



Report of the Tribunal Program Review Task Force

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September 25, 2015

Prepared for: Benchers
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Purpose: Decision

REPORT OF THE TRIBUNAL PROGRAM REVIEW TASK FORCE

Introduction

1. The Tribunal Program Review Task Force was struck by the Benchers in May 2014. It comprises Benchers Ken Walker, QC (Chair), Haydn Acheson, Pinder Cheema, QC, and David Mossop, QC, along with non-Bencher lawyer David Layton and public representative Linda Michaluk. Tribunal and Legislative Counsel Jeff Hoskins, QC, Hearing Administrator Michelle Robertson and Policy Manager Michael Lucas provide staff support.
2. This was the resolution adopted by the Benchers at that time:

BE IT RESOLVED to form a task force of Benchers and others to

 - review the progress of the changes to the tribunal system implemented since 2011;
 - recommend changes for the improvement of the system and correction of any problems;
 - identify any further reforms that the benchers should consider at this time;
 - report to the Benchers as soon as possible, and in any event before the end of 2014.
3. The materials before the Benchers at the meeting in May 2014 included 16 topics and issues for the Task Force to consider and make recommendations for the consideration of the Benchers. The Task Force made a number of interim reports to the Benchers beginning in December 2014.
4. At that time, the Task Force made two recommendations, which were accepted by the Benchers. As a result, the appointment of all the adjudicators, other than Benchers, was extended to the end of 2015, and the Law Society Rules were amended to reduce the risk of one of the members of a hearing panel or review board not being able to continue causing the loss of a hearing in process.
5. This is the final report and recommendations of the Task Force. Appendix 1 to this report is a summary of the recommendations of the Task Force to the Benchers.

Background

6. In 2008, the Lawyer Independence and Self-Governance Committee reported to the Benchers on its concerns about potential threats to the independence of the legal profession in British

Columbia. The Committee reviewed the core functions of the Law Society “to consider whether the processes and activities of the Law Society can be expected to maintain the public’s confidence in the Law Society’s discharge of its statutory and common law duties, thereby adequately preserving and promoting independence and effective self-governance of lawyers.”

7. The Committee’s review of the prosecutorial and adjudicative functions concluded that the Benchers should consider more effectively differentiating between the two aspects of Bencher involvement, either within the ranks of the Benchers or by separating the functions altogether. The Committee reported, in part:

(d) Prosecutorial and Adjudicative Functions

There is an overlap between the prosecutorial and adjudicative functions of the Law Society. The Law Society is responsible for the prosecution of discipline hearings and credentials applications, a process that is overseen by the Discipline and Credentials Committees of the Benchers. The President appoints the members of hearing panels and panels must be chaired by a lawyer Bencher. In practice, hearing panels are routinely comprised of Benchers or life-Benchers.

The Committee recognizes that, on its face, this overlap of functions could be viewed as a conflict and may raise an apprehension of bias on the part of both the public at large and members of the Law Society. If the Law Society regulatory processes are perceived to be biased, the credibility of the organization may be impaired. ...

As there are good legal arguments that the processes used by the Law Society are procedurally fair, the Committee does not believe that this issue is one that requires immediate attention. The Committee remains mindful of public perception and confidence, however. Would the public consider that the Benchers, elected by the group that they are required to regulate, are sufficiently independent in order to discharge the necessary regulatory responsibilities entrusted to them in the public interest? Would a separation of the functions assist? ... The Committee believes that it would be prudent for the Benchers to identify this issue as one for possible future (although not necessarily immediate) consideration, and to keep a close eye on developments concerning this issue in other jurisdictions. For example, if the Benchers remain responsible for both the investigative and adjudicative functions of lawyer regulation, should there be a more rigid division of functions within the ranks of the Benchers themselves? Alternatively, the Law Society may consider separating its adjudicative function from its investigative function entirely.

8. The Benchers received the Committee's report in April 2008. In November of that year, the Benchers considered a further policy paper on the question, entitled "An Examination of Issues in Connection with the Dual Prosecutorial and Adjudicative Functions of the Benchers." That paper set out considerations for and against separating the investigative and adjudicative functions of the Benchers and compared the processes in comparable regulatory bodies in other jurisdictions and in other professions. The Benchers discussed the issues and resolved to refer the matter to the Independence and Self-Governance Advisory Committee, forerunner of the current Rule of Law and Lawyer Independence Advisory Committee.
9. At the end of the following year, that Committee reported to the Benchers on its consideration of the issues. The report included this report on a policy conference of the Federation of Law Societies earlier in the year:

... Mr. Donaldson advised that the tenor of the Conference produced a "vigorous" overall discussion on the issue of the separation of the adjudicative and investigative functions. One of the principal themes was that "he who makes the rules ought not to sit on panels adjudicating their alleged breach." Many at the Conference, Mr. Donaldson advised, had a strong sense that there should be a separation of the functions. British Columbia is one of a minority of provinces where hearing panels are generally made up solely of Benchers who also make the rules. He expressed concern that one day these overlapping functions would be challenged and that the Court of Appeal may not be sympathetic to the Law Society's process.

10. The Committee concluded that the modern situation "warrants a change away from the combined function of responsibility for both the investigation and adjudication of complaints." They presented the Benchers with a number of options, including the Benchers retaining the responsibility for investigations and charge approvals and relinquishing the adjudication function. That option was recommended to the Benchers, who resolved to

strike a task force to develop models for separation of the Law Society's adjudicative and investigative functions (based on Option 1 in the Committee's report), and to make recommendations about which model to adopt.

11. This brought about the formation of the Task Force Examining the Separation of Adjudicative and Investigative Functions of the Benchers, who reported to the Benchers in July 2010. The Benchers, nearly unanimously, adopted the Task Force's recommendation to "create a pool of individuals who can be appointed to hearing panels" and that the pool include:

- sitting Benchers (the "Bencher pool")

- life Benchers, and former lawyer Benchers and other lawyers ... (the “lawyer pool”); and
 - life appointed Benchers, former appointed Benchers, and other non-lawyer non-benchers ... (the “public pool”).
12. The new program was to be implemented for a trial period of three years, after which there would be a full review of outcomes. The minutes of the meeting indicate that the chair of the Task Force informed the Benchers that its recommendations were considered to be “the easiest first step” to separation of the Benchers’ adjudicative and investigative roles.
 13. In December 2010, the Benchers took an important step toward implementation of the new tribunal program by adopting criteria for the composition and operation of new hearing panel pools. The Executive Committee was empowered to make appointments of individual non-Benchers and non-lawyers on the advice of a Subcommittee to be appointed for the purpose.
 14. The Benchers approved criteria for appointment intended to ensure the independence, qualification and diversity of adjudicators. They also adopted provisions that would make it mandatory for all members of the hearing panel pools to receive training appropriate to the role that they were asked to fulfill.
 15. It was further decided that non-lawyer members of hearing panels would be paid an honorarium on the same basis as the appointed Benchers are recognized.
 16. In the following months, the Law Society advertised for expressions of interest in participating in the Law Society Tribunal from both lawyers and members of the public. The response was very impressive with over 100 lawyers and nearly 600 non-lawyers making applications to be considered for the job. The Executive Committee appointed a Subcommittee, chaired by Gavin Hume, QC to make recommendations on the final appointments. The Subcommittee, in turn, considered it appropriate to have the applications vetted by an independent agency, which made recommendations that were implemented by the Executive Committee.
 17. Following an intensive training program led by the BC Council of Administrative Tribunals, hearing panels comprising a Bencher chair, a non-Bencher lawyer and a public representative began conducting hearings at the end of 2011. Hearing panels appointed on that configuration continue to the present.
 18. Reviews of hearing panel decisions continued to be heard by a quorum of the Benchers. Legislation was required to provide for non-Bencher and public participation. An amendment to section 47 of the *Legal Profession Act* and changes to the Law Society Rules governing reviews came into effect January 1, 2013. Any review on a citation issued or

