

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING: Benchers

DATE: Friday, January 30, 2009

PRESENT:

Gordon Turriff, QC, President	Jan Lindsay
Glen Ridgway, QC, 1 st Vice-president	David Mossop, QC
Gavin Hume, QC, 2 nd Vice-president	Thelma O'Grady
Haydn Acheson	Peter Lloyd
Rita Andreone	Robert Punnett, QC
Kathryn Berge, QC	David Renwick, QC
Joost Blom, QC	Meg Shaw, QC
Robert Brun, QC	Richard Stewart, QC
Leon Getz, QC	Ronald Tindale
Carol Hickman	Art Vertlieb, QC
William Jackson	Herman Van Ommen
Patrick Kelly	James Vilvang, QC
Stacy Kuiack	Kenneth Walker
Terence La Liberté, QC	Dr. Maelor Vallance
Bruce LeRose, QC	David Zacks, QC
Barbara Levesque	

ABSENT:

STAFF	Tim McGee	Bill McIntosh
PRESENT:	Michael Bernard	Jeanette McPhee
	Barbara Buchanan	Doug Munro
	Stuart Cameron	Susanna Tam
	Su Forbes, QC	Alan Treleaven
	Jeffrey Hoskins, QC	Adam Whitcombe
	Howard Kushner	Carmel Wiseman
	Michael Lucas	

GUESTS:

- Johanne Blenkin, Executive Director, BCCLS
- Dean Donna Greschner, Faculty of Law, University of Victoria
- James Bond, First Vice President, CBABC
- Ron Friesen, Acting Executive Director, CLEBC
- Jamie Maclaren, Executive Director, Pro Bono Law of BC
- Caroline Nevin, Executive Director, CBABC
- Jane Mundy, Reporter, Lawyers Weekly
- Wayne Robertson, QC, Executive Director, Law Foundation of BC

CONSENT AGENDA

1. Minutes

The minutes of the meeting held on December 12, 2008 were approved as circulated.

The following resolutions were **passed unanimously and by consent.**

2. Professional Conduct Handbook Amendments

Resolved: to approve new Rules 7.01 to 7.04 and Footnote 4 in Chapter 6 of the *Professional Conduct Handbook*, exempting lawyers who deliver short term services in court-annexed or non-profit programs or clinics from some conflicts rules in limited circumstances, as follows:

Limited representation

- 7.01 In Rules 7.01 to 7.04, “**limited legal services**” means advice or representation of a summary nature provided by a lawyer to a client under the auspices of a not-for-profit organization with the expectation by the lawyer and the client that the lawyer will not provide continuing representation in the matter.
- 7.02 A lawyer must not provide limited legal services if the lawyer is aware of a conflict of interest and must cease providing limited legal services if at any time the lawyer becomes aware of a conflict of interest.
- 7.03 A lawyer may provide limited legal services notwithstanding that another lawyer has provided limited legal services under the auspices of the same not-for-profit organization to a client adverse in interest to the lawyer’s client, provided no confidential information about a client is available to another client from the not-for-profit organization.
- 7.04 If a lawyer keeps information obtained as a result of providing limited legal services confidential from the lawyer’s partners and associates, the information is not imputed to the partners or associates, and a partner or associate of the lawyer may
 - (a) continue to act for another client adverse in interest to the client who is obtaining or has obtained limited legal services, and
 - (b) act in future for another client adverse in interest to the client who is obtaining or has obtained limited legal services.

FOOTNOTES:

- 4. These Rules contemplate that, in some instances when a lawyer provides limited legal services, it may be impractical for the lawyer to perform a conflicts check before providing legal services to a client.

