



# Minutes

## Benchers

Date: Friday, December 04, 2015

Present:

Ken Walker, QC, President	Dean Lawton
David Crossin, QC, 1 <sup>st</sup> Vice-President	Peter Lloyd, FCPA, FCA
Herman Van Ommen, QC, 2 <sup>nd</sup> Vice-President	Jamie Maclaren
Haydn Acheson	Sharon Matthews, QC
Joseph Arvay, QC	Nancy Merrill, QC
Satwinder Bains	Maria Morellato, QC
Edmund Caissie	David Mossop, QC
Pinder Cheema, QC	Lee Ongman
David Corey	Greg Petrisor
Jeevyn Dhaliwal	Claude Richmond
Lynal Doerksen	Phil Riddell
Thomas Fellhauer	Elizabeth Rowbotham
Craig Ferris, QC	Sarah Westwood
Martin Finch, QC	Tony Wilson
Miriam Kresivo, QC	

Excused: Cameron Ward

Staff Present:

Tim McGee, QC	David Jordan
Deborah Armour	Michael Lucas
Taylor Ashlie	Jeanette McPhee
Renee Collins	Doug Munro
Lance Cooke	Jack Olsen
Su Forbes, QC	Lesley Small
Andrea Hilland	Alan Treleven
Jeffrey Hoskins, QC	Adam Whitcombe

Guests: Honourable Robert Bauman	Chief Justice of the Supreme Court of BC
Dom Bautista	Executive Director, Law Courts Center
Johanne Blenkin	CEO, Courthouse Libraries BC
Kari Boyle	Director of Strategic Initiatives, Mediate BC Society
Wayne Braid	CEO, The Society of Notaries Public of BC
Jeff Campbell, QC	2016 Vancouver County Bencher
Anne Chopra	Equity Ombudsperson, Law Society of BC
Dr. Catherine Dauvergne	Dean of Law, University of British Columbia
Aseem Dosanjh	Second Vice President, Trial Lawyers Association of BC
Richard Fyfe, QC	Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General
Daniel Gallant	Thompson Rivers University Law Student
Brook Greenberg	2016 Vancouver County Bencher
Lisa Hamilton	2016 Vancouver County Bencher
Woody Hayes, FCPA, FCA	2016 Appointed Bencher
Gavin Hume, QC	Law Society of BC Member, Council of the Federation of Law Societies of Canada
Prof. Craig Jones, QC	Faculty of Law, Thompson Rivers University
Derek LaCroix, QC	Executive Director, Lawyers Assistance Program
Carmen Marolla	Vice President, BC Paralegal Association
Michael McDonald	Treasurer, Indigenous Bar Association
Steven McKoen	2016 Vancouver County Bencher
Christopher McPherson	2016 Westminster County Bencher
Adam Munnings	CBA, Co-Chair, Aboriginal Lawyers Forum
Susan Munro	Director of Publications, Continuing Legal Education Society of BC
Caroline Nevin	Executive Director, Canadian Bar Association, BC Branch
Wayne Robertson, QC	Executive Director, Law Foundation of BC
Mark Rushton	2016 Appointed Bencher
Rose Singh	Vice President, BC Paralegal Association
Michelle Stanford	2016 Kamloops District Bencher
Monique Steensma	CEO, Mediate BC
Prof. Jeremy Webber	Dean of Law, University of Victoria
Michael Welsh	Vice-President, Canadian Bar Association, BC Branch

## **1. Guest Speaker: The Honourable Chief Justice Robert J. Bauman**

Mr. Walker welcomed the Honourable Chief Justice Bauman, who began his remarks noting the strong working relationship between the Law Society and the Courts, a relationship that helps create and maintain cohesion in the legal profession.

The Chief Justice outlined recent developments in the Court, including appointments to the Bench, caseload considerations and upcoming projects. He noted the increasingly challenging nature of the work, which he attributed to a very able Bar.

Specifically, the Court has been looking closely at self-represented litigants; in family matters particularly, filings by self-represented litigants has reached as high as 44% of total filings. Also being considered are Civil Rule reform initiatives, with which the Court is looking to simplify the Rules for lawyers and lay litigants as recommended by the National Action committee.

The Chief Justice himself has been engaged as First Vice-Chair of the Canadian Judicial Council, which provides oversight of judicial conduct, education and efficiencies in the administration of justice across the country. He has also been actively involved in the community, speaking to diverse groups and organizations.

