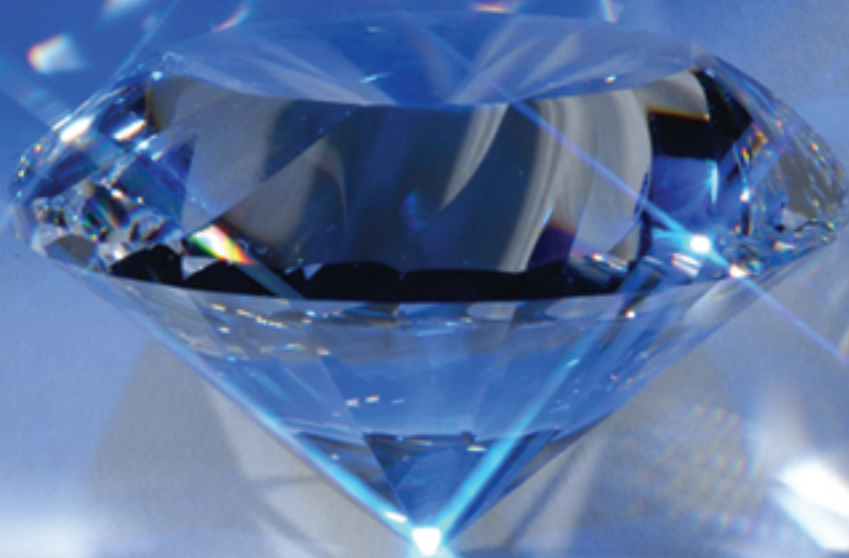


August 2005

Crystal Clear



New Perspectives for
the Canadian Bar Association

The Report of the CBA Futures Committee



Crystal Clear

New Perspectives for the Canadian Bar Association

A CANADIAN BAR ASSOCIATION SPECIAL COMMITTEE REPORT

Crystal Clear: New Perspectives for the Canadian Bar Association

Presented to the Council of the Canadian Bar Association by the CBA Futures Committee

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August 2005

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Robert Patzelt
Chair, CBA Futures Committee

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Foreword

Looking into the future has long been the domain of scientists, astrologers, stock market analysts and carnival hustlers. Those who are right reap the rewards of their prescience and are honoured as prophets; those who are wrong are deemed to be charlatans, deserving of scorn, derision or burning at the stake. Consequently, most people avoid outward gazing, preferring to place Fate in the hands of Chance rather than to dare to predict the potential alignment of the stars.

While a legal system based on precedent might suggest a propensity to rely on the past, lawmakers and legal advocates must in fact deal with the most unpredictable aspect of life itself – human behaviour. The task of looking into the future of the legal profession and, in turn, the future of the Canadian Bar Association, is all the more difficult when broader social, economic, political, cultural and institutional factors are added to the mix.

When examining the future, one has to be careful not to be shackled by the detail of the present and the past. The easiest assumption and the safest is to suggest that tomorrow will be the same as today. Taking the leap into the void, accepting that there will not be complete information and that there are risks in the known and the unknown, we have put forward our considered opinion of the most likely scenarios for the profession and for the CBA 10 years hence, and for the directions it should take to master the unknown.

We have worked on the array of issues facing lawyers and the CBA for over two years. We have learned to make future assessments based on the best current knowledge and the force and direction of the major drivers of change. Rather than seeking perfection, our objective has been to create greater clarity for the future of the CBA. Ultimately, time will judge how well we have succeeded.

Shedding Light on Dark Shadows: A Call for Action

1.1 CBA Futures Committee Mandate

The CBA Futures Committee was formed in March 2003 and, while its mandate has expanded somewhat over time, its essence is:

to study the challenges facing lawyers and the legal profession and make recommendations about the kind of organization the CBA will need to be and what it will need to offer lawyers and the legal profession in order to be relevant and vibrant.*

The distinction between lawyers and the legal profession is important because, as will be seen in this Report, the real challenge is to explore the richness of differences that exist in the values, attitudes, needs, expectations and intentions of individuals and recognizable segments within the profession, rather than treating the legal profession as a homogeneous entity.

Furthermore, the nature of the CBA will be heavily dependent on the future requirements of individual lawyers, law firms and the profession, if it is to meet its objective of **relevancy**. There must be a strong linkage between what the CBA will provide and what will be specifically required by CBA members, rather than a random selection of service and program offerings. Also, the need for **vibrancy** suggests adding strength, growth and lustre to the CBA, rather than being comfortable with the status quo.

The CBA is an interconnected system of Branches, Sections, Conferences, Committees, partner organizations, staff, elected volunteers, members, potential members, suppliers, allies, etc. It is part of a larger network of the organized profession, including law schools, law societies and specialist associations. All these entities have both common and distinct interests. Change in one part of the sys-

**Throughout this Report, any reference to “lawyers” should be read to include Quebec notaries.*

tem affects the whole system in ways that may not be immediately apparent. Thus, the broad cross-section of CBA entities must be involved in defining and addressing the future of the CBA.

1.2 The Importance of Planning for the Future

Whether one recognizes and accepts them or not, there are many indicators and signs that give substantive clues as to what the legal profession in Canada, and consequently the Canadian Bar Association, may look like in 2015. From the “clutter” of data, ideas, opinions, forces and pressures, the CBA must select those factors which will be the most critical drivers of change; assess their impact on individual members, the legal profession, and the CBA; and take actions to optimize the role of the CBA as a relevant and vibrant organization.

By nature, most large organizations resist change, remaining rigid and inert in the face of uncertainty. The strength normally associated with size can be sapped quickly if even one fundamental pillar of stability crumbles against the tide. Lawyers individually have different needs and face a spectrum of challenges during their careers. Their personal situations and preferences tend to dictate what they want from a professional association, whether it be advocacy, practice assistance, specific services, education, networking or mentoring opportunities. But lawyers also have a collective responsibility as champions of the “rule of law” and defenders of the independence and integrity of the legal and judicial systems. For this, a critical mass of lawyers is fundamental. A relevant and vibrant CBA is vital to the evolution and survival of the legal profession and the legal system in Canada.

“

Security, personal, national and international, is the factor which will continue to wield the most influence on our world, society and our human relationships over the next 10 years. The legal profession will therefore continue to be profoundly affected by this, defensively and offensively.

”

Veronica L. Jackson
Gange Goodman & French

Doing nothing is a choice that may eventually doom us to irrelevance. The future requires all lawyers to get involved, to have an opinion and, most impor-

tant, to do something. This Futures Report is really a call for CBA members and the legal profession to get involved in taking control of our collective future.

The world in which we live and work is constantly changing, whether or not we are willing to go along with that change. Geopolitical upheaval and the continuing threat of international terrorism have superimposed an international mantle on the Canadian legal system. In addition, failures in integrity and responsibility in both the corporate and public sectors have raised calls for enhanced oversight, transparency and accountability. Efforts to combat terror and fill the accountability gap have tested principles fundamental to the Canadian legal system and, consequently, the legal profession.

“

Canada needs a healthy and vibrant and united CBA. Canada is founded on the 'supremacy of the rule of law.' The CBA is the champion of that rule of law.

”

Simon V. Potter
McCarthy Tétrault

Our profession has witnessed an erosion of the rule of law through the extension to the state of arbitrary powers; threats to the independence of the profession through government interference with the lawyer-client relationship and with the self-regulatory nature of the profession; legislative and executive incursions into the judicial function and judicial independence; and attacks on individual liberties, including *Charter* rights to free speech, association, fair trial, liberty and equality.

The CBA must continue to advocate strongly in defence of the profession's fundamental values and principles. We must take a leadership role in these areas or risk losing our credibility and competitive advantage to our competitors, of which there are many. Every CBA Branch has some experience with legal organizations that operate in competition with the CBA, whether they are regulatory bodies or representatives of special interests. Besides being the leading voice in Canada, the CBA is well-positioned to continue its role of exporting our knowledge and experience of democracy and an independent legal profession and judiciary to developing democracies.

We examined the potential impact of what we called the Mediocrity Spiral. Lack of relevance or vibrancy of the CBA could lead to a decline in membership or a less committed group of volunteer members. This in turn would restrict the

CBA's financial and human resources, both volunteer and staff, and consequently reduce the ability of the CBA to provide quality programs and services to its members. The result would be an even greater decline in membership and interest. Inevitably, the Mediocrity Spiral would lead to the extinction of the CBA, taking with it many of the noble objectives it has set for itself on behalf of individual lawyers and the legal profession.

The antidote to mediocrity is courage – courage to nourish an organization that can adapt to new situations, one that is nimble enough to make the necessary adjustments in direction, structure and operations to meet the challenges of the future. As we will demonstrate in this Report, there are many emerging areas where the CBA can create enhanced value for its membership. By building on these new directions, we can set in motion an Opportunity Spiral, in which incremental successes can open up even greater opportunities to generate value and benefits for CBA members and the legal profession in Canada.

This Futures Report is an invitation to recognize change, to become nimble, and to begin to take the short-, medium- and long-term steps necessary to plan for and manage the potential impacts of change. All changes bring some form of risk. Those risks must be identified, their impacts assessed, and plans made to manage their effect on individual lawyers, the legal profession and the CBA itself.

While the future can never be certain, this Report is intended to alert the organization and its members to its greatest opportunities, challenges and risks over the next 10 to 15 years, and to suggest the most productive and appropriate direction and priorities.

It is important to introduce the concepts and language of futures thinking into these discussions so that the groundwork can be set for ongoing strategic and operational planning. There must be a broad consultation among CBA members to reach a consensus on what is important (and what is not), so that there is a sense of shared mission, shared values, shared risks and shared rewards inherent in the notion of association.

Throughout this Report the unspoken question will be – **why associate?** The value and benefits of association will have the greatest influence on the future role, structure, operations and services of the CBA. Understanding what makes the CBA valuable is critical if we are to respond adequately to the uncertainties of the future. [In Chapter 3, this Value-Based Model is given a full description and analysis].

This Report will, we hope, be the first of a series of forward-looking docu-

ments. To control our own future, we must confront the shadows of uncertainty, indifference and inaction that surround us. Futures thinking and futures planning should become a regular and accepted management practice, influencing current planning and decision-making.

1.3 The CBA as Prism

The importance of identifying and describing the value structure of the CBA can be captured in the following analogy. The CBA can be likened to a prism. The present is a kaleidoscope of light representing competing and complementary trends and drivers of change. If the CBA is to achieve desired outcomes for the future, it must identify its essence – how it provides value and benefits – to re-direct the light of change into acceptable, discernable patterns for the future. This will mean adjusting the composition, size and alignment of the prism.

Extending the analogy, the prism can be seen as a multi-dimensional crystal, radiating a spectrum of light in all directions for individual members and the legal profession, and for the broader public interest.

1.4 Structure of the Report

Extending the image of the prism, this Report is presented in such a way that the critical drivers of change (Chapter 2) are directed through a potentially re-configured CBA (Chapter 3) to emit a set of fundamental future directions for the organization (Chapter 4).

Chapter 2 looks at the dominant factors and trends that will drive change in the future, and their likely impacts on lawyers and the legal profession. It examines lawyers' values, attitudes and tendencies, as well as their needs and expectations. It looks at lawyer practitioners and their clients, changes in the structure of legal practice and the market for legal services, broader changes in the legal system itself, potential CBA allies or competitors in the areas of legal advocacy and representation, as well as a host of external factors that go beyond the legal profession.

Chapter 3 attempts to answer the question, "What can/must the CBA do in the future, that individual lawyers and firms cannot easily do on their own, that will bring value and benefit to its membership and the legal profession?" Specific CBA value roles are identified and described.

In Chapter 4, suggested strategic directions for the CBA are presented, each linked to specific change factors (Chapter 2) and providing the streams of value and benefits suggested in Chapter 3.

1.5 Methodology

The CBA Futures Committee is composed of a diverse team of CBA members and staff, each of whom brings to this work a wealth of knowledge and experience gleaned from active and committed participation in the CBA at both the Branch and National levels. The Members of the Futures Committee are identified in **Annex B**. We benefited from regular meetings facilitated by Ron Knowles of Western Management Consultants, who also enlightened us on change management theory and provided guidance on process.

