



# Minutes

## Benchers

Date: Friday, September 07, 2012

Present: Bruce LeRose, QC, President  
Art Vertlieb, QC, 1st Vice-President  
Jan Lindsay, QC 2nd Vice-President  
Kathryn Berge, QC  
David Crossin, QC  
Thomas Fellhauer  
Leon Getz, QC  
Miriam Kresivo, QC  
Nancy Merrill  
Maria Morellato, QC  
David Mossop, QC  
Thelma O'Grady  
Lee Ongman  
Vincent Orchard, QC  
Greg Petrisor  
Richard Fyfe, QC, Deputy Attorney  
General of BC, Ministry of Justice,  
representing the Attorney General

David Renwick, QC  
Phil Riddell  
Catherine Sas, QC  
Richard Stewart, QC  
Herman Van Ommen  
Ken Walker  
Tony Wilson  
Barry Zacharias  
Haydn Acheson  
Satwinder Bains  
Stacy Kuiack  
Peter Lloyd, FCA  
Ben Meisner  
Claude Richmond

Absent: Rita Andreone, QC  
David Crossin, QC

Bill Maclagan

Staff Present: Tim McGee  
Andrea Brownstone  
Robyn Crisanti  
Su Forbes, QC  
Ben Hadaway  
Jeffrey Hoskins, QC  
Michael Lucas

Bill McIntosh  
Jeanette McPhee  
Doug Munro  
Lesley Small  
Alan Treleaven  
Adam Whitcombe

Guests:

Dom Bautista, Executive Director, Law Courts Center  
Johanne Blenkin, Chief Executive Officer, Courthouse Libraries BC  
Kari Boyle, Executive Director, Mediate BC Society  
Maureen Cameron, Director of Membership, Volunteers and Public Affairs,  
Canadian Bar Association, BC Branch  
Ron Friesen, CEO, Continuing Legal Education Society of BC  
Donna Greschner, Dean, Faculty of Law, University of Victoria  
Jeremy Hainsworth, Reporter, Lawyers Weekly  
Gavin Hume, QC, the Law Society's Representative on the Council of the  
Federation of Law Societies of Canada  
Marc Kazimirski, President, Trial Lawyers Association of BC  
Carmen Marolla, Director, Sponsorship and Advertising, BC Paralegal  
Association  
Wayne Robertson, QC, Executive Director, Law Foundation of BC  
Jeremy Schmidt, Executive Coordinator, Faculty of Law, UBC  
Kerry Simmons, President, Canadian Bar Association, BC Branch

**CONSENT AGENDA**

**1. Minutes**

The minutes of the meeting held on July 13, 2012 were approved as circulated.

The following resolution was passed unanimously and by consent.

**2. Executive Committee Recommendation: Benchers' Appointment to Justice Education Society Board of Directors**

*BE IT RESOLVED* that the Benchers nominate Leon Getz, QC for re-appointment as a member and director of the Justice Education Society for a second two-year term, effective September 1, 2012.

**3. Rules to Implement Bill 40 Amendments to the Legal Profession Act**

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

*1. By rescinding Rule 3-7.1 and substituting the following:*

**Extraordinary action to protect public**

**3-7.1(1)** An order may be made under this Rule with respect to a lawyer or articled student who is

(a) the subject of an investigation or intended investigation under Rule 3-5, and

- (b) not the subject of a citation in connection with the matter under investigation or intended to be under investigation.
- (2) If they are satisfied, on reasonable grounds, that extraordinary action is necessary to protect the public, 3 or more Benchers may
  - (b) impose conditions or limitations on the practice of a lawyer or on the enrolment of an articled student, or
  - (c) suspend a lawyer or the enrolment of an articled student.
- (14) An order made under this Rule or varied under Rule 3-7.3 [*Procedure*] is effective until the first of
  - (a) final disposition of any citation authorized under Part 4 arising from the investigation, or
  - (b) rescission, variation or further variation under Rule 3-7.3.

#### **Medical examination**

- 3-7.2**(1) This Rule applies to a lawyer or articled student who is the subject of
- (a) an investigation or intended investigation under Rule 3-5 [*Investigation of complaints*], or
  - (b) a citation under Part 4.
- (2) If they are of the opinion, on reasonable grounds, that the order is likely necessary to protect the public, 3 or more Benchers may make an order requiring a lawyer or articled student to
- (a) submit to an examination by a medical practitioner specified by those Benchers, and
  - (b) instruct the medical practitioner to report to the Executive Director on the ability of the lawyer to practise law or, in the case of an articled student, the ability of the student to complete his or her articles.
- (3) The Executive Director may deliver a copy of the report of a medical practitioner under this Rule to the Discipline Committee or the Practice Standards Committee.
- (4) The report of a medical practitioner under this Rule
- (a) may be used for any purpose consistent with the Act and these Rules, and
  - (b) is admissible in any hearing or proceeding under the Act and these Rules.

