

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

- MEETING:** Benchers
- DATE:** Friday March 2, 2007
- PRESENT:**
- | | |
|--|-------------------|
| Anna Fung, QC, President | Jan Lindsay |
| John Hunter, QC, 1 st Vice-president | Thelma O'Grady |
| Gordon Turriff, QC, 2 nd Vice-president | June Preston |
| Rita Andreone | Robert Punnett |
| Kathryn Berge, QC | David Renwick |
| Joost Blom, QC | Glen Ridgway, QC |
| Ian Donaldson, QC | Richard Stewart |
| Michael Falkins | Ronald Tindale |
| Leon Getz, QC | Art Vertlieb, QC |
| Gavin Hume, QC | James Vilvang, QC |
| William Jackson | Ken Walker |
| Patrick Kelly | David Zacks, QC |
| Terry La Liberté, QC | |
| Bruce LeRose, QC | |
- NOT PRESENT:**
- | | |
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| Carol Hickman | Dirk Sigalet, QC |
| Allan Seckel, QC, Deputy AG | Dr. Maelor Vallance |
- STAFF PRESENT:**
- | | |
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| Timothy McGee, CEO | Michael Lucas |
| Stuart Cameron | Melissa McConchie |
| Brad Daisley | Bill McIntosh |
| Denise Findlay | Jeanette McPhee |
| Su Forbes, QC | David Newell |
| Jeffrey Hoskins | Alan Treleaven |
| Howard Kushner | Adam Whitcombe |
- GUESTS:**
- Dean Andrew Petter, University of Victoria
 - Ken Walton, Vice-president, CBABC
 - Frank Kraemer, QC, Executive Director, CBABC
 - Caroline Nevin, Associate Executive Director, CBABC
 - Johanne Blenkin, Executive Director and Chief Librarian, BCCLS
 - Jamie McLaren, Executive Director, Pro Bono Law of BC
 - Wayne Robertson, Executive Director, Law Foundation of BC
 - Rose Keith, President, Trial Lawyers Association
 - Georgeann Glover, President, LAP
 - Barry Kerfoot, Director, LAP
 - Dereck LaCroix, QC, Executive Director, LAP

1. MINUTES

The minutes of the meeting held on January 26, 2007 were approved as circulated.

2. PRESIDENT'S REPORT

Ms. Fung circulated a written report detailing her work on behalf of the Law Society during February 2007.

Ms. Fung noted that this would be the last Benchers meeting. Frank Kraemer, QC would attend as the Executive Director of the CBA BC Branch. She congratulated him on his new position as Senior Counsel and Executive Director, Superior Courts Judiciary.

Ms. Fung thanked Mr. Hunter for representing the Law Society at the reception for new Queen's Counsel.

Ms. Fung reported that she, Mr. McGee, and staff policy lawyer Doug Munro had met with CBA representatives to discuss making a joint submission on the Civil Justice Reform working group report. Ms. Fung said she came from the meeting thinking a joint submission was unlikely but each organization agreed to share its response with the others.

Ms. Fung reported that she and Mr. McGee had attended a symposium offered by the American Society of Association Executives, which featured Glenn Tecker who presented a number of ideas about improving governance structures in non-profit and professional governance. Ms. Fung said she came away from the symposium with some ideas and would be bringing forward proposals for changes later in the year.

3. CEO'S REPORT

Mr. McGee asked Mr. Kushner to provide an update on development of a new approach to complaint resolution, and asked Mr. Daisley to report on communications initiatives.

Mr. Kushner reported that the Law Society receives about 4000 contacts per year, which results in about 1500 complaint files. Of those, about 150 matters are considered by the Discipline Committee, 20 are referred to the Practice Standards Committee, and the remainder are handled by Law Society staff members. He said it is necessary to do something different with complaints that are not sent to the Discipline Committee so that they are handled in a more timely way. An intake and early assessment project was proposed and promoted by Law Society staff. It is a pilot project that will run for one year with three staff lawyers and two paralegals, with a senior lawyer as team leader. The project is a development of the case-management function focused on identifying and streamlining new complaints. More serious complaints will be sent to the professional conduct group, while less important matters will be handled over the telephone as much as possible. Matters that are unlikely to go to the Discipline Committee but require more extensive documentation will be handled by the two lawyers on the team with a view to closing files within ninety days of receiving the complaint. Staff members have had some, and will have more training in mediation techniques. Mr. Kushner will review all closing letters before they are sent to ensure clarity and consistency. Mr. Kushner said either he or Mr. Cameron and discipline counsel reviewed every matter being referred to the Discipline Committee.

