

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

- MEETING:** Benchers
- DATE:** Friday October 12, 2007
- PRESENT:**
- | | |
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| Anna Fung, QC, President | Barbara Levesque |
| John Hunter, QC, 1 st Vice-president | Jan Lindsay |
| Gordon Turriff, QC, 2 nd Vice-president | Thelma O'Grady |
| Rita Andreone | June Preston |
| Kathryn Berge, QC | Robert Punnett |
| Joost Blom, QC | Glen Ridgway, QC |
| Leon Getz, QC | Allan Seckel, QC, Deputy AG |
| Carol Hickman | Dirk Sigalet, QC |
| Gavin Hume, QC | Richard Stewart |
| William Jackson | Ronald Tindale |
| Patrick Kelly | Dr. Maelor Vallance |
| Terry La Liberté, QC | Art Vertlieb, QC |
| Bruce LeRose, QC | Ken Walker |
| | David Zacks, QC |
- NOT PRESENT:**
- | | |
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| Ken Dobell | David Renwick, QC |
| Ian Donaldson, QC | James Vilvang, QC |
- STAFF PRESENT:**
- | | |
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| Malcolm Blake | Melissa McConchie |
| Stuart Cameron | Bill McIntosh |
| Felicia Ciolfitto | Jeanette McPhee |
| Brad Daisley | Doug Munro |
| Margrett George | David Newell |
| Jeffrey Hoskins | Don Terrillon |
| Howard Kushner | Alan Treleaven |
| Michael Lucas | Adam Whitcombe |
- GUESTS:**
- Jerry McHale, QC, Assistant Deputy Minister, Ministry of the Attorney General
Dean Andrew Petter, University of Victoria
Ken Walton, President, CBABC
Caroline Nevin, Associate Executive Director, CBABC
Johanne Blenkin, Executive Director and Chief Librarian, BCCLS
Wayne Robertson, Executive Director, Law Foundation of BC
Jamie McLaren, Executive Director, Pro Bono Law of BC
Allan Parker, Executive Director, Western Canada Society to Access Justice
John Pavey, Manager of Pro Bono and Justice Services, Salvation Army
Anne Chopra, Equity Ombudsperson

1. MINUTES

The minutes of the meeting held on September 7, 2007 were approved as corrected.

2. **CONSENT AGENDA**

The following resolutions were passed unanimously and by consent:

Resolved: to extend the mandate of the Women in the Legal Profession Task Force to December 31, 2007.

Resolved: to authorize the President, as the Law Society's representative on the Council of the Federation of Law Societies, to vote in favour of the following resolutions:

RESOLVED THAT: commencing with the Council meeting to be held in Regina on November 8 – 9, 2007, that Council shall elect executive officers for a one year term commencing on November 15 of each year; and

RESOLVED THAT: commencing in 2008, AGMs be held on or prior to November 15 of each year at such time and in such manner as the Executive shall determine in its discretion having regard to the availability of audited financial statements of the Federation.

3. **PRESIDENT'S REPORT**

Ms. Fung circulated a written report on her activities on behalf of the Law Society over the previous month.

Ms. Fung thanked all the Bencher's and others who participated in the satellite locations of the AGM.

Ms. Fung reported that a working group had been struck to work with Madam Justice Grey to develop model Anton Pillar Orders and Mareva Injunctions.

Ms. Fung drew the Bencher's attention to the consultation paper and draft Model Rule on Client Identification and Verification circulated by the Federation of Law Societies. She said the Federation was seeking comments by the end of October. The material has been put on the Law Society's Website for comment by members, and the Law Society has struck a working group.

Ms. Fung congratulated Mr. Ridgway on being acclaimed as Law Society Second Vice-president for 2008. and Mr. Hume on being elected President of the Canadian Association of Counsel for Employers.

4. **CEO'S REPORT**

A written report from Mr. McGee was circulated.