In addition to an extensive document review of Canadian and international literature and data (see Bibliography – **Annex C**), we examined Statistics Canada data on demographics of the legal profession. As well, we held a number of specific interactive meetings and “town halls” with CBA members to get a better sense of what was on the minds of lawyers about the future. These included:

- A dialogue with Council members at the Whitehorse Mid-Winter Meeting (February 2004)
- A “town hall” meeting (“Saturday Afternoon Live” with Tasha Kheiriddin) at the Annual Conference in Winnipeg (August 2004)
- A brainstorming session with representatives of CBA National Sections and the Department of Justice in Ottawa (October 2004)
- A consultation with the CBA Young Lawyers Directorate in Ottawa (October 2004)
- An awareness-building exercise on communications and lawyers’ image, entitled “Common Threads and Loose Ends”, conducted in Charlottetown with CBA Council (February 2005).

We engaged the polling firm Ipsos-Reid to survey four distinct populations on their motivations for joining the legal profession, their career expectations, career satisfaction, practice intentions and major challenges. The specific population segments included:

- Law students
- Lawyers in practice for 2 years
- Lawyers in practice for 7-8 years
- Lawyers in practice for 15 years.

The results of the on-line survey, conducted between May 28 and June 15, 2004, were presented to the CBA in August 2004.

Throughout this process, we communicated with the CBA membership via *EPIIgram*, the electronic newsletter of the Emerging Professional Issues Initiative (EPII). Each *EPIIgram* included an interactive component through which we gained further insight into the views of CBA members.

As our study progressed, we became increasingly aware of the absence of certain critical pieces of information about the legal profession and lawyers in Canada. In some cases, additional research was commissioned; in others, we reluctantly were forced to accept best guesses and opinions.

In addition to the research and commissioned studies, we held a number of lively discussions of our own to assess evidence (or lack thereof) and to provide direction for this Report. It is important to note that we ourselves went through an ongoing evolution of our thinking about what was necessary and valuable in a Futures Report, the issues themselves, the level of detail that was required and the relationship of the Report to the CBA's strategic planning and operational planning exercises.

Regular updates on our work were presented to the CBA Council and Board of Directors.

1.6 Fundamental Assumptions

We were well aware that the risks of certain future scenarios (e.g. declining membership, absence of volunteers, inadequate resources) could set the CBA into the Mediocrity Spiral. We also acknowledged the gaps in our knowledge about lawyers and the profession.

Rather than allowing these factors to stifle discussion and innovation, we operated with several fundamental and positive assumptions:

- There will still be a need for the CBA in 2015
- The CBA will acquire or develop the managerial, financial, human and technological resources necessary to remain viable
- CBA members, through their voluntary efforts, will continue to lead the work of the CBA's professional staff
- Gaps in CBA information, research, planning and operations can be identified and addressed
- The CBA has sufficient flexibility to identify and accommodate uncertainties and unforeseen risks between 2005 and 2015.

chapter one

Favouring Opportunity over Mediocrity, we accepted the challenge of setting out a course for the CBA that would clarify its directions for the longer-term.

Refractors: The Dominant Drivers of Change

2.1 Key Trends and Drivers: General Discussion and Caveats

In this Chapter we will examine some of the key trends or drivers for change that emerged from our research and discussions. In this, it is important to acknowledge that the legal profession is not homogeneous – there are differences of gender, ethnicity, age and career expectations. Lawyers work full-time, part-time, in the corporate sector, in large, medium, and small firms, in the public sector in governments, and in associations and other non-governmental organizations. Some lawyers work outside “traditional” legal practice, and, increasingly, other professionals and paralegals are entering various fields and activities involving law.

In 2002, there were 85,863 lawyers in Canada. It is estimated that there is a net increase of 15,000 lawyers every five years so that, in the time horizon of this Report, there will be an additional 40,000 lawyers. Inter-generational differences are a very real factor (a generation is generally considered to be about 20 years) as aging “Baby Boomers” retire or reduce their work activity, the “Generation X’ers” move into positions of greater power and influence, and the “Echo Generation” enters or contemplates entering the legal profession.

Relevant to this Report is the fact that lawyers may have different views on whether law is a profession, a calling, a business or “just a job.” Some lawyers

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People entering the legal profession will be more selective about their volunteer commitments and these will also have to be fulfilling to them professionally and personally and allow for them to be engaged and to be listened to.

”

John D.V. Hoyles
CBA - Ottawa ON

volunteer for association work or do *pro bono* work in their communities; others are driven by billable hour quotas or by other personal goals. As a result, reasons for associating with an organization like the CBA will vary, especially since membership is predominantly voluntary and not part of any professional accreditation or regulatory imperative. Lawyers will become members of the CBA not only for the potential benefits they may derive, but also for the overall nature of the experience they will have as part of the association.

Certain underlying causes – barriers, obstacles, incentives – may be insufficiently addressed or understood simply by comparing statistics. Emerging trends around issues such as diversity may need more longitudinal data to determine whether changes are permanent or merely “blips” on the landscape. Changes in levels of *pro bono* work may have as much to do with variances in the general economy as with altruism or social conscience. Ongoing research over a longer period is vital.

It is also important to look at parallel, intersecting or competing forces. For example, as more women enter the legal profession, there has emerged a greater desire for part-time work and/or accommodation of the demands of work and family (work-life balance). Is this a direct cause-and-effect relationship, or does it reflect broader social and economic trends? A recent Catalyst Canada study shows more and more male lawyers seeking the same sort of arrangements. Is it really a gender issue then, or simply a situation and remedy first identified by women that has become an institutional standard?

“

Over the next 10 years, the profession will fully recognize the high cost of burnout in both genders. The profession will recognize that the need for workplace accommodation is not 'just a woman's issue' but a human need. The CBA must be the catalyst for this change.

”

Sandra L. Schulz, Q.C.
Chartered Mediator

Cause and effect can become blurred. For example, there has been considerable speculation that the influx of more women will permanently alter the legal profession – less adversarial behaviour, more effort to find alternative solutions, a more human face to the profession. Will this be the case as more women become more senior or will the changes in the profession attract more women to stay in it? Or must the profession change independently of gender? Human behaviour is very unpredictable, and stereotyping by gender or other personal characteristics may confuse us as to the future outcomes.

These caveats are provided to indicate the hazards of jumping to conclusions or of relying on easy extrapolation.

All data and findings need to be assessed from a broad and inclusive perspective to confirm their validity.

To give a flavour of the robustness of the discussions on what the dominant trends and change factors might be, the Futures Committee members were given the opportunity to indicate their personal priorities as well as to warn of any false trends they detected from the information they reviewed. These individual opinions appear throughout this Chapter.

2.2 The Question of Culture

One issue that received much attention in our discussions as well as in the various consultations was **culture**. Traditionally, culture means the collective set of values, beliefs, attitudes, behaviours, expectations and norms of a group. As was mentioned earlier, the legal profession is not homogeneous; in fact, many sub-groups emerge, often based on area or type of practice, each with its own set of experiences. Hence, the term “culture” in this Report goes well beyond ethnicity to describe “cultures” that actually revolve around the organization or workplace.

Often references to culture were framed in terms of negative values, norms or behaviours – for example, rigidities or isolation in the workplace, the “tyranny” of the billable hour, “toxic” relationships created by inequities in levels of satisfaction or reward versus expectations, sexual harassment, and outright cases of discrimination against individuals because of personal characteristics.

The Futures Initiative Survey conducted by Ipsos-Reid addressed a number of cultural factors such as career motivation, expectations and degree of satisfac-

“

The leading factor that will emerge to change the legal profession over the next 10 years is the increasing importance associates will place on their personal and family time -- the 'work life balance' issue. Associates will shun enormous billing pressure. Greater importance will be placed on interesting work, flexible work environments and alternatives to hourly billing, with the end focus being more free time.

”

Kelly James Smith
Rogers Moore

tion. Opinions were not necessarily common across or even within generational cohorts; there are both cross-generational and intra-generational differences in “culture.”

For the purpose of this Report, perhaps the most important drivers of change are the growing multiplicity of working and/or personal cultures within the legal profession, their potential to create divisions or alliances between discernible segments and groups within the profession, and the need both to recognize and to accommodate differences within the profession and the work of the CBA.

Again, there is little tangible current evidence on which to draw firm conclusions about the actual cultural sub-groups that exist, their dynamics and the extent to which the current profession moulds the culture or how the overall culture of the profession is altered by the beliefs, attitudes, valuations and expectations of new entrants.

As a starting point, the CBA must re-affirm the values that lawyers and CBA members do hold in common, such as the desire to help society, improve the law and the administration of justice, and advance the ideals and image of the profession – many of the values already cited in the Vision and Mission statements of the CBA.

There will be a need in the future to isolate the dominant cultural issues that emerge as the demographics of the profession change, most notably:

- Balancing career and family life
- Expanding practice and career options
- Recognizing gender and diversity differences
- Adopting expansive, more global perspectives
- Providing pro-active client service
- Improving the image of the individual lawyer and the profession.

In addition to the human factors that are affecting the culture of the profession, a number of other factors such as technology are having major effects on behaviours, expectations, values and beliefs, not only of lawyers but of clients, partners in the judicial system and other stakeholders. For example, the traditional paper-based culture of the legal profession is being radically transformed by the possibilities of electronic linkages and data storage. Time for research and reflection, once the lawyer’s greatest ally, is shrinking as the pace of transactions accelerates.

Virtually all factors of change are having a perceptible impact on the overall culture of the profession, and there is a growing need to identify shifts and vary-

ing impacts on sub-groups, so that differences can be accommodated by the profession and the CBA.

“

The pressures of the 'bottom-line' and the desire for a balanced life, combined with an over-whelming explosion of information vying for each lawyer's attention, will result in ever lessening job satisfaction. The profession may be on the verge of a crisis. The CBA has an unprecedented opportunity to assist lawyers through this rapidly approaching period of convulsing change.

”

Frank C. Kraemer
CBA - Vancouver BC

2.3 The Practitioners

According to Statistics Canada, the Canadian legal profession has grown almost ten-fold in the past 50 years (there were 9,000 lawyers in 1951, and 85,863 in 2002). By 2015, we can expect 125,000 practising lawyers in Canada. The rate of growth of the profession has been higher, for example, than that of physicians and surgeons (the population of lawyers grew by 109% in the 1970s compared to 42% for physicians and surgeons). There is anecdotal evidence that there may not be enough work to go around and that some law practices are failing or lawyers are simply leaving the profession. Despite this less than rosy outlook, law schools are graduating 3,500 new lawyers each year, of whom 2,500 are called to the Bar.

While 10,000 lawyers in the 2001 census were over 55, there is no indication of how many will retire, and when.

A closer examination of the law profession shows that it is experiencing unprecedented levels of **fragmentation** as the demographics change. This is critical to the question of future supply because different groups have different expectations, experiences and desires for change. Three dominant demographic drivers of change on the supply side are gender, diversity (including ethnoracial) and age.

2.3.1 Women

In 1970, only one in 20 lawyers in Canada was female. Today, one of every three lawyers is a woman, with the majority under age 35. Only 10% of lawyers over 50 are women (the next large cohort of potential retirees). In 1990-91, female law students outnumbered males for the first time, and in 2003, 60% of law school enrollees were women. In 2004, 56% of law school graduates were women.

“

The most important factor is the changing demographics, number one, women, followed closely by the impact of multiculturalism in Canada. To the extent that the profession will grow into a female dominated demographic, the CBA will grow, or decline through its response to this clear pattern.

”

Stephen L. Bresolin
CBA - Ottawa ON

It is difficult to determine the exact year that a 50-50 gender split will be reached in the profession because of a lack of information by gender on retirement and drop-out patterns in the profession, as well as on the impact of other factors such as law school tuition fees, and perceived benefits of other employment opportunities.

We have learned, though, from the 2004 longitudinal study of women lawyers in Ontario by Professor Fiona Kay et al. for the Law Society of Upper Canada (*Turning Points and Transitions: Women's Careers in the Legal Profession*), that more women lawyers than ever are working part-time; that male lawyers are still more highly represented in partnership positions and are more likely to be sole practitioners; that women are more broadly dispersed across practice areas; that women lawyers are under-represented in the over \$200,000 income bracket and most highly represented in the under \$40,000 bracket; that, of sole practitioners, male lawyers earn on average \$126,000 annually compared to \$86,000 for women; that women lawyers are more likely to have several legal positions over the course of their careers, and more likely to make lateral professional moves; and that there are very high attrition rates for women.

