

# THE LAW SOCIETY OF BRITISH COLUMBIA

## MINUTES

- MEETING:** Benchers
- DATE:** Friday, October 1, 2010
- PRESENT:**
- |  |   |
|--|---|
| Glen Ridgway, QC, President                      | David Loukidelis, Deputy Attorney General of BC |
| Gavin Hume, QC, 1 <sup>st</sup> Vice-President   | Benjimen Meisner                                |
| Bruce LeRose, QC, 2 <sup>nd</sup> Vice-President | David Mossop, QC                                |
| Haydn Acheson                                    | Suzette Narbonne                                |
| Rita Andreone                                    | Thelma O'Grady                                  |
| Kathryn Berge, QC                                | Lee Ongman                                      |
| Joost Blom, QC                                   | Gregory Petrisor                                |
| Patricia Bond                                    | David Renwick, QC                               |
| Robert Brun, QC                                  | Claude Richmond                                 |
| E. David Crossin, QC                             | Alan Ross                                       |
| Tom Fellhauer                                    | Catherine Sas, QC                               |
| Leon Getz, QC                                    | Richard Stewart, QC                             |
| Carol Hickman                                    | Herman Van Ommen                                |
| Stacy Kuiack                                     | Art Vertlieb, QC                                |
| Jan Lindsay, QC                                  | Kenneth Walker                                  |
| Peter Lloyd, FCA                                 |   |
- ABSENT:** Satwinder Bains
- STAFF PRESENT:**
- |                     |                  |
|---------------------|------------------|
| Tim McGee           | Bill McIntosh    |
| Deborah Armour      | Jeanette McPhee  |
| Stuart Cameron      | Doug Munro       |
| Robyn Crisanti      | Lesley Pritchard |
| Lance Cooke         | Susanna Tam      |
| Su Forbes, QC       | Alan Treleaven   |
| Jeffrey Hoskins, QC | Adam Whitcombe   |
| Michael Lucas       |                  |
- GUESTS:**
- Dean Chris Axworthy, Faculty of Law, Thompson Rivers University
  - Dom Bautista, Executive Director, Law Courts Center
  - Mark Benton, QC, Executive Director, Legal Services Society
  - Johanne Blenkin, Executive Director, BCCLS
  - Mary Anne Bobinski, Faculty of Law Dean, UBC
  - Anne Chopra, Equity Ombudsperson
  - Jeremy Hainsworth, Reporter, Lawyers Weekly
  - Jamie Maclaren, Executive Director, Access Pro Bono Law
  - Stephen McPhee, President, CBABC
  - Caroline Nevin, Executive Director, CBABC
  - Wayne Robertson, QC, Executive Director, Law Foundation of BC
  - Rob Seto, Director of Programs, CLEBC
  - John Hunter, QC, Member of the FLSC Council for the Law Society of BC

## **CONSENT AGENDA**

### **1. Minutes**

The minutes of the meeting held on September 2, 2010 were approved as circulated.

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

### **2. President’s Report**

Mr. Ridgway referred the Benchers to his written report — circulated by email prior to the meeting — for an outline of his activities as President during the month of September.

### **3. CEO’s Report**

Mr. McGee provided highlights of his monthly written report to the Benchers (Appendix 1 to these minutes), including the following matters:

- a. Federation of Law Societies of Canada Bi-Annual Conference - Saint John, New Brunswick - September 23 – 25, 2010
- b. People Initiatives at the Law Society
- c. Proposed Changes to the *Notaries Act*
- d. White Paper on the *Limitation Act*
- e. Core Process Review Project

Mr. McGee also briefed the Benchers on the International Institute of Law Association (IILACE) Annual Conference, being held in Vancouver this week. Co-host of the conference, Mr. McGee noted that IILACE’s member organizations represent and/or regulate about 1.3 million of the world’s lawyers. Mr. McGee thanked President Ridgway for delivering welcoming remarks at the conference’s opening dinner.

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

The Benchers received and reviewed a report on outstanding hearing decisions.

## **GUEST PRESENTATION**

### **5. The Future Practice of Law: Regulating the Legal Profession**

Jordan Furlong, a partner with Edge International Consulting, delivered a presentation and conducted a discussion using interactive (voting) slides. Mr. Furlong’s paper (*Transformation: Five Catalysts Now At Work in the Canadian Legal Services Marketplace*) is at page 5000 of the agenda package.

