



# Minutes

## Benchers

Date: Friday, December 07, 2012

Present: Bruce LeRose, QC, President  
Art Vertlieb, QC, 1st Vice-President  
Jan Lindsay, QC 2nd Vice-President  
Rita Andreone, QC  
Kathryn Berge, QC  
David Crossin, QC  
Thomas Fellhauer  
Leon Getz, QC  
Miriam Kresivo, QC  
Bill Maclagan  
Nancy Merrill  
Maria Morellato, QC  
David Mossop, QC  
Thelma O'Grady  
Lee Ongman

Greg Petrisor  
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: Vincent Orchard, QC

Staff Present: Tim McGee  
Deborah Armour  
Robyn Crisanti  
Jeffrey Hoskins, QC  
Bill McIntosh  
Ben Hadaway

Jeanette McPhee  
Doug Munro  
Alan Treleaven  
Michael Lucas  
Jack Olsen  
Lance Cooke

Guests: Dom Bautista, Executive Director, Law Courts Center  
Mark Benton, QC, Executive Director, Legal Services Society  
Johanne Blenkin, Chief Executive Officer, Courthouse Libraries BC  
Jay Chalke QC, Assistant Deputy Minister, Ministry of Justice and Attorney General, and Acting Deputy Attorney General  
Dean Crawford, Vice-President, CBABC  
Lynal Doerksen, 2013 Bencher-elect for Kootenay County  
Ron Friesen, CEO, Continuing Legal Education Society of BC  
Gavin Hume, QC, the Law Society's Representative on the Council of the Federation of Law Societies of Canada  
Jamie Maclaren, Executive Director, Access Pro Bono  
Sharon Matthews, QC, Past-President, CBABC  
Caroline Nevin, Executive Director, CBABC  
Wayne Robertson, QC, Executive Director, Law Foundation of BC  
Jeremy Schmidt, Executive Coordinator, Faculty of Law, University of British Columbia  
Derek LaCroix, QC, Executive Director, Lawyers Assistance Program  
Heather Raven, Associate Dean, Faculty of Law, University of Victoria

## **CONSENT AGENDA**

### **1. Minutes of October 26, 2012 Meeting**

The minutes of the meeting held on October 26, 2012 were approved as circulated.

### **2. Minutes of Bencher Decision at October 27, 2012 Governance Retreat**

The minutes of the meeting held on October 27, 2012 were approved as circulated.

### **3. Act & Rules Subcommittee : Amendment to Rule 5-6 (Public Hearing)**

The following resolution was passed unanimously and by consent.

***BE IT RESOLVED to amend the Law Society Rules effective January 1, 2013 as follows:***

#### ***1. In Rule 5-6, by rescinding subrules (1), (2), (4) and (5) and substituting the following:***

(1) Every hearing is open to the public, but the panel or review board may exclude some or all members of the public in any circumstances it considers appropriate.

(2) On application by anyone, or on its own motion, the panel or review board may make the following orders to protect the interests of any person:

- (a) an order that specific information not be disclosed;
- (b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).

(4) Except as required under Rule 5-7 [*Transcript and exhibits*], when a hearing is proceeding, no one is permitted to possess or operate any device for photographing, recording or broadcasting in the hearing room without the permission of the panel or review board, which the panel or review board in its discretion may refuse or grant, with or without conditions or restrictions.

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

**2. *In Rule 5-12, by adding the following subrule:***

(4) If the review board finds that there are special circumstances and hears evidence under section 47(4) of Act, the Rules that apply to the hearing of evidence before a hearing panel apply.

