

# THE LAW SOCIETY OF BRITISH COLUMBIA

## MINUTES

**MEETING:** Benchers

**DATE:** Friday, December 10, 2010

**PRESENT:**

Glen Ridgway, QC, President	Benjimen Meisner
Gavin Hume, QC, 1 <sup>st</sup> Vice-President	David Mossop, QC
Bruce LeRose, QC, 2 <sup>nd</sup> Vice-President	Suzette Narbonne
Haydn Acheson	Thelma O'Grady
Rita Andreone	Lee Ongman
Kathryn Berge, QC	Gregory Petrisor
Joost Blom, QC	David Renwick, QC
Patricia Bond	Claude Richmond
Robert Brun, QC	Alan Ross
E. David Crossin, QC	Catherine Sas, QC
Tom Fellhauer	Richard Stewart, QC
Leon Getz, QC	Herman Van Ommen
Stacy Kuiack	Art Vertlieb, QC
Jan Lindsay, QC	Kenneth Walker

**ABSENT:**

Satwinder Bains	Peter Lloyd, FCA
Carol Hickman, QC	

**STAFF PRESENT:**

Tim McGee	Michael Lucas
Deborah Armour	Jeffrey Hoskins, QC
Stuart Cameron	Bill McIntosh
Robyn Crisanti	Jeanette McPhee
Lance Cooke	Doug Munro
Charlotte Ensminger	Susanna Tam
Su Forbes, QC	Alan Treleaven
Kensi Gounden	Adam Whitcombe

**GUESTS:**

Dom Bautista, Executive Director, Law Courts Center  
Johanne Blenkin, Executive Director, BCCLS  
Mary Anne Bobinski, Faculty of Law Dean, UBC  
Ron Friesen, CEO, CLEBC  
Donna Greschner, Faculty of Law Dean, UVIC  
Jeremy Hainsworth, Reporter, Lawyers Weekly  
Nick Hebler, former Saskatchewan Roughrider and BC Lion  
Richard Lindsay, QC, Partner, Lindsay Kenney LLP  
Jamie Maclaren, Executive Director, Access Pro Bono Law  
Todd McKendrick, Board Chair, CLEBC  
Stephen McPhee, President, CBABC  
Sharon Matthews, Vice-President, CBABC  
Nancy Merrill, Bencher-Elect, County of Nanaimo  
Caroline Nevin, Executive Director, CBABC  
Wayne Robertson, QC, Executive Director, Law Foundation of BC

## CONSENT AGENDA

### 1. Minutes

The minutes of the meeting held on November 5, 2010 were approved as circulated.

### Consent Resolutions

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

### 2. External Appointments: Nomination to Board of Directors of the Land Title & Survey Authority

#### ***BE IT RESOLVED:***

- to re-appoint Geoff Plant, QC to the Board of Governors of the Land Title & Survey Authority for a second three year term, commencing April 1, 2011.

### 3. Amendment of Rule 5-13: Initiating a Review by the Benchers

#### ***BE IT RESOLVED to rescind Rule 5-13 and substitute the following:***

Initiating a review

- 5-13** (1) Within 30 days after the decision of the panel in a credentials hearing, the applicant may deliver a Notice of Review under Rule 5-15 [Notice of Review] to the Executive Director and counsel representing the Society.
- (2) Within 30 days of a decision of the panel in a credentials hearing, the Credentials Committee may adopt a resolution to refer the decision to the Benchers for a review.
- (2.1) When a review is initiated under subrule (2), counsel representing the Society must promptly deliver a Notice of Review under Rule 5-15 [Notice of Review] to the Executive Director and the applicant.
- (2.2) Within 30 days after the decision of the panel under Rule 4-35 [Disciplinary action], the respondent may deliver a Notice of Review under Rule 5-15 [Notice of Review] to the Executive Director and discipline counsel.
- (3) Within 30 days of a decision of the panel in a hearing on a citation, the Discipline Committee may resolve to refer the decision to the Benchers for a review.
- (4) When a review is initiated under subrule (3), discipline counsel must promptly deliver a Notice of Review under Rule 5-15 [Notice of Review] to the Executive Director and the respondent.

