



# Minutes

## Benchers

Date: Friday, September 27, 2013

Present: Art Vertlieb, QC, President  
Jan Lindsay, QC 1<sup>st</sup> Vice-President  
(by telephone)  
Ken Walker, QC 2<sup>nd</sup> Vice-President  
Haydn Acheson  
Rita Andreone, QC  
Satwinder Bains  
Kathryn Berge, QC  
David Crossin, QC  
Lynal Doerksen  
Leon Getz, QC  
Miriam Kresivo, QC  
Peter Lloyd, FCA  
Bill Maclagan

Ben Meisner  
Maria Morellato, QC  
David Mossop, QC  
Thelma O'Grady  
Lee Ongman  
Vincent Orchard, QC  
Greg Petrisor  
Claude Richmond  
Phil Riddell  
Herman Van Ommen, QC  
Tony Wilson  
Barry Zacharias

Excused: David Crossin, QC  
Thomas Fellhauer  
Stacy Kuiack  
Nancy Merrill  
David Renwick, QC  
Richard Stewart, QC

Staff Present: Tim McGee  
Deborah Armour  
Felicia Ciolfitto  
Lance Cook  
Robyn Crisanti  
Su Forbes, QC  
Ben Hadaway  
Andrea Hilland

Jeffrey Hoskins, QC  
Michael Lucas  
Bill McIntosh  
Jeanette McPhee  
Doug Munro  
Amy Tang  
Alan Treleaven

Guests: Mark Benton, QC, Executive Director, Legal Services Society  
Karima Budhwani, Program Director, Law Foundation of BC  
The Honourable Thomas Crabtree, Chief Judge of the Provincial Court of BC  
Dean Crawford, President, Canadian Bar Association, BC Branch  
Ron Friesen, CEO, Continuing Legal Education Society of BC  
Jeremy Hainsworth, Reporter, Lawyers Weekly  
Carol Hickman, QC, Life Bencher, Law Society of BC  
Gavin Hume, QC, Law Society Member of Council of the Federation of Law Societies of Canada  
Marc Kazimirski, President, Trial Lawyers Association of BC  
Carmen Marolla, BC Paralegal Association  
Caroline Nevin, Executive Director, Canadian Bar Association, BC Branch  
Anne Pappas, J.D, Interim Dean of Law, Thompson Rivers University  
Dr. Jeremy Schmidt, Dean of Law, University of British Columbia  
Kerry Simmons, Past President, Canadian Bar Association, BC Branch  
Dr. Jeremy Webber, Dean of Law, University of Victoria

## **CONSENT AGENDA**

### **1. Minutes**

#### **a. Minutes**

The minutes of the meeting held on July 12, 2013 were approved as circulated.

The *in camera* minutes of the meeting held on July 12, 2013 were approved as circulated.

The *in camera* minute of the Benchers' July 15, 2013 email authorization was approved as circulated.

#### **b. Resolutions**

The following resolutions were passed unanimously and by consent.

- Proposed Amendments to Rule 2-27(4): Academic Qualification for Enrolment in the Admission Program

***BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 2-27(4) and substituting the following:***

- (4) Each of the following constitutes academic qualification under this Rule:
    - (a) successful completion of the requirements for a bachelor of laws or the equivalent degree from an approved common law faculty of law in a Canadian university;
    - (b) a Certificate of Qualification issued under the authority of the Federation of Law Societies of Canada;
  - (4.1) For the purposes of this Rule, a common law faculty of law is approved if it has been approved by the Federation of Law Societies of Canada unless the Benchers adopt a resolution declaring that it is not or has ceased to be an approved faculty of law.
- Proposed Amendments to Rule 1-17: Procedure for Committee Meetings

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

- 1. By rescinding Rule 1-13***
- 2. By amending Rule 1-17 by adding the following subrule:***

- (3) A committee may take any action consistent with the Act and these Rules by resolution of a majority of the members of the committee present at a meeting, if the members present constitute a quorum.
- Proposed Amendments to Rules 1-48 and 1-49: Composition and Mandate of the Executive Committee

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

- 1. By re-numbering Rule 1-48 as 1-48(1) and adding the following subrules:***

- (2) The President is the chair of the Executive Committee, and the First Vice-President is the vice-chair.
- (3) The Executive Committee is accountable and reports directly to the Benchers as a whole.

**2. By rescinding Rule 1-49 and substituting the following:**

**Powers and duties**

**1-49**(1) The Executive Committee provides direction and oversight for the strategic and operational planning of the Society and ensures that the Benchers exercise their oversight, regulatory and policy development responsibilities.

- (2) The powers and duties of the Executive Committee include the following:
- (a) authorizing appointment of counsel to advise or represent the Society when the Society is a plaintiff, petitioner or intervenor in an action or proceeding;
  - (b) authorizing the execution of documents relating to the business of the Society;
  - (b.1) appointing persons to affix the seal of the Society to documents;
  - (b.2) approving forms under these Rules;
  - (c) approving agreements relating to the employment, termination or resignation of the Executive Director and the remuneration and benefits paid to him or her;
  - (d) assisting the President and Executive Director in establishing the agenda for Bencher meetings and the annual general meeting;
  - (e) planning of Bencher meetings or retreats held to consider a policy development schedule for the Benchers;
  - (f) assisting the Benchers and the Executive Director on establishing relative priorities for the assignment of Society financial, staff and volunteer resources;
  - (f.1) providing constructive performance feedback to the President;
  - (g) recommending to the appointing bodies on Law Society appointments to outside bodies;
  - (g.1) determining the date, time and locations for the annual general meeting;
  - (g.2) overseeing Bencher elections in accordance with Division 1 of this Part;
  - (i) appointing members of the Board of Governors of the Foundation under section 59 of the Act;
  - (i.1) deciding matters referred by the Executive Director under Rule 2-72.5;
  - (i.2) declaring that a financial institution is not or ceases to be a savings institution under Rule 3-50;
  - (i.3) adjudicating claims for unclaimed trust funds under Rule 3-84;
  - (j) other functions authorized or assigned by these Rules or the Benchers.

- Ratification of the National Mobility Agreement – August 30, 2013

***BE IT RESOLVED to approve various amendments to the National Mobility Agreement 2013 (NMA 2013), and to authorize the President or his designate to execute the NMA 2013 on behalf of the Law Society of British Columbia, as recommended by the Credentials Committee (clean and redline drafts of the NMA 2013 are attached as Appendix 1 to these minutes))***

- Re-appointment of Thomas Christensen to the Legal Services Society Board of Directors

***BE IT RESOLVED to re-appoint Thomas Christensen to the Board of Directors of the Legal Services Society for a two-year term effective September 7, 2013***

- Reduced Fee Feasibility Working Group Report and Recommendation

***BE IT RESOLVED to accept the report of the Reduced Fee Feasibility Working Group (page 267 of the meeting materials), as recommended by the Executive Committee***

- Amendments to BC Code Rule 3.2-1.1: Limited Retainers

***BE IT RESOLVED to adopt various amendments to the BC Code rules on limited retainers, as recommended by the Ethics Committee, as follows:***

**Add definition of “limited scope retainer” as follows:**

“limited scope retainer” means the provision of legal services for part, but not all, of a client’s legal matter by agreement with the client;

**Amend commentary to rule 3.1-2 on competence (amendments underlined)**

**3.1-2** A lawyer must perform all legal services undertaken on a client’s behalf to the standard of a competent lawyer.

<b>Commentary</b>
[1] As a member of the legal profession, a lawyer is held out as knowledgeable, skilled and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with all legal matters to be undertaken on the client’s behalf.

**[2]** Competence is founded upon both ethical and legal principles. This rule addresses the ethical principles. Competence involves more than an understanding of legal principles: it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied. To accomplish this, the lawyer should keep abreast of developments in all areas of law in which the lawyer practises.

**[3]** In deciding whether the lawyer has employed the requisite degree of knowledge and skill in a particular matter, relevant factors will include:

- (a) the complexity and specialized nature of the matter;
- (b) the lawyer's general experience;
- (c) the lawyer's training and experience in the field;
- (d) the preparation and study the lawyer is able to give the matter; and
- (e) whether it is appropriate or feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question.

**[4]** In some circumstances, expertise in a particular field of law may be required; often the necessary degree of proficiency will be that of the general practitioner.

**[5]** A lawyer should not undertake a matter without honestly feeling competent to handle it, or being able to become competent without undue delay, risk or expense to the client. The lawyer who proceeds on any other basis is not being honest with the client. This is an ethical consideration and is distinct from the standard of care that a tribunal would invoke for purposes of determining negligence.

**[6]** A lawyer must recognize a task for which the lawyer lacks competence and the disservice that would be done to the client by undertaking that task. If consulted about such a task, the lawyer should:

- (a) decline to act;
- (b) obtain the client's instructions to retain, consult or collaborate with a lawyer who is competent for that task; or
- (c) obtain the client's consent for the lawyer to become competent without undue delay, risk or expense to the client.

**[7]** A lawyer should also recognize that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting or

other non-legal fields, and, when it is appropriate, the lawyer should not hesitate to seek the client's instructions to consult experts.

[7.1] When a lawyer considers whether to provide legal services under a limited scope retainer the lawyer must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. An agreement for such services does not exempt a lawyer from the duty to provide competent representation. The lawyer should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also rule 3.2-1.1.

[8] A lawyer should clearly specify the facts, circumstances and assumptions on which an opinion is based, particularly when the circumstances do not justify an exhaustive investigation and the resultant expense to the client. However, unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications.

[9] A lawyer should be wary of bold and over-confident assurances to the client, especially when the lawyer's employment may depend upon advising in a particular way.

[10] In addition to opinions on legal questions, a lawyer may be asked for or may be expected to give advice on non-legal matters such as the business, economic, policy or social complications involved in the question or the course the client should choose. In many instances the lawyer's experience will be such that the lawyer's views on non-legal matters will be of real benefit to the client. The lawyer who expresses views on such matters should, if necessary and to the extent necessary, point out any lack of experience or other qualification in the particular field and should clearly distinguish legal advice from other advice.

[11] In a multi-discipline practice, a lawyer must ensure that the client is made aware that the legal advice from the lawyer may be supplemented by advice or services from a non-lawyer. Advice or services from non-lawyer members of the firm unrelated to the retainer for legal services must be provided independently of and outside the scope of the legal services retainer and from a location separate from the premises of the multi-discipline practice. The provision of non-legal advice or

services unrelated to the legal services retainer will also be subject to the constraints outlined in the rules/by-laws/regulations governing multi-discipline practices.

[12] The requirement of conscientious, diligent and efficient service means that a lawyer should make every effort to provide timely service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.

[13] The lawyer should refrain from conduct that may interfere with or compromise his or her capacity or motivation to provide competent legal services to the client and be aware of any factor or circumstance that may have that effect.

[14] A lawyer who is incompetent does the client a disservice, brings discredit to the profession and may bring the administration of justice into disrepute. In addition to damaging the lawyer's own reputation and practice, incompetence may also injure the lawyer's partners and associates.

