

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING:	Benchers	
DATE:	Friday February 29, 2008	
PRESENT:	John Hunter, QC, President	Jan Lindsay
	Gordon Turriff, QC, 1 st Vice-president	David Mossop, QC
	Glen Ridgway, QC, 2 nd Vice-president	Thelma O'Grady
	Rita Andreone	Robert Punnett
	Kathryn Berge, QC	David Renwick, QC
	Joost Blom, QC	Allan Seckel, QC, Deputy AG
	Robert Brun, QC	Meg Shaw, QC
	Ken Dobell	Richard Stewart, QC
	Leon Getz, QC	Ronald Tindale
	Gavin Hume, QC	Dr. Maelor Vallance
	William Jackson	Art Vertlieb, QC
	Patrick Kelly	James Vilvang, QC
	Terry La Liberté, QC	Ken Walker
	Bruce LeRose, QC	David Zacks, QC
	Barbara Levesque	
	Peter Lloyd	
NOT PRESENT:	June Preston	Carol Hickman
STAFF PRESENT:	Tim McGee, CEO	Bill McIntosh
	Dana Bales	Doug Munro
	Stuart Cameron	David Newell
	Brad Daisley	Susanna Tam
	Su Forbes, QC	Alan Treleaven
	Jeffrey Hoskins	Adam Whitcombe
	Howard Kushner	Carmel Wiseman
	Michael Lucas	
GUESTS:	Dean Andrew Petter, University of Victoria	
	Miriam Maisonville, Vice-president, CBABC	
	Caroline Nevin, Executive Director, CBABC	
	Johanne Blenkin, Executive Director and Chief Librarian, BCCLS	
	Tom Fellhauer, Chair, CLE Society	
	Jamie McLaren, Executive Director, Pro Bono Law of BC	
	Stephen Frame, President, Trial Lawyers Association	

1. MINUTES

The minutes of the meeting held on January 25, 2008 were approved as circulated.

2. CONSENT AGENDA

The following resolution was passed unanimously and by consent:

Be it resolved to authorize the Law Society's representative on the Federation of Law Societies Council to vote in favour of:

1. giving the Federation of Law Societies Executive a mandate to designate such individuals from time to time that it deems to be suitably qualified to represent the Federation on the Special Advocate selection committees of the federal government;
2. adopting model rules on client identification, verification and record-keeping.

3. PRESIDENT'S REPORT

Mr. Hunter gave a brief report on his activities on behalf of the Law Society during the previous month.

4. CEO'S REPORT

Mr. McGee reported that the management team had been focused primarily on the formulation of strategic priorities. Other matters included:

1. The Competition Bureau sent a follow-up letter to all Law Societies asking for an indication of what, if any, follow-up on issues identified in their report was taking place and offering assistance.
2. A new PLTC session got underway. Mr. McGee noted that this was the largest February session in ten years, which reflected the staff work done to even out the distribution of students over the sessions. Mr. McGee thanked the Benchers who participated in the session on professional responsibility.
3. The first "town hall" meeting for 2008 was held in February. Mr. Hunter attended and outlined the work being done on priorities. Results of the second annual employee survey were reported. Mr. McGee said the survey appeared to focus attention on two areas: continuing to improve communication, and improve career development. Mr. McGee reported that a new Employee Council was elected for a two-year term.
4. The communications department has produced a booklet on careers in law intended to inform prospective law students about the profession using "real world" examples of different legal careers.

5. REPORT ON OUTSTANDING HEARING DECISIONS

The Benchers received a report on outstanding hearing decisions.

6. STRATEGIC PLANNING AND PRIORITIES

Mr. Hunter introduced the topic of strategic planning and policy priorities. He said the aim was to try to ensure that the Law Society's resources are focused on the things the Benchers consider important. The process that was followed started by asking all the policy committees and task forces to report out, and all have done so. The Executive Committee considered those reports in two sessions and has set out in their report to the Benchers two central themes that emerge from the material. The Executive Committee also tried to identify particular tasks that need to be

completed with some priority. When the Benchers have expressed their views, the Executive Committee will develop the plan for the next one to three years.

