



AGENDA

MEETING: Benchers
DATE: Friday, November 5, 2010
TIME: 7:30 a.m. Continental breakfast
 8:30 a.m. Meeting begins
PLACE: Bencher Room

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 Bencher 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.

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|---|---|------------------|
| 1 | Minutes of October 1, 2010 meeting
<ul style="list-style-type: none"> Minutes of the regular session Minutes of the <i>in camera</i> session (Benchers only) | Tab 1
p. 1000 |
| 2 | Act & Rules Subcommittee: Amendment to <i>Professional Conduct Handbook</i> on Regulatory Compliance
<ul style="list-style-type: none"> Memorandum from Mr. Hoskins for the Act & Rules Subcommittee | Tab 2
p. 2000 |
| 3 | Act & Rules Subcommittee: Amendments to Return to Practice Rules
<ul style="list-style-type: none"> Memorandum from Mr. Hoskins for the Act & Rules Subcommittee | Tab 3
p. 3000 |

REGULAR AGENDA

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| 4 | President's Report
<ul style="list-style-type: none"> Written report to be distributed electronically prior to meeting |
| 5 | CEO's Report
<ul style="list-style-type: none"> Written report to be distributed electronically prior to meeting |
| 6 | Report on Outstanding Hearing & Review Reports
<ul style="list-style-type: none"> Report to be distributed at the meeting |

2009-2011 STRATEGIC PLAN IMPLEMENTATION (FOR DISCUSSION AND/OR DECISION)

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| 7 | Discipline Guidelines Task Force: Publication of Conduct Reviews
Mr. Van Ommen to report
<ul style="list-style-type: none"> Report from Discipline Guidelines Task Force | Tab 7
p. 7000 |
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GUEST PRESENTATIONS		
8	Hon. Michael de Jong, QC, Attorney General of BC Presentation by the Honourable Mr. de Jong	
9	Rob Wood ADM, Court Services Branch Presentation by Mr. Wood	
FOR INFORMATION ONLY		
10	Pamela Murray, QC Memorial Scholarship Endowment Fund package	Tab 10 p. 10000
IN CAMERA SESSION		
11	Chief Legal Officer's Report Ms. Armour to report	
12	Selection of LSBC Member of FLS Council Mr. McGee to report Mr. Ridgway to chair the selection process (<i>in camera</i>) <ul style="list-style-type: none">• Memorandum from the Executive Committee (public)	Tab 12 p. 12000
13	Bencher Concerns	

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING: Benchers

DATE: Friday, October 1, 2010

PRESENT:

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

ABSENT: Satwinder Bains

STAFF PRESENT:

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

GUESTS:

Dean Chris Axworthy, Faculty of Law, Thompson Rivers University
 Dom Bautista, Executive Director, Law Courts Center
 Mark Benton, QC, Executive Director, Legal Services Society
 Johanne Blenkin, Executive Director, BCCLS
 Mary Anne Bobinski, Faculty of Law Dean, UBC
 Anne Chopra, Equity Ombudsperson
 Jeremy Hainsworth, Reporter, Lawyers Weekly
 Jamie Maclaren, Executive Director, Access Pro Bono Law
 Stephen McPhee, President, CBABC
 Caroline Nevin, Executive Director, CBABC
 Wayne Robertson, QC, Executive Director, Law Foundation of BC
 Rob Seto, Director of Programs, CLEBC
 John Hunter, QC, Member of the FLSC Council for the Law Society of BC

CONSENT AGENDA

1. Minutes

The minutes of the meeting held on September 2, 2010 were approved as circulated.

REGULAR AGENDA – for Discussion and Decision

2. 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 September.

3. CEO's Report

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

- a. Federation of Law Societies of Canada Bi-Annual Conference - Saint John, New Brunswick - September 23 – 25, 2010
- b. People Initiatives at the Law Society
- c. Proposed Changes to the *Notaries Act*
- d. White Paper on the *Limitation Act*
- e. Core Process Review Project

Mr. McGee also briefed the Benchers on the International Institute of Law Association (IILACE) Annual Conference, being held in Vancouver this week. Co-host of the conference, Mr. McGee noted that IILACE's member organizations represent and/or regulate about 1.3 million of the world's lawyers. Mr. McGee thanked President Ridgway for delivering welcoming remarks at the conference's opening dinner.

4. Report on Outstanding Hearing and Review Reports

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

GUEST PRESENTATION

5. The Future Practice of Law: Regulating the Legal Profession

Jordan Furlong, a partner with Edge International Consulting, delivered a presentation and conducted a discussion using interactive (voting) slides. Mr. Furlong's paper (*Transformation: Five Catalysts Now At Work in the Canadian Legal Services Marketplace*) is at page 5000 of the agenda package.

STRATEGIC PLANNING AND PRIORITIES MATTERS – for Discussion and/or Decision

6. Proposed Discipline Rules Amendments (Strategy 2-5)

Mr. Getz reported on the recent work of the Act and Rules Subcommittee in preparing amendments to the Law Society Rules intended to make the process of approving, issuing and running a hearing on

a discipline citation more efficient and effective. Mr. Getz acknowledged the work of Discipline Counsel Jaia Rai, noting that she led the preparation of a valuable Discipline Counsel report on this subject that was reviewed by the Discipline Committee in 2009. Mr. Getz referred the Benchers to the memorandum prepared by Mr. Hoskins on behalf of the Subcommittee (page 6000 of the agenda package) for details of the proposed amendments and supporting notes.

Mr. Van Ommen moved (seconded by Mr. Getz) the adoption of the suggested resolution set out at page 6044 of the agenda package (Appendix 2 to these minutes).

The motion was carried unanimously.

7. Delivery of Legal Services Task Force Report: Approval of Recommendations

Mr. Vertlieb outlined the genesis of the Delivery of Legal Services Task Force's Final Report (page 7000 of the agenda package). Mr. Vertlieb acknowledged the value of the paper prepared by Mr. Walker's Kamloops working group for the 2010 Benchers' Retreat in June of this year. Mr. Vertlieb said that the task force's final report is a fine-tuned version of the report delivered at the Benchers' Retreat in June 2010, incorporating input provided at the Retreat.

Mr. Vertlieb described the purpose and approach of the task force report's recommendations as increasing access to affordable and competent legal services by incremental measures. Mr. Vertlieb noted that the proposed initiatives focus on expanding the services that may be provided by paralegals and articulated students under the supervision of a lawyer.

Mr. Vertlieb moved (seconded by Mr. Hume) that the Benchers adopt the eight Delivery of Legal Services Task Force recommendations set out at pages 7016 – 7018 of the agenda package (Appendix 3 to these minutes).

Issues raised in the ensuing discussion included:

- the benefits and the limitations of the incremental approach taken by the task force and reflected in its recommendations
- the need for a strategic and incremental approach to implementing the task force's recommendations
- the need to test the proposed reforms by allowing them to operate in the marketplace
- the importance of close monitoring and flexibility by the Law Society in allowing the marketplace to operate and in the regulation of legal services provided by paralegals and articulated students
- the importance of early development and execution of a strategy for communications and public education regarding the task force's recommendations and their implementation.

The motion was carried.

Mr. Vertlieb thanked all the members of the task force for their valuable contributions and stressed his appreciation for Mr. Acheson's dedicated service.

There was discussion regarding whether this is the appropriate time to dissolve the Delivery of Legal Services Task Force; the Benchers agreed that the task force should remain active to support the implementation of its recommendations.

REGULAR AGENDA – Other Matters for Discussion and/or Decision

8. Ethics Committee: Progress Report on Implementation of the Model Code

Mr. Hume briefed the Benchers on progress made by the Ethics Committee in reviewing the provisions of the Federation's Model Code of Professional Conduct since January 2010. He confirmed that the Committee intends to consult the profession about the non-conflicts portion of the Code during October and the first part of November 2010. Mr. Hume provided an update regarding the Federation's continuing work on the conflicts portion of the Code. He advised that the Ethics Committee expects to consult with the profession separately regarding the Code's conflicts provisions, to assess the input received and then to report to the Benchers with recommendations. Whether such report and recommendations encompasses both the conflicts and non-conflicts aspects of the Code will depend on the timing of the completion of the Federation's work on conflicts, and on the nature of the ensuing Code provisions.

9. Report on the Federation Meeting (Sept. 23-25, Saint John, New Brunswick) [agenda item]

John Hunter, QC reported to the Benchers on the recent Federation Council meeting and semi-annual conference in St. John, New Brunswick. Mr. Hunter provided some elaboration on the written report prepared by Mr. Treleaven's *in camera* report (page 9000 of the *in camera* agenda package).

Mr. Hunter advised that this was his last report to the Benchers as member of the Federation Council for the Law Society¹, and thanked the Benchers for the honour they had bestowed by appointing him to that role.

IN CAMERA SESSION

The Benchers discussed other matters *in camera*.

WKM
2010-10-15

¹ Mr. Hunter becomes First Vice President of the Federation of Law Societies of Canada on November 15, 2010 and under the Federation's constitution, automatically ceases to be the Law Society of BC's Council representative at that time.



Chief Executive Officer's Monthly Report

A Report to the Benchers by

Timothy E. McGee

October 1, 2010

Introduction

The fall is typically a very busy time at the Law Society and this year is no exception. My report this month focuses on two important internal staff initiatives and updates on several on-going matters.

For me personally it is especially busy as I am co-hosting the 2010 IILACE (International Institute of Law Association Chief Executives) Annual Conference in Vancouver during Benchers week. This comes on the heels of the bi-annual conference of the Federation of Law Societies of Canada, which was held in Saint John, New Brunswick last week, and the Law Society's AGM. And since it is the conference season, the month of October kicks off in Vancouver with the International Bar Association Annual Conference, bringing together over 5,000 lawyers from around the world. The Law Society is hosting one event here at the Law Society at the end of the Conference and is co-sponsoring two other events during the week of the Conference. I will be providing updates on these activities at the November meeting.

1. Federation of Law Societies of Canada Bi-Annual Conference - Saint John, New Brunswick - September 23 – 25, 2010

John Hunter, QC, the Law Society's representative on the Federation Council and soon to be First Vice-President of the Federation, will be at the meeting to provide his report on the Saint John Conference. In addition, Alan Treleaven, our staff liaison to the Federation, is preparing a brief written summary of events which will be available prior to the meeting.

2. People Initiatives at the Law Society

There are two important initiatives that we undertake each fall which involve all of the staff of the Law Society.

The first is the annual Employee Survey, which provides every employee with the opportunity to provide their views on a wide range of matters of importance to the organization. This will be the fifth year of our current survey and the results are shared with all staff and with the Benchers early in the New Year. The results of the survey assist Management in developing initiatives to help better engage our staff and to make the Law Society a stronger organization. Recent initiatives arising from the survey include our on-going skills training and leadership development programs.

