

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING: Benchers

DATE: Friday November 14, 2008

PRESENT: John Hunter, QC, President
Gordon Turriff, QC, 1st Vice-president
Glen Ridgway, QC, 2nd Vice-president
Haydn Acheson
Rita Andreone
Kathryn Berge, QC
Robert Brun, QC

Ian Donaldson, QC Life Bencher
Leon Getz, QC
Gavin Hume, QC
Carol Hickman
William Jackson
Patrick Kelly
Stacy Kuiack
Terence La Liberté, QC
Bruce LeRose, QC

Barbara Levesque
Jan Lindsay
Peter Lloyd
David Mossop, QC
Thelma O'Grady
Robert Punnett
David Renwick, QC
Allan Seckel, QC, Deputy AG
Meg Shaw, QC
Richard Stewart, QC

Ronald Tindale
Art Vertlieb, QC
James Vilvang, QC
Kenneth Walker
David Zacks, QC

ABSENT: Joost Blom, QC

STAFF Tim McGee
PRESENT: Dana Bales
Michael Bernard
Barbara Buchanan
Stuart Cameron
Donna Embree
Su Forbes, QC
Jeffrey Hoskins
Howard Kushner
Michael Lucas

Cara McGregor
Bill McIntosh
Jeanette McPhee
Doug Munro
Carol Oakley

Susanna Tam
Alan Treleaven
Adam Whitcombe
Carmel Wiseman

GUESTS: Mark Benton, Executive Director, LSS
Johanne Blenkin, Executive Director, BCCLS
Dean Mary Ann Bobinski, Faculty of Law, University of British Columbia
Dean Donna Greschner, Faculty of Law, University of Victoria
Robert Holmes, First Vice-President, Trial Lawyers Association of BC
Jack Huberman, QC, Executive Director, CLE Society
Jamie Maclaren, Executive Director, Pro Bono Law of BC
Miriam Maisonville, President, CBABC

Caroline Nevin, Executive Director, CBABC
Wayne Robertson, Executive Director, Law Foundation of BC

CONSENT AGENDA

1. Minutes

The minutes of the meeting held on October 3, 2008 were approved as circulated.

2. Consent Resolutions

The following resolutions were passed unanimously and by consent.

a. Changes to Executive Limitations

Resolved: to approve various changes to the Executive Limitations set out in Part 2 of the *Bencher Governance Policies*, as recommended by the Audit Committee and set out in Appendix 1.

b. Definition of “Professional Conduct Record”

Resolved: to adopt several amendments to the definition of “professional conduct record” in Rule 1 of the Law Society Rules to align the definition with other recent changes in the Rules, as recommended by the Act and Rules Subcommittee and set out in Appendix 2.

c. Law Society Nominee on the Board of Directors of Legal Services Society

Resolved: to re-appoint Mayland McKimm, QC to serve on the Board of Directors of the Legal Services Society for a third two-year term commencing September 3, 2008.

Resolved: to nominate Lay Bencher Barbara Levesque to serve on the Board of Directors of the BC Courthouse Library Society for a one-year term commencing December 1, 2008.

Resolved: to re-appoint Richard Swift, QC to serve on the Board of Directors of the Land Title and Survey Authority for a three-year term commencing April 1, 2009.

The Benchers noted and approved the President’s decisions to name Bencher Thelma O’Grady as the Law Society’s nominee on the Board of Directors of the Continuing Legal Education Society of BC, for a three-year term commencing September 1, 2008, and to nominate (jointly with the President of CBABC) Nanaimo practitioner Ronald Lamperson to serve on the Board of Directors of the CLE Society, for a three-year term commencing September 1, 2008.

REGULAR AGENDA – for Discussion and Decision

3. President’s Report

Mr. Hunter reviewed the Executive Committee election process called for by the Law Society Rules, and outlined the sequence of events that will unfold between the closing of nominations on November 24 and the completion of voting on December 5, 2008.

Mr. Hunter briefed the Benchers on the status of the current County of Vancouver by-election, confirming that the ballots received by the end of the day will be checked and counted on Monday, November 17, with the results to be announced by the following day.

Mr. Hunter reported to the Benchers on his recent attendance at the 2008 Annual Conference of the International Bar Association in Buenos Aires, highlighting points of interest arising from a symposium on the rule of law and a workshop on the law of privilege. Mr. Hunter also noted that the 2010 IBA meeting will be in Vancouver and encouraged the Benchers to begin considering ways the Law Society might contribute to the hosting of that event.

4. CEO’s Report

Mr. McGee reported on two recent staff changes. Donna Embree is our new Manager of Human Resources and Michael Bernard is our new Manager, Communications and Public Affairs.

Mr. McGee reviewed highlights of the Law Society’s financial results to September 30, noting that the positive revenue variance and operating expense savings achieved for the year-to-date likely will result in a year-end operating surplus of approximately \$1.4 million. Mr. McGee also advised the Benchers that lower investment returns and reduced market values likely will reduce LIF’s insurance fund surplus from \$48 million at the end of 2007 to about \$34.5 million at the end of 2008.

Mr. McGee updated the Benchers on the on-going process for reviewing and setting strategic priorities and planning for the 2008-2011 period. He noted that at its November meeting, the Executive Committee’s will review the priorities defined by the Benchers early in the current year, with a view to presenting a review of strategic priorities at the December Benchers meeting.