#### **Procedure**

- 3-7.3** (1) The Benchers referred to in Rules 3-7.1 to 3-7.3 must not include a member of the Discipline Committee.

- (2) Before Benchers take action under Rule 3-7.1 or 3-7.2, there must be a proceeding at which 3 or more Benchers and discipline counsel are present.
- (3) The proceeding referred to in subrule (2)
  - (a) must be initiated by the Discipline Committee, the Practice Standards Committee or the Executive Director, and
  - (b) may take place without notice to the lawyer or articulated student if the majority of Benchers present are satisfied, on reasonable grounds, that notice would not be in the public interest.
- (4) The lawyer or articulated student and his or her counsel may be present at a proceeding under this Rule.
- (5) All proceedings under this Rule must be recorded by a court reporter.
- (6) Subject to the Act and these Rules, the Benchers present at a proceeding may determine the practice and procedure to be followed.
- (7) Unless the Benchers present order otherwise, the proceeding is not open to the public.
- (8) The lawyer or articulated student or discipline counsel may request an adjournment of a proceeding conducted under this Rule.
- (9) Rule 4-29 [*Adjournment*] applies to an application for an adjournment made before the commencement of the proceeding as if it were a hearing.
- (10) Despite subrule (9), the Executive Director is not required to notify a complainant of a request made under subrule (8).
- (11) After a proceeding has commenced, the Benchers present may adjourn the proceeding, with or without conditions, generally or to a specified date, time and place.
- (12) An order made or varied under this Rule may be rescinded or varied by the Benchers who made the order, or a majority of them, on the application of the lawyer or articulated student or discipline counsel.
- (13) On an application under subrule (12) to vary or rescind an order,
  - (a) both the lawyer or articulated student and discipline counsel must be given a reasonable opportunity to make submissions in writing, and
  - (b) the Benchers present may allow oral submissions if, in their discretion, it is appropriate to do so.

- (14) If, for any reason, any of the Benchers who made an order under this Rule is unable to participate in the decision on an application under subrule (12), the President may assign another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of each Bencher unable to participate.

2. ***In Rule 4-17,***

- (a) ***by rescinding the heading and substituting the following:***

**Interim suspension or practice conditions, and**

- (b) ***by rescinding subrules (1), (1.1), (3) and (4) and substituting the following:***

- (1) If there has been a direction under Rule 4-13(1) [*Direction to issue, expand or rescind citation*] to issue a citation, 3 or more Benchers may do any of the following:
- (b) in any case not referred to in paragraph (b.1), impose conditions or limitations on the practice of a respondent who is a lawyer or on the enrolment of a respondent who is an articled student;
  - (b.1) suspend a respondent who is a lawyer, if the Benchers present consider, on the balance of probabilities, that the continued practice of the respondent will be dangerous to the public or the respondent's clients;
  - (c) suspend the enrolment of a respondent who is an articled student if the Benchers present consider, on the balance of probabilities, that the continuation of the student's articles will be dangerous to the public or a lawyer's clients.
- (1.1) The Benchers referred to in subrule (1) must not include a member of the Discipline Committee.
- (3) An order made under subrule (1) may be varied by the Benchers who made it, or a majority of them, on the application of the respondent or discipline counsel.
- (4) On an application to vary an order under subrule (3),
- (a) both the respondent and discipline counsel must be given a reasonable opportunity to make submissions in writing,
  - (b) the Benchers considering an application under subrule (3) may allow oral submissions if, in their discretion, it is appropriate to do so, and
  - (c) if, for any reason, any of the Benchers who made the order is unable to participate in the decision, the President may assign another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of each Bencher unable to participate.

3. ***In Rule 4-19, by rescinding the heading and substituting the following:***

**Review of interim suspension or practice conditions;**

4. ***In Rule 5-3(1), by rescinding paragraphs (b) and (c) and substituting the following:***

- (b) one of the Benchers who made an order under Rules 3-7.1 to 3-7.3 or Rule 4-17 regarding the respondent;
- (c) a member of a panel that heard an application under Rule 4-19 [*Review of interim suspension or practice conditions*] to rescind or vary an interim suspension or practice condition or limitation in respect of the respondent.

