ADDRESSING DISCRIMINATORY BARRIERS FACING ABORIGINAL LAW STUDENTS AND LAWYERS

April, 2000

The Law Society of British Columbia

Aboriginal Law Graduates Working Group

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FOREWORD

Numerous commissions of inquiry have repeatedly concluded that the Canadian legal system has not served Aboriginal peoples well. The reasons for this are diverse, and the range of possible solutions are complex and controversial. For many Aboriginals, the legal system is inherently foreign to their views and values, a problem that is exacerbated by the fact that the legal system has been traditionally administered by non-Aboriginals. Certainly the legal profession, as one part of the legal system, has not historically been a welcoming place for Aboriginals.

For that reason alone, publication of this report is a significant milestone in the Law Society's commitment to promote greater equality in the legal profession. For the first time, the Law Society, through its Equity and Diversity Committee, has systematically sought out the views of Aboriginal lawyers and law students concerning the problems and discriminatory barriers that they face in accessing and working in the legal profession. Armed with that information, the Committee formed an Aboriginal Law Graduates Working Group to analyze those problems and barriers and to recommend actions and policies to overcome them. This report reflects the Working Group's analysis, deliberations and recommendations. The onus now lies with the Benchers and the legal profession to take the next step, through discussion, dialogue and action, to ensure that the legal profession is a just, equitable and welcoming place for Aboriginal law students and lawyers.

It has been a privilege and an honour to act as Chair of the Aboriginal Law Graduates Working Group. I want to sincerely thank the many Aboriginal lawyers and law students who candidly shared their views with us and to especially thank the members of the Working Group and the Advisory Group for their efforts in bringing this report to fruition.

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I. INTRODUCTION

Background to this report

This report constitutes the third and final stage of a research project undertaken by the Law Society of British Columbia to identify and address discriminatory barriers faced by Aboriginal law students and lawyers. The first stage of the project was a survey of Aboriginal law graduates conducted in late 1994 and early 1995. The data collected from that survey was published in *Report on the Survey of Aboriginal Law Graduates in British Columbia* (the *Survey Report*).[1] The second stage involved five focus group meetings of Aboriginal lawyers and law students held in different parts of the province in the Fall of 1996. The comments and suggestions arising out of the focus group meetings were published in May, 1998 in a report entitled *Summary of the Discussion of the Aboriginal Law Graduates Focus Groups* (the *Focus Groups Report*).[2] The *Survey Report* and the *Focus Groups Report* indicate that Aboriginal law students and lawyers have faced and continue to face a variety of discriminatory barriers at all levels of the legal profession. In December, 1998, the Equity and Diversity Committee of the Law Society established the Aboriginal Law Graduates Working Group to analyze the results and suggestions in the two reports and to recommend action and policies that the Law Society might adopt or endorse to overcome barriers facing Aboriginal lawyers and law students.

Terminology

The word "Aboriginal" is used in this report rather than "First Nations," "Indigenous," "Native" or "Indian." We recognize that these terms can carry different political and social meanings for different people. For consistency with the two previous reports, we continue to use the word "Aboriginal" unless the context demands otherwise. When we use the word "Aboriginal," we intend to include status and non-status Indians, Métis and Inuit peoples.

Working Group

The Working Group was composed of three members of the Law Society's Equity and Diversity Committee and six Aboriginal lawyers and law students. The Working Group members were selected in an effort to represent varying experiences and perspectives on the current realities of legal education and law practice for Aboriginal persons. The members of the Working Group, and their various affiliations, are set out below:

> *Hugh Braker, Q.C.* is an Aboriginal lawyer practising in Port Alberni, a member of the Law Society's Equity and Diversity Committee and a member of the Subcommittee that prepared the *Survey Report* and *Focus Groups Report*.
>
> *Terry Brown* is an Aboriginal lawyer who worked (until March, 2000) at the L'ax Ghels Community Centre, which is a Legal Services Society Native Community Law Office. Terry is also a member of the Law Society's Equity and Diversity Committee.
>
> *Gary Campo* is a third-year Aboriginal law student at the University of Victoria.

1. Law Society of British Columbia, 1996.
2. Law Society of British Columbia, 1998.

Gerry Ferguson is a member of the Law Society's Equity and Diversity Committee, a member of the Subcommittee that prepared the *Survey Report* and *Focus Groups Report*, and a Professor of Law at the University of Victoria.

Linda Locke is an Aboriginal lawyer at the Upper Skeena Counselling & Legal Assistance Society, which is a Legal Services Society Native Community Law Office in Hazelton. Linda is also a representative on the Aboriginal Justice Centre.

Bonnie Leonard is an Aboriginal lawyer practising at Mair Jensen Blair in Kamloops. Bonnie was President of the Native Law Students Association at the University of Victoria.

Candice Metallic is an Aboriginal lawyer who articled and practised for two years at Blake Cassels & Graydon until the Fall of 1999. Candice is a member of the Executive of the Indigenous Bar Association.

Linda Thomas is a third-year Aboriginal law student at the University of British Columbia.

Kory Wilson-Goertzen is a recent Aboriginal law graduate from the University of British Columbia and is currently an instructor at the Institute of Indigenous Government in Vancouver.

Advisory Group

In order to assist the Working Group in collecting information, evaluating suggestions and formulating recommendations, representatives of relevant organizations and institutions were consulted about certain issues the Working Group was considering, and met with the Working Group several times. They are listed as the "Advisory Group." However, this report was prepared by the Working Group and does not necessarily represent the views of members of the Advisory Group. Although the Advisory Group members are not responsible for the comments, suggestions and recommendations in this report, the Working Group is very grateful to them for their very valuable contributions to our deliberations. The Advisory Group consisted of:

William Duncan, Director of the Professional Legal Training Course until November, 1999;

Jack Huberman, *Q.C.*, Executive Director of the Continuing Legal Education Society of British Columbia;

June McCue, an Aboriginal Law Professor and Director of the First Nations Program at the Faculty of Law, UBC;

Lynn Smith, a Justice of the Supreme Court of British Columbia and a member of the Education Committee of that Court; and

Daniel Steinberg, a Judge of the Provincial Court of British Columbia and a member of the Equality Committee of that Court.

The Survey Report

The *Survey Report* is a summary of the data obtained from a survey that was mailed to the 81 Aboriginal lawyers known to be residing in British Columbia. The objective of the survey was to obtain information from Aboriginal lawyers about their personal experiences and perceptions of

any cultural or discriminatory barriers they experienced in law school, articles and practice. The survey was not sent to law students. Half of the respondents completed the survey (41 out of 81). Of these 41 respondents, 93% had been called to the B.C. bar, with the majority having been called within the past 10 years; 71% of respondents were practising; 29% were no longer practising or had never practised; half were women; half lived in Vancouver or Victoria; half had been raised off reserve; 83% spoke English as their first language and only 10% were fluent in an Aboriginal language. The relatively small sample size and the 50% response rate must be kept in mind when assessing the survey results.

The Focus Groups Report

The *Focus Groups Report* records the views of the 37 Aboriginal lawyers and law students who attended focus group meetings in Victoria, Vancouver, Kelowna, Prince George and Kamloops. Retired Judge Alfred Scow, British Columbia's first Aboriginal lawyer and judge, acted as facilitator at all five focus groups. Of the 37 participants, 12 were law students and the remaining 25 were lawyers. It is estimated that the focus group participants represented approximately 25% of all Aboriginal law students and lawyers in the province.

The survey of Aboriginal lawyers was designed to collect information on the nature and extent of discriminatory barriers that Aboriginal lawyers and law students face. Apart from one question, the survey did not request the Aboriginal respondents to provide solutions or directions on how to eliminate any such discriminatory barriers. However the focus group sessions were specifically designed, not only to further explore the nature and extent of discriminatory barriers, but also to elicit possible strategies or solutions for eliminating such barriers. The focus group participants shared their experiences in a most candid and personal way. Many of them also made suggestions for improvements. The experiences and suggestions for reform made by the participants were directed at various institutions, including pre-law programs, law schools, articling, PLTC, CLE and the judiciary. The focus groups were a very effective method for eliciting suggestions for possible improvements. However, it must also be observed that the focus group methodology had two significant limitations: (1) suggestions for reform were generally not fully discussed, debated and voted upon, and therefore do not necessarily reflect the opinion of the majority of participants; (2) none of the institutions being commented upon were present and therefore had no opportunity to respond to the participants' concerns and suggestions for reform.

Working Group's methodology

The Working Group (and the Advisory Group) were specifically set up to assess and evaluate the various suggestions for reform that were made by the Aboriginal participants in the survey and focus groups. The Working Group met on seven occasions to review the suggestions from the *Survey Report* and *Focus Groups Report* and to prepare our own recommendations. During these meetings, the Working Group also received information and feedback from the Advisory Group and other representatives from various legal institutions. While the suggestions in the *Survey Report* and *Focus Groups Report* provided the primary framework for our discussions, the Working Group quickly passed over suggestions that were based on outdated information and also pursued some issues that were not dealt with in the two previous reports.

II. ACCESS TO LAW SCHOOL

Aboriginal persons have been, and continue to be, under-represented in the legal profession. In 1997 there were approximately 500 Aboriginal lawyers in Canada. If the Aboriginal population were proportionately represented in the profession, there would be approximately 1,500 Aboriginal lawyers in Canada.[3] In British Columbia as of December 31, 1999, there were 8,688 practising lawyers and 1,159 non-practising lawyers. Although there are no exact figures on the number of practising and non-practising Aboriginal lawyers in British Columbia, the Working Group estimates the total number is between 100 and 150. Assuming that Aboriginal persons in British Columbia constitute five to eight per cent of the population, there should be 500 to 800 Aboriginal lawyers in the province, rather than the 100 to 150 that there are. Because successful completion of a law degree is a condition for becoming a lawyer, ensuring Aboriginal access to law school is a critical first step in increasing the number of Aboriginal lawyers. In this part of our report, we briefly examine the existence and adequacy of opportunities and programs for Aboriginal persons to enter and successfully complete law school. In particular, we look at two types of programs that are specifically designed to increase the number of Aboriginal students in law schools: (1) pre-law preparation programs; and (2) discretionary law school admission categories.

A recent report of the Canadian Bar Association's Working Group on Racial Equality in the Legal Profession acknowledged that systemic racism is, in general, widespread within the profession.[4] The CBA Working Group drew special attention to the unique discrimination faced by Aboriginals and noted the historical relationship of colonialism that lies at the heart of that discrimination.[5] The problem of under-representation of Aboriginal persons in the legal profession is part of a more widespread Canadian problem, namely, the significant under-representation of Aboriginal persons at all levels of higher education. Statistics Canada has recently released the following data[6] on the distribution of Aboriginal and non-Aboriginal populations aged 20 to 29, by highest level of education attained as of 1996:

Level of education obtained	Aboriginal	Non-Aboriginal
Less than high school	45%	17%
High school diploma	32%	36%
Community college/trade-vocational graduates	20%	28%
University graduates	4%	19%

3. These statistics are cited in the University of Saskatchewan Native Law Centre's brochure for the Program of Legal Studies for Native People.

4. *Racial Equality in the Canadian Legal Profession*, presented to the Council of the Canadian Bar Association, February, 1999 by the Working Group on Racial Equality in the Legal Profession. This volume contains two reports. The first — *The Challenge of Racial Equality: Putting Principles into Practice* — was authored by the Working Group at large and will hereafter be referred to as the *CBA Racial Equality Report*. The second — *Virtual Justice: Systemic Racism and the Legal Profession* — is the report of Working Group member Joanne St. Lewis and will hereafter be referred to as the *St. Lewis Racial Equality Report*. The reference cited above is from the *CBA Racial Equality Report* at 2.

5. *CBA Racial Equality Report* at 27.

6. This data is reported in the *Globe & Mail*, Tuesday, February 22, 2000, at A3.

This data indicates that significant society-wide initiatives need to be taken to improve the overall level of education attained by Aboriginal persons.

A. Laurentian University's Aboriginal Legal Education Certificate Program

In 1992-93 Laurentian University undertook a consultation program with Aboriginal peoples in northeastern Ontario. The consultation process was designed to assess the need for a Native pre-law program in Ontario. The consultation group concluded that there were a number of barriers that discouraged Native students from obtaining a law degree or entering other justice-related professions. The consultation group found that (1) attending university can be a difficult and isolating experience for Native people, and (2) university curricula in general, and law school curricula in particular, are based in large part on a value system foreign to Aboriginal values and beliefs. With that in mind, the consultation group recommended that a pre-law program be established that would develop the academic skills necessary for law school within the context of a culturally relevant curriculum.

In response to the above suggestion, the Department of Native Studies at the University of Sudbury and Laurentian University have created the Aboriginal Legal Education Certificate program. The program began in September, 1997. Students entering the program must have the normal requirements for admission to a B.A. program at Laurentian University. The program is one year in length. Students in the program take seven law-related courses.[7] The program has the following objectives:

1. to develop the academic skills of Aboriginal students that will better prepare them for the unique nature of legal studies in law school;

2. to provide a program of instruction for students on laws and processes affecting Aboriginal peoples to facilitate an understanding of the relationship between Aboriginal peoples and Canadian legal and political systems.[8]

The Director of the Aboriginal Legal Education Certificate Program would like to see successful completion of the program as a direct route for admission into Canadian law schools. We have been advised by the two law schools in British Columbia that they generally consider essential a minimum of three years of undergraduate preparation to acquire the academic skills necessary to succeed in law school. Although it is too early to say for sure, the Admissions Committees at the two B.C. law schools may well decide, based on prior experience, that one year of university level training, even if specifically designed for students intending to enter law school, is not sufficient preparation to allow a student to successfully compete in law school.

Whether or not the Aboriginal Legal Education Certificate Program operates as a direct route into law school, it certainly is the type of program that can encourage Native peoples to enrol in university and, in that context, graduates of the program may well proceed to second and third-year university level studies, before ultimately applying for admission to law school. In this way, the program will have encouraged more Native people to enter law school, and for those

7. The Aboriginal Legal Education Certificate Program brochure lists the seven courses as follows: (1) introduction to legal studies, (2) introduction to private law, (3) introduction to public law, (4) legal research, writing and Aboriginal law, (5) Canadian law, politics and Aboriginal people, (6) Aboriginal people and the criminal justice system, and (7) social policy and family law for Native people.

8. See program brochure.

ultimately not entering law school, the program will have provided them with valuable training and background information on legal and justice-related issues.

B. University Of Saskatchewan's Program Of Legal Studies For Native People

The Program of Legal Studies for Native People has been offered through the Native Law Centre at the University of Saskatchewan since 1973. When the Saskatchewan program was established in 1973, there were only four lawyers and five law students of Aboriginal ancestry in Canada. For its first 15 years, the Saskatchewan program admitted approximately 30 students each year. For the next seven years (1988-1994), enrolment rose to an average of 60 students per year. For the past five years (1995-1999), enrolment has fallen to approximately 40 students each year.[9] By 1997, there were almost 400 alumni of the Saskatchewan program who had successfully graduated from law school and another 125 alumni who were currently enrolled in law school. Since 1985, approximately the same number of men and women have enrolled in the program.

The main purposes of the Saskatchewan program are (1) to increase the number of Aboriginal students admitted into law schools across Canada, and (2) to help prepare Aboriginal students academically and culturally for the rigours of law school.

(i) Admission

The Saskatchewan program is open to all qualified Canadian students of Aboriginal ancestry (status or non-status Indian, Métis and Inuit). To qualify, Aboriginal applicants must first apply to a Canadian law school and receive an offer of admission from a law school. The law school's offer of admission may be unconditional. This means that the student is not required to attend the Saskatchewan program in order to be admitted to the law school, but may do so if he or she wishes. On the other hand, some Aboriginal students will receive a conditional offer of admission to a law school. This means that the law school will admit the Aboriginal applicant only if the applicant successfully completes the Saskatchewan program.

Law schools will only admit a student (whether Aboriginal or non-Aboriginal) in circumstances where the law school believes that the student has a reasonable prospect of passing. In an effort to ameliorate past and continuing educational and socio-economic inequities that some persons experience, law schools have set aside a number of discretionary admission places in law school for such applicants. In the case of some Aboriginal students who apply for admission under a law school's discretionary category, their academic records leave a reasonable doubt whether they currently possess sufficient academic background and skills to successfully pass law school. In such cases, the law school may extend to those applicants an offer of admission that is conditional on the applicants successfully completing the Saskatchewan program. In this way, the Saskatchewan program increases Aboriginal access to law schools by enabling law schools to increase the number of offers to Aboriginal students in the higher risk category because law schools can rely on the Saskatchewan program to conduct an extensive and comprehensive evaluation of an Aboriginal student's prospects for passing law school.

One of the Focus Group suggestions was that the Saskatchewan program should place more emphasis on admitting Aboriginal students to its program who have demonstrated ties to the

9. The Director of the Saskatchewan program believes that this drop in enrolment is in large measure attributable to the availability of funding for students to attend the program.

