

CBA LEGAL
FUTURES
INITIATIVE

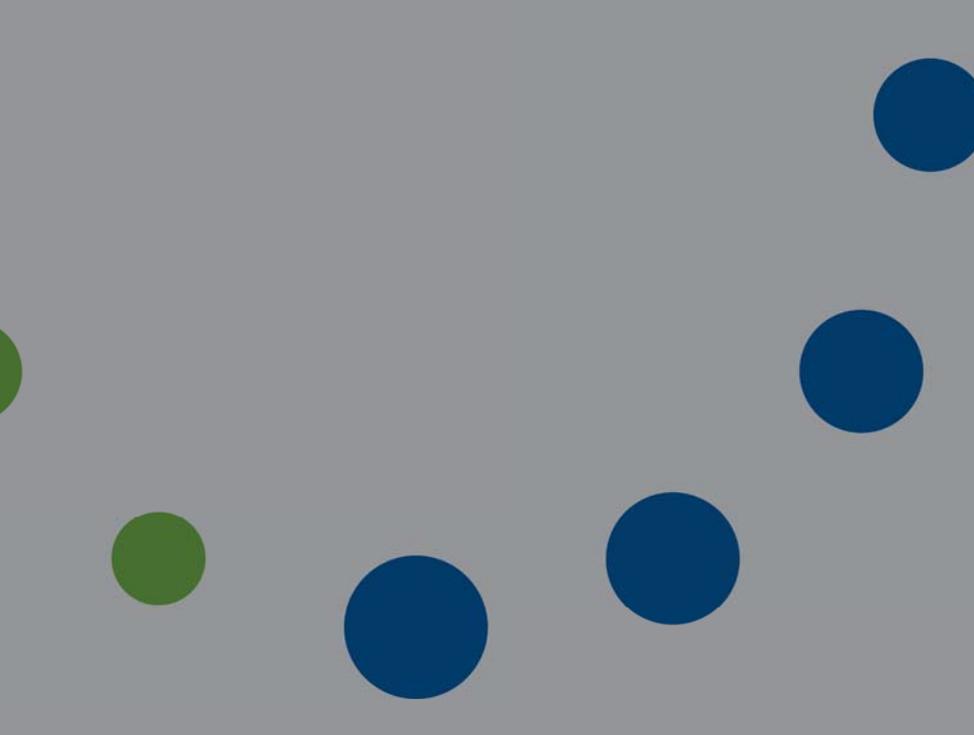
FUTURES:
**TRANSFORMING THE DELIVERY
OF LEGAL SERVICES IN CANADA**



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
BARREAU CANADIEN

INFLUENCE. LEADERSHIP. PROTECTION





FUTURES: TRANSFORMING THE DELIVERY OF LEGAL SERVICES IN CANADA

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Foreword

Canadians expect and deserve a vibrant and relevant legal profession. The CBA Legal Futures Initiative set out to help our members meet that expectation. Our work confirms that there are many opportunities for lawyers to improve the way they serve those who now retain them and to meet the needs of underserved and completely unserved segments of the market — and in both cases, to do so in ways that better resonate with Canadians. Yet there are impediments to making the required changes. These include: the regulatory framework in which lawyers work; the lack of access by lawyers to business models that would support more innovative practices; and the skills and knowledge required to seize these opportunities. The work of the CBA Legal Futures Initiative was designed to enable the Canadian legal profession to transform itself while retaining the best aspects of its rich traditions and regulatory structure. The future for lawyers is as much about ethics and values as it is about economics and value. Changes can indeed be made to the ways that lawyers work without losing the policy justifications behind many of the governing norms and practices.

As the Canadian population grows and changes, users of future legal services will be more diverse, often from communities that are underserved by existing legal structures and models, or that access legal services from providers other than lawyers. The twin challenges of **access to justice** and **diversity** have been explored at length in recent studies by the Canadian Bar Association.¹ The findings and recommendations of these studies should be read together with the CBA Legal Futures Initiative reports and integrated into future plans and directions for the legal profession in Canada.

The CBA Legal Futures Initiative was created to help the Canadian legal profession remain relevant, viable, and confident in the face of change. It has been a complex process involving thousands of hours of work by hundreds of dedicated CBA members, researchers, consultants, and CBA staff. To supplement several important pieces of commissioned research for this initiative, the CBA undertook extensive consultations, both in person and online, with a broad cross-section of lawyers, clients, law students, and other legal stakeholders. Expert teams were assembled to examine and suggest recommendations in three critical areas: innovation, regulation, and education. In-depth interviews held with selected innovators confirmed that the need for change is real and pressing, and that change is already taking place.

This need for change was documented in the *Trends and Issues* paper that the CBA Legal Futures Initiative published in June 2013. *Trends and Issues* summarized the findings of our commissioned research and concluded:

“The legal industry in Canada is not immune to the major macro trends that are transforming virtually every industry in the world...”

[L]aw firms and individual lawyers will have to make important decisions on how to maintain a competitive advantage in the provision of legal services in Canada and globally.

While these decisions may seem daunting to some people, they also present a vast range of opportunities for the profession to reinvent itself and thereby ensure that it remains dynamic and confident.”²

The legal profession to date has been, in large part, conservative in dealing with change. There has been some resistance to the idea that it is necessary to make significant changes now. But the work of the Futures Initiative over the past two years confirms that a changing legal profession holds significant **opportunity** for lawyers who are willing to innovate, as well as for the thousands of Canadians who currently are not accessing legal services, either by choice, lack of funds, or the absence of channels that meet their needs. Some lawyers and law firms will be able to survive without adapting because of their inherent competitive advantages. But there are clear indications that disruptive forces will effect change in most parts of the Canadian legal profession, demanding creative and reasoned responses. By its nature, disruptive change has historically, in almost all industries and professions, started with disruption at the simple, low end of the spectrum and graduated to more advanced and sophisticated work and processes.

The legal profession in Canada is not homogeneous. The perspective on the future of a senior partner in an established firm may differ from the perspective of a new call, a law student, an in-house counsel, a government lawyer, a sole practitioner in a rural setting, or a lawyer who has abandoned a full-time legal career for whatever reason. Individuals and entities will have to create their own customized strategies and responses. One size will not fit all. It will be important to build **flexibility** and **choice** into any recommendations or strategies for the future.

Just as no two lawyers have the same experience, clients of legal services also have varying demands and expectations. As was identified in *Trends and Issues*, there has been a shift in market power to the client side. As a result, many of the changes that face the Canadian legal profession are **client-driven**. Whenever there is an effort to change how legal services are delivered, client needs must be the motivating force.

This report is a call to action for the Canadian legal profession. The title, *FUTURES: TRANSFORMING THE DELIVERY OF LEGAL SERVICES IN CANADA*, expresses the varied possibilities that lie ahead for the Canadian legal profession. It is critical for the Canadian legal profession to catch up with the forces that are radically changing the delivery of legal services and, by extension, the role and participation of lawyers in those activities, without further delay.

Perhaps Futures’ most important finding is that the Canadian legal profession can no longer afford to plan for the future on an occasional basis. At the end of this report, we have included an action plan for the CBA to keep the momentum going. For this report to be a success, individual lawyers — and the profession as a whole — must create their own futures.

To this end, the CBA must also transform itself into a constant and active advocate for change. The CBA is only one of many participants in the Canadian legal system. It possesses no regulatory authority to dictate the conduct of other stakeholders. But as the national representative body comprised of many different constituents within the legal system, it is well placed to act as a catalyst for facilitating change that will benefit all Canadians. We offer this report as an invitation to all stakeholders to think about the future, and imagine the ways in which we can collaborate to achieve shared goals.

Futures has been powered by the tremendous contributions of a key group of people: the Steering Committee, our teams, and our staff. Thank you to Allan Fineblit, Q.C., Karen L. Dyck, Gary Luftspring, Domenic Crolla, and the formidable Joan Bercovitch for their dedication in steering this initiative from its early stages to the exciting product you are about to read. I extend my gratitude to our team leads — Malcolm M. Mercer, Malcolm Heins, LSM, and Ian Holloway, Q.C. — and their incredible team members: Brian G. Armstrong, Q.C., Corinne Boudreau, Leonard J. Brody, Kris Dangerfield, Adam Dodek, Douglas D. Ferguson, Andrew Fleming, Lisa Fong, Monica N. Goyal, Daniel Jutras, Tony Kavanagh, Norman Letalik, Harvey Morrison, Pascale Pageau, Marie-Claude Rigaud, Stephen Taran, Stephanie Willson, Alice Woolley and Rani W. Wong. I especially thank our Special Adviser Richard Susskind for his wise counsel.

Finally, this initiative has been supported by the contributions of many CBA staff members, and I am grateful for the valuable work and energy shared by Aviva Rotenberg, Karin Galldin, Sheila Redel, Sarah MacKenzie, Noah Arshinoff, Cathy Cummings, Kim Covert, Chantal Duguay-Hyatt, Ashley Cochrane, Leslie Huard, and Emily J. Alderson, as well as the considerable pen-wielding skills of Ian Sadinsky. Futures' vision has been made all the brighter through all of your contributions.



Fred Headon
Chair, CBA Legal Futures Initiative
President, Canadian Bar Association
August 2014

Executive Summary

The legal profession in Canada is entering a period of major change. The combined forces of globalization, technology, and market liberalization are creating new services, new delivery mechanisms, and new forms of competition. Those changes are altering client needs and expanding client expectations. Clients want services to be quicker, cheaper, and smarter. They want more transparency and involvement, and they want to be and stay connected.

At the same time that the demand from existing clients is changing, there are still many individuals and communities in Canada with inadequate access to any type of legal services. In many cases, the Canadian legal profession still does not reflect or understand the needs of an increasingly diverse population.

The key to establishing a viable, competitive, relevant and representative legal profession in Canada in the future is **innovation** — not just the development and adoption of technology-driven platforms and service delivery models, although they are critical, but also through new ideas about how lawyers are educated and trained, and how they are regulated to maintain professional standards while protecting the public.

Because the legal profession is not homogeneous, it is important to build **flexibility** and **choice** into any proposed changes for the future. One size does not fit all.

The 22 recommended actions in this report are based on seven key findings:

In terms of business models, lawyers need to be freed to work differently through new structures and in conjunction with other professionals (including alternative business structures).

Lawyers should be allowed to practise in business structures that allow ownership, management and investment by persons other than lawyers or other regulated professionals. Multi-disciplinary practices and fee-sharing with non-lawyers should be allowed. All of these proposed changes must be carried out under the oversight of an enhanced regulatory framework.

A shift toward the introduction of new business models requires regulation of entities in addition to the regulation of individual lawyers. This form of dual oversight would allow continued innovation in legal service structures and delivery to provide better quality services to clients, while maintaining the rules of professional conduct expected from lawyers.

A commitment to diversity in the Canadian legal profession should also be embedded within the entities delivering legal services to Canadians. In addition, diversity should be part of the construction of the

governing bodies of law societies to ensure that there is more meaningful representation of the diverse Canadian society within the profession.

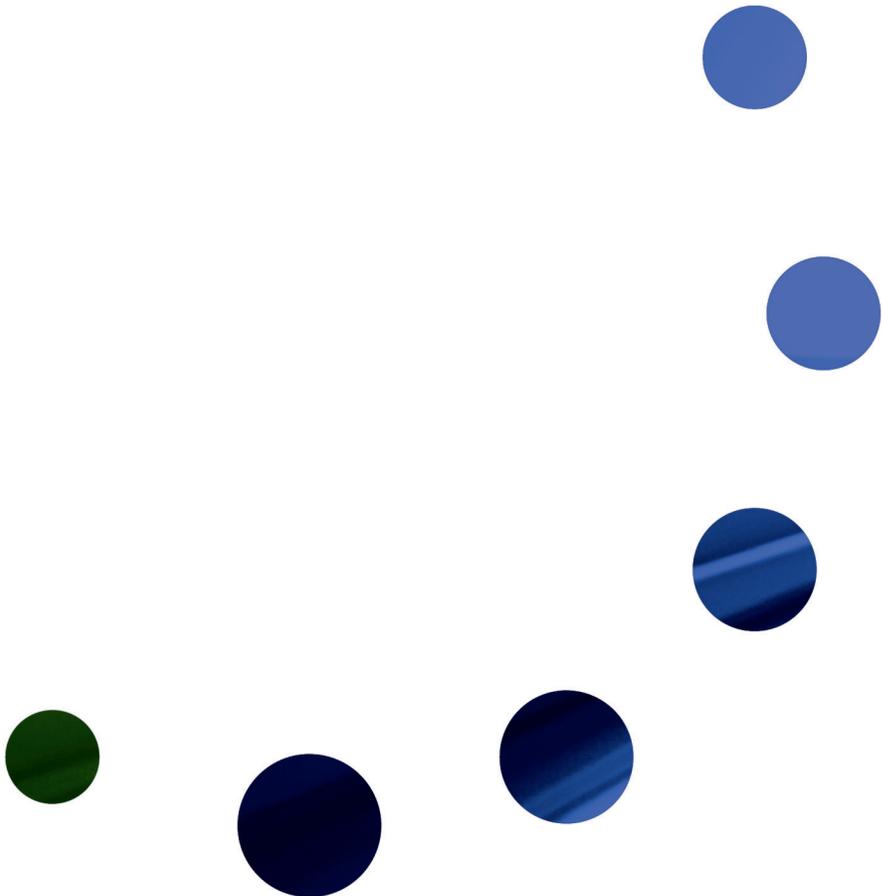
In this dynamic future environment, it will be important for lawyers to obtain lifelong education and training. This will require more flexibility and choice in the way new lawyers are educated and trained, as well as innovative models and courses of study for pre-call training and continuous professional development.

There will also be new legal disciplines created, such as legal knowledge engineers, legal process analysts, legal support system managers, and legal project and risk managers. Parallel legal programs should be developed at existing legal education institutions or through new legal education and training providers.

To facilitate all forms of innovation, there is a need for more data on the Canadian legal profession. There is also a need for a central place where the information can be examined, validated, and distributed, as well as where information about innovative practices and solutions can be collected, endorsed, and celebrated. The establishment of a centre of expertise would fulfill this purpose.

The transformation of legal services in Canada represents an outstanding **opportunity** for lawyers — whether they practise in large, medium, small or solo firms, as in-house counsel, in government, or in not-for-profit organizations — to provide valuable new services to an expanding client base. The liberalization of the legal profession also provides a unique opportunity for legal educators and legal regulators to revisit their existing structures and methods and re-invent them to support the lawyers and law organizations of the future.

Finally, the Canadian Bar Association, as the voice of the legal profession in Canada, will continue advocating for a flexible, dynamic and responsive legal marketplace, and preparing lawyers and their clients to benefit from these changes. As a champion for innovation, the CBA can facilitate a national dialogue on the possibilities, as well as the practicalities, of transforming the legal profession in Canada.





Introduction to
the CBA Legal Futures
Initiative



1.1 PURPOSE

In 2012, the Canadian Bar Association (CBA) created the CBA Legal Futures Initiative (Futures) to examine the fundamental changes facing the Canadian legal profession and to help lawyers understand and respond to those changes. Specifically, the purpose of the CBA Legal Futures Initiative was:

- to provide leadership and a strategic and systematic Canadian response in the face of unrelenting, dynamic and transformative change;
- to canvass and reflect a wide range of views both from within and outside the profession;
- to study the reasons for change and assess their likely impacts on the market for legal services in Canada; and
- to provide a framework for ideas, approaches, and tools to help the legal profession adapt to change, so that it remains confident, viable, relevant, and competitive.

In addition to Futures, the CBA conducted a separate inquiry into access to justice in Canada entitled *Reaching Equal Justice: An Invitation to Envision and Act* (“*Reaching Equal Justice*”).³

There are many overlapping issues, impacts, and findings in these two studies and the *Reaching Equal Justice* report must be considered as a complement to this report.

Futures’ intent is to deliver a framework to help the profession adapt and re-orient for success in the face of fundamental change; to assist the profession in its efforts to meet clients’ changing needs; and to make recommendations to stakeholders, including legal regulators and educators, on how they can best prepare the profession. Major change is coming to the

legal profession — in many respects the seeds have already been planted. The legal profession must adapt to that change or be forced to do so by others — or risk being marginalized.

The changes facing the Canadian legal profession are real and the legal profession must become more proactive in creating its own future. This also implies a need for speed to make up for lost time and lost ground.

1.2 CORE BELIEFS

The core beliefs of Futures serve as foundations to this work. Fundamentally, lawyers continue to provide distinctive value to their clients through services that differentiate them from other service providers. Opportunities lie ahead for lawyers who demonstrate that distinct value by offering choice to their clients in how they receive legal services, and by delivering services in ways that better resonate with clients. Access to legal services is key to the future relevance of the Canadian legal profession; success should be measured by the ability of legal innovation to both improve existing legal services and to meet unmet legal needs. Finally, the Canadian legal profession needs to be more inclusive and more reflective of Canadian demographics as part of its transformation.

1.3 FINDINGS

At the conclusion of the two-year inquiry, Futures finds the following:

Transformative forces are changing the Canadian legal profession, as represented by the key drivers of globalization, liberalization, technology, and the lack of access to legal services.

Lawyers need to be freed to work differently through new business structures, in any form that they desire, as long as they can be appropriately regulated.

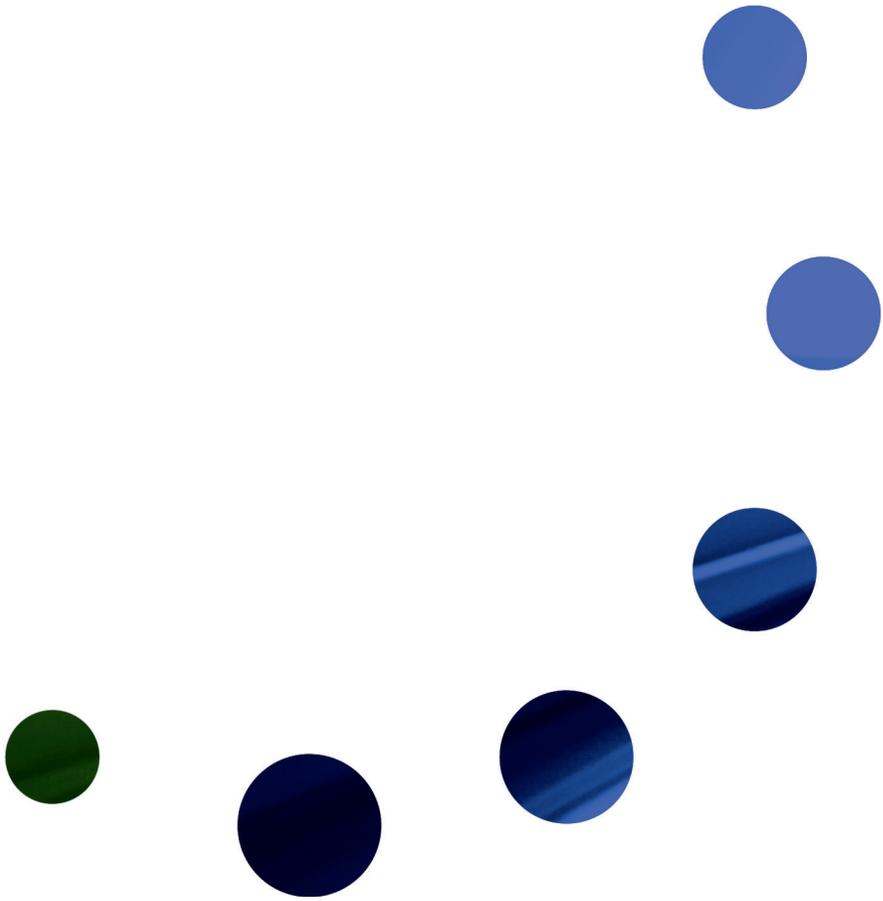
The **entities in which lawyers work should be regulated** to strengthen adherence to rules of professional conduct while allowing for the delivery of better quality services to clients.

A **commitment to diversity in the profession** should be embedded within the entities delivering legal services to the Canadian marketplace and within the governing bodies of law societies to allow for more meaningful representation of a diverse Canadian society within the profession.

Legal education and training should be regarded as life-long processes, and educators should be empowered to innovate to provide more flexibility and choice in the ways that new lawyers are educated and trained. New and current lawyers also need to embrace the techniques used in other professions for training and improvement.

To facilitate innovation, and understand and reflect on the profession's role in Canada, **data on the legal profession should be collected**. Formal means through which the profession can collectively examine, endorse, and celebrate new forms of legal service delivery should be established.

Finally, **there is great opportunity in the transformation of legal services in Canada** for all stakeholders: for individual and organizational clients; for sole practitioners and large-firm lawyers; for public sector and in-house counsel; for provincial and territorial regulators, and for educators. There is also **great opportunity for the Canadian Bar Association to help facilitate** the transformation of the legal profession in Canada.





A Strategy for the
Legal Profession to Meet
the Future Need for Legal
Services in Canada



2.1 CREATING A VISION

To create a successful strategy for managing future legal needs, it is crucial to understand what clients expect of lawyers, the legal system, and the legal services they receive. Canadian lawyers must then establish a clear vision of what may be possible in the future — a vision based on opportunity and full participation of the profession and its stakeholders. The vision should address current barriers and impediments to participation and access, and should be broad enough to involve all segments of the profession.

To establish that vision, lawyers must acknowledge the following key propositions:

- Major changes are already here — the legal profession must proactively catch up to expectations in the marketplace.
- Successful transformation must be largely client-driven and client-centred.
- Much of the change will be precipitated by others outside the profession (and outside the country), encouraged in the early stages by entrepreneurs and those clients that purchase significant quantities of legal services.
- The traditional model for law firms may be replaced by new, more specialized client-sensitive models, offering services through a variety of structures as well as a variety of career options for legal professionals.
- As both buyers and sellers of legal services, in-house counsel will continue to exert considerable leverage in requesting changing legal services.
- The day-to-day work of lawyers may change as other providers and technology-based processes supply more routine and simpler legal services, or provide intake services, in turn creating new career opportunities for lawyers.
- There will be greater transparency in the legal profession with respect to the types of services provided; the actual value added by lawyers; pricing; and timing. Each of these areas will enhance opportunities to meet client expectations of greater involvement in their files.
- There will be a greater level of innovation and entrepreneurship in the legal profession.
- Technology will render legal information and tools more accessible, and clients will gravitate to them as long as the providers offer assurances of quality.
- Technology will bring to the Canadian market greater awareness of products and services offered elsewhere, creating new expectations of similar offerings in Canada.
- Technology will lead clients to seek advice and services on an as-needed basis, and offer interaction with lawyers through intelligent systems.
- Regulation of the profession will become more flexible, allowing for legal services to be delivered through a variety of structures and processes.
- Lawyers will begin to work more in teams with both lawyers and non-lawyers to deliver legal services.
- Technology and the participation of non-lawyers will reduce costs. Non-lawyers will provide low-risk services under the supervision of lawyers and quality managers.
- Life-long legal education will become the norm, with additional skills and practical training added to the law school curriculum or delivered afterward to prepare lawyers for the demands of the future (business management, project and process management, communications, technology literacy, etc.).
- Lawyers will train, as other professionals do, by

incorporating more practical experiences earlier in their legal education, and training after their licensing with more coaching and feedback in practice settings.

