

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

- MEETING:** Benchers
- DATE:** Friday April 7, 2006
- PRESENT:**
- | | |
|---|----------------------------|
| Robert McDiarmid, QC, President | Thelma O'Grady |
| Anna Fung, QC, 1 st Vice-president | Robert Punnett |
| John Hunter, QC, 2 nd Vice-president | David Renwick |
| Rita Andreone | Glen Ridgway, QC |
| Kathryn Berge, QC | Alan Seckel, QC, Deputy AG |
| Ian Donaldson, QC | Dirk Sigalet, QC |
| Michael Falkins | Richard Stewart |
| Leon Getz, QC | Ronald Tindale |
| Carol Hickman | Gordon Turriff, QC |
| Gavin Hume, QC | Dr. Maelor Vallance |
| William Jackson | Art Vertlieb, QC |
| Patrick Kelly | James Vilvang, QC |
| Terry La Liberté, QC | David Zacks, QC |
| Bruce LeRose | |
- NOT PRESENT:**
- | | |
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| Joost Blom, QC | June Preston |
| Jan Lindsay | |
- STAFF PRESENT:**
- | | |
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| Timothy McGee, CEO | David Newell |
| Stuart Cameron | Denise Palmer |
| Brad Daisley | Murray Patterson |
| Kensi Gounden | Don Terrillon |
| Jeffrey Hoskins | Alan Treleaven |
| Michael Lucas | |
- GUESTS:**
- Associate Dean Robin Elliot, University of British Columbia
 - Dean Andrew Petter, University of Victoria
 - Meg Shaw, President, CBABC
 - Frank Kraemer, QC, Executive Director, CBABC
 - Caroline Nevin, Associate Executive Director, CBABC
 - Johanne Blenkin, Chief Librarian, BCCLS
 - Dugald Christie, Executive Director, Western Canada Society to Access Justice (for item 6)
 - Bruce Fraser, Chair, Western Canada Society to Access Justice (for item 6)
 - Jamie McLaren, Executive Director, Pro Bono Law of BC

1. MINUTES

The minutes of the meeting held on March 7, 2006 were approved as circulated.

2. PRESIDENT'S REPORT

Mr. McDiarmid circulated a report detailing his activities on behalf of the Law Society during the previous month. He thanked Mr. Renwick for speaking at the swearing in ceremonies of Judges Gardner and Romano.

Mr. McDiarmid reported that the Attorney General's office had sought the Law Society's assistance in identifying suitable lawyers for addition to the list of special prosecutors. He said the list was last revised in 1999, included no women and included only Lower Mainland lawyers. Mr. McDiarmid asked Benchers to provide him with the names of suitable lawyers.

3. CEO'S REPORT

Mr. McGee reported that the management team had been focused on the application for certification of the Professional Employees Association as bargaining agent for lawyers employed by the Law Society. However, he said, the other work of the Law Society had moved forward with employees and the management team pulling together under difficult circumstances.

Mr. McGee reported that Law Society finances were tracking at or below budget through February, except for policy and legal services. Most of the cost savings were attributable to salary savings on vacant staff positions. TAF expenses were tracking below budget but anticipated hiring would cause expenses to catch up later in the year. TAF expenses were forecast to be approximately \$400,000 below revenues. Excess TAF revenue will be transferred to the Lawyers Insurance Fund reserves for Part B insurance claims. Operating results for Law Society buildings are ahead of plan. 750 Cambie Street is still in a negative cash flow position because of the cost of tenant improvements, but is expected to turn positive around mid-year.

Mr. McGee reported that the Financial Planning Subcommittee had received a report on the Facilities Review Project and concluded that the best option was to provide space for trust account review, and custodianship program expansion in fourth floor space at the Law Society building. He said the design contract and general contractor had been selected through a competitive RFP process. The range of expense would be between \$600,000 and \$800,000, which will be capitalized. Construction is expected to begin in May and completed in July.

Mr. McGee reported that the two Discipline Counsel positions had been filled, and two out of three positions in the Public Response Group had been filled, one internally, and one externally. Discussions with a candidate for Chief Legal Officer were entering the final phase, and progress had been made on recruiting a new Chief Financial Officer.

Mr. McGee reported on costs associated with restructuring in the professional conduct and discipline departments. He said the Siefert hearing had been postponed from January to June or July. The incremental cost to date of outsourcing files was slightly less than the salary savings due to vacant positions; however, those files would remain with outside counsel until conclusion resulting in projected incremental costs of approximately \$140,000.

4. REPORT ON OUTSTANDING HEARING DECISIONS

The Benchers received a report on outstanding hearing decisions.