Aboriginal community. [10] The implication in that suggestion is that the Saskatchewan program is admitting too many Aboriginal students, particularly those who grew up off-reserve, who have no ties to, or commitment to improving, Aboriginal communities. The Working Group strongly disagrees with that suggestion.[11] First, available evidence suggests just the opposite. A surprisingly high percentage of Aboriginal lawyers in the *Survey Report* (83%) indicated that they entered law school "to serve my community." Second, the suggestion is based on a misconception of the Saskatchewan program's admission process. The Saskatchewan program admits Aboriginal students who already have a conditional or unconditional offer of admission from a Canadian law school. Thus it is the various law schools, not the Saskatchewan program, that effectively control Aboriginal admissions. Finally, in British Columbia, both law faculties consider an Aboriginal applicant's involvement and interest in Aboriginal communities and Aboriginal issues as an important factor in making their discretionary admissions decisions.

(ii) Program description

The Saskatchewan program, which is eight weeks long (late May to late July), is taught by lawyers and law professors from across Canada. Since 1994, the subject matter taught in the program is property law, and it is divided into three components: personal property, real property and Aboriginal property. The property course is equivalent to first-year property courses taught at Canadian law schools. Each week, students receive 15 hours of instruction in property law and also attend tutorials, as well as writing and other skills seminars. In addition to completing six written assignments, students are required to write mid-term practice exams and final exams. The program is designed to teach students the skills necessary to succeed in law school using property law as the substantive law vehicle. The program's teaching group also includes Elders who provide guidance, counselling, instruction and cultural components to the program. At the end of the program, the teaching group assesses each student's performance based upon writing assignments, exams and student participation during the program. A student's final grade and an overall assessment is sent to each law school where the student has received a conditional or unconditional offer of admission.

(iii) Course credit for the program

Approximately two-thirds of Canadian law schools formally recognize the property course offered by the Saskatchewan program as equivalent to the first-year property course at their law schools.[12] Accordingly, those law schools grant course credit for first-year property to students

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10. The following suggestion appears in the *Focus Groups Report* at 8:

> Suggestion 1.02 – That the University of Saskatchewan's Program of Legal Studies for Native People re-evaluate its admission policy in consideration of the people the program is meant to help, and to place more emphasis on ties and commitment to the Aboriginal community.

11. The Director of the Saskatchewan program has also rejected this suggestion in the following words: "it would be inappropriate to follow the suggestions of some and restrict admission to students who 'come from reserves.' The Program of Legal Studies for Native People is intended to serve all Aboriginal students, not just those from reserves. Students who are Métis and Inuit will, by definition, not come from reserves, but they are Aboriginal students who must be served by the program. We also believe that it is inappropriate to exclude 'students who grew up off-reserve' because they do not control where they grew up but depend for this on the dictates of the government (placing children in care or in adoptive families) or their parents. Our Elders encourage the participation of all Aboriginal people in the program, regardless of their origins. Their wisdom in this is indicated by the fact that many students who have grown up outside of their communities are the most committed to working for Aboriginal peoples in spite of their background."

12. The Law Faculty at UVic gives students who have successfully completed the Saskatchewan program credit for the first-year property course. On the other hand, the Law Faculty at UBC does not. Other law schools that give credit

who have successfully completed the Saskatchewan program. The reduction of one course from an Aboriginal student's first-year course load can make a real difference to that student's ability to succeed in first-year law. The first-year law program is acknowledged by all students to be very heavy. A significant number of Aboriginal students, as with other students admitted in the discretionary category, have difficulty adjusting to the workload and skills demands of the first-year program. In addition, many Aboriginal students have child care responsibilities as well as responsibilities to extended family and community that place significant pressures on their time. These time pressures are also exacerbated by cultural differences that Aboriginal students must cope with in law school. The reduction of one course in their course load provides Aboriginal students with additional time to spend on other courses, thereby improving their chances to succeed in first year. Between 1973 and 1984, approximately 60% of the Saskatchewan program graduates successfully completed a law degree. After the first introduction of skills components in the program in 1985, the success rate rose to approximately 79%. With the introduction of the single course format and the complementary skills components in 1994, the number of Saskatchewan program graduates who successfully complete their law degree is now 85% or higher.

(iv) Funding for the Saskatchewan program

The direct costs of the instructional components of the Saskatchewan program are covered by student tuition fees ($2,150 per student). The costs of Native Law Centre staff to administer the program, to provide student counselling, recruit and so on are not included in this amount. Those amounts are covered by the operating budget of the Native Law Centre, which is supported by funding from the University of Saskatchewan and various law foundations (British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Northwest Territories). These grants help to support the Program of Legal Studies for Native People and *all* other Native Law Centre programs, including research, publications and library.

From a student's point of view, the major costs of attending the program are tuition ($2150), room and board (perhaps $500 a month for a single student), the cost of travelling to and from Saskatchewan and the loss of income from a summer job while attending the program. Available funding for individual students has been significantly reduced in recent years. The Department of Indian and Northern Affairs (DINA) provides grants for post-secondary education to First Nations Bands and Inuit communities. Status Indian and Inuit students can apply to their Band or community for funding to attend the Saskatchewan program and to attend law school. However, DINA has placed a cap on the total amount of post-secondary educational grants. As the number of Aboriginal students attending post-secondary programs rises, the size of the grants to each student has necessarily decreased. In addition, some Bands give priority to undergraduate university degrees, leaving no money for educational programs such as the Saskatchewan program.

Non-status Indians and Métis do not qualify at all for DINA funding. To remedy this inequity, the federal Department of Justice in 1973 created a Grants and Scholarship Program for these students to assist them to attend both the Saskatchewan program and law school. Between 1985 and 1994, an average of 15 to 16 non-status Indians and Métis were funded and attended the program each year. In 1995 the Department of Justice significantly reduced its grants and scholarship budget. That year, funding for qualified students already in law school was

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for the property course include Alberta, Calgary, Saskatchewan, Manitoba, Osgoode Hall, Ottawa, Windsor, Queen's and Dalhousie. McGill does not give credit because its common law property course is not taught until the second year of their program.

continued, but there were no funds for any new students entering the program. As a result, the number of non-status Indians and Métis attending the Saskatchewan program has fallen by half. In 1998, the Department of Justice increased its bursary funds, but still at a level well below the pre-1995 funding level. Rather than funding 15 to 20 non-status Indians and Métis as in the past, the Department of Justice bursary program is now sufficient to support, on average, three to five students each year to attend the Saskatchewan program.

(v) Opinions about the program

Although a few participants in the focus groups were critical of the Saskatchewan program,[13] the vast majority of the focus group participants spoke very favourably of it. A majority of the Working Group members also attended the Saskatchewan program and viewed it as very beneficial. The Working Group members who attended the program were generally of the opinion that the program is very helpful in preparing Aboriginal law students both academically and culturally for law school. In addition, they felt that the program provided an important network for Aboriginal students across the country. One Working Group member who did not attend the Saskatchewan program primarily for financial reasons indicated that she wished she had attended because she felt "behind" those Aboriginal students in her first-year class who had attended the program.

The major concerns expressed about the Saskatchewan program were largely of a logistical nature: its length, the expense and the unavoidable relocation. We will return to these matters.

(vi) Attendance at the Saskatchewan program by UVic and UBC students

The Faculty of Law at the University of British Columbia has traditionally made extensive use of the Saskatchewan program. Indeed, 25% of all Aboriginal lawyers in Canada who attended the Saskatchewan program have received their law degree from UBC. Approximately five years ago, UBC's policy on the use of the Saskatchewan program shifted. It is now Faculty policy that applicants to UBC do not have to attend the Saskatchewan program. No offers of admission are made conditional on a student attending the Saskatchewan program. However, the Director of the Aboriginal Program at UBC may recommend to a particular student that he or she would benefit from attendance. In 1997 only six of the approximately 45 Aboriginal law students enrolled in UBC that year had attended the Saskatchewan program. UBC's policy shift arose out of doubts that some faculty members and some Aboriginal students had as to whether a Saskatchewan-like program is what is really needed to assist incoming Aboriginal law students to succeed in law school. Apart from whether the program was necessary, others were concerned that the Saskatchewan program was too long (eight weeks), too expensive or too inconvenient (i.e. students having to relocate to Saskatchewan).

The Faculty of Law at the University of Victoria continues to rely on the Saskatchewan program to a greater extent. In 1997 and 1998, a total of 13 Aboriginal students were admitted to the University of Victoria under its special access program. Three of these students were given conditional offers (i.e. they were required to take the program). The remaining 10 students were given unconditional offers and were, therefore, not required to take the program. Nonetheless,

13. It was not clear from the *Focus Groups Report* exactly how many focus group participants expressed dissatisfaction, whether some of the critics were persons who had heard rumours about the program but chose not to attend it for various reasons, and whether dissatisfaction with the program arose principally from dissatisfaction with the handling of one serious incident involving a student several years ago.

the law school strongly advises these students that the program is very beneficial[14] and that if they can obtain funding they should take advantage of this opportunity. As a result, five of the 10 students voluntarily entered the program.

(vii) Concerns, options and alternatives

The Working Group is of the opinion that the Saskatchewan program provides valuable and unique assistance in a number of ways to Aboriginal persons who want to become lawyers:

1. it provides an effective screening and evaluation function that enables law schools to admit Aboriginal students who might not otherwise be admitted;

2. it provides students with extensive instruction and practice in the academic and legal skills necessary for successful completion of law school;

3. it helps to prepare students for the cultural shocks of law school and also provides the opportunity to create a support network among Aboriginal students; and

4. it provides an opportunity for its graduates to obtain credit for the first-year property course at most law schools; this in turn gives those students much needed, additional study time for their other first-year law courses.

It appears from the *Focus Groups Report* and our own deliberations that the major concerns that some people have with the Saskatchewan program are its length, the expenses involved in attending the program and the difficulties involved in having to relocate to Saskatchewan. Our Working Group considered each of these concerns and possible options to deal with them.

(a) Relocation

Having to move to Saskatoon for eight weeks to attend the program involves certain expenses that vary depending on each student's circumstances (e.g., travel expenses there and back and perhaps additional accommodation expenses if a student has been living for free at home or if that student has to continue to maintain a home residence for spouse or children, etc.). Although a matter for concern, these expenses can be managed through increased bursary funding.

The more difficult problem with relocating occurs for students who have family commitments that make it very difficult to move to Saskatoon for eight weeks. These family commitments may involve spouses, children, sick relatives, etc. Relocating with one's dependents may not be feasible economically or practically, and leaving one's dependents to attend the program alone may be equally difficult or impossible. The Working Group found no easy solution to these problems.

We considered Suggestion 1.01 in the *Focus Groups Report* that a program similar to the Saskatchewan program "be established in British Columbia in order to eliminate some of the hardship that is incurred through students having to relocate to Saskatchewan to take the program." We do not think that suggestion is feasible for a number of reasons. First, in regard to relocation problems, it would solve the concerns of some students, but not all students. For example, if such a program was established at UBC, it would solve relocation problems for

14. The Working Group received anecdotal evidence from one of its members about the beneficial effects of the Saskatchewan program. That member stated that in his first-year law class, there were seven Aboriginal students. Five of those students attended the Saskatchewan program, and four of them passed first year. The two who did not attend the Saskatchewan program did not pass first year.

students from Greater Vancouver, but not for students from all other areas of the province. Second, it seems very unlikely that the suggestion to create a Saskatchewan-like program in B.C. is financially feasible: (1) it is far from clear whether the two law schools in B.C. would generate enough students to financially sustain such a program on a yearly basis; (2) the two law schools have no existing funds to launch such a program; and (3) potential funders would likely be reluctant to fund a similar program when the existing Saskatchewan program has a proven, 25-year track record.

As another alternative to the relocation problem, we considered the option of distance education. Could the Saskatchewan program be delivered, in whole or in part, to some or to all students, at home through distance education techniques? We recognize that the benefits of the existing program's in-person lectures and class discussions, tutorials, support groups and on-site assistance would be difficult to replicate through a distance education program. On the other hand, a distance education option would provide valuable access to the program for those who cannot attend on-site. Such distance education might be spread out over a longer timeframe. While the challenges of providing an effective distance education program would be great, we would nonetheless encourage the Saskatchewan Native Law Centre, as part of its program review, to at least investigate, evaluate and consider the pedagogical and financial feasibility of a full or partial distance education option for the Saskatchewan program. The Native Law Centre might consider applying for a one-time grant from the Department of Justice, the DINA, and other funders to hire a distance education expert to conduct a feasibility study for the Centre.

(b) Length

It has been suggested by some that the eight-week Saskatchewan program is too long. We do not agree with that suggestion. The eight-week program provides a realistic timeframe for students to acquire, practise and upgrade the analytic, reading and writing skills required for law school. Equally important, the eight-week course allows students to complete the first-year property course, thereby reducing their course load by one course and providing them with additional study time for their other first-year courses. Having said that, we appreciate that an eight-week preparatory course involves a very significant time commitment from those who do attend and that it is not feasible either for financial or family reasons for some students to attend.

We considered the creation of shorter preparatory courses as an alternative for those students who are unable to attend the eight-week Saskatchewan program. We were advised that UBC's First Nations Law Committee is beginning to discuss the possibility of providing an optional one to two-week skills-based workshop for incoming students just prior to the beginning of law school. Such a program would focus on study skills, time management, case briefing, exam preparation and exam writing, law school environment, etc. A two-week program would not accomplish all of the objectives of the eight-week Saskatchewan program (most notably, there would be no course credit for property law), but such a program would provide very valuable preparatory instruction for those who cannot attend the Saskatchewan program (and would probably benefit even those who did attend the Saskatchewan program).

We also observe that, in considering the feasibility of a two-week preparatory course, it would be beneficial if the UBC Committee were to consider the possibilities of not only offering the preparatory course on site, but also through distance education. We recognize that there may be little need or justification for a distance education option for a one to two-week program that is offered immediately before the beginning of law school, but we do think the idea should at least be investigated before it is rejected.

It is also worth observing that Dalhousie Law School has developed a pre-law program for students admitted under their Indigenous Black and Mi'kmaq Programme. Those students attend a four-week pre-law introductory program (during the month of May), and in recognition of their need for additional study time, they may take one less course in the first year and that course (Criminal Law) is then taken as an intensive course the following May after completion of their first-year examinations. Mi'kmaq applicants also have the option of substituting the Saskatchewan program in lieu of Dalhousie's program. Successful completion of one of these two programs is a condition of admission into first-year law.

(c) Funding

As we previously observed, available funding for students to attend the Saskatchewan program has been reduced in recent years. Some students who would like to attend cannot and do not because of financial constraints. We believe the Saskatchewan program has been and continues to be a very important vehicle for increasing access to law school and success in law school for Aboriginal persons. We recommend that the Law Society, as part of its equity policy and mandate, develop a strategy to ensure that all Aboriginal students who have received an offer of admission to a B.C. law school and who wish to attend the Saskatchewan program are provided with adequate financial means to allow them to do so. This strategy could be developed by staff and an advisory committee or working group appointed for that purpose. We have not considered the specific content of such a strategy but it may include action plans for (1) lobbying the federal government (e.g., DINA and the Department of Justice) to increase funding; (2) lobbying the provincial government (e.g., the Ministry of Advanced Education, the Ministry of Aboriginal Affairs and the Ministry of the Attorney General) to establish funding programs; (3) the creation of a Law Society bursary fund; (4) the creation of law firm, Law Foundation and private sector bursary funds; and (5) working with Aboriginal organizations in pursuit of the strategy objectives.

While the above suggestions are specifically directed at making the Saskatchewan program financially accessible to all Aboriginal students who wish to attend, we also recommend that the strategy be expanded to support other appropriate pre-law Aboriginal programs that may be developed in the future, such as a one to two-week preparation course.