- Governments, legal regulators, the courts, and the legal profession acting together will create new means through technology to ensure a minimum level of access to justice for all Canadians through legal capability training in schools, online dispute resolution, e-filing, and other means.
- Clients will expect the legal profession to become more diverse to better reflect the population it serves and to be able to provide for the needs of different communities or constituencies.
- Diversity will become the context within which changes discussed in the report can be effectuated, both within and around our profession. Reform will not reach its full potential unless we change the very fibre of our profession and become more inclusive to the communities within and around us.

2.2 FORMULATING RECOMMENDATIONS

Since the future cannot be predicted with certainty, it may be necessary to accept imperfect solutions or incomplete actions in certain areas as long as they are moving the profession in the right direction.

Innovation may involve the occasional failure. While lawyers are generally trained to expect perfection, the Canadian legal profession must learn to experiment and accept some failure as a prerequisite to true innovation.

Similarly, Futures' recommendations are actionable, but sufficiently flexible to allow enough choice for individual segments of the legal profession, as well as supportive responses from key stakeholders. It is impossible to suggest only one strategic response

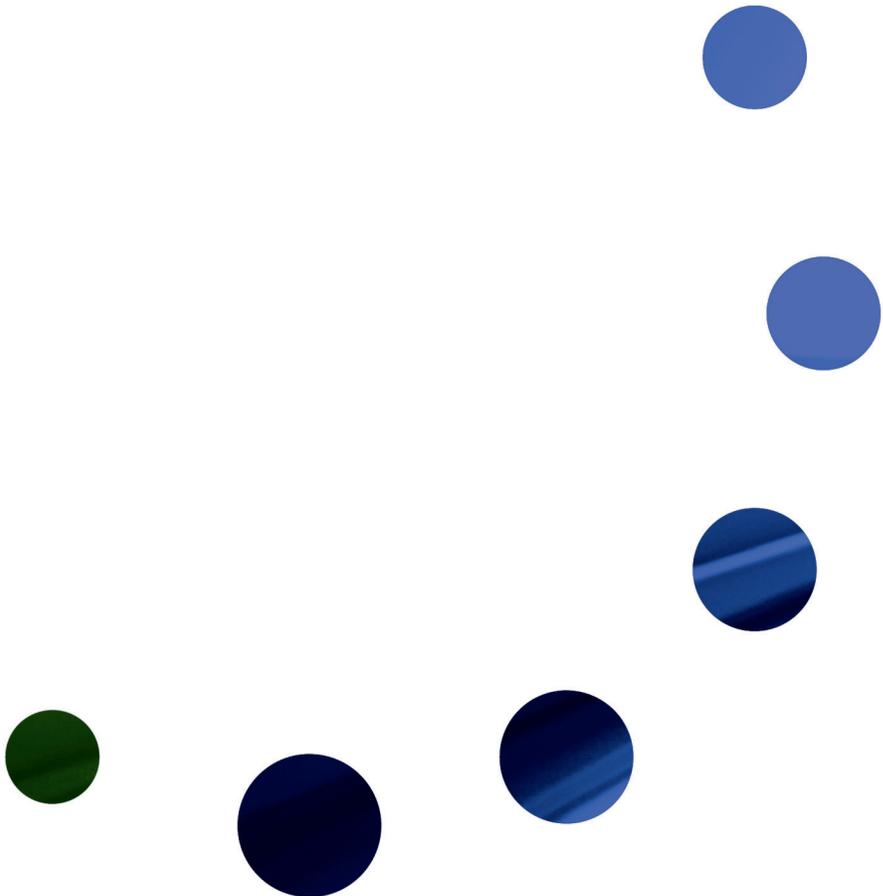
when there is so much still unknown about the future of legal services in Canada.

It should also be clear that Futures is not offering its recommendations on transforming the legal profession out of protectionist inclinations. Instead, the recommendations are provided in recognition of the vital contributions of lawyers to the rule of law; access to justice; an equitable and just society; robust institutions (including a strong judiciary and Bar); effective dispute resolution; and a functioning democracy. These concepts and institutions need to be preserved and strengthened in the future and the recommendations are designed for this purpose.

As a precursor to our recommendations, we start with foundational discussions about law and the purpose of lawyers, what we know about current-day providers of legal services, what clients will want from lawyers (besides advice), and what this indicates about opportunities for tomorrow's lawyers. We also delve into key issues in the changing legal environment in Canada – major drivers of change, reasons why the legal profession must change, and barriers to change – before presenting our recommendations.

2.3 THEMATIC ORGANIZATION OF THE STRATEGY

Our strategy is organized around three themes — **innovation, regulation, and education**.⁴ Specific recommendations are made in each of these areas. As the recommendations take hold and become more widely accepted, lawyers will need to adjust their attitudes, expectations, knowledge, skills, and business practices to ensure they are congruent with the impact of the changes taking place in the profession and in the market for legal services. The change process will require continuing advocacy and management. The report includes an action plan for the CBA to provide direction and assistance to the legal profession on how to proceed in the future.





The Legal Needs of
Society and the Future
Role of Lawyers



3.1 WHY DOES SOCIETY NEED LAWYERS?

Any assessment of the future legal needs of Canadians must begin with an understanding of why the profession of law exists in the first place. We avoid chaos through the structure of our legal system; law reflects and enforces society's values. The law attaches consequences to the activities of human beings and organizations — it imposes obligations, it confers powers, and it prohibits courses of actions. Although these consequences can be of profound significance to business and to the working and social lives of citizens, the full breadth of the law is often too complex for non-lawyers to understand without help. Accordingly, non-lawyers seek guidance from lawyers.

Until recently, lawyers have been the dominant interface between non-lawyers and the law and, for many legal situations, society has granted the legal profession exclusive rights to provide help. However, new technologies (especially the Internet) and new providers (sometimes enabled by liberalization) are now challenging the legal profession's position as the only interface. Policymakers are likely to reappraise the role and relevance of the legal profession if legal help can be provided accurately, responsibly, and yet more cheaply and conveniently by other methods or persons.

The purpose of the law is not to keep lawyers employed. Rather, lawyers should survive in this changing environment because they bring value that no one else can – not because other providers are regulated out of the market.

Lawyers should remain active and prosper because they bring trust to those they advise through their professional obligations, i.e., to be zealous representatives of their clients, and to protect the rule of law and the administration of the legal system. It is this dual imperative that sets aside lawyers as a

profession, rather than as mere providers of legal services. A lawyer's duty to a client is to protect the client's interests with candour and confidentiality and without conflict of interest, while concurrently ensuring the integrity of the justice system. Fidelity to law without loyalty to clients is inconsistent with democratic values and the dignity of all members of society. Loyalty to clients without fidelity to law is inconsistent with the lawful ordering of society. The purpose that lawyers serve is to ensure that all members of society may exercise their legal rights and freedoms knowing that this exercise will be honoured by all other members of society and by society itself. Lawyers create positive social change for their clients by crafting structures that provide fair solutions to the problems that clients face, or opportunities that clients wish to seize.

It has been clear for most people within the profession that only lawyers can and should, for example, appear in superior courts, negotiate and draft highly complex documentation, or advise on the implications of large and difficult bodies of regulations. However, as new methods for the delivery of legal services emerge, it is far from clear that the work that used to be the sole province of lawyers — either because of regulation or due to the deep expertise and experience required — can only be undertaken by lawyers in the future.

INNOVATION IN ACTION:

Legal Entrepreneurship

Natalie McFarlane is a lawyer and the founder of LawLignment and Agile Agree. LawLignment is a startup law practice targeting social innovators/enterprises, and AgileAgree is a legal solution for lawyers that helps support lawyers' creativity and connection to new markets. She believes there are many opportunities for tomorrow's lawyers: *"Law and the application of law touch every aspect of society. This idea that there is a dearth of legal work out there speaks ultimately to the fact that the legal profession is facing the challenge of how*

to maintain their relevance — and that is where we have to start thinking about what it is we actually do (or are supposed to do). We have to go back to point zero and think: What is the role of lawyers? If we explore that space a bit more, that could catalyze some forward movement led from within the profession instead of from outside.”

3.2 ARE LAWYERS THE ONLY PROVIDERS OF LEGAL SERVICES?

Lawyers are not the only individuals in society who provide legal services. Increasingly, other service providers are delivering information and advice to clients in areas traditionally reserved for lawyers. A recent study found that there are very few legal issues about which the public consults lawyers.⁵ Individual clients consult lawyers principally about criminal and family issues, wills and powers of attorney, and real estate matters. Yet it has been estimated that Canadians seek legal advice for only 11.7% of justiciable events.⁶

If lawyers are not the only individuals providing legal advice and services, who else is?

Accountants, financial planners, human resource consultants, and other professionals offer guidance and advice to their clients about rights and entitlements. There has been rapid growth in the number of legal outsourcers who provide standardized, systematized, or “routinized” legal services (often referred to as “commoditization”) where there is little requirement for expert legal advice, insight, or strategy. Technology is also replacing the traditional lawyer in some areas where routine or predictable matters can be resolved without recourse to a lawyer. The growth of in-house counsel is a somewhat similar but special situation because the legal work is still being performed by trained lawyers. The notable difference is that these lawyers are situated within a specific organization, so that they are essentially providing service to only one client rather

than to the public at large. Global competition from offshore law firms or legal process outsourcers (LPOs) is also a significant factor in reducing the domestic demand for lawyers. Internationally, expectations in client service are being transformed by the growth of alternate business structures (ABSs) which permit non-lawyer investment and ownership, and multi-disciplinary practices (MDPs) which combine legal services with other professional services. Community and government agencies provide some forms of legal services through caseworkers or specialized advisers. Finally, a growing early-resolution services sector is offering accessible justice services to individual clients to resolve everyday legal problems before they require more formal court and tribunal-related services.⁷

There is also a growing phenomenon of individuals representing themselves in the justice system, although their choices are largely driven by economic circumstances and the cost of legal services.⁸ They present latent markets for which legal literacy and self-help technologies are being rapidly developed, in many cases by non-lawyers.

The very definition of legal services is becoming difficult to ascertain. Conventionally, legal services have been defined by legislatures as activities restricted solely to lawyers, with activity outside of those definitions sometimes challenged as the unauthorized practice of law. The policy reasons behind legal services being reserved to lawyers were twofold: (1) the protection of lawyers from competition, and (2) the protection of the public from unqualified persons.⁹ In more recent years, decision-making on reserved legal services focused on the protection of the public, resulting in an extension of regulation to paralegals and notaries public in some jurisdictions as in the public’s interest. It is outside the scope of Futures’ work to determine whether some legal activities should no longer be reserved or what further role might be played by other regulated professionals. But given that clients are already

seeking significant legal assistance from other service providers, we can assume that some legal services will not require delivery under regulated standards in the future.

3.3 WHAT DO CLIENTS WANT FROM LAWYERS BESIDES ADVICE?

If lawyers are to continue contributing positive value for their clients, the legal profession must become more focused on their expressed needs and expectations for legal services. Clients expect legal services to be delivered like all other services. They expect to obtain legal services in ways that are familiar to them, user-friendly, and quick.

From Futures' research and consultations, we found that clients are asking for:

- lower costs and cost certainty (value and predictability);
- clearer information about the process and the use of familiar technology and processes (clarity, transparency and familiarity);
- results (competence and experience);
- involvement (participation in the process); and
- respect (a mutual partnership rather than an authoritarian approach).¹⁰

Clients are also looking for more discrete legal tasks and services ("disaggregation"), as well as speed, convenience, and availability. Many of these needs can be facilitated by modern technologically based platforms.

Clients are also still looking for non-legal support as they go through the uncertainty, emotions, and complexities of a legal process. They want access, empathy, and personal contact with lawyers who can demonstrate a holistic understanding of the client's

circumstances and needs. Yet these desires may not outweigh the attraction of a new service provider who offers robust advice at a considerably lower price. Lawyers' ability to extend empathy to their clients must necessarily be embedded in a competitive package.

It will be particularly important in the future for the demographics of the Canadian legal profession to reflect the diversity of the Canadian population at large. Clients want to connect with legal service providers with whom they share common values and experiences. Clients also want varied, creative, and diversified advice; it is not in their interests to receive legal services from a team comprised of lawyers whose life perspectives are homogeneous.

INNOVATION IN ACTION: In-House Counsel

As Executive Vice-President and Chief Legal Officer of a major Canadian company representing Canada's largest food and drug retail companies, Gordon Currie is working hard to reduce — or eliminate — "billable hours." George Weston Limited now has a policy that for any matter over \$5,000 (in legal fees), it is mandatory to discuss alternate fee arrangements. However, Currie is not as concerned with costs as he is with the work being done by smart, technically capable people. He says "it is not about saving money — it is about getting value," especially on big projects like buying a new business.

INNOVATION IN ACTION: Legal Services Models

DJ Larkin is a lawyer and housing campaigner at Pivot Legal Society, a Vancouver-based non-profit organization dedicated to bringing the voices of marginalized and vulnerable people to the court system and the public. Pivot focuses on law reform in areas that most affect these marginalized groups, such as homelessness, sex work, and issues related to drug usage and health, on behalf of people who regularly interact with the justice system. "We are a hoodies-and-plaid office," says DJ: "We don't find

suits necessary to the work we do connecting with clients on a day-to-day basis."

Pivot aims to give a voice to people who often go unheard. As DJ indicates, *"It is important to make sure we are doing [law] in a way that our clients would be proud of, because the court process is important and we have to make sure that those processes don't further marginalize people. One measure of success is whether the voices of our clients were heard, respected and reflected in court decisions and in government policies."*

3.4 OPPORTUNITIES FOR 21ST - CENTURY LAWYERS

What new opportunities will exist for lawyers of the future? What legal services will emerge which the next generation of lawyers will be uniquely placed to provide? And what are we training new and young lawyers to become? These questions bring together the central themes of the client's need for legal services to be delivered differently; the importance of an independent legal profession; and the need for all stakeholders to exhibit flexibility and choice to enable the legal profession to adapt to the future.

Tomorrow's lawyering will look radically different from today's.

For socially significant, high-value, complex work, or for work where inter-personal interaction is vital, there will remain a need for expert legal advisers serving clients in the traditional way. However, new methods for sourcing legal work, often based on IT, are likely to reduce the frequency with which this traditional advisory service will be required. Similarly, even in the most complex files, clients are expecting lawyers to make better use of standardized processes and tools as part of the service delivery.

We also anticipate seeing the emergence of new practice areas in Canada. The resurgence of

Indigenous legal traditions, and a growing understanding of Canada as a multijural nation, may require lawyers to reconceptualize the law entirely, and to consider the various ways in which Canadian and Indigenous legal orders may be mutually enriched and harmonized.¹¹

From our case studies and the growing literature on the future of the legal industry authored by, among others, Richard Susskind, Jordan Furlong, and Mitch Kowalski, the emergence of a number of new legal disciplines is evident.¹² These may not resemble the current everyday work of traditional lawyers but they are disciplines for which there will be market demand. Crucially, these new disciplines will give rise to services that can only be provided by people with deep legal training and experience.

New jobs are already emerging at the intersection of law and technology. In future, the following job descriptions will become increasingly common:

Knowledge Engineers build online legal advice systems and document drafting systems, and organize and represent legal knowledge within those systems.

Legal Process Analysts develop the architecture within law firms or organizations by which complex legal work is disaggregated and sourced through multiple providers.

Legal Support System Managers develop and deliver tools to clients to help them undertake their legal work, such as workflow systems, document management systems, and intranets for in-house departments.

Legal Project Managers formally bring the discipline of project management to the legal process of deals and disputes.

Online Dispute Resolution presents new roles for lawyers as e-advocates, e-arbitrators, e-neutrals, and e-mediators.

Legal Risk Managers provide new tools, techniques and systems for identifying, quantifying, monitoring, hedging, and reducing their clients' legal risk.

Compliance Officers advise on regulatory compliance within industries that are subject to complex regulation.

Legal Management Consultants on a preventative basis offer advice on strategy and operations to large legal departments.

It is not suggested that all of these disciplines will thrive. Rather, we believe that these new roles are demonstrative of the added value that people with legal training can bring to a society in which legal information is readily and widely available, in digital format, or turned into an inexpensive commodity. Whether these disciplines do indeed flourish will depend on having a legal profession that is appropriately trained and sufficiently innovative to develop new and improved services for clients.

INNOVATION IN ACTION:

Online Legal Information

CanLII is the not-for-profit organization best known as the authoritative free source for Canadian case law. Now, they have launched *CanLII Connects*, a second website that provides free access to summaries, case commentaries and other legal information. *CanLII Connects* started in April 2014 with over 27,000 secondary-source documents provided by law firms, academics, leading practitioners, bloggers, research specialists, commercial publishers and law societies. *CanLII Connects* is an innovation that builds on CanLII case metadata (like citation information) that is also freely available to software developers to use in other websites or apps. Says CanLII President and

CEO Colin Lachance: "We want to share this data to make it easier for other innovators to incorporate legal information into specialized tools and services that serve the profession and the public in new and exciting ways." Think, for example, of the weather app on your smartphone. The company that made the app does not produce the weather data, it 'grabs' it from the online sources that do. By keeping use and access to its information and metadata free, CanLII keeps costs down for lawyers, increases direct public access to legal information, and, ideally, increases access to justice.

INNOVATION IN ACTION:

Business Processes

Patricia Olah is a lawyer and national co-leader of Borden Ladner Gervais' process improvement and project management system *BLG Adroit*. Part of her job is explaining the system and how it streamlines resources around client values: "When I teach this concept to the lawyers at BLG, I have a chart I love that explains that what the client values is at the core. I have a circle on a page, and within that circle I have the word client. Around that circle are five other circles. One says, 'Is that legal task necessary, or is it waste?' One says, 'Is the person performing that legal task the most cost-effective resource?' Another says, 'Is the process transparent to the client? Do they know what is being done, why it is being done, and who is doing it?' The next one says, 'Does the process use checklists, templates and technology to help save time and costs?' And the last one says, 'Does the process incorporate reporting and communication styles that meet the client's needs?'"

4

The Changing
Legal Environment



Providing a strategic response in the face of fundamental change is not a trivial task. As pointed out in *Trends and Issues*, “psychological studies of lawyers have found that they are generally skeptical, autonomous, and not resilient.”¹³ Similarly, because of their generally autonomous nature, individual lawyers will react differently to the key drivers of change based on their own circumstances, experiences, and attitudes towards change. A strategic response to the future for the profession must be based on flexibility and choice so that individual lawyers can find their own bearings and chart their own courses.

4.1 MAJOR DRIVERS OF CHANGE IN THE LEGAL PROFESSION

Four major trends are seen as providing the impetus for change in the legal profession: globalization, technology, changing client expectations (see Section 3.3), and a growing lack of access to legal services. These are often interrelated and, in combination, will create enormous pressures on the legal profession in the future.

The globalization of commerce presents a number of serious challenges for lawyers. Newer and cheaper sources of supply will put continuing downward pressure on prices for legal services. Multinational and multi-disciplinary practices (MDPs) will offer more choice and convenience for legal services, as will foreign-based legal service providers. Alternative business structures (ABSs), permitted in other jurisdictions and fuelled by non-lawyer capital, will be able to invest more in innovative processes and technologies and provide more entrepreneurship that will enable the delivery of legal services better, faster, and cheaper across national and provincial borders. Globalization will also affect the education and training of new lawyers who will have to practise in a more competitive and connected world by making better use of technology and being better able to integrate their services with those of other professionals.

Technology can both sustain the legal profession and disrupt it by completely transforming how a market functions. From an international perspective, Futures’ expert adviser Richard Susskind identifies what he considers to be key disruptive legal technologies in the future: automated document assembly; relentless connectivity; the electronic legal marketplace; e-learning; online legal guidance; legal open-sourcing; closed legal communities; workflow and project management; embedded legal knowledge; online dispute resolution; intelligent legal search; big data; and artificial intelligence-based problem-solving.¹⁴ Whether he is right in whole or in part, what is compelling about Susskind’s predictions and categorization of disruptive technologies is that they affect not only the production and delivery of legal services, but also legal education, research, regulation (because of new markets and new participants), and business structures. Further, in areas such as online dispute resolution, these disruptive technologies act as a substitute, partner or alternative to the formal justice system.

Looking to the Canadian legal marketplace, the following systems and applications present similar disruptive potential: cloud-based services that do intelligent deconstruction of documents to facilitate client engagement about contract creation; legal process and document production portals that enable lawyers to manage document production and document exchange between different parties; legal referral websites; technology that enables lawyers to dispense virtual advice through expert systems in areas with risk or complexity, although the questions may be routine or repetitive; crowd sourcing and review sites where individuals choose to review companies instead of registering disputes; teleconferencing and web technologies for remote and online legal services; and greater use of e-filing and other court initiatives such as electronic transcripts.

Broad technological trends are apparent: greater

processing power, more portable devices, and more intelligent systems. The Canadian legal profession cannot rest on the assumption that other lawyers will remain the competition in the future. A sharp and responsive GoogleLawyer engine, which one day could be assembled from Google's proprietary data collected from online searches, may prove to be the profession's greatest competitor.

Globalization and the rapid increase in the use of technology have created growing calls for the liberalization of markets, and profoundly changed how we interact with each other. As more knowledge and information becomes readily available, there is a desire to break down barriers between countries, regions, and industries. Similarly, as other professions deliver quicker, cheaper, and simpler services, Canadians will demand the same of their legal services.

Finally, access to legal services in Canada is a driver of change that may ultimately have the greatest impact. The public should not be limited to a single legal services delivery model that no longer meets its needs. If the Canadian legal profession cannot ensure that low- and middle-income Canadians have access to affordable, regional, and culturally competent legal services, someone else will. Similarly, if lawyers do not deliver services in ways that meet client expectations, someone else will.

