may be logistical factors that could dissuade newly called lawyers from seeking Benchers nomination. It is common for newly called lawyers to be required to work and bill many hours in order to climb the career ladder. Also, because they are at the beginning of their careers, newly called lawyers who practise in firms may not be afforded flexible schedules. Newly called lawyers in sole practice may find the need to develop marketing and client retention skills in addition to practice management skills, precluding the ability to take on much in the way of volunteer activity. A significant time commitment is required of Benchers, and this may not be compatible with the schedules of newly called lawyers.

Ironically, the Law Society’s call for Benchers candidates invites “young lawyers” to run:

The Benchers note that Aboriginal lawyers, solicitors, visible minority lawyers, women lawyers and young lawyers continue to be under-represented among elected Benchers. All lawyers who meet the qualifications for Benchers and want to contribute to the governance of the profession are encouraged to stand for election, but Aboriginal lawyers, visible minority lawyers, women lawyers, young lawyers and those practising predominantly in solicitors’ fields are particularly encouraged to do so. The Benchers believe that the Law Society’s mandate to protect the public interest in the administration of justice will be best served by leadership from diverse backgrounds and experience.

So while “young lawyers” are being encouraged to run for Benchers election, Rule 1-22(1)(b) prevents lawyers with less than seven years at the bar from doing so. For the Law Society to genuinely welcome age diversity at the Benchers table, it would be logical to remove the year of call restriction from Rule 1-22(1)(b).

There is also an equality consideration for removing the year of call restriction, which was put before the Benchers in 1995. The Law Society’s demographic data indicates that women leave the practice of law at greater rates than men in the first five years of call;² there is a concern that

¹ *Alberta Legal Profession Act*, section 13.

² For example, of all women called to the bar in 2003, only 66% retained practicing status in 2008 compared to 80% of men called in the same year.

the 7 year call requirement disproportionately affects the participation of women at the Benchers table. Women continue to be underrepresented, currently occupying 12 of 31 seats (39%) at the Benchers table. Arguably, the eligibility requirement that Benchers candidates must be members in good standing for at least 7 years poses a systemic barrier to women's participation in Law Society governance because women leave legal practice at higher rates than men during their first few years of practice.

The requirement also poses a legal barrier that currently prohibits newly called lawyers from being elected to the Benchers table. The primary benefit of removing the requirement would be to remove systemic and legal barriers and help to improve Benchers diversity in relation to gender and age. The possibility of Benchers candidacy may also increase the interest of newly called lawyers in Law Society governance, and improve successionship at the Benchers table.

On the other hand, the logistical considerations of the first few years of legal practise (noted above) may dissuade newly called lawyers from Benchers seeking candidacy even if the year of call restriction is removed. Another difficulty is that newly called lawyers may not yet have sufficient "name recognition" to get a sufficient number of votes. Moreover, it may be difficult for representatives of "minority" groups to get elected by "majority" populations.

On balance, however, there are strong policy rationales for removing the barrier. If there are newly called lawyers who are willing to step up for governance roles because they believe they have something to offer, they should not be precluded from doing so. The nomination and election procedures, in combination with the Appointments Policy should provide sufficient "checks and balances" to facilitate the election of Benchers capable of fulfilling their roles.

Option 2: Designated Seat

Another option might be to create a designated seat at the Benchers table for a newly called lawyer. Manitoba applies this model, designating a seat for a student representative at the Benchers table. A designated seat would provide tangible assurance that the concerns of newly called lawyers are being represented at the Benchers table, and would also likely increase the level of engagement of newly called lawyers with Law Society governance. However, there are a number of problems with the designated seat model.

First, there is a concern about opening "flood gates" to other equity-seeking groups who may also have reasons to request a designated seat at the Benchers table.³

³ For example, there have been discussions of designating a seat for an Aboriginal Benchers. Such a seat might be justifiable based on the unique constitutional position of Aboriginal peoples, and the reality that Aboriginal issues pervade a number of areas targeted in the Law Society's strategic plan. However, the proposed "special seat" has not been fully supported, even by Indigenous lawyers (for concerns about tokenism and isolation, which will be described below). While the Benchers acknowledged a need for Aboriginal representation at the Benchers table, they

Second, a designated seat could result in tokenism. The person occupying the designated seat might be expected to represent his/her group's perspective on various issues, despite varying opinions within the group.

A third and related point is that a designated seat could also lead to the isolation and detachment of "special interest" concerns away from the Law Society's core processes. Rather than addressing a particular equity-seeking group's concerns throughout the Law Society's mandate, policies, procedures, and practices, the designated seat may result in an overreliance on the individual representative to bring forward the interests of the equity-seeking group, as well as a relegation of all issues relating to the equity-seeking group to the individual representative. The designated seat would probably lead to piecemeal governance, whereas a more holistic approach would likely be more effective.

Option 3: Working Group

Another option that has been discussed is the creation of a newly called lawyers working group. While this idea may be popular, there are a few drawbacks to consider.

First, the aforementioned concerns about flood gates, tokenism, and detachment in relation to the "designated seat" option also apply to the creation of a working group.

Second, a Law Society group for newly called lawyers may be redundant. For example:

- a) The Canadian Bar Association has a Young Lawyers Section for law students, articling students and lawyers who have been in practice for less than 10 years. The group provides opportunities for discussions and continuing legal education focused on issues which arise in the early years of legal practise. However, participation is limited to CBA members, and not all newly called lawyers belong to the CBA.
- b) The Inns of Court program gives junior barristers an opportunity to discuss practical and professional issues with the judiciary and senior lawyers. However, there is a cost associated with this program, registration is limited to 25 participants, and it currently only operates in Vancouver.

It has been suggested that these groups are insufficient to meet the needs of newly called lawyers because they have no regulatory powers or authority. Nevertheless, they could be useful to identify issues that require action, and to bring these issues to the attention of the Benchers to address.

There is also some uncertainty about the mandate of any proposed newly called lawyers working group. The Law Society sometimes creates working groups to examine options and develop

opted to specifically request the government of British Columbia to appoint an Aboriginal person as a Lay Benchers rather than to create a designated "Aboriginal seat" at the Benchers table.

recommendations in relation to various aspects of the legal system (e.g. the Alternative Business Structures Working Group, Civil Justice Reform Working Group, Cloud Computing Working Group, Family Justice Reform Working Group, etc.) However, the proposed newly called lawyers working group appears to have a different purpose than previous working groups. The purpose of the proposed newly called lawyers working group seems to be a consultative mechanism for newly called lawyers to bring their issues to the attention of the Benchers, rather than analyzing possible improvements to the legal system.

Another downside to the working group option is the increased administrative burden that would be required to operate and maintain the working group (e.g. scheduling meetings, generating agendas, recording minutes, following up on action items, etc.)

A consideration that relates to the concerns about “flood gates,” piecemeal governance, and administrative burdens is that, historically, the Law Society had more advisory committees, but has moved to a more cohesive governance model in recent years. For example, there used to be a Gender Bias Committee and a Multiculturalism Committee, as well as a number of related working groups (e.g. the Aboriginal Law Graduates Working Group, the Disability Research Working Group, and the Interpreters Working Group, etc.). The objectives of all of these committees and working groups have now been integrated into the Equity and Diversity Advisory Committee’s mandate under the more cohesive governance model. The more cohesive approach is intended to reduce redundancies, facilitate collaboration, and streamline administration.⁴

There is some rationale to support the integration of newly called representatives into the Law Society’s existing governance structure. At a preliminary consultation with newly called lawyers, they identified issues related to mentoring, articles, student debt, legal aid, and technology. These issues fall within the mandates of existing Law Society committees and task forces, so it would likely be more efficient to ensure adequate representation of age diversity in existing committees and task forces instead of creating a separate working group for newly called lawyers.

Option 4: Age Diversity in Law Society Appointments

The Law Society promotes diversity in its *Appointments Policy*, but could improve its encouragement of age diversity. Section 1.1.4 of the *Appointments Policy* states:

The Law Society promotes diversity in its internal and external appointments and should ensure adequate representation based on gender, Aboriginal identity, cultural diversity, disability, sexual orientation and gender identity.

Notably, neither age nor length of call to the bar is listed here.

⁴ A potential downside of the integrated model is that the concerns of some equity-seeking groups may become overshadowed. For example, although the Equity and Diversity Advisory Committee acknowledges that lawyers with disabilities require support, it is difficult to maintain momentum for initiatives to support them.

There are a few reasons to encourage such diversity in Law Society appointments. Lawyers of different ages or length of call likely have unique perspectives and may be closer to certain issues. For example, newly called lawyers likely have fresher memories regarding admissions and articling experiences. They may also be more attuned to technological advancements than more experienced lawyers. At the other end of the spectrum, lawyers nearing retirement may also have distinct issues and perspectives for the Law Society to consider. Accordingly, age diversity should be added to the list of diversity markers being promoted in Law Society appointments.

Age has been considered as a relevant factor in the task force appointments in the past. For instance, newly called lawyers were targeted for appointment in the Admission Program Reform Task Force in 2001. The Law Society acknowledged that newly called lawyers would have recent experience with the Admission Program, would be significantly affected by reform, and would have valuable insights to inform the Task Force's work.

Newly called lawyers should be adequately represented on all committees and task forces with mandates that affect them. Many of the issues conveyed during the preliminary consultation with newly called lawyers relate to the Legal Education Advisory Committee's mandate. The Legal Education Advisory Committee often seeks input from law students and newly called lawyers (e.g. the Committee surveyed PLTC students and newly called lawyers as part of its Admission Program Review). Accordingly, it would likely be beneficial to have at least one newly called lawyer appointed to the Legal Education Advisory Committee.

Although the Executive Committee tasked the Equity and Diversity Advisory Committee with examining how the Law Society might better engage with newly called lawyers, none of the concerns raised during the preliminary consultation with newly called lawyers involved equity or diversity issues. While age diversity should be encouraged in the Equity and Diversity Advisory Committee, a specific seat for a newly called lawyer on this Committee is likely not required.

Recommendations

After considering a number of options to improve Law Society engagement with newly called lawyers, the Equity and Diversity Advisory Committee recommends:

1. The requirement candidates for Benchers election to be members in good standing for at least 7 years [under Rule 1-22(1)(b)] should be removed; and
2. Age or length of call to the bar should be added to the list of diversity markers being promoted in section 1.1.4 of the Law Society's Appointments Policy.

APPENDIX A: BENCHER ELIGIBILITY IN OTHER LAW SOCIETIES

Law Society	Eligibility
Alberta	<p><i>Legal Profession Act</i> s. 13(1) Only an active member resident in Alberta is eligible for nomination and election as a Benchers.</p> <p>(3) A member is ineligible for nomination or election as a Benchers if at any time before the date of the election the member was disbarred.</p> <p>(4) A member is ineligible for nomination or election as a Benchers if, within the 5-year period immediately before the date of the election,</p> <ul style="list-style-type: none"> (a) the member was found guilty of conduct deserving of sanction without an order being made for the member's disbarment as a result of the finding, unless the Hearing Committee, the Benchers or the Court of Appeal, as the case may be, made an order directing that the member is not ineligible by reason of the finding, (b) an order of the Benchers was made...for the suspension of the membership of the member for a fixed period, (c) an order of the Benchers was made...for the suspension of the membership of the member for a fixed period, unless the Benchers made an order directing that the member is not ineligible by reason of the suspension order, or (d) the membership of the member was under suspension at any time during that 5-year period. <p>(5) A member is not ineligible...if the disbarment order or finding of guilt was successfully appealed.</p> <p>Nomination must be supported by 5 active members.</p>
Saskatchewan	<p>All members, except members under suspension, are eligible as candidates in an election of benchers. (<i>Legal Profession Act</i>, section 17).</p> <p>Nomination must be supported by 2 lawyers in good standing.</p>
Manitoba	<p>To be eligible to be a candidate for election as a benchers, a member of the society must be a practising lawyer on the 1st Monday in March of the election year and have his or her name on the voting list on the 1st Monday in April of the election year. (Rule 2-5 (a))</p> <p>Nomination must be supported by 5 active members.</p>

Manitoba student benchers	Each year, on a date fixed by the chief executive officer, the students who are enrolled in the society's bar admission course must elect one student from among their number to be student benchers for a term of one year or until his or her successor is elected. The student benchers takes office at the first meeting of the benchers following his or her election. (Rule 2-30)
Ontario	Every licensee is qualified to be a candidate in an election of benchers if his/her license is not suspended. (By-Law 3, s. 7) Nomination must be supported by 5 lawyers whose licenses are not suspended.
Quebec Barreau	Must be a practising barrister. Cannot be: purely solicitor, retired, employed by Barreau in the 3 years preceding nomination, an administrator of a section of the Barreau, a member of the board of a professional association within the legal field, or a member of a board of an affiliated body to the Barreau (e.g. Bar Services Corporation of Québec, Professional Liability Insurance Fund of the Barreau du Québec, Bar Foundation, Pro Bono Quebec School, etc.).
New Brunswick	To be eligible for nomination...the candidate shall be a member in good standing and, if an incumbent, has not been elected in more than two immediately preceding elections. <i>Legal Profession Act</i> s. 8(4)
Nova Scotia	The nomination of a candidate for election to Council is valid only if it is in writing, signed by five members of the Society in good standing who are eligible to vote in the district in which the nominee seeks to be a candidate and the nominee consents in writing to the nomination. Rule 2.5.3 A member of Council who is found guilty of professional misconduct, conduct unbecoming or professional incompetence or found to be incapacitated under Part 3 of the Act shall be deemed to have resigned from Council. Rule 2.8.2
Prince Edward Island	The council shall consist of ... members in good standing. (<i>LPA</i> s. 7(1)) A maximum of two members from each firm, partnership or employer are eligible to be nominated, elected or appointed to the council or to any office for the same year. <i>Legal Profession Act</i> s. 7(3)
Newfoundland and Labrador	A person who is a member in good standing and whose name is on the voting list on the day on which the election for benchers takes place is eligible for election as a benchers. <i>Legal Profession Act</i> s. 11

Yukon	A person is not eligible for nomination and election to the executive unless they are an active member resident in the Yukon. <i>Legal Profession Act</i> s. 8(1)
Northwest Territories	Every active member is eligible for nomination and election to the Executive. <i>Legal Profession Act</i> s. 4(1)
Nunavut	Every active member is eligible for nomination and election to the Executive. <i>Legal Profession Act</i> s. 4(1)



To Benchers
From Executive Committee
Date November 30, 2016
Subject **Access to Justice BC - Three Year Funding**

Background

Access to Justice BC (A2JBC) has need for funding over the next three years to continue its work. The funding request is up to \$300,000, with the intent that the Law Society and Law Foundation collaborate by jointly supporting A2JBC through matching grants of up to \$150,000 each. Attached is background information on the mandate and goals prepared by A2JBC (Appendix A).

The Benchers have adopted a policy on the provision of funding to outside bodies. The policy states, *"It is the Benchers' policy that the Law Society will consider funding externally operated projects or programs only when the Law Society specifically sponsored or participated in the creation of the project or program."* The Law Society is a founding member and a participant initially with President David Crossin QC and joined later by CEO Tim McGee QC.

A2JBC Funding Proposal

The current request for funding will permit an extension of the support that has been provided to A2JBC via project funding from the Law Foundation over the last two years, consisting of two grants of \$40,000 and \$50,000. That funding has led to:

- The establishment of Access to Justice BC - the first multi-sectoral coordinated approach to access to justice in BC history;
- The identification of Family Law and Indigenous Law as priorities;
- The identification of ten possible Family Law initiatives;
- Current work on the following initiatives:
 - Unbundled legal services
 - Presumptive Consensual Dispute Resolution
 - Family Justice Hub pilot

The current request anticipates that the funds will be used over the next three years to support a strategic co-ordinator, costing in the range of \$70,000 per year, website and communications support at \$15,000 to \$20,000 per year, and a fund for convening and travel costs, up to \$10,000 to \$15,000 per year.

Given the preliminary nature of the work of A2JBC to date, a detailed budget for further work is not yet in place. However, the funds will only be advanced subject to a list of conditions that will allow the Law Society and the Law Foundation to oversee the funding and monitor implementation.

Funding Source

Courthouse Libraries BC has advised that there is a balance of \$385,000 of excess unallocated net assets. They engaged with the Law Society and Law Foundation to develop a proposal to use \$300,000 of those funds to support A2JBC. As the Law Society and Law Foundation each provide approximately half of CLBC's funding, the present intent is to return \$150,000 to each of the Law Society and the Law Foundation. The mechanism to accomplish this, as agreed with CLBC, is for the Law Society to set aside \$150,000 out of the total amount collected for CLBC under the 2017 practice fee, and make those funds available to A2JBC. The exact method of disbursement will be coordinated through the Law Foundation.

Request

There is widespread support in the legal community for the work A2JBC is undertaking. As the Law Society was a founding member of A2JBC, the following Benchers resolution is proposed:

WHEREAS the Law Society and The Law Foundation wish to collaboratively co-fund Access To Justice BC through equal matching grants of \$150,000;

BE IT RESOLVED that the Benchers authorize that \$150,000 of the total amount collected for Courthouse Libraries BC under the 2017 Practice Fee be distributed to Access to Justice BC, over the period from January 1, 2017 to December 31, 2019 on the following conditions:

1. *that Access to Justice BC submit a detailed budget for the project that is satisfactory to the Law Society and the Law Foundation.*
2. *that the coordination role of Courthouse Libraries be clarified and agreed upon as between the Law Society and the Law Foundation.*
3. *that an implementation plan be developed and approved for the project that identifies outcomes for the project and related activities. The implementation plan will provide specific details about each activity including: a completion date for each activity, a deliverable where appropriate, individuals/organizations/committees that will be involved in the activity, the person responsible for the activity, the location where each activity will take place, and the person responsible to sign off/approve the deliverable. The implementation plan will outline how all the specific project objectives will be accomplished.*
4. *that a mid-year and an annual report be submitted to the Law Society and the Law Foundation outlining progress made on implementing the project activities and identifying outcomes to date.*

Access to Justice BC

Access to Justice BC (A2JBC)

Access to Justice BC (“A2JBC”) was created in 2014 to serve as a platform for organizations to work collaboratively to improve access to civil and family justice in BC. It was started by the BC lawyers and judges who attended a National Colloquium on Access to Justice in January of 2014. It is built on the American justice commission model and adapted to suit the BC justice sector. A2JBC is chaired by the Chief Justice of BC and now has 30 members, three recently added from key aboriginal justice organizations in BC. It represents a broad cross-section of justice system stakeholder and user organizations and constituencies (the “Leadership Group” – see *Appendix 1* for list of members). It is a first in BC’s legal history.

