



# Minutes

## Benchers

Date: Saturday, June 16, 2012

Present:

Bruce LeRose, QC, President	Greg Petrisor
Art Vertlieb, QC, 1st Vice-President	David Renwick, QC
Jan Lindsay, QC 2nd Vice-President	Phil Riddell
Rita Andreone, QC	Catherine Sas, QC
Kathryn Berge, QC	Richard Stewart, QC
David Crossin, QC	Herman Van Ommen
Thomas Fellhauer	Ken Walker
Leon Getz, QC	Tony Wilson
Miriam Kresivo, QC	Barry Zacharias
Bill Maclagan	Haydn Acheson
Nancy Merrill	Satwinder Bains
Maria Morellato, QC	Stacy Kuiack
David Mossop, QC	Peter Lloyd, FCA
Thelma O'Grady	Ben Meisner
Lee Ongman	Claude Richmond
Vincent Orchard, QC	

Absent:

Staff Present:

Tim McGee	Bill McIntosh
Deborah Armour	Jeanette McPhee
Robyn Crisanti	Alan Treleaven
Jeffrey Hoskins, QC	Adam Whitcombe
Su Forbes, QC	
Michael Lucas	

Guests:

Jonathan Herman, CEO, Federation of Law Societies of Canada  
John Hunter, QC, President, Federation of Law Societies of Canada  
Gavin Hume, QC, the Law Society's Representative on the Council of the Federation of Law Societies of Canada

Shelley Brown, FCA, Guest Speaker  
Gordon Gibson, Guest Speaker  
Carsten Jensen, QC, President-elect, Law Society of Alberta  
Kit Krieger, Guest Speaker  
Nancy McKinstry, Guest Speaker,  
Ian Mulgrew, Guest Speaker  
Stephen Raby, QC, President, Law Society of Alberta,  
Don Thompson, QC, Executive Director, Law Society of Alberta  
Elizabeth Watson, President, Watson Advisors Inc.

## **CONSENT AGENDA**

### **1. Minutes**

The minutes of the meeting held on Friday, May 11 were approved as circulated.

The following resolution was passed unanimously and by consent.

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

***1. In Rule 1 by adding the following definition:***

**“pro bono legal services”** means the practice of law not performed for or in the expectation of a fee, gain or reward;;

***2. In Rule 1-6:***

***(a) by rescinding subrule (5) and (7) and substituting the following:***

(5) At least 60 days before an annual general meeting, the Executive Director must distribute to members of the Society by mail a notice of the date and time of the meeting.;

***(b) by repealing subrule (8)(a)(ii) and substituting the following:***

(ii) each resolution and amendment received in accordance with subrule (6),  
and;

3. ***By rescinding Rule 2-2 and substituting the following:***

**Member in good standing**

**2-2** Subject to Rules 3-13(7) [*Practice review*] and 4-4.2(2) [*Continuation of membership under investigation or disciplinary proceedings*], a member of the Society is a member in good standing unless suspended under section 38(5)(d) of the Act or under these Rules.;

4. ***By adding the following Rules:***

**Pro bono legal services by non-practising and retired members**

**2-4.2** Despite an undertaking given under Rule 2-3(1)(a) or 2-4(2)(a), a non-practising or retired member may provide pro bono legal services.

**Transition**

**2-4.3** A retired or non-practising member who has provided pro bono legal services between May 14, 2012 and June 16, 2012 is deemed not to be in breach of section 15 nor the undertaking given under Rule 2-3(1)(a) or 2-4(2)(a) for that reason alone.;

5. ***By rescinding Rule 2-48(1)(d)(iv);***

6. ***By rescinding Rule 2-49.3(1)(e)(iv);***

7. ***By rescinding Rule 2-52(3)(c);***

8. ***By rescinding Rule 2-70 and substituting the following:***

**Annual practising fees**

**2-70(1)** The annual practising fee and insurance fee are payable in respect of each calendar year.

(2) The date for payment of the annual practising fee and first insurance fee instalment is November 30 of the year preceding the year for which they are payable.;

9. ***By rescinding Rule 2-74(1)(b);***

10. ***In Rule 3-5, by adding the following subrule:***

(1.1) For the purpose of conducting an investigation under this Division and section 26 of the Act, the Executive Director may designate an employee of the Society or appoint a practising lawyer or a person whose qualifications are satisfactory to the Executive Director.;

**11. In Rule 3-13, by adding the following subrules:**

- (6) A lawyer who is the subject of a practice review may not resign from membership in the Society without the consent of the Practice Standards Committee.
- (7) The Practice Standards Committee may, by resolution, direct that a lawyer who is subject to a practice review and would otherwise cease to be a member of the Society under Rule 2-70 continue as a member not in good standing and not permitted to practise law.
- (8) A direction under subrule (7) may be made to continue in effect until stated conditions are fulfilled.
- (9) When a direction under subrule (7) expires on the fulfillment of all stated conditions or if the Practice Standards Committee rescinds the direction
  - (a) the lawyer concerned ceases to be a member of the Society,
  - (b) if the rescission is in response to a request of the lawyer concerned, the Committee may impose conditions on the rescission.;

**12. In Rule 3-25, by striking “the practice of law” wherever it appears, and substituting “the practice of law, other than pro bono legal services,”;**

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

**Transition**

**3-25.1** A lawyer who has provided pro bono legal services between May 14, 2012 and June 16, 2012 does not lose the exemption under Rule 3-25(1) for that reason alone.;

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

**Continuation of membership under investigation or disciplinary proceedings**

- 4-4.2(1)** In this Rule, “investigated lawyer” means a lawyer who is the subject of
- (a) an investigation under Part 3, Division 1, or
  - (b) a decision of the Discipline Committee under Rule 4-4(1)(a.2) or (b).
- (2) An investigated lawyer may not resign from membership in the Society without the consent of the Executive Director.
  - (3) A respondent may not resign from membership in the Society without the consent of the Discipline Committee.
  - (4) The Executive Director may direct that an investigated lawyer who would otherwise have ceased to be a member of the Society under Rule 2-70 continue as a member not in good standing and not permitted to engage in the practice of law.

