

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

- MEETING:** Benchers
- DATE:** Friday, November 13, 2009
- PRESENT:**
- | | |
|--|---------------------|
| Gordon Turriff, QC, President | David Mossop, QC |
| Glen Ridgway, QC, 1 st Vice-President | Suzette Narbonne |
| Gavin Hume, QC, 2 nd Vice-President | Thelma O'Grady |
| Haydn Acheson | Peter Lloyd |
| Rita Andreone | David Renwick, QC |
| Kathryn Berge, QC | Meg Shaw, QC |
| Joost Blom, QC | Richard Stewart, QC |
| Robert Brun, QC | Ronald Tindale |
| William Jackson | Art Vertlieb, QC |
| Patrick Kelly | Herman Van Ommen |
| Stacy Kuiack | James Vilvang, QC |
| Terence La Liberté, QC | Kenneth Walker |
| Bruce LeRose, QC | Dr. Maelor Vallance |
| Jan Lindsay | |
- ABSENT:**
- | | |
|---------------|------------------|
| Leon Getz, QC | Barbara Levesque |
| Carol Hickman | David Zacks, QC |
- STAFF PRESENT:**
- | | |
|---------------------|------------------|
| Tim McGee | Jeanette McPhee |
| Stuart Cameron | Doug Munro |
| Lance Cooke | Lesley Pritchard |
| Su Forbes, QC | Alan Treleaven |
| Jeffrey Hoskins, QC | Adam Whitcombe |
| Michael Lucas | Carmel Wiseman |
| Bill McIntosh | |
- GUESTS:**
- Dom Bautista, Executive Director, Law Courts Center
 - Dean Mary Ann Bobinski, Faculty of Law, University of BC
 - Ron Friesen, CEO, CLEBC
 - Azul Depordash, Trial Lawyers Association
 - Regianne Garcia, Graduate Student from UBC Law
 - Dean Donna Greschner, Faculty of Law, University of Victoria
 - Caroline Nevin, Executive Director, CBABC

CONSENT AGENDA

1. Minutes

The minutes of the meeting held on October 14, 2009 were approved as circulated.

Consent Resolutions

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

2. **BE IT RESOLVED** to amend the Law Society Rules as follows:

1. *In Rule 3-18, by inserting the following definitions:*

“continuing education” means activities approved by the Executive Director for credit as professional development;

“credit as a mentor” means a credit of a specified maximum number of hours of continuing education for participation in a mentoring relationship under Rule 3-18.31;

2. *By adding the following Rule:*

Mentoring

- 3-18.31** (1) The Benchers may allow credit as a mentor, subject to any conditions that the Benchers consider appropriate.
- (2) To qualify to receive credit as a mentor, a lawyer must
- (a) have engaged in the active practice of law in Canada for 7 of the 10 years immediately preceding the calendar year, and
 - (b) not be the subject of an order of the Credentials Committee under subrule (4)(c).
- (3) On a referral by the Executive Director or on the recommendation of the Discipline Committee or the Practice Standards Committee, or on its own motion, the Credentials Committee may inquire into a lawyer’s suitability to receive credit as a mentor and may do any of the following:
- (a) conduct or authorize any person to conduct an investigation concerning the fitness of the lawyer to act as a mentor;
 - (b) require the lawyer to appear before the Credentials Committee and to respond to questions of the Committee;
 - (c) order the lawyer to produce any documents, records or files that the Credentials Committee may reasonably require.
- (4) After allowing the lawyer to make submissions, the Credentials Committee may do any of the following:
- (a) permit the lawyer to receive credit as a mentor;
 - (b) permit the lawyer to receive credit as a mentor subject to conditions or limitations;
 - (c) order that the lawyer not receive credit as a mentor.
- (5) The onus is on the lawyer to show cause why an order should not be made under subrule (4)(b) or (c).

