



# Minutes

## Benchers

Date: Friday, March 01, 2013

Present: Art Vertlieb, QC, President  
Jan Lindsay, QC 1<sup>st</sup> Vice-President  
Ken Walker, QC 2<sup>nd</sup> Vice-President  
Haydn Acheson  
Rita Andreone, QC  
Kathryn Berge, QC  
David Crossin, QC  
Lynal Doerksen  
Thomas Fellhauer  
Leon Getz, QC  
Miriam Kresivo, QC  
Stacy Kuiack  
Peter Lloyd, FCA  
Bill Maclagan

Ben Meisner  
Nancy Merrill  
Maria Morellato, QC  
David Mossop, QC  
Thelma O'Grady  
Lee Ongman  
Vincent Orchard, QC  
David Renwick, QC  
Claude Richmond  
Phil Riddell  
Catherine Sas, QC  
Herman Van Ommen, QC  
Tony Wilson  
Barry Zacharias

Richard Fyfe, QC, Deputy Attorney  
General of BC, Ministry of Justice,  
representing the Attorney General

Excused: Richard Stewart, QC  
Greg Petrisor

Absent: Satwinder Bains

Staff Present: Tim McGee  
Deborah Armour  
Robyn Crisanti  
Jeffrey Hoskins, QC  
Su Forbes, QC  
Michael Lucas

Bill McIntosh  
Jeanette McPhee  
Doug Munro  
Alan Treleaven  
Adam Whitcombe

Guests:

Chris Axworthy, QC, Dean, Faculty of Law, Thompson Rivers University  
Dom Bautista, Executive Director, Law Courts Center  
Mark Benton, QC, Executive Director, Legal Services Society  
Johanne Blenkin, Chief Executive Officer, Courthouse Libraries BC  
Anne Chopra, Equity Ombudsperson  
Dean Crawford, Vice-President, CBABC  
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  
Jamie Maclaren, Executive Director, Access Pro Bono  
Caroline Nevin, Executive Director, Canadian Bar Association, BC Branch  
Maryann Reinhardt, BC Paralegal Association  
Wayne Robertson, QC, Executive Director, Law Foundation of BC  
Rob Seto, Director of Programs, CLEBC  
Rose Singh, BC Paralegal Association  
Brian Wallace, QC, Life Bencher and Chair of the Bencher Election Working Group

**CONSENT AGENDA**

**1. Minutes**

The minutes of the meeting held on January 25, 2013 were approved as circulated.

**REGULAR AGENDA – for Discussion and Decision**

**2. Governance Committee: Interim Report and Recommendations from the Benchers Election Work Group – Next Steps**

Mr. Vertlieb introduced this matter and provided background on the history and mandate of the Bencher Election Working Group (BEWG).

Ms. Lindsay briefed the Benchers as Vice-Chair of the Governance Committee. She reported that the Governance Committee considered the BEWG Interim Report in a special meeting on January 24. Ms. Lindsay summarized the report's two recommendations, noting they are set out at page 2019 of the meeting materials:

**Staggered elections**

43. The Law Society should conduct annual elections with the number of Benchers to be elected approximately equal to the total number of Benchers divided by the number of years in the term of office. Therefore, if the term of office remains at two years, half of the Benchers would be elected each year. If the term of office increases to three years, one-third of Benchers would be elected each year.

#### **Term of office increased to three years**

44. The term of office for all elected and appointed Benchers should be increased to three years and the term limit should be increased to allow three full terms in office. In the case of partial terms, the principle of not counting half or less of a term against the term limit should continue. That means that a Bencher or former Bencher would not be allowed to seek election or accept appointment to a term that would take the total time served as a Bencher beyond 10½ years.

Ms. Lindsay stated the Governance Committee's view that while the two recommendations meet the threshold for referral by the Benchers to the Law Society's next Annual General Meeting (AGM) as a series of resolution for discussion and decision, the subject matter is not sufficiently important or urgent to warrant the expense of a stand-alone referendum.

Mr. Vertlieb noted that the passage of any resolutions at the upcoming AGM in relation to the two BEWG recommendations would then require the Benchers to address a number of transition and implementation issues.

