

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING: Benchers

DATE: Friday November 16, 2007

PRESENT:

Anna Fung, QC, President	Bruce LeRose, QC
John Hunter, QC, 1 st Vice-president	Jan Lindsay
Gordon Turriff, QC, 2 nd Vice-president	Thelma O'Grady
Ralston Alexander, QC (Life Bencher) for item 8 only)	June Preston
Rita Andreone	Robert Punnett
Kathryn Berge, QC	David Renwick, QC
Joost Blom, QC	Glen Ridgway, QC
Ken Dobell	Dirk Sigalet, QC
Ian Donaldson, QC	Richard Stewart
Leon Getz, QC	Dr. Maelor Vallance
Carol Hickman	Art Vertlieb, QC
Gavin Hume, QC	James Vilvang, QC
William Jackson	Ken Walker
Patrick Kelly	David Zacks, QC
Terry La Liberté, QC	

NOT PRESENT: Barbara Levesque Ronald Tindale

STAFF PRESENT:

Tim McGee	Michael Lucas
Lynn Burns	Bill McIntosh
Stuart Cameron	David Newell
Brad Daisley	Susanna Tam
Su Forbes, QC	Alan Treleaven
Jeff Hoskins	Adam Whitcombe
Howard Kushner	Carmel Wiseman

GUESTS:

Meg Shaw, QC, Bencher Elect
Vic Dietz, QC, President, Law Society of Saskatchewan
Tom Schonhoffer, Executive Director, Law Society of Saskatchewan
Dean Mary Ann Bobinski, University of BC Faculty of Law
Stephen McGee, Executive Officer, CBABC
Joanne Silver, Director of Stakeholder Relations, CBABC
Johanne Blenkin, Executive Director and Chief Librarian, BCCLS
Wayne Robertson, Executive Director, Law Foundation of BC
Stephen Frame, President, Trial Lawyers Association
Tom Fellhauer, Chair, CLE Society
Jack Huberman, QC, Executive Director, CLE Society
Meredith Woods, Program Lawyer, CLE Society
Larry Berg, President, Vancouver International Airport Authority

Carol Kerfoot, Director, Vancouver International Airport Authority
Ron Morin, member.

1. MINUTES

The minutes of the meeting held on October 12, 2007 were approved as corrected.

2. CONSENT AGENDA

The following resolutions were passed unanimously and by consent:

Resolved: to amend the Law Society Rules, effective January 1, 2008, as follows:

1. In Schedule 1, by rescinding items A1 and A2 and substituting the following:

A. Annual Fee	\$
1. Practice fee set by members (Rule 2-70)	1,554.00
2. Special Compensation Fund assessment (Rule 2-70)	350.00

2. In Schedule 2, by revising the prorated figures in each column accordingly; and

3. In the headings of Schedules 1, 2 and 3, by striking the year “2007” and substituting “2008”.

Resolved: to amend Law Society Rule 4-37 by adding the following subrules:

(3) A lawyer who is suspended under this Part or Part 5 must inform all clients who reasonably expect the lawyer to attend to their affairs during the period of the suspension and clients or prospective clients who inquire about the availability of the lawyer’s services during the suspension period of the following:

- (a) the period the lawyer will not be practising;
- (b) the arrangements the lawyer has put in place to protect the clients’ interests during the time the lawyer will not be practising;
- (c) the fact that the lawyer is not practising during the relevant period because of the suspension.

(4) A panel that suspends a lawyer may relieve the lawyer of any of the obligations set out in subrule (3) if the panel is satisfied that it is consistent with the public interest and imposing the obligation would be unreasonable in the circumstances.

3. PRESIDENT’S REPORT

Ms. Fung congratulated all the Benchers who were re-elected or elected.

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

- Attending a meeting of the Kootenay Bar Association where there was some debate of mandatory continuing development. One issue concerned how to provide courses to the sole practitioner who practices only criminal law in the Kootenays. There was also a debate about spending Law Society funds to support pro bono work.

- Two trips to Regina. One to attend the Law Society of Saskatchewan Centennial Dinner, the other to attend the Federation of Law Societies meeting.
- Attending the conference in Edmonton on the future of regulation of the legal profession as part of the Law Society of Alberta's centennial celebrations.
- Speaking at the pro bono workshop hosted by the Law Society. Ms. Fung acknowledged the special efforts of Law Society staff member Bill McIntosh in putting the workshop together.
- Attending the first year law program at UBC to talk about professional conduct, along with several other Benchers. She said the Bencher participation received good reviews from the students and faculty, in particular Jan Lindsay and Ian Donaldson. Ms. Lindsay said Mr. Stewart was responsible for her very good preparation.