RECOMMENDATIONS

1. **That the Saskatchewan Native Law Centre consider, perhaps through a specially funded study, the pedagogical and financial feasibility of offering its Program of Legal Studies for Native People, in whole or in part, on a distance education basis as an option for those who cannot attend the on-site program.**

2. **That the UBC Law Faculty consider granting course credit for first-year property to students who successfully complete the Saskatchewan program.**

3. **That the Law Society, as part of its equity mandate, develop a strategy (through staff and an ad hoc committee appointed for that purpose) to ensure that all Aboriginal students who have received an offer of admission to a B.C. law school and who wish to attend the Saskatchewan program are provided with adequate financial means to allow them to do so. Such a strategy may include action plans for creation of a Law Society bursary fund, for lobbying the federal and provincial government, the Law Foundation, law firms and the private sector to create or contribute to similar bursary funds, and an action plan for working with Aboriginal organizations to pursue these objectives.**

4. **That the Law Society's funding strategy be extended to and support any other appropriate pre-law Aboriginal program that may be developed in the future, such as a one or two-week preparatory course immediately prior to first-year law school.**

5. **That the Law Society express its support for Recommendation 24 of the *CBA Racial Equality Report* that suggests that the Canadian Council of Law Deans establish an Aboriginal advisory committee with representatives from the Indigenous Bar Association, the CBA Aboriginal Law Section, the Native Law Centre and the Aboriginal law students associations to do the following:**

   a) **conduct on-going evaluation of pre-law programs for Aboriginal students;**

   b) **promote the recognition of pre-law programs among law faculties; and**

   c) **expand pre-law programs to other areas of the country so that they are more readily accessible to Aboriginal students.**[15]

C. Law school admissions for Aboriginal persons

(i) Aboriginal admissions category

Approximately 80% of law students are admitted to law school under the general admissions category. In the general admissions category, admission is based either primarily or exclusively on grade point average and Law School Admissions Test (LSAT) scores. For the past 25 years or more, law schools have recognized that sole reliance on these academic criteria often leads to inequities in the admissions system. A person's ability to compete for the highest grade point average may be adversely affected by family responsibilities, health problems, physical disability, racial and ethnic background, and social and economic disadvantage. The creation of discretionary admissions categories is a recognition of this fact and an affirmation of the fact that non-academic achievements and experiences are also relevant criteria for admission into law school. Students admitted in the discretionary category must, however, demonstrate sufficient academic skills and background to succeed in law school. Both UBC and UVic law schools have a discretionary admissions category for Aboriginal students, the aim of which is to increase representation of Aboriginal people in the legal profession.

Both UBC and UVic set aside approximately 20% of their admissions places for the discretionary category. UBC sets aside 40 of its 196 admission positions while UVic sets aside at least 20 of its 105 admission places. UBC designates half (20 places) of its discretionary admission category for First Nations candidates, while UVic designates a minimum of one-quarter (five) of its discretionary admission places for Aboriginal applicants. In addition, Aboriginal applicants at both law schools are admitted under the regular category when their grade point averages and LSAT scores qualify them for regular admission.[16]

(ii) Data on the use of the Aboriginal admissions category

Table 1 shows the number of Aboriginal applications, offers and admissions at both law faculties for the past eight years.

15. *CBA Racial Equality Report* at 29.

16. It is worth noting that in 1998-99 UBC also had three Aboriginal students in their LL.M. program and one Aboriginal student in their Ph.D. program:

Table 1
Aboriginal applications, offers and admissions

	Number of applications		Number of offers		Number enrolled	
	UVIC	UBC	UVIC	UBC	UVIC	UBC
September, 1999	41	51	11	27	3 + 2[a]	17
September, 1998	36	34	12	19	5	10 + 1[b]
September, 1997	35	46	17	27	7	18 + 1[c]
September, 1996	51	42	15	18	6	12 + 1[b]
September, 1995	32	48	11	26	8 + 1[c]	17 + 1[b]
September, 1994	36	58	13	21	6	10 + 1[b]
September, 1993	31	64	10	33	5 + 1[c]	17
September, 1992	28	77	11	28	5	19
TOTALS	290	420	100	199	49	125

Table 2 shows the percentage of law school applications, offers and admissions by Aboriginal persons compared to non-Aboriginal persons for a four-year period at UBC, UVic and Canada-wide. The period covered is 1995 to 1998, because Canada-wide data for 1999 was not available at the time this table was prepared.

Table 2
Aboriginal applications, offers and admissions: four-year average

	CANADA	UBC	UVIC
Aboriginal applications as a % of all law school applicants	1.8%	3.1%	3.85%
Aboriginal offers as a % of all law school offers	2.65	4.25	5.5
Aboriginals as a % of all first-year law students	3.25	7.1	6.3

(iii) Observations and reflections on admissions data

As the data in Table 2 shows, 3.1% of UBC's applicants are Aboriginals, whereas 4.25% of UBC's offers are made to Aboriginals and 7.1% of UBC's first-year law students are Aboriginal. Likewise, 3.85% of UVic's applicants are Aboriginals, whereas 5.5% of UVic's offers are made to Aboriginals and 6.3% of UVic's first-year students are Aboriginal. The data in Table 2 shows

a) One Aboriginal student who failed first year in 1997 was readmitted and a second student who withdrew in the Fall of 1998 was readmitted. One other student was made a conditional offer, but that student did not pass the Saskatchewan program and was not admitted.

b) One Aboriginal student repeated.

c) One Aboriginal student was admitted in the regular category.

that both B.C. law schools are well ahead of the Canadian law school average for Aboriginal applicants, offers and admissions. Both schools are to be commended for that fact.

However the data in Table 2 also reveals that Aboriginal applicants are still under-represented in the total applicant pool. Although it has been estimated that Aboriginal persons constitute anywhere from 5% to 10% of the B.C. population, Aboriginal law school applicants represent only 3.1% of all UBC applicants and only 3.85% of all UVic applicants. In other words, Aboriginal persons do not apply to law school in as high a percentage per capita as non-Aboriginal persons overall. The number of Aboriginal law applicants at both law schools for the year 2000 is substantially down from previous years. Both schools each received only 27 Aboriginal applicants this year.

These figures suggest that more needs to be done to create and encourage a larger pool of Aboriginal applicants. This might be accomplished through the creation of an outreach strategy. An outreach strategy might include (1) career development activities (e.g., Aboriginal lawyers speaking to Aboriginal young persons, feature stories on Aboriginal lawyers in the media, etc.) to encourage young Aboriginal persons to consider law as a career, and (2) the provision of adequate financial funding (e.g., increased government and private sector bursaries) for law school so that no qualified Aboriginal applicant is precluded from attending law school on the basis of lack of financial resources.

In regard to recruiting Aboriginal applicants, neither law school currently has an active program, although a law school information session is being planned for central British Columbia by the two law faculties in the Fall of 2000, with the financial assistance of the Law School Admissions Council's minority recruitment fund. Both law schools should be encouraged to continue to seek funding for such outreach sessions from the Law School Admissions Council, which has a pool of money available for such purposes. Between 1993 and 1996, UVic spent approximately $1,500-$1,800 per year on Law Faculty advertisements in five Aboriginal newspapers that are broadly circulated in British Columbia and the North. The Academic and Cultural Support Director at UVic is of the opinion that these advertisements had the effect of encouraging Aboriginal people to think about law as a career and about UVic Law School in particular. The Director is also of the opinion that the all-time high of 51 Aboriginal applicants at UVic in 1996 was in part a response to these advertisements. Due to cuts in its budget, UVic has not allocated or spent any money on advertising in the Aboriginal press since 1996.

In regard to financial support for Aboriginal students, we have already noted that funding for Aboriginal students to attend law school has been reduced by the Federal Department of Justice and also effectively reduced by DINA because it has capped its educational grants, while educational costs are rising and more students are applying for a slice of the fixed economic pie. The two law faculties currently have limited bursaries for Aboriginal students entering law school.[17] More bursary funding is needed.

In regard to the number of offers made to Aboriginal persons for admission to law school, both B.C. law schools make a higher percentage of offers per capita to Aboriginal persons than to non-Aboriginal persons. For example, as Table 2 shows, 3.1% of UBC applicants are Aboriginal, but 4.25% of UBC's offers are made to Aboriginal persons. The data for UVic reveals a similar trend. Notwithstanding this fact, could more offers be made to Aboriginal persons?

17. For example, UVic has the Winona Wood Native Women's Student Scholarship in Law, awarded annually to an outstanding Aboriginal woman entering the Law Faculty, and the Jessie L. and Frederic R. Sherwood First Nations Assistance Bursary and the Bryan and Audrey Williams Bursary.

At UBC, there are up to 20 admission positions reserved for Aboriginal persons. From the data in Table 1 it can be seen that, in the past eight years, UBC has made offers to 47.4% of the Aboriginal applicants who have applied to UBC (199 offers out of 420 applications). Admissions staff at UBC have advised us that in recent years they have made offers to all Aboriginal applicants who, in the Admission Committee's judgement, have the academic background and skills to succeed in law school. Even so, UBC has not quite filled their 20 Aboriginal positions per year. In the past four years, they have filled 59 of a possible 80 positions (73.7%). Without more qualified Aboriginal applicants, UBC does not appear to be in a position to make more offers than it currently does.

At UVic, the faculty formally reserves five of its 20 discretionary admission positions for Aboriginal persons. The figure of five Aboriginal positions out of a total of 100 admission positions was originally selected by UVic on what was then considered a generous estimate that 3% to 5% of the B.C. population was Aboriginal. Today the 3% to 5% Aboriginal population estimate is probably too low, particularly when one includes the Métis population. Even if the 5% Aboriginal population estimate is accurate, Aboriginal people are currently under-represented in the legal profession due to a number of historic wrongs,[18] and therefore reserving more than 5% of admission positions for Aboriginal persons is clearly appropriate on affirmative action grounds to allow Aboriginal persons "to play catch-up." Indeed, the CBA Working Group on Racial Equality in the Legal Profession notes that, while the national numbers of Aboriginal law students and lawyers continue to increase, their overall representation nonetheless "falls far short of what one would expect given the number of Aboriginal people in Canada."[19]

Increasing the number of Aboriginal students at the UVic law faculty beyond five per year would also broaden the support group for those students. Aboriginal students have emphasized the importance of having an adequate number of Aboriginal students in the law school to support one another from the inevitable isolation, alienation and insensitivity that many Aboriginal students experience.[20] In addition, when UVic originally selected the figure of five Aboriginal admission positions per year, they only admitted 100 students rather than the 105 students that they now admit, and they also had fewer qualified Aboriginal applicants for those five positions than they now have. As Table 1 shows, all five UVic positions have been filled since at least 1992, and since at least 1994, the data in Table 1 shows that UVic has been prepared to admit a few more than five Aboriginal persons in its discretionary category. For example, as Table 2 shows, in the four-year period from 1995 to 1998 UVic admitted on average 6.3 Aboriginal persons in their discretionary category.

From the data in Table 1 it can also be seen that, in the past eight years, UVic has made offers to 34.5% (100 offers out of 290 applications) of the Aboriginal persons who have applied to UVic, compared to 47.4% at UBC. This might suggest that UVic could make offers to a slightly higher percentage of its applicants, assuming the Admissions Committee is of the opinion that the applicants have adequate academic background and skills to succeed in law school. Based on all of the above, the Working Group is of the opinion that UVic should consider increasing the

18. For example, in British Columbia the Law Society excluded Aboriginal persons from membership in the Law Society until 1949 on the basis that they were not qualified to vote under the *Provincial Elections Act*. See. D. Tong, "A History of Exclusion: The Treatment of Racial and Ethnic Minorities by the Law Society of British Columbia in Admissions to the Legal Profession," 56(2) *The Advocate* 197 (1998).

19. *CBA Racial Equality Report* at 28.

20. For example, 37% of the survey respondents specifically mentioned the existence of other Aboriginal students as a key factor in improving their own law school experience. *Survey Report* at 12.

number of discretionary admissions positions that it formally sets aside for Aboriginal persons from five to at least eight or perhaps 10.

RECOMMENDATIONS

6. **That the Law Society, the B.C. Branch of the CBA, the B.C. Ministry of the Attorney General (Special Advisor on Equality) and UVic and UBC law schools join forces and resources in an effort to create and administer a coordinated outreach plan or strategy designed to increase the number of Aboriginal applicants and Aboriginal admissions into law school. The Admissions Outreach Strategy should include a range of Aboriginal career development activities throughout the province. The Strategy Document should also formulate action plans for the development of bursaries or other forms of financial aid to ensure that Aboriginal students who qualify for admission to law school are not discouraged from attending because of their financial need.**

7. **That the Law Society take the lead in approaching the CBA and the two law schools to see if they are willing and able to work toward the development and implementation of a coordinated Aboriginal Admissions Outreach Strategy.**

8. **That the UVic Law Faculty consider increasing its discretionary admissions positions for Aboriginals from five to at least eight or perhaps 10.**

The Working Group's proposal for the development of an Aboriginal Outreach Strategy is in keeping with similar recommendations made by the CBA Racial Equality Working Group with respect to members of racialized[21] communities in general. In Recommendation 1, they suggest that the CBA host a meeting with law school deans and members of associations representing law students and lawyers from racialized communities to develop and encourage the implementation of programs that would eliminate the systemic discrimination that deters students from racialized communities from applying to and getting into law schools. The Racial Equality Working Group also suggests the creation of a national system for tracking the access of students from racialized communities to law schools.[22]

III. LAW SCHOOL EXPERIENCE

In regard to law school experiences, the *Survey Report* indicated that 76% of the Aboriginal lawyers who responded to our survey experienced some form of discriminatory barriers as a result of their Aboriginal ancestry. It is also worth noting that this discrimination had a gendered nature: 85% of the women, versus 67% of the men, indicated they had experienced discrimination. Perhaps we should start by noting that it is encouraging that at least 24% of Aboriginal survey respondents experienced no such discrimination. On the other hand, it is troubling that the vast majority of survey respondents did experience some form of discrimination during law school. These discriminatory barriers and their frequency are summarized in the *Survey Report* (p.8) as follows:

21. The *CBA Racial Equality Report* uses the term "racialized" in favour of "visible minority" or "racial minority" to refer to those communities of "individuals who may have individual experiences of racism and who are collectively vulnerable to racism because of the way institutions define and treat them." *CBA Racial Equality Report* at vi.

22. *CBA Racial Equality Report* at 9.

Table 3
Discriminatory barriers in law school

Type of barrier	Number and percentage of respondents identifying barrier	
	Number	**%**
Insensitivity in course materials or by instructors	23	56
Social isolation	19	46
Racist slurs and demeaning remarks	12	29
Culture shock	11	27
Other	7	17
No discrimination experience	10	24

The discriminatory experiences can be divided into two large categories: curriculum and law school environment.[23] We will discuss each of these in turn, although they are not, of course, totally unrelated to one another.

Curriculum

Table 3 reveals that over half of the Aboriginal law school graduates who responded to our survey experienced racial and cultural insensitivity in either course materials or by course instructors. This insensitivity could appear in various forms: an absence of Aboriginal courses or Aboriginal perspectives in existing courses, comments in materials or classes that betrayed a total ignorance or at least a lack of sensitivity to cultural differences, and finally, in the worst case scenario, comments or materials that were blatantly anti-Aboriginal.

In the focus groups, many comments were made about the lack of Aboriginal law content in law school curricula, whether as separate Aboriginal law courses or as components of other courses. These comments were less predominate from recent graduates than from Aboriginals who had graduated a number of years ago. Recent graduates were more likely to comment on the inconsistency in the way Aboriginal components were worked into some core courses and not others. A few focus group correspondents noted that Aboriginal components were sometimes marginalized by being treated as "add-ons" and "not examinable," or were cut from course outlines when a professor was running behind schedule.

In light of the above, the Working Group carefully examined Suggestion 1.03 in the *Focus Groups Report* to the effect "that better attempts be made to integrate the teaching of topics in Aboriginal law with the teaching of more 'traditional' legal topics, particularly when the topics are especially relevant to one another (e.g., property law)."

23. Another aspect of potential discrimination that has been noted by the CBA Racial Equality Working Group — and which falls outside the two categories noted in this report — is the cost of attending law school. The *CBA Racial Equality Report* notes that, while not all students from racialized communities are poor, there is a greater likelihood that students from racialized communities face economic hardships. To remedy this problem, Recommendation 4 suggests that the CBA conduct a fundraising campaign to raise money for bursaries and scholarships for students in or entering law school who are disadvantaged because of racial discrimination. *CBA Racial Equality Report* at 9.

The Working Group was provided with information from both law schools concerning their efforts to introduce Aboriginal law courses and Aboriginal law components into their existing curricula. UBC Law Faculty reported that efforts have been increasingly made over the past seven years to integrate Aboriginal legal content into traditional law courses. As well, the Faculty continues to offer seven Aboriginal law courses and to maintain the First Nations Law Clinic. UBC reports that traditional law courses such as Property, Evidence, Legal Institutions and Torts do include minimal Aboriginal law content and that the First Nations Legal Studies Program at the Law Faculty has obtained a small university grant to help produce Aboriginal materials that faculty could use in their courses.

Likewise, the UVic Law Faculty reports that efforts have been made to expand the Aboriginal law content in their existing curriculum. The Faculty has three courses devoted entirely to Aboriginal law matters plus an Aboriginal moot course, and two other courses in which substantial components are devoted to Aboriginal law issues.[24] The Faculty also reports that Aboriginal issues and perspectives have been integrated in modest ways in core courses such as the first-year courses on Legal Process, Constitutional Law, Criminal Law, Property Law and Torts and upper-year courses such as the Criminal Law Term Program, Evidence, Debtor/ Creditor, Family Law, Environmental Law, Trusts, Social Welfare Law and Feminist Legal Theory. The Law Faculty is also intent on moving forward with an Aboriginal Law Term Program and the creation of two interdisciplinary chairs, one in Aboriginal Law and Social Justice and the other in Aboriginal Law and Economic Development. However, these initiatives are dependent on obtaining external funding.