INNOVATION IN ACTION:

Legal Entrepreneurship

Dominic Jaar started an e-discovery firm that was acquired by KPMG. Now, he is a lawyer and information management specialist for the accounting giant. He notes that accounting firms are more proactive than most law firms when it comes to change: "KPMG invests in R&D constantly. That is something you don't see in law firms. Name me one law firm that has bought a company!" He cautions that inaction will be to the profession's detriment: "Innovation in the legal

profession will not come from the legal world. It will come from the outside. That is already the case. It is companies and service providers in related areas that are attacking the practice of law. It is people from outside law who have realized that 80% of what lawyers do is not protected, so they are moving into those areas. Those people are innovating."

INNOVATION IN ACTION: Technology

The federal Department of Justice is exploring digital technologies such as social media and collaborative work spaces for the future. Blueprint 2020 co-champion and Associate Assistant Deputy Attorney General responsible for Aboriginal Affairs in the Department of Justice Canada, lawyer Michael Hudson believes there are many people-based benefits to collaborative workspaces, such as the SharePoint program used at the Department: "[The computer-based system] allows people to post ideas and documents and share. And when you are in an online forum, it seems trite to say, they can't see you. And it takes the unconscious bias that people have out of the equation. Take hierarchy, for example: in this space someone who is quite junior has as much say as someone who is senior. Same for gender bias, or disability. [Technology can] make the idea process blinder to status and gender than might otherwise be the case."

4.2 HOW ARE LAWYERS EXPERIENCING CHANGE?

The Futures consultations revealed that while lawyers' experiences of change vary across practice settings, geographic location, and length of practice, some change factors are felt uniformly: the request to provide more services for less cost; clients' expectations that assistance is available when it suits them; and the need to demonstrate expertise to gain clients' trust, which is particularly challenging to new and young lawyers in working environments where they have diminished training opportunities. In-house counsel are aware of and attuned to the

major drivers of change because of their direct responsibility to a specific organization whose markets and operations are affected by the same changes. In-house counsel have a ringside seat for watching client expectations evolve, and seeing how clients interact with other professionals. Nevertheless, among in-house counsel there is still some reticence to innovate because of budget and risk considerations and existing relationships with legal service providers, as well as their training and their comfort with what has been the norm.

Some lawyers cling to the status quo through maintaining existing structures and processes for running a legal practice; relying on rigid billing methodologies (e.g. the billable hour); establishing fixed career paths and expectations for junior lawyers; resisting file transparency or external oversight; being unwilling to include or empower clients in the legal process; demonstrating reluctance to work with outsiders, whether they are other lawyers or non-lawyer professionals; and showing a minimal interest in investing in innovation.

This conservatism is not universal, however, as there are pockets of innovators and early adaptors within the legal profession. But rather than leading changes and creating their own futures, many lawyers believe that they must maintain current practice structures and delivery models in order to satisfy their professional and regulatory requirements and to protect their financial well-being.

INNOVATION IN ACTION:

In-House Counsel

Michel Lalande, Senior Vice-President - General Counsel and Corporate Secretary at BCE and Bell Canada, thinks that there will be a need for in-house counsel in the future, but only for lawyers who learn to adapt: *"When you are in business, one of the things the people who run things want from their legal counsel is counsel that will de-*

complexify the complex for them and talk in business language. While remaining agents for identifying risks, counsel must also be agents for identifying solutions. If legal counsel are not able to do this, their influence will progressively diminish. If legal counsel is able to adapt, their influence will increase."

INNOVATION IN ACTION:

Business Processes

David and Karen Dunn Skinner, Lean Practice Management Advisors at Gimbal Canada, explain how the legal profession benefits from adopting a culture of continuous improvement: *"Lean Six Sigma is a well-known and well-understood, and tried and tested, business improvement strategy... (but) it is not just about identifying waste and reducing cost (to clients). Cost alone is not the end game. It is about freeing up otherwise limited human, financial, and technological resources. By targeting waste, you can better leverage all your resources and better support your clients and their needs. You can deliver better quality work in less time and at less cost, and that is the meaning of Lean. You will also enhance your reputation as a lawyer focused on adding value to your clients' business objectives."*

4.3 BARRIERS TO CHANGE

It is important to examine the barriers that impede more widespread acceptance and adoption of change in the Canadian legal profession.

As indicated earlier, studies show that most lawyers are by nature conservative and risk-averse. But attitudes vary with personal circumstances. Age, gender, experience, income, and perceived competitive advantage are only some of the factors segmenting lawyers' attitudes towards change. Lawyers or law firms may not be motivated to innovate because of their current success ("if it ain't broke, why fix it?"). They believe it is not worth the effort, time, and cost to make necessary adjustments. In many cases, there is a lack of entrepreneurship. High fees,

comfortable incomes, and an aging demographic reduce the motivation to improve, invest, or innovate.

While there are already a number of examples of innovative legal practices in Canada, there are few mechanisms for lawyers to identify, observe, assess, accept and eventually implement these breakthroughs. There is no collective culture of innovation. New undertakings are happening in silos, often on the margins or outside the profession. Finding the means to connect and support innovation within the profession will be critical for the future.¹⁵

A perception that regulators are intolerant of experimentation is also a barrier to innovation, as many lawyers and law firms believe that fundamental changes in how they operate and provide services would not meet their law societies' requirements. Both the profession and the public deserve regulation that responds to the modernization of the provision of legal services while maintaining appropriate ethical standards and public protections.

There are questions raised about the purpose of legal education and training — should it remain primarily an academic pursuit focused on theory and legal reasoning? Should it be more directly matched to the expressed needs of clients? Should it equip students with both an understanding of the law and all of its implications including the ability to be nimble, mobile, and innovative as the role of a lawyer is redefined. Should the curricula and methods of educating tomorrow's lawyers also be grounded in flexibility and choice?

Another barrier to change is limited access to the legal profession by members of diverse and equity-seeking groups who could bring fresh perspectives and solutions to improving access to legal services in Canada. It will be important to develop models that facilitate an expansion of diversity within the legal profession, and to educate new types of lawyers who

will be willing and able to innovate in meeting existing and unmet needs.

One final impediment to change is the absence of good data on the Canadian legal profession. Lawyers are trained to think rationally and to act on the best information available. For many lawyers, anecdotal evidence, opinions, predictions, and wish lists are not sufficient to support moves towards change.

INNOVATION IN ACTION: Technology

Noah Waisberg is a lawyer and the co-founder and CEO of DiligenceEngine, a software program that helps users review contracts more quickly and accurately. As an entrepreneur in the legal tech sector, Noah has encountered many barriers to change: *"The best explanation I heard from a partner at a large firm is that he needs the work to be done right... He is confident that his current process of doing it will get it right. It is very hard to trust a new way of doing things. His house is on the line, and he wants it to be right. What we [at DiligenceEngine] have tried to do is not replace junior lawyers but enhance them. It is not that our software is more accurate than a person, but that a person using our software is faster and more accurate. It's not about being a person replacement but a person enhancement."*

INNOVATION IN ACTION: Legal Entrepreneurship

Darcy Lindberg graduated law school in 2012, and soon after started his own community-oriented solo practice in Victoria, B.C. The hardest part about being a young legal entrepreneur? Breaking through a legal culture resistant to change: *"There is an underlying sort of culture of fear in law schools... This is not healthy or productive, and what I noticed is a lot of my fellow students got caught up in that. I think one of the struggles I see with my colleagues in law school is that struggle of 'How am I going to make a living if I do the things I want to do with law?' That is a really tangible*

struggle people deal with in law school.” Darcy found encouragement from his First Nations community and a positive articling experience in Whitehorse. His best piece of advice: “Look at being a lawyer as a tool in your toolbox,” meaning, take away the expectations and do the work you want to do.

4.4 REASONS WHY THE CANADIAN LEGAL PROFESSION MUST CHANGE

Based on Futures’ assessment of the major drivers of change, we believe that the Canadian legal profession must quickly accept change — and adapt.

The arguments in favour of change as revealed through Futures’ research and consultations are:

- Globalization, new competition, and client desire for “more for less” are eroding lawyers’ share of the market for legal services.
- There is a growing disconnect between how lawyers and clients value the services provided by lawyers.
- Tremendous unmet needs for legal services remain, especially for low-income and middle-income Canadians. Increasingly, these needs are being addressed by providers from outside the legal profession, including those within the early resolution services sector.
- Technology is rapidly expanding the availability of information to the public; data management and analysis capabilities; and communications tools. As a result, clients expect more choice and flexibility of legal services, alternate billing and delivery arrangements, and greater speed, convenience and participation in the legal process, without borders.
- Technology is improving the efficiency of many business functions, and altering client expectations about how they interact with lawyers and the legal system, with consequent competitive pressures on firms and lawyers using outdated operating processes and systems.
- Technology is altering the way people learn, putting the onus on law schools and other providers of education and training to adopt new teaching models and methods.
- New forms of legal businesses permitted elsewhere in the world, such as alternate business structures, are bringing non-lawyers into the ownership and management of legal practices, stimulating investment in innovation while further opening the legal marketplace to broader competition. This creates challenges for the regulation of the profession, as unregulated non-lawyer legal professionals occupy greater portions of the Canadian legal marketplace.
- Multidisciplinary practices show potential for providing clients with a greater range of services, again creating regulatory challenges because non-lawyers may be involved in various tasks on a legal file, complicating duty, responsibility and ethics considerations.
- As the market for legal services changes, new lawyers may avoid certain non-profitable areas of the law while others avoid entering the profession at all. In addition, lawyers continue to drop out of the profession temporarily or permanently because of shrinking incomes, work arrangements, and a desire for greater work-life balance.
- Although some progress has been made, the Canadian legal profession still does not fully reflect or represent the diversity of the Canadian population, which raises questions about whether the profession is able to sufficiently meet the public interest.
- In-house counsel, who are both buyers and suppliers of legal services, have become much more concerned with the cost as well as the quality

of externally provided legal services, doing more work themselves or requiring outside law firms to provide greater transparency, financial limits, and control for legal fees charged. In many cases, there is a demand for alternate fee arrangements to replace the billable hour or to create some combination of performance-based fees based on both outcomes and inputs.

- Entrance into the legal marketplace by paralegals, online service providers, legal process outsourcers (LPOs), and other forms of competition will have a continuing impact on the overall demand for services from lawyers and the prices people will be willing to pay.
- Clients are refusing to pay for junior lawyers or articling students. This is reducing the availability of articling positions.
- Globalization and the mobility of human resources, accelerated by technology, are creating issues of standardization with respect to legal credentials and professional licensing.
- With so much change and innovation already taking place, there is a need for lawyers to revisit how they are exercising their role in protecting the rule of law and the administration of justice.
- Finally, by approaching change as an opportunity rather than a threat, the legal profession can avoid the risk of intervention by government or market forces, and develop its own resiliency by building on its existing strengths and values. This may require some modification of attitudes and behaviours.

The biggest reason to change, however, is that great opportunities await the Canadian legal profession once it is freed to work differently.

Opportunities to:

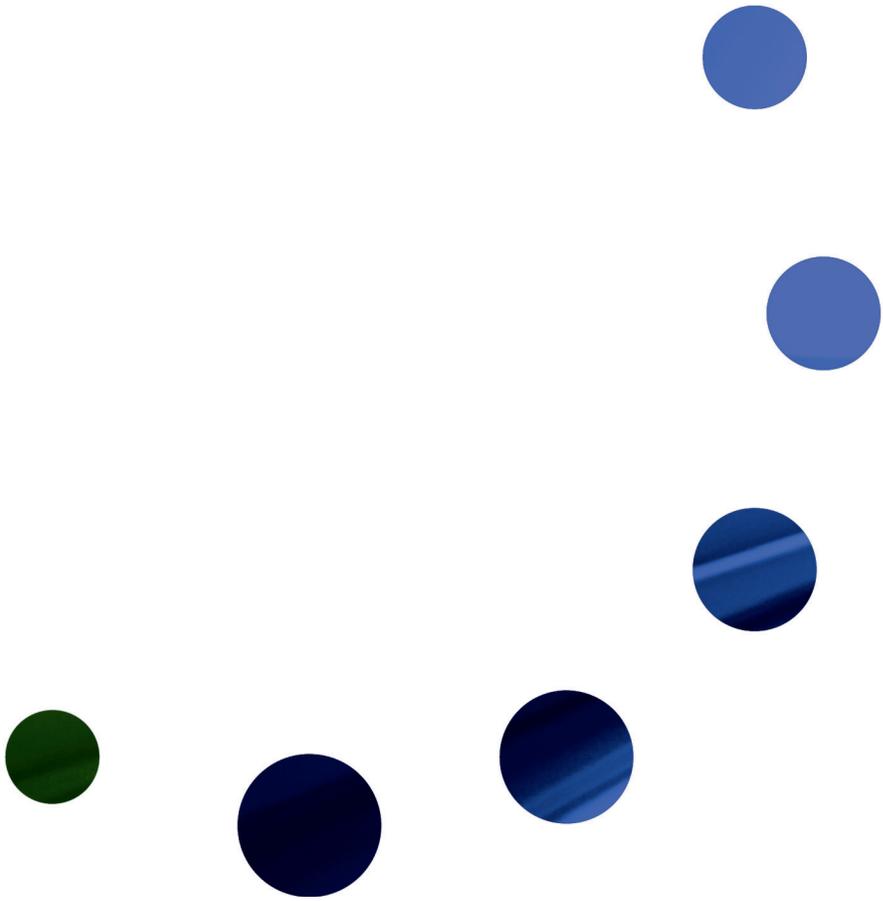
- put clients at the centre of all innovations, particularly those underserved by the existing structures;
- open up models of legal service delivery to try new things;
- work in conjunction with others and encourage the profession to learn from other professionals about best practices in service delivery; and
- creatively re-imagine what it means to “be a lawyer” in the future.

If we can do so, the public will be best served and lawyers will have reasserted their relevance and value.

INNOVATION IN ACTION:

Legal Entrepreneurship

Governor General David Johnston addressed the CBA Legal Conference in Halifax, N.S. on August 14, 2011 on the challenges facing the legal profession: *“We live in rapidly changing times... We all recognize the changes taking place. But we must go beyond this understanding. We must also be willing to embrace and adapt to change. We must scrutinize our social contract — both with the public and internally — to ensure that we stay relevant — that is, stay just — and continuously strive for the good... Can we craft a new definition of the legal professional?... For many today, the law is not accessible, save for large corporations and desperate people at the low end of the income scale charged with serious criminal offences. We must engage our most innovative thinking to redefine professionalism and regain our focus on serving the public.”*



5 Innovation



Innovation is the process of doing new things or doing things differently. For many, innovation is synonymous with technology. There is no question that technology has been a critical enabler for innovation, but it is a tool, not an outcome. This section will examine a number of areas where the delivery of legal services is either already changing due to innovation or would benefit from innovation. Based on new service offerings that we are already experiencing in Canada and elsewhere, Futures anticipates that the following will continue to drive innovation:

- new structures for delivering legal services (e.g. ABSs);
- new ways of lawyers working together and with non-lawyers (e.g. MDPs);
- new forms of law firm management (including the use of non-lawyer business professionals);
- new services for clients;
- new ways of bundling or disaggregating services;
- new technologies;
- new business processes;
- new billing arrangements;
- new legal curricula;
- new career choices;
- new ways for providing access to legal services; and
- new attitudes and perspectives.

Innovation happens through a process of experimentation, testing and validation. It is important for the legal profession to recognize that all true innovation requires initial failure in order to refine ideas. The profession will have to learn from its mistakes, and accommodate some risk in the interests of improvement and future benefit. This will require leadership, not only to support innovation, but also to share and celebrate innovation in the profession. An expanded knowledge base about the profession and

the legal industry would help stimulate and direct innovation to where it will be most beneficial.

Innovation must not compromise the fundamental values of the profession and protections of the public, so it must be supported by complementary innovations in regulation. (These will be discussed in Chapter 6). There must also be innovation in court processes and decision-making bodies.¹⁶

An important test of the value of any innovation will be its impact on access to legal services. If more Canadians are able and willing to use lawyers and the justice system for their legal needs, then the legal profession will have responded to the expressed needs of clients and potential clients, who today indicate that legal services are too costly for them to access except in the most dire of circumstances. Innovation cannot only serve the top echelons of the legal marketplace; the profession's duty to act in the public interest requires it to do more in transforming access to legal services.

Finally, lawyers must be trained to work in a continually evolving profession. Education, training, and continuous professional development must also keep pace with innovation, so that lawyers throughout their careers are able to remain relevant and competitive as experts in their fields of practice and to be more adaptable and able to capitalize on changes in the market. (Education will be examined in greater depth in Chapter 7).

INNOVATION IN ACTION:

Business Processes

Matthew Peters is a partner in the Technology Group at McCarthy Tétrault. He explains the rationale behind his firm's use of off-shore and in-shore outsourcing in delivering legal services to its clients: *"The legal industry has to a large extent been operating as in feudal times... in the sense*

that work has been done in the same way things were done in feudal times. For example, if you were a cobbler you went out and purchased the leather and made the shoe yourself. Then you had the Industrial Revolution: now the shoemaker sources out all the pieces and they find the lowest-cost way to do it. Applying that to what we are seeing in the legal profession now: We in law have missed the Industrial Revolution.”

5.1 NEW LEGAL BUSINESS STRUCTURES

If lawyers are to deliver services in different ways, and if they are to be able to take full advantage of opportunities for innovation, they should be free to embrace whichever structures work best for them and their clients. For example, technology and business processes can provide lower-cost solutions, and larger businesses with scope and scale can deliver services in a way that the small business professional cannot. Lawyers need to be able to practise in any business structure they desire, as long as their activities can be appropriately regulated for the protection of the public interest.

At present, there are four permitted business structures in Canada (with limited exceptions):¹⁷

- sole proprietorship;
- partnership;
- limited liability partnership (LLP); and
- professional corporation.

While other jurisdictions, including Australia and England and Wales, have made real advancements in legal service delivery models, in Canada business structures are only modestly advanced from the 19th century.

There is a need to move beyond traditional models to new, more flexible working arrangements, as well as to

new business processes that will allow the profession to be more responsive to the diverse groups of clients it serves. By providing a more holistic range of services, lawyers will be able to better meet the needs of existing clients, as well as the unmet needs of individuals and groups who may look to other professionals — or outside of the formal legal system entirely — in order to resolve their issues.

By loosening the rules on permitted business structures — for example, by allowing fee sharing, ownership, and investment by non-lawyers — regulators can encourage more innovation and business process improvement. (The regulatory aspects of these issues will be addressed in Chapter 6).

ABSs, which include non-lawyer ownership, were first adopted in New South Wales, Australia, in 2001, and were subsequently adopted in England and Wales in 2007. ABSs are under examination by some Canadian law societies and other jurisdictions.¹⁸ Supporters of ABSs believe that a liberalized environment would enhance the economic benefits for both consumers and legal services providers in Canada, as ABSs possess economic incentives for both lawyers and clients.¹⁹ Supporters also postulate that outside investors, different service providers, and alternate capital structures can provide a boost for financing new legal service delivery models, stimulate better management, and enable business to take greater risks in improving their services.²⁰

Because of regulatory constraints, management structures, and reliance on old models of legal service delivery, law firms today demonstrate the following:

- insufficient investment in innovation;
- restrictions in the range of services and cost structures provided;
- limited participation of non-lawyer business professionals in management;

- lack of collaboration with other lawyers and non-lawyers;
- the immediate distribution of profits in a way that acts as a disincentive for retaining resources for research and development and dampens the career prospects of junior lawyers and new calls to the Bar; and
- fixed methods of working and advancing within the law firm hierarchy, with limited ability to integrate lawyers with diverse lived experiences and life circumstances.

Given more recent instruments for limiting personal and firm liability (such as assurance funds and professional liability insurance), some basic reasons for establishing partnership models may require rethinking. The recent decline and demise of longstanding Canadian legal partnerships suggests that more research may be required on if and how the partnership model can be viable in the future. Regardless of the viability of the law firm model, the Canadian legal profession is facing expanded competition from outside providers like ABSs in other jurisdictions, and the profession must not be limited in its ability to respond.

If adopted in Canada, ABSs may also result in the provision of legal services to a greater proportion of those with legal needs. There is evidence that market liberalization and outside investment in England and Wales and Australia are improving the availability of legal services and lowering costs,²¹ although, as cautioned by the CBA's Access to Justice Committee, access to legal services must be considered in conjunction with the quality of legal services received.

The Futures consultations raised questions about the potential quality of the services provided by ABSs. There were concerns about whether lawyers could uphold their professional values and obligations under such business models – whether it was possible to

have a dual loyalty to clients and shareholders. Interestingly, Canadian in-house counsel did not express a corollary concern with their ability to uphold their legal values while serving the commercial interests of their companies. Caution was also expressed in the consultations that the bundling or disaggregation of services by ABSs and MDPs, as well as the participation of multinational corporations, would challenge the current regulatory framework. (This issue is addressed further in Chapter 6 on Regulation).

One final caveat about the expansion of legal business structures was their potential impacts on diversity in the profession. While ABSs present great opportunities for new and different ways of working, such structures may also create unstable work situations. For example, outsourced or contract work may be disproportionately occupied by members of under-represented groups. Additionally, while ABSs and new model law firms may appear attractive as options for Gen Y, women lawyers, parenting lawyers, and lawyers with disabilities, law firms must continue to demonstrate progress towards diversity and equality in their working environments. Any assessment of the performance of ABSs must measure the impact on increasing diversity and equality in the profession. Lawyers, law firms, and ABSs should all demonstrate meaningful commitments to diversity. (Again, see Chapter 6 on Regulation).

Futures did not identify one specific structure that would be most beneficial for consumers and the profession. This reflects the unpredictable nature of innovation, and the need for flexibility to foster it. Rather, the legal profession should be flexible in its adoption of new business structures, with suitable regulations in place to maintain the core ethical principles of Canadian lawyers and to protect the public from harm.

Recommendation #1 – Flexibility in Business Structures

Lawyers should be allowed to practise in business structures that permit fee-sharing, multidisciplinary practice, and ownership, management, and investment by persons other than lawyers or other regulated legal professionals.