credentials hearing ordered after that date are to be reviewed by a review board comprising Benchers, non-Bencher lawyers and public representatives.

The way it is

19. Before getting to the recommendations of the Task Force for changes to the way things are now done, it may be worthwhile reviewing the current situation. The basic requirements and process for appointment to hearing panels and review boards are set out in the Panel and Review Board Appointment Protocol (the “Protocol”), which is attached as Appendix 2.
20. The current pool of individuals qualified to participate in Law Society Tribunal hearing panels and review boards consists of all of the 25 current elected Benchers, a group of 19 lawyers who are not currently elected Benchers and a group of 23 members of the public, including some who are currently appointed Benchers.
21. In order to qualify to participate in a hearing panel, all members of the adjudicator pool must complete an introductory course in administrative law, including the statutory and regulatory law that applies to the Law Society. All lawyers are required to attend a two-day decision-writing workshop, and all Bencher lawyers are required to attend a two-day workshop on hearing skills. These courses are mandatory for each category of adjudicator regardless of past experience in order to ensure that all adjudicators have a similar grounding in the Law Society processes.
22. Each hearing panel consists of an elected lawyer-Bencher, who must be the chair of the panel, another lawyer who is not currently a Bencher and a public representative. The public representative could be an appointed Bencher, but in the vast majority of cases is not.
23. Review boards, which review decisions of hearing panels on application of one of the parties, consist of three Benchers, at least two of whom must be lawyers and one of whom acts as the chair, two non-Bencher lawyers and two non-Bencher public representatives. Before sitting as a member of a review board, each adjudicator must participate in one hearing panel.
24. There are guidelines for appointment to hearing panels and review boards designed to avoid actual or apparent conflicts. These include that Benchers who are members of the Discipline Committee or Credentials Committee do not participate in hearings or reviews arising from their respective Committee. That may be obvious where the Bencher has participated in the decision to issue the citation or order the credentials hearing, but it is not limited to those cases. So the number of Benchers available for discipline hearings and reviews is reduced by the number appointed to the Discipline Committee each year, and similarly the number available for credentials hearings and reviews is reduced by the number on the Credentials Committee.

25. Hearing panels and review boards are appointed by the President. The Protocol provides for a rotation of adjudicators in each pool, subject to a number of exceptions and disqualifications and, naturally, dependent on availability. In practice, the Hearing Administrator has the function of applying the Protocol to establish hearing panels and review boards for the President's approval.
26. Nonetheless, the President has the discretion to depart from the rotation in appropriate circumstances. Under the Rules the President also has the discretion to terminate a panel or a panel member. The President is obliged to adjudicate certain applications or appoint another Benchers to adjudicate. When a prehearing or pre-review conference is needed, the President must set the time and place and appoint a Benchers to preside.
27. At the same time, the Rules give the Executive Director the discretion to make many decisions pertaining to the publication of hearing panel and review board decisions and summaries. While the discretion is generally exercised in favour of publication in the interests of transparency and accountability of the Law Society and the Tribunal, some lawyers, students and applicants affected by decisions occasionally bring applications for exceptions of one kind or another. These applications must be adjudicated by the Executive Director.
28. When the parties are unable or unwilling to agree on a date, time and place for a hearing, the Rules give the power to set the date to the Executive Director or a Benchers presiding at a prehearing conference.
29. When non-Benchers were brought into the adjudicator group, it was decided that the public representatives should be compensated for their contribution to the legal profession, as well as the public interest, at the same rate that Appointed Benchers received for acting as directors of the organization and other duties. That is a fairly modest honorarium of \$250 per day. Because appointed Benchers were available for relatively few hearings in the past, that has increased the cost of most hearings by that amount. In our view that is a good investment in public input and well worth the modest cost.
30. When it came to the volunteer involvement of members of the profession, however, the Benchers decided to extend the traditional voluntary nature of contributions of lawyer adjudicators to their own profession. As a result, no honorarium or per diem amount is paid to lawyers.
31. The reasonable expenses of all adjudicators for travel, accommodation and meals are fully reimbursed. This does not appear to affect the cost of the tribunal program significantly, since Benchers also claim expenses when sitting on hearing panels and review boards.

Process

32. The Task Force met eight times in the course of something over a year. We started by reviewing the tribunal process as it has existed since 2012, including statistics and financial information resulting from that activity.
33. We sought and obtained information from other Canadian law societies and regulatory bodies in BC. Appendix 3 to this report is a table summarizing the responses. It is clear from the information that we obtained and examined that there is no one way to operate a professional regulatory tribunal. There is, in fact, a wide variation in the way that law societies and other professional bodies go about it.
34. Nova Scotia and New Brunswick do not draw their adjudicators from among the Benchers at all. (Although, in New Brunswick, one adjudicator also happens to be a member of Council.) Others, like Ontario and Manitoba, as well as British Columbia, use a mix of Benchers, non-Bencher lawyers and public representatives. Alberta is the last provincial law society to use only Benchers on hearing panels, but we understand that Alberta is actively engaged in redesigning its tribunal program.
35. We were also interested to hear that Ontario and Manitoba have more recently made the leadership of their tribunals independent of the Benchers by appointing independent, non-Bencher chairs. In keeping with the respective sizes of those law societies, the position is full-time in Ontario and part-time in Manitoba.
36. By way of contrast, in Alberta the chair of the committee that approves charges, the equivalent of our Discipline Committee, also appoints the Benchers to the hearing panel. As we mentioned, that is currently under review.
37. We sought written comments from former Benchers, from Counsel representing the Law Society and from those appearing for lawyers subject to hearings. We held an informative meeting with counsel who have acted for or against the Law Society, or both, in discipline and credentials matters. We were impressed with the emphasis that experienced counsel placed on having hearing panels chaired by experienced adjudicators.
38. We heard from adjudicators participating. This occurred at a dinner/training session on March 4. Appendix 4 to this report contains a summary of the remarks of adjudicators following three years of experience.
39. At the Benchers Retreat in May, we had the opportunity to hear a preliminary discussion of some of the Task Force's thoughts as we formulated our recommendations. It was clear from most of the discussion, in which a large proportion of the Benchers participated, that the

group is not ready to phase in the complete separation of their roles as policy makers and legislators for the profession from their roles as adjudicators.

