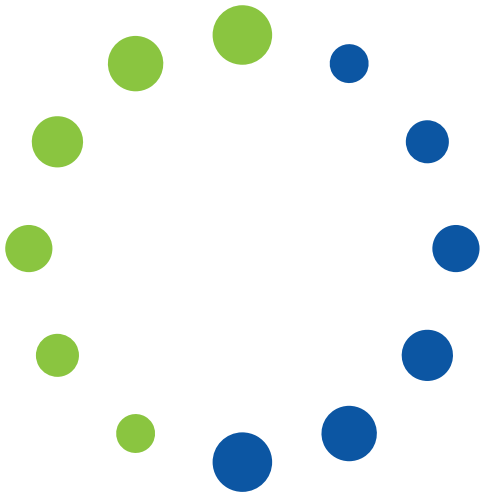

CBA LEGAL FUTURES INITIATIVE

REPORT ON **THE CONSULTATION**

February 21, 2014

THE CANADIAN BAR ASSOCIATION
L'ASSOCIATION DU BARREAU CANADIEN
INFLUENCE. LEADERSHIP. PROTECTION.

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1. INTRODUCTION: WHY CONSULTATION?

The CBA's Legal Futures Initiative set out to develop an understanding of the future practice environment for Canadian lawyers to assist the profession in successfully adapting to change. In June of 2013, the Initiative commenced a comprehensive consultation involving a broad cross-section of the legal profession and its stakeholders, with areas of inquiry shaped from the dominant themes in the Legal Futures Initiative's June 2013 report, "The Future of Legal Services in Canada: Trends and Issues." The following report is an overview of ideas and themes arising from the consultation; it does not contain the views of the Legal Futures Initiative's Steering Committee or the CBA. It also does not expansively describe all stakeholders' views on the future, as the Initiative's consultations were often undertaken to canvas specific areas of inquiry with particular groups. Rather, it describes what the Legal Futures Initiative heard from stakeholders about the experience of being a lawyer in a changing environment, evolving client relationships, and views on the future. This is all synthesized to provide the key themes and novel ideas that emerged.

Methodology

To start a conversation about the future of the legal profession, a twenty-question survey was widely distributed. Participants were asked to provide their thoughts on: 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 (*see Appendix 1 for a full list of consultation questions*).

Between June 2013 and January 2014, the Legal Futures Initiative distributed personalized correspondence inviting comment from over three hundred institutions and organizations, presented to audiences both internationally and within Canada, coordinated in-person consultations with stakeholder groups, and led vibrant discussions through twitter and through content published on the Legal Futures Initiative's website. Highlights of the 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 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;

- Hosting weekly twitterchats;
- Engaging members of equality-seeking groups both within and beyond the CBA on the Legal Futures Initiative's application of a diversity and inclusivity lens to its work.[1]

Key themes emerging from the consultation

Responses to the consultation demonstrated two over-arching perspectives: those who believe that change is happening in the legal profession, and those who doubt that transformative change is occurring or that there are compelling reasons to meet that change. The respondents who cautioned against the need for change 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" while compromising the ability to lawyer in the public interest or for under-served practice areas like family and criminal defence law. Respondents holding opposing views took a different perspective on lawyers' responsibilities towards the public; these respondents indicated that the various means by which clients are demanding changes to legal services are proof that the profession needs to genuinely transform itself from the inside out to retain the public's trust.

The consultation feedback also unearthed different perspectives as some topics engaged reflections on the past and the present, whereas others were more conducive to imagining future possibilities. The Legal Futures Initiative's questions on education garnered feedback on the cost, length, and form of law school education, as well as on the utility of post-call training, but largely in reference to respondents' own experiences. Innovating within one's practice structure, or through re-structuring legal service delivery, was a better vehicle for respondents to identify their visions of the future. 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, an underlying theme was the composition of today's profession: who within the profession can take advantage of these innovations, which segments of the profession bear the burden of reform, and what cautions and opportunities arise from applying the dual lenses of diversity/ inclusivity and access to justice to future innovations.

In whole, the consultation illuminated a single reality: there really is no consensus on the future of the legal profession. Some areas of inquiry engendered heated debate, others received little comment, but across this spectrum of engagement, it was impossible to identify the best way forward as ideas that were lauded also received meaningful critical analysis. By canvassing only individual experiences, and without regular ability to explore ideas in more detail with participants, it is unsurprising that the Legal Futures Initiative's consultation has not identified broad areas of agreement; however, it has shed a light on different stakeholders' experiences, hopes, and concerns, all of which shall inform the Initiative's work going forward.

1 A consultation is planned for March 2014 with the CBA's Access to Justice Committee on applying an access-to-justice lens to the Legal Futures Initiative's work.

2. HOW LAWYERS ARE ADAPTING TO CHANGING CLIENT DEMANDS

The Legal Futures Initiative canvassed participants about changing client expectations and the practice of law, and what clients value most from their counsel. Technology, cost pressures, and business management tools are already transforming relationships between lawyers and their clients. Even the concept of value in legal services has shifted; thinking like a client means that lawyers are moving beyond traditional conflict resolution to providing increasingly strategic and tailored problem-solving or avoidance.

Clients and value

The following characteristics were identified most often as those that clients value:

- Honesty, even when that honesty requires that the client be disappointed;
- Integrity, also described as objectivity or an independent mind;
- Effective communication in dispensing advice and listening, and demonstrating a willingness to engage the client as an active participant in the management of their own matter;
- Empathy, or as described by senior in-house counsel from the NGO sector, "good bedside manner."