#### 4. 2011 Fee Schedules

***BE IT RESOLVED to amend the Law Society Rules, effective January 1, 2011, as follows:***

1. *In Schedule 1, by rescinding items A1 to A3 and substituting the following:*

<b>A. Annual fee</b>	<b>\$</b>
1. Practice fee set by members (Rule 2-70)	1729.14
2. Special Compensation Fund assessment (Rule 2-70)	5.00
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	1,750.00
(b) member in part-time practice	875.00

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 “2010” and substituting “2011”.*

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

#### 4.1 Consent Matters added to the Agenda after its Circulation

##### **a. Proposed LSBC Policy on ICBC Electronic Billing and Recommendations for Considering Amendments to the Law Society Rules and the *Legal Profession Act* (Agenda Item 14)**

***BE IT RESOLVED to approve the four recommendations set out at page 14003 of the meeting materials:***

1. The Act and Rules Subcommittee should make suggestions for revising Rule 3-57 in order to contemplate broader methods of delivering a bill than are covered at present. The revision should be principles-based and strive to avoid technology specific language in order to avoid become stale-dated.
2. The Law Society’s practice advisors should indicate to ICBC that its proposed electronic billing policy is an acceptable substitute for Rule 3-57 and the requirements of s. 69. While ICBC has an obligation not to store personal information in a foreign jurisdiction, we may wish to suggest that their web-based services be housed in British Columbia.
3. The Act and Rules Subcommittee, as part of its general consideration of modernizing the application of the Act and Rules, should consider whether to expand the definition of “written” to include electronic storage, and whether s. 69 of the Act needs to be amended to better align with the Electronic Transactions Act and the approach in Rule 3-57(3)(d).

4. The Benchers should direct staff to consider, either as part of the 2012-2015 Strategic Plan, or as part of a request for legislative amendment over that period, whether our requirements that a bill be signed and delivered need to be reconsidered in light of modern technology and to provide the Benchers with a policy analysis at that future time.

**b. Proposed Minimum Number of Hours of Continuing Education Required for Practising Lawyers in 2011**

*BE IT RESOLVED to approve the following recommendation of the Legal Education Advisory Committee (the Committee):*

The Committee recommends that practicing members be required to complete and report a minimum of 12 hours of accredited continuing education in 2011, including at least two hours pertaining to any combination of professional responsibility and ethics, client care and relations, and practice management.

**REGULAR AGENDA – for Discussion and Decision**

**5. 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 December 2010.

**a. Access to Justice**

Mr. Ridgway made reference to a speech (*Access – the Elephant in the Room*) delivered by Chief Justice Finch at last month's CBABC meeting in Scottsdale, Arizona. Mr. Ridgway expressed appreciation for the spirit of the Chief Justice's remarks and endorsed his call for examination of the Law Society's infrastructure and its effectiveness for enhancing access to legal services in BC. Mr. Ridgway noted the importance of the challenges and opportunities that will face the Access to Legal Services Advisory Committee in 2011.

**b. Proposed Notaries Act Amendments**

Mr. Ridgway briefed the Benchers on a recent meeting he and Mr. McGee attended on behalf of the Law Society. Also attending were senior representatives of the Ministry of Attorney General, the Canadian Bar Association and the Society of Notaries Public. Mr. Ridgway noted particularly the contribution of CBABC President Stephen McPhee in framing the enhancement of access to legal services as a central theme of the discussion.

**c. 2011 Executive Committee Election**

Mr. Ridgway congratulated Ms. Berge, Mr. Renwick and Richard Stewart on their election to the 2011 Executive Committee.

Mr. Acheson announced that Mr. Lloyd has been acclaimed as the appointed Benchers' member of the 2011 Executive Committee.

## 6. 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. Core Process Review – Report of Findings
- b. 2010 Employee Survey – Sneak Preview
- c. 2009 – 2011 Strategic Plan Annual Review
- d. Key Performance Measures – Update
- e. Other Items of Interest
  - Performance Management for 2010
  - New Practice Advisor
  - LSBC 2010 United Way Campaign

## 7. 2010 Core Process Review Project: Report of Findings

Mr. McGee briefed the Benchers on Management Board's recently completed *Core Process Review: Report of Findings* (at page 7000 of the meeting materials). He outlined four purposes of the Core Process Review project:

- to assess those processes which are essential to the Law Society mandate and to assure the public that we are regulating the legal profession in British Columbia effectively
- to address staff expectations for meaningful changes to allow them to work more effectively and efficiently
- to gain a more comprehensive understanding of the Law Society processes with a view to revisiting the key performance measures on which the Law Society reports
- to create a roadmap for continuous improvement in the future

Mr. McGee asked Kensi Gouden, Manager, Standards & Professional Development, and project manager for the Core Process Review, to highlight solutions and next steps identified in the report. Mr. Gouden reported that as a result of the process mapping and consideration by the departments, more than 900 suggestions and 350 potential solutions were developed. Those staff responses were consolidated into about 180 proposed solutions, organized by department into six categories:

- Access to Information
- Communications
- New processes
- Resourcing

- Policy
- Training

Just under a third of the proposed solutions related to better information management and greater access to information. The next most common theme was communication, which also comprised more than a third of provided solutions. There were also 37 suggestions for new processes and about 10% of the proposed solutions suggested that more resources were necessary. A small number of the proposed solutions recognized that a policy change, either in the form of a new or revised rule or a general statement, was necessary in order to be more effective. Finally, a small number of proposed solutions called for increased training.