Matters not needing change

40. There are a number of the innovations adopted in 2011 that the Task Force considers are working well and we make no recommendation for change.
41. **Public participation in the panels.** This is near universally accepted as a very positive development. The public panel members were selected by a neutral third party looking for skills needed for the position including previous (though not legal) decision-making experience. This has been very positive. The public panellists applaud the move. They enjoy the experience including training. They enjoy participating in the decision-making process. Each of these public participants is now an advocate for our decision making process. The Law Society has more individuals educating others about the Law Society mandate and its values.
42. We see the participation of public representatives in the hearing process as a marked success. It has opened the process to more diverse input by including the general public, whose interests the Law Society is mandated to serve and protect. We note the degree of media attention and general welcoming given the changes allowing for the inclusion of non-Benchers and non-lawyers when they were made in 2011.
43. **Non-Bencher lawyer participation in panels.** Similarly, we see the participation of lawyers who are not currently Benchers as a positive approach. It also opens the process to more diverse input by including a broader spectrum of members of the profession. We were impressed with the professional approach and enthusiasm of the non-Benchers in the pool, particularly those who had never been Benchers. It is important to maintain this new connection with the profession.
44. We also note the significant step that the changes represent in moving toward separation of the adjudicative and prosecutorial functions of the Law Society. We note that our present program is similar to the “hybrid” system in place in Ontario, Manitoba and other provinces. That is, some Bencher involvement with others also participating. We were attracted to the fully separated system now used in Nova Scotia and New Brunswick. While we seriously considered recommending further separation, we do not recommend a change in that respect at this time. We do recommend that the Benchers and the Tribunal continue to monitor developments in the rest of Canada with a view to considering further changes in the future.

45. **Mandatory training.** Our review concludes this was very positive. We are leaders here. The Federation of Law Societies is now coordinating a move to create standards to achieve what we have achieved on a national scale.
46. The mandatory training program appears to have improved the quality of the tribunal program and proven useful to adjudicators in fulfilling their function. All adjudicators should continue to attend the two-day introductory program for an overview of administrative law principles, ethics and decision-writing and hearing skills, attend the two-day workshop on decision-writing before writing a decision and attend the two-day workshop on hearing skills before chairing a hearing panel.
47. Subject to the recommendations of the Federation of Law Society's working group that is putting together a national program for adjudicator education, we see no reason for change in this area.
48. **Compensation of adjudicators.** We considered the compensation that some other law societies pay to their adjudicators, including lawyers acting in that capacity. While we consider it entirely appropriate that non-lawyer public representatives be entitled to per diem compensation at the same rate established for the appointed Benchers, we appreciate that lawyers giving their time to their profession has traditionally been done as unpaid volunteers.
49. We do not recommend a change in the payment of honoraria to non-lawyer adjudicators and do not recommend initiating payment to lawyer adjudicators.

Issues and recommendations

50. On review of our three-year project, some issues were identified where, in our view, changes and improvements should be made in order to ensure better operation of the tribunal function of the Law Society. We set out below a discussion of each of those issues and, where appropriate, our recommendation to the Benchers for changes.
51. **Tribunal Code of Conduct.** In our view, the expectations of adjudicators and the ethical standards that they should attain should be set out expressly in a single code of conduct for the guidance of members of the Law Society hearing panel pools.
52. We looked at some codes of conduct adopted by other tribunals. Some were long and complicated and some were shorter and simpler. All had something to offer, but we did not see it as part of our mandate to draft an appropriate document. Rather, we simply recommend that adoption of a code of conduct become a priority for the Tribunal following this review. It may be that a new working group of members of the pools would be the best means of achieving that end.

RECOMMENDATION 1—Create a Code of conduct.

We recommend that a concise and readable code of conduct for the Tribunal be developed and adopted once the current review is concluded.

53. **New appointments to the hearing panel pools.** In 2011, the Law Society advertised widely for adjudicators for the Tribunal. There was a working group that was tasked with finding the best qualified applicants for appointment to the hearing panel pools. Wisely, the working group chose not to make the selections themselves, but to retain a firm of “head-hunters” to vet the applications and recommend the best applicants for appointment based on criteria established by the working group and some senior staff.
54. Although the resulting appointments have been a major success, the Task Force looked closely at the criteria used in the first round of appointments. We also looked at some other sets of criteria for appointment of adjudicators, such as those used by the Provincial Judicial Council in recommending candidates for the Provincial Court.
55. In our view, the criteria for appointment of non-Bencher lawyers and for non-lawyers used in 2011 are essentially appropriate for use in future recruitment. We have edited the criteria for brevity and clarity and attached as Appendix 5 the criteria that we recommend for future use when recruiting new members to both pools of adjudicators.

RECOMMENDATION 2—Adjust criteria for appointment to hearing panel pool.

We recommend that the criteria for selection for non-Bencher members of the lawyer and public pools be adjusted only slightly from those used in 2011. Recommended criteria for lawyers and for non-lawyers appear in list form in Appendix 5 to this report.

56. **The number of adjudicators in each of the pools.** The original task force was concerned that too few people would be a problem and therefore estimated 25 as the ‘right’ number for each pool. Since the initial appointments, the Executive Committee has added a number of life benchers to the pools.
57. The result has been the opposite of the original task force’s main concern. Over the last three years, most panel members averaged only one or two hearings per year. That is not enough experience to make full and effective use of the training program in which the Law Society has invested its resources and panel members have invested their time and efforts.
58. The number of lawyer Benchers available for hearing panels and review boards varies. The maximum is 25, but it takes time for new Benchers to get the required training. Disqualifications and conflicts resulting from committee work and other causes further

reduce the number of Benchers available for adjudication in each case. Generally, there are about 12 to 15 Benchers qualified for each of discipline or credentials cases.

59. In our view, the size of the other pools, non-Bencher lawyers and public representatives, should be reduced to approximately the same size. This is to ensure that members of the pool are assigned to panels and review boards sufficiently frequently that they gain an appropriate level of experience while maintaining a pool large enough that adjudicators are available when needed.
60. We recommend the size of each pool be reduced to 15 to 18 adjudicators in each pool.

RECOMMENDATION 3—Reduce the size of public and non-Bencher lawyer pools to create experience.

We recommend the pool size be reduced. The public pool should be reduced to 15 to 18 to allow more (but not too many) hearings per pool member per year. The number of non-Bencher lawyers in the pool should be reduced to a similar range.