**4. Act & Rules Subcommittee: Amendment to Rule 5-10 (Time to Pay)**

*BE IT RESOLVED to amend the heading of Law Society Rule to: “Extension of time or variation of condition.”*

**5. Act & Rules Subcommittee: Rescission of Rules Concerning the Special Compensation Fund**

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

- 1. In Rule 2-49, by rescinding subrule (1) (f) (iv);*
- 2. By rescinding Rules 3-28 to 3-42 effective on proclamation of section 20 of the Legal Profession Amendment Act, 2012.*

**6. Act & Rules Subcommittee: Amendments to various Rules Referencing the Professional Conduct Handbook**

*BE IT RESOLVED to amend the Law Society Rules effective January 1, 2013 as follows:*

1. ***In Rules 1-1.2 (1), 1-50, 2-14.1 (1), 2-19 (4), 2-22.2 (1), 2-23.2 (1) and (2), 2-23.7 (1) and (2) and 2-23.9 (1), by striking “and the Professional Conduct Handbook” wherever it appears and substituting “and the Code of Professional Conduct”;***
2. ***In Rule 2-9.2, by rescinding subrule (1) and substituting the following:***
  - (1) In this Rule, “**designated paralegal**” means an individual permitted under rule 5.01 [*Supervision*] of the *Code of Professional Conduct* to give legal advice and represent clients before a court or tribunal.;
3. ***In Rule 2-15(4) by striking “and Professional Conduct Handbook” and substituting “and Code of Professional Conduct”;***
4. ***By rescinding the preamble to Rule 2-21 and substituting the following:***

**2-21** A practitioner of foreign law who is not a member of the Society must do all of the following when engaging in any marketing activity as defined in the *Code of Professional Conduct*, rule 3.02 [*Marketing*].;
5. ***In Rule 2-23.7,***
  - (a) ***by rescinding subrule (2) (c) (ii) and substituting the following:***
    - (ii) under the supervision of a practising lawyer, as required under the *Code of Professional Conduct*, rule 5.01 [*Supervision*].; **and**
  - (b) ***in subrule (3) by striking “or the Professional Conduct Handbook” and substituting “or the Code of Professional Conduct”;***
6. ***By rescinding Rule 3-19 and substituting the following:***

**3-19** A lawyer must not advertise any specialization, restricted practice or preferred area of practice except as permitted in the *Code of Professional Conduct*, rule 3.03 [*Advertising nature of practice*].;
7. ***By rescinding Rule 9-1 (c) and substituting the following:***
  - (c) contrary to the *Code of Professional Conduct*, rule 3.02 [*Marketing*].;
8. ***By rescinding Rule 9-14 and substituting the following:***

**9-14** A limited liability partnership must not use a name contrary to the *Code of Professional Conduct*, rule 3.02 [*Marketing*].;

***AND BE IT FURTHER RESOLVED, should the numbering of the Code of Professional Conduct be changed, to change the numbers of provisions of the Code of Professional Conduct referred to in this resolution accordingly.***

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

### **7. President's Report**

Mr. LeRose briefed the Benchers on various Law Society matters, including:

#### **a. 2013 Executive Committee Election**

On December 5, 2012, three Benchers were elected to the 2013 Executive Committee: David Crossin, QC (County of Vancouver), Nancy Merrill (County of Nanaimo) and Herman Van Ommen, QC (County of Vancouver).

#### **b. Five Highlights of 2012**

- i. Passage of the *Legal Profession Amendment Act, 2012*
- ii. Adoption by the Benchers of the Federation Model Code's Conflicts rules, and of the *Model Code of Professional Conduct of BC* (the BC Code), to take effect on January 1, 2013
- iii. Adoption by the Benchers of resolutions permitting enhanced services to be delivered by designated paralegals, effective January 1, 2013
- iv. Review of Law Society governance by the Governance Review Task Force and the Benchers, with the Task Force's final report and recommendations to be presented at today's meeting
- v. Formation and first meeting of the Legal Service Provider Task Force, as tangible steps toward the enhancement of accessibility of legal services to British Columbians

#### **c. Presentation of the President's Pin**

Mr. LeRose presented the Law Society President's Pin to 2013 President Art Vertlieb, QC.

#### **d. Introduction of the CBABC Vice-President**

Sharon Matthews, QC, Past President of the Canadian Bar Association, BC Branch (CBABC), introduced Dean Crawford as CBABC's 2012-2013 Vice President and designated representative at Law Society of BC Bencher meetings in 2013.