3. **BE IT RESOLVED** pursuant to Rule 3-18.3(1) that each practising lawyer in British Columbia must complete at least 12 hours of continuing education in 2010, including at least two hours of continuing professional development that pertains to any combination of professional responsibility and ethics, client care and relations, and practice management.

4. **BE IT RESOLVED** to amend the Law Society Rules as follows:

1. *By rescinding Rule 2-35;*

2. *By adding the following Rule:*

Law school faculty

- 2-48.1** (1) A full-time lecturer in a faculty of law of a university in Canada who has the academic qualifications required under Rule 2-27 may apply for call and admission without completing the admission program.
- (2) On an application under this Rule, the Credentials Committee may approve the application subject to the condition specified in subrule (3).
- (3) A lawyer called and admitted under this Rule who ceases to be a full-time lecturer in a faculty of law of a university in Canada must complete the admission program unless the Credentials Committee otherwise orders.:
- (4) The Benchers may require a lawyer who fails to comply with subrule (3) to resign from the Society.

5. **BE IT RESOLVED** to amend the Law Society Rules as follows:

1. *By rescinding Rule 9-1(c) and substituting the following:*

- (c) contrary to Chapter 14, Rule 4(e) of the Professional Conduct Handbook (“Marketing of Legal Services”).

2. *By rescinding Rule 9-14 and substituting the following:*

LLP name

- 9-14** A limited liability partnership must not use a name contrary to Chapter 14, Rule 4(e) of the Professional Conduct Handbook (“Marketing of Legal Services”).

6. **BE IT RESOLVED** to amend the Law Society Rules as follows:

1. *By rescinding Rule 3-51.1(3) and (3.1) and substituting the following:*

- (3) While engaged in an activity referred to in subrule (1), a lawyer must not accept an aggregate amount in cash of \$7,500 or more in respect of any one client matter or transaction.
- (3.1) Despite subrule (3), a lawyer may accept an aggregate amount in cash of \$7,500 or more in respect of a client matter or transaction for professional fees, disbursements, expenses or bail.

- (3.2) A lawyer who accepts an aggregate amount in cash of \$7,500 or more under subrule (3.1), must make any refund greater than \$1,000 out of such money in cash.
- (3.3) A lawyer who receives cash, unless permitted under this Rule to accept it, must
 - (a) make no use of the cash,
 - (b) return the cash, or if that is not possible, the same amount in cash, to the payor immediately,
 - (c) make a written report of the details of the transaction to the Executive Director within 7 days of receipt of the cash, and
 - (d) comply with all other Rules pertaining to the receipt of trust funds.

2. *By rescinding Rule 3-56(1.3)(d) and substituting the following:*

- (d) in cash if required under Rule 3-51.1(3.2) or (3.3).

REGULAR AGENDA – for Discussion and Decision

7. President's Report

Mr. Turriff provided an overview of his presidential activities of the past month, noting his attendance at Professor Richard Devlin's invigorating lecture on self-regulation as the highlight.

Mr. Turriff thanked a number of Benchers for their recent support, including:

- Mr. Kelly for attending a call and admission ceremony in Kelowna and delivering remarks on behalf of the Benchers, on short notice
- Ms. Andreone, Mr. Hume, Ms. Lindsay, Ms. O'Grady, Mr. Van Ommen and Mr. Vilvang for joining him in participating in a seminar on professional responsibility at the UBC law school
- Ms. Berge, Mr. Brun, Mr. Ridgway and Mr. Stewart for joining him in participating in a seminar on professional responsibility at the University of Victoria law school

Mr. Turriff congratulated Mr. Vertlieb and Mr. McHale on their receipt of 2009 CBABC Goyer Awards for Distinguished Service. He noted that Dr. Vallance would be unable to attend the 2009 Life Benchers Dinner. After acknowledging the dedication and value of his service as an appointed Bencher over the past eight years, Mr. Turriff presented Dr. Vallance with his Life Bencher pin.