61. **Three different panellists.** In the course of our work, the Task Force learned about the process of establishing hearing panels and review boards. Getting appropriate adjudicators together at the same time for a hearing or review has always had its complexities, but the new regime involving three different categories of participants drawn from three lists on a rotational basis has added to the complexity.
62. Previously, the Hearing Administrator would email all the Benchers and the first three to reply affirmatively were appointed to the hearing panel. Likewise, the first seven or more Benchers to reply became a review panel. This was efficient but perhaps not the best method or use of the adjudicators. The requirement for diversity in the panels and a more fair rotation system are definitely an improvement.
63. However, the mandatory requirement of a panel member from each pool (public, lawyer, Bencher) has caused scheduling issues and other unexpected issues. Michelle Robertson, the Hearing Administrator, is required to use one person from each pool, which has caused occasional delays. The most common problem is finding an available lawyer Bencher to chair a hearing panel or to chair or participate in a review board. This is largely because of the fluctuating number of available Benchers and the participation of Benchers in the committees that initiate the hearing processes. To date, there have not been significant difficulties filling the non-Bencher lawyer and public representative positions, but that could happen in the future, particularly if the sizes of the relevant pools are decreased.
64. In our view, flexibility is very important. More flexibility is required to allow timely hearings and to avoid administrative nightmares. We recommend that the lawyer pool and

the lawyer Bencher pool be combined to allow two from that large group be two members of the panel. The third member, in each case, would continue to be a public representative.

65. This change is intended only to enhance flexibility so that hearing and review dates are not jeopardized by availability issues. The Protocol should be amended to indicate that the norm will continue to be that one lawyer Bencher and one non-Bencher lawyer should sit on each hearing panel. Likewise, each review board would continue to include three Benchers and two non-Bencher lawyers. However, when no lawyer Bencher is available, a hearing can proceed on the date set with two qualified non-Bencher lawyers. Similarly, if no non-Bencher lawyer is available, a hearing can proceed with two lawyer Benchers.

RECOMMENDATION 4—Combine lawyer and Bencher pools to allow administrative flexibility in extraordinary circumstances.

We recommend that the lawyer pool and the lawyer Bencher pool be combined. The norm would be that each panel would include one lawyer Bencher and one non-Bencher lawyer, but so that hearings would not be lost due to the inability to find one from each group, there would be flexibility for occasions when a member of each group is not available. The third panellist would continue to be a public member in each case.

66. **Chair of hearing panels.** Before 2012, new lawyer Benchers had the opportunity to sit on a number of hearing panels as new wingers and benefit from the example and advice of experienced Benchers chairing the panels. The new Bencher listened and learned on the job, at that time with relatively little training. The experienced Benchers would mentor and assist until new Benchers had experience. They could then move into the chair position with relative ease. This old school system created an experienced capable pool of decision makers. It also provided a more reasonable and stress-free introduction to the tribunal program for newly-elected Benchers.
67. The Rules require that each hearing panel be chaired by a current Bencher who is a lawyer. This mandatory requirement created an unforeseen issue. The rule was created at the time that non-lawyers were first included in hearing panels. For the first 23 years, those were only Appointed Benchers. Since it was considered that lawyers were more likely to have experience with hearings and the training to deal with evidentiary questions and the like, the rule assigned chairing duties to lawyer Benchers. When the new system was introduced, there did not appear to be any reason to change that rule. Lawyer Benchers were required to take the workshop on hearing skills and proceeded to carry on presiding at hearings. Of course, the new arrangement meant that lawyer Benchers can only participate in hearings that they chair.
68. That worked well until 2014 when there was a new crop of elected lawyer Benchers. They were required to complete all three two-day training courses before they could participate in

a hearing panel. Then, without any direct experience with Law Society hearings, they were required to act as chair of the panel from day one. We were fortunate that experienced “winger” lawyers were available to assist in most cases.

69. In our view, previous experience on hearing panels should be mandatory for a leadership role in a hearing panel. We now have a number of lawyer adjudicators with more than three years’ experience. We should take advantage of that to get experienced leadership in the chair and, at the same time, create a more sensible introduction to the tribunal program for new Benchers.
70. We recommend that the chair of a hearing panel or review board should be the most experienced of the two lawyers, whether a Bencher or not. To chair, a lawyer should have sat on at least five hearings and attended the hearing skills workshop prior to first chairing.
71. Qualification to sit as a lawyer winger on a hearing panel does not include the hearing skills workshop, so new lawyer Benchers would be available for hearing panel duties earlier in their Bencher careers. This would help to alleviate the shortage of available Benchers that occurs after each general election and help new lawyer Benchers get hearing experience more quickly.

RECOMMENDATION 5—Appoint experienced lawyers as chairs.

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

72. **Independent Tribunal chair.** The degree of separation between the adjudicative and prosecutorial functions of the Law Society has been enhanced by the new configuration of tribunals. While Benchers have provided the steady hand of experienced adjudicators in the past, there is now a sizable group of lawyers and non-lawyers who have had significant hearing experience.
73. While the President appoints the members of the Discipline Committee to consider investigation reports and issue citations where appropriate, he or she also populates the panel that will decide the citation and the review board that reviews the decision. Similarly, the President appoints the members of the Credentials Committee that orders credentials hearings and also populates credentials hearing panels and review boards.
74. As the chair of the Tribunal, the President is restricted in the role that he or she can play in supporting and monitoring the regulatory activities of the Law Society. Alternatively, if the

President is involved in investigations and prosecutions, the role of the chair of the Tribunal is prone to conflicts and disqualifications.

75. The Executive Director is responsible for the management of the investigation of complaints and credentials applications, the prosecution of citations and credentials matters, but also can unilaterally set dates for hearings and exercises discretion on the publication of hearing and review decisions. In other jurisdictions (Manitoba, Ontario, Nova Scotia) an independent chair of the tribunal fulfills functions like those.
76. We recommend creation of the position of Chair of the Law Society Tribunal. The position would be independent of the Law Society structure, Discipline and Credentials Committees, the Benchers and the staff. The Tribunal Chair would be clearly associated only with the adjudication function and separate from the investigation and prosecutorial side of the Law Society.
77. The Tribunal Chair would be appointed by the Benchers for a fixed term and removable by the Benchers only for cause. He or she would be accountable through a regular (annual or semi-annual) report to the Benchers, which would be made generally available to the public. The independent Chair would also be charged with monitoring developments in the tribunals of other law societies across Canada and other professional bodies in British Columbia and making recommendations for improvements and reforms to the Benchers as appropriate.
78. We envision the appointment of a senior lawyer with experience with adjudication in the courts or tribunals. He or she might be a retired judge or tribunal chair. It would require only part-time work and, of course, part-time compensation.
79. The Chair would be the spokesperson for the Tribunal. It would be difficult and confusing for the President to speak for the Law Society as regulator, investigator and prosecutor and at the same time speak for the Law Society Tribunal.
80. The Tribunal Chair would manage the size and experience of the pools. The Chair would also populate panels from existing pool members, act as a mentor to adjudicators, assist them and evaluate their performance.
81. Further duties would include the current regulatory duties of the President and Executive Director and overseeing a skills-based appointments process for new members of the hearing panel pools. A schedule of possible duties for an independent Tribunal Chair is attached as Appendix 6.
82. The appointment of an independent Tribunal Chair would be a further step towards separation of the regulatory and decision-making functions of the Law Society. In other jurisdictions (Manitoba, Ontario, Nova Scotia) an independent chair of the tribunal fulfills functions like the ones we have suggested.

