



# Memo

To: Executive Committee  
From: Andrea Hilland  
Date: January 4, 2018  
Subject: Proposed Amendment to Terms of Reference

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## **Purpose**

This memo seeks approval for a minor amendment to the Truth and Reconciliation Advisory Committee's Terms of Reference (attached as Appendix A).

## **Background**

At the October 30, 2015 Benchers meeting, shortly after the release of the Truth and Reconciliation Commission's report and recommendations, the Benchers unanimously agreed to take immediate action to respond to the TRC's calls to action. Following the December 4, 2015 Benchers meeting, a Steering Committee was struck to guide the Law Society of BC's approach to implementing calls to action that pertain to the Law Society of BC's mandate.

The TRC's Recommendations were the focus of the Benchers' Retreat and Conference on June 3, 2016. At the Benchers meeting on June 4, 2016, the Benchers supported the idea of establishing a permanent advisory committee. A resolution to create the Truth and Reconciliation Commission Advisory Committee was passed at the July 8, 2016 Benchers meeting.

The Law Society Truth and Reconciliation Steering Committee developed terms of reference for the permanent advisory committee. The terms of reference for the Truth and Reconciliation Advisory Committee were endorsed at the September 30, 2016 Benchers meeting. Following the September 30, 2016 Benchers meeting, a permanent Truth and Reconciliation Advisory Committee was appointed, and has been operating in accordance with the terms of reference since its inception.

## **Issue**

The Truth and Reconciliation Advisory Committee's terms of reference provide that:

The Committee will have two co-chairs: the president of the Law Society of British Columbia and an Indigenous representative.

However, the current Vice-President of the Law Society has been appointed to serve as the Law Society's representative as co-chair of the Truth and Reconciliation Advisory Committee for the 2018 term. This is a slight divergence from the Committee's terms of reference.

### **Recommendation**

The terms of reference should be amended to state that:

The Committee will have two co-chairs: a member of the Executive Ladder (i.e. the President, First Vice-President or Second Vice-President) of the Law Society of British Columbia and an Indigenous representative.

The proposed amendment maintains the requirement that the Law Society's representative be a member of Executive Ladder and accordingly continues to demonstrate the commitment of the Law Society's top level of governance to the implementation of relevant TRC calls to action. The proposed amendment also facilitates continuity in the leadership of the Truth and Reconciliation Advisory Committee.

## Appendix A

### TRUTH AND RECONCILIATION ADVISORY COMMITTEE TERMS OF REFERENCE

#### I. BACKGROUND

On June 2, 2015, the Truth and Reconciliation Commission (TRC) released its Executive Summary Report (Report),<sup>1</sup> including 94 recommendations (Recommendations)<sup>2</sup> to redress the legacy of residential schools and to offer guidance for reconciliation.

At the October 30, 2015 Benchers meeting, the Benchers unanimously agreed that addressing the challenges arising from the TRC Recommendations is one of the most important and critical issues facing the country and the legal system today. Therefore, they decided to take immediate action to demonstrate their commitment to respond meaningfully to the Recommendations.

The Benchers acknowledged that Recommendations 27 and 28 speak specifically to the legal profession, but recognized that the role of lawyers in reconciliation goes beyond these two Recommendations. A number of the other Recommendations are also intended to alleviate legal issues currently impacting Indigenous communities and, although not directly aimed at lawyers, their implementation largely depends on the engagement of lawyers.

The Law Society's regulatory authority over lawyers in British Columbia provides a significant opportunity to facilitate the implementation of the TRC Recommendations that relate to the Law Society's mandate to uphold and protect the public interest in the administration of justice, by:

- (a) preserving and protecting the rights and freedoms of all persons;
- (b) ensuring the independence, integrity, honour and competence of lawyers;
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission;
- (d) regulating the practice of law; and
- (e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.<sup>3</sup>

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<sup>1</sup> [http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec\\_Summary\\_2015\\_05\\_31\\_web\\_o.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec_Summary_2015_05_31_web_o.pdf).

<sup>2</sup> [http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls\\_to\\_Action\\_English2.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf).

<sup>3</sup> Section 3 of the *Legal Profession Act*.

The Law Society intends to support the realization of TRC's Recommendations that intersect with its mandate.

The TRC's Recommendations were the focus of the Benchers' Retreat and Conference on June 3, 2016. At the Benchers meeting on June 4, 2016, the Benchers supported the idea of a permanent advisory committee. A resolution was passed to create the Truth and Reconciliation Commission Advisory Committee at the July 8, 2016 Benchers meeting.