A 2004 Law Society of Alberta study, *Equity and Diversity in Alberta's Legal Profession*, found that young women lawyers are more inclined to take jobs in the public sector than in the private sector, and remain under-represented in authority and leadership positions in large law firms, perhaps out of choice, but

perhaps not. Theories of women's eventual flight from the profession still lack solid national research evidence. However, the Alberta study concluded that while men leave the profession in greater absolute numbers, women leave in greater proportion than do men.

What is necessary is to determine whether the expectations, attitudes, behaviours, work patterns and support requirements of female lawyers will vary significantly from those of male lawyers and, if so, how they will affect the profession and the practice of law. For example, a disproportionate amount of family responsibilities still remain with the female, creating higher "churn" rates for women in the profession and necessitating accommodation strategies so that both work and family obligations can be met. Rather than simply assuming that the status quo will remain or that the next generation of family partners will provide greater assistance, we must study gender as a potential driver of change in the culture, practices and behavioural norms of the profession. Women in the profession should be fully engaged in this exercise. And, it will be important to hear from women who have left the profession, as well as from those who have "survived."

The CBA already has as part of its mission to promote equality in the legal profession and to eliminate discrimination. It is time to revisit this area, to update the data on women in the profession, the obstacles and barriers that exist, and to develop new strategies to ensure that equity is achieved in the likelihood of the genders achieving similar levels of satisfaction during the course of a legal career.

Renewed dialogue within the legal profession concerning the ground rules for the practice of law and how legal work is organized could form the basis for collaboration with other professions around broader social policy issues (child care strategies, tax policy, parental leave, the duty to accommodate, government contracting policies, etc.), and how these issues shape the experience of professional women. The legal profession cannot simply resign itself to the attrition rate of women; the challenge must be to focus on a culture of equality for the future.

2.3.2 Diversity

A second potential demographic driver of change is the growing diversity of the Canadian population. Diversity refers not only to race, colour, or national origin, but also to gender, language, religion, sexual orientation, differing learning abilities and styles, physical and mental abilities, and even economic status. Unlike employment equity, which has a legislated basis for four specific disig-

nated groups (women, visible minorities, persons with disabilities, and Aboriginal peoples), diversity is a more expansive concept that focuses on the voluntary accommodation of differences. Diversity theory and practice are not only about equity, but also about opportunity (e.g. serving a diverse client base, attracting new employees, accommodating diverse cultural tastes, customs and practices). The development of true “cultural competency” will enhance the relevance, reach and authenticity of the legal profession.

Race data for the Canadian legal profession are sketchy and even misleading, particularly since most depend on self-identification. In the 2001 Census only 6.8% of Canadian lawyers identified themselves as visible minorities; in the general population, the proportion was 13.4%. This compares unfavourably with other professions. For example, 21.3% of dentists and 17.5% of specialized physicians self-identified as belonging to a visible minority. In Ontario in 1996, 7.3% of lawyers identified themselves as non-white, compared to 17.5% of the overall population. This compares with 24.5% of physicians in Ontario who were non-white, and 22.1% of engineers. According to a 2004 research study by the Law Society of Upper Canada, in Ontario “people of racialized communities are underrepresented relative to their numbers in the Canadian population” despite “important inroads across various fields of law and across different practice settings, including law firms of all sizes.” (*Diversity and Change: The Contemporary Legal Profession in Ontario*). Though it would be inaccurate to extrapolate this data to other provinces where the population mix may be different, it is clear that barriers to full participation exist.

Another statistic shows that, in 1995, non-white lawyers in the 50-54 age bracket in Ontario earned less than 50% of what their white counterparts earned.

Diversity in the profession and diversity in the general population refer to both visible and invisible differences among people. We must examine if and how these differences impact the future of the profession and, by extension, the directions of the CBA. At a minimum, distinct groups should be engaged in continuation and extension of CBA’s past work on equity in the legal profession, work which has covered issues related to racial equality, concerns of gay, lesbian and transgendered lawyers, and issues related to lawyers with disabilities. The goal would continue to be the elimination of barriers to entry and progression in the legal profession and the CBA, and to improve access by clients to culturally appropriate legal services and programs.

Diversity is a deeply held Canadian value. It is also the essential avenue by which the CBA can become even more vibrant, relevant and valuable to its members. Consequently, the legal profession in Canada and the CBA must do more to understand the importance and impact of diversity and to promote it

not only to its members, but to the legal education system, the law societies, the judicial system and the public.

2.3.3 Age and Experience

The advent of a new generation of lawyers will produce significant changes in the prevailing attitudes, expectations, work patterns and values of the profession.

For example, current law students surveyed by Ipsos-Reid indicated that their prime motivation for entry into the profession were the desire to help society (35%), the range and flexibility of professional opportunities that a legal career provides (32%) and the intellectual stimulation and challenge of the law (29%). Far down the list was the motivation of income potential or financial stability (21%). This may reflect the attitudes that law is merely the first of a number of careers, that students are willing to replace income with meaningful or challenging work, or that they are comfortable in the knowledge that the cohort of Baby Boomers will eventually retire, ensuring that the students' financial needs and expectations will at some point be met.

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Generational shifts in values and expectations will challenge the legal profession to accommodate new ways of practising law, new relationships of lawyers to firms and clients and new concepts of professional success.

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Joan Bercovitch
CBA - Ottawa ON

Three specific attitudes of younger lawyers will have a major impact on future directions for the CBA:

- Their desire to achieve work-life balance
- Their willingness to become involved and make a difference in their communities, and
- Their understanding that a career in law will require lifelong learning.

Time spent in the profession undoubtedly colours a lawyer's attitudes, expectations and intentions. Many first- and second-year lawyers are frustrated with being “out of the loop” for stimulating work, instead finding themselves relegated to a form of “hazing” (long hours, high volumes of routine work, rel-

atively low pay). Time demands, workload and the lack of a personal life are seen as key stressors by all lawyers. In fact, even among lawyers with seven to eight years of practice, almost 70% are still thinking of leaving the profession. In a recent study of 10 large firms conducted by Catalyst Canada, a majority (62% of the women, 50% of the men) planned to change jobs within five years. Not surprisingly, lawyers with at least 15 years of practice were less likely to leave the profession but, even in this group, a majority had considered changing their area of practice (Ipsos-Reid).

From a futures standpoint, it is clear that age and years of practice are significant drivers of change and should be considered in any approach to segmentation, program and service design, and communications. While a great deal of emphasis has been placed on lawyers coming into the profession, consideration should also be given to the new behaviours associated with the age of retirement. It is not uncommon now to see lawyers working into their seventies, eighties, or even nineties. This trend could also affect the demographics of the profession.

2.3.4 The Impact of Law School

Because a finite number of law schools provide a finite number of requisite courses in various legal subjects, there could be a control mechanism at the entry level into the profession. Nevertheless, young lawyers have told us that there is still a push at the law school level towards going into the larger firms. As the motivations and diversity of new entrants shift in the future, this may change.

Two continuing issues at the law school stage which may affect the demographics of the legal population will be the relatively high cost of tuition and the concomitant problem of personal debt. Servicing law school and pre-law school debt may influence or limit the choices of new entrants about their area of practice or career. Accumulated debt will certainly restrict the number of new entrants who will be able and willing to establish sole practices.

Equity programs at law schools may slowly change the demographics of the profession, but numbers of Aboriginal students, for example, are so low that such programs are unlikely to have much impact over the next decade unless special measures are introduced (*The Study of Accessibility to Ontario Law Schools*, October 2004; Social Program Evaluation Group, Queen's University).

2.4 The Clients

This section on the demand for legal services should be read with the two sections that follow – 2.5 (The Legal Marketplace) and 2.6 (Legal Services Delivery and Legal Practice Models).

The challenge of discerning dominant trends in client behaviour is heightened by the wide range of legal services available, changes in legal practice models, variations between private and public sector practices, as well as issues of price, supply of lawyers and product and service differentiation.

Yet again, analysis is frustrated by the lack of comprehensive data or research. Conclusions are therefore speculative or based on anecdotal evidence, but do provide some insight into factors which bear watching for the future in the area of the demand for services in the private sector. A significant gap in information also exists about the demand for legal services in the public sector.

The **price** or **cost** of lawyers' services continues to be a prime area of concern of clients. As transparency increases in a post-Enron world, more and more of the mystery of pricing is being eliminated and clients are looking for defensible levels of **value for money**. This may mean notional benchmarking against other professional service providers or greater demand for fixed price undertakings. More initiatives may be undertaken in the area of pre-paid legal services insurance, where the cost of legal services can be spread over a larger number of potential clients, and volume discounts can be achieved through negotiation. While soft advertising of law firms and legal services has slowly become accepted, it is unclear whether or when advertising on the basis of price will come into the Canadian marketplace.

Accounting firms, management consultants, paralegals, service bureaus, infomediaries and dispute resolution consultants are providing **new choices of service providers** to the public. If uncontested or unregulated, these alternative choices could provide significant competition to traditional legal suppliers. Coupled with this trend is the increased sophistication of the legal services con-

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The rise in consumer knowledge and sophistication, combined with competition from within and outside Canada, will drive the profession to provide services on clients' terms.

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Stephen Hanson
CBA - Ottawa ON

sumer, especially in accessing information, simple forms or regulations directly on-line or through intermediaries. This trend will continue to have an impact on certain areas of practice (e.g. wills, real estate, insurance, traffic offences and small claims disputes).

In a price-driven market, loyalty to a single lawyer or firm could become a thing of the past (as happened, for example, in the stockbroker business). Clients will be limiting their actual needs to specific items and negotiating price on a distinct set of services. Perceived benefits of a single source of “legal memory” might also disappear.

Perhaps the biggest threat on the demand side is the current **poor image** of lawyers held by the public. This is in many ways unfortunate and unfair, because public views may be fashioned by weaknesses, inequities or failings in the current legal system (delays, appeal processes, filing costs, etc.) or from public misconceptions about the role of the legal profession vis-à-vis the justice system. Nevertheless, all lawyers are affected, especially when there is an actual case of impropriety or unprofessional behaviour. Stereotypes of unscrupulous lawyers are reinforced by unflattering portrayals in films, books and other media. (The issue of image is discussed in greater detail in Section 4.2.3.) Intriguingly, common knowledge holds that the vast majority of the public have the highest regard for their personal lawyer, but an unfavourable view of the profession in general.

“*The many lawyers who want to see an improvement in the profession's public image and reputation understand correctly that lawyers can't achieve their long-term goals and potential without a real image improvement -- an improvement that is thankfully very attainable with the right combination of sustained effort and continued modeling of the profession's principles.*”

Ron Knowles
Western Management Consultants

The 2004 Ipsos-Reid survey and the various discussion groups confirmed that image is a burning preoccupation of the legal profession. As clients become even more sophisticated and informed, the profession will require a sophisticated strategy for renewal and enhancement. Without concerted action in this area in the future, there could be continued erosion of the overall demand for lawyers' services.

2.5 The Legal Marketplace

The interplay of the changes in supply and demand for legal services has created a number of important new trends which will have substantial impact in the future. Indeed, many of these are already having an impact on the legal marketplace.

Consumer demand for specific legal services has enhanced the trend towards **commoditization** or **unbundling** of services. This in itself demands a greater level of rigour in defining, pricing, delivering and charging for services. It also opens the door for the potential use of paralegal suppliers for the more routine actions on some files.

Lawyers will be required by consumers to provide **alternative pricing models** in addition to the standard practice of billable hours. This will include fixed price contracts, quantity discounts and contingency fees, as well as new ways for lawyers to partner and share risk with clients.

There will be continuing pressure on firms of all sizes to reduce their costs. In some cases, they may opt for mergers or alliances or, at the other end of the scale, move towards specialization or “boutique” status. General or sole practitioners will find it increasingly difficult to survive amidst large or highly specialized competitors. Because of the changing nature of demand, firms are moving from local to regional to national to global practices.

There may also be increased calls for regulation of non-legal service providers, such as immigration consultants, although this trend might also lead to calls for greater regulation of lawyers.

New areas of law will likely emerge (e.g. Internet law or public health law), but some traditional practice areas may become “de-legalized” as simple language and simple process alternatives become available (especially on-line). Increased use of Alternative Dispute Resolution (ADR) procedures will also affect the legal marketplace.

