

# THE LAW SOCIETY OF BRITISH COLUMBIA

## MINUTES

**MEETING:** Benchers

**DATE:** Friday May 12, 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
Ken Dobell	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	Brian Wallace, QC, Life Bencher
Bruce LeRose	David Zacks, QC
Jan Lindsay	

**NOT PRESENT:** Joost Blom, QC

**STAFF PRESENT:**

Timothy McGee, CEO	Jeffrey Hoskins
Barbara Buchanan	Michael Lucas
Lynn Burns	David Newell
Stuart Cameron	Don Terrillon
Brad Daisley	Alan Treleaven
Charlotte Ensminger	Adam Whitcombe
Kuan Foo	Carmel Wiseman
Su Forbes, QC	

**GUESTS:**

Catherine Best, Director, CanLII  
Johanne Blenkin, Chief Librarian, BCCLS  
Rose Keith, Vice President, Trial Lawyers Association  
Frank Kraemer, QC, Executive Director, CBABC  
Jamie McLaren, Executive Director, Pro Bono Law of BC  
Caroline Nevin, Associate Executive Director, CBABC  
Dean Andrew Petter, University of Victoria  
Frits Verhoeven, Vice-president, CBABC

### 1. MINUTES

The minutes of the meeting held on April 7, 2006 were approved as corrected.

**2. PRESIDENT'S REPORT**

Mr. McDiarmid introduced new Lay Bencher, Ken Dobell and welcomed him to the Bencher table. A written report on Mr. McDiarmid's activities as President over the previous month was circulated. Mr. McDiarmid said he had attended meetings with Meg Shaw and Frank Kraemer, respectively President and Executive Director of the CBABC and he could confidently say that the days of strained relations with the CBA were over.

**3. CEO'S REPORT**

Mr. McGee circulated a written report updating the summary of Law Society finances, noting that overall operating expenses were positive to plan for the previous month and year-to-date.

Mr. McGee reported on the town hall meeting held on April 26, 2006 at which the focus was on ways to enhance communication and information sharing within the Law Society. An employee survey will be conducted later in the year and action plans for 2007 will be formulated on the basis of the results of the survey. The management team will meet with all employees in June to communicate the basis for the Law Society salary structure and share benchmarking information. The bonus program will be clarified and communicated to all staff. A zero-based budgeting system will be adopted for the 2007 budget. Managers will be directly involved in developing budgets for their departments and will be accountable for them.

Mr. McGee reported that Jeanette McPhee would be joining the Law Society as Chief Financial Officer. Ms. McPhee was formerly the CFO for Cascade Aerospace. Mr. McGee reported that recruiting activity was continuing for the position of Chief Legal Officer and the last vacant position in the public response group.

Mr. McGee drew the Benchers' attention to the trade agreement between British Columbia and Alberta that appeared to encompass mobility of lawyers. He said the Law Society appeared to be in compliance with the agreement through the mobility protocol, but there are some concerns regarding dispute resolution under the agreement that might constitute an incursion into self-regulation.

Mr. Turriff asked if the Law Society could expect support from the Attorney General with respect to dealing with concerns about the agreement. Mr. McGee said there had not yet been any discussions with the Attorney General but there would be.

Mr. McGee asked Jeff Hoskins, General Counsel and Director of Policy and Legal Services to report on Bencher support initiatives. A copy of Mr. Hoskins' presentation is attached as Appendix 1.

Following the presentation, Mr. Turriff asked if the Benchers had ever discussed as a policy matter the extent to which a hearing panel may receive advice while a hearing is ongoing. Mr. Hoskins said the issue had been discussed in the past, but an update might be useful.

Mr. Donaldson asked what the mandate of the proposed policy committee would be. Mr. Hoskins said it would most likely to the preboard work for Benchers on matters that involve regulatory policy, so that the standing regulatory committees, such as Discipline and Credentials, would not have to fit lengthy policy discussions into their already full agendas.

**4. REPORT ON OUTSTANDING HEARING DECISIONS**

The Benchers received a report on outstanding hearing decisions.

