



Benchers' Meeting Agenda

Date: Saturday, June 12, 2010

Time: 8:30 AM

Place: Oceanic Ballroom, Beach Club Resort

CONSENT AGENDA:

The following matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. If any Benchers wishes to debate or have a separate vote on an item on the consent agenda, he or she may request that the item be moved to the regular agenda by notifying the President or the Manager, Executive Support (Bill McIntosh) prior to the meeting.

1	Minutes of April 23, 2010 meeting	Minutes of the regular session Minutes of the <i>in camera</i> session (Benchers only)	Tab 1 p. 1000
2	2010 Law Society Award Recommendation	<i>In camera</i> memorandum from Mr. McIntosh on behalf of the Selection Committee (Benchers only)	Tab 2 p. 2000
3	Proposed Amendments to Rule 2-43 (Court and Tribunal Appearances by Articled Students)	Memorandum from Mr. Hoskins on behalf of the Act & Rules Subcommittee	Tab 3 p. 3000
4	Multi-Disciplinary Partnerships: Fees & Revisions to Rules	Memorandum from Mr. Hoskins on behalf of the Act & Rules Subcommittee	Tab 4 p. 4000
REGULAR AGENDA			
5	President's Report	Written report to be distributed electronically prior to meeting	
6	CEO's Report	Written report to be distributed electronically prior to meeting	
7	Report on Outstanding Hearing & Review Reports	Report to be distributed at the meeting	
2009-2011 STRATEGIC PLAN IMPLEMENTATION: MATTERS FOR DISCUSSION AND/OR DECISION			
8	Law Society Strategic Communications Plan	Presentation from Ms. Crisanti and Ms. Jarzebiak	
9	Legal Profession Act: Proposed Amendments	Memorandum from Mr. Hoskins on behalf of the Act & Rules Subcommittee Mr. Getz to report	Tab 9 p. 9000
OTHER MATTERS FOR DISCUSSION AND/OR DECISION			
10	Professional Conduct Handbook: Proposed Amendments (Pro Bono)	Memorandum from the Ethics Committee Mr. Hume to report	Tab 10 p. 10000
11	Family Law Task Force: Update and Clarification of Mandate	Memorandum from Mr. Munro Ms. Hickman to report	Tab 11 p. 11000



FOR INFORMATION ONLY			
12	Federation of Law Societies: 2010 Update	FLS President John Campion, QC & CEO Jonathan Herman	
13	Commission on the Future of Legal Aid in BC: Confirmation of LSBC Involvement and Support	Letter from Mr. Ridgway to Mr. Bond	Tab 13 p. 13000
14	Complaints Reduction Staff Group 2: Early Intervention Project – Interim Report	Report from Complaints Reduction Staff Group 2	Tab 14 p. 14000
IN CAMERA SESSION			
15	Discussion of Benchers Concerns		

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING: Benchers

DATE: Friday, April 23, 2010

PRESENT:

Glen Ridgway, QC, President	Jan Lindsay, QC
Gavin Hume, QC, 1 st Vice-President	Peter Lloyd, FCA
Bruce LeRose, QC, 2 nd Vice-President	David Loukidelis
Haydn Acheson	David Mossop, QC
Rita Andreone	Suzette Narbonne
Kathryn Berge, QC	Thelma O'Grady
Joost Blom, QC	Lee Ongman
Patricia Bond	Gregory Petrisor
Robert Brun, QC	David Renwick, QC
E. David Crossin, QC	Alan Ross
Tom Fellhauer	Catherine Sas, QC
Leon Getz, QC	Richard Stewart, QC
Carol Hickman	Herman Van Ommen
Patrick Kelly	Dr. Maelor Vallance
Stacy Kuiack	Art Vertlieb, QC
Barbara Levesque	Kenneth Walker

ABSENT: ---

STAFF PRESENT:

Tim McGee	Michael Lucas
Deborah Armour	Bill McIntosh
Stuart Cameron	Jeanette McPhee
Lance Cooke	Doug Munro
Robyn Crisanti	Lesley Pritchard
Charlotte Ensminger	Susanna Tam
Su Forbes, QC	Alan Treleaven
Jeff Hoskins, QC	Adam Whitcombe

GUESTS:

Dom Bautista, Executive Director, Law Courts Center

Mark Benton, QC, Executive Director, Legal Services Society

Danielle Bicknell, Webcast Operator, CLEBC

Penelope Chandler, Chief of Staff for the Attorney General of BC

The Honourable Michael de Jong, QC, Attorney General of BC

Christine Elliott, Member of the Ethics Committee

Mona Duckett, QC, FLS Council member for the Law Society of Alberta

Dean Donna Greschner, Faculty of Law, University of Victoria

Robert Holmes, President, Trial Lawyers Associations of BC

John Hunter, QC, LSBC Member of the FLS Council

Terry La Liberte, QC, Life Benchers, Member of the Ethics Committee

David Loukidelis, Deputy Attorney General of BC

Jamie Maclaren, Executive Director, Access Pro Bono

Todd McKendrick, Chair, Board of Directors, CLEBC

Mayland McKimm, QC, Chair, Board of Directors, Legal Services Society

Stephen McPhee, Vice-President, CBABC

GUESTS: Jane Mundy, Reporter, Lawyers Weekly
 Caroline Nevin, Executive Director, CBABC
 Peter Ramsay, QC, Member of the Ethics Committee
 Rob Seto, Director of Programs, CLEBC
 Joanne Silver, Director of Membership and Public Affairs, CBABC
 Anne Stewart, QC, Member of the Ethics Committee

CONSENT AGENDA

1. Minutes

The minutes of the meeting held on March 5, 2010 were approved as circulated.

Consent Resolutions

The following resolutions were passed unanimously and by consent.

2. ***BE IT RESOLVED*** to amend Chapter 11, Rules 16 to 21 of the *Professional Conduct Handbook* (duty of lawyer where firm changes its composition) by rescinding those provisions and replacing them with Chapter 3, Rules 6 to 12, as set out at pages 2002 – 2004 of the meeting materials (Appendix 1 to these minutes), effective immediately;

3. ***BE IT RESOLVED*** to amend the *Law Society Rules* (implementing the Quebec Mobility Agreement in British Columbia), effective July 1, 2010 as follows:

1. ***In Rule 2-1, by rescinding paragraph (c) and substituting the following:***

- (c) non-practising members;
- (d) Canadian legal advisor.

2. ***In Rule 2-5, by rescinding paragraphs (d) and (e) and substituting the following:***

- (d) practitioner of foreign law permit issued under Rule 2-18,
- (e) inter-jurisdictional practice permit issued under Rule 2-12, and
- (f) Canadian legal advisor certificate issued under Rule 2-51.

3. ***By adding the following rules:***

Canadian legal advisors

Scope of practice

2-23.1 (1) A Canadian legal advisor may

- (a) give legal advice on
 - (i) the law of Québec and matters involving the law of Québec,
 - (ii) matters under federal jurisdiction, or
 - (iii) matters involving public international law,
- (b) draw, revise or settle a document for use in a proceeding concerning matters under federal jurisdiction, or

- (c) appear as counsel or advocate before any tribunal with respect to matters under federal jurisdiction.
- (2) A Canadian legal advisor must not engage in the practice of law except as permitted under subrule (1).

Requirements

- 2-23.2** (1) A member in good standing who is admitted as a Canadian legal advisor has all the duties and responsibilities of a practising lawyer under the Act, these Rules and the Professional Conduct Handbook.
- (2) A Canadian legal advisor must
- (a) be a member in good standing of the Barreau du Québec authorized to practise law in that Province,
 - (b) undertake to comply with Rule 2-23.1, and
 - (c) immediately notify the Executive Director in writing if he or she ceases to be authorized to practise law in Québec.

Transfer as Canadian legal advisor

- 2-49.3** (1) Subject to subrule (3), a member of the Barreau du Québec may apply for call and admission on transfer as a Canadian legal advisor by delivering to the Executive Director the following:
- (a) a completed application for call and admission as a Canadian legal adviser in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society;
 - (b) a certificate of character;
 - (c) a certificate of standing from the Barreau du Québec and each other body regulating the legal profession, in any jurisdiction, in which the applicant is or has been a member of the legal profession;
 - (d) an errors and omissions insurance application or exemption form;
 - (e) the following fees:
 - (i) the investigation fees and call and admission fees;
 - (ii) a prorated practice fee;
 - (iii) a prorated annual insurance fee, unless exempt under Rule 3-25;
 - (iv) a prorated Special Compensation Fund assessment;
 - (f) any other information and documents required by the Act or these Rules that are requested by the Credentials Committee or the Benchers.
- (2) Subject to subrule (1), Rules 2-49 to 2-51 apply, with any necessary changes, to an application for call and admission on transfer as a Canadian legal adviser.
- (3) This Rule does not apply to a member of the Barreau du Québec unless he or she has earned a bachelor's degree in civil law in Canada or a foreign degree and a certificate of equivalency from the Barreau.

4. In Rule 2-51, by rescinding subrules (4) and (5) and substituting the following:

- (4) On proof that an applicant who has otherwise qualified for call and admission has taken the oath required under subrule (2)(a), the Executive Director must issue to the applicant a practising certificate, a non-practising certificate or a Canadian legal advisor certificate, as the case may be.
- (5) The Executive Director must not renew a practising certificate or a Canadian legal advisor certificate issued under subrule (4) unless the lawyer has been presented in open court as required under subrule (2)(b).

5. In Rule 3-25, by adding the following subrules:

- (5) A Canadian legal advisor may apply to the Executive Director for exemption from the requirement to maintain professional liability insurance and pay the insurance fee.
- (6) On an application under subrule (5), the Executive Director must grant the exemption, provided the Canadian legal advisor maintains the full mandatory professional liability insurance coverage required by the Barreau du Québec that extends to the Canadian legal advisor's practice in British Columbia.

- 4. ***BE IT RESOLVED* that the Benchers defer appointment of the replacement for Mayland McKimm, QC on the Board of Directors of the Legal Services Society until May 2011, upon consultation with the Executive Committee of the BC Branch of the Canadian Bar Association.**
- 5. ***BE IT RESOLVED* that the Benchers ratify the recommendation of the Credentials Committee to award the 2010 Law Society Scholarship to Jeffrey Yuen, with Jeffrey Benjamin Meyers as runner-up.**

REGULAR AGENDA – for Discussion and Decision

6. President's Report

Mr. Ridgway referred the Benchers to his written report — circulated by email prior to the meeting — for an outline of his activities as President during the month of April (Appendix 2 to these minutes).

7. CEO's Report

Mr. McGee opened his report by welcoming Deborah Armour, the Law Society's Chief Legal Officer, to her first Benchers meeting.

Mr. McGee provided highlights of his monthly written report to the Benchers (Appendix 3 to these minutes), including the following matters:

- Financial Report – Q1 Operating Results
- Core Process Review – Update
- Key Performance Measures (KPMs) and the Audit Committee
- CanLII Governance Reforms and New Agreement

- International Bar Association (IBA) 2010 Annual Conference (October 3-8, 2010, Vancouver, BC)
- Retention of Aboriginal Lawyers Event (June 16, 2010)
- Dealing with Media Inquiries

8. Report on Outstanding Hearing and Review Reports

The Benchers received a report on outstanding hearing decisions.

GUEST PRESENTATIONS

9. Legal Services Society Update

Mayland McKimm, QC, Chair of the Board of Directors of the Legal Services Society (LSS), delivered a presentation to the Benchers. Mr. McKimm outlined LSS's statutory mandate, services and resources, identifying a number of areas as opportunities for the Law Society to provide non-financial support:

- Communications
- Develop a Law Society vision for publicly funded legal aid services
- Promote lawyer involvement in legal aid
- Leadership and strategy development

Mr. McKimm's speaking notes are included as Appendix 4 to these minutes.

10. Attorney General's Update on Legislative Priorities for 2010-2011

The Honourable Michael de Jong, QC, Attorney General for British Columbia, made a presentation to the Benchers. The Attorney General outlined the government's legislative agenda for 2010-2011, highlighting:

- BC Supreme Court's new civil and family rules and revised schedule of fees
 - implementation to be effective July 1, 2010
- *Family Relations Act*
 - consultation through the balance of 2010
- *Limitation Act*
 - consultation through the balance of 2010
- Impaired Driving / Repeat Offenders
 - stronger administrative penalties under the *Motor Vehicle Act*
- Non-traditional Partnerships between the Crown and the Private Bar
 - private forfeiture

- Legal Aid
 - the provincial government supports CBABC's proposal for an multipartite commission on the future of legal aid in BC
 - the provincial government is looking at alternative sources of legal aid funding
- Court Services Branch
 - the Ministry is working with the Courts to re-work protocols around document disclosure
- Televised Court Proceedings
 - the Attorney General does not envision cameras in every courtroom throughout the province; but thinks there could be value in some broadcasting of some proceedings.