A universal factor in the marketplace will be the growing use of sophisticated **technology**. It will improve access to core information, increase the speed of transactions, and necessitate whole new systems and standards for security, e-forms, e-contracts and other electronic documents. Client-lawyer “face to face” encounters will likely be substantially reduced as technology becomes all-pervasive. Technology will help small firms reduce overhead, and allow rural, remote and even home-based firms to compete with “bricks and mortar” global giants (if smaller firms still exist in 2015).

Other trends and developments in the legal marketplace which will have an impact in the future include:

- The widening compensation gap, particularly between lawyers in large firms and those in sole practice or small firms
- The growing trend to contract or part time work, and
- The challenges of meeting increased client service expectations in a faster, interconnected world in which competitors will be prepared to offer more for less.

2.6 Legal Services Delivery and Legal Practice Models

Technology is perhaps the most pervasive (and least understood) driver of change in the legal profession. Technology is not only affecting the structure and process of organizing and delivering legal services, but it is becoming an integral part of the actual transactions themselves as, for example, new electronic formats replace paper-based documents and processes.

As indicated previously, clients are able to do more of the work themselves, or at least expect a reduction in fees because of technological change. They also demand real-time access, for example, to file status, time records and work-in-progress.

More and more situations that required the physical presence of a lawyer or a legal team will be serviced instead electronically by advanced information and communications technology – for example, teleconferencing, shared electronic documents and the PDA (“Blackberry”).

Technology will make it easier for lawyers to work outside a fixed physical structure and will alter both hours of work and the geographical areas serviced. However, technology could be a double-edged sword, because it will also allow new competitors to enter domestic practice and market areas. Technology and the impact of a larger, global marketplace will create more pressure for **standardization of work**.

In addition to the influences of technology, other market forces, such as price competitiveness and client demands for transparency and value for money, will lead to the greater **commercialization** of the practice of law. Law firms and legal practitioners will become more familiar with and adopt a more business-like approach to the management of their operations, including their approach to organizational structure, management and planning. The “bottom line” and “profit centres” will become far greater influences on long-term and

day-to-day decision-making about matters, including preferred areas of practice, acceptance of new files, billing models and procedures, personnel management, and investments in research and technology.

The trend towards commercialization may already be negatively affecting the propensity of the profession to perform legal aid or *pro bono* work, or in some cases to accept difficult files or needy clients. This could create a problem of access to legal services in the future.

Many of the same types of commercial pressures will affect the work of corporate counsel. Cost, value for money and off-loading of non-legal activities will all influence the future role and operations of in-house counsel.

As governments also adopt more business-like approaches to management, government lawyers will likely experience a shift to greater transparency and accountability for their actions and costs. Since government contracts out a large volume of its work to the private sector, there may be greater pressure to align the costs (and value for money) of public and private providers as this comparative information becomes more readily available. Governments (like large corporations) are both consumers and employers, and will try to optimize their return from both in-house and contracted services.

The knowledge and skill-set of a lawyer or firm will become one of the major determinants of market advantage. Technology and commercialization demand a new set of skills for legal practitioners, from basic typing and computer skills to more complex business planning skills. The importance of new knowledge will necessitate an enhancement in knowledge management skills, including research, analysis, storage and distribution (including sharing techniques).

The continued growth of the legal knowledge base and the changes in legal practice models and legal services delivery models will accentuate the need for ongoing learning at an individual level, within a firm, or through enhanced Continuing Legal Education (CLE) through the CBA or other providers. The need for lifelong learning is already accepted by law students and young lawyers and will continue to influence the evolution of the profession.

While mid-sized firms in Canada continue to be acquired by larger firms, initial forays into publicly-held or publicly-traded Canadian firms have been rejected. However, as other business and professional groups, once considered unlikely candidates for public ownership (e.g. management consultants, accountants, stock brokers) continue to use this avenue, the need for capital or investment financing may also cause some firms to investigate this option. In fact, the 2004 Clementi Report in the United Kingdom recommended to the UK

government that outside ownership of law firms be permitted, subject to certain caveats.

In a related manner, firms will likely continue their experiments with **multi-disciplinary practices**, seeking to align themselves with other professional specialties (e.g. government relations, psychology, management consulting) to expand their ability to provide comprehensive services to larger, more sophisticated clients.

New approaches to delivering legal services will continue to be introduced, including problem-solving versus adversarial methods, such as mediation (already mandatory in certain practice areas). These approaches will grow in popularity if they succeed in reducing the time, cost and emotional strain of more traditional legal processes. Individual lawyers and practice areas will align themselves with experienced and complementary alternative services, providing a form of “seamless” service delivery to their clients.

2.7 Changes in the Legal and Judicial Systems

A fundamental driver of change will be developments in the legal and judicial systems. We expect to see continuing potential for erosion of the rule of law by the use of extensive and arbitrary state powers. Threats to judicial independence and lawyer-client relationships must also be addressed. Public demands in areas such as national security may continue to increase calls to limit certain constitutional rights and freedoms.

Recognition of **Aboriginal self-government** as a fourth order of government in Canada promises new challenges, opportunities and perspectives, including the advancement of indigenous legal systems. Traditional concepts

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The law is there for us and is only as good as we make it. The most important factors are that the legal system, laws and society will continue to change. It is critical for the CBA to ensure that it and its members contribute to ensuring that the changes to the legal system in all its facets are the best that we can effect as key participants in that process.

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Robert G. H. Patzelt
Scotia Investments Limited

such as **restorative justice** (e.g. sentencing circles) may have a greater influence on legal practice and the judicial system.

Non-adversarial mechanisms, such as the **collaborative justice** approach to family law, will alter some of the dynamics of the legal system. If successful, these approaches could expand to other areas of practice. **Alternative Dispute Resolution (ADR)** processes and techniques have already begun to change certain areas of the law.

Other legal frameworks such as **religious law** (the “sharia” for Muslims, the “Beth Din” process for Jews, for example) hold the potential to complement and complicate the current secular legal system, providing alternative systems for resolution of legal issues, but also raising questions of shared values, consistency and accountability of these systems.

As society’s beliefs, attitudes and norms evolve, new laws will continue to be passed creating new crimes, new penalties and, potentially, new areas of practice for lawyers. Organized politics at all levels will still have the greatest influence on the direction and substance of these new laws. Elected politicians will continue to have the greatest influence on the judicial system through judicial appointments, salaries and the allocation of responsibilities (those not constitutionally entrenched) between various orders of government. Politicians will continue to have the greatest influence on the law enforcement system, as it will likely remain publicly managed for the future.

A major issue for the legal system will continue to be the question of barriers to **access to justice** for social, economic and geographical reasons. **Legal aid** continues to be a contentious issue between governments and the profession, and there will be a need to involve the public more in understanding the impact of this issue on the fairness and operation of the legal system.

One other potential issue is the **international harmonization** of various legal systems as the pressures of globalization break down traditional concepts of borders and sovereignty. The legal profession is already quite engaged in this process, but it will be necessary to ensure that Canadian legal values, expectations and norms form part of the evolution of the vast system of international law in the future.

The CBA will have to ensure that it keeps abreast of and contributes to understanding these developments in order to remain relevant and representative.

2.8 Representation and Advocacy for the Legal Profession

At present, a considerable number of organizations represent lawyers and advocate on their behalf. There are also a number of regulatory bodies which have an important role in establishing standards for Canadian lawyers. While the CBA is the only national organization representing all sectors of the profession, fragmentation at the organizational level is strongly affected by the various sub-groups which make up the legal profession. Organizations form around geography, specialization of practice, special interests or single issues.

While this diversity of representation and advocacy can be a progressive force for the advancement of the profession, in a more highly connected world there may be a need for greater integration and coordination, and at the same time a greater opportunity through technology for increased segmentation. The presence of so many organizations will force individual lawyers and firms to make choices among various collective options. There may also be confusion among decision-makers and the public when confronted with an array of organizations representing various aspects of the profession or advocating on different issues of the law. In more practical terms, there may be opportunities among organizations to share knowledge, skills, staff, volunteers, some operational systems, and even programming (such as CLE), to increase their overall efficiency and effectiveness.

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The CBA has an opportunity to build on its position as the pre-eminent lawyers' organization. But to do so it will have to be like a fine jazz ensemble - playing harmoniously as a united whole, while each instrument shines on its own. The band is nothing without the players; the players are greatly diminished without the band.

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Robert P. Stack
Cox Hanson O'Reilly Matheson

Today there is little sharing of strategic goals, operational plans, membership lists, benefits packages and other potential collaborative opportunities. Given the limited resources available for representation and advocacy and the growing number of organizations acting on behalf of the profession, this is an area that should be examined as both an opportunity and a challenge.

For the CBA, this means creating a distinct “brand” for its vision, mission, programs and services, to distinguish it from competing or complementary

organizations. (This will be discussed in greater detail in Section 4.2.2.) Branding does not eliminate the possibility of collaboration or even co-branding. It does, however, help fight through the clutter and confusion which face both lawyers and those they seek to influence, and proper branding does impose boundaries and constraints.

2.9 External Forces

A number of forces outside the legal profession will greatly affect the world in which lawyers operate. While they may not be directly related to lawyers and the legal profession, they will add to the uncertainty of the environment in which decisions will be made.

Some of the major external uncertainties that must be considered include:

- **Globalization** of economies, industries, corporations, information and communications, challenging traditional concepts of nationhood and sovereignty
- The continuing presence of **nationalism** within both developed and developing nations
- Continuing struggles between **state** and **individual rights**
- Expanding definitions of **human rights** to include issues such as economic and social conditions
- Continuing demands to adopt the values and practices of **sustainable development** and **environmental stewardship**
- Demand for greater institutional and corporate **responsibility, transparency, accountability** and **ethical standards**
- Emergence of new **economic “tigers”** such as China
- Continued pressure to meet the needs of **developing nations** and to re-allocate resources between rich and poor
- **Inter-generational differences** in incomes, attitudes, expectations and world views
- Demand for both greater and lesser **regulation** (depending on issues and impacts).

To this list of uncertainties must be added the prospects of natural phenomena (disasters) and human-created events (wars, conflicts, social upheavals, discoveries).

These issues go far beyond the scope of this Report, but their impacts must be monitored to determine their relevance to the future of lawyers and the legal profession.

2.10 Summary of Change Factors

While it is difficult to predict which of the many factors presented will have the greatest influence, the following will likely provide the greatest challenges, risks and opportunities to the law profession in Canada and to the CBA:

- The **demographics** of the profession, especially the impact of the shift to more **women**
- Variances in **inter-generational expectations**, especially the changing attitudes, work habits and career intentions of **young lawyers**
- The desire for better **work and family life balance** and the impact on individual lawyers, firms and the profession
- Continuing **fragmentation** of the profession because of increased specialization, diversity and variations in income
- The proliferation of **sub-groups** within the profession and their impact based on differences of opinion on the mission of the profession (a calling, a profession, a business or a job)
- New forms of **competition** in the marketplace
- **Multiple representatives and advocates** for the legal profession
- Shifts in the volume and nature of legal work, including **supply imbalances**
- The perceived **negative image** of lawyers and its impact on respect and influence in society, buyer aversion, and lawyers' own career satisfaction
- The **lack of information** necessary to make fact-based decisions on behalf of the profession
- The introduction of **new legal service models**, including ADR
- The **commercialization** of the legal profession and the introduction of business concepts into legal practices
- The impact of **globalization** on the legal system, legal practice models and the economic structure of law firms
- The impact of **technology** on the law, the judicial system, legal practice, information management, communications, competition, client expectations and service
- The need to stay **connected** and to form **communities** of interest and influence.

Achieving Brilliance: Shaping the Future Facets of the CBA

3.1 The Current CBA Context for Futures Planning

We now shift our focus from the lawyers and the legal profession to the Canadian Bar Association. A brief overview of CBA's recent history will set the context for its need to address the major drivers presented in the previous chapter.

For most of the last decade, the CBA's strategic direction has been built around a single priority – **relevance** to members. The pursuit of relevance has required cohesiveness and integration within the CBA, particularly in the collaboration among Branches and the national organization. In the future, the drivers of change will fundamentally transform the environment in which the CBA operates, forcing the CBA to seek out new ways to serve its members and the profession. The CBA of the future must build on current strengths, but also add new roles and capabilities to enhance value to members, and must take every opportunity to do so in ways that appear “seamless” to the outside. This is not to say that everything the CBA does today must necessarily also be done in 10 years.