Mr. Kushner reported that staff members were preparing a written policy and procedures manual.

Mr. Kushner reported on a second initiative to reduce the number of complaints and examine other ways of speeding up handling. One idea being considered concerned how to deal with members who do not respond to the Law Society. Another group will look at members who are complained about more frequently than other lawyers.

Mr. Daisley reviewed the history of the Benchers Bulletin and introduced the new format and content that will broaden to include issues that affect the legal community. The Bulletin will also

include a CEO's column giving information about how he is implementing the Benchers' policies operationally. The Discipline Digest will be included in the Bulletin.

Bill MacIntosh introduced a new brochure designed to provide people with a ready reference to the information and resources available on the Law Society website.

Mr. McGee reported on implementation of the new trust assurance program. He reminded the Benchers that the program has two basic components: a self report filed by lawyers and a field audit program carried out by Law Society staff. In addition to these components, some members will be required to file an accountant's report. A protocol has been developed to deal with questions and concerns of members who are required to file an accountant's report. If a member contacts the Law Society regarding selection of firms required to file accountant's reports, the contact will be acknowledged within 48 hours and staff will try to resolve any concerns over the telephone. If the member is not satisfied with the explanation, he or she may submit a written request for a review of the decision. In such cases the file and decision will be reviewed by trust accounting staff, and the member will receive a written response within one week, giving reasons why they were selected. If the member is still dissatisfied, there will be an opportunity for a final review by the Executive Director. Mr. McGee asked the Benchers to refer inquiries to the Law Society so that they could be handled in accordance with the protocol. He noted that some members may perceive that they were selected to require an accountant's report because they are considered a risk for theft of trust funds. In fact, that is not the main component of the decision, which is based significantly on a history of noncompliance with accounting rules. He noted that some concern had arisen about the risk rating process. He said the compliance rating is not the determining factor in deciding whether to require an accountant's report.

4. REPORT ON OUTSTANDING HEARING DECISIONS

The Benchers received a report on outstanding hearing decisions.

5. REPORT FROM LAWYERS ASSISTANCE PROGRAM

Mr. Kerfoot and Mr. LaCroix introduced three lawyers who had been helped by the Lawyer Assistance Program and then volunteered to help others. Each of the lawyers described the personal circumstances that led them to seek assistance from Mr. LaCroix and LAP, and the value of the assistance they received.

Mr. LaCroix circulated a report on LAP in 2006 and thanked the Benchers for their continued support both financially and as leaders in the profession.

Mr. LaLiberté reminded the Benchers that LAP was the result of the vision of Mr. Vertlieb and his colleague, Russ MacKay.

6. LAWYERS INSURANCE FUND 2006 YEAR END RESULTS

Ms. Forbes gave a presentation on the experience of the Lawyers Insurance Fund in 2006. A copy of the report is attached as Appendix 1.

Ms. Berge noted the very high levels of satisfaction expressed by insured lawyers represented by LIF counsel (whether internal or external), and asked whether any consideration had been given to polling plaintiff's counsel for their view on outcomes.

Mr. Falkins reiterate his previously expressed view that the early reporting of potential claims by layers is critical to the success of the program and is supported by the confidentiality of those reports.

Mr. Donaldson said one of the good things about the universal nature of lawyers insurance is that lawyers don't feel like their premiums will go up if they report a potential claim. With respect to confidentiality of reports he noted that when considering discipline related matters Benchers would often like to know about some incidents and there is sometimes a tension with respect to confidentiality.

7. PRO BONO FUNDING TASK FORCE

Mr. Donaldson referred to a letter from Wayne Robertson, Executive Director of the Law Foundation regarding the terms of the previously approved annual grant from the Law Society to the Law Foundation to fund pro bono services in the province. Mr. Donaldson said the task force recommended that the grant be paid in two installments.

Mr. Stewart asked if there was a benchmark for the Law Foundation's funding of pro bono activities prior to 2006? Mr. Robertson said the Law Foundation would grant at least \$300,000 to fund pro bono services, although he anticipated that the amount would be more.

It was moved (Donaldson/Zacks) to transfer to the Law Foundation the grant previously approved by resolution of the Benchers on November 10, 2006 in two halves, the first half in March of each year, and the second half in October of each year, on the terms set out in the letter from Mr. Robertson dated February 7, 2007, a copy of which is attached as Appendix 2.

