

Position Paper on the Ministry of the Attorney General’s Proposed Legal Professionals Regulatory Modernization

Overview

The Federation of Asian Canadian Lawyers (British Columbia) Society (“**FACL BC**”) is a diverse coalition of Asian Canadian lawyers in British Columbia (“**BC**”). FACL BC is pleased to share its position on the recent proposal of the Ministry of the Attorney General (the “**Ministry**”) to change the way legal professionals are regulated.

In general terms, the Ministry proposes to amalgamate the Law Society of British Columbia (the “**Law Society**”) and the Society of Notaries Public of British Columbia (the “**Notaries Society**”) into a single regulator, which would govern lawyers, notaries public, and paralegals in British Columbia. In September 2022, the Ministry released an Intentions Paper¹ that outlines the proposed reforms to the regulatory regime to solicit engagement from the public and key partners.

FACL BC has prepared this Position Paper summarizing our position on the Ministry’s proposed reforms as they relate to our mandate to promote equity, justice, and opportunity for Asian Canadian legal professionals and the broader community.

In our view, although the underlying goals of the proposal are laudable, it is generally unclear how the proposed reforms will further those goals, as the Intentions Paper is bereft of detail that would allow FACL BC to provide an informed opinion. For example, as explained below, FACL BC is, in principle, in favour of a licensing program for paralegals that would lower the cost of legal services for the public and offer a route to foreign-trained lawyers who have trouble becoming licensed in BC. However, the Intentions Paper fails to describe the specifics of that proposal in any detail. We are also concerned that some of the proposals are likely to undermine the Ministry’s stated goals. In particular, reducing the number of elected Benchers would undoubtedly reduce diversity and stifle representation on the new regulator’s board.

The Ministry’s Rationale

As we understand the Ministry’s rationale, it has proposed this modernization primarily to make it easier for the public to access legal services and advice. The proposed changes are aimed at prioritizing the public interest, improving access to justice, furthering reconciliation, and improving the overall efficiency, effectiveness, and flexibility of the regulatory framework. According to the Ministry, regulating all legal services under a single

¹ Ministry of Attorney General, “Legal Professions Regulatory Modernization” (September 2022), link: <https://engage.gov.bc.ca/app/uploads/sites/121/2022/09/MAG-Intentions-Paper-September-2022-1.pdf> [Intentions Paper].

statute and appointing a single regulator would contribute to achieving these goals. The proposed single regulator would have a mandate to protect the public interest and improve access to legal services. Its goal is to accomplish the above by modernizing the governance framework for all legal service providers.

Many people in BC cannot afford a lawyer.² Moreover, the gap in accessing justice and legal services seems to exist despite an increase in legal clinics and *pro-bono* work. The Ministry is of the view that the proposed changes are necessary because accessing legal services can become a regulatory issue where rules prevent certain legal professionals from providing services leading to a decrease in the overall availability of services and an increase in cost of those services being provided.

In the Ministry's view, it is the appropriate entity to address this issue because access to justice requires a governance framework that allows the legal field to prioritize the public interest as opposed to simply the interests of its professional members, including lawyers, notaries public, and paralegals. However, the Ministry intends for legal professionals in BC to remain self-regulating without government interference.

The new governance framework is also aimed at furthering reconciliation. The Ministry intends for the proposed changes to be consistent with the *United Nations Declaration on the Rights of Indigenous Peoples* and to address institutional and systemic racism.

FACL BC's Mandate

Given FACL BC's mission to promote equity, justice, and opportunity for Asian Canadian legal professionals and the broader community, issues of representation, access to justice, and independence of the bar are of primary concern to us.

In particular, FACL BC is most concerned with ensuring that recent and historical advancements in bringing a diversity of voices to decision-making positions in both the Law Society and the Notaries Society are not undone. FACL BC strongly advocates for the inclusion of pan-Asian members, as well as those from a broad diversity of backgrounds and experiences, on any body purporting to regulate legal professionals in British Columbia. It is incumbent on the Ministry to demonstrate that it is both committed to and has a structural plan to ensure that these perspectives are afforded an equitable position at the table and the opportunity to actively and materially engage in decision-making.