The second initiative is the annual employee performance review program. Each year at this time staff discuss with their manager their work over the past year focusing on performance against roles and

responsibilities and identifying strengths as well as opportunities for improvement in the coming year. The goal is to ensure that all employees have the opportunity to self assess their contributions in the year and to receive constructive feedback. This program also feeds into our employee recognition (bonus) program under which bonuses are awarded on the basis of criteria set out in our Employee Recognition Policy. These initiatives require a significant commitment of time and thought on behalf of managers and staff alike but are an important part of our overall commitment to a positive work environment and service excellence.

3. Proposed Changes to the *Notaries Act*

Since the last Benchers meeting, President Ridgway has written to the Deputy Attorney General and Senior Assistant Deputy Minister to convey the views of the Benchers on the proposed amendments to the *Notaries Act*. More recently, the President and I met with the President and Executive Director of the CBA BC Branch and separately with the President and Executive Director of the Society of Notaries Public of B.C. to review the proposals in greater detail. The Ministry of Attorney General is seeking further feedback from the Law Society and the CBA BC Branch on the proposals by October 15. This is a very tight timeline. This topic and our process to formulate a further response will be discussed in further detail at the meeting.

4. White Paper on the *Limitation Act*

The Attorney General recently convened a meeting with a number of key stakeholder groups including the Law Society to present a white paper on proposed changes to the *Limitation Act*. The Attorney is seeking feedback on the proposed new regime by November 15. The Executive Committee has requested staff, together with Benchers Hadyn Acheson and Thelma O’Grady, review what the Benchers have done on this topic in the past and bring this forward together with a précis of the new white paper for consideration by the Benchers at their meeting on November 5.

5. Core Process Review Project

Work on the Law Society’s core process review project which began in January of this year is progressing well and on schedule. The project has three phases. We have completed Phase 1 - Current Process Mapping - and we are now in Phase 2 – Solutions Development. This phase is scheduled for completion by November 1. The final phase will be a report with recommendations to the

Benchers, which is planned for the Benchers meeting in December. Most recently, the core process review project team, lead by Kensi Gounden, held an all staff open house to share findings to date and to stimulate discussion, learning and idea generation across all departments. The event, which was held on the second floor, included pre-recorded video presentations by representatives of each department commenting on their work, related challenges and opportunities. There was a good turnout and the feedback suggests that the event was really effective in helping staff understand what happens outside their area and how their work affects others. Special thanks to First Vice-President Gavin Hume, QC for attending and participating in the interactive sessions.

Timothy E. McGee
Chief Executive Officer

CITATION RULES AMENDMENTS

SUGGESTED RESOLUTION:

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

1. *In Rules 3-6(4), 3-12(3.1) and 3-14(6.1), by rescinding paragraph (c) and substituting the following*
 - (c) failed to respond to a communication from the Society;
 - (d) breached an order made under the Act or these Rules.
2. *By rescinding Rule 4-3 and substituting the following:*

Consideration of complaints by Committee

4-3 (1) The Discipline Committee must consider any complaint referred to it under these Rules and may instruct the Executive Director to make or authorize further investigation that the Discipline Committee considers desirable.

(2) If, in the view of the Executive Director and the Chair of the Discipline Committee, there is a need to act before a meeting of the Committee can be arranged, the Executive Director may refer a complaint to the Chair for consideration under Rule 4-4.1.
3. *In Rule 4-4(1), by rescinding paragraph (c) and substituting the following:*
 - (c) direct that the Executive Director issue a citation against the lawyer under Rule 4-13(1) [*Direction to issue, expand or rescind citation*].
4. *In Rule 4-4.1(2), by rescinding paragraph (a) and substituting the following:*
 - (a) direct that the Executive Director issue a citation against the lawyer under Rule 4-13(1) [*Direction to issue, expand or rescind citation*], or
5. *In Rule 4-6,*
 - (a) *by rescinding subrule (1) and substituting the following:*
 - (1) No one is permitted to disclose any of the following information except for the purpose of complying with the objects of the Act or with these Rules:
 - (a) all of the information and documents that form part of the consideration of a complaint under Rule 4-4 or 4-4.1;
 - (b) the result of a consideration under Rule 4-4., *and*

- (b) *by rescinding paragraph (b) of subrule (4) and substituting the following:*
- (b) the citation is in respect of an offence to which the respondent has pleaded guilty or of which the respondent has been found guilty, or
6. *In Rule 4-9(6), by rescinding paragraph (c) and substituting the following:*
- (c) direct that a citation be issued against the lawyer under Rule 4-13(1) *[Direction to issue, expand or rescind citation];*
7. *By rescinding Rule 4-13 and substituting the following:*
- Direction to issue, expand or rescind citation**
- 4-13** (1) The Discipline Committee or the chair of the Committee may order a hearing into the conduct or competence of a lawyer by directing that the Executive Director issue a citation against the lawyer.
- (1.1) After a hearing has been ordered under subrule (1), the Discipline Committee may direct the Executive Director to add an allegation to a citation.
- (2) At any time before a panel makes a determination under Rule 4-35 *[Disciplinary action]*, the Discipline Committee may rescind a citation or an allegation in a citation and substitute another decision under Rule 4-4(1) *[Action on complaints]*.
8. *By rescinding Rule 4-15(1) and substituting the following:*
- Notice of citation**
- 4-15** (1) A citation must be served on the respondent
- (a) personally, or by mailing it by registered mail to the respondent's last known address, and
- (b) not more than 45 days after the direction that it be issued, unless the Discipline Committee or the chair of the Committee otherwise directs.
9. *By adding the following Rules:*
- Amending an allegation in a citation**
- 4-16.1** (1) Discipline counsel may amend an allegation contained in a citation
- (a) before the hearing begins, by giving written notice to the respondent and the Executive Director, and
- (b) after the hearing has begun, with the consent of the respondent.

- (2) The panel may amend a citation after the hearing has begun
 - (a) on the application of a party, or
 - (b) on its own motion.
- (3) The panel must not amend a citation under subrule (2) unless the respondent and discipline counsel have been given the opportunity to make submissions respecting the proposed amendment.

Severance and joinder

- 4-16.2** (1) Before a hearing begins, the respondent or discipline counsel may apply in writing to the Executive Director for an order that
- (a) one or more allegations in a citation be determined in a separate hearing from one or more other allegations in the same citation, or
 - (b) two or more citations be determined in one hearing.
- (2) An application under subrule (1) must
- (a) be copied to the party not making the application, and
 - (b) state the grounds for the order sought.
- (3) The Executive Director must promptly notify the President of an application under subrule (1).
- (4) The President may
- (a) allow the application with or without conditions,
 - (b) designate another Benchers to make a determination, or
 - (c) refer an application to a prehearing conference.

10. In Rule 4-17

- (a) *by rescinding subparagraph (i) of subrule (1)(d) and substituting the following:*

- (i) submit to an examination by a qualified medical practitioner named by the 3 Benchers or to be named by the Chair of the Discipline Committee, and, *and*

- (b) *by rescinding subrule (1.19) and substituting the following:*

- (1.19) After a proceeding has begun, the Benchers present may adjourn the proceeding, with or without conditions, generally or to a specified date, time and place.

11. By rescinding Rule 4-24 and substituting the following:

Notice of hearing

- 4-24** (1) The date, time and place for the hearing to begin must be set
- (a) by agreement between discipline counsel and the respondent, or
 - (b) failing agreement, by the Executive Director or by the Benchers presiding at a prehearing conference.
- (2) When a date is set under subrule (1), the Executive Director must notify the respondent and the complainant in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the respondent consents to a shorter notice period.
- (3) Written notification under subrule (2) may be made at the same time that the citation is served under Rule 4-15 [*Notice of citation*], or at a later time.

12. By rescinding Rule 4-24.1(1)(d), (2) and (4) and substituting the following:

- (d) breached an order made under the Act or these Rules.
- (4) Despite Rules 4-34 [*Submissions and determination*] and 4-35 [*Disciplinary action*], the panel may consider facts, determination, disciplinary action and costs and issue a decision respecting all aspects of the proceeding.

13. In Rule 4-25

(a) by rescinding subrule (2) and substituting the following:

- (2) At any time after a citation has been issued and before the hearing begins, a respondent may demand in writing that discipline counsel disclose the evidence that the Society intends to introduce at the hearing., *and*

(b) in subrule (3), by striking “the start of the hearing:” and substituting “the beginning of the hearing:”.

14. By rescinding Rule 4-26(1), (2) and (5) and substituting the following:

- (1) Before a hearing begins, the respondent may apply for disclosure of the details of the circumstances of misconduct alleged in a citation by delivering to the Executive Director and discipline counsel written notice setting out the substance of the application and the grounds for it.
- (2) The Executive Director must promptly notify the President of an application under subrule (1).

- (5) The President may
 - (a) designate another Benchers to make a determination under subrule (3),
or
 - (b) refer the application to a prehearing conference.

15. By adding the following Rule:

Preliminary questions

- 4-26.1** (1) Before a hearing begins, the respondent or discipline counsel may apply for the determination of a question relevant to the hearing by delivering to the Executive Director and to the other party written notice setting out the substance of the application and the grounds for it,
- (2) The Executive Director must promptly notify the President of an application under subrule (1).
 - (3) When an application is made under subrule (1), the President must do one of the following as appears to the President to be appropriate:
 - (a) appoint a panel to determine the question;
 - (b) refer the question to a prehearing conference;
 - (c) refer the question to the panel at the hearing of the citation.
 - (4) The President may designate another Benchers to exercise the discretion under subrule (3).
 - (5) A panel appointed under subrule (3)(a) is not seized of the citation or any question pertaining to the citation other than that referred under that provision.

16. In Rule 4-27

- (a) ***by striking “before the hearing on a citation commences” in subrule (1) and substituting “before the hearing on a citation begins”, and***
- (b) ***by rescinding subrules (3) to (6) and substituting the following:***
 - (2.1) The Executive Director must notify the respondent and discipline counsel of the time and place of the conference.
 - (3) Discipline counsel must be present at the conference.
 - (3.1) The respondent may attend the conference in person, through counsel or both.

- (3.2) If the respondent fails to attend the conference, the Benchler presiding may proceed with the conference in the absence of the respondent and may make any order under this Rule, if the Benchler is satisfied that the respondent had notice of the conference.
- (4) Any person may participate in a conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of this Rule.
- (5) The conference may consider
 - (a) the simplification of the issues,
 - (b) the necessity or desirability of amendments to the citation,
 - (c) the possibility of obtaining admissions that might facilitate the hearing,
 - (d) the discovery and production of documents,
 - (d.1) the possibility that privilege or confidentiality might require that all or part of the hearing be closed to the public, or that exhibits and other evidence be excluded from public access,
 - (e) setting a date for the hearing to begin, and
 - (g) any other matters that may aid in the disposition of the citation.
- (5.1) The respondent or discipline counsel may apply to the Benchler presiding at the conference for an order
 - (a) for discovery and production of documents,
 - (b) to withhold the identity or contact information of a witness,
 - (c) to adjourn the hearing of the citation,
 - (d) for severance of allegations or joinder of citations under Rule 4-16.2 [*Severance and joinder*],
 - (e) for disclosure of the details of the circumstances of misconduct alleged in a citation under Rule 4-26 [*Application for details of the circumstances*], or
 - (f) concerning any other matters that may aid in the disposition of the citation.
- (6) The Benchler presiding at a pre-hearing conference may
 - (a) adjourn the conference generally or to a specified date, time and place,
 - (c) set a date for the hearing to begin, and
 - (d) allow or dismiss an application made under subrule (5.1) or referred to the conference under this Part.