INNOVATION IN ACTION:

Legal Services Models

Marc-Antoine Cloutier co-founded the Québec legal clinic Juripop at the tender age of 19, while still in law school. Juripop’s target audience is low-income individuals who do not qualify for legal aid. As an “entreprise d’économie sociale” under Québec law, Juripop cannot bill individuals directly for legal services. People in need of assistance “join” the Juripop organization for a small annual fee, and then access the organization’s lawyers. Members pay a small hourly rate on a sliding scale according to their ability to pay. Says Marc-Antoine: *“This structure allowed us to respect the rules of the Québec Bar. It is not easy as an organization model, but it is the model that allowed us to grow.”* Juripop also works in multidisciplinary teams and uses innovative service delivery methods like travelling caravans of lawyers and legal workshops in places of residence: *“We help not just with our clients’ legal health, but with the health of the community.”*

5.2 PROMOTING INNOVATION IN THE LEGAL PROFESSION

Because of the segmentation of the Canadian legal profession, innovation often takes place in silos. There are few mechanisms for bringing lawyers together in national dialogue, so that the profession as a whole can strengthen itself by sharing innovation.

As indicated earlier, technology is a key enabler of innovation and should be an integral part of the future management and delivery of legal services. Simple and cost-effective technological solutions must be championed and disseminated by the CBA and other stakeholders to help lawyers structure their practices in

order to better offer new and more effective legal services.

Technological innovations will be both client-facing and lawyer-facing. As Susskind predicts, early stages of artificial intelligence will begin to shape the practice of law and provide client-focused solutions. A useful analogy is found in examining the impact of intuitive programs such as TurboTax and QuickTax on the provision of income tax services. The value of such systems lies in lowering the cost of production, and in turn, the price of these services. But value is also found in these products because they permit the delivery of tax services in ways similar to how users access other services in their lives. Delivering services in ways that resonate with them is of critical value to clients.

On the lawyer-facing side, a market is emerging for increased support services to lawyers. Many of these new solutions originate in innovation incubators, which are public and private sector models that provide expertise, networks, and tools to start and grow successful entrepreneurial ventures.²² Lawyers should have access to innovation incubators to access inventions that will deliver legal services with greater speed, affordability, choice, and convenience. The CBA, as an essential ally of the profession, can be at the forefront of this innovation through the introduction of a legal innovation incubator. With the knowledge base gained through such an incubator, the CBA could better continue its leadership role regarding the public delivery of legal services and its advocacy for greater access to justice for all Canadians.

The CBA could partner with business schools, or

others interested in legal service innovation, to develop case studies that explore successful examples of existing Canadian innovations, akin to the 14 Canadian Case Studies in Innovation recently published on the Futures website, and the interviews with Canadian innovators featured in our online showcase, *Do Law Different*. To change attitudes and break down rigid barriers to change in the profession, the CBA should initiate and facilitate a national dialogue on innovation.

The CBA might also act as a catalyst for developing a Canadian legal innovation investment fund. The mechanism would have to be further developed, but the objective would be to encourage lawyers to make a shared investment in a pool that would be directed to legal innovations. Shareholders would receive a return for any new intellectual property developed and have first call on promising new products and services. Governments and the courts might also be invited to participate in the investment fund, where there is an opportunity for innovation to improve the overall administration of and access to justice.

To stimulate innovation in law schools, the CBA could endow an innovation chair and/or provide innovation scholarships.

Finally, as a champion for change, the CBA could establish innovation awards where lawyers are recognized and honoured for their contributions to innovation in the profession. This type of recognition would have several effects. First, it would publicize new ideas and inventions and help spread their adoption across the profession. Second, it would stimulate even more innovation as others contribute new ideas and add-ons. Third, it would demonstrate the potential benefits of innovation and help soften long-held attitudes about taking risks. And finally, it would be a powerful marketing tool for lawyers who wish to demonstrate the viability of their emerging ideas to new clients.

Many of these specific ideas will require more discussion and analysis. But the central principle – that the CBA should take a leadership role in innovation – should be confirmed by its membership as vital to the future of the legal profession in Canada. Legal innovation in Canada needs to flourish in order to compete with the bright and imaginative innovations from other jurisdictions that will inevitably emerge in Canadian markets.

Recommendation #2 – CBA Promotion of Innovation

The CBA should take a leadership role in promoting innovation as follows:

- support and facilitate innovation incubation;
- facilitate a national dialogue on innovation in the legal profession;
- consider the development of an investment fund for innovations;
- create an innovation chair and/or an innovation scholarship; and
- establish innovation awards.

INNOVATION IN ACTION:

Business Processes

Andrew Currier is the co-founder of PCKIP, a Toronto-based firm specializing in patents and trademarks with an automated, paperless office. By going paperless, his firm saves money on file storage, is better able to allocate staff time, and has increased transparency and predictability for clients. He explains how workflows operate in his law firm: *“Say you walk into McDonald’s and you ask for a Happy Meal. The cashier presses a button on the cash register and a message goes out to the back where they make the three components of that Happy Meal and they compile the items separately and put them all in a bag. In our office, when someone comes to us with a patent application, we do something quite similar. We hit a button saying a patent has been ordered. That creates a matter number and it also issues instructions to different members of the firm to fulfill their portion of the task to prepare the patent application.”*

INNOVATION IN ACTION:

Legal Services Models

Cognition LLP is an innovative law firm that provides experienced lawyers to clients on an as-needed basis. With over 40 lawyers having both large firm and in-house experience, Cognition supplies clients with skilled professionals who work either on-site or remotely. According to Joe Milstone, one of the firm’s co-founders: *“Our new breed of legal services provides an ideal alternative to retaining a traditional law firm or hiring full-time in-house counsel. Cognition gives clients the best of both worlds by providing senior, business-minded legal advice at affordable rates and on a flexible basis.”*

Cognition lawyers build one-to-one lawyer-client relationships resulting in more meaningful legal advice from lawyers who understand their client’s business operations. With in-house counsel in most companies being asked to do more for less, Cognition offers a convenient and competitive option at fees amounting to between one-half to one-third of those charged by traditional firms.

Cognition lawyers are able to control how much they want to work and at what location, therefore allowing them to make personal choices on their work-life balance. *“By being a dispersed law firm, our lawyers have the luxury of being able to work from our head office if they choose, but often they prefer to work from their own offices, at home, or directly on-site with clients”* says Rubsun Ho, Cognition’s other co-founder.

5.3 A CENTRE FOR EXPERTISE AND INFORMATION ON THE CANADIAN LEGAL PROFESSION

Throughout the CBA Legal Futures Initiative, participants were stymied by the lack of credible and accessible data on the Canadian legal profession. There is limited data available on the profession in terms of services offered, pricing, profitability, incomes, and cost structures. There is mostly anecdotal information on client needs, preferences, and satisfaction, and on access to legal services more generally. The legal profession has little information on emerging competitors and their business specifics, including marketing and pricing strategies. There is also limited information on the demographics of the profession, its diversity, individual career expectations, and attitudes towards various working arrangements (full-time, part-time, consultants).

In terms of legal education and training, there is little longitudinal data on: career choices and outcomes compared to admission criteria and curricula; segmentation of law students and graduates by diversity groups; hiring by firms; progression to partner status; data on geographic decisions; and comparative measures of effectiveness of various training methods (e.g. e-learning).

In many areas, including regulation, there is a lack of information on international comparators, a critical requirement in a more global marketplace. In August 2005, the CBA released a report titled

Crystal Clear: New Perspectives for the Canadian Bar Association ("Crystal Clear"). As one of its 11 recommendations, it proposed the establishment of a "professional centre of expertise and information on the legal profession in Canada."²³ While it was strongly supported at the time, almost a decade later no progress has been made on this recommendation.

In the interim, data has grown to become an important contributor to business success in an even more globalized and competitive world. With the continued growth of search and data management companies such as Google, the analysis of "big data" has become an important business component for many companies and industries.²⁴

As detailed in *Crystal Clear*, the proposed centre would carry out the following functions:²⁵

- be a central focus for the collection, analysis and distribution of all data related to the structure, composition and operations of the legal profession in Canada;
- collect both quantitative and qualitative information;

- include segmentation of research and analysis in its operational planning;
- create a clearinghouse for legal information for CBA members and the public;
- develop information on competition to the legal profession; and
- release key information and trends to the media and the public.

In 2005, relying on Statistics Canada information was not considered to be an option "because of its restricted scope and timeliness."²⁶ With continued cutbacks in resources, relying on Statistics Canada data is even less of an option in 2014.

Data allows the profession to see and understand macro changes, to reflect on its relationship with the public, and to contemplate transformations in ways that have not yet been envisioned.

In summary, the CBA should facilitate the building of expertise and information about the Canadian legal profession by revisiting and acting upon its 2005 recommendation.

Recommendation #3 – Centre of Expertise and Information

The CBA should establish a professional centre of expertise and information on the legal profession in Canada that would be the pre-eminent and authoritative source of data on all aspects of the legal profession in Canada, including its organization, demographics, volumes and types of services, and national and international comparators.

INNOVATION IN ACTION: Legal Informatics

James Williams is both a law professor at Osgoode Hall Law School and a software engineer at Google working in legal informatics: the study of how information is exchanged and used in the legal domain. He says that law has not yet realized the efficiencies that information technology can bring:

"In the shipping industry, DHL and others have

brought in process analysts to redesign their workflows, down to the minute details of how people move packages. There is little data generated in the law. We have no clue what the courts are up to. You don't have anything that would give you any indicator of what your case is going to cost, how long it would take to go through the system... You can do neat things once you have data, but we have no data... If you can't measure something, you can't optimize it."

6 Regulation



As indicated earlier, the regulation of lawyers in Canada in 2014 follows a model that has not changed for generations. Many assumptions upon which it was based are no longer current or relevant. This model should be challenged in both the public interest and in the interest of the profession.

Legal services in Canada are generally defined as those services delivered by lawyers²⁷ who are regulated by law societies, whose directors are generally elected lawyers.²⁸ The law societies establish qualifications for individuals to become lawyers, set codes of conduct and other rules that lawyers must follow, and discipline lawyers for professional misconduct.

The central aspects of Canada's current regime can be understood by the following questions and answers:²⁹

Q. Who governs the law societies?

A. Mostly elected lawyers.

Q. Who do the law societies regulate?

A. Individual lawyers.

Q. What are the qualifications to become a lawyer?

A. Law school degree, articling, bar admission course/examination and "good character."³⁰

Q. How do the law societies regulate?

A. By establishing codes of ethics and other rules directed at individual lawyers and by dealing reactively with complaints made against individual lawyers.

Q. With whom are lawyers permitted to work and share profits?

A. Subject to limited MDP rules in some provinces, lawyers may only practise with and share profits with other lawyers.³¹

These structures exist to support the profession in its

collective obligation to advance the public interest. At their core, lawyers' professional obligations require them to subordinate their personal interests in the interests of their clients and in the interest of society as a whole. The ethical and regulatory reforms recommended by Futures would advance the public interest in improving access to legal services in Canada, and are premised on the central role of lawyers in the provision and regulation of legal services. Properly interpreted, the professionalism of lawyers allows for innovation in the provision of legal services, as well as the ability to compete in a more global marketplace.

The sections that follow will examine three aspects of regulation, and make recommendations in regard to the Federation of Law Societies of Canada's Model Code of Professional Conduct,³² which is being adopted by law societies across Canada:

- the **liberalization** of regulations to permit innovation in the provision of legal services;
- the **modernization** of the scope of regulation, including the promotion of diversity within the profession; and
- **changes to self-regulation** to ensure the integrity and relevance of the regulatory framework.

6.1 LIBERALIZATION OF REGULATIONS

Clients demand flexibility and choice in the delivery of legal services. For example, many are seeking a medical clinic model where other service providers work in conjunction with lawyers to provide targeted and as-needed services. The era of exclusive relationships with a lawyer sitting behind a mahogany desk administering expensive advice is coming to a close. Yet currently in Canada (except for Québec), the dominant regulatory paradigm is one in which:

- only lawyers can provide legal services;
- practice income can only be shared with other lawyers (Model Rule 3.6-7 of the Model Code); and
- non-lawyers in law firms must be directly supervised by lawyers (Model Rule 6.1-1 of the Model Code).³³

In British Columbia and Ontario, limited non-lawyer ownership is permitted in authorized MDPs and non-lawyers providing services to MDP clients may be partners with lawyers.³⁴ However, those non-legal services must support or supplement the provision of legal services. The current regulatory restrictions create a number of ethical and/or public policy issues:

- permitting only lawyers to provide legal services may restrict access to justice, especially where there are unmet needs;
- limiting the definition of legal services to that which is provided by lawyers, when in reality, the preponderance of legal services are provided by non-lawyers;
- limiting the way legal services are delivered to what might be called the “professional consultancy” model; and
- offering little choice other than a consultancy model to lawyers who serve individuals and small enterprises.

Alternative Business Structures (ABSs)

If lawyers were freed to provide legal services outside of the professional consultancy model, it would likely be possible to deliver some legal services profitably at a lower cost. There is substantial evidence that both business process and technological innovation³⁵ can result in effective delivery of some legal services by methods other than spending hours of professional time solving problems. The expertise and capital to bring to market those services which employ such processes and innovation are scarce within today’s legal profession. Closer cooperation with people with business expertise and investment capital will facilitate

the innovation the profession needs to better serve Canadians. (In addition, see the discussion of fee-sharing and referral fees below).

In the face of substantial unmet legal needs, liberalized regulation would enable the profession to develop new and creative ways to provide services. Employing a liberalized model would allow the profession to uphold the public policy rationale underlying regulation while welcoming the investment and capital that spurs innovation, allows for global competition, enhances efficiencies, and facilitates new ways of serving clients. There is now good evidence from Australia and England and Wales that non-lawyer ownership need not cause harm to client representation or the public interest.³⁶ That positive experience has been generated in part by the fact that it is the entity in which the investment is made which is effectively regulated, with the lawyers within it being responsible for regulatory compliance. The Canadian regulatory framework should be liberalized accordingly to achieve similar benefits.

As new legal service delivery models are created in Canada, regulators may need to consider their treatment of issues like the financial disclosure obligations of shareholders in ABSs, the regulation of activities or tasks in addition to the regulation of individuals and entities, and/or proportional regulation for different segments of the Canadian legal profession. Similarly, since some of the potential ABSs will serve a broad consumer base through markedly different business models than now exist, regulators will need to be mindful that conflicts of interest between clients are adequately addressed by regulatory tools.

Recommendation #4 – Alternate Business Structures

Non-lawyer investment in legal practices should be permitted, but only on a carefully regulated basis as follows:

A business or not-for-profit corporation should be eligible for registration as an alternate business structure (ABS) within which the fee-sharing rule would not apply.

An ABS should be permitted to deliver legal services on the following basis:

- (a) the ABS itself would have fiduciary and legal ethics obligations in respect of clients receiving legal services through the ABS. The legal advice should be provided to clients solely in the interests of the client and not in the interests of the ABS or its owners;
- (b) the ABS would be subject to law society entity regulation;
- (c) the ABS would be subject to other existing FLSC Model Code rules, such that:
 - (i) the confidentiality rules apply;
 - (ii) the conflicts rules apply, including where other services are offered by the ABS to clients receiving legal services; and
 - (iii) the candour rule applies, including with respect to any conflicts of interest that may exist.
- (d) the lawyers working within an ABS should continue to be regulated persons;
- (e) the provision of legal services would be required to be carried out by lawyers or other regulated legal professionals as permitted, or provided by legal or non-legal professionals who are effectively supervised and controlled by lawyers;
- (f) material owners of ABS shares should be deemed to be clients for the ABS for the purpose of applying the conflicts rules;
- (g) privileged information should not be accessible for purposes of the ABS, including by the management and directors of the ABS, without informed express client consent and then only for the benefit of the client;
- (h) the ABS would be required to purchase insurance covering claims from clients in respect of legal services with current per-claim coverage and with aggregate limits being no less than currently required for lawyers but increasing with the size of the ABS.

Fee-Sharing with and Referral Fees to Non-Lawyers

Allowing lawyers to enter into economic relationships with non-lawyers could result in advantages to clients. Beyond direct investment in legal practices, lawyers' ability to participate in franchise relationships could result in greater access to legal services in rural and underserved communities, and better access to

technology and support for the lawyers working in those locations. Economic relationships involving the sharing of legal fees and the payment of referral fees between lawyers and non-lawyers are a crucial part of non-lawyer ownership in legal practices. Fee-sharing rules are relatively recent in Canada and there have been a number of initiatives to modify and reform them in various Canadian jurisdictions. The policy

concerns underlying the prohibition of fee-sharing with non-lawyers are the protection of client representation against conflicting interests and pressures, and protection against clients being misled or pressured into retaining a lawyer.

Similarly, referral fees to non-lawyers are prohibited in the Model Code (Rule 3.6-7(b)). Historically, no referral fees were permitted (including to lawyers), but this was modified in recent years to create new business opportunities and to ensure that a client's legal work is done by the best qualified lawyer.

In England there is no general ban on referral fees. Chapter 9 of the Solicitors' Regulatory Authority ("SRA") Code sets out a series of outcomes that must be achieved with respect to referral fees (and fee-

sharing), including: the lawyers' independence and professional judgment must not be prejudiced; the client's interests are protected; the client is in a position to make informed decisions; and there is transparency of any financial or other interest between the introducer and the lawyer.³⁷

Again, with suitable regulatory conditions, there would appear to be no valid reason for unnecessarily restricting fee-sharing with or paying referral fees to non-lawyers. They can indeed be permitted if the liberalized rules avoid substantial risks of material impairment to client representation and the duties owed by lawyers to clients. If fee-sharing and referral fees are expanded to non-lawyers, we envision real benefits in the delivery of legal services to clients and the opportunities available to lawyers.

Recommendation #5 – Fee-sharing with and Referral Fees to Non-Lawyers

The FLSC Model Code Rules should be amended to permit fee-sharing with non-lawyers and paying referral fees to non-lawyers, subject to the following:

- (a) the conflict rules apply;
- (b) the confidentiality rules apply and privilege must be protected;
- (c) the candour rule applies, meaning full disclosure of the shared fee and of the nature of the relationship with the entity with which the fee is shared must be made to the client;
- (d) the referral fee must be fair and reasonable and fully disclosed;
- (e) shared fees may not be contingent on the revenue or profitability of specific matters or as the result of such matters;
- (f) the lawyer shall not accept the referral unless the lawyer and the client discuss any client expectations arising from the referral and mutually agree on the basis of the retainer;
- (g) an accounting record is required of referral fees paid and received indicating the amounts and counterparties to each payment; and
- (h) referral fees shall not be accepted where the lawyer is aware that the referral is exploitive.

Multi-Disciplinary Practices (MDPs)

With clients demanding greater choice in the provision of legal services and more holistic solutions to their problems, they will expect to be able to access both legal and non-legal services from the same firm. These might include services in complementary disciplines (i.e. accounting, tax advisory work, or medical services). The greatest regulatory concerns about the provision of legal services by these multi-disciplinary practices are solicitor-client privilege and the extent to which legal advice can be safely shared within the MDP, and possible conflicts of interest between different aspects of the MDP's service provision to a client.³⁸ In jurisdictions with established experience with MDPs, the risks to solicitor-client privilege have not manifested. Technology has supported this with

electronic documents allowing for substantially greater control over access within organizations. At the same time, the law of solicitor-client privilege has evolved to encompass non-lawyers, with Canadian courts particularly robust in protecting solicitor-client privilege by extending it under certain circumstances to external advisers who act as team members on transactional work.³⁹

The point of an MDP is to provide clients with access to legal and non-legal services from the same firm, and the Canadian regulatory regime should enable these partnerships. If there are circumstances in which there may be non-legal services that would result in regulatory problems if supplied together with legal services, those should be specified as exclusions.

Recommendation #6 – Delivery of Non-Legal Services by MDPs and ABSs

MDPs and other forms of ABSs should be permitted to deliver non-legal services together with legal services on the basis that the rules should require protection of privileged information by requiring that non-lawyers, including partners/owners, not have access to privileged information except with express informed client consent. The rule or the commentary should provide that:

- (a) the confidentiality rules apply and privilege must be protected;
- (b) the conflicts rules apply, including where other services are offered by the MDP to clients receiving legal services;
- (c) the candour rule applies, including with respect to any conflicts of interest that may exist.

Breach should attract entity and individual sanction.

If the public interest demonstrably requires that some non-legal services should not be provided together with legal services, the rules should so provide. Otherwise there should be no restrictions.

INNOVATION IN ACTION:

Legal Services Models

Laura Zizzo is a lawyer, environmental adviser, and founding partner at Zizzo Allan, a Toronto-based firm that specializes in climate change law. In this new and changing field, *"our work involves thinking about the clients' interests more broadly."* Zizzo Allan purposefully builds interdisciplinary teams of professionals to give their clients the best advice possible. *"We will work with other consultants [such as] financial service industry reps*

and technical experts. We try to understand where those other service providers are coming from in the development of legal opinions." On her interdisciplinary work, Laura says: *"I just think of it as normal now."*

Independence of Lawyers' Opinions

As indicated in Section 3.1 *Why Does Society Need Lawyers?*, one of our fundamental premises as a society is the necessity of the rule of law to ensure

liberty, economic well-being, and the effective administration of justice. As a profession, we consider our role to be central in protecting the rule of law and the administration of justice. Powerful clients can more easily compromise a lawyer's responsibility to protect the rule of law and the administration of justice. Proper lawyering for powerful clients is fundamental to our democratic system and it is likely that situations of risk will continue to increase into the future. ABSs may present challenges in placing lawyers under the supervision of employers whose interests may diverge from those protected by lawyers' professional responsibilities. The importance of the independence of lawyers' opinions should be reiterated to ensure that lawyers' opinions properly support the rule of law rather than the purposes of a corporation, a government, or other employers.

For a legal opinion to be properly reliable, the opinion must be provided by a competent lawyer. The opinion must be based on facts appropriately determined or assumed, rather than for other considerations such as personal status or gain. The lawyer must actually hold the opinion and the opinion must be reasonable.

The proposed liberalization of legal business structures raises concerns about influences being brought to bear on a lawyer's opinion. The Enron case is but one example of a business scandal that involved numerous professionals, including lawyers.⁴⁰

Other situations that could potentially threaten the independence of a lawyer's opinion are where a lawyer is employed exclusively by the client (e.g. in-house counsel), or where the client of a law firm is large and wields significant commercial power vis-à-vis the law firm ("client capture"). In the Futures consultations, several government lawyers also raised the issue of the independence of their opinions. Independence is central to the services that lawyers provide, and regardless of the structure within which the lawyer works, independence should not be eroded.