- (5) The Discipline Committee may, by resolution, direct that a respondent who would otherwise have ceased to be a member of the Society under Rule 2-70 continue as a member not in good standing and not permitted to engage in the practice of law.
- (6) A direction under subrule (4) or (5) may be made to continue in effect until stated conditions are fulfilled.
- (7) When a direction under subrule (4) or (5) expires on the fulfillment of all stated conditions or is rescinded by the Executive Director or Discipline Committee
  - (a) the lawyer concerned ceases to be a member of the Society,
  - (b) if the rescission is in response to a request of the lawyer concerned, the Committee may impose conditions on the rescission.;

**15. By rescinding Rule 4-35(2)(b) and substituting the following:**

- (b) fine the respondent an amount not exceeding \$50,000.;

**16. By rescinding Rule 4-40 and substituting the following:**

**Conviction**

**4-40(1.1)** In this Rule, “**offence**” means

- (a) an offence that was proceeded with by way of indictment, or
  - (b) an offence in another jurisdiction that, in the opinion of the Benchers, is equivalent to an offence that may be proceeded with by way of indictment.
- (2) If the Discipline Committee is satisfied that a lawyer or former lawyer has been convicted of an offence, the Committee may refer the matter to the Benchers under subrule (3).
- (3) Without following the procedure provided for in the Act or these Rules, the Benchers may summarily suspend or disbar a lawyer or former lawyer on proof that the lawyer or former lawyer has been convicted of an offence.;

**17. By rescinding Rule 5-11(1)(c);**

**18. In Schedule 1, by rescinding paragraphs A1 and 2 and substituting the following:**

1. Practice fee (Rule 2-70) ..... 1,840.41;

**and**

**19. In Schedule 2, by deleting the column of prorated Special Compensation Fund fees.**

***BE IT RESOLVED to amend Rule 5-6 of the Law Society Rules by adding the following subrule:***

- (5) When a panel makes an order under this Rule or declines to make an order on an application, the panel must give written reasons for its decision

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

### **5. President's Report**

Mr. LeRose briefed the Committee on various Law Society matters to which he had attended since the last meeting, including:

#### **a) 2012 Law Society of Alberta Bencher Retreat**

The workshop sessions were very worthwhile. Presentations by Samantha Barrass, Executive Director of Supervision, Risk and Standards for the Solicitors' Regulatory Authority of England and Wales were noteworthy. Ms. Barrass spoke on various regulatory topics, including alternate business structures, international and global practice, and outcomes-focused regulation. Attendance at the Retreat by First and Second Vice-Presidents Art Vertlieb, QC and Jan Lindsay, QC was valuable.

#### **b) Bill 44 (the Civil Resolution Tribunal Act)**

In recent meetings with the Honourable Minister Bond and her Deputies, the Law Society's concerns with a number of aspects of this new legislation (the *Civil Resolution Tribunal Act* received Royal Assent on May 31, 2012) were explained, particularly on the issue of absence of representation of stakeholders by counsel in the Tribunal process. Minister Bond expressed regret regarding the lack of prior consultation that has marked the bill's introduction, and noted that the Law Society's participation will be welcomed by the Ministry of Attorney General in the process of developing the policies and protocols for implementation of the new Act's civil dispute resolution regime over the next 18 to 24 months. The Law Society will participate actively in that implementation process, focusing on protection of the public interest in the administration of justice.

## **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. 2013 Budget and Fees – Planning Process**
- b. 2012 -2014 Strategic Plan**
- c. Government Relations Update**
- d. Professional Responsibility – Thank You to Our Teachers**
- e. Governance Review Task Force Update**

## **7. Federation of Law Societies of Canada (FLSC) Council Report**

Gavin Hume, QC briefed the Benchers as the Law Society's representative at FLSC Council on recent Federation developments, including:

### **a. National Committee on Accreditation (NCA)**

On May 28 the NCA met in Toronto. The Committee's current focus is the revision of equivalency standards to accord with the new Canadian common law degree requirements. NCA members include Don Thompson, QC, Executive Director of the Law Society of Alberta, Donna Greschner, Dean of Law at the University of Victoria and Alan Treleaven, the Law Society's Director of Education.

### **b. Common Law Degree Approval Committee**

The Federation's Common Law Degree Approval Committee met June 7-8 in Toronto, to begin the process of accrediting Canadian common law degrees for law students graduating in 2015. Committee members include Mary Anne Bobinski, Dean of Law at the University of British Columbia, and Alan Treleaven.

### **c. National Admission Standards Steering Committee**

The Steering Committee met on June 11 in Ottawa to move this important national project forward. Work is proceeding toward circulation of national admission standards document to the Federation's member law societies in the fall of 2012, for review and approval at the September Council meeting in Vancouver. The Steering Committee is chaired by Law Society of Alberta Executive Director Don Thompson, QC; other members are Federation

President John Hunter, QC, Federation CEO Jonathan Herman, and the Law Society's Tim McGee and Alan Treleaven.