5. **REPORT ON THE LAW SOCIETY TRUST ASSURANCE PROGRAM**

Jeanette McPhee, Chief Financial Officer, gave a presentation on the Law Society's new trust assurance program. Key points in the presentation included:

- 70 audits have been performed to date. The plan is to perform approximately 550 audits per year when the program is fully staffed. Every firm will have at least one compliance audit every six to seven years.
- The program assists new firms through direct auditor visits to help understand audit rules, publications, and the requirement to file accountant's reports for the first two years.
- The program provides communication and advice to members through a member information telephone line, bookkeepers guide, new law firm guide, sample checklist of

internal controls, Benchers Bulletin articles, and Website information. Additional assistance is available from the Small Firm Practice Course, and Practice Advisers.

- On a survey of firms that were audited predominantly positive and no negative responses were received to the following questions:
 - The objectives of the Compliance Audit were clearly stated and discussed by the auditor
 - The auditor displayed a professional, constructive, and positive approach during the audit.
 - The auditor provided clear answers, and Rule references (if applicable) to any questions posed.
- The key performance indicators of the program is to ensure that all law firms scrupulously follow the rules relating to the proper receipt and handling of trust funds resulting in a long-term reduction in the number of financial suspensions and referrals to Professional Conduct, and improved performance on key compliance questions from lawyer trust report filings

Mr. Jackson noted that audited members had been given an opportunity to provide feedback on the process through a survey, and he asked if any questions had received a significantly negative response. Ms. McPhee said that there were no negative responses, all responses were either positive or neutral.

In response to a question from Mr. Sigalet, Ms. McPhee said the program had two auditors stationed outside the Lower Mainland in the Okanagan. They are Law Society employees but they work from their homes when not in the field.

Mr. LeRose congratulated Ms. McPhee and the other staff involved in the program. He said he was convinced that the program would benefit the public and members in the long term. H also noted that the program results in savings for members because it is funded by TAF. It is also a useful resource for members, and the trust report is useful for obtaining and disseminating information from and to members.

Ms. Preston asked if there was any plan to communicate the benefits of the program to the public and members. Ms. McPhee said there had been some articles published in the Benchers Bulletin and on the Law Society website, but information had probably not reached the general public.

5. REPORT ON OUTSTANDING HEARING DECISIONS

The Benchers received a report on outstanding hearing decisions.

6. REPORT FROM THE LAW SOCIETY EQUITY OMBUDSPERSON

Anne Chopra, the Law Society Equity Ombudsperson presented a report on the ombudsperson program. Key points from the report included:

- The main focus of the education aspect of the program has been articles published in the Benchers Bulletin and Advocate. The program is intended to assist firms to establish workplace equity and harassment policies. Continuing efforts will include promoting the recently updated model policies approved by the Benchers.
- Confidentiality is key to the success of the program.
- The ombudsperson does not work as an advocate, but takes a neutral position in matters. She will assist either individual lawyers with concerns about workplace equity or harassment, or with firms seeking to develop programs or deal with problems.

- The overall volume of calls has increased over time but it is not a steady volume. More calls come in after the ombudsperson makes a presentation to a group or publishes an article.
- The predominant issues remain workplace and sexual harassment. In some cases inappropriate questions are still being asked in articling and employment interviews, indicating a continued need for education.
- Ms. Chopra recommended that she visit more areas outside the Lower Mainland on a regular basis.
- Ms. Chopra said the continuation of the ombudsperson program sent a positive message to the profession that all members should be treated with dignity and respect. However, she suggested that the program budget did not reflect the importance the Benchers placed on that principle. She urged the Benchers to consider increasing the funding for the program in 2008.

Ms. O'Grady said she supported the recommendations because the program is very important. Mr. Hume agreed. Sexual harassment is still a problem but no complaints have proceeded to a citation and hearing. The discipline system does not seem to work well for matters of this kind. Education appears to be a more effective solution.

Ms. Preston thanked Ms. Chopra for her work. She said the fear that some women and men feel in the workplace is real and upsetting. The ombudsperson's work is important to the public if only because the wellbeing of lawyers is in the public interest.