[15] **Incompetence, Negligence and Mistakes** - This rule does not require a standard of perfection. An error or omission, even though it might be actionable for damages in negligence or contract, will not necessarily constitute a failure to maintain the standard of professional competence described by the rule. However, evidence of gross neglect in a particular matter or a pattern of neglect or mistakes in different matters may be evidence of such a failure, regardless of tort liability. While damages may be awarded for negligence, incompetence can give rise to the additional sanction of disciplinary action.

#### **Add new rule:**

#### **Limited Scope Retainers**

**3.2-1.1** Before undertaking a limited scope retainer the lawyer must advise the client about the nature, extent and scope of the services that the lawyer can provide and must confirm in writing to the client as soon as practicable what services will be provided.

#### **Commentary**

[1] Reducing to writing the discussions and agreement with the client about the limited scope retainer assists the lawyer and client in understanding the limitations of

the service to be provided and any risks of the retainer.

[2] A lawyer who is providing legal services under a limited scope retainer should be careful to avoid acting in a way that suggests that the lawyer is providing full services to the client.

[3] Where the limited services being provided include an appearance before a tribunal a lawyer must be careful not to mislead the tribunal as to the scope of the retainer and should consider whether disclosure of the limited nature of the retainer is required by the rules of practice or the circumstances.

[4] A lawyer who is providing legal services under a limited scope retainer should consider how communications from opposing counsel in a matter should be managed (See rule 7.2-6.1)

[5] This rule does not apply to situations in which a lawyer is providing summary advice, for example over a telephone hotline or as duty counsel, or to initial consultations that may result in the client retaining the lawyer.

**Amend rule 7.2-6 to refer to new rule**

**7.2-6** Subject to rules 7.2-6.1 and 7.2-7, if a person is represented by a lawyer in respect of a matter, another lawyer must not, except through or with the consent of the person's lawyer:

- (a) approach, communicate or deal with the person on the matter; or
- (b) attempt to negotiate or compromise the matter directly with the person.

**7.2-6.1** Where a person is represented by a lawyer under a limited scope retainer on a matter, another lawyer may, without the consent of the lawyer providing the limited scope legal services, approach, communicate or deal with the person directly on the matter unless the lawyer has been given written notice of the nature of the legal services being provided under the limited scope retainer and the approach, communication or dealing falls within the scope of that retainer.

**Commentary**

[1] Where notice as described in rule 7.2-6.1 has been provided to a lawyer for an opposing party, the opposing lawyer is required to communicate with the person's lawyer, but only to the extent of the limited representation as identified by the lawyer. The opposing lawyer may communicate with the person on matters outside of the limited scope retainer.

**REGULAR AGENDA – for Discussion and Decision****3. Examination of the Relationship Between the Law Society as Regulator of Lawyers and as Insurer of Lawyers: Report of the Rule of Law and Lawyer Independence Advisory Committee**

Mr. Richmond addressed the Benchers as Chair of the Rule of Law and Lawyers Independence Advisory Committee. Mr. Richmond moved (seconded by Ms. Berge) that the Benchers adopt the following draft resolution:

*Whereas, having read the report of the Rule of Law and Lawyer Independence Advisory Committee dated April 12, 2013 (the Report), the Benchers understand that the Law Society's current co-existing responsibilities as both regulator and insurer of lawyers creates a propensity and risk for a conflict of duties that warrants corrective action.*

*THEREFORE BE IT RESOLVED THAT a working group of Benchers and staff be created to undertake a detailed examination and analysis of the two solution options described in the Report for future consideration by the Benchers.*

Mr. Richmond reviewed the background of the Committee's report (at page 300 of the meeting materials) and the draft resolution now before the meeting. He noted that the current Committee relied on discussion and analysis of this subject performed by the 2012 Rule of Law and Lawyers Independence Advisory Committee, and took note of the report prepared by the 2008 Independence and Self-Governance Advisory Committee. Mr. Richmond confirmed that the current review has been conducted pursuant to Initiative 1-1(b) of the 2012 - 2014 Strategic Plan: "Examine the relationship between the Law Society as the regulator of lawyers and the Law Society as insurer of lawyers;" and pursuant to Strategy 1-1: "Regulate the provision of legal services effectively and in the public interest." The review entailed extensive research of approaches taken by other law societies and regulatory bodies, and extensive consultation with the Law Society's regulatory, insurance, finance and executive staff.

Mr. Richmond outlined the Committee's conclusion: the regulating and insuring of lawyers by the Law Society are both within the public interest at the policy-setting level; however at the operational level and warranting corrective action, there is tension and propensity for conflict between the Law Society's co-existing responsibilities as regulator and insurer of lawyers.

Mr. Richmond noted that the Committee considered a range of potential solutions (paragraphs 56 – 68 of the Report, pages 320 – 322 of the meeting materials) before identifying two solution options which it recommends for further consideration and development. From the Report:

61. In the end the Committee supports the further consideration and development of two options. The two options should be measured by the extent to which they would be a reasonably practical solution in the public interest and by the extent to which they would provide substantive solutions to the various concerns identified by the Committee. As models of the two options are developed, they may display many similarities but they are distinguishable by a difference in corporate structure, as follows:

(a) *Solution Option 1: Modify LIF's integration as a Law Society department –*

62. This option maintains the Lawyers Insurance Fund "in-house" and involves no significant changes to the corporate structure of the Law Society.
63. The development of Option 1 incorporates the challenge of maintaining the existing corporate structure of the Society while envisioning a list of operational policies, protocols, and other changes that will address the concerns of the Committee for matters of both appearance and underlying substance.

...

(b) *Solution Option 2: Operate LIF as a separate legal entity, in the form of a relatively independent subsidiary of the Law Society –*

66. Rather than operating claims management and insurance services through a private, for profit corporate model, this option envisages instead the creation of a separate, not-for profit Law Society subsidiary corporation that would handle claims management with a separate board and reporting structure.

Committee member Herman Van Ommen, QC, confirmed the Committee's conclusion that the status quo is not desirable and that corrective action is needed. He noted that the Committee has not had enough information to recommend specific changes.

In the ensuing discussion 10 Benchers spoke in favour of the resolution and two spoke against. Issues raised were:

- Whether public confidence in the Law Society's objectivity and regulatory function may be undermined by misunderstanding by complainants and the public as to why the Lawyers Insurance Fund and the Professional Conduct department sometimes take different positions on the same facts
- Whether current practices around sharing of information by the Lawyers Insurance Fund and the Professional Conduct department may have adverse effect on the Law Society's regulatory performance
- Whether the Report's language and tone is sufficiently objective and neutral
- Whether the Committee and its report should have focused more on evidence of actual conflicts and adverse effects on regulatory performance and public confidence
- Whether the fundamental issues are the potential for public misunderstanding and diminished confidence flowing from inherent tensions between the Law Society's regulatory and insurance responsibilities
- Whether the members of the Audit Committee generally possess sufficient technical knowledge of the insurance industry to conduct oversight of the Law Society's insurance program
- Whether the Governance Committee should consider the governance aspect of such oversight

Ms. Andreone proposed a friendly amendment, to add the following words to the draft resolution: "..., *having regard to the need to provide best practices oversight and governance of the insurance portfolio.*"

The amendment was approved.

Mr. Richmond stated the amended resolution:

*Whereas, having read the report of the Rule of Law and Lawyer Independence Advisory Committee dated April 12, 2013 (the Report), the Benchers understand that the Law*

*Society's current co-existing responsibilities as both regulator and insurer of lawyers creates a propensity and risk for a conflict of duties that warrants corrective action.*

*BE IT RESOLVED THAT a working group of Benchers and staff be created to undertake a detailed examination and analysis of the two solution options described in the Report for future consideration by the Benchers, having regard to the need to provide best practices oversight and governance of the insurance portfolio.*

The motion to adopt the amended resolution was carried.

The Benchers agreed that the mandate of any such working group should not be limited to the two solution options referenced in the resolution and in the Report.

The Benchers deferred consideration of the role of the Governance Committee in relation to the oversight and governance of the Law Society's insurance program.

#### **4. CBABC Rural Education and Access to Lawyers (REAL) Initiative: Funding Request for 2014**

Mr. Vertlieb briefed the Benchers on the background of this matter, noting that:

- CBABC Provincial Council has approved the contribution of \$50,000 by CBABC to 2014 funding of the REAL Initiative (Phase 3)
- The REAL Initiative aligns with Strategy 2-2 of the 2012 – 2014 Strategic Plan: "Improve access to justice in rural communities"
- The Executive Committee unanimously recommends the contribution of \$50,000 by the Law Society to 2014 funding of the REAL Initiative (Phase 3),
  - matching the contributions of CBABC and the Law Foundation of BC

Mr. Walker moved (seconded by Ms. Bains) that the Benchers approve the Law Society's contribution of \$50,000 to 2014 funding of the REAL Initiative (Phase 3).

The motion was carried unanimously.

## 5. 2014 Fees and Budget: Finance Committee Recommendations to the Benchers

Ms. Lindsay briefed the Benchers as Chair of Finance Committee. She reviewed the work done by the Committee, with the full participation of Law Society management, in conducting a ground-up, zero-based review of the Law Society's operating budgets for 2014. Ms. Lindsay confirmed that she supports the view of the Finance Committee and management that the Law Society budget and fees proposed for 2014 will allow the Society to continue to regulate legal profession in the public interest.

Mr. McGee noted that the proposed 2014 budget includes funding for the first phase of an initiative already approved by the Benchers, to enhance the Law Society's practice advice and support functions. Ms. McPhee confirmed that the proposal before the Benchers calls for an increase of 1.3% for total mandatory fees paid by BC lawyers in 2014 (excluding taxes, and including the Lawyers Insurance Fund assessment, unchanged from 2013 at \$1,750).

Mr. Walker (Vice-Chair of the 2013 Finance Committee) moved (seconded by Mr. Acheson) the adoption of the General Fund, Lawyers Insurance Fund and Trust Administration Fee resolutions, as set out at Tab 4 of the meeting materials:

***BE IT RESOLVED THAT, commencing January 1, 2014, the practice fee be set at \$1,940.00, pursuant to section 23(1)(a) of the Legal Profession Act, consisting of the following amounts:***

General Fund	\$1,571.11
Federation of Law Societies of Canada contribution	25.00
CanLII contribution	36.00
Pro Bono contribution	30.39
Courthouse Libraries BC	190.00
Lawyers Assistance Program	60.00
The Advocate	<u>27.50</u>
<b>Practice Fee</b>	<b>\$1,940.00</b>

***BE IT RESOLVED THAT:***

- the insurance fee for 2014 pursuant to section 30(3) of the *Legal Profession Act* be set at \$1,750;
- the part-time insurance fee for 2014 pursuant to Rule 3-22(2) be set at \$875; and
- the insurance surcharge for 2014 pursuant to Rule 3-26(2) be set at \$1,000.

***BE IT RESOLVED THAT:***

- effective January 1, 2014, the trust administration fee be set at \$15 for each client matter, pursuant to Rule 2-72.2(1).

The motion was carried unanimously.

Mr. Vertlieb thanked the Finance Committee and acknowledged, Ms. Lindsay, Mr. McGee and Ms. McPhee for their direction and leadership throughout the 2014 budgeting and fee-setting process.