Furthermore, if access to justice is the primary rationale behind the proposed regulatory regime change, it must be focused on providing increased access to justice for those most vulnerable such as immigrants, Indigenous peoples, and others who have traditionally been marginalized by the legal system, including those for whom English is a second language.

Finally, FACL BC reiterates that any body that regulates legal professionals must be independent from the government. Anything less would provide opportunity for political considerations to unduly and inappropriately influence regulatory decision-making. A regulatory regime that is representative, accessible, and independent is the minimum standard and FACL BC is committed to holding the Ministry accountable on these issues.

² A survey conducted for the Law Society in 2020 found that 60% of people with a legal problem in British Columbia got no advice about their situation and more than half of those who did get advice from a non-lawyer (Intentions Paper at p. 4).

FACL BC's position on each of the proposals put forward by the Intentions Paper, as set out below, is informed by these considerations and our overarching mission.

Other Jurisdictions

To provide context to the proposed regulatory change, we reviewed how lawyers, notaries public, and paralegals are regulated in other jurisdictions across Canada.

There are no noteworthy differences with respect to the regulation of **lawyers** across jurisdictions. As in British Columbia, lawyers in other jurisdictions are regulated by a Law Society, which is enabled through legislation like the *Legal Professions Act*, S.B.C. 1998, c. 9. For the purpose of this Position Paper, we did not review whether there were any differences in the governance structure of other Law Societies compared to BC.

Notaries in every Canadian jurisdiction except British Columbia and Québec may only provide the following services:

- Administer/take/attest oaths, affidavits, affirmations or declarations;
- Certify and attest true copies of documents; and
- Witness or certify and attest the execution of documents.

As in BC, members of the provincial Law Societies in those jurisdictions are considered notaries by default. Non-members are appointed as notaries by a Minister or Attorney General, depending on the jurisdiction.

In Québec, similar to BC notaries are permitted to perform a wider range of services, such as:

- Providing legal advice in all areas of law;
- Acting in matters that are not contested in court (e.g., residential real estate transactions); and
- Representing individuals in certain non-contentious proceedings.

Québec notaries act as public officers and provide services with a focus on prevention, conciliation, and alternative conflict resolution rather than litigation. The *Chambre des notaires du Québec* regulates and governs notaries in Québec.

Paralegals in most provinces are unlicensed and only indirectly regulated through their supervising lawyer. In other words, generally speaking, paralegals in almost all jurisdictions are not permitted to provide any legal services on their own, but rather perform legal services under the supervision of lawyers (or notaries in Québec).

In Ontario, however, paralegals must be licensed through the Law Society of Ontario to provide legal services, including representation in small claims court, traffic court, some criminal matters and before tribunals. Paralegals can also perform some notary services. Paralegals in Ontario are regulated by a 13-member Paralegal Standing Committee (which comprises elected paralegals and members of the Law Society of Ontario's governing board) and have their own Rules of Conduct and Professional Conduct Guidelines.

Modernized Governance Framework

The Intentions Paper states that the governance frameworks for lawyers and notaries are both in need of revitalization. It proposes a new structure under a single statute, single regulator framework in the form of “a competent, nimble, and skill-based board, composed of a diverse group of legal service providers and others who individually and collectively have a deep understanding of the regulator’s public interest mandate.” While FACL BC supports these criteria in principle, the specifics of the board actually proposed by the Ministry are cause for serious concern insofar as representation and independence are concerned. Furthermore, while the Intentions Paper does provide some intentions that have the potential to mitigate some of FACL BC’s concerns, they are light on details and clear actionable plans upon which we and other organizations could form a full position.

FACL BC accepts that the governance frameworks for the regulatory bodies of both lawyers and notaries may require modernization to better serve the public interest, to increase public confidence in the regulatory regime, and to protect and further support recent achievements in the diversity of decision-makers. These improvements are also called for in the Canadian Bar Association British Columbia Branch’s (“CBABC”) Submission on Self-Regulation³ and the Cayton Report.⁴ It may be appropriate for the Law Society’s focus on serving the public interest and regulating legal professions to be enhanced and representing its members’ interests to be de-emphasized or entirely eschewed.