Aboriginal law students have advised us that, in their opinion, the actual amount of Aboriginal content in most law school courses is still minimal. The Working Group is of the opinion that both law schools are making significant efforts to better integrate Aboriginal law issues and perspectives into their respective curricula. The Working Group would like to affirm the importance of this priority and encourage law schools to continue to improve and increase the integration of Aboriginal issues and perspectives into all courses where relevant.[25] In order to facilitate this process, the Working Group recommends:

RECOMMENDATIONS

9. **That the Law Society request the Deans of the two B.C. law schools to present a report annually at a Benchers meeting to summarize the Aboriginal initiatives concerning curriculum and law school environment in their respective law faculties. Such a report will not only serve as a useful internal audit for the law faculties, but will help to keep the Law Society and legal profession up-to-date on law school developments and challenges in Aboriginal programming. The Working Group also hopes that such a report will act as a catalyst for the Law Society and the legal profession to offer its expertise and resources to help to sustain and enhance these Aboriginal initiatives.**

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24. These latter two courses are Colonial Legal History and Race, Ethnicity, Culture and the Law.

25. The CBA Racial Equality Working Group has also recommended that law schools focus on curriculum changes. Specifically, Recommendation 22 suggests that "each law faculty immediately establish, fund and support an Aboriginal Advisory Committee to design, implement and monitor curriculum changes to ensure compulsory courses include analysis from an Aboriginal perspective." The CBA Racial Equality Working Group adds that these Advisory Committees should promote "compulsory law school community awareness programming concerning Aboriginal matters." *CBA Racial Equality Report* at 28-29.

10. **That the Law Society promote the expansion of Aboriginal material and components in law school courses by offering an Aboriginal Curriculum Enhancement Grant (for example, $5,000 annually to each law school) to hire research students to prepare such course components.**

11. **That CLE and PLTC provide copies of their Aboriginal course materials or components to the Deans of the two law faculties on an on-going basis to further facilitate the expansion of Aboriginal materials in the law school curriculum.**

Law school environment

The *Survey Report* revealed two other significant components to the discriminatory barriers that Aboriginal lawyers experienced while they were in law school. The first is a sense of culture shock and social isolation, and the second is racist slurs and demeaning remarks (see Table 3).

The culture shock and social isolation that many Aboriginal law students experience arises from a combination of factors. It is greatest for Aboriginal students who grew up on reserves and had greater exposure to Aboriginal values. Aboriginal participants in the focus groups indicated that many values embedded in the Canadian legal system and law schools are antithetical to the values that they learned in Aboriginal communities. For example, the adversarial system and non-Aboriginal notions of property are inconsistent with certain Aboriginal ideas and values. Likewise, the individualism and competitiveness of the legal system and the law school environment are at odds with Aboriginal values. Also, the secular and rationalist approach to Western law and legal education can create an uneasy and unnatural divide between the spiritual and the non-spiritual for Aboriginal students. Finally, some Aboriginal law students feel that they are from a different social class than the average non-Aboriginal law student whom they see as coming from a more "elite" and "moneyed" segment of Canadian society. For these and other associated reasons, a significant number of Aboriginal students reported in the survey and focus group discussions that they experienced feelings of both culture shock and alienation from the main student body, and a concomitant inability to share their feelings with anyone other than other Aboriginal law students.

A second form of discrimination involves openly racist slurs or other intentionally or unintentionally demeaning remarks. Although these can come from faculty or administrators, the *Survey Report* and the *Focus Groups Report* indicate that law students are the major source of this form of discrimination in law school. At the most "benign" level, focus group participants indicated that many non-Aboriginal students were ignorant of, or uncomfortable with, Aboriginal issues. However, a more malevolent form of racism experienced by a majority of Aboriginal students is the basic lack of respect that many law students show towards Aboriginal students and their abilities.[26] Much of this perception stems from a negative view of the discretionary admissions category under which many Aboriginal students are admitted. Non-Aboriginal law students have indicated directly and indirectly to Aboriginal law students that they do not "deserve" to be in law school. Although this view is not held by a majority of non-Aboriginal law students, it does seem to be held, and expressed, in various ways by a significant number of non-Aboriginal law students. Such attitudes are not unique to British Columbia nor to Aboriginal students. The CBA Racial Equality Working Group heard numerous complaints from racialized students about comments from other students that implied that any racialized student in law

26. See *Focus Groups Report* at 12.

school was there because of a special program and was therefore not as gifted as the white students.[27]

Finally, some Aboriginal students have reported overt racist comments and other demeaning remarks made by law students and less frequently by professors (often sessional or visiting lecturers). The *Focus Groups Report* also indicates that a disproportionate number of overt acts of racism were directed against female Aboriginal students as opposed to male Aboriginal students.[28]

As a response to some of the above concerns, various participants in the focus groups put forward a number of suggestions for consideration:

> Suggestion 1.05 – That Aboriginal students, particularly first-year students, hold "sharing circles" to allow them to talk among themselves and share their experiences.
>
> Suggestion 1.06 – That the law schools invite an Elder to come once a week to talk to the Aboriginal students.
>
> Suggestion 1.07 – That there be an ongoing and independent body within the law schools to mediate disputes or complaints between faculty and students.
>
> Suggestion 1.08 – That the law schools take a more active role in promoting values of anti-racism and anti-discrimination in the student body.
>
> Suggestion 1.09 – That the law schools have a policy in place that covers acts of discrimination and racism, and that they have the ability to punish or suspend students who are in violation of this policy.

As part of our process of examining the above suggestions, our Working Group requested and obtained information from the two law schools about various initiatives that they have taken to respond to the discriminatory nature of law school environments. At UBC, in addition to the Director of the First Nations Legal Studies Program, a First Nations Legal Studies Advisor is now employed on a term contract basis. The Advisor offers coordinated tutorials in conjunction with the Director and a part-time teaching assistant for Aboriginal law students, and is also available for personal counselling and to assist with matters such as recruitment, Aboriginal moots and administration of the First Nations Legal Studies Program. UBC also has a First Nations Law Committee and a First Nations Law Students Association. During the past year, the First Nations Law Committee has been considering the feasibility of creating the following programs: (1) setting aside money and designating a space in the law school for Aboriginal student circles; (2) inviting Elders to such circles; and (3) organizing a First Nations speakers series for all students.

The University of British Columbia has created a zero tolerance racism/discrimination policy for all faculties. Law students can bring complaints to the Director of the First Nations Law Program, to individual professors, to the Dean or, ultimately, to the UBC Equity Office. The UBC Law Faculty's Equity Committee is studying further ways to meet the anti-discrimination objectives of the university policy. These potential initiatives include introducing all law students

27. *CBA Racial Equality Report* at 6. Joanne St. Lewis notes that the stigma attached to admissions equity programs continues to haunt students following law school because "[m]any lawyers believe that special measures or equity programs involve a lowering of standards" and that "the grades are not a true reflection of their performance and have to be discounted." *St. Lewis Racial Equality Report* at 76.

28. *Focus Groups Report* at 12.

to the policy during orientation week, as well as posting such policies in a high visibility area of the law school and informing all visiting and guest lecturers of such a policy.

The UVic Law Faculty has a Director for its Aboriginal and Cultural Support Program. UVic also has a Native Law Students Association and a faculty/student Anti-Discrimination Committee. Like UBC, UVic has a zero tolerance anti-discrimination policy. In 1998, the UVic Law Faculty adopted a comprehensive Aboriginal equity policy setting out its goals and objectives in the areas of admissions, curriculum, recruitment of Aboriginal faculty and law school environment. The Native Law Students Association organizes an annual Aboriginal Awareness Week and the Law Faculty and law students, for the past four years, have organized an Aboriginal Cultural Awareness Camp, which is now a four-day event and is attended by approximately 25% of the student body. A number of years ago, the Law Faculty installed a First Nations carving and weaving in the front atrium of the law school in recognition of the historical relationship of First Nations people to the land on which the University sits. The Faculty also has the Keith Jobson award that is designed to recognize outstanding contributions made by First Nations law students.

The Working Group is of the opinion that the two law faculties are generally aware of the concerns of Aboriginal students about the law school environment and are taking significant steps to respond to these concerns. Despite such steps, Aboriginal students are still experiencing discrimination. The Working Group is of the opinion that the two law schools must continue their efforts to both identify and respond to such concerns. One way to do this would be for the Law Faculty administration to institute at least one formal session per year with the Aboriginal Law Student Associations for the particular purpose of identifying existing concerns and possible responses.

The culture shock that many Aboriginal law students experience creates a special and challenging problem. On the one hand, Canadian law and law school cultures are premised on Euro-Canadian legal views and values. Although there has been some recent openness to at least recognizing this fact and to diversifying the curriculum beyond Euro-Canadian views, such change is slow and will likely remain marginal in the foreseeable future. In pragmatic recognition of this reality, the Working Group is of the opinion that the law schools (and the Saskatchewan pre-law program) should make special efforts to inform and prepare Aboriginal students for this anticipated culture shock. Such preparation could include (1) sending to Aboriginal law students, prior to their enrolment in law school, select readings on this problem and the written reflections of prior law students on their experiences of culture shock and their responses thereto; (2) meeting with Aboriginal law students at the beginning of the law school program to acknowledge and create individual mechanisms for responding to such anticipated culture shock.

The Working Group is of the opinion that law schools should continue, and if possible increase, their active roles in promoting values of anti-racism and anti-discrimination in the law school environment. While policies against racism and discrimination exist within the law faculties, many students, both Aboriginal and non-Aboriginal, report that the existence of racism and discrimination in the law schools is seldom openly addressed in course content, class discussion or in general law school discourse. This silence is attributable in part to the majority's inexperience, fear and inability to talk about such issues. The Working Group is of the opinion that these are not insurmountable obstacles and that they can and should be overcome. We also believe that initiatives such as the UVic Aboriginal Awareness Camp and the Unlearning Racism Workshop are useful vehicles that should be increasingly used to break down such barriers.

The Working Group also supports and recognizes the importance of other initiatives at both law schools that are designed to improve the environment for Aboriginal law students. These include:

- the existence of Aboriginal law student associations;
- programs such as an Aboriginal Awareness Week;
- increasing the number of Aboriginal guest speakers;
- creating a comprehensive Aboriginal equity policy;
- creating space and an opportunity for Aboriginal students to engage in culturally relevant activities; and
- advertising and promoting the zero tolerance policy concerning anti-discriminatory conduct.

The Working Group also considered focus group Suggestion 1.07 that an independent body within the law schools be created to mediate complaints of discrimination. The two law schools advised the Working Group that, in their opinion, there were already sufficient avenues for students to bring such complaints. These complaint avenues include the Directors of the Aboriginal Law Programs and/or the Associate Dean and Dean of the Law Faculties. Complaints may be made directly by students or through the Native Law Students Association. The Working Group agrees that another level of bureaucracy is not needed within the law schools, which are already relatively small in size. However, the law schools do need to continue to advertise and promote their zero tolerance policies and to show an openness and a willingness to support any students who come forward with such complaints.

RECOMMENDATION

12. That the two B.C. law faculties continue to identify and respond to the discriminatory barriers experienced by Aboriginal law students by:

(a) formalizing an annual meeting between the Native Law Students Association and appropriate law school representatives for the express purpose of identifying Aboriginal concerns, discussing possible responses and monitoring existing Aboriginal initiatives;

(b) finding better ways to educate incoming law students as to the rationale and justification for the discretionary admissions category and the qualifications and contributions that discretionary admission category applicants make to the law school and legal profession;

(c) informing and preparing incoming Aboriginal law students for the culture shock and social isolation that they may experience at law school (e.g., through the distribution of written materials and the convening of special meetings to discuss such matters);

(d) promoting and supporting Aboriginal law student activities, such as support circles, visits by Elders and guest lecture series;

(e) creating and applying a comprehensive Aboriginal equity policy that sets out equity objectives and activities in the areas of admissions, curriculum, faculty recruitment and law school environment;

(f) continuing to promote values of anti-racism and anti-discrimination in the law school environment through educational activities, both in and outside of the classroom, such as unlearning racism workshops and cultural awareness sessions; and

(g) finding effective ways to convey to guest lecturers and speakers the faculties' concerns for cultural sensitivity.

IV. THE PROFESSIONAL LEGAL TRAINING COURSE

The Law Society of British Columbia requires all articling students to complete the Professional Legal Training Course (PLTC) as a mandatory step towards call to the bar. PLTC is delivered by the Continuing Legal Education Society of British Columbia (CLE) on a contract basis. The standards, curriculum and funding are determined by the Law Society.[29] PLTC is a 10-week, full-time course with a mixture of substantive law, procedure, legal skills, professional ethics and practice management. The course is specifically designed to bridge the gap between the theory of law school and the reality of law practice. The PLTC program assesses students in four skills areas (advocacy, drafting, interviewing and writing), as well as conducting two examinations in substantive and procedural law. These assessments and examinations are designed to ensure that students have attained a minimum entry level competence to practise law.[30]

In 1995, with the support and urging of the Multiculturalism Committee of the Law Society, PLTC created the half-time position of Academic Support Instructor. Although no exact statistics existed, there was anecdotal evidence that a larger number of Aboriginal and other special access students were failing PLTC assessments or examinations in comparison to other groups. Although the Academic Support Instructor is available to provide assistance to students while they are attending PLTC, more typically the instructor works with students after they have failed one or more PLTC components. All students who have worked with the Academic Support Instructor have eventually passed PLTC.

The majority of the focus group participants expressed the opinion that PLTC was an important and helpful program for training lawyers in the practical aspects of the practice of law. However, as with law school education, the majority of the participants indicated that they had major concerns with two aspects of the program: (1) Aboriginal legal issues were not addressed at all in the course materials; and (2) the instructors (especially some guest instructors) displayed a

29. The costs of PLTC are funded about 50% by student tuition fees ($2,125 per student) and about 50% by the Law Society. Student tuition fees are paid by the student's articling employer in about 90% of cases.

30. If a student fails one or two assessments/exams, that student has an automatic right to redo the assessment/exam at the next PLTC session. If a student fails three or four assessments/exams, the student must apply to the Credentials Committee for approval to repeat those assessments/exams. Such approval is normally given. If a student fails five or all six assessments/exams, that student must apply to the Credentials Committee. The Credentials Committee will normally require the student to repeat the entire course or, in exceptional cases, to obtain further legal education before re-enrolling in PLTC. A student who fails an exam or assessment for a second time must apply to the Credentials Committee for the opportunity to repeat that exam or assessment for a third or subsequent time. In the past seven or eight years, approximately 85% of all articling students have passed all courses, while 15% have had to repeat one or more assessments or exams. The Director of PLTC has indicated that it is hard to determine the ultimate failure rate for PLTC (i.e., the number of students who do not get admitted because they cannot pass PLTC). Students who fail PLTC sometimes quit the articling program for other reasons. However, of those students who continue to redo the failed assessments and exams, the ultimate failure rate is less than 1%. No separate statistics are kept on the percentage of Aboriginal students who fail one or more assessments/exams, or who fail PLTC entirely.

significant lack of cultural sensitivity in discussing various legal issues.[31] As in law school, this cultural insensitivity was felt most strongly by Aboriginal students who had grown up on reserves or had otherwise been deeply imbued with Aboriginal values.

In response to the above concerns, the following suggestions were made by various focus group participants:

> Suggestion 2.01 – That PLTC raise the issue of Native law or incorporate Native law issues into one of the assessments (e.g., interviewing assessment).
>
> Suggestion 2.02 – That a one-to-one mentoring program be implemented during the PLTC and articling processes.
>
> Suggestion 2.03 – That PLTC implement an anti-racism and cross-cultural training session at some point during the 10-week course.
>
> Suggestion 2.04 – That there be a greater representation of Aboriginal lawyers as guest speakers and instructors used in PLTC.
>
> Suggestion 2.05 – That PLTC instructors be given some form of mandatory anti-racism and cultural sensitivity training.

In regard to Suggestion 2.01 that PLTC should incorporate Aboriginal legal issues into the course and the assessment/evaluation process, the Director of PLTC[32] acknowledged that Aboriginal issues are not generally covered in the *Practice Material*, classroom discussions or in the assessment/examinations. The Director did indicate that a section on Aboriginal title was added to the real estate section of the *Practice Material* a few years ago. The Director agreed that it would be beneficial to add other Aboriginal materials where appropriate. The new Director of PLTC reports that there is now some modest Aboriginal legal issues content in the *Practice Material* and that PLTC has just begun a major push to expand the content in an organized, coherent way, by incorporation into existing subject areas.