***BE IT RESOLVED to amend the Law Society Rules as follows, effective on proclamation of sections 36(a) and (c) to (g) and 37 of the Legal Profession Amendment Act, 2012:***

1. ***In Rule 1:***

(a) ***By rescinding the definitions of “conduct unbecoming a lawyer” and “respondent” and substituting the following:***

**“conduct unbecoming a lawyer”** includes any matter, conduct or thing that is considered, in the judgment of the Benchers, a panel or a review board,

- (a) to be contrary to the best interest of the public or of the legal profession, or
- (b) to harm the standing of the legal profession;

**“respondent”** means a person whose conduct or competence is

- (a) the subject of a citation directed to be issued under Rule 4-13(1) [*Direction to issue, expand or rescind citation*], or
- (b) under review by a review board under section 47 of the Act;

(b) ***By rescinding paragraphs (c), (l) and (r) of the definition of “professional conduct record” and substituting the following:***

- (c) a decision by a panel or a review board to reject an application for enrolment, call and admission or reinstatement;
- (l) an action taken by a review board under section 47 of the Act;
- (r) the outcome of an appeal under section 48 of the Act;
- (t) a decision of or action taken by the Benchers on a review of a decision of a hearing panel;; ***and***

(c) ***By adding the following definition:***

**“review board”** means a review board established in accordance with Part 5;

2. ***In Rule 2-23.6, by rescinding subrules (5) and (8) and substituting the following:***
  - (5) The lawyer applying under subrule (3) or the Executive Director may initiate a review by a review board on the record of a decision under subrule (4) by delivering to the President and the other party a notice of review.
  - (8) The person who applies for a review under subrule (5) may apply to the President for a stay of the cancellation pending the decision of the review board..
3. ***In Rule 2-26, by rescinding subrule (3) and substituting the following:***
  - (3) The Credentials Committee may, with the consent of the person concerned, vary or remove practice conditions or limitations made under this Division or imposed on a review initiated under Rule 5-13(1) or (2) *[Initiating a review]*..
4. ***In Rule 2-48, by rescinding subrule (4) and substituting the following:***
  - (4) When the Credentials Committee has initiated a review under Rule 5-13 *[Initiating a review]* of a hearing panel's decision to enrol an articulated student, the articulated student is not eligible for call and admission until the review board has issued a final decision on the review or the review is withdrawn by the Credentials Committee..
5. ***In Rule 2-53(b), by striking “by the Benchers” and substituting “by the review board”.***
6. ***In Rule 2-63, by rescinding paragraph (b) and substituting the following:***
  - (a.1) a review is initiated under section 47 of the Act,
  - (b) a person appeals a decision to the Court of Appeal under section 48 of the Act,  
or
7. ***In Rule 2-69.2, by rescinding subrule (7) and substituting the following:***
  - (7) If, on a review of a panel decision rejecting an application, the review board approves the application, the applicant may apply to the review board under subrule (4), and subrules (3) to (6) apply as if the review board were a panel..
8. ***In Rule 4-20, by rescinding paragraph (b) and substituting the following:***
  - (a.1) a review is initiated under section 47 of the Act,
  - (b) a person appeals a decision to the Court of Appeal under section 48 of the Act,  
or.
9. ***In Rule 4-38, by:***
  - (a) ***rescinding subrule (1)(b) and substituting the following:***

- (b) at the conclusion of a hearing before a review board under section 47 of the Act,; *and*
- (b) *by rescinding subrule (3)(b) and substituting the following:*  
 (b) all or part of the report of the hearing panel or review board, or.
10. *In Rule 5-1(c), by striking “by the Benchers” and substituting “by a review board”.*
11. *In Rule 5-2, by rescinding subrule (8) and substituting the following:*  
 (8) The President may refer a matter that is before a panel to another panel, fill a vacancy on a panel or terminate an appointment to a panel.
12. *In Rule 5-3, by rescinding subrule (3).*
13. *In Rule 5-9, by*
- (a) *striking “The Benchers may” in subrule (0.2) and substituting “A review board may”;*
- (b) *striking “or the Benchers” wherever it appears in subrules (1.1) and (1.2) and substituting “or review board”;* *and*
- (c) *striking “the panel or the Benchers have the discretion” in subrules (3) and (3.1) and substituting “the panel or review board has the discretion”.*
14. *In Rule 5-10(4), by striking out “by the hearing panel or the Benchers” and substituting “by the hearing panel or review board”.*
15. *By rescinding Rule 5-12 and substituting the following:*

**Review by review board**

- 5-12(1)** In Rules 5-12 to 5-21, “**review**” means a review of a hearing panel decision by a review board under section 47 of the Act.
- (2) Subject to the Act and these Rules, a review board may determine the practice and procedure to be followed at a review.
- (3) Delivery of documents to a respondent or applicant under Rules 5-12 to 5-21 may be effected by delivery to counsel representing the respondent or the applicant.

**Review boards**

- 5-12.1(1)** A review board must consist of
- (a) an odd number of persons, and
- (b) more persons than the hearing panel that made the decision under review.



- (2) A review board must be chaired by a Bencher who is a lawyer.
- (3) Review board members must be permanent residents of British Columbia over the age of majority.
- (4) The chair of a review board who ceases to be a Bencher may, with the consent of the President, continue to chair the review board, and the review board may complete any hearing or hearings already scheduled or begun.
- (5) Two or more review boards may proceed with separate matters at the same time.
- (6) The President may refer a matter that is before a review board to another review board, fill a vacancy on a review board and may terminate an appointment to a review board.
- (7) Unless otherwise provided in the Act and these Rules, a review board must decide any matter by a majority, and the decision of the majority is the decision of the review board.