Ms. Fung referred to the written report on the Federation of Law Societies meeting that was circulated. Highlights of the meeting included:

- Strategic planning for the next three years. Top priorities included preserving the independence of the profession, setting national conduct standards, and possibly national admission standards.
- The Federation committee on anti-money-laundering continues discussions with government regarding proposed regulations on client identification. The Federation has pointed out that it has promulgated model rules, but the government continues to propose regulations. A task force has been formed to review and comment on the proposed regulations.
- The Competition Bureau report on regulated professions is expected to be published soon. The legal profession is included. It is not expected to be a flattering report, and it is anticipated that it will be critical, particularly with respect to entry to the professions. The Federation will prepare a common response and communication. LSBC resources are being made available to assist with that.
- In New Brunswick the Court of Queen's Bench struck down a Law Society of New Brunswick by-law on standards of practice in real estate conveyancing on the basis that it was enacted for the improper purpose of restricting competition. The Law Society of New Brunswick is seeking an opinion before deciding whether to appeal the decision.

4. CEO'S REPORT

Mr. McGee briefly reported on Law Society finances to date. He said membership revenues were slightly up against the plan and the General Fund was expected to be on budget for expenses at the end of the year. Despite concern earlier in the year, TAF revenues are slightly ahead of the target. A new electronic TAF filing form is now available that assists members to calculate and remit TAF. The Special Compensation Fund is up against budget as a result of favourable settlements with financial institutions. That has been taken into account in future budgeting for the Special Compensation Fund.

Mr. McGee reported on his attendance at the ILLACE conference, which was well attended. Highlights of the conference included:

- Comments from the head of the European Union that the public interest for regulators is being defined in terms of consumer interests and consumer choice.
- The head of the Law Society of England and Wales talked about expectations about new competitors entering into the provision of legal services, and more profitable business models through MDPs. There was some discussion about preserving

privilege in the context of MDPs, but that was not seen as a problem. There is also the possibility of public ownership of law corporations as a way to raise capital.

- Mr. McGee said he chaired a discussion on independence of the legal profession. Most views were represented. The emerging view is that we are on the right track to examine independence on a global basis and address weaknesses where they are found.

Mr. Turriff commented on the contrast between comments on independence and the lack of resolve in the UK to stand up to erosion of independence.

Mr. McGee reported that the 2007 employee survey was complete and showed positive numbers in several areas. Participation was up to 70%, which is above average for this kind of survey. Scores for responses in the areas of communication and leadership were improved over the first survey done in 2006. Mr. McGee said the full report would be provided in December.

5. REPORT ON THE LAW SOCIETY ADMISSION PROGRAM AND PLTC

Ms. Burns and Mr. Treleaven gave a presentation on the Law Society's admissions program and PLTC. A copy of the presentation is attached.

Mr. Getz asked if there was any data available on how many people of finish PLTC fail to get jobs. Mr. Treleaven said that information was not available.

Dr. Vallance asked whether the proportion of male to female students had changed in recent years. Ms. Burns said that slightly more than half the students in PLTC were women. This had lagged behind the law schools for a few years but had now caught up.

Mr. Jackson asked if a lack of potential lecturers limited PLTC to Vancouver and Victoria. Ms. Burns said that was not the reason PLTC was not offered elsewhere but it would probably be a problem if it were tried. She said the overwhelming preference expressed by students is to travel to Vancouver. Out of town students are given priority in the May PLTC session so many students are already in Vancouver or Victoria having just finished law school.

Mr. Jackson asked if the success rate of 99% is typical of bar courses. Ms. Burns noted that 99% was the ultimate success rate, not the initial success rate. She said it is typical.

Mr. Zacks asked what options there were for a student who fails the PLTC exams. Ms. Burns said students have two further opportunities to pass the exams. After three failures, students must wait one year to apply again. Mr. Zacks asked if there was anything in common among people who fail two or more times. Ms. Burns said that was a complex question. Such people are often older students, and some are students with foreign law degrees, but there are other possible factors as well.

Mr. Hume recalled earlier discussion about standardizing Bencher/student interviews, and asked if that was going ahead. Mr. Treleaven said staff was working on a form of checklist for Benchers to use during student interviews.