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

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

## **GUEST PRESENTATION**

### **9. Federation of Law Societies of Canada: Executive Update**

Federation President John Hunter, QC provided the Benchers with a general briefing on Federation affairs. Mr. Hunter confirmed his view that the current Council is functioning well. He commented on an ongoing governance topic of discussion: determining the parameters of Council members' independent authority and voting mandate as representatives of their respective law societies. Mr. Hunter noted with pleasure that a report by the Law Society's Federation Council representative is a standing item on agendas for Law Society of BC Benchers meetings.

Mr. Hunter commented on parallels in governance issues addressed in yesterday's Benchers Retreat workshop, *Good Governance in the Public Interest*, and at last week's Law Society of Alberta Retreat. He cited presentations by Samantha Barrass, Executive Director of the UK's Solicitors' Regulatory Authority, and Ian Mulgrew, columnist for the Vancouver Sun on legal affairs, and noted the importance of modern law societies' focus on delivery of effective, innovative regulation. Mr. Hunter suggested there is opportunity for Canadian law societies to reflect on delivery of effective legal regulation as a strategic key to maintaining their independence.

Federation CEO Jonathan Herman expressed appreciation for the Law Society's contribution of leadership and resources to the Federation.

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

### **10. Strategic Plan Implementation Update**

#### **a. Governance Review Task Force Update**

Mr. LeRose confirmed that a first draft of WATSON Advisors' interim report is expected by the end of June. The task force has scheduled a 1.5 day workshop in early July for intensive



review of the draft report. By late July the second draft will be circulated for the Benchers' review over the balance of the summer.

**b. Mid-year Reports by the Advisory Committees**

The Access to Legal Services, Equity & Diversity, Independence & Rule of Law, and Lawyer Education Advisory Committees will provide their mid-year reports to the Benchers at the July 13 meeting.

**OTHER MATTERS – For Discussion and/or Decision**

**11. Paralegals Providing Enhanced Levels of Legal Services: Follow-up to May 11 Benchers Meeting**

Mr. LeRose reminded the Benchers that at their May meeting they returned two policy issues to the Executive Committee for further review and recommendations: (a) whether the Law Society should restrict the number of paralegals performing enhanced functions that a lawyer may supervise; and (b) whether paralegals who perform enhanced legal functions should be able to give and receive undertakings. In October 2010 the Benchers approved in principle various measures to enhance the scope of legal services that may be provided by paralegals under the supervision of a lawyer. Mr. LeRose noted that resolution of the supervision and undertaking issues is essential to the implementation of those measures.

Mr. LeRose outlined the work done by staff and the Executive Committee on the two noted issues since the May Benchers meeting, referring to the Committee's memorandum at page 11000 of the meeting materials for discussion. He confirmed that the recommendation set out at pages 11008 and 11017 were endorsed unanimously by the Committee members.

**(a) Should the Law Society restrict the number of paralegals performing enhanced functions that a lawyer may supervise?**

Mr. LeRose confirmed that the recommendation set out at page 11008 was endorsed unanimously by the Committee members:

***Recommendation of Executive Committee***

The Executive Committee recommends Option 3.

Option 3

Lawyers may supervise no more than two paralegals able to perform enhanced legal services (defined as giving legal advice, appearing in court, and subject to the resolution of the undertaking issue, potentially giving or receiving

undertakings). The limitation will be reviewed after a period of time to determine if it is necessary.

After debate at its meeting on May 29, the Committee reached a consensus that the novelty of the proposal put forward by the Delivery of Legal Services Task Force to expand the range of legal services that could be offered by a supervised paralegal warranted a cautious approach at the outset to ensure, as much as possible, that the public interest was properly protected. Setting an initial limit around the number of paralegals providing these services that a lawyer can supervise will, the Committee believes, allow the Law Society to better assess the efficacy of the proposal in a controlled manner, while being able to ensure other stakeholders in the justice system (including the Courts) that proper supervision by lawyers will be both expected and possible. The cap will need to be included in the Law Society Rules, rather than contained in the *BC Code*.

The recommendation, though, should be reviewed after a given period of because the Committee understands that, while constituting a prudent limitation at the outset of the program, a cap of two may be unnecessary in the long term. The Committee recommends reviewing the cap at the same time as the assessment is being done of the pilot project for paralegals appearing as counsel on certain family law matters that has recently been approved by the Court. Conducting a survey at that time concerning the efficacy of the proposal and seeking feedback from the profession and, perhaps, clients about whether the cap is necessary, would be advised.

The Committee also recognized that it is necessary to have a specific designation for the paralegals performing the enhanced services, especially if a cap on the number that a lawyer can supervise remains. The purpose of the proposal has never been to affect current business models of the use of “legal assistants” as defined by the *Handbook*. Rather, the proposal has been created to permit lawyers to identify paralegals who will be capable of performing the enhanced services and training and supervising them accordingly. It is expected that these paralegals will do more than just perform the enhanced services. They will in all likelihood also continue to spend much of their time performing the work that “legal assistants” currently undertake. Many of those people are called “paralegals” now, and it would be very difficult, if not impossible, to require them to stop using that designation.

If a cap is imposed at the outset, however, it will be necessary to find some way of identifying which of the “legal assistants”/paralegals under the supervision of a lawyer are allowed to provide the enhanced services. The Executive Committee recommends the use of the term “Designated Paralegal.” The use of this term would permit persons who are currently using the term “paralegal” to continue doing so while performing currently

permissible functions. Lawyers will, however, each be able to “designate” up to two paralegals who, under their supervision, will be able to perform the “enhanced services” including giving legal advice and appearing in Court and (subject to the debate in the section below) perhaps giving and receiving undertakings.

