



Minutes

Benchers

DATE: Friday, October 21, 2011

PRESENT:

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

David Loukidelis, QC, Deputy
Attorney General of BC, representing
the Attorney General

ABSENT: David Renwick, QC

STAFF PRESENT:

Deborah Armour	Jeanette McPhee
Lance Cooke	Doug Munro
Charlotte Ensminger	Lesley Pritchard
Jeffrey Hoskins, QC	Susanna Tam
Michael Lucas	Alan Treleven
Bill McIntosh	Adam Whitcombe

GUESTS:

Chris Axworthy, QC, Faculty of Law Dean, Thompson Rivers University
Dom Bautista, Executive Director, Law Courts Center
Mark Benton, QC, Executive Director, Legal Services Society
Johanne Blenkin, Executive Director, Courthouse Libraries BC

Kari Boyle, Executive Director, Mediate BC Society
Jay Chalke, QC, Assistant Deputy Minister for Justice Services Branch
Donna Greschner, Faculty of Law Dean, UVIC
Jeremy Hainsworth, Reporter, Lawyers Weekly
Azool Jaffer-Jeraj, President, Trial Lawyers Association of BC
Jamie Maclaren, Executive Director, Access Pro Bono
Sharon Matthews, President, CBABC
Caroline Nevin, Executive Director, CBABC
Wayne Robertson, QC, Executive Director, Law Foundation of BC
Margaret Sasges, Chair, Law Foundation of BC
David Zacks, QC, Chair, Courthouse Libraries BC

CONSENT AGENDA

1. Minutes

The minutes of the meeting held on September 9, 2011 were approved as circulated.

Consent Resolutions

The following resolutions were passed unanimously and by consent.

2. Act & Rules Subcommittee: Conduct Review Subcommittee Report and Proposed Amendments to Rule 4-9

BE IT RESOLVED to amend Rule 4-9(1) by rescinding paragraph (a) and substitute the following:

- (a) prepare a written report of the factual background, the Subcommittee's conclusions and any recommendations, and

3. Act & Rules Subcommittee: Powers of the President and Proposed Rule 1-3(8)

BE IT RESOLVED to amend Rule 1-3 by rescinding subrule (8) and substituting the following:

- (8) In the absence of the President, the powers of the President may be exercised by a Vice-President or another member of the Executive Committee designated by the President.

4. Proposed Policy for Bencher Access to Law Society Regulatory Committees' Meeting Materials and Minutes

BE IT RESOLVED to implement an access protocol that would allow individual Benchers:

access to minutes and agenda materials of all Law Society committees except regulatory committees of which the Bencher is not a current member.

5. External Appointments: Approval of Revised Law Society Appointments Policy

BE IT RESOLVED to approve a policy for Law Society appointments to boards, councils and committees of other bodies (the Law Society Appointments Policy), as set out at page 5006 of the meeting materials (Appendix 1 to these minutes), effective immediately, with the exception of the following provisions under the heading of "Communication Expectations", which are to be reviewed the Appointments Subcommittee in consultation with Ms. Berge and presented to the Benchers for approval at their next meeting:

The Law Society will maintain an accurate listing of Law Society appointments, both current and pending, on the Law Society website, including

- description of the organization
- outline of the appointee's responsibilities
- contact information for inquiries
- directions for submitting expressions of interest and resumes

The Law Society will provide appropriate orientation and guidance regarding its expectations of those appointees to outside bodies whose responsibilities include representing and communicating the interests of the Law Society to such bodies.

REGULAR AGENDA – for Discussion and Decision

6. 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. Hearing Panel Pools – Eligibility of Retiring Benchers

At their September meeting the Executive Committee confirmed that effective immediately, new Life Benchers are subject to same eligibility criteria and application protocol as current Life Benchers.

b. Meeting with Chief Justice Bauman of the BC Supreme Court

A productive review of various issues, including: the Law Society's draft 2012-2014 Strategic Plan; electronic court proceedings; improved sharing of information between the BC courts and the Law Society; and the appointment of Ian Donaldson, QC, Kenneth McEwan, QC and Dinyar Marzban, QC to the Committee on Relations with the Judiciary.

c. Meeting with BC Supreme Court Subcommittee on Paralegals

A positive discussion of pending expansion of the rights of paralegals to appear before BC courts, including plans for a family law pilot project.

d. Meeting with BC Deputy Solicitor General / Legislative Amendments Update

A positive 45-minute discussion of the Law Society's package proposed amendments to the *Legal Profession Act*.

