

**THE LAW SOCIETY OF BRITISH COLUMBIA**

**MINUTES**

**MEETING:** Benchers

**DATE:** Friday, December 11, 2009

**PRESENT:**

Gordon Turriff, QC, President	David Mossop, QC
Glen Ridgway, QC, 1 <sup>st</sup> Vice-President	Suzette Narbonne
Gavin Hume, QC, 2 <sup>nd</sup> Vice-President	Thelma O'Grady
Rita Andreone	Peter Lloyd
Kathryn Berge, QC	David Renwick, QC
Joost Blom, 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
Bruce LeRose, QC	Dr. Maelor Vallance
Barbara Levesque	David Zacks, QC
Jan Lindsay	(by telephone)

**ABSENT:**

Haydn Acheson	Terence La Liberté, QC
Robert Brun, QC	Meg Shaw, QC

**STAFF PRESENT:**

Tim McGee	Doug Munro
Stuart Cameron	Lesley Pritchard
Su Forbes, QC	Susanna Tam
Jeffrey Hoskins, QC	Alan Treleaven
Michael Lucas	Adam Whitcombe
Bill McIntosh	Carmel Wiseman
Jeanette McPhee	

**GUESTS:**

Dom Bautista, Executive Director, Law Courts Center  
Johanne Blenkin, Executive Director, BCCLS  
Dean Mary Ann Bobinski, Faculty of Law, University of BC  
James Bond, President, CBABC  
Patricia Bond, 2010 Bencher, Vancouver County  
David Crossin, QC, 2010 Bencher, Vancouver County  
Azul Depordash, Trial Lawyers Association  
Ron Friesen, CEO, CLEBC  
Anna Fung, Life Bencher  
Dean Donna Greschner, Faculty of Law, University of Victoria  
Todd McKendrick, Chair, CLEBC Board of Directors  
Stephen McPhee, Vice-President, CBABC  
Jane Mundy, Reporter, Lawyers Weekly  
Caroline Nevin, Executive Director, CBABC

**GUESTS:** Wayne Robertson, QC, Executive Director, Law Foundation of BC  
Alan Ross, 2010 Bencher, Vancouver County  
Catherine Sas, QC, 2010 Bencher, Vancouver County

## **CONSENT AGENDA**

### **1. Minutes**

The minutes of the meeting held on November 13, 2009 were approved as circulated.

### **2. Revised Minutes of the May 8th meeting**

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

### **Consent Resolutions**

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

### **3. Term of Office and Term Limits for Benchers**

***BE IT RESOLVED*** to amend the Law Society Rules by rescinding Rule 1-1(1) and substituting the following:

- (1) The term of office for an appointed Bencher begins on the date that the appointment is effective and ends on January 1 of the next even-numbered year.
- (1.1) Despite subrule (1), an appointed Bencher continues to hold office until a successor is appointed.

***BE IT RESOLVED*** to amend the Law Society Rules as follows effective January 2, 2010:

1. By adding the following Rule:

#### **Term limits**

- 1-1.1 (1) A Bencher is ineligible to be elected or appointed as a Bencher if
  - (a) at the conclusion of the Bencher's term of office, he or she will have served as a Bencher for more than 7 years, whether consecutive or not, or
  - (b) the Bencher has been elected Second Vice-President-elect.
- (2) Despite subrule (1)(a) but subject to subrule (1)(b), a Bencher who was a Bencher on January 10, 1992 and who, at the conclusion of his or her term of office, will not have served as a Bencher for more than 11 years, whether consecutive or not, is eligible to be elected or appointed as a Bencher.

2. By rescinding Rule 1-2 and substituting the following:

#### **Life Benchers**

- 1-2 (1) A person, including the Attorney General, who is ineligible for further election or appointment as a Bencher under Rule 1-1.1 is a Life Bencher on leaving office as a Bencher.

- (3) A Life Bencher
  - (a) may attend and speak at meetings of the Benchers,
  - (b) has no vote in Bencher meetings,
  - (c) except as a member of a committee under Rule 1-47, may not exercise any of the powers of a Bencher, and
  - (d) is ineligible to be elected or appointed as a Bencher.
- (4) A Bencher who was a Bencher on January 10, 1992 and who has served for at least 7 years as a Bencher is a Life Bencher on leaving office as a Bencher,
- (5) A person who was a Life Bencher on January 1, 2010 continues to be a Life Bencher.

3. By rescinding Rule 1-21(2) and substituting the following:

- (2) An incumbent Bencher who qualifies under subrule (1) and is not disqualified under Rule 11.1 is eligible to be nominated as a candidate for re-election as a Bencher.

#### 4. **Anonymous Publication of Discipline Decisions**

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

1. **In Rule 4-38(1) and (2) by striking the phrase** “Subject to Rule 4-38.1, the Executive Director” **and substituting** “The Executive Director”.
2. **In Rule 4-38.1, by rescinding subrules (2) to (5), (7) and (8) and substituting the following:**
  - (2) If all allegations in the citation are dismissed by a panel, the publication must not identify the respondent unless the respondent consents in writing.
  - (3) On an application under subrule (4) or on its own motion, the panel may order that publication not identify the respondent if
    - (a) the panel has imposed a penalty that does not include a suspension or disbarment, and
    - (b) publication of the identity of the respondent could reasonably be expected to identify an individual, other than the respondent, and that individual would suffer serious prejudice as a result.
  - (4) An individual affected, other than the respondent, may apply to the panel for an order under subrule (3) before the written report on findings of fact and verdict is issued or oral reasons are delivered.