Review indicated that the solutions fell into three broad categories:

- within department changes that could be implemented without additional resources or the involvement of others
- cross-departmental initiatives that require the cooperation or assistance of another department or utilization of resources in another department
- systemic solutions that involve either a significant number of departments and additional resources or that involve the entire organization

There were more than 40 within-department solutions that could be implemented without additional resources or the involvement of anyone outside the department that had proposed the solution. Many of these have already been implemented and most of the balance will be evaluated by year-end or shortly thereafter and implemented if appropriate. There were nearly 140 cross-departmental solutions that involve the interface between departments or require assistance from other departments. As all the cross-department solutions involved more than one department working together, managers have been asked to review the list of suggested solutions from their respective departments and develop implementation plans as appropriate.

Management Board has identified three systemic solutions for development:

- redeveloping information and document management across the organization
  - an Information Management Project Team has been established to retain the necessary expertise to evaluate our needs and identify solutions to address those needs
  - the Project Team expects to start the first phase of the needs analysis early in the new year and will develop and consult on the business case for any solutions that are identified
- redeveloping our regulatory processes
  - Chief Legal Officer Deborah Armour and her regulatory team will be working to develop a business case which will identify cost-effective solutions for changes to improve both the quality and timeliness of our discipline function
- redeveloping our delivery of practice advice to lawyers

- a Lawyer Advice and Support Assessment Project Team has been established to evaluate the mandate and priorities for delivery of practice advice and support
- the Project Team will report back at the beginning of March 2011 with recommendations regarding how best to deal with the issues identified in the core process review and with a business case for any recommended changes

Management Board expects that as we move into 2011, many of the within-department suggestions and some of the cross-departmental solutions will have been implemented. Management Board will also be working with the Audit Committee in 2011 to review and reconsider our key performance measures. The systemic solutions will require more development before they can be implemented but the roadmap is clear. While there will be resource implications, Management Board expects they will be addressed within the budget priorities for 2011 and beyond.

## **8. Report on Outstanding Hearing & Review Reports**

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

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

### **9. 2009-2011 Strategic Planning: Reports from the 2010 Advisory Committees**

Mr. McGee reminded the Benchers that their review of the year-end reports from the Law Society's four advisory committees marks the first stage of updating the current 2009-2011 Strategic Plan. He then asked Mr. Lucas to outline the process to be followed in executing that update over the next two months, and in developing a post-2011 strategic plan for the Law Society over the coming year.

Mr. Lucas referred the Benchers to his memorandum at page 9000 of the meeting materials for a summary of the recommendations set out in the advisory committee reports. He noted that the Benchers' discussion of those recommendations will inform the Executive Committee in its consideration of the recommendations and their various priorities, helping the Committee to guide the discussion at the January Benchers meeting, at which time decisions will be made for updating the current Strategic Plan.

Mr. Mossop briefed the Benchers on the work of the Access to Legal Services Advisory Committee in 2010, outlining that Committee's recommendations for 2011. Discussion followed.

Mr. Brun briefed the Benchers on the work of the Equity and Diversity Advisory Committee in 2010, outlining that Committee's recommendations for 2011. Discussion followed.

Ms. Lindsay briefed the Benchers on the work of the Independence and Self-Governance Advisory Committee in 2010, outlining that Committee's recommendations for 2011. Discussion followed.

Ms. O'Grady briefed the Benchers on the work of the Lawyer Education Advisory Committee in 2010, outlining that Committee's recommendations for 2011. Discussion followed.

### **10. Lawyer Education Advisory Committee Reports**

#### **a. Advocacy Education**

Ms. O'Grady briefed the Benchers on the issues considered by the Advocacy Education Working Group in assisting the Lawyer Education Advisory Committee to meet Strategy 3-3 of the Law

Society's Strategic Plan for 2009-2011. The objective of Strategy 3-3 is to *develop and implement initiatives to improve advocacy skills for lawyers.*

Ms. O'Grady referred to the Advisory Committee's report (page 10013 of the meeting materials) for a statement of the Working Group's recommendations:

**Recommendation 1**

That the Law Society endorse and encourage exploration of the establishment of an advocacy organization for BC lawyers with a mandate similar to Ontario's Advocates' Society

**Recommendation 2**

That the Law Society endorse the development of an online advocacy skills training "toolkit" as a consolidated resource and guide for supporting and enhancing the oral advocacy skills and performance of BC lawyers, and that Courthouse Libraries BC and the Continuing Legal Education Society of BC be approached to explore developing this initiative

**Recommendation 3**

That the Law Society expand the promotion of its CPD mentoring program, including the focus on advocacy skills

**Recommendation 4**

That the Law Society approach the Access Pro Bono Society of BC to discuss the feasibility of Access Pro Bono introducing a pro bono civil duty counsel program in Small Claims Court

**Recommendation 5**

That the Law Society encourage the development of a province-wide roster of senior counsel to be available by telephone to assist inexperienced lawyers with advocacy basics during a trial

**Recommendation 6**

That the Law Society contact the Crown and the Provincial Court judiciary to discuss their re-introducing the Crown Counsel advocacy training program

**Recommendation 7**

That the Law Society implement a communication strategy to encourage law firms and senior lawyers to "take a junior to court"

Ms. O'Grady reported that the Lawyer Education Advisory Committee supports all of the recommendations. She noted that the recommendations anticipate follow-up action by

Committee members and staff, but do not call for Law Society expenditure of funds or additional staffing resources.

