

# THE LAW SOCIETY OF BRITISH COLUMBIA

## MINUTES

**MEETING:** Benchers

**DATE:** Friday July 4, 2008

**PRESENT:**

John Hunter, QC, President	Terry La Liberté, QC
Gordon Turriff, QC, 1 <sup>st</sup> Vice-president	Bruce LeRose, QC
Glen Ridgway, QC, 2 <sup>nd</sup> Vice-president	Peter Lloyd
Haydn Acheson	David Mossop, QC
Rita Andreone	Thelma O'Grady
Joost Blom, QC	Robert Punnett
Robert Brun, QC	David Renwick, QC
Ian Donaldson, QC Life Bencher	Meg Shaw, QC
Leon Getz, QC	Richard Stewart, QC
Carol Hickman	Ronald Tindale
Gavin Hume, QC	Dr. Maelor Vallance
William Jackson	Art Vertlieb, QC
Patrick Kelly	James Vilvang, QC
Stacy Kuiack	Ken Walker

**ABSENT:**

Kathryn Berge, QC	Allan Seckel, QC, Deputy AG
Barbara Levesque	David Zacks, QC
Jan Lindsay	

**STAFF PRESENT:**

Tim McGee, CEO	Michael Lucas
Dana Bales	Bill McIntosh
Stuart Cameron	Jeanette McPhee
Su Forbes, QC	David Newell
Jeffrey Hoskins	Susanna Tam
Graeme Keirstead	Alan Treleaven
Howard Kushner	Adam Whitcombe
	Carmel Wiseman

**GUESTS:**

Dean Donna Greschner, University of Victoria Faculty of Law  
Miriam Maisonville, Vice-president, CBABC  
Caroline Nevin, Executive Director, CBABC  
Johanne Blenkin, Executive Director and Chief Librarian, BCCLS  
Michael Roman, Chair, CLE Society  
Ron Friesen, Director of Education, CLE Society  
Jamie McLaren, Executive Director, Pro Bono Law of BC  
Wayne Robertson, Executive Director, Law Foundation of BC  
Rose Keith, Trial Lawyers Association

1. **MINUTES**

The minutes of the meeting held on May 31, 2008 were approved as circulated.

2. **CONSENT AGENDA**

The following resolutions were passed unanimously and by consent:

**Resolved:** to rescind Rule 10-3 of the Law Society Rules.

3. **PRESIDENT'S REPORT**

Mr. Hunter noted a recent decision of the Yukon Court of Appeal upholding the principle in *Leask v. Cronin*. In *Cunningham v. Lilles et al* the court affirmed the principle and cast responsibility on the Law Society to monitor the behavior of lawyers.

Mr. Hunter reported that the letter responding to the draft rules proposed by the Civil Justice Review Task Force that was authorized by the Benchers at the previous meeting had been sent and was now published on the Law Society website together with the response from the CJRTF. The response has both positive and negative aspects. On the positive side, the consultation period has been extended to December, 2008 so there is time to reflect on the proposed rules. The Law Society's task force has decided that there is more value in having informal discussions rather than exchanging further letters.

Mr. Hunter noted that the Law Society had held another successful public forum on youth justice issues, and he congratulated the staff responsible for putting it together.

4. **CEO'S REPORT**

Mr. McGee reported on a number of works in progress including:

- Budget and fee recommendation – to be dealt with later in the meeting.
- Follow up on the discussion of scope of practice at the Benchers retreat. The Executive Committee has asked staff to further refine the issues and identify information gaps with a view to further discussion by the Benchers in September.
- Federation working group of CEOs and council members examining how to put the Federation Council's strategic priorities into operation. The group has identified six core areas among Law Society operations, involving forty-four defined activities. The group looked for existing consistencies in those areas across the country. Out of the forty-four activities, eight have a high level of consistency, ten have a moderate level, and twenty-three have a low level of consistency. The greatest consistency was in the area of admissions and credentials, largely as the result of mobility. Low consistencies include dealing with defalcation coverage, complaints and discipline, quality assurance and continuing education. Low consistency does not mean these things are not being done appropriately, only that they are being done differently in different Law Societies. In some cases the differences reflect real differences in the jurisdictions, such as the size of membership.
- A Law Society representative met with representatives of the Competition Bureau regarding their concerns about lawyers refusing to sign mortgage documents prepared by title insurance companies. The Bureau wanted the Law Society to make lawyers generally aware of the applicability of the *Competition Act*. The Executive Committee decided that the Law Society would publish the content of the Competition Bureau's letter to lawyers in the next Benchers Bulletin and remind members that they should be aware of the provisions of the *Competition Act*.

