

# THE LAW SOCIETY OF BRITISH COLUMBIA

## MINUTES

- MEETING:** Benchers
- DATE:** Saturday, June 18, 2011
- PRESENT:**
- |  |   |
|--|---|
| Gavin Hume, QC, President                        | David Loukidelis, QC, Deputy Attorney General of BC |
| Bruce LeRose, QC, 1 <sup>st</sup> Vice-President | Benjimen Meisner                                    |
| Art Vertlieb, QC, 2 <sup>nd</sup> Vice-President | Nancy Merrill                                       |
| Haydn Acheson                                    | David Mossop, QC                                    |
| Rita Andreone                                    | Suzette Narbonne                                    |
| Satwinder Bains                                  | Thelma O'Grady                                      |
| Joost Blom, QC                                   | Lee Ongman  |
| Patricia Bond                                    | Gregory Petrisor                                    |
| Robert Brun, QC                                  | David Renwick, QC                                   |
| E. David Crossin, QC                             | Claude Richmond                                     |
| Tom Fellhauer                                    | Alan Ross   |
| Leon Getz, QC                                    | Catherine Sas, QC                                   |
| Carol Hickman, QC                                | Richard Stewart, QC                                 |
| Stacy Kuiack                                     | Herman Van Ommen                                    |
| Jan Lindsay, QC                                  | Kenneth Walker                                      |
| Peter Lloyd, FCA                                 |   |
- ABSENT:** Kathryn Berge, QC
- STAFF PRESENT:**
- |                     |                 |
|---------------------|-----------------|
| Deborah Armour      | Jeanette McPhee |
| Jeffrey Hoskins, QC | Alan Treleaven  |
| Michael Lucas       | Adam Whitcombe  |
| Bill McIntosh       |                 |
- GUESTS:**
- The Honourable Barry Penner, QC, Attorney General of BC  
Allan Fineblit, QC, Chief Executive Officer, Law Society of MB  
Jonathan Herman, Chief Executive Officer, Federation of Law Societies of Canada  
John Hunter, QC, Federation of Law Societies of Canada Council Representative  
Ronald MacDonald, QC, President, Federation of Law Societies of Canada  
Darrel Pink, Executive Director, Nova Scotia Barristers' Society  
Stephen Raby, QC, President-elect, Law Society of AB  
Don Thompson, QC, Executive Director, Law Society of AB  
Frederica Wilson, Director, Policy and Public Affairs, Federation of Law Societies of Canada

Mr. Hume welcomed the Honourable Barry Penner, QC, Attorney General of BC, the representatives of the Federation of Law Societies, the Law Societies of Alberta., Manitoba, Saskatchewan and Upper Canada, and the Nova Scotia Barristers' Society.

Mr. Penner extended greetings on behalf of the province and thanked the Benchers for their hospitality. Mr. Penner reported that 15 bills were passed in the Spring 2011 legislative session, and advised that planning for the fall 2011 legislative session is well advanced.

Mr. Penner noted that the proposed new *Family Law Act* is a key government priority for the fall session, and aligns with various Law Society initiatives to enhance access to legal services.

## **CONSENT AGENDA**

### **1. Minutes**

The minutes of the meeting held on May 13, 2011 were approved as circulated.

### **Consent Resolutions**

The following resolutions were passed unanimously and by consent.

### **2. Act & Rules Subcommittee: Proposed Amendments**

#### **a. Rules Governing Appointments to Regulatory Committees (allowing non-lawyer, non-Bencher appointments)**

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

1. In Rule 2-24:

(a) By rescinding subrule (1) and substituting the following:

(1) For each calendar year, the President must appoint a Credentials Committee, including a chair and vice chair, both of whom must be Benchers.

(b) In subrule (3), by striking the phrase “the President may appoint a lawyer or Bencher” and substituting the phrase “the President may appoint a person”.