In the ensuing discussion a number of questions were raised about Recommendation 1, relating to the nature and extent of any gap in the advocacy practice support presently provided to BC lawyers by existing organizations. Ms O'Grady advised that the Advisory Committee will re-consider Recommendation 1.

Ms. O'Grady moved (seconded by Professor Blom) that Recommendations 2 – 7 be approved by the Benchers for implementation.

The motion was carried.

#### **b. Professionalism Education**

Ms. O'Grady briefed the Benchers on the issues considered by the Professionalism Education Working Group in assisting the Lawyer Education Advisory Committee to meet Strategy 3-2 of the Law Society's Strategic Plan for 2009-2011. The objective of Strategy 3-3 is to *develop and implement initiatives to more effectively educate lawyers on the topic of professionalism*. Ms. O'Grady referred the Benchers to page 10017 of the meeting materials for the recommendations of the Working Group:

##### **Recommendation 1**

That the Law Society provide the Proposed Content Guideline and the sample resources template on undertakings, together with information on how they might be employed, to the Continuing Legal Education Society of BC, the Trial Lawyers' Association of BC, the BC branch of the Canadian Bar Association, and BC's law schools;

##### **Recommendation 2**

That six months later the Law Society meet with the Continuing Legal Education Society of BC, the Trial Lawyers' Association of BC, the BC branch of the Canadian Bar Association, and BC's law schools, and again periodically, to evaluate how effective this approach is in promoting the development of courses and resources in professionalism and ethics, and to collaborate strategically on next steps.

Ms. O'Grady reported that the Lawyer Education Advisory Committee supports both recommendations. She noted that the recommendations anticipate follow-up action by

Committee members and staff, but do not call for Law Society expenditure of funds or additional staffing resources.

Ms. O'Grady moved (seconded by Mr. Meisner) that Recommendations 1 and 2 be approved by the Benchers for implementation.

The motion was carried.

### **11. Adoption of Criteria for Composition & Operation of Hearing Panels**

Mr. Ridgway reviewed the background of this matter, reminding the Benchers that in July 2010 they adopted a resolution directing that the Law Society move to a three-pool system of selecting hearing panels, with current Benchers, non-Bencher lawyers and non-lawyers on each panel (subject to exception only in extraordinary circumstances). Mr. Ridgway noted that the resolution could not be implemented immediately because the latter two categories are subject to new criteria to be established by the Benchers. He also noted that the Executive Committee has developed recommendations for the Benchers in that regard, summarized in a draft resolution at page 11015 of the meeting materials, as follows:

## **SUGGESTED RESOLUTION -**

### **HEARING PANEL POOL**

#### ***BE IT RESOLVED***

1. *to establish a pool of individuals who may be appointed to hearing panels;*
2. *to empower the Executive Committee to name individuals to the hearing panel pool on the advice of a Subcommittee that is established for that purpose and that includes non-lawyer representation;*
3. *that, in order to be named to the hearing panel pool, an individual must*
  - *not be a current employee of or contractor to the Society;*
  - *not be elected to political office or a declared candidate for office or nomination at the federal or provincial level of government;*
4. *that, in order to be named to the hearing panel pool, a lawyer must*
  - *be a member in good standing of the Society;*
  - *have been a member in good standing of the Society for at least seven years;*
  - *not be the subject of a complaint investigation or a claim under Part B of the professional liability insurance policy;*
  - *not act for any party in outstanding litigation involving the Society;*
  - *not be a current director, or the equivalent, of a lawyer advocacy group;*
5. *that, in order to be named to the hearing panel pool, a non-lawyer must*
  - *submit to a criminal record check;*
  - *not be the subject of a professional regulatory investigation or professional discipline within the last five years;*
  - *not be a complainant in an outstanding complaint about a lawyer in British Columbia;*
6. *to adopt as guidelines for appointments to the hearing panel pool:*
  - *appointment of all individuals to the hearing panel pool should*
    - *ensure appropriate representation of geographical areas of British Columbia;*
    - *promote gender equity; and*
    - *consider the representation of all cultural groups*