17. In Rule 4-29**(a) by rescinding subrules (1) to (5) and substituting the following:**

- (1) Before a hearing begins, the respondent or discipline counsel may apply for an order that the hearing be adjourned by delivering to the Executive Director and the other party written notice setting out the grounds for the application.
- (2) The Executive Director must promptly notify the President of an application under subrule (1).
- (3) Before the hearing begins, the President must decide whether to grant the adjournment, with or without conditions, and must notify the parties accordingly.
- (4) The President may
 - (a) designate another Benchers to make a determination under subrule (3), or
 - (b) refer the application to a prehearing conference.
- (5) After a hearing has begun, the chair of the panel may adjourn the hearing, with or without conditions, generally or to a specified date, time and place., *and*

(b) by adding the following subrule:

- (7) Rule 4-24 [*Notice of hearing*] does not apply when a hearing is adjourned and re-set for another date.

18. In Rule 4-30, by adding the following subrule:

- (3) Despite subrule (1), before the hearing begins, the panel may receive and consider
 - (a) the citation, and
 - (b) an agreed statement of facts.

19. By rescinding Rule 4-31.**20. By rescinding Rule 4-32 and substituting the following:****Evidence of respondent**

- 4-32** Discipline counsel must notify the respondent of an application for an order that the respondent give evidence at the hearing.

20. By rescinding Rule 4-34(1) and (2) and substituting the following:

Submissions and determination

- 4-34** (1) Following completion of the evidence, the panel must invite submissions from discipline counsel and the respondent on each allegation in the citation.
- (2) After submissions under subrule (1), the panel must
- (a) find the facts and make a determination on each allegation, and
 - (b) prepare written reasons for its findings on each allegation.

21. In Rule 4-35

(a) by rescinding subrule (1)(a) and substituting the following:

Disciplinary action

- 4-35** (1) Following a determination under Rule 4-34 adverse to the respondent, the panel must
- (a) invite the respondent and discipline counsel to make submissions as to disciplinary action., *and*

(b) by rescinding subrules (4) to (7) and substituting the following:

- (4) The panel may consider the professional conduct record of the respondent in determining a disciplinary action under this Rule.
- (5) Regardless of the nature of the allegation in the citation, the panel may take disciplinary action based on the ungovernability of the respondent by the Society.
- (6) The panel must not take disciplinary action under subrule (5) unless the respondent has been given at least 30 days notice that ungovernability may be raised as an issue at the hearing on disciplinary action.
- (7) The panel may adjourn the hearing on disciplinary action to allow compliance with the notice period in subrule (6).

22. In Rule 4-36

(a) by rescinding subrule (1)(b) and (c) and substituting the following:

- (c) a disciplinary action is imposed under Rule 4-35, or
- (d) a conditional admission tendered under Rule 4-21 [*Conditional admissions*] is accepted by the Discipline Committee., *and*

- (b) *by rescinding subrule (4)(b) and (c) and substituting the following:*
 - (b) has violated a prohibition against practice imposed by a governing body,
 - (c) is the subject of a declaration by a governing body under a provision similar to Rule 4-35(2)(d), or
 - (d) made an admission that is accepted under a provision similar to Rule 4-21.
- 22. *In Rule 4-37 by rescinding subrule (1)(b)(ii) and substituting the following:*
 - (ii) the Public Guardian and Trustee;
 - (iii) every governing body of which the person is known to be a member.
- 23. *In Rule 4-35*
 - (a) *in subrule (1), by striking “facts and verdict portion of a hearing” and substituting “facts and determination portion of a hearing”, and*
 - (b) *in subrules (1) and (4), by striking “penalty portion of a hearing” and substituting “disciplinary action portion of a hearing”.*
- 24. *In Rule 4-38.1*
 - (a) *in subrule (3), by striking “imposed a penalty” and substituting “imposed a disciplinary action” and*
 - (b) *in subrule (4), by striking “findings of fact and verdict” and substituting “findings of fact and determination”.*
- 25. *By rescinding Rule 4-43(1) and substituting the following:*
 - (1) If the chair of the Discipline Committee believes that a lawyer or former lawyer may have committed a discipline violation, the chair may order that an investigation be made of the books, records and accounts of the lawyer or former lawyer.
- 26. *In Rule 5-2*
 - (a) *in subrule (2), by rescinding paragraphs (b) and (d) and substituting the following:*
 - (b) the hearing is to consider a conditional admission under Rule 4-22 [Consent to disciplinary action],

(b.2) the hearing is to consider a preliminary question under Rule 4-26.1
[*Preliminary questions*],

(d) one or more of the original panel members cannot complete a hearing
that has begun.; *and*

(b) by rescinding subrules (4) to (6) and substituting the following:

(4) Panel members must be permanent residents of British Columbia over the
age of majority.

(5) The chair of a panel who ceases to be a Benchers may, with the consent of
the President, continue to chair the panel, and the panel may complete any
hearing or hearings already scheduled or begun.

27. By rescinding the title of Rule 5-4 and substituting the following:

Compelling witnesses and production of documents

28. In Rule 5-5

(a) by rescinding subrule (2) and substituting the following

(2) Before a court reporter begins reporting the proceedings of a hearing, the
chair of the panel must ensure that the reporter takes an oath or makes a
solemn affirmation to faithfully and accurately report and transcribe the
proceedings., *and*

(b) in subrule (6), by adding the following paragraphs:

(a.1) oral evidence;

(a.2) affidavit evidence;

**29. In Rule 5-9, by striking “after the hearing has commenced.” and substituting
“after the hearing has begun.”.**

**30. In Rule 5-13, by striking “with respect to penalty.” and substituting “with
respect to disciplinary action.”.**

31. By rescinding Rule 5-18(3) to (6) and substituting the following:

(3) Counsel representing the Society must be present at the conference.

(3.1) The Executive Director must notify the applicant or the respondent, as the
case may be, or his or her counsel, of the time and place of the conference.

(3.2) The applicant or the respondent, as the case may be, may attend the
conference, in person, through counsel or both.

- (3.3) If the applicant or the respondent, as the case may be, fails to attend the conference, the Benchers presiding may proceed with the conference in the absence of that party and may make any order under this Rule, if the Benchers are satisfied that the party had been notified of the conference.
- (4) If the Benchers presiding at a pre-review conference considers it appropriate, he or she may allow any person to participate in the conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of this Rule.
- (5) The conference may consider
 - (a) the simplification of the issues,
 - (b) any issues concerning the record to be reviewed,
 - (c) the possibility of agreement on any issues in the review,
 - (d) the exchange of written arguments or outlines of argument and of authorities,
 - (d.1) the possibility that privilege or confidentiality might require that all or part of the hearing be closed to the public or that exhibits and other evidence be excluded from public access,
 - (e) setting a date for the review, and
 - (f) any other matters that may aid in the disposition of the review.
- (6) The Benchers presiding at a pre-review conference may
 - (a) adjourn the conference generally or to a specified date, time and place,
 - (b) order the exchange of written arguments or outlines of argument and of authorities, and set deadlines for that exchange,
 - (c) set a date for the review, and
 - (d) make any order or allow or dismiss any application consistent with this Rule.

31. By rescinding Rule 5-19(1) to (4) and substituting the following:

- (1) Before a hearing on a review commences, the applicant, respondent or counsel for the Society may apply for an order that the hearing be adjourned by delivering to the Executive Director and to the other party written notice setting out the grounds for the application.
- (2) The Executive Director must promptly notify the President of an application under subrule (1).

- (3) Before the hearing begins, the President must decide whether to grant the adjournment, with or without conditions, and must notify the parties accordingly.
- (4) The President may
 - (a) designate another Benchers to make a determination under subrule (3),
or
 - (b) refer the application to a pre-review conference.

32. *By rescinding Rule 10-1(1) and substituting the following:*

- (1) A lawyer, former lawyer, articulated student or applicant may be served with a notice or other document personally or by
 - (a) sending it by registered mail or electronic mail to his or her last known address, or
 - (b) serving it as directed by the Supreme Court.
- (1.1) In subrule (1), “**last known address**” includes an address given to discipline counsel for delivery of documents relating to a citation.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

SUMMARY OF RECOMMENDATIONS

Expanded Roles for Articled Students:

Recommendation 1:

The Task Force recommends that the Credentials Committee be directed to explore expanded duties for Articled Students. The referral of matters to the Credentials Committee should include the background material on Articled Students that the Task Force considered.

Expanded Roles for Paralegals:

Recommendation 2:

The Task Force recommends the following definition of paralegal:

A paralegal is a trained professional who:

- works under the supervision of a lawyer;
- possesses adequate knowledge of substantive and procedural law relevant to the work delegated by the supervising lawyer;
- possesses the practical and analytic skills necessary to carry out the work delegated by the supervising lawyer; and
- carries out his or her work in a competent and ethical manner.

The Task Force further recommends that the following instructions supplement the definition, potentially by way of an annotation or footnote:

A lawyer must not delegate work to a paralegal, nor may a lawyer hold someone out as a paralegal, unless the lawyer is satisfied that the person has sufficient knowledge, skill, training, experience, and good character to perform the tasks delegated by the lawyer in a competent and ethical manner. In arriving at this determination lawyers should be guided by **[refer to guidelines]**. Lawyers are professionally and legally responsible for all work delegated to paralegals. Lawyers must ensure that the paralegal is adequately trained and supervised to carry out each function the paralegal performs, with due regard to the complexity and importance of the matter.

Recommendation 3:

The Task Force recommends:

- a) Paralegals should not be allowed to give or receive undertakings;
- b) The Law Society should work with the courts to determine what forms of advocacy paralegals should be permitted to perform;
- c) The Strategic Plan should be amended to include as follows: A working group or task force of Benchers and staff will work with the British Columbia Supreme

Court and the Provincial Court of British Columbia to explore what advocacy roles supervised paralegals should be allowed to perform in accordance with the recommendations contained in the Report of the Delivery of Legal Services Task Force. The working group or task force will make recommendations to the Benchers with regard to any potential changes to the Law Society Rules and *Professional Conduct Handbook* that might be required as a result of the consultations with the courts.

- d) Paralegals should be allowed to give legal advice in matters the supervising lawyer has deemed the paralegal competent to provide advice.

Recommendation 4:

The Task Force recommends:

1. A lawyer can supervise a maximum of 2 paralegals performing enhanced functions;
2. There should be no limit to the number of legal assistants or paralegals performing *traditional* functions that a lawyer may supervise.
3. Law Society communications should make it clear that these changes are not intended to alter existing legal services delivery models in law firms; rather, they are intended to allow for lower cost, competent legal services to be delivered to the public in areas of unmet need;

“Enhanced functions” consist of giving legal advice and/or engaging in advocacy functions permitted by courts or tribunals.