## **II. PREAMBLE**

The Law Society of British Columbia:

1. Acknowledges the Truth and Reconciliation Commission's finding that, for over a century, the central goal of Canada's Aboriginal policy can best be described as "cultural genocide";
2. Recognizes that lawyers have played, and continue to play an active role in past and present injustices that affect Indigenous people; and
3. Understands that the matters identified in the TRC's report and recommendations are some of the most critical issues facing the legal system today.

Therefore, the Law Society of British Columbia has constituted a Truth and Reconciliation Commission Advisory Committee to guide the Law Society's immediate and meaningful response to the TRC's calls to action.

## **III. MANDATE**

The mandate of the Truth and Reconciliation Advisory Committee is to provide guidance and advice to the Law Society of British Columbia on legal issues affecting Indigenous people in the province, including those highlighted in the Truth and Reconciliation Commission's Report and Recommendations, such as: Indigenous laws, the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*, Aboriginal rights and title (including treaty rights), issues concerning jurisdictional responsibility for Indigenous people, child welfare, overrepresentation of Indigenous people in custody and the need for enhanced restorative justice programs, and the disproportionate victimization of Indigenous women and girls.

## **IV. GOALS**

The goals of the Truth and Reconciliation Advisory Committee are to support the Law Society in its efforts to:

1. Understand access to justice issues from the perspective of Indigenous people in British Columbia;
2. Address the unique needs of Indigenous people within the legal system in BC;
3. Improve cultural competence training for lawyers in British Columbia to:
  - a. Recognize and respond to diverse legal service needs; and
  - b. Understand the relevance and applicability of Indigenous laws within the Canadian legal system;
4. Address the unique needs of Indigenous people within the Law Society's regulatory processes; and
5. Support Indigenous lawyers to help ensure the legal profession reflects the public it serves.

## **V. RESPONSIBILITIES**

The Committee will:

1. Monitor legal issues affecting Indigenous communities in British Columbia;
2. Recommend ways for the Law Society to develop and maintain positive relationships with Indigenous communities;
3. Ensure that Indigenous communities are effectively engaged in the efforts of the Committee to fulfill its mandate;
4. Promote collaboration and coordination across Law Society committees and departments on Indigenous policies, programs, and initiatives;
5. At the request of the Benchers or Executive Committee on matters regarding Indigenous issues pertaining to the legal system in British Columbia:
  - Develop recommendations, policy options, and initiatives;
  - Advise the Benchers on priority planning;
  - Analyze policy implications of Law Society initiatives;
  - Identify strategic collaborative opportunities; and
  - Attend to other matters referred to the Committee.

## VI. PRINCIPLES

The guiding principles for the Committee are as follows:

1. Reconciliation requires a willingness to promote structural and systemic change in the relationship between Indigenous and non-Indigenous peoples;
2. Inclusive engagement with Indigenous communities and the legal profession is required for the Committee to fulfill its mandate;
3. Relationships built upon respect are essential to the Committee's operation;
4. Flexibility is necessary for the Committee to address a broad range of issues, adapt to changing circumstances, and maintain relevance; and
5. Transparent communication is necessary to build and maintain trust in the Committee's endeavors.

## VII. COMPOSITION

The Committee will be comprised of an equal number of Benchers and non-Benchers.

Selection of Committee members will be in accordance with the Law Society's appointments practices, and will reflect:

- a broad range of Indigenous representatives;
- different regions of the province, including urban and rural locations;
- a variety of practice areas; and
- gender balance.

Committee members who are well respected by Indigenous communities will be selected, with the understanding that Committee members will be trusted to identify and convey the perspectives and concerns of Indigenous communities to inform the work of the Committee.

The Indigenous representatives on the Committee will be survivors or intergenerational survivors of the residential school experience.

**PROPOSED AMENDMENT:** The Committee will have two co-chairs: ~~the President~~ a member of the Executive Ladder (i.e. the President, First Vice-President or Second Vice President) of the Law Society of British Columbia and an Indigenous representative.

## **VIII. MEETING PRACTICES**

The Committee shall operate in a manner consistent with the Law Society's governance policies.

The Committee shall meet as required.

At least half of the members of the Committee will constitute a quorum.

The Committee will strive to reach consensus in decision-making. If consensus cannot be attained, then decisions will be made by a majority vote.

## **IX. REPORTING REQUIREMENTS**

The Committee will provide written reports to the Benchers two times annually by providing one mid-year report and one year-end report each year.

The Committee may provide additional updates at regularly scheduled Bencher meetings.

## **X. REVIEW**

These Terms of Reference are subject to review from time to time as deemed appropriate by the Benchers.