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

### **6. Proposed Discipline Rules Amendments (Strategy 2-5)**

Mr. Getz reported on the recent work of the Act and Rules Subcommittee in preparing amendments to the Law Society Rules intended to make the process of approving, issuing and running a hearing on

a discipline citation more efficient and effective. Mr. Getz acknowledged the work of Discipline Counsel Jaia Rai, noting that she led the preparation of a valuable Discipline Counsel report on this subject that was reviewed by the Discipline Committee in 2009. Mr. Getz referred the Benchers to the memorandum prepared by Mr. Hoskins on behalf of the Subcommittee (page 6000 of the agenda package) for details of the proposed amendments and supporting notes.

Mr. Van Ommen moved (seconded by Mr. Getz) the adoption of the suggested resolution set out at page 6044 of the agenda package (Appendix 2 to these minutes).

The motion was carried unanimously.

## **7. Delivery of Legal Services Task Force Report: Approval of Recommendations**

Mr. Vertlieb outlined the genesis of the Delivery of Legal Services Task Force's Final Report (page 7000 of the agenda package). Mr. Vertlieb acknowledged the value of the paper prepared by Mr. Walker's Kamloops working group for the 2010 Benchers' Retreat in June of this year. Mr. Vertlieb said that the task force's final report is a fine-tuned version of the report delivered at the Benchers' Retreat in June 2010, incorporating input provided at the Retreat.

Mr. Vertlieb described the purpose and approach of the task force report's recommendations as increasing access to affordable and competent legal services by incremental measures. Mr. Vertlieb noted that the proposed initiatives focus on expanding the services that may be provided by paralegals and articulated students under the supervision of a lawyer.

Mr. Vertlieb moved (seconded by Mr. Hume) that the Benchers adopt the eight Delivery of Legal Services Task Force recommendations set out at pages 7016 – 7018 of the agenda package (Appendix 3 to these minutes).

Issues raised in the ensuing discussion included:

- the benefits and the limitations of the incremental approach taken by the task force and reflected in its recommendations
- the need for a strategic and incremental approach to implementing the task force's recommendations
- the need to test the proposed reforms by allowing them to operate in the marketplace
- the importance of close monitoring and flexibility by the Law Society in allowing the marketplace to operate and in the regulation of legal services provided by paralegals and articulated students
- the importance of early development and execution of a strategy for communications and public education regarding the task force's recommendations and their implementation.

The motion was carried.

Mr. Vertlieb thanked all the members of the task force for their valuable contributions and stressed his appreciation for Mr. Acheson's dedicated service.

There was discussion regarding whether this is the appropriate time to dissolve the Delivery of Legal Services Task Force; the Benchers agreed that the task force should remain active to support the implementation of its recommendations.

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

### **8. Ethics Committee: Progress Report on Implementation of the Model Code**

Mr. Hume briefed the Benchers on progress made by the Ethics Committee in reviewing the provisions of the Federation's Model Code of Professional Conduct since January 2010. He confirmed that the Committee intends to consult the profession about the non-conflicts portion of the Code during October and the first part of November 2010. Mr. Hume provided an update regarding the Federation's continuing work on the conflicts portion of the Code. He advised that the Ethics Committee expects to consult with the profession separately regarding the Code's conflicts provisions, to assess the input received and then to report to the Benchers with recommendations. Whether such report and recommendations encompasses both the conflicts and non-conflicts aspects of the Code will depend on the timing of the completion of the Federation's work on conflicts, and on the nature of the ensuing Code provisions.

### **9. Report on the Federation Meeting (Sept. 23-25, Saint John, New Brunswick) [agenda item]**

John Hunter, QC reported to the Benchers on the recent Federation Council meeting and semi-annual conference in St. John, New Brunswick. Mr. Hunter provided some elaboration on the written report prepared by Mr. Treleaven's *in camera* report (page 9000 of the *in camera* agenda package).

Mr. Hunter advised that this was his last report to the Benchers as member of the Federation Council for the Law Society<sup>1</sup>, and thanked the Benchers for the honour they had bestowed by appointing him to that role.

## **IN CAMERA SESSION**

The Benchers discussed other matters *in camera*.

WKM  
2010-10-15

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<sup>1</sup> Mr. Hunter becomes First Vice President of the Federation of Law Societies of Canada on November 15, 2010 and under the Federation's constitution, automatically ceases to be the Law Society of BC's Council representative at that time.