Recommendation 5:

The Task Force Recommends that remote supervision of paralegals be permitted, but that the Benchers also consider capping the number of paralegals a lawyer or law firm can supervise through remote supervision.

Recommendation 6:

- a) The requirements and restrictions for lawyer supervision should be set out in either the Rules, the *Handbook*, or an appendix to the *Handbook*.
- b) **[Optional]** The supervising lawyer should be required to submit a form to the Law Society electronically that includes:
 - i. The names of the paralegals the lawyer is supervising;
 - ii. The areas of law in which the lawyer is using the paralegals;
 - iii. The types of enhanced services the paralegal will perform;
 - iv. The education and experience of the paralegal;
 - v. A copy of the oath/affirmation of conduct;

- vi. The location of the office the lawyer & paralegals work in;
- vii. A description of the supervision model/plan the lawyer has in place to train and supervise the paralegals.
- viii. Whether any supervision occurs remotely, and if so a description of the steps the lawyer is taking to ensure adequate supervision occurs

Recommendation 7:

The Task Force recommends that the Discipline Guidelines be amended to make it clear that failure to supervise a paralegal performing enhanced functions is by its nature more serious than a standard finding of failure to supervise, and the full range of discipline actions should be available. A sanction that should be added to the list is a prohibition against a lawyer being able to supervise paralegals performing enhanced functions in the future.

Recommendation 8:

The Task Force recommends that the following be exempted from the application of this report:

1. Community advocates funded and designated by the Law Foundation of British Columbia;
2. Student legal advice programs or clinical law programs run by, associated with, or housed by a law school in British Columbia; and
3. Non-profit organizations providing free legal services, provided the organization is approved by the Executive Committee of the Law Society of British Columbia.

To Benchers
From Jeffrey G. Hoskins, QC for Act and Rules Subcommittee
Date October 6, 2010
Subject **Proposed Professional Conduct Handbook amendments – Regulatory compliance**

At the meeting in March, the Benchers adopted Rule amendments recommended by the Subcommittee on ungovernability. At the same time, amendments to the *Professional Conduct Handbook* expanding on the specific obligation of lawyers to submit to regulation by the Law Society were referred back to the Subcommittee for further consideration.

In the discussion, Benchers suggested that the proposed paragraphs (c), “cooperate with Law Society investigations and audits,” was redundant with proposed paragraph (e), “not obstruct or delay or otherwise interfere with investigations, audits and inquiries involving the lawyer or a member of the lawyer’s firm.” In addition, others were concerned that a lawyer acting for the subject of an audit or investigation might be offside the rule when acting within the law to slow down or turn aside the Law Society’s efforts.

The Subcommittee has revised its proposed additions to the Handbook provision in response to these concerns:

- The provisions regarding the level of cooperation with the Law Society in an investigation, audit or inquiry has been revised so that a lawyer is required to cooperate when the procedure relates to the lawyer’s own practice or to the lawyer’s law firm and otherwise not to obstruct the Law Society’s operations;
- The duty not to obstruct has been modified by the adverb “improperly” so that there is no doubt that a lawyer properly acting for a client is not in violation;
- The Subcommittee also broadened the obligation to comply with Law Society orders to include any made under the Law Society Rules, in keeping with amendments recently made to the discipline rules;

I attach a draft amendment and a suggested resolution for adoption of the changes.

JGH

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Attachments: draft Handbook amendment
suggested resolution

PROFESSIONAL CONDUCT HANDBOOK

CHAPTER 13

RESPONSIBILITY TO THE LAW SOCIETY

~~Responding to Law Society correspondence~~Regulatory compliance

3. A lawyer must
- (a) reply promptly to any communication from the Law Society;
 - (b) provide documents as required to the Law Society;
 - (c) not improperly obstruct or delay Law Society investigations, audits and inquiries;
 - (d) cooperate with Law Society investigations, audits and inquiries involving the lawyer or a member of the lawyer's firm;
 - (e) comply with orders made under the *Legal Profession Act* or Law Society Rules; and
 - (f) otherwise comply with the Law Society's regulation of the lawyer's practice.

The Law Society's disciplinary and competence procedures

4. A lawyer must not use the Law Society's disciplinary and competence procedures, or suggest to a client that such procedures be used, vexatiously or solely to further the client's civil claim against another lawyer.

PROFESSIONAL CONDUCT HANDBOOK

CHAPTER 13

RESPONSIBILITY TO THE LAW SOCIETY

Regulatory compliance

3. A lawyer must
 - (a) reply promptly to any communication from the Law Society;
 - (b) provide documents as required to the Law Society;
 - (c) not improperly obstruct or delay Law Society investigations, audits and inquiries;
 - (d) cooperate with Law Society investigations, audits and inquiries involving the lawyer or a member of the lawyer's firm;
 - (e) comply with orders made under the *Legal Profession Act* or Law Society Rules; and
 - (f) otherwise comply with the Law Society's regulation of the lawyer's practice.

The Law Society's disciplinary and competence procedures

4. A lawyer must not use the Law Society's disciplinary and competence procedures, or suggest to a client that such procedures be used, vexatiously or solely to further the client's civil claim against another lawyer.

PROFESSIONAL CONDUCT HANDBOOK

CHAPTER 13

RESPONSIBILITY TO THE LAW SOCIETY

Regulatory compliance

3. A lawyer must
 - (a) reply promptly to any communication from the Law Society;
 - (b) ~~file~~provide documents ~~or reports with~~as required to the Law Society~~as required~~;
 - (c) not improperly obstruct or delay Law Society investigations, audits and inquiries;
 - ~~(d) cooperate with Law Society investigations and audits;~~
 - ~~(d) — comply with orders of panels, committees or Benchers;~~
 - ~~(e) — not obstruct or delay or otherwise interfere with investigations,~~ audits and inquiries involving the lawyer or a member of the lawyer's firm;~~and~~
 - (e) comply with orders made under the *Legal Profession Act* or Law Society Rules; and
 - (f) otherwise comply with the Law Society's regulation of the lawyer's practice.

The Law Society's disciplinary and competence procedures

4. A lawyer must not use the Law Society's disciplinary and competence procedures, or suggest to a client that such procedures be used, vexatiously or solely to further the client's civil claim against another lawyer.

DUTY TO LAW SOCIETY**SUGGESTED RESOLUTION (HANDBOOK):**

BE IT RESOLVED to amend Chapter 13 of the Professional Conduct Handbook by rescinding rule 3 and substituting the following:

Regulatory compliance

3. A lawyer must
 - (a) reply promptly to any communication from the Law Society;
 - (b) provide documents as required to the Law Society;
 - (c) not improperly obstruct or delay Law Society investigations, audits and inquiries;
 - (d) cooperate with Law Society investigations, audits and inquiries involving the lawyer or a member of the lawyer's firm;
 - (e) comply with orders made under the *Legal Profession Act* or Law Society Rules; and
 - (f) otherwise comply with the Law Society's regulation of the lawyer's practice.

REQUIRES SIMPLE MAJORITY OF BENCHERS VOTING

To Benchers
From Jeffrey G. Hoskins, QC for Act and Rules Subcommittee
Date October 18, 2010
Subject **Return to practice rules amendments**

I attach draft amendments to Rule 2-59, which allows the Credentials Committee to require a lawyer returning to practice after an absence of more than seven years to complete a course of study in addition to the admission course. This would give the Committee the flexibility to require a returning lawyer to take a course such as the Small Firm Practice Course or the Practice Refresher course where that appears to be useful.

In addition, changes are proposed to make this Rule parallel to Rule 2-57, which applies to lawyers returning to practice after an absence of three to seven years and provides a process by which application for permission to return to practice can be obtained.

Changes in this nature were initiated by the Credentials Committee some time ago and approved and recommended by the Act and Rules Subcommittee in September.

JGH

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LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Returning to Practice

Returning to the practice of law after an absence

- 2-57** (1) If, for a total of 3 years or more in the relevant period, a lawyer has not engaged in the practice of law, the lawyer must not practise law without first doing one of the following:
- (a) passing the qualification examination;
 - (b) obtaining the permission of the Committee under subrule (3).
- (2) Subrule (1) applies
- (a) despite any other Rule, and
 - (b) whether or not the lawyer holds or is entitled to hold a practising certificate.
- (3) A lawyer may apply in writing to the Committee for permission to practise law without passing the qualification examination.
- (4) On an application under subrule (3), the Committee may approve the application if, in its judgement
- (a) the lawyer has engaged in activities that have kept the lawyer current with substantive law and practice skills, or
 - (b) the public interest does not require the lawyer to pass the qualification examination.
- (5) Before approving an application under subrule (4), the Committee may require the lawyer to enter into a written undertaking to do any of the things set out in Rule 2-59(2)(b) [\[Conditions on returning to the practice of law\]](#).

Conditions on returning to the practice of law

- 2-59** (1) A lawyer or applicant who has spent a period of 7 years or more not engaged in the practice of law must not practise law without the permission of the Credentials Committee.

(1.1) Subrule (1) applies

- (a) despite any other Rule, and
- (b) whether or not the lawyer holds or is entitled to hold a practising certificate.

(1.2) A lawyer or applicant must apply in writing to the Committee for permission to practise law under subrule (1).

LAW SOCIETY RULES

(1.3) An application under subrule (1.2) may be combined with an application under Rule 2-57(3) [Returning to practice of law after an absence].

(2) As a condition of permission to practise law under subrule (1), the Credentials Committee may require one or more of the following in addition to passing the qualification examination:

(a) successful completion of all or part of one or more of the following:

(i) the admission program;

(ii) ~~the training~~another course offered by the Society or a provider approved by the Society.~~or~~

~~(iii) a part of the training course;~~

(b) a written undertaking to do any or all of the following:

(i) practise law in British Columbia immediately on being granted permission;

(ii) not practise as a sole practitioner;

(iii) practise law only in a situation approved by the Committee for a period set by the Committee, not exceeding 2 years;

(iv) ~~successfully complete the training course or a part of the training course within a period set by the Committee, not exceeding one year from the date permission is granted;~~

(v) practise only in specified areas of law;

(vi) not practise in specified areas of law.

(3) Despite Rule 2-26(3) [Powers of the Credentials Committee], the Credentials Committee may vary a condition under subrule (2)(a) without the consent of the lawyer concerned.

(4) On the written application of the lawyer, the Credentials Committee may allow a variation of an undertaking given under subrule (2)(b).

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Returning to Practice

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- (a) passing the qualification examination;
 - (b) obtaining the permission of the Committee under subrule (3).
- (2) Subrule (1) applies
- (a) despite any other Rule, and
 - (b) whether or not the lawyer holds or is entitled to hold a practising certificate.
- (3) A lawyer may apply in writing to the Committee for permission to practise law without passing the qualification examination.
- (4) On an application under subrule (3), the Committee may approve the application if, in its judgement
- (a) the lawyer has engaged in activities that have kept the lawyer current with substantive law and practice skills, or
 - (b) the public interest does not require the lawyer to pass the qualification examination.
- (5) Before approving an application under subrule (4), the Committee may require the lawyer to enter into a written undertaking to do any of the things set out in Rule 2-59(2)(b) [*Conditions on returning to the practice of law*].