The Leadership Group has made the family justice system and responding to the needs of Aboriginal people in BC its top two priorities. It is an action-oriented group, and has committed to partnering with Aboriginal organizations and communities in an initiative that addresses the concerns expressed in the Truth and Reconciliation Commission’s report that the child protection justice system is not working for Aboriginal families.

To date, contributions to the work of A2JBC have been through volunteer time and in kind resources plus two grants from the Law Foundation - \$40k in 2015 for a Strategic Coordinator, and \$50k in 2016 to support identified initiatives in the family law area. There is now a recognition that some infrastructure is needed to sustain and make the work of the group more effective.

“We have spent untold hours in our various efforts to promote access to justice, and the issue still seems to be intractable....A coordinated, multidisciplinary response that speaks to a common vision is going to be much more effective....The problem is complex, and complex problems require extraordinary new answers...We have to inspire innovation, and we have to fundamentally look at culture change.”

- The Hon. Chief Justice Bauman, Benchers Bulletin interview, December 2015

Following a review of the American justice commission models and an approach in the health care sector that has been successful, the A2JBC Leadership group members endorsed a Framework for Action, adapted from the successful health-care model. It promotes a system-wide commitment to a common goal:

“a sustainable civil and family justice system
in which justice is accessible to British Columbians”

Appendix A

This goal will be achieved through pursuing a Triple Aim, with three interrelated aspects:

- 1) improved user experience of the justice system
- 2) improved justice outcomes for the population, and
- 3) sustainable per capita costs.

Access to justice in BC cannot be achieved by any one organization, or by organizations working within their own silos. It requires a new and more collaborative way of working and delivering services for everyone in the justice sector – lawyers, judges, notaries, advocates, academics, public policy practitioners and users of the system - inclusive of those in rural areas and remote communities as well as those in high-volume urban areas. A2JBC recognizes that to succeed it needs the engagement, commitment and investment of the justice sector players as a whole, along with the public.

With this in mind, A2JBC has taken a different approach than previous initiatives to effect reform. It is pursuing a collective impact approach that has met with success in other sectors across North America but is new to the justice system in BC. Those who have studied collective impact initiatives have identified five conditions for success. A2JBC is actively pursuing three of these (a common agenda, shared measurement and mutually reinforcing but differentiated activities). The other two, which A2JBC is struggling to pursue, are continuous communication and backbone support. These last two critical success factors have also been identified by the American justice commissions, the earliest of which were established in 2000. They have shared a number of the lessons learned along the way.

“The Commission’s leadership must work to maintain its base of support by communicating effectively and consistently with partners and stakeholders. Commission leaders need to make clear what the Commission is doing and why it is important.”

- Hallmarks of Effective Access to Justice Commissions, ABA

A2JBC infrastructure needs

Collective impact initiatives are fluid, and action on implementation is at the level of the individual collaborating organizations. The “infrastructure” required for collective impact does not mean a bureaucracy with all the trappings; it is whatever it takes to create a “platform” for stakeholders to collaborate, to avoid duplication of efforts and to make a difference, in this case, in achieving the goal of access to justice in BC. The required infrastructure is in many ways a knowledge platform to connect member stakeholders with

each other and to engage the end user – the public, the profession and all those who are involved in the justice system. The networking and connection required to make A2JBC a successful collective impact platform can to some extent be done electronically or by convening the participating players. However, it also requires one or more people or organizations to play a coordinating and facilitating role.

The initial \$40k grant for A2JBC from the Law Foundation ended in June 2016. The Law Foundation has provided a subsequent \$50k one-year grant to support A2JBC's coordinating work for specific family law initiatives. However, it is not sufficient to cover the needed infrastructure cost to make A2JBC a viable platform for system-wide collective action on access to justice. The Strategic Coordinator's contract is up for review shortly depending on funding.

"A staff capacity is necessary to provide adequate support, continuity, communications, and continued momentum ..."

- Hallmarks of Effective Access to Justice Commissions, ABA

To increase the impact of A2JBC, \$300K of funding is requested, to be disbursed over a three year period to fund:

- A Strategic Coordinator to support the implementation of the A2JBC's Framework for Action;
- Website and communications support; and,
- Travel and convening costs.

Alignment with Law Society and Law Foundation mandates

A2JBC is an important step in pursuing the commonly held public interest mandate of the Law Foundation and the Law Society.

"For its part, the Law Society has an ongoing commitment to improving access to justice and to affordable legal services for all British Columbians. These goals are prominent in the Law Society's current three-year strategic plan..."

- Tim McGee, CEO's Perspective column

A2JBC is making important progress on the Law Society's priority to respond to the Truth and Reconciliation Commission's calls for action. It has begun to develop a working relationship with the newly formed Aboriginal Justice Council. On behalf of A2JBC, the Chief Justice met with Aboriginal Justice Council representatives in the early spring, and attended their late

spring meeting. Chief Judge Crabtree has agreed to be A2JBC's liaison with the Aboriginal Justice Council. A fruitful meeting was recently held between Chief Judge Crabtree and A2JBC's strategic coordinator and four Aboriginal Justice Council members. They plan to continue to work on a Collaboration Framework setting out the purposes, principles and priorities for ongoing partnership. A2JBC has committed to an early initiative focused on Aboriginal issues.

The work of A2JBC will also benefit the legal profession. Early A2JBC initiatives involve exploring new practice modalities that will expand the use of legal services to meet currently unmet legal needs. Underlying these initiatives is a more holistic approach to legal problem-solving that recognizes the need for legal service providers to be engaged at many different points where the public interacts with the justice system.

A platform that is supported has the potential for a dramatic move forward on the access to justice front in BC. Never before have so many high level representatives from key stakeholders come together to the same table to tackle this issue collaboratively and systemically. They are doing it on an ongoing basis committed to breaking down silos, taking risks and committing to continuous improvement and learning from their experiences. They have committed to putting the user first, engaging with people with expertise outside law and tackling how to measure progress in a systemic way.

While A2JBC needs to start small focusing on two priorities it holds the promise of making a real difference for all BC citizens.

"Meaningful systemic change to our justice system is imperative in order to meet the needs of the Canadian public. Evolving current practices, thinking creatively, and embracing new models of how the legal system may serve all individuals in our communities, whether they are represented by counsel, or not, may prove to increase access to justice".

- Jennifer Muller, former self-represented litigant and Executive member, A2JBC, remarks at the April 2016 Benchers meeting

Access to Justice BC Committee**Appendix 1****Members – September 2016**

Name	Title	Affiliation
Robert Bauman	Chief Justice	Court of Appeal
Austin Cullen	Associate Chief Justice	Supreme Court
Peter Voith	Judge	Supreme Court
Thomas Crabtree	Chief Judge	Provincial Court
Richard Fyfe, QC	Deputy Attorney General	Ministry of Justice
Kurt Sandstrom	Assistant Deputy Minister	Ministry of Justice
David Crossin, QC	President	Law Society of BC
Michael I Welsh	President	Canadian Bar Association, BC Branch
Mark Benton, QC	Executive Director	Legal Services Society
Wayne Robertson, QC	Executive Director	Law Foundation of BC
Johanne Blenkin	Chief Executive Officer	Courthouse Libraries BC
Jamie Maclaren	Executive Director	Access Pro Bono
Jerry McHale, QC	Lam Chair in Law and Public Policy	UVic, Faculty of Law
Rick Craig	Executive Director, Justice Education Society	PLEI
Katrina Harry	Lawyer, Parents Legal Centre LSS	Aboriginal
Cheryl Vickers	Lawyer	Administrative Law
Jennifer Muller	District Counsellor, N Van. School District	Public
Kari Boyle	Coordinator, BC Family Justice Innovation Lab	Mediators
Eyob Naizghi	Executive Director, MOSAIC	Immigrant and Multicultural Community
Rose Singh	Paralegal	Paralegals

Jane Dyson	Executive Director, Disability Alliance of BC	Community Advocates
Wayne Braid	Executive Director, BC Notaries	Notaries
Mary Mouat, QC	Family Lawyer, Quadra Legal Centre	Family Law
Stacey Tyers	Legal Advocate, Terrace and District Community Services Society	Low Income and Marginalized Communities
Allan Seckel, QC	Chief Executive Officer, Doctors of BC	Health
Dan Baxter	Manager, BC Chamber of Commerce	Small Business
Nils Jensen	Mayor, Oak Bay	Union of British Columbia Municipalities
William Dick	Lawyer, Murphy Battista	Trial Lawyers' Association of BC
Colleen Spier	Lawyer	Aboriginal Justice Council
Darlene Shackelly	Executive Director	Native Courtworker and Counselling Association of BC



Memo

To: Benchers
From: Rule of Law and Lawyer Independence Advisory Committee
Date: November 16, 2016
Subject: National Security Consultations: Proposed Submission

The Federal government is conducting a consultation on national security. In particular, the consultation focusses on key elements of Canada's national security laws and policies "to ensure they reflect the rights, values and freedoms of Canadians." In particular, the government is looking for the consultation to inform changes to national security legislation, including changes introduced by the *Anti-terrorism Act, 2015* (former Bill C-51). The Law Society made submissions to the government on Bill C-51.

The President asked this Committee to review the consultation materials and to prepare a draft for consideration by the Benchers. That draft is attached. The consultation must be submitted by December 15, 2016.

MDL/al

Attachment

The Law Society
of British Columbia



Consultation on National Security

Submissions to the Ministry of Public Safety and Ministry of Justice

Law Society of British Columbia

December 2016

845 Cambie Street, Vancouver, BC, Canada, V6B 4Z9
Telephone: 604.669.2533 | www.lawsociety.bc.ca

Introduction

The Law Society of British Columbia (the Law Society) is an independent organization whose origins date back to 1869. Its membership comprises all lawyers who have been called to the Bar in British Columbia who remain in good standing pursuant to the *Legal Profession Act* S.B.C. 1998 c.9 and the Law Society Rules. It is governed by the Benchers, being 25 lawyers who have been elected by the membership, together with up to six persons who are not members of the Law Society appointed by the Lieutenant Governor in Council of British Columbia, as well as the Attorney General of British Columbia.

Pursuant to s. 3 of the *Legal Profession Act*, the Law Society's object and duty is "to uphold and protect the public interest in the administration of justice by" (inter alia) "preserving and protecting the rights and freedoms of all persons."

The Law Society supports measures to protect and preserve public safety, and recognizes the very real challenges arising from threats of terrorism worldwide. Canada has an enviable position in the world as a tolerant and just country that promotes personal rights and freedoms and encourages diversity. Ensuring that there is a robust protection of public safety is both consistent with Canadian values and, in turn, further protects the society in which those values are practised.

There is always a delicate balance to be struck, however, in the promotion of public safety and the protection of rights and freedoms, and the Law Society recognizes that the balance is not always easily accomplished.

The Law Society has on a number of occasions in the past made submissions regarding the proper scope of legislative efforts to address national security, particularly in the context of money-laundering and terrorist financing, interception of electronic communications (sometimes referred to as "lawful access") and most recently with respect to the *Anti-terrorism Act (2015)*. Many of our comments in this submission are consistent with submissions we have made on this subject in the past. The unifying theme of our submissions focuses on ensuring that proposed legislation appropriately balances public safety with the rights and freedoms guaranteed to all Canadians.

Canada is a country that is founded upon principles that recognize the supremacy of the rule of law.¹ It is incumbent on all justice system participants to ensure that this founding principle is upheld. This is done by preserving and protecting Canadians rights and liberties to the standards required by our Constitution. An excessive derogation of those rights and liberties in favour of

¹ Preamble, *Charter of Rights and Freedoms*, Schedule B., *Constitution Act*, 1982

increased state powers in the name of national security must be prevented. Failing to do so would be inimical to the democratic culture of this country, our international reputation as a tolerant, just society that promotes personal rights and freedoms and encourages diversity, and of recognized principles relating to the rule of law.

Opening Comments

The Law Society is encouraged that the starting point for this consultation is a commitment from the government to guarantee that Canadian Security Intelligence Service (CSIS) warrants comply with the *Canadian Charter of Rights and Freedoms*. Our submissions on the *Anti-terrorism Act 2015*, some of which will be restated in this submission, outlined several instances where the legislation contained provisions that were quite clearly contrary to the *Charter*. Instances where current legislation or where proposals that have been raised may infringe on solicitor-client privilege are also discussed in our submissions.

It is not enough, however, for the government to ensuring that CSIS warrants will comply with the *Charter*. The government must ensure that *all* its legislation does not offend the rights and freedoms guaranteed by our Constitution. Further, the government must take steps to prevent, as much as it can, opportunities for security agencies to take measures that, even if well-intentioned, violate fundamental rights and freedoms or violate the rule of law.

Submissions

1. Clarity of Legislative Provisions

We are pleased that the government commits to “narrow overly broad definitions.”

As we pointed out in submissions made on the *Anti-terrorism Act 2015*, we were and remain concerned about the vagueness of some of the terms in the various legislative efforts concerning terrorism.

Canada is founded upon the principle of the supremacy of the rule of law, as recognized in the *Charter*.

In his book *The Rule of Law*² the late Tom Bingham (a former Lord Chief Justice of England and Wales) identified several principles that underlie the rule of law. The first amongst these was

² Bingham, T. *The Rule of Law* Allen Lane publishers, © 2010

that “the law must be accessible and so far as possible intelligible, clear and predictable.” He said:

...if you or I are liable to be prosecuted, fined and perhaps imprisoned for doing or failing to do something, we ought to be able, without undue difficulty, to find out what it is we must do or must not do on pain of criminal penalty.³

There are several problematic definitions or provisions brought about by the *Anti-terrorism Act (2015)*, such as “activities that undermine the security of Canada” in amendments to the *Security of Canada Information Sharing Act*, as well as amendments to the *Criminal Code* that will create the new offence of “advocating or promoting terrorism,”⁴ and introduce the concept of “terrorist propaganda” that can be ordered deleted from the internet if available to the public,⁵ to name a few.

Terms, definitions, or general legislative provisions that are overly broad or generally too vague to permit people, without undue difficulty, to know whether their activity is or is not lawful must be avoided. They offend the rule of law. We urge the government to review carefully all legislation relating to national security to ensure that it does not create provisions that are too vague to permit people to know whether what they are doing will offend the law.

1. Canadian Security Intelligence Act

Part 4 of *Anti-terrorism Act (2015)* contains amendments to the *Canadian Security Intelligence Service Act*. These amendments alter the function of the Canadian Security Intelligence Service (“CSIS”) from an intelligence-gathering agency to an agency whose role will include taking “measures” to prevent “threats to the security of Canada.”

As a result of the amendments to the *Canadian Security Intelligence Service Act* enacted through the *Anti-terrorism Act (2015)*, laws, including rights and freedoms guaranteed by the *Charter*, can be violated by CSIS in the course of taking measures to reduce a security threat by virtue of an order made by a court in an *ex parte, in camera* proceeding. This order can be made in the absence of any arguments against granting the authorization.

Through this Act, the state seeks to create a mechanism whereby “the rights and freedoms of all persons” can be violated by the state. It risks making the judge hearing the application complicit

³ *Ibid*, page 37

⁴ *Criminal Code* s. 83.221

⁵ *Criminal Code* s. 83.222

in the state perpetrating otherwise unlawful acts and may thereby violate judicial independence. It strikes the wrong balance between security and freedom.

We agree with comments that have been made by a former Chair of the Security Information Review Committee describing the provisions that allow CSIS agents to apply to a judge for authorization for measures that could potentially contravene a *Charter* right as a “major flaw.” We submit that, from a constitutional perspective, it is a fatal flaw.

We submit that legislation that specifically authorizes a process for the violation of the rights of Canadians guaranteed by the *Charter* is, by its own terms, contrary to the *Charter*. Law enforcement agencies have many investigative tools and legislative powers that permit them, within the law, to investigate crime and criminal activities, including matters that may be commonly considered as terrorist-related activities. These measures have been shown to be highly effective in discovering and successfully prosecuting these activities.

Our concerns about the new provisions in the *Canadian Security Intelligence Service Act* are enumerated below.

(i) **Judicial Warrants Authorizing Violations of the Law**

Section 12.1 of the Act as amended by the *Anti-Terrorism Act (2015)* allows CSIS to take reasonable measures to reduce a threat to the security of Canada. The Law Society supports any legislation that seeks to preserve public safety provided it finds the proper balance with the rights and freedoms of Canadian citizens. The amended Act does provide limitations that would preclude CSIS, when taking a measure to reduce a security threat, from intentionally or through criminal negligence causing death or bodily harm, willfully obstructing, perverting or defeating the course of justice, or violating the sexual integrity of an individual. The Act further prevents CSIS taking measures if they will contravene a right or freedom guaranteed by the *Charter* or if they will be contrary to other law. In our respectful view, these are all appropriate limitations.

However, the legislation also provides that these limitations operate *unless CSIS is authorized to do so by a warrant issued under s. 21.1 of the Act* (section 12.1(3)). This provision is concerning.

In brief, section 21.1 provides that in order to reduce a threat to the security of Canada, a CSIS employee can, with ministerial approval, apply to a judge of the Federal Court for a warrant authorizing the person to whom the warrant is directed to do a number of things as set out in that section *without regard to any other law, including that of any foreign state*. The matters that must be specified in the application are set out in s. 21.1(2).

(ii) Authorization Required Only Where Proposed Measures “Will” Violate the Law

The application is only required where CSIS has determined that its activities *will* (not *may*) violate the law – see section 12.1(3) - which we believe is the wrong test. It will be difficult, in advance, to know if certain measures *will* contravene a right or freedom or *will* violate the law. While some contemplated measures could undoubtedly be envisioned to violate the law (and we believe in a country governed by the rule of law, these should be discarded as appropriate measures in any event), the legality of others may be much less certain. The intention behind this provision is to allow for judicial consideration of the action before it takes place. Consequently, we consider that any measure that *may* violate the law should be presented to a judge, who may then consider, for the purpose of the issuance of a warrant, whether such measure is justified.

Moreover, we are concerned with the concept of a state agency being statutorily authorized to seek judicial approval to violate the law. While judicial oversight of police powers is a longstanding function of the courts, it has always been to ensure compliance with the law, not to authorize its violation. The history of courts in Canada is not one of ruling on permissible violations of the law and it is unfortunate that this possibility is now sanctioned by Parliament.

(iii) Assistance Orders

We are also concerned that, through section 22.3 (assistance orders), a judge may order any person to provide assistance in the execution of a warrant authorized under s. 21.1 – effectively requiring a person named in the assistance order to assist in the violation of a law. Private citizens should never be conscripted into assisting the state in taking measures against a third party through the violation of the law.