Ms. Lindsay moved (seconded by Mr. Meisner) that the Benchers refer to the members for discussion and decision at the next Annual General Meeting resolutions calling for amendments to the Law Society Rules to provide for:

- a. Staggered Bencher election dates; and
- b. A three-year term for elected Benchers

In the ensuing discussion the following issues were raised:

- the membership previously rejected a proposal to increase permitted Bencher service to a maximum of 10 years
  - the proposed three terms of three years is not materially different from 10 years
- the general membership has not demonstrated appreciable sense of urgency or appetite for the issues underlying the two BEWG recommendations
- members who attend the Law Society's annual general meetings are more aware of and interested in issues like Bencher election reform than the general membership

- the current Bencher election system periodically produces large cohorts of new Benchers, triggering significant loss of knowledge and experience at the Bencher table
- the current Bencher election system has the democratic aspect of permitting the membership to express confidence (or lack thereof) in incumbent Benchers at regular intervals
- negative effects of staggered (i.e. annual) elections could include voter fatigue and perception of unduly internal focus and priorities by the Law Society and the Benchers
- the issues raised by staggering elections and extending terms of office from two to three years are less significant than the issues underlying the re-configuration of election districts

A straw poll was taken and the Chair determined that the motion lacked sufficient support to proceed.

### **3. Audit Committee Review of the Law Society's Key Performance Measures (2012) and Enterprise Risk Management Plan – Updated February 2013)**

Mr. Lloyd briefed the Benchers as chair of the Audit Committee. He reported that in February 2013 the Committee reviewed the 2012 Key Performance Measures (KPMs) Report and the Law Society of BC Enterprise Risk Management (ERM) Plan – Updated February 2013. Both documents are now being presented to the Benchers for information (at pages 3001 and 3068 of the meeting materials, respectively).

Mr. Lloyd noted the importance of KPMs and the ERM Plan in assisting the LS to govern in the public interest.

Mr. McGee advised that the Law Society governance review conducted in 2012 revealed the importance of KPMs to the Benchers' directorship role, particularly in relation to three facets of oversight over management and operations:

- Maintaining current knowledge of key areas of the Law Society's regulatory activity and operations
- Reviewing current measurement of operational performance in those areas
- Monitoring current trends in the context of past performance and assessing the factors underlying such trends

Mr. McGee confirmed that there were a number of anomalies in the 2012 KPM results, such that not all Professional Conduct and Discipline targets were met. He noted that management's job is to investigate, analyze and propose appropriate responses to such anomalies, and that Chief Legal Officer Deborah Armour is leading that management process in this matter.

Ms. Armour briefed the Benchers, referring to her memorandum (Appendix B to the 2012 KPMs Report, at page 3065) for details. She reported that in 2012, Professional Conduct and Discipline met their KPM targets for timeliness, but not those for thoroughness, fairness and courtesy. Ms. Armour noted that 33% of all complaints were closed within 60 days, compared to 25% in 2011 and 15% in 2010: it could be inferred that the speed with which files are now closed may contribute to complainants feeling their concerns were not addressed thoroughly or fairly. She advised that while a significant proportion of reported complainant dissatisfaction generally arises from the closing of complaint files for lack of jurisdiction, that proportion was particularly high in 2012.

Ms. Armour also reported that a significant percentage of complaints closed for lack of jurisdiction relate to fee disputes. She noted that while the Law Society offers a fee mediation program, participation is voluntary and historically lawyers have shown less interest in the program than their clients. A communication package is being developed with the goal of increasing participation in the fee mediation program.

Ms. Armour advised that going forward, the Law Society will pay particular attention to all files closed for no jurisdiction to determine whether there are other ways those complainants' satisfaction can be improved. Also, 2013 KPM results will be monitored closely and compared to the current results to determine whether 2012 was an anomaly or marks the start of a trend requiring more fundamental response.

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

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

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

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

**a) Laraine Kaminsky Presentation to the Benchers on January 25, 2013 (*Enhancing Diversity in BC's Legal Profession*)**

Ms. Kaminsky's presentation to the Benchers following the January 25 meeting was valuable and well-attended, with about 15 Benchers and 20 other lawyers present.