In the discussion that followed the Attorney General's presentation, a number of issues were raised, including:

- Possible alternative sources of funding for legal aid
- Importance of legal aid funding to family law cases
- Possibility of linking provincial funding of legal aid to other benchmarks
- Value of the Attorney General's efforts to consult with the legal profession and the Law Society

11. Federation Model Code: Future Harm Exception to Confidentiality

Mr. Ridgway welcomed Mona Duckett, QC as the Federation Council member for the Law Society of Alberta, and Chair of the Federation's Model Code Subcommittee on Conflicts and Future Harm, and a former Bencher and past-President of the Law Society of Alberta. Mr. Ridgway noted that rules on conflicts and the future harm exception to confidentiality are the two [Model Code of Professional Conduct](#) issues still to be resolved. Mr. Hume confirmed that the Law Society's Ethics Committee has begun its review of the Model Code and expects to present recommendations regarding its implementation in BC to the Benchers later in 2010.

Ms. Duckett made a presentation to the Benchers, adapting from the "Future Harm" presentation she delivered to the Federation's Council Meeting and Semi-annual Conference in Toronto last March. Following her presentation Ms. Duckett led a discussion based on a number of fact scenarios.

OTHER MATTERS – Other Matters for Discussion and/or Decision

12. Federation Update: Semi-annual Meeting and Conference in Toronto, March 18 – 20, 2010

John Hunter, QC briefed the Benchers as the Law Society's representative on the Council of the Federation of Law Societies of Canada. Mr. Hunter thanked the Benchers for their support in naming him as the LSBC member of the Council. Mr. Hunter highlighted a number of issues discussed during the March meeting and conference. Mr. Hunter also represents the Law Society on the

Federation's Anti-Money Laundering Litigation Committee, and he updated the Benchers on the status of the matters being managed by that committee.

IN CAMERA SESSION

The Benchers discussed other matters *in camera*.

WKM

2010-05-13

PROFESSIONAL CONDUCT HANDBOOK

CHAPTER 11

RESPONSIBILITY TO OTHER LAWYERS

CHAPTER 3

COMPETENCE, QUALITY OF SERVICE AND RELATIONSHIP TO CLIENTS

Duty of lawyer and law firm when a change affects clients on termination of employment

16. When a lawyer ~~departs from~~leaves a law firm to practise alone or to join another law firm, ~~there is a duty upon~~ the departing lawyer and the law firm have a duty to inform all clients for whom the departing lawyer is the responsible lawyer in a legal matter ~~of the clients that the clients have a~~ right to choose who will continue to represent them. The same duty may arise when a firm is winding up or dividing into smaller units.
17. This duty does not arise if the ~~departing lawyer and the law firm~~lawyers affected by the changes, acting reasonably, ~~both~~ conclude that the circumstances make it obvious that a client will continue as a client of ~~thea particular lawyer or~~ law firm ~~notwithstanding the departure of the lawyer.~~
18. When ~~these Rules~~this Chapter requires a notification to clients, each client ~~for whom the departing lawyer is the responsible lawyer in a legal matter~~ must receive a letter ~~informing them of the right to choose his or her lawyer~~ as soon as practicable after the effective date of the departure changes is determined, informing the client of the right to choose his or her lawyer.
19. It is preferable that this letter be sent jointly by the firm and any lawyers affected by the changes~~the departing lawyer and the law firm.~~ However, in the absence of a joint announcement, the firm or any lawyers affected by the changes may send letters in substantially the form set out in Appendix 4~~either the departing lawyer or the law firm.~~
10. Lawyers whose clients are affected by changes in a law firm have a continuing obligation to protect client information and property, and must minimize any adverse effect on the interests of clients.¹
2011. The right of a client to be informed of changes to a law firm and to choose his or her lawyer cannot be curtailed by any contractual or other arrangement.
2412. With respect to communication other than that required by these Rules, lawyers should be mindful of the common law restrictions upon uses of proprietary information, and interference with contractual and professional relations between the law firm and its clients.

PROFESSIONAL CONDUCT HANDBOOK

FOOTNOTE

1. This obligation generally includes an obligation to ensure that files transferred to a new lawyer or law firm are properly transitioned, including, when necessary, describing the status of the file and noting any unfulfilled undertakings and other outstanding commitments.

PROFESSIONAL CONDUCT HANDBOOK

CHAPTER 3

COMPETENCE, QUALITY OF SERVICE AND RELATIONSHIP TO CLIENTS

Duty of lawyer and law firm when a change affects clients

6. When a lawyer leaves a law firm to practise alone or to join another law firm, the departing lawyer and the law firm have a duty to inform all clients for whom the departing lawyer is the responsible lawyer in a legal matter that the clients have a right to choose who will continue to represent them. The same duty may arise when a firm is winding up or dividing into smaller units.
7. This duty does not arise if the lawyers affected by the changes, acting reasonably, conclude that the circumstances make it obvious that a client will continue as a client of a particular lawyer or law firm.
8. When this Chapter requires a notification to clients, each client must receive a letter as soon as practicable after the effective date of the changes is determined, informing the client of the right to choose his or her lawyer.
9. It is preferable that this letter be sent jointly by the firm and any lawyers affected by the changes. However, in the absence of a joint announcement, the firm or any lawyers affected by the changes may send letters in substantially the form set out in Appendix 4.
10. Lawyers whose clients are affected by changes in a law firm have a continuing obligation to protect client information and property, and must minimize any adverse effect on the interests of clients.¹
11. The right of a client to be informed of changes to a law firm and to choose his or her lawyer cannot be curtailed by any contractual or other arrangement.
12. With respect to communication other than that required by these Rules, lawyers should be mindful of the common law restrictions upon uses of proprietary information, and interference with contractual and professional relations between the law firm and its clients.

FOOTNOTE

1. This obligation generally includes an obligation to ensure that files transferred to a new lawyer or law firm are properly transitioned, including, when necessary, describing the status of the file and noting any unfulfilled undertakings and other outstanding commitments.

PRESIDENT'S REPORT**April, 2010**

This report outlines my activities subsequent to the Benchers' Meeting of March 5, 2010.

In the late afternoon/evening of March 9, I attended the New Westminster Bar Association meeting in New Westminster, where I was joined by Benchers Carol Hickman and Jan Lindsay. I am not sure whether David Renwick is allowed in that part of the Westminster district, but he was not in attendance. I was able to catch the 10:45 ferry from Tsawwassen to Duke Point that evening.

On Friday, March 12, I attended the Q.C. reception, which is funded by the Law Society but controlled by the Attorney General. This is a tremendous event, which honours some members of our profession who have accomplished things over their careers and are recognized by the designation "Q.C." Our own Jan Lindsay (presently trapped in Turkey), whom I had seen the Tuesday previous, was there, as was Life Bencher, Bill Jackson, and both of them received Q.C.'s.

On Monday, March 15, I journeyed to the "Hub City" of our province, Nanaimo, to attend a reception funded by the lawyers of Nanaimo County. This was a reception for law students and was held at the offices of Ramsay Lampman Rhodes. Many thanks to those folks, and in particular, Stephen McPhee, Sandra Dick, and Clint Sadlemyer, for arranging that event. CBA provincial heavyweights were in attendance, as were folks from UVIC and UBC, and a whole bunch of students. There was a great crowd. The headliner was Bowman, CJSC. This is an idea thought up by Nanaimo County, but particularly Nanaimo City lawyers, to attempt to attract articling students to the leading legal district in the province. I do not know whether this has worked, but we certainly have more articling students on the top part of Vancouver Island than we had, say, eight years ago. Perhaps they are inspired by "prominent" lawyers who are playing a role on the provincial scene, such as the aforementioned Stephen McPhee.

On March 17, I got up really early in the morning and went to Toronto by way of Air Canada. Do not agree to have the snacks that they give you at 9 o'clock in the morning. Even I cannot tolerate the chocolate chip cookies and ice cream that they serve at that time. I arrived in Toronto at about noon and went on the subway to the Royal Ontario Museum, which I had not been to in about ten years. The weather was fabulous. I walked back through the campus of the University of Toronto, and everyone was out participating in sporting activities, etc., in shorts and T-shirts.

It apparently was the day of student council elections, and everyone was on the streets within the campus handing out brochures and making speeches advocating "change." I was inclined to stand on the corner with a cup asking for change.

For the next two days, we attended Federation meetings. The President of the Federation is John Campion of the Toronto office of Fasken Martineau, which is the "Headquarters" of the firm. We were absolutely honoured to have two dinner engagements at the Law Society of Upper Canada. Their facility at Osgood Hall, I must say, is impressive. While I am glad that I am not part of the membership that has to financially support that facility, I can say that it is something which all of us, as lawyers in Canada, can be proud of and appreciative of the lawyers in Ontario for preserving that facility. It is terrific, and the dinners we had there were very, very impressive.

Apparently, in the Benchers' dining room, only the Treasurer of the Law Society of Upper Canada is allowed to speak unless he gives permission. Derry Miller, the Treasurer of the Law Society of Upper Canada, comes from Regina, and maybe that's why he let me speak. He also let me sit in his chair in his office, and I must say, most of the Ontario delegation was looking quite wistfully when they saw me in that chair. I can assure you, however, that I have no intention of going back to Ontario to be the Treasurer of the Law Society of Upper Canada.

I also was able to have lunch with a graduate of Foam Lake Composite High School, who now resides in Toronto.

When we boarded the plane Saturday at noon to return, the weather had changed a bit, and there were snowflakes in the air.

On March 26, I went to Vancouver for a Call Ceremony in the morning, various meetings during the day, and the Court of Appeal Special Sitting and reception in the late afternoon.

At about this time, I was also called to comment on certain news items involving lawyer costs/discipline matters that had been dealt with in Court. These included the Court of Appeal decision upholding an award of costs against a lawyer and the decision of the Supreme Court of Canada (9-0) to the effect that Courts have a role in the conduct of lawyers in matters before the Court.

On April 1, I was in Vancouver for my meeting with Mr. McGee and other matters relating to the operation of the Law Society.

On April 7, I attended the grand opening of the University of Victoria's new Law Library, built with the assistance of funds from the Law Foundation.

On Thursday, April 8, I, together with Gavin Hume and Bruce LeRose, had lunch with the Executive of the Canadian Bar Association, BC Branch, and then had a tour of the building, known as the "Ladder Tour." We got to meet all of the people actively involved in running the affairs of the Law Society and keeping Benchers on message and focus.

That was followed by my weekly meeting with Mr. McGee and then the Executive Committee Meeting.

The next day, April 9, I was pleased to attend a luncheon put on by the Trial Lawyers Association, where Pat Bond, our own Pat Bond, received recognition for her excellent participation in Trial Lawyers activities, activities involving the family law Bar, the practice of family law, and life in general.

On April 14, I spent some time at conduct meetings and Benchers/articling student interviews in my own district, and then went to Vancouver, where I was able to introduce Bruce LeRose to the SkyTrain system and to the wonders of the Italian community on Commercial Drive.

On April 15, I attended the "pouring" to commence construction of the new UBC Law School. This Law School has received the go-ahead due to financial contributions by lawyers in British Columbia and also a substantial commitment from the Law Foundation. The new building will replace the "bunker," which had replaced the heritage buildings that produced some tremendous lawyers, judges, etc., most of whom are now "heritage" lawyers and judges. There was no one there from Fasken Martineau that I was aware of.

That evening I attended a hockey game sponsored, in part, by Fasken Martineau.

On Friday, April 16, I attended the Leadership Prayer Breakfast at the request of Gavin Hume of the firm of Faskin Martineau. I did this for Gavin, who does need prayer. I should tell you, however, that I consider the breakfast that I have before each Benchers Meeting to be a prayer breakfast. As long as there are Benchers, there will be a need for prayer.

On Wednesday, April 21, I, together with CBA folks and TLABC folks, will be meeting in Victoria with our Attorney General (at his request).

On the ferry with me on April 14, journeying to Vancouver, were several Cowichan Valley dentists and members of their staff. They were heading to the Big City (home of Faskin Martineau) for CDE (Continuing Dental Education). They were staying at a hotel for a few days. their requirement—90 hours/3 years.

Querre: The “draconian” cost of the Bruce LeRose inspired CPD in contrast to the requirements for dentists.



Chief Executive Officer's Monthly Report

A Report to the Benchers by

Timothy E. McGee

April 23, 2010

Introduction

My report this month includes the financial results for the first quarter of 2010, as well as updates on a number of initiatives underway since the last Benchers meeting and several upcoming events. The report concludes with some information about the Law Society's current media relations policies and the procedures that are in place to ensure that we can respond appropriately to media enquiries.

1. Financial Report – Q1 Operating Results

Highlights of the financial results to March 31, 2010 are summarized in Appendix 1. Jeanette McPhee, our CFO, and I will be available to answer any questions you may have on the results at Friday's meeting.