Inherent within these traits is the lawyer's ability to connect with clients. A mid-career private practitioner noted that a good lawyer possesses "the ability to understand what the client sees as important, rather than what the lawyer sees as important." Our increasingly sophisticated and cross-border world demands new skills from lawyers. Emerging indicators of value identified by respondents ranged from business acumen to public relations, risk management, expertise in creating legal teams, facility to work in multi-disciplinary teams, and strategic, visionary thinking.

Not all respondents expressed confidence about clients valuing honesty from their counsel. Of particular concern for public sector lawyers was their responsibility to offer an honest opinion to their employer when that opinion may not be positively received. They identified that their clients' financial constraints sometimes resulted in different assessments of risk than that which

a lawyer might offer in accordance with their professional responsibilities.

Clients and fees

The "more for less" challenge is resonating across all practice environments. Clients want value for money, and not simply a bill based on hourly rates and time; clients are questioning traditional pricing mechanisms and asking for alternatives. The Legal Futures Initiative's commissioned research, The Clients' Perspective, confirmed that clients view themselves as playing more active roles as consumers and offering to do more work themselves. While consultation respondents understood the need to re-examine pricing of their services, many also expressed caution about the downward pressure on legal costs. For example, making legal advice cheaper can compromise important aspects of a legal advisory role, like advising a client on future implications of their decision in addition to identifying the immediate consequences of the client's decision, or lead to errors created through hastily-done work.

Clients desire cost certainty and cost predictability, and are comfortable discussing outsourcing work and incentives for repeat business with their lawyers. In mid- and large-sized firms, it is increasingly common for clients to request forecasting budgets from their counsel for delivery of services; clients then direct the extent that junior lawyers or paralegals are involved on their file. Clients' interest in lower cost services has also resulted in third parties being added to the solicitor-client relationship, as exemplified by the hiring of legal bill review companies by corporate clients. A lawyer at a mid-sized firm described her amazement that,

> "We're paying for a third-party provider to swipe our fees in order to manage and improve the client's relationship with us – that makes no sense to me!"

In-house counsel balance cost-cutting mandates from their employers with assessments of legal risk:

> "By improving internal efficiencies and thinking carefully about how they allocate their scarce resources - putting the right resources in the right place at the right time - general counsels can gain the time they need to be proactive."

Public sector lawyers identified that fiscal pressures on their clients means an emphasis on cost recovery models; unlike the private sector's experience, this has reinforced the billable hour within public sector work environments.

Clients and technology

Participants uniformly reported that technology has had an impact on the practice of law; one of the most-cited examples was that more clients are self-educating on their legal matters, which was also confirmed by clients in the Legal Futures Initiative's The Clients' Perspective report. For some participants in the consultation, clients' access to information has translated to more sophisticated clients; conversely, other participants indicated that they now have to provide added legal advice

on why the information that the clients have received is not accurate or reliable.

Even more prevalent was feedback about the impact of technology on communications between lawyers and clients. For some practice environments, specifically in big law firms, lawyers are expected to embrace a 24/7 service orientation towards clients. Public sector lawyers shared that their clients had similar expectations about the rapidity of a response from counsel. In contrast, small and sole practitioners were freer to create boundaries in choosing how and when to communicate with their clients, explaining that both work/life balance and adherence to professional responsibilities motivated the delays in their responses. A participant from Alberta warned that email is changing the very nature of lawyers' work, saying "legal practice (is) becoming more 'reactive' rather than (a) serious thinking profession. We have lost the 'sober second thought'."

3. INNOVATIONS IN LEGAL SERVICES

Have lawyers innovated inside or outside conventional practice models, and if so, by what means? The Legal Futures Initiative canvassed participants on new management tools, technology, working in new models, and the role of investment capital in the delivery of legal services. Participants are already adopting some of these innovations to meet client needs, and it was easy for participants to imagine re-structuring legal service models in general terms. However, as detailed later in this report, discussions about Alternative Business Structures (ABS) invoked radically divergent opinions about the perceived value that these models provided to the public.

Retainers and fee agreements

The concept of bundling legal services or conversely, unbundling and providing limited scope retainers, was familiar to many participants, particularly amongst small and sole practitioners, who are able to be creative to meet individual clients' needs. Larger firm lawyers provide bundling to clients, particularly those who have files in multiple practice areas within their firm, and allow their clients to prioritize the most pressing issues to manage legal costs over time. Many respondents cautioned about the commoditization of work and resultant price wars between law firms, suggesting that pushing the work to the lowest price can make lawyers seem less professional.

On the cost of legal services, lawyers wondered how to move away from billing in hourly increments, acknowledging that the billable hour does not lend itself to efficiencies (nor does it reward lawyers who cannot meet their billable hour requirements due to family responsibilities or disabilities, or who possess different working habits). From a senior practitioner in a large firm:

> "It would be a tremendous step in the right direction if we rid ourselves of the 'billable hour' concept and moved toward a fixed fee for certain work/projects. One of the struggles for large multijurisdictional firms is that often we are using colleagues within our organization that are billing at rates our clients

consider too high. The question has arisen - can we actually go to one of our competitors to meet our clients' needs in certain jurisdictions?"