- *appointments of lawyers to the hearing panel pool should*
  - *ensure the appointment of both barristers and solicitors to the hearing panel pool, and*
  - *consider the appointment of lawyers who practise in a variety of areas of practice;*
- 7. *that individuals be named to the hearing panel pool for a term of three years and be eligible for re-appointment for one further three-year appointment;*
- 8. *that appropriate training courses be made available to all individuals named to the hearing panel pool;*
- 9. *that individuals named to the hearing panel pool be required to complete a basic course in administrative justice before being appointed to a hearing panel;*
- 10. *that all lawyer Benchers be required to complete a hearing skills workshop before chairing a hearing panel;*
- 11. *that all adjudicators be required to complete a decision-writing workshop before writing a majority decision on behalf of a tribunal;*
- 12. *that all adjudicators be encouraged to complete either or both of the hearing skills and decision-writing workshops, even if not required to do so;*
- 13. *that all members of hearing panels be reimbursed for reasonable expenses; and*
- 14. *that non-lawyer members of hearing panels be paid an honorarium on the same basis as is currently available to Appointed Benchers.*

Mr. Hume moved (seconded by Mr. LeRose) that the said draft resolution be adopted.

In their ensuing review of the provisions of draft resolution, the Benchers addressed the final bullet of Criterion 4:

***4. that, in order to be named to the hearing panel pool, a lawyer must***

...

- *not be a current director, or the equivalent, of a lawyer advocacy group;*

The key issues raised in the ensuing discussion were:

- the intended scope of “*director, or the equivalent*”
  - there was consensus that the scope of the limitation should be limited to those in positions of “directing mind” leadership responsibility and authority
- public service and public interest implications of including Criterion 4
- public confidence and public trust implications of removing Criterion 4

Mr. Brun moved (seconded by Ms. Sas) to remove Criterion 4 from the draft resolution.

The motion was carried.

The Benchers also addressed Criterion 5:

***5. that, in order to be named to the hearing panel pool, a non-lawyer must***

- *submit to a criminal record check;*
- *not be the subject of a professional regulatory investigation or professional discipline within the last five years;*
- *not be a complainant in an outstanding complaint about a lawyer in British Columbia;*

Following discussion, the Benchers accepted Mr. Hume's proposal that the draft resolution forming the subject of the main motion be revised by way of friendly amendment, such that the second bullet of Criterion 5 reads:

- *submit his or her professional regulatory or discipline record for the past five years to the Law Society for verification and review;*

The main motion was carried as amended.

**OTHER MATTERS (FOR DISCUSSION AND/OR DECISION)**

**12. Act & Rules Subcommittee: Rule 4-43 (Mirror Imaging Rules)**

Mr. Getz referred the Benchers to Mr. Hoskins's memorandum at page 12000 of the meeting materials for background to the Act and Rules Subcommittee's proposed Rules amendments and protocol "...to ensure that the Law Society continues to be able to do full investigations of a lawyer's practice in response to an order under Rule 4-43 [*Investigation of books and accounts*] while protecting the privacy interest of the lawyer or others in material not relevant to the investigation that might be caught in a forensic copying of the lawyer's computer records."

Mr. Getz moved (seconded by Mr. Hume) that the draft resolution and attached protocol set out at pages 12039-12042 of the meeting materials (Appendix 2 to these minutes) be adopted.

The motion was carried by a two-thirds majority of the Benchers present.

**13. Proposed Revised Bencher Governance Policy H-5 – Accepting Appointments to Boards or Committees of Other Organizations**

Ms. Lindsay briefed the Benchers on the background for the President's request that the Independence and Self-Governance Committee review and clarify the existing Law Society governance policy on Benchers accepting appointment to boards or committees of other organizations (Policy H5 of the Bencher Code of Conduct, in the Bencher Governance Policies).

Ms. Lindsay moved (seconded by Mr. Van Ommen) that the proposed revised version of Policy H5 set out at page 13006 of the meeting materials (Appendix 3 to these minutes) be adopted for immediate implementation.

The key issues raised in the ensuing discussion were:

- the importance of avoiding both the fact and the appearance of bias and conflict to maintain public confidence in the legal profession and its independent regulation by the Law Society
- the relevance to the Law Society of the current controversy surrounding the overlapping memberships of the BC Federation of Teachers and the BC College of Teachers and related concerns regarding whether the College is acting in the public interest
- whether the proposed revised version of Policy H5 may be *ultra vires* of the *Legal Profession Act*
- whether the scope of the operative provisions of the proposed revised version of Policy H5 is too vague or broad (i.e. ... *Benchers must not accept appointment or seek election to a board of directors or a committee of an organization the objective, purpose or vision of which is, or may reasonably be perceived to be, in conflict with the objectives of the Law Society.*)
- whether the approach and wording of Policy H5 should be guided by the Benchers' own sense of the best interests of the public, even if the resulting media and public response may lead to dissipation of public confidence in the legal profession and its independent regulation by the Law Society

The Benchers accepted Ms. Lindsay's request that the operative provision of the proposed revised version of Policy H5 be altered by friendly amendment to read: ... *Benchers must not accept appointment or seek election to a board of directors or an executive committee of an organization the objective, purpose or vision of which is, or may reasonably be perceived to be, in conflict with the objectives of the Law Society.*

The motion was defeated.