**6. Family Law Task Force Request for Permission to Provide Analysis & Recommendations to the Benchers re: Authority, Guidelines and Training for Designated Paralegals to act as Counsel at Family Law Mediations & Arbitrations**

Family Law Task Force Chair Carol Hickman, QC briefed the Benchers and presented the following draft resolution for approval:

***BE IT RESOLVED THAT:***

The Family Law Task Force analyze and report to the Benchers with recommendations on whether:

1. Designated paralegals can act as counsel at family law mediations and arbitrations, and in other family law dispute areas, and if so, to consider what guidelines or practice commentary should be created to assist supervising lawyers;
2. Designated paralegals practising in family law ought to be strongly encouraged to take training in screening for domestic violence, consistent with the statutory obligation for family dispute resolution professionals contained in the *Family Law Act*.

The Benchers unanimously approved the resolution.

## **GUEST PRESENTATIONS**

### **7. Provincial Court of BC Update**

Mr. Vertlieb welcomed the Honourable Thomas Crabtree, Chief Judge of the Provincial Court of BC to the meeting and invited him to address the Benchers.

Chief Judge Crabtree thanked the Benchers for their hospitality, and expressed his appreciation to the Law Society to the Court for its support on three issues:

- public support for the BC Courts, and in particular the Provincial Court
- the Law Society's willingness to pursue innovation and to collaborate with the BC Courts in that regard, particularly in relation to the Family Law Paralegals pilot project
- the Law Society's participation in and contributions to the Judicial Council over many years

Chief Judge Crabtree emphasized the Provincial Court's commitment to enhancing the accessibility and timeliness of the judicial process. He noted the importance of recent progress in three areas:

- streamlining of the Court's administrative structure,
- improvements to the Court's information management and scheduling systems
- use of technology, particularly video-conferencing

Chief Judge Crabtree also commented on the Provincial Court's commitment to communication and transparency in the use of its website, referring to the publication of quarterly updates to a report first published in September 2010 on the Court's resources, particularly its complement of judges.

## **REPORTS**

### **8. 2012 – 2014 Strategic Plan Implementation Update**

This matter was put over to the next meeting.

## 9. President's Report

Mr. Vertlieb briefed the Benchers on various Law Society matters to which he has attended since the last meeting, including:

### a) **First Year Faculty of Law Classes**

Mr. Vertlieb spoke to the first year Law classes at UBC and the University of Victoria, addressing the themes of professionalism and collegiality. He will seek an early opportunity to visit the Faculty of Law at Thompson Rivers University.

### b) **CBA Legal Conference (August 18 – 20, 2013 in Saskatoon, Saskatchewan)**

Mr. Vertlieb reported on the presentation by Dr. Melina Buckley, chair of the CBA's Envisioning Equal Justice Initiative, and briefed the Committee on the communications strategy for a proactive Law Society response to the release of the Initiative's report, which is expected later in the fall. Mr. Vertlieb also commented on Mr. McGee's presentation on corporate counsel issues, noting that representatives of the Canadian Corporate Counsel Association have been invited to deliver a presentation to the Benchers at the November 7 meeting.

### c) **International Criminal Court Conference in Victoria**

Mr. Vertlieb delivered welcoming remarks for the Law Society at a recent International Criminal Court conference in Victoria.

### d) **Law Society Liaison to Canadian Bar Association Provincial and National Councils**

Vancouver Bencher Maria Morellato, QC has been re-appointed as the Law Society President's non-voting nominee to the CBABC Provincial Council and the CBA National Council, each appointment for a one-year term commencing September 1, 2013.

## 10. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (attached as Appendix 2 to these minutes), including the following matters:

- Introduction
- 2014 Budgets and Fees
- Management and Staff Updates

- New Manager, Intake & Early Resolution
- Leadership Council
- RRex Program
- Thriving Professional Awards
- On-the-Spot Recognition
- Golden Lion Award
- RRex Day
- Inspired Lion Award
- RRex Award
- Annual Performance Awards
- 2013 Employee Survey
- Events and Conferences
  - Canadian Corporate Counsel Association Plenary Session – CBA Canadian Legal Conference
  - 2013 International Institute of Law Association Chief Executives (IILACE) Annual Conference
  - Kootenay Bar Association Summer Meeting
  - Federation of Law Societies of Canada Semi-Annual Meeting – St. John’s Newfoundland
  - Fall Justice Summit
  - National Action Committee on Access to Justice Event
- PLTC Thank you

### **11. Trust Assurance Program Summary Report: First Six-Year Cycle**

Felicia Ciolfitto, Manager of Trust Assurance and Trust Regulation, briefed the Benchers on the successful completion of the first six-year cycle of the Law Society's Trust Assurance and Trust Regulation programs. Ms. Ciolfitto's written report is at Tab 10 of the meeting materials.

### **12. Law Society Financial Report (August 31, 2013)**

Jeanette McPhee, Chief Financial Officer and Director of Trust Regulation, referred the Benchers to her report on the Law Society's financial results and highlights for the first eight months of 2013 (Tab 11 of the meeting materials).

### **13. Law Society Liaison to the Canadian Bar Association National and Provincial Councils: Annual Update**

Maria Morellato, QC briefed the Benchers as the Law Society's designated liaison to the Canadian Bar Association (CBA) National and Provincial (BC) Councils. Ms. Morellato reported that during the past year she had the privilege of attending the two national CBA Council meetings, and most Provincial Council meetings. She noted that the Law Society and the CBA have much in common, including mutual commitment to the public interest, an independent legal profession and the rule of law, and a number of shared goals and priorities. As examples Ms. Morellato referred to Law Society and CBA initiatives relating to access to justice, diversity issues and the pressing need to address the implications of a rapidly changing legal marketplace, including emerging regulatory challenges.

Ms. Morellato also outlined highlights of the work presented at the CBA national meetings in February and August, referring the Benchers to her written report (Tab 12 of the meeting materials) for details.

### **14. Federation Council Update**

Gavin Hume, QC reported as the Law Society's member of the Council of the Federation of Law Societies of Canada. Mr. Hume outlined significant issues to be addressed at the upcoming Council meeting and Conference (October 17-18 in St. John's, Newfoundland). Key matters on the Council meeting agenda include:

- signing of the Quebec Mobility Agreement
- discussion of implementation issues relating to National Admission Standards

- Trinity Western University's pending application for law school accreditation

The Conference will feature discussion of the impact of a number of topics on legal regulation, including:

- technology
- globalization
- the changing nature of legal practice and services

Mr. Hume also reported as Chair of the Federation Standing Committee on the Model Code of Professional Conduct. He noted that the Committee is about to send a major consultation package to the Federation's member law societies, the Canadian Bar Association and an association of ethics professors, proposing Model Code provisions and language on topics including:

- doing business with clients
- short term legal services
- conflicts rules
- incriminating physical evidence

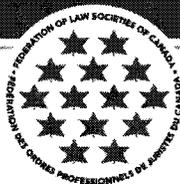
## **15. Report on the Outstanding Hearing & Review Reports**

A report on outstanding hearing and review reports was circulated, and a number of timing issues were discussed and explained.

The Benchers discussed other matters *in camera*.

WKM  
2013-10-25

Federation of Law Societies  
of Canada



Fédération des ordres professionnels  
de juristes du Canada

# National Mobility Agreement 2013

## National Mobility Agreement 2013

## Federation of Law Societies of Canada

May, 2013  
City

The purpose of this agreement is to facilitate temporary and permanent mobility of lawyers between Canadian jurisdictions.

While the signatories participate in this agreement voluntarily, they intend that only lawyers who are members of signatories that have implemented reciprocal provisions in their jurisdictions will be able to take advantage of the provisions of this agreement.

The signatories recognize that

- they have a duty to the Canadian public and to their members to regulate the inter-jurisdictional practice of law so as to ensure that their members practise law competently, ethically and with financial responsibility, including professional liability insurance and defalcation compensation coverage, in all jurisdictions of Canada,
- while differences exist in the legislation, policies and programs pertaining to the signatories, including those differences between common law and civil law jurisdictions in Canada, lawyers have a professional responsibility to ensure that they are competent with respect to any matter that they undertake, and
- it is desirable to facilitate a nationwide regulatory regime for the inter-jurisdictional practice of law to promote uniform standards and procedures, while recognizing the exclusive authority of each signatory within its own legislative jurisdiction.

Most of the signatories subscribed to the Interjurisdictional Practice Protocol of 1994, in which they agreed to certain measures to facilitate the temporary and permanent inter-jurisdictional practice of law and the enforcement of appropriate standards on lawyers practising law in host jurisdictions.

Since December 2002, all provincial law societies, other than the *Chambre des notaires du Quebec* ("Chambre"), have signed the National Mobility Agreement ("NMA") establishing a comprehensive mobility regime for Canadian lawyers.

In 2006 all law societies other than the *Chambre*, signed the Territorial Mobility Agreement. Under that agreement, provisions were mandated for reciprocal permanent mobility between the law societies of the territories and the provinces for five years. A further agreement made in November 2011 renewed the Territorial Mobility Agreement without a termination date.

## National Mobility Agreement 2013

In June 2008 Quebec enacted a "Regulation respecting the issuance of special permits of the Barreau du Quebec" ("Barreau"), which provided, inter alia, that a member in good standing of a bar of another Canadian province or territory could become a member of the Barreau known as a "Canadian legal advisor" ("CLA"). A CLA may provide legal services respecting the law of federal jurisdiction, the law of his or her home province and public international law.

In March 2010 all law societies, other than the Chambre, signed the Quebec Mobility Agreement ("QMA"). Under that agreement members of the Barreau are able to exercise mobility in the common law jurisdictions on a reciprocal basis as CLAs.

In June 2010 the Council of the Federation approved the Mobility Defalcation Compensation Agreement ("MDCA") to bring more consistency, certainty and transparency to the process for compensating the public if funds are misappropriated by lawyers exercising their mobility rights under the NMA. Since then, all provincial law societies, other than the Barreau and the Chambre, have signed the MDCA.

In March 2012 all law societies, including the Chambre, signed an addendum to the Quebec Mobility Agreement extending to members of the Chambre the right to acquire CLA status in another province.

In January 2013, the Council of the Federation of Law Societies approved a report from the National Mobility Policy Committee. In that report, the Committee concluded and recommended that it would be in the public interest to implement mobility to and from the Barreau on the same terms as now apply to mobility between common law jurisdictions under the permanent mobility provisions of the NMA. The Committee also reported that the CLA provisions of the QMA and its Addendum should continue in place with respect to members of the Chambre, and the Chambre was in favour of that resolution. The Committee's report and recommendations do not affect the current rules for temporary mobility between Quebec and other provinces and the territories.

As a result, the signatories hereby agree to adopt this new National Mobility Agreement, 2013 ("NMA 2013"), changing the original NMA to remove the distinction between members of the Barreau and members of law societies outside of Quebec for the purposes of transfer between governing bodies. The signatories also agree to incorporate into the NMA 2013 the provisions for members of the Chambre to be granted status as CLAs by law societies outside of Quebec and to rescind the QMA and its Addendum.

