



THE CANADIAN
BAR ASSOCIATION
British Columbia Branch

Submission to:

The Law Society of British Columbia

on:

**The Future of Legal Services,
Legal Practice and the Legal Profession
in British Columbia**

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PREFACE

The Canadian Bar Association nationally represents over 36,000 members and the British Columbia Branch itself has 7,000 members. Its members practice law in many different areas and the Branch has established many different sections to provide a focus for lawyers who practice in similar areas to participate in continuing legal education, research and law reform. The Branch also establishes special committees from time to time to deal with issues of interest to the Branch.

The Law Society of British Columbia's Futures Task Force is seeking input from the Canadian Bar Association (BC Branch) in its consideration of the future of legal practice, the legal profession in British Columbia and legal regulation. More specifically, it is seeking feedback on the factors and forces that are likely to influence the delivery of legal services and the regulation of the legal profession and legal practice over the next decade.

EXECUTIVE SUMMARY

The legal profession is currently in a period of transition in this country, and in British Columbia as well. Lawyers are being asked to re-evaluate the way that they do business and how they meet the changing needs of their clients – from surveys to consultations to research reports conducted over the last several years on the future of this profession.

The access to justice concern continues to rise, despite the emergence of online dispute resolution platforms and increases in legal aid funding. There are challenges in meeting the clients' desires for flexibility and choice; people expect information and advice quickly and for a reasonable cost. In addition, clients prefer to see a legal culture that understands and reflects their own personal life experiences.

The growing concern about the mental health of those in the legal profession adds an additional layer of concern, and rightly so. However, by examining ways to create efficiencies using technology and new business structures, the burden may become more manageable. Law societies and law schools play a very important role in this process, but in the end, every lawyer must look for opportunities to better serve residents of British Columbia now and into the future.

Identification of new niches to service and new methods of delivery will become critical as we move into the next decade – removing barricades to innovation will be essential to ensure that the public is receiving the legal service it requires.

The Law Society of British Columbia task force has posed a number of questions intended to provide a sense of direction as this profession moves forward. We agree that planning for the future is essential, in order to better equip the profession (and incoming new lawyers) for the demands of clients. Each of the questions will be identified along with discussion of CBA's position and general commentary on the larger issues raised; feedback was also obtained locally through CBABC Provincial Council¹ and Access to Justice Committee, while other information was taken from reports and a 2019 Nanos survey taken by CBA National on behalf of our membership, where noted herein.

¹ The CBABC Provincial Council brings together approximately 100 lawyers from throughout British Columbia in a variety of practice areas and employment settings including government, in-house and private practice. The Council is an advisory body to the CBABC Board of Directors and meets three times a year. Provincial Council members participated in a "Trends Workshop" in which they were asked to identify changes in several areas, many of which were relevant to this consultation.

QUESTION: HOW WILL THE CHANGING DEMOGRAPHICS OF THE LEGAL PROFESSION, INCLUDING THE GROWTH IN LAWYERS OVER THE AGE OF 65, THE NARROWING GENDER BALANCE, THE LAGGING DIVERSITY OF THE LEGAL PROFESSION AND THE EXPECTATION OF THE NEXT GENERATION OF LAWYERS AFFECT THE FUTURE DELIVERY OF LEGAL SERVICES?

In September of 2019, the CBABC Provincial Council conducted a workshop “Trends in the Legal Sector”, to identify areas of key importance to the legal profession in BC.

Here are some of the comments relevant to the question posed:

- feels like Law Society members over 50 and 60+ are unwilling to change
- “baby boomers” hang on too long; question whether lawyers are engaged in sufficient/effective succession planning
- approach to work seems to vary by generation: described as a “loss of career focus”, “greater expectation for work-life balance”, “flexible work arrangements increasing”, “working from home increasing”
- work-life balance is more important than ever for the youngest generation of members
- many younger lawyers/staff cannot afford to live in Vancouver, creating possible shortages in the future
- younger lawyers carry higher levels of debt increasing pressures on where they practice and in what area of law
- number of young lawyers in rural regions are decreasing
- increased number of students are educated outside Canada
- fewer “general” practitioners
- respect for diversity: concerns over use of correct pronouns and trans issues

In a Nanos survey conducted by CBA National, about 84.1% of BC respondents feel that promoting equality in the profession is “important/somewhat important”.

In its 2014 report entitled “Futures: Transforming the Delivery of Legal Services in Canada”², CBA National conducted an in-depth review of the future of the legal profession, along with recommendations. The relevant portions of this report and related recommendations are included throughout the response to this consultation paper, for consideration by this task force. We acknowledge the significant effort that went into that report and its recommendations.

² CBA *Futures: Transforming the Delivery of Legal Services in Canada*, August 2014 (Canadian Bar Association)

It was identified that the legal profession ought to be more inclusive to better reflect the demographics of Canadians as part of its ongoing transformation. To accommodate this, it was suggested that diversity be embedded within the legal entities in the marketplace and also within the governing bodies of the law societies in general, so that there is a more meaningful representation of society within the profession. Clients will demand that the legal profession become more diverse to reflect the needs of the population it serves. The legal profession must be able to accommodate the needs of different communities or constituencies. In fact, it was suggested that diversity will become the context within which changes will be effectuated both within and outside the profession. Until the profession becomes more inclusive and representative of the community around us, reform will not reach full potential.

Clients express a desire to connect with lawyers with whom they share common values or life experience. This can be challenging to accommodate given the current demographics of lawyers in British Columbia today. When most lawyers in a particular firm have a life perspective that is homogeneous, clients are often unable to obtain advice that is varied and diversified, and there is a lack of connection that results. With a more diversified legal profession, clients will feel more at ease, trusting their lawyer to provide creative solutions that they can trust and accept.

In addition, there is still seen to be limited access by members of diverse and equity-seeking groups to the legal profession – groups who can bring fresh solutions and innovation to improve access to justice. Any proposed models developed should facilitate expansion of diversity in the legal profession and educate new types of lawyers – lawyers who are willing and able to innovate and meet unmet needs of these groups.

CBA created a tool (*Measuring Diversity in Law Firms*) and suggests that the profession ought to collect self-identification data to assess representation of diverse groups and also data to test diversity “climate” to assess inclusivity. It is suggested that the collection of such data can be used for several purposes. For example, such data could identify barriers, examine diversity issues and even identify regulatory problems; it could also be used to track progress in a law firm. Data could also be collected and used in aggregate by the Law Society to help other stakeholders obtain useful information about the profession in general. A compliance mechanism could be used so that the Law Society could collect and publish this data (in aggregate form) so that there is a better understanding of diversity and inclusivity.