**(b) Should Paralegals be permitted to give or receive undertakings**

Mr. LeRose confirmed that the recommendation set out at page 110017 was endorsed unanimously by the Committee members:

***Recommendation of Executive Committee***

The Executive Committee recommends Option 4, that no changes be made to Rule 5.01(3)(c) of the BC *Code*. After a considerable amount of discussion, the Committee was satisfied that the language of Rule 5.01(3)(c) of the BC *Code* would provide adequate protection to ensure that the important professional obligations that are created by undertakings remain in place. The Rule is a general prohibition on non-lawyers giving or accepting undertakings except where given or accepted under the direction of and supervision of a lawyer responsible for the particular matter. Moreover, the non-lawyer must disclose that he or she is not a lawyer, describe his or her capacity, and identify the lawyer who is responsible for the legal matter. The Committee was satisfied that with these conditions in place, a properly supervised non-lawyer could give or accept an undertaking because it would not be expected that the undertaking would be given or accepted without consultation with the responsible lawyer. The Committee accepted that it mattered not whether the non-lawyer was a paralegal providing enhanced legal services or any other non-lawyer. A non-lawyer who was not authorized by a lawyer to give or accept undertakings would be effectively precluded from doing so by virtue of the conditions in Rule 5.01(3)(c) unless he or she were acting as a “rogue,” and even the current rules do not preclude the possibility of a rogue non-lawyer giving or accepting undertakings under the name of the responsible lawyer.

The remaining changes recommended by the Ethics Committee to Rule 5.01 of the BC *Code* will need to be made. Following this Committee’s recommendation in the Part above concerning the need to name the paralegals who are able to provide enhanced services, the name chosen will have to be incorporated into Rule 5.01(3.3) accordingly, or be added to the definition section in Rule 5.01(2).

Mr. Lucas presented the Benchers with two draft resolutions for adoption of the Executive Committee’s recommendations. Resolution 1 (Appendix 2 to these minutes) proposes various amendments to the *Professional Conduct Handbook*; Resolution 2 (Appendix 3 to these minutes) proposes various amendments to the *BC Code of Conduct*.

Mr. Vertlieb moved (seconded by Mr. Walker), that the Benchers adopt Resolution 1 and Resolution 2 as set out in Appendices 2 and 3, respectively.

In the ensuing discussion the following points were addressed:

- The BC Supreme Court has approved a pilot project calling for the provision of enhanced services by designated family law paralegals (the BC Courts Family Law Paralegals Pilot Project), and for a review of the effectiveness of the pilot project following the conclusion of its term (as yet undetermined, but expected to be in the range of 10 to 14 months)
  - It would be desirable to align the review of the proposed limitation on the number of designated paralegals that a lawyer may supervise with the review of the family law paralegals pilot project
- It is important that the Law Society communicates effectively with the profession and the public regarding the meaning and use of the term “designated paralegal”
- It is important that the Law Society works effectively with all stakeholders, including the judiciary, the Ministry of Attorney General, educational service providers for paralegals, and the public, to ensure effective regulation of the provision of “enhanced services” by designated paralegals

The motion was carried unanimously.

Mr. Vertlieb moved (seconded by Mr. Walker), that the Benchers adopt Option 3 (as set out on page 11008 of the meeting materials and page 6 of these minutes), with the understanding that the “period of time” referred to therein means the time of completion of the BC Courts Family Law Paralegals Pilot Project:

The motion was carried unanimously.

## **12. Selection of Benchers’ Nominee for 2013 Second Vice-President**

Mr. LeRose reported that Victoria Bencher Kathryn Berge, QC and Kamloops Kenneth Walker have declared their candidacy for election as the Benchers’ nominee for 2013 Second Vice-President. After asking for further declarations and hearing none, Mr. LeRose confirmed that the Benchers will be asked to select by secret ballot Ms. Berge or Mr. Walker as their nominee as 2013 Second Vice-President for election at the 2012 Annual General Meeting, with the identity of the Benchers’ nominee to be announced at their July meeting.

***IN CAMERA SESSION***

The Benchers discussed other matters in camera.

WKM  
2012-06-29

The Law Society  
of British Columbia



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

A Report to the Benchers by

Timothy E. McGee

June 16, 2012

## **Introduction**

My report to the Benchers this month is somewhat abridged because I will be delivering a comprehensive mid-year report to the Benchers in July. That report will provide updates on progress made under the 2012 – 2014 Strategic Plan and our 2012 Operational Priorities, interim results under our KPM's, as well the formal presentation of the 2013 Budget and Fees recommendation.

For this meeting, I am pleased to provide the following updates for your information.

### **1. 2013 Budget and Fees – Planning Process**

The Finance Committee, chaired by Art Vertlieb, QC, met in May to review the proposed 2013 Law Society budgets and member fees. The meeting included a detailed review of the main expense items by category as well as an analysis of management's revenue assumptions and projections for 2013. The recommendations of the Finance Committee, which were reviewed by the Executive Committee at their May 29 meeting, will be brought to the Benchers for consideration at the July meeting.

### **2. 2012 – 2014 Strategic Plan**

We are now halfway into the first year of the Law Society's 2012 – 2014 Strategic Plan.

Implementation of the Strategic Plan is progressing well and on schedule. There are a total of 19 implementation initiatives divided among the 3 overarching strategic goals in the plan. Work has begun on 11 of the 19 initiatives.

Of most immediate interest will be the advances made on the initiatives raised by recommendations from the Delivery of Legal Services Task Force report, and in particular the development of a pilot project to allow paralegals to appear as counsel on some family law matters in Supreme Court. Work continues in creating a similar pilot project with the Provincial Court.

Work has been proceeding as well on Phase 1 of the Indigenous Lawyers Mentoring Project. A draft report has been prepared, and it is expected that it will be before the Benchers in July. The Rule of Law and Lawyer Independence Committee has made a good start examining the relationship between the insurance and regulatory functions of the Law Society and, through the Lawyer Education Advisory Committee, work has been done with the Continuing Legal Education Society toward creating courses for lawyers, to be offered free of charge, on the BC Code of Conduct. A Task Force is being created to examine the issue of whether the Law Society should regulate lawyers or expand regulation to all legal service providers.