Conditions on returning to the practice of law

- 2-59** (1) A lawyer or applicant who has spent a period of 7 years or more not engaged in the practice of law must not practise law without the permission of the Credentials Committee.
- (1.1) Subrule (1) applies
- (a) despite any other Rule, and
 - (b) whether or not the lawyer holds or is entitled to hold a practising certificate.
- (1.2) A lawyer or applicant must apply in writing to the Committee for permission to practise law under subrule (1).

LAW SOCIETY RULES

- (1.3) An application under subrule (1.2) may be combined with an application under Rule 2-57(3) [*Returning to practice of law after an absence*].
- (2) As a condition of permission to practise law under subrule (1), the Credentials Committee may require one or more of the following in addition to passing the qualification examination:
- (a) successful completion of all or part of one or more of the following:
 - (i) the admission program;
 - (ii) another course offered by the Society or a provider approved by the Society.
 - (b) a written undertaking to do any or all of the following:
 - (i) practise law in British Columbia immediately on being granted permission;
 - (ii) not practise as a sole practitioner;
 - (iii) practise law only in a situation approved by the Committee for a period set by the Committee, not exceeding 2 years;
 - (iv)
 - (v) practise only in specified areas of law;
 - (vi) not practise in specified areas of law.
- (3) Despite Rule 2-26(3) [*Powers of the Credentials Committee*], the Credentials Committee may vary a condition under subrule (2)(a) without the consent of the lawyer concerned.
- (4) On the written application of the lawyer, the Credentials Committee may allow a variation of an undertaking given under subrule (2)(b).

RETURN TO PRACTICE

SUGGESTED RESOLUTION:

BE IT RESOLVED to rescind Rule 2-59(2) and substitute the following:

- (1.1) Subrule (1) applies
 - (a) despite any other Rule, and
 - (b) whether or not the lawyer holds or is entitled to hold a practising certificate.
- (1.2) A lawyer or applicant must apply in writing to the Committee for permission to practise law under subrule (1).
- (1.3) An application under subrule (1.2) may be combined with an application under Rule 2-57(3) *[Returning to practice of law after an absence]*.
- (2) As a condition of permission to practise law under subrule (1), the Credentials Committee may require one or more of the following in addition to passing the qualification examination:
 - (a) successful completion of all or part of one or more of the following:
 - (i) the admission program;
 - (ii) another course offered by the Society or a provider approved by the Society.
 - (b) a written undertaking to do any or all of the following:
 - (i) practise law in British Columbia immediately on being granted permission;
 - (ii) not practise as a sole practitioner;
 - (iii) practise law only in a situation approved by the Committee for a period set by the Committee, not exceeding 2 years;
 - (v) practise only in specified areas of law;
 - (vi) not practise in specified areas of law.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society *of British Columbia*



PUBLICATION OF CONDUCT REVIEWS

For: The Benchers
Date: November 2010

Purpose of the Report:

Discussion and Decision

Prepared on behalf of:

The Discipline Guidelines Task Force

Lance Cooke
Staff Lawyer,
Policy and Legal Services Department
(604) 605-5325

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5. Notable Research and Consultation

1. Introduction & Executive Summary

The issue for the Benchers' consideration is the extent to which the Law Society's "Conduct Reviews" ought to be made public. A concern has been voiced that a Conduct Review might be a more effective disciplinary tool if it were followed by an effective publication of the originating circumstances and the issues addressed at the Subcommittee's meeting with the lawyer. More effective publication might introduce some transparency to the Conduct Review process, for both the public and practicing lawyers. Thus, publication could serve the dual purpose of assisting in the professional conduct education of lawyers and enabling the public to have a better appreciation of the Law Society's disciplinary efforts.

The Conduct Review publication issue has come to the Discipline Guidelines Task Force for review in the midst of the Task Force's efforts to draft broad guidelines for the Discipline Committee, regarding its assessment and disposition of professional conduct matters. The target guidelines are intended to cover all of the potential disciplinary outcomes, including Conduct Reviews, but also including the full range from the direction to issue a Citation to the closing of an investigation file with No Further Action.

In considering the Conduct Review publication issue, the Task Force has concluded that the degree of public disclosure (or privacy) to be associated with Conduct Reviews is such an important constitutive element that a decision to change Law Society policy on publication might have a significant effect on what guidelines are required. In other words: One cannot say how Conduct Reviews should be allocated until one is told what Conduct Reviews are; and, a change toward more significant publication of Conduct Reviews may amount to a change in what Conduct Reviews are.

The Task Force now seeks direction from the Benchers on the question of what sort of disciplinary outcome a Conduct Review is supposed to be. More particularly, what level of transparency and publication should a conduct review entail?

This Memorandum is provided to inform and facilitate the Benchers' review of the Conduct Review publication question. The present analysis seeks to identify policy objectives and the extent to which they may be served by the available options. The main options presented herein include continuing the Law Society's recent practice of relatively limited publication, increasing our publication efforts within the existing Rules, and amending the Rules to enable increased disclosure and publication of Conduct Reviews. Alternatively, the Benchers may determine that more analysis of the Conduct Review publication issue is required and be able to offer some direction on scope of further analysis.

An important and potentially contentious consideration is the contrast that may be drawn between Conduct Reviews and Citation proceedings, with respect to the degree to which procedural fairness is present for the lawyer subject to the disciplinary process and the extent to which the publication of findings of fact must be underwritten by sufficient procedural fairness, such as the rights to contest allegations, to require proof, and to cross-examine witnesses under oath.

2. What is a Conduct Review?

a. General Description

The Discipline Committee's range of disciplinary outcomes includes the direction to issue a Citation, which in theory leads to a hearing, potential disciplinary sanctions, published Reasons, and thereby becomes the most public and transparent of results. The Discipline Committee also has an alternative option, where appropriate, to require the lawyer to attend a Conduct Meeting, which is a private meeting with a lone Benchers and does not involve a potential for further sanctions (unless the lawyer were to refuse to attend). In the case of a Conduct Meeting, a "Complainant" would receive the information that the Conduct Meeting had been directed but no specific information about the conversation between the Benchers and the lawyer. Apart from the complainant and the lawyer, no one outside the Law Society would be made aware of the Conduct Meeting at all. Between these two disciplinary options lies the Conduct Review.

The March 2005 *Report of the Conduct Review Task Force* (the "2005 CRTF Report" – **Attachment 1**) included the following observations:

The Conduct Review was created in the 1970s as a means of compelling a lawyer to appear before a subcommittee of Benchers to discuss discipline or ethical matters in an informal manner with a view to giving the member advice or guidance. The intention of the Conduct Review was viewed as educational rather than punitive.

Charles Locke, Q.C., when he was Treasurer of the Law Society, described the problems that a conduct review was meant to address as:

- (1) how could the Law Society deal with what could be described as grave indiscretions not calling for citation but which bode ill for the future unless the member concerned is made to understand what he has done; and
- (2) how to help the lawyer with a past record of offences correct his ways so that it would not happen again.¹

The functions of the Conduct Review Subcommittee were once described in the Benchers' Disciplinary Manual as follows:

The main purpose of the Conduct Review Subcommittee is to provide a means whereby disciplinary or ethical matters may be discussed between a member and two or more Benchers in an informal manner with a view to giving advice and guidance to the member as to his future professional conduct. The emphasis is educational rather than punitive. While Rule 11 refers to a formal caution, when such caution is deemed necessary, it will be given for the purpose of impressing upon the member that repetition of the objectionable conduct will likely result in serious consequences, rather than rebuking him for past actions.

¹ Advocate, Volume 30, Part 1, December-January 1972

The defining characteristics of Conduct Reviews include the following points, many of which are provided for in the Law Society Rules (cf. Rules Excerpts – **Attachment 2**):

- Conduct Reviews are usually conducted by a Subcommittee consisting of two Benchers or one Bencher with another senior lawyer.
- Where there is a Complainant in the matter:
 - the Complainant is informed of the Discipline Committee’s direction that the lawyer attend a Conduct Review and is provided with a brief explanation of what a Conduct Review is; and
 - the Subcommittee may meet with the Complainant immediately before the Conduct Review, in order to better understand the Complainant’s perspective and concerns.
- The Conduct Review itself is a private meeting, attended only by the Subcommittee, the lawyer (who must attend in person), and possibly the lawyer’s counsel (if counsel has been retained).
- Following the Conduct Review, the Subcommittee provides a written report to the Discipline Committee; most such reports have recommended that their matters be closed with no further action. If there is a Complainant, he or she also receives a copy of the Subcommittee’s report.
- After receiving the Subcommittee’s report, the Discipline Committee has a number of options available, including a possible direction that a Citation be issued against the lawyer.
- In general, the Law Society is allowed to publish a summary of the circumstances of the matter leading to the Conduct Review but must not identify the lawyer or any Complainant in that summary in absence of that person’s consent. Over the past few years most conduct reviews have not resulted in published summaries.
- Contrary to the general rule, in the relatively limited number of cases where the circumstances of the matter are known to the public, or where the Conduct Review follows the rescission of a Citation, the Law Society may disclose the lawyer’s name and publish the Discipline Committee’s final direction on outcome.
- The fact that a lawyer has been directed to attend a Conduct Review and a copy of the Subcommittee’s report together form a part of the lawyer’s “Professional Conduct Record”. The significance of the Professional Conduct Record is that it is the only portion of the lawyer’s history relating to complaints and professional conduct investigations that may be provided to a disciplinary panel at the hearing of a subsequent Citation, and then only *after* the panel’s decision on facts and verdict, during the “penalty determination phase” of the proceeding.

b. Present Functional Assessment

Conduct Reviews are the second most serious disciplinary result available to the Discipline Committee. Consequently, they are often directed in cases where a matter may involve a serious conduct concern but there are significant reasons for not issuing a Citation. They are also directed in situations where the specific conduct at issue is not judged to be serious enough to warrant a Citation but where there is a concern about an

emerging pattern in the lawyer's conduct, about an inability to accomplish the necessary communication with a less serious disciplinary result, or about the need to have the problematic conduct noted in the lawyer's professional conduct record. At Discipline Committee meetings, the discussion of a matter resulting in a Conduct Review may also include: 1) lack of certainty of result in attempting to prove a Citation; 2) the most effective means of attempting to influence the lawyer's future behavior; and 3) the need for progressive discipline following one or more previous less serious disciplinary results.

In addition to noting the factors the Discipline Committee may consider in determining whether a conduct review would be an appropriate disposition of a matter, it is also worth mentioning the frequency with which Conduct Reviews are authorized. As the second most serious disciplinary option available to the Discipline Committee, and as an option which does not require the testing of the Law Society's case through the full machinery of a disciplinary hearing, Conduct Reviews have been widely used to respond to a variety of alleged breaches of professional responsibility. At the time of writing of this memorandum, the year to date count on Conduct Reviews authorized by the Discipline Committee stands at 40. For the years from 2005 through 2009, the number of conduct reviews authorized annually ranges from a low of 48 through to a high of 66, with the average being 56.