Dr. Vallance asked if there was a correlation between course selection at law school and failure at PLTC. Ms. Burns said there was only anecdotal evidence for such a correlation. She said it appears that if a student has taken a relatively narrow range of courses at law school and is not a strong student, they may have more difficulty with PLTC.

Mr. Turriff said that Benchers should have a policy discussion on increasing the difficulty of PLTC in order to create a class of truly expert legal services providers as part of a larger effort to increase access to legal services. Mr. Treleaven said the consistent pass rate at PLTC was seen primarily as an indication of the consistency of the program.

6. REPORT ON OUTSTANDING HEARING DECISIONS

The Benchers received a report on outstanding hearing decisions.

7. REPORT FROM THE VANCOUVER INTERNATIONAL AIRPORT AUTHORITY

Ms. Fung welcomed and introduced Carol Kerfoot, the Law Society's appointee to the Vancouver International Airport Authority board of directors, and Larry Berg, President and CEO of the Airport Authority.

Ms. Kerfoot thanked the Benchers for nominating her for appointment to the Airport Authority board. She said the appointment ranked with the best she had experiences. "YVR" as the airport is known, is well managed, with a board that subscribes to best practices in governance.

Mr. Berg gave a presentation, a copy of which is attached, then invited questions.

Mr. Zacks commented that in his experience baggage handling at YVR seemed to be among the poorest in North America, and asked why that might be so. Mr. Berg said he was not surprised to hear complaints about that. One problem is that faster customs procedures result in people waiting longer for their luggage. In the past people spent much longer clearing customs so their baggage was available when they completed the customs process. Additionally, the tight labour market results in shortages. People tend to use baggage handling as an entry-level job leading to better airport positions.

Mr. Dobell asked if there was any change in Canada's status as an "approved destination" in China. Mr. Berg said Canada was not on the "approved destination" list. One reason is the ability to claim refugee status immediately on stepping onto the airport ramp in Canada.

Mr. Jackson asked if there were any plans for expanding or improving the South Terminal. Mr. Berg said YVR could handle expansion there, however, as airlines grow bigger, they tend to move from the South Terminal to the main terminal. However, expansion at the South Terminal will have to be considered eventually, and a new terminal is not out of the question.

8. RECOMMENDATIONS OF THE TITLE INSURANCE TASK FORCE

Mr. Alexander said the comments from the Law Society membership were somewhat more plentiful than expected and it was clear that the issues had attracted some attention. His view was the members' responses were universally in favour of approving the task force's recommendations. Title insurance companies take the contrary view, however, those comments should be considered in the context of their financial interest in preserving the status quo.

Mr. Zacks said he practiced in an area where title insurance can play a role, but he was not a "big believer" in title insurance because it does not add a lot in most circumstances, particularly in residential conveyances. In some areas title insurance is useful and on occasion it is essential. It has a place in commercial transactions. The public should decide whether it is useful in any given set of circumstances. Lawyers ought to promote the value they bring to residential conveyances and mortgages, but not every transaction requires the same depth of advice, so it is in the public interest to let people decide what kind of assurance they want. Some of the comments from lawyers were strikingly anti-competitive. If the Benchers conclude that the public ought to decide whether to use title insurance or not, it may be necessary to develop ways of ensuring that the system functions well when title insurers are involved. Mr. Zacks did not think title insurance itself was a detriment to the land title system.

Mr. McGee reviewed the recommendations from an operational point of view. The first and second recommendations are things that the Law Society does already and will continue to do. The third recommendation concerns working with the LTSA. The Law Society does have staff-level

liaison with the LTSA that could form the basis for more specific discussions. Recommendation number four would have operational and budgetary impact but staff could return to the Benchers with a specific proposal for implementation. The Law Society has already taken steps of the kind contemplated by recommendation five, but he would consider what if any further steps should be taken. Recommendation 6 speaks for itself and the changes contemplated are possible with existing resources.

Mr. Vilvang commented that educating the public is a long and expensive process, and educating the public about the value of lawyers in a conveyance would be a fool's game.

With respect to Recommendation 1, Ms. Wiseman said that when there is a report of unauthorized practice arising in the context of document preparation, the Law Society pursues it. Sometimes the response is that documents were prepared by a law firm. If that is so, there is no unauthorized practice to pursue.