The Working Group is of the opinion that PLTC should make a concerted effort to include Aboriginal legal issues in the course materials and to introduce these issues, where appropriate, in classroom discussions and in assessments/evaluations. The Working Group is of the opinion that this objective can be accomplished by PLTC creating an advisory panel(s) of experts to work with existing PLTC instructors in order to review the existing *Practice Material* and to make recommendations for the inclusion of Aboriginal issues into those materials. The PLTC course and *Practice Material* concentrate on eight or nine basic areas of law.[33] In light of the diversity of these eight topics, it may be appropriate to assemble more than one expert committee to examine these materials. In keeping with the recommendations of the CBA Racial Equality Working Group, the Director and staff of PLTC should consult with members of the Indigenous Bar

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31. The *Focus Groups Report* (at 18) states that "many participants felt that Aboriginal students attending PLTC are subjected to intellectual, personal and racial insults during the program…. Most of these comments centred around the perception that PLTC consciously or unconsciously promoted 'a corporate lifestyle' and that it was insensitive or inflexible when dealing with those who did not fit into that 'lifestyle.' Several participants cited specific cases in which they felt that they had been treated either callously or rudely by instructors or administrators of the program when they had attempted to have their concerns heard."

32. William Duncan was the Director of PLTC until November, 1999 and references in this report to the Director generally refer to Mr. Duncan.

33. These substantive areas of law include: civil litigation, commercial law, company law, creditors' remedies, criminal procedure, family law, real estate law, tax law and wills and estates.

Association and the CBA Aboriginal Law Section in order to identify Aboriginal persons and non-Aboriginal persons with expertise in Aboriginal legal issues who can work together to eliminate discrimination from existing materials.[34] The Working Group is of the opinion that, at a minimum, the PLTC *Practice Material* should point out areas in which the law would be different, for example in wills and estates or in family law, for Aboriginal persons living on or off-reserve, as opposed to non-Aboriginal persons. Once Aboriginal legal issues and/or materials are introduced into the *Practice Material*, these issues and materials should be examinable in the same way that other PLTC materials are.

RECOMMENDATION

13. That PLTC establish an Advisory Panel(s) of Aboriginal lawyers and non-Aboriginal lawyers with expertise in Aboriginal issues to review the PLTC curriculum and *Practice Material* and to make suggestions for incorporation of Aboriginal legal issues into the curriculum and *Practice Material*.

The Working Group also examined focus group Suggestion 2.03, to the effect that PLTC implement an anti-racism and cross-cultural training session at some point during the PLTC course. The Director of PLTC properly pointed out to the Working Group that there are many demands on what should be covered in PLTC and that time constraints necessarily mean that some matters are omitted or must be treated in a very brief fashion. Second, the Director pointed out that experience elsewhere has indicated that it is difficult to design an effective and successful, stand-alone, anti-racism and cross-cultural training session as part of an already overly full PLTC program. The Director indicated that such an effort had been made as part of the Nova Scotia Bar Admission course, but that many felt it was not effective and it was subsequently removed from the course. The Director suggested that such stand-alone training sessions might be better done in a setting outside of PLTC and be offered to the profession at large.

The Working Group acknowledges the time constraints that are placed on PLTC and the difficulties of doing a "stand alone" anti-racism, cross-cultural training session. However, the Working Group is of the opinion that the anti-discrimination objectives that underlie such training sessions can and should be incorporated into the substantive law, professional responsibility and skills sessions and assessments. Introduction of anti-discrimination materials into these components is both feasible and more effective than a stand-alone program in drawing students' attention to the relevance of these matters. For example, materials and assessments/ examinations can provide students with the opportunity to spot discrimination issues and biases in fact patterns, in interview formats or in substantive law.

RECOMMENDATION

14. That the Director and staff of PLTC work with the Aboriginal Advisory Panel(s) in order to build anti-discrimination components into the course materials and assessments.

Focus group Suggestions 2.04 and 2.05 deal with PLTC instructors. First, there is a suggestion that there should be a greater representation of Aboriginal lawyers as guest instructors and speakers at PLTC and, second, that PLTC instructors should be given some form of mandatory anti-racism and cross-cultural training. The Working Group agrees with the first suggestion about the need for greater representation of Aboriginal lawyers as PLTC guest instructors. The

34. See Recommendation 25, *CBA Racial Equality Report* at 29.

Working Group is of the opinion that this can be accomplished through the PLTC Director and staff working with the Aboriginal Advisory Panel(s). In regard to the idea in Suggestion 2.05 that there be some form of "mandatory" anti-racism and cross-cultural training for PLTC instructors, the Working Group is of the opinion that it is not necessary to recommend "mandatory" training. The Working Group believes that PLTC instructors comprise a core of experienced, committed and sensitive people who are fully committed to the Law Society's anti-discrimination policies and objectives. In light of comments in the *Focus Groups Report* concerning cultural insensitivity of some PLTC instructors, the PLTC Director and staff hired an Aboriginal facilitator and instructor to put on a half-day, cross-cultural awareness session for the instructors in May, 1998. The session raised the instructors' awareness of Aboriginal cultural issues and also provided the instructors with a variety of ways to better communicate cultural sensitivity around legal issues. The Working Group is of the opinion that PLTC instructors, like all other lawyers, judges and law professors, can benefit from such exposure to cross-cultural training sessions. The Working Group applauds PLTC's initiatives and recommends that PLTC instructors continue to regularly update and refresh their anti-racism and cross-cultural training knowledge and skills.

The Working Group is of the opinion that there is a real risk that some guest instructors in PLTC may advertently or inadvertently introduce culturally insensitive, demeaning or racist comments into their presentations. The Working Group is of the opinion that the PLTC Director and staff must develop ways to prevent such occurrences and to effectively deal with such occurrences when and if they do occur.

Some focus group participants felt that PLTC had not responded sensitively or effectively in the past to Aboriginal students' concerns. On the other hand, the Director and the staff of PLTC indicated that they were unaware of and had no recollection of Aboriginal students bringing serious concerns and comments to their attention. The Director indicated that students can make their concerns and comments known to PLTC through a variety of ways: the formal course survey, the formal instructor survey, comments sheets in each classroom, informal discussions with the instructor, contact with the Director or through the class representative. The Director of PLTC indicated that since the *Focus Groups Report* was published, PLTC has tried to better publicize these methods.

RECOMMENDATIONS

15. **That PLTC instructors should continue to regularly update and refresh their anti-racism and cross-cultural awareness training.**

16. **That PLTC (and CLE) should create appropriate guidelines for volunteer and guest instructors.**

17. **That PLTC (and CLE) should put effective mechanisms in place to inform guest lecturers what their policy is regarding the treatment of historically disadvantaged groups, including Aboriginal students.**

18. **That PLTC (and CLE) better advertise their system for responding to complaints; the complaints process should include a mechanism for getting back to the person making the complaint and letting that person know what actions were taken by PLTC (or CLE).**

19. **That PLTC students should continue to be instructed on the role of the Law Society's Discrimination Ombudsperson in resolving discrimination complaints.**

Suggestion 2.02 of the *Focus Groups Report* recommended that a one-to-one mentoring program be implemented during the PLTC and articling process. The Working Group does not think that this suggestion was aimed at providing a system of academic tutoring by the mentor, but rather was designed to assist and support Aboriginal articling students on a personal, cultural and professional level. The Working Group agrees that a one-on-one mentoring system for Aboriginal articling students should be established. The Working Group does not consider that it is a responsibility of PLTC to put such a mentoring program in place. The Canadian Bar Association and the law student associations at the two law schools have already set up a mentoring system for law students who wish to sign up. The Working Group is of the opinion that the Native Law Student Associations at the law faculties should work with representatives of the Indigenous Bar Association and the Canadian Bar Association to ensure that an effective mentoring system is put in place during law school and carried forward into articling.

RECOMMENDATION

20. **That the Native Law Student Associations at the law faculties should work with representatives of the Indigenous Bar Association and the Canadian Bar Association to ensure that an effective mentoring system is put in place during law school and carried forward into articling.**

Proposed PLTC entrance examination

During 1999, considerable discussion, debate and consternation arose out of the proposal to create a PLTC entrance examination. The proposal emanated from the Credentials Committee of the Law Society of British Columbia. The Credentials Committee has responsibility for recommending to the Benchers any changes or amendments to the PLTC or articling programs that the Committee feels are necessary and appropriate. The Credentials Committee's proposal for a PLTC entrance examination was given approval in principle by the Benchers, although the timing and details of such a program were left for future discussion and consultation. The Working Group met with the Chair of the Credentials Committee and the then Deputy Executive Director of the Law Society to express the Working Group's concerns (1) about the need for such a proposed entrance examination, and (2) about the potential adverse impact it would have on Aboriginal and other minority students. In particular, the Working Group expressed the following concerns:

- that the time required to study for the proposed PLTC entrance examination, which would now be located outside the 10-week PLTC program, would create a barrier to those students who came from economically disadvantaged backgrounds or who had family or community responsibilities, because those persons would have difficulty setting aside the suggested three to four weeks of unpaid study time necessary to prepare for the PLTC entrance examination;

- that the lack of a formal tutoring program to help prepare students for the proposed PLTC entrance examination would have a disproportionately greater impact on Aboriginal and other special access students; and

- that the proposed PLTC entrance examination, with its apparent focus on certain "mainstream" law subjects, would lead to correspondingly less flexibility in law school curricula and cause greater resistance to incorporating Aboriginal law issues into "mainstream" courses, and would also reduce students' motivation to take specialized Aboriginal law courses while in law school.

The Chair of the Credentials Committee indicated to the Working Group that these concerns would be taken into account during the implementation stage. Since that time, further consultations have taken place with various interested groups and the status of the proposed PLTC entrance examination is still under consideration.

The Working Group is of the opinion that an adequate case has not yet been made to justify the implementation of a compulsory PLTC entrance examination. The Working Group recommends:

RECOMMENDATIONS

21. **That the Equity and Diversity Committee of the Law Society resist the implementation of the proposed PLTC entrance examination, and if such examination is to proceed, that the Equity and Diversity Committee ensure that no barriers are created by the proposed PLTC entrance examination for Aboriginal or other traditionally disadvantaged students.**

22. **That if a PLTC entrance examination is implemented, the Law Society make available a system of tutoring by a qualified person, such as the Academic Support Instructor currently employed by PLTC.**

23. **That PLTC and the law schools work together to make more concerted efforts to inform law students about PLTC course content and the courses that PLTC recommends that law students should consider taking as part of their LL.B. program.**

V. CONTINUING LEGAL EDUCATION SOCIETY

The Continuing Legal Education Society of British Columbia (CLE) is the principal provider of continuing legal education courses for lawyers throughout the province. CLE is an independent, non-profit society that relies upon the volunteer services of leading members of the legal profession. Volunteers work as faculty members, guest instructors and advisers for courses, practice manuals and other CLE publications. On average, CLE provides over 100 courses, seminars, workshops and skills training events and over 140 video repeats of such events each year.

During the focus group sessions, very few comments were made, either positive or negative, about CLE and its programs. Upon inquiry, it was discovered that the reason for this is that few Aboriginal lawyers participate in or attend CLE courses. The *Survey Report* indicated that approximately 30% of the Aboriginal lawyers who responded were not practising law. Of the 70% who were practising, the largest percentage practised as sole practitioners or as partners or associates in small law firms. CLE course enrolment data indicates that attendance at CLE courses is lower for sole practitioners and lawyers from small law firms. In addition, many Aboriginal lawyers practise in areas other than the Lower Mainland where CLE courses are most frequently offered. Sole practitioners, whether Aboriginal or non-Aboriginal, have reported that they find it difficult to attend CLE courses, first and foremost because they have to shut down their practice for a day or more and, in the case of some practitioners, the costs of the course and of travel to Vancouver make attendance at CLE courses more difficult. In light of these realities, some focus group participants made the following suggestions:

> Suggestion 2.06 – That a credit system be instituted for law firms with five or fewer lawyers, so that lawyers from those firms who are unable to attend a course due to

unexpected circumstances, are able to credit the amount of money paid to some future course.

Suggestion 2.07 – That CLE assist small law firms (five or fewer lawyers) by allowing them either to attend one free CLE course per year, if there is available seating, or to attend CLE courses at a reduced rate.

Suggestion 2.08 – That CLE rotate its courses throughout the province, enabling lawyers who are located in areas other than the Lower Mainland to attend without incurring additional expenses.

The above three focus group suggestions share a common theme, namely an effort to find ways to promote more effective access to CLE courses for those who work as sole practitioners or in small law firms on a limited income, especially if they work outside the Lower Mainland. The Working Group noted that the same concerns exist for similarly situated non-Aboriginal lawyers.

In regard to focus group Suggestion 2.07 that CLE provide one course per year free or at a reduced rate for sole practitioners and members of small law firms (i.e., five or fewer lawyers), the Executive Director of CLE advised the Working Group that CLE has a bursary program to assist financially needy lawyers to attend CLE courses. The CLE bursary program allows applicants to register for most CLE courses for $50. In order to qualify for the program, course registrants must have a net income before tax from the practice of law of less than $25,000 per annum. CLE bursary registrants are permitted to register for up to three courses per year. The Executive Director indicated that CLE provided $57,000 worth of bursary registrations last year.

The Working Group is of the opinion that the bursary program is not sufficiently well known to Aboriginal lawyers. Information on the bursary program is contained in the CLE course calendars. The Working Group is of the opinion that other ways should be considered to further publicize the CLE bursary program to Aboriginal lawyers. For example, a brief reference to the bursary program on each course notice might be considered. CLE might contact members of the Indigenous Bar Association and ask for their assistance in advertising the bursary program. The Working Group is also of the opinion that the income level at which bursary applicants are eligible for assistance should be increased from $25,000.

While the Working Group's report was being written, the Law Society and CLE announced a new voucher program that offers insured lawyers two vouchers per year, with a value of $150 each, towards the purchase of two CLE courses (average registration fee for a full-day CLE course is $300 to $350). This voucher system will significantly reduce the need for an expanded bursary system. However, the Working Group is still of the opinion that CLE should consider increasing access to its courses for the lowest wage earners by raising the bursary threshold income level of $25,000 to $40,000 or $50,000, at least on an experimental basis.

RECOMMENDATIONS

24. **That CLE explore ways of better advertising the existence of the CLE bursary program to Aboriginal lawyers in British Columbia.**

25. **That CLE reconsider whether the $25,000 threshold for its bursary program is too low and that it consider increasing access to its courses for the lowest wage earners by raising the bursary threshold income level to $40,000 or $50,000, at least on an experimental basis.**

The Working Group also considered focus group Suggestion 2.06 that a credit system be instituted for law firms with five or fewer lawyers, so that lawyers from those firms who are unable to attend a course due to unexpected circumstances are able to credit the amount of money paid for that course to some future course. CLE's current policy on refunds is that a course fee is refundable (less $50) if CLE is given notice within five business days before the course occurs. The Working Group is of the opinion that this is a reasonable cancellation and refund policy.

The Working Group considered focus group Suggestion 2.08 to the effect that CLE rotate its courses throughout the province, thereby enabling lawyers who are located in areas other than the Lower Mainland to attend without incurring additional expenses. While the Working Group understands the sentiments behind this suggestion, we are of the opinion that it is not economically feasible for CLE to do so. It would be virtually impossible for CLE to recover its travel costs were it to put on most programs in other parts of the province where the potential number of registrants is rather small. CLE attempts to provide convenient service to lawyers located outside of the Lower Mainland by providing some live programs in larger areas outside of the Lower Mainland, by providing video repeats of many of its programs throughout the province,[35] and by providing course materials for sale to those who cannot attend CLE courses.

In addition to promoting greater access to CLE courses for Aboriginal lawyers, the Working Group also considered the Aboriginal law content of existing CLE courses and materials. The Executive Director of CLE indicated that seven Aboriginal law courses have been offered by CLE since 1993[36] and that 11 other CLE courses involved some discussion of Aboriginal law issues.[37] In regard to CLE materials, the *Annual Review of Law and Practice*, which has been published annually since 1992, contains a chapter on Aboriginal law, and the *British Columbia Real Property Assessment Manual* and the *Due Diligence Desk Book* raise issues of Aboriginal law.

Since the Working Group began its deliberations, the Executive Director of CLE has undertaken to expand the Aboriginal law content in CLE courses, course materials and other publications. For example, a number of substantive Aboriginal law issues were included in CLE's September, 1999 Estate Litigation course. CLE also inaugurated its first annual Aboriginal Law Conference on November 29, 1999 and has undertaken a commitment to offer a major Aboriginal law course on an annual basis. The 1999 conference was entitled "Resolving Disputes Involving Aboriginal Peoples." The Executive Director of CLE has also indicated that he intends to conduct an in-house seminar on Aboriginal law issues for his CLE programming staff in order to better alert them to appropriate areas for inserting Aboriginal legal issues into CLE's regular programming.