**THE SIGNATORIES AGREE AS FOLLOWS:****Definitions**

1. In this agreement, unless the context indicates otherwise:

“Barreau” means le Barreau du Québec;

“Chambre” means la Chambre des notaires du Québec;

“day” means any calendar day or part of a calendar day in which a lawyer provides legal services;

“discipline” includes a finding by a governing body of any of the following:

- (a) professional misconduct;
- (b) incompetence;
- (c) conduct unbecoming a lawyer;
- (d) lack of physical or mental capacity to engage in the practice of law;
- (e) any other breach of a lawyer’s professional responsibilities;

“disciplinary record” includes any of the following, unless reversed on appeal or review:

- (a) any action taken by a governing body as a result of discipline;
- (b) disbarment;
- (c) a lawyer’s resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings;
- (d) restrictions or limits on a lawyer’s entitlement to practise;
- (e) any interim suspension or restriction or limits on a lawyer’s entitlement to practise imposed pending the outcome of a disciplinary hearing.

“entitled to practise law” means allowed, under all of the legislation and regulation of a home jurisdiction, to engage in the practice of law in the home jurisdiction;

“governing body” means the Law Society or Barristers’ Society in a Canadian common law jurisdiction, the Barreau and the Chambre;

“home governing body” means any or all of the governing bodies of the legal profession in Canada of which a lawyer is a member, and “home

## National Mobility Agreement 2013

jurisdiction” has a corresponding meaning;

“host governing body” means a governing body of the legal profession in Canada in whose jurisdiction a lawyer practises law without being a member, and “host jurisdiction” has a corresponding meaning;

“Inter-Jurisdictional Practice Protocol” means the 1994 Inter-Jurisdictional Practice Protocol of the Federation of Law Societies of Canada, as amended from time to time;

“lawyer” means a member of a signatory governing body, other than the Chambre;

“liability insurance” means compulsory professional liability errors and omissions insurance required by a governing body;

“mobility permit” means a permit issued by a host governing body on application to a lawyer allowing the lawyer to provide legal services in the host jurisdiction on a temporary basis;

“notary” means a member of the Chambre;

“practice of law” has the meaning with respect to each jurisdiction that applies in that jurisdiction;

“providing legal services” means engaging in the practice of law physically in a Canadian jurisdiction or with respect to the law of a Canadian jurisdiction;

“Registry” means the National Registry of Practising Lawyers established under clause 18 of this agreement;

“resident” has the meaning respecting a province or territory that it has with respect to Canada in the *Income Tax Act* (Canada).

### General

2. The signatories agree to adopt this agreement as a replacement for the National Mobility Agreement of 2002, the Quebec Mobility Agreement of 2010 and the Addendum to the Quebec Mobility Agreement of 2012, all of which are revoked by consent.
3. The signatory governing bodies will
  - (a) use their best efforts to obtain from the appropriate legislative or supervisory bodies amendments to their legislation or regulations necessary or advisable in order to implement the provisions of this agreement;
  - (b) amend their own rules, by-laws, policies and programs to the extent they consider necessary or advisable in order to implement the provisions of this agreement;

## National Mobility Agreement 2013

- (c) comply with the spirit and intent of this agreement to facilitate mobility of Canadian lawyers in the public interest and strive to resolve any differences among them in that spirit and in favour of that intent; and
  - (d) work cooperatively to resolve all current and future differences and ambiguities in legislation, policies and programs regarding inter-jurisdictional mobility.
4. Signatory governing bodies will subscribe to this agreement and be bound by it by means of the signature of an authorized person affixed to any copy of this agreement.
  5. A signatory governing body will not, by reason of this agreement alone,
    - (a) grant to a lawyer who is a member of another governing body greater rights to provide legal services than are permitted to the lawyer by his or her home governing body; or
    - (b) relieve a lawyer of restrictions or limits on the lawyer's right to practise, except under conditions that apply to all members of the signatory governing body.
  6. Amendments made under clause 3(b) will take effect immediately on adoption with respect to members of signatory governing bodies that have adopted reciprocal provisions.

**Temporary Mobility Among Common Law Jurisdictions**

7. Clauses 8 to 32 apply to temporary mobility of lawyers of common law jurisdictions in other common law jurisdictions.

**Mobility without permit**

8. A host governing body will allow a lawyer from another jurisdiction to provide legal services in the host jurisdiction or with respect to the law of the host jurisdiction on a temporary basis, without a mobility permit or notice to the host governing body, for a total of not more than 100 days in a calendar year, provided the lawyer:
  - (a) meets the criteria in clause 11; and
  - (b) has not established an economic nexus with the host jurisdiction as described in clause 17.
9. The host governing body will have the discretion to extend the time limit for temporary mobility under clause 8 with respect to an individual lawyer.

## National Mobility Agreement 2013

10. It will be the responsibility of a lawyer to
  - (a) record and verify the number of days in which he or she provides legal services in a host jurisdiction(s) or with respect to each jurisdiction; and
  - (b) prove that he or she has complied with provisions implementing clause 8.
  
11. To qualify to provide legal services on a temporary basis without a mobility permit or notice to the host governing body under clause 8, a lawyer will be required to do each of the following at all times:
  - (a) be entitled to practise law in a home jurisdiction;
  - (b) carry liability insurance that:
    - (i) is reasonably comparable in coverage and amount to that required of lawyers of the host jurisdiction; and
    - (ii) extends to the lawyer's practice in the host jurisdiction;
  - (c) have defalcation compensation coverage from a Canadian governing body that extends to the lawyer's practice in the host jurisdiction;
  - (d) not be subject to conditions of or restrictions on the lawyer's practice or membership in the governing body in any jurisdiction;
  - (e) not be the subject of criminal or disciplinary proceedings in any jurisdiction; and
  - (f) have no disciplinary record in any jurisdiction.
  
12. For the purposes of clause 8:
  - (a) a lawyer practising law of federal jurisdiction in a host jurisdiction will be providing legal services in the host jurisdiction;
  - (b) as an exception to subclause (a), when appearing before the following tribunals in a host jurisdiction a lawyer will not be providing legal services in a host jurisdiction:
    - (i) the Supreme Court of Canada;
    - (ii) the Federal Court of Canada;
    - (iii) the Tax Court of Canada;
    - (iv) a federal administrative tribunal.
  
13. A host jurisdiction will allow a lawyer to accept funds in trust on deposit, provided the funds are deposited to a trust account:
  - (a) in the lawyer's home jurisdiction; or
  - (b) operated in the host jurisdiction by a member of the host governing body.

## National Mobility Agreement 2013

**Mobility permit required**

14. If a lawyer does not meet the criteria in clause 11 to provide legal services in the host jurisdiction or with respect to the law of the host jurisdiction on a temporary basis, a host governing body will issue a mobility permit to the lawyer:
- (a) on application;
  - (b) if, in the complete discretion of the host governing body, it is consistent with the public interest to do so;
  - (c) for a total of not more than 100 days in a calendar year; and
  - (d) subject to any conditions and restrictions that the host governing body considers appropriate.

**Temporary mobility not allowed**

15. A host governing body will not allow a lawyer who has established an economic nexus with the host jurisdiction to provide legal services on a temporary basis under clause 8, but will require the lawyer to do one of the following:
- (a) cease providing legal services in the host jurisdiction forthwith;
  - (b) apply for and obtain membership in the host governing body; or
  - (c) apply for and obtain a mobility permit under clause 14.
16. On application, the host governing body will have the discretion to allow a lawyer to continue to provide legal services in the host jurisdiction or with respect to the law of the host jurisdiction pending consideration of an application under clause 15(b) or (c).
17. In clause 15, an economic nexus is established by actions inconsistent with temporary mobility to the host jurisdiction, including but not limited to doing any of the following in the host jurisdiction:
- (a) providing legal services beyond 100 days, or longer period allowed under clause 9;
  - (b) opening an office from which legal services are offered or provided to the public;
  - (c) becoming resident;
  - (d) opening or operating a trust account, or accepting trust funds, except as permitted under clause 13.

**National Registry of Practising Lawyers**

18. The signatory governing bodies will establish, maintain and operate a National Registry of Practising Lawyers containing the names of lawyers from each signatory governing body qualified under clause 11 to practise law interjurisdictionally without a mobility permit or notice to the host governing body.

## National Mobility Agreement 2013

19. Each signatory governing body will take all reasonable steps to ensure that all relevant information respecting its members is supplied to the Registry and is kept current and accurate.

**Liability Insurance and Defalcation Compensation Funds**

20. Each signatory governing body will ensure that the ongoing liability insurance in its jurisdiction
- (a) extends to its members for the provision of legal services on a temporary basis in or with respect to the law of host signatory jurisdictions; and
  - (b) provides occurrence or claim limits of \$1,000,000 and \$2,000,000 annual per member aggregate.
21. In the event that a claim arises from a lawyer providing legal services on a temporary basis, and the closest and most real connection to the claim is with a host jurisdiction, the home governing body will provide at least the same scope of coverage as the liability insurance in the host jurisdiction. For clarity, all claims and potential claims reported under the policy will remain subject to the policy's occurrence or claim limit of \$1,000,000 and \$2,000,000 annual per member aggregate.
22. Signatory governing bodies will notify one another in writing, as soon as practicable, of any changes to their liability insurance policies that affect the limits of liability or scope of coverage.
23. Signatory governing bodies that are also signatories to the MDCA will apply or continue to apply the provisions of the MDCA respecting defalcation compensation. Signatory governing bodies that are not signatories to the MDCA will apply or continue to apply the provisions of the Interjurisdictional Practice Protocol respecting defalcation compensation, specifically clause 10 of the Protocol and Appendix 6 to the Protocol.
24. Signatory governing bodies will notify one another in writing, as soon as practicable, of any changes to their defalcation compensation fund programs that affect the limits of compensation available or the criteria for payment.

**Enforcement**

25. A host governing body that has reasonable grounds to believe that a member of another governing body has provided legal services in the host jurisdiction will be entitled to require that lawyer to:
- (a) account for and verify the number of days spent providing legal services in the host jurisdiction; and
  - (b) verify that he or she has not done anything inconsistent with the provision of legal services on a temporary basis.

## National Mobility Agreement 2013

26. If a lawyer fails or refuses to comply with the provisions of clause 25, a host governing body will be entitled to:
- (a) prohibit the lawyer from providing legal services in the jurisdiction for any period of time; or
  - (b) require the lawyer to apply for membership in the host jurisdiction before providing further legal services in the jurisdiction.
27. When providing legal services in a host jurisdiction or with respect to the law of a host jurisdiction, all lawyers will be required to comply with the applicable legislation, regulations, rules and standards of professional conduct of the host jurisdiction.
28. In the event of alleged misconduct arising out of a lawyer providing legal services in a host jurisdiction, the lawyer's home governing body will:
- (a) assume responsibility for the conduct of disciplinary proceedings against the lawyer unless the host and home governing bodies agree to the contrary; and
  - (b) consult with the host governing body respecting the manner in which disciplinary proceedings will be taken against the lawyer.
29. If a signatory governing body investigates the conduct of or takes disciplinary proceedings against a lawyer, that lawyer's home governing body or bodies, and each governing body in whose jurisdiction the lawyer has provided legal services on a temporary basis will provide all relevant information and documentation respecting the lawyer as is reasonable in the circumstances.
30. In determining the location of a hearing under clause 28, the primary considerations will be the public interest, convenience and cost.
31. A governing body that initiates disciplinary proceedings against a lawyer under clause 28 will assume full responsibility for conduct of the proceedings, including costs, subject to a contrary agreement between governing bodies.
32. In any proceeding of a signatory governing body, a duly certified copy of a disciplinary decision of another governing body concerning a lawyer found guilty of misconduct will be proof of that lawyer's guilt.