He has been pleased to chair Access to Justice BC, whose mandate is to enhance access to justice across all socio-economic levels by supporting the development and implementation of access initiatives and removing access barriers. The committee was formed following the recognition by the National Action Committee that a culture shift is needed in the justice system, one that will require collaboration amongst a broad range of champions of change, and that will emphasize innovation and action. As chair, Chief Justice Bauman has brought together over 23 diverse organizations across many sectors, including healthcare, government, community outreach, dispute resolution, the legal profession and the judiciary. The committee strives to coordinate all efforts across all types of access initiatives; the area of family disputes has been identified as a key area within which access can be improved. The very fact that communication has begun amongst these diverse silos is a mark of success in itself.

The three main aims of the committee are to improve the justice experience, improve outcomes and ensure sustainability. Continuous improvement is a goal, with an emphasis on small, defined action within measurable time periods.

Chief Justice Bauman applauded the work of the Law Society, which he described as wide ranging and effective, noting that vigilant regulation itself is an effective access tool. Specifically, he commended the Law Society for its work towards regulating other legal service providers, and its establishment of a Legal aid task force.

**President's Introduction:**

Mr. Walker thanked Chief Justice Bauman for his remarks. He also recognized the presence of the newly elected and appointed Benchers, and introduced them to the meeting. Additionally, he recognized and introduced guests Michael McDonald, Treasurer of the Indigenous Bar Association and Adam Munnings, co-chair of the CBABC Aboriginal Lawyers Forum and executive member of the Aboriginal Law Section. Finally, he thanked Ms. Rita Andreone for providing a helpful and informative presentation on Bencher Governance to the Benchers the previous day, and noted that there would be a showing of the short documentary, North Boys: The Story of Jimmy and Charlie after the Bencher meeting for those interested. The documentary chronicles the lives of two residential school survivors, and was shown at the recent Federation Conference focused on the Truth and Reconciliation Commission's Report and Calls to Action.

**CONSENT AGENDA****2. Minutes****a. Minutes**

The minutes of the meeting held on October 30, 2015 were approved as circulated.

**b. Resolutions**

The following resolutions were passed unanimously and by consent.

***BE IT RESOLVED to amend the Law Society Rules as follows:******1. In Rule 1-8, by rescinding subrules (5) and (7) and substituting the following:***

- (5) At least 60 days before an annual general meeting, the Executive Director must, by electronic or other means, distribute to Benchers and members of the Society in good standing a notice of the date and time of the meeting.
- (7) At least 21 days before an annual general meeting, the Executive Director must, by electronic or other means, make available to Benchers and members of the Society in good standing
  - (a) a notice containing the following information:
    - (i) the locations at which the meeting is to be held, and
    - (ii) each resolution received in accordance with subrules (6), and
  - (b) the audited financial statement of the Society for the previous calendar year..

2. ***In Rule 1-9, by rescinding subrule (2) and substituting the following:***
  - (2) The Executive Director may appoint a Bencher or a member of the Society in good standing to act as local chair of a location where the President is not present..
3. ***In Rule 1-11, by rescinding subrules (5) and (6) and substituting the following:***
  - (5) At least 21 days before a special general meeting, the Executive Director must, by electronic or other means, distribute to Benchers and members of the Society in good standing a notice of the meeting stating the business that will be considered at the meeting.
  - (6) The accidental omission to give notice of a special general meeting to any Bencher or member of the Society, or the non-receipt of that notice, does not invalidate anything done at the meeting.
4. ***In Rule 1-13***
  - (a) ***by striking the words in subrule (1) “Members of the Society” and substituting the words “Benchers, members of the Society”; and***
  - (b) ***by rescinding subrule (2) (c) and substituting the following:***
    - (c) appointed Benchers and persons given permission to attend the meeting by the President, who may be given a card for identification only..

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

1. ***By rescinding Rule 1-5 (6) by striking the words “a mail ballot” in both places that it occurs, and substituting the words “a ballot”.***
2. ***In Rule 1-6:***
  - (a) ***by rescinding the preamble to subrule (4) and substituting the following:***
    - (4) Within 30 days after the Benchers pass a resolution under subrule (1), the Executive Director must make available to each member of the Society in good standing,
  - (b) ***by rescinding subrule (4) (b) and substituting the following:***
    - (b) a statement by the President or Vice-President, as the case may be, stating why he or she should not be removed from office, if that person wishes to have such a statement provided to each member, and, ***and***
  - (c) ***by rescinding subrule (6) and substituting the following:***

(6) After the counting of the ballots is completed, the Executive Director must declare whether the President or Vice-President, as the case may be, ceases to hold office.

