

**THE LAW SOCIETY OF BRITISH COLUMBIA**

**MINUTES**

- MEETING:** Benchers
- DATE:** Friday March 3, 2006
- PRESENT:**
- |   |                             |
|---|-----------------------------|
| Robert McDiarmid, QC, President                 | Thelma O'Grady              |
| Anna Fung, QC, 1 <sup>st</sup> Vice-president   | June Preston                |
| John Hunter, QC, 2 <sup>nd</sup> Vice-president | Robert Punnett              |
| Rita Andreone                                   | David Renwick               |
| Kathryn Berge, QC                               | Glen Ridgway, QC            |
| Joost Blom, QC                                  | Allan Seckel, QC, Deputy AG |
| Ian Donaldson, QC                               | Dirk Sigalet, QC            |
| Michael Falkins                                 | Richard Stewart             |
| Gavin Hume, QC                                  | Ronald Tindale              |
| William Jackson                                 | Gordon Turriff, QC          |
| Patrick Kelly                                   | Dr. Maelor Vallance         |
| Terry La Liberté, QC                            | Art Vertlieb, QC            |
| Bruce LeRose                                    | James Vilvang, QC           |
| Jan Lindsay                                     | David Zacks, QC             |
- NOT PRESENT:** Leon Getz, QC Carol Hickman
- STAFF PRESENT:**
- |                    |                 |
|--------------------|-----------------|
| Timothy McGee, CEO | Jack Olsen      |
| Stuart Cameron     | Neil Stajkowski |
| Brad Daisley       | Don Terrillon   |
| Su Forbes, QC      | Alan Treleaven  |
| Jeffrey Hoskins    | Adam Whitcombe  |
| Michael Lucas      | Carmel Wiseman  |
| David Newell       |                 |
- GUESTS:**
- Associate Dean Robin Elliot, University of British Columbia
  - Frits Verhoeven, Vice-president, CBABC
  - Caroline Nevin, Associate Executive Director, CBABC
  - Jamie Maclaren, Executive Director, Pro Bono Law of BC
  - Rose Kieth, Trial Lawyers Association
  - Ed Montague, Trial Lawyers Association
  - Georgeann Glover, President, LAP
  - Derek LaCroix, QC, Executive Director, LAP
  - Duff Waddell, for item 8
  - Michael Hall, student

**1. MINUTES**

The minutes of the meeting held on February 3, 2006 were approved as circulated.

**2. PRESIDENT'S REPORT**

Mr. McDiarmid circulated a written report.

**3. CEO'S REPORT**

Mr. McGee said that his reports would focus on the 2006 operations plan discussed previously with the Benchers, and senior staff members would be reporting on the particular aspects of the plan under their supervision. Before turning to Mr. Terrillon for a report on the trust assurance program, Mr. McGee reported that eighty students had begun the first PLTC session of 2006. He thanked the Benchers who participated in the session on professional ethics. He also reported that about ten percent of Law Society members had signed up to receive the Benchers Bulletin electronically, which is quite good for the initial take-up. He said that even at that moderate take-up rate, the Law Society would save approximately \$15,000 per year.

Mr. McGee reported that in the first month of the year the Law Society's financial numbers were tracking according to plan. With respect to recruiting, Mr. McGee reported that nineteen people had applied for the new Chief Legal Officer position, and interviews would be conducted in the second week of March. Twenty people had applied for the three counsel positions, and thirty people had applied for the three positions in the public response group. Recruiting is underway for a new Chief Financial Officer to replace Mr. Stajkowski. Mr. McGee noted that this was the last Benchers meeting that Neil Stajkowski would attend before leaving the Law Society. He thanked Mr. Stajkowski for his efforts during his sixteen-year career at the Law Society.

Mr. McGee reported that all assessments were complete in the facilities review project, but plans would be limited to dealing with the immediate need to accommodate the trust assurance and custodianship programs. The office space for those programs will be set up on the fourth floor together with the Audit and Investigations staff. Mr. McGee recommended that the Financial Planning Subcommittee review the detailed renovation plan and budget.

It was agreed to refer the fourth floor renovation plan and budget to the Financial Planning Subcommittee for review.

Mr. Terrillon gave an update on the development of the trust assurance program. A copy of his presentation is attached as Appendix 1. Mr. Terrillon reported that program development was on schedule and on budget, and he expected to have auditors in the field by August, 2006.