2. Update – Core Process Review

The Core Process Review is proceeding on schedule. The project leader Kensi Gounden has met with all managers to review the process and to create the project charter, which is now complete. Consultative sessions with staff have started and by the end of April sessions will have been held with all regulatory departments. So far the response to the project has been encouraging. The most important thing at this stage is to ensure that staff are clear on the purpose of the project and that they know what to expect in the months ahead. This includes receiving input on how people want to contribute and be involved both on an individual and departmental level. The next steps are the completion of a detailed project plan by the end of April and the mapping of all current regulatory processes by June.

A copy of my initial communication to staff regarding the Core Process Review together with a detailed Q&A are attached as Appendix 2. If you have any questions or comments regarding the Review, please do not hesitate to contact Kensi or me.

3. Key Performance Measures (KPMs) and the Audit Committee

At the March 5, 2010 Benchers meeting following the review of the 2009 KPM results there were some questions regarding what role the Audit Committee should play in monitoring the KPMs and reporting to the Benchers. Since then Jeanette McPhee and I have met with Rita Andreone in her capacity as Chair of the Audit Committee, and we have worked out the following plan to address those issues:

- First, in January and February of each year (commencing in 2011) the Audit Committee will meet with the CEO and Management Board to review the prior year KPM results in detail and to question Management on the performance reflected in the results. The report on the KPM results will then be brought forward at the March Benchers meeting by the CEO together with a report from the Audit Committee detailing its review with Management. This was the procedure in 2009 but was not followed this year because of the lack of available meeting dates during the Olympic period in February.
- Second, every two or three years commencing in 2010, the Audit Committee will oversee a “structural” review of the KPMs, working with Management to ensure that the KPMs continue to be reflective of our core operations and responsive to the Law Society’s public interest mandate. The Committee will subsequently report their findings and recommendations to the Benchers.

In 2010, this second stage structural review will be conducted through a series of meetings with the Audit Committee in late June, September and November. The results of our current Core Process Review will be available later this year, and those results and associated recommendations will be available to assist the Audit Committee in reporting back to the Benchers on the desirability of modifications, if any, to the KPMs for 2011.

4. CanLII Governance Reforms and New Agreement

I am pleased to report that a new long term contract for the continued development and support of CanLII has been entered into between CanLII and LexUM Inc., CanLII’s long-term business partner. The new agreement follows months of negotiations and replaces an inadequate letter agreement with a full commercial agreement with appropriate terms, conditions and protections for both parties. The new agreement also contains clear service level commitments for CanLII’s benefit and a stable and verifiable pricing mechanism.

In addition to a new operating agreement, CanLII is on the cusp of implementing a new streamlined governance regime including the establishment of an appropriately sized board of directors (7 members versus the previous 15 members) selected on the basis of a skills-based matrix and the hiring of a full-time professional manager. These positive reforms flow from the 2009 report and recommendations of the Federation’s CanLII Futures Committee and will be fully implemented within the next few months.

**5. International Bar Association (IBA) 2010 Annual Conference
(October 3-8, 2010, Vancouver, BC)**

The Law Society is assisting the organizers of the International Bar Association's 2010 Annual Conference on a variety of levels. The Conference will be held in Vancouver later this year, and while most of the proceedings will be geared towards networking for practitioners from around the world, there are portions of the Conference that are directly relevant to regulators of the legal profession. To this end we have agreed to host a lunch at the Law Society offices on Friday, October 8 for a small group of international regulators as part of the Bar Issues Commission program. In addition we are joining with the Federation of Law Societies and the CBA BC Branch in partial sponsorships of a lunch and a dinner event during the weeklong conference. As a major institution in the host jurisdiction we believe it is important for the Law Society to be involved with the IBA Annual Conference in this way.

6. Retention of Aboriginal Lawyers Event (June 16, 2010)

The Benchers materials for the April 23 meeting include a memorandum from Susanna Tam outlining the Law Society's plans to hold a special Aboriginal Leadership event at the First Nations House of Learning at UBC on Wednesday, June 16. This is an innovative initiative which has been developed through the work of our Equity and Diversity Advisory Committee and is in furtherance of the Law Society's strategic objective to increase the retention of aboriginal lawyers in the profession. Please take a moment to read the memorandum and consider attending all or part of the event.

7. Dealing with Media Inquiries

Our Communications group met recently with Glen Ridgway, QC as the Law Society President for 2010, to review the Law Society's current media relations policies and procedures to ensure that we have appropriate channels in place to respond to media enquiries. We agreed to continue our current practice of referring all initial enquiries to the Communications Department at the Law Society main number. Our Communications staff will then assess the enquiry and determine the appropriate spokesperson. Because the President is the only person officially authorized under our Benchers policies to speak on behalf of the Law Society (subject to the President's delegation to others, such as a Task Force Chair when addressing the work of that Task Force) we have agreed that Glen will address all enquiries of a policy nature including in particular:

- The work of various Law Society Task Forces and Committees;
- Responses to civil and criminal court proceedings involving the Law Society;
- Court proceedings which may impact our mandate; and
- General policy discussions related to the Law Society's mandate or the practice of law.

Enquiries of a general nature including, in particular, requests for basic information, will be handled at the appropriate staff level. All enquiries relating to on-going professional conduct and discipline matters will continue to be referred to Stuart Cameron for response.

Please contact Robyn Crisanti, Manager of Communications and Public Relations, if you are contacted by the media or at any time if you have questions regarding media related matters. Robyn's direct telephone line is (604) 697-5845 and her e-mail address is rcrisanti@lsbc.org.

Timothy E. McGee
Chief Executive Officer

2010 FINANCIAL REPORT Q1 Operating Results

Attached please find a copy of the financial highlights and results to March 31, 2010.

General Fund

In November 2009, the Benchers resolved to fund the Forensic Accounting department (2010 Budget = \$1.2 million) with the General Practice fee, beginning January 1, 2010. As these costs were not included in the 2010 practice fee budget, this has resulted in unfunded costs which are being funded by the General Fund operating reserve.

For financial statement presentation purposes, we have separated out this transfer to highlight the impact of this change.

General Fund (No Forensic Accounting or TAF)

The General Fund operating results for the first quarter of the year has a positive variance of \$255,000.

The positive revenue variance of \$165,000 relates to CPD penalty revenue and custodianship recoveries. CPD penalty revenue consists of penalties charged to members who did not meet the CPD requirement for 2009. In addition, we received a large custodianship recovery in the first quarter. These positive revenue variances are permanent and will continue to year end.

The operating expenses are \$90,000 positive to budget for the first quarter, related to the timing of counsel fees and PLTC supplies.

2010 Forecast – General Fund (No Forensic Accounting or TAF)

Excluding the impact of the Forensic Accounting department transfer, the General Fund (no TAF) is projected to be positive to budget by \$150,000 due to additional CPD penalty revenue and custodianship recoveries.

2010 Forecast – General Fund (Including Forensic Accounting, no TAF)

Including the impact of the Forensic Accounting department transfer, the General Fund (no TAF) is projected at a \$950,000 deficit by year-end. As all of the Forensic Accounting expense will be taken from General Fund operating reserve in 2010, the balance of that reserve will be reduced to \$3.7 million at the end of 2010.

TAF-Related Revenue and Expenses***Revenue***

TAF revenue for the first quarter is not received until the April / May period, therefore there are no receipts in the first quarter.

The BC Real Estate Association (BCREA) reports that first quarter real estate unit sales were 18,300, a 64% increase over the first quarter of 2009. The first quarter 2009 results were low due to the economic and real estate conditions at that time. The results in 2010 are very similar to the first quarter of 2008, with 19,100 unit sales. The increase in real estate unit sales is good news for the TAF revenue levels, although there is some caution from BCREA as noted below.

The BCREA has noted, “Home sales have moderated since the beginning of the year. Waning pent-up demand and eroding affordability were key factors in the market. Despite an improving provincial economy, higher mortgage interest rates and tighter credit conditions for low-equity homebuyers and investors will squeeze some prospective buyers out of the market this spring.”

We will continue to monitor changes in the TAF revenue levels and economic forecasts.

Expenses

TAF operating expense is tracking to budget.

Special Compensation Fund

The positive variance in Special Compensation Fund is related to the timing of costs and recoveries, as there was little activity in the Fund during the first quarter.

Lawyers Insurance Fund (LIF)

During the first quarter, the investments market value increased \$1.2 million of which approximately \$900,000 is unrealized and therefore only recognized through the net assets on the balance sheet.

LIF operating results are \$978,000 below budget in the first quarter, mainly due to the timing of realization of investment income. There were few investment changes during the first quarter, therefore little realization of investment income.

The overall investment return for the first quarter of 2010 was 1.3%, compared to a benchmark of .8%.

The Law Society of British Columbia



Summary of Financial Highlights - 2010 (\$000's)

2010 General Fund Results - YTD March 2010				
	<u>Actual</u>	<u>Budget</u>	<u>\$ Var</u>	<u>% Var</u>
Revenue				
Membership fees	5,029	5,027	2 *	0.04%
PLTC and enrolment fees	266	237	29	12.24%
Electronic filing revenue	159	152	7	4.61%
Interest income	110	95	15	15.79%
Other revenue	388	276	112 **	40.58%
	5,952	5,787	165	
Expenses including 845 Cambie	3,575	3,665	90 ***	2.46%
	2,377	2,122	255	
Forensic Accounting Transfer	(168)	(224)	56	
	2,209	1,898	311	

* Membership numbers are 10,207 to date, tracking to budget
 ** CPD late fees 37k not budgeted, Custodianship recoveries 87k over budget
 *** Mainly timing of counsel fees and PLTC supplies

2010 General Fund Year End Forecast		
	<u>Ave # of Members</u>	<u>Forecast Variance</u>
Practice Fee Revenue		
2008 Actual	10,035	
2009 Actual	10,213	
2010 Budget	10,300	
2010 YTD	10,207	
Revenue		
CPD late fees not budgeted plus larger Custodianship recoveries than budgeted		150
2010 General Fund Forecast - Net Results prior to Forensic Accounting Transfer		150
Forensic Accounting Transfer		(1,200)
Unplanned vacancies savings in Forensic Accounting		100
Impact of Forensic Accounting Transfer		(1,100)
2010 General Fund Forecast - Net Results including Forensic Accounting Transfer		(950)
General Fund Operating Reserve, December 31, 2009		4,618
General Fund Operating Reserve, December 31, 2010		3,668

<i>Trust Assurance Program Forecast</i>						
	2009 Actual	2009 Budget	Variance	2010 Forecast	2010 Budget	Variance
TAF Revenue	2,436	3,045	(609)	2,467	2,467	-
TAP Expenses:						
Trust Administration Department	2,054	2,311	257	2,371	2,371	-
Forensic Accounting	1,234	1,215	(19)	-	-	-
Total TAP Expenses	3,288	3,526	237	2,371	2,371	-
Trust Assurance Program	(852)	(481)	(371)	96	96	-
Use of TAF Reserve	(852)	(481)	(371)	-	-	-
Net Trust Assurance Program	-	-	-	96	96	-
<p>Most recent Real Estate Association projection - 8% increase in unit sales from 2009 to 2010. We are waiting to see the first quarter results before revising the budgeted revenue for 2010.</p> <p>Forensic Accounting is being funded by the practice fee effective January 1, 2010.</p> <p>Based on the current real estate and revenue forecasts, the Trust Assurance Program should be funded for 2010.</p>						

<i>2010 Lawyers Insurance Fund Long Term Investments - YTD March 2010</i>		
Market Value		
March 31, 2010	96,575,851	
December 31, 2009	95,359,569	
Performance	1.3%	
Benchmark Performance	0.8%	

The Law Society of British Columbia
General Fund
Results for the 3 Months ended March 31, 2010
(\$000's)

	2010 Actual	2010 Budget	\$ Var	% Var
Revenue				
Membership fees (1)	5,029	5,027		
PLTC and enrolment fees	266	237		
Electronic filing revenue	159	152		
Interest income	110	95		
Other revenue	388	276		
Total Revenues	5,952	5,787	165	2.9%
Expenses				
Regulation	1,265	1,343		
Education and Practice	673	665		
Corporate Services	548	527		
Bencher Governance	418	434		
Communications and Information Services	402	416		
Policy and Legal Services	316	292		
Depreciation	71	89		
Total Expenses	3,693	3,766	73	1.9%
General Fund Results before 845 Cambie and TAP	2,259	2,021	238	
845 Cambie net results	118	101	17	
General Fund Results before FA Transfer	2,377	2,122	255	
Forensic Accounting Transfer	(168)	(224)	56	
General Fund Results before TAP	2,209	1,898	311	
Trust Administration Program (TAP)				
TAF revenues	2	-	2	
TAP expenses	519	526	7	1%
TAP Results	(517)	(526)	9	
General Fund Results including TAP	1,692	1,372	320	

(1) Membership fees include capital allocation of \$1.792m (YTD capital allocation budget = \$1.793m).