#### 5. **Oath of Office for Benchers**

*BE IT RESOLVED to amend the Law Society Rules by adding the following Rule:*

##### **Oath of office**

- 1-1.2 (1) At the next regular meeting of the Benchers attended by a Bencher after being elected or appointed as a Bencher or taking office as President or a Vice-President, the Bencher must take an oath of office in the following form:

I, [name] do swear or solemnly affirm that:

I will abide by the Legal Profession Act, the Law Society Rules and the Professional Conduct Handbook, and I will faithfully discharge the duties of [a Bencher/President/First or Second Vice-President], according to the best of my ability; and

I will uphold the objects of the Law Society and ensure that I am guided by the public interest in the performance of my duties.

- (2) An oath under this Rule must be taken before a judge of the Provincial Court or a superior court in British Columbia, the President or a Life Bencher.

## **6. Continuing Professional Development**

***BE IT RESOLVED** to amend the Law Society Rules by rescinding Rule 3-18.3(7) and substituting the following:*

- (6.1) A lawyer who ceases to be a practising lawyer without completing all required professional development must complete the uncompleted portion in the next calendar year in which the lawyer is a practising lawyer, in addition to the required professional development for that calendar year.
- (7) A practising lawyer who is in breach of this Rule has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the Chair of the Discipline Committee.

## **7. Amendment to Rule 4-24.1 - Summary Hearing Rule**

***BE IT RESOLVED** to amend the Law Society Rules by rescinding Rule 4-24.1(1)(c) and substituting the following:*

- (c) failed to respond to a communication from the Society;
- (d) breached an order made by a hearing panel.

## **8. 2010 Fee Schedules**

***BE IT RESOLVED** to amend the Law Society Rules, effective January 1, 2010, as follows:*

1. In Schedule 1, by rescinding items A2 and A3 and substituting the following:

### **A. Annual fee \$**

2. Special Compensation Fund assessment (Rule 2-70) 50.00
3. Liability insurance base assessment (which may be increased or decreased in individual cases in accordance with Rule 3-22(1)):
- (a) member in full-time practice 1600.00
- (b) member in part-time practice 800.00
2. In Schedule 2, by revising the prorated figures in each column accordingly; and

3. In the headings of schedules 1, 2, and 3, by striking the year “2009” and substituting “2010”.

**9. Rule amendments consequential to amendment of law school faculty call and admission rules**

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

1. By rescinding Rule 2-26.1(5)(c) and substituting the following:

(c) is imposed by Rule 2-48.1, 2-49.1 or 2-54.

2. By rescinding Rule 2-32(4) and substituting the following:

(4) The articling term cannot be reduced by more than 5 months by any other Rule or the combined effect of any Rules.

**10. Election of appointed Bencher to the Executive Committee**

*BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 1-39(7) to (9) and substituting the following:*

(8) At the last regular meeting of the Benchers in each calendar year, the appointed Benchers must elect one appointed Bencher to serve as a member of the Executive Committee for the following calendar year.

(9) All Benchers appointed, or eligible to be appointed, for a term that includes all or part of the calendar year for which members of the Executive Committee are to be elected are eligible for election to the Executive Committee under subrule (8).

(12) If, because of a tie vote or for any other reason, the Benchers fail to elect 3 members of the Executive Committee under subrules (4) and (5), or if a vacancy occurs in any position elected under this rule, the Benchers or the appointed Benchers, as the case may be, must hold an election to fill the vacancy at the next regular meeting of the Benchers.

**REGULAR AGENDA – for Discussion and Decision**

**11. President’s Report**

Mr. Turriff reported on a number of his activities conducted on behalf of the Law Society in the past month, including:

- travelling to Chilliwack to attend a reception hosted by David Renwick, QC and to speak to the local Rotary Club and two classes of high school students
- travelling to Kelowna to represent the Law Society at the 2009 Yale County Bench and Bar Dinner
- travelling to Los Angeles to attend the Fall Meeting of the CBA BC Branch, a highlight of which was a session on professional ethics and responsibility led by Past-President John Hunter, QC and Mr. Ridgway

- travelling to Victoria to attend a Call and Admission Ceremony, and deliver a 125<sup>th</sup> Anniversary speech to the Rotary Club.

Mr. Turriff thanked Ms. Berge and Mr. Stewart for hosting him at the Victoria call ceremony.

Mr. Turriff welcomed newly elected 2010-11 Benchers Patricia Bond, David Crossin, QC, Lee Ongman, Alan Ross and Catherine Sas, QC. He then presented Mr. Ridgway with his 2010 President's Pin.

Mr. Turriff congratulated Ms. Hickman, Ms. Lindsay and Mr. Vertlieb on their recent election to the 2010 Executive Committee and thanked Ms. Berge, Ms. O'Grady and Mr. Renwick for also participating in the election. Mr. Kelly then announced that Ms. Leveque has been elected by the appointed Benchers as their Executive Committee representative for 2010.

Mr. Turriff referred the Benchers to the 2009 Benchers Survey and asked them to complete and return it to Mr. McIntosh by the end of the meeting.

## **12. CEO's Report**

Mr. McGee provided highlights of his monthly written report to the Benchers, including the following matters:

- Update – New Bencher Orientation Program – January 15, 2010
- Update – 2009-2011 Strategic Plan Annual Review
- Update – Collective Bargaining
- Update – Chief Legal Officer Recruitment
- 2009 Employee Survey
- Human Resources Strategic Plan

Human Resources Manager Donna Embree briefed the Benchers on the Law Society's Human Resources Strategic Plan. She outlined the plan's two goals and accompanying priorities:

- To make the Law Society an employer of choice
  - Develop and implement a strategic leadership development program and skills development program
  - Develop an engaged and motivated work force
- To shift the Law Society's Human Resources approach from a transactional orientation to a service and resource focus
  - Implement a HR System
  - Modernize HR processes

Ms. Embree noted the importance of aligning the Law Society's HR goals with the strategic priorities set by the Benchers. Mr. McGee acknowledged the value of the contributions made by Ms. Embree in her first year with the Law Society.