(iv) Oversight

We appreciate that there are two levels of preliminary oversight. First, the Minister must approve the application. Second, the application must be approved by a judge of the Federal Court. We are unaware, however, of any requirement that CSIS report back to the court on the measures it took pursuant to the warrant so that the court could assess whether the measures complied with the extraordinary authorization in question. While we recognize that there is some limited oversight available through the Security Intelligence Review Committee (section 38(1.1)), we believe that specific judicial oversight of each authorization given under s. 21.1 ought to be required. Knowledge that the execution of the authorization will be reviewed by the authorizing justice is a strong deterrent to acting beyond the scope of the authorization.

(v) Applications for Warrant are Made in Private

Pursuant to s. 27, the application is heard in private in accordance with regulations. We are unaware of any provision requiring a “special advocate” or other party to be present to ensure a balanced view of the circumstances, although we expect it is possible that the court itself may create such a requirement in the course of its development of law as applications proceed.

The private, *ex parte* nature of the application places the court in a very difficult position, and will require, at the very least, reliance on the disclosure of CSIS in the course of the application. There is always a danger that an agency seeking authority to discharge its obligations will present its case in the most favourable light. One of the great checks and balances in a democracy is the ability of the adversarial system to present opposing views. This legislation prevents that important function from taking place.

The private nature of the proceedings also means that the ultimate decision will be unlikely to be made public, creating the possibility of a body of secret jurisprudence with respect to CSIS acting beyond the law. This offends the rule of law.

(vi) No Provisions Permitting Appeals or Applications to Set Aside Warrant

There are no provisions on how to set the warrant aside nor is there any way to appeal the warrant. Either would be difficult to contemplate in any event given that the warrant is applied for in a private proceeding. However, each of these limitations removes a standard safeguard of judicial review and oversight.

We recognize that the state must be vigilant in meeting the danger that security threats can pose to the security of Canada, but we do not believe that legislation should conscript judges into permitting the state to violate the law when seeking to preserve the security of a country, whose foundation is based on the rule of law. Nor do we believe that legislation should be drafted that permits the state to violate the rights and freedoms guaranteed to Canadians on the premise, paradoxically, that it may be necessary at times to do so to preserve the very same rights and freedoms. Such laws do not reflect the values of Canadian society.

The recent judgment of the Federal Court cited at 2016 FC 1105⁶ demonstrates the danger that state agencies may collect or retain data in ways that are not authorized and that may in fact be contrary to law. The case also demonstrates the surprise and frustration of the courts when state agencies do so. The comment by the Director of CSIS, in response to the case in question, that

⁶ *In the Matter of an Application by XXX for Warrants pursuant to ss. 12 and 21 of the Canadian Security Intelligence Act R.S.C. 1985 c. C-23* (October 4, 2016)

he really did not know why the court was not told of the activities undertaken by CSIS when it applied for the warrants is not reassuring in any sense. The fact that CSIS was found by the court to have violated its duty of candour ought to be a very troubling matter for the government and for all Canadians, and justifies the creation of stringent reporting and oversight requirements that are as transparent as possible to ensure Canadians can be confident that its state security agencies are not acting without regard to and above the law.

We therefore urge that the provisions of the *Canadian Security Intelligence Service Act* that authorize applications for a judicial warrant to violate the laws and the rights and freedoms of Canadians be repealed.

2. Investigative Capabilities in a Digital World

The Law Society agrees with the proposition that Canada's law enforcement and national security investigators must be able to work effectively in a digital world. However, they must not be permitted to violate fundamental rights and freedoms. Various "lawful access" proposals considered over the years have raised concerns that fundamental rights and freedoms are violated, and that Canadians privacy expectations are compromised. As these proposals are again under consideration, we raise the following issues that we submit should be considered in any consultation on national security.

(i) Solicitor-Client Privilege

Solicitor-client privilege is a fundamental principle of justice and a civil right of supreme importance in Canadian law. Because this privilege is such a fundamental principle of law, it has been held that the usual balancing of the exigencies of law enforcement against the privacy interests afforded by the privilege is not particularly helpful because the privilege is a *positive* feature of law enforcement, not an impediment to it.

In *Lavallee, Rackel & Heintz v. Canada (Attorney General)*⁷ the Supreme Court of Canada set out general principles that govern the legality of searches of law offices as a matter of common law, meant to reflect the present-day constitutional imperatives for the protection of solicitor-client privilege. "Law office" has subsequently been given a broad definition by the British Columbia Court of Appeal in *Festing v. Canada (Attorney General)*⁸ as "any place where privileged documents may reasonably be expected to be located."

⁷ [2003] 3 S.C.R. 209

⁸ 2003 BCCA 112

The Law Society considers that it is probable that many, and perhaps most, of the communications between a solicitor and his or her client occur, in today's world, by using telephones, cellular phones, computers and email. Proposals aimed at the lawful interception of, or access to the content of, such communications must take this into account. The Law Society believes that the principles stated by the Supreme Court in *Lavallee* are equally as applicable to the interception of privileged communications between a solicitor and a client as they are to the seizure of privileged information or documents under the authority of a search warrant.

Lawyers have ethical obligations not to divulge the confidential or privileged information of their clients. The Supreme Court of Canada has been mindful of the protection that must be given to solicitor-client privilege, which plays a fundamental role in the functioning of the criminal justice system and is essential to the protection of the constitutional rights of accused persons. The Supreme Court has held that “it is important that lawyers, who are bound by stringent ethical rules, not have their offices turned into archives for the use of the prosecution.”⁹

The Law Society also considers that the definition of “law office” as it relates to the application of the *Lavallee* principles concerning search warrants is equally applicable to the interception of privileged communications. Therefore, any place where records of privileged communications may reasonably be expected to be found must constitute a “law office.” Internet service providers, or telecommunication service providers who have records of communications between a lawyer and a client may, therefore, arguably be “law offices” for these purposes. We submit that it is important that the proposed legislative amendments take into consideration and address these complicated issues of protecting privilege where proposed production orders, preservation orders, or authorizations to intercept communications are authorized.

(ii) Lawyers are Obligated to Keep Clients Informed of Material Matters

Past “lawful access” proposals have proposed the creation of preservation orders that would permit a justice or judge to include a term or condition in the order preventing disclosure of the existence of the order. These sorts of provisions must be treated carefully, particularly where lawyers may be the target of the enquiries.

Although not all information obtained by a lawyer during the course of a retainer is subject to solicitor-client privilege, a lawyer is still required to hold in strict confidence all information concerning the business and affairs of a client acquired during the course of the professional

⁹ *Maranda v. Richer* [2003] 3 S.C.R. 193 at para 37

relationship. The information may not be divulged without the consent of the client, or except as required by law or by a court.¹⁰

The lawyer also has a duty to act in the best interests of the client. The lawyer has a duty generally to disclose all relevant information to the client which may affect the retainer and also has a duty to disclose to the client all circumstances of the lawyer's relations to the parties which might influence whether the client selects or continues to retain the lawyer.¹¹

Our concerns about statutory provisions requiring the disclosure or production of privileged information have been set out above. Equally troublesome, however, is any proposal requiring the production or preservation of confidential client information combined with the possibility of a prohibition preventing the lawyer from telling his or her client of the existence of such an order.

Any prohibition preventing a lawyer from disclosing to his or her client the existence of an order requiring the lawyer to disclose, produce or preserve confidential information about a client for the purpose of assisting the state in an investigation is the very antithesis of a lawyer's duty to the client. It is all the more troubling if the investigation by the state concerns the activities of the lawyer's client, because, by virtue of an order requiring the disclosure, production or preservation of the client's confidential information, the lawyer may, in fact, become a compellable witness against the client. The lawyer must be able to communicate that fact to the client. It would be contrary to the public interest in the administration of justice to prevent a client from knowing that a lawyer may be required to produce, disclose or preserve the client's confidential information to an agent of the state. In *Canada (Attorney General) v. Federation of Law Societies of Canada*¹² the Court held that it was a principle of fundamental justice that the state cannot impose duties on lawyers that undermine their duty of commitment to their clients' causes.

The Law Society therefore strongly urges that no legislation be created that would permit a judge to order that a lawyer be prohibited from disclosing to his or her client the existence of a production or preservation order that requires a lawyer to produce or preserve a client's confidential or privileged information or documents.

¹⁰ Rule 3.3-1, *Code of Professional Conduct for British Columbia*

¹¹ Rule 2.1-3(b), *Code of Professional Conduct for British Columbia*

¹² [2015] 1 S.C.R. 401

(iii) Extra-Territorial Application of Production and Preservation Orders

Investigative power proposals sometimes suggest that they are meant to permit the production or preservation of documents or information located outside of Canada. The Law Society strongly cautions against drafting legislation meant to have extra-territorial application. The Law Society does not believe that it would be in the public interest to require Canadians, by virtue of a law in Canada, to preserve or produce information under their control in a foreign country, particularly if the laws of the foreign country required the individual to maintain the confidentiality or privacy of the information. Such a result would place the Canadian citizen in an untenable position – requiring him or her to be forced to choose, in effect, which law to break. This is a criticism that has, for example, been made of the USA PATRIOT Act. Canada should not follow this example. The Law Society would encourage, instead, that efforts be undertaken to modernize existing treaties on the sharing of information.

(iv) Judicial Authorization and Standards to be Met

Infringements on the privacy of citizens ought to be available to law enforcement agencies only in limited circumstances. Individual citizens ought otherwise to be free from state interference in their private information and communications.

To this end, the Law Society believes that the public interest in the administration of justice requires interceptions of communications, whatever their nature may be, to be judicially authorized in all cases. Orders for the production of materials should also require judicial authorization. Peace officers should *not* be statutorily authorized to make orders for the preservation of materials or information. These powers should only be left to a judge, and should only be exercised after evidence has been presented explaining the rationale and justification for the order sought, together with evidence that it is necessary for the investigation of an offence. There should be no lesser standard of proof for the interception, seizure or preservation of differing types of communications or evidence. Standards and thresholds for obtaining or intercepting information must also not vary depending on the type of technology involved.

(v) Interception Capabilities

Proposals that contemplate requiring all telecommunication and internet service providers to build into their systems the technical capacity to intercept communications in order to assist law enforcement agencies with quicker and easier access to information should be closely scrutinized.

The Law Society is concerned that these sorts of proposals negatively affect rights and freedoms related to the privacy of communications, and therefore compromises the public interest in the

administration of justice. The imposition of such a requirement, especially if done in combination with the imposition of penalties should the requirement not be met, may reasonably be seen by many as conscripting service providers to assist in surveillance for the State. The Law Society understands that difficulties may be faced by law enforcement agencies in accessing communications if such intercept capabilities are not in place, but the public interest in the administration of justice is not strengthened if the State were to compel individuals or entities to assist in the State's investigation capabilities.

(vi) Broad Application of Lawful Access Proposals

Search warrants and orders for the interception of communications have been available for a number of years, and a considerable body of law has developed around such provisions. The Law Society understands that the current provisions may not always be ideally suited for intercepting electronic documents or communications.

New proposals, however, should not apply to *all* information, documents and communications over which access is sought during the course of an investigation. If new provisions are truly required to deal with the development of communications technology, then they should (subject to dealing with the concerns raised above) only apply to the new technology. The current laws should continue to exclusively apply to the seizure of such items as paper documents and the interception of telephone communications, for example.

Conclusion

We reaffirm that the Law Society supports efforts by Parliament to uphold, protect and enhance the security and safety of Canadians. We support efforts by the government to review and update legislation to make such improvements.

However, such efforts must be consistent with the rule of law and must find the appropriate balance between preserving public safety and preserving the rights and freedoms for which Canada is envied. The matters that we have addressed in these submissions, in our respectful opinion, identify specific areas of concern that the government must address when considering legislative proposals to address national security matters.



Governance Committee: 2016 Year End Report

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December 9, 2016

Prepared for: Benchers

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Purpose: Discussion and Decision

Committee Mandate and Responsibilities

The mandate of the Governance Committee is to assist the Benchers in meeting their governance obligations by reviewing and advising the Benchers about governance policy and practice. The Governance Committee advises the Benchers on governance policies, practices and standards that promote and enhance effective Bencher, committee and task force deliberation, decision-making and conduct so as to ensure the Law Society fulfills its mandate.

Its responsibilities are to develop recommendations for the Benchers and regularly review:

1. The Bencher governance manual documenting the Bencher governance policies and procedures;
2. The Benchers' current approach to governance to ensure the Benchers are aware of governance trends and best practices;
3. The mandate of the Law Society, the position descriptions of the President and Benchers and the terms of reference for the Committees;
4. The essential and desired experiences and skills for Benchers;
5. The orientation, training, coaching, and mentoring for Benchers to develop their skills as Benchers;
6. The evaluation process for the Benchers;
7. The criteria Benchers consider government should apply when selecting appointed Benchers;
8. The conflict of interest guidelines and policies; and
9. The adequacy of the quality, timeliness and relevance of information provided to the Benchers and Committees.

Committee Process

1. Since the beginning of this year, the Committee has met four times.
2. On January 28, 2016 the Committee met to review the results of the 2015 Bencher and committee evaluation surveys and also to review the issue of a mission statement for the Law Society. The Committee also received an update on a provider for electronic voting for the annual general meeting and for the annual Bencher elections.
3. On April 18, 2016 the Committee met to consider an issue regarding the distribution of committee agenda and materials. The Committee also reviewed the terms of reference for Law Society committees in light of the responses received from all of the committee and determined to revise the terms of reference and return the terms of reference to the committees for further consideration. The Committee also considered further the issue of a mission statement for the Law Society.
4. On July 7, 2016 the Committee considered a further revision to the CEO performance evaluation statement along with suggested revisions to the committee terms of reference considered at its previous meeting. The Committee also considered whether to recommend to the President that a Law Society conflicts advisor be identified and made known to the Benchers, in keeping with amendments to the Bencher Code of Conduct revised in 2015. Finally, the Committee considered a recommendation from the Rule of Law and Lawyer Independence Advisory Committee that the Bencher Code of Conduct include a provision that Benchers must not act for parties who are bringing a claim against a lawyer where the lawyer is represented by the Lawyers Insurance Fund.
5. On November 4, 2016 the Committee met to consider a suggestion about changing the conduct of Executive Committee elections and reviewed several issues in respect of the Bencher Code of Conduct. The Committee also considered suggested revisions from the committees regarding their respective terms of reference.

Recommendations

1. The Benchers reflect on the relatively low agreement with the statement “*The Benchers are up to date with latest developments in the market for legal services.*” and consider whether this is knowledge the Benchers would like to have in their role as governors of the legal profession.
2. The Benchers consider whether they would benefit from more governance training opportunities and if so, whether that training should be provided collectively or through opportunities for individual training.
3. The Benchers reflect on the sentiment about dissent and Bencher willingness to express contrary views and consider whether there is a need to provide a more open and inclusive environment at the Bencher table.
4. The 1994 Mission Statement be eliminated as no longer consistent with the Law Society’s statutory mandate and there should be no separate mission or vision statement for the Law Society beyond what is provided in s. 3 of the *Legal Profession Act*.
5. The Law Society’s representative on the Council of the Federation of Law Societies of Canada should not receive *in camera* materials.
6. The current distribution of agenda and materials for committees, task forces and working groups be maintained but this issue should be revisited again in two years.
7. The creation of the position of Law Society conflicts advisor is unnecessary and the relevant provision of the Bencher Code of Conduct be revised accordingly.
8. The Bencher Code of Conduct be revised to provide explicitly that Benchers should not represent the Law Society in regulatory or insurance matters or appear before the courts in matters involving discipline, credentials, the Special Compensation Fund or the Lawyers Insurance Fund.
9. The committee terms of reference in Appendix A be approved.

Bencher and Committee Evaluation

6. As the Committee does annually, the Committee reviewed the results of the 2015 Bencher and committee surveys and provided a report to Benchers at their March 2016 meeting.
7. The Committee discussed the responses to the question about Bencher knowledge of the market for legal services. It was suggested that Benchers should know more about the legal services market. The responses to the CEO evaluation statements were again discussed this year and it was suggested that the relatively low level of agreement with the statements did not reflect dissatisfaction with the CEO's performance but rather a lack of knowledge about the criteria the Executive Committee uses in its annual evaluation of the CEO.
8. As a result of its review, the Committee provided a number of recommendations to the Benchers in its report on the 2015 Bencher and committee evaluation surveys.
9. Those recommendations were:
 - A. that the Benchers reflect on the relatively low agreement with the statement "*The Benchers are up to date with latest developments in the market for legal services.*" and consider whether this is knowledge the Benchers would like to have in their role as governors of the legal profession;
 - B. that the Executive Committee ensure that the Benchers are made aware of the general criteria used in connection with the annual CEO evaluation and the process for evaluating the CEO;
 - C. that the Benchers consider whether they would benefit from more governance training opportunities and if so, whether that training should be provided collectively or through opportunities for individual training;
 - D. that the Executive Committee review the responses to the statement "*The right things are placed on the agenda.*" and the related comments in this report and consider how they might address this in setting the Bencher agenda and the inclusion of items on that agenda; and
 - E. that the Benchers reflect on the sentiment about dissent and Bencher willingness to express contrary views and consider whether there is a need to provide a more open and inclusive environment at the Bencher table.
10. The discussion at the March 2016 Bencher meeting lead to a direction that the Executive Committee review the survey results to address specific Bencher concerns.
11. At the April 2016 Executive Committee meeting, Ms. Kresivo reported on concerns that had been raised by the 2015 Bencher Survey. After some discussion, the Executive Committee

agreed that in response to the possible concern about the annual CEO evaluation and the process for evaluating the CEO, Mr. Crossin would report on CEO compensation to the Benchers, referencing it in the context of the evaluation process. In response to the concerns about the ability to express contrary views, the Executive Committee suggested Mr. Crossin raise the issue of Bencher participation during the *in camera* session of the May Bencher meeting.

Law Society Mission Statement

12. During the year, the Committee considered the last two remaining recommendations from the 2013 Governance Review Task Force (GRTF) final report.

1.1 Clarify the Law Society's interpretation of its legislative mandate as set out in s. 3 of the Act to ensure a shared understanding among Benchers, staff and the public of the Law Society's mission and key focus. This is particularly important with respect to s. 3(a).

1.2 Articulate a vision for the Law Society that sets out the Benchers' vision of what the Law Society strives to be.

13. The Committee noted that the subject of the 2015 Bencher retreat had been a discussion about the meaning and scope of our statutory mandate. In that context, the Committee considered the current Mission Statement approved by the Benchers in 1994 and agreed that it failed to reflect the current mandate of the Law Society as set out in s. 3 of the *Legal Profession Act*. The Committee also spent some time considering whether the Law Society required a mission or vision statement in light of the statutory mandate set out in s. 3 of the *Act*. After some discussion, the Committee reached a consensus that the 1994 Mission Statement be scrapped as no longer consistent with the Law Society's statutory mandate and that the Benchers do not create a separate mission or vision statement for the Law Society beyond what is provided in s. 3 of the *Act*.