**Disqualification**

**5-12.2**The following must not participate in a review board reviewing the decision of a hearing panel:

- (a) a member of the hearing panel;
- (b) a person who was disqualified under Rule 5-3 [*Disqualification*] from participation in the hearing panel.

**16. By rescinding Rule 5-13(2) and (3) and substituting the following:**

- (2) Within 30 days after a decision of the panel in a credentials hearing, the Credentials Committee may, by resolution, refer the decision for a review on the record by a review board.
- (3) Within 30 days after a decision of the panel in a hearing on a citation, the Discipline Committee may, by resolution, refer the decision for a review on the record by a review board.
- (5) Within 30 days after the order of the Practice Standards Committee under Rule 3-18(1) [*Costs*], the lawyer concerned may deliver a notice of review under Rule 5-15 [*Notice of review*] to the Executive Director.

**17. By rescinding Rule 5-14(1) and substituting the following:**

- (1) When a review is initiated under Rule 5-13 [*Initiating a review*], the order of the panel or the Practice Standards Committee with respect to costs is stayed.

18. ***In Rules 5-15(a), 5-16(2) and 5-17(2), by striking “the Benchers” wherever it occurs and substituting “the review board”.***

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

**Record of an order for costs by the Practice Standards Committee**

**5-17.1(1)** Unless counsel for the lawyer and for the Society agree otherwise, the record for a review of an order for costs under Rule 3-18 [Costs] consists of the following:

- (a) the order;
- (b) all correspondence between the Society and the lawyer relating to the assessment and ordering of costs;
- (c) the Committee’s written reasons for any decision on costs;
- (e) the notice of review under Rule 5-15 [*Notice of review*].

(2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

20. ***In Rule 5-19, by rescinding subrule (5) and substituting the following:***

(5) After a hearing has commenced, the chair of the review board may adjourn the hearing, with or without conditions, to a specified date, time and place.

21. ***By rescinding Rule 5-20 and substituting the following:***

**Decision on review**

**5-20(1)** The decision of the review board on a review is made by majority vote.

- (2) The review board must prepare written reasons for its decision on a review.
- (4) When the review board gives written reasons for its decision, it must not disclose in those reasons any information that is confidential or subject to solicitor and client privilege.
- (5) The Executive Director must promptly deliver a copy of the review board’s written reasons prepared under subrule (2) to the applicant or respondent and counsel for the Society.
- (6) On request, the Executive Director must disclose the review board’s written reasons for its decision.

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

**Appeal to Court of Appeal**

- 5-22(1)** The Discipline Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 of the Act of a decision of a panel or review board in a discipline hearing.
- (2) The Credentials Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 of the Act of a decision of a panel or review board in a credentials hearing.
- (3) The Practice Standards Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 of the Act of a decision of a review board with respect to an order for costs under Rule 3-18 [*Costs*].

**REGULAR AGENDA – for Discussion and Decision**

**4. President's Report**

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

**a) CBA National Council Meeting and Canadian Legal Conference (Vancouver, August 11 – 14, 2012)**

Former Bencher Robert Brun, QC gave a strong and balanced speech as in-coming CBA National President. He noted the importance of the distinct and separate nature of the roles and responsibilities of the provincial branches of the CBA and the provincial law societies.

Ms. Berge attended the National Council meeting and the Conference proceedings as the Law Society's representative. Ms. Berge's written report is at TAB 10 of the meeting materials.

**b) Law Society Representation at CBA National and Provincial Councils**

Vancouver Bencher Maria Morellato, QC has replaced Victoria Bencher Kathryn Berge, QC as the Law Society President's nominee to the CBA National and Provincial Councils, for a one-year term effective September 1, 2012. Mr. LeRose thanked Ms. Berge for her dedicated and effective service as the Law Society's official representative to both Councils.

**c) Governance Review Task Force Update**

The Governance Review Task Force met recently with two members of the Working Group on Bencher Elections (Brian Wallace, QC (Chair) and Patrick Kelly, Mr. Hoskins also attending as staff support) to review the working group's draft report and recommendations.

Following the September 15 deadline for Benchers' written responses to the task force's interim report, task force members will interview the Benchers on the governance issues raised by the interim report and the Bencher responses.

A summary of the written responses will be prepared as part of the briefing material for the Benchers' workshop on Law Society governance scheduled for Saturday, October 27.

**d) BC Courts Family Law Paralegals Pilot Project Update**

On August 22 Law Society CEO Tim McGee, Staff Lawyer Doug Munro and President LeRose attended a productive meeting with a number of Provincial Court judges to review planning for a pilot project to provide paralegals in designated registries with limited right of audience in some family law proceedings. The key matters still to be resolved prior to implementation of the two-year pilot project are confirmation of the Provincial Court's commitment to the project, and completion of the project's evaluation protocol.