Moreover, FACL BC supports the Ministry’s proposal to maintain the current policy of government-appointed directors constituting a minority on the board and the new decision to remove the Attorney General’s membership on the board. This would contribute to the independence of the legal professions. It is not clear from the Intentions Paper how many lawyers would be on this proposed board, and so FACL BC cannot provide its views on that question. If lawyers were to be outnumbered by government-appointed directors, that would be a serious concern.

Finally, FACL BC approves of the Ministry’s proposal to support initiatives to focus the board’s role on strategic oversight and to leave regulatory and operational matters primarily to other committees or arms of the larger regulatory body. However, the Intentions Paper lacks specificity and detail as to how these proposals would be achieved structurally and, perhaps more importantly, there continue to be significant concerns related to representation and diversity on the board that the proposals either do not address or will likely exacerbate.

While the Intentions Paper repeatedly emphasizes that its proposed changes would build on recent improvements in the diversity of regulatory decision-makers and would “ensure the regulator’s board is reflective of all British Columbians” in balancing “the dual objectives of diversity and functionality”, the proposed changes to the governance framework clearly prioritize “functionality” over diversity. Although not directly committed to in the Intentions Paper, the reference to the CBABC’s recommendation to reduce the number of Law Society Benchers in their Submission on Self-Regulation and other recently modernized regulators reveal that the current intention is to create a board consisting of between 12-15 directors to

³ Canadian Bar Association British Columbia Branch, “Submission on Self-Regulation and LSBC” (October 25, 2021), link: https://www.cbabc.org/CBAMediaLibrary/cba_bc/pdf/Elections/Bencher/2021/CBABC_Submission_to_LSBC_Governance_Review.pdf [CBABC Submission on Self-Regulation].

⁴ Harry Cayton, “Report of a Governance Review of the Law Society of British Columbia” (November 2021), link: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/GovernanceReview-2021.pdf> [Cayton Report].

oversee the entire regulatory framework for all legal professionals.⁵ The rationale behind this substantial reduction in size is to achieve nimbleness and cohesion while being “large enough to ensure that all regulated legal service providers and the public are reflected in [the board’s] composition, and to ensure a diversity of skills, perspectives, regions, and backgrounds are represented in its deliberations.” Yet, FACL BC cannot conceive how such significant reductions of seats at the decision-making table can maintain, much less enhance, a diversity of perspectives.

The Intentions Paper contemplates a board composed of elected directors, government-appointed directors, and directors appointed by other members of the board. Given a size of 15 directors total and a relative balance between the different classes of directors, the proposed board would consist of, at most 5-7 elected directors. Of the current elected Law Society Benchers, almost half are racialized. Five are Indigenous. A reduction from 25 elected Benchers to 5 elected directors would reduce the number of racialized elected directors from 10-12 to 1-2. The current composition of the Benchers is not an accident. It is the result of decades of racialized lawyers working toward progress in the profession.

Understood in this context, the Ministry’s proposal cannot be reasonably construed as progress in increasing representation. Moreover, the requirement that elected directors come from all regulated legal professions and geographic regions will likely create further obstacles to electing a diverse board. To address this, the Ministry proposes to reform the Electoral College model, to legislate a guaranteed Indigenous appointee, and to use the appointment of directors by other members of the board to fill any identified or anticipated “gaps” in representation. However, none of these measures is sufficient to adequately and equitably address the real representation problems caused by such a drastic reduction in board size.