Recommendation 9 of that report referencing both law firms and alternative business structures (ABS) of the Futures report is as follows:

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.

With respect to alternate business structures which will be discussed further in this response, it was found that ABSs and newer model law firms were most attractive to those members that were identified as “Generation Y”, women lawyers, parenting lawyers and lawyers with disabilities. Law firms need to have the ability to adapt and allow progress by demonstrating greater degrees of progress with respect to diversity and equality in the working environment. Regulators need to be responsive to the request for alternate business structures in order to better accommodate the needs of particular demographic segments of the legal profession.

We also canvassed the Access for Justice Committee of the CBABC for further feedback on this particular question. The following are a sampling some of the verbatim responses received:

The aging population:

“the growth in lawyers over 65 is, in my view, a temporary issue that will remedy itself as the Boomers die off (I am one): because of the increased lifespan and need to provide for oneself and one’s family, a number of lawyers are choosing to work past 65 and this trend is not unique to the legal profession. I do not think that there is much to be done about this except to be aware of the demographic bulge that is constituted by the Boomers.”

Gender balance:

“Where the profession can be pro-active is in the areas of gender balance (this is slowly improving – read Beverly McLachlin’s book “Truth Be Told”) and in diversity of the profession viz-a-viz that of the general population. The CBA has taken steps in this regard as has the Law Society. I think that those steps and programs and policies should be reviewed and assessed for effectiveness. A continual process of trial, testing and reassessment needs to be done in order to achieve the objectives of gender balance and profession diversity. A properly balanced and more diverse legal profession will result in a better future delivery of legal services.”

Younger lawyers:

“Young lawyers (I hope) are more inclined to seek work/life balance than the older generations. That will mean a different way of practicing in the future. Moreover, they are far more technology-savvy than the older generations and this too will assist in the more technology-intensive character of future legal services. I think that we should actively pool or interview young lawyers about their expectations or, to the extent that data already exists, share that with the professional associations (CBA/Law Society) before making decisions in this regard.”

“This is true...across all generations of lawyers, both in private and public practice. Take for example, criminal law. Crown Counsel have little flexibility in managing their workload in the face of more complicated Charter litigation, resulting in longer and acrimonious proceedings, in the context of Jordan timelines being met, travel and complex disclosure requirements. Students or newly called lawyers have difficulty in understanding that a career in the public sector is not necessarily one that will guarantee work-life balance.”

Foreign-trained lawyers:

“Our profession has also in recent years seen an increase in foreign accredited or trained law students (who may be older but often tend to be younger in age and life experience). They face discrimination because their degrees are from outside Canada and are perceived to be lesser than the lawyers trained within Canada. They also have a huge disadvantage as they often miss key articling deadlines and as a result, experience high frustration due to their struggles in obtaining articles. Many of these students also are hired at dismal articling salaries, starting at about \$35,000. These students are being exploited and many work for free as legal assistants or “interns” in the law firm, with the hope that this may result in an actual articling position. Also the different bar admission requirements across the provinces play a factor as well. The BC PLTC is considered the toughest program in Canada. Other provinces have changed their programs to include alternative teaching methods and evaluations such as the virtual law firm or articling credit for working in a “legal” capacity (but not necessarily with an actual law firm).”

Diversity:

“While individuals from different cultural backgrounds are entering and graduating from law school, many are faced with the fact that there are no role models or mentors available for them as there is lack of diversity as reflected with the senior bar. This issue is more glaring when lack of diversity on the bench is also considered. A separate but related issue is that of “bullying” by judges and how that impacts differently on lawyers based on, e.g. cultural background or gender.”

“in my view, for our profession to continue striving towards excellence and in providing quality services in the best interests of our clients, we need to consider what changes can be implemented now to meet the present and future needs of our changing membership.”

“Ultimately, the profession must distance itself from its monolithic image. We should uphold our core values, but we must also acknowledge that there is no one model for the delivery of legal services (no one model for access justice) that works for everyone. Nor is cost the only barrier. As but one example, consider that 69% of trans-identified people in Ontario said they would not feel safe attending at a lawyer’s office (TRANSforming JUSTICE – Trans Legal Needs Assessment Ontario Project). How can the profession possibly begin to address this issue in a way that is not specific to that community?”

“Changing demographics of the profession affecting future delivery: Yes, that’s true. More diversity ensures lawyers will have lived experiences within the community they serve. If we hope to increase diversity in the legal profession we need to continue the supports which exist in law school through PLTC and articling.”

QUESTION: HOW WILL DEVELOPMENTS IN LEGAL TECHNOLOGY IMPACT THE FUTURE DELIVERY OF LEGAL SERVICES IN BRITISH COLUMBIA, PARTICULARLY SOLE PRACTITIONERS AND SMALLER LAW FIRMS?

The “Trends in the Legal Sector” discussion from September 2019 provided the following perspectives, comments and concerns:

- technology is changing perceptions on response rates and increasing pressure and expectations to unrealistic levels
- communications through social media like Facebook
- lack of technological advances in courts versus those in practice (how to move from technology back to paper filing for court purposes)
- impact of technological advances and stress/health of lawyers
- the increased pace of practice
- use of the cloud for exchange of documents
- video judges, remote video access for appearances by lawyers/parties/witnesses
- fake news
- lack of access to technological solutions or apps due to cost, lack of availability of services in Canada, privacy issues, lack of knowledge about what helps your practice
- increasing communication with clients by text/messaging and concerns regarding recording it on the file, harassment issues, etc.
- e-discovery and e-trials more prevalent
- paperless workplaces more common
- increased concern over online security, cyber-threats
- improving access to justice – changing practice models – offering remote services via video
- increased influence of technology in evidence (video, digital, computer service based)
- increased use of electronic documents
- increase in artificial intelligence
- increased demand for online CPD
- some entities will be better positioned to exploit data mining and use of intelligent drafting tools
- impact of CRT on personal injury lawyers
- move to online programs from face to fact programs and from print to online
- remote access to courts – coming, but slowly
- privacy concerns with digital files being “forever” and issues with border crossings
- digitization of files electronic disclosure

- digitization of court files
- decreased use of a physical library
- rapid increase/growth in technology – especially difficult for “old school” lawyers – hard to keep up
- far more evidence documents than previous generations due to electronic records
- technology is outpacing our use of it in practice, in the courts, by clients

The 2014, CBA Futures made the following findings and recommendations:

It is apparent that the daily work of lawyers has changed and will likely continue to change as technology-based processes are introduced; this can create new career opportunities for lawyers. Clients will tend to gravitate towards legal service providers that are able to provide legal information and tools in a manner that is easily accessible. Technology is also used by clients to seek advice and legal services on an as-needed basis, with lawyers being more available through interactive systems. This will increase awareness of the services that are available to the public generally.