**3. *By rescinding Rule 1-25 (1) and (2) and substituting the following:***

- (1) A member of the Society in good standing is eligible to vote in a Bencher election.
- (1.1) A member of the Society must not cast a vote or attempt to cast a vote that he or she is not entitled to cast.
- (1.2) A member of the Society must not enable or assist a person
  - (a) to vote in the place of the member, or
  - (b) to cast a vote that the person is not entitled to cast.
- (2) Only those members of the Society whose names appear on the voter list prepared under Rule 1-26 [*Voter list*], as corrected, are entitled to vote in a Bencher election.

**4. *By rescinding Rule 1-27 (1) to (4) and substituting the following:***

- (1) By November 1 of each year, the Executive Director must make available to each member of the Society whose name is on the voter list prepared under Rule 1-26 [*Voter list*]
  - (a) a ballot containing, in the order determined under Rule 1-28 [*Order of names on ballot*], the names of all candidates in the district in which the member is entitled to vote and stating the number of Benchers to be elected in that district,
  - (b) instructions on marking of the ballot and returning it to the Society in a way that will preserve the secrecy of the member's vote,
- (2) The accidental omission to make the material referred to in subrule (1) available to any member of the Society or the non-receipt of the material does not invalidate an election.
- (3) For a ballot to be valid, the voter must
  - (a) vote in accordance with the instructions provided with the ballot,
  - (b) not vote for more candidates than the number of Benchers to be elected in the district,
  - (c) place the ballot in the ballot envelope and seal the envelope,
  - (d) complete the declaration and sign it,
  - (e) place the ballot envelope in the mailing envelope and seal the envelope, and
  - (f) deliver, or mail postage prepaid, the mailing envelope to the Executive Director.

- (4) The Executive Director may issue a replacement ballot to a voter who informs the Executive Director in writing that the original ballot has been misplaced or spoiled or was not received..

5. ***By adding the following rule:***

**Electronic voting**

**1-27.1**(1)The Executive Committee may authorize the Executive Director to conduct a Bencher election partly or entirely by electronic means.

- (2) The Executive Director
  - (a) may retain a contractor to assist in any part of an election conducted electronically,
  - (b) must ensure that votes cast electronically remain secret, and
  - (c) must take reasonable security measures to ensure that only members entitled to vote can do so.
- (3) A ballot may be produced electronically and, to cast a valid vote, a member must indicate his or her vote in accordance with instructions accompanying the ballot.
- (4) Rules 1-20 to 1-44 apply, with the necessary changes and so far as they are applicable, to an election conducted partly or entirely by electronic means..

6. ***In Rule 1-29:***

- (a) ***by rescinding the title and substituting “Rejection of ballots”;***
- (b) ***in subrule (1), by striking the words “A ballot paper must” and substituting the words “A ballot must”; and***
- (c) ***in subrule (2) (a), by striking the words “the ballot paper as printed by the Society” and substituting the words “the ballot provided by the Society”.***

7. ***In Rule 1-31:***

- (a) ***in subrule (1), by striking the words “for each election for Benchers” and substituting the words “for each Bencher election”; and***
- (b) ***in subrule (4) (b), by striking the words “a ballot paper is rejected” and substituting the words “a ballot is rejected”.***

8. ***By rescinding Rule 1-32 and substituting the following:***

### **Counting of votes**

**1-32** The Executive Director must supervise the counting of votes according to the following procedure:

- (a) the name of each voter who votes is crossed off the voter list, and all the ballots of a voter who submits more than one ballot must be rejected;
- (b) each voter declaration is read, and the ballot of a voter who has not completed and signed the declaration correctly is rejected;
- (c) the ballot envelopes containing ballots are separated by district, and mixed to prevent identification of voters;
- (d) for each district, the ballot envelopes are opened and the ballots removed;
- (e) ballots that are rejected according to the Act or these rules are kept separate;
- (f) all votes are counted and recorded unless void or contained in a rejected ballot.

**9.** *In Rule 1-36 (1), by striking the words “in an election for Bencher” and substituting the words “in a Bencher election”.*

**10.** *By rescinding Rule 1-37 and substituting the following:*

#### **Retention of documents**

**1-37** The Executive Director must retain the ballots and other documents of a Bencher election for at least 14 days after the election or, if a review is taken under Rule 1-36 [Review by Executive Committee], until that review has been completed..

**11.** *In Rule 1-40, by rescinding subrule (2) and substituting the following:*

- (2) The rules respecting a Bencher election apply, with the necessary changes and so far as they are applicable, to a referendum under this rule, except that the votes need not be reported by districts..

**12.** *By rescinding Rule 1-43.*

### **c. Removed Items:**

The following items were removed from the consent agenda for further consideration:

- 1. Memo from Mr. Hoskins to Benchers: Rules on Appointment of Panel and Review Board Chairs.