Project communication materials and business planning resources for lawyers are being developed by the Law Society's Communications department.

**e) Request for Assistance from the Judicial Council of BC**

The Judicial Council of BC has requested the assistance of the BC Branch of the CBA and the Law Society in encouraging a broad range of applicants for judicial office on the BC Provincial Court. The Equity and Diversity Advisory Committee has been asked to review the Judicial Council's request and then report back to the Executive Committee with recommendations for the Law Society's course of action.

**5. 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) Paralegal Pilot Project – Communications Plan****b) Request of Minister of Justice and Attorney General for Recommendation for Regulatory Reform involving Law Society and Society of Notaries**

c) **2012 Employee Survey**

d) **Review of Targets in the Key Performance Measures**

e) **International Institute of Law Association Chief Executives – Annual Conference**

**6. Federation of Law Societies of Canada: Council Report by the Law Society's Council Representative**

Mr. Gavin Hume, QC reported as the Law Society's representative to the Council of the Federation of Law Societies of Canada. Mr. Hume updated the Benchers on various Federation matters, including:

a) **Federation Council Meeting and Conference (Vancouver, September 2012) Agenda and Planning**

*National Competency Standards* is a key topic on the Council meeting agenda, and *Strengthening Competency* is the theme of the two-day Conference to follow. Other topics on the Council meeting agenda are

- Mobility for Quebec lawyers
- Strategic planning and priorities, with emphasis on developing national standards for regulation and enhancing access to legal services
- 2013 Budget
  - no levy increase proposed for the coming year

b) **Updates on Several Ongoing Federation Initiatives**

- Common Law Degree Standards
  - on track for implementation by 2015
- Model Code of Professional Conduct Implementation Update
  - update on status of Model Code approvals by various provincial law societies
  - Standing Committee on the Model Code has three projects underway, directed at:
    - simplifying rules and systems for interprovincial transfers between firms

- simplifying rules on unbundled legal services
- resolving various and minor drafting issues in the Code provisions on current conflicts
- National Committee on Accreditation (NCA) Update
  - many new candidates are submitting applications
    - including a growing number of Canadians who are going overseas for their legal education and then seeking accreditation in Canada via the NCA
      - this year, 62 of 406 students in the Law Society's Admission Program are holders foreign law degrees, having come through the NCA
      - up from 32 students (out of 403) in 2009

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

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

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

### **8. Strategic Plan Implementation Update**

Mr. LeRose noted that the Advisory Committees provided their mid-year reports at the July Bencher meeting, and that he had provided a Governance Review Task Force briefing earlier in the meeting (as part of his President's Report).

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

### **8a. The Cowper Report**

Mr. LeRose briefed the Benchers on the recently released report of Geoffrey Cowper, QC ([\*A Criminal Justice System for the 21<sup>st</sup> Century\*](#)) and the [Law Society's preliminary response](#) to

the report and its recommendations. He confirmed the Law Society's ongoing engagement in this important process.

Deputy Attorney General Richard Fyfe, QC outlined the provincial government's expectations and planning for early next steps in that process. He confirmed that a White Paper is expected to be released by the end of October, setting out the government's objectives and related planning. Mr. Fyfe also noted that the White Paper may be released in two parts, starting with initial recommendations, with more detailed discussion of planning considerations and proposed initiatives to follow. Mr. Fyfe stressed the importance of early consultation by the Ministry of Attorney General with the Legal Services Society, the Law Society and others in the White Paper preparation process.

### **9. Final Report of the Family Law Task Force: *Qualifications for Lawyers Acting as Arbitrators, Mediators, and/or Parenting Coordinators in Family Law Matters***

Mr. LeRose introduced Life Bencher Carol Hickman, QC as Chair of the Family Law Task Force. Ms. Hickman outlined the background of the task force and its work since 2006 in developing best practices for family law lawyers, in conjunction with the provincial government's reform of the family law system in BC. She advised that those reforms include replacement of the *Family Relations Act* with the *Family Law Act*, which has received Royal Assent and comes into force on March 18, 2013.

Ms. Hickman referred to the report at TAB 9 of the meeting materials (at page 9003) for the task force's current mandate (as amended and approved by the Benchers at their July meeting:

*The mandate of the Family Law Task Force is to develop for recommendation to the Benchers practice standards for lawyers who are acting as family law arbitrators, family law mediators, and/or parenting coordinators. (those standards are referred to in the task force report as "Family Law ADR Qualifications")*

Ms. Hickman highlighted the task force's extensive consultation efforts and time challenges over the summer months, noting that the provincial government has requested the Law Society to submit its proposed Family Law ADR Qualifications by September 30, for incorporation into the regulations to be promulgated under the *Family Law Act*. She acknowledged the commitment to collaboration shown by members of the policy group at the Ministry of Justice. She also noted the dedication and hard work over the summer months by the members of the task force, and by staff lawyer Doug Munro.