## 5. PARALEGALS TASK FORCE REPORT

Brian Wallace, QC, presented the report of the Paralegals Task Force. Mr. Wallace reminded the Benchers that in the context of the report “paralegal” referred exclusively to non-lawyers employed by lawyers and did not contemplate independent paralegal practices. He noted that an issue outstanding from the Task Force’s interim report was the status of paralegals in Provincial Court. The Provincial Court was, and is, concerned that paralegals would have a right of audience in the court. The Task Force clarified that it was not its intention to establish a positive right of audience for paralegals but to remove the Law Society’s prohibition on paralegals attending court. The Provincial Court favours allowing paralegals to assist lay litigants with case preparation but remains concerned about paralegals appearing on behalf of clients. The next step would require negotiating with the Court to establish a protocol for determining how permission to appear would be granted to a paralegal so that a determination can be made in advance of an appearance. The Task Force and the Court appear to be of similar minds with respect to the kinds of criminal proceedings paralegals might be permitted to appear on; in particular, these would be the same matters as may be heard by a Judicial Justice of the Peace. In civil matters, paralegals might be permitted to appear on uncontested procedural matters.

Mr. Hunter asked whether the Task Force had considered recommending greater encouragement for articulated students to handle Provincial Court matters rather than permitting paralegals to appear as advocates.

Mr. Wallace said the Task Force did not think continuing the prohibition on advocacy by paralegals was justified by the educational benefits for articulated students.

Mr. Hunter commented that there is an additional benefit in terms of ease of regulation because the Law Society regulates articulated students directly, but only indirectly regulates paralegals.

Mr. Wallace said the Task Force’s recommendations should not be seen as taking away the valuable training role for articulated students, but it must be remembered that the purpose of the appearance in court is advocacy for the client rather than training for lawyers.

Mr. Kelly asked about the extent of insurance coverage for paralegals. Ms. Forbes said the supervising lawyer is responsible for their paralegal’s errors. As long as the paralegal is supervised by an insured lawyer, the paralegal will be an “additional insured” under the lawyer’s policy. However, supervision is not a defined term of the policy.

Ms. Hickman was somewhat concerned about the possibility of paralegals appearing in court, but was particularly concerned about the lack of definition of qualifications for paralegals. She did not think it was sufficient to leave the determination of qualification to individual supervising lawyers.

Mr. Wallace said the Task Force addressed that issue in its first report, which was accepted by the Benchers of the day. There appeared to be alternative means of training people adequately for particular tasks that were not limited to requiring people to take specific courses or programs. The Law Society decided it did not want to get into credentialing paralegals, as is now the case in Ontario.

Mr. LaLiberté was concerned about excluding representation by paralegals in Supreme Court. He noted that at a conference on civil justice reform, Chief Justice Brenner expressed concern that the Law Societies were not encouraging lawyers to work in superior court.

Mr. Vilvang said he would be reluctant to make changes to Chapter 12 of the Professional Conduct Handbook without simultaneous development of criteria for training paralegals, insurance requirements, and a plan for regulating paralegals either by the Law Society or another body, with the concomitant requirement to pay fees.

Mr. Turriff noted that one of the recommendations is that the Law Society discuss with the Provincial Court ways to make small claims litigation more affordable, and using paralegals is potentially an important component of that.

Ms. Preston asked if there would be an articulated standard of supervision, as there is potential for significant variability in the level of supervision.

Mr. Donaldson said he saw the recommendations in part as the Law Society doing what it can to help people present their cases in different forums where they can benefit from the experience of paralegals whose training or expertise may come from different sources. It is important to make that help available at reasonable cost.

It was moved (Donaldson/LaLiberté) to refer the report to the Ethics Committee to consider revisions to Chapter 12 of the Professional Conduct Handbook and coincidentally to commence discussions with the Provincial Court and the Supreme Court about the role paralegals might properly play in those courts.

It was agreed to amend the motion to refer the report to the Credentials Committee, the Discipline Committee, the Access to Justice Committee, and the Practice Standards Committee for input in addition to the Ethics Committee.

