

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

- MEETING:** Benchers
- DATE:** Friday October 3, 2008
- PRESENT:**
- | | |
|--|-----------------------------|
| John Hunter, QC, President | Terence La Liberté, QC |
| Gordon Turriff, QC, 1 st Vice-president | Bruce LeRose, QC |
| Glen Ridgway, QC, 2 nd Vice-president | Barbara Levesque |
| Haydn Acheson | |
| Rita Andreone | Peter Lloyd |
| Kathryn Berge, QC | David Mossop, QC |
| Joost Blom, QC | Thelma O'Grady |
| Robert Brun, QC | Robert Punnett |
| Ian Donaldson, QC Life Bencher | David Renwick, QC |
| | Allan Seckel, QC, Deputy AG |
| Leon Getz, QC | Meg Shaw, QC |
| Carol Hickman | Richard Stewart, QC |
| | Ronald Tindale |
| William Jackson | Art Vertlieb, QC |
| Patrick Kelly | James Vilvang, QC |
| Stacy Kuiack | Kenneth Walker |
- ABSENT:**
- | | |
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| Gavin Hume, QC | David Zacks, QC |
| Jan Lindsay | |
- STAFF**
- | | |
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| Dana Bales | Jeanette McPhee |
| Barbara Buchanan | Doug Munro |
- PRESENT:**
- | | |
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| Stuart Cameron | Carol Oakley |
| Jeffrey Hoskins | Susanna Tam |
| Howard Kushner | |
| Michael Lucas | Alan Treleaven |
| Cara McGregor | Carmel Wiseman |
| Bill McIntosh | |
- GUESTS:**
- Johanne Blenkin, Executive Director and Chief Librarian, BCCLS
 - Stephen Frame, President, Trial Lawyers Association of BC
 - Jack Huberman, QC, Executive Director, CLE Society
 - Jamie Maclaren, Executive Director, Pro Bono Law of BC
 - Stephen McPhee, Secretary Treasurer, CBABC
 - Caroline Nevin, Executive Director, CBABC
 - Wayne Robertson, Executive Director, Law Foundation of BC
 - Michael Roman, Chairman, CLEBC
 - Denis Skorkowski, Law Student, Sao Paulo, Brazil

CONSENT AGENDA

1. Minutes

The minutes of the meeting held on September 5, 2008 were approved as circulated.

2. Consent Resolutions

The following resolutions were passed unanimously and by consent.

a. Amendments to the *Professional Conduct Handbook*

Resolved: to approve a number of amendments to the *Professional Conduct Handbook* as recommended by the Ethics Committee to bring the Handbook into conformity with the BC Human Rights Code's treatment age, and set out in Appendix 1.

b. Publication Policy for Unauthorized Practice Undertakings and Orders

Resolved: to adopt the following recommendations of the Unauthorized Practice Committee.

- a. The Law Society should continue to publish:
 - i. notice of the Court Orders obtained; and
 - ii. aggregate summaries of the Undertakings received by the Society in unauthorized practice matters, excluding the names of the persons who have provided the Undertakings, and breaking out the various areas of practice and types of services and actions prohibited by the Undertakings.

- b. The Law Society should continue to treat Undertakings given in unauthorized practice matters as public information, so that members of the public inquiring about a particular person may be provided with a copy of the relevant Undertaking.

- c. The Law Society should cease publication of the names of persons who give Undertakings in unauthorized practice matters, with the Unauthorized Practice Committee retaining discretion to authorize the publication of such persons in cases where such publication is in the public interest and not unfair to the person(s) involved.

c. Law Society Nominee on the Law Courts Education Society's Board of Directors

Resolved: to re-appoint Margaret Ostrowski, QC as the Law Society's nominee on the Board of Directors of the Law Courts Education Society for a term of two years commencing September 2, 2008.

REGULAR AGENDA – for Discussion and Decision

3. President’s Report

Mr. Hunter reported that the business of the 2008 AGM was completed successfully. He congratulated Mr. Hume on his election as the Second Vice-President for 2009, and congratulated Mr. Turriff for his excellent presentation in support of the 2009 Practice Fee. Mr. Hunter noted that the member’s resolution on judicial reform passed by a wide margin, and will have to be taken into consideration by the Benchers in determining what role the Law Society should play in the on-going Supreme Court Rules revision process. Mr. Hunter also referred to communications difficulties experienced in the meeting, noting the poor quality of the Vancouver meeting room’s audio reception of telephone communications from the satellite locations. Mr. Hunter pointed out that the AGM’s telecommunications system was designed and managed by outside contractors, has performed satisfactorily for the past five years, and functioned normally in sound checks conducted before the meeting. The audio difficulties threatened the viability of the 2008 AGM because the current Rules require that all voting participants at a general meeting be able to “hear each other.” Mr. Hunter said that a staff working group directed by Mr. McGee is analyzing the range of options for organizing and conducting the AGM, and will report to the Benchers in the coming months with recommendations to ensure that the viability of future AGMs will not be jeopardized by communications difficulties.