RECOMMENDATION 6—Appoint an independent Tribunal Chair.

We recommend the appointment of an independent Chair of the Law Society Tribunal who would be the leader and administrative head of the Tribunal. This Chair would appoint panels and review boards from existing members of the adjudicator pools. He or she would also manage the size and experience of the pools, act as a mentor to adjudicators, assist them and evaluate their performance.

Further duties would include the current regulatory duties of the President and the Executive Director and overseeing a skills-based appointments process for new members of the hearing panel pools. The Tribunal Chair would also be the spokesperson for the Tribunal when one is needed and make a regular (annual or semi-annual) report to the Benchers and the public on the activities of the Tribunal.

83. **“Supernumerary” Benchers.** The Task Force is concerned that every effort be made to alleviate any potential problem with the availability of adjudicators. We suggest that Life Benchers who are qualified to sit on hearing panels when they complete their Bencher term limit continue to qualify as a spare or “supernumerary” adjudicator. We recommend that Life Benchers only remain available for two years after ceasing to be a Bencher and that they be appointed to hearing panels only in the case of need. This would apply to both elected and appointed Benchers. So, when there are no adjudicators available in either the lawyer or public representative category, a properly trained and experienced Life Bencher in the category could be appointed to the panel and the hearing need not be re-scheduled.

RECOMMENDATION 7—Keep Life Benchers as spares to be used in extraordinary circumstances.

We recommend that Benchers, both elected and appointed, who have reached the term limit and become Life Benchers remain eligible for appointment to hearing panels for two years. Life Benchers would be appointed only in the event that no current member of the appropriate pool was available.

84. **Continuity and renewal.** When the Task Force heard from counsel who had appeared before the Law Society Tribunal, as discipline counsel, Law Society counsel in a credentials matter or on behalf of a respondent or applicant, the most important message that we took from the discussion was the importance of experience for adjudicators. In order to achieve that, continuity in the membership of the adjudicator pool is essential.

85. However, we are also very aware that the long-term success of the Tribunal requires a modest degree of periodic renewal of its membership. We discussed at some length the appropriate way to balance the two requirements in order to maintain the confidence of the profession and the public while providing continued growth and diversity. It is also

important to allow for changes in individual circumstances and a way to replace individuals who are not suited to the work or the position.

86. The result is, of necessity, somewhat arbitrary, but our recommendation is that adjudicators be appointed for four-year terms. We consider that sufficient time to gain experience and facility with the types of decisions required. It justifies the investment in training by both the individual and the Tribunal. It is also, in our view, sufficiently long to provide a significant degree of independence, but is not so long to create a lack of accountability. We recommend that adjudicators be eligible for one reappointment, which would bring the term limit in line with the usual period applied to Benchers.

RECOMMENDATION 8—Appoint pool members to a four-year term, renewable only once.

We recommend that the term of appointment to the hearing panel pool be four years and that a member be eligible for one reappointment of four years. Benchers are limited to their terms of office as elected or appointed Benchers.

87. **Staggered terms.** Continuity in an adjudicative body is important. To that end, it is not desirable to have the personnel of the body disrupted by changes too often. On the other hand, it is also important not to have the entire membership of the body up for renewal or replacement at the same time.

88. Our recommendation to avoid both of those undesirable situations is to have half of the membership up for renewal or replacement every two years. We believe that a two-year run without scheduled changes would foster a reasonable degree of stability. At the same time, an infusion of new adjudicators every two years would give the Tribunal an appropriate degree of renewal. The changes would not overly burden the Tribunal Chair and others required to manage the changes and ensure that individual cases are appropriately continued.

RECOMMENDATION 9—Stagger terms of appointment to ensure continuity as well renewal.

We recommend that the terms of office of non-Bencher hearing panel pool members be staggered so that half expire every two years. In order to achieve that outcome, some appointments in 2016 would have to be made for two years only. In order to ensure an appropriate rate of renewal, only a limited number of members would be re-appointed in 2018 and 2020.

Transmittal

89. We ask that the Benchers approve the recommendations contained in this report and refer them to the Act and Rules Committee to consider how they might best be implemented through amendments to the Act and Rules.

APPENDIX 1

SUMMARY OF RECOMMENDATIONS

These are the recommendations of the Task Force for adoption by the Benchers:

RECOMMENDATION 1—Create a Code of conduct.

We recommend that a concise and readable code of conduct for the Tribunal be developed and adopted once the current review is concluded.

RECOMMENDATION 2—Adjust criteria for appointment to hearing panel pool.

We recommend that the criteria for selection for non-Bencher members of the lawyer and public pools be adjusted only slightly from those used in 2011. Recommended criteria for lawyers and for non-lawyers appear in list form in Appendix 5 to this report.

RECOMMENDATION 3—Reduce the size of public and non-Bencher lawyer pools to create experience.

We recommend the pool size be reduced. The public pool should be reduced to 15 to 18 to allow more (but not too many) hearings per pool member per year. The number of non-Bencher lawyers in the pool should be reduced to a similar range.

RECOMMENDATION 4—Combine lawyer and Bencher pools to allow administrative flexibility in extraordinary circumstances.

We recommend that the lawyer pool and the lawyer Bencher pool be combined. The norm would be that each panel would include one lawyer Bencher and one non-Bencher lawyer, but so that hearings would not be lost due to the inability to find one from each group, there would be flexibility for occasions when a member of each group is not available. The third panellist would continue to be a public member in each case.

RECOMMENDATION 5—Appoint experienced lawyers as chairs.

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

RECOMMENDATION 6—Appoint an independent Tribunal Chair.

We recommend the appointment of an independent Chair of the Law Society Tribunal who would be the leader and administrative head of the Tribunal. This Chair would appoint panels and review boards from existing members of the adjudicator pools. He or she would also manage the size and experience of the pools, act as a mentor to adjudicators, assist them and evaluate their performance.

Further duties would include the current regulatory duties of the President and the Executive Director and overseeing a skills-based appointments process for new members of the hearing panel pools. The Chair would also be the spokesperson for the Tribunal when one is needed and make a regular (annual or semi-annual) report to the Benchers and the public on the activities of the Tribunal.

RECOMMENDATION 7—Keep Life Benchers as “spares” to be used in extraordinary circumstances.

We recommend that Benchers, both elected and appointed, who have reached the term limit and become Life Benchers remain eligible for appointment to hearing panels for two years. Life Benchers would be appointed only in the event that no current member of the appropriate pool was available.

RECOMMENDATION 8—Appoint pool members to a four-year term, renewable only once.