The CBA staff is currently structured around organizational functions – e.g. advocacy, continuing legal education, communications, finance and administration. In the future, though, members will have varying perspectives, needs and, most important, perceptions of benefit from association. Consequently, the CBA will increasingly be in the business of providing different services to distinct member segments, raising the question whether the current staff organization should be restructured to parallel the segments. This could mean a move away from the current functional model, with all of the attendant risks of staff disruption and turmoil.

The CBA is an interconnected system of Branches, Sections, Conferences, Committees and related organizations (e.g. Canadian Bar Insurance Association, Canadian Bar Association Financial), supported by staff, elected volunteers, members, potential members, suppliers, allies and others. It is also part of a larger sys-

tem of organizations that represent and advocate on behalf of the legal profession. All these entities have both common and distinct interests. But change affects the whole system. Ideally, the broad cross-section of the organizations that make up the organized profession should be involved, or at least consulted, in the process of transforming the CBA.

The CBA has experience and established practices in the various aspects of planning, including the development of a mission and vision, a strategic plan that is regularly updated, budgeting based on an intense review of priorities, and resource allocation. While these processes have been central to the CBA's success as an organization to date, many of these tools and processes seem best suited to periods of incremental, steady progress. When looking to the future, bolder and broader concepts will almost certainly be required.

3.2 A Value-Based Approach to Futures Planning

To develop a set of strategic directions for the future (Chapter 4), we first propose to create an analytical grid to determine the importance and priority of key drivers of change for future decisions and actions.

Our approach looks at the **Value Proposition** for the CBA, basically answering the question:

What can/must the CBA do in the future that individual lawyers, their firms or employers cannot easily do on their own that brings value and benefits to its membership and the legal profession?

In the context of the two qualifiers directing our Committee's work – **relevancy** and **vibrancy** – we examine a number of areas that contribute to the CBA's overall value as an organization. It should be noted that the CBA produces two sets of distinct but complementary "value families." The first set encompasses direct value and benefits to members, including:

- **Value** to individual lawyers and identifiable demographic segments of the profession
- **Value** to various types of legal service providers (e.g. sole practitioners, firms of various sizes, in-house counsel, public sector lawyers), and
- **Value** to the overall profession of law.

In addition, the CBA through its actions contributes to the greater public good, including:

- **Value** to the legal system, the judicial system and the law enforcement system, and
- **Value** to the public in terms of justice, human rights, democracy and the rule of law.

The degree of member support for the second set of less direct, less tangible outcomes is perhaps proportional to the degree of personal benefit members receive from the CBA, although this may vary from member to member.

3.3 Established CBA Value Roles

In fulfilling its vision and mission, the CBA has, through its philosophy, organization and actions, established a number of roles which create value for members and others. For the future, the CBA will constantly have to consider their relative importance and priority to members and make trade-offs among them based on the organization's available resources. These choices must be based on an assessment of existing programs and services against those which might displace them. In Chapter 4, we identify our proposed set of strategic directions, based on the following ten value roles:

- The Power of Association/Protecting the Profession
- Members' Services
- Creation of a Networking/Collaboration Hub
- Promoting Equity and Accommodating Differences in the Legal Profession
- Contributing to Social Value and the Public Interest
- Research, Innovation and Knowledge Management
- Communications, Marketing and Outreach
- Education
- Centre of Information and Expertise on the Legal Profession
- Risk Management for the Profession/Futures Planning.

I. The Power of Association/Protecting the Profession

Through its size, diversity, strength and collective action, the CBA can create synergies in the areas of: advocacy on behalf of the profession; economies of scale of operations; bulk purchasing of services; reputation and goodwill enhancement (branding); and protection of the commercial and professional boundaries of the profession.

The CBA also has the breadth and depth of membership to sustain long-term advocacy and economic strategies, as well as to maintain a model code of conduct of ethical standards and behaviour and, eventually, to provide accreditation (in

certain areas).

II. Members' Services

The CBA provides support to legal practice, including relevant and current Continuing Legal Education (CLE) programs, practice management support tools and information, legal and law practice related communications, and advice on innovation, especially in the areas of technology. Increasing the productivity of individual members and firms can directly contribute to the enhancement of their economic success.

In addition, through an ongoing assessment of members' needs and requirements, the CBA provides a wide range of valuable member services in areas such as finance, insurance, health and travel.

III. Creation of a Networking/Collaboration Hub

The CBA provides a focal point for linking a number of distinct segments and “communities” within the legal profession. This networking/collaborative function can assist with developing shared values and objectives, enhanced dialogue on issues and programs, information sharing, collective research and advocacy initiatives, job search, client development, social interaction, orientation and mentoring opportunities. Formal and informal networks also serve as a “grapevine” for bringing information and ideas into the CBA in a timely manner.

CBA Conferences, Committees and Sections are formal aspects of the CBA network, but less formal networks of members also develop as offshoots of these collaborative mechanisms.

One valuable networking/collaborative initiative of the CBA is the scheduling of Annual and Mid-Winter Meetings in various locations across Canada, linking not only lawyers, but judges and other key players in the legal system.

IV. Promoting Equity and Accommodating Differences in the Legal Profession

As part of its mission, the CBA attempts to manage variances in the profession, suggesting solutions for accommodating differences and eliminating inequities.

As a representative organization, the CBA promotes dialogue and supports the “democratization” of the profession, so that a diversity of opinions, experi-

ences and expectations can be fairly represented. While striving for consensus, the CBA can also accommodate minority and differing opinions so that positions reflect the full range of views of the profession.

V. Contributing to Social Value and the Public Interest

The CBA is a visible, credible, reliable organization that can represent the “voices” of the legal profession to lawmakers, the judiciary, law enforcement agencies, other legal bodies, academic and research institutions, the media and the public.

It provides ready access by lawyers to the most senior decision-makers and government officials, and can differentiate between activities solely in the public interest and those that are of benefit to the profession.

The CBA is a defender of the legal and judicial systems, the rule of law and individual human rights. In certain instances, the CBA will seek standing to advocate in support of important legal principles. In addition, the CBA intervenes in individual cases to support specific legal issues.

VI. Research, Innovation, and Knowledge Management

In support of its work on behalf of the legal profession, the CBA initiates research into evolving areas of the profession, providing valuable new insights, tools or applications to its members. It also collects, stores and distributes various forms of legal information, a function that most lawyers or firms would be unable to do to the same degree on their own.

In addition, the CBA provides research on a broad range of advocacy issues, as well as input to decision-makers on specific pieces of legislation.

VII. Communications, Marketing, and Outreach

The CBA is actively involved in communications with members, decision-makers and other interest groups and stakeholders, via direct and e-mail communication of Branch and National publications, market research surveys and media relations.

The Annual and Mid-Winter meetings of the CBA remain valuable communications vehicles. Topical and high-powered guest speakers bring attention to the CBA and the profession, enhancing visibility as well as interest in the proceedings overall.

Communications tools are closely aligned with the evolution of technology, and the CBA has used its highly developed website and innovative initiatives such as e-news, Branch newsletters, *National* on-line, web surveys, CBA PracticeLink and the *EPIIgram* program to increase connectivity and dialogue with its members.

The CBA is not as successful as some members would like with the media and the public about the public image of the profession, despite concerted efforts through the “Lawyers Care” public relations initiative, which is jointly funded by some Branches and CBA National. Although it goes well beyond a simple question of communications, image was one area where members felt they wanted greater value from the CBA. The ubiquitous preoccupation of the profession with its poor public image reflects the need for CBA leadership on behalf of all members. In Chapter 4, distinct strategic directions will be described for developing and enhancing the CBA “brand” and promoting a more positive image of lawyers and the legal profession.

VIII. Education

The CBA has developed a successful and self-sustaining Continuing Legal Education program. Its commercial viability confirms its value to members. We believe that there may be other opportunities and value in expanding education and training initiatives at both the National and Branch levels. These could include: the development of specific courses for law students (e.g. legal practice models, profession “cultures”); in-person or on-line courses for non-law students and the public on the legal and judicial systems and the role of lawyers; courses for international legal communities; and basic courses on business management, practical uses of technology and communications skills, such as the development of presentations and public speaking.

3.4 Opportunities for Additional CBA Value Roles

In addition to these established current CBA roles, we see two additional areas where the CBA could provide value:

IX. Centre of Information and Expertise on the Legal Profession

As we have indicated earlier, there is a dearth of reliable information about the profession. A dedicated CBA centre of information and expertise on the legal profession could collect basic statistics, initiate census-taking and surveys, track and analyse various trends and developments in the legal profession, and assess their impacts and potential risks. In addition, it could develop a history of the

profession, acting as its corporate memory and documenting best practices for future use.

The centre could also initiate quality assurance standards for information. As more and more data comes from the Internet, there is a need to validate information, verify evidence and check sources.

An opportunity may exist to commercialize some of the centre's activities.

X. Risk Management for the Profession/Futures Planning

Throughout our work, we became more and more aware of the need for conducting risk management assessments of the legal profession through regular and formal futures planning exercises. Certain trends may not impact all lawyers with the same intensity, speed or cost. Yet, when rolled up to the profession level, they can do sufficient damage to weaken or impair the future of the profession.

Risk management is a form of insurance, with the CBA acting as the antenna to detect emerging trends which contain risks for the profession. In Section 1.2, the Mediocrity Spiral was described. One overwhelming factor, such as declining membership, can set in motion a series of effects that could ultimately lead to the end of the CBA. Such a risk should not be left to chance, but instead should be addressed in a rational and regular manner. Risk management is a sophisticated and expanding discipline that must become part of the CBA's standard management functions.

“Rainbow’s End:” Realizing the Long-Term Value of the CBA

In this Chapter, we set out what we see as the most critical directions the CBA must pursue if it is to respond to the challenges and risks for the future and maximize its value to its members, the legal profession and the legal and judicial systems. Each of these critical directions responds to one or more of the major drivers for change outlined in Chapter 2, and addresses a number of the value roles described in Chapter 3. For each critical direction, we make recommendations on the types of actions the CBA must take.

The critical directions mirror in many ways the proposed value structure for the CBA, **creating internal strength** (membership, core services, segmented delivery, recognition of differences, integrated organizational structure, law practice economics, centre of expertise on the legal profession), **reaching out** (creating dialogue and connectedness, CBA “branding”, more positive image with the public), **developing new cooperative arrangements** (partnerships and alliances), and **protecting the profession** (risk management and ongoing futures planning).

4.1 Creating Internal Strength

As a first step, the CBA must develop a set of directions that supports its own internal strength and promotes relevance, vibrancy and growth.

4.1.1 Building CBA Membership

Membership remains the most critical factor for the future of the CBA. Aside from the financial resources that members provide, they also contribute the leadership, ideas, volunteer time, reputation and numbers that create the real strength and power of the association. Since membership in the CBA is primarily voluntary, and alternative organizations and avenues exist for representation and advocacy, the CBA must earn its members, lawyer by lawyer, firm by firm,

on a continuous basis, year by year. This represents by far the greatest risk factor that the CBA faces. Compounded over a ten-year period, it underscores the importance of **relevancy** in every single action that the CBA takes. While motives for membership may vary (self-interest, public interest, a mix), the overriding need for a **critical mass** of members is crucial to the survival of the CBA.

Despite constant efforts to recruit and retain members, the rate of participation of lawyers in the CBA remains at slightly higher than 50% (similar to the experience of other voluntary professional associations in Canada, and similar to the American Bar Association). In terms of a long-term objective, we wrestled with the possibility of setting a membership target anywhere from 75% to 175% (to include non-lawyer members). After considerable discussion, the Committee makes the following recommendation:

Recommendation #1

By increasing the relevancy and value of the CBA and taking specific recruitment and retention action, the CBA must raise the total membership annually as a percentage of the overall population of lawyers so that by the year 2015, 90% of Canadian lawyers will be satisfied members of the CBA. The ultimate goal is to reach 100% participation.

To meet this goal, we propose the following additional actions:

- Poll members, non-members, and potential new entrants to develop a better understanding of why lawyers do or do not join the CBA
- Analyse the factors that influence membership including:
 - cost
 - direct benefits
 - specific programs and services
 - mission, mandate, and image of the CBA
 - competing associations
 - social or networking opportunities
 - peer acceptance or pressure
 - recruitment initiatives
 - retention initiatives
 - other factors
- Develop an enhanced professional, long-term campaign to recruit and retain members, including special campaigns for selected demographic or practice groupings and law students

- Identify reciprocal membership arrangements with potential partners or allies
- Create special membership categories for large firms
- Examine customized membership arrangements with selected or restricted services
- Examine the concept of memberships sponsored by third parties or individuals
- Consider the separation of public interest programs and activities into a charitable trust that would be funded by voluntary, tax-deductible contributions
- Examine the tax deductibility of selected volunteer contributions of time or in-kind services
- Tie CBA membership activities directly to CBA “branding” activities.