#### **14. Proposed LSBC Policy on ICBC Electronic Billing and Recommendations for Considering Amendments to the Law Society Rules and the *Legal Profession Act***

The Benchers approved the proposed Law Society policy by consent (see page 3 of the minutes).

#### **15. Dissolving the Unbundling Legal Services Task Force**

This matter was put over to the January meeting, in light of the absence of the task force's chair, Ms. Hickman.

#### **16. Election of Appointed Bencher Member of 2011 Executive Committee**

Mr. Acheson announced that Peter Lloyd, FCA has been acclaimed as the appointed Benchers' member of the 2011 Executive Committee.

***IN CAMERA SESSION***

The Benchers discussed other matters *in camera*.

2010-12-20/WKM

The Law Society  
of British Columbia



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

A Report to the Benchers by

Timothy E. McGee

December 10, 2010

## **Introduction**

This is my last report to the Benchers in 2010 and I am pleased to provide updates on a variety of items that we have been working on throughout the year, as well as to preview certain items that will be on the agenda in 2011.

On behalf of management and all staff, I would also like to take this opportunity to thank our outgoing President Glen Ridgway, QC for his efforts and support during the year. I think I speak for everyone when I say it has been a pleasure working with Glen and we have benefited greatly from his wisdom, commitment and, in no small measure, his sense of humour and fair play. I am looking forward to the Benchers' Welcome/Farewell Dinner on January 28, 2011 to expand on these sentiments, and others.

### **1. Core Process Review – Report of Findings**

I am very pleased to report that because of the outstanding efforts of Kensi Gounden, management, and the participation of virtually all of our staff, we are able to present to the Benchers and staff the “Core Process Review: Report of Findings” on schedule. This is the culmination of the largest internal review and assessment project the Law Society has undertaken. Work began in January of this year and literally hundreds of staff hours were invested in the three main phases of the project.

I encourage you to read the report, which has been distributed separately to the Benchers in the meeting package for this month. We will have an opportunity to discuss it at the meeting and to review next steps.

Change management projects like the Core Process Review can fail for a number of reasons. The most common is that although there is a lot of fanfare at the launch of the project, there is a lack of follow-up and broad engagement among staff when the real work begins. We have resoundingly overcome that risk. The staff at LSBC has risen to the occasion and we have a comprehensive, credible report. The second most common failing is that organizations do not convert the findings into a plan of action. In other words, decisions need to be made about how to implement the recommendations. The report indicates that work will commence right away so that the Benchers can make decisions on the major transformational recommendations, such as a new information management system, in the spring of 2011. In the meantime, improvements to internal processes within the control of managers in their respective groups will be implemented right way.

## **2. 2010 Employee Survey – Sneak Preview**

The 2010 Employee Survey marks the fifth consecutive year that we have surveyed all staff for the views in the areas described as Communication, Our Culture, Leadership, My Manager, My Work Unit, and Employee Satisfaction. The survey also asks employees to indicate the factors that most motivate them to stay at the Law Society. Management use the results of the annual survey to understand better how employees are engaged in the affairs of the Law Society, and to help create action plans to build on our strengths and to address areas of concern.

As we have done in past years, the Benchers will receive a presentation from TWI Surveys Inc., the administrators of the survey, at the Bencher meeting in January and will have an opportunity to discuss the results with management and TWI at that meeting.

By way of a sneak preview however, I am pleased to say that the overall survey results for 2010 are modestly more positive year over year with gains in virtually every category. In particular, our investment in leadership training for managers and skills training for staff seems to be paying off in the satisfaction levels on a number of fronts. As always, there continue to be some areas that lag others, and some that will require greater focus in 2011.

The ultimate purpose of the survey is to give everyone a voice on matters that are integral to a strong, well functioning organization. In this regard, I am most pleased that the participation rate in the 2010 Survey was 83%, the highest rate ever, an 11% increase year over year and over 20% higher than 2006, the first survey year. This willingness to participate in the survey underscores the importance of management's responsibility to use the results to help make the Law Society an even better place to work.

## **3. 2009 – 2011 Strategic Plan Annual Review - Update**

The Bencher package for this meeting includes a report on the process for conducting the annual review of the 2009 - 2011 Strategic Plan. This is essentially a 2-stage process. At this meeting, the Benchers will have an opportunity to assess the progress that has been made on current strategic initiatives, and to consider the range of topics that the four Advisory Committees have outlined in their year-end reports. The second stage of the review is scheduled for the Bencher meeting in January when decisions will be taken on what modifications, if any, should be made to the current plan. As 2011 is the final year of the current 3-year strategic plan, in 2011 the Benchers will also be involved with the major task of restating the Law Society's strategic plan for the 2012 – 2015 period. This important work will commence next spring.