## **8. CEO's Report**

Mr. McGee provided highlights of his monthly written report to the Benchers (Appendix 1 to these minutes), including the following matters:

### **1. Operational Updates**

- *Project Leo*
- *New Employee Recognition and Rewards Program*
- *Review of Key Performance Measures Targets*

### **2. 2012 Annual Employee Survey**

### **3. 2012 International Institute of Law Association Chiefs (IILACE) Conference – Hong Kong**

### **4. United Way Campaign**

### **5. Update re Collective Bargaining with PEA**

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

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

## **10. Presentation by Legal Services Society Board Chair, David Crossin, QC**

Legal Services Society Board Chair, David Crossin, QC delivered a presentation to the Benchers. A transcript of Mr. Crossin's remarks is attached as Appendix 2 to these minutes.

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

### **11. Strategic Plan Implementation Update**

Mr. LeRose referred the Benchers to Tab 11 of the meeting materials for an update on the implementation status of the 2012 – 2014 Strategic Plan as at December 12, 2012.

### **12. Governance Review Task Force Final Report**

Mr. LeRose outlined the review process pursued by the Governance Review Task Force over the past year. He thanked the task force members (Haydn Acheson, Rita Andreone, QC, Stacy

Kuiack, Bruce LeRose, QC (Chair), Jan Lindsay, QC, Peter Lloyd, FCA, Art Vertlieb, QC for their dedication and commitment. Mr. LeRose acknowledged the valuable assistance provided by Watson Advisors Inc, particularly Elizabeth Watson, QC and Katie Armitage, and by Law Society staff, particularly Tim McGee, Adam Whitcombe and Bill McIntosh.

Mr. LeRose referred the Benchers to Tab 12 for the Final Report of the Governance Review Task Force, and particularly to the Recommendations section, commencing at page 12013.

Mr. Crossin moved (seconded by Mr. Lloyd) that the Benchers accept the Final Report of the Governance Review Task Force, and adopt the recommendations contained therein.

The motion was carried unanimously.

### **13. Year-end Reports from the 2012 Advisory Committees**

#### **a. Report from the Access to Legal Services Advisory Committee**

Mr. Stewart briefed the Benchers as Committee Chair on the work of the Access to Legal Services Advisory Committee in 2012, outlining that Committee's recommendations for 2013 and referring to the report at page 13000 for details. Discussion followed.

#### **b. Report from the Equity and Diversity Advisory Committee**

Ms. O'Grady briefed the Benchers as Committee Chair on the work of the Equity and Diversity Advisory Committee in 2012, outlining that Committee's recommendations for 2013 and referring to the report at page 13011 for details. Discussion followed.

#### **c. Report from the Rule of Law and Lawyer Independence Advisory Committee**

Ms. Berge briefed the Benchers as Committee Chair on the work of the Rule of Law and Lawyer Independence Advisory Committee in 2012, outlining that Committee's recommendations for 2013 and referring to the report at page 13017 for details. Discussion followed.

#### **d. Report from the Lawyer Education Advisory Committee**

Ms. O'Grady briefed the Benchers as Committee Chair on the work of the Lawyer Education Advisory Committee in 2012, outlining that Committee's recommendations for 2013 and referring to the report at page 13024 for details. Discussion followed.

**OTHER MATTERS – For Discussion and/or Decision****14. Recommendation to Benchers to Adopt Changes to BC Code prior to Implementation on January 1, 2013**

Mr. Getz reported as Chair of the Ethics Committee regarding the Committee's recommendation that the Benchers adopt a number of changes to the *Code of Professional Conduct of British Columbia* (the BC Code), to be effective on the BC Code's implementation date of January 1, 2013. He referred the Benchers to the Committee's report at page 14000 for background, and particularly to pages 14012 – 14014 for a "redline" outline the recommended changes (Appendix 3 to these minutes).