5. NEW FIRM PRACTICE COURSE

Mr. Treleven reviewed the background to the decision to develop a course for new firms focused on practice management and trust accounting procedures. He said the course was being developed as a modularized program that can be taken in pieces over a total of approximately six to eight hours. Development so far focused on core modules but work is also being done on some optional

modules to enrich the course, which is expected to be an expanding resource. The target audience will be required to complete the online course within six months. Developing the course is budgeted to cost \$350,000, but is expected to cost between \$250,000 and \$300,000. Mr. Treleaven introduced staff lawyer, Kensi Gounden, who gave a presentation on the course as developed to date. A copy of the presentation is attached as Appendix 1.

6. FUNDING REQUESTS FROM WESTERN CANADA SOCIETY TO ACCESS JUSTICE AND THE SALVATION ARMY PRO BONO PROGRAM.

Dugald Christie said that Western Canada Society to Access Justice (WCSTAJ) had a close relationship with the Salvation Army with whom it had divided responsibility for delivering pro bono services in BC. He asked to defer the WCSTAJ request for pro bono clinic funding so that the requests from both organizations could be coordinated. However, Mr. Christie said, the PST court challenge was continuing and the full \$80,000 request was needed to cover the cost of litigation. Mr. Christie said the Court of Appeal seize upon the fallback position put forward by the Law Society's counsel, which must now be undone, and it would be cheap of the Law Society not to provide funding. Mr. Christie said he could not do all that was required in the litigation, help clients and run WCSTAJ at the same time.

Bruce Fraser spoke on behalf of the Board of WCSTAJ. He said Mr. Christie is the main fundraiser for the society, spending several hours per day telephoning members, which benefits all lawyers in the province and the public. Mr. Christie cannot spend that time while dealing with the PST challenge, and WCSTAJ sought the Law Society's help to fill that gap.

Mr. McDiarmid noted that a resolution put forward by Mr. Christie at the Law Society AGM several years previously resulted in the formation of a pro bono committee that included representatives of the Law Society, the CBA, Mr. Christie and John Pavey of the Salvation Army, and ultimately the formation of Pro Bono Law of BC. PBLBC remains a joint creation of the Law Society and the CBABC. Mr. McDiarmid also noted the Benchers' policy on funding external programs.

Mr. Vilvang was concerned that the Benchers did not have sufficient information to make a proper decision. He suggested postponing consideration of the matter until more information can be provided, including the possibility of WCSTAJ and the Salvation Army can coordinate their efforts.

Mr. LeRose asked if WCSTAJ had sought funding from the Law Foundation.

Mr. Christie said application had been made to the Law Foundation, and it appeared that there was a 50/50 chance that the funding would be approved, but it would not be available until August. He said the Law Foundation has no ability to provide emergency funding. Mr. Christie reiterated his desire to coordinate with the Salvation Army to satisfy the Benchers that there would be no duplication of effort. However, he said, his request was not for clinic funding but to cover the costs of the PST challenge.

Mr. Vertlieb said the Executive Committee had discussed the two funding requests and the Benchers' policy and thought there might be some value in appointing a short-term task force to create a consistent approach to funding requests for pro bono services.

Jamie McLaren said Pro Bono Law of BC had asked to meet with the Board of WCSTAJ to discuss developing a foundation to raise funds for pro bono work in BC. The foundation would be operated in a similar but smaller scale way to the Law Foundation, possibly with the help of the Law Foundation, and would seek funding from a wide variety of sources.

Mr. Donaldson said the Benchers must consider Mr. Christie's points seriously and decide whether this was an exceptional event that requires acting outside the more general policy. In the short run, the Benchers must think seriously about doing what is necessary to enable the PST challenge to carry on and enable pro bono clinics to continue. The amount of money needed to bridge a gap at a critical juncture, although significant, is much smaller than the amount given annually to LAP and requires careful consideration so as not to abandon the "little guy" who has been fighting for lawyers and the public.

Mr. Turriff said the Benchers did not have enough information to make a decision. He agreed that it was unnecessary to decide the general issue of funding pro bono providers immediately, but he encouraged the President to appoint Pat Schmit to any task force that might be appointed.

Meg Shaw said the CBA was taking steps to obtain intervenor status in the PST challenge case at the Supreme Court of Canada. She said there was strong support for to intervene in support of the position that the entire tax is unconstitutional.

Mr. Getz spoke as a director of WCSTAJ. He said the PST challenge was an initiative of Mr. Christie on his own and not an activity of WCSTAJ, but WCSTAJ is paying the price in the loss of Mr. Christie's efforts as a fundraiser. He said it was somewhat disingenuous to say the money requested was to fund the PST challenge. In fact, the money is for WCSTAJ to allow it to do what it would not be able to do if it loses Mr. Christie's fundraising time.

It was moved (Ridgway/Hickman) to appoint a task force to examine the issues regarding Law Society funding for pro bono services and report back to the Benchers at their regularly scheduled meeting in July, if possible, and not later than their regularly scheduled meeting in September.

Mr. Getz declared a conflict of interest as a director of WCSTAJ and he did not vote.

The motion was carried.

Mr. McDiarmid suggested that the task force might be able to provide an interim report early, given the urgent nature of Mr. Christie's funding request.