The Law Society  
of British Columbia



## ***Chief Executive Officer's Monthly Report***

A Report to the Benchers by

Timothy E. McGee

October 1, 2010

## **Introduction**

The fall is typically a very busy time at the Law Society and this year is no exception. My report this month focuses on two important internal staff initiatives and updates on several on-going matters.

For me personally it is especially busy as I am co-hosting the 2010 IILACE (International Institute of Law Association Chief Executives) Annual Conference in Vancouver during Benchers week. This comes on the heels of the bi-annual conference of the Federation of Law Societies of Canada, which was held in Saint John, New Brunswick last week, and the Law Society's AGM. And since it is the conference season, the month of October kicks off in Vancouver with the International Bar Association Annual Conference, bringing together over 5,000 lawyers from around the world. The Law Society is hosting one event here at the Law Society at the end of the Conference and is co-sponsoring two other events during the week of the Conference. I will be providing updates on these activities at the November meeting.

### **1. Federation of Law Societies of Canada Bi-Annual Conference - Saint John, New Brunswick - September 23 – 25, 2010**

John Hunter, QC, the Law Society's representative on the Federation Council and soon to be First Vice-President of the Federation, will be at the meeting to provide his report on the Saint John Conference. In addition, Alan Treleaven, our staff liaison to the Federation, is preparing a brief written summary of events which will be available prior to the meeting.

### **2. People Initiatives at the Law Society**

There are two important initiatives that we undertake each fall which involve all of the staff of the Law Society.

The first is the annual Employee Survey, which provides every employee with the opportunity to provide their views on a wide range of matters of importance to the organization. This will be the fifth year of our current survey and the results are shared with all staff and with the Benchers early in the New Year. The results of the survey assist Management in developing initiatives to help better engage our staff and to make the Law Society a stronger organization. Recent initiatives arising from the survey include our on-going skills training and leadership development programs.

The second initiative is the annual employee performance review program. Each year at this time staff discuss with their manager their work over the past year focusing on performance against roles and

responsibilities and identifying strengths as well as opportunities for improvement in the coming year. The goal is to ensure that all employees have the opportunity to self assess their contributions in the year and to receive constructive feedback. This program also feeds into our employee recognition (bonus) program under which bonuses are awarded on the basis of criteria set out in our Employee Recognition Policy. These initiatives require a significant commitment of time and thought on behalf of managers and staff alike but are an important part of our overall commitment to a positive work environment and service excellence.

**3. Proposed Changes to the *Notaries Act***

Since the last Benchers meeting, President Ridgway has written to the Deputy Attorney General and Senior Assistant Deputy Minister to convey the views of the Benchers on the proposed amendments to the *Notaries Act*. More recently, the President and I met with the President and Executive Director of the CBA BC Branch and separately with the President and Executive Director of the Society of Notaries Public of B.C. to review the proposals in greater detail. The Ministry of Attorney General is seeking further feedback from the Law Society and the CBA BC Branch on the proposals by October 15. This is a very tight timeline. This topic and our process to formulate a further response will be discussed in further detail at the meeting.

**4. White Paper on the *Limitation Act***

The Attorney General recently convened a meeting with a number of key stakeholder groups including the Law Society to present a white paper on proposed changes to the *Limitation Act*. The Attorney is seeking feedback on the proposed new regime by November 15. The Executive Committee has requested staff, together with Benchers Hadyn Acheson and Thelma O'Grady, review what the Benchers have done on this topic in the past and bring this forward together with a précis of the new white paper for consideration by the Benchers at their meeting on November 5.

**5. Core Process Review Project**

Work on the Law Society's core process review project which began in January of this year is progressing well and on schedule. The project has three phases. We have completed Phase 1 - Current Process Mapping - and we are now in Phase 2 - Solutions Development. This phase is scheduled for completion by November 1. The final phase will be a report with recommendations to the

Benchers, which is planned for the Bencher meeting in December. Most recently, the core process review project team, lead by Kensi Gounden, held an all staff open house to share findings to date and to stimulate discussion, learning and idea generation across all departments. The event, which was held on the second floor, included pre-recorded video presentations by representatives of each department commenting on their work, related challenges and opportunities. There was a good turnout and the feedback suggests that the event was really effective in helping staff understand what happens outside their area and how their work affects others. Special thanks to First Vice-President Gavin Hume, QC for attending and participating in the interactive sessions.