Ms. Hickman reviewed each of the task force's eight recommendations, set out in the task force report (pages 9006 – 9010 of the meeting materials and Appendix 2 to these minutes).

Mr. Stewart moved (seconded by Ms. Berge) that the Benchers accept the Family Law Task Force Report and adopt its eight recommendations.

Ms. O'Grady moved (seconded by Mr. Orchard) that Recommendation 6 be amended

- to *recommend* rather than *require* that...lawyers acting as family law arbitrators, family law mediators, and/or parenting coordinators ... record a minimum of six hours of continuing professional development per year in dispute resolution skills training and/or theory

In the ensuing discussion

- Ms. O'Grady (Chair that the Lawyer Education Advisory Committee) noted that
  - the Committee's support for the proposed amendment is a strong majority, but not unanimous
  - if the Benchers approve this amendment, the Committee will forthwith consult with family law organizations, family law mediators, and relevant educational providers to assess
    1. whether to move to a mandatory continuing professional development requirement, and
    2. if so, how the specifics of the requirement might be articulated to best meet the educational needs of family law arbitrators, family law mediators, and parenting coordinators.
  - the Committee would report back to the Benchers with its recommendations in time for the Law Society to formalize its requirements and processes before March 18, 2013
- Mr. LeRose noted that the Executive Committee met yesterday to review this matter
  - the Committee's support for the task force's recommendations, including Recommendation 6, is a strong majority, but not unanimous
- key issues raised by a various Benchers were
  - whether requiring six hours of annual CPD on the designated topics
    - maintains professional standards and public confidence



- impairs access to legal services
- is necessary in light of the *Family Law Act*'s creation of new statutory powers for practitioners

The motion to amend Recommendation 6 was defeated.

Mr. Walker moved (seconded by Mr. Richmond) that Recommendation 1 be amended to reduce the required current practice experience from "10" to "3" years

In the ensuing discussion

- Mr. Walker noted his concerns that
  - requiring 10 years of current practice experience would unduly restrict access to legal services
    - many family law disputes are not complex and do not warrant the cost of legal services provided by a lawyer with 10 years of experience
    - family law practitioners should be permitted to decide whether they have the requisite skills and practice experience
    - the market place should be permitted to determine the value of practitioners' services
- a "friendly amendment" to increase the required current practice experience from "3" to "5" years was proposed by Mr. Walker and accepted by the Benchers

The motion to amend Recommendation 1 was defeated.

Key issues raised by various Benchers in discussion of the main motion were

- judgment and experience
  - judgment comes with experience and judgment is vital in family law disputes
- importance of access to legal services
- importance of practice standards and professional regulation
- importance of the Law Society's credentialing oversight and flexibility in particular cases

- importance of public funding and support to enhancing access to legal services

The motion was carried.

Ms. Hickman noted the importance of Recommendation 5, particularly its consultation element:

**Recommendation 5:** The Task Force recommends that the Law Society should alert lawyers of the obligation in s. 8 of the Family Law Act to screen for family violence. Lawyers who will be “advising a party in relation to a family law dispute” should be strongly encouraged to take courses in screening for family violence.

Mr. Stewart moved (seconded by Mr. Zacharias) that the mandate of the Family Law Task Force be extended through December 2013.

The motion was carried.

## **10. Report on CBA National Conference and Council Meeting**

Ms. Berge provided a brief oral report to supplement her written report on the 2012 CBA National Conference and Council meeting held in Vancouver last month.

WKM  
2012-10-12



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

A Report to the Benchers by

Timothy E. McGee

September 7, 2012

## **Introduction**

My report this month will be somewhat briefer than usual, as it follows my comprehensive mid-year report to the Benchers at the meeting in July. The items I would like to highlight for you are as follows.

### **1. Paralegal Pilot Project – Communications Plan**

The initial focus of the expanded role that the Benchers have recently approved for paralegals and articling students (as part of the Law Society's strategic plan to enhance access to affordable legal services) will be on the paralegal pilot project in family law. However, the scope of the changes affecting paralegals goes beyond the family law area and extends to all legal advice and any court appearances permitted by the courts. These changes, which are currently anchored to the requirement for lawyer supervision over no more than two "designated" paralegals, have opened the door to a new model for the provision of legal services.

The Benchers have been clear that one of the key success factors for these changes will be the willingness of lawyers to take on the supervisory role and the extent to which they do so across the province. In other words, we should not assume that just because the rules have been changed that take-up will necessarily follow. Accordingly, we believe that a well-designed, multi-faceted plan to communicate the changes, the goals and the potential benefits of this new business model for legal services to the profession and the public should be undertaken. This is not a standard activity for the Law Society, but it is an excellent example of why we need to be able to adapt and respond to changing needs and circumstances where that is critical to achieving a strategic goal.

