



# Minutes

## Benchers

Date: Friday, April 05, 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  
Satwinder Bains  
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  
Greg Petrisor  
David Renwick, QC  
Claude Richmond  
Phil Riddell  
Catherine Sas, QC  
Richard Stewart, QC  
Herman Van Ommen, QC  
Tony Wilson  
Barry Zacharias

Absent: Vincent Orchard, QC

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:  
Dom Bautista, Executive Director, Law Courts Center  
Mark Benton, QC, Executive Director, Legal Services Society  
Johanne Blenkin, Chief Executive Officer, Courthouse Libraries BC  
Mary Anne Bobinski, Dean, Faculty of Law, University of BC  
Kari Boyle, Executive Director, Mediate BC Society

Anne Chopra, Equity Ombudsperson  
 Susan Munro, Director of Publications on behalf of Ron Friesen, Continuing Legal Education Society of BC  
 Dean Crawford, Vice-President, CBABC  
 Donna Greschner, Dean, Faculty of Law, University of Victoria  
 Jeremy Hainsworth, Reporter, Lawyers Weekly  
 Tamara Hunter, Law Foundation of BC  
 Marc Kazimirski, President, Trial Lawyers Association of BC  
 Jamie Maclaren, Executive Director, Access Pro Bono  
 Caroline Nevin, Executive Director, Canadian Bar Association of BC  
 The Hon. Nancy Phillips, Associate Chief Judge of the Provincial Court of BC  
 MaryAnn Reinhardt, BC Paralegal Association  
 Wayne Robertson, QC, Executive Director, Law Foundation of BC  
 Deb Whelan, BC Paralegals Association

**CONSENT AGENDA**

**1. Minutes**

The minutes of the meeting held on March 1, 2013 were approved as circulated.

The *in camera* minutes of the meeting held on March 1, 2013 were approved as circulated.

The following resolutions were passed unanimously and by consent.

- **Schedule 4 of the Law Society Rules: tariff of costs and interim suspension proceedings**

*BE IT RESOLVED to amend Schedule 4 of the Law Society Rules by rescinding item 2 and substituting the following:*

2.	Proceeding under s. 26.01, 26.02 or 39 and any application to rescind or vary an order under the Rules, for each day of hearing	30
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- **Rule 5-14 - stay of order on intention to review**

*BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 5-14(3) and substituting the following:*

(3)When a review has been initiated under Rule 5-13, any party to the review may apply to the President for a stay of any order not referred to in subrule (1) or (2).

- **Rule 9-1 – Unlimited liability companies (ULCs) as law corporations**

*BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 9-1 and substituting the following:*

- 9-1** A law corporation must use a name
- (a) under which no other corporation holds a valid law corporation permit under this Division,
  - (b) that does not so nearly resemble the name of another corporation holding a valid law corporation permit under this Division that it is likely to confuse or mislead the public,
  - (c) that complies with the *Code of Professional Conduct*, section 4.2 [Marketing], and
  - (d) that includes one of the following phrases:
    - (i) “law corporation”;
    - (ii) “law ULC”;
    - (iii) “law unlimited liability company”.

- **Rule 10-1 and others – serving documents and notice of Law Society proceedings**

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

1. *By rescinding Rule 4-15 and substituting the following:*

**Notice of citation**

**4-15** The Executive Director must serve a citation on the respondent

- (a) in accordance with Rule 10-1, and
- (b) not more than 45 days after the direction that it be issued, unless the Discipline Committee or the chair of the Committee otherwise directs.

2. *By rescinding Rule 4-41(2) and substituting the following:*

- (2) The notice referred to in subrule (1) must be served in accordance with Rule 10-1.