Mr. Alexander said the task force apprehended that there had been a lack of rigor in the investigation of complaints although that may not be so now. One of the appendices to the report describes an analysis of a professional conduct issue that questions the ability of a part time lawyer to properly supervise a large staff processing thousands of transactions each month. It is perhaps that consideration that should be emphasized.

Mr. Kushner said that any professional conduct issues arising from the provision of document preparation are investigated.

Mr. LeRose said he understood Mr. Alexander's frustration but unless there is a complaint and sufficient evidence to back it up, it is difficult to take action. Mr. Stewart asked if the task force was suggesting that the Law Society take a more proactive approach to the professional conduct issue rather than simply waiting for a complaint.

Mr. Alexander said the task force sought to alert the Benchers to the fact that the unauthorized practice aspect of the matter is obscured by the response described by Ms. Wiseman. The task force thought it unlikely that unauthorized practice can be avoided in a way that complies with the Handbook requirements for proper supervision. It is not enough to end the matter when advised that documents are prepared under a lawyer's supervision.

Mr. Donaldson said the task force seemed to be of the view that title insurance doesn't really benefit the public, and given the nature of the system, consumers are being fleeced. The first recommendation concerns two aspects of the Law Society's jurisdiction. Mr. Zacks has suggested that the consumer should make the decision. Might those questions be better addressed in the political forum rather than the Law Society's regulatory forum?

Mr. Alexander said there is no question but that title insurance impacts members' practices. If one accepts that under the current *Legal Profession Act* lawyers and notaries are the only people entitled to prepare documents for registration in the Land Title Office, then there is no scope for a political solution. There is essentially a reservation of practice, but it is being eroded by the mechanism of the "awkward" mode of compliance by the title insurance companies. The question is whether the Law Society is prepared to do anything about it. Mr. Alexander suggested that the Law Society had not tested the proposition in court because it is afraid of the potential outcome.

Mr. Getz said the Benchers should remember that Recommendation one was made in the context of the task force trying to get information it needed, but was trumped. The Benchers must decide whether the Law Society is going to assume an investigative role with a view to fact-finding and whether there is anything it can do in that direction. The task had reported to it that one firm is filing thousands of mortgages per month. All we need to do is seek verification of that from the Land Title Offices and then reach our conclusions. Similarly with education program, it does not need a new PLTC. It could be accomplished with relatively simple brochures. There is no need to make it controversial.

Ms. Andreone suggested that if the focus of the Law Society's concern was on setting clear standards on how to effectively supervise non-lawyers, it extended beyond title insurance.

Mr. Turriff said that if the Law Society thinks the public is in danger, then it must do something about it, whether it is through unauthorized practice or professional conduct. Whatever is done, the Law Society must be careful not to be seen to be doing it to preserve a class of work to lawyers that could be adequately done by others. That is a bigger question than whether to approve Recommendation one.

Mr. Zacks said that as far as the Law Society knows, the only evidence of public harm has been received from other lawyers, and generally lawyers practicing in the subgroup most affected by title insurance. He did not suggest that the practices of title insurers are pristine and did not defend them, but he was concerned that the Law Society might take a path that could lead to attack by others would regulate the legal profession either within Canada or internationally. The overriding consideration under the statute is the public interest, not the lawyers' interest.

Mr. Vertlieb asked if it would make a difference if the Law Society and the Society of Notaries Public considered together how to protect the public interest. Mr. Alexander did not think there was a significant difference of view between the Law Society and the Notaries on this point.

Mr. Kelly said that the heart of the Law Society's purpose is the protection of the public interest. Recommendation 1 suggests that the Law Society investigate through existing processes something that has been drawn to our attention that falls within the public protection mandate and the Law Society would be remiss not to pursue it in a clear way.

With respect to Recommendation 2, Mr. Cameron said that if something triggered a complaint, the Law Society would investigate it.

Mr. Alexander said Recommendation 2 spoke to a different issue. He said title insurance companies pay lawyers to attend on the execution of documents. On the face of it, it appears that someone other than a lawyer is making lawyers available for a fee.

Mr. Morin said the discussion was missing the point that in 2005 the members passed a resolution demanding that the Law Society take action. The response was to form the task force. The *Legal Profession Act* is clear that only lawyers and notaries can prepare documents for registration in the Land Title Office. Title insurers are preparing documents through false front law firms. The resolutions were passed because the Law Society has not been enforcing the *Legal Profession Act*. With respect to letting consumers choose, that does not happen because the lenders dictate what the consumer can choose. In the end the answer is simple: the Law Society should fulfill its statutory obligation to enforce the *Legal Profession Act*.