7. CEO's Report

Mr. McGee did not report, as he was attending the Annual Conference of the International Institute of Law Association Chief Executives in Adelaide, Australia.

Ms. McPhee provided highlights of the CFO's Financial Report to the Benchers – First Nine Months of 2011 (page 7000 of the meeting materials).

8. Report on Outstanding Hearing and Review Reports

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

GUEST PRESENTATIONS

9. Presentation by David Loukidelis, QC, Deputy Attorney General of BC: Justice Access Centres and the Ministry of Attorney General's Plans for Additional Locations

BC Deputy Attorney General David Loukidelis, QC and Assistant Deputy Minister Jay Chalke, QC briefed the Benchers on the Ministry of Attorney General's plans for and early progress in deployment of Judicial Access Centres (JACs) to increase the public's timely and cost effective access to justice for civil problems. They reviewed early lessons learned from the JACs currently operating in Nanaimo and Vancouver, expressing hope that the Law Society will continue to support the operation of those centres. They noted the importance of a collaborative and problem-solving approach to resolving legal and related issues, highlighting:

- legal and non-legal services onsite
- relationships with community social serving NGOs
- plans for pilot projects for court appearance and representation by paralegals

Discussion followed the presentation, during which the following points were addressed:

- importance of collaboration with legal education institutions
- need to address language as a barrier to access to justice
- need for aspirational commitment as precursor for decisions and progress on allocation of resources

Mr. Hume noted that dialogue between the Ministry and the Law Society will continue, with the Society's involvement led by the Access to Legal Services Advisory Committee.

10. Presentation by Margaret Sasges, Chair of the Law Foundation Board of Governors: Annual Law Foundation Update to the Benchers

Law Foundation Board Chair Margaret Sasges updated the Benchers on the Law Foundation's finances and operations. She circulated the Foundation's 2010 Annual Report and noted that the difficult market conditions described therein have persisted through 2011, requiring continued use of reserves to meet funding commitments.

Ms. Sasges commented on the value of the Law Society's support, noting particularly the contribution of the Trust Assurance dept in leading the recovery of over \$1 million in interest on trust funds from banks over the past three years.

Ms. Sasges identified the Law Foundation's priorities for 2012 as promoting access to justice and legal services, establishing the appropriate level of reliance on reserves to fund current commitments, exploring other sources of revenue, and defining the appropriate basis for decisions to reduce current funding commitments, if necessary.

Both Ms. Sasges and Executive Director Wayne Robertson, QC noted the availability of large project funding for 2012 (up to \$75,000 per project). Ms. Sasges flagged public legal education, collaboration, family law, technology and support for current grantees as key funding themes for 2012.

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

11. Alternative Business Structures in the Legal Profession (2009-2011 Strategic Plan Initiative 1-2b)

Ms. Lindsay briefed the Benchers as Chair of the Independence and Self-governance Advisory Committee. She referred to the Committee's report at page 11000 of the meeting materials for a review of other jurisdictions' experiences to date with alternate business structures (ABSs) in the legal profession. Ms. Lindsay described the report's core theme as considering how outside ownership of law firms might trigger issues and duties impacting on core values of the Law Society.

Mr. Lucas summarized the conclusion of the Committee's review as determining that there is not enough evidence available to warrant recommending that ABSs be permitted and regulated in BC. The Committee also concluded that continued monitoring of ownership structures of law firms elsewhere and in BC is needed.

Ms. Lindsay moved (seconded by Mr. Van Ommen) the adoption and publication of the Committee's report, with the commitment that the Law Society continue to monitor developments in ownership and operational structures of law firms in other jurisdictions.

With a friendly amendment to replace "adoption" with "receipt, the motion was carried.

12. Reviewing Draft 2012-2014 Strategic Plan: Bencher Discussion

Mr. Hume outlined the process followed by the Executive Committee in re-working the draft 2012-2014 Strategic Plan at page 12004 of the meeting materials. He reviewed various changes made to apply the input provided by the Benchers at their September meeting, including consolidation of the four goals from previous drafts of the Plan into the three goals as set out at page 12006:

- 1. The Law Society is a more innovative and effective professional regulatory body.**
- 2. The public has better access to legal services.**
- 3. The public has greater confidence in the administration of justice and the rule of law.**

In the ensuing discussion there was consensus on the following points:

- The goals should be re-worked with language and grammar that better reflect their aspirational nature
- Initiative 1-1(b) should be re-worked with language and grammar that better reflect the general (as opposed to specific) intention
- Initiative 1-1(a) should be re-positioned

It was agreed that the draft plan will be re-worked as discussed for the Executive Committee's review and further revision before being returned to the Benchers for review and approval at their December meeting.