Mr. Cameron gave a report on the public response group. He reported that the average age of complaint files closed was very consistent over time. He said the group would be emphasizing prompt evaluation and closure of files where there is no evidence of professional misconduct, and on reducing the number of complaint files open longer than targeted timelines. The average number of files per staff member is 80, although a greater than usual number of files were referred to outside counsel to deal with reduced staff levels. In response to a question from Mr. LeRose, Mr. Cameron said that the cost of outside counsel files would be tracked. In response to a question from Mr. Jackson, Mr. Cameron said that approximately ten percent of complaints would ultimately be referred to the Discipline Committee. In response to a question from Ms. Preston, Mr. Cameron said that it would be possible to distinguish between complaints made by the public and complaints made by other lawyers. In response to a question from Mr. Turriff, Mr. Cameron said that the average age of complaint files had remained quite constant over a fifteen-year period, but the goal is to reduce the age of files.

**4. REPORT ON OUTSTANDING HEARING DECISIONS**

The Benchers received a report on outstanding hearing decisions.

## **5. REPORT FROM THE LAW SOCIETY EQUITY OMBUDSPERSON**

Anne Chopra reviewed a reviewed a statistical report on the Equity Ombudsperson program, a copy of which is attached as Appendix 2. Ms. Chopra noted that the program encompasses for areas of service:

- Advice to lawyers, lawyers' employees, and students. This part of the program is demand driven. Ms. Chopra noted that she has received calls from managing partners and managers proactively seeking advice on how to handle issues.
- Awareness – the highest level of awareness is in the Lower Mainland and Victoria because of Ms. Chopra's attendance at UBC Law School, and PLTC. Outside those areas, most awareness results from publication in the Benchers Bulletin.
- Articles – a series of practical articles on awareness of equity issues and how to deal with problems.
- Statistical reports to the Law Society.

With respect to the future of the program, Ms. Chopra said an independent audit was conducted and resulted in useful feedback. Ms. Chopra said she had met with the program review task force and would be meeting with Mr. McGee to discuss budget issues. As well, Ms. Chopra said she hoped to be involved in the educational element of the small firm task force because medium sized and small firms do not have the same resources as large firms to develop and implement workplace equity policies.

Mr. McDiarmid noted that over half the telephone calls Ms. Chopra received concerned matters that fell outside the scope of the program, and he asked what those calls were about. Ms. Chopra said most are calls from the public, which she refers to the Law Society.

Ms. Berge asked Ms. Chopra for her view on the need for outreach in areas of province other than the Lower Mainland and Victoria. Ms. Chopra said the issues she dealt with were not just relevant in Vancouver and Victoria and the Benchers Bulletin alone might not be sufficient to make people aware of the program. However, she said, it was largely a matter of resources.

Ms. Preston noted that Law Societies across the country were doing similar kinds of work and the Law Society of BC had taken something of lead in the area. She said the program clearly benefits the public interest.

## **6. LAWYERS INSURANCE FUND 2005 YEAR END REPORT**

Ms. Forbes gave a presentation on the Lawyers Insurance Fund in 2005, a copy of which is attached as Appendix 3.

Mr. Zacks spoke as the Bencher liaison to the Lawyers Insurance Fund. He said the LIF is recognized as the best run assurance fund of its kind in North America. He said the greatest reason why incident reports are so much higher than claims is the way in which Ms. Forbes and the LIF staff deal with the lawyers who report matters. They go out of their way to help lawyers in every respect while maintaining an awareness of how the matter must be handled from an insurance perspective. Mr. Zacks reminded the Bencher that LIF staff will attend at firms or local bar association meetings to discuss how the LIF works, and he encouraged Benchers to take advantage of that opportunity.

Mr. Falkins commented that the confidentiality of information coming into the LIF is a key element in the high incident reporting rate.

Ms. Berge asked if any consideration had been given to raising the insurance policy limits. Ms. Forbes said that would be discussed at the national level because the enhanced mobility of lawyers means that the insurers tend to work together to ensure that there is some uniformity across

jurisdictions. Ms. Forbes noted that on average only one or two claims are paid each year that reach the current policy limit of \$1 million.