**Permanent Mobility of Lawyers**

33. A signatory governing body will require no further qualifications for a member of another governing body to be eligible for membership than the following:
- (a) entitlement to practise law in the lawyer's home jurisdiction;
  - (b) good character and fitness to be a lawyer, on the standard ordinarily applied to applicants for membership; and
  - (c) any other qualifications that ordinarily apply for lawyers to be entitled to practise law in its jurisdiction.

## National Mobility Agreement 2013

34. Before admitting as a member a lawyer qualified under clauses 33 to 38, a governing body will not require the lawyer to pass a transfer examination or other examination, but may require the lawyer to do all of the following:
- (a) provide certificates of standing from all Canadian and foreign governing bodies of which the lawyer is or has been a member;
  - (b) disclose criminal and disciplinary records in any jurisdiction;
  - (c) consent to access by the governing body to the lawyer's regulatory files of all governing bodies of which the lawyer is a member, whether in Canada or elsewhere; and
  - (d) certify that he or she has reviewed all of the materials reasonably required by the governing body.
35. Members of the Barreau whose legal training was obtained outside Canada and who have not had their credentials reviewed and accepted by the Barreau are not qualifying members of the Barreau for the purpose of clauses 33 to 40.

**Public Information**

36. A governing body will make available to the public information obtained under clause 34 in the same manner as similar records originating in its jurisdiction.

**Liability Insurance**

37. Subject to clause 40, a signatory governing body other than the Barreau will, on application, exempt a lawyer from liability insurance requirements if the lawyer does the following in another signatory jurisdiction:
- (a) is resident;
  - (b) is a member of the governing body; and
  - (c) maintains ongoing liability insurance required in that jurisdiction that provides occurrence or claim limits of \$1,000,000 and \$2,000,000 annual per member aggregate.
38. For the purposes of clause 37, a lawyer who is resident in Quebec and who is a member of more than one signatory governing body other than the Barreau will be deemed resident in one of the other jurisdictions in which the lawyer is a member, as determined in accordance with nationally consistent criteria to be included in the insurance programs of all signatory jurisdictions. In the event that nationally consistent criteria are not in place, the lawyer will be deemed resident in the jurisdiction of the signatory body in which the lawyer has been a member continuously for the longest period of time.
39. In the event that a claim arises from a lawyer providing legal services and the closest and most real connection to the claim is with a jurisdiction in which the lawyer has claimed an exemption under clause 37, the insurance program of the governing body in the jurisdiction where the lawyer is insured will provide at least the same scope of coverage as the liability insurance in the jurisdiction in which

## National Mobility Agreement 2013

the lawyer is exempt. For clarity, all claims and potential claims reported under the policy will remain subject to the policy's occurrence or claim limit of \$1,000,000 and \$2,000,000 annual per member aggregate.

40. A lawyer who is a member of the Barreau and one or more of the other signatory governing bodies must comply with the liability insurance requirements of the Barreau and at least one of the other signatory governing bodies of which the lawyer is a member. Insurance coverage is to be provided as follows:
- (a) by the professional liability insurance program of the Barreau with respect to services provided by the lawyer as a member of the Barreau;
  - (b) by the professional liability insurance program of a signatory governing body other than the Barreau with respect to services provided by the lawyer as a member of a signatory governing body other than the Barreau.

### **Temporary Mobility between Quebec and Common Law Jurisdictions**

41. The Barreau will permit lawyers entitled to practise law in a home jurisdiction, on application under regulations that apply to the Barreau, to provide legal services in Quebec or with respect to the law of Quebec on a specific case or for a specific client for a period of up to one year, which may be extended on application to the Barreau.
42. A signatory governing body, other than the Barreau, will permit members of the Barreau to provide legal services in its jurisdiction or with respect to the law of its jurisdiction on one of the following bases:
- (a) as provided in clauses 8 to 32; or
  - (b) as permitted by the Barreau in respect of the members of the signatory governing body.

### **Permanent Mobility of Quebec Notaries**

43. Signatory common law governing bodies will establish and maintain a program in order to grant Canadian Legal Advisor ("CLA") status to qualifying members of the Chambre.
44. Members of the Chambre whose legal training was obtained outside Canada and who have not had their credentials reviewed and accepted by the Chambre are not qualifying members of the Chambre for the purpose of clauses 42 to 49.

## National Mobility Agreement 2013

45. A member of the Chambre who is granted the status of CLA in any jurisdiction outside of Quebec may, in his or her capacity as a CLA:
- (a) give legal advice and consultations on legal matters involving the law of Quebec or involving matters under federal jurisdiction;
  - (b) prepare and draw up a notice, motion, proceeding or similar document intended for use in a case before a judicial or quasi-judicial body in a matter under federal jurisdiction where expressly permitted by federal statute or regulations;
  - (c) give legal advice and consultations on legal matters involving public international law; and
  - (d) plead or act before a judicial or quasi-judicial body in a matter under federal jurisdiction where expressly permitted by federal statute or regulations.
46. A governing body will require no further qualifications for a notary to be eligible for status as a CLA beyond the following:
- (a) entitlement to practise the notarial profession in Quebec; and
  - (b) good character and fitness to be a member of the legal profession, on the standard ordinarily applied to applicants for membership.
47. Before granting CLA status to a notary qualified under clauses 42 to 50, a governing body will not require the notary to pass a transfer examination or other examination, but may require the notary to do all of the following:
- (a) provide certificates of standing from all Canadian and foreign governing bodies of the legal profession of which the notary is or has been a member;
  - (b) disclose criminal and disciplinary records in any jurisdiction; and
  - (c) consent to access by the governing body to the notary's regulatory files of all governing bodies of the legal profession of which the notary is a member, whether in Canada or elsewhere.
48. A governing body will make available to the public information obtained under clause 47 in the same manner as similar records originating in its jurisdiction.
49. A governing body must require that a notary who is granted the status of a CLA continue to maintain his or her practising membership in the Chambre.
50. The Chambre will continue to make available to its members who are also CLAs in another jurisdiction ongoing liability insurance with minimum occurrence or claim limits for indemnity of \$1,000,000 and \$2,000,000 annual per member

## National Mobility Agreement 2013

aggregate.

**Inter-Jurisdictional Practice Protocol**

51. The signatory governing bodies agree that the Inter-Jurisdictional Practice Protocol will continue in effect, to the extent that it is not replaced by or inconsistent with legislation, regulation and programs adopted and implemented to give effect to this agreement.

**Transition Provisions**

52. This agreement is a multi-lateral agreement, effective respecting the governing bodies that are signatories, and it does not require unanimous agreement of Canadian governing bodies.
53. Provisions governing temporary and permanent mobility in effect at the time that a governing body becomes a signatory to this agreement will continue in effect:
- (a) with respect to all Canadian lawyers until this agreement is implemented; and
  - (b) with respect to members of Canadian law societies that are not signatories to this agreement.

**Withdrawal**

54. A signatory may cease to be bound by this agreement by giving each other signatory written notice of at least one clear calendar year.
55. A signatory that gives notice under clause 54 will:
- (a) immediately notify its members in writing of the effective date of withdrawal; and
  - (b) require that its members who provide legal services in the jurisdiction of another signatory governing body ascertain from that governing body its requirements for inter-provincial mobility before providing legal services in that jurisdiction after the effective date of withdrawal.

National Mobility Agreement 2013

**SIGNED as indicated in respect of each signatory below**

LAW SOCIETY OF BRITISH COLUMBIA

Per: \_\_\_\_\_

Authorized Signatory

\_\_\_\_\_

Date

LAW SOCIETY OF ALBERTA

Per: \_\_\_\_\_

Authorized Signatory

\_\_\_\_\_

Date

LAW SOCIETY OF SASKATCHEWAN

Per: \_\_\_\_\_

Authorized Signatory

\_\_\_\_\_

Date

LAW SOCIETY OF MANITOBA

Per: \_\_\_\_\_

Authorized Signatory

\_\_\_\_\_

Date

LAW SOCIETY OF UPPER CANADA

Per: \_\_\_\_\_

Authorized Signatory

\_\_\_\_\_

Date

National Mobility Agreement 2013

BARREAU DU QUÉBEC

Per: \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Date

CHAMBRE DES NOTAIRES DU QUÉBEC

Per: \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Date

LAW SOCIETY OF NEW BRUNSWICK

Per: \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Date

NOVA SCOTIA BARRISTERS' SOCIETY

Per: \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Date

LAW SOCIETY OF PRINCE EDWARD ISLAND

Per: \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Date

National Mobility Agreement 2013

LAW SOCIETY OF NEWFOUNDLAND AND LABRADOR

Per: \_\_\_\_\_

Authorized Signatory

\_\_\_\_\_

Date

Federation of Law Societies  
of Canada



Fédération des ordres professionnels  
de juristes du Canada

# National Mobility Agreement 2013

## Federation of Law Societies of Canada

May, 2013  
City

The purpose of this agreement is to facilitate temporary and permanent mobility of lawyers between Canadian jurisdictions.

While the signatories participate in this agreement voluntarily, they intend that only lawyers who are members of signatories that have implemented reciprocal provisions in their jurisdictions will be able to take advantage of the provisions of this agreement.

The signatories recognize that

- they have a duty to the Canadian public and to their members to regulate the inter-jurisdictional practice of law so as to ensure that their members practise law competently, ethically and with financial responsibility, including professional liability insurance and defalcation compensation coverage, in all jurisdictions of Canada,
- while differences exist in the legislation, policies and programs pertaining to the signatories, including those differences between common law and civil law jurisdictions in Canada, lawyers have a professional responsibility to ensure that they are competent with respect to any matter that they undertake, and
- it is desirable to facilitate a nationwide regulatory regime for the inter-jurisdictional practice of law to promote uniform standards and procedures, while recognizing the exclusive authority of each signatory within its own legislative jurisdiction.

Most of the signatories subscribed to the Interjurisdictional Practice Protocol of 1994, in which they agreed to certain measures to facilitate the temporary and permanent inter-jurisdictional practice of law and the enforcement of appropriate standards on lawyers practising law in host jurisdictions.

Since December 2002, all provincial law societies, other than the *Chambre des notaires du Quebec* ("Chambre"), have signed the National Mobility Agreement ("NMA") establishing a comprehensive mobility regime for Canadian lawyers.

In 2006 all law societies other than the *Chambre*, signed the Territorial Mobility Agreement. Under that agreement, provisions were mandated for reciprocal permanent mobility between the law societies of the territories and the provinces for five years. A further agreement made in November 2011 renewed the Territorial Mobility Agreement without a termination date.

## National Mobility Agreement 2013

In June 2008 Quebec enacted a "Regulation respecting the issuance of special permits of the Barreau du Quebec" ("Barreau"), which provided, inter alia, that a member in good standing of a bar of another Canadian province or territory could become a member of the Barreau known as a "Canadian legal advisor" ("CLA"). A CLA may provide legal services respecting the law of federal jurisdiction, the law of his or her home province and public international law.

In March 2010 all law societies, other than the Chambre, signed the Quebec Mobility Agreement ("QMA"). Under that agreement members of the Barreau are able to exercise mobility in the common law jurisdictions on a reciprocal basis as CLAs.