Mr. McGee briefed the Committee on his recent attendance at the IILACE (International Institute of Law Association Chief Executives) conference in Namibia. Mr. McGee advised that the information exchanged at the conference confirms the Law Society is well-positioned — in terms of infrastructure, funding, operational capabilities and policy development — to deliver its regulatory mandate. Mr. McGee also noted that while IILACE’s member law societies share a number of concerns on

a strategic level (access to legal services and retention of lawyers, for example), responses to such issues vary widely among jurisdictions.

Mr. McGee reported to the Benchers regarding on-going work to develop a more reliable and effective platform for the audio-conferencing and remote location-voting aspects of the Law Society's Annual General Meeting, advising that a detailed report with recommendations will be presented to the Benchers in early 2009.

Mr. McGee asked Stuart Cameron, Director of Discipline/Litigation Counsel, to update the Benchers on the recently completed national Discipline Administrators Conference, hosted by the Law Society and drawing 40 Discipline professionals from across Canada. Mr. Cameron reported that the presentations and discussions were of excellent quality, and that progress is being made in the development of national discipline standards.

5. Report on Outstanding Hearing and Review Reports

The Benchers received a report on outstanding hearing decisions.

6. Scope of Practice Task Force

Mr. Vertlieb, Chair of the task force, briefed the Benchers regarding the methodology to be used in identifying the existing knowledge base and gaps in information that would be required for the Benchers to discuss the substantive policy issues around the scope of practice. The Scope of Practice Task Force will conduct its inquiry by seeking answers to two broad questions: "what information is needed?" and "how best to get that information?" Mr. Vertlieb said that an expert will likely be retained to guide the task force in formulating its approach to and conduct of public consultation. He advised that it is still too early to predict when the task force's work will be completed.

7. Client Identification and Verification Rules

Mr. Getz briefed the Benchers as chair of the Act and Rules Subcommittee regarding the subcommittee's progress in reviewing and responding to input from a wide range of sources since the last Benchers meeting. After a full discussion by the Benchers, Mr. Getz moved (seconded by Mr. Turriff) that the draft Rules attached to Mr. Hoskins's November 5, 2008 memorandum (Tab 9 of the meeting materials) and set out in Appendix 3 be adopted and implemented by December 31, 2008, subject only to such clarification as may be approved by the Benchers at their December meeting. The motion passed unanimously, and the Benchers agreed that reasonable steps should be taken to inform the profession that the Benchers have adopted Draft 31, to be implemented by December 31, 2008; subject only to such clarification as may be approved by the Benchers at their December meeting.

8. Benchers' Dual Prosecutorial and Adjudicative Functions

Mr. Lucas presented a paper (Tab 10 of the meeting materials) examining a number of issues in connection with the prosecutorial and adjudicative functions of the Benchers. The Benchers referred Mr. Lucas's paper, and the issues it raises, to the

Independence and Self-governance Advisory Committee for review and recommendations.

9. Civil Justice Reform Task Force

In the absence of task force chair Joost Blom, QC, Mr. Hunter introduced the task force's memorandum, noting that its focus goes more to the process of revising the Supreme Court Rules than to the content of those revisions. After Bencher discussion, Mr. Turriff moved (seconded by Mr. Punnett) that the Law Society seek to convene at the earliest possible opportunity a meeting of a senior representative of each of the Rules Revision Committee, the Supreme Court of BC, the Department of Attorney General, the Trial Lawyers Association of BC, the BC Branch of the Canadian Bar Association and the Law Society, for the purpose of exploring possibilities for moving the Rules revision process forward in a manner that could be supported by all those parties. The motion carried.

10. Finance Committee Report on Investment Management Review

Mr. Turriff advised that the Finance Committee has completed its review of the Law Society's investment managers and the investment guidelines. He confirmed that while the Society's investment portfolio has lost value in the past quarter, the extent of that loss is close to the industry benchmark level and within the acceptable range. Mr. Turriff also advised that by early in the new year, conduct of the Law Society's investment portfolio will have been transferred from the current manager to two new managers, with the portfolio to be divided between the two new managers on roughly a 50-50 basis.

Mr. Vertlieb noted that the proportion of the Law Society's investment portfolio allocated to federal bonds was not in compliance with the Society's current investment guidelines. Following a discussion, Ms. McPhee said the Finance Committee had reviewed the current allocation and was satisfied for the time being. Ms. McPhee also said management will report at the December meeting regarding the variance of specific allocations to the guidelines.

REGULAR AGENDA – for Information Only

11. Introduction of the *Professional Conduct Communication Toolkit*, an Online Training Course

Ms. Andreone presented an overview of the *Professional Conduct Communication Toolkit* and demonstrated some of its online components and capabilities, with the assistance of Neil Hain, a Law Society staff lawyer and co-author of the course. Discipline Committee Chair Andreone advised that the core purpose of the *Communication Toolkit* is to reduce the number of communication-related professional conduct complaints. Ms. Andreone reported that the course went online October 31, 2008 and was pre-vetted by about 25 lawyers to favourable reviews. She urged all Benchers to encourage their firms to implement the course.

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