Mr. Christie deplored the decision to refer the matter to a task force. He said he would continue to fight the PST, with the result that people would be laid off at clinics and poor people would go unrepresented through pro bono clinics, which would be unfair.

7. NOMINATION TO THE BOARD OF THE VANCOUVER INTERNATIONAL AIRPORT AUTHORITY

Mr. McDiarmid noted the Benchers' policy of not extending board appointments beyond a total of six years, except in special circumstances. He said the Law Society's current nominee to the Airport Authority board, Thomas English, had asked to be considered for reappointment notwithstanding the policy.

It was moved (Fung/Jackson) to nominate Carol Kerfoot for appointment to the board of Vancouver International Airport Authority for a term of three years beginning on June 1, 2006.

The motion was carried.

8. LAW SOCIETY SCHOLARSHIP

It was agreed to award the Law Society Scholarship of \$12,000 to Kim Stanton, and if Ms. Stanton does not take up the scholarship, then to Michael Begg.

9. TERRITORIAL MOBILITY INITIATIVE

Mr. McDiarmid explained that this matter would come before the Federation of Law Societies in May.

Mr. Treleaven reviewed a draft report of the Federation of Law Societies Territorial Mobility Group proposing a territorial mobility agreement under which the Territorial Law Societies would implement the permanent transfer provisions of the National Mobility Agreement for a five-year period during which they would make their best efforts to resolve issues arising from implementation of the temporary mobility provisions. If a Territorial Law Society does not implement the full National Mobility Agreement after five years, it will withdraw from all aspects of the agreement.

It was moved (Ridgway/Fung) to authorize Mr. McDiarmid to support the Territorial Mobility proposal at the Federation of Law Societies.

Ms. Andreone declared a possible conflict of interest by virtue of her partner being a member of the Federation of Law Societies Territorial Mobility Committee and her membership in one or more Territorial Law Societies, and did not vote.

The motion was carried.

10. TRUST ACCOUNTING RULES

It was moved (Donaldson/Fung) to amend Rule 3-65(2)(d) by striking "*pursuant to Rule 3-51(2)*" and substituting "*pursuant to Rule 3-51(3)*".

The motion was carried by a majority of greater than two-thirds of the Benchers present.

11. BC JUSTICE REVIEW TASK FORCE

Mr. McDiarmid urged the Benchers to keep the work of the Justice Review Task Force on the table because of its potential impact on the administration of justice.

Mr. Seckel agreed that the Justice Review Task Force was engaged in important work but said it was not moving so fast that the Benchers should be concerned that the Law Society would not have opportunities for input. He said the only initiative being implemented so far was the recommendation of the Street Crime Working Group regarding development of a community court. The Family Working Group has released a report, but that is a longer-term project and many things will have to happen before anything is implemented. The Civil Justice Working Group report will likely take a broad principle approach rather than making detailed legislative recommendations.

Mr. Zacks said that the government could take immediate steps to ensure that there is free public online access to up-to-date statutes. He said BC was the only province not to provide free access.

Mr. Seckel said he was not in a position to comment on a political statement and noted that the Ministry of the Attorney General was in the same position as everyone else.

Mr. McDiarmid offered the view that the Attorney General's Ministry was very supportive of the Law Society's view regarding the statutes, but the matter was in the hands of another ministry.

Mr. Turriff said the Task Force should make its process as public as possible.

Mr. Seckel said the process was not intended to be closed, particularly as it moves towards implementation.

Ms. Hickman suggested the Benchers consider the Law Society's role going forward to ensure that it has more involvement in reviewing working group reports if there is any perception that recommendations have been approved by the Law Society.

Mr. Vilvang said it was important to recognize the huge size of the project and the consequent cost of broad, formal consultation. He said the task force would have difficulty increasing the amount of effort required to deal with large amounts of formal input at every stage of the process.

Mr. Jackson noted there is a process through the Access to Justice Committee that allows consideration of green papers and workup to be brought to the Benchers.

Mr. LaLiberté said the Access to Justice Committee was preparing a report following its retreat and would be reporting to the Benchers regularly.

Ms. Hickman said that family law appeared to have slipped "below the radar" and it appeared that the Attorney General was moving ahead on family law reforms, apparently on the basis that it was following a Law Society process. She said the Law Society could not afford to take its time on these matters.

Mr. Seckel said there was nothing moving so fast that the Law Society needed to rush. He said there was no perception at the Attorney General's office that the work of the task force is a Law Society product. There are some initiatives that are unlikely to be controversial and that might be implemented as and when funds are available, but there is no prospect of controversial changes being implemented in the short-term.

12. UPDATE ON CLAIMS AND INVESTIGATIONS IN THE WIRICK MATTER

This matter was considered in camera.

Ms. Cummings reviewed a written report updating claims and investigations in the Wirick matter.

13. DISCUSSION OF MATTERS OF CONCERN TO BENCHERS

This matter was considered in camera.