2. In Rule 3-10:

(a) By rescinding subrule (1) and substituting the following:

(1) For each calendar year, the President must appoint a Practice Standards Committee, including a chair and vice chair, both of whom must be Benchers.

(b) In subrule (3), by striking the phrase “the President may appoint a lawyer or Bencher” and substituting the phrase “the President may appoint a person”.

3. In Rule 3-29:

(a) By rescinding subrule (1) and substituting the following:

(1) For each calendar year, the President must appoint a Special Compensation Fund Committee, including a chair and vice chair, both of whom must be Benchers.

- (b) In subrule (3), by striking the phrase “the President may appoint a lawyer or Bencher” and substituting the phrase “the President may appoint a person”.
- 4. In Rule 3-34(6), by striking the phrase “All Benchers and lawyers are eligible” and substituting the phrase “All persons are eligible”.
- 5. In Rule 4-2:
  - (a) By rescinding subrule (1) and substituting the following:
    - (1) For each calendar year, the President must appoint a Discipline Committee, including a chair and vice chair, both of whom must be Benchers.
  - (b) In subrule (3), by striking the phrase “the President may appoint a lawyer or Bencher” and substituting the phrase “the President may appoint a person”.

**b. Rule 1-39 (Executive Committee Elections)**

*BE IT RESOLVED* to rescind Rule 1-39(11)(b) and substitute the following:

- (b) a ballot must be rejected if it contains votes for more candidates than there are positions to be filled, and

**3. Professional Conduct Handbook: Amendments to Chapter 4, Rule 6 (Fraudulent Conveyances)**

*BE IT RESOLVED* to amend Chapter 4, Rule 6 of the Professional Conduct Handbook by striking the phrase “dishonesty, crime or fraud, including a fraudulent conveyance, preference or settlement.” and substituting “dishonesty, crime or fraud.”

**REGULAR AGENDA – for Discussion and Decision**

**4. President’s Report**

Mr. Hume referred the Benchers to his written report — circulated by email prior to the meeting — for an outline of his activities as President since his last report, and elaborated on a number of matters, including those outlined below.

**a. May 18, 2011 (Law Society Legislative Amendments Package Update)**

Mr. Hume reported that he and Mr. McGee recently met with John Les, Parliamentary Secretary to the Premier for a productive discussion of the Law Society’s pending package of requested amendments to the *Legal Profession Act*.

**b. May 19, 2011 (Access to Justice Forum)**

Mr. Hume reported on his attendance at a weekly meeting of the Access to Justice Forum Steering Committee. He noted that a subcommittee has been struck to develop content for the forum to be held this fall: the Law Society’s Michael Lucas (Manager, Policy & Legal Services) and Doug Munro (Staff Lawyer) have been appointed to the subcommittee.

**c. May 20, 2011 (Regional Bar Admission and Call Ceremony)**

Mr. Hume reported on his attendance at a bar admission and call ceremony in New Hazelton, BC with Bencher Kathryn Berge, QC, Kamloops, appointed Bencher Benjimen Meisner, Life appointed Bencher Patrick Kelly and Life Bencher Ronald Toews, QC.

**d. June 6-7, 2011 (Federation of Law Societies of Canada)**

Mr. Hume reported on his attendance in Ottawa at a Federation Council meeting (June 6) and at a Federation Model Code of Conduct Standing Committee.

**5. CEO's Report**

In Mr. McGee's absence, Mr. Hume provided highlights of the CEO's monthly written report to the Benchers (Appendix 1 to these minutes), including the following matters:

- a. 2012 Budget and Fees
- b. 2010 Annual Review
- c. Recruiting for New Hearing Panel Pools
- d. Core Process Review Recommendations Implementation - Electronic Documents and Records Management
- e. Communications and Media
- f. Policy for Law Society Participation in Charity Events
- g. Thank You – PLTC Teachers