Firstly, FACL BC supports the reform of the Electoral College model which favours geographic diversity over other forms of diversity. However, without any details as to what the actual reforms would look like, it is impossible to comment on whether they would be effective in increasing diversity in elections. Secondly, introducing a statutory minimum requirement for a single guaranteed Indigenous appointee creates the real danger of tokenizing that appointee and creating a barrier for any additional Indigenous (and other racialized) representation. While the Intentions Paper acknowledges that such a statutory minimum “would not and could not account for all the diverse perspectives of Indigenous peoples”, it fails to provide solutions to this problem. Finally, the gap-filling appointment of directors by members of the board has the potential to address some of the concerns raised about representation, particularly in enabling an intentional approach to ensuring a diversity of voices at the decision-making table. However, beyond the proposal that these appointments be made in accordance with “a fair, transparent, accountable and independent nomination process”, the Intentions Paper is alarmingly scant on details. Without any indication of what kind of criteria and principles would inform this process beyond vague references to diversity, FACL BC is simply unable to comment on whether this proposal adequately addresses concerns about representation on the board.

Single Statute, Single Regulator

Some perceive the Law Society as a professional association that acts as an advocacy body for lawyers by engaging in “turf protection” and lobbying efforts.⁶ Of course, as a regulator of legal professionals, the Law Society must serve the public interest. The Law Society’s mandate to serve the public interest includes

⁵ The CBABC Submission on Self-Regulation suggests a board of 15. The new British Columbia College of Oral Health Professionals has a board of 12 (link: <https://oralhealthbc.ca/about/board/>).

⁶ CBABC Report at pp. 17-20; Cayton Report at p. 4.

promoting access to legal services. This may involve expanding the regulation of legal services provided by non-lawyers, as seen in past efforts to regulate paralegals.⁷

In this context, a single regulator model may provide an effective centralized mechanism to protect the interests of the public. Whereas having separate regulators can increase potential competition and the need for coordination, the stated benefits of a single regulator include improved clarity of mandate and operational efficiency. The Ministry's single statute, single regulator proposal may present an opportunity for different legal professions and services to be clearly defined, categorized, and regulated under a single system that is accessible and accountable to the public.

Even so, a single statute, single regulator model is not necessarily the best solution to existing problems. The most significant change under this model seems to be the merging of the Law Society and the Notaries Society. In terms of expanding access to legal services, there is a lack of clarity on the role and abilities of paralegals in contrast with lawyers and notaries. Authorizing paralegals to provide an extended range of legal services may increase access to less costly legal services.

But in practice, the Law Society has also demonstrated a commitment to the regulation of paralegals, such as the Innovation Sandbox and existing regulatory schemes over designated and licensed paralegals. In this regard, it is unclear how a single statute, single regulator model can provide anything definitive to overcome challenges in existing regulatory initiatives, in comparison to any endeavor by the Law Society itself.

Furthermore, questions remain as to whether the overhaul of the current regime with the establishment of a single statute, single regulator regime would be more effective or less difficult than introducing separate targeted reforms and statutory amendments to the Law Society and the Notaries Society, especially considering that a total overhaul of existing governance structures may attract considerable resistance. The proposal of a single regulator model seems to rule out any confidence in the Law Society and Notaries Society's capability and willingness to move toward better governance practices, despite the Law Society's adoption of the majority of the recommendations from the Cayton Report. Moreover, a single statute, single regulator model may in theory give coherence to the different legal professions, but whether this is actually the case warrants further study, given the disparities between these professions in number and substance.

Clear Mandate

FACL BC supports the Ministry's intention that the proposed regulator's mandate reflect the powers and responsibilities delegated to it by the BC Legislature clearly and transparently. Overall, having a clear mandate which lays out the regulator's broad purpose and authority, core responsibilities, and guidance on how to carry out these duties will likely increase public confidence in the proposed regulator and provide for better accountability. FACL BC would like to see these priorities set out not just in the enabling statute, but also in the mission statement of the proposed regulator. This will increase public transparency and, therefore, confidence and accountability.