It is anticipated that the legal profession, working with the government, regulators, and the courts, can create a minimum level of access to justice for everyone through the use of technology. This can include, for example, expansion of online dispute resolution, e-filing and training in schools.

Expert advisor Professor Richard Susskind describes technology as a disrupter in the sense that it can transform how the legal market operates. He has identified the following disruptive legal technologies that legal professionals should be aware or make use of: 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. Recent history has shown that his predictions have been realized, with many of these technologies becoming commonplace not only for the delivery of legal services, but for legal research and education, and even business structures. In some instances, disruptive technologies act as a substitute or alternative to the existing formal justice system, as in the case of the Civil Resolution Tribunal, here in British Columbia.

Further trends identified in Canada:

- cloud-based services that do an intelligent deconstruction of documents to engage clients and contract creation
- legal process and document production portals to manage and exchange documents
- legal referral websites
- technology that enables lawyers to dispense advice through expert systems

- crowdsourcing/review sites where people can review companies instead of lodging legal disputes
- teleconferencing for legal services online
- more use of e-filing and electronic transcripts by courts
- more portable devices and intelligent systems will be used

Professor Susskind predicts that the greatest competitor may become a Google Lawyer-type search engine, which mines existing legal information from its proprietary data.

CBABC's Access to Justice Committee had differing views on the issue of technology, but indicated that as a profession, we need to be more aware of the changes that are happening and be prepared to embrace the bad with the good impacts. It was also noted that AI cannot completely replace the human factor when dealing with legal issues:

"While AI can be used to resolve disputes, I am not sure that it can be properly used to deliver justice. In many areas, the need for a "just" result, and not just a "result" is required. And that is where lawyers and judges and impartial, fair, human deliberation will be required. Thus, I agree that, in many areas, there may be the use of AI or computer programs that can deliver results. But many other areas, humans will require human attention. I think that a good example is in relation to custody issues. So much of the disputes are relationship-based and I do not think AI can be seen as adequately delivering a product that is acceptable. Another area that is outside of AI (at least for the next number of generations) is constitutional law: this deals with the relationship between the State and the individual and between groups/collectivities and each other and the State. Thus, while the legal profession may be diminished somewhat, I do not think that it will be extinct."

"I would also like to add that there appears to be a trend by some bigger law firms, in particular those with the practice area of personal injury law, in outsourcing document review (e.g. to India). The experience and knowledge of a lawyer cannot be replaced by AI and I believe ought to be regulated, in terms of the scope and nature of outsourcing that can be done."

"While AI may increase access to justice, in my view it may also be detrimental to access to justice. I am concerned that advances in AI will lead to further power imbalances."

"Many of the AI initiatives in our field are led by for profit companies that are looking to provide additional services to law firms."

"...there are companies mining data from judgements on Canlii with a view of being able to provide clients with detailed analysis of decisions of specific judges. The objective is to answer questions such as 'is this judge plaintiff friendly or defence friendly', on a particular issue where does the judge tend to rule, etc. etc."

“These companies are not going to provide such analysis for free – and only those firms/clients who can afford it will have access to it.”

“Maybe this is no different than what the current reality is – big firms and clients with big pockets have a resource advantage over firms and clients with limited resources (for example, a big firm/rich client can afford to pay for legal time to research decisions of a particular judge etc.)”

“I have concerns about whether AI will actually be democratizing (or the opposite). I think that government and the LSBC (as regulator) need to ensure that the use of AI in our profession doesn’t lead to less access to justice.”

“I definitely see AI as having a place to more efficiently manage and streamline the reams of modern document disclosure and potentially to help small firms with overall case management of their files. I agree that it cannot take the place of providing legal advice to obtain the best legal results. I think we should regard AI as having the ability to free up lawyers time to focus on the matters that they should be focused on which is the resolution of legal issues.”

“there are many areas, the need for a ‘just’ result and not just a ‘result’. Criminal Justice, family immigration, litigation and poverty law issues are all areas where the human/individual is required. However, the combination of AI and a lawyer could be effective and interesting in other areas of the law.”

QUESTION: TO WHAT EXTENT, IF ANY, WILL THE UNMET NEED FOR LEGAL ADVICE AND SERVICE CONTINUE TO IMPACT THE PUBLIC AND THE PROFESSION AND WHAT SOLUTIONS, BEYOND THE EFFORTS CURRENTLY IN PLACE, MIGHT BE PROVIDED TO INCREASE ACCESS FOR THOSE WHO ARE CURRENTLY UNABLE TO OBTAIN ASSISTANCE?

The “Trends in the Legal Sector” discussion from September 2019 provided the following observations and comments:

- there has been an increase in self represented litigants: people who need legal services aid as well as people who can afford legal services but choose to self-represent
- the expectation of lawyers to change: pro bono engagement decrease noted, the greater focus of people not able to afford a lawyer but who don’t qualify for legal aid and fewer lawyers willing to take on legal aid files.

CBA Nationals’ Nanos survey indicated that 89.9% of BC respondents felt it was “important/somewhat important” to improve access to justice through key targets in the CBA Equal Justice report.

The Futures report identified this issue and found that access to legal services is an important driver of change that may ultimately have the greatest impact on our profession. In the past, there was a single delivery model for all legal services – and the public finds this model no longer suits its needs. There should no longer be a single model for providing legal services to the public – in the end, if the legal profession does not ensure that low and middle class Canadians have access to affordable and culturally competent legal services, someone else will. If lawyers do not deliver legal services in a way that the public demands – again, someone else will.

It is suggested that lawyers must be free to work through new business structures in any form desired, so long as they can be properly regulated. This will allow for greater transparency of the type of services offered, the actual value of lawyers, pricing and timing. This will involve a much higher degree of innovation within the legal profession.

On the subject of innovation, the test of the value of innovation will depend on how well it impacts access to justice issues. Clients and potential clients indicate that traditional legal services are far too costly; by allowing innovative ways to deliver and price legal services, we can determine whether more Canadians will be using lawyers for their legal matters – and measure whether the legal profession has responded effectively to the needs of clients. The use of innovative methods to deliver legal services will not only serve the top tier of the marketplace – it can and should be used to service everyone. This profession must act

in the public interest and in so doing, there is a duty to transform legal services to provide greater access.