We recommend that the term of appointment to the hearing panel pool be four years and that a member be eligible for one reappointment of four years. Benchers are limited to their terms of office as elected or appointed Benchers.

RECOMMENDATION 9—Stagger terms of appointment to ensure continuity as well renewal.

We recommend that the terms of office of non-Bencher hearing panel pool members be staggered so that half expire every two years. In order to achieve that outcome, some appointments in 2016 would have to be made for two years only. In order to ensure an appropriate rate of renewal, only a limited number of members would be re-appointed in 2018 and 2020.

APPENDIX 2

**PANEL AND REVIEW BOARD
APPOINTMENT PROTOCOL**

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

1. Each hearing panel is chaired by a Bencher who is a lawyer and includes two members of the hearing panel pool:
 - one lawyer who is not a current Bencher, and
 - one person who is not a lawyer.
2. Each review board is chaired by a Bencher who is a lawyer and includes two additional Benchers and four members of the hearing panel pool:
 - two lawyers who are not current Benchers, and
 - two people who are not lawyers.
3. When a current Appointed Bencher is appointed to a review board, he or she is considered a Bencher, and two others will be appointed from the non-lawyer roster of the hearing panel pool. No more than one current Appointed Bencher will be appointed.
4. The hearing administrator maintains three rosters:
 - a roster of current lawyer Benchers who qualify to chair hearing panels and review boards;
 - a roster of non-Bencher lawyers who are members of the hearing panel pool; and

- a roster of non-lawyer members of the hearing panel pools, including current Appointed Benchers.
5. When a member of the hearing panel pool or a lawyer-Bencher completes the required training courses, his or her name is added to the bottom of the appropriate roster.
 6. The required courses are as follows:
 - for all panellists, the introductory course on administrative justice and any annual updates required by the Benchers;
 - for all lawyers, the decision-writing workshop; and
 - for all lawyer Benchers, the hearing skills workshop;
 7. When a hearing panel or review board is to be appointed, the hearing administrator determines the highest member(s) on each roster who
 - is not disqualified under Rule 5-3(1) or (2);
 - is not a member of the Committee that ordered the hearing, either at the time the hearing was ordered or at the time of the hearing;
 - has not had previous dealings with the respondent or applicant that could give rise to a reasonable apprehension of bias;
 - is not the subject of a complaint investigation or discipline matter;
 - is available on the hearing dates.
 8. Before being appointed to a review board, a member of the hearing panel pool or a Bencher must have completed at least one hearing as a member of the hearing panel.
 9. The President establishes hearing panels composed of the three pool members under clause 1, and review boards composed of seven pool members under clauses 2 and 3.
 10. The President may appoint members of the pool out of order in a case that, in the President's opinion, requires special skill, expertise or experience.

11. When a member of the pool is appointed to a hearing panel or review board, his or her name goes to the bottom of the appropriate roster. If the hearing or review does not proceed, or if the pool member does not begin the hearing or review, for any reason, he or she may request that his or her name be returned to the top of the roster.
12. If a pool member at the top of a roster is not available for three or more consecutive hearings panels or review boards, the President may direct the hearing administrator to place the pool member's name at the bottom of the appropriate roster.
13. The hearing administrator keeps a complete record of the appointment process for each hearing panel or review board.
14. Pool members and Benchers may enquire of the hearing administrator as to where they stand on the applicable roster.

| Province Reg. Body | Hearings per Year | Annual Budget | Composition of Panels | Training | Appointment System | Separation of Pool | Appointment of Panels | Length of Appt Term | Re-Appointments | Evaluation | Removal |
|--------------------|-------------------|----------------------------|--|---|---|---|--|---|--|--|--|
| Alberta | 45 | \$582,000 | 24 Benchers 4 public | Twice yearly, voluntary after initial session | Bencher elections | No | By chair of charging committee | While bencher | Bencher elections | N/A | N/A |
| Ontario | ½ yr = 60 | \$2 mil | 83 total 31 Benchers 3 paralegals 7 Lay Benchers 28 appointees 14 <i>Ex Officio</i> | 2 days Plus 2 – 3-hr sessions/year | Inside appointments /outside advertise occasionally | yes | Convocation appoints Chair – lawyer, non-Bencher; full-time/paid | Benchers – 2 yrs; lawyers staggered | Yes – evaluation process | yes | Formal process for removal of Chair; not other members |
| Manitoba | 12 – 15 | No separate budget figures | 14 Benchers 44 lawyers 8 public | 1 full-day/year Some noon-hours 2 days – public | Inside/public advert | Independent Chair Vice-chair is Bencher 1 public rep/2 lawyers No Bencher required | Independent Chair; part-time/paid | Lawyers – year to year; public reps not changed since start of program, 5 yrs ago | More or less same year to year | No | No – but annual reappointment gives opportunity not to continue a member |
| Saskatchewan | 14 | | 24 Governors (less Benchers on Conduct Investigation Comm.) 12 – 14 public | When available being developed | none | no | Bencher Chair appoints panels; Hearing Chair designated | Benchers – 2 3-yr terms, max of 6 yrs; public reps – up to 2 3-year appointments | Better to have more staggered change with new replacements | No – developing as part of governance strategy | no |
| New Brunswick | 6 – 10 | No fixed budget | 15 lawyers 4 public 1 Governor | No formal training | Inside/advert for public reps | Kept at arm’s length from Soc. functions | Registrar appoints panels | Terms are 7 yrs; try to stagger exits | Have occurred; 7 yr policy new, not likely reappoint after 7 | no | no |

| Province Reg. Body | Hearings per Year | Annual Budget | Composition of Panels | Training | Appointment System | Separation of Pool | Appointment of Panels | Length of Appt Term | Re-Appointments | Evaluation | Removal |
|-----------------------|-------------------|-------------------------|--|---|--|--------------------------------|--|---|--|--|---|
| Nova Scotia | 3 - 4 | \$52 K | 24 lawyers 4-5 public no Hearing Comm. Members on Council (fully independent) | 1 full day plus skills matrix | Appointed by council | yes | Hearing Comm. Chair is volunteer | No spec term – suggests no more than 3 2-yr terms; do stagger | No specified term – no more than 3 2-yr terms; do stagger changeover | Not unless appeal | Yes – by recommendation from Chair to President |
| Physicians & Surgeons | None for 5 yrs | No budget needed | None; Council – 10 elected MDS 5 public | Orientation on role of committee and governance; no admin law | Public – appointed by government Inside – 6 yr limit | no | No hearings | no hearings | No hearings | No hearings | Council members have been asked to resign – is formal process |
| Dental Surgeons | 1 - 3 | \$250 K | 1 Bencher 10 dentists 5 public | Annual plus refresher | inside | yes only 1 Board on Disc Comm. | Chair or Vice-Chair appoints panels – volunteers | 2 years, with reappointments staggered | Yes – consideration and recommendation from Gov. Comm. | No – in process of developing evaluation framework | no |
| BC | 40 - 50 | \$128 K (excl salaries) | 19 Benchers 22 lawyers 25 public | 2 to 6 days of training | Benchers elected/appointed, others applied and evaluated independently | Mostly | President | 3 years | Extended for additional year pending review | No | No |

APPENDIX 4
LAW SOCIETY TRIBUNAL ADJUDICATORS
SUMMARY OF REMARKS ON THEIR EXPERIENCE
MARCH 4, 2015

JOHN LANE: I have done I think about five hearings. I found the hearings to be absolutely excellent in the sense that they are so well organized and so straightforward and I think one of the biggest things I found as a lay person is in every case the chairs that I have had the opportunity to work with have been extremely helpful and beneficial and very knowledgeable. I have sat on other tribunals, and they don't go as well, and they are not as straightforward.