Mr. Getz moved (seconded by Mr. Zacharias) that the Benchers adopt the Ethics Committee's recommendations for changes to the BC Code (as set out in Appendix 3), to be effective on the BC Code's implementation date of January 1, 2013.

The motion was carried unanimously.

**15. Proposal to Re-number the *Code of Professional Conduct of British Columbia* (the BC Code)**

Mr. Getz briefed the Benchers regarding the Federation's plans for re-numbering its *Code of Professional Conduct* (the Model Code), and regarding the Ethics Committee's recommendation that the BC Code be re-numbered along the lines proposed for the Model Code, with minor revisions concordant with the various amendments made to the provisions of the Model Code in formulating the BC Code. Mr. Getz noted that the next week the Federation Council will be asked to approve the proposed re-numbering of the Model Code.

Mr. Getz moved (seconded by Mr. Crossin) that Mr. LeRose be authorized as President of the Law Society to approve the re-numbering of the BC Code as recommended by the Ethics Committee, or to decline to approve such re-numbering, depending on the decision made by the Federation Council regarding re-numbering the Model Code.<sup>1</sup>

The motion was carried unanimously.

Mr. Olsen noted that the re-numbered BC Code is to be posted to the Law Society website by end of the year. CLEBC CEO Ron Friesen confirmed that the re-numbered version of the BC Code should be incorporated into CLEBC's training materials before BC Code programming is rolled out in January.

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<sup>1</sup> The Federation Council has approved the proposed scheme for re-numbering the Model Code, and Mr. LeRose has approved the BC Code version of that scheme.



## **16. White Paper on Justice Reform: Considering the Law Society's Response**

Mr. LeRose introduced this matter and referred the Benchers to page 16000 for a memorandum by Mr. Lucas and Mr. Munro, outlining the Provincial Government's White Paper on justice reform entitled *A Modern, Transparent Justice System*. Mr. LeRose advised that the Law Society has been invited to comment on the White Paper, and referred to page 16001 for four questions, noting that the Benchers' discussion of those questions is hoped to frame the Society's response to the White Paper:

- 1. Should the Law Society be supportive of the general vision/plan set out in the White Paper?**
- 2. Should the Law Society seek to participate in the process going forward, including participation at the Justice Summit?**
- 3. Should the Law Society recommend that the Justice and Public Safety Council consist of participants beyond merely government?**
- 4. Is the Law Society able to contribute any expertise to the considerations and actions identified by the government in the White Paper?**

Key comments made during the ensuing discussion are summarized below.

- 1. Should the Law Society be supportive of the general vision/plan set out in the White Paper?**
  - There was consensus that the Law Society can and should contribute to the Provincial Government's efforts to enhance access to justice for British Columbians
- 2. Should the Law Society seek to participate in the process going forward, including participation at the Justice Summit?**
  - Some Benchers questioned whether the Law Society would be invited to participate in the Justice Summit
    - Assistant Deputy Minister Chalke confirmed that the Law Society would be invited to any Justice Summit
  - Other Benchers cautioned against endorsing the Justice Summit process too readily or unreservedly, especially at this formative stage
- 3. Should the Law Society recommend that the Justice and Public Safety Council consist of participants beyond merely government?**

- There was strong consensus that participation in the Justice and Public Safety Council should extend beyond government
- Several Benchers made the point that given the White Paper's confirmation of strategic planning as a key element of the Council's mandate, the Law Society's participation in the Council is necessary and important
  - Acting Attorney General Jay Chalke, QC noted
    - the Provincial Government is committed to early progress and to relationship-building in supporting the Council's work
    - the Law Society's input regarding the Council's membership and participation will be welcome as this justice reform process progresses
    - this reform process entails introducing collaborative spirit and practice into the behaviour of BC's justice system and its players, whose identity and history is grounded in the pursuit and protection of independence

**4. Is the Law Society able to contribute any expertise to the considerations and actions identified by the government in the White Paper?**

- There was consensus that the Law Society can and should contribute the benefit of its operational experience and expertise
  - particularly in the areas of systems design, information management and communication

Mr. LeRose thanked the Benchers and Mr. Chalke for their comments. Mr. LeRose confirmed that the Law Society's written response to the White Paper will be prepared for the Benchers' review and comment, prior to submission to the Provincial Government by December 31, 2012.