Furthermore, it is predicted that in the future, lawyers will work with non-lawyers in a triage-like approach – much like nurses do for doctors today. The public should feel confident in relying on these non-lawyers: it is recommended that effective (as opposed to direct) supervision of these non-lawyers should be permitted by regulators.

Recommendation #10 of the Futures report, which the LSBC may wish to consider, states:

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: issues requiring the legal expertise of a lawyer; and “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.**

The Access to Justice Committee of the CBABC provided the following views:

“I am of the view that, unless we as a profession find ways to improve delivery of legal services to those who currently need them but cannot avail themselves of them because of cost, we will render the legal profession and the legal system less relevant to the public. This has the effect of diminishing respect for ‘rule of law’ generally. There is no one way to improve access to legal services for those who currently are unrepresented. Thus, I think that there needs to be multiple approaches including, but not limited to, use of ‘paralegals’ for a variety of matters, unbundled legal services, lawyers working for reduced fees, administrative tribunals with employees whose job is to assist the processing of claims/complaints/disputes.”

“Tapping into unmet areas for legal services – this was also raised as something that, from an access to justice perspective, we as a profession should act proactively on. One comment was that we can be part of the solution or be left behind (or words to that effect).”

“In particular, I am concerned that if the profession isn’t proactive about this, we risk having the government act unilaterally (which this government has shown it is willing to do); I agree

with (the) suggestion that there needs to be multiple approaches. Those approaches need to be set up in a way that performance indicators can be measured. I'm concerned about a large-scale initiative that targets only one area of law (e.g. family law). While I appreciate that many people cannot afford family lawyers, this area of law is one of the most complex and difficult areas – and involves many vulnerable people.”

“I believe we need to consider this issue of the unmet demand beyond the context of generating business for lawyers, which is often how it is viewed.there are members of the public who are (and rightfully so) concerned about lawyering up. As a result they avoid lawyers in order to keep the peace, even when they can afford a lawyer. I have seen this many times in the family law context. In addition to working with others and allowing non-lawyers to provide certain legal services, we need to also work on changing the adversarial approach to dispute resolution and the public's image of lawyers as professionals who make disputes worse rather than as problem solvers.”

“The legal profession is currently a full-service industry in a time where self-service appears to be the preferred model. The traditional model of taking over the litigation in full is no longer what consumers either desire or can afford. Unbundling through a flat fee or task specific retainer allows for a more cost-effective delivery of legal services. “

“Allowing potential clients to opt in on legal services for specific aspects of their cases and opt out for tasks they have the ability to accomplish on their own is key to providing access to justice. For some litigation files, it may be impossible to unbundle or to adequately predict and charge a fixed fee. File or litigation management (project management) is a tool which can be effective in managing large litigation cases. For example, the Legal Services Society (LSS) has a team of lawyers managing large cases in an effort to bring cost down. “

“Lack of competence and training of alternative legal professionals (such as regulated paralegals) will diminish rather than improve access to justice, therefore, care must be taken to ensure effective & competent representation.”

QUESTION: TO WHAT EXTENT, IF ANY, ARE LAWYERS AND FIRMS FEELING BUSINESS PRESSURES AND IF SO, HOW ARE THEY RESPONDING?

The “Trends in the Legal Sector” discussion from September 2019 provided the following observations and comments:

- greater cost concerns (in legal services)
- lack of affordable office space for lawyers – increased rent and property costs
- issues with succession planning and sale of practices
- decreased interest in being an equity partner
- limited services are more common, e.g. online forms
- fixed fees or RFPs or estimates requested far more often
- the business trend towards more multi-disciplinary approaches which could impact conventional notions of law firm ownership/management
- competition from non-lawyers (accounting firms)
- fewer lawyers in the future
- increase in non-lawyer practitioners
- increase in online or automated transactional services: Telus Health (Babylon), McDonalds’ kiosks, etc. and increase in convenience services: Uber, Uber Eats, Airbnb creating new consumer expectations
- more clients want to self-represent or get limited advice
- clients who cannot afford legal services

The 2014 Futures report from CBA noted that some lawyers tend to stick firmly to the status quo to maintain existing structures and ways for running the legal practice. For example, many resist changing billing practices from the billable hour model. There is still generally a fixed career path for young lawyers and the expectations that go along with that. There is still some unwillingness to include clients in the legal process – or to empower them. There is also some reluctance to working with ‘outsiders’ – whether they be other lawyers or other non-lawyer professionals. There is minimal interest in investing in innovation.

Many lawyers strongly believe that they must retain current practice methods and delivery models in order to satisfy professional and regulatory requirements – and also to protect their financial well-being. However, there remain some early adaptors and innovators within the legal profession who are prepared to accept the financial risk and regulatory challenges in order to better serve the public.

The Access to Justice Committee of the CBABC weighed in on this issue:

“I agree that law firms require capital for technology and marketing and business acumen and managerial ability. I also agree that law school and the PLTC and articles do not prepare you for the ‘business of law’. I can say that I was woefully unprepared for the business elements of practice and that much of what I have learned has been through the school of hard knocks. Perhaps law schools could be either encouraged or required to provide courses on the elements of business of law. Or alternately or in addition, we could put a heavier emphasis on business skills in the CPD requirements (beyond the annual two hours of ethics and law practice management).”

“I agree that law school does not prepare newly called lawyers for the business of law, the ins and outs of accounting/trust reconciliation, etc.”

“I agree ...that law school and the PLTC and articles do not prepare you for the “business of law” and law schools should be required to provide courses on the business of law as it relates to small firms & sole practitioners. As well, a survey should be sent out to small firms & sole practitioners for input on the extent to which law firms are feeling business pressures and if so, what they are and how firms are responding.”

QUESTION: TO WHAT EXTENT, IF ANY, ARE ALTERNATIVE LEGAL SERVICE PROVIDERS AND ALTERNATE BUSINESS STRUCTURES LIKELY TO IMPACT LAWYERS AND LAW FIRMS IN BRITISH COLUMBIA?

The CBA Futures indicated that lawyers need to be free to work through new business structures, in any form that they desire, as long as they can be appropriately regulated. This way there will be adherence to rules of professional conduct while providing quality service to the public.

The Nanos survey results indicated that 32% of respondents in Canada wanted more flexibility in allowing different types of structures. Current regulatory constraints and old models of legal service delivery result in:

- 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 outside lawyers and non-lawyers;
- fixed methods of advancing in law firms often limit the ability of lawyers with diverse life experiences to advance
- fixed distribution of firm profits limits investment in research and development – which further reduces career prospects for newer lawyers

In the end, the Futures report did not identify one specific business structure that would benefit consumers in the future – rather, it encouraged flexibility to adapt to new innovations and ideas. It recommended a loosening on permitted business structures to encourage more innovation and process improvement – for example through fee-sharing, ownership and investment by non-lawyers.