Mr. McGee said the desired outcome for the meeting was to take away a sense of the strategic direction of the Law Society; to take the themes identified by the Executive Committee and put them in some form of order that reflects the Benchers' priorities so that the Executive Committee can return with a more detailed plan.

Ms. O'Grady urged the Benchers, when thinking about priorities, to be aware of the context of current realities. She noted that several identifiable groups were underrepresented at the Bencher table including women, people of colour, and people with disabilities. She said the Benchers should keep those people in mind as they set priorities.

Mr. Tindale said he would give priority to achieving practical and concrete progress in relation to competition law and globalization.

Mr. Punnett commented on the amount of apparent overlap that existed between what various committees and task forces have been doing, which called into question past efficiency. He said the Benchers should try to address those overlaps and concentrate more effectively on those issues.

Mr. Hunter said the Executive Committee had a similar reaction. He noted that this was the first time the Benchers had received a complete report on all the policy work being done, which was very useful for that reason.

Mr. Vilvang broke the priorities down into three categories: high, medium and low. He said the first high priority should be focused on the core function of effective regulation including prompt, thorough investigations and hearings. The second high priority should be maintaining self-governance, taking a cohesive, national approach. In the medium priority category are paralegal issues including a mandate to establish criteria for accreditation of paralegals, lawyer education, and retaining lawyers in the profession. Low priorities concern specific areas of law: conveyancing practices, unbundling, comments on the Civil Justice Reform task force report.

Mr. Stewart said the cost of legal services should be a priority. Firms struggle to keep their overheads down so that lawyers don't have to increase their rates, but that is difficult. He suggested examining how much it costs to practice law and look at ways to reduce that cost.

Mr. Getz said that any of the matters identified in the Executive Committee's report could be priorities and the difficulty was that any one of them could absorb a lifetime of work. The question is what do they mean in terms of the actual work the Law Society does; how does one get from the high-level themes to things that the Law Society ought to and can do?

Mr. Hunters said the theory was that if the Benchers can reach some consensus on central issues, the next level would be to identify the specific actions that can address those issues in the shorter term and advance toward overall solutions. In some cases, the first step may be for the Benchers to become more knowledgeable about an issue.

Mr. Kelly commented that there are some areas outside the core functions of the Law Society that might be better done by others. He suggested that the Law Society might not engage as much as it could with other participants in the justice system, such as the law schools and others who are regularly represented at Benchers meetings. One strategy might be to enhance partnerships where they matter, such as in education. For example, there is little education for lawyers on the fundamentals of running a law practice as a functioning business.

Ms. Andreone echoed the importance of the matters mentioned so far, but she said that, as a pragmatist, she wanted to be able to show that the Benchers have accomplished something. The

high-level issues may deserve analysis as concepts but there are simple, concrete steps that could be taken such as creating a checklist for policy committees to ensure that certain aspects are considered for every issue, such as how it fits with the Law Society mandate, the relationship to the national agenda, financial impact, etc. With respect to priorities, Ms. Andreone said addressing the Competition Bureau report was clearly important. On the regulatory front, addressing the problem of multiple repeat offenders with low level problems was a high priority. Separation of the prosecutorial and adjudicative functions of the Benchers is also important and should be done immediately. The particular issues facing in-house counsel should also be addressed.

Mr. Blom separated ideas into three categories: must do, very good to do, and good to do but not high priority. In the must do category, he placed completing the work begun on professional development, and responding to the Competition Bureau report. He said it might be necessary to respond to the Civil Justice Reform task force report, but like Mr. Vilvang, he was unsure that the Law Society as an institution has a great deal to offer in that regard. In the very good to do category, Mr. Blom included the issues identified by the Futures Committee concerning how to use the Law Society's regulatory power to increase public access to legal services. He also said the chronic offenders issue and separation of prosecutorial and adjudicative powers mentioned by Ms. Andreone are important. He said there were two additional matters that were important but over which the Law Society has very little control. One is the depopulation (in terms of lawyers) of large parts of the province, the "representativeness" of the profession, and lawyer education. The remaining matters identified by the Executive Committee fall into the good but not high priority category.

Mr. Mossop agreed with the three main themes identified by the Executive Committee but saw them as longer range themes. Responding to the Competition Bureau report is a shorter-range matter. Enhancing access to legal services should be the number one priority. Mr. Mossop thought that lawyers want more done in relation to legal aid funding, but there are other issues as well. He said he would like to see lawyers going out into the community to educate the public on the functions of lawyers and the Law Society. The Law Society might also encourage law courses in undergraduate programs.