**7. PRESENTATION FROM THE LAWYERS ASSISTANCE PROGRAM**

Mr. LaCroix circulated a written report on the work of LAP in the previous year. He thanked the Benchers for the opportunity to speak and assured them that not only is LAP the right thing to do, but it is also valuable to the Law Society and the public in reducing insurance claims, and complaints, and keeping bright lawyers in the profession.

Ms. Glover said she became involved with LAP because of Mr. LaCroix's assistance to a young lawyer she knew. She said volunteering for LAP had restored her faith in the profession, and she noted that the program is considered to be one of the best in North America, and that is because of the strength of its volunteers and support from the Law Society. Ms. Glover introduced two lawyers who volunteered after being assisted by LAP.

The first lawyer said she did not come to LAP because of a mood disorder or addiction but because she had problems with stress and anxiety early in her career, but discovered that those problems were linked to underlying depression, an illness that ran in her family. She described the experience of discovering that she was not alone in her difficulties and that she did not have to deal with them on her own. This made her understand the importance of reducing the stigma and fear that surrounds these illnesses, and one way of doing that is by volunteering with LAP.

The second lawyer described himself as an alcoholic who has been sober since 1998. He said he was very fortunate to work with lawyers who care about the people they work with and that is how he got involved with LAP. He said LAP saved his life, restored his family to him, and made it possible for him to enjoy practicing law and be around other lawyers. That has allowed him to help some other lawyers. He commented that he has also been able to help others in his community who are not lawyers but have sought his assistance with personal or family difficulties.

**8. PROFESSIONAL CONDUCT HANDBOOK, APPENDIX 3**

Mr. Hume briefly reviewed the memorandum from the Ethics Committee. He said the proposal was to delete subparagraph 5(g) from Appendix 3 of the Handbook, which would mean that multiple draw mortgages would no longer be precluded from being considered to be simple conveyance transactions. Mr. Hume said that in practical terms, subparagraph 5(g) meant that Notaries could act for both borrower and lender in these transactions but lawyers could not. He noted that there had been no complaints arising from subparagraph 5(g) and only a small number arising from Appendix 3. He said the majority of draw mortgage work is simple and it is easy for lawyers to identify conflicts when they arise and refer the parties to independent lawyers. The Ethics Committee concluded that excluding multiple draw mortgages from Appendix 3 is not a matter of principle but is in fact a practical issue.

It was moved (Hume/LeRose) to amend the Professional Conduct Handbook, Appendix 3 by:

1. deleting paragraph 4(d)(ii) and replacing it with the following:
  - (ii) to be advanced in stages, or
2. Adding the word "or" at the end of paragraph 5(e)(iii);
3. Deleting "the mortgage, or" in paragraph (f) and substituting "the mortgage.";
4. Deleting paragraph 5(g).

Mr. Waddell suggested that there is no material difference between a single transaction mortgage and a construction mortgage involving multiple draws. The sole function of a lawyer in multiple draw mortgages is to do a lien and judgment search on the property before an advance is made. This is the same search that is done on a single advance mortgage. The lawyer is not involved in determining whether the construction is at a suitable stage; that is done by a third party inspector.

Mr. LaLiberté asked what the perceived mischief is in the draw mortgage scenario.

Mr. Waddell said there is always the possibility of a conflict of interest. It could be that the borrower asserts that the stage of construction is further along than the bank's inspector says it is, but the lawyer does not get involved in those disputes.

Mr. Turriff said he would not support the motion merely because of the competitive disadvantage placed on lawyers. He said the Law Society should not lower its standard because someone else is allowed to participate in the transactions. He asked if the Ethics Committee had considered tying the application of the rule to the lawyer's level of experience.

Mr. Hume said the Committee did not consider that.

Mr. LeRose pointed out that borrowers and lenders always have the ability to retain their own lawyer.

The motion was carried.

## **9. LAW SOCIETY 2005 FINANCIAL RESULTS**

Mr. Stajkowski gave a presentation on the Law Society's financial results in 2005. A copy of the presentation is attached as Appendix 4.

Mr. Donaldson noted that some of the increase in the cost of regulatory programs included the cost of severance payments and other reorganization costs, and he asked how much of that was attributable to the larger number of complaint files with outside counsel.

Mr. Cameron said the additional cost of investigation and discipline files would be approximately \$300,000.