Recommendation #1 of the report states:

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.

And recommendation #4 of the report states:

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 alternative business structure (ABC) 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.

And 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**
- (d) 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.**

The Access to Justice Committee of the CBABC provided the following comments:

“I think that it is likely that alternate business structures will impact lawyers and law firms in BC. A generation or two ago, the question was whether national and then international law firms might have an effect on lawyers and law firms in BC. Despite much local opposition, of course those firms came and now are a permanent feature of our legal landscape. I think that we need to accept that alternate business structures are coming and we need to work proactively to deal with the ramifications of that reality.”

“there is a lack of data on whether alternate services providers will charge less than lawyers”

“it is likely that alternate business structures will impact lawyers and law firms in BC. The real issue for the legal profession is how to ensure the change is a value-added change.”

“effective and competent legal representation: If the training is too rigorous legal fees will likely remain high. If the training is too lax, the fees may decrease but so will the corresponding service.”

QUESTION: AS NEARLY ONE-QUARTER OF ALL PRACTICING BC LAWYERS ARE ENGAGED IN PROVIDING LEGAL SERVICES TO GOVERNMENT, CORPORATIONS AND NON-PROFIT ORGANIZATIONS AND REGULATORY BODIES, WHAT MORE COULD OR SHOULD BE DONE TO SUPPORT THESE LAWYERS IN THE ROLES THEY PLAY FOR THEIR EMPLOYERS?

The CBA Futures noted that as both buyer and sellers of legal services, in-house legal counsel will continue to exert considerable leverage in requesting changes to the delivery of legal services. In-house lawyers are very aware of major drivers of change because they have a responsibility to one organization that is usually impacted by the same drivers. These lawyers have the ability to see how client expectations evolve first-hand and how clients expect to interact with professionals. Budget and risk issues might impact in-house counsel's ability to promote innovation; similarly, relationships with external counsel and comfort with the status quo might also limit the amount of innovation.

The Access to Justice Committee also provided these comments:

“there was a pointed comment respecting the potential for government lawyers to be able to do pro bono work – if the system were adjusted to allow for it”

“I think one of the issues is the resistance by courts in using technology for routine (e.g. criminal) appearances. Crown often have to make numerous court appearances. It would be helpful if video appearances would be approved for straight forward routine appearances (e.g. fixing an arraignment hearing date, adjourning a matter) involving the Crown and/or allowing Paralegals to make routine appearances on behalf of Crown.”

“My thoughts are that the Law Society should give consideration to working together with government to consider how to provide more space for government lawyers to get involved in pro bono work. While Crown lawyers often cannot take o pro bono litigation cases due to conflicts issues there are some areas where they could provide some pro bono assistance. I have understood the lack of insurance (as Crown lawyers are self insured by the government) is the main impediment for Crown lawyers taking on pro bono work. The Wills Clinic run through Pro Bono BC is one example of where this impediment has been overcome to allow government lawyers to offer pro bono services. I see the younger generation of lawyers in our office being quite keen to give back to their communities and I think finding a way to allow Crown lawyers more scope to get involved in Access to Justice Initiatives would help them stay engaged.”

QUESTION: WHAT PRESSURES WILL THE LAW SOCIETY FACE TO ADJUST THE SELF-REGULATION MODEL IN A CHANGING LANDSCAPE? HOW DO SHIFTS IN OTHER JURISDICTIONS AWAY FROM THE SELF-REGULATION MODEL, AND THE CHALLENGES FACED BY SOME OTHER SELF-REGULATING PROFESSIONS IN BC, AFFECT THIS DECISION?

The “Trends in the Legal Sector” discussion from September 2019 provided the following observations and comments:

- legal regulation is unresponsive/fractured and siloed
- professional regulation (losing self-regulation)
- potential impact if alternative legal service providers are regulated and the possible decrease in the number of lawyers
- potential threats to independent professional regulation

The CBA Futures found arguments both in favour and against self-regulation. Members found that the independence of the bar to prevent unwarranted interference in the representation of clients was very important. Other points mentioned: independence of the judiciary as supported by appointments from an independent bar; support of the notion of professionalism elevating the law above being a mere business; and that lawyers as experts in the law who make up the regulatory bodies become the most effective and efficient way to regulate the practice of law.

Arguments against self-regulation include conflicts of interest when representative and regulatory functions are held within the same organization. The CBA endorses the separation of its representative function from that of the law societies.

The CBA found that it is no longer in the public interest to govern our profession with 80% elected lawyers and 20% layperson representatives. There were a number of different ways this has been managed in Canada and in the USA – including having elections for reserved seats to fill identified demographic gaps, appointments from target groups and other public interest institutions. A generic recommendation for independent directors was suggested, to allow flexibility in accordance with the needs of the provincial bar.

Recommendation #11 of the report states:

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.

The Access for Justice Committee provided the following comments on this issue:

“First, I think that self-regulation of the legal profession is important to maintain the independence of the legal profession and that, I believe, is a constitutional principle of fundamental importance. That said, unless the legal profession becomes more open to change and in particular, allows changes to the delivery of legal services such that better access to justice is served, the government will be more inclined to change or alter or maybe even do away with self-regulation.”

“self-regulation, independent bar and protection of core values like solicitor-client privilege and rule of law – this was consistently an important point”

“I believe all of these are interdependent and integral to the role lawyers play in society. In order to preserve and protect the core values of our profession and the rule of law we should not be regulated by governments. We need to self-regulate and do so in the best interest of the public. Lawyers play a critical role in society, which includes seeking justice and holding those in power accountable, to achieve these goals we cannot be regulated by the same powers we are trying to hold accountable.”

“The regulation of lawyers must be independent of government to ensure true independence (think Trump). Self-regulation has the advantage of ensuring professional expertise to address the fundamental aspects of professional regulation; namely professional competence and conduct. However, the problem with self-regulation is, as lawyers, we seem to be arguing both sides of the coin, one for the public interest in terms of regulation and one for personal interest in representation. Either we change or the change will be forced upon us. I do not know enough about other jurisdictions and the shifts away from the self-regulation model to comment further – do shifts in other jurisdictions away from the self-regulation model and the challenges faced by some other self-regulating professions in British Columbia affect this discussion?”

QUESTION: HOW CAN CORE VALUES OF THE LEGAL PROFESSION THAT UNDERPIN FUNDAMENTAL STRUCTURES OF THE JUSTICE SYSTEM BE MAINTAINED IN THE FACE OF A CHANGING MARKETPLACE FOR THE DELIVERY OF LEGAL SERVICES?