8. CEO's Report

Mr. McGee updated the Benchers on a number of operational matters and human resources initiatives, including:

- Q3 2009 Financial Results Highlights
 - General Fund – positive variance to budget for the year to date of \$800,000

- Ms. McPhee reported that increased membership and higher-than-expected electronic filing revenue are the main reasons for the General Fund's positive variance
 - Ms. McPhee also advised that the current year-end forecast for the General Fund is a positive variance to budget of about \$480,000
- Trust Administration Fee
 - Expenses - positive variance to budget for the year to date of \$350,000
 - Revenue – year to date results continue to track to previous forecasts, projecting \$2.4 million in TAF revenue for the current year
 - With the use of TAF-related reserve, the Trust Assurance program should be fully funded for 2009
- Special Compensation Fund
 - Operating results are on track for the year
- Lawyers Insurance Fund
 - Operating results are \$6,587,000 negative to budget, due to the decline in investment market and values in 2009
 - Overall investment return for the first half of 2009 is 13.5%, compared to benchmark of 11.1%
 - Finance Committee is currently meeting quarterly to review the investment manager's investment and compliance reports
 - Next meeting is scheduled for December 2009
- Discipline Process and Procedure Review
 - Early progress by an internal working group toward determining what would be required in order to ensure that all complaints received by the Law Society are closed or brought forward to the Discipline Committee for further action within a year
- Strategic Plan Review
 - Preparatory work for the upcoming annual review of the Strategic Plan — particularly preparation of the Advisory Committees' annual reports — and outline of the purpose and goals of that review process
 - Reviewing and fine-tuning current priorities, rather than overhauling primary goals
- Appointed Bencher Remuneration
 - Progress of the Executive Committee's special working group on appointed Bencher remuneration
 - Completed its review and expects to report to the Committee at its November meeting and then to the Benchers in December

- External Appointments
 - Progress of external governance review of the Law Society's appointments policies and practices
 - Recommendations for appointees and external boards expected in the New Year
- New Benchers Orientation
 - Goals and highlights of revamped New Benchers orientation program
 - First session scheduled for December 10-11, 2009
- People Initiatives
 - Leadership Development Program
 - Comprehensive program to be completed in the fall of 2010
 - 2009 Employee Survey is underway
 - Recruiting for two key positions is underway
 - Chief Legal Officer
 - Manager of Communications and Public Relations

9. 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

10. Strategic Planning Update

Mr. McGee reviewed the background of the Law Society's strategic planning concept and process, highlighting the importance of work done in 2007 and 2008 to the development of the Society's current Strategic Plan.

Mr. Lucas outlined the process for the upcoming annual review of the Strategic Plan, to commence with presentation and discussion of the various Advisory Committees' year-end reports at the November Executive Committee meeting and the December Benchers meeting. He outlined the current plan's three main goals and supporting strategies and initiatives and reviewed some of the initiatives that have been completed in 2009.

Discussion followed. Mr. McGee reminded the Benchers of the key questions they addressed in developing and fine-tuning the current Strategic Plan in 2007 and 2008:

- What issues if unaddressed over next three years, (beyond regulatory and program essentials) would mean the Law Society is not addressing its mandate?
- Are the plan's current three main goals appropriate for the coming year?
 1. Enhancing access to legal services.

2. Enhancing public confidence in the legal profession through appropriate and effective regulation of legal professionals.
 3. Effective education, both of legal professionals and those wishing to become legal professionals, and of the public.
- Are you satisfied with the implementation progress achieved over the past year?

The Benchers agreed with the approach proposed by Mr. McGee for reviewing the 2009-2011 Strategic Plan.

REGULAR AGENDA – Other Matters for Discussion and/or Decision

11. Federation of Law Societies Winnipeg Council Meeting Report

Mr. Treleven reported for the Law Society's FLS Council representative, Ian Donaldson, QC, who was unable to attend due to health issues. Mr. Treleven advised that Mr. Donaldson had intended to note.