Mr. McGee said there is a budget for files that would be sent to outside counsel in the normal course, and while there are vacancies in the professional conduct and discipline areas more files go to outside counsel. However, the vacant positions carry a salary base into 2006, but won't be filled until mid-year. The estimate of \$300,000 is an estimate of the additional cost pressure due to outside files. He said staff would be looking at other areas to find ways of reducing the pressure in regulatory areas.

Mr. Turriff asked how much of the budget overage was direct cost of reorganization.

Mr. Stajkowski said that the cost was \$660,000, not including the cost of outside counsel files.

Ms. Fung asked what the budget increase in 2006 was for regulatory programs.

Mr. Stajkowski said the 2006 budget was actually reduced, largely as the result of anticipated savings in the custodianship area.

**10. PUBLIC SURVEY RESULTS**

Mr. Whitcombe presented highlights from the results of the public opinion survey conducted in January 2006. A copy of the presentation is attached as Appendix 5.

Mr. Zacks asked if there is a geographic breakdown with respect to the question of whether people choose not to go to a lawyer because of the cost.

Mr. Whitcombe said there was data on that point from the 1998 survey that could be provided.

**11. APPOINTMENT TO THE FINANCIAL PLANNING SUBCOMMITTEE**

It was agreed to appoint Bruce LeRose to the Financial Planning Subcommittee.

**12. SELECTION OF THE LAW SOCIETY DELEGATE TO THE FEDERATION OF LAW SOCIETIES COUNCIL**

Mr. Vertlieb reported that the working group created to consider this matter did not reach a clear consensus on the best model for a selection process that takes into account the need for leadership, connectivity, and continuity and experience. The group was particularly concerned that the President of the day might feel uncomfortable with someone else representing the voice of the Law Society at the Federation Council. Accordingly, the working group recommended maintaining the status quo of appointing the current President, with a commitment to reexamining the issue in two years when greater experience with how the newly structured Council functions can be brought to bear.

It was moved (Vertlieb/Vilvang) that:

1. the Law Society continue to appoint the President as its Federation of Law Societies Council member during the Presidential year, and that the 1<sup>st</sup> Vice-president and the 2<sup>nd</sup> Vice-president continue to participate in Council activities, including attending at least two Council meetings each year;
2. the Law Society consciously pursue through its Council member the objective of being appropriately represented on the Federation Executive, including as President, and on committees, including as Chair; and
3. the Benchers revisit the process for selecting the Council member within two years, to determine based on fuller experience whether changes are warranted.

Mr. Vilvang supported the motion. He said the Law Society of BC would shape the Federation by the way the Benchers approach it. He disagreed that the Law Society representative at the Federation ought to be seen as the voice of the Law Society at the Federation and at the Bencher table because that would result in a limited Federation. The ultimate goal should be to make the Federation a much stronger organization and a real jurisdiction with power. He said the Benchers should focus on the mandate of the Federation, not on protecting its own fiefdom.

Mr. Turriff thought the question deserved further consideration immediately, not in two years so that the Law Society of BC could enjoy the benefits of change now. He said the Law Society should establish itself at the Federation immediately.

Mr. Zacks agreed with Mr. Vilvang that the Federation is gaining importance. For example, he said, one of the committees on which he sits is dealing with WTO issues and will be of increasing importance. Mr. Zacks said it would be necessary to create a relationship with and devolution of

powers to the Federation because the federal government looks to the Federation on matters of national significance.

Ms. Berge said she entered the discussion of the working group with an open mind and was somewhat surprised by the conclusions that the group came to. The fact is that this is a time of change that favours a team approach.

The motion was carried.

**13. ANNUAL FEE PROCESS**

It was moved (Fung/Donaldson) to set the annual practice fee for 2007 by resolution at the Annual General Meeting.

Mr. Zacks asked whether there was any consideration other than cost in the Executive Committee's recommendation to set the fee at the AGM.

Mr. McDiarmid said the Committee also favoured creating an opportunity for discussion and the earlier concerns about CBA fees being included is no longer there.

Mr. Jackson noted that the CBABC's position on fees may be clear but that does not bind members, who might seek to bring a motion to the meeting. He did not want to create a situation where no fee is set.

The motion was carried.

**14. UPDATE ON CLAIMS AND INVESTIGATIONS IN THE WIRICK MATTER.**

This matter was discussed *in camera*.

**15. DISCUSSION OF MATTERS OF CONCERN TO BENCHERS**

This matter was discussed *in camera*.

DMGN

06-03-28