**6. Report on Outstanding Hearing and Review Reports**

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

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

**7. Discipline Guidelines Task Force Recommendations**

Mr. Van Ommen, chair of the Discipline Guidelines Task Force, briefed the Committee on the Task Force's Interim Report (at page 5000 of the meeting materials), including the *Conduct Assessment and Disposition Guidelines* (the Guidelines), prepared for recommendation to the Benchers. Mr. Van Ommen advised that the Task Force's proposed Guidelines are being issued following a significant consultation process. He noted that, rather than advocating a rigid association of categories of misconduct with specific disciplinary responses, the Guidelines propose a principle-based approach, taking account of relevant circumstances while evaluating each case on its own merits. Mr. Van Ommen noted in particular the inclusion of the following principles:

- the application of progressive discipline where appropriate

- the idea that it may be appropriate for a lawyer to receive more significant disciplinary responses if the lawyer's conduct results in a series of referrals to the discipline committee
  - i.e. conduct meeting / conduct review / citation
- the concept of public interest paramountcy
  - the Discipline Committee's decisions should be made in the public interest
  - where a discipline violation can be proven, any measure less than the issuance of a citation must be consistent with the public interest
- the adoption of a citation threshold taking into account evidence and proof
  - is there a reasonable prospect that the lawyer would receive an adverse determination following a hearing?
  - Law Society staff will focus on the availability and admissibility of potential evidence throughout the conduct of the file

Mr. Van Ommen thanked Staff Lawyer Lance Cooke for his excellent work in supporting the task force's deliberations and leading the drafting of its report. Mr. Van Ommen also acknowledged the valuable contributions of the members of the task force: Bencher David Crossin, QC (2011), Past-President Anna Fung, QC (2010-2011), appointed Bencher Stacy Kuiack (2010-2011) and Past-President John Hunter, QC (2010).

Mr. Van Ommen moved (seconded by Mr. Crossin) that the Benchers accept the Interim Report of the Discipline Guidelines Task Force and adopt the *Conduct Assessment and Disposition Guidelines* contained therein.

The key points made in the ensuing discussion were:

- the Guidelines should be implemented as soon as practically possible and then reviewed in a couple of years
- future iterations of the Guidelines should address the interplay of the Discipline and Practice Standards Committees and their protocols
- the Guidelines should be communicated to the profession and to the public

The motion was carried.

Mr. Crossin noted that the task force's report and guidelines reflect the synthesis of wide-ranging and valuable input from task force members and others, made possible by Mr. Van Ommen's leadership as task force chair.

Mr. Van Ommen moved (seconded by Mr. Kuiack) that the Discipline Guidelines Task Force be dissolved.

The motion was carried.

**OTHER MATTERS (FOR DISCUSSION AND/OR DECISION)****8. Act & Rules Subcommittee: Proposed Amendments to Rule 3-5 (Investigation of Complaints)**

Mr. Getz briefed the Benchers on proposed amendments to Rule 3-5, referring them to Mr. Hoskins's memorandum (at page 8000 of the meeting materials) for explanation of the purpose and intended result of the proposed amendments to the rules governing investigations:

- requiring lawyers to cooperate with a Law Society investigation
- clarifying that investigations may be conducted by means other than the exchange of written correspondence
- enabling investigators to require lawyers to answer questions and produce records and to enter lawyers' offices to further the investigation
- expressly require lawyers to provide information and records that are privileged or confidential to Law Society investigators
- curing some anomalies and inadequacies in the current rule

Ms. Armour advised that the proposed amendments to the Rules dovetail well with the purpose and effect of the *Conduct Assessment and Disposition Guidelines*: making investigations more robust and fair, and clarifying the Law Society's current investigative authority. Ms. Armour also noted that the proposed Rules amendments comprise a subset of proposed amendments to the *Legal Profession Act*, which were submitted to the provincial government last year and which the Society understands are unlikely to come before the Legislature until 2012.

Mr. Getz moved (seconded by Ms. Andreone) that the Benchers adopt the suggested resolution set out at pages 8016-8017 of the meeting materials (Appendix 2 to these minutes).