While Model Rule 3.1-2 already has provisions to protect the independence of a lawyer's opinion, given the many new legal structures expected in the future and for greater clarity, the Commentary should explain how and why this is important. We thus recommend supplementing Model Rule 3.1-2, which provides that "A lawyer must perform all legal services undertaken on a client's behalf to the standard of a competent lawyer," and Model Rule 3.1-1, which defines a competent lawyer to mean "a lawyer who has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client and the nature and terms of the lawyer's engagement, including ..." with commentary that assists the profession in resisting pressure to provide an improperly "helpful" opinion.

Recommendation #7 – Independence of Lawyers' Opinions

In response to concerns about lawyers' independence, including their independence in new liberalized structures for legal service delivery, the Commentary to Model Rule 3.1-2 should be amended to add Commentary 8.1 and to revise Commentary 9 as follows:

- [8.1] A lawyer should only express an opinion to a client that the lawyer genuinely holds and that is reasonable in the circumstances.
- [9] A lawyer should be wary of bold and overconfident or unreasonable assurances to the client, especially when (i) it is foreseeable that the client may rely on the lawyer's advice as to the legal propriety of proposed conduct or (ii) the lawyer's employment may depend upon advising in a particular way.

6.2 EXPANDING THE SCOPE OF REGULATION

Compliance-Based Regulation

Lawyers are regulated as individuals to ensure their conduct meets the professional standards that legal regulators promise to the public. Yet the policies, procedures, and decision-making processes of law firms influence the behaviour of individual lawyers. As liberalized legal business structures become more prevalent and permitted, those legal business structures should also be regulated, in addition to individual lawyers. In 2014 there are 95 Canadian law firms with 50 or more lawyers, as compared to only 13 such firms in 1981. Despite the fact that most Canadian lawyers are in sole or small practice, there is good reason to believe that large legal businesses will continue to grow.

Clients of a mid-size or large law firm will likely interact with several lawyers in the course of their file; if there are difficulties on that file, it is likely that the clients' poor experience may call into question the conduct of some or all of the lawyers involved. Clients reasonably expect their law firms, as well as the individual lawyers, to be professionally responsible to them. The existing method of regulating only individual lawyers prohibits dealing with client complaints in a more holistic fashion.

Another criticism of the current regulatory approach is that it is reactive. Codes of conduct are established to mandate how lawyers perform their functions, but it is only when complaints are filed by clients that law societies examine a lawyer's conduct, save for the practice management audits undertaken by some regulators. Professor Richard Devlin, among others, suggests that this may lead to questions about the appropriateness of self-regulation as it may not present the most effective and efficient treatment of client complaints.⁴¹ (The issue of self-regulation will be considered later in this chapter.) However, moving

regulation beyond lawyers to entities offers great opportunities in the implementation of preventative management systems and pro-active compliance with legal and ethical obligations.

Australia established an innovative regulatory approach over a decade ago for their newly permitted incorporated legal practices (ILPs) that allow for non-lawyer investment and ownership in law practices akin to an ABS. It required that one member of the board of directors of the incorporated legal practice be a lawyer designated as a "legal practitioner director."⁴² There are two significant aspects of this approach. First, there is someone — a lawyer — responsible for professional conduct in the incorporated legal practice. Second, there is a requirement for appropriate management systems in the areas of negligence, communication, delay, liens/file transfers, cost disclosure/billing practices/termination of retainers, conflicts of interests, records management, undertakings, supervision of practice and staff, and trust account regulations. By assigning responsibility for compliance within organizations, there is typically substantive movement towards getting things done. Perhaps the most persuasive argument for compliance-based regulation is evidence from New South Wales that showed a two-thirds drop in complaints once an ILP had completed its initial self-assessment.⁴³

There is now a body of academic research supporting a requirement for legal practices to establish internal infrastructure to meet their legal and ethical obligations ("ethical infrastructure").⁴⁴ These tools have been adopted in other jurisdictions with some modifications; the Solicitors' Regulatory Authority of England and Wales requires, for example, that regulated entities meet set outcomes, and has revamped their solicitors' code of conduct with high-level principles and outcomes.⁴⁵

Compliance-based regulation should be a supplement

to, rather than a substitute for, individual lawyer and rule-based regulation. In 2013, the CBA developed the *CBA Ethical Practices Self-Evaluation Tool*, with principles similar to those of the Australian model.⁴⁶ The principles identified in the CBA tool could serve as an effective framework for compliance-based regulation so that regulation becomes broader in

scope, more explicit, and proactive in ensuring high ethical conduct. Different approaches will be effective in different contexts and regulated entities should have flexibility and choice in defining for themselves where they need to go – and how they will get there – in order to meet identified principles.

Recommendation #8 – Compliance-Based Entity Regulation

Compliance-based regulation of legal practices should be adopted to promote ethical best practices as a supplement to existing rule-based regulation of individual lawyers. Under compliance-based regulation:

- a) law firms would be required to register with the law societies;
- b) law firms become regulated entities upon registration;
- c) law firms would be required to designate a lawyer with whom the law society may deal on behalf of the law firm and who is responsible for overseeing law firm regulatory compliance; and
- d) regulation of law firms would include the requirement of supplementary compliance-based regulation to promote ethical best practices.

Compliance with Diversity Principles

The regulation of entities — whether law firms or ABSs — allows the profession to take proactive steps toward a more representative profession. A requirement to comply with uniform principles in the areas of diversity and equality results in better consumer services, and is consistent with the regulatory objectives of law societies. Ethical infrastructure in Canada should integrate principles on equality in the profession and access to justice. *The CBA Ethical Practices Self-Evaluation Tool* already includes objectives that address diversity and inclusivity within legal practices by asking, *inter alia*:

- whether lawyers and other members of the firm have adequate awareness, knowledge, and training to ensure that clients with disabilities and other equality-seeking groups receive competent legal services;
- whether the firm engages in fair and equitable hiring practices; and,
- whether the firm undertakes practices and fosters a culture in which access to justice is valued and promoted.

Similarly, the collection of uniform data from all members of the profession, law firms, and regulated entities would enable the profession to be smarter about its deficiencies. The CBA's *Measuring Diversity in Law Firms* tool suggests that the profession collect both self-identification data (to assess the representation of diverse groups) and diversity climate data (to assess inclusivity).⁴⁷ If qualitative and quantitative data were collected to assess representation and inclusivity, Futures anticipates that the information could be used for a variety of purposes. Such data could raise awareness of barriers, provide an evidence base for examining diversity issues, identify regulatory problem areas, and show varied progress towards better diversity and inclusivity. Crucially, such data should be

published by law societies in aggregate form, thus facilitating other stakeholders' access to information about the profession.

Innovative legal regulators already require diversity reporting and compliance with diversity-related outcomes.⁴⁸ The federal Department of Justice's employment equity targets have resulted in the Department becoming a leader in diversity and inclusivity in the Canadian legal profession.⁴⁹ Parallel measures are being considered in corporate environments. The Ontario Securities Commission is proposing to amend its *Disclosure of Corporate Governance Practices* to require reporting issuers to provide annual disclosure on gender diversity. The federal government is considering whether the *Canadian Business Corporations Act* should include mandatory reporting on objectives in regard to diversity in corporate governance.

There is no evidence to demonstrate that the market alone will correct the continued homogeneity of the Canadian legal profession. A principle-based compliance model, as recommended in *Compliance-Based Regulation*, should offer definitions of broad objectives and underlying values in the promotion of diversity and inclusivity in legal workplaces. A compliance model should be adopted in conjunction with a requirement by law societies to collect and publish, in aggregate form, qualitative and quantitative data about diversity and inclusivity within all regulated legal service providers.

Recommendation #9 – Compliance and Reporting on Diversity

Law societies should require law firms, and ABSs if permitted, to comply with diversity-related principles that reflect legal and ethical requirements. Law societies should also uniformly collect qualitative and quantitative data about the demographic composition of all licensed legal service providers (lawyers, law firms and ABSs), and publish the data in aggregate form.

6.3 EFFECTIVE SUPERVISION OF NON-LAWYERS

Clients deserve new and cost-effective ways of receiving legal services, and this entails varying the rule on supervision of non-lawyers. If legal services can only be delivered by lawyers spending professional time and supervising the time of non-lawyers directly involved on legal problems, then the cost of legal services cannot be reduced except by reduction of professional incomes (it is worth noting, however, that income levels can be maintained by increasing the amount of time spent on legal problems). Just as importantly, legal services currently cannot be delivered other than from the offices of the professional.

Under current Model Rule 6.1-1:

“A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.”

The policy basis for direct supervision is to ensure that legal work is completed properly and ethically so that clients receive competent legal services.

The Commentary on Model Rule 6.1-1 is more lenient. It provides that the extent of supervision depends on the type of legal matter, its degree of standardization and repetitiveness, and the experience of the non-lawyer working on the matter, including any special knowledge the non-lawyer may have.

In the legal working environments of the future, lawyers should be able to work meaningfully in conjunction with others, i.e. where non-lawyers will perform triage-like services for clients. The public should be able to rely on those non-lawyer services as being adequately supervised. Some form of liberalization should be permitted, especially for services not actually provided by lawyers, to require that lawyers provide effective, rather than direct, supervision.

Recommendation #10 – Effective Supervision of Non-Lawyers

The FLSC Model Code Direct Supervision rule should be revised to require effective supervision rather than direct supervision. The requirement of effective supervision would be satisfied either by direct supervision or by the establishment of a well-designed process, automated or not, which:

- (a) gathers all appropriate client information;
- (b) identifies for consideration and action by a lawyer:
 - i) issues requiring the legal expertise of a lawyer; and
 - ii) “red flags” indicating legal, ethical and other similar legal issues;
- (c) requires the lawyer to undertake tasks not permitted to be delegated to a non-lawyer;
- (d) provides for effective quality assurance; and
- (e) protects confidentiality and privilege.

6.4 ENHANCED INDEPENDENT REGULATION

As the environment for legal services has changed outside of Canada, governments have reduced the ability of lawyers to solely regulate themselves, citing the need for greater accountability, while also introducing consumer-oriented substantive changes to the content of that regulation.⁵⁰

Arguments in favour of self-regulation of the profession stress the importance of the independence of the bar from unwarranted state interference in the representation of clients, as well as independence from clients and potential corrupting market forces. Other points in favour of self-regulation are: the independence of the judiciary as supported by appointments from an independent bar; support to the notion of professionalism elevating the law above being merely a trade or business; and that the use of lawyers, experts in the law, to make up the regulatory bodies is the most effective and efficient way to regulate the practice of law.

Arguments against self-regulation include the inherent conflicts of interest that may arise when representative and regulatory functions are combined in the same body. As the national representative body of lawyers in Canada, the CBA inherently endorses the separation of its representative function from that of the law societies' regulatory function.

The possibility of self-protectionism in discipline cases is also often raised as an argument against self-regulation along with questions about the reactive nature of a complaints-based discipline system. As set out in *Section 6.2 Compliance-Based Regulation*, preventative and proactive compliance-based regulation of entities would mitigate these concerns. It may also be that conduct adjudication should, in the future, be separated from other regulatory functions. We support the tribunal reform recently undertaken in

Ontario with an independent tribunal chair and the appointment of additional non-elected lawyer adjudicators.⁵¹ These reforms should be watched with interest and evaluated carefully.

The selection of law society directors is central to many arguments raised for and against self-regulation. In Canada currently, while there are variations between provinces and territories, approximately 80% of law society directors are elected and 20% are typically appointed lay people.⁵² Electing 80% of law society directors is problematic because it does not necessarily provide appropriate diversity of expertise, perspective, and lived experience; it can cause over-representation of some parts of the profession, and under-representation of others. Election of law society directors tends to result in a board that is older than the profession generally and less demographically diverse. Bringing different perspectives to governance serves the public interest because it grows capacity from under-represented groups within the leadership of law societies. It is also crucial to strengthening diversity and inclusivity in the profession, since the increased presence of diverse groups in the profession cannot alone affect the governing norms, privileges, and access to opportunities within the profession. Similarly, the election of 80% of law society directors lends some truth to the perception that self-regulation may tend to protect the interests of the profession. Running for election risks creating the false belief among some law society directors that their role is to represent their electors, which may result in election platforms designed to be attractive to that group.

It is no longer in the public interest to govern our profession with 80% elected lawyers and 20% lay person representatives. Law societies in Canada, the United States, and internationally have adopted various ways of adding different perspectives to their governing bodies, from elections for reserved seats to fill identified demographic gaps, to seats reserved for segments of the profession, to appointments from

target groups, sometimes made in conjunction with public interest-oriented institutions.⁵³ Given the range of models in existence and the varying requirements in

different locations, a generic recommendation for independent directors will allow some flexibility according to circumstances.

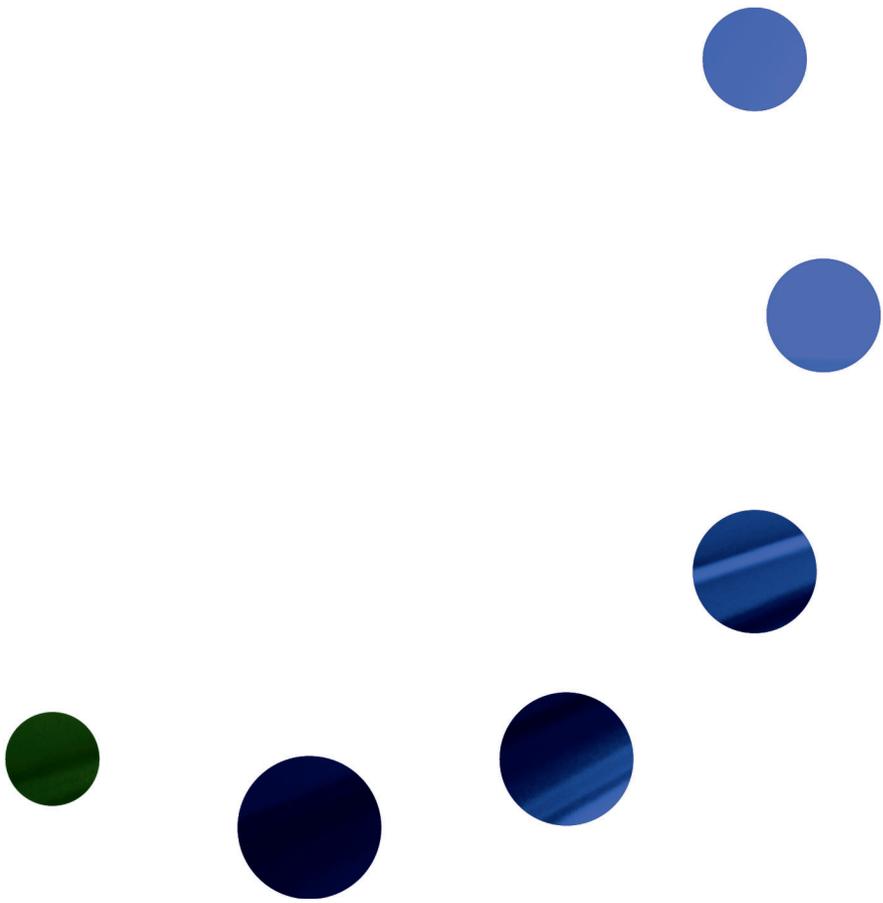
Recommendation #11 – Law Society Directors

The governing bodies of law societies should be made up of elected lawyers, as well as a significant number of appointed lawyers and non-lawyers. The appointed governors should be selected by an independent appointment process designed to fill gaps in experience, skills and diversity.

INNOVATION IN ACTION:

Law Society Governance

The governing Council of the Nova Scotia Barristers' Society has three member-at-large positions. These are reserved to fill demographic gaps that have been identified within Council, including gender or sexual orientation, geographic representation, race, practice area, and practice venue. As a young First Nations lawyer, member-at-large Naomi Metallic sees an advantage in having diverse regulatory bodies for the legal profession: *"It benefits the public more broadly to be more diverse... Having a real diversity of people brings more fruitful discussion, and assists the members of Council to see issues from a variety of perspectives. A lot of (the work) the Council is currently engaged in is focused on the public, particularly access to justice issues... It is important that everyone in the public, including equity-seeking groups, is included in the discussion."*



7

Education



As the profession of law continues to evolve with new services, business models, and delivery mechanisms, and as client needs continue to change and grow, one of the biggest challenges will be to determine how to educate and train the next generation of lawyers, as well as those currently in practice.

Learning has become a life-long proposition for lawyers. Expert knowledge, skills and continuing training in the law will result in better services to clients, and maintain lawyers' competitive advantage in the future, particularly in an environment where clients have greater access to information online and from other sources. This means that the education and training of the next generation of lawyers must be examined from the following perspectives:

- a) What will clients need in the future?
- b) Who is best situated to provide it?
- c) How do we measure success in the education and training of lawyers?

There will be no one perfect way to become a lawyer in the future, nor to keep current as an existing lawyer in order to meet client expectations. Lawyers will likely require a broader set of skills than those currently offered by academic, licensing, and post-call education and training organizations. There will be a need for more flexibility and choice in legal education and training – from what is offered, to who may provide it and how it can be accessed.

In our consultations, the education and training of lawyers was one of the most intensely discussed issues, with widespread opinions offered on law schools' admissions criteria and curricula; the cost of legal education; student debt; the length of legal study; post-law school/pre-call training; and continuing professional development. Some debated the extent to which law schools should balance pure legal knowledge with practical skills. But not all law graduates have clear trajectories into practice; they

may seek careers in academia, government, politics, civil society organizations, or in positions where their legal work is combined with that of other professions. There are already vastly different ways of practising law and vastly different client needs. We expect that even more different career paths will become available in coming years.

In *Section 3.4 Opportunities for 21st-Century Lawyers*, we set out a number of potential new opportunities and careers for people trained in the law. These new opportunities are responsive to growing collaboration between lawyers and other disciplines, other professionals, and indeed, clients themselves. Richard Susskind asks the question, "What are we training young lawyers to become?" The answer would appear to be that we are training young lawyers to take on different roles and means of delivering service to clients, with traditional law practice being only one option of many. If that is true, then greater collaboration will be required between law schools, regulators, and the legal profession to ensure that the legal needs of the future — as defined and expressed by legal services users — can be met by the current and future generations of lawyers.

7.1 LAW SCHOOL ADMISSION CRITERIA

Currently in Canada, most candidates for admission to law schools require a minimum of two years of undergraduate study. With the exception of students in Québec, the majority of successful applicants will have completed an undergraduate degree. Arguments for pre-law academic requirements point to the maturity and breadth of experience candidates will have achieved, preparing them for the rigours of legal study and practice.

But in virtually every other Commonwealth country a student can enrol in law school directly after high school. It would be naive to suggest that Canadian

lawyers are systematically better, or provide better service to the public, than their Commonwealth colleagues.

Participants in the consultations pointed out that unnecessary pre-academic qualifications increase the overall expense to the student and ultimately could affect the price of legal services and limit access to justice. Further, the added cost burden could affect diversity within the profession, discouraging people with limited means from applying.

The pre-call requirement also means that prospective lawyers must invest their time in both an undergraduate degree and a law degree before entering the workforce. This can often collide with personal aspirations. Men and women with parenting

aspirations are challenged to invest heavily in the early years of their legal careers, whereas they might otherwise wish to start families after lengthy academic studies. Those who do take leave from work for parenting reasons find themselves at a competitive disadvantage with their non-parenting colleagues.

In this vein, law schools and legal regulators should revisit the assumption that a lengthy undergraduate education is a proxy for maturity. Futures considered whether law schools overly rely on LSAT scores and concluded that, instead of recommending elimination of the LSAT, more work is needed on ways to assess and measure other criteria for being a good lawyer. Participants in the consultations suggested that these criteria might include creativity, empathy, adaptability, resilience, and breadth of perspective.

Recommendation #12 – Expanding Criteria for Law School Admission

Law school admission criteria should consider other factors, including applicant life experience, as an alternative to the present minimum two-year pre-law university study.

7.2 TUITION FEES

In the Futures consultations, many current law students questioned the level of law school tuition fees. In Canada, tuition fees vary from institution to institution, with first year law school tuition ranging from about \$3,000 to almost \$30,000 a year.⁵⁴ Participants in our consultations saw law school tuition as a barrier to access to the profession, and wondered whether ensuing debt has on-going effects on students choosing a career and getting started.⁵⁵ With job prospects declining while tuition is rising, we wonder whether students are forced to seek higher-paying jobs, while potentially eschewing work in small or solo practices or in the public interest. It is possible that high tuition and student debt limit socio-economic diversity in the student body and the legal profession.

Similarly, it is possible that high tuition and student debt restrict access to law school for people from underserved or marginalized communities who might work in those same communities as graduates. Further empirical study of these linkages is required to assess the extent to which tuition may be affecting access to the profession, as well as to understand the counterbalancing effect that may be created through increased financial support.

Manitoba's initiative to financially assist law students by forgiving student loans extended through their program is a model for other jurisdictions to consider. All stakeholders should be encouraged to imagine the ways in which they could collaborate and share the cost of reform.

Recommendation #13 – Debt Forgiveness Programs

Debt forgiveness programs should be established for graduates who practise within under-served communities, with low-income individuals, or primarily in the public interest.

INNOVATION IN ACTION: Legal Education

Manitoba's Forgivable Loans Program forgives student loans for recent legal graduates working in underserved communities. A partnership between the University of Manitoba's Faculty of Law, the Manitoba Bar Association, and the Law Society of Manitoba, the program forgives 20% of the new lawyer's loan for every year they spend working in the community. Often this means the new lawyers return to small towns, especially those in the north. Students must show a connection to the community when applying to the program. Law student Margaret Hillick, a mother of two and an experienced social worker, says the Forgivable Loans Program made it possible for her to attend law school. *"I would never have had the opportunity to go to law school without it. I would have made different choices for myself and my family. Taking on the debt load associated with law school without the possibility of a forgivable loan would not have been feasible."*

Margaret is looking forward to practising law in her home town of Thompson, Manitoba after graduation.

7.3 LAW SCHOOL ENTRY AND EXIT DATA

There is little information available on the personal characteristics, socio-economic circumstances, and career aspirations of persons applying and admitted to Canadian law schools. The same limitations apply to data on graduating students. There is also little personal data on those who drop out of law school and their reasons for leaving.

