

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING:	Benchers	
DATE:	Friday June 13, 2004	
PRESENT:	William Everett, QC, President	Patrick Nagle
	Ralston Alexander, QC, 1 st Vice-president	Darrell O'Byrne
	Robert McDiarmid, QC 2 nd Vice-president	Margaret Ostrowski, QC
	Joost Blom, QC	June Preston
	Ian Donaldson, QC	Greg Rideout
	Michael Falkins	Glen Ridgway, QC
	Anna Fung, QC	Patricia Schmit, QC
	Carol Hickman	Dirk Sigalet, QC
	Gavin Hume, QC	Grant Taylor
	John Hunter, QC	Lilian To
	William Jackson	Gordon Turriff, QC
	Patrick Kelly	Art Vertlieb, QC
	Terry La Liberté, QC	James Vilvang, QC
	Bruce LeRose	Anne Wallace, QC
NOT PRESENT:	Ross Tunnicliffe	David Zacks, QC
	Dr. Maelor Vallance	
STAFF PRESENT:	James Matkin, QC, Executive Director	Michael Lucas
	Stuart Cameron	David Newell
	Brad Daisley	Neil Stajkowski
	Jeffrey Hoskins	Alan Treleaven
GUESTS:	Larry Anderson, QC, President, Law Society of Alberta	
	Doug McGillivray, QC, Vice-president, Law Society of Alberta	

1. MINUTES

The minutes of the meeting held on May 7, 2004 were approved as corrected.

2. PRESIDENT'S REPORT

Mr. Everett confirmed that Anna Fung, QC had been selected as the Benchers' nominee for Second Vice-president in 2005. Mr. Everett congratulated Ms. Fung and thanked Mr. Hunter for running.

Mr. Everett reported that the past month had brought good news, thanks to the efforts of Mr. Matkin, the Law Society staff and other Benchers. He reported that the proposal for an independent Land Title Authority had been to the provincial Treasury Board and Cabinet and would proceed with draft legislation through a committee on which Mr. Alexander would continue to represent the Law Society. Mr. Everett thanked Mr. Alexander for his hard work in bringing the matter to this point.

Mr. Everett reported on discussions with the federal government with respect to money-laundering. He said there would be no new legislation introduced for at least a year, and the federal government was now embracing the no cash rule passed by the Law Society of BC. He said other Law Societies were examining the possibility of creating model rules based on the BC rule.

Mr. Everett reported that he had sent a letter to the government of Newfoundland and Labrador saying they were wrong to legislatively exempt government employed lawyers from payment of Law Society fees.

Mr. Everett reported that the provincial government had introduced a new *Real Estate Act*. The Law Society had expected the exemption for lawyers would be in the legislation but contrary to the agreement reached with the government and other interested groups, the exemption was in the regulations. Mr. Matkin, Mr. Alexander, together with representatives of the CBA, Realtors Association and Notaries, met with the responsible minister. In the final event, the legislation was amended to put the exemption in the legislation. Mr. Everett again thanked Mr. Matkin and Mr. Alexander for their work.

Mr. Everett reported that the acquisition of the property at 750 Cambie Street was complete. He said time would prove this to be a prudent investment decision.

3. EXECUTIVE DIRECTOR'S REPORT

Mr. Matkin reported that the Society of Notary Publics wanted to be aligned with the Law Society with respect to the Trust Administration Fee, and had asked for advanced notice of when the fee would be implemented so that they could implement the same fee at the same time. Accordingly, introducing the fee would not place lawyers at a competitive disadvantage to notaries.

Mr. Matkin reported that Law Society management staff was working on the second phase of performance evaluations, in which performance evaluations are tied to compensation. Work with Western Management Consultants on the management structure of the Law Society and succession planning continued.

Mr. Matkin reported that the Supreme Court of Canada had selected a private firm to provide confidential digital communications for the court. Juricert will be embedded in the system as the authentication provider.

Mr. Matkin reported that the Law Society would be working on a model rule for the prohibition of cash transactions. The model rule might require some minor changes to the BC rule in order to make it uniform, as there were some concerns in other jurisdictions regarding the threshold amount and the exemptions. Mr. Matkin reported that the Law Society of Alberta adopted the BC no-cash rule. The only concern was whether there should be a specific exemption to allow lawyers to receive money to pay fines or to pay victim restitution (in the absence of a court order).

4. REPORT ON WESTERN LAW SOCIETIES MEETING

Mr. Alexander reported that the other western Law Societies are aligned with the Law Society of BC on a number of initiatives, one of which is the Western Torrens Protocol. Mr. Alexander recalled for the Benchers that the protocol was intended to address a problem with closing procedures in residential conveyance and mortgage transactions in the other western provinces, and had the additional benefit of providing more cost-effective protection from survey errors than title insurance. Initially there was limited acceptance of the protocol by the major financial institutions. Mr. Alexander reported that the Bank of Montreal had recently accepted the protocol and it was hoped that this would stimulate other major banks to do the same.