At the meeting we will review with the Benchers the initial outline of a proposed communications plan for the paralegal initiative. We will be seeking your feedback, input and suggestions on the plan. If at any time you have questions or ideas on this topic, please do not hesitate to contact Robyn Crisanti, Manager, Communications and Public Affairs, or me.

### **2. Request of Minister of Justice and Attorney General for Recommendation for Regulatory Reform involving Law Society and Society of Notaries**

Following on meetings that President LeRose and I had with Minister of Justice and Attorney General Shirley Bond in the spring and early summer regarding how best to approach regulatory reform in connection with the role of the Law Society and the Society of Notaries Public of BC, our respective organizations received a request from Minister Bond to work together to

develop options for her consideration.

Bruce and I subsequently met with the President and CEO of the Society of Notaries to determine whether there was common ground for jointly pursuing Minister Bond's request. I am pleased to report that our meeting was very productive. We have now provided a joint response to Minister Bond outlining that we propose to approach the challenge she has put to us through the auspices of the Law Society's Legal Services Task Force, which will be chaired by Bruce LeRose, QC, and will be empanelled in the fall.

Bruce and I will provide additional details on this positive development and respond to any questions at the meeting.

### **3. 2012 Employee Survey**

We will soon be conducting our annual employee survey. The annual survey provides staff with an opportunity to provide feedback on how we can improve job satisfaction and our effectiveness as an organization. Each year management designs an action plan around one or two of the most important findings from the survey. We will review the results of the survey and our action plan with the Benchers early in the New Year.

### **4. Review of Targets in the Key Performance Measures**

The Key Performance Measures (KPMs) are the dashboard which the Benchers use to monitor the effectiveness of our core regulatory operations. They were designed and adopted by the Benchers five years ago and now form an important part of our accountability and transparency as an organization. The Law Society is the only law regulator in Canada (and one of only a few regulators) that publishes and reports annually on performance measures for all of its regulatory functions.

While the Audit Committee is charged with reviewing the results of the KPMs with management each year prior to their review by the Benchers and posting on our website, the Benchers have directed that the actual setting of the targets comprising the KPMs be delegated to the Executive Committee to oversee. At the last Executive Committee meeting in August, I reviewed this with the Committee and indicated that management will be preparing a report for the Committee's meeting in November setting out background and possible options for re-setting the KPM targets for their consideration. Our goal will be to bring any changes to the Benchers for consideration and adoption early in 2013.

**5. International Institute of Law Association Chief Executives – Annual Conference**

I am a member and currently on the Executive Committee of an international organization called the International Institute of Law Association Chief Executives (IILACE). IILACE brings together the CEOs of law regulatory and association bodies from around the world. The main focus for IILACE is the annual conference, which I attend and which is typically scheduled over four days in the fall. The 2010 conference was held here in Vancouver. This year's conference is in Hong Kong in October.

The program for this year's conference touches on the most pressing issues facing the legal profession and those involved in its regulation and advocacy today. The heads of the regulatory bodies from the UK, Australia, Canada, Germany, Scandinavia and several US and African jurisdictions attend. This year we have CEOs from Japan, China and India for the first time. The real advantage I find with IILACE is that the group is relatively small, approximately 30 – 40 CEOs, but with representation from all the most engaged jurisdictions around the world. The formula of a small group of senior leaders over four consecutive days with extensive participation is a good one. I will be reporting back to the Benchers on IILACE 2012 at our meeting in November.

Timothy E. McGee  
Chief Executive Officer

## RECOMMENDATIONS

**Recommendation 1:** Lawyers acting as family law arbitrators must meet the following qualifications:

1. 10 years of current practice experience, or experience as a judge or master;
2. A lawyer must possess sufficient knowledge, skills and experience relevant to family law to carry out the arbitral function in a fair and competent manner;
3. A minimum of 40 hours approved training in how to conduct an arbitration. Course work should include:
  - a. Theory and skills training;
  - b. Drafting;
  - c. How to conduct an arbitration;
  - d. The statutory framework of arbitration;
  - e. Family dynamics;
  - f. Administrative law principles governing arbitrations.
4. A minimum of 14 hours of approved training in family violence. The training should include skills for identifying, evaluating and managing family violence and issues of power dynamics in particular relation to the dispute resolution process;
5. Relevant courses taken to meet the current rule 3-20 requirement and any relevant courses taken since qualifying count towards these requirements

**Recommendation 2.1:** The Task Force recommends that the current approved course requirements for lawyers acting as family law mediators be amended to require the following:

1. A lawyer must possess sufficient knowledge, skills and experience relevant to family law to carry out the mediatory function in a fair and competent manner;
2. A minimum of 80 hours of approved mediation skills training. Course work should include:
  - a. Theory and skills training;
  - b. Drafting;
  - c. How to conduct a mediation;
  - d. The statutory framework of mediation;
  - e. Family dynamics;
  - f. A minimum of 10 hours of role playing scenarios.
3. A minimum of 14 hours of approved training in screening for family violence. The training should include skills for identifying, evaluating and managing family violence and issues of power dynamics in particular relation to the dispute resolution process.