3. Law Society Rules Amendment (Rule 3:91, Client Identification and Verification)

Resolved: to amend Rule 3-91 by rescinding paragraph (a) of the definition of “reporting issuer” and substituting the following:

3-91 In this Division,
“reporting issuer” means an organization that is

- (a) a reporting issuer within the meaning of the securities law of any province or territory of Canada, or
- (a.1) a corporation whose shares are traded on a stock exchange that is prescribed by the *Income Tax Act* Regulations (Canada), and operates in a country that is a member of the Financial Action Task Force on Money Laundering, or
- (b) controlled by a reporting issuer;

4. External Appointments

Resolved: to appoint William Everett, QC and Emily Reid, QC to the Board of Governors of the Hamber Foundation, each for a three-year term of March 1, 2009 to February 29, 2012.

Resolved: to nominate Edna Cheung of Miller Thomson LLP to the City of Vancouver as the Law Society’s representative on the City of Vancouver Building Permit Board of Appeal for a three-year term of February 1, 2009 to January 31, 2012.

Resolved: to nominate Deanna Ludowicz, a Grand Forks sole practitioner, to the Board of Directors of the Legal Services Society for a three-year term of January 1, 2009 to December 31, 2012.

REGULAR AGENDA – for Discussion and Decision

5. President’s Report

Mr. Turriff advised the Benchers that he intends to focus his efforts as the Law Society’s 2009 President on community engagement and communication.

Mr. Turriff briefed the Benchers on the Law Society’s first public forum of 2009, held on January 28 at the Wosk Centre for Dialogue and featuring the Right Honourable Beverley McLachlin, Chief Justice of Canada. He reported that more than 250 people attended *Clearing the Path to Justice*, and said the event was a strong demonstration of the Society’s commitment to public education. Mr. Turriff thanked the many staff volunteers for their contribution to the success of the event,

and applauded Communications Officer Dana Bales for her good work in leading the forum's planning and organization.

The President reported on his recent meeting with the Honourable Mr. Justice Macaulay, Chair of the Attorney General's Rules Revision Committee, following from the 'Interested Parties' meeting chaired by Mr. Hunter in early December, 2008. Mr. Turriff said his discussion with Mr. Justice Macaulay was productive, noting that His Lordship had advised the RRC was hard at work through January on revisions to the current draft Rules.

Mr. Turriff also reported briefly on various public appearances he made as Law Society President in January.

6. CEO's Report

Mr. McGee briefed the Benchers on the January 13, 2008 Town Hall meeting of Law Society staff, thanking President Turriff for attending and delivering a presentation on behalf of the Benchers, and thanking Vancouver County Bencher Herman Van Ommen and Lay Bencher Haydn Acheson for their attendance. Mr. McGee reported that he delivered three key messages to Law Society staff:

- LSBC is on sound financial footing, thanks to strong fiscal planning and discipline
- We should expect continuing change and turbulence in the global and local financial markets over the coming year or two, with more Professional Conduct complaints and LIF reports likely to be filed as a result
- Our management strategy for 2009 is "stay-the-course": focusing on execution of the Law Society's core regulatory and operational functions and priorities.

Mr. McGee briefed the Benchers on developments regarding implementation of the Agreement on Internal Trade (AIT) between the federal and provincial governments to allow for full labour mobility among the provinces. Mr. McGee outlined the status of submissions that have been made on behalf of Federation of Law Societies and the various provincial law societies regarding exceptions, turning to Mr. Lucas for an update on the status of our Law Society's submissions.

Mr. Lucas noted the current National Mobility Agreement allows law societies to assess the character of applicants for membership, and that while the provincial government has confirmed the Law Society of BC's ability to conduct character assessments will be preserved under the AIT, there is no precise definition as to what constitutes a character assessment. The Law Society appears to be able to continue to apply its "return to practice requirements" to lawyers transferring into the province. The AIT does not appear to require the admission of licensed paralegals from another

province, because there is no equivalent profession certified or regulated in B.C. Mr. Lucas also noted that the AIT allows provinces to post exceptions to provisions in the agreement provided they are done to attain a legitimate objective. However, Premier Campbell has made it clear that he does not favour legitimate objective exceptions, and the BC government wishes to see this province lead the country in labour mobility. Mr. Lucas advised the agreement also requires the government to ensure compliance with provisions in the agreement by non-governmental bodies exercising authority delegated by law, and that the government appears to view all self-regulating professions, including the Law Society, as such non-governmental bodies. Both the Law Society and the Federation of Law Societies have expressed concern that such a provision might be interpreted as requiring governments to dictate how law societies make decisions regarding admissions, which would be inconsistent with the fundamental constitutional principle that there be an independent bar.