The motion was carried.

## **6. REPORT ON COURTHOUSE ACCESSIBILITY**

Mr. Vertlieb reported that following a meeting with the Chief Justices at which concerns about accessibility of courthouses around the province were discussed, the Chief Justices welcomed Prof. Lila Quastel, a member of the disabilities working group and occupational therapist, to inspect courthouses and report on accessibility issues. Tim McGee and Alan Seckel secured additional support for the work. Mr. Vertlieb introduced Lila Quastel.

Prof. Quastel said her inspections were focused on some major groups of disabilities: vision and hearing impairment, mobility issues, upper limb weakness and wheelchair use. Two courthouses, Prince George and Prince Rupert, have so far been inspected, and a third, Richmond, is scheduled. The Prince George Courthouse is a new building and gets generally high marks for accessibility, although there are a few minor problems that can be corrected such as very heavy exterior doors that would be difficult for some people to open, and an electrically opened door that is too narrow for many wheelchairs. The Prince Rupert Courthouse, in contrast, is a very old building, which suffers from serious accessibility problems typical of older buildings. Prior to a recent renovation, it was completely inaccessible to wheelchairs, and wheelchair access is still problematic in that the only disabled access door is two blocks away from the disabled parking spaces and is controlled by the registrar. The one bathroom renovated to accommodate disabled people is inadequate to the purpose. Prof. Quastel said the disabilities working group had suggested that in the future professionals in the field of access for disabled people should be consulted before undertaking renovations or new construction to ensure that accessibility and utility is maximized.

Mr. Vertlieb confirmed that the Equity and Diversity Committee would continue to work in this area and had an ongoing, productive dialogue with the Attorney General's ministry.

## **7. CANLII STRATEGIC PLAN AND FUNDING**

Mr. McDiarmid introduced Catherine Best, the Law Society of BC's appointee on the CanLII board of directors, and member of the Information and Technology Committee.

Ms. Best reviewed the CanLII strategic plan and funding request for 2006 and 2007. She reported that both had received complete support from the Federation of Law Societies Council. Highlights of new developments included:

- Implementation of a new and much better search engine;
- Addition of the citator database, which adds a great deal of functionality;
- Success in obtaining up-to-date legislation from all jurisdictions, except BC;
- A decision by the Supreme Court of BC to allow family law decisions to be provided on CanLII;
- Receipt of the Law Libraries Award of Excellence in Legal Publishing; and
- Growth in usage by 30% from 2004 to 2005 with continued growth in the first quarter of 2006.

Ms. Best noted that the proposed levy of \$27.74 per member for 2006 would be offset by an increased contribution from the Law Foundation of BC, from \$65,000 in 2005 to \$71,500 in 2006, leaving only \$14.33 per member to be contributed by the Law Society. The proposed levy of \$29 per member in 2007 is expected to be offset by a similar Law Foundation grant.

Mr. Stewart was particularly interested in how much and how effectively the public used CanLII.

Ms. Best thought the public did use CanLII, and she noted that the Supreme Court of Canada and legislation sections are used particularly heavily. Ms. Blenkin said the public frequently use CanLII at the law library.

Mr. McDiarmid noted that it had been a principle of the Benchers' support for CanLII from the outset that legal information should be publicly available.

Mr. LeRose questioned why lawyers continued to use commercial legal research databases when they could use CanLII.

Ms. Best said CanLII did not and could not claim to be the equivalent of Quicklaw but noted the two services can be used in complementary and cost effective ways.

Mr. Punnett asked if BC family law decisions that had not previously been provided to CanLII would be added retroactively.

Ms. Best said that would not be straightforward because those decisions were written before guidelines on disclosure were adopted and were not written with publication in mind, consequently, some de-identification would be required.

Mr. Turriff noted that a special arrangement was made with the Quebec Notaires for CanLII funding, and asked whether, if legislation is the most used resource on CanLII, were BC lawyers effectively overpaying, given that BC statutes are not available?