3. *By rescinding Rule 10-1 and substituting the following:*

**Service and notice**

- 10-1** (1) A lawyer, former lawyer, articulated student or applicant may be served with a notice or other document personally or by sending it by

- (a) registered mail, ordinary mail or courier to his or her last known business or residential address,
  - (b) electronic facsimile to his or her last known electronic facsimile number,
  - (c) electronic mail to his or her last known electronic mail address, or
  - (d) any of the means referred to in paragraphs (a) to (c) to the place of business of his or her counsel or personal representative or to an address given to discipline counsel by a respondent for delivery of documents relating to a citation.
- (1.2) If it is impractical for any reason to serve a notice or other document as set out in subrule (1), the President may order substituted service, whether or not there is evidence that
- (a) the notice or other document will probably
    - (i) reach the intended recipient, or
    - (ii) come to the intended recipient's attention, or
  - (b) the intended recipient is evading service.
- (1.3) The President may designate another Bencher to make a determination under subrule (1.2).
- (2) A document may be served on the Society or on the Benchers by
- (a) leaving it at or sending it by registered mail or courier to the principal offices of the Society, or
  - (b) personally serving it on an officer of the Society.
- (3) A document sent by registered mail or courier is deemed to be served 7 days after it is sent.
- (4) Any person may be notified of any matter by ordinary mail, electronic facsimile or electronic mail to the person's last known address.

- **Proposed new Rule 4-20.1 – Notice to Admit**

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

*1. By adding the following Rule:*

**Notice to admit**

- 4-20.1** (1) At any time, but not less than 45 days before a date set for the hearing of a citation, the respondent or discipline counsel may request the other party to admit, for the purposes of the hearing only, the truth of a fact or the authenticity of a document.

- (2) A request made under subrule (1) must
  - (a) be made in writing in a document clearly marked “Notice to Admit” and served in accordance with Rule 10-1 [*Service and notice*], and
  - (b) include a complete description of the fact the truth of which is to be admitted or attach a copy of the document the authenticity of which is to be admitted.
- (3) A request may be made under subrule (1) by a party that has made a previous request under that subrule.
- (4) A respondent or discipline counsel who receives a request made under subrule (1) must respond within 21 days by serving a response on the other party in accordance with Rule 10-1 [*Service and notice*].
- (5) The time for response under subrule (4) may be extended by agreement of the parties or by an order under Rule 4-26.1 [*Preliminary questions*] or 4-27 [*Pre-hearing conference*].
- (6) A response under subrule (4) must contain one of the following in respect of each fact described in the request and each document attached to the request:
  - (a) an admission of the truth of the fact or the authenticity of the document attached to the request;
  - (b) a statement that the party making the response does not admit the truth of the fact or the authenticity of the document, along with the reasons for not doing so.
- (7) If a party who has been served with a request does not respond in accordance with this Rule, the party is deemed, for the purposes of the hearing only, to admit the truth of the fact described in the request or the authenticity of the document attached to the request.
- (8) If a party does not admit the truth of a fact or the authenticity of a document under this Rule, and the truth of the fact or authenticity of the document is proven in the hearing, the panel may consider the refusal when exercising its discretion respecting costs under Rule 5-9 [*Costs of hearings*].
- (9) A party who has admitted or is deemed to have admitted the truth of a fact or the authenticity of a document under this Rule may withdraw the admission with the consent of the other party or with leave granted on an application
  - (a) before the hearing has begun, under Rule 4-26.1 [*Preliminary questions*] or 4-27 [*Pre-hearing conference*], or
  - (b) after the hearing has begun, to the hearing panel.