Distribution of Agenda and Materials

14. At its February meeting, the Executive Committee considered the distribution of the Executive Committee agenda and materials in light of inquiries regarding who receives those agenda and materials. The Executive Committee referred consideration of the issue of distribution of agenda and materials to this Committee for consideration.
15. The Committee considered several questions during its discussion.
16. The first was whether there is a rationale for our current practice of providing agenda and materials only to members of committees. It was noted that that this issue raised the question of the proper relationship between our committees, as subordinate groups established to do work the Law Society has committees and that Benchers should not be looking over the

shoulders of committees or engaging with their work before their work comes before the Benchers for consideration. It was suggested that letting Benchers see and comment on committee material in real time creates the potential for that sort of engagement with the work of committees. On the other hand, notwithstanding this point, it was suggested that agenda and material for the Executive Committee, the Finance and Audit Committee and perhaps the Ethics and Advisory committees might be appropriate for distribution in advance.

17. For the Finance and Audit Committee, the Committee agreed that as the Benchers as a whole are responsible for operations and the budget, the Finance and Audit Committee agenda and material should be available to any Bencher who wished to attend.
18. The availability of Executive committee agenda and materials was considered as a separate case. It was suggested that Benchers knowing what is on the Executive Committee agenda would be helpful. On the other hand, it was noted that one of the responsibilities of the Executive Committee is to establish the agenda for Bencher meetings and it may not always be appropriate for Benchers to see everything prior to receiving the actual agenda as determined by the Executive Committee.
19. After considerable discussion, the consensus was that it was appropriate to maintain the status quo for committees, task forces and working groups but that the overall issue of distribution should be revisited in a couple of years.
20. In the context of the distribution discussion, the Committee also considered distribution of the *in camera* portions of the agenda. It was noted that our current *in camera* policy only applies to Bencher agenda and materials. While recognizing that for many of our committees, there is seldom *in camera* material because distribution is limited to committee members. However, the Executive Committee and possibly a few other committees occasionally find *in camera* material before them. The Committee agreed that the current *in camera* policy should be revised to include agenda and material for committees.
21. Finally, the Committee considered our current practice of providing the *in camera* version of the Executive Committee agenda to our representative on the Federation of Law Societies of Canada council. The practice is based on the FLSC governance policies that strongly encourage law society representatives to be fully informed about their law society's issues and positions. Despite this important consideration, there was a consensus that our FLSC representative should not receive *in camera* materials generally but that this direction should be implemented only after the appointment of our next representative.

Benchers Code of Conduct

22. One of the responsibilities of the Committee is to develop recommendations for the Benchers and regularly review the conflict of interest guidelines and policies. This year, the Committee revisited a previous recommendation adopted by the Benchers in 2015.
23. The Committee had previously noted that the options for consultation or advice under the previous conflicts policy placed the President in a difficult position and were too formal in suggesting a ruling by the Benchers. As a result, the Committee recommended revising the conflicts policy to provide for possibility of consulting a Law Society conflicts advisor. The recommendation was adopted by the Benchers.
24. The Committee noted that no one had yet been appointed to fill the position of Law Society conflicts advisor and that the absence of such a person had not created any issue to date. After some discussion, the Committee agreed to recommend to the Benchers that the creation of Law Society conflicts advisor was not necessary and that the relevant provision of the Bencher Code of Conduct be revised accordingly.
25. The Committee also had before it a recommendation from the Rule of Law and Lawyer Independence Advisory Committee that the Bencher Code of Conduct should be revised to preclude Benchers but not members of a Bencher's firm from acting for parties bringing an action against a lawyer represented by the Lawyers Insurance Fund.
26. The Committee considered the recommendation and the justification given by the Rule of Law and Lawyer Independence Advisory Committee and agreed to recommend such a revision to the Benchers.
27. Finally, in reviewing the provisions in relation to Benchers representing parties in matters involving the Law Society, it was noted while there are several provisions in the Code of Conduct that imply current Benchers should not represent the Law Society in discipline matters or appear before the courts in discipline, credentials or Special Compensation Fund matters or claims engaging the Lawyers Insurance Fund, there is no explicit statement to that effect.
28. The Committee first considered whether there was a statement in our governing documents that the Benchers owe a fiduciary duty to the Law Society and it was noted that the *Legal Profession Act* provides that the Benchers govern the affairs of the Law Society and, as such, it has always been assumed that the Benchers are in a fiduciary relationship with the Law Society akin to that of corporate directors. There was a consensus that Benchers did owe a fiduciary duty to the Law Society and the Committee agreed that there should be an explicit statement in the Bencher Code of Conduct that Benchers should not represent the Law Society in regulatory or insurance matters or appear before the courts in matters involving discipline,

credentials, the Special Compensation Fund or claims against a lawyer insured by the Lawyers Insurance Fund.

29. It was also agreed that the Committee ought to look at the current Code of Conduct in its entirety early in the New Year.

Executive Committee Election

30. The Executive Committee is unique in that it is the only committee that the Benchers must establish under the *Act* and to which the President does not appoint its members. Either directly (in the case of the appointed and elected Bencher members) or indirectly (in the case of the President, First Vice-President and Second Vice-President), all of the members of the Executive Committee are selected by Benchers.
31. The Executive Committee election process is set out in Rule 1-41. Rule 1-41(10)(c) provides that when there is more than one Bencher to be elected, the candidates with the most votes, up to the number of positions to be filled, are elected. The result of this prescribed election method is that it is possible to be elected to the Executive Committee without the votes of a majority of voting Benchers. In fact, in two of the last four Executive Committee elections, at least one of the members elected did so without the support of at least 50% of the Benchers who voted.
32. It was suggested to the Committee that a ranked or preferential voting scheme in place of our current “first past the post” method might be a fairer procedure as it would better represent majority Bencher support for those elected. The Committee reviewed an example of a preferential method based on the alternative vote process prescribed Rule 1-30 for electoral districts where on there is only one Bencher to be elected.
33. The Committee gave careful consideration to the question of whether there was anything wrong with current method and if so, was there any merit to any particular alternative method? After reviewing the material provided by staff and some discussion, the Committee decided to refer the issue to the Executive Committee for its consideration, noting that the Governance Committee was not making a recommendation.

Committee Terms of Reference Review

34. The final report of the Governance Review Task Force made several recommendations regarding establishing written terms of reference for each Law Society committee. The Task Force suggested that the terms of reference should address the purpose; composition and quorum; accountability; duties and responsibilities; meeting practices; reporting requirements and staff support for each of the committees. These recommendations were adopted by the Benchers and directed to the Governance Committee for development.

35. Over the past year, the Governance Committee has been working with each of the Law Society's committees to establish terms of reference that address the content approved by the Benchers. The expectation is that the terms of reference will guide the committees, inform present and future committee members about their committees and educate members and the public about the duties and functions of Law Society's committees. There was also an expectation that terms of reference would be relatively consistent in format and structure.
36. The process of developing the terms of reference was complicated somewhat by the fact that the duties and responsibilities of some committees are set out in the *Act* and *Rules*. The Committee expects that the terms of reference will be instructive and explanatory. Every effort has been made to ensure that the terms of reference are consistent with the *Act* and *Rules* but, to the extent there is any inconsistency, the terms of reference do not supersede any specific provision of the *Act* and *Rules*.
37. With that in mind, attached as Appendix A to this report are the terms of reference for the following committees:
- Access to Legal Services Advisory Committee
 - Act and Rules Committee
 - Equity and Diversity Advisory Committee
 - Ethics Committee
 - Finance and Audit Committee
 - Lawyer Education Advisory Committee
 - Practice Standards Committee
 - Rule of Law and Lawyer Independence Advisory Committee
 - Unauthorized Practice Committee
38. The terms of reference for the Discipline, Credentials and Truth and Reconciliation committees remain to be considered by their respective committees and will be brought to the Benchers for consideration in the New Year.

ACCESS TO LEGAL SERVICES ADVISORY COMMITTEE

TERMS OF REFERENCE

Updated: December 2016

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

1. Under Rule 1-47, the President may appoint any person as a member of a committee of the Benchers and may terminate the appointment.
2. At least half of the Committee members should be Benchers, and the Chair of the Committee must be a Bencher.

MEETING PRACTICES

1. The Committee operates in a manner that is consistent with the Benchers' Governance Policies.
2. The Committee meets as required.
3. The Committee may invite guests to participate in discussion of topics, but the meetings are not "public".
4. Quorum consists of at least half of the members of the Committee. (Rule 1-16(1))

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 provides status reports to the Benchers twice a year.

DUTIES AND RESPONSIBILITIES

1. 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;

2. 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;
3. 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;
4. The Committee must discharge specific tasks the Benchers have delegated to it. These include:
 - a. 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;
 - b. Reporting to the Benchers twice a year to provide updates as to the monitoring and advisory work of the Committee.

STAFF SUPPORT

Staff Lawyer, Policy & Legal Services

ACT AND RULES COMMITTEE

TERMS OF REFERENCE

Updated: December 2016

MANDATE

The Act and Rules Committee implements decisions by the Benchers that require amendments to the Legal Profession Act (the “Act”) and the Law Society Rules (the “Rules”). The Committee also monitors the Act and Rules with the view to correcting non-substantive errors and generally identifying and recommending non-substantive improvements to the Act and the Rules. The goal is to have Rules that are easy to navigate and easy to understand for all users.

COMPOSITION

1. Under Rule 1-47, the President may appoint any person as a member of a committee of the Benchers and may terminate the appointment.
2. Generally, the Committee consists of 4 to 6 Benchers.

MEETING PRACTICES

1. The Committee operates in a manner that is consistent with the Benchers’ Governance Policies.
2. The Committee will meet in person approximately six times per year. The Committee may also meet by phone or conduct drafting, review drafts, or perform other tasks by email or other electronic means of communication.
3. The Committee has a Chair who works closely with staff support and convenes meetings, facilitates discussion, assigns responsibilities, and establishes priorities.
4. Decisions are generally by consensus. If consensus is not possible, final decisions are made by majority vote of the members present at the meeting. The Chair may vote.
5. Quorum consists of at least half of the members of the Committee. (Rule 1-16(1))

ACCOUNTABILITY

The Committee is accountable to the Benchers as a whole. The Committee strives to address requests promptly and to meet any deadlines requested in order to facilitate approval.

DUTIES AND RESPONSIBILITIES

1. The Committee prepares draft amendments to the LPA and Rules for consideration and approval by the Benchers.
2. Recommendations for amendments to the LPA, after approval by the Benchers, are submitted to the BC Ministry of Justice.
3. Recommendations for amendments to the Rules are generally made to the Benchers for approval at a meeting of the Benchers.
4. Committee monitors the LPA and Rules with the view to correcting non-substantive errors and generally identifying and recommending non-substantive improvements to the LPA and the

Rules to keep the LPA and Rules current, useful, user-friendly, and consistent with recognized standards for legislative drafting.

STAFF SUPPORT

Staff Lawyer Policy & Legal Services

EQUITY AND DIVERSITY ADVISORY COMMITTEE

TERMS OF REFERENCE

Updated: December 2016

MANDATE

The Equity and Diversity Advisory Committee monitors developments affecting equity and diversity in the legal profession and the justice system and promotes equity, diversity, and inclusion in the legal profession.

COMPOSITION

1. Under Rule 1-47, the President may appoint any person as a member of a committee of the Benchers and may terminate the appointment.
2. The Committee must be chaired by a Bencher and must have at least one appointed Bencher.

MEETING PRACTICES

1. The Committee operates in a manner that is consistent with the Benchers' Governance Policies.
2. The Committee meets required.
3. Quorum consists of at least half of the members of the Committee. (Rule 1-16(1))

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.

DUTIES AND RESPONSIBILITIES

1. Monitor issues affecting equity, diversity, and inclusion in the legal profession in British Columbia;
2. At the request of the Benchers or Executive Committee:
 - a. develop recommendations, policy options, collaborations, and initiatives;
 - b. advise the Benchers on priority planning;
 - c. analyze policy implications of Law Society initiatives;
 - d. attend to other matters referred to the Committee regarding equity, diversity, and inclusion in the legal profession in British Columbia; and

STAFF SUPPORT

Staff Lawyer, Policy and Legal Services

ETHICS COMMITTEE

TERMS OF REFERENCE

Updated: December 2016

MANDATE

The Ethics Committee identifies issues of professional responsibility and develops recommendations on policies concerning substantive matters of professional responsibility for consideration by the Benchers. The Committee also interprets existing rules and provides advice to individual members and to the members at large on matters of professional responsibility and publishes Committee opinions of general interest to members in the Benchers' Bulletin.

COMPOSITION

1. Under Rule 1-47, the President may appoint any person as a member of a committee of the Benchers and may terminate the appointment.
1. The Committee generally consists of nine or twelve members.

MEETING PRACTICES

1. The Committee operates in a manner that is consistent with the Benchers' Governance Policies.
2. The Committee usually meets nine times per year on the day before each Benchers meeting.
3. Its opinions are usually reached by consensus, but in rare circumstances where consensus cannot be achieved, the Committee will vote on issues in accordance with the Law Society Rules and Roberts Rules of Order.
4. Quorum consists of at least half of the members of the Committee (Rule 1-16(1)).

ACCOUNTABILITY

The Committee is accountable to the Benchers and makes proposals for change to the Code of Professional Conduct for British Columbia ("the BC Code") to the Benchers who have final responsibility for changes to the Code.

DUTIES AND RESPONSIBILITIES

1. The Committee's duties and responsibilities are advisory in nature.
2. The Committee maintains communications with the Federation of Law Societies of Canada's Standing Committee on the Model Code of Professional Conduct, observes developments in the Model Code, and makes recommendations to the Benchers concerning contemplated amendments to the Code of Professional Conduct for British Columbia.
3. The Committee considers ethical issues referred for its review by the Benchers or by the Executive Committee.
4. In some cases the Committee considers issues raised by individuals and it may, where appropriate, issue ethics opinions for the purpose of providing guidance to members of the legal profession.

5. The Committee is also responsible for some of the annotations to the Code of Professional Conduct, either by issuing opinions to stand as annotations or by reviewing case summary annotations at the request of staff.

STAFF SUPPORT

Staff Lawyer, Ethics

FINANCE AND AUDIT COMMITTEE

TERMS OF REFERENCE

Updated: December 2016

MANDATE

The Finance and Audit Committee assists the Benchers with oversight of the financial affairs of the Law Society. The Committee provides recommendations on the annual fees, reviews the annual budgets, and reviews the financial and investment results on a quarterly basis. In addition, the Committee oversees the external audit process, recommends the approval of the audited financial statements to the Benchers, and provides oversight over the internal controls and enterprise risk management of the Law Society.

COMPOSITION

1. Under Rule 1-49, the President may appoint any person as a member of a committee of the Benchers and may terminate the appointment.
2. The President should appoint members based on relevant knowledge, skills and operational background.
3. The Chair must be a Bencher and at least one member must be an Appointed Bencher.

MEETING PRACTICES

1. The Committee operates in a manner that is consistent with the Benchers' Governance Policies.
2. The Committee shall meet a sufficient number of times to fulfill its mandate.
3. Quorum consists of at least half of the members of the Committee. (Rule 1-17 (1))

ACCOUNTABILITY

The Committee is accountable to the Benchers as a whole.

REPORTING REQUIREMENTS

The Chair shall report regularly to the Benchers on the work of the Committee.

DUTIES AND RESPONSIBILITIES

1. Financial Reporting (General Fund and Lawyers Insurance Fund)
 - a. Review the draft annual fees and related budgets prepared by management, including periodic department reviews, and make a recommendation on the annual fees to the Benchers.
 - b. Review the financial results on a quarterly basis.
2. Internal Controls and Risk Management (General Fund and Lawyers Insurance Fund)
 - a. Receive the CEO/CFO confirmation letter on internal controls.
 - b. Ensure that any recommendations made by the external auditors and agreed to by the Committee and management are implemented.

- c. Oversee the annual report on Enterprise Risk Management.
 - d. Institute any special investigations considered necessary and, if appropriate, hire external experts to assist.
 - e. Review and make recommendations to the CEO and/or the Benchers relating to any possible conflict of interest situations that come to the Committee's attention.
- 3. External Audit – General Fund and Lawyers Insurance Fund
 - a. Recommend the selection of external auditors, who are then appointed by members at the Annual General Meeting.
 - b. Review directly with the auditors their approach and the audit's scope, the financial and any other audit issue results, approve the audit plan and engagement letter, receive the management representation letter, receive the annual Audit Report and recommend approval of the audited statements to the Benchers.
 - c. Review and approve any major changes in financial reporting as required by changes to the CICA Handbook Rules.
 - d. Review the overall performance of the auditors and approve the audit fee and related costs.
 - e. In conjunction with the external audit, review the annual actuarial reports.
- 4. Executive Limitations
 - a. Periodically review the executive limitations relating to the financial affairs of the Law Society, including the insurance program, and advise Benchers if any changes are needed.
 - b. Monitor executive performance to ensure that all major limitations dealing with the financial affairs of the Law Society are being met.
- 5. Investments
 - a. Periodically review the Law Society Statement of Investment Policies and Procedures and recommend to the Bencher any changes as necessary.
 - b. Review the quarterly performance of the Lawyers Insurance Fund investment portfolio managers.
- 6. Insurance Subcommittee
 - a. Appoint the members of the Insurance Subcommittee, and receive reports from the subcommittee.
- 7. Bencher assignments
 - a. Act on any issues referred to the Committee by the Benchers.

STAFF SUPPORT

Chief Financial Officer

Controller

LAWYER EDUCATION ADVISORY COMMITTEE

TERMS OF REFERENCE

Updated: December 2016

MANDATE

The Lawyer Education Advisory Committee monitors and advises the Benchers on developments and issues affecting the education of lawyers and law students in BC, fulfills the responsibilities assigned to the Committee by the Strategic Plan, and fulfills any other responsibilities that the Benchers or Executive Committee may from time to time refer to the Committee.

COMPOSITION

1. Under Rule 1-47, the President may appoint any person as a member of a committee of the Benchers and may terminate the appointment.
2. The Chair and Vice-chair should be Benchers.

MEETING PRACTICES

1. The Committee operates in a manner that is consistent with the Benchers' Governance Policies.
2. The Committee meets as required.
3. Quorum consists of at least half of the members of the Committee (Rule 1-16(1)).