Mr. Vertlieb said the Benchers could have confidence that the CEO and management would instruct staff to take action based on what was heard today. He did not see any reason why the Law Society would not want to take action where there is evidence of activity that is contrary to the public interest. If title insurance companies are using lawyers in an improper way, then the Law Society should do something about it. He suggested changing the word "specifically" to "rigorously" in Recommendation 1.

It was moved (Vertlieb/Lindsay) to accept the recommendations of the Title Insurance Issues Task Force, with the substitution of "rigorously" for "specifically" in Recommendation 1.

Mr. Zacks was against the motion not because he was against the idea but because it is a management function. The Benchers' enforcement obligations are pursued by staff and it seems anomalous and unnecessary to pass a resolution to do what the Law Society is already obligated to do.

Mr. McGee said he believed the Law Society has an obligation to pursue matters described in Recommendations 1, 2 and 3. The Law Society does not always wait for a complaint if it has knowledge of facts giving rise to concern, but it does not go on fishing expeditions. The report does not bring any startlingly new information. There are ongoing matters that can be discussed *in camera*. However, if the Benchers adopt the recommendations, it would amount to heightened status of, or new information from a reliable source that would cause the Law Society to re-evaluate what it is doing.

Mr. Vilvang disagreed that this was purely a staff matter. There are policy decisions that are made by the Unauthorized Practice Committee that give staff direction. Direction from the Benchers may be useful too. There are financial considerations to taking on the title insurance companies. Those are policy decisions that have to be made by the Benchers.

Mr. Turriff suggested simply resolving to direct staff to redouble efforts to examine whether there are violations of the *Act* or standards, and report back to the Benchers.

Mr. Ridgway commented that the member resolutions passed at the AGM meant the matter was not wholly within the staff realm.

Ms. Berge noted Ms. Andreone's earlier comment that there is a larger issue with respect to supervision that includes lawyers that in fairness should be considered as well. She suggested adding to Recommendation 1 "or other instances of insufficient supervision of staff by Law Society members." With respect to the impact on Law Society resources, Ms. Berge said the members had passed resolutions at the AGM, which authorized the Benchers to expend resources, and they could be expected to support the Benchers if doing so impacted on fees.

Ms. Lindsay said the public interest includes protecting the interests of members. The Members have instructed the Benchers to take action. Title insurance constitutes the introduction of an unnecessary product and might be the thin edge of the wedge and has the potential to degrade the integrity of the land title system. There needs to be a public education effort.

Mr. Kelly was in favour of the motion. He noted that some of the recommendations pertained to existing matters but there are additional recommendations.

Ms. Fung said that in her view the task force recommendations were a modest proposal. The task force spent a great deal of time looking closely at the issues and went through many drafts before coming forward with recommendations. The Benchers should bear in mind that in passing the motion they would be making a statement of priorities that might require some realignment of Law Society priorities and resources.

The motion was carried.

It was moved (Vertlieb/Berge) that the Benchers would receive a status report on implementation of the recommendations by April 2008.

The motion was carried.

9. EXECUTIVE COMMITTEE ELECTION

Mr. Hunter introduced a proposal to change the timing of Executive Committee elections. The past practice has been to have new Benchers participate in the election of the Executive Committee for the next year. That requires holding the election after January 1. However, there is value in completing committee appointments in December and it is helpful if the President knows who will be on the Executive Committee. He proposed changing the Law Society Rules to permit Executive Committee elections to be held in November and December of the preceding year.

It was moved (Hunter/Turriff) to amend Rule 1-39 as follows:

by striking subrule (2) and substituting the following:

(2) All persons elected as a Bencher for a term that includes the calendar year for which members of the Executive Committee are to be elected are eligible for election under subrule (1),

In subrule (3) by striking the words “at the last regular meeting of Benchers in the year before the election” and substituting the words “by November 22.”,

In subrule (4) by striking the word “mail”,

In subrule (5) by striking the words “earlier than January 7” and substituting the words “later than December 6”, and by striking the word “mail”,

In subrule (8) by adding the words “and until a new member of the Committee is elected under this subrule in the following calendar year”,

In subrule (11)(c) by adding at the beginning of the subrule the words “when more than one Bencher is to be elected,”

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

Ms. Fung said nominations for election to the 2008 Executive Committee must be given to the Corporate Secretary no later than November 22, 2007.