2. *By rescinding Rule 4-24.1(3) and substituting the following:*
  - (3) Unless the panel rules otherwise, the respondent and discipline counsel may adduce evidence by
    - (a) affidavit,
    - (b) an agreed statement of facts, or
    - (c) an admission made or deemed to be made under Rule 4-20.1 [*Notice to admit*].
3. *By rescinding Rule 4-30(3) and substituting the following:*
  - (3) Despite subrule (1), before the hearing begins, the panel may receive and consider
    - (a) the citation,
    - (b) an agreed statement of facts, and
    - (c) an admission made or deemed to be made under Rule 4-20.1 [*Notice to admit*].
4. *By adding the following paragraph to Rule 5-5(6):*
  - (b.1) an admission made or deemed to be made under Rule 4-20.1 [*Notice to admit*];

## **GUEST PRESENTATION**

### **2. Overview of Provincial Court of BC Scheduling Project**

The Honourable Nancy Phillips, Associate Chief Judge of the BC Provincial Court, briefed the Benchers on the Provincial Court Scheduling Project (PCSP). Officially announced and endorsed by Chief Judge Crabtree in August 2012, PCSP's objectives are "to develop and implement scheduling practices that will make more efficient, effective and equitable use of judicial resources."<sup>1</sup>

Associate Chief Judge Phillips elaborated on PCSP's objectives:

- to develop and implement new scheduling practices to enhance the use of judicial resources
- to rescind parts of the Criminal Caseflow Management Rules (CCFM) that have not proven effective in reducing the number of appearances or creating trial certainty

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<sup>1</sup> PCSP Briefing Note, circulated at the April 5, 2013 Bencher meeting.

- to develop computer software to support the new scheduling process and enable the court to obtain better management information
- engage justice system stakeholders in the Provincial Court Scheduling Project to foster systemic change

The new scheduling model features three elements:

- delayed assignment of judges to cases and cases to courtrooms
- simplified Criminal Front End Processes – non-adjudicative and uncontested appearances will be dealt with by Judicial Case Managers (JCMs)
- increased use of video technology and computer software to provide options for earlier case conferencing (family & civil), bail and sentencing hearings
  - the software will improve current ad hoc practices which see available judge-time linked with emergent needs in other locations

Associate Chief Judge Phillips outlined the project's three key principles:

- Flexibility – the new scheduling model will better enable the court to address inevitable last-minute developments on trials, reducing unused court time and delay and thereby increasing access to justice
- Community equity – court schedules will be drawn to ensure communities have similar wait times-to-trial and that court resourcing standards in family, civil as well as criminal are monitored and addressed.
- File management by counsel – in moving away from the CCFM Rule appearances, the Provincial Court is signaling a return of responsibility for file management to counsel.

Associate Chief Judge Phillips confirmed that active engagement with the bar is an important aspect of the project's development and implementation: PCSP has sought feedback from counsel by surveying lawyers and is working closely with the Ministry of Justice, Legal Services Society, the Criminal Justice Branch and others. Elements of the new scheduling model, such as the elimination of some of the CCFM appearances, will be implemented at the same time across the province. The trial streaming component will be brought into place in a staged fashion starting late 2013 or early 2014 in North Fraser. Following her presentation Associate Chief Judge Phillips responded to a number of questions from Benchers.

### 3. Law Foundation of BC Annual Update

Board Chair Tamara Hunter presented the Law Foundation's annual update to the Benchers. Formed in 1969 as North America's first law foundation, this non-profit body's founding legislation authorizes it to receive and distribute interest earned on clients' funds held in their lawyers' trust accounts. From its inception through 2011, the Law Foundation has approved grants totalling almost \$460 million to support important law-related programs in British Columbia.<sup>2</sup> Ms. Hunter's presentation slides are attached as Appendix 1 to these minutes.

Ms. Hunter outlined the Law Foundation's mandate, vision, mission and strategic priorities:

- Mandate
  - Legal aid
  - Legal education (professional legal education and public legal education)
  - Law libraries
  - Law reform
  - Legal research
- Vision
  - a society where access to justice is protected and advanced
- Mission:
  - to advance and promote a just society governed by the rule of law, through leadership, innovation and collaboration
- Strategic Priorities
  - maintain and improve Law Foundation finances
  - provide support for Law Foundation grantees
  - continue the ongoing evaluation of Law Foundation programs and projects
  - research and address gaps in access to justice in BC – sectoral and substantive
  - Develop new programs and initiatives

Ms. Hunter reviewed the history of Law Foundation's efforts to respond to the cuts in legal aid funding that started in 2002, noting that about 65 per cent of current grants are directed at supporting the provision of legal aid in BC.