Mr. McGee presented each of the Benchers with a bound copy of the speech (Self-Governance as a Necessary Condition of Constitutionally Mandated Lawyer Independence in British Columbia) delivered by Mr. Turriff in September 2009 to the Conference of Regulatory Officers in Perth, Australia. Mr. McGee noted that a good number of requests for copies have been received. He credited the Communications department for completing this important public outreach initiative, particularly Denise Findlay, Cara McGregor, Carol Oakley and Lesley Pritchard, all under Adam Whitcombe's leadership.

Mr. Turriff expressed his appreciation to Law Society staff for their assistance, particularly to Michael Lucas and Collette Souvage for their research.

### **13. Report on Outstanding Hearing and Review Reports**

The Benchers received a report on outstanding hearing decisions.

## **GUEST PRESENTATIONS**

### **14. University of Victoria Law School Report**

This matter was put over to the January meeting.

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

### **15. Regulating Multi-Disciplinary Partnerships – Report and Recommendations of the Ethics Committee**

Mr. Hume briefed the Benchers as Ethics Committee Chair. He provided background and context, noting that at their July 2009 meeting the Benchers approved in principle the regulation of members of multi-disciplinary partnerships (MDPs) by the Law Society, on two conditions:

- Resolution of the issue of insurance coverage for claims that may arise from the action of non-lawyer members of a firm
- Development of draft Law Society Rules for the Benchers' review and approval

Mr. Hume advised that the Ethics Committee has gone through the current Rules and the proposed new Rules with care to ensure that MDPs will only be allowed to extent that they support the practice of law. He reviewed highlights of the proposed new Rules, including:

- MDPs are subject to the regulatory requirements expected of a lawyer
- MDPs' non-lawyer members will not interfere with the practice of law and professional judgment of their lawyer members
- MDPs' provision of legal services will be under the actual control of their lawyer members

Mr. Hume moved (seconded by Mr. Van Ommen) that the Benchers adopt the resolutions to adopt the Law Society Rules and the *Professional Conduct Handbook* set out at pages 1542 and 1550 of the meeting materials, respectively (appended to these minutes as Appendix 1).

Mr. Walker moved (seconded by Ms. Lindsay) that the subject of regulation of MDPs by the Law Society be referred to the Independence & Self-governance Advisory Committee for further review.

In the ensuing discussion, several issues were raised, including:

- The current priority of the MDP issue for the federal Competition Bureau
- The proposed Rules contemplate the regulation of members of MDPs, but not the MDPs themselves
- Whether the subject of regulation of MDPs should be referred to the profession for input
- Whether now is the time for a principled decision by the Benchers

The motion to refer was defeated.

In the ensuing discussion of the main motion, a number of issues were raised, including:

- Implications of the fact that relatively few MDPs have taken up the opportunity provided to them in Ontario
  - Small numbers mean ease of regulation or waste of resources
- Implications of both regulating and not regulating MDPs
  - for small and rural communities
  - for the legal profession's national and global competitiveness
  - for protection of the public interest
- Procedural and practical implications of regulating MDPs
- Confirmation by Ms. Forbes that the Lawyers Insurance Fund will arrange suitable coverage of non-lawyer members of MDPs if the Benchers decide to proceed with their regulation
- Various start-up considerations, including
  - credentialing processes
  - notice to the profession and public
- Confirmation of "the practice of law" as the regulatory context for the actions of non-lawyer members of MDPs, and the consequences of those actions

The main motion was carried by more than a two-thirds majority of the voting Benchers (16 for and 7 against).

The Benchers agreed that July 1, 2010 will be the implementation date for the new Rules, subject to the Credentials Committee's determination that more time is needed to prepare the Law Society's administrative procedures for credentialing non-lawyer members of MDPs.

## **16. Benchers' Investigative and Adjudicative Functions: Analysis and Recommendations**

Ms. Lindsay presented the report of the Independence and Self-Governance Advisory Committee (page 1600 of the meeting materials). She noted that the Committee had been directed by the Benchers to examine the dual prosecutorial and adjudicative roles of Benchers.

Ms. Lindsay moved (seconded by Mr. Jackson) that the Benchers resolve to strike a task force to develop models for separation of the Law Society's adjudicative and investigative functions (based on Option 1 in the Committee's report), and to make recommendations about which model to adopt.

In the ensuing discussion the Benchers considered a number of issues, including the following:

- the consensus view of the Independence and Self-Governance Advisory Committee that the Law Society's current system for investigating and adjudicating complaints works well, and has some support from BC's courts
- whether the current system may raise an apprehension of bias
  - in the public mind
  - in government
  - in the legal profession
- implications of any such apprehension of bias for the legal profession's independence and self-regulation
- implications for improving the efficiency of use of Law Society resources and the quality of adjudication by expanding the pool of potential tribunal members beyond currently elected and appointed Benchers

The motion was carried.

## **17. Delivery of Legal Services Task Force Report**

Mr. Vertlieb outlined the task force report (set out at page 1700 of the meeting materials). Mr. Vertlieb outlined the background for the task force's formation, highlighted a number of key principles that guided the task force's analysis and approach, and reviewed its methodology and interim findings. He noted that information-gathering is the task force's current mandate, and that while the information that has been gathered is important, it does not change the task force's view that substantive changes to the Law Society's regulatory approach are needed to enhance the delivery of legal services in BC.

Mr. Vertlieb referred the Benchers to sections 3 and 4 of the task force report for an outline of methodologies proposed for the next stage of the task force's work, together with a statement of proposed mandate (pages 1717-1720 of the meeting materials, appended to these minutes as Appendix 2).

Mr. Mossop moved (seconded by Mr. Lloyd) that:

1. the Delivery of Legal Services Task Force be continued;
2. the methodology set out in section 3 of the task force report be approved; and
3. the revised mandate set out in section 4 of the task force report be approved.

The motion was carried.