OTHER MATTERS – For Discussion and/or Decision

13. Courthouse Libraries BC Governance Planning: for Bencher Review and Input

Courthouse Libraries BC Board Chair and Life Bencher David Zacks, QC outlined the process followed and recommendations developed by the CLBC board over the past two years in reviewing CLBC's governance structure. He referred the Benchers to the CLBC board's memorandum at page 13000 of the meeting materials, and the draft CLBC Constitution at page 13002 for details.

Mr. Zacks noted particularly the conclusion of the CLBC board that best practices and CLBC's sustainability warrant a smaller number of Society members and a smaller, non-stakeholder

board comprised of directors chosen for their skills and competencies by a Nominating Committee.

Mr. Zacks also noted that CLBC Executive Director Johanne Blenkin has been instrumental in improving web access to CLBC resources and is a national leader in developing innovative ways to enhance public access to legal information and resources.

Mr. Ross briefed the Benchers as Chair of the Courthouse Libraries BC Review Task Force, which was formed in February 2011 and comprises Lisa Nakamura for the Ministry of Attorney General, Eugene Raponi for the Law Foundation, Wayne Robertson, QC for the Law Foundation, Alan Treleaven and Alan Ross for the Law Society, with Mr. Ross as Chair. The task force has met five times in addressing its terms of reference, which are:

To make recommendations to the Law Foundation, Law Society and Ministry of the Attorney General on

1. The role of Courthouse Libraries BC in providing appropriate legal information services to the BC public and legal community
2. The costs and resources necessary for Courthouse Libraries BC to provide appropriate legal information services for
 - a. 2012
 - b. the medium term
 - c. the long term
3. funding and support for Courthouse Libraries BC by the contributions of the Law Foundation, Law Society and Ministry of Attorney General
4. the mechanism for Courthouse Libraries BC to report to the Law Foundation, Law Society and Ministry of Attorney General
5. collaborating with the Courthouse Libraries BC board on Courthouse Libraries BC's governance structure, including the governance role of the Law Society's appointees to the CLBC board.

Mr. Ross confirmed that the task force has consulted with Mr. Zacks and the CLBC board and agrees with their proposals for revising CLBC's governance structure and constitution. Mr. Ross thanked the members of the task force and particularly Ms. Blenkin for their hard work.

Mr. Zacks advised that a CLBC special meeting will be convened early in 2012 to review and approve the proposed revisions to CLBC's governance structure and constitution, upon the Benchers' approval.

Mr. Hume confirmed that the draft CLBC constitution will be on the agenda for the December Benchers meeting for approval.

14. For Bencher Approval: Proposed 2012-2013 Federation Levy Increase

Mr. Hume briefed the Benchers. He advised that the Federation's current staff resources are stretched very thin, and that more Federation staff are required to support effective implementation of the various initiatives being brought forward by the member societies. Mr. Hume referred the Benchers to Ms. McPhee's memorandum at page 14000 of the meeting materials for background.

Mr. LeRose moved (seconded by Mr. Vertlieb) that the Law Society approve the following resolution:

BE IT RESOLVED THAT:

the Federation of Law Societies of Canada levy be set at \$25 per FTE, effective July 1, 2012.

The motion was carried unanimously.

15. Federation of Law Societies of Canada (FLSC) – Common Law Degree Implementation Report

Mr. Walker briefed the Benchers as Vice-Chair of the Credentials Committee. He referred to the Final Report of the Federation's Common Law Degree Implementation Committee (at page 15003 of the meeting materials), noting that the Credentials Committee has reviewed and unanimously approved the report and its 20 recommendations (pages 15006 – 15008). Mr. Walker described the report as the product of excellent collaboration between the Federation, its member societies and the law schools.

Mr. Walker moved (seconded by Mr. Stewart) that the Final Report of the Federation's Common Law Degree Implementation Committee and the recommendations therein be adopted.

In the ensuing discussion there was agreement on the importance of continued collaboration between the Federation, its member societies and the law schools.

The motion was carried unanimously.

18. Federation Update

Mr. Hume updated the Benchers as the Law Society's member of Federation Council. He briefed them on the proceedings of the Council meeting and Federation Annual Conference held in Charlottetown, PEI, September 15 – 17, 2011, referring to the report of Federation President Ronald MacDonald, QC for details (at page 18000 of the meeting materials).