35. Last year, CLE offered 112 video repeats of 19 different courses in 15 communities in the province.

36. CLE conferences with an Aboriginal law focus were as follows: April 2, 1993, Aboriginal Law Conference; July 23-24, 1993, Aboriginal Law; February 20, 1995, Indian Act Taxation and Exemption; March 7, 1997, Aboriginal Law Update; March 25, 1998, Aboriginal Title Update; November 30, 1998, Aboriginal Title: Impact on B.C. Business; and Fall, 1999 Aboriginal Law Conference. Understanding Indian Act Conveyancing is scheduled for April, 2000.

37. CLE conferences where Aboriginal law issues were discussed include: June, 1993, Real Estate Update for Legal Support Staff; May 13, 1994, Federal Court Practice; March 31, 1995, Real Property Assessment 1995; November, 1995, Mortgages; September 18, 1996, Priorities; November 15, 1996, Real Estate Litigation – 1996 Update; October 23, 1998, Fiduciary Obligations; March 26, 1999, Family Practice in Provincial Court 1999; Fall, 1999, Human Rights; Winter, 1999, Municipal Law; and Winter, 1999, School Law – Race Issues in General.

RECOMMENDATIONS

26. That CLE establish an advisory panel(s) of Aboriginal lawyers and non-Aboriginal lawyers with expertise in Aboriginal legal issues to assist CLE staff in a review and inclusion of appropriate sections on Aboriginal legal issues in CLE publications and manuals.

27. That CLE programming staff consult with Aboriginal advisory panel(s) with a view to including Aboriginal legal issues, where appropriate, in future course programming. That CLE programming staff maintain contact with staff lawyers at the Native Community Law Offices operated by the Legal Services Society in order to identify appropriate Aboriginal law issues for inclusion in future CLE conferences.

VI. ARTICLING

All prospective applicants for admission to the British Columbia bar are required to complete a 12-month training program that includes a nine-month articling period. Students are required to article with a qualified lawyer in order to gain the practical experience required for the practice of law.[38] In British Columbia, the responsibility for obtaining articles lies solely with the student. The Law Society has not assumed responsibility for ensuring articles are available for law school graduates. Thus, law firms and other legal institutions that hire articling students become, in effect, one of the gatekeepers of how many law students effectively qualify for admission to the bar and who they are. The exact number of articling positions available in a given year is subject to the economic vagaries of the practice of law.[39] In recent years, economic and social conditions in British Columbia have made the search for articles rather competitive. Both UVic and UBC law faculties provide some assistance to their students in the search for articles through either a student articling committee or a Career Placement Office. Both law faculties have recently added Career Placement Officers to assist students in applying for and finding articling positions.

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38. The "Articling Guidelines" published by the Law Society of British Columbia set out the obligations of principals and students during articles. According to the guidelines, principals should:
    a) see that students are instructed generally on various aspects of the practice of law and professional conduct;
    b) advise students about the professional bodies and their rules and, in particular, the Law Society, especially regarding discipline and competence;
    c) give students adequate instruction on professional conduct towards the courts, clients, the public and other members of the profession;
    d) see that students have adequate exposure to most of the areas of practice that they will encounter in their own practices (if the student cannot be given experience in certain fields, secondment is recommended); and
    e) ensure students become familiar with good general office practice and are shown how to treat clients in a competent and courteous manner.

    These guidelines are distributed to all applicants when they enrol as articled students, and are published in the *Member's Manual*.

39. A 1983 report on "Professional Legal Education and Competence" published by the Law Society of British Columbia stated that:

    > *… entry to articles can be characterized as a "free market" system in which "buyers," i.e. principals, select the best "product" available. Since articling is a necessary condition to practice in British Columbia, and since the number of students seeking positions exceeds the number of positions available, there is a high demand for articling positions.*

    Taylor, J.P., *Report to the Law Society of British Columbia on Professional Legal Education and Competence*, Vancouver: The Law Society of British Columbia, 1983, at 116.

The *Survey Report* and the *Focus Groups Report* provide some information on and concerns about the experiences of Aboriginal law students and lawyers in regard to three main aspects of articling: access to articles, treatment during articling and retention after articles.

Access to articling

All 41 Aboriginal persons who responded to the survey had articled. Seventy per cent were still practising law, 30% were not. No data is available on the number of Aboriginal law graduates who chose not to article or were unable to locate articles. Of the Aboriginal law graduates who did article, the following information is available from the *Survey Report*:

1. Seventy per cent (70%) of respondents articled with a private law firm. Of those students, a little less than half articled with a law firm of more than 21 lawyers, approximately 10% articled with a firm of between five and 20 lawyers, and nearly half articled with a firm of five or fewer lawyers.[40]

2. An unusually large number of Aboriginal students articled with the government. On average, 2%-5% of non-Aboriginal students article with the government, whereas 25% of respondents articled with the government, while another 5% articled with public interest or community law offices. Focus group participants suggested that this was due to the fact that the government has an equity hiring policy that encourages and facilitates the hiring of Aboriginal articling students. The Working Group found no evidence of similar equity hiring policies in private law firms.

3. Of the 37 focus group participants, 12 were still attending law school. Of the remaining 25 focus group participants, 24 had articled while one chose not to article. Of the 24 who did article, 54% articled with private law firms, 21% articled with government, 8% split articles between law firms and government, and the remaining 17% did not indicate with whom they had articled.[41]

4. Forty-four per cent (44%) of the survey respondents felt they experienced no greater difficulty in finding articles than non-Aboriginal students. This may be attributable in part to the high Aboriginal hire rate of the government. On the other hand, 30% of the respondents felt that they did have greater difficulty in finding articles than non-Aboriginal students, while another 25% did not know. Those who felt that they had greater difficulty in finding articles cited the following reasons: unfamiliarity with law firms, inability to find firms in preferred area of practice and cultural barriers. Two female respondents mentioned sexism as an additional barrier and two other respondents regretted the lack of Aboriginal law firms or some form of network among Aboriginal lawyers and law students.

The Working Group has had difficulty assessing the above information in regard to access to articling for Aboriginal students. This difficulty relates to the fact that we have no comparative data on how Aboriginal students' experiences with articling differs from that of non-Aboriginal students. The lack of overall data concerning the articling experience is a matter that needs to be addressed by all interested parties. Recent studies in other Canadian jurisdictions suggest that there is an over-representation of visible minority graduates and Aboriginal law graduates among

40. See Table 8 of the *Survey Report* at 13.

41. See *Focus Groups Report* at 22.

those students who are unable to find articles.[42] The *CBA Racial Equality Report*, for example, confirms that students from racialized communities face significant barriers during the interviewing and hiring process for articles. The CBA Racial Equality Working Group heard submissions from students who were asked inappropriate questions during articling interviews and who felt that their interviewers had made racially based assumptions about their abilities or interests. In addition, various law school deans reported that white students with mediocre marks were more likely to be hired than racialized students with the same mediocre marks. Finally, the Law Society of Upper Canada reported that, of 133 students who had difficulty finding articles in 1996, 43.9% were visible minority students in spite of the fact that these students comprised only 17% of the graduating class.[43]

In British Columbia, the focus group participants provided some anecdotal evidence of similar difficulties. A number of participants in the focus groups alluded to problems finding articles. One practitioner stated that, when she was seeking articles about a decade ago, she found that most firms "simply did not hire Indians, even the firms that practised Native law." She eventually found articles with the Department of Justice. Other participants noted that, among graduates who had articled with private law firms, many had articled with the same few law firms that made an effort to recruit Aboriginal students. One participant suggested the biggest problem for Aboriginal law graduates was not whether or not they would find articles but rather where those articles would be.[44] Concerns about Aboriginals' equal access to articling led some focus group participants to make the following suggestions:

> Suggestion 3.02 – That the Law Society enter into negotiations to explore setting up a co-op style program to replace the current articling program, to address some of the issues surrounding equality of access to articles.
>
> Suggestion 3.03 – That the Law Society take a greater role in helping students find articles by establishing an articling student placement program within the Law Society.
>
> Suggestion 3.04 – That the Law Society reduce the call requirement for principals from four years to three.
>
> Suggestion 3.05 – That the Law Society keep a directory of principals who are willing to split articles with other principals.
>
> Suggestion 3.06 – That the Law Society and the law schools encourage the placement and hiring of Aboriginal law graduates from clerkship and articling positions.

Barriers during articles

In the *Survey Report*, approximately 60% of the respondents indicated that, while articling, they did not experience any cultural or discriminatory barriers based on their Aboriginal ancestry.

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42. *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession: Report to the Bicentennial Convocation, May 1997*, Toronto: The Law Society of Upper Canada, 1997, at 12.

43. *CBA Racial Equality Report* at 11-12.

44. Studies conducted in other jurisdictions have also noted the trend of Aboriginal and visible minority lawyers finding employment in government rather than private institutions. A section of a 1990 report issued by the State of Washington Minority and Justice Task Force, which studied the differences in attorneys' incomes based on ethnic background, noted "Minority attorneys were less likely to be employed in private firms than whites, even though they may have been educated at law schools of equal standing and practiced law for similar periods of time.…" From *State of Washington Minority and Justice Task Force, Final Report* (December, 1990), 67-75.

However, approximately 40% did report experiencing such barriers. These barriers and their frequency are summarized in the *Survey Report* (p.15) as follows:

Table 4
Barriers During Articles

Type of barrier	Number and percentage of respondents identifying barrier	
	Number	%
Cultural insensitivity or racism by staff or other articled students	10	24
Racist slurs and demeaning remarks	6	15
Discrimination or favouritism in work assigned by employer	6	15
Channelling into area of law that was not of interest	4	10
Other	6	15
No discrimination	24	59

It is encouraging that at least 60% of Aboriginal survey respondents did not experience any discrimination during articles as a result of their Aboriginal ancestry. However, the fact that 40% did is a matter of significant concern. It should be noted that, of the respondents who did experience discrimination, the most frequently ranked form of discrimination was cultural insensitivity or racism by staff or other articled students, followed by racist slurs and demeaning remarks and, finally, discrimination or favouritism in assigning work. Focus group participants who experienced derogatory or racist remarks during their articling experience indicated that they were reluctant to approach anyone in the law firm, or to approach the Law Society's discrimination ombudsperson, for fear of being branded a "troublemaker" and thereby lessening their opportunities of being retained after articles by that firm, or being hired by other firms. Two female Aboriginal respondents to the survey mentioned experiences as articling students where judges mistook them for court personnel or Aboriginal courtworkers.

Retention after articles

Thirty-seven per cent (37%) of the Aboriginal survey respondents were hired back by the law firms or institutions where they had articled.[45] On the other hand, 63% were not hired back. Of those who were not hired back, over one-quarter indicated that the primary reason was that their employer had not been in a financial position to hire them back. This observation is consistent with the fact that nearly half of Aboriginal law students who article with private law firms do so with firms of less than five lawyers. In addition there is some evidence that only a limited number of law firms hire Aboriginal articling students. Other Aboriginal articling students who were not hired back indicated that their employer did not practise in their area of interest (15%), they did not like their employer (8%), or they had accepted an offer of employment with another firm or organization (12%).

45. We do not have data on whether the "hire-back" rate was higher for government or for private law firms. Certainly the "hire-back" rate for small firms is normally lower than for large firms.

Once again, the Working Group must report that there are no statistics available that permit us to compare the retention rates for Aboriginal law students with the retention rates of other non-Aboriginal law graduates or, for that matter, of other visible minority groups. Some focus group participants expressed the opinion that Aboriginal articling students were sometimes hired as a sign of "tokenism" but that such firms had no intention of keeping them on after articles. While the Working Group has no evidence one way or the other as to the validity of this particular claim, reports from other jurisdictions do suggest that Aboriginal students are less likely to be retained by their employer following articles. The *CBA Racial Equality Report* notes that in 1995/96 the Indigenous Blacks and Mi'kmaq Programme at Dalhousie Law School reported that, while there had been much success in recruiting, admitting, retaining and graduating qualified students, the hire-back rate for Blacks and Mi'kmaq graduates in both the private and public sectors was "dismal and alarming."[46]

Assisting articling students

The Law Society of Upper Canada has recently implemented a number of activities to assist students seeking articles. For example, the Law Society of Upper Canada has a placement office and an Articling Placement Mentor Program. The objective of the mentor program is to provide unplaced students with a support link by pairing them with a member of the profession who will provide advice, support and encouragement in the search for an articling position. Mentors meet with their assigned student approximately one hour each week to discuss issues of concern to the student and to provide advice on strategies the student might employ in his or her job search. The Law Society reports that, by the end of 1998, 97% of prospective articling students registered with the Society's Placement Office had been placed. Much of this success was attributed to the mentoring program.

In light of the fact that articling is a compulsory requirement for call to the British Columbia bar, the Working Group is of the opinion that the Law Society should assume a more active role in the entire articling process than it has in the past. This greater role would include working with other interested groups to collect data about the articling process, to assist students in finding appropriate articles, to ensure that discrimination toward Aboriginal graduates does not occur in either hiring articling students or in their treatment once hired and, finally, to monitor retention rates of articling students for evidence of discrimination. The Working Group is of the opinion that, to accomplish these objectives, the Law Society should appoint a full-time staff person whose primary job is to act as "articling liaison officer." That officer would be responsible for assisting the Law Society to put policies and programs in place to effect the above objectives.[47]

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46. *CBA Racial Equality Report* at 28.

    The *CBA Racial Equality Report* highlights several ways in which students from racialized communities may be discriminated against in the post-articling hiring process. First, discrimination in the selection of articling students may mean that they did not have the opportunity to benefit from a well-rounded articling experience in a firm that is likely to hire new lawyers. Second, racialized students at bigger law firms may have been relegated to library research, thereby losing the competitive advantage that accrues to students who have the opportunity to work with senior lawyers on important files. Third, word-of-mouth recruitment operates to the disadvantage of students from racialized communities who are less likely to have connections in legal circles. Finally, students from racialized communities may face racially based assumptions about their skills, interests and abilities from potential employers. *CBA Racial Equality Report* at 19.

47. The CBA Racial Equality Working Group has also recommended that steps be taken to combat discrimination in the articling process. Recommendation 5 suggests that the CBA develop and distribute a model policy for articling interviews, which should include the following:
    a) strategies for ensuring all students are given a fair chance to compete for available positions;

RECOMMENDATION

28. That the Law Society appoint an Articling Liaison Officer to promote fair and adequate access to articling opportunities and to help eliminate discriminatory experiences in the articling process. The functions of the Articling Liaison Officer should include:

- **working with the two law school Career Placement Officers to ensure that articling data is collected annually from those seeking articles and those who are not;**
- **working with the Career Placement Officers to keep lists of law students and law firms looking for an articling match;**
- **keeping a directory of lawyers who are willing to split articles with other lawyers;**
- **keeping a list of Aboriginal lawyers and law firms who are specifically interested in hiring Aboriginal articling students;**
- **investigating the creation of financial support programs for Aboriginal students (such as single parents) who cannot financially afford to article;**
- **helping facilitate greater networking between Aboriginal law students and lawyers through programs such as summer articles, one-on-one mentoring, receptions, etc.;**
- **helping establish an advisory group of Aboriginal lawyers and articling students;**
- **working with private law firms to encourage the creation of equity hiring programs for Aboriginal and visible minority students;**
- **acting as a liaison for receiving complaints concerning the articling process;**
- **undertaking pro-active, equity education activities for law firms in order to minimize the experience of discriminatory treatment that some Aboriginal articling students experience.**

In regard to Suggestion 3.02 that the Law Society explore the possibility of replacing the current articling program with a co-op style program and Suggestion 3.04 that the Law Society reduce the call requirement for principals from four years to three years, the Working Group is of the opinion that neither of these options may be necessary if the Law Society takes a more active role in promoting access to articles through the appointment of an Articling Liaison Officer. If fair and adequate access to articles still remains a problem in spite of the activities of an Articling Liaison Officer, then more drastic measures will need to be contemplated.

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b) a list of the types of questions that are unacceptable to ask during interviews; and
c) suggestions for ways to prevent racial bias from infiltrating the interview and hiring process and from affecting the articling experience.

CBA Racial Equality Report at 14.

VII. THE PRACTICE OF LAW

Aboriginal practice rates

The *Survey Report* indicated that approximately 70% of the Aboriginal respondents were practising law, while 30% were not.[48] This is a high non-practising rate when compared with other segments of the legal profession. In particular, data collected by the Law Society of British Columbia in the *Women in the Legal Profession* report[49] showed that 13% of men who were called to the bar since 1975 had ceased practice, while 20% of women called to the bar since 1975 had ceased practice. As a result of this disproportionate exit of female lawyers from the legal profession, the Law Society established part-time and non-practising categories of membership to help facilitate career breaks, especially for women. The fact that 30% of Aboriginal law graduates are no longer practising suggests that further inquiries should be made into the reasons for such non-practising status, in order to ensure that such decisions are not based upon systemic discrimination. The need for such enquiries is confirmed by the CBA Racial Equality Working Group's assertion that the relationship between the decisions of racialized lawyers to leave the practice of law and the existence of systemic discrimination within the profession needs to be further addressed.[50]

The *Survey Report* does indicate that, of the 29% of Aboriginal respondents who were not in practice (i.e., 12 out of 41 respondents), only two were unemployed, both of whom were women. (The Working Group has no information on the current employment status of the 13 Aboriginal law graduates who are not practising law and who did not respond to our survey.) The survey respondents who are not practising indicated they are holding various positions, including some in government, law schools and tribal organizations. Of the 12 non-practising survey respondents, only five had ever practised. The primary reasons cited for leaving practice by these five respondents were dislike of the adversarial system and the pressure of practice, as well as a degree of disinterest or disillusionment with law. Two respondents indicated that racial or cultural discrimination had been a factor in their decision to leave the profession, while two other respondents indicated that they left because they did not have a job. The above data does not clearly point to a major problem of overt or systemic discrimination for Aboriginal persons who are not in the practice of law, but the high non-practising rate among Aboriginals is nonetheless deserving of further study.