## **EXECUTIVE REPORTS**

### **3. President's Report**

Mr. Walker began by acknowledging the passing of former Law Society Treasurer Brian Wallace, QC, noting his hard work and dedication to the profession.

With this his last report, he also thanked those Benchers who have assisted him throughout the year at various official and professional events.

He reported on the Executive Committee meeting of November 18, 2016, at which the Committee received a report from Ms. Hilland regarding the formation of a steering committee to guide the Law Society through a consultation process with Indigenous community leaders. The Executive Committee deferred discussion of the student interview process until all members of the Committee could participate; however, Mr. Walker recognized the increasing number of interviews required of Benchers and reminded them that Life Benchers were available to assist. Also discussed were the refinements of the Strategic Plan and the regular Bencher Agenda review.

Mr. Walker acknowledged and thanked the Benchers for the important work done in the year on the Tribunal process, and stressed the importance of improving efficiency and remaining open to innovation. He also noted with pride the work done towards the proposed legislative amendment within challenging time constraints. He congratulated Benchers and staff for continuing to strive to improve and to have the courage to stand by convictions even in the face of challenge.

He expressed his gratitude to all Benchers, Mr. McGee and the many staff at the Law Society who have supported him during his Presidency. He also recognized the service of departing Benchers, and wished them well.

Mr. Welsh, Vice President of the CBABC, thanked Mr. Walker for his work and collaboration with the CBABC in the year, and presented him with a small gift in appreciation.

Ms. Dhaliwal also acknowledged Mr. Walker and on behalf of all the Benchers, expressed their appreciation for his leadership.

Mr. Walker then presented incoming President, Mr. David Crossin, QC, with his President's pin. In accepting his pin, Mr. Crossin noted that there would be a formal occasion upon which to recognize Mr. Walker's service to the Law Society as President, but took this opportunity to note Mr. Walker's leadership, modesty and unfailing good will which will be much missed around the Bencher table.

#### **4. CEO's Report**

Mr. McGee provided highlights of his monthly written report to the Benchers (attached as Appendix 1 to these minutes).

He began by thanking the Benchers, on behalf of all the staff, for all their important work throughout the year, with particular good wishes to those Benchers departing in 2015. He also welcomed new Benchers and looked forward to working with them in the year ahead.

He noted that, though this was his last report in 2015, his report in January, 2016 will cover the 2015 year-end review, including the key performance measures and budget figures. Though the latter will be covered in greater detail in January, he did note the financial pressure created this year by increasing hearing processing and litigation costs, and confirmed that the considerable efforts taken to manage that pressure appear to have been successful.

He highlighted the governance review process undertaken by the Federation, noting that a draft report will be presented in December to determine its readiness to be presented to Law Societies in March of 2016. As major issues have been worked out, pathways towards opportunities to harmonize efforts nationally have emerged.

Finally, with the presentation of a small gift, Mr. McGee thanked Mr. Walker for his collaboration with staff, his hard work, his kindness and his good humour throughout the past year.

#### **5. Briefing by the Law Society's Member of the Federation Council**

Gavin Hume, QC briefed the Benchers as the Law Society's member of the Federation Council. He noted the upcoming Federation Council meeting scheduled for December 17, at which Federation Governance would be a key issue for discussion. The role of the Federation and the way in which that role affects the decision makers have emerged as focal points. Governance structure is also changing, with the addition of Presidents' and CEOs' Forums to help manage issues of national importance. Following this final governance review, the Federation will seek final approval from the Law Societies.

Also on the Agenda will be the National Admissions Standards Project, upon which the Law Society of BC has expressed concerns, anti-money laundering provisions and the Federation's role internationally. Mr. Hume also anticipates focus on improving communication between the law societies and the Federation to foster a common approach across the country, as well as discussion of the recently implemented Interactive Model Code.

Mr. Van Ommen also reported as the Law Society of BC's member of the National Requirement Review Committee, which had its first substantive meeting in November. He noted that the

Committee anticipates creating a report for later distribution, but that it will be some time before it is completed, in part to allow consideration of relevant appellate decisions that are expected in the coming year.

## **DISCUSSION/DECISION**

### **6. Lawyer Education Advisory Committee Report to the Benchers on Admission Program Review**

Tony Wilson, Chair of the Lawyer Education Advisory Committee, briefed the Benchers on the Committee's review of and recommendations for the Law Society's Admission Program. He began by thanking the members of the Committee for their hard work throughout the year.