Mr. Hunter reported that Art Vertlieb, QC will chair the Scope of Practice Task Force — struck at the September 5 Benchers meeting — and that Carol Hickman, David Mossop, QC, Robert Punnett and non-Bencher Stan Lanyon, QC will serve as task force members. Mr. Vertlieb advised that the new task force will immediately begin planning its approach to the complicated set of issues before it, with the view to presenting a preliminary progress report at the November Benchers meeting.

Mr. Hunter invited Task Force Chair Joost Blom, QC to brief the Benchers on his group’s recent activities and current focus. Professor Blom reported that the CJRTF does not have resources for a line-by-line critique of the draft Rules, and instead is focusing on the broad implications of implementation of the proposed changes. In that regard the task force is developing a two-pronged proposal for:

- a. a base line study of civil justice costs, including costs that arise outside the judicial process; and
- b. a pilot project for testing the draft Rules.

Professor Blom confirmed that the CJRTF intends to report the Benchers at their November meeting, and hopes to submit a Law Society proposal to the BC Justice Review Task Force and the Supreme Court Rules Revision Committee before the end of the year.

Mr. Hunter reported briefly on his attendance at last month's FLS Annual Meeting and Conference in Halifax with a Law Society delegation that included Mssrs. Turriff, Donaldson, McGee, Treleaven and Cameron. He observed that the Federation's meetings are becoming increasingly valuable to its member societies for information-sharing and joint policy development.

4. CEO's Report

Chief Legal Officer Howard Kushner presented the Chief Executive Officer's Monthly Report to the Benchers in Mr. McGee's absence, highlighting the following matters.

A staff working group is conducting a full review of the AGM meeting procedure and rules in light of the audio difficulties that beset this year's meeting, and will be reporting with recommendations to the Executive Committee and the Benchers in the coming months.

The Law Society delegation to the conference made presentations and led discussions on the topics of national admissions standards (the "Hunter Report"), complaints and discipline processes, and Federation governance. Much work lies ahead to keep up the momentum around developing national standards, and the Federation National Conference in Quebec City in March of 2009 will be a bell-weather meeting in that regard.

The Law Society will be conducting its third annual Employee Survey in the October-November timeframe. The survey results will be shared with all employees and reviewed at a Town Hall meeting in January. Management will use the results to develop action plans for the ensuing year. The survey administrators (TWI Surveys Inc.) will present the results to the Benchers at a meeting early in 2009.

A staff working group under Jeanette McPhee's leadership is addressing the logistical, security and employee/Bencher related issues connected with the 2010 Olympics. We are in contact with VANOC and the City of Vancouver to ensure that we know as soon as possible what the access and transit protocols will be and what decisions we need to make regarding all of our operations. We will be keeping the Executive Committee and the Benchers informed as this unfolds.

Michael Bernard will be joining the Law Society on October 27 as Manager, Communications and Public Relations. As Adam Whitcombe outlined in his recent announcement, Michael brings a solid background in journalism, communications and public relations to his new role. We believe he will be an excellent addition to our strong communications team.

5. Report on Outstanding Hearing and Review Reports

The Benchers received a report on outstanding hearing decisions.

6. Client Identification and Verification Rules

Mr. Getz reviewed the progress made by the Act and Rules Subcommittee in re-working the draft Rules amendments presented to the last Benchers meeting, explaining that progress has been slowed by a good number of issues that have arisen over the past month, such that the Subcommittee was not yet ready to present a recommendation. Mr. Getz outlined two possible courses of action:

- a. Adopt the current draft amendments and make them effective December 15 or December 31, with the view to making further amendments after Subcommittee reports back to the Benchers at their November meeting; or
- b. Defer the matter to the November Benchers meeting, and advise the profession that while implementation of amendments to the Rules has been postponed (to either December 15 or December 31) to permit consideration of input received from members and others, the amendments to be implemented at that later date should expected to be substantially similar to the current draft.

Following a full discussion, it was moved by Mr. Getz (seconded by Mr. Ridgway), that the Law Society should :

- a. postpone the effective date of pending revisions to the Law Society Rules until December 31, 2008, so that the Act and Rules Subcommittee may refine the current draft Rule revisions to consider input received and issues raised by members and others, for presentation to the Benchers at their November 14, 2008 meeting; and
- b. issue a Notice to the Profession regarding the new implementation date.

The motion was carried.

REGULAR AGENDA – for Information Only

7. Federation of Canadian Law Societies Task Force on Common Law Degrees Consultation Paper

Mr. Hunter reviewed the background to the appointment and work of the FLS Task Force on Common Law Degrees, which he chairs. Mr. Hunter reported that the task force’s consultation paper was released last week for comment and feedback from the Canadian legal profession until December 15, 2008. He expressed hope that the profession will take interest in the consultation paper and provide input, noting that the task force will be particularly interested in feedback on whether a course of study

on legal ethics should be a mandatory element of the legal education of anyone seeking to practise law in Canada.