## **19. Strategic Plan Annual Review: Phase 1**

Mr. McGee reviewed the purpose of the annual review of the Law Society's three- year rolling strategic plan, describing the process as a tweaking – rather than re-writing – of the current plan.

Mr. Lucas described the purpose of the Law Society's Advisory Committees as identifying strategic issues of importance in the medium term (over the next five to seven years), monitoring those issues, and reporting back to the Benchers at least annually on whether and how the Strategic Plan should be updated. He outlined highlights of the various advisory committees' year-end reports, noting that the Benchers are being asked to consider the recommendations contained in those reports.

Mr. Lucas referred the Benchers to his memorandum at page 1900 of the meeting materials for more background on the current annual review of the 2009-2011 Strategic Plan, noting particularly the summary of the Executive Committee's deliberations and the conclusion at page 1902:

### **EXECUTIVE COMMITTEE DISCUSSIONS**

The Executive Committee considered the recommendations of the Advisory Committees and other matters that may need to be addressed in the Strategic Plan. The Committee reached a general consensus that the plan need not, and likely ought not, be amended in a significant fashion, as it broadly identifies the important goals of the Law Society moving into the next two-year period. The Committee also agreed that the work being done on discipline matters ought to be more clearly identified in the Strategic Plan.

### **CONCLUSION**

The current Strategic Plan and the Advisory Committee reports are presented to the Benchers for discussion and consideration at this meeting, from which it is hoped that some consensus can be reached on what, if any, modifications to the Strategic Plan need be incorporated. When giving thought to prioritization of the various recommendations, it would be useful to keep in mind this question: "is this a significant issue of importance to the public interest in the administration of justice that the Law Society should address in 2010 in order to appropriately discharge its mandate?"

Following remarks by the chairs of each of the advisory committees, a discussion ensued. A number of Benchers commented on the importance of legal aid funding as an access to justice issue. Others identified the need to provide for the working group or task force on separation of Benchers' prosecutorial and adjudicative powers that was approved earlier in the meeting. There was consensus on the need to incorporate into the Strategic Plan provision for the project to enhance the Law Society's discipline process that was launched in 2009 and to ensure that the Strategic Plan reflected a commitment to examine issues relating to the retention of Aboriginal lawyers in the legal profession.

The Benchers agreed that no resolution was needed to formalize their discussion, and directed staff to incorporate the input provided in the current discussion into draft revisions of the current Strategic Plan, for presentation at the January Benchers meeting.

## OTHER MATTERS FOR DISCUSSION AND/OR DECISION

### 20. Remuneration of Appointed Benchers

Past-President Anna Fung, QC presented the report and recommendations of an informal 'blue ribbon' panel (Ms. Fung, Past-President Robert McDiarmid, QC and Life Appointed Bencher June Preston, MSW) regarding remuneration of the Law Society's appointed Benchers. Ms. Fung outlined the process followed and issues considered by the panel. She reviewed the panel's recommendations for implementation of a new policy to guide the Law Society's remuneration of its appointed Benchers, noting particularly:

- the narrowness of the current policy's qualifying criteria, particularly the restriction to meetings and hearings, and the lack of provision for travel
- the panel's conclusions that the new policy should not address the matters of preparation, reputational risk and remuneration of Life Appointed Benchers, for reasons set out in the panel's report (page 2003 of the meeting materials)
- the proposed new policy would move the Law Society's per diem rate from the 32<sup>nd</sup> percentile to the 62<sup>nd</sup> percentile of the organizations surveyed by the panel
  - Alberta is at the 69<sup>th</sup> percentile

Ms. Fung noted that the Executive Committee has endorsed the panel's recommendations and has proposed the following resolution to give effect to these recommendations:

*BE IT RESOLVED THAT:*

1. *the Law Society's current policy for remuneration of appointed Benchers shall be replaced by the following per diem policy, effective January 1, 2010:*

- **Appointed Bencher Event Day Per Diem – \$250**

All Appointed Benchers are eligible to receive \$250 for every day—or portion thereof—during which they attend any meeting, hearing or other event at the request of the Law Society, inclusive of preparation and travel ("Law Society Event").

- **Appointed Bencher Travel Day Per Diem – \$125**

In addition, all Appointed Benchers are eligible to receive \$125 for every day—or portion thereof—when circumstances require them to travel for the purpose of attending a Law Society Event prior to or following the day of the event ("Law Society Travel").

Finally, Ms. Fung noted the panel's request that Law Society management report to the Executive Committee by March 2011 on the cost and operational experience of the revised policy for remuneration of appointed Benchers.

Ms. Hickman moved (seconded by Ms. Berge) that the Benchers adopt the resolution presented by the Executive Committee, and that the Benchers request Law Society management report to the Executive Committee by March 2011 on the cost and operational experience of the revised policy for remuneration of appointed Benchers.

The motion was carried unanimously.

## **OTHER BUSINESS**

Mr. Turriff welcomed the Honourable Michael de Jong, Attorney General of BC, to the meeting as an *ex officio* Bencher.

Mr. de Jong applauded Mr. Turriff for his work as 2009 President of the Law Society, noting particularly the value of his efforts to connect the people of British Columbia with their legal institutions.

Mr. de Jong announced that the following appointments are effective immediately:

- Mr. Jackson as Queen's Counsel
- Ms. Lindsay as Queen's Counsel
- Ms. Shaw as Master of the Supreme Court of BC

## ***IN CAMERA* SESSION**

### **Discussion of Bencher Concerns**

This matter was discussed *in camera*.