In June 2010 the Council of the Federation approved the Mobility Defalcation Compensation Agreement ("MDCA") to bring more consistency, certainty and transparency to the process for compensating the public if funds are misappropriated by lawyers exercising their mobility rights under the NMA. Since then, all provincial law societies, other than the Barreau and the Chambre, have signed the MDCA.

In March 2012 all law societies, including the Chambre, signed an addendum to the Quebec Mobility Agreement extending to members of the Chambre the right to acquire CLA status in another province.

In January 2013, the Council of the Federation of Law Societies approved a report from the National Mobility Policy Committee. In that report, the Committee concluded and recommended that it would be in the public interest to implement mobility to and from the Barreau on the same terms as now apply to mobility between common law jurisdictions under the permanent mobility provisions of the NMA. The Committee also reported that the CLA provisions of the QMA and its Addendum should continue in place with respect to members of the Chambre, and the Chambre was in favour of that resolution. The Committee's report and recommendations do not affect the current rules for temporary mobility between Quebec and other provinces and the territories.

As a result, the signatories hereby agree to adopt this new National Mobility Agreement, 2013 ("NMA 2013"), changing the original NMA to remove the distinction between members of the Barreau and members of law societies outside of Quebec for the purposes of transfer between governing bodies. The signatories also agree to incorporate into the NMA 2013 the provisions for members of the Chambre to be granted status as CLAs by law societies outside of Quebec and to rescind the QMA and its Addendum.

**THE SIGNATORIES AGREE AS FOLLOWS:****Definitions**

1. In this agreement, unless the context indicates otherwise:

“Barreau” means le Barreau du Québec;

“Chambre” means la Chambre des notaires du Québec;

“day” means any calendar day or part of a calendar day in which a lawyer provides legal services;

“discipline” includes a finding by a governing body of any of the following:

- (a) professional misconduct;
- (b) incompetence;
- (c) conduct unbecoming a lawyer;
- (d) lack of physical or mental capacity to engage in the practice of law;
- (e) any other breach of a lawyer’s professional responsibilities;

“disciplinary record” includes any of the following, unless reversed on appeal or review:

- (a) any action taken by a governing body as a result of discipline;
- (b) disbarment;
- (c) a lawyer’s resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings;
- (d) restrictions or limits on a lawyer’s entitlement to practise;
- (e) any interim suspension or restriction or limits on a lawyer’s entitlement to practise imposed pending the outcome of a disciplinary hearing.

“entitled to practise law” means allowed, under all of the legislation and regulation of a home jurisdiction, to engage in the practice of law in the home jurisdiction;

“governing body” means the Law Society or Barristers’ Society in a Canadian common law jurisdiction, the Barreau and the Chambre;

“home governing body” means any or all of the governing bodies of the legal profession in Canada of which a lawyer is a member, and “home

## National Mobility Agreement 2013

jurisdiction” has a corresponding meaning;

“host governing body” means a governing body of the legal profession in Canada in whose jurisdiction a lawyer practises law without being a member, and “host jurisdiction” has a corresponding meaning;

“Inter-Jurisdictional Practice Protocol” means the 1994 Inter-Jurisdictional Practice Protocol of the Federation of Law Societies of Canada, as amended from time to time;

“lawyer” means a member of a signatory governing body, other than the Chambre;

“liability insurance” means compulsory professional liability errors and omissions insurance required by a governing body;

“mobility permit” means a permit issued by a host governing body on application to a lawyer allowing the lawyer to provide legal services in the host jurisdiction on a temporary basis;

“notary” means a member of the Chambre;

“practice of law” has the meaning with respect to each jurisdiction that applies in that jurisdiction;

“providing legal services” means engaging in the practice of law physically in a Canadian jurisdiction or with respect to the law of a Canadian jurisdiction;

“Registry” means the National Registry of Practising Lawyers established under clause 18 of this agreement;

“resident” has the meaning respecting a province or territory that it has with respect to Canada in the *Income Tax Act* (Canada).

## General

2. The signatories agree to adopt this agreement as a replacement for the National Mobility Agreement of 2002, the Quebec Mobility Agreement of 2010 and the Addendum to the Quebec Mobility Agreement of 2012, all of which are revoked by consent.
3. The signatory governing bodies will
  - (a) use their best efforts to obtain from the appropriate legislative or supervisory bodies amendments to their legislation or regulations necessary or advisable in order to implement the provisions of this agreement;
  - (b) amend their own rules, by-laws, policies and programs to the extent they consider necessary or advisable in order to implement the provisions of this agreement;

## National Mobility Agreement 2013

- (c) comply with the spirit and intent of this agreement to facilitate mobility of Canadian lawyers in the public interest and strive to resolve any differences among them in that spirit and in favour of that intent; and
  - (d) work cooperatively to resolve all current and future differences and ambiguities in legislation, policies and programs regarding inter-jurisdictional mobility.
4. Signatory governing bodies will subscribe to this agreement and be bound by it by means of the signature of an authorized person affixed to any copy of this agreement.
  5. A signatory governing body will not, by reason of this agreement alone,
    - (a) grant to a lawyer who is a member of another governing body greater rights to provide legal services than are permitted to the lawyer by his or her home governing body; or
    - (b) relieve a lawyer of restrictions or limits on the lawyer's right to practise, except under conditions that apply to all members of the signatory governing body.
  6. Amendments made under clause 3(b) will take effect immediately on adoption with respect to members of signatory governing bodies that have adopted reciprocal provisions.

**Temporary Mobility Among Common Law Jurisdictions**

7. Clauses 8 to 32 apply to temporary mobility of lawyers of common law jurisdictions in other common law jurisdictions.

**Mobility without permit**

8. A host governing body will allow a lawyer from another jurisdiction to provide legal services in the host jurisdiction or with respect to the law of the host jurisdiction on a temporary basis, without a mobility permit or notice to the host governing body, for a total of not more than 100 days in a calendar year, provided the lawyer:
  - (a) meets the criteria in clause 11; and
  - (b) has not established an economic nexus with the host jurisdiction as described in clause 17.
9. The host governing body will have the discretion to extend the time limit for temporary mobility under clause 8 with respect to an individual lawyer.

## National Mobility Agreement 2013

10. It will be the responsibility of a lawyer to
  - (a) record and verify the number of days in which he or she provides legal services in a host jurisdiction(s) or with respect to each jurisdiction; and
  - (b) prove that he or she has complied with provisions implementing clause 8.
  
11. To qualify to provide legal services on a temporary basis without a mobility permit or notice to the host governing body under clause 8, a lawyer will be required to do each of the following at all times:
  - (a) be entitled to practise law in a home jurisdiction;
  - (b) carry liability insurance that:
    - (i) is reasonably comparable in coverage and amount to that required of lawyers of the host jurisdiction; and
    - (ii) extends to the lawyer's practice in the host jurisdiction;
  - (c) have defalcation compensation coverage from a Canadian governing body that extends to the lawyer's practice in the host jurisdiction;
  - (d) not be subject to conditions of or restrictions on the lawyer's practice or membership in the governing body in any jurisdiction;
  - (e) not be the subject of criminal or disciplinary proceedings in any jurisdiction; and
  - (f) have no disciplinary record in any jurisdiction.
  
12. For the purposes of clause 8:
  - (a) a lawyer practising law of federal jurisdiction in a host jurisdiction will be providing legal services in the host jurisdiction;
  - (b) as an exception to subclause (a), when appearing before the following tribunals in a host jurisdiction a lawyer will not be providing legal services in a host jurisdiction:
    - (i) the Supreme Court of Canada;
    - (ii) the Federal Court of Canada;
    - (iii) the Tax Court of Canada;
    - (iv) a federal administrative tribunal.
  
13. A host jurisdiction will allow a lawyer to accept funds in trust on deposit, provided the funds are deposited to a trust account:
  - (a) in the lawyer's home jurisdiction; or
  - (b) operated in the host jurisdiction by a member of the host governing body.

## National Mobility Agreement 2013

**Mobility permit required**

14. If a lawyer does not meet the criteria in clause 11 to provide legal services in the host jurisdiction or with respect to the law of the host jurisdiction on a temporary basis, a host governing body will issue a mobility permit to the lawyer:
- (a) on application;
  - (b) if, in the complete discretion of the host governing body, it is consistent with the public interest to do so;
  - (c) for a total of not more than 100 days in a calendar year; and
  - (d) subject to any conditions and restrictions that the host governing body considers appropriate.

**Temporary mobility not allowed**

15. A host governing body will not allow a lawyer who has established an economic nexus with the host jurisdiction to provide legal services on a temporary basis under clause 8, but will require the lawyer to do one of the following:
- (a) cease providing legal services in the host jurisdiction forthwith;
  - (b) apply for and obtain membership in the host governing body; or
  - (c) apply for and obtain a mobility permit under clause 14.
16. On application, the host governing body will have the discretion to allow a lawyer to continue to provide legal services in the host jurisdiction or with respect to the law of the host jurisdiction pending consideration of an application under clause 15(b) or (c).
17. In clause 15, an economic nexus is established by actions inconsistent with temporary mobility to the host jurisdiction, including but not limited to doing any of the following in the host jurisdiction:
- (a) providing legal services beyond 100 days, or longer period allowed under clause 9;
  - (b) opening an office from which legal services are offered or provided to the public;
  - (c) becoming resident;
  - (d) opening or operating a trust account, or accepting trust funds, except as permitted under clause 13.

**National Registry of Practising Lawyers**

18. The signatory governing bodies will establish, maintain and operate a National Registry of Practising Lawyers containing the names of lawyers from each signatory governing body qualified under clause 11 to practise law interjurisdictionally without a mobility permit or notice to the host governing body.

## National Mobility Agreement 2013

19. Each signatory governing body will take all reasonable steps to ensure that all relevant information respecting its members is supplied to the Registry and is kept current and accurate.

**Liability Insurance and Defalcation Compensation Funds**

20. Each signatory governing body will ensure that the ongoing liability insurance in its jurisdiction
  - (a) extends to its members for the provision of legal services on a temporary basis in or with respect to the law of host signatory jurisdictions; and
  - (b) provides occurrence or claim limits of \$1,000,000 and \$2,000,000 annual per member aggregate.
21. In the event that a claim arises from a lawyer providing legal services on a temporary basis, and the closest and most real connection to the claim is with a host jurisdiction, the home governing body will provide at least the same scope of coverage as the liability insurance in the host jurisdiction. For clarity, all claims and potential claims reported under the policy will remain subject to the policy's occurrence or claim limit of \$1,000,000 and \$2,000,000 annual per member aggregate.
22. Signatory governing bodies will notify one another in writing, as soon as practicable, of any changes to their liability insurance policies that affect the limits of liability or scope of coverage.
23. Signatory governing bodies that are also signatories to the MDCA will apply or continue to apply the provisions of the MDCA respecting defalcation compensation. Signatory governing bodies that are not signatories to the MDCA will apply or continue to apply the provisions of the Interjurisdictional Practice Protocol respecting defalcation compensation, specifically clause 10 of the Protocol and Appendix 6 to the Protocol.
24. Signatory governing bodies will notify one another in writing, as soon as practicable, of any changes to their defalcation compensation fund programs that affect the limits of compensation available or the criteria for payment.