The motion was carried.

It was moved (Donaldson/Zacks) to dissolve the Pro Bono Funding Task Force.

The motion was carried.

8. PRO BONO LAW OF BC BOARD STRUCTURE

Mr. Jackson sought input from the Benchers regarding a suggestion to invite another organization in the pro bono community, such as the Salvation Army or Western Canada Society to Access Justice, to join Pro Bono Law of BC as a member and appoint additional board members. He noted that the founding members, the Law Society and the CBABC could retain control of Pro Bono Law of BC but the public nature of the organization would be increased and there would be greater pool of directors from which to draw unconflicted presidents, and additional board members to carry the workload.

Mr. Zacks said the Benchers cared about PBLBC but should leave it to the PBLBC board to determine what is in the best interests of the organization.

9. REGULATORY POLICY COMMITTEE MANDATE

Mr. Hume reviewed the Benchers' resolution creating the Regulatory Policy Committee required the committee to draft a mandate of their review. The Committee recognized the potential overlap with the mandate of the Ethics Committee, but thought that could be resolved with the Ethics Committee on a practical basis.

It was moved (Hume/Andreone) to approve the following mandate for the Regulatory Policy Committee:

13. Regulatory Policy Committee

- a. The mandate of the Regulatory Policy Committee is to:

- i. Identify and study policy issues relating to the regulation of the profession;
- ii. Develop specific proposals and options for consideration by the Benchers relating to policy matters pertaining to the regulation of the profession in the areas of professional conduct, fitness to be called and the practice of law; and
- iii. Attend to such other matters as may be referred to the Committee from time to time.

The motion was carried.

10. FINANCIAL RULES SUSPENSIONS

Mr. Hume briefly reviewed a memorandum from the Regulatory Policy Committee regarding the implications of the rules for publication of suspensions when a suspension results from noncompliance with financial reporting obligations. The rules require all suspensions to be published. In most cases when a lawyer is automatically suspended for noncompliance with financial reporting rules, the lawyer quickly remedies the problem, rendering publication unnecessary for public protection purposes and a pointless expense for the Law Society. The Committee recommended amending the Rules to give the Executive Director the discretion to not publish a suspension resulting from noncompliance with financial rules, and providing guidance through a policy to publish the suspension if the noncompliance is not remedied within ten days.

It was moved (Hume/Ridgway) to ask the Regulatory Policy Committee to draft amendments to the Law Society Rules to permit extensive publication (i.e. beyond notice on the Law Society's website) of financial rules suspensions in the Executive Director's discretion, and to draft a policy guideline that, generally, if the default which resulted in the financial suspension is not remedied within ten days, then there will be extensive publication of the suspension.

The motion was carried.

11. PROFESSIONAL CONDUCT HANDBOOK, CHAPTER 9

Mr. Hoskins explained that this matter arose from a letter received from Gowlings regarding multi-disciplinary partnerships (MDPs). MDPs are permitted in Ontario subject to fairly stringent restrictions that require lawyers to be in control. Gowlings has asked the Law Society to consider adopting a similar model to Ontario. Although the experience in Ontario to date has been largely benign, it does raise the spectre of MDPs with the concomitant concerns identified in previous debates on the subject. The Ethics Committee sought direction from the Benchers as to whether it should examine the question and possibly draft rules for consideration, or simply decline to consider the request.

Mr. Hume said there were strong and differing views amongst members of the Ethics Committee. His opinion was that the committee should proceed. There are a number of non-lawyers such as accountants, patent agents or valued operating officers that a firm may want to make partners and who practice with and in support of the lawyers.

Mr. Zacks noted that the Ontario rules require that non-lawyer partners practice in an occupation or profession that supports or supplements the practice of law. That removes many of the concerns that led the Benchers to reject more broadly defined MDPs in the past. He agreed with Mr. Hume that the Law Society should move forward with the request.

Mr. Vilvang was concerned that this would be viewed not as an end in itself but as a step in the direction that would lead to broader MDPs.