Mr. Alexander reported that the first item on the agenda was whether the Western Law Societies group should continue to meet, considering that the Federation of Law Societies had become more effective following its restructuring. He said the group decided it would continue to meet because there were some issues on which the western Law Societies share a particular perspective and there was an opportunity to do some “pre-board” work before that improves the position of the western Law Societies at Federation meetings.

Mr. Alexander reported that the Law Society of Nunavut had made changes to its accounting rules that would require lawyers closing transactions in Nunavut to use a Nunavut trust account. The impetus for the changes was the lack of funding for the Nunavut Law Foundation. The Foundation is not receiving income from funds held in trust because the money is being held in trust accounts in other provinces. Unfortunately, the requirement to hold funds in a Nunavut trust account may place lawyers offside the rules in their home jurisdictions. Mr. Alexander said the Western Law Societies group was looking at a solution that would see a portion of the interest on trust accounts in other provinces being given to the Nunavut Law Foundation.

Mr. Alexander reported that the Law Society of Alberta was considering dropping the examination component of their admission program. He noted that this could raise an issue with respect to interjurisdictional mobility.

Ms. Preston offered her observations as a Lay Benchers. She reported that she had met with the Alberta Lay Benchers. Among the topics discussed was the impact of Lay Benchers in the sixteen years since they were appointed. Ms. Preston suggested it would be interesting to do some research on the impact of Lay Benchers. Another topic discussed was the potential benefit of a more effective orientation manual for new Lay Benchers, and possibly some form of exit interview for outgoing Lay Benchers. Ms. Preston noted that BC Lay Benchers were the only western Lay Benchers who did not receive some compensation. She supported the method of appointing Lay Benchers in BC, but suggested that the question of compensation should be considered.

Mr. Everett noted that there was a special task force currently examining the President’s honorarium, and at their most recent meeting the subject of compensation for Lay Benchers had arisen. He said the task force would likely make a recommendation on that subject at the next meeting.

5. REPORT ON OUTSTANDING HEARING DECISIONS

The Benchers received a report on outstanding hearing decisions.

6. FEDERATION OF LAW SOCIETIES INTERVENTION POLICY

Mr. Treleaven reported that the new intervention policy proposed by the Federation was not substantively different from the existing policy. The requirement for unanimity continues. The proposed change concerns how unanimity is defined. Under the proposed policy, the Federation may intervene in a court case if there is 100% approval or abstention and no dissent.

It was moved (McDiarmid/Jackson) to approve the proposed change to the Federation of Law Societies intervention policy.

The motion was carried.

7. FEDERATION OF LAW SOCIETIES SEARCH WARRANT POLICY.

Mr. Donaldson said the proposed policy with respect to execution of search warrants on lawyers’ offices (where the lawyer is not the target of the warrant) had been circulated to a number of

groups but the response was not complete. In particular the Law Society was still seeking input from the criminal defense bar. He suggested postponing discussion until the next meeting.

It was moved (Fung/Donaldson) to postpone discussion of this matter until the next Benchers meeting.

The motion was carried.

8. APPOINTMENT TO THE LAW COURTS EDUCATION SOCIETY BOARD OF DIRECTORS

Ms. Ostrowski did not participate in the discussion or vote on this matter.

It was agreed to appoint Ms. Ostrowski to the Board of Directors of the Law Courts Education Society.

9. APPOINTMENT TO THE CBA BENEVOLENT FUND SOCIETY BOARD OF DIRECTORS

It was moved (Fung/Donaldson) to appoint Karl Warner, QC to the Board of Directors of the CBA Benevolent Fund Society.

The motion was carried.

Mr. LaLiberté reported that Anne Wallace, QC had joined the Benevolent Fund Society board as well.

10. ANNUAL GENERAL MEETING SATELLITE MEETING LOCATIONS

The Benchers considered the Executive Committee's request for guidance with respect to satellite meeting locations for the 2004 AGM.

Mr. Taylor suggested that the Committee consider a satellite location in Surrey or the Fraser Valley.

Mr. O'Byrne said he had discussed with the Corporate Secretary the issues that would be on the AGM agenda other than the annual practice fee. He said interest in the AGM would be quite low if the fee issue was not on the agenda.

Mr. Vertlieb suggested that the main meeting location might be moved to a location other than Vancouver, such as New Westminster.

11. LIBRARIES TASK FORCE STATUS AND MANDATE

Mr. McDiarmid reviewed the Libraries Task Force recommendation that the task force be reconstituted as a standing committee of the Benchers. He said library and legal information issues were becoming more and more prominent as topics of discussion in all jurisdictions. It is apparent that the cost of access to legal information is becoming an issue for all lawyers. Mr. McDiarmid said the ongoing nature of these important issues and the amount of money the Law Society provides to the BCCLS and CanLII warrant establishing a committee with an ongoing mandate to formulate and coordinate Law Society policy regarding libraries and legal information.

Ms. Schmit noted that the Legal Education Task Force would conclude its work and make recommendations to the Benchers at some point in the future, but there would be some ongoing issues arising from its work that should be referred to the proposed committee.

Mr. Hunter favoured forming the committee but his only concern was whether a focus on libraries was too narrow,

Mr. McDiarmid agreed that the committee should have a mandate that encompasses both traditional libraries and other forms of legal information delivery, hence the proposed name "Libraries and Legal Information Committee".