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

**9. Election of Benchers' Nominee for 2012 Second Vice-President: Candidates' Entry Deadline**

Mr. Hume reported that to date Jan Lindsay, QC is the sole Bencher to have declared her candidacy for election as the Benchers' nominee for 2012 Second Vice-President-elect. Mr. Hume then confirmed that in the absence of additional candidates, a motion to declare Ms. Lindsay's acclamation was in order.

Mr. LeRose moved (seconded by Ms. O'Grady) that Westminster County Bencher Jan Lindsay, QC be acclaimed as the Benchers' nominee for 2012 Second Vice-President-elect, to be presented as such at the Law Society's 2011 Annual General Meeting.

The motion was carried.

**FOR INFORMATION ONLY****10. Federation of Law Societies of Canada (FLSC) Reports**

- a. FLSC 2011 Update

CEO Jonathan Herman presented the Benchers with an overview of FLSC's structure, noting that as a creation of its member law societies, the Federation serves as their collective branch office and exists at their pleasure. Mr. Herman also noted the strong contributions of the Law Society and its representatives to the leadership, governance and policy work of the Federation.

President Ronald MacDonald, QC also acknowledged the valued contributions of the Federation's member societies and their representatives, thanking Mr. Hume in particular for his contributions to the implementation of the Model Code of Conduct. Mr. MacDonald thanked the Law Society for its hospitality and congratulated the Benchers and staff on the value of yesterday's policy workshop (*The Future of Legal Regulation in British Columbia*), describing the session as demonstration of the potential for growth in Canadian legal regulation.

Mr. MacDonald outlined the Federation's current priorities as including:

- development of national standards for admission of new lawyers, accreditation of foreign-trained lawyers, Common law degrees, and discipline of practising lawyers
- enhanced national access to legal services
- completion of a major reorganization of CanLII
- maintaining active liaison with the international legal community (particularly the International Bar Association) on behalf of Canadian law societies

Mr. MacDonald closed by describing the Federation as a legal microcosm of Canada itself: a voluntary, diverse, commonality, coming together to develop the best possible way to regulate Canadian lawyers in the public interest.

**b. FLSC Council Update**

Mr. Hume briefed the Benchers as the Law Society's member of the Federation Council, reporting on the June 6, 2011 Council meeting in Ottawa.

***IN CAMERA SESSION***

The Benchers discussed other matters *in camera*.

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The Law Society  
of British Columbia



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

A Report to the Benchers by

Timothy E. McGee

June 18, 2011

## **Introduction**

My report this month includes updates on a number of ongoing matters as well as some encouraging news on the media front. I will not be attending the Benchers meeting this month as I will be attending my son Fraser's high school graduation that morning. If you have any questions or comments on anything in my report please don't hesitate to let me know.

### **1. 2012 Budget and Fees**

The Finance Committee, chaired by Bruce LeRose, QC, met three times during May and June to review the proposed 2012 Law Society budgets and member fees. The meetings included a detailed review of the main expense items by category as well as an analysis of management's revenue assumptions and projections for 2012. The Committee also heard from representatives from the Lawyers Assistance Program and Courthouse Libraries BC, two major external organizations that receive sustaining funding through the Law Society. This year the Committee also heard from representatives of the CBABC branch regarding the REAL (Rural Education and Access to Lawyers) program regarding the future plans and funding needs of that program.

The Committee has concluded its work and its recommendations will be presented to the Benchers at the July 2011 Benchers' meeting.

### **2. 2010 Annual Review**

The Law Society's 2010 Annual Review has been distributed electronically to all members and is now available on our website. Electronic copies will be circulated to interested parties, all provincial MLAs, and Law Society staff shortly. In consideration of cost-savings and our environmental footprint, the Annual Review is only available in electronic form this year.