To facilitate its review, the Committee surveyed approximately 500 PLTC students, and lawyers called to the Bar for less than three years, to gauge their levels of satisfaction with the Admission Program. The Committee also met with the Deans of BC's law schools, invited responses from the profession, held discussions with law firms, met with the designer of the Prairie provinces' CPLED program, examined the programs in Ontario, and considered programs in several other countries.

The result is the Committee's unanimous view that the Law Society of BC's PLTC program is highly successful, as reflected in the Committee's recommendations. However, the recently released Federation National Standards Admissions Assessment Proposal, which recommends a standardized assessment approach across the country, is not supported in its present form by the Committee. There may be further Federation developments, which the Committee will take into account. Mr. Wilson anticipates presenting the Committee's Report to the Benchers for discussion and decision at the March 2016 Bencher meeting.

In brief, the current recommendations include:

- maintaining articling, but monitoring availability of articling positions and consider recommending minimum articling pay;
- continuing with our 'gold standard' PLTC program, including the length of the term;
- holding off on recommending development of any online learning platform pending further development of effective and cost-efficient tools and platforms;
- consider revisions to rules around Articling Principals, including a reduction of the necessary years of experience.

Additionally, the Committee reviewed its recommendations in light of the recent Report and Calls to Action of the Truth and Reconciliation Commission (“TRC”), with a view to incorporating this important learning into PLTC. Recognizing the importance of acting, PLTC content will be developed in consultation with Aboriginal leaders.

Finally, Mr. Wilson underscored his Committee’s belief in the excellence of the PLTC program, and cautioned against any dilution of it to conform to the proposed national standards assessment program. Mr. Walker cautioned that, while we may not agree with the recommendations of the National Standards Assessment Proposal, we also do not want to isolate the Law Society of BC from other law societies nationally.

## **7. Truth and Reconciliation Commission: Call to Action #27: Proposal from the Lawyer Education Advisory Committee**

In response to the TRC’s Call to Action #27, which specifically recommends that lawyers receive appropriate cultural competency training, Mr. Wilson on behalf of the Lawyer Education Advisory Committee moved (seconded by Ms. Matthews) that:

The CPD requirements, approved by the Benchers on September 9, 2011, be amended to include Aboriginal law and practice skills in the special two hour component, as follows:

At least 2 of the 12 hours must pertain to any combination of professional responsibility and ethics, client care and relations, practice management, and Aboriginal law and practice skills, including the Truth and Reconciliation Commission’s recommended “appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations,” and “skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.”

Stand alone as well as embedded content satisfy the two hour ethics requirement.

Briefly, the recommendation is to include aboriginal cultural competency training as acceptable training to fulfill the two hour continuing professional development ethics requirement.

Mr. Wilson noted that certain courses currently offered by CLE include an aboriginal cultural competency component; Ms. Matthews also noted that the Courthouse Library Society has developed a comprehensive program that will be available in 2016.

In response to questions, Mr. Wilson confirmed that the proposal would not make such training mandatory, only an optional way to fulfill the ethics requirement. He also confirmed that this proposal is distinct from the intention to develop a mandatory program through PLTC for students.

The motion was approved unanimously.

Following the break, Mr. Crossin noted that, in response to the TRC Calls to Action, the Law Society has agreed to seek the guidance and hear the voices of indigenous leaders on how best to respond to these Calls to Action. Mr. Crossin emphasized that we must be respectful of this leadership and guidance both for major initiatives and smaller projects. He suggested that the resolution passed earlier was perhaps premature, and that we should first reach out to the indigenous community to ensure we articulate the vision appropriately with every step forward, regardless of its size.

Mr. Crossin moved (seconded by Mr. Richmond) that the Benchers reconsider and postpone their earlier motion to amend CPD requirements to allow cultural competency training to fulfill the annual two hour ethics requirement (as set out above), pending consultation with the indigenous community.

Mr. Walker called upon Mr. Adam Munnings, co-chair of the CBABC Aboriginal Lawyers subsection to help Benchers understand the issue from the indigenous lawyers' perspective. Mr. Munnings emphasized that the conversation around CPD credits, and the subsequent decision that was made, failed to include any aboriginal voices. He also related his concern that some of the CLE courses being discussed actually focused on aboriginal law, rather than on the injustices done to aboriginal people and the intergenerational effects of those injustices. He stressed the point that aboriginal people must be included in the conversation and in the process moving forward.

Mr. Walker thanked Mr. Munnings for his remarks, and reiterated on behalf of the Benchers that their intentions were to be respectful.

Following Mr. Munnings' remarks, it was observed that at issue were the principles of our engagement, not simply the motion at hand; we should allow an initial consultation process to design such principles before embarking on any initiatives. However, further discussion demonstrated that swift action was still valued by others.