Mr. McGee also updated the Benchers on early progress and feedback regarding implementation of the new Client ID and verification rules. He noted that Practice Advisor Barbara Buchanan has been busy presenting information and answering questions on the rules at CLE courses and CBA (BC) sub-section meetings. The Practice Advice group has also produced a number of resource materials on the rules including an extensive Q&A piece prepared in conjunction with a Federation of Law Societies working group that is focusing on consistent interpretation of the rules across Canada. Progress is being made, but the working group reports that they expect to be busy for many months to come.

Mr. McGee provided a progress report on the work of the Olympic planning committee under CFO Jeanette McPhee's leadership. The Law Society buildings are located in the "red zone" of the Olympic events. The committee is reviewing the logistical, security and staff/Bencher-related issues connected with the 2010 Olympics.

Mr. McGee asked Ryan Williams, President of TWI Surveys Inc., to present highlights and analysis of the responses to the 2008 Law Society Employees Survey. Mr. Williams pointed out that 77 per cent of the Law Society's employees responded to the survey, marking the third consecutive increase in the response rate. He also noted the following highlights:

- Overall improvement in all six categories of questions
- Staff indicate high levels of pride, willingness to share and care for one another and a sense of teamwork
- Positive shifts in perceptions of leadership and management categories
- Highest retention factors are:
 - Interesting, challenging work and an appropriate work life balance

- Of the 42 items on the survey:
 - 32 increased over 2007, 17 of which can be considered statistically significant
 - 7 showed a decline over 2007, none of which were statistically significant
 - Two-thirds of the 30 comparable questions in the TWI Surveys database are significantly above average

7. Report on Outstanding Hearing and Review Reports

The Benchers received a report on outstanding hearing decisions.

STRATEGIC PLANNING AND PRIORITIES MATTERS – for Discussion and/or Decision

8. 2008-2010 Advisory Committee Reporting and 2009-2011 Strategic Priorities Planning

Mr. Turriff outlined the background of the Benchers' strategic planning process introduced in late 2007 and asked Mr. McGee to brief the Benchers on the structure and purpose of the current discussion. Mr. McGee reminded the Benchers that in early 2008 they had established three policy priorities for the Law Society:

- enhancing access to legal services
- enhancing public confidence in the Law Society and the legal profession to protect the public interest in the administration of justice
- effective education (of lawyers, the Law Society and the public)

Mr. McGee reviewed the draft 2009-2011 Strategic Plan and suggested the Benchers consider the issues which would indicate a failure to execute the Law Society's statutory mandate to protect and promote the public interest in the administration of justice, were they not acted upon within the next 12 to 18 months.

Following reports by the Chairs of the Access to Legal Services Advisory Committee, the Equity and Diversity Advisory Committee, the Independence & Self-governance Advisory Committee, the Legal Education Advisory Committee and the Retention of Women in Law Task Force, the Benchers conducted a thorough discussion of the various priority recommendations and issues arising. At the conclusion of the discussion, Mr. McGee confirmed that the proposed 2009-2011 Strategic Plan will be revised for presentation to the Executive Committee and the Benchers at their February 2009 meetings.

REGULAR AGENDA – Other Matters for Discussion and/or Decision

9. 2009 Finance Committee

The Benchers nominated Kathryn Berge, QC and Bruce LeRose, QC and the Lay Benchers nominated Stacy Kuiack to serve on the 2009 Finance Committee.

10. 2009 Executive Committee

The Lay Benchers nominated Patrick Kelly to serve on the 2009 Executive Committee.

IN CAMERA SESSION

11. Discussion of Bencher Concerns

This matter was discussed *in camera*.

WKM

2009-02-16