Without this data it is difficult to determine empirically

how law school admissions practices, length of law school studies, tuition levels, and resulting student debt affect people in various socio-economic categories in terms of their progression into the legal profession. Such information would also be predictive of diversity in various segments of the profession and would offer insights into systemic barriers for diverse and/or marginalized groups. Making this information public would help potential students identify barriers before entering law school so that they could take necessary steps to ensure a successful progression to becoming a lawyer.

Recommendation #14 – Law School Entry and Exit Data

Law schools should gather and publish qualitative and quantitative data on the composition of students entering and exiting law school.

7.4 NEW MODELS FOR LEGAL EDUCATION

As clients request increasingly different forms of legal services, and as the need for accessibility in legal services becomes more acute, there is a requirement for flexibility and choice in how legal professionals are educated and trained.

This process has already begun, and over the next few years, existing and new providers will introduce new educational models that complement or streamline current models and offer further specialization. These programs can be integrated into traditional programs or offered as substitutes or supplements without compromising the high quality of education in the law and the legal knowledge and skills that are central to the services provided by the profession.

When creating new delivery models for education and training, attention must be paid to the expertise and mission of those providing them. In addition, new models for education and training should offer new

opportunities for collaboration – just as lawyers will need to work more closely with other professionals in the practice of law, so too should the stakeholders educating and training legal professionals.

In our consultations, there were different opinions on the optimal length of law school studies. Some suggested reducing the length of study to two years with more training occurring at some intermediary stage between graduation and call; others suggested extending the length to four years with a lighter course load containing more integration of practice and theory to promote synthesis and critical thinking. One idea offered was an accelerated program for students with significant legal experience or legal training. Finally, there was some discussion about specialization and segmentation, with one suggestion that the LLB/JD provide education for general practitioners at a reduced tuition to increase effective access to law for the public.

Given the varying expectations for incoming law students and the many new ways that will be available

to deliver legal services, consideration should be given to developing a range of innovative legal education models beyond the traditional one (which will still remain an important option). The need to reduce costs of tuition, to potentially shorten the time spent in law

school and to broaden curricula, together with the opportunities that technology offers for e-learning and the creation of new legal study communities, suggests that a number of models may be desirable.

Recommendation #15 – New Models for Legal Education

Legal education providers, including law schools, should be empowered to innovate so that students can have a choice in the way they receive legal education, whether through traditional models or through restructured, streamlined or specialized programs, or innovative delivery models.

INNOVATION IN ACTION: Legal Training

Grant Borbridge, Canadian Corporate Counsel Association Past Chair, explains why the CCCA partnered with the Rotman School of Management in Toronto to create the Business Leadership Program for In-House Counsel: *“At a law firm, a person often becomes specialized in one area of the law. They typically have people who are senior to them who have oversight as to what they are doing and who can direct them and provide advice when they have issues they have not dealt with before. It is a guided way to develop expertise and it provides safety around the edges.*

“Often when the person makes the transition to be in-house counsel, suddenly they are working with multidisciplinary teams of engineers, operations experts, IT professionals, accountants or HR people. They lead teams and are in meetings where they are expected to understand financial statements and the impact of the decisions being made on the financial performance of the entity and to understand the implications on staffing requirements. And all of these things, they did not learn in law school...It is a whole new world, and they have to figure out very quickly how to survive and in fact excel in that environment.”

INNOVATION IN ACTION: Multidisciplinary Education

Claire Farnoux is an LLM student at the Université de Montréal who participated in the Law Without Walls program out of Florida. Law Without Walls is an innovative, mostly virtual, course which pairs law students and business students from around the world with academic, legal and entrepreneurial mentors. After a period of online course-based learning, the students develop a practical solution for a real-world law or business problem. Claire teamed up with two students from the U.K. to design an automated system for court documents. The best part about the program? Collaboration across academic fields, says Claire: *“Walls open, and we have to work with people from other disciplines.”*

7.5 PROBLEM SOLVING IN THE PRACTISING WORLD

The best educational models integrate the teaching of knowledge with related skills. This is critical for the future of legal services in Canada. While it is present in the current academic environment, the Futures consultations identified a desire to strengthen law students' facility with "translational" knowledge – the ability to turn knowledge of legal concepts, regulatory processes, and legal cultures into actual problem-solving ability in practice.

The consultations provided a wealth of information on what different segments of the profession would like graduates to learn beyond traditional legal theory and substantive law.

In-house counsel want their future lawyers to have business skills, and for this content to be taught in collaboration with other faculties. Representatives of large firms want their lawyers to be skilled in risk

management, business development, financial acumen and negotiation, but also have cultural competence, emotional intelligence, and excellent communication skills. Small and sole practitioners believe their colleagues of the future will need both practical experience with, and literacy in, technology, as well as financial management, legal marketing, and law office management. And new and young lawyers urgently need practical experience, ranging from court appearances to working directly with clients, networking, and practice development, to become tomorrow's lawyers.

Lawyers of all generations expressed a desire for more practical opportunities for learning through clinical and work placements. Similarly, through innovative ideas like supervised apprenticeships in the middle of law school, or a version of articles in mid-course, law students felt they could refine their studies while at law school, make better and more informed decisions on what they might do after graduation, and be better prepared for their careers in general.

Recommendation #16 – Problem Solving in the Practising World

An integrated, practical approach, including multidisciplinary skills training, should be incorporated into substantive curricula to provide "translational knowledge" – the ability to turn critical knowledge of legal concepts, regulatory processes, and legal culture into actual problem-solving ability in practice.

7.6 FOCUS ON LEARNING OUTCOMES

Educators now understand that learning processes can be built with a focus on “outcomes” (what a learner is expected to know, understand, and be able to demonstrate after a course of study) rather than “inputs” (discrete areas requiring study). Focusing on learning outcomes would allow legal educators to be more innovative while still developing knowledgeable and skilled lawyers.

While there will always be the need for pure learning about the law, there will also be a requirement to match the knowledge and skills of new lawyers with the needs of future clients.

To this end, we recommend a focus on learning outcomes that will satisfy the future demands for legal services. Again, this will require collaboration between law schools, the legal profession and key stakeholders.

Recommendation #17 – Focus on Learning Outcomes

The curriculum for academic legal education should focus on learning outcomes and should be developed in consultation with key stakeholders.

7.7 EASING RESTRICTIONS ON LAW STUDENTS IN LEGAL CLINICS

One option to improve practical training is to provide more opportunities for students to gain experience in legal clinics. A restricting factor is that, in some jurisdictions, the right of audience of law students is limited.⁵⁶ Limits on student appearances in courts across the country should be examined and eased as appropriate. Particularly in family courts, where the

access to justice issues are most significant and where there are many self-represented litigants, barriers should be minimized.

This issue will require either legislation or judicial fiat to ease restrictions. Legal regulators, the courts, and legislatures should amend legislation, regulations, and directives to allow students to participate in an appropriate range of legal services.

Recommendation #18 – Easing Restrictions on Law Students in Legal Clinics

Where they exist, legal and other constraints should be minimized to broaden the participation of law students in appropriate services in legal educational clinics.

7.8 PRE-CALL STRUCTURED, RIGOROUS, AND CONSISTENT TRAINING

In the consultations, there was considerable interest in the education and training that take place after law school and before the call to the Bar, including the subject of articling. Studies by the Law Society of Upper Canada⁵⁷ found that articling is a highly variable experience, depending on the placement and the regulating province. Issues arising from the Futures consultation included:

- the burden on small practitioners;
- lack of time of principals to rigorously supervise students;
- clients' unwillingness to pay for training students; and
- inadequate emphasis on practical skills training.

A number of new models have been developed, including the Law Practice Program (LPP) in Ontario, which was designed to fill a perceived shortage of articling positions in the province.

The LPP consists of four months of studies and four months of placements with law firms or other legal organizations. While we acknowledge the possibility of two tiers of law graduates being created — those that

completed full articles and those that undertook the LPP — it is positive that both groups will be evaluated by the Law Society of Upper Canada on the same competency standards. Experimentation in training, as in other areas, is an important part of the process of innovation. With good data about comparative outcomes in the Law Society of Upper Canada's LPP, other provinces can carefully examine the findings and consider developing their own solutions to further consistency in pre-call training.

It is expected that the current articling system will disappear in the medium to long term and that experimentation is required in knowledge and skills training between law school and admission to the Bar. More generally, it would be desirable to have further practical training opportunities integrated at a number of points along the education and training spectrum. This should be accompanied by effective feedback and the opportunity to develop knowledge and skills in simulated situations where client interests are not at stake. This approach should also create opportunities to gain exposure in access to justice environments, small practices, and rural settings. Again, collaboration between law schools, legal regulators, and legal practitioners will be necessary to develop creative approaches.

Recommendation #19 – Structured, Rigorous and Consistent Pre-call Training

There should be a structured, rigorous and consistent approach to pre-call training to ensure new lawyers have all the skills and knowledge required to practise safely and effectively.

INNOVATION IN ACTION: Legal Education

Lakehead University, in Thunder Bay, Ont., is the first Canadian university to integrate practical skills training into the regular three-year legal curriculum – which means their graduates don't have to article. Lakehead students are expected to be practice-ready for Northern Ontario communities upon graduation. Dean Lee Stuesser says: "We

think the lawyering skills they learn are really what are most valuable to them. Lawyering skills are basic communications skills, oral and written. We are talking about being able to work with people, how to manage a practice, how to manage clients, how to time manage, how to negotiate... the fundamentals of what we do as lawyers."

Lakehead's first class will graduate in 2016.

7.9 CONSISTENT KNOWLEDGE AND SKILLS STANDARDS FOR CERTIFICATION

The largest single source of law graduates in Canada is not a Canadian law school, but the National Committee on Accreditation (NCA). The Futures

Education and Training team noticed inconsistency between the current NCA requirements for a certificate of qualification and the national standards for accrediting law degrees. To ensure that all lawyers in Canada have the necessary knowledge and skills to practise, substantive law should be tested in conjunction with the skills necessary to practise.

Recommendation #20 – Consistent Knowledge and Skills Standards for Certification

Consistent knowledge and skills standards should be applied to Canadian law degrees and National Committee on Accreditation certificates of qualification.

7.10 PARALLEL PROGRAMS FOR NEW STREAMS OF LEGAL PROVIDERS

There is a market for emerging disciplines for new legal service providers, as identified in *Section 3.4 Opportunities for 21st - Century Lawyers*. Each of these career tracks will require a separate mix of knowledge, skills and practical training. It will be difficult, expensive, and unnecessary for every law school in Canada to provide the full breadth of education to cover this wide spectrum. Law schools may wish to specialize in distinct pedagogical approaches, specific

career paths, or new types of academic education.⁵⁸ Other educational providers like colleges, trade schools, and professional development educators may develop complementary education and training programs for the new legal service providers, similar to the development of nurse practitioners in the medical field, hygienists in the dental field, and opticians in the ophthalmology field. To the extent that these new career tracks need to be regulated, regulators or government should endorse the emergence of these educational streams and adopt regulatory mechanisms to protect the public.

Recommendation #21 – Parallel Legal Programs

Educational providers should consider creating parallel programs, in areas such as legal technology, in college or other environments, or incorporated into law school education, to educate and train new streams of legal service providers, which may include lawyers.

INNOVATION IN ACTION: In-House Counsel

Bryce McLean is head in-house counsel at Pason Systems, a Calgary-based company which supplies technological applications to the oil drilling sector. McLean believes the legal profession should re-think training lawyers as both solicitors and barristers. Instead, specialized training would provide graduates with skills sets tailored to the realities of modern legal practice. Bryce sees an ongoing need for people, like general counsel, to manage the big picture. But there is also a

need for legal technicians: “I know lawyers who would just like to sit in a room and draft.” Likewise, he believes that people who combine technological know-how with an understanding of legal work will be crucial for building the programs that future legal work will rely on.

7.11 CONTINUING PROFESSIONAL DEVELOPMENT

Most Canadian provinces and territories have mandated continuing professional development (CPD) standards for lawyers together with compliance reporting. Generally, lawyers are required to devote 12 to 15 hours a year to CPD, with variations in jurisdictions on accreditation of programs as well as content requirements on ethics, professionalism, and practice management. Other jurisdictions allow for more self-direction in lawyers' maintenance of their personal training. In Alberta, for example, all active lawyers have to create and declare annual CPD plans.⁵⁹ The U.K.'s Solicitors Regulatory Authority has announced that it is abandoning its annual 16-hour CPD requirement as of November 2016, mandating instead an annual declaration pledging that a solicitor's needs have been considered, a plan has been created to meet those needs and that steps will be taken to satisfy those needs.⁶⁰

But there is inconsistency in defining and monitoring the relevance and quality of content, and there is little or no information available on the impact or outcomes of CPD. In fact, in the consultations, many participants questioned whether mandatory post-call education actually reduced claims or complaints against lawyers. We could find no research in North America to demonstrate a direct link between hours-based reporting and reduced complaints and claims. Some participants in the consultations considered CPD to be a "joke" — a time to update smartphones or read a newspaper.

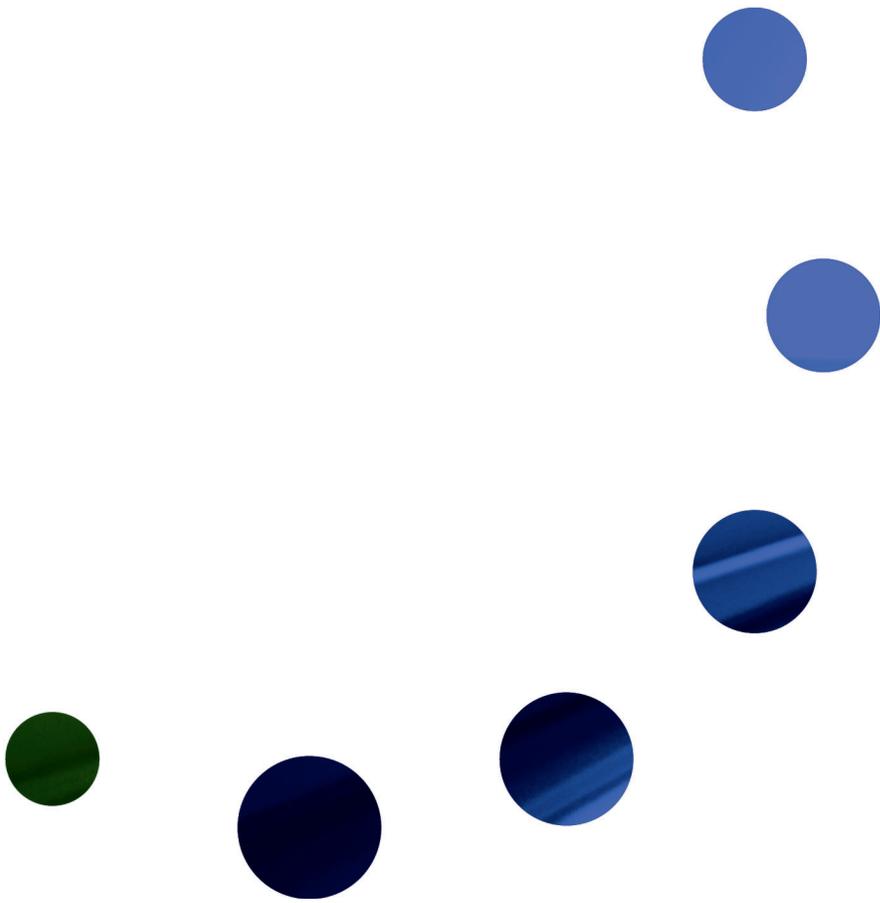
If the goal of CPD is to improve competence, then

more valid measures of the process would be outcomes rather than inputs (hours of study). Other professions require regular testing to ensure continued competence. The legal profession does not. Whatever new approaches are being considered, there must be consultation with legal regulators to identify gaps in lawyer training and with legal educators to develop detailed and targeted curricula for CPD. One possible avenue for exploration is the idea of graduated or limited licensing; depending on what kinds of legal education models develop (or are eliminated, i.e. articling), it may be worth considering whether licensing of lawyers could be achieved through graduated stages of training.

With respect to who should provide CPD, there should be greater cooperation between law schools, law firms, in-house counsel, and other professional development providers to determine which group is best placed to provide particular types of training. Rather than being disjointed, every effort should be made to ensure the delivery of continuing education is organized, comprehensive, cost effective and "seamless." Particularly if entity regulation is adopted in Canada on a compliance basis as we have recommended in *Section 6.2 Compliance-Based Regulation*, entities (including current firms) should be able to certify and be responsible for their employees in their interactions with clients. Law societies should develop resources to help small legal entities that may be newly subject to entity regulation get effective CPD plans in place, as well as encourage the growth of service providers who can be accessed to provide that CPD easily and cost effectively.

Recommendation #22 – Continuing Professional Development

Continuing professional development should be designed to meet lawyers' needs through the stages of their careers and reflect identified and emerging client needs. Legal regulators should adopt consistent outcome-based national standards for CPD. Research should be undertaken to measure any link between quantity or input-based CPD and competence.



8

Conclusion



The legal profession in Canada has entered a period of unprecedented change. This turbulence provides a unique window for Canadian lawyers to redefine, recalibrate and reenergize their role in society and to chart a new direction for the future.

This transformation is about identifying and realizing the full potential of the opportunities before us, even if that means casting off outdated attitudes and processes. There will still be a tremendous demand for legal services in the future. The challenge for the profession will be to concentrate its efforts on building ways to better serve clients. If clients want flexibility and choice, lawyers must provide it. If clients want speed, access, and transparency, lawyers must provide it. If clients want value-based billing, lawyers must provide it. If clients want connectedness and accessibility, lawyers must provide it. If clients want a legal culture that understands and reflects their own life experience, lawyers must provide it. Our consultations with clients, which form the foundation for this report, confirm that Canadians still expect much of the legal profession, but they also seek a profound change in the way legal services are delivered. To be the vibrant and relevant profession they deserve, and to perform the role that our democratic society rightly expects of us, our profession must meet the changing expectations of clients.

The key for the legal profession in the future will be innovation. No idea, no institution, no model, no regulation should be sacrosanct. Lawyers should be encouraged to innovate while respecting their greater duties to the justice system and the public. Education processes, business structures, legal services, delivery models, and regulatory institutions and provisions should all be examined to see if innovation and liberalization can enhance value to both clients and the profession. Collectively, we must commit to diversity within and around the legal profession, as diversity will become the context within which reform can be effected.

As with any change movement, there is a need for strong leadership. The CBA, as the voice of the profession, can play a central role in helping lawyers understand and adapt for the future. The CBA provides some essential tools and resources (Appendix 2) such as the Futures Readiness Checklist (Appendix 3) to help individual lawyers. The Action Plan (Appendix 1) sets out ten specific activities or groups of activities that the CBA can undertake to build on the findings of Futures.

Other key stakeholders, such as law schools and law societies, also have important responsibilities for helping the legal profession remain viable and relevant in the future.

Ultimately, however, it is up to each of us. Each lawyer needs to look for opportunities to better serve Canadians, and to explore what lessons can be learned from other professionals, what potential we have yet to unlock in technology, and what niches have not yet been served. Despite how daunting and unfamiliar some of this work may seem, the Canadian legal profession has served our country well for many, many decades. If we have come this far, the Legal Futures Initiative is confident we can take these next steps too. During our consultations, we heard many lawyers speak of wanting to do more for their clients; that desire now needs to be translated into action.

It is time for the legal profession to move into the future, not to remain stuck in the present or, worse still, mired in the past. A new wave of competitors, a new breed of legal clients, a new generation of lawyers and law students are planning and acting as if the future were already here.

What are we waiting for?



Summary of Recommendations



1 Flexibility in Business Structures

Lawyers should be allowed to practise in business structures that permit fee-sharing, multidisciplinary practice, and ownership, management, and investment by persons other than lawyers or other regulated legal professionals.

2 CBA Promotion of Innovation

The CBA should take a leadership role in promoting innovation as follows:

- support and facilitate innovation incubation;
- facilitate a national dialogue on innovation in the legal profession;
- consider the development of an investment fund for innovations;
- create an innovation chair and/or an innovation scholarship; and
- establish innovation awards.

3 Centre of Expertise and Information

The CBA should establish a professional centre of expertise and information on the legal profession in Canada that would be the pre-eminent and authoritative source of data on all aspects of the legal profession in Canada, including its organization, demographics, volumes and types of services, and national and international comparators.

4 Alternative Business Structures

Non-lawyer investment in legal practices should be permitted, but only on a carefully regulated basis as follows:

A business or not-for-profit corporation should be eligible for registration as an alternate business structure (ABS) within which the fee-sharing rule would not apply.

An ABS should be permitted to deliver legal services on the following basis:

- (a) the ABS itself would have fiduciary and legal ethics obligations in respect of clients receiving legal services through the ABS. The legal advice should be provided to clients solely in the interests of the client and not in the interests of the ABS or its owners;
- (b) the ABS would be subject to law society entity regulation;
- (c) the ABS would be subject to other existing FLSC Model Code rules, such that:
 - (i) the confidentiality rules apply;
 - (ii) the conflicts rules apply, including where other services are offered by the ABS to clients receiving legal services; and
 - (iii) the candour rule applies, including with respect to any conflicts of interest that may exist.
- (d) the lawyers working within an ABS should continue to be regulated persons;
- (e) the provision of legal services would be required to be carried out by lawyers or other regulated legal professionals as permitted, or provided by legal or non-legal professionals who are effectively

- supervised and controlled by lawyers;
- (f) material owners of ABS shares should be deemed to be clients for the ABS for the purpose of applying the conflicts rules;
- (g) privileged information should not be accessible for purposes of the ABS, including by the management and directors of the ABS, without informed express client consent and then only for the benefit of the client;
- (h) the ABS would be required to purchase insurance covering claims from clients in respect of legal services with current per claim coverage and with aggregate limits being no less than currently required for lawyers but increasing with the size of the ABS.

5 **Fee-sharing with and Referral Fees to Non-Lawyers**

The FLSC Model Code Rules should be amended to permit fee-sharing with non-lawyers and paying referral fees to non-lawyers, subject to the following:

- (a) the conflict rules apply;
- (b) the confidentiality rules apply and privilege must be protected;
- (c) the candour rule applies, meaning full disclosure of the shared fee and of the nature of the relationship with the entity with which the fee is shared must be made to the client;
- (d) the referral fee must be fair and reasonable and fully disclosed;
- (e) shared fees may not be contingent on the revenue or profitability of specific matters or as the result of such matters;

- (f) the lawyer shall not accept the referral unless the lawyer and the client discuss any client expectations arising from the referral and mutually agree on the basis of the retainer;
- (g) an accounting record is required of referral fees paid and received indicating the amounts and counterparties to each payment; and
- (h) referral fees shall not be accepted where the lawyer is aware that the referral is exploitive.