The Law Society of British Columbia
General Fund - Balance Sheet
As at March 31, 2010
(\$000's)

	Mar 31 2010	Dec 31 2009
Assets		
Current assets		
Cash and cash equivalents	57	3
Unclaimed trust funds	1,478	1,439
Accounts receivable and prepaid expenses	850	1,372
B.C. Courthouse Library Fund	1,919	724
Due from Lawyers Insurance Fund	10,389	16,302
	<u>14,693</u>	<u>19,840</u>
Property, plant and equipment		
Cambie Street property	11,866	11,886
Other - net	1,393	1,439
	<u>27,952</u>	<u>33,165</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	1,521	4,305
Liability for unclaimed trust funds	1,478	1,439
Current portion of building loan payable	500	500
Deferred revenue	10,037	14,893
Deferred capital contributions	90	92
B.C. Courthouse Library Grant	1,919	724
Due to Special Compensation Fund	9	9
Deposits	31	28
	<u>15,585</u>	<u>21,990</u>
Building loan payable	<u>5,100</u>	<u>5,600</u>
	<u>20,685</u>	<u>27,590</u>
Net assets		
Operating Reserve	5,176	4,618
Capital Allocation	2,091	957
	<u>7,267</u>	<u>5,575</u>
	<u>27,952</u>	<u>33,165</u>

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
For the 3 Months ended March 31, 2010
(\$000's)

	Operating Reserve \$	Capital Allocation \$	Total \$
Net assets - December 31, 2009	4,618	957	5,575
Net (deficiency) excess of revenue over expense for the period	(100)	1,792	1,692
Repayment of building loan	500	(500)	-
Purchase of capital assets:			
LSBC Operations	47	(47)	-
845 Cambie	111	(111)	-
Net assets - March 31, 2010	<u>5,176</u>	<u>2,091</u>	<u>7,267</u>

**The Law Society of British Columbia
Special Compensation Fund
Results for the 3 Months ended March 31, 2010**
(\$000's)

	2010 Actual	2010 Budget	\$ Var	% Var
Revenue				
Annual assessment	133	129		
Total Revenues	133	129	4	3.1%
Expenses				
Claims and costs, net of recoveries	(32)	159		
Administrative and general costs	65	32		
Loan interest expense	(12)	-		
Total Expenses	21	191	(170)	-89.0%
Special Compensation Fund Results	112	(62)	174	

The Law Society of British Columbia
Special Compensation Fund - Balance Sheet
As at March 31, 2010
(\$000's)

	Mar 31 2010	Dec 31 2009
Assets		
Current assets		
Cash and cash equivalents	1	1
Due from Lawyers Insurance Fund	853	2,753
Due from General Fund	9	9
	<u>863</u>	<u>2,763</u>
	<u>863</u>	<u>2,763</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	6	8
Current portion of claims payable	-	1,886
Deferred revenue	381	505
	<u>387</u>	<u>2,399</u>
Net assets		
Unrestricted net assets	476	364
	<u>476</u>	<u>364</u>
	<u>863</u>	<u>2,763</u>

The Law Society of British Columbia
Special Compensation Fund - Statement of Changes in Net Assets
For the 3 Months ended March 31, 2010
(\$000's)

	Unrestricted
	\$
Net assets - December 31, 2009	364
Net excess of revenue over expense for the period	<u>112</u>
Net assets - March 31, 2010	<u><u>476</u></u>

**The Law Society of British Columbia
Lawyers Insurance Fund
Results for the 3 Months ended March 31, 2010
(\$000's)**

	2010 Actual	2010 Budget	\$ Var	% Var
Revenue				
Annual assessment	3,214	3,137		
Investment income (1)	125	1,202		
Total Revenues	3,339	4,339	(1,000)	-23.0%
Expenses				
Insurance Expense				
Provision for settlement of insurance deductibles	3,845	3,845		
Salaries and benefits	514	572		
Contribution to program and administrative costs of General Fund	329	366		
Office	206	279		
Actuaries, consultants and investment brokers' fees	89	143		
Allocated office rent	29	29		
Premium taxes	5	3		
	5,017	5,237		
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	154	173		
Total Expenses	5,171	5,410	239	4.4%
Lawyers Insurance Fund Results before 750 Cambie	(1,832)	(1,071)	(761)	
750 Cambie net results	115	70	45	
Lawyers Insurance Fund Results	(1,717)	(1,001)	(716)	

(1) There is an unrealized gain of \$916k for the year recognized through net assets (not through income statement). See Statement of Changes in Net Assets.

The Law Society of British Columbia
Lawyers Insurance Fund - Balance Sheet
As at March 31, 2010
(\$000's)

	Mar 31	Dec 31
	2010	2009
Assets		
Cash and cash equivalents	9,528	20,573
Accounts receivable and prepaid expenses	396	377
Due from members	68	35
General Fund building loan	5,600	6,100
Investments	106,077	105,082
	<u>121,669</u>	<u>132,167</u>
Liabilities		
Accounts payable and accrued liabilities	1,051	1,690
Deferred revenue	2,993	6,075
Due to General Fund	10,389	16,302
Due to Special Compensation Fund	853	2,753
Provision for claims	56,258	54,471
Provision for ULAE	8,123	8,073
	<u>79,667</u>	<u>89,364</u>
Net assets		
Unrestricted net assets	24,502	25,303
Internally restricted net assets	17,500	17,500
	<u>42,002</u>	<u>42,803</u>
	<u>121,669</u>	<u>132,167</u>

The Law Society of British Columbia
Lawyers Insurance Fund - Statement of Changes in Net Assets
For the 3 Months ended March 31, 2010
(\$000's)

	Unrestricted \$	Internally Restricted \$	Total \$
Net assets - December 31, 2009	25,303	17,500	42,803
Net deficiency of revenue over expense for the period	(1,717)	-	(1,717)
			-
Unrealized gains on available-for-sale financial assets arising during the period	916	-	916
Net assets - March 31, 2010	<u>24,502</u>	<u>17,500</u>	<u>42,002</u>

From: [Tim McGee](#)
To: [Group Allstaff](#)
Subject: LSBC Core Process Review
Date: Thursday, March 25, 2010 5:46:00 PM
Attachments: [LSBC Core Process Review Q&A.pdf](#)

Dear Colleagues,

At our first Town Hall of the year in January I announced that we would be undertaking an important project in 2010 to review how we carry out the core functions of the Law Society and to identify opportunities to work more effectively and efficiently. This type of review is a benchmark for well run organizations. I am personally committed to the project as the executive sponsor with the full support of Management Board and the Benchers.

To be successful the review must be well planned and must involve full, open and meaningful consultation with staff. It must also capture the good ideas which come forward in a way which will lead to recommendations which we can support and implement. In short, we have an opportunity to make the Law Society an even better place to work and I am asking for your help in doing so.

Over the next few weeks, our project lead, Kensi Gounden, will be meeting with everyone from each of the departments involved. He will explain how the review will take place and how you can participate. I encourage you to ask questions, give your feedback and share your ideas. I am certain we won't have answers for all the questions at this stage but knowing what we don't know, but need to know, is important too.

To keep you informed and up to date with progress and developments we will be communicating throughout the year. To get things started, we have prepared the attached Q&A which I hope you will find helpful.

Please feel free to contact Kensi or me at anytime if you have questions or feedback.

Regards,
Tim

Timothy E. McGee
Chief Executive Officer
The Law Society of British Columbia
845 Cambie Street
Vancouver, BC V6B 4Z9
Direct: (604) 443-5766
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Please consider the environment before printing this e-mail or any attachments it may contain.



Core Process Review Q&A

March 2010

The following questions have been answered to explain the Core Process Review project. If you have any additional questions, please contact [Kensi Gouden](#). We will post additional Q&A as they come up.

Q: What is a core process review?

A: In this context, a work process is a collection of related, structured activities or tasks that achieve a specific goal for a particular stakeholder. An example might be “Fielding a complaint” which triggers various steps and activities.

Core processes are those that are fundamental and directly linked to the society’s mandate of acting in the public interest. They are different from those activities involved in the administrative functions, such as HR and accounting, which support the core work of the society.

A core process review is an exercise whereby work processes are broken down into their various steps (the current state) so that they can be viewed objectively, analyzed and improved. By breaking processes down in this way, it is common to find opportunities to, for example, reduce duplication of effort, optimize interactions with other departments and replicate good practices in other areas.

In the coming days, we will be providing examples of such projects at other organizations and more information to help you understand the project.

Q: Why are we conducting a core process review?

A: It is simply good business to ensure an organization is operating as efficiently and effectively as possible.

The public has an expectation that our services will be delivered in a timely and effective way. In response, the Benchers have called for shortening the length of time it takes to complete key regulatory processes. The Core Process Review project will support that objective.

We also have a duty to conduct ourselves in the most professional and efficient way possible if we are to preserve our ability to fulfill the mandate of the society.



We have also heard from many of you about your frustrations relating to processes and resources which are preventing you from being fully satisfied in your jobs. We want the process review to address these as well.

Q: What will the Core Process Review project achieve?

A: We expect it will achieve four things. First, it will allow us to identify opportunities for operational improvement. Second, it will allow everyone to participate in a meaningful and recognizable way, developing innovative solutions to operating challenges. Thirdly, it will create a roadmap for continuous improvement that can be used in the future. Lastly, it will provide us with the data necessary to update our current performance measures, including those by which we evaluate our operational effectiveness.

Q: What opportunities for improvements do we expect to find?

A: We won't know what solutions will be identified until we finish mapping out and assessing the current processes. However, possible changes could involve reducing duplication of effort, addressing work flow problems and improving inter-departmental communication. The review process will also identify what we are already doing well and assess whether any current processes can be expanded or used elsewhere.

Q: We have been asked for ideas for improvement in the past. How is this different?

A: Instead of just gathering ideas ad hoc, a core process review is a systematic approach to seeking input from all, evaluating our current processes, and making recommendations for improvements across the organization, which we will follow through on. We also have the full support of the Benchers for this work.

Q: Who will be involved in the Core Process Review project?

A: Everyone involved in our core functions and programs will be involved throughout the review process including:

- Custodianship
- Discipline



- Insurance
- Investigations
- Professional Conduct
- Tribunal/Legislative
- Trust Assurance
- Forensic Accounting
- Practice Standards
- Practice Advice
- PLTC
- Credentials

Other departments may be consulted for information and input regarding how they interact with the departments listed above.

Q: Who is in charge of the project?

A: Tim McGee is the project sponsor and Management Board will be responsible for overseeing and supporting the project. Kensi Gounden is the project manager and will be responsible for the day-to-day coordination of the review. Kensi will be assisted by a project team involving consultants Marion McAdam, an expert in managing process change and a process review expert. Robyn Crisanti will provide assistance with communications.

The project team is not yet finalized and we may be adding in others as needed.

Q: How will the process review be conducted?

A: We are committed to following a set of guiding principles throughout the course of this project. Those principles are:

- Collaboration
- Involvement
- Openness
- Transparency
- A desire to improve

We recognize that full understanding and commitment by all employees to this project is critical. Therefore, we must work within these values to ensure the project's success.



Q: What's the plan and timeline for the review?

A: Project Plan: Done in consultation with the core departments and programs. (Completion by April 30)

Phase I – Current Process Mapping: Involving meetings with staff in each of the core departments and programs, we will identify and map the processes currently in place. Once this is completed we will develop process charts with the help of the process expert. Everyone will have a chance to review and comment on the process charts to ensure they are a good representation of how we currently conduct our work. (Completion by June 30)

Phase II – Solution Development: Departments will identify opportunities for improvement arising from the current process charts and develop solutions. Of course, it will not be practical or possible to incorporate all suggested changes, but all suggestions will be fully considered. (Completion by October 31)

Phase III – Recommendations: The final phase of the project will be a report on the findings and recommendations, again prepared with the involvement of the core departments and programs. (Completion by December 31)

Q: When and how will the recommendations be implemented?

A: The timeline and method for implementation will depend on the recommendations, so it is too early to say when or how the changes will take place. However, you will be kept up-to-date on progress, both through your involvement in the project and regular communication from the project team.

Q: Do departments have to wait until all other departments have completed Phase I before moving on to Phase II?

A: Some departments have indicated an eagerness to proceed with the review and develop solutions soon after the current processes are mapped out.

While there is no reason why departments could not begin to identify possible solutions immediately following the current process mapping phase, it is important to remember that many processes will run across more than



one department. As such, we may have to wait until it is decided any changes are in the best interests of the entire process and all departments involved.

Q: What will the Core Process Review project mean to me?

A: First, you will have an opportunity to talk about those areas of your job that could be done differently to make them better or faster.

Second, as we've heard from a number of you, we expect that the review will allow you to identify needed improvements to our systems and operations that currently keep you from doing your work as well as it could be done. Finally, we have every reason to believe that the project will, in the long-term, improve overall job satisfaction. Of course, there may be short-term pain in learning new ways of doing things. However, the knowledge you will acquire through your involvement in the project and the opportunity to work more effectively should make your work more satisfying.