19. CBA National Council Report

Ms. Berge reported to the Benchers as the Law Society's representative on the CBA National Council. She provided a briefing on the proceedings of the CBA Canadian Legal Conference held in Halifax, NS, August 15 -17, 2011.

IN CAMERA SESSION

The Benchers discussed other matters *in camera*.

WKM
2011-11-18

LAW SOCIETY OF BC APPOINTMENTS POLICY

Objective

The objective of the Law Society in making appointments or nominations to boards, councils or committees of outside bodies is to ensure that well-qualified persons with the requisite character, knowledge, expertise, willingness and ability to undertake the responsibilities of the position are appointed. The Law Society recognizes that each of its appointees has a duty to serve the best interests of the body to which he or she is appointed, keeping in mind the protection of the public interest in the administration of justice.

Term of office

A Law Society appointment to any position will normally be for a term not exceeding three years, and a total period not exceeding six years, provided that other considerations relating to the particular appointment may result in a shortening or lengthening of this period. An initial appointment to a position does not carry with it an expectation of automatic reappointment.

Benchers or non-Benchers

A Bencher should be appointed to an outside body only if that body's legislation or by-laws require that the Law Society appointee be a Bencher. In all other cases there should be a presumption against appointing Benchers to outside bodies. An example of a circumstance that might rebut that presumption is a Law Society appointment to a newly created body, where it might be desirable to appoint a Bencher for the first one or two terms, or until the body's procedures are well established.

Consultation

Canadian Bar Association:

- It is generally desirable that a consensus be reached in cases where a body's governing legislation, by-laws or governance policy call for a Law Society appointment in consultation with the Canadian Bar Association.
- A consensus should be attempted in all cases, recognizing that there may be rare instances where the Law Society will appoint someone not approved or acceptable to the Canadian Bar Association.

Outside Body:

- It is generally desirable that, before making an appointment or nomination to an outside body, the Law Society consult the body's chair and senior management regarding applicable appointment parameters
 - appointment parameters include
 - the body's requirements, needs or interests to be addressed by the appointment, including

- ✓ skills, experience and background desired in an appointee
- prospective appointees who have expressed interest in the appointment to the body, including
 - ✓ names, current contact information and resumes
 - ✓ the body's receptiveness to their appointment
- appointment timing preferences and requirements, including
 - ✓ term of office, commencement date and date of appointment
- re-appointment factors, including
 - ✓ the incumbent's eligibility and readiness to continue to serve
 - ✓ the body's receptiveness to re-appointment of the incumbent

Geographic considerations

The Law Society should consider geographical representation when making appointments to organizations which have a province-wide scope.

Equity

The Law Society promotes diversity in its internal and external appointments and should ensure adequate representation based on gender, Aboriginal identity, cultural diversity, disability, sexual orientation and gender identity.

Appointment of judges

Where the legislation or by-laws of the body permit, judges are eligible to be appointed to positions by the Law Society.

Communication Expectations

All Law Society appointees or nominees to other bodies are expected to provide timely notice to the Law Society of any plans, policies or events that

- materially change the body's objects or operations, or
- could reasonably be considered inconsistent with the Society's mandate to uphold and protect the public interest in the administration of justice
 - unless to provide such notice would be contrary to their duty to act in the best interests of those bodies

In addition, Law Society appointees or nominees to bodies whose objects are related to the Society's public interest mandate should expect to be requested

- to provide periodic updates on those bodies' affairs to the Executive Committee or the Appointments Subcommittee
 - including any plans, policies or events that
 - materially change the bodies' objects or operations, or
 - could reasonably be considered to be inconsistent with the public interest in the administration of justice
 - unless to do so would be contrary to their duty to act in the best interests of those bodies
- to complete a voluntary, online assessment of their appointment experience at the conclusion of each term

These periodic updates and post-appointment assessments by Law Society appointees to bodies whose objects are related to the Society's public interest mandate

- reflect and enhance the mutual commitment of the Law Society and those bodies
 - to protecting and promoting the public interest in the administration of justice
 - to supporting good governance practice by the Law Society and those bodies
 - to supporting continuous improvement of the Law Society's processes for making appointments and nominations to outside bodies

The Law Society will maintain an accurate listing of Law Society appointments, both current and pending, on the Law Society website, including

- description of the organization
- outline of the appointee's responsibilities
- contact information for inquiries
- directions for submitting expressions of interest and resumes

The Law Society will provide appropriate orientation and guidance regarding its expectations of those appointees to outside bodies whose responsibilities include representing and communicating the interests of the Law Society to such bodies.