ACCOUNTABILITY

The Committee is accountable to the Benchers.

REPORTING REQUIREMENTS

With respect to its general monitoring and advisory function, the Committee provides status reports to the Benchers twice a year.

DUTIES AND RESPONSIBILITIES

1. to complete assignments mandated for the Committee by the Strategic Plan,
2. to monitor developments affecting the education of lawyers and student lawyers in British Columbia and Canada-wide, and to report to the Benchers on a semi-annual basis on those developments,
3. to advise the Benchers on priority planning and respective issues affecting the education of lawyers and student lawyers in British Columbia,
4. to attend to such other matters as the Benchers or the Executive Committee may refer to the Committee.

STAFF SUPPORT

Director of Education and Practice

PRACTICE STANDARDS COMMITTEE

TERMS OF REFERENCE

Updated: December 2016

MANDATE

The Practice Standards Committee has a statutory responsibility to investigate the competence of lawyers brought to its attention, and to recommend to those lawyers the steps they should take to improve their knowledge, attitude or skill in practising law. The Committee deals with those lawyers who appear to have fallen below appropriate standards of competence. The Committee also approves programs and activities directed to lawyers requiring remediation, and to all practicing lawyers to assist lawyers to become and remain competent in their chosen fields of practice.

COMPOSITION

1. Under Rule 1-47, the President may appoint any person as a member of a committee of the Benchers and may terminate the appointment.
2. The Committee generally consists of eight to ten members.
3. The Chair and Vice-Chair of the Committee are Benchers or appointed Benchers.

MEETING PRACTICES

1. The Committee operates in a manner that is consistent with the Benchers' Governance Policies.
2. The Committee shall meet as required.
3. Quorum consists of at least half of the members of the Committee (Rule 1-16(1)).

ACCOUNTABILITY

The Committee is accountable to the Benchers.

DUTIES AND RESPONSIBILITIES

The Law Society operates a program of Practice Review and Remediation. Carried out under the specific authority of Section 27 of the Legal Profession Act 1998, and Rules 3-15 to 3-25, this program entails identifying members with potential competency problems, authorizing an assessment of their practice to see if there are general problems, and then having the lawyer fix any problems which are identified.

In fulfilling this mandate, the Committee:

1. Provides input into the setting of proposed budget requirements of the Committee for the ensuing year so that the goals of the programs might be better achieved.
2. Reviews information about lawyers who have been identified by Law Society staff as possibly having competency related problems (Rule 3-16(c)).
3. If needed, orders investigations respecting those members to determine competence (Rule 3-17(1)).

4. Recommends ways to help those members become competent or recommends restricting them from practising in areas of law in order to protect the public interest (Rule 3-19(1)(b)).
5. In the process of reviewing members, recommends standards of practice (Rules 3-16(a) and 3-19(1)(b)).
6. Assists the Finance and Audit Committee and Benchers in monitoring the extent to which the competency-related policy has been achieved.
7. Selects and evaluates programs and specifically ensures that programs are based on information and analysis about:
 - a. the extent to which legal services are provided competently;
 - b. how lawyers maintain their own competence; and
 - c. how lawyers can best be assisted to practise more competently (Rules 3-16(b) and 3-22).

STAFF SUPPORT

Director, Education & Practice

Manager, Standards, Professional Development and Practice Advice

RULE OF LAW AND LAWYER INDEPENDENCE ADVISORY COMMITTEE

TERMS OF REFERENCE

Updated: December 2016

MANDATE

The Rule of Law and Lawyer Independence Advisory Committee advises the Benchers on matters relating to the rule of law and lawyer independence so that the Law Society can ensure:

- a. its processes and activities preserve and promote the preservation of the rule of law and the independence and effective self-governance of lawyers; and
- b. 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.

The Committee also monitors issues (including current or proposed legislation) that affect or might affect the independence of lawyers and the rule of law, and develops means by which the Law Society can effectively respond to those issues.

COMPOSITION

1. Under Rule 1-47, the President may appoint any person as a member of a committee of the Benchers and may terminate the appointment.
2. The Chair of the Committee is a Bencher.
3. The Committee generally consists of four to six Benchers and Life Benchers, and often an appointed Bencher is a member of the Committee.
4. Usually there are at least two lawyers who are not Benchers on the Committee.

MEETING PRACTICES

1. The Committee operates in a manner that is consistent with the Benchers' Governance Policies.
2. The Committee meets as required.
3. The Committee may invite guests to participate in discussion of topics, but the meetings are not "public".
4. Quorum consists of at least half of the members of the Committee (Rule 1-16(1)).

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 provides status reports to the Benchers twice a year.

DUTIES AND RESPONSIBILITIES

1. Monitor issues (including current or proposed legislation) that affect or might affect the independence of lawyers and the rule of law, and develop means by which the Law Society can effectively respond to those issues. 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;
2. 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 the independence and effective self-governance of lawyers, and to ensure that the legal profession and the public are properly informed about the meaning and importance of the rule of law;
3. Discharge any specific tasks that the Benchers delegate to the Committee;
4. Discharge all work in a manner consistent with the Law Society's public interest mandate.

STAFF SUPPORT

Staff Lawyer, Policy & Legal Services

Unauthorized Practice Committee

Terms of Reference

Updated: December 2016

MANDATE

The Unauthorized Practice Committee considers and makes policy decisions with respect to the unauthorized practice of law and the relevant provisions of the Legal Profession Act. From time to time, staff consults with the Committee on policy matters that arise regarding the interpretation and application of sections 1, 15 and 85 of the Act and informs the Committee on current litigation. In appropriate situations, the Committee may refer issues to other Committees or the Benchers as a whole for review, comment and determination.

COMPOSITION

1. Under Rule 1-47, the President may appoint any person as a member of a committee of the Benchers and may terminate the appointment.
1. The Committee generally consists of three or more Benchers, one or more Appointed Benchers, and one or more non-Bencher lawyers.

MEETING PRACTICES

1. The Committee operates in a manner that is consistent with the Benchers' governance policies.
2. The Committee meets as required, generally on a quarterly basis, with the option to meet more frequently or by telephone, as required.
3. Prior to each meeting, the Committee will receive an agenda and materials to review. Generally, the materials are less than 300 pages in length.
4. Quorum consists of at least half of the members of the Committee. (Rule 1-16(1))

ACCOUNTABILITY

The Committee is accountable to the Benchers.

DUTIES AND RESPONSIBILITIES

1. From time to time, staff consults with the Committee on policy matters that arise regarding the Law Society's application and interpretation of the unauthorized practice provisions found in sections 1 and 15 of the Act. Staff informs the Committee with respect to the enforcement of those provisions pursuant to section 85 of the Act.
2. When making policy decisions on if, when and how the Law Society should interpret and apply the unauthorized practice provisions of the Act, the Committee reviews matters pursuant to Law Society's mandate to protect the public as found in section 3.

3. The Committee may refer matters and issues to other Law Society committees (i.e. the Ethics Committee) if such consideration is warranted. Further, the Committee may refer matters to the Benchers as a whole for consideration.

STAFF SUPPORT

Manager of Discipline and Unauthorized Practice

Staff Lawyer, Unauthorized Practice

The Law Society
of British Columbia



Year-End 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

December 9, 2016

Prepared for: Benchers

Prepared by: Access to Legal Services Advisory Committee

Purpose: Information

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Introduction

1. The purpose of this report is to provide the Benchers an update on the topics the Committee has been considering since its July 2016 report.
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. The Benchers did not assign discrete tasks to the Committee, so its work followed the traditional functioning of an advisory committee.

Limited Scope Legal Services¹

3. In 2016 the Committee has been considering what the Law Society can do to better promote limited scope legal services.
4. The main focus has been to liaise with Kari Boyle regarding the creation of a roster of family law lawyers who would be prepared to provide limited scope independent legal advice to people engaged in family law mediations. The project Ms. Boyle is overseeing is the recipient of the \$60,000 access to justice fund the Law Society established with the Law Foundation of British Columbia. The Law Foundation has agreed to extend the project from the end of 2016 to March 31, 2017.
5. Since the update the Committee provided in July, the family law roster project has advanced considerably. Over the summer, Ms. Boyle established a team of practitioners to develop practice resources of lawyers who would join the roster. The Law Society provided a practice advisor to review the documents created by the working group. This working group has developed a family law toolkit. The intention is to host it on the Courthouse Libraries website starting November 2016. The toolkit will include a template retainer letter for one-time consults as well as for ongoing limited consultations, checklists of tasks for the lawyer and the self-represented individual, flowcharts and “how to” guides.²
6. In November the Committee received its most recent status report from Ms. Boyle. Ms. Boyle and her team have started to liaise with the courts to find ways for the courts to be supportive of lawyers providing limited scope appearances.³ They are developing an educational toolkit for the judiciary to facilitate this objective. They plan to have the first

¹ Also called “unbundled legal services”.

² This was as of the November consult with the Committee. Ms. Boyle indicated a range of other matters to be included, but not yet completed.

³ They have met with the British Columbia Court of Appeal and Provincial Court of British Columbia, and hope to meet with the British Columbia Supreme Court soon.

iteration of the roster of lawyers who are prepared to provide unbundled independent legal advice in family law mediations up in November, and will build on it from that point.⁴

7. One of the challenges the project faced was finding an organization that is prepared to oversee the roster when the project ends. Fortunately, Courthouse Libraries has agreed to take on this role. This dovetails well with much of the work Courthouse Libraries does regarding legal education and information, coupled with the scope of its reach.
8. The Committee met with Johanne Blenkin, CEO of Courthouse Libraries in April and again in November along with Jane Morley, QC. The purpose of these discussion related to the work the Access to Justice Committee is doing regarding limited scope retainers.
9. Ms. Morley explained that the Access to Justice Committee has decided to focus on several areas of reform, including limited scope retainers. They developed a three-fold aim model in order to determine whether reforms are focused on the right areas. Efforts at reform should: 1) improve the user experience, 2) improve justice outcomes for the population, and 3) have a cost that is in line with the benefit. Their hope is that establishing such a method will allow for better outcomes but also provide a framework by which initiatives can be assessed.
10. With respect to limited scope retainers, Ms. Morley explained that the Access to Justice Committee is exploring establishing a family law Hub in Kamloops. In some respects the Hub are modeled on the Justice Access Centre concept (“JAC”), but Ms. Morley explained it will differ in several respects. The focus will be on limited scope services in family matters with a presumption of starting with consensual dispute resolution. The Hub will not be government run, and focused on affordable, user-based improvements on how we deliver justice. So rather than the JAC, which is an overlay of the current system, the proposal is to test and develop a new way of accessing justice in a user-based, iterative model. Within the Access to Justice Committee the project is championed by Chief Justice Bauman and Dan Vandersluis.
11. Ms. Morley explained she will be developing a request for support from government, but will also be seeking support from a range of stakeholders, including the Law Society. The exact form of that support is not certain at this point, but might involve actively championing the concept, resources or staff support. When the Law Society receives such a request, the Committee can provide some policy analysis to assist the Benchers in determining whether to support the initiative. As a general proposition, each discrete element of the project is something the Law Society has already embraced as a matter of policy and the question may be more about what type of support is appropriate to provide

⁴ The expectation is also to make use of paralegals.

specific initiatives and outside organizations. At present, the Committee is unable to make a recommendation to the Benchers.

12. In September, the Committee reviewed an initiative that the Canadian Research Institute for Law and the Family is trying to get off the ground.⁵ The object is to evaluate how lawyers and clients view limited scope retainers and to establish a roster of lawyers who are trained and willing to provide limited scope retainers. The goal would be to better understand the business proposition (for lawyers) and the client satisfaction with limited scope services versus the alternatives. If that project fails to secure funding, the Committee intends to follow-up with its lead (J.P. Boyd) to discuss the feasibility of trying the project in British Columbia instead of Alberta.
13. In British Columbia, and elsewhere, people continue to identify limited scope services as one of the tools for addressing unmet legal need. As the Benchers are aware, the Law Society was the first in Canada to promulgate rules to facilitate limited scope services. Since then, staff and Benchers have participated in several continuing education presentations and webinars. However, the feedback we receive still indicates some lawyers are concerned that the Law Society will take a heavy-hand in dealing with complaints arising from limited scope retainers. In addition, lawyers continue to express concern that the courts will not honour the limited nature of the retainer and call on lawyers who have made an appearance to speak to other matters or act as an office for service of future documents.
14. Part of the challenge the Law Society faces with respect to limited scope retainers, and assessing the impact of the reforms from 2008, is that we lack empirical data on which to make findings. When the Law Society established rules to facilitate limited scope services, we did not have data on how much limited scope work lawyers perform or in what areas of practice. In 2016 we still lack such data. Because we did not have a historical baseline, we cannot measure the impact of the reforms. Consequently, much of what is left is anecdote.
15. The Benchers unanimously adopted the 2008 report in order to improve access to justice. We consistently hear that lawyers are apprehensive about how the Law Society will treat complaints arising from a limited scope retainer, so perhaps there is room to allay some concerns through targeted communications and education. In addition, it is the Committee's understanding the Law Society has reached out to Chief Justice Hinkson to explore ways to facilitate unbundling at the Supreme Court. These efforts are important and are consistent with the original efforts of the Unbundling of Legal Services Task Force to encourage the courts to create streamlined processes for lawyers to appear for limited retainer purposes without finding themselves locked an open-ended obligation.

⁵ See http://www.crilf.ca/current_projects.htm.

Professional Responsibility and Promoting Access to Justice

16. At the November 4, 2016 Benchers meeting the Committee led the Benchers in a discussion about whether the Law Society ought to establish rules to encourage, or require, lawyers to promote access to justice. Due to how agenda cycles operate, the Committee will not have had the opportunity prior to submitting this report to consider the outcome of that discussion.⁶ This report does not summarize that conversation, which are captured in the minutes that also form part of the agenda for the December meeting.
17. However, the Committee notes the following action items:
 - a. In 2017 the Law Society should develop a means to obtain better particulars regarding the type of pro bono lawyers do so it is better able to understand the gaps in service from the service provider side of the equation, and better determine how best to direct its efforts to promote pro bono;
 - b. In 2017 the Law Society should develop a means to engage law firms to find out what access to justice innovations firms are prepared to commit to (on a voluntary / aspirational basis) to improve access to justice and legal services for British Columbians.
18. The Benchers at their November 4, 2016 meeting endorsed referring the action items to the Executive Committee, with the understanding that the Benchers support the idea of reforms to the Annual Practice Declaration and an outreach or law firm survey project.
19. The idea of arriving at a better understanding of the collective responsibility of lawyers to promote access to justice, and make their services more available to the public, is something that the Committee will discuss further and provide some guidance to the 2017 Committee to carry on the work, informed by the issues and ideas identified by the Benchers in their discussion, as well as the information that is obtained through the survey methods suggested above.⁷

⁶ The Committee does not meet again as a group until December 8, 2016.

⁷ It is important to note that because of when lawyers fill out their Annual Practice Declaration there will be some delay before the Law Society has the information from the revised APD. However, this will not prevent the 2017 Committee from moving forward with certain aspects of this work.

Conclusion

20. Improving access to justice and legal services is a strategic priority for the Law Society.

The Committee continues to be of the view that the Law Society would benefit from getting a better understanding of what lawyers are currently doing to promote access to justice and legal services in underserved areas and to people of low and middle incomes. In addition, the Committee believes there is value in finding out what innovations firms are prepared to bring to the access to justice challenges in society. Firms may develop pragmatic and beneficial initiatives that merely require some assistance from the Law Society to bring to the marketplace. It is worth harnessing the wisdom of the profession and see what can be done collectively to improve access to justice and legal services for all British Columbians.

21. Many groups are focusing on limited scope retainers as an important tool in the access to justice toolbox. To the extent lawyers are concerned that such retainers create heightened risk of Law Society sanction, it is incumbent on the Society to find ways to allay those concerns and facilitate the professional delivery of such services to the public. If lawyers turn to the Law Society for guidance, and we are unable to provide more than a list of the risks associated with limited scope services, it is understandable the profession will continue to be hesitant to embrace such services. If so, the policy objectives adopted by the Benchers in 2008 will continue to face impediments to realizing their promise.

/DM

The Law Society
of British Columbia



Year End Report

Equity and Diversity Advisory Committee

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

November 22, 2016

Prepared for: Benchers

Prepared by: Equity and Diversity Advisory Committee / Andrea Hilland

Introduction

1. The Equity and Diversity Advisory Committee (“Committee”) is one of the five 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 may be 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 June 2016 report.

Topics of Discussion: July to November 2016

4. The Committee met on July 8, September 30, and November 4, 2016. The Committee has discussed the following initiatives between July and November, 2016.

Equity Ombudsperson Program Review

5. The Committee has undertaken an extensive review of the Equity Ombudsperson Program, has considered a number of options, and is working towards a consensus on a recommendation to present to the Benchers for consideration in 2017.

Gender Equality Report – 25th Anniversary

6. In 1992, the Law Society produced an extensive report on gender equality in the legal system. The Committee is considering options to mark the 25th anniversary of the report in 2017.

Gender Equity in Law Society Award Designation

7. The Committee observed that, since its inception in 1986, the Law Society Award had never been awarded to a woman. The Equity and Diversity Advisory Committee encouraged the Law Society Award Selection Committee to improve gender equity in conferring the Law Society Award. On November 17, 2016, Constance D. Isherwood, QC became the first female recipient of the Law Society Award.

Justicia in BC

8. The Justicia Project (facilitated by the Law Society of British Columbia and undertaken by law firms) has been actively underway in British Columbia since 2012. Recommendations for enhancing flexible work arrangements, improving parental leave policies, and tracking gender demographics, 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.
9. 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. A module on parental leave has now been recorded, and a module on flexible work arrangements is under development.

Lawyers with Disabilities

10. In 2004, the Law Society of BC generated a report entitled "Lawyers with Disabilities: Overcoming Barriers to Equality" which contains a "Resource Guide for Lawyers with Disabilities and Employers". Law Society staff has updated the Resource Guide, which will be available on the Law Society's website.

Mandate and Terms of Reference

11. The Governance Committee asked each Advisory Committee to submit a draft mandate and terms of reference, in order to develop a more unified approach. The Committee has now finalized its mandate and terms of reference.

Newly Called Lawyers

12. The Committee has developed a recommendation to improve engagement with newly called lawyers for consideration at the December 2016 Benchers meeting.



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

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

December 9, 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, May 4, July 6, September 28, November 2 and December 7, 2016.