**17. Law Corporation Name Format: Unlimited Liability Companies ("ULCs")**

Mr. LeRose briefed the Benchers, noting the Executive Committee's unanimous support for the recommendations set out in the Committee's memorandum to the Benchers at page 17000:

The Executive Committee recommends that the Act & Rules Subcommittee be directed to draft a rule or rule amendment enabling the Executive Director to issue law corporation permits to companies registered as ULCs and named, in accordance with the *Business Corporations Act*, without including the word "corporation" in the corporate name. More specifically, the Executive Committee recommends that in the case of proposed law ULCs that are deemed by the Executive Director to be acceptable for registration, the words "Law ULC" be included in the corporate name in place of the

words “law corporation,” as the latter is contemplated in section 82(1)(b) of the *Legal Profession Act*.

Ms. Andreone moved (seconded by Mr. Van Ommen) that the Benchers adopt the recommendations of the Executive Committee, as set out in the Committee’s memorandum to the Benchers at page 17000.

The motion was carried.

### **18. Law Society Privacy Review Report: Bencher Considerations**

Mr. LeRose introduced this matter, acknowledging the leadership of Past-President Gavin Hume, QC in building support during 2011 for a review of the Law Society’s internal privacy policies and practices.

Mr. McGee briefed the Benchers. He noted that one of the initiatives proposed in the Enterprise Risk Management Plan adopted by the Benchers in December 2011 was an independent review of the Law Society’s internal privacy policies and practices. That review has now been completed under Mr. Hoskins’s leadership, and has resulted in the presentation of a detailed report and recommendations (page 18005) by the privacy consultants retained by the Law Society. Mr. McGee advised that management is developing a plan for implementing the consultants’ recommendations, noting that this matter is operational and as such do not require the Benchers’ direct engagement.

Mr. McGee then reported on two issues requiring the Benchers’ consideration:

1. Benchers’ access to confidential information via their current access to the entire Law Society premises
2. Security of Law Society electronic information

Mr. McGee referred to the memorandum at page 18000 for details, and to page 18001 for management’s recommendation, provided with the unanimous support of the Executive Committee:

We suggest, with the support of the Executive Committee, that the unassailable best privacy practice by the Law Society would be to restrict Bencher card access to the parking lot and the ninth floor. Access to any other floor (with the exception of the areas otherwise open – namely reception on the sixth and eighth floors during business hours) would involve meeting with staff on a prearranged and accompanied basis.

Ms. Berge moved (seconded by Mr. Zacharias) that the Benchers adopt the “best privacy practice” approach, as recommended by management and the Executive Committee, and as set out at page 18001.

Key points raised in the ensuing discussion were:

- Benchers have a fiduciary duty to protect the confidentiality of information to which they may be exposed in relation to their access to the Law Society’s physical premises
  - that fiduciary duty extends to the risk of Benchers’ unintentional breach of privacy protocols
- the proposed “best privacy practice” does not ban or prevent Benchers’ access to secure areas of the Law Society premises, it simply requires that Benchers be invited and escorted when they visit such secure areas
- there is a “tail wagging the dog” aspect to the proposed “best privacy practice”
- the principles of what Bs should and should not see should be articulated in a clear, succinct privacy protocol should be developed to articulate the principles governing Benchers’ appropriate access to Law Society information

The motion was carried unanimously (with one abstention).

On the second matter of security of Law Society electronic information, Mr. McGee confirmed that the Executive Committee will address the issues and then report to the Benchers with recommendations in 2013.

## **19. Election of an Appointed Bencher to the 2013 Executive Committee**

Mr. Meisner announced that the appointed Benchers have selected Stacy Kuiack to represent them on the 2013 Executive Committee.

### ***IN CAMERA SESSION***

The Benchers discussed other matters *in camera*.