#### **4. Key Performance Measures - Update**

The Law Society measures the success of its core public interest operations based on a set of Key Performance Measures (KPMs) which were adopted by the Benchers in 2008. Compiling the results of the KPMs is an ongoing process throughout the year in some areas, such as the regular surveying of complainants on their satisfaction levels. In other areas, we require year-end information to determine results. We are working towards presenting the Audit Committee (the Bencher Committee charged with assisting the Benchers in overseeing the KPMs) with the final 2010 KPM results in January with a view to presenting those results to the Benchers at their meeting in March.

#### **5. Other Items of Interest**

##### ***Performance Management for 2010***

We have completed the annual performance review process for all staff at the Law Society. The process involves all staff preparing a self-evaluation of their performance during the year and meeting with their respective managers to discuss accomplishments against stated goals and objectives. That conversation also helps managers and staff identify where things worked or did not work during the year, and agree on the priorities for 2011. Employees are also eligible for bonuses as part of our Employee Recognition Program, based upon the criteria set out in the program, which is designed to recognize outstanding contributions in the year.

##### ***New Practice Advisor***

I am pleased to report that after a rigorous search and interviews with a number of qualified candidates, we have hired Warren Wilson, QC as a new Practice Advisor for the Law Society. Warren will be starting in January and he will work on a part time basis to fill the service gap resulting from Jack Olsen moving to a part time basis. We are very excited to have Warren on board and we are confident that his considerable experience, expertise and familiarity with Law Society operations will stand us all in good stead.

##### ***QC for Carol Hickman***

On behalf of management and staff, I would like to take this opportunity to congratulate Carol Hickman on her recent QC designation. Carol has made many significant contributions to the work of the Law Society and we know she has a very busy practice as well. Congratulations Carol for this well deserved honour.

***LSBC 2010 United Way Campaign***

In the words of the United Way Vancouver campaign officials, the Law Society has always “punched above its weight” when it comes to giving to this very worthy cause. I am proud to say that this year was no exception. Staff of the Law Society raised over \$38,000 through donations and special events, an increase of more than 25% over last year. Special thanks go to our Co-Chairs Deborah Armour and Katherine Potter and to the enthusiastic team of staff volunteers at the Law Society who worked so hard to make this possible.

Timothy E. McGee  
Chief Executive Officer

## FORENSIC COPYING

### SUGGESTED RESOLUTION:

*BE IT RESOLVED to rescind Rule 4-43 and substitute the following:*

#### Investigation of books and accounts

**4-43** (1) If the chair of the Discipline Committee reasonably 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, including, if considered desirable in the opinion of the chair, all electronic records in the possession of the lawyer or former lawyer.

- (1.1) An order under this Rule must provide for
- (a) the protection of the privacy interests of any person in electronic records produced or copied under this Rule that are not related to the matter under investigation, and
  - (b) a method of resolving disputes related to an order made under this Rule.
- (2) When an order is made under subrule (1),
- (a) the Executive Director must designate one or more persons to conduct the investigation, and
  - (b) the lawyer or former lawyer concerned must
    - (i) immediately produce and permit the copying of all files, vouchers, records, accounts, books and any other evidence regardless of the form in which they are kept,
    - (ii) provide any explanations that the persons designated under paragraph (a) require for the purpose of the investigation,
    - (iii) assist the persons designated under paragraph (a) to access, in a comprehensible form, records in the lawyer's possession or control that may contain information related to the lawyer's practice by providing all information necessary for that purpose, including but not limited to
      - (A) passwords, and
      - (B) encryption keys, and
    - (iv) not alter, delete, destroy, remove or otherwise interfere with any book, record or account within the scope of the investigation without the written consent of the Executive Director.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

**Attachment 1**  
**[policy/process document to attach to 4-43 orders]**

This document forms part of the 4-43 order.

This 4-43 order permits the Law Society investigator to make forensic copies of records regardless of the storage medium. This part of the 4-43 order sets out the procedure the Law Society will take to ensure that it is not accessing personal information that is not relevant to the investigation, or information over which you may properly assert privilege, while ensuring that relevant records are preserved and are available to the Law Society for the purpose of its investigation.

Pursuant to this 4-43 order the investigator may copy all files and records. If the investigator needs to make a forensic copy of an electronic record, the Law Society uses the following process to balance your reasonable expectation of privacy with the Law Society's authority to copy and inspect a lawyer's records.

If the investigator needs to copy electronic records, two forensic copies will be made. One copy will be preserved to reflect the state of your records at the time they were copied and the other copy will be used as a working copy from which to abstract information required for the investigation.

