

CBA LEGAL
FUTURES
INITIATIVE

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



THE CANADIAN
BAR ASSOCIATION

L'ASSOCIATION DU
BARREAU CANADIEN

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FUTURES: TRANSFORMING THE DELIVERY OF LEGAL SERVICES IN CANADA

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Foreword

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

Executive Summary

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

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

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

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

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

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

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

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

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

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

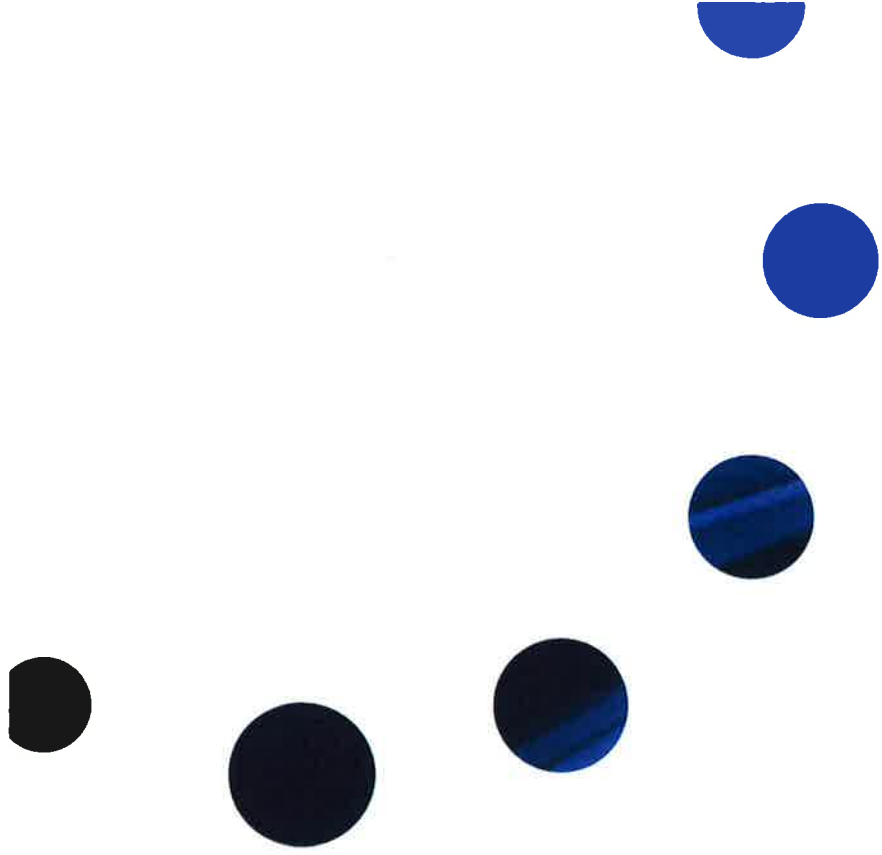
In this dynamic future environment, it will be important for lawyers to obtain lifelong education and training. This will require more flexibility and choice in the way new lawyers are educated and trained, as well as innovative models and courses of study for pre-call training and continuous professional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

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

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

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

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



7.3 LAW SCHOOL ENTRY AND EXIT DATA

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

Without this data it is difficult to determine empirically

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

Recommendation #14 – Law School Entry and Exit Data

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

7.4 NEW MODELS FOR LEGAL EDUCATION

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

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

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

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

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

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

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

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

Recommendation #15 – New Models for Legal Education

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

INNOVATION IN ACTION: Legal Training

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

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

INNOVATION IN ACTION: Multidisciplinary Education

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