Small and sole practitioners are already using flat fee pricing, and characterized the motive for doing so as their clients' inability to write a blank cheque for legal services. Young practitioners were similarly confident that lawyers are best placed to develop flat fee pricing and that it would certainly result in profit for lawyers after a trial-and-error development period. As affirmed by a young partner in a mid-sized firm in an urban centre,

"I prefer to give flat fees, because then I can give better service (to my clients). I can think about things when I want, and I think I'm actually making more money with flat fee agreements."

Technology as a driver of innovation

Respondents acknowledged technology's promise – from improving the public's legal literacy, to creating online platforms for client collaboration, to automating legal work within and outside firm environments. But the capacity to adopt technological innovations appears to vary based on practice settings. New model firms and small practitioners described themselves as "freest to change" and characterized their use of technology as allowing "scale and efficiency to the Davids rather than the Goliaths." In a lively twitterchat about technology and legal services, a lawyer working in a small Intellectual Property firm described how his firm automated their internal processes through workflows to enable seamless transition between professionals on files, eliminating considerable email traffic, and likened their integrated workflows to how a fast food restaurant manages orders. Deemed a resounding success, this firm has created an in-house development team to create further internal efficiencies.

Small and sole practitioners and new model firms are also capitalizing on virtual law practices to reduce their overhead. However, with cloud computing and the growing practice of clients obtaining online access to their files, participants had questions about meeting their professional responsibilities, and asked for law societies to offer clear guidelines in the spirit of facilitating innovations:

"While maintaining vigilance, law societies should encourage innovation and more cost-effective ways of getting basic and even specialized information to clients."

A related concept was put forward by an educator with expertise in computer-assisted legal education, who asked whether it was fair to ask clients to pay humans to provide a service that can be done more efficiently through technology – or of greater contention, whether it was ethical to do so.

More generally, the consultation feedback affirmed that technology is changing the means by which the public resolves disputes, permitting people to create legally binding activities without the traditional input of lawyers. Technology can also transform the academic environment in which

law students are taught, although feedback from current law students suggested universities have a way to go, with some disappointment expressed about the dated technologies being used in some law schools.

Changes to lawyers' work processes

Along with automation of processes as described above, respondents from large-scale practice environments indicated a growing facility with legal project management and Lean Six Sigma principles. Business analysis and project management made sense to big firm participants, who noted that streamlining one's practice should appeal to lawyers who can then spend more time practicing law than dealing with administrative details. Public sector lawyers are also adopting business analytic models to become more efficient; this includes reflecting on the means by which legal requests are made to justice departments, and asking if the sourcing of legal work is being done cost-effectively.

New structures of legal service delivery

Respondents saw the value of lawyers working in teams, with other service providers or in conjunction with other disciplines, to provide the best quality services in the most efficient and cost-effective manner to their clients. This encompassed the addition of project managers on big files and professional managers of law firms; many respondents indicated that lawyers could be better supported by business expertise. Lawyers are not trained to run businesses, and their skills are often diffused when they are required to manage all aspects of their practices. A mid-career lawyer from a mid-sized firm in Ontario questioned the lawyer's multiplicity of roles with a playful example:

> "Imagine the President/Chair/CEO or like management person with Swiss Chalet having to roast the chickens, plate the meals and serve them! Yet, this is what lawyers do every working day."

Law firms' adoption of professional management is reflected to some extent by public sector innovations; representatives from public sector lawyers indicated that lawyers who act as their legal managers receive specialized training in the business of law and in management.

Capital and legal services

Respondents who wanted to create new forms and structures of legal services were limited by the rules prohibiting outside investment in law firms. They viewed this restriction as stifling of transformation as innovation necessarily requires an environment that allows for capital infusion and diversification of structures. Innovators wished to have regulatory environments liberalized, but they also wanted assistance from the Canadian Bar Association in marketing legal start-ups to venture capitalists. A young lawyer from Toronto who has chosen to start her business outside of the regulatory model indicated that the investors she approaches are confused about her training as a lawyer; they do not understand how to safely invest in her business despite the fact that she is not operating her business as a lawyer bound by the Rules of Professional Conduct.

However, as exemplified by the debate on ABS set out below, other respondents were very uncomfortable with the concept of outside investment in law firms, querying how to preserve the lawyer's role in preserving justice when balanced against corporate shareholder interests.

4. THE REGULATORY ENVIRONMENT

Changes in lawyers' regulatory environment invited the least comment from participants in our consultation, but when addressing other topics, participants often raised related questions about law societies and the extent to which law societies facilitate – or restrict – innovation in the profession. The Legal Futures Initiative asked about alternatives to articling, alternatives to regulating lawyers' conduct, and liberalizing law firm structures to allow for non-lawyer ownership in the form of ABS; only the latter prompted wide dialogue.

Entry to the profession and articling

Current students wanted to see changes in the way that law societies, and indirectly, the profession, support prospective lawyers. It was suggested that law associations play a greater role in managing law student debt, noting that medical associations are far more aggressive negotiating with banks directly and enabling medical students to obtain loans at prime with no co-signor. Students expressed uncertainty about the Law Society of Upper Canada's new Law Practice Program (LPP); at the conclusion of the consultation period, it was unclear if the program can be treated as a fourth year of academic studies for the purpose of freezing payments on existing student loans. The risk that LPP students would have to pay for a fourth year of education while also paying back their law school debts was considered a financially unsound policy approach.