WKM

2009-12-23

## 11. Regulating Multi-Disciplinary Partnership

*BE IT RESOLVED to amend the Law Society Rules effective July 1, 2010 as follows:*

### 1. In Rule 1

- (a) by adding the following paragraph to the definition of “firm”:
- (g) a multi-disciplinary practice;
- (b) by adding the following definitions:

**“multi-disciplinary practice” or “MDP”** means a partnership, including a limited liability partnership or a partnership of law corporations, that is owned by at least one lawyer or law corporation and at least one individual non-lawyer or professional corporation that is not a law corporation, and that provides to the public legal services supported or supplemented by the services of another profession, trade or occupation;

**“professional corporation”** includes a law corporation and means a corporation that is a company, as defined in the Business Corporations Act, and that is in good standing under that Act or that is registered under Part 10 of the Business Corporations Act, through which a member of a profession, trade or occupation is authorized under a statute governing the profession, trade or occupation to carry on the business of providing services to the public;

- 2. In Rule 2-10(1), by striking “sections 15 to 17 of the Act” and substituting “sections 15 to 17 of the Act or Rule 2-23.2”.
- 3. By adding the following Rules:

### **Multi-Disciplinary Practice**

#### **Definition and application**

2-23.1 (1) In Rules 2-23.1 to 2-23.12,

**“legal services”** means services that constitute the practice of law as defined in section 1 of the Act;

**“member of an MDP”** means a lawyer or non-lawyer who holds an ownership interest in the MDP.

- (2) The responsibilities imposed under Rules 2-23.1 to 2-23.12 are not affected by the fact that a member of an MDP is carrying on the practice of a profession, trade or occupation or participating in the MDP as an employee, shareholder, officer, director or contractor of a professional corporation or on its behalf.

#### **Conditions for Multi-Disciplinary Practice**

2-23.2 (1) A lawyer must not practise law in an MDP unless

- (a) the lawyer and all members of the MDP are in compliance with Rules 2 23.1 to 2 23.12 and the Professional Conduct Handbook,
  - (b) all lawyers who are members of the MDP have obtained express permission under this Division to practise law in the MDP,
  - (c) all non-lawyer members of the MDP are of good character and repute,
  - (d) all members of the MDP agree in writing
    - (i) that practising lawyers who are members of the MDP will have actual control over the delivery of legal services by the MDP,
    - (ii) that non-lawyer members of the MDP will not interfere, directly or indirectly with the lawyer's
      - (A) obligation to comply with the Act, these Rules and the Professional Conduct Handbook, and
      - (B) exercise of independent professional judgement,
    - (iii) to comply with the Act, these Rules and the Professional Conduct Handbook, and
    - (iv) to cooperate with and assist the Society or its agents in the conduct of a practice review, examination or investigation, and
  - (e) all members of the MDP who are governed by the regulatory body of another profession agree to report to the MDP any proceedings concerning their conduct or competence.
- (2) For the purposes of this Rule, a lawyer has actual control over the delivery of legal services of the MDP if, despite any partnership agreement or other contract, the lawyer is able, in all cases and without any further agreement of any member of the MDP, to
- (a) exercise independent professional judgement, and
  - (b) take any action necessary to ensure that the lawyer complies with the Act, these Rules and the Professional Conduct Handbook.

**Application to practise law in Multi-Disciplinary Practice**

- 2-23.3 (1) Before a lawyer may practise law in an MDP, the lawyer must submit the following to the Executive Director:
- (a) an application in a form approved by the Credentials Committee;
  - (b) the application fee specified in Schedule 1 for each lawyer member of the proposed MDP;
  - (c) the investigation fee specified in Schedule 1 for each non-lawyer member of the proposed MDP;

- (d) copies of all partnership agreements and other contracts that the lawyer proposes to enter into with other members of the proposed MDP.
- (2) In addition to any other requirement determined by the Credentials Committee, in the form referred to in subrule (1), the lawyer must report full details of the arrangements that the lawyer has made to ensure that
  - (a) no non-lawyer member of the MDP provides services to the public, except
    - (i) those services that support or supplement the practice of law by the MDP, and
    - (ii) under the supervision of a practising lawyer,
  - (b) privileged and confidential information is protected under Rule 2 23.8,
  - (c) all members of the MDP comply with the rules respecting conflicts of interest as required under Rule 2 23.9,
  - (d) every member of the MDP obtains and maintains liability insurance as required under Rule 2 23.10,
  - (e) the lawyer and the MDP maintain trust accounts and trust accounting records in accordance with Rule 2 23.11, and
  - (f) all non-lawyer members of the MDP enter into the agreements required under Rules 2 23.2.
- (3) Any number of lawyers proposing to practise law together in an MDP may submit a joint application under this Rule.

**Consideration of application to engage in Multi-Disciplinary Practice**

- 2-23.4 (1) On receipt of an application under Rule 2 23.3, the Executive Director must
- (a) grant permission to practise law in the MDP,
  - (b) if the requirements for permission to practise law in an MDP have not been met, refuse permission, or
  - (c) refer the application to the Credentials Committee.
- (2) The Executive Director must not grant permission under subrule (1) unless the Executive Director is satisfied of the following:
- (a) all of the conditions set out in Rule 2 23.2 have been satisfied;
  - (b) the lawyer has made arrangements that will enable the lawyer and the MDP to comply with Rules 2 23.1 to 2 23.12.
- (3) If the lawyer applying for permission under Rule 2 23.3 agrees, the Executive Director may impose restrictions or conditions on permission granted under subrule (1).

- (4) Within 30 days after being notified of the decision of the Executive Director under subrule (1)(b), the lawyer may, by written notice, request a review by the Credentials Committee.
- (5) If an application is referred to the Credentials Committee under subrule (1)(c) or a review is requested under subrule (4), the Credentials Committee must direct the Executive Director to
  - (a) grant permission to practise law in an MDP, with or without restrictions or conditions, or
  - (b) reject the application.
- (6) If an application is rejected or if restrictions or conditions are imposed, the Credentials Committee must, on the written request of the lawyer applying, give written reasons for the decision.