FACL BC lauds the Ministry's specific proposals to include education on Indigenous cultural competence and the maintenance of a public register of licensees as core responsibilities of the proposed regulator. However, FACL BC notes a lack of details on other elements of the "clear mandate" delegated to the proposed regulator. Furthermore, FACL BC maintains that the Ministry has failed to adequately prioritize important issues in its

⁷ CBABC Report at p. 22.

proposal for a clear mandate. For example, FACL BC would like to see the values of representation, access to justice for traditionally marginalized groups, and acting in the public interest enshrined by codifying them into the proposed regulator's core responsibilities. While some of these concerns are addressed in the Intentions Paper as potential guiding principles, these values should be given higher priority by elevating them to core responsibilities. As it stands, the proposal appears to create a hierarchy of priorities by providing for three "levels" of a clear mandate. It may be favourable to use a structure that recognizes the equal importance of defined responsibilities and guiding principles.

Flexible Licensing Framework

FACL BC is generally supportive of the Ministry's efforts to license paralegals in a revised statute, along with granting the regulator the authority to expand the scope or scopes of practice of paralegals and other legal professionals in specific areas, or on a case-by-case basis. FACL BC notes, however, that these reforms must be done in a way that actually broadens access to justice.

It is FACL BC's position that the proposed regulation of paralegals and other legal service providers has the potential to improve access to and the quality of legal services, which aligns with FACL BC's mission to promote equity, justice, and opportunity for Asian Canadian legal professionals and the broader community. In Canada, an alarming proportion of self-represented litigants identify as South or East Asian. Recent reports suggest that as much as 14.8% of self-represented litigants identify as Asian.⁸ In British Columbia, the most consistently cited reason for self-representation is the inability to afford to retain, or to continue to retain, legal counsel.⁹ Accordingly, since the cost of legal services is a barrier to access to justice for pan-Asian members of our communities, FACL BC supports expanding regulation to other legal service providers to the extent it will reduce fees and thereby broaden access to justice.

Should the Ministry implement paralegal licensing, FACL BC encourages the Ministry to take the necessary steps, such as conservative licensing fees, to ensure that the regulation of paralegals actually has the effect of increased legal services. Furthermore, FACL BC recommends that the Ministry introduce mandatory cultural competency training as a part of any paralegal licensing process.

It is not clear, however, whether licensing paralegals or other legal service providers would actually reduce the cost of legal services.¹⁰ Factors such as training requirements and premiums for liability insurance could lead to higher fees than the unregulated market. We note that in Ontario, where paralegals are licensed and regulated, the median billing rate of a paralegal is \$144 per hour, and the top quartile of paralegals working for law firms billed at \$250 or more per hour.¹¹ Other factors, such as increased supply and competitive price setting, could

⁸ Julie Macfarlane and Charlotte Sullivan, "Tracking the Trends of the Self-Represented Litigant Phenomenon: Data from the National Self-Represented Litigants Project, 2019-2021", link: <https://scholar.uwindsor.ca/cgi/viewcontent.cgi?article=1010&context=lawnsrlppubs>.

⁹ Julie Macfarlane, The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants - Final Report at 39, link: <https://representingyourselfcanada.com/wp-content/uploads/2016/09/srlreportfinal.pdf>.

¹⁰ Lisa Trabucco, "What Are We Waiting For? It's Time to Regulate Paralegals in Canada" at p. 155, link: <https://canlii.ca/t/2bf2>.

¹¹ Law Society of Ontario, "Paralegal Business Models and Billing Practices" (April 2021), link: <https://lawsocietyontario.azureedge.net/media/lso/media/about/initiatives/flsp-paralegals-en-aoda.pdf>.

lead to lower fees. In British Columbia, the results from the designated paralegal pilot project suggest a general consensus that using paralegals will have a positive effect on providing services at a lower cost.¹²

In British Columbia, given the lack of regulation, the term “paralegal” is unclear and confusing. The current framework allows anyone to market themselves as a paralegal, though only those who pay a fee to the BC Paralegal Association may use the trademarked title of a “BCPA Registered Paralegal”. The obvious concern is that those who are unfamiliar with the legal system in BC may be at risk of being duped or taken advantage of, especially if English is not their first language. Licensing will necessarily provide quality assurance at the outset. Having a minimum standard of ethics, practice requirements, and assurances can assist in ensuring all levels of legal services will serve our community.