6 **Delivery of Non-Legal Services by MDPs and ABSs**

MDPs and other forms of ABSs should be permitted to deliver non-legal services together with legal services on the basis that the rules should require protection of privileged information by requiring that non-lawyers, including partners/owners, not have access to privileged information except with express informed client consent. The rule or the commentary should provide that:

- (a) the confidentiality rules apply and privilege must be protected;
- (b) the conflicts rules apply, including where other services are offered by the MDP to clients receiving legal services; and
- (c) the candour rule applies, including with respect to any conflicts of interest that may exist.

Breach should attract entity and individual sanction. If the public interest demonstrably requires that some non-legal services should not be provided together with legal services, the rules should so provide. Otherwise there should be no restrictions.

7 Independence of Lawyers' Opinions

In response to concerns about lawyers' independence, including their independence in new liberalized structures for legal service delivery, the Commentary to Model Rule 3.1-2 should be amended to add Commentary 8.1 and to revise Commentary 9 as follows:

- [8.1] A lawyer should only express an opinion to a client that the lawyer genuinely holds and that is reasonable in the circumstances.
- [9] A lawyer should be wary of bold and overconfident or unreasonable assurances to the client, especially when (i) it is foreseeable that the client may rely on the lawyer's advice as to the legal propriety of proposed conduct or (ii) the lawyer's employment may depend upon advising in a particular way.

8 Compliance-Based Entity Regulation

Compliance-based regulation of legal practices should be adopted to promote ethical best practices as a supplement to existing rule-based regulation of individual lawyers. Under compliance-based regulation:

- (a) law firms would be required to register with the law societies;
- (b) law firms become regulated entities upon registration;
- (c) law firms would be required to designate a lawyer with whom the law society may deal on behalf of the law firm and who is responsible for overseeing law firm regulatory compliance; and

- (d) regulation of law firms would include the requirement of supplementary compliance-based regulation to promote ethical best practices.

9 Compliance and Reporting on Diversity

Law societies should require law firms, and ABSs if permitted, to comply with diversity-related principles that reflect legal and ethical requirements. Law societies should also uniformly collect qualitative and quantitative data about the demographic composition of all licensed legal service providers (lawyers, law firms, and ABSs), and publish the data in aggregate form.

10 Effective Supervision of Non-Lawyers

The FLSC Model Code Direct Supervision rule should be revised to require effective supervision rather than direct supervision. The requirement of effective supervision would be satisfied either by direct supervision or by the establishment of a well-designed process, automated or not, which:

- (a) gathers all appropriate client information;
- (b) identifies for consideration and action by a lawyer:
 - (i) issues requiring the legal expertise of a lawyer; and
 - (ii) "red flags" indicating legal, ethical and other similar legal issues.
- (c) requires the lawyer to undertake tasks not permitted to be delegated to a non-lawyer;
- (d) provides for effective quality assurance; and
- (e) protects confidentiality and privilege.

11 Law Society Directors

The governing bodies of law societies should be made up of elected lawyers, as well as a significant number of appointed lawyers and non-lawyers. The appointed governors should be selected by an independent appointment process designed to fill gaps in experience, skills, and diversity.

12 Expanding Criteria for Law School Admission

Law school admission criteria should consider other factors, including applicant life experience, as an alternative to the present minimum two-year pre-law university study.

13 Debt Forgiveness Programs

Debt forgiveness programs should be established for graduates who practise within under-served communities, with low-income individuals, or primarily in the public interest.

14 Law School Entry and Exit Data

Law schools should gather and publish qualitative and quantitative data on the composition of students entering and exiting law school.

15 New Models for Legal Education

Legal education providers, including law schools, should be empowered to innovate so that students can have a choice in the way they receive legal education, whether through traditional models or through restructured, streamlined or specialized programs, or innovative delivery models.

16 Problem-solving in the Practising World

An integrated, practical approach, including multidisciplinary skills training, should be incorporated into curricula to provide “translational knowledge” — the ability to turn critical knowledge of legal concepts, regulatory processes, and legal culture into actual problem-solving ability in practice.

17 Focus on Learning Outcomes

The curriculum for academic legal education should focus on learning outcomes and should be developed in consultation with key stakeholders.

18 Easing Restrictions on Law Students in Legal Clinics

Where they exist, legal and other constraints should be minimized to broaden the participation of law students in appropriate services in legal educational clinics.

19 **Structured, Rigorous and Consistent Pre-call Training**

There should be a structured, rigorous, and consistent approach to pre-call training to ensure new lawyers have all the skills and knowledge required to practise safely and effectively.

20 **Consistent Knowledge and Skills Standards for Certification**

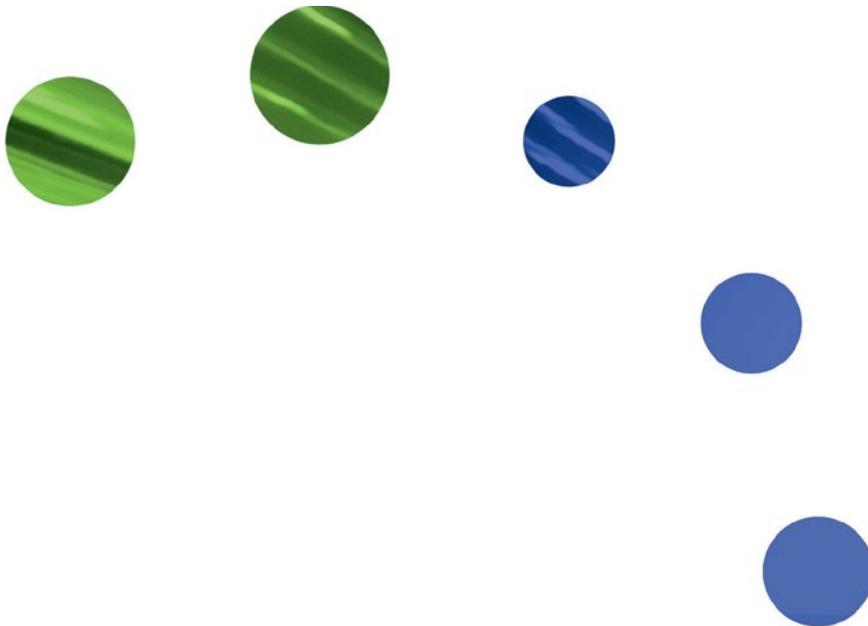
Consistent knowledge and skills standards should be applied to Canadian law degrees and National Committee on Accreditation certificates of qualification.

21 **Parallel Legal Programs**

Educational providers should consider creating parallel programs in areas such as legal technology, in college or other environments, or incorporated into law school education, to educate and train new streams of legal service providers which may include lawyers.

22 **Continuing Professional Development**

Continuing professional development should be designed to meet lawyers' needs through the stages of their careers and reflect identified and emerging client needs. Legal regulators should adopt consistent outcome-based national standards for CPD. Research should be undertaken to measure any link between quantity or input-based CPD and competence.



Appendix 1

Pulling It All Together – CBA Action Plan



In terms of immediate actions, the Canadian Bar Association should:

Take a leadership role in promoting innovation in the legal profession by facilitating a national dialogue on innovation in the legal profession, supporting and facilitating innovation incubators, exploring the development of an innovation investment fund, creating an innovation chair and/or an innovation scholarship and establishing Innovation awards.

Establish a centre of expertise and information on the legal profession in Canada.

Consult with law societies about regulatory innovation in the Canadian legal profession.

Maintain an ongoing discussion with law schools and other legal educational training providers to ensure that the knowledge and skills of lawyers continues to match client needs and expectations.

Champion access to justice and diversity within the legal profession.

Act as an advocate, catalyst, and facilitator for change by continuing the work and following up on the recommendations of the CBA Legal Futures Initiative through dedicated groups dealing with innovation, ethics and regulation, education and training, access to justice, diversity and other emerging issues.

Develop mechanisms to identify emerging changes, measure progress, and publicize potential opportunities and impacts to the legal profession and the public.

Create an inventory of changes that are already taking place in Canada and internationally in technology, business structures, regulation and education, and share them with the profession.

Provide specific tools to help lawyers adjust to the future.

Continue to engage the profession in a national dialogue on the future of legal services in Canada and the role of the profession in meeting the legal needs of the public.

Appendix 2

Tools and Resources



LEGAL FUTURES INITIATIVE TOOLS AND RESOURCES

Available online at www.cbafutures.org unless otherwise noted

TOOLS:

Canadian Bar Association, *Guidelines for Practicing Ethically with Information Technologies*, online:

<http://www.cba.org/cba/activities/pdf/guidelines-eng.pdf>

Canadian Bar Association, *Ethical Practices Self-Evaluation Tool*, online:

<http://www.cba.org/CBA/activities/code/ethical.aspx>

Legal Futures Initiative, *Futures Readiness and Self-Assessment Tool* (see Appendix 3)

RESOURCES:

Legal Futures Initiative, *14 Case Studies on Canadian Legal Innovation* (2014)

Legal Futures Initiative, *Available Business Models in Canada - By Jurisdiction* (2014)

Legal Futures Initiative, *Business Innovation Accelerators & Incubators in Canada* (2014)

Legal Futures Initiative, *The Clients' Perspective* (2013)

Legal Futures Initiative, *Demographic Trends* (2013)

Legal Futures Initiative, *The Future of the Legal Profession: Report on the State of Research* (2013)

Legal Futures Initiative, *The Future of Legal Services in Canada: Trends and Issues* (2013)

Legal Futures Initiative, *Innovations in Legal Services: 14 Eye-Opening Cases* (2013)

Legal Futures Initiative, *Key Trends in the Legal Marketplace* (2013)

Legal Futures Initiative, *Voices of Change: Canadian Social Media and Other Writings on the Future of Legal Practice* (2013)

Legal Futures Initiative, *You Can't Argue With 100 Years of Success: Navigating Beyond The Inflection Point* (2013)

Appendix 3

Futures Readiness and Self-Assessment Tool



TRANSFORMING THE DELIVERY OF LEGAL SERVICES IN CANADA – ARE YOU PREPARING FOR THE FUTURE?

Assess your practice by considering the following questions:

Your Environment

- What is unique about the environment in which you provide legal services:
 - ✓ Geographic location
 - ✓ Specialized expertise
 - ✓ Defined or niche clientele
 - ✓ Use of technology
 - ✓ Fee structure
 - ✓ Other?
- What is the demographic makeup of your practice? How does the makeup of your practice compare to the demographic makeup of your client base?
- Other than lawyers, who provides services that are similar to — or the same as — yours in your immediate geographic area, or in Canada more generally?
- What value do you provide that is different than your competitors?
- What could you learn from how clients receive services from other professional and commercial practices like dental offices, medical clinics, accounting firms and online shopping sites?
- Do you have a community of like-minded practitioners that support you in efforts to change?

Your Clients

- How would your clients describe you as a lawyer:
 - ✓ Trusted advisor
 - ✓ Collaborative problem solver
 - ✓ Savvy business person
 - ✓ Cutting edge innovator
 - ✓ Other?
- What kind of clients will you have in ten years? Will they be the same as your current client mix?
- What are your clients telling you about the value they find in your work?
- What do your clients say about how you price your services?
- Are your clients asking for their files to be disaggregated (i.e. unbundling)?
- Have you considered outsourcing some of your work and, if so, what value would that bring to your clients?
- Have you recently surveyed your clients on service delivery? Have you addressed any concerns they may have expressed?

Your Practice

- How would an outsider describe your practice:
 - ✓ Traditional
 - ✓ Efficient
 - ✓ Innovative
 - ✓ Technology-enhanced
 - ✓ Other?
- How do you measure the efficiency of your work and its value to your clients?
- Have you used strategic planning tools or workflow analysis in your practice?
- Would techniques of project management assist you in your practice?
- Do you feel appropriately equipped through training in practice management skills?
- What opportunities exist in your market that you might not have addressed?
- Could parts of your work be enhanced – or replaced by – technology?
- What potential benefits could be created by working in a multidisciplinary or collaborative environment?
- How could overseas innovations like Alternative Business Structures (i.e. allowing for non-lawyer ownership of legal practices) affect your practice?

Your Goals

- What are your goals for your practice in ten years:
 - ✓ Maintain or increase profitability (without necessarily growing revenue?)
 - ✓ Expansion to new client bases
 - ✓ Increased use of technology
 - ✓ Retirement
 - ✓ Other?

Your Future

- What are the biggest challenges in transforming your practice:
 - ✓ Maintaining the quality of your services in a changing environment
 - ✓ Developing and implementing a new structure for pricing your services
 - ✓ Increasing your creative use of technology
 - ✓ Developing your unique brand
 - ✓ Offering services that provide value to clients and meet their needs
 - ✓ Other?
- What could you do better if you could structure your practice differently?
- What more could you do if non-lawyers could help manage or invest in your practice? Are there disadvantages?
- Do you feel equipped with the skills to be an entrepreneur or business manager? If not, where will you acquire them?
- How would you test your ideas about new legal services? How do you refine your ideas? How can you incorporate lessons learned (including failed efforts) from any effort to innovate in service delivery?
- Will your firm support innovative billing structures?

Your Responsibilities Beyond Your Immediate Clients

- Where do you see under-served market sectors? What do your clients wish you could help them with? How would you go about offering services to those under-served markets, or addressing unmet legal needs?
- As the future of legal services in Canada depends on providing services that are better tailored to your clients' realities, what can you do to bring both diverse lived experiences and diverse personal and professional backgrounds to the makeup of your practice?
- How are you ensuring that your firm or practice is meeting its obligations in regard to accessibility and inclusivity of services?

Did any of these questions give you pause for thought? Feel free to consult the resources referenced in our Select Bibliography (Appendix 7). Stay tuned to www.cbafutures.org as we publish more tools – including a Planning for the Future Guide for lawyers and law firms in the fall of 2014 - and join our forthcoming Twitterchats on the issues that will be of most use to you in adapting to the future. What else do you need to prepare yourself for the future of legal services in Canada? Tell us at futures@cba.org.

Appendix 4

Project Description



PROJECT DESCRIPTION AND OVERALL PROJECT METHODOLOGY

The CBA's Legal Futures Initiative set out to develop an understanding of the future practice environment for Canadian lawyers in order to assist the profession in adapting to change. The initiative had five specific objectives:

1. identify and consider the factors (economic, social, legal, regulatory, demographic and technological) that are likely to change the work of lawyers and the market for their services over the next decade and beyond;
2. assess the likely shifts in demand for legal services – from major companies through to current and potential individual clients;
3. make recommendations on the organization and structure of the profession and of legal businesses, to ensure that legal services remain relevant in the long-term;
4. make recommendations on the training and education of the next generation of lawyers (in law firms, in-house, government and non-profit organizations); and
5. make recommendations on the regulation of the legal profession and legal services in the future.

The first step of the multi-phase project consisted of conducting extensive research and analysis to understand the current legal environment in order to identify and understand what's driving changes in the legal marketplace. The CBA commissioned seven original research studies that examined a number of important aspects for the future: general trends, demographics, economics, innovation, client needs and expectations (see list of studies in Appendix 7). The Initiative's June 2013 report *The Future of Legal Services in Canada: Trends and Issues* provided the foundation for the second step of the initiative, consultation.

From June 2013 to April 2014, the initiative conducted comprehensive consultations with a broad cross-section of the legal profession and its stakeholders. Concurrent to the consultation phase, dedicated teams of CBA members examined three critical areas – Business Structures and Innovation; Ethics and Regulation; and Legal Education and Training – and reported their findings to the Steering Committee in April 2014. The Report on the Consultation, published in February 2014, summarizes the results of the consultations. It captures what the initiative heard from stakeholders about being a lawyer in a changing environment, evolving client relationships, and different views on the future. For a summary of the consultation process and highlights, see Appendix 5.

In the third and final step, the Steering Committee synthesized the team reports and the feedback from the consultations into one cohesive report. It should be noted that the court system and the government involvement in the legal system were outside the scope of this report, although both will have an important influence on the Canadian legal profession in the future. The study also struggled with the lack of baseline data regarding the legal market, such as the demographics of the profession, the range of services provided, pricing and other fee arrangements, profitability and income, cost structures including technology and infrastructure, and client preferences and satisfaction. Nonetheless, the final report includes 22 recommendations on specific actions that the CBA and other bodies should make to assist the Canadian legal profession in responding to change.

Appendix 5

Consultation Methodology, Results and Highlights



CONSULTATION METHODOLOGY

To start a conversation about the future of the legal profession, the Legal Futures Initiative distributed a twenty-question survey among stakeholders.

Participants were asked to provide their thoughts on a variety of topics, including: changing client expectations and the practice of law; new hiring, costing, and efficiency approaches in legal practice; the role of non-lawyers in owning or managing law firms; the objectives of legal education; alternatives to articling; clients' views on lawyers' professional codes of conduct; the relationship between lawyers' regulation and innovation; and what lawyers need most to prepare themselves for the future.

Futures also distributed personalized correspondence inviting comment from over three hundred institutions and organizations, held in-person consultations with stakeholder groups, presented to audiences internationally and within Canada, and led vibrant discussions through content published on the Legal Futures Initiative's website and on Twitter. Highlights of the Initiative's consultation phase include:

- meeting with CBA Branch representatives at in-person consultations across the country;
- receiving substantive comment from international bar associations and judges;
- consulting with new and young lawyers, representatives from small, mid, and large-sized firms, legal innovators, public sector lawyers, and in-house counsel on the relationship between market-driven change and innovation in the legal profession;
- consulting with managing partners of large law firms, small and sole practitioners, professional development groups, and law deans on the education and training needs of lawyers;
- consulting with the Federation of Law Societies, the Canadian Association of Legal Ethics, law

societies, and lay benchers on the ethical implications of the future of the profession;

- consulting with law students on legal education, and on their expectations for the future of the profession;
- regular blogs posted on Nationalmagazine.ca, Slaw.ca, and on our website, on different themes;
- engaging members of equality-seeking groups, both within and beyond the CBA, on how to integrate diversity and inclusivity considerations in the Initiative's work.

Futures also engaged a wide range of participants through regular, guest-hosted Twitterchats through #cbafutureschat. With conversations about hot topics like how to be a legal innovator, new forms of employment for lawyers, and the transformative possibilities of online dispute resolution, Futures attracted participants from the U.S., Europe, and Australia to our online dialogues. Futures' Twitterchats also served as a great leveller as new and prospective lawyers traded ideas with thought leaders. We look forward to continuing the conversation through Twitter in the months to come.

KEY THEMES EMERGING FROM THE CONSULTATION

The responses that Futures received during the consultation phase reflect two different perspectives. Some respondents doubted that transformative change is occurring in the legal profession or that there are compelling reasons to meet that change. These respondents often expressed strong support for the public policy reasons underlying lawyers' existing regulatory regimes. Similarly, they voiced reservations about liberalizing business structures, for fear of creating more "Big Law" and compromising the ability of lawyers to work in the public interest or in underserved practice areas. Other respondents

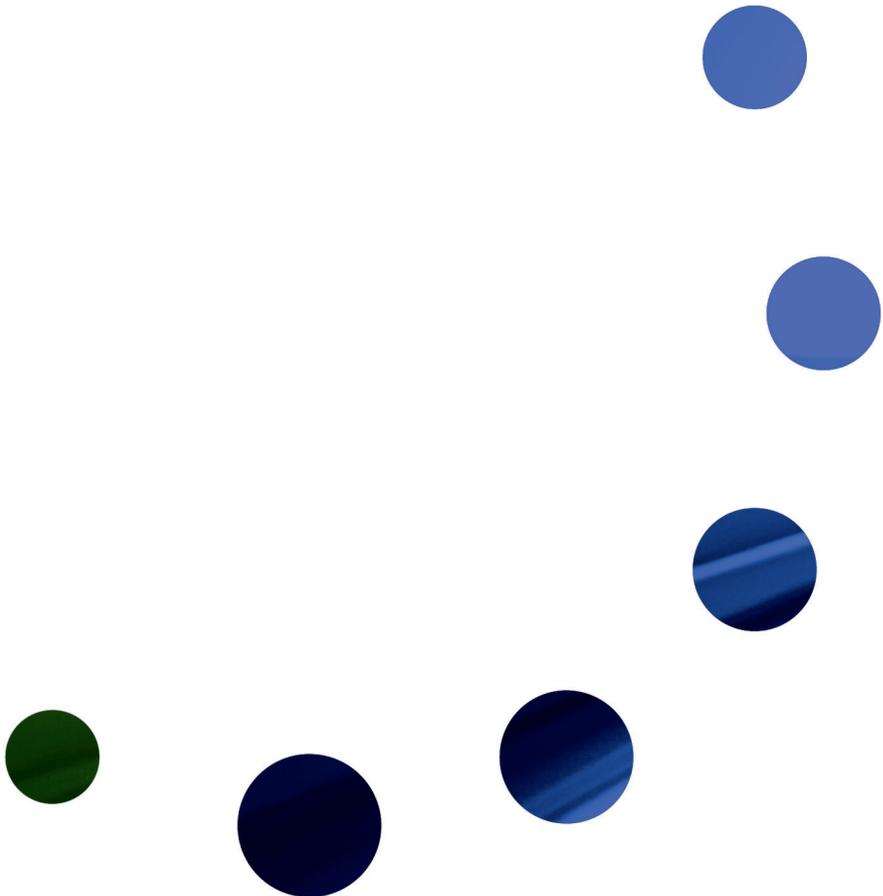
believed that a major transformation is currently happening in the legal profession and warrants action. These respondents pointed to changing client demands as proof that the profession needs to transform itself to keep the public's trust.

Some consultation topics engaged reflections on the past and the present, whereas others were more conducive to imagining future possibilities.

Questions on innovation in business structure and practice management methods provoked the most future-oriented responses, whereas discussions about legal education were largely grounded in participants' own academic experiences. Imbued throughout the consultation were questions of whether — and how — regulators can support innovation in the profession, and how regulators would ensure lawyers' continued professionalism in new business structures. Finally, two underlying themes were the composition of today's profession and access to justice: Who within the profession can take advantage of these innovations? Which segments of the profession bear the burden of reform? What client groups will benefit from innovation? How can we ensure diversity and access to justice considerations are integrated into future innovations?