**b) 2012 AGM Member Resolution Follow-up: Bencher Working Group to Research Feasibility of a Reduced-Fee Class of Membership for Non-profit Lawyers (Reduced-Fee Feasibility Working Group)**

The President has created a Bencher working group (the Reduced-Fee Feasibility Working Group) to consider the issues raised by the Member Resolution passed at the 2012 Annual General Meeting:

*BE IT RESOLVED that the Law Society membership direct the Law Society to research the feasibility of creating a class of membership for non-profit lawyers with a reduced rate of practice fees, and to present to the membership within six months information about the feasibility of such a class of membership.*

The Working Group members are First Vice-President Jan Lindsay, QC (Chair), Bill Maclagan and David Mossop, QC. Staff support will be provided by Jeanette McPhee, Chief Financial Officer & Director of Trust Regulation, Lesley Small, Manager, Member Services & Credentials, and Michael Lucas, Manager, Policy & Legal Services, or another Policy & Legal Services staff lawyer.

**c) Meetings with the Judiciary**

Mr. Vertlieb met recently with each of the Honourable Lanch Finch, Chief Justice of BC, the Honourable Robert Bauman, Chief Justice of the BC Supreme Court, the Honourable Thomas Crabtree, Chief Judge of the BC Provincial Court, and the Honourable Mary Saunders, Justice of the BC Court of Appeal. The meetings covered various matters of mutual interest to the Courts and the Law Society, including enhancing access to legal services and enhancing the retention of women and young lawyers in BC's legal profession.

**d) Reception for 2012 Queen's Counsel Recipients**

On February 6 the Law Society hosted a reception for the lawyers who were honoured with the Queen's Counsel designation in 2012. The reception was well organized, well attended and much appreciated by the honourees and their families.

**e) Governance Committee Update**

On February 22 the Governance Committee met to address key issues identified for its follow-up in the Governance Review Task Force report approved by the Benchers in December 2012. Several more key issue meetings are being scheduled for the coming weeks. The Governance Committee will present a detailed mid-year report at the June 15 Bencher meeting.

#### **f) Designated Paralegal Program Update: Outreach to Paralegals and the Legal Profession**

Mr. Vertlieb and Staff Lawyer Doug Munro participated in a recent information session for BC paralegals convened by the Continuing Legal Information Society of BC. More Law Society outreach to paralegals and the profession regarding the designated paralegal program and family law paralegal pilot project is planned for the coming months. Information on the program and the pilot program is available on the [Law Society website](#).

### **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:

- Audit Committee Review of the Law Society's 2012 Key Performance Measures and Enterprise Risk Management
- Justice Summit Steering Committee Update
- CSAE Symposium for Chief Staff and Elected Officers
- CLE-TV Code of Conduct Course Update
- PLTC – Bencher and Life Bencher Participation

### **7. Lawyers Insurance Fund: 2012 Year End Report**

Director of Insurance Su Forbes briefed the Benchers on the performance of the Lawyers Insurance Fund for 2012. Ms. Forbes addressed the following topics:

- Causes of claims
- Frequency of claims by areas of practice
- Severity by area of practice
- Results of reports
- Part B (defalcation) claims
- Insurance Fee Comparison
  - Annual LIF fee unchanged from 2011 at \$1750
    - Eighth highest in Canada for the third largest program
- Service Evaluation and Risk Management
- Part A Service Evaluation Form Results
- Risk Management Presentations
  - 20 were done in 2012, reaching a total audience of 1,232 BC lawyers
- New on the Horizon: “My Insurance Policy: Questions and Answers”
  - Soon to be posted on the Law Society website

A question and answer session followed. Mr. Vertlieb thanked Ms. Forbes on behalf of the Benchers for her informative presentation, and for LIF's strong performance in 2012.

## **8. Federation of Law Societies of Canada Council Update**

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

### **a. National Mobility Agreement**

The Federation Council has approved in principle the National Mobility Agreement (NMA), building on various agreements providing for mobility of Quebec lawyers in other Canadian provinces.

The NMA is now before the Federation's member law societies for approval, including the Law Society, and should come before the Benchers for approval in May, following review by requisite committees. The NMA is expected to be in force later in the spring.

### **b. National Admission Standards**

Work is continuing on implementation of the Federation's National Admission Standards, which were approved by the member societies in 2012.