- Mr. Treleven reported that the CBABC had approached the Law Society wanting to participate in developing an articling registry as recommended by the Small Firm Task Force. They have done the work and expect to go live on July 15. Lawyers will be able to post available positions with details, and students from across Canada will be able to look for a position or post their interest. The registry will be on the CBABC website but will not be restricted to CBA members.

**5. REPORT ON OUTSTANDING HEARING DECISIONS**

The Benchers received a report on outstanding hearing decisions.

Mr. Getz expressed concern about the length of time between a decision on facts and verdict and the penalty hearing in some cases. Mr. Turriff agreed that some aspects of the timing were within the panel’s control and in appropriate cases panels can manage the process more actively.

Mr. Brun said it appeared to be primarily a scheduling problem, and he suggested that it might be helpful to hold penalty hearings in the evening.

**6. LAW SOCIETY BUDGET AND FEES RECOMMENDATION FOR 2009**

Mr. Turriff summarized the Finance Committee’s recommendations for Law Society fees in 2009. In keeping with Bencher policy, the proposed budget is balanced and does not use any of the accumulated surplus. Although the Annual Practice Fee increases by 5.3%, primarily due to market-based salary increases, it is offset by reductions in other fees, with the result that the total cost to practicing lawyers is reduced from 2008. The budget includes the cost of implementing the continuing professional development program and work in the professional conduct and policy areas, some additional internet-based filing services, and a contingency for task forces that may be required. The budget also allows for the current portion of the ten-year capital plan. The Federation of Law Societies levy will increase from \$15 per member to \$17 per member, although most people who have attended Federation meetings in recent years are of the view that the levy should be increased more substantially in order to make the Federation more effective. The Law Society’s contribution to CanLII will increase by approximately one dollar per member. The contribution to pro bono remains at 1%, as previously determined by the Benchers. Mr. Turriff said the Finance Committee invited the BC Courthouse Library Society and the Lawyers Assistance Program to justify the funding they receive from the Law Society. The committee was convinced that it should recommend a 4% increase in funding to the BCCLS. No increase in LAP funding is recommended but the committee believes that it is an outstanding program that provides good value for money to the profession. The Special Compensation Fund fee in 2008 is \$350, but the committee recommends reducing it to \$150 in 2009 to reflect the near completion of the Wirick matter. The committee expects that the Special Compensation Fund fee will be further reduced in 2010. The Insurance Fee will remain at \$1400 in 2009.

It was moved (Turriff/Mossop):

That the Benchers recommend to the members at the 2008 Annual General Meeting a practice fee of \$1,633.50 for the practice year commencing January 1, 2009, consisting of the following amounts:

General Fund	\$1,384.00
BCCLS	\$166.00
LAP	\$56.00
Advocate	<u>\$27.50</u>
Practice Fee	\$1,633.50

That the insurance fee for 2009 pursuant to section 30(3) of the Legal Profession Act be fixed at \$1,400; the part-time insurance fee for 2009 pursuant to Rule 3-22(2) be fixed at \$700; and the insurance surcharge for 2009 pursuant to Rule 3-26(2) be fixed at \$1,000.

That the Special Compensation Fund Assessment for 2009 be set at \$150.00

The motion was carried.

## 7. **ELIMINATION OF THREE REQUIRED PRACTICE AREAS DURING ARTICLES**

Mr. Turriff reviewed a proposal from the Credentials Committee to eliminate the requirement for a principal of an articled student to commit to giving the student experience in at least three practice areas. The proposal stems from the work of the Small Firm Task Force, which considered ways to ensure that small firms could offer articling positions, particularly in rural areas. While there are sound policy reasons for exposing students to a broad base of experience, it is not always possible for small firms to do so and that may limit accessibility to articles.

It was moved (Turriff/Ridgway) to eliminate the requirement that principals commit to exposing articled students to three practice areas.

Mr. Ridgway said the Credentials Committee had considered both the positive and negative aspects of the recommendation and hoped that the Law Society would encourage firms with a limited scope of practice to work out arrangements to have students spend time elsewhere to gain broader experience.

Mr. Stewart agreed that the Law Society should continue to support the idea of broad experience in articles while eliminating it as a formal requirement. He said the Credentials Committee also recommended moving the Bencher interview with articled students to an earlier time in the articling period in order to increase the amount of time students have to seek out opportunities to broaden their experience.

Ms. Andreone suggested it might be appropriate to postpone a decision on this matter to await a more general discussion of specialization.

Mr. Hume said it would be some time before such a discussion takes place.

Mr. McGee said it would be possible to measure whether the proposed change increases the availability of articles.

Mr. Lloyd said the possibility that a student who has received training in a limited area of practice would be permitted to provide services to the public who might assume that the new lawyer has capabilities in a variety of areas raised again the question of recognizing specialization.