Other initiatives are underway or are in the stages of starting up. A more detailed progress report and commentary on the Strategic Plan will be prepared and presented to the Benchers for the July meeting that will inform as to the status of the various initiatives that are underway.

In the fall, the Benchers will undertake their annual review of the Strategic Plan. The annual review has two objectives: to confirm that the priorities set out in the current Strategic Plan continue to have the support of the Benchers, and secondly, to review the annual reports of the four Advisory Committees to identify and assess any emerging priorities for the current or subsequent plan.

### **3. Government Relations Update**

#### ***a) Law Society of BC/Justice Services Branch Staff Meeting***

On May 22, the Justice Services Branch, Ministry of Justice hosted a meeting among staff of the Law Society and the Justice Services Branch. At the half-day meeting we were briefed on recent changes to the Ministry of Justice, and on its justice reform and review initiatives. We also shared information on our respective organizational structures and staff roles and responsibilities.

The view of all participants was that the meeting was a success, opening lines of communication on common issues of interest and facilitating cooperation and collaboration where that would be in the public interest.

We agreed to make the plenary session a biannual event and to follow up on a one-on-one basis as topics or issues arise. Both our respective organizations can now put names to roles and faces to names, and this should auger well for the future.

Attending with me from the Law Society were:

- Adam Whitcombe, Chief Information and Planning Officer
- Jeff Hoskins, QC, Tribunal and Legislative Counsel
- Michael Lucas, Manager, Policy and Legal Services
- Doug Munro, Staff Lawyer, Policy and Legal Services
- Robyn Crisanti, Manager, Communications and Public Affairs

Representing the Justice Services Branch were:

- Jay Chalke, QC, Assistant Deputy Minister, Justice Services Branch
- Chris Beresford, Executive Director, Maintenance Enforcement and Locate Services
- Nancy Carter, Executive Director, Civil Policy and Legislation Office



- James Deitch, Executive Director, Criminal Justice and Legal Access Policy Division
- Cris Forrest, Director, Planning and Operational Support
- David Merner, Executive Director, Dispute Resolution Office
- Nancy Pearson, Manager, Stakeholder Relations
- Irene Robertson, Executive Provincial Director, Family Justice Services Division

**b) Bill 44 - Civil Resolution Tribunal Act**

On May 24, Bruce LeRose, Adam Whitcombe and I attended a briefing on Bill 44, *Civil Resolution Tribunal Act*. The briefing, organized by the Justice Services Branch and held at the Ministry of Justice offices in Victoria, was also attended by Sharon Matthews, President, CBABC and Caroline Nevin, Executive Director, CBABC.

At the briefing Jay Chalke, QC, Assistant Deputy Minister, David Merner, Executive Director, and Richard Rogers, Director, Strategic Projects, both of the Dispute Resolution Office, outlined the intent and scope of Bill 44 and provided us with the opportunity to seek clarification and to determine our role in future implementation.

Bill 44 passed third reading without amendment on May 30 and we have been invited to participate in an implementation working group to be established by the Ministry in the weeks ahead. We look forward to working with the Ministry and others in the legal community to ensure that the promise of an effective voluntary dispute resolution process is fulfilled.

**4. Professional Responsibility – Thank You to Our Teachers**

I would like to thank the following Benchers and Life Benchers who taught Professional Responsibility to PLTC students in May.

**Vancouver class**

Art E. Vertlieb, QC  
David W. Mossop, QC  
Anna K. Fung, QC  
Gordon Turriff, QC  
Karl F. Warner, QC

**Victoria class**

Ralston S. Alexander, QC  
G. Glen Ridgway, QC  
Richard S. Margetts, QC

We very much appreciate the time and effort that all Benchers and Life-Benchers contribute from time to time to this important topic of instruction.

Timothy E. McGee  
Chief Executive Officer

## PARALEGALS

### SUGGESTED RESOLUTION (HANDBOOK):

*BE IT RESOLVED to amend the Professional Conduct Handbook*

1. *By deleting the title and rules 1 to 9 of chapter 12 and substituting the following:*

#### CHAPTER 12 -

#### SUPERVISION

##### Direct supervision required

1. A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.<sup>1</sup>

##### Definitions

2. In this Chapter,

“**designated paralegal**” means an individual permitted under rule 6 to give legal advice and represent clients before a court or tribunal

“**non-lawyer**” means an individual who is neither a lawyer nor an articulated student;

“**paralegal**” means a non-lawyer who is a trained professional working under the supervision of a lawyer.

##### Delegation

3. A lawyer must not permit a non-lawyer to:
  - (a) accept new matters on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer approves before any work commences;
  - (b) give legal advice;
  - (c) give or accept undertakings or accept trust conditions;

- (d) act finally without reference to the lawyer in matters involving professional legal judgment;
- (e) be held out as a lawyer;
- (f) appear in court or actively participate in formal legal proceedings on behalf of a client except as set forth above or except in a supporting role to the lawyer appearing in such proceedings;
- (g) be named in association with the lawyer in any pleading, written argument or other like document submitted to a court;
- (h) be remunerated on a sliding scale related to the earnings of the lawyer or the lawyer's law firm, unless the non-lawyer is an employee of the lawyer or the law firm;
- (i) conduct negotiations with third parties, other than routine negotiations if the client consents and the results of the negotiation are approved by the supervising lawyer before action is taken;
- (j) take instructions from clients, unless the supervising lawyer has directed the client to the non-lawyer for that purpose and the instructions are relayed to the lawyer as soon as reasonably possible;
- (k) sign correspondence containing a legal opinion;
- (l) sign correspondence, unless
  - (i) it is of a routine administrative nature,
  - (ii) the non-lawyer has been specifically directed to sign the correspondence by a supervising lawyer,
  - (iii) the fact the person is a non-lawyer is disclosed, and
  - (iv) the capacity in which the person signs the correspondence is indicated;
- (m) forward to a client or third party any documents, other than routine, standard form documents, except with the lawyer's knowledge and direction;
- (n) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do; or
- (o) issue statements of account.