10. REPORT FROM THE CONTINUING LEGAL EDUCATION SOCIETY

Tom Fellhauer, Chair of the CLE Society Board of Directors gave a presentation, a copy of which is attached.

11. REMARKS FROM THE PRESIDENT OF THE LAW SOCIETY OF SASKATCHEWAN

Vic Dietz, QC thanked the Benchers for their hospitality. He acknowledged the Law Society of BC’s efforts and accomplishments at the Federation of Law Societies, and said the Benchers and staff should be proud of that work. This year, the Law Society of Saskatchewan celebrated its 100th anniversary as a celebration of integrity.

Part of the reason for coming to BC was to see how the LSBC operates. The Law Society of Saskatchewan is going through substantial reorganization and it is very helpful to see how the LSBC does its work. Most committees have been eliminated and the Law Society is looking to bring more work in-house, as is being done in BC. We note that both the LSBC and other Law Societies have very competent staff and we are looking to model ourselves more on that.

Dr. Dennis Kendall, of the Saskatchewan College of Physicians and Surgeons demonstrated how far ahead the medical profession is of the legal profession in the area of qualification.

Regarding title insurance, the situation in Saskatchewan is different. In Saskatchewan borrowers sign a power of attorney in favour of First Canadian Title, which then does all the paperwork. Nobody explains the mortgage to the borrower. The Law Society of Saskatchewan is approaching the problem from the perspective of having the land title office underwrite fraud and forgery and charging an additional fee to cover it.

With respect to the Federation, we don’t foresee the day when it will be come an overarching body, but do see it taking on more and more of the national issues such as the protection of lawyer-client privilege as a public protection issue.

Ms. Fung thanked Mr. Dietz and Mr. Schonhoffer for attending.

12. REPORT ON PRO BONO WORKSHOP

Mr. Getz briefly reviewed a written report on the workshop hosted by the Law Society for organizations involved in the delivery of pro bono legal services. He said the workshop was enlivening because it was the first time such a large number of participants had gathered and discussed the provision of pro bono services with one another. The workshop was also depressing because it brought home just how much work there is to be done, particularly in terms of delivering services on the ground. A debt of gratitude is owed to Wayne Robertson, Executive Director of the Law Foundation, and Bill McIntosh, Law Society Communications Officer, for putting the workshop together.

Mr. Kelly commented that the value of pro bono services provided in BC annually is about \$9.25 million. That is a significant leverage on a small investment by the Law Society.

13. LAWYER EDUCATION COMMITTEE REPORT

Mr. LeRose reviewed the report from the Lawyer Education Committee circulated to the Benchers. He noted that the Benchers had considered mandatory continuing professional development (MCPD) on at least four occasions in the past thirty years but in each case had decided to try to increase voluntary consumption of continuing education. In March 2004 the Benchers approved mandatory reporting of continuing professional development, and in 2006 the Benchers approved in principle MCPD. The Committee was asked to spend the year developing a proposal for the Benchers to review. The Committee comprises seven Benchers and others. All members of the Committee support the proposal, but it is a compromise.

Dr. Vallance said he had been an enthusiastic promoter of a professional development program, which is essential to the good standing of any profession. Success is measurable in terms of collegial study, but it requires a catalyst or impetus. The proposed program is described in very broad terms and is intended to be flexible. Once initiated, it will change over time. In the medical profession there was a steady flow of information as programs were developed. There was a lot of anxiety among medical professionals. When the program was introduced it was not well defined but it has become so over time and is now well accepted.

It was moved (LeRose/O’Grady) to accept the recommendations of the Lawyer Education Committee as follows

1. Each practising member of the Law Society of British Columbia must complete not fewer than 12 hours per year of continuing professional development undertaken in approved educational activities that deal primarily with the study of law or matters related to the practice of law.
2. Approved educational activities include:
 - (a) Traditional courses and activities:
 - Attendance, in person, at a course offered by a provider approved by the Law Society;
 - Participation in online “real time” courses, streaming video, web and/or teleconference courses offered by a provider approved by the Law Society where there is an opportunity to ask and answer questions;
 - Review, in a group with one or more other lawyer(s) of a video repeat of a course offered by a provider approved by the Law Society;

- Completion of an interactive, self study online course offered by a provider approved by the Law Society, provided that a testing component is included in the course;
- Teaching at a course related to law or to the practice of law. In the case of teaching, the lawyer is entitled to a credit of three hours of reporting for each one hour taught.

