

**THE LAW SOCIETY OF BRITISH COLUMBIA**

**MINUTES**

**MEETING:** Benchers

**DATE:** Saturday, June 13, 2009

**PRESENT:**

Gordon Turriff, QC, President	Jan Lindsay
Glen Ridgway, QC, 1 <sup>st</sup> Vice-President	David Mossop, QC
Gavin Hume, QC, 2 <sup>nd</sup> 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	Art Vertlieb, QC
Carol Hickman	Herman Van Ommen
William Jackson	James Vilvang, QC
Patrick Kelly	Kenneth Walker
Stacy Kuiack	Dr. Maelor Vallance
Bruce LeRose, QC	David Zacks, QC
Barbara Levesque	

**ABSENT:** Terence La Liberté, QC Ronald Tindale

**STAFF PRESENT:**

Tim McGee	Michael Lucas
Michael Bernard	Bill McIntosh
Stuart Cameron	Jeanette McPhee
Su Forbes, QC	Alan Treleaven
Jeffrey Hoskins, QC	Adam Whitcombe
Howard Kushner	Carmel Wiseman

**GUESTS:** Allan Fineblit, QC, Executive Director, Law Society of Manitoba  
Jonathan Herman, CEO, Federation of Law Societies of Canada  
Jeff Hirsch, President, Law Society of Manitoba  
Rod Jerke, QC, President-elect, Law Society of Alberta  
Peter Michalyshyn, QC, President, Law Society of Alberta  
Stéphane Rivard, President, Federation of Law Societies of Canada  
Don Thompson, QC, Executive Director, Law Society of Alberta

## **CONSENT AGENDA**

### **1. Minutes**

The minutes of the meeting held on May 8, 2009 were approved as circulated.

## **REGULAR AGENDA – for Discussion and Decision**

### **2. President's Report**

Mr. Turriff opened the meeting by welcoming the representatives of the Law Society of Alberta, the Law Society of Manitoba and the Federation of Law Societies of Canada.

Mr. Turriff reported on the progress of the 125<sup>th</sup> Anniversary President's Tour, noting that in May he spoke to receptive audiences in Prince Rupert and Trail. Mr. Turriff thanked Prince Rupert Bencher Robert Punnett, QC for organizing and hosting a dinner with the local bar on his behalf.

Mr. Turriff updated the Benchers on the GP discipline matter. He advised that the Law Society has retained Ian Donaldson, QC to ensure that the Society's actions comply with the Court's publicity ban. Mr. Turriff also advised that the Law Society is continuing to press the editors of the Vancouver Sun to publish an 800-word op-ed article as the Society's response to Mr. Mulgrew's article on the GP matter.

Mr. Turriff also reported briefly on various public appearances he made as Law Society President through the month of May 2009.

Mr. Turriff closed his report by noting that the Facts and Verdict decision in the Goldberg discipline case was recently posted to the Law Society web site.

### **3. CEO's Report**

Mr. McGee briefed the Benchers on the draft agenda for the July 10, 2009 Benchers meeting. He outlined several of the matters to be discussed, including:

- the final report of the Retention of Women in Law Task Force
- a report from the Access to Legal Services Advisory Committee
- an interim report from the Delivery of Legal Services Task Force
- a report from the Discipline and Independence and Self-governance Committees on policy for anonymous publication of discipline decisions

The July Benchers meeting will be dedicated to reporting on some of the work underway and discussion of related policy implications. Mr. McGee elaborated on implementation of the Law Society's 2009-2011 Strategic Plan, reporting that 10 of the plan's 13 strategies are currently being implemented, with the balance "in the queue." He mentioned reform of legal advertising rules, mentoring as a Continuing Professional Development program and separation of the Benchers' prosecutorial and adjudicative functions as further examples of strategic policy work that is underway.

Mr. McGee asked Mr. Treleaven to update the Benchers on the status of CPD reporting by members almost six months into the Continuing Professional Development program's first year. Mr. Treleaven reported that, effective June 10, 2009, 27 % of the membership had reported at least some CPD hours, and that 9 % had reported completion of their annual requirement of 12 hours. Mr. Treleaven also advised that by June 10<sup>th</sup>, 50 % of the Benchers had reported at least some CPD hours, and 3 % had reported at least 12 hours. Mr. Treleaven advised the Benchers that all the members will soon receive a "friendly email": advising them of their current CPD balance, and of their responsibility to report at least 12 CPD hours by December 31<sup>st</sup>.

Mr. Treleaven also provided the Benchers with an overview of the proceedings at the Law Society of Alberta's annual Benchers' Retreat in Jasper, which he attended last week with Messrs Turriff, Ridgway and Hume.