Discriminatory barriers

The *Survey Report* indicated that 81% of the respondents experienced barriers as an Aboriginal lawyer while 12% did not, and a further 7% did not know. These barriers and their frequency are summarized in the *Survey Report* (p.17) as follows.

48. The survey was sent out to 81 Aboriginal lawyers. Of that group, 20% had ceased membership, 11% were listed as non-practising members of the Law Society and 69% were practising. Of the 41 Aboriginal lawyers who responded to the survey, 29% were not practising, while 71% were practising.

49. Law Society of British Columbia, 1991.

50. *CBA Racial Equality Report* at 17.

Table 5
Barriers for Aboriginal Lawyers

Type of barrier	Number and percentage of respondents identifying barrier	
	Number	%
Discrimination or insensitivity by lawyers	15	37
Discrimination or insensitivity by judges	13	32
Employment matters (hiring, promotion, salary)	15	37
Overwork and burn-out	15	37
Discrimination or insensitivity by clients	9	22
Dissuasion from practising in area of interest	8	20
Racist slurs and demeaning remarks	6	15
Lack of legal aid referrals	6	15
Geographic isolation	5	12
Other	13	32
No barriers	5	12
Did not know	3	7

The most frequently cited form of discriminatory barrier was discrimination or insensitivity, first by lawyers, and second by judges. The Aboriginal respondents also felt that they had experienced discriminatory barriers in regard to employment matters, such as hiring, promotion and salary. Aboriginal lawyers, like non-Aboriginal lawyers, reported that overwork and burn-out were significant barriers to them in the practice of law. Whether Aboriginal lawyers experience overwork and burn-out to a greater extent than non-Aboriginal lawyers, the Working Group is in no position to comment.

Focus group participants agreed that discrimination and insensitivity by non-Aboriginal lawyers occurred too frequently. They suggested that this sort of discrimination stems from the general disrespect shown towards Aboriginal law students entering law school under the various First Nations admissions categories and that this disrespect carries over into the profession. While Aboriginal focus group participants felt that they were accepted as “friends” by non-Aboriginal lawyers, they felt that they were not as readily accepted as competent lawyers by those same persons. Interestingly, four survey respondents referred to internalized racism or discrimination whereby Aboriginal organizations and groups refused to retain Aboriginal lawyers on the assumption that Aboriginal lawyers are less competent or well qualified than non-Aboriginal lawyers. Several survey respondents referred to Aboriginal lawyers being dissuaded or prevented from practising in areas of interest to them, and others referred to not receiving a sufficient or fair number of legal aid referrals.

Role of the Law Society

During the focus group discussions, there were very few comments made regarding the participants' interactions with the Law Society of British Columbia. However, comments and suggestions were made as to the sorts of initiatives that the Law Society could undertake to improve the treatment of Aboriginal lawyers within the legal profession. The *Focus Groups Report* contains the following suggestions:

> Suggestion 3.15 – That an Aboriginal lay Bencher be appointed. (An Aboriginal woman, Wendy John, has recently been appointed as a lay Bencher.)
>
> Suggestion 3.16 – That more Aboriginal lawyers be encouraged to seek nomination for Bencher.
>
> Suggestion 3.17 – That the Law Society and CLE promote and develop cross-cultural awareness programs related to legal issues.
>
> Suggestion 3.18 – That the Law Society be an advocate and role model with respect to proportional minority representation.
>
> Suggestion 3.19 – That the Law Society develop a plan for promoting a review of racial and ethnic presence in the justice system.
>
> Suggestion 3.20 – That the Multiculturalism Committee[51] of the Law Society undertake a comprehensive study of racial and ethnic diversity within the legal profession. It should encompass data adequate to allow for meaningful overview in the future to help ensure proportionate representation of minorities throughout the profession.
>
> Suggestion 3.21 – That the Multiculturalism Committee of the Law Society be available as a resource for the profession in matters pertaining to multiculturalism and diversity.
>
> Suggestion 3.22 – That the Law Society appoint Aboriginal people to Law Society committees and as representatives on boards of various organizations.
>
> Suggestion 3.23 – That the Law Society promote and maintain regular communication with the Aboriginal bar associations.

The above focus group suggestions fall into two main categories: (1) that Aboriginal representation as Benchers and Law Society committee appointees be increased; (2) that the Law Society take an active role in eliminating discriminatory barriers that Aboriginals experience in the practice of law. The Working Group agrees with these two main suggestions.

Several of the suggestions raised by the participants had to do with the under-representation of Aboriginal lawyers in positions of responsibility, either as Benchers or representatives on important committees. A number of focus group participants were of the opinion that Aboriginal lawyers had a feeling that, if they chose to run as Bencher, they would have difficulty gaining sufficient support from non-Aboriginal lawyers. While the Working Group has no way of assessing the validity of that belief, the very existence of that belief has inhibited Aboriginal lawyers from running for positions such as Bencher.

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51. In 1998 the Multiculturalism Committee, the Gender Equality Monitoring Committee and the Disability Advisory Committee merged to form the Equity and Diversity Committee.

In regard to the second set of suggestions, the Working Group is of the opinion that the Law Society should take a lead role in promoting the drafting, adoption and eventual monitoring of comprehensive equity employment plans (both hiring and treatment after hiring) for Aboriginal and other minority lawyers. In so doing, the Law Society would also be acting in accord with Recommendation 9 of the CBA Working Group on Racial Equality that recommends that the CBA, law societies, justice departments and all law firms adopt a workplace equity policy that includes equitable hiring policies. The CBA also recommends that these bodies actively recruit and hire lawyers from racialized communities.[52]

The Working Group is of the opinion that the Law Society of British Columbia should follow the lead of the Law Society of England and Wales, which has developed a model equal opportunities policy. Law firms are deemed to have adopted that model policy in the absence of their own written policy. Among other matters, the model policy sets employment targets for ethnic minorities.[53] The targets are not binding, enforceable quotas, but rather provide a clear guide for "good practices." The Equal Opportunities Committee of the Law Society of England has developed its own three-year action plan[54] to focus its activities on encouraging full implementation of the Law Society's anti-discrimination measures that include (1) a practice rule outlawing discrimination and requiring firms to have anti-discrimination policies; (2) a revised

52. *CBA Racial Equality Report* at 21.

53. The English model policy envisages a target of one ethnic minority fee earner in firms between six and 10 fee earners, and 10% of lawyer trainees and 5% of other fee-earners in larger firms. Prior to this policy being adopted, an independent research study showed that well-qualified, ethnic minority students were much less successful than equally or less qualified white students in obtaining training contracts (7% for ethnic minority students, versus 47% for white students).

54. The Committee's action plan provides as follows:

> Strategy of the Equal Opportunities Committee (1998-2000):
>
> Pointing the way towards equal opportunities best practice to promote bias-free environments in the workplace (including during training) that enable solicitors, as employers and employees, to thrive in their profession.
>
> The Committee proposes to achieve this by:
> - Emphasising the need for every solicitor employing or managing staff to be responsible for equal opportunities issues in the workplace;
> - Targeting appropriate support and assistance at different types of practice and practitioner;
> - Targeting specific initiatives at particular forms of discrimination.
>
> Why?
> - To make the profession accountable for its equal opportunities policy, in order to meet increasing legal, political, social and economic demands for greater equality, diversity and flexibility.
>
> How?
> - By identifying and advising on the positive steps required, and urging solicitor-employers to implement the profession's anti-discrimination measures by:
>   - ensuring an awareness of the Rule among solicitors as employers;
>   - promoting examples of good employment practices in the profession;
>   - promoting the full participation of under-represented/special interest groups in the Law Society, private/employed practice, and the judiciary;
>   - using positive action measures to tackle discrimination;
>   - promoting the availability of the package of measures to individual solicitors as employees/ prospective employees;
>   - developing a better understanding of the barriers to advancement through research and statistics and liaison with special interest groups and specialist organizations;
>   - participating in the development of relevant, progressive workplace policies;
>   - monitoring the implementation of the Rule and complaints-handling.

Code of Practice that deals in more detail with discrimination in the most common areas of a solicitor's law practice; and (3) a model anti-discrimination (equal opportunities) policy.

Key elements in the Law Society of England and Wales' overall strategy for equal opportunities have been (1) obtaining the support of senior members of the profession to champion equality initiatives; (2) working with and gaining the support of ethnic minority lawyers groups; and (3) demonstrating the nature and extent of inequality and discrimination in the profession and the benefits of effectively responding to it.

The Working Group is of the opinion that the Law Society should lead the way in terms of employment equity in private law firms by directing the Equity and Diversity Committee to initiate the drafting of a comprehensive equity employment plan as a model for adoption by law firms. Creation of such an equity plan may be best achieved by appointing a specialized working group for that purpose, composed of minority and non-minority lawyers and one or more employment equity specialists.

RECOMMENDATIONS

29. **That the Law Society create a comprehensive model employment equity policy for law firms to ensure that Aboriginal lawyers do not experience discriminatory barriers in the practice of law. Such a policy should be formulated by directing the Equity and Diversity Committee to appoint a working group for that purpose, composed of minority and non-minority lawyers and one or more employment equity specialists.**

30. **That the Equity and Diversity Committee of the Law Society establish an Aboriginal Advisory Group:**

    - **to assist (with others) in the development of a strategy and action plan to create adequate bursary funding for needy Aboriginal students to attend pre-law programs and law school (see Recommendations 3 and 6);**
    - **to assist (with others) in the development and implementation of an Aboriginal Law School Admission Outreach Strategy (see Recommendations 6 and 7);**
    - **to assist (with others) to set up an Aboriginal mentoring program for Aboriginal law students and articling students;**
    - **to provide advice to the Articling Liaison Officer in regard to articles for Aboriginal students;**
    - **to encourage Aboriginal lawyers to run for Bencher and to put their names forward for appointments to committees by the Law Society;**
    - **to encourage Aboriginal lawyers to apply for judicial appointments;**
    - **to offer assistance to the judicial education committees in planning and including Aboriginal law and perspectives into their education programs;**
    - **to increase law practice opportunities for Aboriginal lawyers; and**
    - **to recommend programs or activities for improving the cross-cultural awareness of members of the legal profession in regard to Aboriginal peoples.**

VIII. THE JUDICIARY

The *Survey Report* and the *Focus Groups Report* indicate that the two principal concerns of Aboriginal lawyers with regard to the judiciary are: (1) an under-representation of Aboriginal judges; and (2) cultural insensitivity by non-Aboriginal judges to Aboriginal issues. The *CBA Racial Equality Report* echoed these concerns when it stated that, when the judiciary is viewed from the perspective of members of racialized communities in general, the two main issues are (1) who becomes a judge and (2) how judges respond to lawyers and clients from racialized communities.[55]

The *Survey Report* indicated that 32% of Aboriginal lawyers had experienced discrimination or insensitivity by judges based on their Aboriginal ancestry. Three female Aboriginal lawyers reported that they were denied legitimacy and credibility by some judges because they were both female and Aboriginal. Interestingly, focus group participants working in northern British Columbia reported more positive experiences with the judiciary than did the Aboriginal lawyers who attended the focus groups in the southern parts of British Columbia. It should be noted that some of the Aboriginal lawyers attending the focus groups were of the opinion that judges treated Aboriginal lawyers no differently than non-Aboriginal lawyers.

Aboriginal judges

In regard to the stated concern that there is an under-representation of Aboriginal judges, the Working Group first looked at the ethnic or racial composition of British Columbia Supreme Court judges. Although there has been increased gender and racial diversity in regard to Supreme Court appointments, that diversity has not extended to Aboriginal ancestry. For example, 21 of the last 51 B.C. Supreme Court appointments have been women. This is in marked contrast to only three female judges among the 51 most senior judges by date of appointment. There are five non-Caucasian Supreme Court judges. There are no Supreme Court judges of Aboriginal descent, nor have there ever been.

Candidates for appointment to the Supreme Court of British Columbia must have a minimum of 10 years experience as a member of a provincial or territorial bar, or 10 years experience in aggregate as a member of a bar and a provincial court judge. There is also a widely held perception that the judicial selection committee may look more favourably on candidates with a minimum of 15 years experience. The fact that there are no Aboriginal Supreme Court judges is attributable, at least in part, to the fact that there are very few Aboriginal lawyers with 10 to 15 years experience. According to data in the *Survey Report*, only seven of the 41 respondents would have call dates of 15 years or more today, and the Working Group is not sure whether those seven are still practising law, because 30% of the survey's 41 respondents were not practising law at the time of the survey. The 41 respondents represented about half the Aboriginal lawyers in the province, so there probably are no more than 10 to 15 Aboriginal lawyers who have the necessary length of experience to qualify for appointment as a Supreme Court judge. In this respect, the pool will grow in time as the increase in Aboriginal graduates in the 1990s makes its way through the profession.

Supreme Court appointments are, of course, made by the Governor General in Council, upon the advice of the federal Minister of Justice who, in turn, receives advice from a judicial selection committee that in British Columbia is composed of one judge, three lawyers and three lay

55. *CBA Racial Equality Report* at 23.

persons. All candidates must apply and be vetted by the selection committee. Experienced Aboriginal lawyers need to be encouraged to apply for judicial appointments. The Working Group was informed that many Aboriginal lawyers are unaware of the appointments process, that they practise by themselves or in small firms, often outside the Lower Mainland, and consequently they do not generally carry a high profile within the legal community, a factor that they consider would affect their chances of receiving a judicial appointment. Although the judicial selection committees are looking for applicants who are considered highly competent by their peers (i.e., lawyers and judges in their community), the selection committee is not necessarily looking for lawyers with a high profile. However this perception by Aboriginal lawyers appears to discourage them from applying.

In regard to the British Columbia Provincial Court, four out of 133 of the current judges are of Aboriginal descent, three of whom have been appointed in the past five years or so. One of the four Aboriginal judges is a woman. As with Supreme Court appointments, there has been a special effort to increase the racial and gender diversity of judicial appointments at the Provincial Court level over the past number of years. In particular, 28 of the 68 judicial appointments to the British Columbia Provincial Court between 1991 and 1999 have been women, compared to only two female judges of the 30 judges appointed between 1971 and 1981.

In light of the fact that there are relatively few Aboriginal judges, some focus group participants made the following suggestions:

> Suggestion 3.08 – That more Aboriginal judges be appointed.
>
> Suggestion 3.09 – That more judges who also have a history of sensitivity and interest in Aboriginal issues be appointed.
>
> Suggestion 3.l0 – That Aboriginal lawyers be encouraged to put their names forward for consideration for judicial appointment.

The Working Group agrees with the sentiments expressed in the above suggestions.

RECOMMENDATION

31. **That the Aboriginal Advisory Group appointed by the Equity and Diversity Committee be asked to examine ways to encourage and support more Aboriginal applications to the judiciary.**

Social context education

In recent years, both the British Columbia Supreme Court and the British Columbia Provincial Court judges have increasingly recognized the importance of social context education concerning race, culture and gender issues in promoting a fair and impartial justice system in a multicultural society. Both the Supreme Court and the Provincial Court judges engage in regular judicial education.

The Western Judicial Education Centre (WJEC) took a lead role, starting in the late 1980s, to introduce social context education into judicial education programs. Social context education endeavours to introduce, among other things, an understanding of the way that gender, race, culture and socio-economic status can and do affect law and the administration of justice. The WJEC organized a number of judicial seminars and workshops on the Delivery of Justice to Aboriginal People, Gender Equality in Judicial Decision Making, and Racial, Ethnic and Cultural Equity. The WJEC also spearheaded, in conjunction with various Provincial Court judges

associations, a large, four-day Judicial Congress in 1993 entitled "The Role of the Judge in the New Canadian Reality: Judicial Skills and Knowledge for the Future."