The 2010 Annual Review includes:

- Highlights of the year – the core process review, our event in support of Aboriginal lawyers and law students, new governance policies, and more
- Strategic goals update – 95% of our strategic plan is either complete or in progress
- An evaluation of core regulatory operations – we met or exceeded almost all of the targets in our key performance measures

If you have not yet had an opportunity to read the Annual Review, I encourage you to do so. We welcome your feedback at rcrisanti@lsbc.org.

### **3. Recruiting for New Hearing Panel Pools**

We have received a tremendous response to our advertisements seeking lawyer and non-lawyer applicants to participate in our Hearing Panels. To date, over 130 lawyers have applied, and a subcommittee of the Executive Committee (chaired by our President, Gavin Hume, QC and staffed by Jeff Hoskins, QC, Tribunal and Legislative Counsel) has narrowed down the applicants to between 25 and 30. The number of non-lawyer applications is growing hourly, with nearly 200 applications received as of June 10. The closing date for those interested is June 30.

The subcommittee will meet early in July to finalize the lawyer list and to work out a method for narrowing down the non-lawyer applicants. The subcommittee should have a final recommendation for both lawyer and non-lawyer candidates by the August 25 Executive Committee meeting.

### **4. Core Process Review Recommendations Implementation - Electronic Documents and Records Management**

As I mentioned in my April 2011 CEO report, a major finding of the Core Process Review was that we rely heavily on the creation, storage and retrieval of data, and on the exchange of relevant, accurate information across our various departments, but that we do not have an integrated system for information management to support that need.

In response, we created an internal working group co-chaired by Adam Whitcombe, Chief Information and Planning Officer, and Jeanette McPhee, Chief Financial Officer, which has been charged with developing an information management solution for the Law Society. The first phase of the project is a detailed needs analysis and the working group has retained KPMG to assist with this. KPMG has reviewed more than 1,500 pages of Law Society policies, manuals and technical documents and completed two full days of interviews with managers and staff. Based on the review and interviews, KPMG is preparing a report that will be completed this month, with a final report expected by June 30, 2011. The report is expected to provide an information management analysis along with recommendations regarding solutions and next steps.

Following receipt of the report, senior management will review the recommendations and are expected to move to the second phase of the project, involving identification of solution providers and development of a

detailed implementation plan, in the fall of this year and into 2012. I will continue to keep the Benchers updated on developments as we move forward with this project.

## 5. **Communications and Media**

The Law Society will host its annual Law and the Media workshop on June 22, 2011. This year's workshop will explore the legal implications of social media and other "new" media technology for journalism and will feature panelists that include Kim Bolan, Vancouver Sun reporter; media lawyers Dan Burnett and Robert Anderson, QC; the Honourable Mr. Justice Geoffrey Gaul, BC Supreme Court Judge; and Theresa Lalonde, social media trainer and CBC Radio and TV reporter. For the first time, we will offer the workshop at the Law Society in the Benchers Room and it will be offered to journalists throughout the province via teleconference.

We have been the beneficiaries of positive comments from a number of sources in recent weeks, including a national newspaper editorial, comments from key media personalities and responses to our forays into alternative media (Twitter and RSS feeds). Of particular note is the following article by Mitch Kowalski:

British Columbia's Law Society has always seemed to me to be the most progressive in terms of service to its members and its attitude of making the legal profession function better. Ontario has a great deal to learn from B.C. in this regard.

Now LSBC is calling for non-lawyers to be part of disciplinary and other hearings. Currently in B.C., like other provinces, non-lawyers are appointed to the Law Society's governing body (called Benchers), so this new movement to having non-lawyer non-bencher appointments is quite radical and refreshing.

Good luck B.C.! I look forward to watching the results of this experiment.

Kowalski, Mitch. "Non-lawyers to judge British Columbia lawyers" *Financial Post* 3 June 2011: n. page. Web.