### **c. 2013 Semi-Annual Conference in Quebec City**

The Federation will hold a semi-annual conference in Quebec City on March 21 and 22, 2013. The two main themes of the conference will be "Legal Regulation in the Global Context" and "Risk Management as Seen and Implemented by a Law Society."

### **d. Standing Committee on the Model Code of Professional Conduct (Model Code)**

Transfer provisions are out for review by the member law societies. Work is continuing on resolution of various minor anomalies in the Model Code's conflicts provisions. The Law Society has had significant input in that regard.

### **e. Update on Canadian National Railway (CN) v. McKercher LLP and Wallace: Supreme Court of Canada Conflicts of Interest Case**



The Benchers were briefed on a recent Supreme Court of Canada hearing regarding conflict allegations made by CN against McKercher LLP, the law firm representing about 100,000 farmers in a class action against CN. The Federation and the CBA were granted leave to make submissions in support of their respective and differing conflict rules: the Federation's "bright line" rule requiring the client's consent to a lawyer taking on an unrelated matter for a party opposed in interest to that client, and the CBA's rule permitting the lawyer to take on such a matter upon concluding that there is no substantial risk that the new retainer would raise issues materially adverse to the interests of the former client.

The Court took active interest in the submissions made on behalf of the Federation and the CBA in that regard.

The Benchers considered other matters *in camera*.

WKM  
2013-03-21

## **CEO's Report to the Benchers**

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March 1, 2013

Prepared for: Benchers

Prepared by: Timothy E. McGee

## **Introduction**

The first two months of the year have been extremely busy ones on many fronts for all of us at the Law Society. There has been much work and progress at the Task Force and Committee levels and we have also been busy finalizing our year end financial reporting, and annual reporting under our Enterprise Risk Management Plan and our Key Performance Measures. I have set out below the items I would like to highlight for this month's meeting.

## **Audit Committee Review of the Law Society's 2012 Key Performance Measures and Enterprise Risk Management Plan**

The Audit Committee Review of the Law Society's 2012 Key Performance Measures and Enterprise Risk Management Plan has been distributed to the Benchers as part of the meeting agenda package. The report and results were reviewed by the Audit Committee at its last meeting and Peter Lloyd, FCA, Chair of the Audit Committee, will be introducing the report to the Benchers. Management Board and I will be happy to answer any questions.

## **Justice Summit Steering Committee Update**

The Ministry of Justice and Attorney General hosted Justice Summit has been scheduled for March 14 and 15, 2013. The Summit will begin with a BC Justice Leaders' dinner, featuring welcoming remarks by the Minister of Justice and Attorney General and a keynote address by The Honourable Mr. Justice Richard Wagner, Supreme Court of Canada. While the agenda for the working sessions on March 15 is still being finalized it will likely include discussions on a number of topics relating to the criminal justice and public safety sector including values, challenges and priorities for improvements.

Participants will be drawn from a wide variety of backgrounds, including the justice ministry, police agencies, victims' services, defense bar, municipalities, legal organizations, community service providers and members of the academic community.

## **CSAE Symposium for Chief Staff and Elected Officers**

President Vertlieb and I will be attending the 2013 CSAE Symposium for Chief Staff and Elected Officers in Montreal, Quebec on February 24 and 25. The Symposium is the lead educational conference on best practices for ensuring a strong and productive working relationship between chief elected and chief staff officers from a wide variety of organizations. This year we will also have the opportunity to reconnect with our counterparts from Alberta, Nova Scotia and Ontario at the conference. Art and I will provide highlights of the Symposium at the March 2013 Bencher meeting.

## **CLE-TV Code of Conduct Course Update**

I am pleased to advise that the CLE-TV BC Code of Conduct course Part II (offered jointly by the Law Society and CLEBC) was watched by an estimated 7,200 people in February 2013. CLE advises this is record attendance for any course offered by their organization. Thank you again to Gavin Hume, QC and Practice Advisors Lenore Rowntree and Barbara Buchanan for developing and leading these webcasts.

## **PLTC – Bencher and Life Bencher Participation**

Thank you to the following Benchers and Life Bencher who took time to teach Professional Ethics at PLTC on February 14:

Art Vertlieb, QC  
Leon Getz, QC  
Bill MacLagan  
Thelma O'Grady  
Phil Riddell  
Gordon Turriff QC

Timothy E. McGee  
Chief Executive Officer