In determining the scope of practice for paralegals, the focus must be on the community’s needs for quality legal services. In Ontario, a legal clinic for low-income Chinese and Southeast Asian people commented that the majority of the clinic’s clients face challenges with immigration or employment.¹³ FACL BC is not aware of a formal study of the pan-Asian community’s need for legal services and encourages the Ministry to conduct this research, along with research into the needs of other racialized groups, prior to implementing any legislation.

The foregoing points are just some of the ways that regulating paralegals could benefit the pan-Asian community in British Columbia. Of course, while regulating paralegals seems positive in theory, implementing the regulations is another story. An example is the paralegals-in-court pilot project, which ran from 2013 to 2015 and allowed paralegals to independently make procedural appearances in court. During this time, only three members of British Columbia’s 1,300-strong bar sent paralegals to court in their stead, possibly because the profession “didn’t know what they could do with paralegals”.¹⁴

FACL BC therefore recommends that, should legislation be passed to license paralegals, such regulation must provide a clear and detailed framework on the paralegal’s scope of authority. Promoting greater public awareness is also important. The Ministry has not provided any detail on the manner in which paralegals would be regulated. FACL BC is not, at this time, in a position to comment with any specificity on the scheme that should be adopted to license paralegals.

FACL BC is most interested in and optimistic about the proposed prospect of enabling the proposed regulator to license paralegals and notaries on a case-by-case basis. FACL BC supports decreasing barriers to entry to providing legal services as this will facilitate a broader range of participating in professional legal services and increase access to justice. FACL BC is particularly hopeful that this proposal may facilitate foreign-trained legal service providers (including lawyers seeking certification to practice in BC) accessing the market and leveraging their expertise and diverse perspectives for the benefit of the BC public. But this will only be possible if barriers to entry are sufficiently decreased.

¹² Law Society of British Columbia, “Designated Paralegal Survey 2016”, link: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/DesignatedParalegalSurvey.pdf>.

¹³ Lucas Powers, “New legal hotline a lifeline for Ontario’s low-income Chinese and Southeast Asians”, link: <https://www.cbc.ca/news/canada/toronto/chinese-southeast-asian-legal-hotline-1.4168196>.

¹⁴ Elizabeth Raymer, “LSBC Discontinues ‘Paralegals in Court’ Pilot” (January 12, 2017), in *Canadian Lawyer Mag*, link: <https://www.canadianlawyermag.com/news/general/lcbc-discontinues-paralegals-in-court-pilot/274110>.

Efficient Discipline Framework

The Intentions Paper describes a number of best practices with respect to the regulation of legal professional practice and conduct. It acknowledges that many of those practices are already in place at the Notaries Society and the Law Society. The Ministry notes that the Law Society is reviewing its regulatory processes to ensure that it accommodates Indigenous complainants and witnesses who may be experiencing marginalization and vulnerability. The Ministry hopes to incorporate the findings of that review into the future regulator's processes.

FACL BC believes that the Law Society and Notaries Society can always improve their processes, particularly with respect to racialized complainants, witnesses, and respondents. Racialized individuals are historically underrepresented in both societies. They experience marginalization and are more likely to face bias.

That said, FACL BC does not believe that it is necessary for a new regulator to be formed in order to conduct this review or achieve any of the objectives set out in the Intentions Paper. A single regulator would not necessarily be better equipped to improve disciplinary processes for marginalized groups, nor is there any guarantee of any marked improvement for racialized individuals participating in the disciplinary framework.

The Intentions Paper fails to address what in particular would change from the Law Society and Notaries Society's disciplinary processes. Rather, it acknowledges that both Societies already have many of the best practices for regulatory discipline in place. Other than relying on an unfinished review conducted by the Law Society, it does not appear as though the Ministry has any actual suggestions for what would change in the new disciplinary framework. At best, the recommendations in the Intentions Paper regarding the proposed discipline framework are vague.

FACL BC is concerned that changing the established disciplinary processes, which the Law Society and Notaries Society have consistently worked to improve, without a clear plan or reason could undermine progress and erode public confidence in the new regulator.