Mr. Brun said responding to the Civil Justice Reform task Force should be a top priority. He said the task force is looking at how to make access to justice affordable and that is a fundamental aspect of what the Law Society does. It should be a top priority along with regulatory functions.

Ms. Lindsay said access to justice, access to legal services, and civil justice reform are all connected. She said lawyers are perceived as making too much money. Lawyers make money because they provide valuable services to clients who can afford to pay for them. Firms must compete for young lawyers, and that is a big part of overhead. Less well off clients have to pay fees that are driven by the economy even though they can't afford them. Ms. Lindsay did not think law schools should be expected to become trade schools. Rather the Law Society should expand its educational role and create an opportunities to bring expanded services, which implies letting go of some areas to others who can provide services at lower cost.

Mr. Hunter said if the Benchers conclude that access to legal services is a priority, consider whether our knowledge base is adequate. It might be necessary to ask for more information.

Mr. Jackson offered a simple touchstone for priorities. Liberal democratic society is premised on an independent bar and judiciary. The core functions of accreditation, discipline, and unauthorized practice are key. The Law Society's prime goal is to preserve the profession itself by ensuring high standards.

Mr. Punnett said that if the Benchers accept that lawyers have a primary obligation to the public and the cost of legal services prevents a large portion of the public from accessing services, then it should be a priority to address that issue. He commented that none of the Benchers would want to

personally participate in the system as a litigant, and that meant there was something fundamentally wrong. The civil justice system is becoming the province of the rich and corporations. Examining civil justice rules is something the Law Society might do.

Mr. LaLiberte agreed with the comments made so far. He hoped that the Benchers would create a plan that can be implemented. In the short term, he suggested the Law Society should consider what role of the Discipline Committee should be – should it focus on rehabilitation? If so, it needs more and more effective tools. With respect to long-term strategy, Mr. LaLiberte agreed with Mr. Jackson.

Mr. Kelly noted Ms. Andreone's remarks about multiple repeat offenders. He said policy direction from the Benchers is needed to determine what to do with the relatively small number of lawyers who are chronic, low-level offenders. The issue must be taken off the "too hard pile" and placed squarely on the Bencher table.

Mr. McGee noted that a number of Benchers had mentioned the Law Society's regulatory function as priority. He said the management team saw those core functions as things we must do in any event. Our goal is to do them as efficiently and responsibly as we can. The benchers have created the key performance measures so that we can inform the benchers how we are doing against a set of measurable objectives. Arguably they are a priority every day. Within them, if there are particular matters such as dealing with frequent fliers, those may be elevated to a strategic priority, but Benchers can assume that we are going to continue to fulfill our core functions.

Dr. Vallance said the core functions have to be regulatory, and that must be where the focus is. He said the public looks to the Law Society for other things as well. The Law Society has a higher profile than other organizations that deal with things that ought to be important to lawyers such as access to justice. The Law Society must put pressure on the other organizations to address those issues. The division of responsibilities between different organizations is not as clear as it could be.

Mr. LaLiberte agreed with Dr. Vallance. He said the Law Society takes on too much and cannot be all things to all people. For example, is the education of the public really part of regulating the legal profession? The Law Society should put more pressure on others to take on such tasks.

Mr. Lloyd said he considered what is not in the plan that he might have expected to see. One is that the Law Society ought to be the thought leader in terms of the independence of lawyers. If the Law Society is seen as a leader on matters that are important to the public, such as access to justice, that reinforces its ability to remain independent. A second thought is that the Law Society does not do much with respect to lawyers not practicing privately, such as in-house counsel, government lawyers, etc.

Ms. Shaw said it is important that the Law Society have the resources and tools to reach the goals that the Benchers set. The Benchers should look at what is impacting on the practice of law, such as technology and give priority to ensuring that the Law Society has sufficient resources to stay current and take optimal advantage of advances in technology. The Law Society must recognize how legal services are provided today and will be provided in the near future and ensure that the Benchers have the knowledge base to recognize and understand the impact of changing technology.