On the whole, the consultation illuminated a single reality: There is no consensus on the future of the Canadian legal profession. Some areas of inquiry engendered heated debate, others received little comment, but across this spectrum of engagement, there was no one best way forward. Given the broad scope of the initiative's research and the sometimes personal nature of the topics, it is unsurprising that the consultation did not identify broad areas of agreement. However, the consultation phase shed an invaluable light on the wide array of stakeholder experiences, hopes, and concerns, all of which informed Futures' work.

For further information on the consultation phase of the Legal Futures Initiative, including the consultation survey, see the *Report on the Consultation*, available online at www.cbafutures.org.



Appendix 6

Acknowledgments



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The CBA Legal Futures Initiative was led by a steering committee consisting of leaders in the legal profession.

STEERING COMMITTEE:

Fred Headon, *Chair of the Legal Futures Initiative, President of the CBA, Air Canada, Montreal, Que.*

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Richard Susskind, OBE was the Special Advisor to the Initiative.

Aviva Rotenberg, *Project Director, Year 1*

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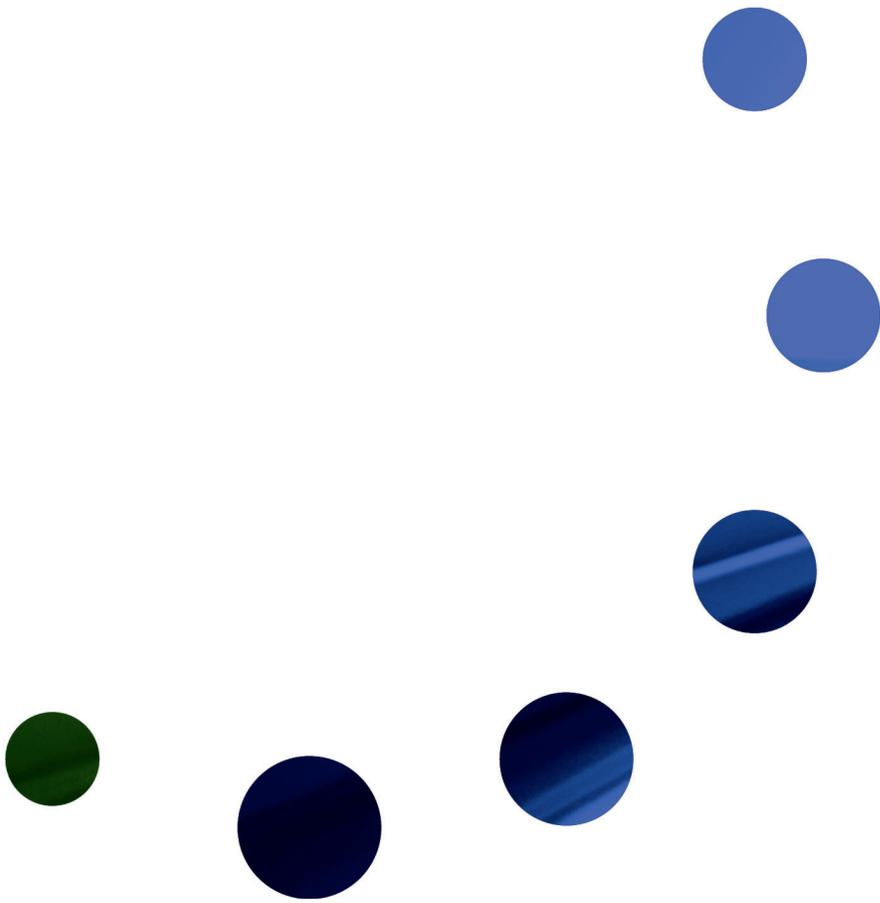
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Appendix 7

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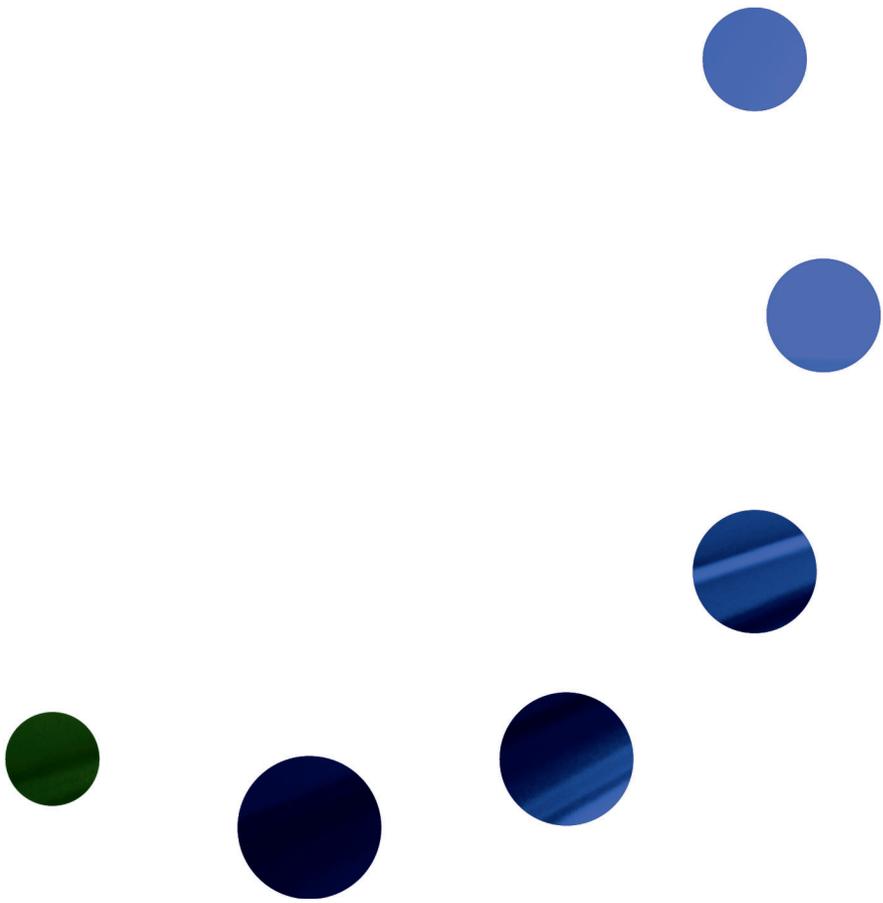
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¹ Canadian Bar Association, *Reaching Equal Justice: An Invitation to Envision and Act* (Ottawa: Canadian Bar Association, 2013) available at:

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² CBA Legal Futures Initiative, *The Future of Legal Services in Canada: Trends and Issues* (Ottawa: Canadian Bar Association, 2013) at p. 4, available at: <http://www.cbafutures.org/CBA/media/mediafiles/PDF/Reports/trends-issues-eng.pdf?ext=.pdf>.

³ Reaching Equal Justice, *supra* note 1.

⁴ While these areas parallel the work of the three dedicated teams, there was important overlap among them and the discussion is also enhanced with additional input from the Steering Committee, the commissioned research, the consultations, and the select interviews.

⁵ Michael Trebilcock, Anthony Duggan, and Lorne Sossin, eds., *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012).

⁶ Ab Currie, *The Legal Problems of Everyday Life: The Nature, Extent, and Consequences of Justiciable Problems Experienced by Canadians* (online: Department of Justice Canada, 2007) at p. 61, available at: http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07_la1-rr07_aj1/rr07_la1.pdf.

⁷ The various forms of the early resolution services sector, i.e. community and public legal education, triage, community justice hubs, etc., are identified in the report *Access to Civil and Family Justice: A Roadmap to Change* (online: Canadian Forum on Civil Justice, 2013) at pp. 11-12, available at:

http://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf.

⁸ Julie MacFarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants* (online: National Self-Represented Litigants Project, 2013) available at: <http://representingyourselfcanada.files.wordpress.com/2014/02/reportm15-2.pdf>.

⁹ See, i.e., Justice Laidlaw's reasoning on behalf of the Court of Appeal for Ontario in *Regina ex rel Smith v Mitchell* [1952] O.R. 896 (OCA); Justice Blair's decision on behalf of the Court of Appeal for Ontario in *R v Laurie and Pointts Ltd.* [1987] 59 O.R. (2d) 161 (OCA).

¹⁰ Canadian Bar Association, *The Clients' Perspective* (online: Canadian Bar Association, 2013) available at: <http://www.cbafutures.org/The-Reports/Report-54>.

¹¹ The CBA has previously acknowledged the need to recognize and value Indigenous legal traditions within the Canadian legal system in its resolution 10-03-M, adopted by Council at the 2013 Midwinter Meeting in Mont-Tremblant, Qué. (online) available at: <http://www.cba.org/CBA/resolutions/pdf/13-03-M-ct.pdf>

¹² For more ideas on new forms of legal work see Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford: Oxford University Press, 2012); Jordan Furlong, *The New World of Legal Work* (online, Lawyers on Demand, 2014), available at: http://www.lod.co.uk/media/pdfs/The_New_World_Of_Legal_Digital_Download.pdf; Mitch Kowalski, *Avoiding Extinction: Reimagining Legal Services for the 21st - Century* (Oxford: Oxford University Press, 2008).

¹³ *Trends and Issues*, *supra* note 2 at 15.

¹⁴ *Ibid* at 40.

- ¹⁵ See also the discussion in *Reaching Equal Justice*, *supra* note 1 at 130-137 on hurdles to justice innovation, and on the need for collaboration and co-operation in building a coherent civil justice system in Canada.
- ¹⁶ *Reaching Equal Justice*, *ibid* at 44-46. The Equal Justice Committee found that “innovation has largely bypassed the justice system” because it is a “system of systems, each with its own diffuse leadership (levels of courts, levels of government, professional bodies, service providers) and underdeveloped mechanisms for communication, cooperation and collaboration.”
- ¹⁷ Multi-disciplinary practices (MDPs) in certain jurisdictions and regulated paralegals in Ontario.
- ¹⁸ Nova Scotia Barristers’ Society Report, “Transforming Regulation and Governance in the Public Interest” (October 2013) available at: <http://nsbs.org/sites/default/files/cms/news/2013-10-30transformingregulation.pdf>; Law Society of Upper Canada Alternative Business Structures Working Group, *Report of the Alternative Business Structures Working Group* (online: Law Society Upper Canada, February 2014) available at: [http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2014/convfeb2014_PRC\(1\).pdf](http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2014/convfeb2014_PRC(1).pdf).
- ¹⁹ Edward M. Iacobucci and Michael J. Trebilcock, *An Economic Analysis of Alternate Business Structures for the Practice of Law* (Law Society of Upper Canada, 2013) available at: <http://www.lsuc.on.ca/uploadedFiles/ABS-report-iacobucci-Trebilcock-september-2014.pdf>. See also Gillian K. Hadfield, “Legal Infrastructure and the New Economy” (2012) 8:1 I/S: A Journal of Law and Policy for the Information Society, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1567712.
- ²⁰ Iacobucci and Trebilcock, *ibid* at 21.
- ²¹ Noel Semple, “Access to Justice: Is Legal Services Regulation Blocking the Path?” (2013) University of Toronto Working Paper, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2303987.
- ²² See *Reaching Equal Justice*, *supra* note 1 at 138-142 for their discussion on fostering a culture of innovation, including a discussion of an incubator housed within the Hague Institute for the Internationalisation of Law (HiIL). For a comprehensive list of Canadian incubators and accelerators, please visit www.cbafutures.org.
- ²³ Canadian Bar Association, *Crystal Clear: New Perspectives for the Canadian Bar Association* (Ottawa: Canadian Bar Association, 2005) at 45.
- ²⁴ Susskind, *supra* note 12 at 40.
- ²⁵ *Crystal Clear*, *supra* note 23 at 45. The list is an extract and has been modified for context.
- ²⁶ *Ibid* at 44.
- ²⁷ In Québec, both “avocats” and “notaires” provide legal services. In Ontario, regulated paralegals may provide legal services. In British Columbia, some legal services may be provided by notaries who are regulated by the Society of Notaries Public. In some provinces, unregulated paralegals provide some legal services.
- ²⁸ In Québec, le Barreau du Québec and La Chambre des notaires du Québec are, like other professions, subject to *l’Office des professions du Québec* appointed by the Québec government.
- ²⁹ These answers are not strictly true across Canada, with firm regulation being a work-in-progress in some provinces. For example, both B.C. and Ontario have legislation permitting them to regulate firms, as per *Legal Profession Act*, SNS 2004, c 28 at s 26 and

Part III, and *Legal Profession Act*, SBA 1998, c 9 at Parts III and IV.

³⁰ Ontario is in the course of establishing an alternative to articling as part of a pilot program.

³¹ In Québec, lawyers are permitted to practise and share profits with other regulated professionals. In Ontario, lawyers may practise and share profits with regulated paralegals.

³² Federation of Law Societies of Canada, *Model Code of Professional Conduct* (online: Federation of Law Societies of Canada, 2012) available at: http://www.flsc.ca/_documents/ModelcodeWTCrevdec2012FI.pdf.

³³ *Ibid.*

³⁴ The Law Society of British Columbia, *Law Society Rules* (online: The Law Society of British Columbia, 2014) at section 2-23, available at <http://www.lawsociety.bc.ca/page.cfm?cid=979&=Law-Society-Rules-Part-2-Membership-and-Authority-to-Practise-Law#2-23-1>; Law Society of Upper Canada, *By-Law 7* (online: Law Society of Upper Canada, 2007) at 14-20, available at: <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147485808>.

³⁵ The CBA Ethics and Professionalism Committee has considered the implications of new technology in legal practice. Consistent with the approach taken in this report, assistance has been provided by the Committee to lawyers by way of guidelines rather than recommendations for new rules. Experience with technological change suggests that existing ethical rules continue to be relevant and effective as technology evolves, while rules based on particular technologies can quickly become obsolete. See Canadian Bar Association, *Guidelines for Practising Ethically with New Information Technology* (online: Canadian Bar Association, 2008) available at: [http://www.cba.org/CBA/activities/pdf/guidelines-](http://www.cba.org/CBA/activities/pdf/guidelines-eng.pdf)

[eng.pdf](http://www.cba.org/CBA/activities/pdf/guidelines-eng.pdf); Canadian Bar Association, *Guidelines for Marketing Practices Using New Information Technologies* (online: Canadian Bar Association, 2009) available at: <http://www.cba.org/CBA/activities/pdf/ethicsguidelines-eng.pdf>.

³⁶ See for example Semple, *supra* note 21, among others.

³⁷ Solicitors Regulation Authority, *SRA Code of Conduct 2011* (online: Solicitors Regulation Authority, 2014) available at: <http://www.sra.org.uk/solicitors/handbook/code/content.page>.

³⁸ Law Society of Upper Canada, *The "Futures" Task Force – Final Report of the Working Group on Multi-Disciplinary Partnerships* (Toronto: Law Society of Upper Canada, 1998).

³⁹ See, i.e., the Ontario Superior Court of Justice's discussion of "deal-team privilege" in *Barrick Gold Corporation v Goldcorp Inc*, 2011 ONSC 1325.

⁴⁰ Mark Curriden, "The Lawyers of Watergate: How a '3rd-Rate Burglary' Provoked New Standards for Lawyer Ethics" (2012) 98 ABA Journal 36; Deborah L. Rhode and Paul D. Paton, "Lawyers, Ethics and Enron" (2002) 8 Stanford Journal of Law Bus & Fin 9.

⁴¹ Richard F. Devlin and Porter Heffernan, "The End(s) of Self-Regulation?" (2008) 45:5 Alberta Law Review.

⁴² Christine Parker, Tahlia Gordon, and Steve Mark, "Regulating Law Firm Ethics Management: An Empirical Assessment of an Innovation in Regulation of the Legal Profession in New South Wales" (2010) 37 Journal of Law and Society 466.

⁴³ *Ibid.*

⁴⁴ See, i.e., Elizabeth Chambliss and David Wilkins, "Promoting Effective Ethical Infrastructure in Large LawFirms: a Call for Research and Reporting" (2002) 30 Hofstra Law Review 691; Adam Dodek, "Regulating Law Firms in Canada" (2011) 90 Canadian Bar Review 383; Susan Saab Fortney,

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- ⁴⁵ The SRA is most innovative for their use of outcomes-based regulation. The Code mandates outcomes for solicitors and suggests indicative behaviours that may help solicitors achieve those outcomes. Failing to achieve an outcome is a breach of the Code. Code of Conduct, *supra* note 37.
- ⁴⁶ Canadian Bar Association, *CBA Ethical Practices Self-Evaluation Tool* (online: Canadian Bar Association, 2013) available at: <http://www.cba.org/CBA/activities/pdf/ethicalsevaluation-e.pdf>.
- ⁴⁷ Canadian Bar Association, *Measuring Diversity in Law Firms: A Critical Tool for Achieving High Performance* (online: Canadian Bar Association, 2007) at 11, available at: http://www.cba.org/CBA/equity/pdf/Measuring_Diversity_Guide.pdf.
- ⁴⁸ The SRA of England and Wales identifies the lack of a diverse and representative profession as a current regulatory risk to their public and consumers. Solicitors Regulation Authority, *SRA Regulatory Risk Index* (online: Solicitors Regulation Authority, 2014) available at: <http://www.sra.org.uk/documents/solicitors/freedom-in-practice/sra-risk-index.pdf>. Public bodies in the U.K., such as the SRA, are required by the Equality Act 2010 to set equality objectives and publish equality information. United Kingdom, *Equality Act 2010*, c 15 available at: <http://www.legislation.gov.uk/ukpga/2010/15/contents>.
- ⁴⁹ Interview with Carol Willans (Counsel, Justice Canada, Intergovernmental and External Relations Division) and Barbara Brownlee (Senior Advisor, Employment Equity and Duty to Accommodate, Justice Canada, Employment Equity), April 2, 2014.
- ⁵⁰ Paul D. Paton, “Between a Rock and a Hard Place: The Future of Self-Regulation – Canada Between the United States and the English/Australian Experience” 2008 J Prof Law 87; Alice Woolley, “Rhetoric and Realities: What Independence of the Bar Requires of Lawyer Regulation” (2012) 45 UBS Law Rev 145; Devlin and Heffernan, *supra* note 41.
- ⁵¹ For more information on the Ontario Law Society Tribunal, see their website: Law Society Tribunal, “About Us” webpage, available at: <http://www.lawsocietytribunal.ca/message.html>. The Law Society of Manitoba also recently created a new Independent Discipline Chair position for a non-lawyer to head their Discipline Committee. Law Society of Manitoba, *Communiqué* (online: Law Society of Manitoba, May 2014) available at: http://www.lawsociety.mb.ca/publications/communiqué/LSM-May%202014.pdf/at_download/file.
- ⁵² In Ontario, there are five elected paralegal Benchers, forty elected lawyer Benchers and eight appointed lay Benchers. In Québec, there is limited non-lawyer involvement likely reflecting the separate role of *l’Office des professions du Québec*.
- ⁵³ The Nova Scotia Barristers’ Society reserves three seats on their governing body to increase diversity. Nova Scotia Barristers’ Society, *Regulations* (2005) at s 2.4, available at: <http://nsbs.org/sites/default/files/cms/menu-pdf/currentregs.pdf>; The Law Society of England and Wales reserves over 25 different seats for non-geographic representatives, including women and ethnic minorities. Law Society of England and Wales, *Constituencies and Council Members 2013-2014* (online: Law Society of England and Wales, 2013) available at: <http://www.lawsociety.org.uk/About-us/documents/council-constituencies/>; The governing board of the Texas State Bar includes four seats reserved for members of targeted minority

groups. Texas, *State Bar Act*, 1987, 70th Leg, ch 148, Sec 3.01, at arts 81.002, 81.020, available at http://www.texasbar.com/AM/Template.cfm?Section=Governing_Documents&Template=/CM/ContentDisplay.cfm&ContentID=24110; New South Wales reserves seats for different geographical regions and for segments of the profession, inter alia, the corporate sector (2), government (2), large firms (2) and young lawyers (1). Law Society of New South Wales, "Law Society Council" webpage, available at: <https://www.lawsociety.com.au/about/organisation/council/index.htm>.

⁵⁴ Marg Bruineman, "Tuition v Salary" *CanadianLawyer4Students* (February 2014) available at: <http://www.canadianlawyermag.com/5021/Tuition-v.-salary.html>.

⁵⁵ Dean Lorne Sossin of Osgoode Hall Law School has also noted these concerns at his university, saying "The general sense of tuition and cost providing huge barriers of access, and then debt and the ongoing effects of that high tuition leading to more challenges for students on choosing their career, getting started, anxieties about the changing legal market – all those are very much realities here in sometimes differing degrees, but they're all top of mind issues." Quoted in Heather Gardiner, "ABA Law School Report Resonates in Canada" *CanadianLawyer4Students* (September 2013) available at: <http://www.canadianlawyermag.com/4836/ABA-law-school-report-resonates-in-Canada.html>.

⁵⁶ Some courts allow students to appear, while others do not. Québec students are not allowed to appear in the courts, and as a result, no Québec law schools have "representational" clinics where students represent clients. In the rest of Canada, every law school has a representational clinic except the University of New Brunswick and the University of Moncton. Douglas D. Ferguson, "The State of

Experiential Education in Canadian Law Schools" speech presented to the Association for Canadian Clinical Legal Education conference held at Robson Hall, University of Manitoba (19 October 2012) available at <http://robsonhall.ca/mlj/sites/default/files/articles/Ferguson%20-%20State%20of%20Experiential%20Education.pdf>.

⁵⁷ Law Society of Upper Canada Articling Task Force, *Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario* (online: Law Society Upper Canada, 2012).

⁵⁸ See, for example, the University of Arizona's announcement of new law-based programs for students who do not intend to practise law, with tuition fees that will be lower than law school. Carol Ann Alaimo, "UA Law School To Undercut Peers With Deep Tuition Discounts" *Arizona Daily Star* (May 26, 2014) available at: http://azstarnet.com/news/local/education/college/ua-law-school-to-undercut-peers-with-deep-tuition-discounts/article_670765a2-b51b-51cd-9cfb-642f410aecf5.html.

⁵⁹ Law Society of Alberta, "Create and Declare a CPD Plan" webpage, available at http://www.lawsociety.ab.ca/lawyers/cpd/cpd_plan.aspx.

⁶⁰ Kathleen Hall, "Annual Declaration Replaces CPD Hours" *The Law Society Gazette* (21 May 2014) available at: <http://www.lawgazette.co.uk/law/annual-declaration-replaces-cpd-hours/5041355.article>.