Mr. Stewart also thanked Ms. Chopra for her work and said he supported the recommendations. He noted that the number of contacts she received from Victoria seemed disproportionately high and asked whether there should be a specific initiative focused on Victoria. He noted that he and Ms. Berge could assist to create opportunities for her to increase the program's profile in Victoria.

Ms. Chopra agreed that she should be more prominent in Victoria, and hoped to visit at least twice a year.

Mr. Vertlieb agreed with what had been said. He said there was a disconnect between the apparent importance of the work being done and the amount of money devoted to it.

Mr. LeRose said the Equity Ombudsperson program budget should be included in development of the Policy and Legal Services budget.

Ms. Berge said she was concerned about the number of contacts the Ombudsperson received from Victoria and urged consideration of concrete steps to move forward with Ms. Chopra's recommendations.

Ms. McPhee noted that the 2008 budget includes a small contingency fund from which the Benchers could allocate resources if proper support for the funding was provided.

The Benchers agreed that the Law Society supports the principle that all members, students and employees should be treated with dignity and respect. With respect to funding, it was suggested that Ms. Chopra develop a detailed budget and provide it to the Law Society management team for consideration and review by the Benchers at the earliest opportunity.

7. INTERIM REPORT FROM THE WORKING GROUP ON SELECTION OF THE LAW SOCIETY REPRESENTATIVE ON THE FEDERATION OF LAW SOCIETIES COUNCIL.

Mr. Vertlieb circulated draft recommendations from the working group with a view to obtaining feedback and returning final recommendations to the Benchers at their next meeting. The recommendations were:

1. replace the existing system of appointing the Law Society president as the Law Society representative on the Federation council.
2. Benchers select the representative from a slate of candidates presented by the Executive Committee drawn from elected and life Benchers.
3. the representative will serve for a term of three years from January 1, 2008 to December 31, 2010, with each subsequent term to be of sufficient length to enable the representative to serve as Federation second vice-president.
4. the council representative will, as a condition of accepting the appointment, undertake to make best efforts to complete the full term, and to accept and complete the term on the Federation's executive ladder, if offered, and also undertake not to accept a judicial appointment or other position that would require withdrawing from the Federation Council.
5. If the representative becomes a life Bencher or is defeated in a Bencher election, the council member will complete the full term and attend Bencher meetings, participating fully except for not having a vote or the ability to move or second resolutions.

Mr. Hunter said the proposal was a useful blueprint for change, particularly with respect to the obligation on the council member to continue to attend Benchers meetings in the event they cease to be an elected Bencher.

Ms. Hickman approved of the recommendations overall but was concerned that some of the obligations on the council member were to onerous.

Ms. Berge said the working group struggled with the terms of commitment. The group's concern was that without a high degree of commitment, the representative would be less effective. Candidates for the position would be aware of the required commitment.

8. REPORT ON PRO BONO PROGRAMS

Wayne Robertson, Executive Director of the Law Foundation gave a brief overview of the organized pro bono programs in the province. He reported that the Law Foundation provides over \$500,000 per year to fund various pro bono related activities. There are now over 109 pro bono clinics throughout the province, and over 1000 lawyers participate in formal pro bono programs. Many others provide pro bono services outside of those programs. There is a rich tradition of pro bono service in BC. The organizations that support it are thriving and supporting lawyers to deliver effective pro bono services. Mr. Robertson introduced Jamie MacLaren, Executive Director of Pro Bono Law of BC, John Pavey, Manager of pro bono and justice services for the Salvation Army, and Alan Parker, Executive Director of the Western Canada Society to Access Justice.

Mr. Parker outlined the new strategic plan at Access Justice, which is to enhance all aspects of governance and operations of the society, continue with advocacy activities, and expand clinic

services around the province. Mr. Parker endorsed a collaborative approach as the best way to serve the vulnerable people of BC.