In proposing its recommendations in the 2014 Futures report, CBA recognized the vital contributions of all lawyers to the rule of law, access to justice, an equitable and just society, robust institutions (strong judiciary and Bar), effective dispute resolution and a functioning democracy. Those concepts were deemed necessary and were to be preserved as change is managed within the legal services industry.

In fact, the rule of law is a necessity to ensure liberty, economic well-being and administration of justice. Lawyers working in the legal profession view their role as being one that protects both the rule of law and administration of justice – there was a deemed risk that powerful clients might pose challenges and compromise a lawyer’s responsibilities to these important values in the future. Similarly, ABSs may present challenges: counsel that is under the supervision of employers whose interests may not align with our professional obligations and duties. Ultimately, it was reiterated that lawyers’ opinions must support the rule of law and not the purposes of an employer/government/corporation.

One additional comment from the Access to Justice Committee of CBABC:

“If the profession becomes proactive in its approach to A2J, to alternate business structures and pressures on self-regulation, we can strive to protect those core values. If we are reactive, or worse still, apathetic to these issues, we will have changes imposed on us and some of these core values may be threatened.”

QUESTION: ARE CURRENT EDUCATIONAL EFFORTS TO ENSURE EFFECTIVE LAWYER DEVELOPMENT THROUGHOUT THE CONTINUUM FROM LAW SCHOOL TO CONTINUING PROFESSIONAL DEVELOPMENT PREPARING FUTURE LAWYERS TO BE EFFECTIVE AND MAINTAINING THAT EFFECTIVENESS AND IF NOT, WHAT CHANGES ARE NECESSARY?

CBA Futures confirmed the notion that educators must be empowered to innovate and have more choice in the ways new lawyers are trained. There were questions raised about the purpose of legal education and legal training – should be remain focussed on theory or be more matched to the needs of clients? Or, should it equip new lawyers with an understanding of the law, coupled with flexibility and innovation? What kind of methods and curriculum should be offered to ensure that flexibility and choice?

In determining the direction of education, these perspectives must be considered:

Who will clients need in the future?

Who is best situated to provide it?

How do we measure success in the education and training of lawyers?

Both new and current lawyers should be prepared to accept the techniques used in other professions for training and continuing education, as life-long learning becomes the norm. Topics such as business management, project and process management, communications, technology literacy – all will be essential to prepare lawyers for the future. In other words, lawyers will require a broader set of skills than those currently offered. In addition, coaching after the initial licensing of new lawyers was also identified as important.

Recommendation #15 of the report states:

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.

CBA Futures indicated that education and training was one of the most “intensely discussed issues” – with comments on criteria, curricula, student debt, rising tuition costs, length of study, post and pre-call training and CPD. In addition, there are so many different ways that lawyers use their legal education – from non-profits to government to in-house corporate counsel – and it is expected that this list will continue to grow. These roles must meet the needs of different clients – preparing lawyers for these new opportunities will require collaboration between lawyers and other disciplines.

Professor Richard Susskind asks the question: What are we training young lawyers to become? If young lawyers are preparing to take on different roles with new methods of delivering legal services, how are we preparing them for that? This will require more coordination between law schools, regulators and the legal profession. Legal service users will define what type of services and delivery methods will be required. In this regard, the report stated that law schools and regulators may need to revisit whether a lengthy undergraduate education is necessary.

In-house counsel want future lawyers to have business skills, taught in collaboration with other faculties. A better understanding of risk management, finance, business development and negotiation were deemed relevant. Also, better communication skills and emotional intelligence were important to this segment. Lawyers in smaller firms need experience in technology, marketing and law firm management. Although practical experience is important for new lawyers, so is communicating with clients, marketing and networking.

Recommendation #16 states:

Problem Solving in the Practising World

As 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.

And 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.

In areas where access to justice issues are profound, such as family law, it was suggested that limits on student appearances in courts be examined and eased. This requires regulators and the courts to press legislators for amendments to legislation and rules to allow students to participate in more legal services.

It was suggested that there was an overreliance on LSAT scores and perhaps more work was required to evaluate what criteria constituted being a good lawyer. This might include, for example: empathy, creativity, resilience and breadth of perspective.

Recommendation #12 of that report:

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.

Recommendation #14 states:

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.

This information might predict diversity and provide insight into barriers for marginalized groups. Making it public might help students identify barriers before entering law school.

The Futures report identified that higher tuition and student debt loads may restrict some applicants and thus reduce the diversity of the student body and profession.

Recommendation #13 of the report states:

Debt Forgiveness Programs

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

CBABC has actively advocated in favour of loan forgiveness for those newly called that are employed in remote communities, but CBA Futures suggests this be expanded to include those who service low-income individuals and who work in areas of public interest as well.

The Futures report also noted that other educational providers will likely develop complementary education and training programs for new service providers – much like the development of nurse practitioners in the medical field or hygienists in the dental profession – government and regulators should endorse these new education streams and adopt new mechanisms to protect the public. Recommendation #21 states:

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.

The report even suggests that the current articling system will disappear in the long term and experimentation is required between law school and admission to the Bar. Additionally, it would be best to incorporate practical training opportunities at different

points along the education and training spectrum so that students have more feedback and the opportunity to develop skills. This might include exposure to small law firm practice, rural settings and access to justice environments. All this will require collaboration between educators, regulators and the profession.

The CBABC Access to Justice Committee provided the following comments on this issue:

“I also think that, starting in early law school and continuing through articles and CPD, lawyers should be required to review issues of A2J, and the linkage of that issue with rule of law, effective justice and the proper functioning of our democratic governance.”

“...perhaps a survey ought to be conducted with regards to the expectations and barriers face(d) by newly called lawyers and/or law students. Based on my own experience as an Articling Student Supervisor and teaching instructor, it seems that members of this group of lawyers have an expectation of a work-life balance (focus on wellness and health), which they are not finding is realistic upon entering in the profession.”

“I also adopt...suggestion of mandatory trauma counselling/training.”

“The legal educational system needs to change in many areas. There needs to be many more experiential requirements – Evidence should be mandatory at UBC – mandatory cultural sensitivity training – trauma counseling – an early warning that many areas of law are significantly stressful and the potential to result in trauma”

QUESTION: WHAT ARE THE IMPACTS MENTAL HEALTH AND SUBSTANCE USE ON LAWYERS, CLIENTS AND THE PUBLIC AND HOW WILL OUR ABILITY TO ADDRESS THE IMPACTS EFFECTIVELY AFFECT THE FUTURE OF LEGAL SERVICES?