¹ Canada (Attorney General) v. Federation of Law Societies of Canada, 2015 SCC 7, [2015] 1 S.C.R. 401 DM1334938

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

Topics of Discussion in 2016

I. 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. The Committee followed up on that publication with an article for the Winter Benchers Bulletin that discusses some disturbing trends concerning the rule of law in England in light of recent events there, including attacks on judges concerning the decision of the High Court in the aftermath of the "Brexit" vote.
11. 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 articles referred to above were published there, and the *Advocate* article was republished with the permission of the *Advocate*.
12. 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 83 "tweets" and has 50

followers. Several tweets have brought attention to deteriorating conditions affecting the Rule of Law in places such as Turkey, Poland, Indonesia and China. The Committee also commented on Twitter drawing attention to about rule of law issues in Canada arising in the facts recited in the judgment in the trial of Senator Duffy, and to the attacks on the character of counsel in the Ghomeshi trial. A number of the Committee's tweets have been retweeted a number of times.

13. 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. The number of followers is not yet high, but the Committee has to date spent little time trying to increase its Twitter profile. It will consider how to do so in the coming year.

II. Judicial Appointments to the Supreme Court of Canada

14. 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.
15. The importance of the topic increased with Mr. Justice Cromwell's announcement earlier in 2016 that he would resign from the Supreme Court of Canada effective September 16. 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.
16. With the help of a small subcommittee, the subject was examined and a report was prepared that was approved for submission by the Benchers at the July Bencher meeting. The submission was noted favourably by a few academics. Ultimately, the government made some changes to the process for Supreme Court judges, several of which were consistent with recommendations put forward by the Law Society. Whether the submissions were determinative on this point is of course subject only to conjecture, but it was rewarding to make the effort to put forward thoughts on this important subject.

III. Consultation on National Security

17. In early September, the Federal Government launched a Consultation on National Security on key elements of Canada's national security laws and policies "to ensure they reflect the rights, values and freedoms of Canadians."

18. The government's Discussion Paper and background information were considered by the Committee at the request of the President. The information identified that the government was seeking to review several topics, including Domestic National Security, Information Sharing, *Criminal Code* Terrorism Measures, Terrorist Entity Listing Procedures, Terrorist Financing and Investigative Capabilities in a Digital World. Amendments to legislation brought about by the *Anti-Terrorism Act 2015* (the former Bill C-51) were also raised. As this Committee had prepared submissions on the topic and in particular on Bill C-51, it considered that further submissions from the Law Society ought to be considered.
19. The Committee has prepared draft submissions that are on the December 9 Benchers' agenda for consideration and approval.

IV. International Bar Association Report of the Presidential Task Force on the Independence of the Legal Profession

20. The Committee reviewed the IBA's Report of the Presidential Task Force on the Independence of the Legal Profession², which came out in the fall of 2016. It was an interesting report that identified indicators or indicia of independence that include:

- Constitutional guarantees of judicial independence;
- Clear and coherent regulation of the legal profession, including freedom to associate through independent bar organisations, clear and transparent rules on admission to the bar, disciplinary proceedings and disbarment, and protection of legal professional privilege;
- Clearly defined scope of permissible interventions from the executive branch of government ("Effective independent regulation of the profession");
- Comprehensive legal education and professional training;
- Freedom from fear of prosecution in controversial or unpopular cases;
- Ability to uphold the Rule of Law in situations of heightened national security concerns; and
- Ethical standards.

A number of common threats to these indicators were identified in the report.

² The Independence of the Legal Profession: Threats to the Bastion of a Free and Democratic Society. A report by the IBA's Presidential Task Force on the Independence of the Legal Profession.

21. The Supreme Court of Canada's decision in *Canada (Attorney General) v. Federation of Law Societies of Canada* [2015] 1 S.C.R. 401 was cited favourably as an example of an independent bar being able to take action against the State to ensure the right balance is created between government objectives in protecting society from illegal activities and the need to safeguard the principle of solicitor-client privilege.
22. The report, while it did not assess risk in individual countries, did draw out examples of concern. It was interesting to note that the report commented that the Legal Services Board in England and Wales was an example where some executive control over the regulatory process makes the risk of infringements on lawyers' professional independence greater. This is of course a concern that this Law Society raised when the *Legal Services Act 2007* created the Legal Services Board.
23. The report also commented on the fact that the former prime minister of the United Kingdom had openly criticised law firms who have undertaken the representation of victims of alleged abuse and unlawful killing at the hands of British soldiers' which is precisely the concern this Committee noted in its article outlined in paragraph 9 above.
24. The Committee noted that there was no direct participation from Canada on the IBA's Presidential Task Force that examined this subject. The Committee therefore prepared a letter that was sent over the signature of the President and the Committee's Chair commenting on the report, identifying the state of the law on this subject in Canada, and offering to participate in future endeavours of this nature. Both the Committee's letter and a link to the report are on the Law Society's website.

V. High School Essay Contest

25. 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*.
26. 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 enrolled in Grade 12 in BC, or for any BC high school student enrolled in Law 12 or Civic Studies 11.
27. 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.

28. The contest has been publicised to the school districts. Consideration will be given concerning how to follow up on the publicity efforts to keep the contest in the minds of teachers and students through the school year. Entries will be due April 10, 2017.

VI. Rule of Law Lecture Series

29. 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.
30. 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. This proposal was approved in principle by the Benchers earlier this year. The Committee is currently planning the lecture by giving consideration to the format and topic and who to invite to present the lecture.

VII. Surveillance

31. As noted in Part I above, the Committee has been mindful of the possible adverse effect of government surveillance on the rule of law. To that extent, it has noted that the British Columbia Civil Liberties Association has commenced action against the Attorney General of Canada in Federal Court seeking that certain provisions of the *National Defence Act* R.S.C. 1985 c. N-5 that permit the interception, retention and use of private communications of persons in Canada unjustly contravene s. 8 of the *Charter of Rights and Freedoms*. The case is scheduled, after some complicated discovery processes are completed, to go to trial in 2017.
32. The committee has determined that it would be wise to monitor the progress of this matter as it deals with legal issues that the Committee has identified in its article published in the *Advocate*. The Committee hopes to hear further from the BCCLA in the new year.

VIII. Professional Independence and Client Demands

33. 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.

34. 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.
35. The Committee gave some preliminary consideration to the report and the issues it raised in the BC context. The Committee ultimately reached a consensus that it would be worthwhile to advise the profession of the existence of the report by posting it on the Committee's page on its website and inviting lawyers to consider it in the context of their work.

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

36. 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.
37. 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.

X. Alternate Business Structures

38. 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.
39. 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.

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

The Law Society
of British Columbia



Lawyer Education Advisory Committee 2016 Year-End Report

Tony Wilson, Chair
Sarah Westwood, Vice-Chair
Pinder Cheema, QC
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Jamie Maclaren
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December 9, 2016

Prepared for: Benchers

Prepared by: The Lawyer Education Advisory Committee

Purpose: Information

Introduction

1. The Lawyer Education Advisory Committee's Year-end Report to the Benchers summarizes the Committee's work in 2016, with a particular focus on the work undertaken since the July 2016 Mid-year report.
2. The foundation for the Committee's work is included in section 3 of the *Legal Profession Act*:

It is the object and duty of the society to uphold and protect the public interest in the administration of justice by ...

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

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

3. The Strategic Plan includes the following goals specifically relating to the work of the Lawyer Education Advisory Committee:
 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.

4. Considerable progress in achieving these strategic goals has been made in 2016, as detailed below.

Admission Program Review Report

5. Pursuant to Strategic Plan Initiative 2-1(a), the Committee completed its admission program work in 2015, and provided the Benchers with an Admission Program Review Report (the “Report”) that contained 22 recommendations addressing the Professional Legal Training Course, articling, the Truth and Reconciliation Commission Report, and the Federation’s national admission standards proposals. The Report and recommendations were adopted by the Benchers on March 4, 2016.
6. The Report reflects several key areas of the Committee’s ongoing work. Specifically, pursuant to Strategic Plan Initiative 2-1(b), the Committee assessed the Federation’s National Assessment Proposal, culminating in the Committee’s recommendation not to endorse the Federation’s proposal.¹ The Report also included articling related recommendations, pursuant to Strategic Plan Initiative 2-1(a), including monitoring the availability of articling positions and examining the issue of articling remuneration.
7. Subsequent to adoption of the Report by the Benchers, the Committee held preliminary discussions on developing an articling remuneration policy, and highlighted the need to complete further policy analysis to gain a full understanding of the issues. The Committee decided that this work would commence after completion of the CPD Program Review.

CPD Program Review

8. The Committee’s principal focus in 2016 has been a comprehensive review of the CPD program, pursuant to Strategic Plan Initiative 2-1(c). The CPD program was last reviewed in 2011.
9. The Committee developed a strategic approach to its evaluation of the program to determine which aspects are functioning well, which elements could be improved, and to identify areas where new perspectives or approaches might further enhance the program. This review comprises three main elements: designing a new CPD purpose statement, conducting a CPD survey and reviewing key elements of the CPD program.

CPD Purpose Statement

10. The Committee began its work by crafting a revised purpose statement for CPD. The Committee concluded that establishing clear goals and objectives would both aid the review process and improve lawyers’ and the public’s understanding of the rationale for continuing professional development. The Committee endorsed the following purpose statement:



¹ On June 14 2016, the Federation Council decided that work would cease on the National Assessment Proposal. The Committee will assess and report on any future Federation developments.

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.







CPD Survey

11. One of the first steps the Committee took in evaluating the existing CPD program was to elicit feedback from the membership by designing and conducting a survey that was distributed online to lawyers in BC. The survey sought input from the profession relating to the effectiveness of the current CPD program, including any challenges and suggestions for improvement. The survey is attached as an appendix to this report.
12. More than 1270 lawyers responded to the survey, making the results statistically valid, being representative of the total population of practicing members +/- 2.6%, 19 out of 20 times. In addition to posing more than a dozen specific questions, the survey provided many opportunities for lawyers to provide feedback about particular issues (e.g. views on wellness and pro bono inclusions) and on the more general theme of how to best improve CPD. Hundreds of comments were provided; for example, 358 comments in response to the lawyer wellness question and over 700 responses in relation to the broad question of how CPD could be improved.
13. Several key themes emerged from the survey. Most notably, there is overall satisfaction with the CPD program, with a majority of respondents (83%) lending support to the continued requirement to complete CPD. Approximately 65% of respondents reported that the 12 hour CPD requirement, including the 2 hour minimum for practice management, ethics, and client care and relations, was about right or not enough. The survey also revealed that the majority of respondents have been completing more than the required 12 hours of CPD, with over 55% completing 16 hours or more, and a further 28% completing from 13 to 15 hours. Of those who complete more than 12 hours of CPD, 40% do not record this excess in the online CPD reporting system.

Should there be some amount of mandatory CPD for lawyers?


Response	Count	
Yes	1048 83.0%	
No	214 17.0%	
<i>Total: 1262</i>		

How appropriate is the current requirement of 12 hours of CPD per year?

Response	Count	
Much too low	27 2.1%	
A little too low	109 8.6%	
About right	698 55.1%	
A little too high	189 14.9%	
Much too high	75 5.9%	
The requirement should not be based on hours	168 13.3%	
<i>Total: 1266</i>		

14. According to the survey, the top factors likely to determine how lawyers complete their CPD are to enhance knowledge and skills within their fields of practice and to improve their competence. The survey also indicates that live and online courses and in-house education are the preferred modes of CPD delivery, while teaching, writing and mentoring are the least popular. High course prices and lack of time were identified as the most significant barriers to lawyers fulfilling their CPD requirements.
15. Questions regarding potential changes to the program revealed that over 60% of respondents are in favour of extending CPD accreditation to wellness courses, while 66% are against extending accreditation to marketing and business development topics. Responses were evenly split on whether CPD credits should be provided for pro bono services, and largely against accrediting legal aid work. A strong majority — over 75% of respondents — are in favour of permitting a carry-over of a portion of their CPD credits to the following reporting year in circumstances where a lawyer has done more than the required 12 hours.

Wellness: Are you in favour of extending CPD accreditation to wellness courses that support the mental and physical well-being of lawyers in the practice of law?

Response	Count	
Yes	761 60.3%	
No	501 39.7%	
<i>Total: 1262</i>		

Pro bono: Are you in favour of extending CPD accreditation to the provision of pro bono legal services?

Response	Count	
Yes	631 50.0%	
No	631 50.0%	
<i>Total: 1262</i>		

16. From an administrative perspective, there is overall satisfaction with the ease of use of the online reporting system, and limited enthusiasm for the development of a web or mobile app for reporting CPD credits.
17. A detailed analysis of the survey results is ongoing, and is informing the Committee's continuing discussions about the merits of various aspects of the CPD program.

Reviewing key elements of the CPD program

18. The principal focus of the Committee's work in 2016 has involved a comprehensive review of key elements of the existing CPD program. The nature of this review and the preliminary recommendations of the Committee are briefly detailed in the following paragraphs.

a. Continuation of a credit hour requirement

The Committee is of the view that there is significant public interest in continuing to have a CPD requirement for BC lawyers. The original approval of the CPD program was premised on assuring the public and the profession that the Law Society is committed to establishing, maintaining and enhancing standards of legal practice in the province. These continue to be both relevant and laudable goals. This position is reinforced by the survey results, which indicate that 83% of respondents reported that there should be some amount of mandatory CPD for lawyers.

Whether the total number of hours should be increased will be reviewed once the Committee's review of CPD subject matter is complete.

b. Continuation of the accreditation system for courses and other CPD modes

After discussing the merits of the existing system in which the Law Society evaluates and approves courses for credit, the Committee concluded that the current accreditation model is functioning well. The Committee's perspective is that replacing the accreditation model with an alternative model in which lawyers are required to self-evaluate whether a course qualifies for CPD would not be as effective in maintaining or strengthening the overall design, quality and functionality of the CPD program.

c. Introduction of a learning plan model or a testing requirement

The Committee discussed the benefits and drawbacks of the "learning plan model," which has been instituted by three other law societies (Alberta and Nova Scotia, and in part in Newfoundland). This approach is one in which lawyers identify particular goals and objectives for their learning plans, and are responsible for creating and documenting their progress through their plan, such as by completing courses and other educational activities. The Committee concluded that requiring lawyers to create learning plans or undergo testing requirements in addition to their existing CPD requirements would represent an undesirable step toward over-regulation. As such, the Committee does not recommend the introduction of a learning plan model or testing requirement.

d. Requirement to take CPD in a lawyer's primary area of expertise

The Committee considered whether lawyers should be required to complete CPD within their specific practice areas, rather than continuing with the current model in which lawyers are permitted to take any accredited CPD, provided at least 2 hours are dedicated to professional responsibility and ethics, client care and relations, and practice management.

The Committee is of the view that lawyer competence can be supported and enhanced even in circumstances where practitioners complete CPD outside their primary areas of expertise, and therefore recommends against regulating which accredited courses individual lawyers can complete to satisfy their CPD requirement. The Committee also noted that restricting CPD in such a fashion would disadvantage specialized lawyers who could be required to select from a very small pool of CPD credits as compared those with a more varied practice.

e. Exemptions

The Committee considered whether the groups of lawyers who are exempt from CPD should be expanded. Currently, lawyers with a practicing certificate, whether full or part-time, are subject to the full CPD requirement, with the following exemptions:

- i. lawyers with a practicing certificate who submit a declaration that they are not practicing law in the reporting year. Examples of lawyers who might submit such a declaration include those who are inactive, on medical or maternity leave or taking a sabbatical; or
- ii. new members who have completed the bar admission program of a Canadian law society during the reporting year.

The Committee discussed whether this exemption list should be expanded to include senior lawyers or judges returning to practice. Based on the view that the competence and value of ongoing education for these lawyers is no different than for other types of lawyers, the Committee recommends that the list of exemptions should not be expanded. The Committee has yet to focus on issues of reciprocity and comity, and whether meeting CPD requirements in another jurisdiction might exempt a lawyer from also fulfilling BC's CPD requirements.

f. Overall subject matter requirements

The Committee reviewed the five subject matter requirements of all accredited learning modes (including courses), namely: professionalism (including ethics); substantive law; procedural law; practice management, including client care and relations; and lawyering skills. The Committee concluded that these overall subject matter requirements are still highly relevant and should remain in place.

g. Subject matter inclusions and exclusions

A large component of the CPD review process is for the Committee to evaluate, and potentially revise, the list of subject matter inclusions and exclusions. Currently, a number of topics are excluded from being eligible for CPD credit. These include some practice management exclusions (of which there are currently 11 excluded topics), lawyering skill exclusions (of which there are currently five exclusions), activities targeting clients, wellness topics and pro bono.

The Committee has spent considerable time examining the rationale for and against adding wellness to the list of topics eligible for CPD credit. This has included a detailed policy analysis of how law societies in Canada and regulators in the United States have incorporated wellness into their continuing professional development programs, a review of academic articles and materials associated with existing wellness courses accredited by other law societies, a review of the survey results, and consultations with the BC Lawyer Assistance Program, which has considerable expertise in this area.

This work has revealed a growing awareness of the disproportionate number of lawyers affected by mental health and addiction issues and the implications for the competent delivery of legal

services. It also reveals that BC is one of only two Canadian law societies that do not recognize wellness-type courses for CPD credit.



As a result of this comprehensive analysis, the Committee agrees, in principle, that the CPD program should remove its blanket exclusion on wellness topics and recommends that a discrete subset of courses specifically designed to address wellness issues affecting lawyers (e.g. depression, addiction, anxiety) be eligible for a limited amount of credit. The Committee is continuing its work on defining wellness and what the scope of such inclusions might be, before presenting a final recommendation to the Benchers.

Future work on the CPD program review







19. The Committee will continue its review of the CPD program into 2017 by addressing the following outstanding issues:
 - a) A continued review of the subject matter inclusions and exclusions;
 - b) A continuation of, or changes to, the current 12 hour credit requirement;
 - c) Possible carry forward of CPD credits from year to year;
 - d) Examining exemptions in relation to interjurisdictional reciprocity and comity;
 - e) Potential changes to a two or three year reporting cycle;
 - f) Assessing the modes of CPD that are eligible for CPD credit, including courses, self-study, mentoring, teaching, writing, blogging, pro bono and legal aid work; and
 - g) Incorporating the Truth and Reconciliation Commission Call to Action 27 into CPD requirements.
20. The Committee also plans to consult extensively throughout the province with BC lawyers, law firms and legal departments, legal organizations, including CPD providers, and law schools, to elicit essential input and suggestions for the CPD program.

Appendix: 2016 CPD Survey Results

Should there be some amount of mandatory CPD for lawyers?