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<sup>2</sup> The Foundation's 2011 Annual Report at page 4.



Ms. Hunter confirmed the impact of the downturn in the global economy since 2008 on interest rates and the Foundation's finances: for the past four years the Foundation has drawn on reserves maintained in its grant stabilization fund to maintain funding commitments made to grantees. Difficult decisions are expected for this fall when the Foundation will assess its current and 2014 funding commitments. Ms. Hunter noted that a principled and strategic approach will be taken, focusing on value and need as key funding criteria.

Ms. Hunter also noted that law firms can make an important contribution to the Foundation's work by ensuring that their trust accounts are maintained at financial institutions providing the highest possible rates of interest. She acknowledged the following institutions for committing to favourable rates in their banking agreements with Law Foundation: HSBC Bank of Canada, Canadian Imperial Bank of Commerce, Royal Bank of Canada, TD Canada Trust and Vancouver City Savings Credit Union.

Ms. Hunter confirmed the Law Foundation's appreciation for its close working relationship with the Law Society and for the interest and support shown by the Benchers over the years. She noted particularly the valuable contributions made by the Trust Assurance department in realizing interest revenue of about \$1 million over the past four years in the course of auditing various banks' compliance with their respective Law Foundation agreements.

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

### **4. Report from Ethics Committee: Issues Relating to the *Code of Professional Conduct for British Columbia (the BC Code)***

Mr. Crossin briefed the Benchers as chair of the Ethics Committee regarding a number of proposed amendments to the BC Code. He noted that the proposed amendments relate to four issues which the Committee views as warranting immediate changes to the BC Code, without waiting for the Federation of Law Societies of Canada to determine whether such changes should be incorporated into the Federation's Model Code of Professional Conduct. Mr. Crossin noted that those four issues are discussed in the Ethics Committee's report to the Benchers, at Tab 4 of the meeting materials:

- A. BC Code rule 3.2-7: Dishonesty of Client (page 4002)
- B. Rule 6.1-4: Associating with person whose character and fitness are in (page 4003)
- C. Rule 3.6-2: Contingent Fees and Contingent Fee Agreements (page 4004)
- D. Chapter 11, Rule 12 of the *Professional Conduct Handbook* (page 4004)

Mr. Crossin moved (seconded by Mr. Zacharias) that the Benchers adopt the following resolution:

*BE IT RESOLVED to amend the Code of Professional Conduct for British Columbia as follows:*

1. *By rescinding rule 3.2-7 and substituting the following*

**Dishonesty, fraud by client**

**3.2-7** A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.

2. *In rule 3.6-2, by rescinding paragraph [1] of the Commentary and substituting the following:*

**[1]** In determining the appropriate percentage or other basis of a contingency fee, a lawyer and client should consider a number of factors, including the likelihood of success, the nature and complexity of the claim, the expense and risk of pursuing it, the amount of the expected recovery and who is to receive an award of costs. The test is whether the fee, in all of the circumstances, is fair and reasonable.

3. *In rule 3.6-3, by rescinding paragraph [1] of the Commentary.*
4. *By rescinding rule 6.1-4 and substituting the following:*

**Suspended or disbarred lawyers**

**6.1-4** Without the express approval of the lawyer's governing body, a lawyer must not retain, occupy office space with, use the services of, partner or associate with or employ in any capacity having to do with the practice of law any person who, in any jurisdiction,

- (a) has been disbarred and struck off the Rolls,
- (b) is suspended,
- (c) has undertaken not to practise,
- (d) has been involved in disciplinary action and been permitted to resign and has not been reinstated or readmitted,
- (e) has failed to complete a bar admission program for reasons relating to lack of good character and repute or fitness to be a member of the bar,

- (f) has been the subject of a hearing ordered, whether commenced or not, with respect to an application for enrolment as an articulated student, call and admission, or reinstatement, unless the person was subsequently enrolled, called and admitted or reinstated in the same jurisdiction, or
- (g) was required to withdraw or was expelled from a bar admission program.