4. The limitations imposed by subrule (3) do not apply when a non-lawyer is
  - (a) a community advocate funded and designated by the Law Foundation;
  - (b) a student engaged in a legal advice program or clinical law program run by, associated with or housed by a law school in British Columbia; and
  - (c) with the approval of the Executive Committee, a person employed by or volunteering with a non-profit organization providing free legal services.
5. A lawyer may employ as a paralegal a person who
  - (a) possesses adequate knowledge of substantive and procedural law relevant to the work delegated by the supervising lawyer;
  - (b) possesses the practical and analytic skills necessary to carry out the work delegated by the supervising lawyer; and
  - (c) carries out his or her work in a competent and ethical manner.<sup>2</sup>
6. Despite rule 3 and subject to the Law Society Rules, where a designated paralegal has the necessary skill and experience, a lawyer may permit the designated paralegal
  - (a) to give legal advice; or
  - (b) to represent clients before a court or tribunal, as permitted by the court or tribunal.

**2. *By deleting footnote 1 of chapter 12 and substituting the following:***

1. A lawyer may permit a non-lawyer to act only under the supervision of a lawyer. The extent of supervision will depend on the type of legal matter, including the degree of standardization and repetitiveness of the matter, and the experience of the non-lawyer generally and with regard to the matter in question. The burden rests on the lawyer to educate a non-lawyer concerning the duties that the lawyer assigns to the non-lawyer and then to supervise the manner in which such duties are carried out. A lawyer should review the non-lawyer's work at sufficiently frequent intervals to enable the lawyer to ensure its proper and timely completion. A lawyer must limit the number of non-lawyers that he or she supervises to ensure that there is sufficient time available for adequate supervision of each non-lawyer.  
  
If a non-lawyer has received specialized training or education and is competent to do independent work under the general supervision of a lawyer, a lawyer may delegate work to the non-lawyer.

A lawyer in private practice may permit a non-lawyer to perform tasks delegated and supervised by a lawyer, so long as the lawyer maintains a direct relationship with the client. A lawyer in a community legal clinic funded by a provincial legal aid plan may do so, so long as the lawyer maintains direct supervision of the client's case in accordance with the supervision requirements of the legal aid plan and assumes full professional responsibility for the work.

Subject to the provisions of any statute, rule or court practice in that regard, the question of what the lawyer may delegate to a non-lawyer generally turns on the distinction between any special knowledge of the non-lawyer and the professional and legal judgment of the lawyer, which, in the public interest, must be exercised by the lawyer whenever it is required.

2. A lawyer must not delegate work to a paralegal, nor may a lawyer hold a person out as a paralegal, unless the lawyer is satisfied that the person has sufficient knowledge, skill, training and experience and is of sufficiently good character to perform the tasks delegated by the lawyer in a competent and ethical manner.

In arriving at this determination, lawyers should be guided by Appendix 7.

Lawyers are professionally and legally responsible for all work delegated to paralegals. Lawyers must ensure that the paralegal is adequately trained and supervised to carry out each function the paralegal performs, with due regard to the complexity and importance of the matter.

3. ***By adding the following appendix:***

## **APPENDIX 7**

### **SUPERVISION OF PARALEGALS**

[Chapter 12]

#### **Key concepts**

1. Lawyers who use paralegals need to be aware of several key concepts:
  - (a) The lawyer maintains ultimate responsibility for the supervision of the paralegal and oversight of the file;
  - (b) Although a paralegal may be given operational carriage of a file, the retainer remains one between the lawyer and the client and the lawyer continues to be bound by his or her professional, contractual and fiduciary obligations to the client;

- (c) The Society will protect the public by regulating the lawyer who is responsible for supervising the paralegal in the event of misconduct or a breach of the Legal Profession Act or Law Society Rules committed by the paralegal;
- (d) A lawyer must limit the number of persons that he or she supervises to ensure that there is sufficient time available for adequate supervision of each person;
- (e) A paralegal must be identified as such in correspondence and documents he or she signs and in any appearance before a court of tribunal;
- (f) A lawyer must not delegate any matter to a paralegal that the lawyer would not be competent to conduct himself or herself.

**Best practices for Supervising Paralegals:**

- 2. Supervision is a flexible concept that is assessed on a case-by-case basis with consideration of the relevant factors, which, depending on the circumstances, include the following:
  - (a) Has the paralegal demonstrated a high degree of competence when assisting the lawyer with similar subject matter?
  - (b) Does the paralegal have relevant work experience and or education relating to the matter being delegated?
  - (c) How complex is the matter being delegated?
  - (d) What is the risk of harm to the client with respect to the matter being delegated?
- 3. A lawyer must actively mentor and monitor the paralegal. A lawyer should consider the following:
  - (a) Train the paralegal as if he or she were training an articled student. A lawyer must be satisfied the paralegal is competent to engage in the work assigned;
  - (b) Ensuring the paralegal understands the importance of confidentiality and privilege and the professional duties of lawyers. Consider having the paralegal sign an oath to discharge his or her duties in a professional and ethical manner;
  - (c) Gradually increasing the paralegal's responsibilities;