Some defended the articling model, and others disputed it, but there was general acknowledgment that articling provides uneven results for newly licensed lawyers. This sentiment was perhaps most succinctly put as follows:

"A good articling position is a great experience. There are just too few of them."

Alternatives to articling were raised. A handful of participants cited the optional bar admission courses presented through the Legal Practice Course in the UK, in Australia with the Diploma of Legal Studies, and in Hong Kong with Postgraduate Certificate in Laws as offering better experiences to prospective lawyers. Yet in regard to Ontario's new LPP, which closely resembles the courses provided in the preceding jurisdictions, students expressed trepidation that this would create two tiers of graduates: those who are rewarded for obtaining articling positions, and those who become stigmatized by their default participation in the LPP. Current law students felt that prospective LPP students were unfairly being experimented on, and they asked for clear messages from the profession that there are benefits to pursuing the LPP route to licensing.

Entity regulation

The consultation included questions about "best practices" guidelines within law firms as a means of regulating lawyers' conduct, rather than reacting to individual disciplinary complaints – a proactive rather than disciplinary approach to regulation. Only a few participants understood that a similar mechanism is mandated through the UK's Legal Services Act, and registered their concern about a law firm having to police its own lawyers' conduct:

> "The increased time and effort required for UK firms to satisfy the obligations of the "responsible" lawyer regarding practice management has imposed sufficient time obligations as to make the small firm very unattractive."

Alternative Business Structures (ABS)

Participants exhibited polarized reactions to Alternative Business Structures (ABS), which are diverse structures that enable outside investments in law practice; some felt it would create a new form of "Big Law" without any concomitant benefits to lower-income and middle-income clients, whereas others felt it presented great possibilities for access to justice and innovation. Views on ABS depended largely on beliefs about whether lawyers' values and responsibilities would properly inform the entity's activities.

The following comments were offered in support of ABS:

- Lawyers can benefit from the experience of professional business and at the end of the day, we need to keep long-term goals in mind. Success depends on who makes the decisions and what criteria are used to reach those decisions;
- Law is not a solely for-profit business so, if that fact was admitted and planned for, non-lawyers could operate law firms;
- We are all still accountable to the Law Society;
- What would the implications be of non-doctors operating a hospital? I should hope the people running a hospital are not doctors.

Opinions against the adoption of ABS included the following:

- There is no way lawyers can continue to be a self-governing profession once legal services, bundled or not, are provided by transnational corporations;
- Disciplinary action against the lawyers without any accountability by those non-lawyer owners, and loss of sense of camaraderie in the profession;
- The priority given to ethics would be diluted in the interest of profit;
- I am concerned that law societies would still put unrealistic expectations on the profession in their zeal to protect the public.

Some participants likened ABS to the dynamic between in-house counsel and their employers who capably balance management by non-lawyers and fulfillment of their ethical responsibilities. Small practitioners were curious about the support that an ABS franchise model could provide to them, but also wondered how that would impact their ability to provide unique customer service. As expressed by a sole practitioner in a semi-rural community, not all of her clients would be attracted to a franchise model as "there is still a market for something real, simple, and human."
In general, Alternative Business Structures were a point of significant contention within the consultation. Most participants understood that they notionally provided opportunities for better business practices, but there was no agreement on the impact that ABS would have on lawyers' professionalism.

5. EDUCATION AND TRAINING OF TOMORROW'S LAWYERS

The education and training of lawyers was the Legal Futures Initiative's hot topic – for example, law school tuition was universally viewed as too high. The feedback, however, focused more on challenges with existing policies and practices than on visions for the future.

Entering law school: admissions and cost

Admissions criteria did not engender many responses, but those who did broach this topic questioned the continuing reliance on the LSAT as a predictor of student success, asking if it was the best way to assess a candidate's suitability for law school, and pointing out the costs associated with studying for, and writing, the LSAT. Managing partners of big firms in both Montreal and Toronto identified that large law firms should seek students with emotional quotient, "grit", sales skills, and diverse life experiences; as a result, both Montreal and Toronto managing partners expressed support for law schools expanding admissions criteria beyond grades and LSAT scores to other measurements of candidates' abilities.

Participants from all generations of practice viewed the requirement to have an undergraduate degree as costly, and a barrier to even considering law school for those with ability but not

means. Those who defended the undergraduate degree requirement did so on the basis of law's complexity (arguing that having a background in another area would help critical analysis) and on the maturity of graduate-level students (with fears expressed about very young lawyers' abilities to handle emotionally charged files). Only the occasional participant noted the relative low cost of a Canadian law degree in comparison to American and international law schools.