Given the frequency with which Conduct Reviews are authorized, it is not uncommon for the Discipline Committee's deliberations on a matter to involve a discussion of the choice between a Conduct Review and a Conduct Meeting, focusing on the most salient distinctions between the two potential disciplinary outcomes. With an eye toward both the lawyer's conduct in the specific matter and any pattern of conduct concerns emerging over time, attention is often paid to the need for the most forceful discussion, a Conduct Review, to drive home the message that the matter is serious and that the lawyer's conduct must improve to avoid more significant disciplinary responses in the future. The Discipline Committee's attention is often occupied with the importance of adding the matter to the lawyer's professional conduct record, a result that would not follow if the matter led only to a Conduct Meeting.

On the other hand, to date it has been much less common for the Discipline Committee's discussion to focus on the issue of whether a summary of the allegations and outcome of a matter would be made public. Despite the possibility for the limited publication of Conduct Reviews provided in the Rules, the Law Society's practice has been to publish information regarding conduct reviews relatively rarely. The two most recent publications involved a matter in which the circumstances were widely known, the Conduct Reviews directed for Mobina Jaffer, Q.C. and Azool Jaffer-Jeraj, and where the Law Society could expect to receive requests for information from the media or individual members of the public. (**Attachments 3 & 4**) In earlier matters, publications connected with Conduct Reviews have been used to raise awareness among lawyers regarding issues of specific concern. Examples where the primary purpose may have been educational and cautionary include the cases of Lawyer 8 (sexual harassment), Lawyer D (initiating a class action suit without instructions from the representative plaintiff), and the unnamed lawyer in the May 1993 Discipline Digest article: "Sexual harassment in the profession: a conduct review." (**Attachments 5, 6 and 7**, respectively). However, the previous publication of conduct review summaries does not go far beyond

this handful of mentioned cases. The publication of conduct review summaries has not been a matter of routine practice for the Law Society up to the present date.

c. History of Development

It appears that when the Conduct Review was first developed, it was the *only* alternative disciplinary response to issuing a Citation and proceeding with a hearing. The value of the Conduct Review in relation to the public interest was summarized as follows at page 3 in the 2005 CRTF Report:

The Task Force considers the Conduct Review to be an important part of the Law Society's ability to protect the public interest. There are times where the conduct of a lawyer, while contrary to the Rules or the *Handbook*, will not be serious enough to warrant the full disciplinary machinery entailed by the citation process. If there were no other disciplinary procedure available, the public interest would be adversely affected because the error of the lawyer's conduct would never be adequately explained to the lawyer, nor would there necessarily be any "record" of the lawyer's conduct.

By instituting the Conduct Review, the Law Society has ensured that the public interest is served by:

- ensuring that the lawyer understands why what he or she has done has resulted in a meeting with two Benchers; and
- ensuring that corrective measures are discussed in order to avoid having a repeat of the impugned conduct.

Subsequently, following recommendations set out in the 2005 CRTF Report, the *Conduct Meeting* and *Conduct Letter from the Chair* options were created, for use in cases where even the Conduct Review's disciplinary aspects were perceived as being unnecessarily strong or involved responses. In addition to applying to cases that previously would not have drawn any disciplinary response, these latter two disciplinary options may also have found some application in cases that otherwise would have resulted in Conduct Reviews. To this extent, the development of the Conduct Meeting may have narrowed the range of application of the Conduct Review and focussed it on the "more serious" end of its original range.

With a range of disciplinary responses created and available to the Discipline Committee, the question of what response is the most appropriate for a specific case becomes unavoidable. Part of the motivation for creating the Discipline Guidelines Task Force was the perceived need for a set of guidelines to assist the Discipline Committee in determining the most appropriate disciplinary response to choose in particular circumstances. The presumption behind the Task Force's existence is that some circumstances actually do warrant a Conduct Review and not a Conduct Meeting and that it is possible to make a choice which is at least inferior if not incorrect. Ultimately, the Task Force's recommendations for the envisioned guidelines will, it is hoped, delineate among the various disciplinary options in a meaningful way that will be of use to the Discipline Committee in choosing the most appropriate response.

d. Comparison & Contrast: LSUC's *Regulatory Meetings*

A quick glance at the Law Society of Upper Canada's disciplinary framework might invite a comparison between LSBC's Conduct Review and LSUC's Regulatory Meeting, as these two disciplinary responses occupy their respective "second rung" positions, immediately below LSBC's Citation and LSUC's equivalent, for the two regulatory bodies. However, a closer examination reveals very significant differences that limit the value of any comparison between the two disciplinary options.

In contrast to the history of the Conduct Review, the development of the Regulatory Meeting came *after* the creation of the less formal and more private "Invitation to Attend," which is applied in Ontario in many cases judged to be less serious matters. Thus, the later-developing Regulatory Meeting has never functioned as *the only* disciplinary alternative to citation and, from its beginnings, its application has been comparatively narrow.

The alternative of a Regulatory Meeting is only considered in relation to cases that would otherwise be tracked toward a full disciplinary proceeding. Thus, the observation that LSUC always publishes summaries of its Regulatory Meetings is tempered by the relative infrequency of the use of that particular disciplinary alternative. LSUC currently has posted six Regulatory Meeting summaries on its website, representing the number of Regulatory Meetings completed between October 2008 and March 2010. (**Attachment 8**) By contrast, the LSBC Discipline Committee has authorized on average 56 Conduct Reviews per year over the past five full calendar years (2005-2009) and that has come from a significantly smaller population of lawyers than the group regulated by LSUC. Taking the infrequency of use into account, it may be that the most apt comparison between LSUC's Regulatory Meetings and those instances of Conduct Reviews resulting in summary publications is that the publication of a matter that has failed to result in a Citation (or equivalent) is a relatively rare event in both regulatory jurisdictions.

3. The Issue of Publication

a. Previous Publication Decisions

The Law Society Rules provide that the Executive Director may publish summaries of Conduct Reviews. In addition, the Discipline Committee minutes regarding the return of the Subcommittee Reports on Lawyer D and Lawyer 8 indicate the Discipline Committee's recommendations that summaries of those matters be published. However, there does not appear to be any written policy unifying the relatively few decisions to publish, nor specifying a basis for selection that would separate those few cases from the great many other Conduct Reviews that have occurred since the 1993 example.

b. Publication and Policy Objectives

The Discipline Guidelines Task Force has considered the following policy objectives and arguments as being potentially relevant to the Conduct Review publication issue:

i. General Deterrence/Educating the Profession

The general deterrence argument is essentially the proposition that lawyers will be less likely to repeat poor conduct, if the nature of that conduct and the Law Society's concern for it is drawn to their attention through publication. But for Conduct Review publication, the disciplinary significance of the instances of conduct dealt with through the Conduct Review process are never brought to the attention of the vast majority of lawyers. Further, the educational purpose of the publication may serve the public interest by alerting lawyers and allowing them to be better prepared in case they encounter potentially problematic conduct on the part of another lawyer they are dealing with in the course their practices.

ii. Specific Deterrence

The specific deterrence objective is focused on avoiding further problematic or recidivist conduct on the part of the lawyer who undergoes the Conduct Review. The extent to which Conduct Review publication would serve the specific deterrence objective might depend on the significance of that publication to the individual lawyer, over and above the significance of experiencing the Conduct Review itself. It seems obvious that the impact of the publication for the lawyer could be significantly different from case to case, depending on the conduct in question, the nature and circumstances of the lawyer's practice, and especially on whether the lawyer's identity is divulged in the published summary.

iii. Warning the Public

Some may argue that a significant purpose that could be served by Conduct Review publication is the warning of the public about a general potential for improper conduct or, where the lawyer's name is disclosed, about that particular lawyer's potential for improper conduct. On the other hand, some may feel that the serious concern about a lawyer's potential future conduct that might make such a warning appropriate would really be an indication that a Conduct Review was not a sufficient disciplinary result. Instead, it might be suggested that the lawyer should be facing either a Citation or a referral to the Practice Standards Committee. Further, and particularly where a lawyer's identity is not to be disclosed in the published summary, some may question the potential for the publication to warn the public, particularly if published in a medium primarily directed to other lawyers (such as the Benchers Bulletin).

iv. Increased Transparency/Educating the Public/Reputation of the Law Society

Some may view increased process transparency as a policy end in itself and view the publication of Conduct Reviews as a step in the direction of increased transparency. They might argue that greater disclosure regarding the specific cases addressed through conduct reviews may tend to promote the consistently appropriate use of this level of disciplinary response. Further, if the Conduct Review process is both more transparent and used in a consistently appropriate manner, arguably Conduct Review publication should foster a more educated public who will have a greater and more soundly based confidence in the Law Society.

Others may be more concerned about the dangers of creating a situation in which the estimated popularity (or unpopularity) of a potential decision may have an improper effect on the decision maker (the Discipline Committee). It may not be the case that the correct disciplinary decision will be popular with that portion of the public that chooses to pay attention to it. Moreover, it is questionable whether the mere publication of Conduct Review summaries could have a sufficient educational impact on the public to result in an increased confidence in the Law Society's regulatory efforts. It may be more likely that public confidence would hinge on the public's initial reaction to specific decisions such as, for example, to Conduct Review a lawyer and take no further action. The Discipline Committee's decision in directing a Conduct Review in the first instance is likely to be influenced by the Opinion Memorandum from staff, which is not only confidential but privileged. If the initial public reaction is disagreement with the Discipline Committee's view, then summary publication would likely lower the public's confidence. Moreover, with a public media that tends to stress the unusual as outrageous and ignore the mundane as not newsworthy, one cannot rely on a number of decisions over time to balance the public's view. As a relevant comparison, one might consider the apparently invariable public dissatisfaction with sentencing decisions in criminal proceedings and the general lack of public awareness and appreciation of the principles of sentencing underlying those decisions. Nonetheless, the popularity of politicians is apparently boosted time and again by their promises to usher in a "new" *tough on crime* approach to criminal activities.

c. The Case for Increased Publication

The case for increasing the frequency or extent of the Law Society's publication of Conduct Reviews may be best expressed in terms of the policy objectives outlined above and the prospect for the increased publications to meet the objectives. For example, if the objective is to draw a beneficial general deterrence effect from the Conduct Review process, then it may be important to try to provide some information about circumstances

leading to Conduct Reviews to the attention of lawyers. Of course the effectiveness of the publication effort may still be an open question. Would the published summaries be read by the individuals who could gain some ethical knowledge and guidance from them? Would the publication foster the view that Conduct Reviews are a disciplinary result that members should be especially concerned to avoid? Would there be a beneficial effect simply from focusing the attention of lawyers more frequently or more extensively on the fact that the Law Society does have disciplinary processes, of which Conduct Reviews form a part?