Mr. Jackson said the requirement was an attempt to protect the myth that lawyers can practice in any area, and it is more important to increase the availability of articles.

Mr. Getz agreed with Mr. Jackson. He said eliminated the requirement would make it easier for boutique firms to take on students. The required skills can be adequately developed in the context of a single area of practice.

Mr. Punnett also agreed with Mr. Jackson and Mr. Getz. He said a responsible principal and responsible student would try to gain as broad experience as possible. He agreed that an earlier Bencher interview would be helpful.

Ms. Hickman suggested it would be possible to loosen the restriction without eliminating it altogether. She noted that there is not statistical evidence that the requirement has reduced the number of articling positions available and there are other options to increase flexibility that could be considered.

Mr. Brun supported the resolution. He said boutique practices are deciding not to take on articulated students because of the requirement.

Ms. Andreone said she would prefer to take a smaller step because she feared that students who have trouble finding articles would be powerless to make firms provide broad experience.

The motion was carried.

**8. ELECTION OF BENCHERS' NOMINEE FOR 2<sup>ND</sup> VICE-PRESIDENT IN 2009**

Mr. Hunter announced that the Benchers had selected Gavin Hume as the Benchers' nominee for 2<sup>nd</sup> Vice-president in 2009. He thanked the other candidates for participating.

**9. MANDATORY CONTINUING PROFESSIONAL DEVELOPMENT**

Ms. Small gave a presentation demonstrating the online system that will allow lawyers to obtain credit for and track their continuing professional development activities.

Mr. LeRose presented draft rules to implement the mandatory continuing professional development program, which he described as readily achievable, broad-based and flexible. He said not everyone would be happy with the program but he believed it to be fair, equitable and functional, with something for everyone. The progress of the program will be monitored by the Lawyer Education Advisory Committee.

In response to a question from Mr. Vertlieb, Ms. Small said she anticipated that lawyers could obtain approval for CPD activities within one to two weeks, but there might be times when faster approval is made necessary by deadlines.

Mr. Jackson asked why teaching the public did not qualify for CPD credit. Mr. LeRose said the program is intended to allow lawyers to help other lawyers. Teaching the public would not contribute to the education of other lawyers.

Ms. Hickman asked whether any other professions or jurisdictions used suspensions as a compliance mechanism. Mr. LeRose said they did, with some exceptions such as the BC College of Physicians and Surgeons. He expressed the hope that there would be little need to enforce compliance that way.

Ms. Hickman expressed concern that the Practice Standards Committee would set the number of CPD hours required. She suggested that the decision might be more properly made by the Benchers. Mr. LeRose said the committee did not want to burden the Benchers but would not object to the Benchers setting the number of hours required.

Mr. Hume said he, like many other lawyers, regularly wrote and spoke at conferences put on by organizations such as Insight that are attended by both lawyers and non-lawyers. Would such activities qualify for CPD credit?

Ms. O'Grady said those activities were essentially marketing activities that lawyers would do in any event. Mr. Lucas said that if a program is aimed primarily at a non-lawyer audience, it might not be approved for credit, but the mere prospect that there would be non-lawyers participating in a program targeted primarily at lawyers would not disqualify it.

Mr. Kelly said he was heartened by the leadership the Law Society was showing with the CPD program. It is good for the profession to say to the public that lawyers are determined to embrace continuing professional development and commit to some 120,000 hours per year, collectively. It sends a very positive message to the public.

Mr. Walker congratulated the committee on specifying twelve hours. He said he was initially resistant to the idea but he discussed it with lawyers in Kamloops district and in general they support twelve hours. Mr. Walker was concerned about “growing pains” in the program and the extensive use of technology when the consequence of non-compliance is suspension. Lawyers he spoke to did not support suspension as a compliance mechanism. He asked the Benchers to make twelve hours of CPD activity compulsory but not implement the compliance rules until the program is up and running and through its initial phase.

It was moved (LeRose/O’Grady) to accept the report of the Lawyer Education Advisory Committee.

The motion was carried.

Mr. LeRose reviewed the proposed rule changes, noting one amendment to the proposed Rule 3-18.3(5) changing 30 days to 60 days.

It was moved (Ridgway/Punnett) that in principle the Practice Standards Committee determine the number of hours of continuing professional development required each year.

Mr. Mossop said the determination of the required number of hours directly affects lawyers, like the practice fee, so the Benchers should make the decision.

Ms. Shaw said that because the proposed rules include the possibility of suspension, it is important that the Benchers make the final decision on the number of hours required.

Ms. Hickman agreed. She suggested amending proposed rule 3-18.3(1) by adding “and approved by the Benchers”. She said the approval would likely be dealt with on the Benchers’ consent agenda and would not consume much time.