The 100% goal may be unattainable, but we believe it must be set to ensure that we will be alive to why small pockets decline to join.

4.1.2 Enhancing and Segmenting Core Programs and Services

As membership demographics and the demand for various programs and services change, the CBA must re-assess its core offerings to ensure that they are relevant and beneficial. Additionally, more consideration must be given to segmentation or customization of programs and services to ensure that they are meeting the real needs of members. Certain programs, such as CLE, will continue to face competitive options in the future, and it will be necessary to ensure that individual programs and services continue to be efficiently organized and managed, and self-sufficient. This means that the CBA must be agile in creating and delivering affordable programs and services, in an array of different formats, to well-researched, targeted segments of the membership and the profession.

Technology will be a major factor in enhancing core programs and services and in supporting their customized delivery. It will also assist with the evaluation of programs and services, allowing quick assessments of client satisfaction.

Our overall recommendation in this area is the following:

Recommendation #2

The CBA must develop the programs and services that various member segments require, and deliver them in a targeted, timely and cost-effective manner, using the individual member’s preferred delivery mechanism.

To this recommendation, we add the following suggestions:

- Regularly survey members on their specific needs for programs and services
- Poll members on the relative importance of various programs and services, their willingness to pay fees beyond their basic membership fee, their preferred method of delivery, and any issues of timing or location
- Assess which programs and services are core and which should be optional or dependent on sufficient demand
- Determine which programs and services may require segmented delivery because of the diversity of the membership
- Customize the content, marketing and delivery of segmented programs and services with the advice of a representative group from the segment concerned (Branch, Conference, Section, demographic group, practice area, practice model, etc.)
- Where necessary, establish separate budgets, specialized staff and technical support systems for creating and delivering segmented programs and services
- Monitor the marketplace for competing programs and services, and alter program and service design accordingly
- Investigate and implement state-of-the-art technology, where feasible, for service delivery
- Introduce point of delivery evaluation tools for members for specific programs and services
- Market outside programs and services (e.g. insurance, financial services, bank loyalty cards, car rentals, travel packages) to members where there is sufficient interest, real potential savings to the members and additional benefits for the CBA.

4.1.3 Promoting Equity and Accommodating Differences

Part of the strength of the CBA comes from its ability to unite members around a specific mission and mandate despite their differing background, expectations, attitudes, practice areas, work situation, gender, age, sexual orientation, income, geographical location and other personal factors. Two particular drivers of change – **the gender shift** in the profession and **the shift in attitudes and expectations of new entrants** – necessitate specific attention to ensure the representativeness and relevance of the CBA.

The CBA will want to take into account different points of view and perspectives in its planning, decision-making and advocacy initiatives, and in the design and delivery of members’ programs and services.

Our overall recommendation with respect to equity and accommodating differences is the following:

Recommendation #3

The CBA must assess member differences, including those related to gender, age and racial background, to determine if they necessitate shifts in CBA policy, advocacy, programming, governance, organization, communications or membership recruitment action, and via the segmentation of programs and services, develop and deliver such programs and services in ways that best accommodate the need.

To accomplish this, the CBA should:

- Re-visit the recommendations of the 1993 *Touchstones for Change* and 1999 *Racial Equality in the Canadian Legal Profession* reports and, where necessary, update their research, analysis and recommendations
- Identify barriers for specific groups to entry and/or progression in the legal profession in Canada
- Identify barriers to particular groups to participation within the CBA
- Review current planning, management and governance structures to ensure that they address any barriers to participation in the CBA and accommodate the diversity of members’ views and expectations
- Advocate for the recognition of differences, the promotion of equity and diversity and the introduction of accommodation practices (e.g. flextime, part-time work, family-related leave, accommodation of religious practices) in the CBA, the legal profession and the judiciary
- Support different segments of the CBA membership in developing networks, advocacy positions and special programs and services **within** the CBA
- Develop mechanisms to encourage discussion between special segments of the membership and the general membership, and to resolve any issues of discriminatory behaviour or inequity
- Study the current availability and promote the provision of culturally appropriate legal services in Canada.

4.1.4 Integrated Organizational Structure

As stated earlier, the CBA is really a larger interconnected network of Branches (local organizations), Sections, Conferences, Committees (constituent groups) and related organizations. To bolster its internal strength and to promote a clearer image to members, the profession and the public, the CBA should continue to create an environment where the various working parts function in a coordinated, cohesive and integrated fashion. In addition to obvious efficiencies and greater effectiveness, an integrated approach will sup-

port the flexibility and nimbleness that will be required to deal with a large volume of complex and competing issues on behalf of a highly fragmented membership population. The CBA will need the ability to address the “politics” and problems that form barriers to organizational unity.

Our overarching recommendation with respect to an integrated organization is the following:

Recommendation #4

The CBA, its Branches, constituent groups and related organizations must seek to operate in a way that is cohesive, representative, integrated and responsive, and that appears to be “seamless” from the outside, while maximizing the benefits of collaboration on management, planning, and programs and services for members.

In support of this recommendation, we propose the following actions:

- Survey component organizations to determine real or perceived barriers to integration
- Identify opportunities for common or shared systems, processes, programs and services
- Develop new mechanisms to “democratize” the governance process, including an examination of the Board of Directors and Council structure and the process for electing officers and other decision-makers
- Synchronize planning processes, advocacy agendas and communications and marketing strategies, where possible
- Cooperate and act jointly with the Branches and constituent groups vis-à-vis external legal organizations, potential partners and allies
- Examine the allocation of human and financial resources between organizations
- Introduce transparent reporting mechanisms across the whole organization
- Develop coordination mechanisms such as inter-organizational advisory groups, task forces and consolidated Board committees
- Organize Branch/National staff meetings and project teams
- Clarify expectations, roles, responsibilities and processes for inter-organizational consultations
- Consult regularly with the component organizations on key decisions and their impact on members and other stakeholders.

4.1.5 Law Practice Economics

The economics of individual firms and the economic well-being of individual practitioners remain important issues for the CBA, and an obvious area for the creation of value for the future. Because there are so many different economic structures (sole practitioners, small, medium, large firms, in-house counsel, public sector lawyers), there is a need to distinguish between macro-economic and micro-economic initiatives (i.e. the economics of the profession versus the economics of the firm or the individual). Actions must respond to the main drivers of change, including new forms of competition, encroachment on the traditional work of the profession, and the impact of gender and generational shifts on standard law practice models.

The over-riding recommendation we make in terms of law practice economics is the following:

Recommendation #5

The CBA must undertake initiatives that assist CBA members to derive economic value from a career in law.

This would maximize the return on investment of law firms, individual lawyers and private and public organizations employing legal counsel. It would assist lawyers in their efforts to survive and prosper in the legal marketplace.

This would be best achieved by:

- Enhancing the capacity of the CBA to research and develop tools, resources, information and advocacy on issues affecting the business and practice of law. This might take the form of a new CBA Department on Emerging Professional Issues (the EPICentre).

At the **macro-economic** level, the CBA should consider the following:

- Take all actions necessary to reduce or eliminate competition for legal work from unregulated professional or para-legal organizations
- Institute an accreditation process for legal specialties
- Advocate for fair economic returns for legal aid work
- Enhance economic returns by building value into the CBA brand (see section 4.2.2 on “Branding”)
- Enhance the image of lawyers and the profession to improve lawyer/client relationships and build demand for legal services (see section 4.2.3 on “Image”)

- Examine alternative pricing arrangements to “billable hours,” and assess their potential acceptance by legal consumers
- Research legal consumer preferences for “unbundling” of services
- Research the phenomenon and the impact of “self-lawyering”
- Promote new areas of legal work by building on the CBA’s international reputation
- Introduce risk management and futures theory into legal profession forecasting and planning exercises
- Facilitate Branch/National marketing efforts on behalf of the profession
- Examine the impact of alternative buyer arrangements like legal services insurance
- Assess the impact of Alternative Dispute Resolution (ADR) and other new techniques on the legal profession.

At the **micro-economic** level, the CBA should consider the following:

- Undertake research and development of law practice tools
- Promote the application of technology to more and more areas of the practice of law
- Conduct periodic surveys of comparative compensation levels for legal professionals and staff
- Provide research, tools and information on ways to create work and family life balance
- Research legal service delivery models for hard-to-reach segments of the population, including rural and remote centres
- Facilitate bulk buying of goods and services (such as insurance, computer time, car rentals, travel agency fees, airline tickets, banking)
- Develop a national referral network for firms and advisory boards
- Provide information and networking opportunities to accommodate diversity within firms
- Develop leadership, mentoring and firm management programs for the profession
- Research and promote assistance to firms with employee relations and human resource management issues.

4.1.6 Creating a Centre of Expertise on the Legal Profession in Canada

The absence of timely and comprehensive data on the legal profession in Canada severely hampers both the work of the CBA on current issues and its ability to do futures planning. The lack of longitudinal data makes it difficult to recognize and confirm new trends for purposes of advocacy, planning and risk management. Relying on Statistics Canada information is not an option because

of its restricted scope and lack of timeliness.

To correct this serious gap in understanding and planning, we recommend that:

Recommendation #6

The CBA must establish a highly-qualified professional centre of expertise and information on the legal profession in Canada whose objective would be to become the pre-eminent and authoritative source of information and expertise on all aspects of the legal profession in Canada, including how it is organized, demographic data, volumes and types of work, and comparators to other professions nationally and internationally.

To do so, the CBA should:

- Establish a dedicated centre called the “Legal Profession Research Institute” mandated to become the central focus for the collection, analysis and distribution of all data related to the structure, composition and operations of the legal profession in Canada
- Direct the Institute to collect both quantitative and qualitative information
- Make the Institute accessible through the Branches, and involve the Branches and CBA partner organizations (for example, CBIA) in the creation of its research and data collection program
- Provide input from particular sub-groups within the CBA membership to ensure that the Institute includes sufficient segmentation of research and analysis in its operational planning
- Investigate the potential for making information available to non-CBA members for a fee, and also providing fee-based specialized activities for CBA members
- Create a clearinghouse function for non-Institute information for members and the public
- Use the Institute to develop information on competition to the legal profession
- Create expertise on the quality assessment of non-Institute information, especially information from the Internet
- Assist Branches, Conferences, Sections, members, partners and allies in the development of surveys and other consultative mechanisms
- Use the Institute to advise Statistics Canada on census planning
- Release key information and trends identified by the Institute to the media and the public.

4.2 Communications, Branding and Image of the Profession

The second group of directions deals with the broad issue of communicating information to members and the public, packaging and identifying the CBA and the “CBA lawyer” as distinct and valuable commodities (“branding”), and taking actions to build a more positive relationship with the public by enhancing the image of lawyers and the legal profession. In a more interconnected world, **communications**, **identity** and **image** are important factors in determining the success or failure of an organization or venture.

4.2.1. From Communications to Dialogue

Advances in communications technologies bring with them the possibility of accessing enormous amounts of data and distributing it rapidly to either a broad audience or selected recipients. Unfortunately for many lawyers, the result has been an avalanche of information (information overload), leaving them overwhelmed and relatively uninformed. In addition, they feel little sense of ownership of or influence on the communications process.

The CBA has developed a comprehensive program over the years for informing members about matters that may be relevant or of interest to them. Traditional methods include direct mail publications, such as the *National*, the *Canadian Bar Review*, *cba.org* and Branch websites, blast e-mails and both print and electronic Branch, Section, Committee and Conference newsletters. Communications methods to the public include print and TV advertising and speeches, as well as press releases and interviews with the media on important issues or events.

Our most important communications recommendation is that:

Recommendation #7

The CBA must maximize the level of dialogue between the CBA and its members, engage members more directly in the CBA, and increase connectedness through the use of state-of-the-art communications technology.