- The Federation's critical importance and its strengthened ability and execution as a unifying voice on national issues facing the provincial law societies
- His appreciation and enthusiasm regarding being elected to the Federation Council's leadership ladder
 - Mr. Donaldson will assume the presidency of the Federation in November 2011

Mr. Treleven briefed the Benchers on highlights of the FLS Council meeting on October 15 in Winnipeg, including:

- Model Code of Professional Conduct
 - Approval of the Federation's Model Code, subject to addition at a later date of a rule on conflicts of interest, and a subrule addressing the future harm / public safety exception to the rules on confidentiality
 - Referral of the Model Code to the provincial law societies to consider implementation
- Final Report of the Federation Task Force on the Canadian Common Law Degree
 - Following its presentation by Task Force Chair John Hunter, QC, the report was approved and referred to the provincial law societies for their approval
- National Admission Standards Project
 - Council approved the commencement of work on developing national standards for admission, and authorized the allocation of funds from the current Federation budget to begin the work
 - In June 2009 Council approved in principle the development of a comprehensive plan to develop national standards for admission to the legal profession

- A steering committee of Council and law societies has mapped out a plan to develop national competence and good character standards for admission, together with appropriate mechanisms for measuring compliance with the standards. Education program on national issues
 - Mr. McGee and Mr. Treleaven are members of the steering committee

12. Forensic Audit Funding

Mr. Ridgway provided the Benchers with a brief history of the Law Society's current approach to funding its forensic audit operations from Trust Administration Fee (TAF) revenue, referring them to the memorandum at page 1200 of the meeting materials for background. He noted that the Finance Committee has recommended that the Benchers discuss the funding of the forensic audit costs towards the end of 2009, with a view to determining how these costs should be funded in 2010 and beyond.

Mr. Ridgway outlined the two funding options identified by the Finance Committee:

- Option 1 – Forensic audit costs should continue to be funded by TAF
- Option 2 – Forensic audit costs should continue to be funded by the practice fee

He stated the purpose of the current discussion as determining the best principled approach to funding forensic auditing going forward, rather than deciding the actual budget parameters for such funding.

Discussion followed, revolving around the issue of whether the burden of forensic funding should be borne by those lawyers and clients who use trust accounts (Option 1), or by the profession and the public as a whole (Option 2).

- Option 1 supporters focused on the principles of fairness and user-pay, developing the following themes
 - Forensic audit work is primarily a support function for the discipline process, usually arising from section 4-43 audits ordered by the Discipline Committee
 - 4-43 investigations always involve lawyers' trust accounts and generally arise from complaints or referrals from the trust assurance or another department, and usually relate to unusual activity or possible defalcation
 - It would be unfair to make lawyers and clients who do not use trust accounts responsible for even a portion of the forensic audit costs associated with regulating trust account
- Option 2 supporters focused on the principle of public confidence in the legal profession and in legal regulation, developing the following themes
 - Forensic audit work is primarily a support function for the discipline process, which is directed at enforcing our rules and requirements, thereby preserving and protecting the reputation of the profession as a whole

- Disciplinary activities should be funded by the profession and the public as a whole

Several Benchers noted that they were torn between the two approaches. One Bencher questioned whether it would be possible to target lawyers found guilty of defalcating or otherwise misusing trust funds for the cost of forensic audit services associated with their discipline proceedings. Another Bencher pointed out that often lawyers subject to discipline penalties lack the resources to pay the full costs levied against them. Another Bencher pointed out that the legal profession and the public are not static, and that many lawyers and legal services move between practice areas.

Mr. Ridway moved (seconded by Mr. Vilvang) that the Benchers adopt the resolution set out at the bottom of page 1201 of the meeting materials:

“Be it resolved that the costs of the forensic audit department be funded from the practice fee in 2010 and onwards.”

The motion was carried.

IN CAMERA SESSION

Discussion of Bencher Concerns

This matter was discussed *in camera*.

WKM
2009-11-27