The CBA National Nanos survey results show that 80.4% of BC respondents feel that mental health training in the legal education system is important/somewhat important.

The Provincial Council “Trends in the Legal Sector” discussion from September 2019 provided the following observations and comments:

- recognition of mental health issues: but where do you go to access resources?
- vicarious trauma via practice
- increase in mental health awareness (more conversations, compassionate and empathetic)
- the bigger expectation for instant communication (may affect lawyers health) keeping up or pushing back on client expectation
- increase in demand for wellness/practice management courses

The Access for Justice Committee of CBABC had the following comments to add:

“Years ago, the Law Society created the position of the Practice Officer (I think that is the term) whose role was to review and consider lawyers’ practices and to intervene when it became apparent that intervention was necessary. More often than not, intervention was required due to mental illness or substance/alcohol abuse. I can only think that a more robust Practice Officer group at the Law Society is the way to effectively affect the delivery of future legal services (to answer the question).”

“Level of wellness in the profession – Build into PLTC a recognition that the kind of work we do is potentially traumatic, not just stressful, but trauma inducing. It starts with education and expanding the available services. 12 counselling session per year is not enough.”

QUESTION: WHAT CAN THE LAW SOCIETY DO TO MAKE THE REGULATORY PROCESS MORE RESPONSIVE TO LAWYERS WHO ARE EXPERIENCING CHALLENGES IN THE DELIVERY OF EFFECTIVE LEGAL SERVICES DUE TO MENTAL HEALTH AND SUBSTANCE USE ISSUES AND TO DEAL MORE EFFECTIVELY WITH LAWYERS WHO REPEATEDLY FACE DISCIPLINARY ACTION OVER THE COURSE OF THEIR CAREER?

The Access to Justice Committee of the CBABC provided the following comment, as it pertains to disciplinary process at the Law Society:

“Regular training of staff on issues involving mental health so that it is recognized. A more holistic approach to a struggling lawyer whether counseling or training.”

QUESTION: COULD CHANGING THE REGULATORY STRUCTURE OF THE LEGAL PROFESSION OR HOW LEGAL SERVICES ARE DELIVERED BENEFIT THE RULE OF LAW OR CREATE RISKS TO ITS PRESERVATION?

The CBA Futures indicated that in Canada, there are few mechanisms for lawyers to identify, assess and implement breakthroughs in innovative legal practices. There seems to be no collective culture of innovation. It will be critical to connect and support innovation in the future as currently, it is occurring in silos – on the margin or outside the legal profession itself.

Lawyers perceive the regulators have been opposed to experimentation. Most lawyers believe that fundamental changes in the way that they practice law would not be tolerated by regulators – which prevents innovation. There needs to be a way to balance ethical standards and public protections with the modernization of legal services and how they are delivered.

The members clarified that innovation should not compromise the fundamental values of the profession. Therefore, it must be supported by innovations in regulation as well. CBA Futures went on to consider and make recommendations for the Federation of Law Societies of Canada’s Model Code of Professional Conduct, which may be useful in this context:

1. The liberalization of regulations to permit innovation in the provision of legal services;
2. The modernization of the scope of regulation, including the promotion of diversity within the profession (relevant to the first question of this consultation); and
3. Changes to self-regulation to ensure the integrity and relevance of the regulatory framework.

The report noted that current regulatory restrictions create a number of both ethical and public policy issues that need to be addressed:

- Permitting only lawyers to provide legal services – which restricts access to justice where there are currently unmet needs;
- Limiting the definition of legal services to that which is provided only by lawyers, when in reality we see non-lawyers providing a preponderance of legal services;
- Limiting the way legal services are delivered to what might be called a “professional consultancy” model; and
- Offering little choice other than a consultancy model to lawyers who are serving individuals and small businesses.

The CBABC Access to Justice Committee provided these comments for consideration:

“I think that a pro-active approach to dealing with the issues of A2J, self-regulation, changing alternate business models, etc. will ultimately enhance the protection of the Rule of Law. Simply hoping to maintain the status quo will impede it.”

“The question is difficult to answer without context of any proposed changes.”and “I agree ...that this question is difficult to answer without context of any proposed changes”

“I note that one comment focused on the Law Society being encouraged to undertake the regulatory sandbox approach that Utah is embracing.”

“... I would like to make the suggestion that the Task Force consider recommending the implementation a “regulatory sandbox” model in BC in an effort to find solutions that may be tailored specifically to local or community-based needs.”

“A regulatory sandbox may prove an effective tool for identifying, exploring and implementing measures and initiatives to address the issues raised in the Consultation Paper (unmet legal needs, discord between regulation and available technology, access to justice). Professor Margaret Hagan’s talk in the fall highlighted how a legal regulatory sandbox can foster innovation and local or community-driven solutions. The Canadian Securities Commission’s own regulatory sandbox has been quite effective in the face of the changes in that sector brought on by the emergence of fintech.”

“Empowering legal professionals, firms, law schools, community organizations, technology companies (in a monitored environment) to implement prototypes and other novel approaches that would normally run contrary to regulation may not only provide much needed data, it may also prove a more agile, responsive and productive change process than trying to tackle these problems through formal changes to the regulatory framework. Of course, the regulatory sandbox should not be limited to technological innovations.”

“As the regulatory sandbox is monitored, the regulator may ensure the core principles of the profession and the public interest are respected.”

“The only way to uphold core values of the legal profession is to ensure mandatory training of all types of legal professionals.”

QUESTION: HOW COULD THE CALLS TO ACTION AND THE ENGAGEMENT WITH INDIGENOUS LEGAL ORDERS INFLUENCE THE FUTURE DELIVERY OF LEGAL SERVICES?

The Provincial Council “Trends in the Legal Sector” discussion from September 2019 provided the following observations and comments:

- Increased awareness, desire to take action on indigenous reconciliation
- Awareness of cultural competency and finding resources and time to engage in it

The Access for Justice Committee of CBABC made the following comments:

“I think this is one of the biggest challenges facing Canada right now and I have been saying this for years. It is only coming to the fore in very recent weeks and it is unfortunately not being presented in a proper manner by participants and by the press. The long and short of it all is that we must engage with Indigenous peoples, understanding that each Indigenous nation is different and that “one size fits all” does not apply here. Part of the reconciliation process requires that the Indigenous peoples be given the time and the resources to deal with their claims and, importantly, to develop and structure their legal order, including their adjudication and governmental deliberative processes.”