Consider for example the breach of undertakings issue. Undertakings are sacrosanct professional obligations, never to be assumed unless their fulfillment is entirely within the control of the lawyer who accepts the obligation, always to be confirmed clearly and in writing. In real estate conveyancing practice, lawyers propose and accept undertakings on a daily basis and often standard forms of undertaking are employed that have stood the test of time and previous use. In some other practice areas, the proposal of an undertaking may be a relatively rare occurrence. Every breach of undertaking is serious and clear breaches often result in citations being issued. However, in some circumstances there may be disagreement about whether an undertaking actually bound a lawyer, or about what would be required to fulfill the undertaking. As with any agreement, a lack of precise expression can lead to the meaning of the agreement coming into question. In such circumstances, where it is less clear that a knowing breach of undertaking has occurred, the matter may be dealt with by way of a Conduct Review. To date such cases have not resulted in the publication of Conduct Review summaries, identifying the aspects of undertakings that have led the lawyers to attract disciplinary attention. To the extent that there may be an aspect of ignorance or inattention in subsequent breaches by other lawyers, it is possible that the publication of Conduct Review summaries could have assisted lawyers in achieving a more effective compliance with their ethical obligations relating to undertakings. Breach of undertakings cases are just one kind of example that may illustrate the idea that increased publication of Conduct Review summaries could have a beneficial effect on the conduct of lawyers.

d. Defeating the Purpose

If the transparency of the Conduct Review process were to be altered significantly, such as by opening the review meeting itself to the Complainant or to the public, or by routinely publishing a detailed summary that discloses the name of the lawyer, there may be some danger that the Conduct Review process would be undermined and its purpose defeated. Consider the following comments from the 2005 CRTF Report:

Professional misconduct that warrants a full hearing must, in the opinion of the Task Force, be the subject of a high level of natural justice, and the public interest requires an open process, permitting not only the complainant, but the public in general, to attend the proceedings (subject only to where evidence may disclose material subject to solicitor-client privilege). Conduct Reviews are a different model of discipline, however. In addition to serving a disciplinary function, the Conduct Review

performs a corrective and educative function. The Task Force is convinced that the utility of the Conduct Review depends, in large part, on the ability of the Conduct Review Subcommittee to have a vigorous and frank discussion of matters with the lawyer. The Task Force also firmly believes that the lawyer who is the subject of the Review is more likely to be forthcoming to the Subcommittee about his or her conduct than would be the case if the complainant were present throughout the meeting or were the entire proceedings to be conducted on the record. Changes to the process to permit or require the complainant to be present for the entirety of the meeting would make the process less effective, and would, in the opinion of the Task Force, detract from rather than advance the public interest.

e. Publication and Procedural Fairness

Perhaps the most significant limiting factor on the Law Society's ability to move in the direction of routinely publishing lawyers' names in Conduct Review summaries, while maintaining a disciplinary response that functions as today's Conduct Reviews, is the lawyers' right to procedural fairness ("natural justice") in the Law Society's disciplinary processes. The Discipline Guidelines Task Force has discussed this issue at length. The Law Society's ability to conduct discipline hearings that are open to the public and to publish written decisions that identify lawyer respondents by is dependent on procedural fairness being incorporated in the Law Society's hearing process. Thus on Citation the lawyer must know the case against him and be able to make full answer and defence; the lawyer has a right to counsel, to call witnesses and bring forward evidence, and to the cross-examine witnesses brought forward by the Law Society, a right to test the allegations against him in a public hearing before an impartial panel, and a right to make submissions on the relevant law and the significance of the evidence. In the event of a finding against the lawyer at hearing, the lawyer has rights of appeal and judicial review. Arguably, it is only by virtue of that full machinery of procedural fairness that the Law Society is able, at the end of the hearing process, to publish a finding against the lawyer and to impose a disciplinary sanction where appropriate. In this way there is something of a balance struck between the potential significance of the outcome of the hearing for the lawyer and the lawyer's entitlement to procedural fairness in the disciplinary process.

In contrast to the Citation and hearing process, the Conduct Review process has fewer and less significant procedural fairness safeguards. The lawyer may have counsel attend the Conduct Review, but there is no right to cross-examine witnesses before the Conduct Review subcommittee. The subcommittee is presented with what is essentially a completed investigation and an assessment of the facts as they are understood by the Law Society's investigating staff, upon which the subcommittee is to base its discussion with the lawyer. The establishing of contested facts is not supposed to be a primary purpose of the Conduct Review. Indeed, the success of the Conduct Review may depend on the Subcommittee's ability to address the conduct issues with the lawyer without having to settle any facts that remain contentious at the time of the meeting.

In the following passage, the 2005 CRTF Report recognized the balance required of a process which has a disciplinary aspect but which is less than a full hearing of the matter:

A conduct review is a less formal process than is the hearing of a citation. Indeed, the Rules describe it as an “informal proceeding”, and the word “hearing” is conspicuously avoided. The Task Force discussed the level of procedural fairness required at a conduct review. There were differing views expressed on this topic.

On the one hand, it was noted that the hearing is described in the Rules as an “informal process”, and that its purpose is as much educative as it is disciplinary. In many cases where a conduct review has been ordered by the Discipline Committee, the lawyer already recognizes that he or she has made an error. In such cases the conduct review allows the Law Society to discuss directly with the lawyer the circumstances under which the error is made and ensure (a) that the lawyer understands the nature of the error and (b) that the lawyer is clear about how to avoid making future errors of this nature. The level of procedural fairness required in this procedure was thought to be relatively low.

On the other hand, it was pointed out that there was a disciplinary function attached to the conduct review process as well. There is a consequence attached to the process, as the report of the Subcommittee forms part of the lawyer’s professional conduct record. That record may be considered by the Law Society, if relevant, in future matters involving the lawyer. In some cases where a conduct review has been ordered, the lawyer does not agree that he or she has engaged in unprofessional conduct. Apart from disputing the eventual report of the Subcommittee, the lawyer has no real opportunity to test the evidence relied upon by the Law Society. Disputing the report of the Subcommittee has, on a few occasions, resulted in the Discipline Committee recommending that a citation be authorized. Some members of the Task Force believed that this left the lawyer in an unenviable predicament.

The consequences for the lawyer’s professional conduct record are already weighing on the disciplinary side of the scale. By adding a further consequence, such as an identity-confirming publication that is tantamount to a finding of improper conduct, the Law Society would be tipping the balance to the extent that the lawyer’s natural justice rights would be activated and full procedural fairness safeguards would be required. Thus the option of using Conduct Reviews as an alternative to issuing Citations may itself depend on the Law Society’s continuing to limit the extent of Conduct Review summary publications, in particular by not disclosing the lawyer’s name unless the circumstances are already widely known.

4. Policy Options and Analysis

The Discipline Guidelines Task Force has identified the following options for consideration by the Benchers:

a. Less Publication

The option of proceeding with less Conduct Review publication than has been employed to date is presented primarily for the purpose of completeness, as the Task Force has not been presented with any indication that the Law Society's publication of these matters has been excessive.

b. The Status Quo

Maintaining the status quo in regard to Conduct Review publication amounts to leaving the matter in the hands of the Executive Director (Law Society staff) to assess the merits of publication as each Conduct Review case arises. This approach has led to some increase in the frequency of publication within the past few years. In at least two of these cases, publication followed the recommendations of the Discipline Committee, as recorded in its minutes. However, the results of the status quo to date remain far short of a regular or routine publication of Conduct Review summaries. It does not appear that any written policy has guided staff's hand in publication decisions, aside from the provisions in the Rules that make publication possible and suggest the limits on disclosure. It has been the practice of staff, when the subject is raised at Discipline Committee meetings, to remind the Discipline Committee of the extent of publication provided for in the Rules.

c. More Publication within the Existing Rules

The existing Rules clearly allow the possibility of more frequent publication of Conduct Review summaries. The Benchers may be of the view that more summaries should be published in accordance with the Rules in order to effectively communicate to lawyers the sort of matters that have been dealt with by Conduct Review and the amount of this kind of disciplinary activity administered by the Law Society. The Benchers may prefer more frequent publication under the existing Rules to a rule amendment at this time. Some may view a more concerted publication effort under the present Rules to be a prudent precursor to any future amendment that might be determined, ultimately, to be in the public interest. The choice to increase publication frequency within the existing Rules could be expressed as an informal direction to staff. Any decision on whether a written Conduct Review publication policy should be developed could be deferred, to allow for some accumulation of experience under the direction to publish summaries more frequently.

d. More Publication with Rule Amendments

In addition to asking staff to increase the frequency of publication within the current Rules, the Benchers could request the development of an addition or amendment to the Rules, in order to expand the possibilities for publishing Conduct Review summaries, disclosing the identities of their subject lawyers, beyond those situations where the circumstances are already widely known. For

example, a rule could be developed that would allow publication with name disclosure where such publication is determined to be significantly in the public interest. If the option of *more publication with rule amendments* were chosen, the issue could be referred to the Act & Rules Subcommittee to consider rule amendments to implement the decision.

5. Notable Research and Consultation

In the course of its consideration of the issues discussed in this memorandum the Discipline Guidelines Task Force had the benefit of communications between staff at the LSBC and the LSUC, as well as copies of LSUC Reports concerning Regulatory Meetings and Invitations to Attend. The Task Force also had the opportunity to review and consider the Regulatory Meeting summaries posted on the LSUC website.

At an early stage, LSBC staff lawyers in the Professional Conduct Department and Discipline Counsel were asked to share their thoughts on the general issue of publishing Conduct Review summaries. However, the timeframe for the preparation of this Memorandum has not allowed follow-up consultation regarding the variety of specific issues identified in the course of the Task Force's review of this topic.

[Recommendation of the Task Force: to be provided orally by Mr. Van Ommen.]

The Law Society *of British Columbia*



Report of the Conduct Review Task Force

Purpose of Report:	Recommendations for Rule Changes to Implement Policy Proposals
Prepared by:	Conduct Review Task Force March, 2005

Report of the Conduct Review Task Force

Introduction

The Conduct Review Task Force was created by the Benchers in October 2003 to review the conduct review process, including its procedural fairness, and to make any recommendations it considers necessary for improving the process.

Peter Keighley, Q.C. chaired the Task Force until his appointment as Master of the Supreme Court in March, 2004. Ian Donaldson assumed the role of Chair at that point. The other members appointed to the Task Force are William Everett, Q.C., Michael Falkins, Russell Tretiak, Q.C., Jane Shackell, Q.C., and Ian Sissett. Robert McDiarmid, Q.C. was added in January 2005. The former Executive Director of the Law Society, James Matkin, Q.C. also attended the meetings of the Task Force until November, 2004. The Task Force was assisted by staff members Tim Holmes, Michael Lucas and Kathy Copak.

The Task Force first met in January 2004, and has met several times over the subsequent months. The Task Force has examined the history of the conduct review process at the Law Society, and has considered past efforts to review the process. It has also considered somewhat similar processes at other law societies.

The Task Force also announced to the profession that it was undertaking the task of reviewing the conduct review process, and to that end invited any persons interested to submit any comments they may have to the Task Force. A number of responses were received, which the Task Force considered and found to be helpful.