**Enforcement**

25. A host governing body that has reasonable grounds to believe that a member of another governing body has provided legal services in the host jurisdiction will be entitled to require that lawyer to:
  - (a) account for and verify the number of days spent providing legal services in the host jurisdiction; and
  - (b) verify that he or she has not done anything inconsistent with the provision of legal services on a temporary basis.

## National Mobility Agreement 2013

26. If a lawyer fails or refuses to comply with the provisions of clause 25, a host governing body will be entitled to:
- (a) prohibit the lawyer from providing legal services in the jurisdiction for any period of time; or
  - (b) require the lawyer to apply for membership in the host jurisdiction before providing further legal services in the jurisdiction.
27. When providing legal services in a host jurisdiction or with respect to the law of a host jurisdiction, all lawyers will be required to comply with the applicable legislation, regulations, rules and standards of professional conduct of the host jurisdiction.
28. In the event of alleged misconduct arising out of a lawyer providing legal services in a host jurisdiction, the lawyer's home governing body will:
- (a) assume responsibility for the conduct of disciplinary proceedings against the lawyer unless the host and home governing bodies agree to the contrary; and
  - (b) consult with the host governing body respecting the manner in which disciplinary proceedings will be taken against the lawyer.
29. If a signatory governing body investigates the conduct of or takes disciplinary proceedings against a lawyer, that lawyer's home governing body or bodies, and each governing body in whose jurisdiction the lawyer has provided legal services on a temporary basis will provide all relevant information and documentation respecting the lawyer as is reasonable in the circumstances.
30. In determining the location of a hearing under clause 28, the primary considerations will be the public interest, convenience and cost.
31. A governing body that initiates disciplinary proceedings against a lawyer under clause 28 will assume full responsibility for conduct of the proceedings, including costs, subject to a contrary agreement between governing bodies.
32. In any proceeding of a signatory governing body, a duly certified copy of a disciplinary decision of another governing body concerning a lawyer found guilty of misconduct will be proof of that lawyer's guilt.

**Permanent Mobility of Lawyers**

33. A signatory governing body will require no further qualifications for a member of another governing body to be eligible for membership than the following:
- (a) entitlement to practise law in the lawyer's home jurisdiction;
  - (b) good character and fitness to be a lawyer, on the standard ordinarily applied to applicants for membership; and
  - (c) any other qualifications that ordinarily apply for lawyers to be entitled to practise law in its jurisdiction.

## National Mobility Agreement 2013

34. Before admitting as a member a lawyer qualified under clauses 33 to 38, a governing body will not require the lawyer to pass a transfer examination or other examination, but may require the lawyer to do all of the following:
- (a) provide certificates of standing from all Canadian and foreign governing bodies of which the lawyer is or has been a member;
  - (b) disclose criminal and disciplinary records in any jurisdiction;
  - (c) consent to access by the governing body to the lawyer's regulatory files of all governing bodies of which the lawyer is a member, whether in Canada or elsewhere; and
  - (d) certify that he or she has reviewed all of the materials reasonably required by the governing body.
35. Members of the Barreau whose legal training was obtained outside Canada and who have not had their credentials reviewed and accepted by the Barreau are not qualifying members of the Barreau for the purpose of clauses 33 to ~~38~~39~~40~~.

**Public Information**

36. A governing body will make available to the public information obtained under clause 34 in the same manner as similar records originating in its jurisdiction.

**Liability Insurance**

37. Subject to clause 40, On application, a signatory governing body other than the Barreau will, on application, exempt a lawyer from liability insurance requirements if the lawyer does the following in another signatory jurisdiction:
- (a) is resident;
  - (b) is a member of the governing body; and
  - (c) maintains ongoing liability insurance required in that jurisdiction that provides occurrence or claim limits of \$1,000,000 and \$2,000,000 annual per member aggregate.

38. For the purposes of clause 37, a lawyer who is resident in Quebec and who is a member of more than one signatory governing body other than the Barreau will be deemed resident in one of the other jurisdictions in which the lawyer is a member, as determined in accordance with nationally consistent criteria to be included in the insurance programs of all signatory jurisdictions. In the event that nationally consistent criteria are not in place, the lawyer will be deemed resident in the jurisdiction of the signatory body in which the lawyer has been a member continuously for the longest period of time.

- ~~38~~39. In the event that a claim arises from a lawyer providing legal services and the closest and most real connection to the claim is with a jurisdiction in which the lawyer has claimed an exemption under clause 37, the insurance program of the governing body in the jurisdiction where the lawyer is insured will provide at least the same scope of coverage as the liability insurance in the jurisdiction in which

## National Mobility Agreement 2013

the lawyer is exempt. For clarity, all claims and potential claims reported under the policy will remain subject to the policy's occurrence or claim limit of \$1,000,000 and \$2,000,000 annual per member aggregate.

40. A lawyer who is a member of the Barreau and one or more of the other signatory governing bodies must comply with the liability insurance requirements of the Barreau and at least one of the other signatory governing bodies of which the lawyer is a member. Insurance coverage is to be provided as follows:

(a) by the professional liability insurance program of the Barreau with respect to services provided by the lawyer as a member of the Barreau;

(b) by the professional liability insurance program of a signatory governing body other than the Barreau with respect to services provided by the lawyer as a member of a signatory governing body other than the Barreau.

### Temporary Mobility between Quebec and Common Law Jurisdictions

4041. The Barreau will permit lawyers entitled to practise law in a home jurisdiction, on application under regulations that apply to the Barreau, to provide legal services in Quebec or with respect to the law of Quebec on a specific case or for a specific client for a period of up to one year, which may be extended on application to the Barreau.

4142. A signatory governing body, other than the Barreau, will permit members of the Barreau to provide legal services in its jurisdiction or with respect to the law of its jurisdiction on one of the following bases:

- (a) as provided in clauses 8 to 32; or
- (b) as permitted by the Barreau in respect of the members of the signatory governing body.

### Permanent Mobility of Quebec Notaries

4243. Signatory common law governing bodies will establish and maintain a program in order to grant Canadian Legal Advisor ("CLA") status to qualifying members of the Chambre.

4344. Members of the Chambre whose legal training was obtained outside Canada and who have not had their credentials reviewed and accepted by the Chambre are not qualifying members of the Chambre for the purpose of clauses 4142 to 4749.

## National Mobility Agreement 2013

4445. A member of the Chambre who is granted the status of CLA in any jurisdiction outside of Quebec may, in his or her capacity as a CLA:

- (a) give legal advice and consultations on legal matters involving the law of Quebec or involving matters under federal jurisdiction;
- (b) prepare and draw up a notice, motion, proceeding or similar document intended for use in a case before a judicial or quasi-judicial body in a matter under federal jurisdiction where expressly permitted by federal statute or regulations;
- (c) give legal advice and consultations on legal matters involving public international law; and
- (d) plead or act before a judicial or quasi-judicial body in a matter under federal jurisdiction where expressly permitted by federal statute or regulations.

4546. A governing body will require no further qualifications for a notary to be eligible for status as a CLA beyond the following:

- (a) entitlement to practise the notarial profession in Quebec; and
- (b) good character and fitness to be a member of the legal profession, on the standard ordinarily applied to applicants for membership.

4647. Before granting CLA status to a notary qualified under clauses 4142 to 4750, a governing body will not require the notary to pass a transfer examination or other examination, but may require the notary to do all of the following:

- (a) provide certificates of standing from all Canadian and foreign governing bodies of the legal profession of which the notary is or has been a member;
- (b) disclose criminal and disciplinary records in any jurisdiction; and
- (c) consent to access by the governing body to the notary's regulatory files of all governing bodies of the legal profession of which the notary is a member, whether in Canada or elsewhere.

4748. A governing body will make available to the public information obtained under clause 4547 in the same manner as similar records originating in its jurisdiction.

4849. A governing body must require that a notary who is granted the status of a CLA continue to maintain his or her practising membership in the Chambre.

50. The Chambre will continue to make available to its members who are also CLAs in another jurisdiction ongoing liability insurance with minimum occurrence or claim limits for indemnity of \$1,000,000 and \$2,000,000 annual per member

aggregate.

### **Inter-Jurisdictional Practice Protocol**

4951. The signatory governing bodies agree that the Inter-Jurisdictional Practice Protocol will continue in effect, to the extent that it is not replaced by or inconsistent with legislation, regulation and programs adopted and implemented to give effect to this agreement.

### **Transition Provisions**

5052. This agreement is a multi-lateral agreement, effective respecting the governing bodies that are signatories, and it does not require unanimous agreement of Canadian governing bodies.

5153. Provisions governing temporary and permanent mobility in effect at the time that a governing body becomes a signatory to this agreement will continue in effect:

- (a) with respect to all Canadian lawyers until this agreement is implemented; and
- (b) with respect to members of Canadian law societies that are not signatories to this agreement.

### **Withdrawal**

5254. A signatory may cease to be bound by this agreement by giving each other signatory written notice of at least one clear calendar year.

5355. A signatory that gives notice under clause 5454 will:

- (a) immediately notify its members in writing of the effective date of withdrawal; and
- (b) require that its members who provide legal services in the jurisdiction of another signatory governing body ascertain from that governing body its requirements for inter-provincial mobility before providing legal services in that jurisdiction after the effective date of withdrawal.

National Mobility Agreement 2013

**SIGNED as indicated in respect of each signatory below**

LAW SOCIETY OF BRITISH COLUMBIA

Per: \_\_\_\_\_

Authorized Signatory

\_\_\_\_\_

Date

LAW SOCIETY OF ALBERTA

Per: \_\_\_\_\_

Authorized Signatory

\_\_\_\_\_

Date

LAW SOCIETY OF SASKATCHEWAN

Per: \_\_\_\_\_

Authorized Signatory

\_\_\_\_\_

Date

LAW SOCIETY OF MANITOBA

Per: \_\_\_\_\_

Authorized Signatory

\_\_\_\_\_

Date

LAW SOCIETY OF UPPER CANADA

Per: \_\_\_\_\_

Authorized Signatory

\_\_\_\_\_

Date

National Mobility Agreement 2013

BARREAU DU QUÉBEC

Per: \_\_\_\_\_

Authorized Signatory

\_\_\_\_\_

Date

CHAMBRE DES NOTAIRES DU QUÉBEC

Per: \_\_\_\_\_

Authorized Signatory

\_\_\_\_\_

Date

LAW SOCIETY OF NEW BRUNSWICK

Per: \_\_\_\_\_

Authorized Signatory

\_\_\_\_\_

Date

NOVA SCOTIA BARRISTERS' SOCIETY

Per: \_\_\_\_\_

Authorized Signatory

\_\_\_\_\_

Date

LAW SOCIETY OF PRINCE EDWARD ISLAND

Per: \_\_\_\_\_

Authorized Signatory

\_\_\_\_\_

Date

National Mobility Agreement 2013

LAW SOCIETY OF NEWFOUNDLAND AND LABRADOR

Per: \_\_\_\_\_

Authorized Signatory

\_\_\_\_\_

Date



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

---

September 27, 2013

Prepared for: Benchers

Prepared by: Timothy E. McGee

## **Introduction**

My report this month covers a variety of topics, the highlights of which are set out below. I would be happy to discuss any of these items in further detail with the Benchers at the meeting this week.