Mr. Walker called upon Mr. MacDonald, member of the Board of the Indigenous Bar Association, who noted that the motion to reconsider the earlier motion, and examine the CPD credits issue in the larger context following consultation with indigenous groups, would be very well received by the Indigenous Bar Association. He acknowledged the good intentions behind

the quick action, but appreciated the Benchers' willingness to pause and rethink, given the importance of initial perceptions and processes in these first steps of engagement.

Mr. Walker thanked Mr. MacDonald, and reiterated that it is the Benchers' intention to 'do the right thing' and move forward respectfully and productively; hearing from Mr. MacDonald and Mr. Munnings will help the Benchers in that aim.

Some Benchers noted the importance of taking action and cautioned against excessive consultation. Others expressed concern that postponing the decision to revise CPD might lead to a lost opportunity to direct members to meaningful training that has been developed by CLE in consultation with Indigenous leaders. Still others strongly supported the motion to reconsider, noting the importance of starting the process in the most mindful, collaborative and respectful way.

After calling for a vote on the motion, Mr. Walker confirmed that the motion to reconsider was passed unanimously.

## **8. Ethics Committee: Family Law Task Force recommendations**

By request of a Bencher, this item was moved from the Consent Agenda to allow for discussion.

Specifically, discussion of the recommendations concerning the proposed scope of practice of paralegals was sought. It was observed that the recommendation to limit paralegals' practice could be construed as contrary to our general goal of increasing access to legal services through other legal service providers.

On behalf of the Ethics Committee, Mr. Van Ommen as chair noted that the Ethics Committee were recommending the adoption of recommendations made by the Family Law Task Force. At issue are two key requirements:

- Designated paralegals may represent clients at mediation only where a lawyer is available to consult by phone; and,
- Final agreements drafted by paralegals are not binding until reviewed by a lawyer

He also discussed the Task Force's decision not to recommend paralegal representation at family arbitrations, given the similarities of arbitrations to trials. In response to a question,

Mr. Van Ommen confirmed that the profession had been consulted prior to the recommendations being made.

Mr. Walker confirmed the Benchers' agreement to vote on the proposed resolution, rather than return the item to the Consent Agenda.

Mr. Van Ommen moved (seconded by Ms. Merrill) that the series of recommendations to change the *BC Code* to give effect to concerns with respect to paralegal representation of family law clients that were identified by the Family Law Task Force, and the changes to the *BC Code* recommended by the Ethics Committee and attached as Appendix 2, be approved by the Benchers.

The motion was passed by unanimous vote.

## **9. Year-End Reports from the 2015 Advisory Committees**

- **Access to Legal Services Advisory Committee**

Phil Riddell, Chair of the Access to Legal Service Committee, thanked the Committee members and staff for their hard work throughout the year. He summarized the work of the Committee, including the earlier decision not to pursue development of a program designed around the Manitoba family law project. In its stead, the Committee has worked with Mediate BC to develop a family law referral roster and a toolkit to provide independent legal advice and unbundled legal services to low income clients in mediation. Funding has recently been approved by the Law Foundation. Additionally, the Committee reviewed and made recommendations concerning contingency fee agreements in family law cases, and explored with LIF coverage for retired lawyers and judges to provide pro bono services.

- **Equity and Diversity Advisory Committee**

Satwinder Bains, Chair of the Equity and Diversity Committee, thanked the Committee members and staff for their hard work throughout the year. She summarized the work of the Committee this year, which included examining how the Committee can include other diversity groups in its work, widening its scope of work beyond gender issues. Additionally, it has and will continue to work on increasing cultural competency around the Bencher table and at PLTC.

- **Rule of Law and Lawyer Independence Advisory Committee**

David Crossin, QC, Chair of the Rule of Law and Lawyer Independence Advisory Committee, thanked the committee members and staff for their hard work throughout the year. He summarized the work of the Committee for the year, including its implementation of a more 'robust' articulation of the principles of Section 3 of the Legal Professions Act and how that intersects with Rule of Law issues. Additionally, he noted

the Committee's commitment to giving voice to Rule of Law issues, and the recent mandate given by Benchers in that regard.

## **REPORTS**

### **10. Report on the Outstanding Hearing & Review Reports**

Written reports on outstanding hearing decisions and conduct review reports were received and reviewed by the Benchers.

### **11. 2015-2017 Strategic Plan Implementation Update**

Mr. McGee briefed the Benchers on the annual review of the Strategic Plan, which does not seek to reopen the plan, but refine it in light of ongoing progress and emerging priorities. He confirmed that this refinement of the plan does not disrupt or replace the day to day operations of the Law Society or the ongoing work of Advisory committees.