- (d) A lawyer should engage in file triage and debriefing to ensure that matters delegated are appropriate for the paralegal and to monitor competence. This may include:
  - (i) testing the paralegal's ability to identify relevant issues, risks and opportunities for the client;
  - (ii) engaging in periodic file review. File review should be a frequent practice until such time as the paralegal has demonstrated continued competence, and should remain a regular practice thereafter;
  - (iii) ensuring the paralegal follows best practices regarding client communication and file management.
- 4. Create a feedback mechanism for clients and encourage the client to keep the lawyer informed of the strengths and weaknesses of the paralegal's work. If the client has any concerns, the client should alert the lawyer promptly.
- 5. If a lawyer has any concerns that the paralegal has made a mistake, the lawyer must take carriage of the file and deal with the mistake.
- 6. Discuss paralegal supervision with a Law Society practice advisor if you have any concerns.

#### **Best practices for training paralegals**

- 7. Develop a formal plan for supervision and discuss it with the paralegal. Set goals and progress milestones.
- 8. Review the guidelines for supervising articled students and adopt concepts that are appropriate to the scope of responsibility being entrusted to the paralegal.
- 9. Facilitate continuing legal education for the paralegal.
- 10. Ensure the paralegal reviews the relevant sections of the Professional Legal Training Course materials and other professional development resources and review key concepts with the paralegal to assess their comprehension level.
- 11. Have their paralegals "junior" the lawyer on files and explain the thought process with respect to substantive and procedural matters as part of the paralegal's training.
- 12. Keep an open door policy and encourage the paralegal to discuss any concerns or red flags with the lawyer before taking further steps.

**A Checklist for Assessing the Competence of Paralegals:**

13. Does the paralegal have a legal education? If so, consider the following:
  - (a) What is the reputation of the institution?
  - (b) Review the paralegal's transcript;
  - (c) Review the courses that the paralegal took and consider reviewing the course outline for relevant subject matters to assess what would have been covered in the course, consider total number of credit hours, etc.
  - (d) Ask the paralegal about the education experience.
14. Does the paralegal have other post-secondary education that may provide useful skills? Consider the reputation of the institution and review the paralegal's transcripts.
15. What work experience does the paralegal have, with particular importance being placed on legal work experience?
  - (a) Preference/weight should be given to work experience with the supervising lawyer and/or firm;
  - (b) If the experience is with another firm, consider contacting the prior supervising lawyer for an assessment;
  - (c) Does the paralegal have experience in the relevant area of law?
  - (d) What responsibilities has the paralegal undertaken in the past in dealing with legal matters?
16. What personal qualities does the paralegal possess that make him or her well-suited to take on enhanced roles:
  - (a) How responsible, trustworthy and mature is the paralegal?
  - (b) Does the paralegal have good interpersonal and language skills?
  - (c) Is the paralegal efficient and well organized?
  - (d) Does the paralegal possess good interviewing and diagnostic skills?
  - (e) Does the paralegal display a strong understanding of both the substantive and procedural law governing the matter to be delegated?
  - (f) Does the paralegal strive for continuous self-improvement, rise to challenges, etc.?

**REQUIRES SIMPLE MAJORITY OF BENCHERS VOTING**



## PARALEGALS

### SUGGESTED RESOLUTION (BC CODE OF CONDUCT):

#### ***BE IT RESOLVED to amend the Code of Professional Conduct***

##### **1. *In Rule 5.01***

###### **(a) *By deleting the first two paragraphs of the Commentary to subrule (1) and substituting the following:***

A lawyer may permit a non-lawyer to act only under the supervision of a lawyer. The extent of supervision will depend on the type of legal matter, including the degree of standardization and repetitiveness of the matter, and the experience of the non-lawyer generally and with regard to the matter in question. The burden rests on the lawyer to educate a non-lawyer concerning the duties that the lawyer assigns to the non-lawyer and then to supervise the manner in which such duties are carried out. A lawyer should review the non-lawyer's work at sufficiently frequent intervals to enable the lawyer to ensure its proper and timely completion. A lawyer must limit the number of non-lawyers that he or she supervises to ensure that there is sufficient time available for adequate supervision of each non-lawyer.

###### **(b) *By deleting subrule (2) and substituting the following:***

###### **Definitions**

**5.01 (2)** In this rule,

**“designated paralegal”** means an individual permitted under subrule (3.3) to give legal advice and represent clients before a court or tribunal;

**“non-lawyer”** means an individual who is neither a lawyer nor an articulated student;

**“paralegal”** means a non-lawyer who is a trained professional working under the supervision of a lawyer.

###### **(c) *By deleting subrule (3)(a) and (h) and substituting the following:***

- (a) accept new matters on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer approves before any work commences;
- (h) be remunerated on a sliding scale related to the earnings of the lawyer or the lawyer's law firm, unless the non-lawyer is an employee of the lawyer or the law firm;

**(d) By adding the following subrules and commentary:**

(3.1) The limitations imposed by subrule (3) do not apply when a non-lawyer is

- (a) a community advocate funded and designated by the Law Foundation;
- (b) a student engaged in a legal advice program or clinical law program run by, associated with or housed by a law school in British Columbia; and
- (c) with the approval of the Executive Committee, a person employed by or volunteering with a non-profit organization providing free legal services.

(3.2) A lawyer may employ as a paralegal a person who

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

**Commentary**

A lawyer must not delegate work to a paralegal, nor may a lawyer hold a person out as a paralegal, unless the lawyer is satisfied that the person has sufficient knowledge, skill, training and experience and is of sufficiently good character to perform the tasks delegated by the lawyer in a competent and ethical manner.