Response	Count		
Yes	1048	83.0%	
No	214	17.0%	
<i>Total: 1262</i>			

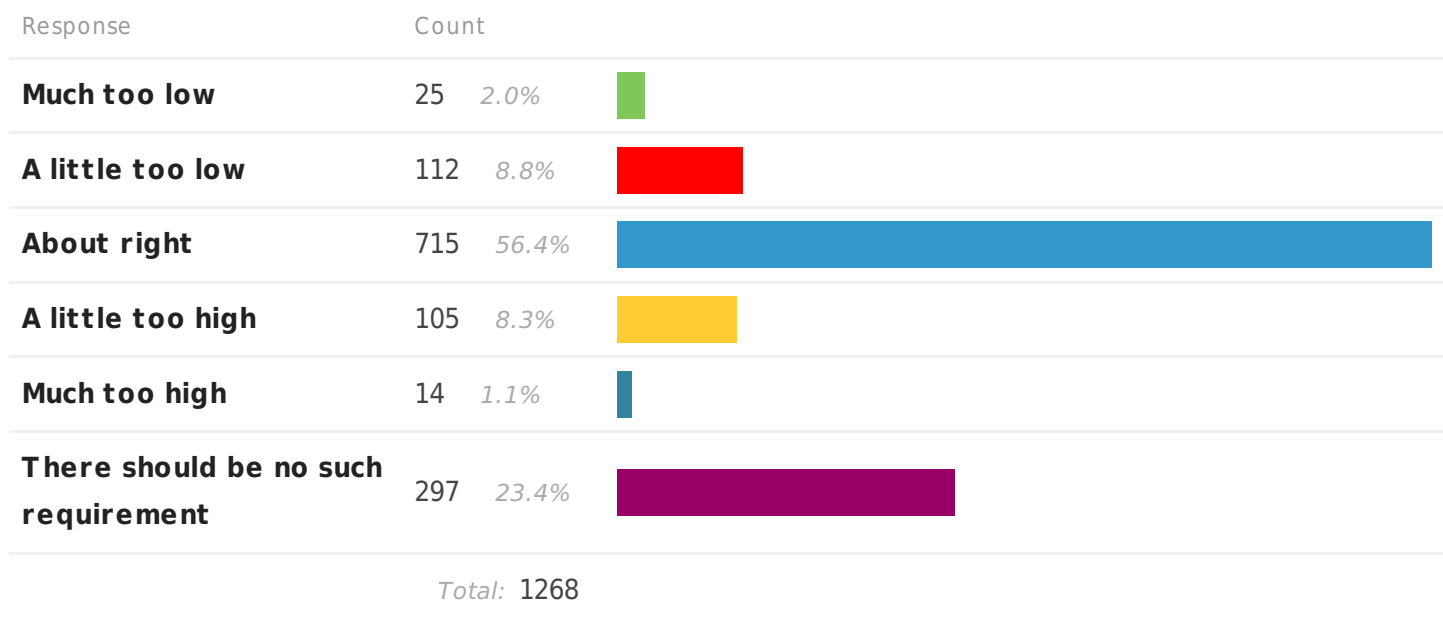
How appropriate is the current requirement of 12 hours of CPD per year?

Response	Count		
Much too low	27	2.1%	
A little too low	109	8.6%	
About right	698	55.1%	
A little too high	189	14.9%	
Much too high	75	5.9%	
The requirement should not be based on hours	168	13.3%	
<i>Total: 1266</i>			

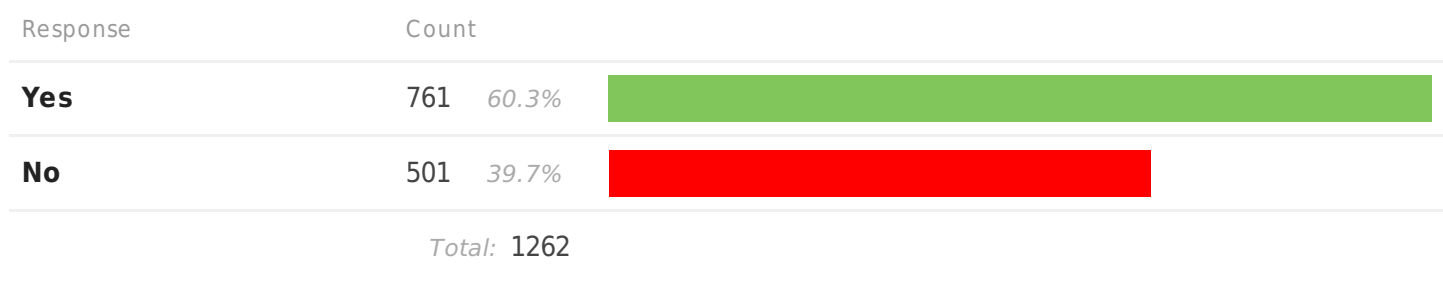
Should the annual CPD requirement be adjusted according to the individual lawyer's:

Variable	Yes	No	
Practising full or part time	622 49.8%	628 50.2%	<i>Total: 1250</i>
Length of time in practice	433 34.7%	814 65.3%	<i>Total: 1247</i>

How appropriate is the current requirement of 2 hours per year minimum for ethics, practice management and client care and relations education?





Wellness: Are you in favour of extending CPD accreditation to wellness courses that support the mental and physical well-being of lawyers in the practice of law?





Law firm marketing and business development: Are you in favour of extending CPD accreditation to law firm marketing and business



development programs?

Response	Count		
Yes	428	34.0%	
No	829	66.0%	
<i>Total: 1257</i>			

Pro bono: Are you in favour of extending CPD accreditation to the provision of pro bono legal services?

Response	Count		
Yes	631	50.0%	
No	631	50.0%	
<i>Total: 1262</i>			




Legal Aid: Are you in favour of extending CPD accreditation to the provision of legal services funded through the Legal Services Society?

Response	Count	
Yes	446 35.5%	
No	809 64.5%	
<i>Total:</i> 1255		






Which of the following would you prefer?

Response	Count	
Maintain an annual CPD requirement, but do not allow lawyers who complete more than the required number of credits each year to carry over some of their excess credits to the next reporting year.	304 24.1%	
Maintain an annual CPD requirement, but allow lawyers who complete more than the required number of credits each year to carry over some of their excess credits to the next reporting year.	955 75.9%	
<i>Total:</i> 1259		

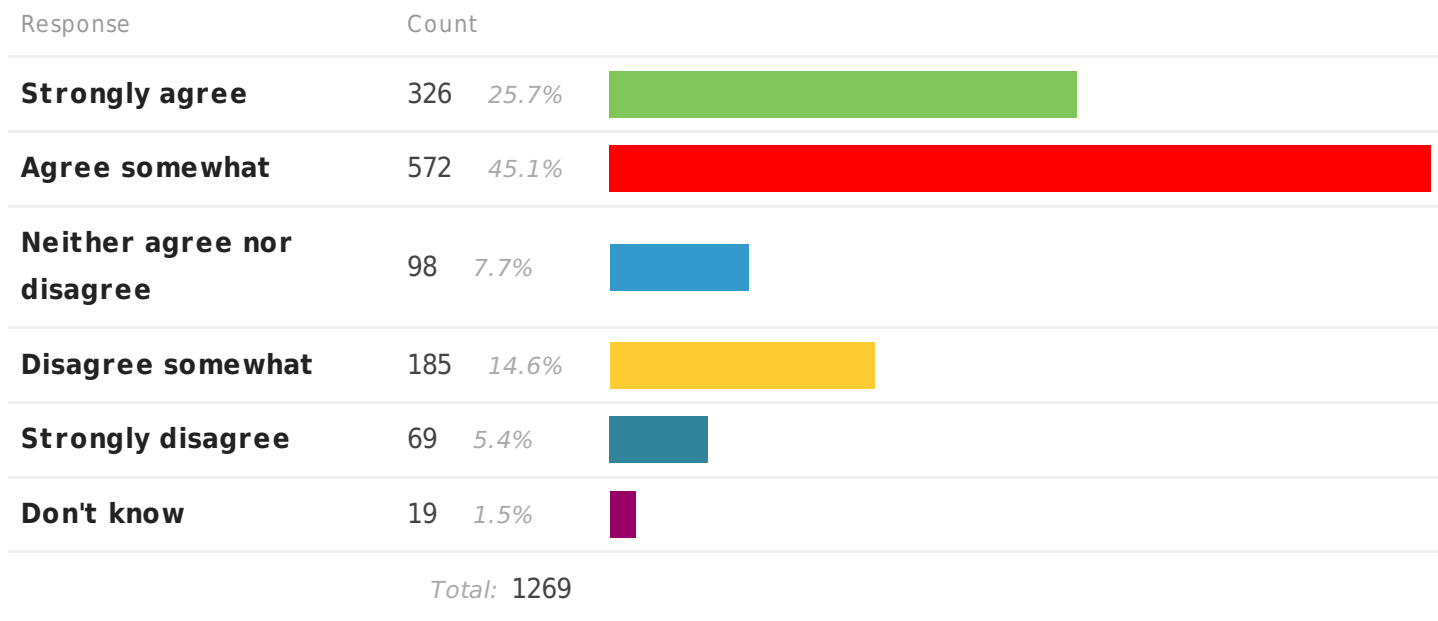
If you typically complete more than 12 hours of CPD in a year, do you record your hours in excess of the required 12 in the Law Society's online CPD reporting system?

Response	Count	
Yes	589 46.5%	
No	513 40.5%	
N/A	165 13.0%	
<i>Total: 1267</i>		

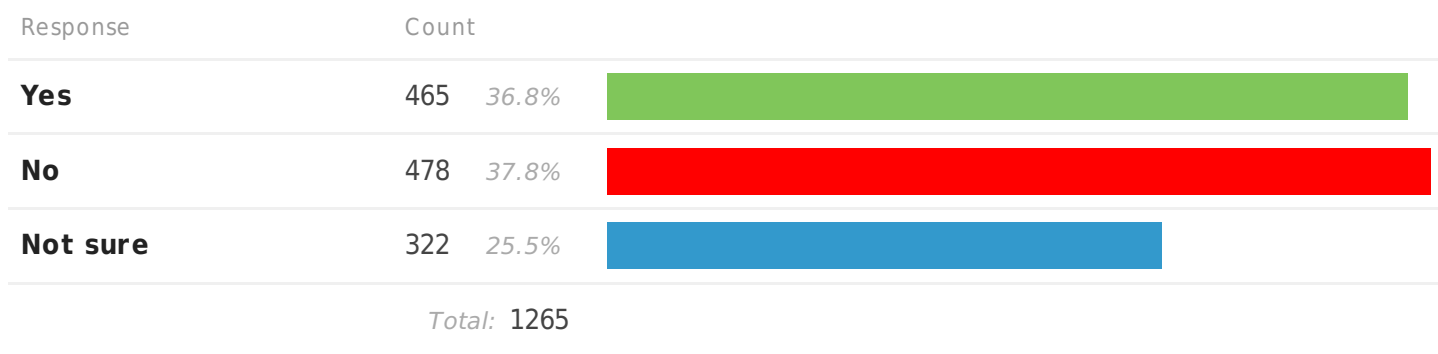
If you typically complete more than 12 hours of CPD in a year, approximately how many hours do you complete in a typical year?

Response	Count	
13 - 15 hours	358 28.4%	
16 to 20 hours	377 29.9%	
21 to 25 hours	127 10.1%	
More than 25 hours	187 14.9%	
N/A	210 16.7%	
<i>Total: 1259</i>		

The online system for reporting CPD credits is easy to use.



If the Law Society were to provide a web app or mobile app for reporting CPD credits, would you likely use it?



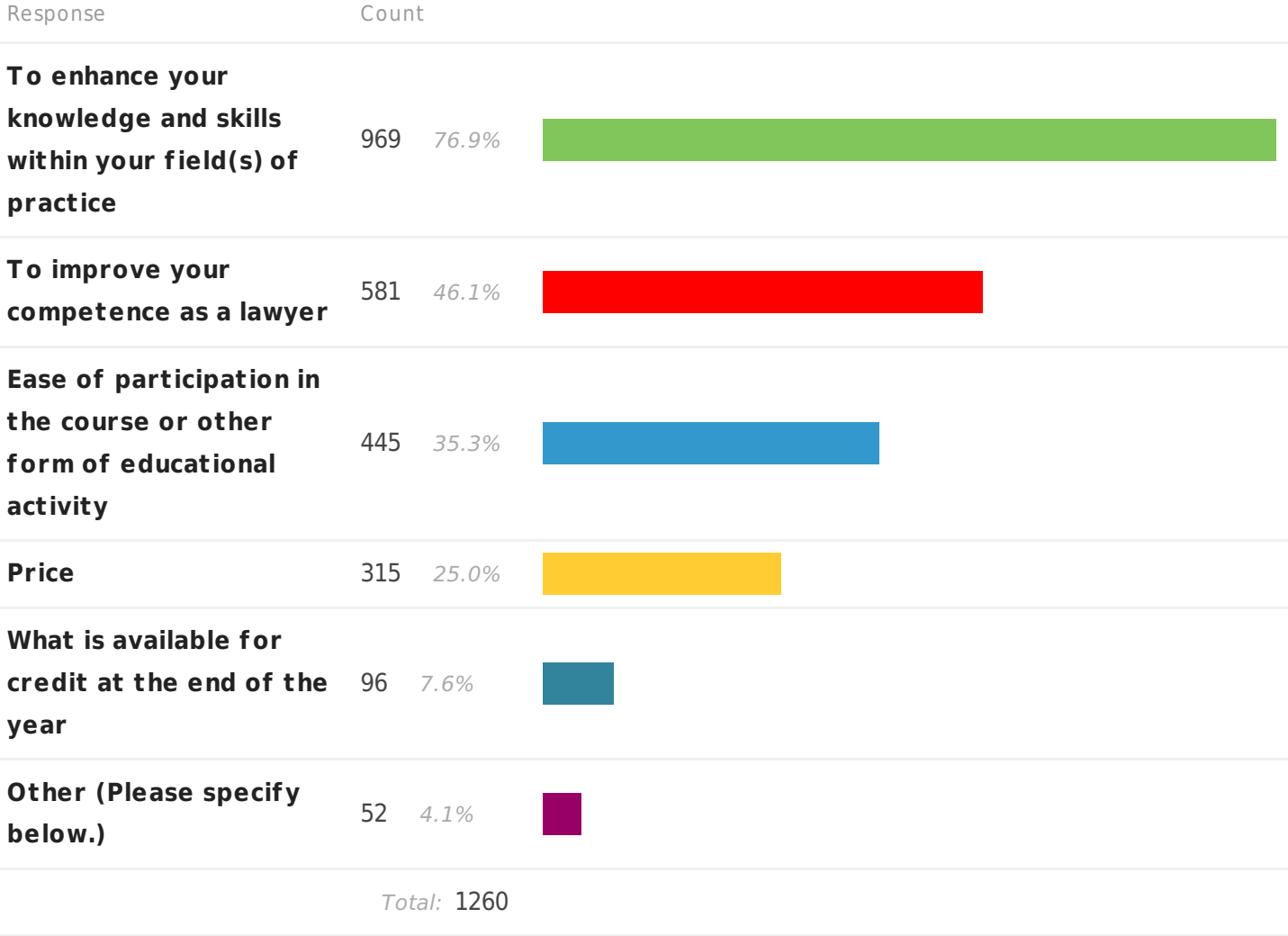
How would you PREFER to satisfy your CPD requirements this year? Please rank up to 8 preferences, with 1 indicating your first preference, 2 your second preference and so on.

Variable	1	2	3	4	5	6	7	8	
Live courses	516 45.8%	255 22.6%	160 14.2%	81 7.2%	52 4.6%	29 2.6%	22 2.0%	11 1.0%	Total: 1126
On-line courses	349 30.9%	333 29.5%	172 15.2%	110 9.7%	70 6.2%	45 4.0%	45 4.0%	6 0.5%	Total: 1130
Study groups	63 7.1%	129 14.6%	154 17.4%	172 19.4%	119 13.4%	115 13.0%	118 13.3%	15 1.7%	Total: 885
In-house education	141 14.5%	227 23.3%	221 22.7%	168 17.3%	72 7.4%	73 7.5%	59 6.1%	12 1.2%	Total: 973
Teaching	68 7.5%	114 12.6%	150 16.6%	150 16.6%	165 18.3%	151 16.7%	95 10.5%	9 1.0%	Total: 902
Writing	17 2.1%	64 7.8%	82 10.0%	109 13.3%	152 18.5%	201 24.5%	172 21.0%	23 2.8%	Total: 820
Mentoring	23 2.7%	48 5.7%	105 12.5%	139 16.5%	166 19.8%	139 16.5%	200 23.8%	20 2.4%	Total: 840
Other (Please specify below.)	34 6.4%	13 2.5%	21 4.0%	8 1.5%	13 2.5%	7 1.3%	20 3.8%	414 78.1%	Total: 530

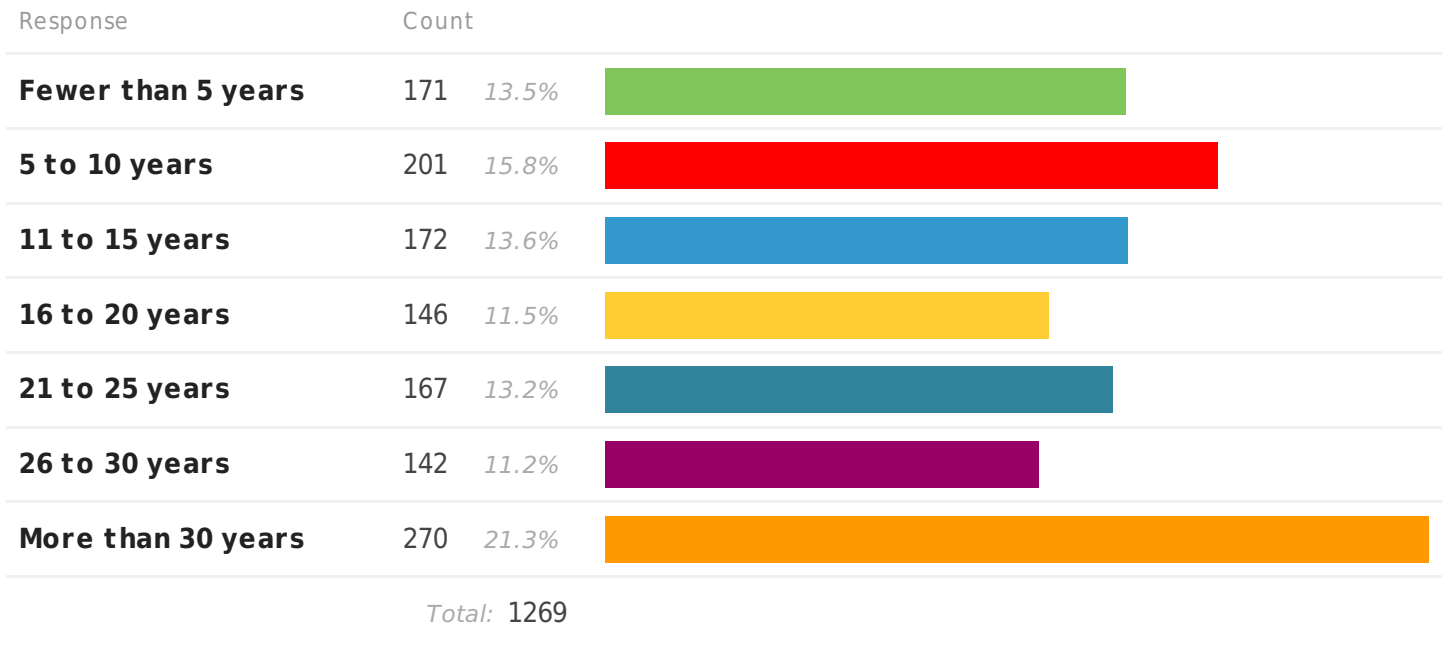
To what extent are any of the following a barrier to satisfying your annual CPD requirement?