## **2014 Budgets and Fees**

The Budget and Fees planning process, which commenced in April of this year with departmental reviews of budget requirements and resourcing priorities, has culminated in the Finance Committee report to the Benchers recommending the fees for 2014 and presenting the underlying operational budgets.

The approach that management has taken again this year is to present recommendations to the Finance Committee reflecting balanced budgets, limited use of reserves and sufficient funding for the proper performance of our core regulatory responsibilities. The basic elements of our budgets vary little from year to year; however, each year we generally have an area that generates particular needs and requirements. This year management focused on the results and recommendations of our Lawyer Support and Advice Working Group, which I have been reporting on to the Benchers throughout the year. This group conducted a comprehensive review of all of our activities and resources supporting lawyers and recommended a number of enhancements to improve those services. You will see that this priority is reflected in the budget proposal and in the specific practice fee recommendation brought forward by the Finance Committee.

Jeanette McPhee, our Chief Financial Officer, and the rest of the Executive Team will be at the meeting to address any specific questions you may have and to provide additional details as requested.

## **Management and Staff Updates**

### ***New Manager, Intake & Early Resolution***

I am very pleased to advise that Katherine Crosbie has joined the Law Society as our new Manager, Intake & Early Resolution. Katherine was chosen from a pool of very strong candidates and brings with her extensive regulatory management experience.

Katherine graduated from the University of Toronto Law School in 1986 following which she moved to Newfoundland where she was in private practice before working in various government positions. Most recently she was Director, Quality Assurance,

Review Division, at WorkSafeBC overseeing a department of 30 professionals. She is on the Executive of the CBA National Administrative Law Section.

In her role at the Law Society, Katherine will be managing the staff and functions supporting the Complainants' Review Committee in addition to the Intake and Early Resolution areas of Professional Conduct.

### ***Leadership Council***

The Leadership Council is the name of our new senior management group which is a key part of the management renewal initiative which I announced earlier this year. The Council replaces the old Management Board and is comprised of my five direct reports (Deborah Armour, Su Forbes, QC, Jeanette McPhee, Alan Treleaven and Adam Whitcombe), plus Jeff Hoskins, QC and three managers appointed by me for a one year term from among a list of managers who put their names forward for consideration.

I am pleased to advise that Robyn Crisanti, Manager, Communications and Public Relations, Kensi Gounden, Manager, Standards and Professional Development and Lesley Small, Manager, Member Services and Credentials are the managers appointed to the initial Leadership Council, which is featured in the current edition of the Benchers Bulletin. The Council met twice over the summer and is planning a full day retreat in November to discuss operational priorities for 2014. Part of the new management approach is to utilize working groups comprised of managers and staff to assume responsibility for implementing the operational priorities established by the Leadership Council. This approach puts a premium on teamwork, initiative and accountability, while broadening the opportunities for managers and staff to demonstrate and develop their leadership skills and potential.

### ***RRex Program***

In January 2013 we launched a revamped program for recognizing and rewarding employee excellence at the Law Society. That program, known as RRex, was designed around feedback from staff together with extensive external research on best practices in this area. The program is intended to reinforce behavior which supports our mandate, encourages innovation, and builds a culture of recognition and appreciation at the Law Society. I am pleased to advise that so far this year it has been enthusiastically embraced by staff and managers alike.

The RReX program recognizes staff in a number of ways.

### ***Thriving Professional Awards***

These awards recognize management and staff who consistently demonstrate such attributes as a positive attitude, good teamwork and collaboration, inter-departmental collaboration or an innovative approach to processes. Awards in this category include:

### **On-the-Spot Recognition**

Staff can be given “on-the-spot” recognition by a manager or peer in the form of a note and gift card to acknowledge outstanding or extraordinary service, behavior or achievement. This option has been very well received and utilized by managers and staff since its introduction.

An interesting and encouraging statistic is that approximately 56% of the on-the-spot recognition awards given out to date have been given by staff in one department to an employee in another department. This suggests that the on-the-spot recognition program will help break down work silos and reinforce inter-departmental cooperation.

### **Golden Lion Award**

This award allows non-management employees to recognize an individual or team for outstanding achievement every month throughout the year. Selected by staff, the recipient keeps the trophy for four weeks and then selects a new recipient to whom the award is passed. The presentation is a fun event held in the Bencher Room and is usually standing room only.

Golden Lion award recipients to date are:

Denise Findlay, Communications Coordinator  
Lynne Knights, Intake Officer  
Brendan Dowd and Elizabeth Moul, Receptionists/Custodial Clerks  
Quinot Matthee, PLTC Program Assistant.  
Debra DeGaust, Senior Paralegal, Practice Standards  
Ruth Long, Staff Lawyer, Intake & Early Resolution  
Jack Olsen, Ethics Advisor, Ethics and Practice

## ***RRex Day***

On October 3, we will host our first annual RRex day to acknowledge and recognize the hard work and commitment of all staff members at the Law Society. Staff will be treated to an appreciation “grab-and-go” breakfast and an offsite lunch awards ceremony, where I will present the two annual Society Awards:

**Inspired Lion Award** – recognizes an individual or team who have significantly improved operational or financial efficiency by developing a new tool, process or design.

**RRex Award** – recognizes a non-management team or individual who has demonstrated a commitment to excellence.

The recipients of these two awards have been selected from nominees submitted to a committee comprised of managers and staff. I am told there were many outstanding nominees and that the awards committee had a difficult assignment. The quality and number of nominees is very encouraging and bodes well for the future success of the RRex program.

## ***Annual Performance Awards***

Staff who have consistently performed at top level throughout the year, or made significant contributions beyond normal job expectations are eligible to receive cash awards at the end of each year as part of their annual performance review. The awards will be based on recommendations by managers to the Executive Team. In making their recommendations, managers will consider standardized assessment criteria, annual performance reviews and key performance measures to ensure consistency and fairness of awards application across all departments.

I would like to take this opportunity to thank our Human Resources team for their tremendous efforts in unrolling this new program to our staff. They have worked very hard to develop the guidelines and assessment tools required to make this new recognition program a success.

If you would like to know more about our RRex program, please feel free to contact me, or Donna Embree, Manager, Human Resources.

## ***2013 Employee Survey***

We will soon be conducting our annual employee survey. The annual survey provides staff with an opportunity to provide feedback on how we can improve job satisfaction and our effectiveness as an organization. Each year management designs an action

plan around one or two of the most important findings from the survey. We will review the results of the survey and our action plan with the Benchers early in the New Year.

## **Events and Conferences**

### ***Canadian Corporate Counsel Association Plenary Session - CBA Canadian Legal Conference***

On August 19, 2013 I participated on a panel at a plenary lunch session for the Canadian Corporate Counsel Association (CCCA) at the CBA 2013 Canadian Legal Conference in Saskatoon. The panel topic was “Three Pillars of the Legal Profession: education, regulation and association – the role each will play in the future of the profession”. My panel colleagues were Nathalie Des Rosiers, the new Dean of the University of Ottawa Law School, and Heather Innes, Incoming Chair of the CCCA, and current Global Process Leader for GM Canada. As you would expect, given the conference sponsor, the discussion among the panelists and the audience focused on the changing roles for in-house counsel over the next 10 years. A number of areas were covered, including the need for more practical training for law students and junior lawyers, issues regarding who is the client and how the public interest fits in, and the question: should regulators view in-house counsel any differently than private practitioners? My key message was that there are many changes emerging in the practice of law and the role of legal services providers, such as alternate business structures and paralegals, respectively. Accordingly, regulators must constantly consider what is in the public interest. Regulators must be flexible and creative enough to embrace change while never losing sight of the public interest imperative.

### ***2013 International Institute of Law Association Chief Executives (IILACE) Annual Conference***

I returned earlier this week from the annual conference of the International Institute of Law Association Chief Executives (IILACE) which was held this year in Berlin. I was elected Vice President of IILACE in 2012 and I will assume the Presidency of that organization for a two year term commencing at the Annual General Meeting in November 2014.

As in past years the conference delivered on its promise to create a forum for a small group of executives to discuss important topics for the regulation and advocacy of the profession and to compare notes on organizational and governance matters. This year we had approximately 45 delegates from around the world including all the major common law jurisdictions. It is interesting to note that the delegates regulate or

represent (and in some cases both) over 1.6 million lawyers worldwide. Of particular note this year was the attendance of two new members, the CEO of the State Bar of California and the CEO of the all Japan lawyers' regulatory body.

I will speak briefly at the Benchers meeting this week on some of the topical highlights and prepare my usual full written report to the Benchers for the October meeting. In the meantime, if you would like a copy of the conference program, please let me know.

### ***Kootenay Bar Association Summer Meeting***

I will be attending the 2013 summer (summer arrives late in the Kootenays!) meeting of the Kootenay Bar Association in Cranbrook this coming weekend. President Art Vertlieb, QC, Second Vice President Ken Walker, QC and I will be travelling to the meeting right after the Bencher meeting this week. I am looking forward to the sessions and to joining 2012 President Bruce LeRose, QC and the local members.

### ***Federation of Law Societies of Canada Semi-Annual Meeting – St. John's Newfoundland***

The Federation of Law Societies semi-annual meeting is being held in St. John's Newfoundland from October 16 to 19. In addition to the formal business conducted at the Federation Council meeting there are meetings of the Law Societies CEOs and CEOs and senior staff, as well as the plenary conference program. This year the theme of the conference is the Canadian regulatory model and whether it remains responsive to the public interest and the profession given the significant changes in the profession over the past 20 years. As always, there is a good mix of strategic discussion as well as sharing of "nuts and bolts" information relevant to our respective operations. We will have a full report at the Bencher meeting in October.

### ***Fall Justice Summit***

The inaugural Justice Summit was held in March of this year and was widely regarded as having exceeded the expectations of the broad range of participants. A report of that inaugural summit was attached as Appendix B to my July report to the Benchers.

The follow-up summit is now in the final planning stages and I am participating in those sessions together with Michael Lucas, Manager of Policy and Legal Services. The goal of the Fall Justice Summit is once more to bring together the key stakeholders in the criminal justice system, including the Ministry of Attorney General, crown and defense counsel, police agencies, health and community support agencies and senior

representatives of all levels of the courts, to map out an approach that will better address the need for renewal and change. The summit will build on the framework of ideas established in March. I will once again be acting as Moderator for the sessions, which will be held on November 8 and 9 at Allard Hall at UBC.

### ***National Action Committee on Access to Justice Event***

On November 19, we will be hosting a breakfast briefing session here at the Law Society for justice stakeholders as part of events being held across the country to present the report of the National Action Committee on Access to Justice chaired by Supreme Court of Canada Justice Thomas Cromwell. Details are presently being sorted out and we will have more to report on this item at the Bencher meeting in October.

### **PLTC Thank You**

Thank you to the following Benchers and Life Benchers who kindly volunteered to teach Professional Responsibility at the September 2013 PLTC sessions:

Art Vertlieb, QC  
Rita Andreone, QC  
Ralston Alexander, QC (Life Bencher)  
Bruce LeRose, QC (Life Bencher)  
Jane S. Shackell, QC (Life Bencher)  
Gordon Turriff, QC (Life Bencher )