In arriving at this determination, lawyers should be guided by Appendix E.

Lawyers are professionally and legally responsible for all work delegated to paralegals. Lawyers must ensure that the paralegal is adequately trained and supervised to carry out each function the paralegal performs, with due regard to the complexity and importance of the matter.

(3.3) Despite subrule (3), where a designated paralegal has the necessary skill and experience, a lawyer may permit the designated paralegal

- (a) to give legal advice; or
- (b) to represent clients before a court or tribunal, as permitted by the court or tribunal.

<b>Commentary</b>
-------------------

The Law Society Rules limit the number of designated paralegals performing the enhanced duties of giving legal advice and appearing in court or before a tribunal.
--

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

APPENDIX E

SUPERVISION OF PARALEGALS

**Key concepts**

Lawyers who use paralegals need to be aware of several key concepts:

1. The lawyer maintains ultimate responsibility for the supervision of the paralegal and oversight of the file;
2. Although a paralegal may be given operational carriage of a file, the retainer remains one between the lawyer and the client and the lawyer continues to be bound by his or her professional, contractual and fiduciary obligations to the client;
3. The Society will protect the public by regulating the lawyer who is responsible for supervising the paralegal in the event of misconduct or a breach of the *Legal Profession Act* or Law Society Rules committed by the paralegal;
4. A lawyer must limit the number of persons that he or she supervises to ensure that there is sufficient time available for adequate supervision of each person.
5. A paralegal must be identified as such in correspondence and documents he or she signs and in any appearance before a court of tribunal.
6. A lawyer must not delegate any matter to a paralegal that the lawyer would not be competent to conduct himself or herself.

**Best practices for Supervising Paralegals:**

1. Supervision is a flexible concept that is assessed on a case-by-case basis with consideration of the relevant factors, which, depending on the circumstances, include the following:
  - a. Has the paralegal demonstrated a high degree of competence when assisting the lawyer with similar subject matter?
  - b. Does the paralegal have relevant work experience and or education relating to the matter being delegated?

- c. How complex is the matter being delegated?
  - d. What is the risk of harm to the client with respect to the matter being delegated?
2. A lawyer must actively mentor and monitor the paralegal. A lawyer should consider the following:
  - a. Train the paralegal as if he or she were training an articulated student. A lawyer must be satisfied the paralegal is competent to engage in the work assigned;
  - b. Ensuring the paralegal understands the importance of confidentiality and privilege and the professional duties of lawyers. Consider having the paralegal sign an oath to discharge his or her duties in a professional and ethical manner;
  - c. Gradually increasing the paralegal's responsibilities;
  - d. A lawyer should engage in file triage and debriefing to ensure that matters delegated are appropriate for the paralegal and to monitor competence. This may include:
    - i. testing the paralegal's ability to identify relevant issues, risks and opportunities for the client;
    - ii. engaging in periodic file review. File review should be a frequent practice until such time as the paralegal has demonstrated continued competence, and should remain a regular practice thereafter;
    - iii. ensuring the paralegal follows best practices regarding client communication and file management.
3. Create a feedback mechanism for clients and encourage the client to keep the lawyer informed of the strengths and weaknesses of the paralegal's work. If the client has any concerns, the client should alert the lawyer promptly.
4. If a lawyer has any concerns that the paralegal has made a mistake, the lawyer must take carriage of the file and deal with the mistake.
5. Discuss paralegal supervision with a Law Society practice advisor if you have any concerns.

### **Best practices for training paralegals**

1. Develop a formal plan for supervision and discuss it with the paralegal. Set goals and progress milestones.
2. Review the guidelines for supervising articulated students and adopt concepts that are appropriate to the scope of responsibility being entrusted to the paralegal.
3. Facilitate continuing legal education for the paralegal.
4. Ensure the paralegal reviews the relevant sections of the Professional Legal Training Course materials and other professional development resources and review key concepts with the paralegal to assess their comprehension level.
5. Have their paralegals “junior” the lawyer on files and explain the thought process with respect to substantive and procedural matters as part of the paralegal’s training.
6. Keep an open door policy and encourage the paralegal to discuss any concerns or red flags with the lawyer before taking further steps.

### **A Checklist for Assessing the Competence of Paralegals:**

1. Does the paralegal have a legal education? If so, consider the following:
  - a. What is the reputation of the institution?
  - b. Review the paralegal’s transcript;
  - c. Review the courses that the paralegal took and consider reviewing the course outline for relevant subject matters to assess what would have been covered in the course, consider total number of credit hours, etc.
  - d. Ask the paralegal about the education experience.
2. Does the paralegal have other post-secondary education that may provide useful skills? Consider the reputation of the institution and review the paralegal’s transcripts.
3. What work experience does the paralegal have, with particular importance being placed on legal work experience?:
  - a. Preference/weight should be given to work experience with the supervising lawyer and/or firm;
  - b. If the experience is with another firm, consider contacting the prior supervising lawyer for an assessment;

- c. Does the paralegal have experience in the relevant area of law?
  - d. What responsibilities has the paralegal undertaken in the past in dealing with legal matters?
4. What personal qualities does the paralegal possess that make him or her well-suited to take on enhanced roles:
- a. How responsible, trustworthy and mature is the paralegal?
  - b. Does the paralegal have good interpersonal and language skills?
  - c. Is the paralegal efficient and well organized?
  - d. Does the paralegal possess good interviewing and diagnostic skills?
  - e. Does the paralegal display a strong understanding of both the substantive and procedural law governing the matter to be delegated?
  - f. Does the paralegal strive for continuous self-improvement, rise to challenges, etc.?

**REQUIRES SIMPLE MAJORITY OF BENCHERS VOTING**