**Changes in MDP**

- 2-23.5 (1) A lawyer practising in an MDP must immediately notify the Executive Director when
- (a) ceasing to practise law in the MDP for any reason,
  - (b) any new person proposes to become a member of the MDP,
  - (c) any member of the MDP ceases to be a member of the MDP or to be actively involved in the MDP's delivery of services to clients or in the management of the MDP, or
  - (d) there is any change in the terms of the partnership agreement or other contract affecting the conditions under which members of the MDP participate in the MDP.
- (2) When a new non-lawyer proposes to become a member of an MDP, the lawyer practising in the MDP must do the following at least 60 days before the proposed membership takes effect:
- (a) notify the Executive Director in a form approved by the Credentials Committee;
  - (b) pay the investigation fee specified in Schedule 1.
- (3) Any number of lawyers practising law in an MDP may notify the Executive Director jointly under subrule (1) or (2).

**Cancellation of permission to practise law in an MDP**

- 2-23.6 (1) If for any reason the Executive Director, in his or her sole discretion, is not satisfied that the lawyer is complying and will continue to comply with Rules 2 23.1 to 2 23.12, the Executive Director must cancel the permission granted under Rule 2 23.4.

- (2) A cancellation under subrule (1) takes effect
  - (a) after 30 days notice to all lawyers who are current members of the MDP affected by the cancellation, or
  - (b) without notice or on notice less than 30 days on the order of the Credentials Committee.
- (3) A lawyer who is notified of a cancellation under this Rule may apply within 30 days to the Credentials Committee for a review of the Executive Director's decision.
- (4) When a lawyer applies for a review under subrule (3), the Credentials Committee must consider all the information available to the Executive Director, as well as submissions from or on behalf of the lawyer applying and the Executive Director and must
  - (a) confirm the decision of the Executive Director,
  - (b) direct the Executive Director to reinstate the permission, with or without restrictions or conditions specified by the Credentials Committee, or
  - (c) order a hearing before a panel under Part 5.
- (5) The lawyer applying under subrule (3) or the Executive Director may initiate a review by the Benchers on the record of a decision under subrule (4) by delivering to the President and the other party a Notice of Review.
- (6) Rules 5-15 and 5-17 to 5-21 apply to a review under this Rule, insofar as they are applicable and with the necessary changes.
- (7) A lawyer who has applied for a review under subrule (3) may apply to the President for a stay of the cancellation pending the decision of the Credentials Committee on the review.
- (8) The person who applies for a review under subrule (5) may apply to the President for a stay of the cancellation pending the decision of the Benchers on the review.
- (9) When considering an application for a stay under subrule (8), the President must consider all the information available to the Executive Director, as well as submissions from or on behalf of the Executive Director and the lawyer concerned and must
  - (a) refuse the stay, or
  - (b) grant the stay, with or without restrictions and conditions.
- (10) On an application under subrule (7) or (8), the President may designate another Bencher to make a determination under subrule (9).
- (11) When a lawyer's permission to practise law in an MDP is cancelled under this Rule, the lawyer must immediately cease practising law in the MDP.

**Lawyer's professional duties**

- 2-23.7 (1) Except as provided in Rules 2 23.1 to 2 23.12, the Act, these Rules and the Professional Conduct Handbook apply to lawyers who practise in an MDP.
- (2) A lawyer practising law in the MDP must take all steps reasonable in the circumstances to ensure that the non-lawyer members of the MDP
- (a) practise their profession, trade or occupation with appropriate skill, judgement and competence,
  - (b) comply with the Act, these Rules and the Professional Conduct Handbook, and
  - (c) provide no services to the public except
    - (i) those services that support or supplement the practice of law by the MDP, and
    - (ii) under the supervision of a practising lawyer, as required under Chapter 12 of the Professional Conduct Handbook.
- (3) A lawyer practising in an MDP must not permit any member or employee of the MDP to direct or control the professional judgement of the lawyer or to cause the lawyer or other members of the MDP to compromise their duties under the Act, these Rules or the Professional Conduct Handbook.

**Privilege and Confidentiality**

- 2-23.8 A lawyer practising law in an MDP must take all steps reasonable in the circumstances, including the implementation of screening measures if necessary, to ensure that no improper disclosure of privileged or confidential information is made to any person, including a person appointed by the regulatory body of another profession in relation to the practice of another member or employee of the MDP.

**Conflicts of interest**

- 2-23.9 (1) A lawyer practising law in an MDP must take all steps reasonable in the circumstances to ensure that the other members of the MDP will comply with the provisions of the Act, these Rules and the Professional Conduct Handbook respecting conflicts of interest as they apply to lawyers.
- (2) This Rule applies when the MDP has provided legal services to a client or when a potential client has sought legal services from the MDP.

**Liability insurance**

- 2-23.10 (1) A lawyer practising law in an MDP must ensure that every non-lawyer member of the MDP providing services directly or indirectly to the public on behalf of the MDP
- (a) maintains professional liability insurance
    - (i) on the terms and conditions offered by the Society through the Lawyers Insurance Fund and pays the insurance fee, and

- (ii) in an amount equivalent to the total amount of coverage that the MDP maintains in excess of that required under Rule 3-21(1), and
- (b) complies with the provisions of Part 3, Division 4 of these Rules as if the non-lawyer were a lawyer.
- (2) If a non-lawyer member of an MDP agrees in writing, in a form approved by the Executive Committee, to engage in activities on behalf of the MDP for an average of 25 hours or less per week, the applicable insurance base assessment is the part-time insurance fee specified in Schedule 1.

### **Trust funds**

- 2-23.11 (1) A lawyer practising law in an MDP that accepts any funds in trust from any person must maintain a trust account and a trust accounting system
- (a) in accordance with Part 3, Division 7 of these Rules, and
  - (b) that are within the exclusive control of lawyers practising law in the MDP.
- (2) A lawyer practising law in an MDP must ensure that all funds received by the MDP that would, if received by a lawyer, constitute trust funds, are handled through a trust account and accounting system that complies with these Rules.