Q: Do we expect to cut costs or staff as a result of this project?

A: This project is not about downsizing. It is about doing our work more efficiently and effectively.

Q: How will we be kept informed?

A: A site for the Core Project Review project will be set up on the intranet in the coming days to which we will post Q&As, information on the project as well as resource materials for greater understanding.

Q: What are the next steps?

A: Kensi will be arranging to meet with your department sometime in the next few weeks to further explain the project, gather information and answer any of your questions. In the meantime, please feel free to call Kensi at any time to discuss the review.



**Legal
Services
Society**

Providing legal aid
in British Columbia
since 1979

Suite 400
510 Burrard Street
Vancouver, BC V6C 3A8

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Fax: (604) 682-0914
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LEGAL AID FUNDING AND THE LAW SOCIETY OF BC
Mayland McKimm, QC, Chair, Legal Services Society
Friday, April 23, 2010

ISSUES

Increased funding for legal aid is not likely in the short term. Therefore, how can the Legal Services Society best position itself for increased funding when the provincial economy improves? How can the Law Society assist?

BACKGROUND

LSS has 33 offices providing services at more than 50 locations.

The Society's statutory mandate is "to assist individuals to resolve their legal problems and facilitate their access to justice." We do this in three different ways: free legal information (websites, publications, outreach workers), legal advice (duty counsel, Brydges Line), and representation.

Revenues in 2010 – 2011 from government will be \$2 million less than the previous year for large criminal cases. Law Foundation revenues will remain unchanged; revenues from the Notary Foundation are expected to remain at historic lows for another year

In 2009 LSS had expenditures of \$82 million dollars, of which 69 per cent (\$56 million) went to lawyers. In 2001, LSS had expenditures of \$89 million of which 58 per cent (\$52 million) went to lawyers. LSS would need an additional \$45 million dollars (based on population growth and inflation) to return the level of per capita government funding we received in 2002; there is no likelihood government will provide that level of additional resources in the current environment.

LSS does not have adequate funding to deliver the services the board of directors believe are necessary to serve the society's clients. Nor does the society have adequate funding to pay lawyers what they deserve to be paid for the work they do.

LSS has restructured its operations to make more money available for services. LSS announced in December 2009 that several services that were previously cut will be reinstated and that several new services will be introduced. These include extended services for clients in particularly difficult family law matters, and enhanced duty counsel programs for both family and criminal law.

LSS has also made minor improvements to the tariffs paid to lawyers and is simplifying the tariffs to reduce the administrative burden on lawyers.

POSITIONING LSS FOR FUTURE FUNDING

LSS believes in outcomes-based legal aid. In any legal dispute the ideal outcome is a timely and lasting resolution that allows people to get on with their lives.

Legal aid clients are no different, but achieving the ideal outcome for them often involves helping them address non-legal issues such as homelessness, poverty, or addiction that have an impact on their legal problems.

Legal advice and representation are of pre-eminent importance in ensuring both fairness in, and proper functioning of, the justice system, and many BC lawyers provide exemplary service to the poor and disadvantaged through the legal aid program. More can be accomplished, however, when legal aid and multiple government ministries integrate their services and make them available early in the legal process or, better still, before the legal process is even needed.

Examples of how this might work include lawyers providing advice outside court at native friendship centres, women's agencies, welfare offices, or hospitals.

HOW THE LAW SOCIETY CAN HELP**1. Communications**

Assist LSS to get consistent and accurate messages to the public, the legal profession and justice system partners. This can be done through LSBC publications and meetings with Law Society stakeholders.

2. Develop a Law Society vision for publicly funded legal aid services

The Law Society's public interest mandate will bring a unique perspective to this issue and may well be different from other law-related organizations.

One issue you may wish to consider is what legal aid services the province must provide as a matter of law, what services are desirable on social justice and other policy grounds, and what services, if not provided, end up costing the citizens and taxpayers more.

3. Promote lawyer involvement in legal aid

This could be done by building on the Law Society's success in encouraging lawyers to provide pro bono services.

4. Leadership and strategy development

Continue to champion initiatives that make justice more accessible such as the work of the Unbundling of Legal Services Task Force, the Delivery of Legal Services Task Force, and the Access to Legal Services Advisory Committee. Work collaboratively with LSS on initiatives where we share common goals.

To Benchers
From Jeffrey G. Hoskins, QC
Date April 28, 2010
Subject **Rule 2-43, Court and tribunal appearances by articulated students**

With the advent of the new Rules of Court, both civil and family, on July 1, Rule 2-43, which refers to rule 52 specifically, will be out of date. If it is appropriate to allow articulated students to appear in Supreme Court chambers on any uncontested matter, it is not necessary to refer to the specific rule of court. That is particularly so since the Table of Concordance to the new Rules of Court indicates that what is now Rule 52 will appear in four different rules (two civil and two family) come July 1.

In looking at Rule 2-43 for this purpose, I noticed that it still refers to the *Young Offenders Act*, which was repealed in 2002 and replaced with the *Youth Justice Act*.

The attached draft makes the appropriate changes, which have been approved by the Act and Rules Subcommittee. Since there will be no reference to a specific Rule of Court, it can be made effective on adoption of the appropriate resolution by the Benchers.

A suggested resolution is attached.

JGH
E:\Policy\Jeff\RULES\memo to Benchers on students in court Jun 10.docx

Attachments: draft 1, redlined and clean

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Admission program

Court and tribunal appearances by articulated students

2-43 (1) An articulated student may appear:

- (b) in Supreme Court of British Columbia in Chambers on any
 - (i) uncontested matter ~~under Rule 52 of the Rules of Court~~, or
 - (ii) contested application for
 - (A) time to plead,
 - (B) leave to amend pleadings, or
 - (C) discovery and production of documents, or
 - (iii) other procedural application relating to the conduct of a cause or matter,
- (d) in the Provincial Court of British Columbia
 - (i) on any summary conviction offence or proceeding,
 - (ii) on any matter in the Family Division or the Small Claims Division, or
 - (iii) when the Crown is proceeding by indictment or under the ~~Young Offenders~~ Youth Criminal Justice Act (Canada) in respect of an indictable offence, for the purposes only of
 - (A) speaking to an application for an adjournment,
 - (B) setting a date for preliminary inquiry or trial,
 - (C) speaking to an application for judicial interim release or an application to vacate a release or detention order and to make a different order, or
 - (D) an election or entry of a plea of Not Guilty on a date before the trial date,

ARTICLED STUDENTS IN COURT**SUGGESTED RESOLUTION:**

BE IT RESOLVED to amend Rule 2-43(1) of the Law Society Rules as follows:

- 1. In paragraph (b)(i), by striking “under Rule 52 of the Rules of Court” and*
- 2. In paragraph (d)(iii), by striking “under the Young Offenders Act (Canada)” and substituting “under the Youth Criminal Justice Act (Canada)”.*

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

To Benchers
From Jeffrey G. Hoskins, QC
Date May 28, 2010
Subject **Revisions to Rules on MDPs**

As you know, the new Rules permitting multi-disciplinary practices come into effect July 1, 2010. Before that date, the Benchers need to set some fees for applications to practise as an MDP. As well, some deficiencies in the existing Rules have been discovered in the course of implementation.

Fees

The Act and Rules Subcommittee recommends MDP fees commensurate with existing fees for lawyers transferring from another jurisdiction on the basis that the administration involved in each is likely to be quite similar. Currently, transfer applicants pay a \$300 application fee and an investigation fee of \$1,125 to ensure that they are of good character and repute and fit to be a solicitor of the Supreme Court. Although an investigation of a non-lawyer may be more difficult than one of a lawyer who has already been vetted by at least one other law society, it would be difficult to charge a differential fee. Likewise, the application fee may not go far on an application involving multiple lawyers and non-lawyers, but the same fee has some compelling logic.

Application Rule

The Act and Rules Subcommittee recommends revisions to the substantive rule governing applications to be an MDP so that it is clear that,

- lawyers employed by an MDP and not a partner does not need to apply or pay a fee;
- if a group of lawyers make a joint application, there is only one application fee (although the investigation fee is per non-lawyer);
- a new lawyer partner joining an existing MDP does not need to make a fresh application (although a new non-lawyer does);

My draft of the changes and a suggested resolution are attached.

JGH

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LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Members

Application to practise law in multi-disciplinary practice

2-23.3 (1) Before a lawyer may practise law ~~in~~as a member of an MDP ~~that has not been granted permission under Rule 2-23.4~~, the lawyer must submit the following to the Executive Director:

- (a) an application in a form approved by the Credentials Committee;
- (b) the application fee specified in Schedule 1 ~~for each lawyer member of the proposed MDP~~;
- (c) the investigation fee specified in Schedule 1 for each non-lawyer member of the proposed MDP;
- (d) copies of all partnership agreements and other contracts that the lawyer proposes to enter into with other members of the proposed MDP.

SCHEDULE 1 – 2010 LAW SOCIETY FEES AND ASSESSMENTS

L. Multi-disciplinary practice fees

- | | | |
|----|---|-------------------------------|
| 1. | Application fee per lawyer (Rule 2-23.3(1)) | TBD <u>\$300</u> |
| 2. | Investigation fee per <u>proposed</u> non-lawyer member of proposed MDP
(Rules 2-23.3(1) <u>and 2-23.5(2)</u>) | TBD <u>\$1,125</u> |

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Members

Application to practise law in multi-disciplinary practice

2-23.3 (1) Before a lawyer may practise law as a member of an MDP that has not been granted permission under Rule 2-23.4, the lawyer must submit the following to the Executive Director:

- (a) an application in a form approved by the Credentials Committee;
- (b) the application fee specified in Schedule 1;
- (c) the investigation fee specified in Schedule 1 for each non-lawyer member of the proposed MDP;
- (d) copies of all partnership agreements and other contracts that the lawyer proposes to enter into with other members of the proposed MDP.

SCHEDULE 1 – 2010 LAW SOCIETY FEES AND ASSESSMENTS

L. Multi-disciplinary practice fees

- | | | |
|----|--|---------|
| 1. | Application fee (Rule 2-23.3(1)) | \$300 |
| 2. | Investigation fee per proposed non-lawyer member of MDP
(Rules 2-23.3(1) and 2-23.5(2)) | \$1,125 |

MULTI-DISCIPLINARY PRACTICES**SUGGESTED RESOLUTION:**

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

1. *In Rule 2-23.3(1)*

(a) by rescinding the preamble and substituting the following:

- (1) Before a lawyer may practise law as a member of an MDP that has not been granted permission under Rule 2-23.4, the lawyer must submit the following to the Executive Director:

(b) in paragraph (b), by striking “for each lawyer member of the proposed MDP”

2. *In Schedule 1, by rescinding section L and substituting the following:*

L. Multi-disciplinary practice fees

- | | |
|--|---------|
| 1. Application fee (Rule 2-23.3(1)) | \$300 |
| 2. Investigation fee per proposed non-lawyer
member of MDP (Rules 2-23.3(1) and 2-23.5(2))..... | \$1,125 |

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

To Benchers
From Jeffrey G. Hoskins, QC for the Act and Rules Subcommittee
Date June 1, 2010
Subject **Proposed amendments to *Legal Profession Act***

At the July 2009 meeting the Benchers resolved to refer a list of proposed amendments to the Act and Rules Subcommittee for consideration and recommendation to a future Benchers meeting. The Subcommittee has considered most of the issues that were referred to it. A summary of the Subcommittee's consideration and its recommendation in each case is attached in a series of separate documents. The Subcommittee plans to complete its review and consider some additional suggested amendments and report to the Benchers further at the meeting scheduled for July 9, 2010.

The Act and Rules Subcommittee recommends that the Benchers authorize a request to the provincial government for amendments to the *Legal Profession Act* as described in the attached documents with respect to the following sections of the Act (plus associated consequential amendments):

- section 1 — Definitions, definition of “practice of law”
- section 14.1 (proposed) — Paralegals
- section 15 — Authority to practise law
- section 23 — Annual fees and practising certificate
- section 24 — Fees and assessments
- section 26 — Complaints from the public
- section 38(5) — Discipline hearings (maximum fines)
- section 38(5) — Discipline hearings (suspension pending compliance)
- section 39 — Suspension
- section 47 — Review on the record

The Act and Rules Subcommittee has also considered possible amendment to the following sections of the *Legal Profession Act*, but recommends no changes at this time. A brief explanation of each potential change is included in the attached documents.

section 4 — Benchers

section 17 — Practitioners of foreign law

Attachments: 12 documents re sections of *Legal Profession Act*

JGH

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LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

SECTION 1 – DEFINITION OF “PRACTICE OF LAW”

SECTION 15 – AUTHORITY TO PRACTISE LAW

Rationalize the definition and prohibition on unauthorized practice

NATURE OF CHANGE PROPOSED

Without changing the substantive effect of the provisions, remove from the definition and relocate in section 15 provisions that are really exceptions to the prohibition in section 15 or actions not really the practice of law but included in the definition for the purpose of invoking the prohibition in section 15.