You are encouraged to instruct counsel to assist in working through this process.

**A. *The investigative process for forensic copying***

1. A forensic expert will make the forensic copies at the time the order is presented, or as soon thereafter as is practicable.
2. The forensic expert will be the custodian of the forensic copies, save as otherwise agreed to by you and Law Society staff or as detailed below.
3. Law Society staff will attempt to come to an agreement with you as to the terms of Law Society's access to content of the forensic copies, and the retention of the forensic copies.
4. If an agreement cannot be reached regarding access to the content of the forensic copies and/or retention issues, an independent supervising solicitor will be used to resolve the dispute.
5. The independent supervising solicitor will be chosen in one of the following ways:
  - a. Law Society staff will provide you a list of Law Society approved independent supervising solicitors for you to choose from;
  - b. If you do not agree to any of the independent supervising solicitors approved by the Law Society, the President of the Law Society may appoint an independent supervising solicitor.
6. If an independent supervising solicitor is appointed, he or she may have custody of the forensic copies as required.

7. If you are unable to come to an agreement with Law Society staff regarding the scope of access to a record, you and your counsel (if any) will be advised in writing of the search parameters the Law Society will submit to the independent supervising solicitor.
8. You will have [#] days from delivery [*other mode of service?*] of the search parameters to provide the Law Society and the independent supervising solicitor your written list of any proposed amendments to the search parameters.
9. The independent supervising solicitor will consider the Law Society's search parameters as well as any written submissions you may have regarding the scope of the search parameters. The independent supervising solicitor will then make a determination as to what information the Law Society may access, and will communicate that decision to you and the Law Society in writing.
10. You and the Law Society have [#] days to dispute the findings of the independent supervising solicitor. If either you or the Law Society disputes the decision of the independent supervising solicitor, either party may seek a review as to jurisdiction and on the merits by a retired judge who has been appointed for this function by the Law Society.
11. A retired judge who reviews a decision of an independent supervising solicitor may confirm or alter the decision of the independent supervising solicitor regarding what content may be accessed.
12. The Law Society will be provided a copy of the information it is allowed to access, subject to the timing of the processes set out above, but will not be provided a copy of the information the independent supervising solicitor, or retired judge on appeal, deems the Law Society is not allowed to access.
13. If the investigation reveals that further search parameters are required, the process in steps 3-12 will be repeated as required.

*B. Retention of the forensic copies*

Unless you and Law Society staff come to an alternate agreement regarding the retention of the forensic copies, the following apply:

1. If the investigation results in a disposition by the Benchers you have 60 days from the day on which the final appeal period from disposition expires to make a request in writing to the Law Society for the return of the forensic copies. In circumstances where you fail to make the application in time the Law Society may destroy the forensic copies or return them to you as it sees fit;
2. If the investigation is closed you have 60 days from the date of notice from the Law Society that the investigation is closed to make a request in writing to the Law Society for the return of the forensic copies. In circumstances where you fail to make the application in time the Law Society may destroy the forensic copies or return them to you as it sees fit;

3. If you voluntarily resign, retire, cease practicing, or go on non-practising status prior to conclusion of the investigation or disposition of any proceeding resulting from the investigation, the Law Society will advise you that the Society will maintain the forensic copies as the Law Society may require them in the event you reapply for admission.

Bencher Governance Policies – Part H Bencher Code of Conduct

*(Proposed Revised Version)*

**5. Accepting appointment to boards or committees of other organizations**

The object and duty of the Society is to uphold and protect the public interest in the administration of justice. From time to time, a Bencher is asked to join, or run for election to, the board of directors or a committee of an organization whose objective, purpose or vision, in whole or in part, is to represent, lobby for or otherwise promote the interests of lawyers. Such organizations might, or might be perceived to, take a position that is contrary to or conflicts with the object and duty of the Society or decisions of the Benchers. The Benchers govern and administer the affairs of the Society in the public interest and it is important for the promotion, protection, interest and welfare of the Society that the Benchers be, and be seen to be, independent of any organization described above.

Accordingly, Benchers must not accept appointment or seek election to a board of directors or a committee of an organization the objective, purpose or vision of which is, or may reasonably be perceived to be, in conflict with the objectives of the Law Society. For the purposes of clarification, organizations whose objective, purpose or vision is to serve or represent, in whole or in part, the interests of lawyers will be organizations to whom this policy is addressed. The Benchers have concluded that such organizations include, but are not limited to, the provincial and national branches of the Canadian Bar Association, the British Columbia Crown Counsel Association, the Canadian Defence Lawyers, and the Trial Lawyers' Association of British Columbia.

If a Bencher who is considering seeking election, or an appointment, to any organization has any doubt about whether the organization falls within the terms of this policy, the Bencher is urged to bring the question to the attention of the Executive Committee for determination.