This will require the CBA to alter the CBA communications process from one-way to two-way, from passive to active and engaged, from periodic to continuous, and from wholesale to targeted. This different approach will be aided greatly by the use of the Internet and emerging technologies – for example, supplementing the printed word with live audio and video streaming. In-person or electronic focus groups or chat rooms will allow more opportunity to provide

input to programs and to provide feedback on their content and relevance.

Actions for CBA consideration include:

- Conduct a comprehensive survey of the communications needs, preferences and habits of CBA members
- Customize communications tools to specific segments of the membership and to individual members
- Review current communications instruments and their effectiveness in delivering intended messages
- Develop an umbrella communications advisory team for the CBA and its Branches
- Create common or linked communications interfaces for the CBA and its Branches, including websites and information “hot lines”
- Find alternative communications mechanisms to replace blanket e-mails
- Conduct regular two-way communications with members throughout the year, either electronically or in focus groups
- Conduct regular surveys of members on-line and in focus groups to determine whether messages are being received
- Introduce two-way communications technology to Annual and Mid-Winter meetings, CLE programs, and Council and Board meetings, to allow greater participation of members.

4.2.2 Branding

The purpose of a brand is to provide instant identity for a product, service and/or organization, and to distinguish it clearly from all other competitors. Some of the more successful brands in the world (Coke, Kleenex, Google) actually become so closely identified with a product or service that their name becomes synonymous with it.

While the CBA has developed a relatively well-known identity within the Canadian legal community, it is less well known outside of the profession (often being confused with other organizations such as the Canadian Bankers Association or the law societies). From the standpoint of communicating its own distinguishing characteristics or value, the current CBA brand may be weak even with Canadian lawyers because of the confusion created by Branches, law societies and other organizations that represent, regulate, or advocate on behalf of the legal profession.

Creating a strong CBA brand means defining, packaging and communicating the vision, mission and mandate of the organization, building upon its history, values, culture and membership, and then consistently protecting the equa-

tion between the CBA and its brand. **The “brand” will be what the CBA will be.**

The benefits of a strong CBA brand include:

- Instant recognition and awareness by lawyers, potential clients and the general public
- Enhanced credibility for the organization and its members
- Increased value and benefits to members in their professional lives
- Unification of the organization, its members, programs, products, services and activities
- Enhanced opportunities for reputation and image marketing (see Section 4.2.3)
- Spin-off benefits to partners, allies and business associates
- Effective differentiation from competing organizations.

For the future, we recommend the following:

Recommendation #8

The CBA must create a new brand, or develop the existing one, to ensure that the essence of the CBA is captured, and to allow for distinctiveness of specific CBA groups, while distinguishing the CBA unmistakably from all competitors and bringing maximum benefits to its members and partners.

Branding is a specialized field of endeavour with its own body of knowledge, standards and best practices. As a first step, the CBA should:

- Retain the services of a professional branding firm to assist in the development of a comprehensive branding strategy.

In developing that strategy, the CBA (and its branding experts) should:

- Work with the Branches and key partner organizations (e.g. CBIA, CBAF) to develop a brand that unifies the total organization but that also allows the Branches to be distinguishable from the National CBA
- Create a new CBA visual image through a revised logo design
- Create a new substantive image through the determination and description of the “essence” of the organization and a planned advertising and communications campaign conveying that message
- Develop a memorable and meaningful slogan or tag line
- Develop a co-branding program with CBA Branches, partner organiza-

tions and business associates

- Ensure that the CBA brand is identified in connection with all programs, services, products, activities and support services
- Build quality standards into any branded or co-branded product or service
- Develop the concept of the “CBA lawyer” as immediately identifiable and distinguishable from the “non-CBA lawyer”
- Develop the link between the brand, the organization and the member
- Promote the values of the organization through the “CBA lawyer” (good people, civil, ethical, charitable, community-minded, knowledgeable)
- Frequently test brand recognition and the associated values the brand conveys to various audiences
- Recognize the diversity of the CBA “family” and develop techniques to allow segmented branding, while still supporting the overall brand and strategy
- Use repetition through every CBA activity, program, service and product to ingrain brand recognition.

4.2.3 Improving the Image of Lawyers/Building a More Positive Relationship with the Public

In the 2004 Ipsos-Reid study and in virtually every discussion group, the image of lawyers and the legal profession stood out as one of the most critical considerations for practitioners in assessing their own value. A negative image of the profession and its impact on individual lawyers could have severe consequences. In some cases it was serious enough to cause lawyers to leave or think of leaving the profession. There is also great concern that the aggregate hard work and social value of the profession is not sufficiently recognized by the public, even though most people have a positive view of their own lawyer.

The overall effect of a poor image is to reduce public trust in and respect for the profession. This can have negative economic consequences – consumer aversion or “self-lawyering.” It can also lead to public calls for regulatory intervention and the end of self-governance. The Sarbanes-Oxley legislation in the United States is a classic example of how regulation can be instituted to assuage public fears created by a small group of “bad apples” in an industry or profession.

In addressing the question of image, it will be important to determine the root causes of the public’s current dissatisfaction. It may be necessary to accept that the profession is far from perfect and that it may, to some extent, have contributed to some of its own image problems.

Our overall recommendation for public image is as follows:

Recommendation #9

The CBA must elevate the relationship of the legal profession with the public, levels of public trust in the profession, and the image of the profession and members of the CBA.

Again, developing an improved image is a specialized field of knowledge. We recommend that the CBA:

- Engage a professional team of public affairs consultants to help develop the strategy and manage the process of image enhancement.

Working with the consulting team, the CBA must also:

- Develop a solid research base on the perceptions of the public and their reasons for those perceptions
- Test the reasons provided to determine their accuracy and, if inaccurate, why perceptions have been tainted
- Accept valid criticisms and develop a multi-level approach to addressing them, including programs to change behaviours and attitudes of lawyers
- Examine inaccurate perceptions (for example, where the problems may stem from the legal system or a misunderstanding of the role of lawyers) and create a communications strategy to remedy them
- Create a “truth and reconciliation” task force of lawyers and non-lawyers to solicit and evaluate the validity of concerns about the image of lawyers and to propose remedies to counter negative perceptions
- Provide increased education to the media and the public, including courses and Law Day events in elementary and secondary schools
- Provide “good news” stories on lawyers’ achievements, including volunteer work in the communities, pro bono work, advocacy on behalf of clients, the legal system, the independence of the judiciary, and human rights initiatives
- Use the CBA “brand” to identify the “CBA lawyer” as a “good apple” – civil, ethical, community-minded, fair, knowledgeable, accessible, charitable, altruistic
- Conduct an ongoing advertising and marketing campaign to promote a positive image of the profession and the “CBA lawyer”
- Exercise public sanctions against members who negatively affect the image of the profession
- Engage CBA Branches, Sections, Conferences and Committees, as well as outside legal organizations, in a concerted effort to improve the

image of lawyers

- Work with law schools to develop and teach courses on ethics and acceptable standards of behaviour for the profession.

4.3 Partnerships and Alliances

The legal profession in Canada demonstrates a fairly high level of organizational fragmentation, including separate organizations for representation, regulation and management of special interests. With the growing trend towards segmentation, there has been an increase in the desire by practice or demographic groups to develop their own organizations. The CBA needs to identify those areas where it should assume exclusive capacity for member service delivery, as well as those where it would be more opportune either to collaborate with other providers or abandon the field. While competition may be healthy in keeping organizations current and dynamic, and while a competitive environment may be more of an issue for some CBA Branches than others, we believe that there will be considerable value and benefit to lawyers and the profession from greater collaboration and the elimination of unnecessary conflicts between organizations.

From a strategic standpoint, however, since partnerships, alliances, and/or mergers or takeovers can be costly, time-consuming and potentially disruptive, we believe that the CBA should first build its own internal strength, connect better with its own members and establish its own distinct identity before venturing too far afield to seek partnerships and alliances.

In preparation for potential partnerships, alliances or other competitive strategies, we recommend that:

Recommendation #10

The CBA must develop its strength, cohesiveness and distinctiveness to a point where it will attract other legal organizations under its umbrella, or have lawyers join the CBA to the exclusion of other legal organizations.

In preparation for potential partnerships and alliances, we recommend that the CBA:

- Study the plans, operations, programs, services and impacts of competing or complementary legal organizations
- Assess the degree of loyalty of members to these organizations

- Determine the level of cross-memberships of CBA lawyers in these organizations
- Identify potential benefits of collaboration with specific organizations, including shared services arrangements and administrative joint ventures
- Examine the potential impact of collaborative arrangements, partnerships and alliances on the public image of the profession and on the individual identities of the partners
- Identify the potential benefits of partnerships and alliances to specific groups, including groups within the CBA who may wish to become more independent
- Where possible, develop formal agreements with other organizations which outline specific roles, and seek means to eliminate harmful competition and overlapping programs and services
- Develop more integrated governance, planning and operational models, including the use of consortia, advisory councils, shared service agreements and staff interchanges
- Publicize partnership, alliance and collaborative work to members and the public to demonstrate benefits to stakeholders and the public interest.

4.4 Continuous Environmental Scanning, Futures Planning and Risk Management

Throughout this futures planning exercise, we have been struck by the complexity of both the process and the content, and by the need for professional expertise to guide both volunteers and CBA professional staff.

We believe that risk management and futures planning should become a regular staff function of the CBA on a permanent basis.

To preserve the viability of the CBA and to maintain its relevance we recommend that:

Recommendation #11

The CBA must develop a culture of effective futures planning and risk assessment, both vis-à-vis the profession and the CBA itself.

To do so, the CBA should:

- Include futures analysis and risk assessment in all CBA planning processes
- Ensure that input from the Centre of Expertise on the Legal Profession is

included in ongoing futures planning by the CBA.

4.5 Next Steps

The Futures Committee has developed its perspective on new directions for the CBA after a lengthy process of learning and deliberation. It is now time for the focus to shift onto CBA members. How do they react to our recommendations? Are they willing to engage in the next steps of creating the new CBA? What ideas, thoughts and solutions do they have to build on the strategic directions we have identified?

We are strongly of the view that the CBA must address each of the recommendations and actions suggested in this Report, and must do so via the most representative and responsible groups of the Association. This should occur through an intense process of consultations, dialogue and interaction among the Association and its stakeholder groups.

We are prepared to continue to serve the CBA as the coordinating body for this consultative process. To this end, the next steps of our work will be to put forward a plan to create awareness, interest and engagement of the CBA in this Report, to provide a vehicle for broadly based member feedback, to engage stakeholder groups in the concrete design of the new CBA, and to build Bar-leader commitment to the plan for the future.

The outcome of this process will be the articulation of the specific products, services and benefits offered by the CBA to its members, and the new relationships with the Association that members will enjoy.

To facilitate this outcome, we are prepared to guide the CBA through implementation of some of the more straightforward of our recommendations, and to assist in the refinement, through the consultative process, of those that are more complex.

To ensure that the future directions of the CBA become a reality, the CBA will have to recognize and implement the new management and operational systems required to meet these key directions for the future, including appropriate planning and budgeting processes. The new knowledge and skill-sets required for the future should be reflected in the recruitment of CBA staff and volunteers. This level of planning and resourcing is, we are convinced, critical to the ongoing success of the Canadian Bar Association.

Conclusion

Lawyers, the legal profession and the CBA will be facing unprecedented changes over the next decade. By re-examining its mandate and value structure, the CBA can make adjustments and take specific actions to better serve its own members and to support the legal system in Canada.

Choices will have to be made by the members in terms of priorities, levels of effort and the allocation of limited financial and human resources. We have set out what we believe to be the most important directions the CBA must take to maintain its relevance, vibrancy and value. We have pointed out both the greatest risks and the greatest opportunities.

Earlier in the Report, we referred to the danger for the CBA of sliding into a Mediocrity Spiral, as well as the prospect of creating an Opportunity Spiral.

The CBA has well served its members, the legal profession, the legal system and Canadians over its 110 years of existence. Undoubtedly, that success was aided by the vision and ideas of its members. Through this Report, we issue the challenge to current members to continue this tradition of leadership.

By successfully answering the fundamental question – **why associate?** – the CBA can be the prism that transforms the confusion of the challenges of today into a clear and brilliant array of complementary and beneficial directions for the future.

Annexes

Annex A

List of Recommendations

Recommendation #1

By increasing the relevancy and value of the CBA and taking specific recruitment and retention action, the CBA must raise the total membership annually as a percentage of the overall population of lawyers so that by the year 2015, 90% of Canadian lawyers will be satisfied members of the CBA. The ultimate goal is to reach 100% participation.