In British Columbia, the Provincial Court judges now hold judicial education conferences twice a year. The conference proceedings are recorded in print and on videotape so that subsequent use can be made of these judicial education materials. The British Columbia Provincial Court Judges Equality Committee took a major step in November, 1997 by organizing a three-day judges conference entitled "The Court in a Multicultural Society: Fairness and Impartiality in Decision Making." This conference was devoted exclusively to an examination of both institutional and individual bias in the administration of justice. In organizing the conference, the Judges Equality Committee incorporated the input of minority group users of the legal system who often experience the system's bias and discrimination. Speakers at the conference included legal and non-legal persons from various minority communities. The conference provided very valuable written materials on race and gender discrimination, including discrimination against Aboriginal persons, both in the context of the law itself and in the application and administration of the law.

The British Columbia Provincial Court judges have not held a similar conference since 1997. The Working Group is of the opinion that a follow-up conference should be planned by the Provincial Court judges. The Working Group is also of the opinion that social context and cultural sensitivity components should be worked into the substantive components of the Provincial Court judges semi-annual educational conferences.

The British Columbia Supreme Court judges also have an Education Committee composed of approximately 10 judges. In 1994 the Canadian Judicial Council decided that all judges in Canada should be exposed to social context education on Aboriginal, gender and race issues. To facilitate this, the National Judicial Institute launched a special initiative to prepare and deliver social context educational programs in cooperation with individual courts. The British Columbia Supreme Court was the first court to have a comprehensive social context program. In February, 1998, the British Columbia Supreme Court judges held a three-day conference entitled "Judging in a Diverse Society." The conference was designed to help judges to recognize and identify racist or discriminatory ideas, practices and comments and to raise judicial awareness concerning equality and anti-discrimination legal issues. The conference specifically concentrated on judicial impartiality and independence and the challenges of judging impartially in a diverse society. The Education Committee, in conjunction with the National Judicial Institute, is organizing a one-day program on Aboriginal Law as part of the Supreme Court's meeting in May, 2000.

The National Judicial Institute (NJI) recognizes that the next step in social context education is to move beyond a stand alone conference and to build social context components on racial, cultural and gender issues into all judicial education programs. In particular, the NJI is currently developing, in collaboration with the courts of Manitoba, Saskatchewan, the Yukon and the Northwest Territories, a comprehensive program on Aboriginal issues. The overall objective is to assist judges in dealing with the broad range of issues that involve Aboriginal rights and Aboriginal persons. A major goal of the project is to develop teaching modules and materials that could be adopted and used in judicial education programs in all jurisdictions in Canada. The program organizers hope to hold the first conference in May, 2001 and to include both plenary sessions and experiential workshops that will assist judges in further developing the necessary skills to deal with Aboriginal issues.

The Working Group considers an ongoing, integrated judicial education program on social context issues concerning Aboriginal peoples to be essential to an impartial judicial system.[56] The Working Group applauds the NJI's recent initiatives to develop a comprehensive judicial education program on Aboriginal issues. The Working Group encourages the judicial education committees in British Columbia to participate in and develop similar Aboriginal programming.

RECOMMENDATIONS

32. **That the judiciary be encouraged to continue to include and expand the treatment of social context issues concerning Aboriginal peoples and race, culture and gender into their educational programs.**

33. **That the Equity and Diversity Committee of the Law Society be asked to foster an exchange of information, at least annually, between the Equity and Diversity Committee and the Judicial Education Committees on their educational initiatives concerning issues pertaining to Aboriginal peoples.**

34. **That the Aboriginal Advisory Group appointed by the Equity and Diversity Committee offer assistance to the Judicial Education Committees in helping them to organize education sessions on Aboriginal issues.**

IX. THE LAW FOUNDATION

In 1969, British Columbia established the first Law Foundation in North America. The Law Foundation of British Columbia is a non-profit organization created by statute to receive and distribute the interest on client funds held for short periods of time in lawyers' pooled trust accounts in financial institutions. The Law Foundation is directed by its legislative mandate to distribute the interest earned from these trust accounts in five areas: legal aid, legal education, law reform, legal research and law libraries. Since its inception, the Law Foundation has approved grants of over $150 million in support of law-related programs in British Columbia.

The Law Foundation has provided $1.7 million in grants to Aboriginal-run organizations between 1988 and 1997. In November, 1998 the Law Foundation decided to put increased emphasis on Aboriginal justice issues. The Foundation established a $1 million budget for the Aboriginal Justice Issues Initiative. A committee was established to examine the best way to allocate these funds. After two years of consultation and planning, an application form was designed, a letter of intent process established and several organizations were invited to apply for funding. In March, 2000 the Board of Governors approved funding for 10 projects amounting to over $800,000. The Board of Governors will decide how to allocate the remaining $200,000 at its June, 2000 meeting.

The projects funded include a program to increase access to mediation training for Aboriginal people, seed funding for alternative dispute resolution services to Aboriginal communities, an Aboriginal family law dispute resolution project, a project to train Aboriginal volunteers to assist members of their communities who have had children removed by Social Services, a courtlink

56. The CBA Racial Equality Working Group also emphasizes the importance of social context education for judges. In Recommendation 17, they advise that the social context education programs of the National Judicial Institute and provincial courts include materials and instruction in critical race theory analysis. Specifically, the Working Group advises that "[t]hese programs should also promote a greater understanding and awareness of the experiences of Aboriginal people as they relate to legal issues involving the courts." *CBA Racial Equality Report* at 25.

program for Aboriginal youths in the North, monitoring and evaluation of a restorative justice program for Aboriginal young offenders, an educational and resource video on Aboriginal young offenders, establishment of an indigenous legal studies centre, research papers and workshops on Aboriginal and treaty rights, and legal education workshops and materials for lawyers and judges on the implications of the *Gladue* decision for sentencing Aboriginal offenders.

The Working Group applauds the Law Foundation for its decision to place increased emphasis on funding Aboriginal justice projects. The Working Group encourages the Law Foundation to continue its emphasis on funding of Aboriginal justice issues.

X. MONITORING AND FOLLOW-UP

The Working Group is of the opinion that a system of monitoring and follow-up on the extent and progress of the implementation of these recommendations is an important component in ensuring that progress is being made in eliminating the discriminatory barriers that Aboriginal law students and lawyers experience.

RECOMMENDATION

35. **That the Law Society direct its Equity and Diversity Committee to report once a year in writing on the extent and progress of the implementation of the recommendations and related matters in this report.**

XI. SUMMARY OF RECOMMENDATIONS

Pre-law school programs

1. That the Saskatchewan Native Law Centre consider, perhaps through a specially funded study, the pedagogical and financial feasibility of offering its Program of Legal Studies for Native People, in whole or in part, on a distance education basis as an option for those who cannot attend the on-site program.

2. That the UBC Law Faculty consider granting course credit for first-year property to students who successfully complete the Saskatchewan program.

3. That the Law Society, as part of its equity mandate, develop a strategy (through staff and an ad hoc committee appointed for that purpose) to ensure that all Aboriginal students who have received an offer of admission to a B.C. law school and who wish to attend the Saskatchewan program are provided with adequate financial means to allow them to do so. Such a strategy may include action plans for creation of a Law Society bursary fund, for lobbying the federal and provincial government, the Law Foundation, law firms and the private sector to create or contribute to similar bursary funds, and an action plan for working with Aboriginal organizations to pursue these objectives.

4. That the Law Society's funding strategy be extended to and support any other appropriate pre-law Aboriginal program that may be developed in the future such, as a one or two-week preparatory course immediately prior to first-year law school.

5. That the Law Society express its support for Recommendation 24 of the *CBA Racial Equality Report* that suggests that the Canadian Council of Law Deans establish an

Aboriginal advisory committee with representatives from the Indigenous Bar Association, the CBA Aboriginal Law Section, the Native Law Centre and the Aboriginal law students associations to do the following:

a) conduct on-going evaluation of pre-law programs for Aboriginal students;

b) promote the recognition of pre-law programs among law faculties; and

c) expand pre-law programs to other areas of the country so that they are more readily accessible to Aboriginal students.

Law schools

6. That the Law Society, the B.C. Branch of the CBA, the B.C. Ministry of the Attorney General (Special Advisor on Equality) and UVic and UBC law schools join forces and resources in an effort to create and administer a coordinated outreach plan or strategy designed to increase the number of Aboriginal applicants and Aboriginal admissions into law school. The Admissions Outreach Strategy should include a range of Aboriginal career development activities throughout the province. The Strategy Document should also formulate action plans for the development of bursaries or other forms of financial aid to ensure that Aboriginal students who qualify for admission to law school are not discouraged from attending because of their financial need.

7. That the Law Society take the lead in approaching the CBA and the two law schools to see if they are willing and able to work toward the development and implementation of a co-ordinated Aboriginal Admission Outreach Strategy.

8. That the UVic Law Faculty consider increasing its discretionary admissions positions for Aboriginals from five to at least eight or perhaps 10.

9. That the Law Society request the Deans of the two B.C. law schools to present a report annually at a Benchers meeting to summarize the Aboriginal initiatives concerning curriculum and law school environment in their respective law faculties. Such a report will not only serve as a useful internal audit for the law faculties, but will help to keep the Law Society and legal profession up-to-date on law school developments and challenges in Aboriginal programming. The Working Group also hopes that such a report will act as a catalyst for the Law Society and the legal profession to offer its expertise and resources to help to sustain and enhance these Aboriginal initiatives.

10. That the Law Society promote the expansion of Aboriginal material and components in law school courses by offering an Aboriginal Curriculum Enhancement Grant (for example, $5,000 annually to each law school) to hire research students to prepare such course components.

11. That CLE and PLTC provide copies of their Aboriginal course materials or components to the Deans of the two law faculties on an on-going basis to further facilitate the expansion of Aboriginal materials in the law school curriculum.

12. That the two B.C. law faculties continue to identify and respond to the discriminatory barriers experienced by Aboriginal law students by:

    (a) formalizing an annual meeting between the Native Law Students Association and appropriate law school representatives for the express purpose of identifying

Aboriginal concerns, discussing possible responses and monitoring existing Aboriginal initiatives;

(b) finding better ways to educate incoming law students as to the rationale and justification for the discretionary admissions category and the qualifications and contributions that discretionary admission category applicants make to the law school and legal profession;

(c) informing and preparing incoming Aboriginal law students for the culture shock and social isolation that they may experience at law school (e.g., through the distribution of written materials and the convening of special meetings to discuss such matters);

(d) promoting and supporting Aboriginal law student activities, such as support circles, visits by Elders and guest lecture series;

(e) creating and applying a comprehensive Aboriginal equity policy that sets out equity objectives and activities in the areas of admissions, curriculum, faculty recruitment and law school environment;

(f) continuing to promote values of anti-racism and anti-discrimination in the law school environment through educational activities both in and outside of the classroom, such as unlearning racism workshops and cultural awareness sessions; and

(g) finding effective ways to convey to guest lectures and speakers the faculties' concerns for cultural sensitivity.

Professional Legal Training Course (PLTC)

13. That PLTC establish an Advisory Panel(s) of Aboriginal lawyers and non-Aboriginal lawyers with expertise in Aboriginal issues to review the PLTC curriculum and *Practice Material* and to make suggestions for incorporation of Aboriginal legal issues into the curriculum and *Practice Material*.

14. That the Director and staff of PLTC work with the Aboriginal Advisory Panel(s) in order to build anti-discrimination components into the course materials and assessments.

15. That PLTC instructors should continue to regularly update and refresh their anti-racism and cross-cultural awareness training.

16. That PLTC (and CLE) should create appropriate guidelines for volunteer and guest instructors.

17. That PLTC (and CLE) should put effective mechanisms in place to inform guest lecturers what their policy is regarding the treatment of historically disadvantaged groups, including Aboriginal students.

18. That PLTC (and CLE) better advertise their system for responding to complaints; the complaints process should include a mechanism for getting back to the person making the complaint and letting that person know what actions were taken by PLTC (or CLE).

19. That PLTC students should continue to be instructed on the role of the Law Society's Discrimination Ombudsperson in resolving discrimination complaints.

Mentors

20. That the Native Law Student Associations at the law faculties should work with representatives of the Indigenous Bar Association and the Canadian Bar Association to ensure that an effective mentoring system is put in place during law school and carried forward into articling.

PLTC entrance examination

21. That the Equity and Diversity Committee of the Law Society resist the implementation of the proposed PLTC entrance examination, and if such examination is to proceed, that the Equity and Diversity Committee ensure that no barriers are created by the proposed PLTC entrance examination for Aboriginal or other traditionally disadvantaged students.

22. That if a PLTC entrance examination is implemented, that the Law Society make available a system of tutoring by a qualified person, such as the Academic Support Instructor currently employed by PLTC.

23. That PLTC and the law schools work together to make more concerted efforts to inform law students as to the PLTC course content and the courses that PLTC recommends that law students should consider taking as part of their LL.B. program.

Continuing Legal Education Society (CLE)

24. That CLE explore ways of better advertising the existence of the CLE bursary program to Aboriginal lawyers in British Columbia.

25. That CLE reconsider whether the $25,000 threshold for its bursary program is too low and that it consider increasing access to its courses for the lowest wage earners by raising the bursary threshold income level to $40,000 or $50,000, at least on an experimental basis.

26. That CLE establish an Advisory Panel(s) of Aboriginal lawyers and non-Aboriginal lawyers with expertise in Aboriginal legal issues to assist CLE staff in a review and inclusion of appropriate sections on Aboriginal legal issues in CLE publications and manuals.

27. That CLE programming staff consult with Aboriginal Advisory Panel(s) with a view to including Aboriginal legal issues, where appropriate, in future course programming. That CLE programming staff maintain contact with staff lawyers at the Native Community Law Offices operated by the Legal Services Society in order to identify appropriate Aboriginal law issues for inclusion in future CLE conferences.

Articling

28. That the Law Society appoint an Articling Liaison Officer to promote fair and adequate access to articling opportunities and to help eliminate discriminatory experiences in the articling process. The functions of the Articling Liaison Officer should include:

    - working with the two law school Career Placement Officers to ensure that articling data is collected annually from those seeking articles and those who are not;

- working with the Career Placement Officers to keep lists of law students and law firms looking for an articling match;
- keeping a directory of lawyers who are willing to split articles with other lawyers;
- keeping a list of Aboriginal lawyers and law firms who are specifically interested in hiring Aboriginal articling students;
- investigating the creation of financial support programs for Aboriginal students (such as single parents) who cannot financially afford to article;
- helping facilitate greater networking between Aboriginal law students and lawyers through programs such as summer articles, one-on-one mentoring, receptions etc.;
- helping establish an advisory group of Aboriginal lawyers and articling students;
- working with private law firms to encourage the creation of equity hiring programs for Aboriginal and visible minority students;
- acting as a liaison for receiving complaints concerning the articling process;
- undertaking pro-active, equity education activities for law firms in order to minimize the experience of discriminatory treatment that some Aboriginal articling students experience.

Law practice

29. That the Law Society create a comprehensive model employment equity policy for law firms to ensure that Aboriginal lawyers do not experience discriminatory barriers in the practice of law. Such a policy should be formulated by directing the Equity and Diversity Committee to appoint a working group for that purpose, composed of minority and non-minority lawyers and one or more employment equity specialists.

30. That the Equity and Diversity Committee of the Law Society establish an Aboriginal Advisory Group:

    - to assist (with others) in the development of a strategy and action plan to create adequate bursary funding for needy Aboriginal students to attend pre-law programs and law school (see Recommendations 3 and 6);
    - to assist (with others) in the development and implementation of an Aboriginal Law School Admission Outreach Strategy (see Recommendations 6 and 7);
    - to assist (with others) to set up an Aboriginal mentoring program for Aboriginal law students and articling students;
    - to provide advice to the Articling Liaison Officer in regard to articles for Aboriginal students;
    - to encourage Aboriginal lawyers to run for Bencher and to put their names forward for appointments to committees by the Law Society;
    - to encourage Aboriginal lawyers to apply for judicial appointments;

- to offer assistance to the judicial education committees in planning and including Aboriginal law and perspectives into their education programs;
- to increase law practice opportunities for Aboriginal lawyers; and
- to recommend programs or activities for improving the cross-cultural awareness of members of the legal profession in regard to Aboriginal peoples.

31. That the Aboriginal Advisory Group appointed by the Equity and Diversity Committee be asked to examine ways to encourage and support more Aboriginal applications to the judiciary.

The judiciary

32. That the judiciary be encouraged to continue to include and expand the treatment of social context issues concerning Aboriginal peoples and race, culture and gender into their educational programs.

33. That the Equity and Diversity Committee of the Law Society be asked to foster an exchange of information, at least annually, between the Equity and Diversity Committee and the Judicial Education Committees on their educational initiatives concerning issues pertaining to Aboriginal peoples.

34. That the Aboriginal Advisory Group appointed by the Equity and Diversity Committee offer assistance to the Judicial Education Committees in helping them to organize education sessions on Aboriginal issues.

Follow-up / monitoring

35. That the Law Society direct its Equity and Diversity Committee to report once a year in writing on the extent and progress of the implementation of the recommendations and related matters in this report.