Mr. McGee thanked Benchers Berge, Lindsay, Ridgway, Stewart and Turriff for their recent contributions to the Professional Responsibility section of the PLTC Spring Session for 2009.

Law Society of Alberta President Peter Michalyson, QC thanked the Benchers for their hospitality on behalf of President-elect Rod Jerke, QC and Executive Director Don Thompson, QC.

#### **4. 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**

#### **5. Enhancing Public Confidence: Policy for Governability**

Discipline Committee Chair ArtVertlieb, QC briefed the Benchers on the Report on Governability prepared on behalf of the Complaints Reduction Staff Group (page 500 of the meeting materials). He said that the issue of lawyers who routinely disregard the Law Society Rules goes beyond discipline to public confidence in the legal profession and its regulation by the Law Society. Mr. Vertlieb noted that Alberta, Manitoba and Ontario have already developed jurisprudence for regarding the repeated disregard of law society rules and communications as grounds for discipline proceedings and punishment, including disbarment.

Mr. Vertlieb said the Discipline Committee seeks the Benchers' direction on whether the Law Society should adopt the concept of "ungovernability" as a characterization of lawyer misconduct, and if so, on what regulatory framework should be used. He referred the Benchers to five framework options (page 512 of the meeting materials):

- (i) to take no action but allow “ungovernability” to develop organically through the case law;
- (ii) to adopt provisions in the *Professional Conduct Handbook* setting out a member’s obligation to be governable;
- (iii) to adopt rules setting out the procedure to be followed if the Law Society intends to seek disbarment on the basis of ungovernability;
- (iv) a combination of (ii) and (iii);
- (v) a combination of (i) and (iii).

Mr. Walker moved (seconded by Ms. Shaw) that the Benchers adopt option (iv) and that the Act and Rules Subcommittee be directed to:

- (i) consider whether changes to the *Professional Conduct Handbook* are needed;
- (ii) develop draft Rules for administering the regulation of professional conduct constituting ungovernability; and
- (iii) report back to the Benchers with recommendations.

A full discussion ensued. Some Benchers felt that a provision in the PCH requiring lawyers to honour and obey Law Society Rules would be nonsensical and would undermine the authority of the Society and its rules. Some Benchers felt that “ungovernability” should be available both as an element of misconduct in a citation and as a penalty consideration; other Benchers felt that a citable offence of “ungovernability” would raise serious problems of proof and fairness, and accordingly that “ungovernability” should only be considered in the context of penalty. Some Benchers stressed that as a matter of fairness, notice should be given to the respondent at the earliest possible time in a discipline proceeding regarding the possibility that the issue of ungovernability might be raised at the penalty hearing.

The motion was carried.

Ms. Berge then moved (seconded by Mr. Zacks) that the Law Society may apply the concept of ungovernability as a characterization of a respondent’s conduct at the penalty stage of a discipline proceeding, but not as an offence element in a citation.

The motion was carried.

There was further discussion on the issue of notice, and the Benchers agreed that notice should be given to the respondent at the earliest possible time in a discipline proceeding regarding the possibility that the issue of ungovernability might be raised at the penalty hearing.

## **REGULAR AGENDA – Other Matters for Discussion and/or Decision**

### **6. Federation of Law Societies Reports**

Federation President Stéphane Rivard and CEO Jonathan Herman delivered a presentation to the Benchers, reviewing history, and current priorities. Mr. Herman outlined a number of the Federation's recent projects, including:

- Coordinating a national response by Canada's law societies to the federal government's money laundering legislation, including development of the model 'no-cash rule' and 'client identification and verification rules'
- Developing a Model Code of Conduct, versions of which have been adopted by the Federation's 14 member law societies
- Developing a national approach to setting minimum standards for law degree accreditation through the work of the Federation's Canadian Common Law Degrees Task Force, chaired by Law Society of BC Past-President John Hunter, QC

Mr. Rivard noted that a key current priority of the Federation is the development of national standards for admission to the legal profession.

Ian Donaldson, QC, the Law Society's representative on the Federation Council, reported to the Benchers on the Council's June 1st meeting in Ottawa.

### **7. Selection of the Benchers' Nominee as 2010 Second Vice-President**

Mr. McIntosh reported that Mr. Le Rose is the sole candidate for the Benchers' nomination as Second Vice-President in 2010.

Mr. Hume moved (seconded by Mr. Vertlieb) that nominations be closed. The motion was carried.

Mr Turriff then declared Mr. Le Rose acclaimed as the Benchers' nominee for the office of Law Society Second Vice-President in 2010.

## **IN CAMERA SESSION**

### **8. Discussion of Bencher Concerns**

This matter was discussed in camera.

WKM

2009-06-27