He referred the Benchers to the five priorities outlined in the Report, including the addition of the priority of addressing the Calls to Action from the Report of the Truth and Reconciliation Commission. He also noted one adjustment to the recommendations, which is to extend the time for the Notaries Qualifications Working Group to report back to Benchers to allow them to complete the work they have undertaken.

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

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December 2015

Prepared for: Benchers

Prepared by: Timothy E. McGee

## **Best Wishes and Thanks**

As this is the last Bencher meeting for 2015 I would like to take this opportunity on behalf of all staff to wish you all a very happy holiday season and to thank you for your many contributions and hard work throughout the year. I would also like to extend congratulations and a special welcome to the newly elected Benchers and to those re-elected for another term. For those Benchers not returning please accept our heartfelt thanks and appreciation for your outstanding service and support.

## **Strategic Priorities Discussion**

In my last report I reviewed in detail the key areas for strategic review and discussion by the Benchers as we head into 2016 being year 2 of our 3 year strategic plan. These areas were the subject of extensive follow-up discussion at the most recent Executive Committee meeting and are on the meeting agenda with accompanying background material. As such, I will not cover them again in this report but I will provide some further observations and comments at the meeting.

## **Federation of Law Societies of Canada – Additional Highlights**

A good portion of my focus and time since the last Bencher meeting has been spent on matters related to LSBC's relationship with the Federation, specifically the National Standards Assessment Project review (which will be touched on in the Lawyer Education Advisory Committee report on the Admission Program Review) and my work as a member of the Governance Review Committee of the Federation. I will provide updates and my comments on each of those projects as they arise at the meeting.

## **Record Year for New Calls to the BC Bar**

This year will be a record year for the Law Society both in terms of the number of students graduating from our PLTC program and for the total number of lawyers called to the Bar in BC. While these results are consistent with recent trends it is also fitting that we are now completing an extensive review of our entire Admissions Program as part of the current strategic plan. The timing could not be better inasmuch as the

Benchers will have a fresh and current perspective to assist them in evaluating the options which are being developed at the Federation and when considering the rapidly evolving landscape of legal education, bar admission criteria and post call competency and CPD regimes in North America and internationally.

## **Financial Matters Update**

At the last Bencher meeting we provided a third quarter financial update and year end forecast. The official year end results for 2015 will be prepared in February next year and presented to the Benchers at the meeting in March. At this stage I can report that we are seeing some positive signs as we go through the final few months of 2015 and we expect our year end forecast to hold or possibly improve. We will provide a better view of our most likely year end position at the meeting in January.

## **2015 Employee Survey**

We have recently closed our annual employee survey for 2015. Our participation rate was a strong 82% although this was down from last year's exceptional rate of over 90%. A new feature in this year's survey was a section asking respondents to indicate their usage levels of various technologies and computer resources and to evaluate their skill levels in those areas. These responses will be used to assist our Skills Enrichment Project which is designed to help all staff achieve a high minimum level of computer literacy and technology skills through training and support. The survey results will be compiled by TWI Surveys Inc. in the coming weeks and we will report to the Benchers in the new-year.

## **Capital Project Builds Character**

As you know we are in the midst of a major capital renewal project regarding the replacement of our aging and finicky two building elevators. I am pleased to report that this project is on time and on budget. The first new elevator is expected to be on line within the next 2 weeks. The second elevator will then be shut down for replacement and should be on line by mid to late January. Thanks to all who have built both character and fitness during this milestone project!

Timothy E. McGee  
Chief Executive Officer

*BC Code Recommended Changes by the Ethics Committee*

***BE IT RESOLVED to amend rule 6.1-3.3 of the Code of Professional Conduct for British Columbia as follows :***

*i. by rescinding rule 6.1-3.3 and by substituting new rule 6.1-3.3 which states:*

**“6.1-3.3** Despite rule 6.1-3, where a designated paralegal has the necessary skill and experience, a lawyer may permit the designated paralegal

- (a) to give legal advice;
- (b) to represent clients before a court or tribunal, other than a family law arbitration, as permitted by the court or tribunal; or
- (c) to represent clients at a family law mediation.”

*ii. By rescinding commentary [1] and by substituting new commentary [1] which states:*

**“[1]** Law Society Rule 2-13 limits the number of designated paralegals performing the enhanced duties of giving legal advice, appearing in court or before a tribunal or appearing at a family law mediation.”

*iii. Following commentary [1] by inserting the following words as commentary [2]:*

**“[2]** Where a designated paralegal performs the services in rule 6.1-3.3, the supervising lawyer must be available by telephone, and any agreement arising from a family law mediation must be subject to final review by the supervising lawyer.”