5. *In rule 7.2-1, by adding the following paragraph to the Commentary:*

[5] A lawyer who knows that another lawyer has been consulted in a matter must not proceed by default in the matter without inquiry and reasonable notice.

In the ensuing discussion the following issues were raised:

- whether there is tension between the protection of the public interest provincially and nationally
- whether protection of the public interest in BC risks undermining progress toward a nationally uniform Model Code
- whether there is or should be a target date for achievement of a uniform Model Code
- whether progress toward national uniformity is
  - incremental and ad hoc, or
  - coordinated and strategic

Mr. McGee noted that the Federation's Standing Committee on the Model Code, chaired by Mr. Hume, is continuing to work closely with the Federation's member law societies toward the goal of a nationally uniform Model Code.

The motion was carried.

## **5. Strategic Plan Implementation Update**

Mr. Vertlieb updated the Benchers on a recent Credentials Committee discussion of articulated students, noting that the discussion was framed in the context of alignment with the current Strategic Plan. He also provided an update on the work of the Governance Committee, confirming that major issue retreat meetings have been scheduled for May 3 and May 24, and that a mid-year progress report will be delivered at the Benchers' Retreat.

Mr. McGee noted that a mid-year report on implementation of the current Strategic Plan will be provided at the July Bencher meeting.

## **6. Review of the Law Society's Draft 2012 Financial Statements and Year End Financial Report**

Ms. Lindsay briefed the Benchers as Chair of the Finance Committee. She advised that the 2014 budgeting process will commence in June 2013, and that the Finance Committee expects to present its recommendations regarding 2014 practice fees at the September 27 Bencher meeting. Ms. Lindsay noted the current TAF funding shortfall facing the Trust Assurance program in light of the ongoing downturn in real estate activity on TAF revenue and confirmed that the Finance Committee will be reporting to the Benchers with recommendations in the coming months.

Ms. Lindsay also updated the Benchers on the work of the Reduced Fee Feasibility Working Group in relation to the member resolution passed at the 2012 Annual General Meeting, calling on the Law Society to consider the feasibility of a reduced-fee class of membership for non-profit lawyers.

Chief Financial Officer Jeanette McPhee reported on the draft 2012 Financial Results, providing an overview of General Fund, Trust Assurance Fund and Special Compensation Fund performance for the past year. Ms. McPhee referred to three sets of material included in the agenda package:

- Summary of Financial Highlights (draft) – December 2012 (page 6004)
- Income Statements (draft) – December 2012 (page 6005)
- Law Society of BC 2012 Draft Financial Results (page 6014)

Ms. McPhee also provided a preliminary view of the Law Society's financial performance for the first quarter of 2013.

Following her presentation Ms. McPhee responded to several questions from Benchers on topics including:

- relationship between Professional Legal Training Course revenue and expenses
- challenges of leasing space in the Law Society's building at 835 Cambie Street
- staff vacancies and outside counsel costs anticipated for 2013

- comparison of law society revenue change and lawyer population change, provincial and national

Mr. McGee noted the significance of the 2011 – 2012 increase of 1.7% in the Law Society's practicing membership and related revenue. Mr. McGee also noted that improved accuracy is expected to follow from conducting the Law Society's annual financial forecasting and budgeting processes in the second half of the year commencing in 2013, rather than the first half, as has been the case for many years.