Variable	Strong barrier	Modest barrier	Not a barrier	
Price	428 34.8%	434 35.3%	369 30.0%	<i>Total:</i> 1231
Geographic location	231 19.2%	306 25.4%	667 55.4%	<i>Total:</i> 1204
Time	272 22.2%	593 48.5%	358 29.3%	<i>Total:</i> 1223
Availability of topics relevant to your practice	279 22.8%	467 38.1%	479 39.1%	<i>Total:</i> 1225
Other (please specify below)	50 17.4%	33 11.5%	205 71.2%	<i>Total:</i> 288

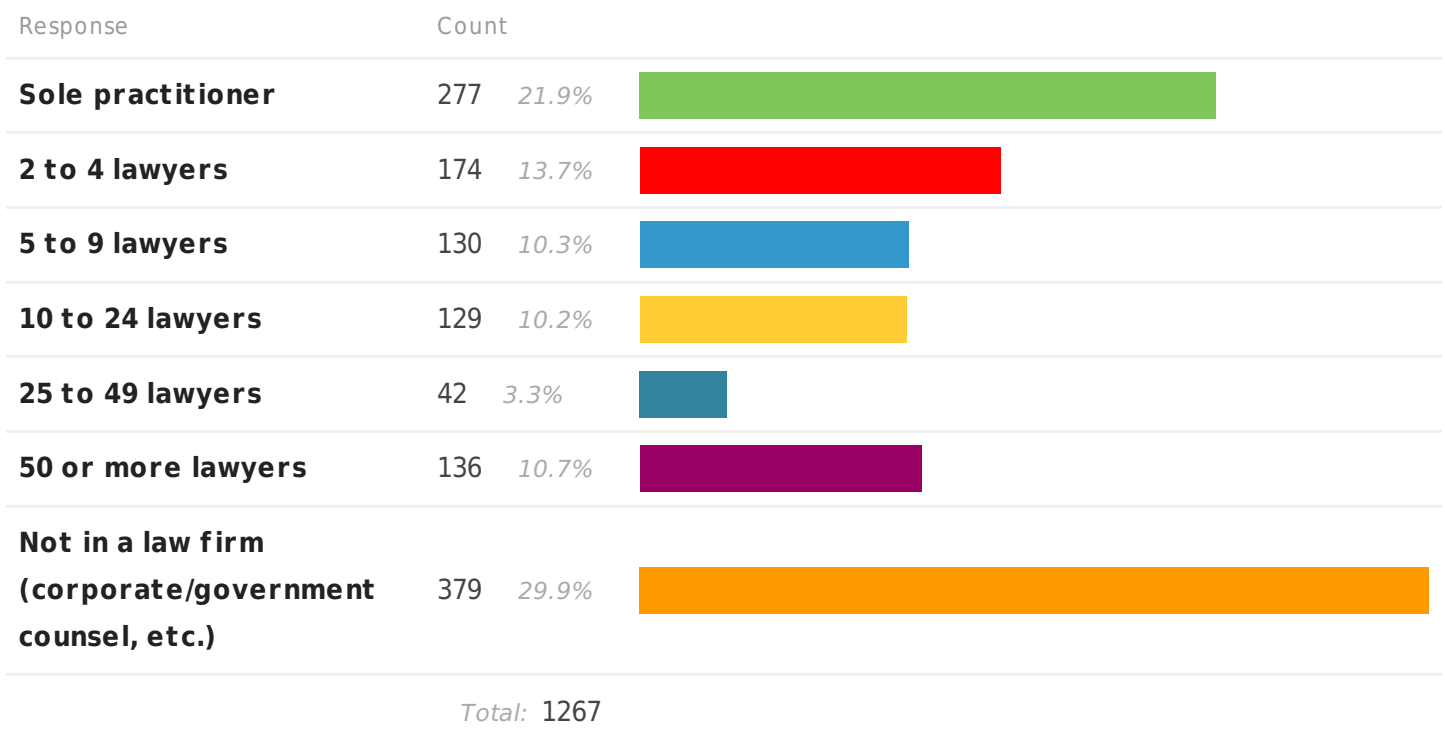
What are the top TWO factors likely to determine how you will fulfil your CPD credits in 2016?



How many years have you practised law?



The size of the firm in which you practise is:



Are you currently practicing?

Response	Count		
Full time	1070	84.6%	<div></div>
Part time	179	14.2%	<div></div>
Not Practising	16	1.3%	<div></div>
Total: 1265			

HOLMES & KING
BARRISTERS & SOLICITORS

ROBERT D. HOLMES
LAW CORPORATION
rdholmes@mhklaw.com

November 22, 2016

VIA REGULAR MAIL

Law Society of British Columbia
845 Cambie Street
Vancouver, B.C. V6B 4Z9

Attention: David Crossin, Q.C. &
Timothy E. McGee, Q.C.

Dear Sirs:

**Re: Constance D. Isherwood, Q.C. – Law Society of BC and CBABC Bench & Bar Dinner
2016**

I would like to personally thank you and the Law Society of BC for making the Bench & Bar Dinner this year so memorable for my aunt, Constance D. Isherwood, Q.C., and for our entire extended family. Also, the collegiality shown by members of the Bench and Bar in such a setting served to underscore the best traditions of the legal profession.

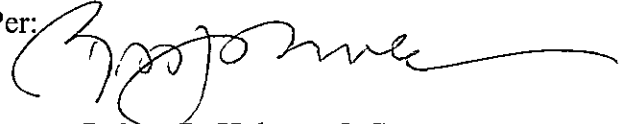
Fortunately, my wife, my sister and brother-in-law and my aunt's son, George Isherwood, were all able to attend, as well as four of my daughters and my son-in-law. It was truly a wonderful event, with each of our family members able to see first-hand the respect and admiration held by so many for my aunt and her life's work.

Finally, if I may be permitted to say so, given that two of my daughters are pursuing careers in law (Maris was called in September 2016 and now practises with Doak Shireff in Kelowna; Olivia is in second year law studies at UBC), it was inspiring for them to see two other women in the law – their great aunt and Catherine Boies Parker – recognized and their contributions to the public and legal profession described.

Yours truly,

HOLMES & KING

Per:



Robert D. Holmes, Q.C.



Faculty of Law | Office of the Dean
Murray & Anne Fraser Bldg Room 108 PO Box 1700 STN CSC Victoria BC V8W 2Y2 Canada
T 250-721-8147 | F 250-721-6390 | uvic.ca/law

November 21, 2016

Mr. Tim McGee, Executive Director
The Law Society of British Columbia
845 Cambie St
Vancouver, BC V6B 4Z9

Dear Mr. McGee,

It is my great pleasure to inform you that the Faculty of Law has recommended to the University of Victoria Senate that the The Pamela Murray, Q.C. Entrance Scholarship be awarded to:

Makaela Peters

Your financial support of UVic Law students directly helps them to achieve academic and professional success. On behalf of the students, faculty, and staff of UVic Law, thank you for your continued generosity. You will also find enclosed a personal thank you letter from Makaela Peters.

In thanks for your support, you and your guests will be invited to the **Student Awards and Donor Recognition Reception** to be held on **Friday, January 13th, 2017** at the Inn at Laurel Point. Please save the date and join us to honour the academic achievements of UVic Law students and those who have supported them. Please watch for an email invitation with full details closer to the date of the event.

It is also my pleasure to announce that Laura Pringle has joined our faculty as the new Alumni Annual Giving Officer. She will be the primary correspondent regarding awards. Please feel free to contact her at 250-853-3518 or at lawalum@uvic.ca.

I look forward to thanking you personally at the Student Awards and Donor Recognition Reception in 2017.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Webber", with a long horizontal flourish extending to the right.

Jeremy Webber
Dean

REDACTED MATERIALS



President's Report to Council and the Law Societies

November 2016

From: Maurice Piette, President
Federation of Law Societies of Canada

To: Council and All Law Societies

Date: November 30, 2016

INTRODUCTION

I have now been President of the Federation for two weeks.

To say it is an honour to assume this responsibility does not really tell the whole story or adequately express how I feel. The opportunity to serve the public interest in this way goes to the heart of what it means to me to be a member of the legal profession. I know this feeling is ingrained in all of us who choose to serve through our law society involvement, but this year has special meaning to me. I am a Quebec notary. My profession stands shoulder to shoulder in Quebec alongside my lawyer colleagues of the Barreau du Québec, and by extension with all lawyers, wherever they may be in Canada. It is not very often that a Quebec notary has led the Federation. I am told that I am the fifth notary in the Federation's 90 year history to occupy this office, the last one being in 1999. So I am proud to be a notary that can add "President of the Federation" to his business card.

I also bring a perspective that very few people can say they share. I have been around the Federation Council table for almost twenty years. I have seen the Federation through good times and challenging ones. I have seen a lot of change, most of it in the last 10 years or so. I can remember the time when the Federation was not much more than a place for the ever-changing leadership of Canada's law societies to meet a couple of times a year. Today's Federation has evolved into something much more. It is maturing and it is recognized as never before as a serious national justice system stakeholder.

With maturity of an association like ours comes occasional growing pains and transitions, and from what I have personally observed at the Federation, the outcome has always been for the better. We have just come through another one of those transitions, a governance review that will make the Federation more responsive to its members and better equipped to carry out what they ask of it. But with this framework now in place, it is time to focus on the real work of the Federation in the service of its members. And that is what energizes me as President as I look ahead to the coming year.

COUNCIL

At the heart of our governance model is the Council of the Federation. To the credit of the law societies who appoint its members, our Council continues to be first rate. At our last meeting in October in St. Andrews by-the-Sea, New Brunswick, I was sad to say goodbye to a number of outstanding colleagues – Gavin Hume (BC), Sheila Greene (Newfoundland and Labrador), Laurie Pawlitza (Ontario) and our Past-President Tom Conway. At the same time, the opportunity for renewal is upon us, and I welcome a number of eager recruits to their first

Council meeting in December – Herman Van Ommen (BC), Morgan Cooper (Newfoundland and Labrador), Ross Earnshaw (Ontario) and Karen Wilford (NWT). I look forward to working with all of you.

The Council also elected Richard Scott, Q.C. of New Brunswick to the position of Second Vice President of the Federation. I am very pleased to welcome him to the Executive Committee and also look forward to working alongside our other Executive officers - next year's President, Sheila MacPherson (NWT), and last year's President, Jeff Hirsch of Manitoba.

My first task as President was to work with the Executive Committee to refresh the composition and leadership of a number of Federation Committees. We did so by putting in place a set of principles that values Council member leadership and accountability first, as well as a predictable annual timetable to revisit committee composition.

And so our work continues.

Strategic Planning

On October 21, 2016 Council members were joined by law society Presidents, Vice Presidents, CEOs, senior staff and Federation staff for an all-day strategic planning workshop. The day was facilitated by Alan Fineblit, former CEO of the Law Society of Manitoba and Johanne Brodeur, former Bâtonnière of the Barreau du Québec. On November 15th, our facilitators circulated for comment their report of what they heard as the consensus on what the Federation's strategic priorities should be for the next three years. Based on the feedback they have been receiving, further reflections will be circulated in advance of our upcoming December Council meeting.

NCA Program Review

At the October Council meeting, Council approved the hiring of CamProf, an independent consulting firm that will carry out a comprehensive review of the National Committee on Accreditation. That work is now underway.

National Requirement Review Committee

In St. Andrews, the Canadian Common Law Program Approval Committee met with the National Requirement Review Committee ("NRRC") to provide its advice and insight regarding its experience so far with the National Requirement. Earlier in October, the NRRC issued a draft report for consultation on whether to include a non-discrimination provision in the National Requirement. After reflection by the Council, it was decided to suspend the consultation pending completion of the ongoing litigation involving Trinity Western University in Ontario and British Columbia.

Working Group on TRC Calls to Action

We also reviewed the report of the Working Group on the TRC Calls to Action. The Working Group proposed setting up a Truth and Reconciliation Commission Calls to Action Advisory Committee. The Council discussed the scope of the mandate for the future Committee and agreed to wait until December to hear from the Working Group on how it might address concerns raised about the breadth of the terms of reference. Those deliberations are underway.

Public Affairs and Government Relations Committee

Our Public Affairs and Government Relations Committee has been especially active in the lead up to the October Council meeting and in the last few weeks. In October the Council approved guidelines that ensure law society input and approval of submissions to be made to government on their behalf, while allowing for nimble action by the Committee when deadlines are too tight for full consultation. Just this month, the Committee responded to a Department of Finance consultation on the Deposit Insurance Program and its connection to lawyer and notary trust accounts. Law societies are now considering another draft submission in the area of national security and the role of special advocates.

The Committee also recognizes the importance for law societies to address anti-money laundering rules and enforcement. Council agreed that the CEOs Forum take a leading advisory role in this area. A working group of law society staff is now being established.

CanLII

CanLII continues to be a high value asset of the law societies. The Council heard from Martin Felsky, Chair of the Board of CanLII, and Xavier Beauchamp-Tremblay, its President and CEO. They reported on CanLII's activities including efforts to add to the historical collection, the inclusion of the Quebec annual statutes and plans to upgrade CanLII Connects. Mr. Beauchamp-Tremblay also noted that discussions are underway with representatives of the law societies with regard to CanLII's next Strategic Plan.

Just as is the case with the Federation Council, a high quality Board is key to CanLII's success. The Council approved the appointment of four outstanding individuals to the CanLII Board – Professor Adam Dodek (University of Ottawa), Crystal O'Donnell (Heuristica, Toronto), Shannon Salter (Chair, Civil Resolution Tribunal, Vancouver) and Tom Schonhoffer (former CEO, Law Society of Saskatchewan).

CLE Programs

Our guests in St. Andrews included Justice Jim Williams, Co-Chair of the National Family Law Program, as well as Justice David Watt and Justice Michelle Fuerst, co-chairs of the National Criminal Law Program. They reported on their respective programs that took place in July of this year. They were encouraged by Council to provide appropriate levels of French-language services and materials at future programs. We learned that the next Criminal Law Program will be the last to be organized and chaired by Justices Watt and Fuerst and Richard Peck.

Finance and Governance

The Council approved the Federation's audited financial statements for the year ended June 30, 2016. The statements were accompanied once again with a clean audit opinion from our auditors, KPMG. We finished the year within our budget and with a small surplus. This month, the Council approved the establishment of the Finance and Audit Committee contemplated by the Governance Policy and replaced the interim committee.

Council also approved amendments to our Governance Policy that make clear that Council meetings be open to the public, but that committee meetings would not. It was proposed that a number of situations set out in the Policy would allow for Council discussions to be held in the absence of the public. For the purpose of the Policy it is understood that the "public" refers to anyone who is not a Council member.

Stakeholder Relations

As was the case for all of my predecessors, paying close attention to the needs of the Federation's members, the law societies, will be a key part of my role as President. I will be reaching out to law society leaders and visiting you whenever possible throughout my presidential year.

Last week I addressed 1,100 Quebec notaries at the continuing education conference of the Chambre des notaires du Québec. On December 3rd, I will be pleased to attend a year-end event hosted by Treasurer Paul Schabas at Osgoode Hall in Toronto.

From time to time, the Federation President is invited to address the federal courts on the occasion of the swearing-in of a new judge. It is fitting that Jeff Hirsch will represent the Federation on December 2nd at the welcome ceremony for Justice Malcolm Rowe of the Supreme Court of Canada. Jeff, as you will recall, was appointed as the Federation's representative on the Independent Advisory Board for Supreme Court of Canada Judicial Appointments.

On December 9th, I will be represented by Past-President Marie-Claude Bélanger-Richard at the swearing-in of Justice Bruce Russel as a judge of the Tax Court of Canada in Halifax.

FEDERATION CONFERENCE ON LEGAL EDUCATION

The interplay between law societies and the legal academy in the preparation of future members of the legal profession is very important and was on display at the Federation's conference in St. Andrews.

On October 19 and 20, 2016, leaders from Canada's law societies, law schools and the Federation came together to discuss their shared role in legal education.

"Legal Education: Building a Better Continuum Together" was planned in partnership with law schools and with the assistance of an eleven-member Conference Planning Committee. The Conference was designed to bring law schools and law societies together to begin thinking and talking about how we can work together to better prepare law students and new lawyers for the realities of practice in a changing world.

The keynote speaker was Paula Littlewood, Executive Director of the Washington State Bar Association. Ms. Littlewood spoke about trends at work that are changing how law is practiced and how legal services are delivered. As an example, she spoke of the rapid rise in popularity of online self-help legal services like LegalZoom and Avvo in the United States. Ms. Littlewood urged us to break down the silos in legal education, to embrace change and to innovate.

Against this forward-looking backdrop, the Conference explored two issues of importance to law schools and law societies, the role of experiential learning in legal education and responses to the Truth and Reconciliation Commission's Calls to Action. Participants were highly engaged in these discussions and in an entertaining debate that sought to answer the question, are law schools and law societies ready for change?

On the second day of the conference participants discussed topics raised on the first day in greater depth. They also focused on how law schools and law societies can foster an ongoing, collaborative relationship that recognizes their shared responsibility for legal education.

A summary report of the Conference with outcomes and recommendations is in progress and will be shared with Conference participants and law schools in the near future.

CONCLUSION

My time as President of the Federation has just begun, but it is really just a small part of a longer journey that the Federation has been on for many years and will continue to pursue long after many of us complete our service. I am grateful for your support as you accompany me in this task and look forward to an enriching year together as we carry the Federation forward from strength to strength.