“Course offered by a provider approved by the Law Society” includes:

- any course offered by the Continuing Legal Education Society of British Columbia, the Trial Lawyers’ Association of British Columbia, the Canadian Corporate Counsel Association, the Canadian Bar Association, the Federation of Law Societies of Canada, or the Law Society of British Columbia
- any course offered by Canadian law schools dealing primarily with the study of law or matters related to the practice of law
- any other course, or provider who offers courses, dealing primarily with the study of law or matters related to the practice of law, provided that the attendee has obtained prior approval from the Law Society of British Columbia.

(b) Non-traditional activities:

- Attendance at CBA section meetings;
- Attendance at a course or other education-related activity offered by a local or county bar association;
- Participation in (including teaching at) an education program offered by a lawyer’s firm, corporate legal department, governmental agency or similar entity, provided that the program is offered in a group setting;
- Participation in a study group of 2 or more provided that the group’s study focuses on law related activities;
- Writing law books or articles relating to the study or practice of law for publication.

3. Not less than two hours of the required 12 hours of continuing professional development must pertain to any combination of the following topics:

- professional responsibility and ethics;
- client care and relations;
- practice management.

4. Each lawyer must report to the Law Society the number of hours of approved professional development activity completed over the previous 12 month period. Failure to complete and report the minimum number of required hours will result in a breach of a Law Society Rule, and may subject the lawyer to sanctions.

Ms. Andreone said she had never learned so much about professional responsibility than when she joined the Discipline Committee, and she asked whether participation in Law Society regulatory committees might be included. It would have the added benefit of encouraging members to volunteer for committees. Mr. LeRose said the subject was not debated at length. He said he

would be concerned that the very small group of participants might tend to make it somewhat exclusive, but it could be considered in the future.

Mr. Jackson said he was against anything mandatory as a matter of principle and for that reason voted against MCPD in principle, but the proposed plan appeared to workable and he supported it. He noted that, as Ms. Fung heard in the Kootenays, it raises the difficult question of how to accommodate specialized senior practitioners.

Mr. Stewart supported the proposal. He was concerned about what further opportunity there would be for change, and suggested that there should be a very easy process for refinement. He was somewhat concerned about the opportunity for consultation and would not want to create an expectation that this was not the final recommendation. Mr. LeRose said if the recommendations were approved he expected they would be put on the Law Society website and would be discussed by members. The Benchers should remain open-minded about ways to improve the program.

Mr. Turriff said there are two ways to justify a compulsory program. One is by saying how serious the Law Society is about continuing education and the other is by saying that it is what the public expects. Both are true. There are some very good aspects to the program but it does not represent a “tectonic” shift. Mr. Turriff said the public might scoff at the requirements. Twelve hours of continuing development work does not seem like much compared to the billable hours many lawyers are expected to produce, and the two hours of professional responsibility is so small as to go unnoticed. He said the Law Society must avoid the inertia that sometimes sets in when a program is under way, and the Benchers should consider improvements as the program moves forward.

Mr. Kelly said he was confident that the Executive Director would incorporate good suggestions into the program.

Mr. Punnett emphasized that the proposal was really a start. Every other profession has some form of mandatory education. Whether one can measure improvement or not, education is never a bad thing. With respect to specialized practitioners, Mr. Punnett saw nothing wrong with them expanding their horizons because that would make them better lawyers. He was concerned about the potential cost for lawyers outside the Lower Mainland, but the way the proposed program was set up and the way organizations like the CLE Society were moving would tend to alleviate that problem.

Mr. Getz agreed with Mr. Turriff’s comments.

Mr. Hume favoured the motion. He urged the Committee to look at the CBA Women Lawyers Forum, which has a very good mentoring program and would be a good early expansion of the MCPD program. Mr. LeRose said mentoring was high on the Committee’s list of things to consider.

Ms. Fung noted that the Law Society of BC was approved as a provider. She suggested all Canadian Law Societies might be approved. Mr. LeRose said a lawyer would simply need to get pre-approval for a course put on by another Law Society. Ms. Fung asked if the requirement for two hours on professional responsibility any one or more of the three topics listed. Mr. LeRose said the two hours could be all in one area or in a combination of areas.

The motion was carried.

14. SELECTION OF FEDERATION OF LAW SOCIETIES COUNCIL MEMBER

Mr. Vertlieb briefly reviewed a report from the Federation Council Appointment Task Force.