WHY CHANGE IS NEEDED

Section 1 defines the “practice of law” as including a number of specified activities (paragraphs (a) to (g)) and then goes on to exclude from the “practice of law” certain things. The exclusions relate to what activities will not be considered unauthorized practice and, for the most part, do not address whether or not the specific service may involve the provision of legal services.

The exception in paragraph (h), when “practice of law” is done without intention of payment, results in pro bono activities of lawyers being something other than the practice of law, which, arguably, makes ethical breaches in that activity conduct unbecoming rather than misconduct.

Parallel to that is the inclusion in paragraphs (f) and (g) of the definition acts that are not actively practising law (offering to provide legal services and holding out as qualified) but are included so that non-lawyers can be prevented from doing them by means of the prohibition in section 15. As an unintended consequence of that provision, a recent applicant attempted to persuade the credentials staff that providing legal services, which is the “practice of law” under paragraph (f), was a means of keeping up on the law for purposes of satisfying the Credentials Committee to grant permission to resume practising status after some time non-practising.

For another example, paragraph (j) excludes from the “practice of law” the lawful practice of notaries public, such as conveyancing of real property and drafting wills, which are clearly the practice of law when done by a lawyer.

The exceptions belong more properly in s. 15 along with other exceptions to the general provision that only practising lawyers may practise law. The Act and Rules Subcommittee identified this as a priority in 2009.

The purpose of the proposed amendment is not to change the substance of the law, other than to correct the unintended consequences. It is intended to clarify the law so that lawyers and non-lawyers would be better able to discern their rights and limitations under the Act.

HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

This series of amendments would continue and improve LSBC's ability to enforce the statute and protect public against unqualified people providing legal advice for payment. It would improve the ability of public and lawyers to understand what non-lawyers can and cannot do.

CONSEQUENTIAL AMENDMENTS

None

HISTORY OF PROPOSED AMENDMENT

This sort of amendment has been discussed in the past, but not pursued primarily because Benchers were reluctant to put the sections concerned on the table for discussion with government.

In July 2009, the Benchers referred the question of amendments to clean up the definition of "practice of law" and the prohibition on unauthorized practice of law in section 15 to the Act and Rules Subcommittee for a recommendation. The Subcommittee had previously indicated that it considered this amendment to be a priority.

RECOMMENDATION

The Act and Rules Subcommittee recommends that the Benchers make this series of amendments part of the Law Society's request for amendments for 2011.

LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

SECTION 4 – BENCHERS

Bencher oath of office

NATURE OF CHANGE PROPOSED

Add a statutory requirement for Benchers to take an oath of office when elected or appointed.

HISTORY OF PROPOSED AMENDMENT

This was one of the legislative amendments that the Benchers referred to the Act and Rules Subcommittee. The Subcommittee recommended to the Benchers that that be done by Rule, which has been done and implemented.

RECOMMENDATION

The Act and Rules Subcommittee is of the view that it is sufficient, and in keeping with the independence of the profession and the Law Society, that the requirement exists in the Law Society Rules. The Subcommittee recommends that this amendment not be part of the Law Society request for legislation in 2010.

LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

SECTION 14.1 (PROPOSED) – PARALEGALS

Certification of paralegals and/or other non-lawyers

NATURE OF CHANGE PROPOSED

This change would be a new section intending to give the Benchers permission to introduce a program for certifying paralegals at some future date if they decide to follow that course.

This is a first draft of what the provision might look like:

Paralegals

14.1 The benchers may make rules to do any of the following:

- (a) establish a certification program for paralegals;
- (b) determine the qualifications for certification as a paralegal;
- (c) determine the rights and privileges associated with certification as a paralegal;
- (d) set the annual fee for certified paralegals.

WHY CHANGE IS NEEDED

This new provision was referred to the Act and Rules Subcommittee for consideration on the basis that the Benchers could consider a program of certifying non-lawyers, presumably qualified paralegals, to provide legal services, either with lawyer supervision or without. The Subcommittee is very cognizant of the work being done by the Delivery of Legal Services Task Force and does not intend to pre-suppose what the Benchers may do in response to its endeavours. However, the Subcommittee is also aware of the time it takes to bring about legislative changes, and proposes a permissive section that will allow the Benchers the flexibility to decide to initiate a program, or not, in due course.

HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

The program, if adopted, would ensure that paralegals or other non-lawyers offering legal services for pay are qualified, regulated and insured. Currently, paralegals are regulated through the lawyers who employ them. Those not employed by a lawyer are regulated only by UPL proceedings initiated by the Law Society where appropriate. It may be that a certification program could allow paralegals to perform some legal services for which

they are qualified, but now restricted to lawyers to ensure proper regulation. That may give members of the public more choice and some cost relief.

CONSEQUENTIAL AMENDMENTS

Section 15 – Authority to practise law. If the Benchers were to opt for an Ontario-like program that would allow paralegals to engage in activities that amount to the practice of law outside of the context of a law firm, section 15 would need to be amended to accommodate that.

HISTORY OF PROPOSED AMENDMENT

It should be noted that the Law Society has requested the statutory authority to certify paralegals on a number of occasions, going back to the 1980s, but the requests have not yet found favour in Victoria. The fact that the Law Society of Upper Canada has undertaken an extensive program may make a difference.

RECOMMENDATION

The Act and Rules Subcommittee asks that the Benchers consider if they want an amendment to allow them to decide on a course of action at a later date.

LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

SECTION 17 – PRACTITIONERS OF FOREIGN LAW

NATURE OF CHANGE PROPOSED

This section was included in the list of possible areas for amendment so that it could be considered whether a change was needed in light of the rapidly changing conditions in trade in services on a global scale. The Act and Rules Subcommittee considers that the broad powers given to the Benchers in the current provision are sufficient to deal with any foreseeable changes.

RECOMMENDATION

No change.

LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

SECTION 23 – ANNUAL FEES AND PRACTISING CERTIFICATE

Benchers to set annual practice fee

NATURE OF CHANGE PROPOSED

Remove the requirement that the annual practice fee be set by the majority of members voting at a general meeting or in a referendum. Substitute a provision that the annual practice will be set by the Benchers.

WHY CHANGE IS NEEDED

In almost all other jurisdictions and professions, the amount of fees set by a self-regulatory body is not set by the members themselves. In our own legislation, every other fee of the Law Society is set by the Benchers.

The Independence and Self-Governance Advisory Committee has considered this matter and its effect on the independence of the legal profession and on the public appearance of acting in the public interest. The Committee has reported its finding that the change should be made in the interest of preserving the independence and self-governance of the legal profession in British Columbia. The Committee's report was considered by the Act and Rules Subcommittee, which has agreed to recommend the change to the Benchers.

This is the text of the Independence and Self-Governance Advisory Committee's report to Act and Rules Subcommittee on this proposed amendment:

The Committee considered whether public confidence and self regulation might be better enhanced if the Benchers set the practice fee rather than members. The Committee debated whether a fee set by members was consistent with proper regulation. The Committee expressed concern that the Law Society's ability to properly finance its activities necessary to act in the public interest could be compromised by members' opportunities, in theory, to set a fee lower than what was necessary. Members' financial interests in a low fee could thereby compromise proper regulation.

The Committee believed that the case for lawyer independence and self-governance would be enhanced, and a clear delineation between member interest and the public interest would be demonstrated, if the Benchers, acting in the public interest, set fees themselves rather than on the approval of members who

may be motivated by self-interest to fix the fee at a rate that would not permit the Law Society to discharge its public interest mandate. A concern was expressed that the Law Society, through the current process, may become beholden to its members, running the risk of making it appear to be a member interest organization.

There was a considerable debate on this issue. The Committee recognized a fundamental tension between democracy and accountability (which supported the current process), and proper regulation, necessary for public confidence (which finds more support in a process that allows the governors of the regulator to set the fees). The fact that Benchers are elected may improve the notion of accountability, however, even if the fee-setting power was taken away from the members. Ultimately, given the mandate of the Committee, it was decided that the Committee should recommend a solution that erred on the side of a process that better ensured proper regulation, a necessary pre-condition to lawyer independence and self-governance.

The Committee therefore reached a consensus that an amendment to s. 23 permitting the Benchers to set the practice fee would be advisable. However, the Committee also agreed that amendments to s. 23 were likely not as pressing as amendments to s. 3.

Since that report was made, the provincial government has introduced legislation to make the elected representatives in the Association of Professional Engineers and Geoscientists responsible for setting the annual fee for members of that professional group. I believe that leaves the Law Society and Foresters as the only major professions requiring membership approval of annual fees. Among other Canadian Law Societies, only New Brunswick (which still has compulsory CBA membership) has that requirement.

HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

This change would allow the Law Society to budget properly to serve the public interest, without the constraint of having to meet registrant approval directly. It would ensure that those regulated by the Law Society could not limit the amount of regulation by fixing a fee too low for effective regulation. It would also ensure that the public and the government could see that that was the case.

CONSEQUENTIAL AMENDMENTS

Section 24 – Fees and assessments

HISTORY OF PROPOSED AMENDMENT

The annual fee was originally set in the *Legal Professions Act*, but inflation eventually caught up with that process, and the Act was amended to allow the Benchers to seek an increase from a general meeting of the members. By the time of the *Barristers and Solicitors Act* in 1979, the current provision of the members setting the fee was in place.

In the 1980s, drafts of the new Act that eventually became the *Legal Profession Act* of 1987 contained a provision for the Benchers to set the annual fee. That was changed back to the members in a general meeting or on a referendum on the strong request of the CBA so that it would not interfere with the universal membership in the CBA. As you know, that practice ended in 2004.

RECOMMENDATION

The Act and Rules Subcommittee recommends that the amendment form part of the Law Society request for legislation in 2011.

LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

SECTION 24 – FEES AND ASSESSMENTS

Removing reference to collecting CBA fees

NATURE OF CHANGE PROPOSED

Remove references to collection of CBA annual fees as part of the Law Society annual practice fee.

WHY CHANGE IS NEEDED

Section 24 of the *Legal Profession Act* contains the following unusual provisions, which formerly authorized the compulsory collection of the annual CBA fees as part of the practice fee:

- (1) The benchers may
 - (c) authorize the society to act as agent of the Canadian Bar Association for the purpose of collecting fees of that association from lawyers who are members of it.
- (2) Fees collected under subsection (1) (c) form part of the practice fee referred to in section 23 (1) (a).

Since these provisions are no longer used, and since some Benchers place importance on distinguishing the Law Society from the CBA, in 2009 the Benchers requested that those provisions be removed from the *Legal Profession Act*.

HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

This change would reflect the separation of the regulatory and advocacy functions already in place in the legal profession.

CONSEQUENTIAL AMENDMENTS

None

HISTORY OF PROPOSED AMENDMENT

This amendment was approved by the Benchers as part of the requested amendments to the *Legal Profession Act* in 2009. It was not enacted by the Legislature.

RECOMMENDATION

The Act and Rules Subcommittee recommends that this amendment be part of the Law Society's request for 2011.

LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

SECTION 26 – COMPLAINTS FROM THE PUBLIC

Mediation of disputes

NATURE OF CHANGE PROPOSED

Add a specific provision allowing the Benchers to make rules providing for the mediation of disputes involving lawyers. The provision could look something like this:

- (2) The benchers may make rules
 - (b) providing for the resolution of complaints and disputes involving lawyers to be resolved or attempted to be resolved by means of mediation or other informal resolution technique,

WHY CHANGE IS NEEDED

There is a rule (3-5(9)) allowing the use of mediation to resolve a dispute involved in a complaint:

- (9) The Executive Director may, at any time, attempt to resolve a complaint through mediation or other informal means.

However, the validity of that Rule, at least with respect to any subsequent disciplinary action, without specific legislative authority may have been called into question by the case of *Salway v. Association of Professional Engineers and Geoscientists of BC*, 2009 BCCA 350. In that case, the Court of Appeal overturned a consent resolution of a discipline matter on the grounds that the informal resolution of complaints was not mandated by the governing statute of the professional organization. Although the professional had accepted what is called a “Stipulated Order” rather than face a formal hearing, the court found that the professional regulatory body had exceeded its jurisdiction because there was no authority in the Act for such an outcome.

HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

Ensure that an efficient method of concluding complaints and discipline matters, by mediation to achieve consent, will not be seen to exceed the statutory mandate of the Law Society.

CONSEQUENTIAL AMENDMENTS

None.

HISTORY OF PROPOSED AMENDMENT

The Act and Rules Subcommittee was asked by the Benchers to consider whether the Act should be amended to allow for the resolution of complaints and disputes by means of mediation, arbitration or other means. The Committee is of the view that specific authority for mediation or other informal means may be of value, but that establishing a program for arbitration is not within the current scope of the Law Society as a regulatory body and they did not see any reason to try to expand it.