Ms. Berge said her approach had been to suspend judgment and listen to what the other Benchers had to say. She said she was struck by Mr. Getz's comments about high-level ideas – they are "big picture" ideas. There appears to be a real recognition that the Law Society's core function is regulation. Ms. Berge described four notional circles: regulation, governance, lawyer education, and the public interest issues described by the Futures Committee. Governance is important. Ms. Berge said she was particularly interested in the idea of looking at other forms of governance of

the profession. The more rigorous approach to policy development suggested by Ms. Andreone is attractive. The Benchers should look at a longer-term strategy of up to ten years. As a preliminary assessment of priorities, Ms. Berge suggested:

- Regulation (governance of the profession).
 - addressing the Competition Bureau report, globalization, and matters such as unbundling of legal services and family law rules that are currently on the periphery but could become central in the near future.
- Access to legal services (more narrowly focused than access to justice) including public education, rules reform, diversity concerns, regulating paralegals and encouraging people to take up paralegal careers.

Mr. Hunter noted Ms. Berge's comment on the term of a plan. He clarified that in talking about an annual plan the Executive Committee did not necessarily expect large or complex matters to be completely concluded within a year, although there might be particular elements that are critical to complete in a short time frame. Overall, there is a longer time frame than one year.

Mr. Mossop said that if the Law Society focuses exclusively on regulation, the profession will lose its independence. With respect to chronic offenders, there is also the question of addiction, which may account for at least some of the problems. The Law Society should look at more aggressive ways of dealing with those issues.

Mr. Walker said the Law Society should move forward in a simple and straight line. The Benchers should consider whether the core regulatory functions are being done as effectively as they should, and staff should be encouraged to come forward with ideas on what tools are needed. Continuing professional development has already been endorsed and can be moved forward as a priority for this year. The Law Society must respond to the Competition Bureau report. It is important to engage the profession, to get them involved in what the Law Society does. There is a disconnect at the moment and the Benchers must find a way of reengaging the profession. Finally, the TAF should be examined to make sure it is working and is properly funded.

Mr. Brun suggested an addition to the policy checklist Ms. Andreone proposed, which was whether the Law Society should be doing something at all or whether there is another organization that could do it better.

Mr. LaLiberte agreed with Mr. Mossop that the Benchers should give the Discipline Committee the tools to deal effectively with people with problems such as addiction or mental health problems. He noted that the Law Society's statutory mandate includes a statement of how it should fulfill the public protection mandate, and he said there should be a greater emphasis placed on the things the Law Society is supposed to do.

Ms. Andreone noted that during a break Mr. Hoskins had provided her with a copy of an extensive checklist and format template used by the policy staff. She suggested it would be a good basis for a condensed, single page checklist for Benchers.

The Benchers discussed whether to ask the members of the Executive Committee for their views. Some Benchers were in favour of hearing from individual committee members, others were not. Mr. Zacks suggested that the next phase of the process would be for the Executive Committee to return with a draft plan, which the Benchers could comment on. The final report card would come at the end of the year when the Benchers look at what was or was not accomplished.

Mr. Vertlieb said his intention had been to listen to what the Benchers had to say rather than to assert his own views. He said the discussion at the Executive Committee had been quite similar to what had taken place with the Benchers and the results were fairly consistent with what the Benchers were saying.

Mr. Hunter said the Executive Committee hoped to get more direction from the Benchers. He noted that Benchers had expressed a range of views on public education, and the Executive Committee would like more direction in that regard. He noted that the Law Society had been moving more in that direction in an ad hoc way with public forums and publications but the point of principle is whether public education is a priority. The Executive Committee will be better able to give a more concrete proposal for how to address public education if the Benchers say it is a priority.

Mr. Jackson said when he stressed core functions as a priority he simply wanted to indicate that it was his highest priority. He did not reject education. The art of government is learning how to prioritize using a risk/benefit analysis. The Benchers would need to know how much the Law Society would spend on education initiatives as compared to core functions before making a determination on priority.

Mr. Zacks said that education has different functions. One function is to educate the public about why lawyers are important in a democratic society. Another function is to education young people who might want to become lawyers if they are aware that lawyers have been on the forefront of most important issues and social change movements. If that is lost, society as a whole loses. It is important to inspire people to become lawyers rather than choosing other occupations. If the Law Society takes on any one aspect of education, it should try to make the practice of law exciting.