Timothy E. McGee  
Chief Executive Officer

## CITATION RULES AMENDMENTS

### SUGGESTED RESOLUTION:

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

1. *In Rules 3-6(4), 3-12(3.1) and 3-14(6.1), by rescinding paragraph (c) and substituting the following*
  - (c) failed to respond to a communication from the Society;
  - (d) breached an order made under the Act or these Rules.
  
2. *By rescinding Rule 4-3 and substituting the following:*

**Consideration of complaints by Committee**

**4-3** (1) The Discipline Committee must consider any complaint referred to it under these Rules and may instruct the Executive Director to make or authorize further investigation that the Discipline Committee considers desirable.

(2) If, in the view of the Executive Director and the Chair of the Discipline Committee, there is a need to act before a meeting of the Committee can be arranged, the Executive Director may refer a complaint to the Chair for consideration under Rule 4-4.1.
  
3. *In Rule 4-4(1), by rescinding paragraph (c) and substituting the following:*
  - (c) direct that the Executive Director issue a citation against the lawyer under Rule 4-13(1) [*Direction to issue, expand or rescind citation*].
  
4. *In Rule 4-4.1(2), by rescinding paragraph (a) and substituting the following:*
  - (a) direct that the Executive Director issue a citation against the lawyer under Rule 4-13(1) [*Direction to issue, expand or rescind citation*], or
  
5. *In Rule 4-6,*
  - (a) *by rescinding subrule (1) and substituting the following:*
    - (1) No one is permitted to disclose any of the following information except for the purpose of complying with the objects of the Act or with these Rules:
      - (a) all of the information and documents that form part of the consideration of a complaint under Rule 4-4 or 4-4.1;
      - (b) the result of a consideration under Rule 4-4., **and**

(b) *by rescinding paragraph (b) of subrule (4) and substituting the following:*

(b) the citation is in respect of an offence to which the respondent has pleaded guilty or of which the respondent has been found guilty, or

6. *In Rule 4-9(6), by rescinding paragraph (c) and substituting the following:*

(c) direct that a citation be issued against the lawyer under Rule 4-13(1) [Direction to issue, expand or rescind citation];

7. *By rescinding Rule 4-13 and substituting the following:*

**Direction to issue, expand or rescind citation**

**4-13** (1) The Discipline Committee or the chair of the Committee may order a hearing into the conduct or competence of a lawyer by directing that the Executive Director issue a citation against the lawyer.

(1.1) After a hearing has been ordered under subrule (1), the Discipline Committee may direct the Executive Director to add an allegation to a citation.

(2) At any time before a panel makes a determination under Rule 4-35 [Disciplinary action], the Discipline Committee may rescind a citation or an allegation in a citation and substitute another decision under Rule 4-4(1) [Action on complaints].

8. *By rescinding Rule 4-15(1) and substituting the following:*

**Notice of citation**

**4-15** (1) A citation must be served on the respondent

(a) personally, or by mailing it by registered mail to the respondent's last known address, and

(b) not more than 45 days after the direction that it be issued, unless the Discipline Committee or the chair of the Committee otherwise directs.

9. *By adding the following Rules:*

**Amending an allegation in a citation**

**4-16.1** (1) Discipline counsel may amend an allegation contained in a citation

(a) before the hearing begins, by giving written notice to the respondent and the Executive Director, and

(b) after the hearing has begun, with the consent of the respondent.

- (2) The panel may amend a citation after the hearing has begun
  - (a) on the application of a party, or
  - (b) on its own motion.
- (3) The panel must not amend a citation under subrule (2) unless the respondent and discipline counsel have been given the opportunity to make submissions respecting the proposed amendment.

**Severance and joinder**

- 4-16.2** (1) Before a hearing begins, the respondent or discipline counsel may apply in writing to the Executive Director for an order that
- (a) one or more allegations in a citation be determined in a separate hearing from one or more other allegations in the same citation, or
  - (b) two or more citations be determined in one hearing.
- (2) An application under subrule (1) must
- (a) be copied to the party not making the application, and
  - (b) state the grounds for the order sought.
- (3) The Executive Director must promptly notify the President of an application under subrule (1).
- (4) The President may
- (a) allow the application with or without conditions,
  - (b) designate another Bencher to make a determination, or
  - (c) refer an application to a prehearing conference.

**10. In Rule 4-17**

(a) *by rescinding subparagraph (i) of subrule (1)(d) and substituting the following:*

- (i) submit to an examination by a qualified medical practitioner named by the 3 Benchers or to be named by the Chair of the Discipline Committee, and, *and*

(b) *by rescinding subrule (1.19) and substituting the following:*

- (1.19) After a proceeding has begun, the Benchers present may adjourn the proceeding, with or without conditions, generally or to a specified date, time and place.