In general, the Law Society has been acknowledged for being progressive, effective and working in the public interest. Some, but not all, of the comments were related to our invitation to the public to apply to our hearing panel pools. This sentiment was enhanced by Gavin Hume, QC's related interviews with CBC Radio, which were very well done.

The Law Society has been recognized for communications excellence by the International Association of Business Communicators for last June's Aboriginal networking event, Inspiring Stories Connecting Future Leaders. Specifically, the award has been given to Dana Bales, Communications Officer, and Susanna Tam, Staff Lawyer, Policy & Legal Services. Congratulations to Dana and Susanna!

## **6. Policy for Law Society Participation in Charity Events**

The Law Society receives numerous requests to participate in charity events throughout the year, and, where the event aligns with the Law Society's mandate and/or strategic goals, we are pleased to support those events by purchasing a table or tickets.

In order to ensure a strong, visible Benchers presence at the charity events that the Law Society supports, we have adopted a new policy for participation. Before purchasing a table or tickets for an event, Diana Papove, Project Coordinator, will canvass the Benchers to see who is available to attend and will only purchase a table if it can be filled. Where only individual tickets to an event are available, Diana will arrange for tickets for those Benchers who have confirmed they can attend the event.

## **7. Thank You – PLTC Teachers**

Thank you to the following Benchers and Life Benchers who taught Professional Responsibility to PLTC on May 27, 2011:

### **Vancouver:**

Anna K. Fung, QC  
Gavin Hume, QC  
David Mossop, QC  
Thelma O'Grady  
Alan Ross  
Gordon Turriff, QC

### **Victoria:**

Richard Margetts, QC  
Richard Stewart, QC

Timothy E. McGee  
Chief Executive Officer

## COMPLAINTS INVESTIGATIONS

### SUGGESTED RESOLUTION:

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

**1. In Rule 3-5:**

**(a) By rescinding subrules (1) to (3) and substituting the following:**

- (1) Subject to subrule (2), the Executive Director may, and on the instruction of the Discipline Committee must, investigate a complaint to determine its validity.
- (2) The Executive Director may decline to investigate a complaint if the Executive Director is satisfied that the complaint
  - (a) is outside the jurisdiction of the Society,
  - (b) is frivolous, vexatious or an abuse of process, or
  - (c) does not allege facts that, if proved, would constitute a discipline violation.
- (3) The Executive Director must deliver to the lawyer who is the subject of a complaint a copy of the complaint or, if that is not practicable, a summary of it.

**(b) By rescinding subrules (6) to (9) and substituting the following:**

- (6) A lawyer must cooperate fully in an investigation under this Division by all available means including, but not limited to, responding fully and substantively, in the form specified by the Executive Director
  - (a) to the complaint, and
  - (b) to all requests made by the Executive Director in the course of an investigation.
- (6.1) When conducting an investigation of a complaint, the Executive Director may
  - (a) require production of files, documents and other records for examination or copying,
  - (b) require a lawyer to
    - (i) attend an interview,
    - (ii) answer questions and provide information relating to matters under investigation, or

- (iii) cause an employee or agent of the lawyer to answer questions and provide information relating to the investigation,
- (c) enter the business premises of a lawyer
  - (i) during business hours, or
  - (ii) at another time by agreement with the lawyer.
- (7) Any written response under subrule (6) must be signed by
  - (a) the lawyer personally, or
  - (b) a director of the law corporation, if the complaint is about a law corporation.
- (8) The Executive Director may deliver to the complainant a copy or a summary of a response received from the lawyer, subject to solicitor and client privilege and confidentiality.
- (10) A lawyer who is required to produce files, documents and other records, provide information or attend an interview under this Rule must comply with the requirement
  - (a) even if the information or files, documents and other records are privileged or confidential, and
  - (b) as soon as practicable and, in any event, by the time and date set by the Executive Director.

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

**Resolution by informal means**

- 3-5.1** The Executive Director may, at any time, attempt to resolve a complaint through mediation or other informal means.

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