Mr. Pavey noted that since Dugald Christie started the Salvation Army's pro bono clinic program in 1989 it has expanded to 23 clinics around the province, and maintains a fairly steady roster of about 300 lawyers. The three-year business plan will measure results in five areas: results, recording, retention (of lawyers in the program), recruitment (of lawyers into the program), and resources. The Salvation Army is working with Access Justice on several projects including a televideo clinic, and some amalgamated clinics.

Mr. MacLaren reported that Pro Bono Law of BC is now accredited as a charitable organization. It is a pro bono services provider, coordinator and promoter. PBLBC will launch a Supreme Court Chambers family law duty counsel project in 2008. It continues to support lawyers providing pro bono services by funding disbursements. PBLBC is working with similar organizations in Ontario and Alberta. New organizations are being formed in Saskatchewan and Quebec. PBLBC is engaged in projects to integrate programs with other providers and harmonize referral processes. It will host a pro bono law conference in Vancouver during the Canada-wide pro bono law week.

9. REPORT ON THE JUSTICE REVIEW TASK FORCE DRAFT RULES OF COURT

Allan Seckel, QC, Deputy Attorney General, and Jerry McHale, QC, Assistant Deputy Minister, Justice Services Branch, gave a presentation on the status of civil and family justice access reform. Key points included:

The vision of the Civil Justice Reform Working Group is to facilitate early solutions and faster justice through:

- Integrated information and services to support solutions to legal problems (Hubs)
 - Streamlined, accessible processes involving new civil rules in the Supreme Court, new harmonized Family Rules in Provincial Court and Supreme Court.
 - Small claims mediation.
- The principles guiding reform are respect for the rule of law, proportionality of the process to the problem, matching the right kind of process to problems, and judicial intervention through active case management.
 - The BC Justice Review Forum has been set up to provide the opportunity for comment on the proposed new rules of civil procedure for the Supreme Court. It is at www.bcjusticereviewforum.ca

In the discussion that followed Mr. Seckel made it clear that greater judicial involvement in case management was not intended to get judges involved when counsel are able to manage the case themselves, but only when counsel cannot or the parties do not have counsel. Another point was made that much of the difficulty encountered with long trials and complex processes is not caused by a failure of the existing rules of court but by inadequate enforcement of those rules, resulting in a culture that does not believe the rules will be enforced. Mr. Seckel agreed that the reforms would not succeed without a cultural change involving judges and lawyers. Part of the intention in clarifying the rules is to help bring a greater consistency of application by judges.

Dr. Vallance lauded the proposal to have experts meet before trial and possibly submit a joint report. He asked if there had been any input from so-called experts? Mr. Seckel said there had been limited input from experts but roundtable discussions with other professions were scheduled, and that was one of the key topics.

Mr. Turriff noted that mediation in small claims court was among the proposed reforms and he asked how success would be defined. Mr. Seckel said mediation was successful if it resulted in a settlement, although some parties might not view the settlement as successful from their point of view. Mr. McHale said that in another program there is an exit survey that provides a large volume of feedback on mediation and there is a high degree of satisfaction with the outcome.

Mr. Punnett asked if the working group had looked at other jurisdictions that have made similar changes in order to examine possibly unintended consequences. Mr. Seckel said many of the proposals were variations on ideas that had been tried in other places, and some other things had been avoided because of negative experiences in other jurisdictions.

10. UNBUNDLING OF LEGAL SERVICES TASK FORCE RECOMMENDATIONS RE RULES OF COURT.

Ms. Hickman thanked the task force members and Law Society staff, Doug Munro, for their work. She said the Ethics Committee considered the draft report the previous day and the task force met with the Court of Appeal, which was responsive to the recommendations. The task force emphasized that the objective was not to have more self-represented litigants in court but to assist people who are already there by getting them some legal services. The urgency of the matter is that the Civil Justice Reform working group of the JRTF is seeking recommendations, and the task force has two recommendations to offer. The first recommendation relates to assisting litigants in preparing documents. The Ethics Committee questioned whether this was a problem, but the experience of lawyer is that it is. Judges are frequently requiring lawyers to attend court even though they were only retained to prepare pleadings and are not solicitors of record. The Court of Appeal was very receptive to the idea of a simple form of acknowledgement, as recommended. The Chief Justice of the Supreme Court also supported the idea. The task force sought approval to send a letter in the form of a draft circulated to the Civil Justice Reform working group.