**11. By rescinding Rule 4-24 and substituting the following:**

**Notice of hearing**

- 4-24** (1) The date, time and place for the hearing to begin must be set
- (a) by agreement between discipline counsel and the respondent, or
  - (b) failing agreement, by the Executive Director or by the Bencher presiding at a prehearing conference.
- (2) When a date is set under subrule (1), the Executive Director must notify the respondent and the complainant in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the respondent consents to a shorter notice period.
- (3) Written notification under subrule (2) may be made at the same time that the citation is served under Rule 4-15 [*Notice of citation*], or at a later time.

**12. By rescinding Rule 4-24.1(1)(d), (2) and (4) and substituting the following:**

- (d) breached an order made under the Act or these Rules.
- (4) Despite Rules 4-34 [*Submissions and determination*] and 4-35 [*Disciplinary action*], the panel may consider facts, determination, disciplinary action and costs and issue a decision respecting all aspects of the proceeding.

**13. In Rule 4-25**

**(a) by rescinding subrule (2) and substituting the following:**

- (2) At any time after a citation has been issued and before the hearing begins, a respondent may demand in writing that discipline counsel disclose the evidence that the Society intends to introduce at the hearing., **and**

**(b) in subrule (3), by striking “the start of the hearing:” and substituting “the beginning of the hearing:”.**

**14. By rescinding Rule 4-26(1), (2) and (5) and substituting the following:**

- (1) Before a hearing begins, the respondent may apply for disclosure of the details of the circumstances of misconduct alleged in a citation by delivering to the Executive Director and discipline counsel written notice setting out the substance of the application and the grounds for it.
- (2) The Executive Director must promptly notify the President of an application under subrule (1).

- (5) The President may
  - (a) designate another Bencher to make a determination under subrule (3),  
or
  - (b) refer the application to a prehearing conference.

**15. *By adding the following Rule:***

**Preliminary questions**

- 4-26.1** (1) Before a hearing begins, the respondent or discipline counsel may apply for the determination of a question relevant to the hearing by delivering to the Executive Director and to the other party written notice setting out the substance of the application and the grounds for it,
- (2) The Executive Director must promptly notify the President of an application under subrule (1).
  - (3) When an application is made under subrule (1), the President must do one of the following as appears to the President to be appropriate:
    - (a) appoint a panel to determine the question;
    - (b) refer the question to a prehearing conference;
    - (c) refer the question to the panel at the hearing of the citation.
  - (4) The President may designate another Bencher to exercise the discretion under subrule (3).
  - (5) A panel appointed under subrule (3)(a) is not seized of the citation or any question pertaining to the citation other than that referred under that provision.

**16. *In Rule 4-27***

- (a) ***by striking*** “before the hearing on a citation commences” ***in subrule (1) and substituting*** “before the hearing on a citation begins”, ***and***
- (b) ***by rescinding subrules (3) to (6) and substituting the following:***
  - (2.1) The Executive Director must notify the respondent and discipline counsel of the time and place of the conference.
  - (3) Discipline counsel must be present at the conference.
  - (3.1) The respondent may attend the conference in person, through counsel or both.

- (3.2) If the respondent fails to attend the conference, the Bencher presiding may proceed with the conference in the absence of the respondent and may make any order under this Rule, if the Bencher is satisfied that the respondent had notice of the conference.
- (4) Any person may participate in a conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of this Rule.
- (5) The conference may consider
  - (a) the simplification of the issues,
  - (b) the necessity or desirability of amendments to the citation,
  - (c) the possibility of obtaining admissions that might facilitate the hearing,
  - (d) the discovery and production of documents,
  - (d.1) the possibility that privilege or confidentiality might require that all or part of the hearing be closed to the public, or that exhibits and other evidence be excluded from public access,
  - (e) setting a date for the hearing to begin, and
  - (g) any other matters that may aid in the disposition of the citation.
- (5.1) The respondent or discipline counsel may apply to the Bencher presiding at the conference for an order
  - (a) for discovery and production of documents,
  - (b) to withhold the identity or contact information of a witness,
  - (c) to adjourn the hearing of the citation,
  - (d) for severance of allegations or joinder of citations under Rule 4-16.2 [*Severance and joinder*],
  - (e) for disclosure of the details of the circumstances of misconduct alleged in a citation under Rule 4-26 [*Application for details of the circumstances*], or
  - (f) concerning any other matters that may aid in the disposition of the citation.
- (6) The Bencher presiding at a pre-hearing conference may
  - (a) adjourn the conference generally or to a specified date, time and place,
  - (c) set a date for the hearing to begin, and
  - (d) allow or dismiss an application made under subrule (5.1) or referred to the conference under this Part.