### **Notifying the Law Society**

- 2 23.12 (1) Each lawyer who practises law in an MDP must report to the Executive Director in a form approved by the Credentials Committee concerning the following:
- (a) non-lawyers members of the MDP providing services to the public;
  - (b) the reasonable steps taken to protect privileged and confidential information under Rule 2 23.8;
  - (c) compliance with the rules respecting conflicts of interest;
  - (d) liability insurance maintained by non-lawyers under Rule 2 23.10,
  - (e) trust accounts and trust accounting records maintained under Rule 2 23.11;
  - (f) the agreements required under Rule 2 23.2 between the lawyer and all non-lawyer members of the MDP, and
  - (g) any other matter required by the Credentials Committee.
- (2) The report required under this rule must be made annually on a date determined by the Executive Director, or more frequently as determined by the Credentials Committee.

#### ***4. In Rule 3-44(2), by rescinding paragraphs (b) and (c) and substituting the following:***

- (b) any certificate, final order or other requirement under a statute that requires payment of money to any party,

- (c) a garnishment order under the Income Tax Act (Canada) if a lawyer is the tax debtor, and
- (d) a judgment of any kind against an MDP in which the lawyer has an ownership interest.

**5. In Rule 3-57, by rescinding subrule (1) and substituting the following:**

- (1) In this Rule, “fees” means fees for services performed by a lawyer or a non-lawyer member of the lawyer’s MDP, and taxes on those fees.

**6. In Rule 9-15, by adding the following subrule:**

- (2.11) Despite subrule (2.1), an LLP that is an MDP in which a lawyer has permission to practise law under Rules 2-23.1 to 2-23.12 may include non-lawyer members as permitted by those Rules.

**AND BE IT FURTHER RESOLVED** to amend the *Professional Conduct Handbook* as follows:

**1. In Chapter 6**

- (a) by rescinding rule 7.1 and substituting the following:

**Conflicts arising as a result of transfer between law firms**

7.1 In Rules 7.1 to 7.9 and Appendix 5:

“**law firm**” includes one or more lawyers practising:

- (a) in a sole proprietorship,
- (b) in a partnership,
- (c) in an arrangement for sharing space,<sup>5</sup>
- (d) as a law corporation,
- (e) in a government, a Crown corporation or any other public body,<sup>6</sup> and
- (f) in a corporation or other body;<sup>7</sup> and
- (g) in a Multi-Disciplinary Practice (MDP);<sup>8</sup>

- (b) by adding the following footnote:

8. See the definition of “MDP” in Rule 1 and Rules 2 23.1 to 2 23.14 of the Law Society Rules.

**2. In Chapter 9**

- (a) by rescinding rule 6 and substituting the following:

6. Subject to rule 6.1, a lawyer must not split, share or divide a client's fee with any person other than another lawyer.<sup>1</sup>

6.1 A lawyer permitted to practise in a Multi-Disciplinary Practice (MDP) under the Rules may share fees, profits or revenue from the practice of law in the MDP with a non-lawyer member of the MDP only if all the owners of the MDP are individuals or professional corporations<sup>2</sup> actively involved in the MDP's delivery of legal services to clients or in the management of the MDP.<sup>3</sup>

(b) by adding the following footnotes:

2. See the definition of "professional corporation" in Rule 1 of the Law Society Rules.

3. This rule also allows a lawyer to share fees or profits of an MDP with a non-lawyer for the purpose of paying out the ownership interest of the non-lawyer acquired by the non-lawyer's active participation in the MDP's delivery of services to clients or in the management of the MDP.

See also the definition of "MDP" in Rule 1 and Rules 2 23.1 to 2 23.14 of the Law Society Rules.

### 3. In Chapter 12

(a) *by rescinding rules 1 and 3 to 6 and substituting the following:*

#### **Responsibility for all business entrusted to lawyer**

1. A lawyer is completely responsible for all business entrusted to the lawyer. The lawyer must maintain personal and actual control and management of each of the lawyer's offices. While tasks and functions may be assigned to staff and assistants such as students, clerks and legal assistants, or to non-lawyer members of a Multi-Disciplinary Practice (MDP),<sup>1</sup> the lawyer must maintain direct supervision over each non-lawyer staff member.

#### **Signing correspondence**

3. Letters on the letterhead of a law firm, including an MDP, when signed by a person other than a practising lawyer, must indicate the status or designation of the signing person for the information of the recipient.

#### **Legal services performed by non-lawyers**

4. There are many tasks that can be performed by an appropriately trained and experienced non-lawyer working under the supervision of a lawyer. This includes qualified legal assistants employed by the lawyer or the lawyer's firm, as well as members of an MDP in which the lawyer practises.

It is in the interests of the profession and the public for the delivery of more efficient, comprehensive and better quality legal services that the training and employment of legal assistants be encouraged.

5. Subject to this chapter, an appropriately trained and experienced non-lawyer may perform any task assigned and supervised by a lawyer, but the lawyer must maintain a direct relationship with the client and has full professional responsibility for the work.

5.1 A lawyer may assign tasks or functions to a non-lawyer if

- (a) the training and experience of the non-lawyer is appropriate to protect the interests of the client, and
  - (b) provision is made for the professional legal judgement of the lawyer to be exercised whenever it is required.
6. Except as permitted under the Legal Services Society Act, section 12, a lawyer must not permit a non-lawyer to:
    - (a) perform any function reserved to lawyers, including but not limited to
      - (i) giving legal advice,
      - (ii) giving or receiving undertakings, and
      - (iii) appearing in court or actively participating in legal proceedings on behalf of a client, except in a support role to the lawyer appearing in the proceedings,
    - (b) do anything that a lawyer is not permitted to do,
    - (c) act finally and without reference to the lawyer in matters involving professional legal judgement, or
    - (d) be held out as a lawyer, or be identified other than as a non-lawyer when communicating with clients, lawyers, public officials or with the public generally.