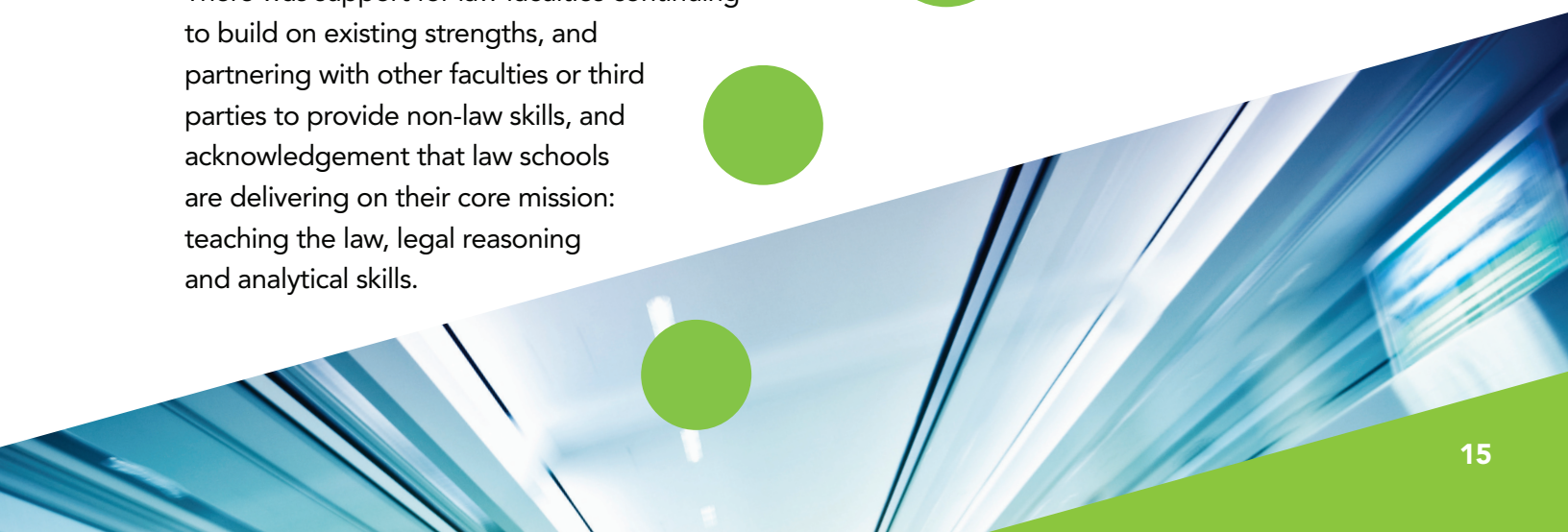
Law school being too expensive was expressed most vocally by current law students, but also echoed by other participants. Younger lawyers questioned whether the high tuition could truly be justified through the granting of a "professional" degree in light of their own experiences of law school being academic and theoretical. Along with current students, young lawyers also expressed that student debt serves to limit early career options as higher-paying positions become the goal after graduation.

The form of law school education

There were lots of ideas about how to change law school curricula and the length of studies, but no consensus. Opinions were mixed on whether more practical skills should be incorporated into legal education at the university level, or if law schools should maintain their historical emphasis on black-letter law and analytical thinking. But everyone wanted curricula better-tailored to their career paths and to client needs:

- From in-house counsel – how to run a business, taught in collaboration with other faculties;
- From large firm representatives – risk management, business development, and negotiation;
- From small and sole practitioners – technology, financial management, and legal marketing;
- From new and young lawyers – practical experience including negotiation, running a trial, and working with clients;
- From lawyers in private practice, of all generations – more practical experience through clinical and work placements.

There was support for law faculties continuing to build on existing strengths, and partnering with other faculties or third parties to provide non-law skills, and acknowledgement that law schools are delivering on their core mission: teaching the law, legal reasoning and analytical skills.



Perhaps the challenge is in the many unknowns around what lies ahead for lawyers' educational needs. As expressed by an academic from Manitoba, law schools should "form lawyers for the future as opposed to reproducing lawyers from the past."

It was noted by young lawyers that law schools structure curricula to give students a sense of all areas, but that this prevented law students from testing their experiences in a practical setting. They believe that such testing occurs only in law school internships, which are unstandardized, and which could benefit students more if subject to better supervision from law school administrations. Young lawyers asked if students could undertake apprenticeships in the middle of law school studies, akin to trades training, or undertake articles in the midst of law school to allow students to refine their studies during their return to law school. These views crossed generations, as senior lawyers shared positive recollections of the practical experiences that they were able to access during their own law school studies.

Different opinions were put forth on the length of law school studies, ranging from four years in length with a lighter course load per year to promote synthesis and critical thinking, to accelerated programs for students with significant legal experience or legal training, to two years of study with more training occurring in bar admissions courses. There was also discussion of specialization at the graduate level, with the suggestion that the LLB/JD provide education for general practitioners at a reduced tuition to increase effective access to law for the public.

Training lawyers in a time of change

Post-call education was lauded for its social aspects, its means of building collegiality, the mentorship opportunities that it creates, and the public confidence that it inspires. However, participants questioned whether mandatory post-call education actually delivers reduced claims/complaints against lawyers. Participants joked that mandatory Continuing Professional Development (CPD) simply allows lawyers time to update their smartphones or read the newspaper. Given that timely, individualized post-call training requires time, trainers, and funding, who is best-placed to provide it?

Desired changes to CPD content varied depending on practice settings; representatives of large firms in Ontario suggested a very different list of training needs than that of a sole practitioner working in Edmonton, Alberta. CPD needs also depended on the length of one's time as a lawyer, with younger lawyers in all practice settings indicating very clearly that:

> "I most need better training in the early years of my practice in order to be more marketable."

Participants suggested that CPD course offerings should result in an examination or work product to bolster the claim that skills are being upgraded. Participants also asked that self-study, writing blogs, and mentoring younger lawyers be recognized as CPD, with the latter request being made

in the context of mentoring the increasing number of first or second year calls to the bar who are starting their own firms.