**RESOLUTION 2**

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

***Following paragraph 7 by inserting the following words:***

**“Commentary – designated paralegals and family law mediation**

[1] The purpose of this commentary is to provide guidance to supervising lawyers who are considering sending a designated paralegal to represent a client at a family law mediation.

[2] Designated paralegals are permitted to represent a client at family law mediations in circumstances the supervising lawyer deems appropriate. However, family law mediations present unique challenges and before permitting a paralegal to represent a client in such processes the supervising lawyer must:

- (a) determine whether the designated paralegal possesses the necessary skill and knowledge to act in the matter (consistent with the general obligation for determining whether to delegate work to the designated paralegal);
- (b) ensure that there is no prohibition at law that prevents the designated paralegal from representing the client. For example, consider the restrictions in the Notice to Mediate Regulations regarding who has the right to accompany a party to a mediation;
- (c) obtain the client's informed consent to the use of the designated paralegal.

[3] It is prudent for the supervising lawyer to advise the mediator and the other party, through their counsel if they are represented, that the designated paralegal will be representing the client and provide the name and contact information for the supervising lawyer.

[4] In addition to considering the process in Appendix E of the BC Code, lawyers should consider the following before permitting a designated paralegal to represent a client at a family law mediation:

- Mediation requires as much competency of the legal representative as is required before a court or tribunal. The supervising lawyer must bear this in mind when determining when it is appropriate to have a designated paralegal represent a client;
- Family law is a unique area of law in which many other areas of law intersect. In addition, clients are often dealing with considerable emotional stress and in some cases come from environments where family violence exists. It is an area of practice fraught with risks that both the lawyer and the designated paralegal need the skills and knowledge to identify and properly manage. Considerable skill is required to represent a client effectively at a family law mediation. A supervising lawyer should ensure the designated paralegal has received specific training in representing a client at a family law mediation. It is prudent to have the designated paralegal shadow the lawyer for several sessions and then have the lawyer shadow the designated paralegal for his or her first few sessions.

[5] Despite more family law matters being directed to consensual dispute resolution processes rather than to court, it remains essential that those processes and the settlements that arise in them be fair. It is important, therefore, for both the supervising lawyer and the designated paralegal to understand the case law surrounding circumstances in which settlement agreements have been set aside by the court on the grounds that the settlement was unfair.

(6] Lawyers must review any settlement agreement arising from a family law mediation where their designated paralegal represented the client and to have such agreements be provisional only until such time as the lawyer signed off on it. This provides an opportunity for review and an additional safeguard for the client. The lawyer would also be prudent to advise the client about this process as a standard part of the retainer agreement.”

### **RESOLUTION 3**

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

***Following item 4 of “A checklist for assessing the competence of paralegals” by inserting the following words:***

#### **“Screening for family violence**

- 1.** The *Family Law Act*, SBC 2011, c. 25 requires family dispute resolution professionals to screen for family violence. Lawyers who practise family law are strongly encouraged to take at least 14 hours of training in screening for family violence, and lawyers who are acting as family law mediators, arbitrators or parenting coordinators are required to take such training.
- 2.** While designated paralegals do not fall within the definition of family dispute resolution professionals, lawyers who delegate to designated paralegals the ability to give legal advice in family law or represent clients in the permitted forums are strongly encouraged to ensure the designated paralegal has at least 14 hours of training in screening for family violence.
- 3.** If a designated paralegal has reason to believe family violence may be present, it is essential the paralegal bring this to the supervising lawyer’s attention so the lawyer can turn his or her mind to the issue and the potential risks associated with it.

#### **Designated paralegals giving legal advice**

- 1.** As part of the process of supervising a designated paralegal, a lawyer should instruct the designated paralegal as to the key aspects of what giving sound legal advice involves.
- 2.** Giving legal advice and independent legal advice involves consideration of process and of the content of the advice. As a matter of process the lawyer, or designated paralegal, must obtain the relevant factual information from the client. This requires the skill of focusing on necessary factual material, rather than an exhaustive and costly exploration of all potential facts no matter how tangential they may be. Once the lawyer, or designated paralegal, has the factual foundation, he or she advises the client of the legal rights, obligations and/or remedies that are suggested by the facts. Finally, the lawyer should make a recommendation as to the preferred course of conduct and explain in clear terms why the suggested course is preferred.

3. When a lawyer is training a designated paralegal it is essential to instruct the paralegal as to the proper process for ensuring the paralegal is imparting sound and cost effective legal advice to the lawyer's client."