RECOMMENDATION

The Act and Rules Subcommittee recommends an amendment to the *Legal Profession Act* that deals only with mediation and other informal methods of dispute resolution.

LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

SECTION 38(5) – DISCIPLINE HEARINGS

Maximum disciplinary fines to be set by Benchers

NATURE OF CHANGE PROPOSED

Remove from the *Legal Profession Act* the specific maximum amount of fines that a hearing panel can impose on a respondent and give the Benchers the specific authority to set the maximum amount.

WHY CHANGE IS NEEDED

The Act currently caps the maximum fine a discipline hearing panel can impose on a lawyer at \$20,000 and \$2,000 for an articulated student. The maximum fine for lawyers has not been adjusted since 1992 and the maximum fine for articulated students remains unchanged since 1988. If the maximum fines were sufficient to deter possible misconduct in 1992, it is doubtful that they are now or that the public will perceive them as adequate.

HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

An increase in maximum fines would make Law Society penalties more current with acceptable levels and bring them into line with other professions in British Columbia. More significant fines are more likely to be perceived by the public as an effective deterrent to protect the public interest. Fines that are more effective could help avoid the unnecessary use of suspensions as a penalty, which can have an adverse effect on some clients.

Delegation of the authority to decide the maximum fine allowable is in keeping with the scheme of the *Legal Profession Act* as a whole, which delegates the details of most issues to the Benchers to determine and enforce by way of the Law Society Rules.

CONSEQUENTIAL AMENDMENTS

Section 36 – add a new matter on which Benchers can make Rules, maximum fines.

HISTORY OF PROPOSED AMENDMENT

In 2008, the Law Society requested an increase in the maximum fines to \$50,000 and \$5,000. However, in 2009 the Benchers resolved to change the request to allow the

Benchers to set the maximum fine by Rule, which required a change to section 36 as well as section 38(5). In neither case was the change enacted by the Legislature.

RECOMMENDATION

The Act and Rules Subcommittee recommends that the amendments be approved as part of the Law Society's legislative request for 2011.

LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

SECTION 38(5) – DISCIPLINE HEARINGS

Disciplinary suspension pending compliance with conditions

NATURE OF CHANGE PROPOSED

Amend the provision permitting hearing panels to impose a suspension on a finding of misconduct (s. 38(5)(d)), to extend a suspension to the time when a respondent complies with a condition or other order imposed in the same matter. Three amendments would allow for a suspension that

- begins immediately until compliance,
- begins at a later date until compliance,
- last for a specified period, or until compliance, whichever is later.

WHY CHANGE IS NEEDED

In 2008 and again in 2009, the Law Society requested a change to section 38(5) to allow a discipline hearing panel that has found a lawyer guilty of misconduct and determined that a suspension is an appropriate penalty to require compliance with conditions before the suspension is lifted.

While the current legislation allows a panel to impose a suspension pending compliance with some requirements that can be imposed as part of a disciplinary penalty, it appears to be an oversight that some other conditions and requirements cannot be enforced in that way.

HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

This change will allow for more effective protection of the public interest by giving hearing panels the discretion to ensure that any non-penalty conditions must be met before a lawyer can return to practice.

CONSEQUENTIAL AMENDMENTS

None

HISTORY OF PROPOSED AMENDMENT

This request was made of government in both 2008 and 2009, but has not been enacted as yet.

RECOMMENDATION

The Act and Rules Subcommittee recommends that the amendments be approved as part of the Law Society's legislative request for 2011.

LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

SECTION 39 – SUSPENSION

Interim suspension before citation

NATURE OF CHANGE PROPOSED

At the meeting in March 2010, the Benchers adopted a new rule (3-7.1) allowing for the interim suspension of a lawyer pending the conclusion of an investigation in to the lawyer's conduct. The previous rule, and section 39, speak to the suspension of a respondent (someone against whom a citation has been issued) pending a hearing on the citation.

Prior to that, a resolution was approved calling for an amendment "to clarify and confirm the Law Society's authority to make the rule(s), not to confer or create new authority." That can best be done in section 39, which now permits the interim suspension of or imposition of practice restrictions on a "respondent", which is defined as a lawyer or articulated student who is the subject of a citation. In order to apply the same provision to lawyers under investigation but not yet cited, we would change "respondent" to "lawyer" or "articled student" as is appropriate in the context. In addition, the term of the suspension becomes "while an investigation is conducted and until the decision of a hearing panel or other disposition of the subject matter of the investigation."

The Act and Rules Subcommittee also suggest changes to the section that would promote consistency of treatment between lawyers and articulated students.

This is what the section as amended would look like:

- 39** (1) The benchers may make rules permitting the chair of the discipline committee or any 3 other benchers to do any of the following while an investigation is conducted and until the decision of a hearing panel or other disposition of the subject matter of the investigation:
- (a) suspend a lawyer, if the lawyer's continued practice would be dangerous to the public or the lawyer's clients;
 - (b) impose conditions on the practice of a lawyer;
 - (c) suspend the enrolment of an articulated student, if the student's continued enrolment would be dangerous to the public or the clients of the student's principal or of the principal's firm;
 - (d) impose conditions on the continued enrolment of an articulated student.

WHY CHANGE IS NEEDED

At the meeting in October 2009, the Benchers discussed options for interim measures that could be taken to increase public protection when a lawyer is under investigation by the Law Society or is charged in the criminal justice system. It was noted that, while the current section 39 and related Law Society Rules permitted the interim suspension of a lawyer who is the subject of a citation, or the imposition of conditions and restrictions on the lawyer's practice, there is no provision permitting that prior to the citation being authorized, even though, in rare cases, there may be a compelling public interest that requires such action.

The Benchers decided that the Law Society should seek an amendment to the *Legal Profession Act* to allow for the required power. In the interim, an amendment was made to the Law Society Rules on the basis of the Benchers' general rule making power in the public interest.

Here is an extract from the *in camera* minutes of that meeting showing the resolution that was adopted:

Mr. Vertlieb moved (seconded by Ms. Hickman) that the Law Society proceed with enactment of new rule(s) permitting the Law Society to impose interim measures before or without a citation, and proceed with appropriate amendment of the Legal Profession Act, on the understanding that the legislative amendment is to clarify and confirm the Law Society's authority to make the rule(s), not to confer or create new authority.

The motion was carried.

HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

This change would allow the Law Society, where needed, to protect the public interest more fully before the investigation into allegations has been completed, for example, in the case of a lawyer who has been charged, but not yet convicted, of a criminal offence.

CONSEQUENTIAL AMENDMENTS

Section 40 – Medical examination

The Subcommittee suggests that a similar change be made to section 40, which used to be combined with section 39. If a lawyer can be suspended before citation it makes sense that the lawyer can be ordered to be examined for medical fitness if the public interest demands it.

HISTORY OF PROPOSED AMENDMENT

This amendment was mandated by the Benchers in October, 2009. It has not yet been communicated to the provincial government.

RECOMMENDATION

The Act and Rules Subcommittee recommends including this amendment in the request for amendments for 2011.

LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

SECTION 47 – REVIEW ON THE RECORD

Review of award of costs

NATURE OF CHANGE PROPOSED

Add awards of cost to the decisions of a hearing panel that can be the subject of a review by the Benchers.

WHY CHANGE IS NEEDED

A strict reading of the current provisions would require that appeals of discipline or credentials hearing decisions on costs must be heard by the Court of Appeal. All other appeals can be heard by the Benchers. This anomaly in the legislation would deprive members of the Law Society, as well as others who apply for membership in the society, of a less formal and more cost-effective route of appeal.

As it happens, the Benchers have often agreed to review costs as part of a general review of the decision of a hearing panel. I don't know of a case where a review of costs alone has proceeded. However, it may be that some possible appellants are dissuaded from pursuing the matter by the current wording of the current section. In any case, the Act should accurately reflect reality in practice.

HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

Allows greater transparency into the remedies available to a person who is the subject of a hearing panel order.

CONSEQUENTIAL AMENDMENTS

None

HISTORY OF PROPOSED AMENDMENT

In 2008 and 2009, the Law Society asked for an amendment to section 47(1) to allow a lawyer who is the subject of a discipline decision or a person who is the subject of a credentials decision to apply to the Benchers for a review on the record of an order for costs. No amendment was made.

RECOMMENDATION

The Act and Rules Subcommittee recommends that the amendments be approved as part of the Law Society's legislative request for 2011.

The Law Society of British Columbia



Pro Bono and the *Professional Conduct Handbook*

May 7, 2010

Purpose of Report:

Policy Discussion and Decision by Benchers

Prepared by:

Ethics Committee



To Benchers
From Ethics Committee
Date May 7, 2010
Subject **Pro Bono and the *Professional Conduct Handbook***

On July 10, 2009 the Benchers adopted the recommendations in the *Access to Legal Services Advisory Committee: Mid-Year Report*. An extract from the July 10 minutes is attached for your information. Item 6 of the extract identifies a specific task for the Ethics Committee: consider whether doing pro bono work is an ethical obligation for lawyers and, if so, whether the Rules and *Professional Conduct Handbook* need revision.

We have considered those issues and are of the view that the *Professional Conduct Handbook* should be amended to expressly recognize that lawyers provide extensive pro bono services and that a lawyer's obligation to provide quality legal services to a pro bono client is not affected by the pro bono status of the case.

We think the Law Society should encourage lawyers to provide pro bono services, but we do not think that lawyers should be compelled, as a matter of professional responsibility, to provide those services; our recommended addition to the *Professional Conduct Handbook* does not include such a change.

In our view, compulsory pro bono would work a hardship on some lawyers, and is inconsistent with the nature of pro bono work itself, which is a voluntary contribution by lawyers of their professional skills. Measuring compulsory pro bono work would be onerous, it could work a hardship on some lawyers whose practices are marginal, it may discourage lawyers from undertaking all but the minimum amount of pro bono work required and could attract hostility to the Law Society from members who resent what they may see as overregulation of their practices. We think these same arguments apply to the mandatory reporting of non-compulsory pro bono work by lawyers and we do not recommend such reporting.

Attachments:

- Draft Chapter 3, Rule 6.
- Extract from July 2009 Benchers meeting.

- (probono14benchers/10)

PROFESSIONAL CONDUCT HANDBOOK

CHAPTER 3

COMPETENCE, QUALITY OF SERVICE AND RELATIONSHIP TO CLIENTS

Pro bono

6. A lawyer's professional responsibility to provide quality legal services to all clients is not affected by the limited ability of some clients to pay for those services, or the fact that the services are provided wholly or partly on a pro bono basis.⁶

FOOTNOTES

6. The provision of pro bono legal services has been a long tradition of the legal profession, which is consistent with Chapter 1, Canon 3(9). It is up to each lawyer to decide how much pro bono services he or she can provide. Lawyers can consult the Law Society website (www.lawsociety.bc.ca/probono) for a list of pro bono agencies.

Extract from July 10, 2009 Benchers Minutes

Access to Legal Services Advisory Committee: Mid-Year Report

Chair David Mossop, QC presented the Access to Legal Services Advisory Committee's mid-year report to the Benchers. He reported that in the first half of 2009, the Committee has focused on the ability of the Summary of the poor to access legal services, and that in the balance of the year, the Committee will focus on the legal needs of middle and low income people, while continuing to monitor *pro bono*.

The Committee's report identifies five issues (at pages 1003-1004 of the meeting materials) and calls for their further consideration and communication as modest but meaningful steps the Law Society can take to improve participation in, and delivery of, *pro bono* in BC.

The Benchers added a sixth issue (the Ethics Committee should be directed to consider whether doing *pro bono* work is an ethical obligation for lawyers, and if so, whether the Rules and *Professional Conduct Handbook* need revision) and resolved to adopt all six issues for further consideration (Six Pro Bono Issues, attached as Appendix 1).

APPENDIX 1: Six Pro Bono Issues

Issue 1: The Benchers should direct the Credentials Committee to consider whether the articling program should be modified to *encourage* articling students to provide a minimum of 10 hours of *pro bono* (either at a clinic or through their firm), and to *require* the articling student and his or her principal to report the total number of hours of *pro bono* provided by the student during articles.

Issue 2: The Benchers should direct the Lawyers Education Advisory Committee to consider whether lawyers who provide *pro bono* through clinic and roster programs should be able to claim a portion of that time towards the ethics / professional responsibility component of Continuing Professional Development ("CPD"). Because CPD requires a lawyer to spend *at least* two hours a year on matters of ethics and professional responsibility, the Lawyers Education Advisory Committee should consider

whether there is a need to limit how many of the 12 hours of CPD may be met by providing *pro bono*.

Issue 3: Gordon Turriff, Q.C., on behalf of the Law Society, should write a letter encouraging law schools and PLTC to consider how to increase the course content on ethics and professional responsibility, with emphasis on the duties a lawyer owes to clients and the court, including finding ways to educate students in the theoretical and practical aspects of poverty law.