“...this needs to be a priority. Whether you are speaking of moving or dealing with the pluralistic juridical systems or ensuring access to justice to the over-represented Indigenous population in our criminal justice system or ensuring that lawyers and judges have appropriate cultural training. All these matters were raised as important.”

“This question is too important not to be addressed but also too complex.”

“But in terms of reconciling the Calls to Action and the future delivery of legal services/regulation – I think legal education is an important component. The LSBC’s introduction of mandatory cultural competency CPD is a good first step. I would like to see the LSBC build on this and examine whether it should require as a condition of accreditation that Canadian law schools have a mandatory Indigenous Law course.”

“Lawyers have a responsibility to educate themselves on Indigenous issues and the Law Society should require mandatory education of Indigenous history and culture. In the end this is probably more of a political issue. We can train and educate but if we don’t have the political will of our politicians to move forward nothing will change.”

“The current governance structure and lack of pluralistic legal system continue to result in many injustices against Indigenous people. Without a discussion about the impact of colonialism, including the current governance structure (federalism) and lack of legal pluralism where Indigenous laws are equally considered alongside common law (and not just

their influence), we cannot expect meaningful discussion and change. As a result this issue goes way beyond the common understanding of access to justice, it is a conversation that should be had in the context of achieving justice.”

“I fully endorse Call to Action 27 but would note that the consultation document refers only to the joint degree at UVIC. I believe that this cultural competence training also should be included in the PLTC and also in CLE for called lawyers. Lawyers need to take into account cultural awareness when providing legal services to Indigenous clients. Our commitment in this regard should not end in law school but is a lifelong journey.”

QUESTION: WHAT OTHER FACTORS AND FORCES ARE LIKELY TO INFLUENCE THE FUTURE DELIVERY OF LEGAL SERVICES AND THE FUTURE OF THE LEGAL PROFESSION AND LEGAL REGULATION IN BC?

The CBA Futures was clear that the legal profession must adapt to changes or be forced to do so by others. Opportunities exist for lawyers who offer choice to clients in how they receive legal services – and by delivering services in ways that resonate with clients. Access to legal service was identified as the key to future relevance in the profession. The ability to improve services using innovation to meet legal needs will be the measure of success.

In 2014, the CBA found that the key drivers of globalization, liberalization, technology and lack of access to legal services would be the transformative forces that would change the legal profession in Canada; this remains true today. New client expectations will also drive change.

It was determined that most of this change would be precipitated by others outside of the profession and by entrepreneurs – as well as by those clients who purchase large quantities of legal services. The traditional model for law firms will be replaced with a model that is client-centred – new client-sensitive models and services through a variety of structures – as well as a variety of career options for professionals.

Legal services will need to be delivered through new structures and processes – and regulation will become more flexible. Legal services will be provided by teams of both lawyers and non-lawyers – and the use of technology and non-lawyers will reduce costs. These reduced costs will allow for better access to justice by those clients unable to afford traditional legal services.

From the research and consultations, the Futures report found that clients are seeking:

- Lower costs and cost certainty
- 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 (mutual partnership)

In addition, clients are looking for discrete legal task and service offerings as well as speed, convenience and availability. Modern technology platforms can provide this. Finally, clients are looking for non-legal support as they deal with uncertainty and complexities of

the legal process – they want access, empathy, and personal contact with legal professionals that understand a client’s needs and who are holistic in their approach.

There will also be new jobs emerging, including the following:

Knowledge Engineers – who build online legal advice systems, document drafting systems and organize legal information

Legal Process Analysts – who develop architecture within law firms so that legal work is unbundled and sourced through multiple providers

Legal Support System Managers – who develop and deliver tools to clients, workflow, document management systems and intranets for in-house counsel

Legal Project Managers – who bring the discipline of project management to legal processes and disputes

Online Dispute Resolution – new roles for lawyers as e-advocates, e-arbitrators and e-mediators

Legal Risk Managers – provide tools and techniques to measure and reduce client’s risks

Compliance Officers – a fast-growing field that advises on regulatory compliance within industries

Legal Management Consultants – offer advice on strategy and operations in legal departments

Lawyers with legal training will add value to all of these new job roles as we look to the future.

The Provincial Council “Trends in the Legal Sector” discussion from September 2019 provided the following observations and comments:

- A reduced emphasis on identity as “lawyers” – the job/profession is part of the identity of the person, not the whole thing
- Declining respect for the legal profession

CONCLUSIONS:

The legal profession needs to accept –and adapt – to change in order to remain relevant. The market for legal services is clearly being eroded by the clients’ desire for “more for less”, globalization and new competition by non-lawyers. There also appears to be a disconnect about the value lawyers add – and the reputation of lawyers has also been under attack in British Columbia through targeted messages by the government.

The need for affordable legal services for low and middle income people continues to grow – and those outside the legal profession are addressing those needs, along with online dispute resolution processes. Regulatory restrictions do not promote innovation by lawyers, who are effectively forced to price themselves out of this marketplace. As clients find they have more choice and flexibility in obtaining legal services online and through non-lawyer options, they will be moving towards options that are more affordable, flexible and convenient.

Technology alters the way people interact with the legal system today, yet lawyers continue to use outdated operating processes and systems; there is an onus on law schools and other education providers to train new models and encourage new methods of legal service delivery to keep up with client expectations.

Around the world, we see new forms of legal businesses permitted and investment in innovation in the legal profession, but this remains a challenge in British Columbia due to legal and regulatory restrictions. Non-lawyers (including paralegals, online service providers and legal process outsourcers) could become more involved in a greater range of services to meet the demand and to service less-profitable areas of the law.

New lawyers are dropping out of the profession due to shrinking incomes and high student debt, higher cost of living and inflexible work arrangements – proving that the traditional model of practicing law is no longer sustainable. There is a lack of diversity that remains within the profession, which needs to be addressed at this level as well.

In-house counsel require law firms to provide greater transparency, alternate fee arrangements and financial limits to a much greater degree. Performance based billing – based on outcome – is becoming more commonplace.

And with so much change happening, lawyers must revisit how they exercise their role in protecting the rule of law and the administration of justice. These changes do not always need to be viewed as a challenge, rather, these changes create many opportunities for the legal profession if it is managed properly. There are ample opportunities for lawyers to put clients at the centre of all innovations in their practice. If new models of legal delivery are allowed, there will be an opportunity to innovate and try new things to meet the needs of

clients. We have the ability to work together and with others in the legal profession to learn about the best new practices in the delivery of legal services. Ultimately, we need to creatively imagine what it really means to be a “lawyer” in the future. This is the only way the legal profession can remain relevant and the industry sustainable.