Ms. Best said CanLII was complex in terms of what resources are available from each jurisdiction. She said there is greater access to older BC case law than for some other jurisdictions at no extra cost to BC lawyers. On the whole, she said, the costs and benefits tend to balance out.

Mr. McDiarmid noted that the Federation had agreed that when BC statutes are made available, CanLII would include them without additional charge to BC.

Mr. Turriff was concerned about the volume of judgments available generally, whether from CanLII or other sources, and suggested it might be necessary to develop some protocol or guidelines that would cut out the large proportion of cases that do not add materially to the body of

law. He said it costs litigants too much to have lawyers do legal research that does not materially assist them and serves only to lengthen trials.

Ms. Best suggested that such protocols or guidelines lay within the power of the courts. She noted that courts in the United Kingdom have set limites on how many cases may be cited. She said cases had been withheld from publication in the United States but that practice was being challenged.

Mr. Robertson commented that CanLII is a very valuable access point to the law for the public and the legal profession. With respect to public access issues, the Law Foundation and the Benchers spoke regularly to government representatives seeking free public access to current legislation. He appreciated the acknowledgement of the Law Foundation's contribution, and said the Governors of the Foundation viewed CanLII as central to access to justice, which is central to the Law Foundation's mandate.

Ms. Andreone asked if there had been any thought given to making CanLII self-sustaining through other revenue streams.

Ms. Best said the board had periodically considered other funding sources but the current view was that if another major contributor was brought in, the Law Societies might lose a significant measure of control over what CanLII does, and that would be undesirable.

Mr. Zacks suggested that when speaking publicly about pro bono services and other access to justice matters the Law Society ought to make the public aware that it is the lawyers of Canada who make the law available to the public through CanLII.

Ms. Berge said she appreciated hearing about CanLII and would like to see as much done as soon as possible to reduce the pressure on clients and firms resulting from the need to use commercial services. She suggested most lawyers would be happy to pay the proposed levy or more to have a very good service.

Mr. LaLiberté asked if CanLII had an appetite to expand. Ms. Best said there would be great deal of cost involved in trying to make CanLII a replacement for commercial services. She recalled that the Law Societies had considered the possibility of acquiring Quicklaw but declined because of the high cost. She said CanLII could do more with more funding but perhaps not replace Quicklaw.

It was moved (Sigalet/Jackson) that the Law Society approve the proposed CanLII levies of \$21.74 per member in 2006 and \$29 per member in 2007.

The motion was carried.

**8. PROFESSIONAL CONDUCT HANDBOOK, CHAPTER 4**

Discussion of this matter was postponed to a later date.

**9. PUBLIC FORUMS PILOT PROJECT**

Mr. Vertlieb outline a pilot project proposed by the Equity and Diversity Committee to hold a series of public forums on topics tying together equity and diversity issues, the legal profession, and the public interest. The goals of the forums would be to bring the public and the profession into the Law Society, to bring the Law Society into the community at large, and to promote the legal profession and the Rule of Law to the diverse communities and the community at large. He said the proposal was modeled closely on a program in Ontario that had enjoyed considerable success. The Committee proposed the role of the Rule of Law in promoting equality as the topic

of the first forum, and making the justice system accessible to people with disabilities as the topic of the second forum.

Mr. Kelly spoke in favour of the proposal. He said that from the perspective of Lay Benchers the focus on some core principles and values resonated very well with promoting a positive exposure for the Law Society and what it contributes to society.

Mr. Turriff thought the proposal was a good idea but reminded the Benchers that the Independence and Self-governance Committee would be seeking funding to take a similar message to students in schools.

Mr. LaLiberté reported that the Access to Justice Committee had held a mini-retreat attended by representatives of the Legal Services Society, the Law Courts Education Society, the BC Courthouse Library Society, and the Law Foundation. Some of the topics discussed included:

- The role of the Law Society in a public awareness campaign to help people know where to go for assistance;
- The need for the Law Society to take an active role in access to justice;
- Dealing with barriers to access.

He thought the proposed forums would provide a good starting point for making the public aware of what the Law Society does.

It was moved (Vertlieb/Donaldson) to approve in principle the two forums proposed as a pilot project.