GRAEME ROBERTS: I found everybody most helpful. There was never a moment where I felt that I was alone. I was always given the opportunity to ask the questions, and I just have the highest degree of respect for all those that I work with.

JOHN WADDELL, QC: I have sat on four or five panels. Two things have impressed me the most, one is the quality of training available to all of us and secondly the quality of counsel that has appeared in front of us on behalf of both the Law Society and the members.

SHARON MATTHEWS, QC: I have sat on, I think, eight or nine hearings in four matters, and I was pleasantly surprised at how much I enjoyed both the adjudicating and the writing. The training was far more scary than the reality, so the hearings are well-organized by Law Society counsel and the member's counsel.

JAMIE MACLAREN: I have sat on two panels now and felt well-prepared, though still quite daunted by the prospect of it all. I thought that counsel were particularly helpful in being patient and guiding me when needed and also my fellow panel members, including the public representatives.

LAURA NASHMAN: I have sat on I think three or four panels and enjoyed it very much. I learned that lawyers are people too and appreciated very much the humanity that is brought to the process.

JUNE PRESTON: I have high regard for the Law Society and how they work in the best interest of the public. Benchers hold that as their vision and why they want to get elected and get on the board. I have sat on panels over the last ten years before it became organized this way and was very glad to know that it was becoming more organized. I took training over the years and always felt so supported by the members who really cared about each other, including the lay people on them.

I also think they are respectful of their own members who are being brought before a hearing. I think it's really important that a person can present their side and so on, and I think it's important that that will always be continued.

CAROL HICKMAN, QC: I also do work as a family law arbitrator, so I find the training very valuable in both capacities. I'm like June because of doing hearings both as a bencher and now sitting in this capacity. I continue to enjoy the work and always appreciate the refreshers and the training that we get.

WOODY HAYES: Being a lay member, I have been particularly impressed with the fairness of the process, and everybody seems to bend over backwards in order to make it as fair to everyone involved as they possibly can.

SANDRA WEAVER: I have sat on probably four or five hearings, including my first review hearing, which I found to be an interesting exercise. I very much appreciated the structure of the panels and the different perspectives that the benchers, the lay members and the non-bencher lawyers bring to the issues. I found it very educational, very useful experience.

JOOST BLOM, QC: I was a bencher for eight years and sat on a decent number of hearings during that time. I thought the process was good, but I think the current process, which came in just as I was finishing, is better.

CAROL GIBSON: I have been on about four hearings, and I have been particularly impressed by how seriously the Law Society and all of the lawyers take their responsibility to the public and to the profession. I just wish that the general public was aware of that.

LYNAL DOERKSEN: I can say, despite the fact that I am constantly in court, I was very impressed with the training we had and how much there was to learn about actually being on the other side and not being an advocate and chairing a panel. It has been very challenging, and I have learned a lot.

JIM DORSEY, QC: I have sat as an administrative arbitrator, both public and private, for thousands of days over four decades, and what I particularly enjoy about this process is the extensive and thorough preparation that occurs before we get to a hearing and at the hearing, the respect, courtesy and competence of all of the people that I have been dealing with.

GAIL BELLWARD: I have become one of your biggest boosters because I have done a lot of work in the Health Sciences with physicians, pharmacists, nurses, that sort of thing. It's really important that this type of thing where there is the respect, where there is the detail where people go into it knowing exactly what is going to happen and see the end result, the learning is just incredible and the elevation of your profession is constant as a result I think is just magnificent.

PAULA CAYLEY: The first hearing I had, we brought somebody back to the profession who had been disbarred, so I really felt the seriousness certainly of the role and the respect that everybody gave to that person in that process. I was very impressed. I have sat on a few panels, and it has been a really positive experience. I have really been impressed with Law Society counsel and the challenge of their role in this process

GLENYS BLACKADDER: I have previous experience in tribunals, but I find that the most rewarding work that I have been able to do have been with the Law Society and I appreciate the opportunity. There is a divergence of interesting opinions in most of the discussions, and I really enjoy that particularly.

DAVID LAYTON: I have been really impressed with the professionalism and the transparency of the tribunal process. I am particularly impressed with the Law Society's effort to constantly assess and reassess and modify this process so that it has become and will continue to become a leader in Canada in terms of really a sound adjudicative process in administrating professions.

JASMIN AHMAD: I have sat on about five or six or maybe more hearings, credentials and discipline. What struck me about the hearings is what everyone, the benchers, the lawyers, the lay representatives have brought to the compassion, the sympathy, the empathy but at the same time the over-arching principle of the interest of the public. That has been present and apparent and brought to the table by everyone, and so it has really struck me. I think that the Law Society is doing a wonderful job in bringing all of the experience and the perspectives they have in bringing this format.

LANCE OLLENBERGER: I'm hoping that it is a mutually beneficial experience because it has been very beneficial to me in my other life, working with the panels, observing and participating in the adjudicative process and determining that things are not always cut and dried the way at times that we feel that they are. So I really appreciate the process we go through, the back and forth, the discussions and decisions that we make so for me, it has been very beneficial. I think five hearings, both credential and discipline, so thank you.

DON SILVERSIDES, QC: Since this panel has been set up, I have had at least two credentials hearings, two discipline hearings and a review. I think that having public representatives really benefits the process. They are not shrinking violets, they participate fully and, in my experience, on every panel, their views, which are very much grounded in common sense, have often carried the day.

BOB SMITH: As a public member on these panels, I honestly feel privileged to be representing the public in the deliberations that the panel is hearing. I look forward, having had only three sessions, some others were cancelled at the 11th hour, so maybe I would have had more, but I look forward to continuing to be able to participate and hopefully more frequently.

HAYDN ACHESON: I have done many hearings over the years, sat on the original task force, probably four or five years ago, where we reviewed the tribunal process, made the recommendation to go outside the benchers table. On the current task force, evaluating the three-year trial, as I look around the room and the diversity I think we made the right decision in the trial. I think the public is served very well by having the diverse group.

GAVIN HUME, QC: I was involved in the setting up of these tribunals, so it is a great pleasure to me to hear about the successes that we are having. I continue to sit, I don't know how many I have done, and I very much appreciate also the training. I was dumped in, like many of us when we first started as benchers, and the training I think has been very useful.