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

Mr. Vertlieb reported on various Law Society matters that have arisen since the last Bencher meeting, including:

### **a. Inaugural Justice Summit and BC Justice Leaders Dinner (March 15 – 16)**

First Vice-President Jan Lindsay, QC represented the Law Society at the BC Justice Leaders Dinner. Mr. McGee delivered welcoming and closing remarks at both the dinner and the summit. Both events went well and signal early progress in this multilateral and ongoing dialogue process, initiated by the Minister of Justice and Attorney General and directed at reforming BC's criminal justice system.

### **b. Canadian Bar Association Meeting in Terrace**

Mr. Vertlieb attended a CBABC meeting in Terrace to brief members of the Prince Rupert, Smithers and Terrace bars on the Designated Paralegals Pilot Project. The assistance and hospitality of Prince Rupert County Bencher Barry Zacharias was gratefully acknowledged.

### **c. Canadian Bar Association Meeting in Campbell River March 7)**

Mr. Vertlieb attended a CBABC meeting in Campbell River to brief members of the local bar on the Designated Paralegals Pilot Project, and on the work of the Legal Service Provider Task Force.

### **d. BC Supreme Court Meeting (March 12)**

Mr. Vertlieb attended a BC Supreme Court committee meeting chaired by BC Supreme Court Justice Gail Dickson. The committee is considering the introduction of television cameras into BC courtrooms.

**e. Federation of Law Societies of Canada Council Meeting and Semi-annual Conference (March 20 – 22, Quebec City)**

Ms. Lindsay will report on this matter later in the meeting.

**f. Meeting with Vancouver Airport Authority Board Chair Mary Jordan (April 2)**

Mr. Vertlieb met with Vancouver Airport Authority Board (VAA) Chair Mary Jordan to review Law Society's upcoming appointment of a director to the VAA board. Ms. Carol Kerfoot's distinguished service as the retiring VAA board member was acknowledged.

**g. Special Compensation Committee**

Mr. Vertlieb noted that 2013 will be the final year of operation for the Special Compensation Committee. He also noted the significance of the work done by many Benchers on that committee over many years, and particularly thanked Mr. Renwick for his leadership in that regard.

Mr. Renwick expressed appreciation to past Committee members for their dedication and commitment, particularly Azim Adoo, Michael Falkins, Patrick Kelly, Bruce LeRose, QC, Peter Ramsay, QC, Patricia Schmit, QC and Richard Stewart, QC. Mr. Renwick also thanked Graeme Keirstead, Stephanie Komick and Lainie Shore for their valuable staff support.

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

Mr. McGee provided highlights of his monthly written report to the Benchers (Appendix 2 to these minutes), including the following matters:

- 2013 Operational Priorities – Progress Report
  1. Review and Renewal of Management Structure
  2. Lawyer Advice and Support Project
  3. Support for Legal Service Provider Task Force
  4. Regulation of Law Firms – Policy and Operational Assessment
  5. Implementation of Governance Review Task Force Report
- Federation of Law Societies of Canada 2013 Semi-Annual Conference, Quebec City
- Inaugural BC Justice Summit

- New Westminster Bar Association Presidents' Dinner
- Bencher Retreat

### **9. Federation of Law Societies of Canada Council Meeting and Conference Update (March 20 – 22, Quebec City)**

First Vice-President Jan. Lindsay, QC briefed the Benchers. Advising that the theme of the conference was “legal regulation in the future,” Ms. Lindsay commented on the challenges posed by regional disparities in resources and priorities to the goals of national standards and uniformity in legal regulation. She noted a particular regulatory challenge facing larger, stronger law societies: balancing pursuit of local excellence with commitment to national standards and uniformity.

Ms. Lindsay drew attention to the Law Society's strong contributions in a number of areas, including Mr. McGee's presentation highlighting the importance of outreach by law societies to a broad range of stakeholders; and Ms. Armour's participation in a panel discussion on discipline standards.

Ms. Lindsay also noted her impression that there is broad commitment among Canada's law societies to pursuit of improvement in regulatory performance, and to pursuit of public education and support.

### **10. Outstanding Hearing Reports**

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

WKM  
2013-04-22