(b) *by adding the following footnote:*

1. See the definition of “MDP” in Rule 1 and Rules 2 23.1 to 2 23.15 of the Law Society Rules. The definition of “member of an MDP” in Rule 2 23.1 applies in the context of this chapter.

**4. In Chapter 13, by rescinding rule 5 and substituting the following:**

**Associating with a person whose character and fitness are in question**

5. Except with the written approval of the Law Society, a lawyer must not employ, retain or otherwise associate in any capacity having to do with the practice of law with a person who, in any jurisdiction:

**5. In Chapter 14, by rescinding rule 5 and substituting the following:**

(a) *by rescinding paragraphs (f) and (g) of rule 10 and substituting the following:*

- (f) a trademark agent, if registered as such under the Trade-marks Act,
- (g) a practitioner of foreign law, if that person holds a valid permit issued under Law Society Rule 2-18, or
- (h) a qualified member of another profession, trade or occupation, provided that the lawyer and the other person are members of a Multi-Disciplinary Practice (MDP)<sup>1</sup> permitted under the Rules.

(b) *by adding the following rules:*

**Multi-Disciplinary Practice**

- 23. Unless permitted to practise law in an MDP under the Law Society Rules, a lawyer must not, in any marketing activity
  - (a) use the term Multi-Disciplinary Practice or MDP, or
  - (b) state or imply that the lawyer's practice or law firm is an MDP.
- 24. A lawyer practising law in an MDP must ensure that all marketing activity for the firm indicates that the firm is an MDP.

(c) *by adding the following footnote:*

- 1. See the definition of “**MDP**” in Rule 1 and Rules 2 23.1 to 2 23.15 of the Law Society Rules. The definition of “member of an MDP” in Rule 2 23.1 applies in the context of this chapter.

### 3. SUGGESTED METHODOLOGY FOR THE NEXT STAGE OF WORK

In sections 3 and 4 the Task Force sets out methodologies for the next stage of work, together with a proposed mandate. It is important to note that while the ideas represented in the proposed mandate are important, it will be impossible to implement all of them in the short term. The topic is too complex and the resources too limited, and no one organization can likely solve all the problems. However, there is much that the Society can do to make meaningful, incremental change. The Task Force therefore seeks guidance from the Benchers on how to prioritize the proposed mandate and methodology for the next stage of work in order to move the project forward and achieve tangible results. The Task Force believes that it is important for the Society to move forward with Stage 2 of this project.

1. **Improving supply of legal services:** How do we increase delivery of competent legal services? The focus here should include a substantive analysis of the following:
  - a. In what circumstances, beyond those presently permitted, should nonlawyers be allowed to provide legal services?
  - b. Are there ways to increase the number of lawyers available to the general public? (e.g. increasing the number of foreign-trained lawyers; establishing categories of limited licensing for lawyers that require less education, but are streamed to narrow areas of practice; working with the Provincial Court to set up a *pro bono* duty counsel program for young lawyers to act as counsel in small claims cases; establishing processes for legal assistants to obtain standing as a lawyer based on education and experience (a variation of the apprenticeship model); improving opportunities for Aboriginals to go to law school, etc.);
  - c. Should we expand the permitted roles of articled students? If yes, how?
  - d. Should we expand the permitted roles of legal assistants? If yes, how?
  - e. Are there ways to improve training and resources for community advocates (e.g. such as the Chief Executive Officer's idea of using offsessions of PLTC to train community advocates)?
  - f. Should solutions be tailored to particular areas of law where there is the greatest need and unmet demand? How can the work be focused to do the most good with the lowest risk of causing harm?
  - g. Does the framework proposed by the Futures Committee in Attachment 2, and the concept of exclusive and concurrent jurisdiction raised by the Task Force, provide an adequate model for any changes? If not, how should it be modified?
  - h. What should the regulatory and insurance framework look like for the recommended changes?

2. **Knowledge building:** Information outreach, communication, education:
- a. How do we improve public knowledge about the types of legal services that are available (e.g. unbundling, full retainer, legal aid, etc.), their relative affordability, and utility, etc.?
  - b. How do we improve public knowledge of legal issues and dispute resolution, both to assist the public in general, and to facilitate better results for those who choose to go it alone, and those who are dealing with self-helpers (e.g. getting lawyers to contribute to content of sites like ClickLaw, encourage government to improve public education of civic rights and responsibilities, etc)?
  - c. How do we increase the profession's understanding of the access to legal services challenges and some of the root causes of the public's perception of the justice system and lawyers?
  - d. How do we bring more certainty to the cost of legal services?
  - e. How do we improve public trust in the legal profession?

In order to make stage 2 manageable and productive it is important to recognize that some of this work is best handled by groups other than the Task Force, and in some cases may involve organizations other than the Law Society developing programs. For example, some of the knowledge building might best be accomplished by the government, particularly as it concerns public education, in other cases the CBA or CLE might be the logical group to spearhead particular knowledge building initiatives. While the Society would have a role to play in sharing information, it is not a given that the Society is the proper body to shepherd these developments.

The Task Force is cognizant that British Columbia has a diverse population and discrete groups might require tailored solutions. This is perhaps most evident in the needs of Aboriginal Communities. In recognition of this the Benchers may wish to have the Task Force liaise with the Equity and Diversity Advisory Committee early in stage 2 to determine what analysis can properly be transferred to that Committee for development. The Task Force and the Committee could then share information as their work developed, ultimately integrating the work of the Committee into the final report of the Task Force. It may be that a reconstitution of the Task Force is appropriate for stage 2 and this would provide an opportunity to ensure that at least one Task Force member is also on the Equity and Diversity Advisory Committee in order to facilitate information sharing. It may be that each Advisory Committee should have membership in the Task Force for this purpose.