6. GENERATIONAL PERSPECTIVES ON CHANGE

A recurrent theme throughout the Initiative's consultation was young lawyers' request that the cost of reform not be borne exclusively by new entrants to the profession, and that more senior members of the profession fulfill their professional obligations to foster the success of younger lawyers. For instance, while law school was indeed a lightning rod in the consultation, it was defended by young lawyers who encouraged the profession to play a greater role in educating and training the new generation. As expressed by a young lawyer from Nunavut:

> "Any segment of the profession that insists that law schools should do more, what they're really saying is that the burden should be shifted to the students, and do we really want (law students) to carry the financial burden?"

Younger lawyers identified that clients increasingly want experienced lawyers, and that this creates obstacles for young lawyers in all practice settings. Young lawyers in big firm settings have diminished access to training and exposure to clients; young lawyers in small and solo practices need to demonstrate practical experience to grow their practices. Uniformly, young lawyers asked the Initiative how the profession would support them in a market where clients are less willing to pay for this part of their training.

We also heard young lawyers' dissatisfaction with the billable hour, and that law firms' desire to deliver low-cost work to clients by excluding young lawyers from files has become a *"race to the bottom."* Young lawyers also expressed distaste for new model law firms in which clients are only hiring experienced counsel, with one young lawyer describing them as *"selfish."* These reactions were linked to value for clients. Younger lawyers questioned the wisdom of restricting junior lawyers' access to files, commenting that this decreases the growth of institutional knowledge within firm environments, and fails to take the *"long view for clients."* The consequences of these practices could be significant indeed; a growing number of mistakes were predicted when young lawyers advance in law firms without any practical trial or court experience. Young lawyers asked for supportive senior leadership with open minds attuned to the changes facing the profession.

Some participants expressed hesitation about senior lawyers' attitudes towards change. As bluntly expressed by a bar association executive from outside Canada, "let the older generation finish practicing as they know it. Build the paradigm with lawyers under age 36."

However, the results of the Futures Initiative's consultation show that senior members of the profession are interested in innovation, although perhaps just as unclear about how to move towards it. It was common

for senior lawyers in large firm environments to express skepticism about the billable hour, but they also wondered how to create cultural shifts within their working environments to facilitate change. Relatedly, firms expressed interest in developing comprehensive strategic plans including a succession plan for each partner and manager, and in key practice areas, to ensure that their younger lawyers continue to thrive. Sole and small practitioners, some nearing retirement, expressed great curiosity in the tools and practices that could transform billing away from the hourly rate. Conservatism is not uniform amongst the generational cohorts.

Participants suggested that questions about the generational divide are best answered by increasing dialogue between newer and more senior members of the profession. Participants recommended better communication and mentorship between lawyers, and suggested a form of "reverse mentoring" - information flow from younger lawyers to older lawyers in the areas of technology, alternate ways to practice law, and diverse and inclusive workplaces.

7. RE-CONCEPTUALIZING THE PROFESSION: WHAT IS "BEING A LAWYER"?

Calling oneself a lawyer can no longer be shorthand for a set definition of skills or work experience. Lawyers are redefining value for their clients in vastly different ways, much of which involves developing new tools and new service delivery models. The Legal Futures Initiative was urged not to make any assumptions about the community to which lawyers belong:

> "(We should) recognise that the legal profession is not "one profession" but a collection of highly independent and independence-minded professionals, divided by specialties, jurisdictions, and market considerations, such as urban/rural, small firm/large firm/solo."

Yet the question remains as to what unifies the profession. A young legal entrepreneur in an urban center suggested that there is "particular insight to be gained by exploring the idea of what "to become a lawyer" means."

The consultation feedback conveyed that lawyers expect to transition many times within their careers. As expressed by a mid-career private practitioner from Quebec, the training, employment, and regulation of tomorrow's lawyer must encompass the reality that today's lawyers "reinvent themselves many times in the course of their professional life."

The role of technology and the emergence of paralegals, consultants, and other legal service providers also prompted reflection about the role of a lawyer. Most respondents felt that technology will assist - but won't replace - lawyers, and that it will definitely trigger new forms of "being a lawyer." Participants were divided on the relationship between other legal service providers and lawyers. Some saw this opportunity as presenting multiple options for better client

service; these respondents tended to come from big firm and in-house environments. Small practitioners, whose markets are increasingly occupied by paralegals, consultants, "self-law" tools and other providers, felt that it has become harder to explain to the public when and why they should hire a lawyer. It is clear that the question of non-lawyer legal professionals in our system, whether viewed positively or negatively, is intrinsically linked to the role that lawyers play. If the emergence of non-lawyer legal professionals grows, what indeed will draw clients to lawyers?

Lawyers want their work environments to be more responsive to personal goals and family responsibilities. In response to the Initiative's question of what lawyers need to succeed in this changing environment, one mid-career lawyer working in-house in Western Canada answered that she wanted "more flexibility in the profession. I don't want to feel like I have to live, breathe, and die the law to be successful in this profession."

That flexibility, historically championed by women as primary caregivers to their families, is now being advocated by young male lawyers as well. Even in big firm environments, where young lawyers have traditionally been motivated by partnership aspirations and loyalty, both men and women report family responsibilities as key influencers over career choices. A young lawyer from Saskatchewan told the Initiative that lawyers are working longer and harder than ever, resulting in pressure on all aspects of the profession from collegiality to lawyers' health – he was not atypical in opining that better work/life balance benefits the profession as a whole.