Issue 4: The Benchers should direct the Finance Committee to consider whether, and if so how, the Law Society should increase funding to *pro bono* in British Columbia. The Finance Committee might wish to liaise with the Law Foundation, Access Justice, Pro Bono Law BC, and the Salvation Army to ascertain whether they can, under their present funding, support the increased *pro bono* participation that might arise if the Law Society puts into effect the other programs and policies identified in this report.

Issue 5: Gordon Turriff, Q.C., on behalf of the Law Society, should write a letter to the key legal education service providers in British Columbia, advising them of the adoption of the Unbundling Report and encouraging them to create course content to assist lawyers in delivering limited scope legal services.

Issue 6: The Ethics Committee should be directed to consider whether doing *pro bono* work is an ethical obligation for lawyers, and if so, whether the Rules and *Professional Conduct Handbook* need revision.

To Benchers
From Doug Munro
Date May 19, 2010
Subject **Family Law Task Force Update**

The Family Law Task Force's mandate is to work with the CBA BC Branch on developing best practice guidelines for lawyers practising family law. The development of the guidelines is being spearheaded by a working group of the CBA BC Branch. The Task Force has met with that group on a number of occasions, and provided input into the drafting process. The work is ongoing. The purpose of this memo is to brief the Benchers on a concept that has arisen during the work, and to seek instructions on how best to proceed.

At a January 25, 2010 meeting with the working group, the Task Force, and representatives of the British Columbia Supreme Court, the British Columbia Court of Appeal, and the Provincial Court of British Columbia, the working group raised the idea of a standing Bench and Bar family committee. The idea stemmed from the concept that best practice guidelines are only part of the equation, and that if the process is to be improved it requires participation of the judiciary. A standing family law committee could discuss what is working and what isn't, and how processes can be improved to achieve the object of family law proceedings being less inflammatory and more productive.

Following that meeting each court considered the concept, and ultimately replied that they would be prepared to participate (to the extent that is proper) in such a committee. The question the Task Force seeks instruction on is whether the Benchers wish for the Law Society to also participate in such a committee, and if so, how best to approach the matter. It might be if the Benchers approve the concept of participation that they would leave it to the Family Law Task Force to appoint several of its members to participate, with an understanding that they could report back to both the Task Force and the Benchers regarding its development. At this point we don't know what such a group would look like, or who would spearhead it, and as such cannot say what kind of support would be required.

At the time of writing this memorandum, the Task Force has not had the opportunity to discuss the logistics in detail. The hope is for the Task Force to meet before the June Benchers' meeting, and Ms. Hickman can provide additional details at that meeting.

DM



May 3, 2010

SENT BY E-MAIL jbond@lmls.com

James Bond
President
Canadian Bar Association
British Columbia Branch
10th Floor, 845 Cambie Street
Vancouver, BC V6B 5T3

G. Glen Ridgway, QC
President

Dear Mr. Bond:

RE: Commission on the Future of Legal Aid in British Columbia

Further to your letter of March 4, 2010 and my initial reply of March 22, 2010, I am able to report that both the Executive Committee and the Benchers have determined that the Law Society should participate as a full partner in the Commission on the Future of Legal Aid in British Columbia (the "Commission") that has been proposed by the Canadian Bar Association BC Branch. The Law Society will provide up to \$50,000 in funding to support the work of the Commission.

In reaching this decision, both the Executive Committee and the Benchers were reassured to hear from you that the work of the Commission and the planned public forums will not focus on the current level of funding for legal aid, or on previous decisions about legal aid funding. The Executive Committee, in particular, was persuaded by your assurances that the work of the Commission would not be an exercise in criticism of the current government's support for legal aid and that the objective is to look at ways of making the delivery of legal aid sustainable in the future.

The Benchers have agreed that, as President, I will be the Law Society's representative on the Steering Committee. I look forward to hearing from you about when the Steering Committee will begin its work.

The Law Society is pleased to join with the BC Branch of the Canadian Bar Association in the work of the Commission, to support the creation of an environment for positive change and to develop respectful ways of moving the issue of legal aid forward and into the public domain.

Yours truly,

A handwritten signature in black ink, reading "G. Glen Ridgway". The signature is written in a cursive, flowing style.

G. Glen Ridgway, QC
President

c: Caroline Nevin
Executive Director
Canadian Bar Association – BC Branch

Tim McGee
CEO
The Law Society of British Columbia

David Mossop, QC
Chair, Access to Legal Services Advisory Committee
The Law Society of British Columbia

To The Benchers and
The Discipline Committee

From Jan Lindsay, Q.C., William Jackson, Q.C., Kenneth Walker, Q.C., Gavin Hume, Q.C.,
and Carmel Wiseman, Chair, Complaints Reduction Staff Group 2 ("CRSG2")

Date April 20, 2010

Subject **Early Intervention Project - Interim Report**

INTRODUCTION

The CRSG2 and the Benchers who volunteered in the Early Intervention Project, Jan Lindsay, Q.C., William Jackson, Q.C., Kenneth Walker, Q.C., and Gavin Hume, Q.C., report on the status of the pilot project and provide some observations to date.

THE EARLY INTERVENTION PROJECT

The early intervention project is a project developed by the CRSG2 to test the proposition that early intervention by the Law Society with junior lawyers who have attracted some complaints will reduce the likelihood of those lawyers becoming "frequent flyers" down the road. Reduced complaints would, in turn, translate to resource savings. A 2005 study indicated that 1 percent of lawyers consume approximately 12 percent of the resources of the Professional Conduct and Discipline Departments.

The CRSG2 produced a list for the year ending in 2008 of all those lawyers with five or fewer years of call who had received two or more complaints. No regard was paid to the validity of the complaints. The fact of the complaint was the determinant. The original list produced a list of about 45 lawyers out of over 2000 lawyers admitted in British Columbia after January 1, 2003. The list was then reviewed and lawyers who were involved in other Law Society processes (e.g. citation, practice standards, audit) or who were, in fact, further on in their careers as they had been called previously in another jurisdiction, were removed from the list. The lawyers who remained were divided into two groups: one group received a letter from the Law Society; the second group received both a letter from the Law Society and met with a volunteer Benchers. Copies of the templates for the letters that went to the lawyers are attached.

In addition to the lawyers who fell within the parameters set out above, the CRSG2 identified a statistically similar historical group of lawyers. The CRSG2 will compare the complaint rates of lawyers in each of the groups against each other and against the complaint rates of the historical group over the next several years to determine whether either or both types of intervention may have impacted the complaint rates of the lawyers in the project.

VOLUNTEER BENCHER EXPERIENCE

Each of the volunteer Benchers met with four or five lawyers, mostly in person although some meetings took place by telephone. The lawyers were fairly well dispersed throughout the province with most in the Lower Mainland. A third were sole practitioners; a further third practised in firms with between 2 and 5 lawyers. The largest firm in which a lawyer in the project practised had eleven lawyers.

The volunteer Benchers considered that being included in the project appeared to have been a wake-up call for some of the lawyers involved although it remains to be seen whether the statistics will bear that out. One lawyer indicated in his Bencher interview that receipt of the letter made him realize he was heading in the wrong direction. He reported that he had changed his practice style and manner of dealing with others as a result of his inclusion in the project.

The Benchers thought that a general theme that emerged from the interviews is that the lawyers in the project were generally lacking in support from senior lawyers in their early years of practice and, for some, while they were articling. The absence of a good mentor or supervising lawyer also appeared to be a factor in some of the complaints. Some Benchers noted that some of the lawyers interviewed had recognized that absence of appropriate support was a problem and had moved firms as a result. One Bencher noted both complaints made about one of the lawyers in the project arose as a result of improper or inadequate instructions from a principal or more senior lawyer in the firm.

The volunteer Benchers suggest that as part of its strategic planning process, the Benchers may wish to consider referring to a Task Force or working group or to an existing Committee, the issue of strengthening support for articling students and junior lawyers in small firms. Some of the ideas the volunteer Benchers discussed, although admittedly at a very preliminary level, were requiring a mentor for junior lawyers, requiring principals to provide mentorship as part of the articling process and including in PLTC information about the need for mentorship and support from a senior lawyer.

NEXT STEPS IN THE PROJECT

As set out above, the project is designed to test the proposition that early intervention in a lawyer's career may reduce the number of complaints that the lawyer thereafter receives. The CRSG2 will run statistical reports commencing in 2011 to compare the complaint rates of the two groups in the pilot project against each other and against the historical group. While it may take several years to assess definitively the impact of the project, the CRSG2 will report back on the early results so that the Discipline Committee and Benchers can consider whether initial results suggest the pilot project should be expanded.

The CRSG2 will also write to each of the lawyers in the pilot project in the course of the year seeking feedback on the project and asking the lawyers whether they think their participation in the project has impacted their practices. The CRSG2 will report on those responses in due course.

CONFIDENTIAL

[date]

[LETTER A]

Dear []:

Re: Early Intervention Pilot Project

The Law Society has initiated a pilot project intended to assist members with five or fewer years of call who have received two or more complaints. You fall into that statistically small group of approximately 45 lawyers out of over 2200 lawyers called in the last 5 years in British Columbia. Most lawyers with five or fewer years of call have never received a complaint.

The pilot project divides the identified lawyers into two groups. Both groups will receive a letter from the Law Society. The second group will also be invited to a meeting with a Benchler. Assignment into the groups is random. The Law Society will then track the complaint records of the lawyers in both groups and compare those complaint rates with the historical complaint rates of lawyers with comparable histories to determine whether the interventions have impacted the lawyers' complaint rates.

Dealing with complaints is time-consuming and stressful for lawyers. Each complaint also represents an unsatisfactory interaction with a client, judge, member of the public, or member of the profession. The Law Society hopes that as a result of participating in this project the number of complaints you receive will be reduced.

In reviewing your complaint history, we note that (some/many/one/all/both/#) of the complaints you have received indicate[s] a problem with (communications, office systems...) [Most/some/all/one of the complaints have/has come from (opposing party, other counsel, client).] While most (all/both) of the complaints have been closed at the staff level without referral to the Discipline Committee or the Practice Standards

Committee, the complaints indicate that you may be able to improve your practice by (suggestions).

In addition to the advice set out above, there are a number of resources available to assist lawyers that you may wish to consider accessing. The Law Society website (www.lawsociety.bc.ca) has links to the [Communications Toolkit] and the [Small Firms Course], [both of] which are/is an on-line course[s] that may be done at your convenience, from your office or home. Those courses will also earn you credits towards your continuing professional development requirements.

The Law Society has three Practice Advisors who are available by telephone to provide confidential advice to members:

- Barbara Buchanan – 604-697-5816;
- Jack Olsen – 604-443-5711; and
- Dave Bilinsky – 604-605-5331

Finally, the Lawyers' Assistance Program is available to all members, and provides confidential outreach, education, support and referrals to lawyers and other members of the legal community.

We urge you to take this opportunity to reflect on your practice and your conduct, and to take advantage of the resources noted above, to determine what you might change so as to reduce the number of complaints you attract.

Within the next few weeks, [name], a Benchers from the Law Society will be contacting you to follow up on this letter. [Name] will review your complaints record with you, and will discuss with you some ideas for avoiding future complaints.

If you have any questions or feedback regarding this matter, we would be pleased to hear from you. Any feedback can be sent to Carmel Wiseman, Staff Lawyer, Policy and Legal Services. Her email address is cwiseman@lsbc.org.

Yours truly,

Howard Kushner
Chief Legal Officer

HK/al

cc. [Benchers]

/letterA

[date]

[LETTER B]

Dear []:

Re: Early Intervention Pilot Project

The Law Society has initiated a pilot project intended to assist members with five or fewer years of call who have received two or more complaints. You fall into that statistically small group of approximately 45 lawyers out of over 2200 lawyers called in the last 5 years in British Columbia. Most lawyers with five or fewer years of call have never received a complaint.

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In addition to the advice set out above, there are a number of resources available to assist lawyers that you may wish to consider accessing. The Law Society website (www.lawsociety.bc.ca) has links to the Communications Toolkit and the Small Firms Course, both of which are on-line courses that may be done at your convenience, from your office or home. Those courses will also earn you credits towards your continuing professional development requirements.

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Finally, the Lawyers' Assistance Program is available to all members, and provides confidential outreach, education, support and referrals to lawyers and other members of the legal community.

We urge you to take this opportunity to reflect on your practice and your conduct, and to take advantage of the resources noted above. In doing so, you may be able to identify changes which you could adopt which would reduce the number of complaints brought against you.

If you have any questions or feedback regarding this matter, we would be pleased to hear from you. Any feedback can be sent to Carmel Wiseman, Staff Lawyer, Policy and Legal Services. Her email address is cwiseman@lsbc.org.

Yours truly,

Howard Kushner
Chief Legal Officer

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