Mr. Sigalet acknowledged that it was difficult to speak against the proposal but questioned whether it addressed the Law Society's goals. He thought the Law Society should focus on its central task of regulation.

Mr. Donaldson favoured the proposal for several reasons. He said it remains important to maintain the Law Society's visibility in the community as a contributor to the community in different ways, and equity and diversity issues continued to increase in importance.

Mr. Vilvang favoured the idea of forums but suggested the topics might focus more on the role of the Law Society in the broader community.

Mr. Vertlieb acknowledged the comments; however, he said, the Committee thought it best to start with topics that would be interesting to the public without being inflammatory.

The motion was carried.

## **10. ACCESS TO JUSTICE CONSULTATION**

Mr. LaLiberté repeated that the Access to Justice Committee had met with a group of interested participants involved in access to justice, as outlined in earlier discussion. He said the meeting was very positive. He noted that there were some misperceptions about who did what, and some participants asked where the Law Society stood in relation to access issues. It was noted that there is legislation in Quebec addressing the idea of proportionality between cost and value in the court process, and the idea of proportionality was a theme that ran through the discussions. Another theme was that the economic middle class has deserted the civil courts in significant measure. It was also noted that the increase in the monetary jurisdiction of small claims court had reduced the total number of cases in the Supreme Court, the total time required to hear those cases had not been reduced. Mr. LaLiberté said it was important to let the court system know about the changes

that the profession is making to address those issues, otherwise changes may be made to the system without the input of lawyers.

Ms. Berge said she attended the meeting and was surprised by the sense of interest and momentum there.

Mr. Getz said it was important to examine what the Law Society can deliver. It is a dangerous field to become involved in if the only motivation is to feel good, although re-examining the mandate of the Access to Justice Committee is a good idea.

Mr. LaLiberté agreed with Mr. Getz and said the Committee was gathering information now to see where it should go.

**11. ADMINISTRATIVE JUSTICE OFFICE REQUEST FOR SUBMISSIONS RE *INQUIRY ACT* POWERS.**

Ms. Fung took the Chair for this matter.

Mr. Donaldson reported that the Administrative Justice Office of the Ministry of the Attorney General sought the Law Society's preliminary views and comments on three papers which consider whether to extend the provisions in the *Administrative Tribunals Act* dealing with immunity, the power to compel evidence and contempt powers to entities which currently rely on the *Inquiry Act* for their protection and authority in those areas. He said there is some concern that the government appears to take the view that the *Inquiry Act* applies to the Law Society.

Mr. Getz asked if a similar request was made to other professional governing bodies, and if so, suggested there might be merit in a coordinated response. Ms. Wiseman said she did not know if other governing bodies were approached.

Mr. Turriff suggested that the Benchers postpone a decision to allow the Independence and Self-governance Committee to examine the issues. He noted that there might be some merit in a coordinated response but there is a danger in associating the Law Society with other governing bodies because of the particular requirement for independence of the legal profession.

It was agreed to postpone discussion of this matter to allow the Independence and Self-governance Committee to examine the independence issues and report back to the Benchers.

**12. MEDICAL CONSULTANT**

Mr. Hunter reported that the Credentials Committee, following the suggestion of Dr. Vallance, had engaged a medical consultant, Dr. Stephen Kline, to assist the Committee from time to time as needed to help the Committee when it must consider applicants with medical or psychological conditions. Mr. Hunter noted that other Committees might benefit from access to Dr. Kline's services.

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

This matter was discussed *in camera* .

Ms. Andreone was absent during this discussion.

**14. PLTC COURSE IN NUNAVUT**

This matter was considered *in camera* .

**15. WTO UPDATE**

Mr. Zacks gave a brief update on progress on the WTO General Agreement on Trade and Services (GATS). He said matters had begun to speed up in this area as it relates to lawyers. The Canadian government is proceeding to consider matters and the question is whether they will get to the point this year of opening up the Canadian border to practice by lawyers from other countries. This raises issues with respect to multi-disciplinary practices and other matters of concern.

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