It was moved (Vertlieb/Berge)

1. *Replace the system of the Law Society President being designated as Council member for a one year term.*

2. *Elected and Life Benchers will be eligible to volunteer for appointment.*

Comment: The Task Force considered confining eligibility to elected Benchers for the duration of the Council term, but decided such a restriction would unnecessarily restrict eligibility, particularly because of the minimum three year term. To be eligible, a Life Bencher would have to be a Law Society member.

3. *The Benchers will choose the Council member from the nominee or nominees presented by the Executive Committee.*

Comment: The Executive Committee would manage the process for inviting volunteers or nominations, and would on an in camera basis decide which nominee or nominees to present to the Benchers.

4. *The first term under the new process will be three years in duration (January 1, 2008 to December 31, 2010).*

Comment: This would mean that the Council member would be eligible to be chosen by the Western region as the Federation Second Vice-President for the November 15, 2009 to November 15, 2010 term. On November 15, 2010, when the Federation Second Vice-President becomes First Vice-President, a new Council member is named from that law society.

5. *Each successive term will be of sufficient length for a Council member to be eligible to serve as the Western region's Second Vice-President (typically a three or four year term, according to the timing of the regional rotation).*

Comment: Assuming the timing of the current rotation, the next term would begin on November 15, 2010.

6. *The Council member, on completing a first term, will be eligible for reconsideration by the Executive Committee to be named by the Benchers to one further term.*

Comment: The Bencher Governance Policies Manual says in appendix 3, section 2: "Law Society appointments to any position will normally be up to a total period of six years, provided that other considerations relating to that particular appointment may result in a shortening or lengthening of this period. An initial appointment to a position does not carry with it an expectation of automatic reappointment for up to six years."

7. *The Council member, as a condition of accepting the position, will agree to make best efforts to complete the full term and then, if offered, to accept and complete the term on the Federation Executive Committee ladder. More particularly, the Council member will not accept a judicial appointment or other position that requires withdrawing from Council.*

8. *If the Council member is or becomes a Life Bencher, or is defeated in a Bencher election, the Council member will complete the full term, and will make best efforts to attend and participate fully at Bencher meetings, with the exception of being unable to vote or to move and second resolutions.*

9. *If the Council member is not a member of the Law Society's Executive Committee, the Council member will make best efforts to attend the Executive Committee meetings at which national or Federation-related matters are being considered.*

Comment: The Task Force considered recommending that the Council member automatically be a member of the Executive Committee, changing the number on the Committee from seven to eight. The Task Force decided that a requirement to commit both to attending all Bencher and all Executive Committee meetings would be too onerous.

10. *Rules should be enacted where appropriate to implement these changes.*

Ms. Andreone was concerned that the term “best efforts” used throughout the recommendations, created a potentially unrealistic level of expectations, and suggested the task force meant “reasonable efforts”.

Mr. Vertlieb agreed to amend the recommendations to substitute “genuine effort” for “best efforts”.

Mr. Hoskins said that despite the best intentions of very committed people, he had seen attendance by Federation representatives at Bencher meetings slip away. He suggested that the way to make people accountable and come to meetings would be to have an annual election.

Mr. McGee said Mr. Hoskins was correct about the historical record, but the situation might be different now in that the process would be more formal and the Federation has a greater profile than it used to have.

Ms. Berge suggested the concern might be resolved by an annual review provision.

Mr. Jackson said his first thought was to include a removal provision, but an annual election might be a more politic solution.

Mr. Getz suggested making the appointment for a term of one year renewable for another two years at the Law Society’s option. That would result in a three-year commitment and the ability to terminate by the Law Society if the appointment does not work out well.

Mr. Vertlieb suggested making the appointment reviewable annually by the Executive Committee.

It was agreed to amend the motion by substituting the words “genuine efforts” for the words “best efforts” wherever they appear in the recommendations, and to make the appointment of the Council representative subject to annual review by the Executive Committee.

The motion as amended was carried.

15. NOMINATION TO THE BOARD OF THE LAND TITLE AND SURVEY AUTHORITY

It was moved (Turriff/Jackson) to refer this matter to the Executive Committee to seek expressions of interest in nomination for appointment to the Board of Directors of the Land Title and Survey Authority and return it to the Benchers in December.

The motion was carried.

16. UPDATE ON CLAIMS AND RECOVERIES IN THE WIRICK MATTER

This matter was considered *in camera*.

17. DISCUSSION OF BENCHER CONCERNS

These matters were discussed *in camera*.