TOM FELLHAUER: I have experienced both the hearing panels being all benchers and also the new regime. I would have to say that I am really, really impressed. There is a completely different feeling when you have a public representative on the hearing panel, and I have had a number of instances where we have been dealing with a situation or asking questions and the public representative has come up with a question that is just spot-on and really captures what I would say, you know, the more public interest

ELIZABETH ROWBOTHAM: I have had about four or five panels in the past year. I have chaired two disciplinary and credential. I find the benefit of the input of advice from both the lawyers and the public representatives very helpful and integral to a successful panel hearing.

CLAYTON SHULTZ: The inclusiveness I found very welcomed from the Law Society and the genuine welcome, which is evident from the comments around this room. It's been a rewarding experience, and I have looked back on it with great enthusiasm.

BRUCE LEROSE, QC: I have to tell you that when current Ken Walker was the chair of this task force that brought this forward to the benchers, the vote was 30 to 1 in favour of Ken's recommendations; I was the one. I have to tell you that I am an absolute convert. Having had the opportunity over the last three years to sit with the likes of Clayton and Woody Hayes and others, they have added so much to the process, and it is a much better process. I'm proud to say that I was wrong. With respect to the training, you are never too old to learn, it's been wonderful training and despite the fact I had the opportunity to sit on many and many of these hearings prior to us getting the training, it has helped me immeasurably.

BILL EVERETT, QC: I have been most impressed by the training that we have all received in preparing us to sit on these panels. I think it's been first-class, and it's allowed us to be able to write really excellent decisions and to conduct the hearings in the fairest manner possible. I am also very impressed by the lay people who serve on the panels. As others have said, they come up with the question that cuts right through it all and goes right to the heart of the matter, and I have been very impressed by that. I also like the way in which the new system separates the

prosecutorial arm from the hearing panel so that we have truly independent and transparent hearing panels judging the lawyers that come before us.

PETER WARNER, QC: I have done about six or seven hearings under this new panel system. I did a number when I was a bencher from 1992 to 98, and I think this system is a better system. I think having members of the public sitting on the bench, as it were, is a sobering experience for either students or lawyers who are in trouble or who are in front of us. With the public there, it is a bigger carpet they are being called upon, so I think it has worked very well.

THELMA SIGLOS: I agree with many of the things that were said here. I totally welcomed the training that I was receiving because I felt it helped me in some of the work that I was doing. I am really grateful for that training.

The second thing is that I was totally impressed with the fairness of the process in terms of transparency, and the respect given to the lawyer who was in front of us and the other counsel and the time given to me when I asked certain questions to understand, and the process itself. I say I took my stand or perspective as a public representative very seriously in that respect.

Thirdly, I was grateful also for the process of giving us copies of the decisions, that to me was a wealth of understanding, seeing what happened in some of the cases and being able to say, yeah how this differs from the matter that I was part of. So overall I am grateful to be part of this process and I learned a lot.

DAN GOODLEAF: I am now in the midst of my fifth panel, and I will share with you a bit of a secret that I had at the beginning. I had some doubts. I thought what is the Law Society of British Columbia doing? Is this window dressing? Is there is some kind of pressure that came its way that is causing them to do what it is doing? So I had the doubts, maybe I was with Bruce on the one that decided to keep the barbarians away from the door. I will tell you that after the first session, any doubts that I had were taken away. As a lay person, as a public representative, at least in the five panels I have been on, you are brought in as an equal, you are treated as an equal, you are expected to carry your own weight, you are expected to have views and not just sit there, and you are expected to defend those views.

DON AMOS: I have sat on other tribunals, and I found my experience here just excellent. The whole process has been just first-class. I also recently sat on my first review hearing, and again this was a very very good process.

GREG PETRISOR: I appreciate the opportunity to do these training sessions. It gives you a chance to maybe have some feedback and discussion with other people who sit on panels because you are kind of alone up there trying to make decisions quickly and answer questions that come up. So, I appreciate the opportunity.

JORY FAIBISH: My experience has been the same as I have heard from many of my colleagues: warm welcome, great deal of consideration in terms of any input that I have to make and I have really appreciated that. I have to say it was a surprise, and a welcomed surprise. I have been on a couple of panels.

APPENDIX 5

CRITERIA FOR APPOINTMENT TO HEARING PANEL POOLS

These are the basic criteria that we recommend for lawyers:

Outstanding legal career, including:

- Excellence in chosen area(s) of law
- Teaching experience – law school, CLE
- Contributions to the profession

A variety of practice backgrounds, with value placed on specialization in:

- Administrative law
- Regulatory law
- Criminal law
- Civil Litigation
- Accounting
- Securities
- Real estate
- Immigration

Adjudication skills

- Sound judgment, independence and objectivity
- Patience
- Decisiveness

Communication skills

- Ability to communicate effectively in hearings and meetings
- Ability to write clearly and effectively in a timely fashion

Diversity:

- Gender
- Geography
- Minority representation

- Experience with cultural and ethnic diversity

These are the basic criteria that we recommend for non-lawyers:

Community service (leadership roles a plus) and recognition

Board experience (leadership roles a plus)

Career leadership / professional or management experience

Regulatory experience

Decision-making skills

- Sound judgment, independence and objectivity
- Patience
- Decisiveness

Communication skills

- Ability to communicate effectively in hearings and meetings
- Ability to write clearly and effectively in a timely fashion

Diversity

- Gender
- Geography
- Minority representation
- Experience with cultural and ethnic diversity

APPENDIX 6

ROLE OF INDEPENDENT TRIBUNAL CHAIR

1. Basically, the role of the Chair would be those of

- a) member of lawyer pool;
- b) chief of Tribunal;
- c) chambers bencher (subject to delegation);
- d) adjudicator on publication issues.

all subject to *Legal Profession Act* and Law Society Rules.

2. The functions of the independent chair would include these:

- a. Establish panels and review boards, appoint members, remove, replace, consent to continuation, etc., supported by staff and guided by Protocol;
- b. Participate in hearings as chair of panel in rotation with other members of lawyer pool;
- c. Conduct pre-hearing and pre-review conferences or appoint another member of the lawyer pool;
- d. Adjudicate applications made before and after hearing or review, such as adjournments, stays, variation of orders, or appoint another member of the lawyer pool. Direct applications to Committee or panel where appropriate;
- e. Act as spokesperson for the Tribunal;
- f. Be responsible for the disclosure and publication of citations, decisions and other Tribunal information and documents. Adjudicate applications relevant to exercise of discretion in relation to publication and disclosure;
- g. Set date for hearing or review when counsel cannot agree;
- h. Designate three or more Benchers to consider applications for interim suspension, etc.;

- i. Be a leader, mentor and coach with all tribunal members;
- j. Participate in the appointment and re-appointment process;
- k. Report to the Benchers and the public annually or semi-annually on the activities of the Tribunal;
- l. Monitor developments in other jurisdictions in Canada and make recommendations to the Benchers on areas of improvement relevant to the Tribunal.