It was moved (Hickman/Berge) to authorize the President to send the letter with recommendations in the form circulated.

Mr. Ridgway asked how the recommendation for new court rules and forms to allow a lawyer providing limited services to go on an off the record in an expedited manner would assist an opposing party or their lawyer facing an unrepresented party.

Ms. Hickman said it would assist primarily with respect to the address for delivery and would avoid confusion about when the limited retainer lawyer might be expected in court.

Mr. Ridgway asked if the Court of Appeal gave a commitment to act in accordance with the form? Ms. Hickman said the Court did not go that far but the first step was to have the recommendations incorporated into the Rules of Court.

Mr. Hunter said the Ethics Committee considered the draft report primarily because the other recommendations in the report would require rule or handbook changes. The specific recommendations being considered fell outside the Ethics Committee's mandate but were discussed as part of the whole report.

Mr. Turriff said the first recommendation to not require a lawyer to file an Appearance merely because he or she had assisted in drafting documents was innocuous, but he opposed the second recommendation because it was, in his view, unnecessary.

Mr. Punnett said he had seen a lawyer required to attend court to explain his involvement when he had merely provided some general assistance to the litigant and was not retained beyond that.

Mr. Turriff said he had been acting on a case for five years on a limited retainer with other lawyers on the other side and they had never had difficulty knowing where to send documents or when to expect his attendance in court because it was all dealt with between counsel. If judges are requiring lawyers to attend court when there is no need, the problem is with the judges.

Mr. Walker hoped that if the recommendation went forward, the people who receive them understand that an appearance filed by a self-represented litigant that clearly identifies that person means that a lawyer involved on a limited basis in not on the record.

Ms. Berge said she understood the difficult the Benchers had in debating issues outside the larger context of the whole report. These two recommendations came after consideration by the working group of initiatives in the United States and consultation with the courts. The experience in the United States is that having limited appearance forms allows greater understanding of the lawyer's limited retainer and allows lawyers greater comfort in accepting limited retainers. That means people have greater access to legal advice.

The motion was carried.

11. **BENCHER REVIEW RULES**

Mr. Hume reviewed proposed amendments to the Law Society Rules implementing a previous policy decision to deal with the situation where a respondent (in a discipline matter) or applicant (in a credentials matter) initiates a Bencher review of a hearing panel decision, staying an order for costs, and then does not proceed for an extended period.

It was moved (Hume/Jackson) to amend the Law Society Rules as set out in Appendix 1.

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

12. **RULES RE SMALL FIRM COURSE**

Mr. Hume explained that there was some confusion in the original rules implementing the Small Firm Course regarding when a person must take the course. The proposed amendment deals with that concern, with the question of when the Practice Standards Committee can order a member to take the course, and specify that a person can take the course before engaging in small firm practice but not more than one year before doing so.

It was moved (Hume/Zacks) to amend the Law Society Rules as follows:

1. ***In Rule 3-18.1 by rescinding subrules (2) and (3) and substituting the following:***
 - (2) This Division applies to a lawyer who begins practice in a small firm or, while practising in a small firm, becomes a signatory on a trust account, unless the lawyer has done both of the following in a Canadian jurisdiction for a total of 2 years or more in the preceding 5 years:
 - a. engaged in the practice of law in a small firm;
 - b. been a signatory on a trust account.
 - (3) Despite subrule (2), this Division applies to a lawyer when the Practice Standards Committee, by resolution, so orders.
2. ***In Rule 3-18.2(1) by deleting "Within 6 months of the date" and substituting "Within 6 months after and not more than 12 months before the date".***

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

13. UPDATE ON CLAIMS AND RECOVERIES IN THE WIRICK MATTER

This matter was considered in camera.

14. DISCUSSION OF BENCHER CONCERNS

These matters were discussed in camera.

DMGN

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