Mr. Walker supported Ms. Hickman’s suggestion.

The motion was defeated.

It was moved (Ridgway/Punnett) to amend proposed Rule 3-18.1(1) by deleting the words “Practice Standards Committee” and substituting the word “Benchers”.

The motion was carried.

It was moved (Ridgway/Vertlieb) to implement the suspension provisions at the same time as the rest of the proposed rules, and not suspend their operation.

Mr. Mossop suggested a fine could be substituted as an alternative to a suspension for noncompliance in the first year of the program.

Mr. Hoskins said the committee considered a fine instead of suspension but rejected it because it would become a tax on non-compliance. Mr. LeRose said the committee did not want lawyers to be able to buy their way out of continuing professional development.

The motion was carried.

It was moved (LeRose/Punnett) 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.

**10. FAMILY LAW TASK FORCE MANDATE**

Ms. Hickman reported that draft family law rules had been published for comment with a deadline of December 31, 2008 for response. She said it was important that the Law Society response to the family law rules should be similar to the response to the civil court rules.

It was moved (Hickman/Shaw) to expand the mandate of the Family Law Task Force to review and recommend a response to the draft family law rules.

The motion was carried.

**11. LAW SOCIETY AWARD**

This matter was considered *in camera*.

It was agreed to give the 2008 Law Society Award to John McAlpine, QC.

**12. COSTS AWARDED BY HEARING PANELS**

This matter was considered *in camera*.

**12. DISCUSSION OF BENCHER CONCERNS**

This matter was considered *in camera*.

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APPENDIX 1



## **PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW**

### **Division 1 – Practice of Law**

#### **Members**

##### **Member in good standing**

**2-2** A member of the Society is a member in good standing unless suspended under section 38(5)(d) of the Act or under Rules 2-77(2), 3-18.5, 3-46(4), 3-74.1, 3-79.1, 4-17 or 4-40.

## **PART 3 – PROTECTION OF THE PUBLIC**

### **Division 2.1 – Education**

#### **Definitions**

**3-18.1** In this Division

**“required professional development”** means a minimum number of hours of continuing education determined by the Benchers under Rule 3-18.3(1);

**“small firm”** includes

- (a) a firm in which not more than 4 lawyers practise law together, and
  - (b) a lawyer in an arrangement to share expenses with other lawyers who otherwise practises as an independent practitioner, except when the lawyer relies on a firm that is not a small firm to maintain trust accounting and other financial records on the lawyer’s behalf,
- but does not include
- (c) a public body such as government or a Crown corporation, or
  - (d) a corporation that is not a law corporation, or other private body;

**“small firm course”** means a course of study designated as such and administered by the Society or its agents and includes any assignment, examinations and remedial work taken during or after the course of study.

#### **Application**

**3-18.11** (1) Rule 3-18.2 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.

(2) Despite subrule (1), Rule 3-18.2 applies to a lawyer when the Practice Standards Committee, by resolution, so orders.

**Small firm course**

- 3-18.2** (1) Within 6 months after and not more than 12 months before the date on which this Rule applies to a lawyer, the lawyer must
- (a) successfully complete the small firm course, and
  - (b) certify to the Executive Director in a form approved by the Executive Director that the lawyer has successfully completed the small firm course.
- (2) A lawyer who is in breach of subrule (1) has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the Chair of the Discipline Committee.

**Professional development**

- 3-18.3** (1) Before the commencement of each calendar year, the Benchers must determine the minimum number of hours of continuing education that is required of a practising lawyer in the following calendar year.
- (2) When making the determination required under subrule (1), the Practice Standards Committee may prescribe circumstances in which a class of practising lawyer may be excused from completing all or part of the required professional development.
- (3) In each calendar year, a practising lawyer must
- (a) complete the required professional development, and
  - (b) certify to the Executive Director in a form approved by the Executive Director that the lawyer has completed the required professional development.
- (4) Despite subrule (3), a practising lawyer need not complete the required professional development in a calendar year in which the lawyer has successfully completed the admission program or the equivalent in another Canadian jurisdiction.
- (5) On written application by a practising lawyer who has refrained from the practice of law for a minimum of 60 consecutive days in a calendar year, the Executive Director may reduce the required professional development for that lawyer.
- (6) The Executive Director must not reduce the amount of required professional development under subrule (5)
- (a) by an amount greater than that proportionate to the part of the calendar year in which the lawyer refrained from the practice of law
  - (b) by any amount if the lawyer refrained from the practice of law as a result of suspension, disbarment or other disciplinary proceedings.

- (7) A practising lawyer who is in breach of subrule (3) has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the Chair of the Discipline Committee.