**Recommendation 2.2:** Abolish the Law Society Rules, rule 3-20(1)(a) requiring three years of legal practice to qualify as a family law mediator.

**Recommendation 2.3:** The Task Force recommends the following approach to grand parenting existing family law mediators:

1. Lawyers who, as of the date the new rule 3-20 is approved, meet the family law mediator requirements under the current rule 3-20 will have until January 1, 2014 to ensure they meet the training requirements for family law mediators recommended in this report;
2. Courses taken to meet the current rule 3-20 requirement and any courses taken since qualifying count towards these requirements;



3. As of the adoption of this report, all lawyers who wish to qualify in the first instance to act as family law mediators must meet the requirements contained in this report;
4. Staff will determine how to implement the reporting requirement and the Law Society will provide notice to the profession regarding the required standards and how to report compliance.

**Recommendation 3:** The Task Force recommends that lawyers acting as parenting coordinators must meet the following qualifications:

1. 10 years of current practice experience, or experience as a judge or master;
2. A lawyer must possess sufficient knowledge, skills and experience relevant to family law to carry out the parenting coordination function in a fair and competent manner. This family law experience must include considerable experience dealing with high conflict families with children;
3. A minimum of 40 hours of approved parenting coordination training, which must include:
  - a. Parenting coordination skills training and theory;
  - b. Dealing with high conflict families and individuals;
  - c. Child development, interviewing children, and the effects of separation and divorce on children;
  - d. The effects of separation and divorce on adults.
4. The minimum approved training qualifications of a family law arbitrator, which include:
  - a. A minimum of 40 hours training in how to conduct an arbitration. Course work should include:
    - i. Theory and skills training;
    - ii. Drafting;

- iii. How to conduct an arbitration;
  - iv. The statutory framework of arbitration;
  - v. Family dynamics;
  - vi. Administrative law principles governing arbitrations.
5. The minimum approved training qualifications of a family law mediator, which include:
- a. A minimum of 80 hours of mediation skills training. Course work should include:
    - i. Theory and skills training;
    - ii. Drafting;
    - iii. How to conduct a mediation;
    - iv. The statutory framework of mediation;
    - v. Family dynamics;
    - vi. A minimum of 10 hours of role playing scenarios.
6. A minimum of 14 hours of approved training in screening for family violence. The training should include skills for identifying, evaluating and managing family violence and issues of power dynamics in particular relation to the dispute resolution process;
7. Relevant courses taken to meet the current rule 3-20 requirement and any relevant courses taken since qualifying count towards these requirements

**Recommendation 4:** The Credentials Committee can set criteria for approved courses for lawyers acting as family law arbitrators, family law mediators, or parenting coordinators. In exercising its authority to assess courses the Credentials Committee should be guided by the substantive minimum requirements set out above.

**Recommendation 5:** The Task Force recommends that the Law Society should alert lawyers of

the obligation in s. 8 of the Family Law Act to screen for family violence. Lawyers who will be “advising a party in relation to a family law dispute” should be strongly encouraged to take courses in screening for family violence.

**Recommendation 6:** The Task Force recommends that lawyers acting as family law arbitrators, family law mediators, and/or parenting coordinators be required to record a minimum of six hours of continuing professional development per year in dispute resolution skills training and/or theory.

**Recommendation 7:** The Task Force recommends that the Act and Rules Subcommittee assist the benchers in seeking a consequential amendment to the Legal Profession Act to make it clear that the Law Society may make rules for the governing of lawyers acting as alternative dispute resolution professionals.

**Recommendation 8:** The Task Force recommends that the Ethics Committee be asked to develop for inclusion in the BC Code the requirements for written agreements for lawyers acting as family law arbitrators, mediators and/or parenting coordinators. These provisions will include the present protections regarding avoidance of conflicts of interest, recommendations regarding the need for independent legal advice, and the requirement for a written agreement as are now set out in Appendix 2 in relation to lawyers acting as mediators.

An additional point to be added to this new provision is that if a lawyer’s role changes from one where the lawyer acts as a facilitator of consensual resolution to one where the lawyer acts as a decision maker, the lawyer must clearly specify in writing the nature of the change in function and when the lawyer will begin to exercise the change. The written agreement between the lawyer and the parties must confirm that such changes in function will be specified in writing. For example: a lawyer may conduct a process designed to be a mediation-arbitration. When the mediation portion of the process fails, the lawyer puts on the arbitrator hat and the lawyer should confirm that shift in role in writing.

The Ethics Committee should attempt to have the amendments to the BC Code in place by March 18, 2013.