8. Retention of Women in Law Task Force

Ms. Berge reported on her attendance at the Project for Attorney Retention (PAR) conference in Washington, DC in May 2008, and at a subsequent meeting in Toronto with representatives of the Law Society of Upper Canada regarding the recently released report of the LSUC Task Force on the Retention of Women in Private Practice. Ms. Berge said that she learned five critical things at the PAR conference:

- a. it takes an average of 7 years of consistent application of new policies and practices to change a culture;
- b. recruitment is easy and retention is hard;
- c. Piecemeal policy change does not work; uniform application of a whole new approach led from the top has been proven to work;
- d. a firm has 90 days to ensure that a new associate develops a strong intra-firm social and work network; and
- e. What works for the women, works for the men.

Regarding her Law Society of Upper Canada visit, Ms. Berge reported that she learned, when meeting with representatives from the Law Society of Upper Canada Task Force on the Retention of Women in Private Practice, that they had greatly benefited from the wide-spread consultation process in which they had engaged prior to consideration of their report by their LSUC Convocation of Benchers.

Ms. Berge also reported as chair of the Retention of Women in Law Task Force, advising that the task force has met four times since mid-May for detailed mandate discussions and to review resource materials. An extended session is planned for a Saturday in November, following which the task force expects to provide the Benchers with confirmation of its mandate and to provide a substantive progress report. The current mandate of the Retention of Women in Law Task Force calls for it to report to the Benchers in January 2009.

9. Articling Registry Presentation

Mr. Treleaven reported that the Articling Registry has been operational since July 15, 2008, as an initiative of the Small Firm Task Force and a joint project of the Law Society and the BC Branch of the Canadian Bar Association. He described the main goal of the registry as the matching of law firms and prospective articulated students, with an emphasis on encouraging and supporting the recruitment of students and lawyers by smaller firms outside urban areas. Mr. Treleaven noted that the registry is open to all Canadian law students and to foreign-trained lawyers through the National Committee on Accreditation. He also pointed out that while the Articling Registry website is hosted by the CBA, all BC lawyers have access to the registry, whether or not they are CBA members.

Mr. Treleaven acknowledged the leadership of Caroline Nevin, Executive Director of CBABC and Lesley Small, Manager of Credentials for the Law Society. He also praised the dedication of Joanne Silver, CBABC's Director of Stakeholder Relations, and the cooperative spirit shown by Communications Officers Jesse Tarbottom of the CBABC and Cara McGregor and Dana Bales of the Law Society in drafting various joint communication pieces on the Articling Registry.

Joanne Silver gave a presentation demonstrating the simplicity of the login, amending, searching and matching processes of the online registry for law firms and students. Ms. Silver advised that 98 students and 14 law firms are currently registered. She said the registry's success will depend on its usage and on word-of-mouth, and stressed the need for more law firms to log onto and use the system.

Mr. LeRose noted as task force chair that the launch of the Articling Registry marks the implementation of the last of six initiatives recommended by the Small Firm Task Force. He reiterated the importance of registration and usage by law firms to the success and value of the registry, and urged the Benchers to encourage their firms to do so. Mr. LeRose thanked Ms. Nevin and Ms. Silver of CBABC and Mr. Treleaven and Ms. Small of the Law Society for their leadership, and he thanked the supporting staff of both organizations for their collaborative approach to making this important project a reality.

10. Federation of Canadian Law Societies Annual Meeting and Conference Report

Mr. Donaldson reported on the FLS Annual Meeting and National Conference held in Halifax last month. He highlighted a number of the matters reviewed in Mr. Treleaven's written report to the Benchers, including:

- a. a presentation by Mr. McGee on corporate governance issues, principles and best practices in the post-Enron era, and lessons law societies can learn from public corporation governance;
- b. a presentation by Mr. Hunter regarding the release of the FLS Task Force on Common Law Degrees consultation paper;
- c. a presentation by Mr. Bryan Findlay (of WeirFoulds) on the necessity of professional and independent adjudicators on law society tribunals;
- d. a presentation by Ms. Moka Case (a Nova Scotia Lay Bencher) on the role and responsibilities of lay benchers in law society governance;
- e. a presentation by Ms. Madeleine Lemieux (a Council member for the Barreau du Quebec) on the work of the National Committee on Access to Justice, chaired by Supreme Court of Canada Chief Justice McLachlin (the Law Society is represented on the committee by Bencher Meg Shaw, QC); and
- f. The Conference Program, which devoted 1.5 days to exploring the advisability and feasibility of moving all of Canada's law societies toward national standards,

focusing particularly on the discipline process, admission standards and governance.

The Benchers also discussed a number of other matters *in camera*.

2008-10-28/WKM