**17. In Rule 4-29**

**(a) by rescinding subrules (1) to (5) and substituting the following:**

- (1) Before a hearing begins, the respondent or discipline counsel may apply for an order that the hearing be adjourned by delivering to the Executive Director and the other party written notice setting out the grounds for the application.
- (2) The Executive Director must promptly notify the President of an application under subrule (1).
- (3) Before the hearing begins, the President must decide whether to grant the adjournment, with or without conditions, and must notify the parties accordingly.
- (4) The President may
  - (a) designate another Bencher to make a determination under subrule (3),  
or
  - (b) refer the application to a prehearing conference.
- (5) After a hearing has begun, the chair of the panel may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.,  
**and**

**(b) by adding the following subrule:**

- (7) Rule 4-24 [*Notice of hearing*] does not apply when a hearing is adjourned and re-set for another date.

**18. In Rule 4-30, by adding the following subrule:**

- (3) Despite subrule (1), before the hearing begins, the panel may receive and consider
  - (a) the citation, and
  - (b) an agreed statement of facts.

**19. By rescinding Rule 4-31.**

**20. By rescinding Rule 4-32 and substituting the following:**

**Evidence of respondent**

- 4-32** Discipline counsel must notify the respondent of an application for an order that the respondent give evidence at the hearing.

**20. By rescinding Rule 4-34(1) and (2) and substituting the following:**

**Submissions and determination**

**4-34** (1) Following completion of the evidence, the panel must invite submissions from discipline counsel and the respondent on each allegation in the citation.

- (2) After submissions under subrule (1), the panel must
  - (a) find the facts and make a determination on each allegation, and
  - (b) prepare written reasons for its findings on each allegation.

**21. In Rule 4-35**

**(a) by rescinding subrule (1)(a) and substituting the following:**

**Disciplinary action**

**4-35** (1) Following a determination under Rule 4-34 adverse to the respondent, the panel must

- (a) invite the respondent and discipline counsel to make submissions as to disciplinary action., **and**

**(b) by rescinding subrules (4) to (7) and substituting the following:**

- (4) The panel may consider the professional conduct record of the respondent in determining a disciplinary action under this Rule.
- (5) Regardless of the nature of the allegation in the citation, the panel may take disciplinary action based on the ungovernability of the respondent by the Society.
- (6) The panel must not take disciplinary action under subrule (5) unless the respondent has been given at least 30 days notice that ungovernability may be raised as an issue at the hearing on disciplinary action.
- (7) The panel may adjourn the hearing on disciplinary action to allow compliance with the notice period in subrule (6).

**22. In Rule 4-36**

**(a) by rescinding subrule (1)(b) and (c) and substituting the following:**

- (c) a disciplinary action is imposed under Rule 4-35, or
- (d) a conditional admission tendered under Rule 4-21 [*Conditional admissions*] is accepted by the Discipline Committee., **and**

- (b) **by rescinding subrule (4)(b) and (c) and substituting the following:**

  - (b) has violated a prohibition against practice imposed by a governing body,
  - (c) is the subject of a declaration by a governing body under a provision similar to Rule 4-35(2)(d), or
  - (d) made an admission that is accepted under a provision similar to Rule 4-21.
  
- 22. In Rule 4-37 by rescinding subrule (1)(b)(ii) and substituting the following:**

  - (ii) the Public Guardian and Trustee;
  - (iii) every governing body of which the person is known to be a member.
  
- 23. In Rule 4-35**

  - (a) **in subrule (1), by striking “facts and verdict portion of a hearing” and substituting “facts and determination portion of a hearing”, and**
  - (b) **in subrules (1) and (4), by striking “penalty portion of a hearing” and substituting “disciplinary action portion of a hearing”.**
  
- 24. In Rule 4-38.1**

  - (a) **in subrule (3), by striking “imposed a penalty” and substituting “imposed a disciplinary action” and**
  - (b) **in subrule (4), by striking “findings of fact and verdict” and substituting “findings of fact and determination”.**
  
- 25. By rescinding Rule 4-43(1) and substituting the following:**

  - (1) If the chair of the Discipline Committee believes that a lawyer or former lawyer may have committed a discipline violation, the chair may order that an investigation be made of the books, records and accounts of the lawyer or former lawyer.
  