Ms. Preston noted that the Chief Librarian from the Great Library in Ontario had given a presentation that would be of interest to the Benchers.

Mr. Sigalet spoke against forming a new committee. He suggested the issues could be dealt with by the Legal Education Task Force.

Mr. McDiarmid said the committee would deal with liaison with information providers, and ongoing issues with respect to the provision of legal information. He acknowledged the policy against creating committees, except when there was an ongoing need, but said that was precisely the case with respect to legal information.

It was moved (McDiarmid/Wallace) to change the Libraries Task Force to the Legal Information Committee.

The motion was carried.

12. OPEN DISCUSSION OF BENCHERS' CONCERNS

Mr. Cameron reported on the Supreme Court of Canada's decision in the *Finney v. Barreau du Quebec* case. The case involved a very lengthy delay by the Barreau in implementing the suspension of a lawyer with a significant history of problems. The Court concluded that bad faith could be found in gross negligence or complete dereliction of duty. However, the decision confirmed that the onus remains on the plaintiff to show bad faith on the part of a regulatory body to overcome statutory immunity provision. Mr. Cameron confirmed that the case was a clear indication that cases involving serious misconduct must be dealt with as quickly as possible.

Mr. Turriff commented that the implications of the *Finney* case would involve not just very serious cases, but also cases of a single lawyer with a history of discipline matters.

Mr. Alexander raised a concern brought to his attention by a member. He said the member had informed him that the Royal Bank of Canada had instituted a new policy requiring lawyers' trust cheques to be held for clearance unless they are certified. He said this was a "slap in the face" particularly considering the way the Law Society had dealt with compensation in the Wirick matter.

Mr. Stajkowski said he had not received any communications from members on this matter so he could not say how widespread the Royal Bank policy was. Mr. Alexander believed it was a general policy of the bank.

Mr. Donaldson said the Law Society should take the issue up with the bank. If the Law Society takes the position that a trust cheque carries an undertaking that it will be honoured, then the Law Society must take up the issue or else it would spread to other banks.

Mr. LaLiberté agreed with Mr. Donaldson.

Mr. LeRose noted that some large firms require lawyers to certify their trust cheques if immediate payment out on the basis of the cheque is required.

It was moved (Ridgway/LeRose) to send a notice to members advising that it is inappropriate to require lawyers to certify their trust cheques.

A discussion followed on the different practices of law firms with respect to requirements for certification of trust cheques. It was noted that prudent practice required that cheques for large sums be certified. However, it was also noted that there was a difference between a firm certifying a cheque once it has been received and requiring a lawyer to certify a cheque before sending it.

Mr. McDiarmid noted that passing resolutions without first doing pre-board work sometimes resulted in unintended consequences. He suggested postponing the motion to a future meeting.

Mr. Everett suggested that he, Mr. Alexander and Mr. Matkin meet with Royal Bank representatives to discuss the matter before the Law Society takes any further steps.

Mr. McDiarmid commented that the problem raised the question of whether the Law Society should consider establishing its own credit union to provide trust accounts for members.

It was moved (Hume/Vertlieb) to postpone discussion of the motion to a future date to be determined.

The motion was carried.

Mr. Turriff raised a concern with respect to the Law Society's credentials process. He noted that the Law Society checks applicants' knowledge, skills, and mental health, but did little to check applicants' integrity. He suggested that Law Society should establish a policy of requiring testimonials from third parties, either randomly or at least with respect to applicants who have been charged with an offence or have other indicators of problems.

Mr. Alexander raised a concern with respect to the Trust Administration Fee. Duff Waddell, a member with a large conveyancing practice, had contacted him with the concern that the Benchers had not considered all the implications of the fee and had not obtained an independent view of the potential impact it would have on practices. Mr. Waddell sought an opportunity to address the Benchers on the subject.

Mr. Turriff said if Mr. Waddell was invited to address the Benchers, John Lakes and Jim Mooney should also be invited.

Mr. Everett said his view was that the Benchers were elected to make decisions such as introducing the Trust Administration Fee, but he was prepared to receive limited representations on substantial changes in policy.

Mr. Nagle agreed with Mr. Everett.

Mr. McDiarmid said members had expressed a lot of concern to him regarding the fee. He said it was a significant change and it would be appropriate to hear from people.

Mr. Alexander noted that both reports from the Conveyancing Practices Task Force addressed the recommendation to implement the Trust Administration Fee, and invited members to make written submissions. He thought the majority of members had not read the reports.

It was agreed to invite Duff Waddell and John Lakes to make written submissions and address the Benchers at the Benchers' meeting in July.

Ms. Wallace raised a concern about the rate at which law students were securing articling positions and new lawyers were securing employment.

It was agreed to direct the Executive Director to provide a report on that subject at the next Benchers meeting.

Mr. LaLiberté said he did not have any statistics but he had heard from some sole practitioners that they were not taking articulated students because it was too expensive.

13. UPDATE ON THE WIRICK INVESTIGATION AND SPECIAL COMPENSATION FUND CLAIMS.

This matter was discussed *in camera*.

DMGN
04-06-13