Mr. Donaldson opposed any suggestion to broaden the rule. He recalled that the discussion in 2001 was the product of extensive work conducted over an extended period, and repeated consideration by the Benchers. It was contentious at the time. Mr. Donaldson echoed comments made by Bencher David Gibbons at that time – there is no groundswell of demand for MDPs, and allowing them would undermine fundamental principles of the profession. He noted comments made by Bencher Bill Everett that the Law Society was successful in litigation arising from anti-moneylaundering legislation partly because it could go forward on the principled basis that the bar is independent and must remain so. Mr. Donaldson saw no need to change the existing rule, and was not convinced by the argument that to attract the best patent agents they must be allowed to be partners.

Mr. Jackson asked who would be disciplined if a non-lawyer partner does something wrong?

Mr. Zacks said he was not particularly concerned about how the Law Society might regulate lawyers with respect to the misdeeds of their non-lawyer partners. He was more concerned about the idea that adopting a similar model to Ontario would interfere with independence of the profession. He distinguished the current situation from 2001 when accountants were seeking to dominate. He said a number of multijurisdictional law firms in the province are sharing fees with non-lawyer partners in Ontario, where it is permitted, and the British Columbia partners are effectively breaching the Law Society Rules as a result. He advocated changing the Rules so that the Law Society can protect all the interests. He said the federal government is being bombarded with requests from foreign jurisdictions such as the United Kingdom and Australia to open up the practice of law to foreign practitioners. The Law Society should recognize the evolution of the practice of law and figure out how to regulate effectively.

Mr. LeRose was strongly opposed to changing the Rules. He said he was persuaded by the clear reasons against permitting a limited form of MDPs, and the only argument in favour is that it would regularize the situation of interjurisdictional firms with non-lawyer partners in Ontario. In effect, the Law Society was being asked to change the Rules to accommodate two people.

Mr. LaLiberté was concerned that the proposed change would be the thin edge of the wedge. The only argument in favour of the Ontario model was that nothing bad had happened yet. He asked who would decide on the character of non-lawyer partners, and what was meant by “effective control” by lawyers.

Ms. Andreone commented that she was not part of the previous debate but had not heard how the proposed changes fit within the Law Society’s public interest mandate, which for her must be the starting point for discussion.

Mr. Turriff said there were compelling points on both sides of the debate and he was unsure how to proceed without further thought.

Mr. Hunter agreed that the matter might not be ripe for decision, but he noted that the Law Society apparently had a large number of members who are acting in good faith but are offside the Law Society Rules because of what is permitted in Ontario. He suggested that the Benchers might consider in the short term amending the Rules so that it is not a violation to be a partner in a firm where the partners in another jurisdiction are partners with non-lawyers.

Mr. Vertlieb suggested that the Benchers should be as near to unanimous as possible before making fundamental changes to the Rules.

In response to Ms. Andreone’s comments, Mr. Hume suggested that the potential for enhanced service to clients placed the matter within the Law Society’s mandate.

Mr. Getz suggested that the matter might be referred to the Regulatory Policy Committee or to a task force.

It was moved (Getz/Zacks) to refer the matter to a committee or task force.

Mr. LeRose said the matter was thoroughly debated in 2001, and the Benchers had all the information they needed to know, so he could see no purpose in referring the matter to a committee or task force.

Mr. Ridgway agreed with Mr. Vertlieb that if the Rule is to be changed, more than a narrow vote in favour is needed.

Mr. Walker spoke against the motion. He noted that the Ethics Committee had examined the issue once and there were strong views around the table. He was against changing the Rules.

The motion was defeated.

Mr. Vertlieb suggested that further discussion be postponed so that staff could seek information about the actual extent of the problem.

Ms. Fung said the matter could be raised at a future meeting with additional information about whether there is a significant problem.

12. MODEL POLICY ON WORKPLACE ACCOMMODATION

Mr. Hume introduced a draft model policy on workplace accommodation. The policy addresses all prohibited grounds of discrimination under the BC Human Rights Code, including disability. The goal of the model policy is to provide law firms with an understanding of the legal duty to accommodate employees and partners under the common law, and a framework for how that duty translates into firm activities and functions. Mr. Hume said the model policy was drafted so that small firms could adopt the first three parts, while providing for larger firms steps to follow and an approach to take.

It was moved (Hume/Preston) to approve publication of the model policy on workplace accommodation.

The motion was carried.

13. PUBLIC FORUM

Mr. Vertlieb circulated a circular promoting the second public forum hosted by the Law Society Equity and Diversity Committee.

14. UPDATE ON CLAIMS AND RECOVERIES IN THE WIRICK MATTER

This matter was considered *in camera*.