The profession was urged to start early in introducing prospective lawyers to practice, as the disconnect between the academic environment and the practice environment often creates great stress for new calls to the bar. A young female lawyer came out strongly in favor of law school internships and presentations by lawyers as means to enable students to identify the best type of law and best type of practice for them, stating that:

> "If this were more available, lawyers would be happier and/or more inclined to stay in the profession."

8. APPLYING A DIVERSITY AND INCLUSIVITY LENS TO THE FUTURE

Participants connected diversity in the profession to the value that clients find in lawyers' services, stating that:

> "A more representative legal profession makes for more trust, when clients can speak to a lawyer to whom they can relate."

Society often depicts the representative lawyer as a white man in a grey suit; however, most people are not this person. This concept needs to be at the forefront of envisioning the future of the profession, but it is not only the Futures Initiative who should consider this; instead, as offered by a gay law student, "everyone is responsible for rethinking the model lawyer."

The Initiative asked for feedback on entry to the profession, and perceived or real barriers to entry for members of under-represented groups. Participants told the Initiative that entry to the profession should be easier for members of equality-seeking groups. The cost of law school tuition needs to be reduced so as not to pose a barrier and to enable individuals to work within their communities, if desired, rather than pursuing higher wages elsewhere. The profession should also undertake early years outreach amongst historically under-represented communities; a young woman of colour indicated that the legal profession could learn from others about how to attract students from historically under-represented groups. Increasing diversity within law school student bodies is not only about creating the conditions for a diverse profession, it's about the value of a diversity-rich learning environment. As shared by an East Coast law student,

> "That this school is so overwhelmingly full of white students, teachers, and staff is a major problem to me - and I'm white."

Participants also told the Initiative that the profession needs to expand its definitions of diversity, particularly as experienced by differently-abled persons, non-gender-conforming persons, and those possessing invisible disabilities. This would ensure that communities are not excluded from diversity initiatives at school, at work, and within lawyers' regulatory structures. A racialized woman who identified as religious pointed out that cultural changes occur through increased dialogue within the profession:

> "Not everyone drinks, stays late on Fridays, or observes Christmas holidays; without a dialogue, age-old assumptions persist."

The Initiative also asked specifically for feedback on new business structures from members of equality-seeking groups. Younger lawyers and women in the profession told the Initiative that law firms need to innovate to retain a more diverse workforce. But others suggested that diversity in the profession would be better facilitated by creating models outside of the law firm structure, as expressed by one participant:

> "The structure of existing law firms, in which you have people competing on the basis of hours billed for a limited number of promotions, is more or less designed to drive women away. I don't think we need to change that system. I think we need to make it easier to access an alternative to it."

While these alternatives may be attractive to Generation Y, women and lawyers with disabilities, they also deserve to be treated with caution. Members of equality-seeking groups asked the Initiative about the relationship between alternative business structures and diversity in the profession. In endorsing them, is the Initiative simply creating a new ghetto for women, persons with disabilities, Aboriginal and racialized members of the profession? Those same participants noted the insecurity of contract work in new models of practice, the often-unacknowledged labour done by those contract workers in delivering outsourced work, and the likelihood that owners of ABS and new model firms will still be from privileged groups, i.e. wealthy and white. The Initiative was also asked to consider the potential impacts of those same future structures on equality in the profession, which was defined differently than diversity and inclusivity.

9. APPLYING AN ACCESS TO JUSTICE LENS TO THE FUTURE

Lawyers' ability to serve middle- and low-income clients can be impacted by the debt they carry at entry to the profession. Both junior and senior lawyers drew a link between high tuition costs and diminished access to justice. They suggest that student debt diverts graduates away from public interest work or certain practice areas requiring specialization. Participants also told us that law students are directed away from small towns and rural areas; their schools are located in (expensive) urban centers, and rural employment opportunities are not highlighted enough within law school environments.

In envisioning increased access to justice within the practice of law, participants highlighted five possibilities: legal expense insurance, more pro bono lawyering, increased legal literacy through technology, preventative lawyering, and lawyers working in partnership with other service providers. Positively, all of these suggestions have been identified as access to justice innovations by the CBA's Access to Justice Committee, and can be found in more detail in the Committee's August 2013 report, "Reaching Equal Justice: An Invitation to Envision and Act."

Raised by a few young lawyers, but without much detail, was the idea of an insurance model for lower income clients akin to medical or dental plans. Far more participants suggested that pro bono be mandatory for all practicing lawyers akin to post-call education, although designed on a proportional basis so as not to disproportionately burden small practitioners; it was also suggested that students be integrated into private practitioners' pro bono activities. Technology was viewed with great promise for sharing legal information and empowering clients to self-advocate, or to assist them in approaching counsel for limited

scope retainers. Lawyers already involved in pro bono work, as well as legal consultants, endorsed preventative lawyering to create positive impacts for low-income clients before their matters become intractable disputes. Those same participants urged lawyers to adopt an entirely different perspective on resolving clients' legal issues, saying,

> "We need to consider putting people into different dispute resolution systems - we need to stop forcing everyone through the same system."

And in regard to lawyers working more effectively as part of teams, frequent reference was made to a "triage" or medical clinic model, in which paralegals were likened to nurse practitioners. Lawyers' functions could be more narrowly defined as an entire team of support provides solutions, not just legal answers. The sentiment behind these possibilities was most effectively communicated by a senior practitioner as:

> "If access to justice is to have any oomph at all, we will have to come up with ways to share our knowledge at a much cheaper price while we retain the ability to provide what is sometimes called bespoke legal services as required."