Enhanced Focus on Public Interest

Self-regulation has historically and traditionally been the subject of criticism. From a legal perspective, it is seen as the acquisition of power, influence and control by selected groups that are not accountable to the body politic. By contrast, proponents of professional self-regulation regard it as necessary to set high standards and to protect the public from the unscrupulous or incompetent. The question is whether the public interest can be effectively safeguarded by self-regulatory regimes.

From FACL BC's perspective, the public interest is best protected by independent and self-regulating legal professionals. There must be a clear separation of powers between the legal profession and the government. A regulatory system that reduces the independence of the legal profession by subjecting it to the state's control would seriously impede the role of lawyers in a democratic society, particularly their role in advancing legal challenges to government legislation and action. The Law Society conducts its regulatory and governance responsibilities with a predominant mandate of public protection.

While FACL BC's priority is to ensure that the Law Society remains self-regulating to maintain the independence of the legal profession, it agrees that there may be some aspects of its governance structure that could be improved. In part of its recommendations in its submission on the Law Society's self-regulation, the

CBABC endorsed that the Law Society cease providing education programming to its members, cease acting as an advocate beyond its core mandate, and cease granting awards to its membership. These practices run the risk of displaying conflicts between serving the public's interest and Law Society members' interest and creating bias in decision-making functions. Currently, the Law Society has a dual mandate in that it acts as an "association" of professionals as well as a "regulator" of professionals. As such, they potentially promote two conflicting roles, to promote the interests of the profession and the interests of legal services users. If the regulator gives precedence to the interests of the profession over the public, it will erode public confidence in its regulatory role.

In addition, FACL BC endorses the recommendations in furtherance of the public's interest as laid out in the Cayton Report. In particular, the Law Society should open the membership of its advisory committee to suitably knowledgeable, experienced and diverse members of the public; the Law Society should extend its commitment to equality and diversity in the legal profession to understanding the diverse requirements and choices of the multicultural community members of BC, including Indigenous people, and provide them with a respectful voice in its deliberations; and before implementing any policy change affecting legal services or the public's interest, the Law Society should carry out and publish a Regulatory Impact Assessment, covering economic impact (including cost to legal providers and the Law Society), equity, diversity and inclusion impact and public benefit.

The Cayton Report concluded that the Law Society met four of the nine Standards of Good Governance, partially met three others, and failed to meet the remaining two. One of the two standards in which the Law Society failed to meet and an area of concern was that it was weak in engagement with the public and lack of consideration of their interests. Notably, the Cayton Report concluded that the Law Society does not engage effectively with legal clients and the public. The Law Society conducted surveys in BC in 2009 and 2020, yet it is not evident how these surveys have influenced policy development. Moreover, it is not apparent that the Law Society attempts to understand from the complaints from members of the public or to engage directly with those who struggle to get access to justice. The five-year Strategic Plan aims to increase engagement with the profession and the public but it is not clear how this is being done.

Conclusion

FACL BC is encouraged that the Ministry has committed to modernizing the regulatory framework for legal service providers in BC. The Intentions Paper contains some laudable proposals which have the potential to increase access to justice and shape the regulatory framework to better serve the public interest. However, FACL BC notes there are some serious gaps in some of the proposals and insufficient details to draw practical conclusions about others. In particular, FACL BC is concerned some proposals will not adequately address key issues of ensuring the legal services profession continues to foster diversity, maintain its independence, and provide access to justice for all British Columbians. For many proposals, the likely impact does not clearly meet the espoused goals of the modernization and it is not obvious how they will improve the current framework. Additionally, and especially concerning for FACL BC, some proposals will in all likelihood materially and adversely impact representation by reducing the diversity of voices at the decision-making table. FACL BC calls upon the Ministry to more seriously consider the impact of its proposals on the representation of those who have traditionally been left out – and are only now starting to be let in.

FACL BC thanks the Ministry for considering our Position Paper and looks forward to continuing to work with the Ministry to promote equity, justice, and opportunity for Asian Canadian legal professionals and the broader community.