Recommendation #2

The CBA must develop the programs and services that various member segments require, and deliver them in a targeted, timely and cost-effective manner, using the individual member's preferred delivery mechanism.

Recommendation #3

The CBA must assess member differences, including those related to gender, age and racial background, to determine if they necessitate shifts in CBA policy, advocacy, programming, governance, organization, communications or membership recruitment action, and via the segmentation of programs and services, develop and deliver such programs and services in ways that best accommodate the need.

Recommendation #4

The CBA, its Branches, constituent groups and related organizations must seek to operate in a way that is cohesive, representative, integrated and responsive, and that appears to be “seamless” from the outside, while maximizing the benefits of collaboration on management, planning, and programs and services for members.

Recommendation #5

The CBA must undertake initiatives that assist CBA members to derive economic value from a career in law.

Recommendation #6

The CBA must establish a highly-qualified professional centre of expertise and information on the legal profession in Canada whose objective would be to become the pre-eminent and authoritative source of information and expertise on all aspects of the legal profession in Canada, including how it is organized, demographic data, volumes and types of work, and comparators to other professions nationally and internationally.

Recommendation #7

The CBA must maximize the level of dialogue between the CBA and its members, engage members more directly in the CBA, and increase connectedness through the use of state-of-the-art communications technology.

Recommendation #8

The CBA must create a new brand, or develop the existing one, to ensure that the essence of the CBA is captured, and to allow for distinctiveness of specific CBA groups, while distinguishing the CBA unmistakably from all competitors and bringing maximum benefits to its members and partners.

Recommendation #9

The CBA must elevate the relationship of the legal profession with the public, levels of public trust in the profession, and the image of the profession and members of the CBA.

Recommendation #10

The CBA must develop its strength, cohesiveness and distinctiveness to a point where it will attract other legal organizations under its umbrella, or have lawyers join the CBA to the exclusion of other legal organizations.

Recommendation #11

The CBA must develop a culture of effective futures planning and risk assessment, both vis-à-vis the profession and the CBA itself.

The CBA Futures Committee – Mandate and Membership

The CBA Futures Committee was formed in March 2003 by then CBA President Simon V. Potter. Its goal is to “study the challenges facing lawyers and the legal profession and make recommendations about the kind of organization the CBA will need to be and what it will need to offer lawyers and the legal profession in order to be relevant and vibrant.”

The members of the Futures Committee, along with a representative selection of their relevant contributions to the Canadian Bar Association, are:

ROBERT G.H. PATZELT

Chair

General Counsel & Group Risk Manager
Scotia Investments Ltd.

Halifax NS

Year of Call: 1988

- Past President, CBA-NS
- Past Treasurer (pro tem), CBA National
- Vice-President, CCCA

ROBERT P. STACK

Vice-Chair

Partner
Cox Hanson O’Reilly Matheson

St. John’s NL

Year of Call: 1984

- Past President, CBA-NL
- Board member, CBIA
- Past member, Triennial Review Steering Committee, CBA National

VERONICA L. JACKSON

Partner
Gange Goodman & French

Winnipeg MB

Year of Call: 1993

- President, MBA
- Past Chair, Equity Issues, MBA
- Past Chair, Admin. Law Section, MBA

FRANK C. KRAEMER

Executive Director
Canadian Bar Association - BC

Vancouver BC

Year of Call: 1975

SIMON V. POTTER

Partner
McCarthy Tétrault

Montreal QC

Year of Call: 1975

- Past President, CBA National
- Past President, CBA-QC
- Member, International Professional Issues Team, CBA National

SANDRA L. SCHULZ, Q.C.

Chartered Mediator
Sandra L. Schulz Professional Corporation

Edmonton AB

Year of Call: 1983

- Past President, CBA-AB
- Trustee and former Director, Law for the Future Fund
- Former member – Board of Directors, CBIA

KELLY JAMES SMITH

Associate

Rogers, Moore

Toronto ON

Year of Call: 2001

- Past Chair of Young Lawyers Division, OBA
- Member, Strategic Planning Committee, OBA
- Served two terms on Executive Committee, OBA

STEPHEN HANSON

Senior Director of Communications

Canadian Bar Association

Ottawa ON

RON KNOWLES

Facilitator

Director

Western Management Consultants

Toronto ON

JOHN D.V. HOYLES

Executive Director and Chief Operating Officer

Canadian Bar Association

Ottawa ON

Year of Call: 1977

JOAN BERCOVITCH

Project Director

Senior Director of Legal and Governmental Affairs

Canadian Bar Association

Ottawa ON

Year of Call: 1987

STEPHEN L. BRESOLIN, C.A.

Associate Executive Director

Canadian Bar Association

Ottawa ON

CHANTAL DUGUAY-HYATT

Executive Assistant

Legal and Governmental Affairs

Canadian Bar Association

Ottawa ON

Bibliography of CBA Futures Committee

The following documents have been developed by or for the CBA Futures Committee over the last two years. They reflect the results of research, consultation and dialogue with members and together helped shape the Futures Report. No document alone represents the views of the Committee.

The bibliography provides a sense of the scope, breadth and process of the work of the Committee.

Research Reports

Law Firm Human Resources – Attrition Rates Survey Results (October 2004) Telephone survey conducted with some of the larger Canadian law firms to explore their attrition rates, whether they have mentoring programs, and other human resources practices.

Ipsos-Reid – “CBA Futures Initiative Survey.” Highlights from online survey conducted in June 2004 (July 2004) Highlights of the June 2004 online Ipsos-Reid survey regarding members’ attitudes, aspirations and overall expectations of their careers and the legal profession.

Ipsos-Reid Survey Results from online survey conducted in June 2004. “CBA Futures Initiative Survey” (July 2004) Results of a CBA online survey, conducted by Ipsos-Reid in June 2004. Survey was conducted among four distinct cohorts of CBA membership in order to gain insight into CBA members’ attitudes, aspirations and overall expectations of their careers and the legal profession.

“Potential Economic Impacts of Demographic and Social Change in the Law Profession and Business of Law in Canada” (February 2004). Document prepared by Dr. David Brusegard.

Report on the practice areas that may experience economic disadvantage or, conversely, economic gain, based on the trends or forces in the legal profession.

“Implications of Demographic Change in the Legal Profession” (February 2004). Document prepared by Dr. David Brusegard.

Potential implications for the legal profession of demographic change taking place in the profession.

“Implications of Trends from the Literature” (February 2004). Document prepared by **Dr. David Brusegard**. Key trends and their potential impact on the legal profession and the CBA.

“Implications for the Futures Committee of CBA’s Derivative Research Resources” (April 2003). Three background research documents prepared by **Ron Knowles**. A guide through CBA’s survey research and selected planning documents from 1995 to 2003.

Consultations

Discussion with CBA Council entitled “Common Threads and Loose Ends” (February 2005). Facilitated by **Sandra Schulz, Q.C., and Veronica Jackson**. Discussion of CBA Futures Committee and CBA Council on communications and lawyers’ public image.

Panel discussion with CBA Council entitled “Saturday Afternoon Live! With Tasha Kheiriddin” (August 2004). Overview of preliminary Ipsos-Reid survey findings, and dialogue with Council membership. Panel discussion of “the expectation gap.”

Presentation and discussion on CBA Futures to the Young Lawyers Conference Directorate (October 2004). Facilitated by **Joan Bercovitch**. Discussion about how the CBA might assist its members in bridging the expectation gap identified in the June 2004 Ipsos-Reid CBA Futures Initiative Survey.

Presentation and discussion on CBA Futures to National Sections/Department of Justice meeting (October 2004). Facilitated by **Sandra Schulz, Q.C.** Discussion about how the CBA might assist its members in bridging the expectation gap identified in the June 2004 Ipsos-Reid CBA Futures Initiative Survey.

***EPIIgram*: “The Future for Lawyers: What will the practice of law be like in the year 2014?” Essay challenge (June 2004).** A short, provocative piece challenging CBA members to reflect on demographic, economic and professional trends facing the legal profession.

“Dominant Themes from the Whitehorse World Café: A Council Consultation.” Background document for the June *EPIIgram* on Futures (April 2004). Major themes arising from the Whitehorse World Café.

Publications

***EPIIgram*: “How to keep lawyers engaged, productive, and on your team” (April 2005).** Overview of the results from a Catalyst Canada Survey of Canadian Lawyers: “*Beyond a Reasonable Doubt: Building the Business Case for Flexibility.*”

***EPIIgram*: “Future World Follow-up” (October 2004).**

Summary of the feedback received as a result of the June 2004 *EPIIgram* about what the practice of law might be like in 2014.

“Saturday Afternoon Live! With Tasha Kheiriddin.” Panel discussion at CBA Council meeting in Winnipeg, MB (August 2004).

Verbatim transcript of panel discussion moderated by Tasha Kheiriddin. Panel took place during the CBA Council meeting at the 2004 Canadian Legal Conference in Winnipeg. Panelists are Dr. Darrell Bricker (Ipsos-Reid), Stephen Nash (The Counsel Network), Kelly Smith (CBA Futures Committee member), Veronica Jackson (CBA Futures Committee member) and Frank Kraemer (CBA Futures Committee member).

“A CBA Futures Committee Presentation.” Video presentation to CBA Council at the Mid-Winter meeting in Whitehorse (February 2004).

Starring Robert Patzelt, Chair of the CBA Futures Committee. Report to Council for the 2004 Mid-Winter meeting in Whitehorse was delivered via video which outlined key findings to date.

Report to the CBA Board of Directors and Membership Committee: Highlights (August 2003). Highlighting the mandate, significance and progress to date of the CBA Futures Committee.

“Membership Retention and Recruitment Recommendations:” Futures Committee Phase I Report presented to the CBA Board of Directors (May 2003). Based on the review of all relevant planning and research documents from the last decade, CBA Futures Committee identifies some conclusions for the CBA about retention and recruitment.

PowerPoint Presentations

Canadian Dental Association: Presentation by George Weber, Executive Director of the CDA, to CBA Council in Winnipeg, MB (August 2004). A case study in organizational transformation. Details how the CDA has attempted to face such challenges as “what will dental practice be like in 2020”, “how to best serve and retain current and future members” and, “will there still be a CDA in 20 years time”?

Slides from the Final Report of the Ipsos-Reid Futures Initiative Survey. Presented by Dr. Darrell Bricker (August 2004). Key slides from the Ipsos Reid survey results, presented during “Saturday Afternoon Live, with Tasha Kheiriddin,” a panel presentation at the CBA’s 2004 Council meeting in Winnipeg.

“CBA Futures Initiative Survey – Preliminary Findings.” Presented by Dr. Darrell Bricker, V.P. Ipsos-Reid (June 2004). Preliminary findings report by Darrell Bricker to CBA Futures Committee.

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“Beyond a Reasonable Doubt: Building the Business Case for Flexibility.” Catalyst Canada (2005).

“Diversity and Change: The Contemporary Legal Profession in Ontario.” A Report to the Law Society of Upper Canada. (September 2004) By: F.M Kay, C. Masuch and P. Curry.

“Final Report on Equity and Diversity in Alberta’s Legal Profession.” (2004). By: Merrill Cooper, Joan Brockman, and Irene Hoffart for the Joint Committee on Equality, Equity and Diversity of the Law Society of Alberta; Canadian Bar Association, Alberta Branch; Faculty of Law, University of Calgary; and Faculty of Law, University of Alberta.

“Racial Equality in the Canadian Legal Profession.” Canadian Bar Association. (February 1999) Report of the Canadian Bar Association Working Group on Racial Equality in the Legal Profession.

“Study of Accessibility to Ontario Law Schools.” (October 2004). By Alan J.C. King, Wendy K. Warren and Sharon R. Miklas. Social Program Evaluation Group, Queen’s University. Report submitted to Deans of Law at Osgoode Hall, York University; University of Ottawa, Queen’s University, University of Western Ontario and University of Windsor.

“Touchstones for Change: Equality, Diversity and Accountability.” Canadian Bar Association. (August 1993) Report of the Canadian Bar Association Task Force on Gender Equality in the Legal Profession.

“Turning Points and Transitions: Women’s Careers in the Legal Profession.” A Longitudinal Survey of Ontario Lawyers. 1990 – 2002. (September 2004). A Report to the Law Society of Upper Canada by F.M Kay; C. Masuch; and P. Curry.