As detailed earlier, concern was registered about the impact of non-lawyer ownership in alternative business structures on lawyers' professional responsibilities. But some participants also raised concern about whether public interest law would diminish under new business structures, as queried by a big firm lawyer from Alberta:

> "Is a law firm a business with one goal - maximising profits? Or is a law firm a collection of individuals who work together to earn a living, but also to realize the additional goals of contributing to their communities, creating a more just society, forming public policy, and helping ensure the rights of society's most vulnerable people. Would (an ABS model) not erode the ability of lawyers to work toward other goals?"

10. HOW TO GET THERE, OR WHAT THE INITIATIVE CAN ACHIEVE

Overwhelmingly, participants responded with gratitude for having their views invited by the Futures Initiative. A law student at a law school consultation told us:

> "I appreciate being asked for my opinion on (the profession) I'm just now becoming a part of, so thank you."

Even with topics that were contentious (i.e. Alternative Business Structures), participants believed that the Legal Futures Initiative should be examining them, telling the Initiative that the CBA would be remiss if it failed to look at ABS from a Canadian perspective.

Be both pragmatic and visionary:

Participants asked the Initiative to consider how it defined its own success, and if the Initiative had established any means for measuring its work in the short- and long-term. A participant in the Legal Innovators' Group consultation told the Initiative that

> "(Futures) would be a success if it prompts lawyers to start asking themselves "why" about their service delivery model."

The Legal Futures Initiative was asked to identify how some promising ideas for change could be realized. Participants encouraged the Initiative to identify who will pay the cost of reform, and where burdens and responsibilities should be allocated amongst stakeholders.

Innovation in the profession can and should include diversity and inclusivity. While some participants were less animated about locating diversity in visions of the future, many indicated that innovation can only be strengthened by diverse membership and participation in the profession. The CBA's Women Lawyers' Forum put this opportunity to be proactive in the context of meeting clients' needs:

> "This is … about the profession having the opportunity to lead and be cutting edge in presenting a more diverse composition to the Canadian public."

Change attitudes:

Participants told the Initiative that the CBA, as a national association, is well placed to showcase early adopters of innovation. Innovators and legal entrepreneurs asked the CBA to create an Innovation Award. Showcasing innovations within the legal profession would celebrate successes, but more importantly, would add credibility to new models of legal service delivery, and demonstrate to clients that there is value in working with different service providers.

The profession's ability to change depends, in part, on the legal system's attitude towards innovation and change. Participants indicated that real change will occur when the profession involves courts and administrative bodies in dialogue:

> "The Initiative should not only be about awareness; it should also be about changing the substantive systems in which we work."

Innovation within the profession also means changing the mindset that effective lawyers work in a set number of ways. The Legal Futures Initiative was asked by a mid-career, female lawyer in a large firm in Vancouver to facilitate "an understanding that everyone operates in different ways - and support for those different ways of working."

Exhibit leadership:

A resounding sentiment was that there needs to be a permanent conversation about the future of the profession – from broad and creative imaginings of future business structures, to assessing emerging technologies, to pedagogical reform in the training of lawyers – to encourage lawyers to innovate within their own practice setting. More often than not, participants affirmed that there should be space within the CBA for these issues to be discussed on a more regular basis.

The Initiative made a commitment to starting a conversation about the future of the profession, and as evidenced by the material in this Report, that conversation has been national in scope, broad in topic, and lively in tone. While the consultation provides no single vision of the future, it provides great insight into the experiences of multiple stakeholders, and will be meaningfully incorporated into the work of the Legal Futures Initiative. To all those who contributed, we offer our thanks.

APPENDIX 1: CONSULTATION QUESTIONS

1. How are changing client expectations affecting the practice of law?
2. What can be done to achieve more equitable representation of historically under-represented groups in all practice settings, at all levels?
3. How can legal services be changed to increase access to justice?
4. What do you most need to help you to succeed given the changes the legal profession is facing?
5. How should the profession best engage in the discussion about change to affect the shape of the future in light of the forces at play?
6. Have you tried to package a bundle of legal services to respond to a client's overall needs rather than a distinct legal problem (for example: "Consumer Debt Solutions" rather than "Real Estate" or "Banking")?
7. What management and hiring approaches could lawyers introduce in their practices to improve productivity, efficiency, and revenues?
8. What are the implications of non-lawyers owning or managing a law firm?
9. How could the legal profession benefit from the experience of professional business managers without unduly compromising professional values?
10. How might law firms be structured and managed to provide clients with greater efficiency and cost predictability?
11. Which skills and attributes of lawyers are most valued by clients? What skills do you think clients want their lawyers to have but find lacking?
12. What should be the primary objectives of legal education (for law faculties, bar admission courses, articling, and continuing legal education)?
13. What needs to change with respect to legal education in Canada?
14. What are the advantages and limitations of the articling system in providing an appropriate level of professional training to prospective lawyers? Are there other options?
15. What training is best provided post-call for lawyers?
16. What five professional obligations would clients put in a professional code of conduct for their lawyers?
17. Which obligations in the professional code of conduct frustrate clients most and how could client expectations be met while respecting the objectives behind those rules?

18. Should there be a separation between the establishment of codes of conduct and their adjudication by elected lawyers?

19. Which of the current regulations, if any, inhibit technological and business process innovation?

20. What existing legal services or client groups do you feel will experience high growth, low growth, no growth, or decline in the future?

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