- 26. In Rule 5-2**

  - (a) **in subrule (2), by rescinding paragraphs (b) and (d) and substituting the following:**
  - (b) the hearing is to consider a conditional admission under Rule 4-22  
[Consent to disciplinary action],

(b.2) the hearing is to consider a preliminary question under Rule 4-26.1  
[*Preliminary questions*],

(d) one or more of the original panel members cannot complete a hearing  
that has begun.; *and*

**(b) by rescinding subrules (4) to (6) and substituting the following:**

(4) Panel members must be permanent residents of British Columbia over the  
age of majority.

(5) The chair of a panel who ceases to be a Bencher may, with the consent of  
the President, continue to chair the panel, and the panel may complete any  
hearing or hearings already scheduled or begun.

**27. By rescinding the title of Rule 5-4 and substituting the following:**

**Compelling witnesses and production of documents**

**28. In Rule 5-5**

**(a) by rescinding subrule (2) and substituting the following**

(2) Before a court reporter begins reporting the proceedings of a hearing, the  
chair of the panel must ensure that the reporter takes an oath or makes a  
solemn affirmation to faithfully and accurately report and transcribe the  
proceedings., *and*

**(b) in subrule (6), by adding the following paragraphs:**

(a.1) oral evidence;

(a.2) affidavit evidence;.

**29. In Rule 5-9, by striking “after the hearing has commenced.” and substituting  
“after the hearing has begun.”.**

**30. In Rule 5-13, by striking “with respect to penalty.” and substituting “with  
respect to disciplinary action.”.**

**31. By rescinding Rule 5-18(3) to (6) and substituting the following:**

(3) Counsel representing the Society must be present at the conference.

(3.1) The Executive Director must notify the applicant or the respondent, as the  
case may be, or his or her counsel, of the time and place of the conference.

(3.2) The applicant or the respondent, as the case may be, may attend the  
conference, in person, through counsel or both.

- (3.3) If the applicant or the respondent, as the case may be, fails to attend the conference, the Bencher presiding may proceed with the conference in the absence of that party and may make any order under this Rule, if the Bencher is satisfied that the party had been notified of the conference.
- (4) If the Bencher presiding at a pre-review conference considers it appropriate, he or she may allow any person to participate in the conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of this Rule.
- (5) The conference may consider
  - (a) the simplification of the issues,
  - (b) any issues concerning the record to be reviewed,
  - (c) the possibility of agreement on any issues in the review,
  - (d) the exchange of written arguments or outlines of argument and of authorities,
  - (d.1) the possibility that privilege or confidentiality might require that all or part of the hearing be closed to the public or that exhibits and other evidence be excluded from public access,
  - (e) setting a date for the review, and
  - (f) any other matters that may aid in the disposition of the review.
- (6) The Bencher presiding at a pre-review conference may
  - (a) adjourn the conference generally or to a specified date, time and place,
  - (b) order the exchange of written arguments or outlines of argument and of authorities, and set deadlines for that exchange,
  - (c) set a date for the review, and
  - (d) make any order or allow or dismiss any application consistent with this Rule.

**31. By rescinding Rule 5-19(1) to (4) and substituting the following:**

- (1) Before a hearing on a review commences, the applicant, respondent or counsel for the Society may apply for an order that the hearing be adjourned by delivering to the Executive Director and to the other party written notice setting out the grounds for the application.
- (2) The Executive Director must promptly notify the President of an application under subrule (1).

- (3) Before the hearing begins, the President must decide whether to grant the adjournment, with or without conditions, and must notify the parties accordingly.
- (4) The President may
  - (a) designate another Bencher to make a determination under subrule (3),  
or
  - (b) refer the application to a pre-review conference.

**32. *By rescinding Rule 10-1(1) and substituting the following:***

- (1) A lawyer, former lawyer, articulated student or applicant may be served with a notice or other document personally or by
  - (a) sending it by registered mail or electronic mail to his or her last known address, or
  - (b) serving it as directed by the Supreme Court.
- (1.1) In subrule (1), “**last known address**” includes an address given to discipline counsel for delivery of documents relating to a citation.

**REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT**

## SUMMARY OF RECOMMENDATIONS

### Expanded Roles for Articled Students:

#### Recommendation 1:

The Task Force recommends that the Credentials Committee be directed to explore expanded duties for Articled Students. The referral of matters to the Credentials Committee should include the background material on Articled Students that the Task Force considered.

### Expanded Roles for Paralegals:

#### Recommendation 2:

The Task Force recommends the following definition of paralegal:

A paralegal is a trained professional who:

- works under the supervision of a lawyer;
- possesses adequate knowledge of substantive and procedural law relevant to the work delegated by the supervising lawyer;
- possesses the practical and analytic skills necessary to carry out the work delegated by the supervising lawyer; and
- carries out his or her work in a competent and ethical manner.

The Task Force further recommends that the following instructions supplement the definition, potentially by way of an annotation or footnote:

A lawyer must not delegate work to a paralegal, nor may a lawyer hold someone out as a paralegal, unless the lawyer is satisfied that the person has sufficient knowledge, skill, training, experience, and good character to perform the tasks delegated by the lawyer in a competent and ethical manner. In arriving at this determination lawyers should be guided by [refer to guidelines]. Lawyers are professionally and legally responsible for all work delegated to paralegals. Lawyers must ensure that the paralegal is adequately trained and supervised to carry out each function the paralegal performs, with due regard to the complexity and importance of the matter.

#### Recommendation 3:

The Task Force recommends:

- a) Paralegals should not be allowed to give or receive undertakings;
- b) The Law Society should work with the courts to determine what forms of advocacy paralegals should be permitted to perform;
- c) The Strategic Plan should be amended to include as follows: A working group or task force of Benchers and staff will work with the British Columbia Supreme

Court and the Provincial Court of British Columbia to explore what advocacy roles supervised paralegals should be allowed to perform in accordance with the recommendations contained in the Report of the Delivery of Legal Services Task Force. The working group or task force will make recommendations to the Benchers with regard to any potential changes to the Law Society Rules and *Professional Conduct Handbook* that might be required as a result of the consultations with the courts.

- d) Paralegals should be allowed to give legal advice in matters the supervising lawyer has deemed the paralegal competent to provide advice.

#### **Recommendation 4:**

The Task Force recommends:

1. A lawyer can supervise a maximum of 2 paralegals performing enhanced functions;
2. There should be no limit to the number of legal assistants or paralegals performing *traditional* functions that a lawyer may supervise.
3. Law Society communications should make it clear that these changes are not intended to alter existing legal services delivery models in law firms; rather, they are intended to allow for lower cost, competent legal services to be delivered to the public in areas of unmet need;

“Enhanced functions” consist of giving legal advice and/or engaging in advocacy functions permitted by courts or tribunals.

#### **Recommendation 5:**

The Task Force Recommends that remote supervision of paralegals be permitted, but that the Benchers also consider capping the number of paralegals a lawyer or law firm can supervise through remote supervision.

#### **Recommendation 6:**

- a) The requirements and restrictions for lawyer supervision should be set out in either the Rules, the *Handbook*, or an appendix to the *Handbook*.
- b) **[Optional]** The supervising lawyer should be required to submit a form to the Law Society electronically that includes:
  - i. The names of the paralegals the lawyer is supervising;
  - ii. The areas of law in which the lawyer is using the paralegals;
  - iii. The types of enhanced services the paralegal will perform;
  - iv. The education and experience of the paralegal;
  - v. A copy of the oath/affirmation of conduct;

- vi. The location of the office the lawyer & paralegals work in;
- vii. A description of the supervision model/plan the lawyer has in place to train and supervise the paralegals.
- viii. Whether any supervision occurs remotely, and if so a description of the steps the lawyer is taking to ensure adequate supervision occurs

**Recommendation 7:**

The Task Force recommends that the Discipline Guidelines be amended to make it clear that failure to supervise a paralegal performing enhanced functions is by its nature more serious than a standard finding of failure to supervise, and the full range of discipline actions should be available. A sanction that should be added to the list is a prohibition against a lawyer being able to supervise paralegals performing enhanced functions in the future.

**Recommendation 8:**

The Task Force recommends that the following be exempted from the application of this report:

1. Community advocates funded and designated by the Law Foundation of British Columbia;
2. Student legal advice programs or clinical law programs run by, associated with, or housed by a law school in British Columbia; and
3. Non-profit organizations providing free legal services, provided the organization is approved by the Executive Committee of the Law Society of British Columbia.