Mr. Punnett said the Law Society is in a truly unique position. It is not like other professional colleges because lawyers have always had a broader in society. There are some areas where the Law Society should continue to take a role, such as in promoting the importance of independence. Other organizations will not do that. He agreed with Mr. Zacks that young people should be encouraged to enter the profession.

Mr. McGee noted that education included educating lawyers, educating the Law Society, and educating the public. With respect to educating lawyers there is the continuing professional development initiative. Educating the Law Society is a lot of what the planning and priorities process is about. With respect to educating the public the Benchers should consider what the Law Society gains by making it a priority to increase communication with the public. Conversely, what might be risked by not increasing communication with the public. Mr. McGee said he was influenced by the fact that the world is dominated by rapid communication. The Law Society might risk losing an opportunity to use communication tools to get messages heard.

Ms. Lindsay noted that the Law Society had already committed money to developing the high school education module, and the public forums are another aspect of public communication.

Mr. Zacks suggested that the Law Society should introduce a requirement for lawyers to provide some form of community service, possibly as part of articles or early years of practice. There should be a way to challenge people to participate in the legal system in a way that gives back to society. Mr. Zacks said he would give such a project fairly high priority.

Ms. Berge said with respect to public legal education, the Law Society would have a role to play to the extent that the Benchers are or are not satisfied that the public is aware of their rights and freedoms, but that role could be fulfilled by monitoring what others are doing to educate the public in that regard from time to time. If the Benchers are satisfied with the efforts being made, there might be no need for the Law Society to take an active role.

Mr. Turriff endorsed Mr. Zacks' idea of a community service requirement.

Mr. LaLiberte agreed that the Law Society should try to draw people into the profession and thought some of that was already happening. He said there is a long tradition in the profession of

giving back to the community, for example, through offering pro bono services. Expanding on that might be a good idea, such as by continuing mentoring.

Mr. Walker suggested that education has two components: education about what the Law Society does and education about what lawyers do. He said the Law Society does a reasonable job about the former, but other organizations such as the CBA might have a bigger role in the latter. The Benchers should remember that governance is what the Law Society is about and ask if it is being done as well as it could or if there are other ways of doing it.

Mr. Blom noted in relation to concerns about a declining interest in law that the number of applications to UBC law school have remained high or increased in recent years, and the academic quality of applicants has gone up as well. He noted that the number of law school spaces had not increased since 1976 and some law schools had reduced their intake.

Mr. Dobell said the report from the Executive Committee did a pretty good job of setting out priorities, and the main question was about capacity. Subject to capacity, he thought the Law Society should do the things set out in the report, accepting that in some cases the first thing that needs to be done is to obtain more information before reaching a final conclusion on priority.

Ms. Levesque said others had already said the things she wanted to emphasize. She agreed with Mr. Mossop that legal aid funding could not be ignored. She suggested that the Law Society may not have fully understood its influence with government, and she would like to see the Law Society use its influence to ensure fundamental rights to access to legal services for all people.

Mr. Renwick said the Benchers must be careful not to try to do too much at once. Addressing some of the regulatory issues would be valuable. For example, there is too much delay between issuance of a citation and the decision. Issues concerning paralegals could also be examined in the near term.

Following a break the Benchers discussed whether to try to assign more specific priorities to items in the Executive Committee report. Mr. Hunter said it appeared to him that the Executive Committee report was acceptable as a working document, so the Executive Committee could work from that, taking into consideration the Benchers comments and ideas. He proposed that the Executive Committee would try to prepare a plan in skeletal form setting out what the committee thinks should be done on the various items, who will do it, and when. There are some parts, such as the scope of practice issues, where the whole of the plan for the moment will be to obtain more information and engage in further discussion at a future meeting. Mr. Hunter said the Benchers would remain seized of the matter and it would be returned for further decisions.

It was agreed to proceed as Mr. Hunter proposed.

7. REPORT ON THE CBA MIDWINTER MEETING

Mr. Jackson reported on the CBA midwinter meeting held in Yellowknife.

8. DISCUSSION OF BENCHER CONCERNS

These matters were discussed *in camera*.