Statutory Authority to Make Rules Concerning Conduct Reviews

The authority of the Benchers to make rules requiring a lawyer to attend before a Conduct Review Subcommittee is found in section 36(e) of the *Legal Profession Act* (the "Act"), which states:

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

.....

(e) require a lawyer or articled student to appear before the benchers, a committee or other body to discuss the conduct or competence of the lawyer or articled student.

Issues Addressed by the Task Force

1. What is a Conduct Review?

One core function of the Law Society is to regulate the conduct of its members. In order to do so, the Law Society investigates complaints made about the conduct of its members. The Law Society's Discipline Committee must consider any complaint about a member's conduct referred to it by another Committee or by staff charged with conducting an investigation. Rule 4-4 of the Law Society Rules provides that, after considering a complaint, the Discipline Committee must:

- (a) decide that no further action be taken on the complaint,
- (b) require the lawyer to appear before the Conduct Review Subcommittee, or
- (c) recommend that a citation be issued against the lawyer.

The Discipline Committee may also refer any matter or any lawyer to the Practice Standards Committee.

The Conduct Review was created in the 1970s as a means of compelling a lawyer to appear before a subcommittee of Benchers to discuss discipline or ethical matters in an informal manner with a view to giving the member advice or guidance. The intention of the Conduct Review was viewed as educational rather than punitive.

Charles Locke, Q.C., when he was Treasurer of the Law Society, described the problems that a conduct review was meant to address as:

- (1) how could the Law Society deal with what could be described as grave indiscretions not calling for citation but which bode ill for the future unless the member concerned is made to understand what he has done; and
- (2) how to help the lawyer with a past record of offences correct his ways so that it would not happen again.¹

The functions of the Conduct Review Subcommittee were once described in the Benchers' Disciplinary Manual as follows:

The main purpose of the Conduct Review Subcommittee is to provide a means whereby disciplinary or ethical matters may be discussed between a member and two or more Benchers in an informal manner with a view to giving advice and guidance to the member as to his future professional conduct. The emphasis is educational rather than punitive. While Rule 11 refers to a formal caution, when such caution is deemed necessary, it will be given for the purpose of impressing upon the member that repetition of the objectionable conduct will likely result in serious consequences, rather than rebuking him for past actions.

¹ Advocate, Volume 30, Part 1, December-January 1972

In the current Rules², Conduct Review subcommittees are appointed by the Chair of the Discipline Committee to consider the conduct of a lawyer which the Committee has resolved to refer to the subcommittee. The Subcommittee must include at least one lawyer, may include one more lay Benchers, and must be chaired by a Bencher or Life Bencher.

The member whose conduct is being reviewed must appear personally, and may be represented by counsel. The complainant, however, is only permitted to attend or speak at all or any part of the review in the discretion of the Subcommittee.

The conduct review itself is referred to in Rule 4-8(1) as an "informal proceeding."

However, the Subcommittee is required to prepare a written report of its findings of fact, conclusions and any recommendations. A process has been developed in Rule 4-9 permitting the lawyer subject to the review to dispute the contents of the report, which the Subcommittee must consider, and either amend its report as it considers appropriate, or forward its report to the Discipline Committee without amendment. After the report is considered by the Discipline Committee, the Committee must do one of three things:

- (a) decide to take no further action on the complaint;
- (b) refer the lawyer to the Practice Standards Committee; or
- (c) recommend that a citation be issued against the lawyer.

2. The Conduct Review and the Public Interest

The Task Force considers the Conduct Review to be an important part of the Law Society's ability to protect the public interest. There are times where the conduct of a lawyer, while contrary to the Rules or the *Handbook*, will not be serious enough to warrant the full disciplinary machinery entailed by the citation process. If there were no other disciplinary procedure available, the public interest would be adversely affected because the error of the lawyer's conduct would never be adequately explained to the lawyer, nor would there necessarily be any "record" of the lawyer's conduct.

By instituting the Conduct Review, the Law Society has ensured that the public interest is served by:

- ensuring that the lawyer understands why what he or she has done has resulted in a meeting with two Benchers; and
- ensuring that corrective measures are discussed in order to avoid having a repeat of the impugned conduct.

² See generally Rules 4-7 to 4-12

The public interest is further served due to the fact that an entry is created on the lawyer's professional conduct record so that, if the lawyer has not learned from the Conduct Review and repeats the error, the report of the Conduct Review Subcommittee may become relevant at the penalty stage in a future hearing of a citation. The report may, of course, also have a bearing on what, if any, disciplinary process the lawyer should be subjected to should the lawyer's future conduct ever be the subject of a further referral to the Discipline Committee. If the lawyer were ever required to attend a future meeting with a Conduct Review Subcommittee, that Subcommittee could, of course, have reference to the report of an earlier Subcommittee.

There have been suggestions that the Conduct Review process should be a more open proceeding, and that, for example, the complainant should be permitted to attend the entire meeting between the lawyer and the Subcommittee. The Task Force, however, rejects that model for this particular form of discipline.

Conduct Reviews are generally held where the conduct in question is an indiscretion that may "bode ill" for the future unless the member concerned is made to understand what he has done or where, in the opinion of the Discipline Committee, a conclusion is reached that it is not in the public interest to authorize the issuance of a citation, but some disciplinary sanction is still warranted.

Professional misconduct that warrants a full hearing must, in the opinion of the Task Force, be the subject of a high level of natural justice, and the public interest requires an open process, permitting not only the complainant, but the public in general, to attend the proceedings (subject only to where evidence may disclose material subject to solicitor-client privilege). Conduct Reviews are a different model of discipline, however. In addition to serving a disciplinary function, the Conduct Review performs a corrective and educative function. The Task Force is convinced that the utility of the Conduct Review depends, in large part, on the ability of the Conduct Review Subcommittee to have a vigorous and frank discussion of matters with the lawyer. The Task Force also firmly believes that the lawyer who is the subject of the Review is more likely to be forthcoming to the Subcommittee about his or her conduct than would be the case if the complainant were present throughout the meeting or were the entire proceedings to be conducted on the record. Changes to the process to permit or require the complainant to be present for the entirety of the meeting would make the process less effective, and would, in the opinion of the Task Force, detract from rather than advance the public interest. The Task Force will make some recommendations, however, concerning how the process may be better explained and thereby made more transparent to complainants in particular and the public in general.

3. There is no provision in the Rules Allowing a Conduct Review to be Rescinded

The Task Force gave much consideration to the fact that, once a conduct review has been ordered, there is no process available to the Discipline Committee to rescind the order.

The Task Force considered past circumstances where Conduct Review Subcommittees have been provided with documents or other evidence which, for various reasons, were not given to the Law Society during its investigation of the underlying complaint. In some cases, the review of this evidence has made it clear that the lawyer's conduct was not improper. In other cases, the Subcommittee may determine that, in its view, and on the basis of the facts before it, the lawyer's conduct is not improper. Even if the Subcommittee, in its Report back to the Discipline Committee, identifies its concerns, there is no rule permitting the Subcommittee to recommend that the Discipline Committee rescind the order that the conduct review take place. Even if, in light of the new evidence, or in light of the Subcommittee's analysis of the facts, the Committee agrees that the lawyer has done nothing wrong, the Rules do not allow the Committee to rescind the order requiring that the conduct review take place.

The Task Force contrasted this lack of ability to rescind an order for a conduct review to the ability of the Discipline Committee to rescind an order that a citation be authorized. If subsequent facts come to the attention of the Discipline Committee after a citation has been authorized, the citation may be rescinded. If no further process were ordered, the lawyer in question would have no professional conduct record. In similar circumstances under an order for a conduct review, however, the best the lawyer could hope for is that the Report of the Subcommittee would report that the lawyer had done nothing wrong. The report would still, however, form part of the member's professional conduct record. While this may be of little consequence, the member may still feel aggrieved by the fact of a blemish on his or her record with the Law Society, in circumstances where the conduct of the member disclosed no real basis for the record.

4. A Conduct Review Subcommittee Report forms part of a member's "Professional Conduct Record"

The Task Force discussed the fact that the Report of the Subcommittee (and any written dispute of the Report) forms part of the member's "professional conduct record", which as a consequence may be used against the member in a hearing on penalty in the event that a subsequent citation is proven against the member. A member's professional conduct record may have other consequences as well. A considerable amount of discussion focused on the consequences to the member arising out of the existence of having a professional conduct record.

Some members of the Task Force considered that the simple existence of a professional conduct record constituted a blemish on the lawyer's reputation with the Law Society. If there was to be a formal recording of an event in a "record" that could be used for subsequent purposes adverse to the lawyer, then it was argued that there should be more procedural fairness in the process.

5. Fairness

The Task Force was created in part as a result of a potential concern about procedural fairness in the conduct review process.

The Task Force discussed, at some length, the varying degrees and level of procedural fairness in Law Society disciplinary processes. The hearing process that results from a decision to authorize the issuance of a citation is obviously a very formal process that results, if the citation is proven, in a penalty being imposed on the lawyer whose conduct is under review. The penalty can be a fine, a suspension from practice or, in the most serious cases, disbarment. A high level of procedural fairness is called for, including matters such as disclosure of evidence, and the right of cross-examination.

A conduct review is a less formal process than is the hearing of a citation. Indeed, the Rules describe it as an "informal proceeding", and the word "hearing" is conspicuously avoided. The Task Force discussed the level of procedural fairness required at a conduct review. There were differing views expressed on this topic.

On the one hand, it was noted that the hearing is described in the Rules as an "informal process", and that its purpose is as much educative as it is disciplinary. In many cases where a conduct review has been ordered by the Discipline Committee, the lawyer already recognizes that he or she has made an error. In such cases the conduct review allows the Law Society to discuss directly with the lawyer the circumstances under which the error is made and ensure (a) that the lawyer understands the nature of the error and (b) that the lawyer is clear about how to avoid making future errors of this nature. The level of procedural fairness required in this procedure was thought to be relatively low.

On the other hand, it was pointed out that there was a disciplinary function attached to the conduct review process as well. There is a consequence attached to the process, as the report of the Subcommittee forms part of the lawyer's professional conduct record. That record may be considered by the Law Society, if relevant, in future matters involving the lawyer. In some cases where a conduct review has been ordered, the lawyer does not agree that he or she has engaged in unprofessional conduct. Apart from disputing the eventual report of the Subcommittee, the lawyer has no real opportunity to test the evidence relied upon by the Law Society. Disputing the report of the Subcommittee has, on a few occasions, resulted in the Discipline Committee recommending that a citation be authorized. Some members of the Task Force believed that this left the lawyer in an unenviable predicament. Moreover, even if during the conduct review the lawyer was able to satisfy the Subcommittee that his or her conduct was not in error (either by bringing new evidence to the attention of the Subcommittee, or through successfully advocating that the basis of the Discipline Committee's analysis may be incorrect) there was no manner by which the lawyer could leave the process without his or her professional conduct record being affected.

The counterpoint to this is that a lawyer who does not acknowledge any wrongdoing may demand that a citation be authorized, which would then permit all of the procedural guarantees of a hearing. Some would consider this "Hobson's choice", and in the event of a stalemate between the member and the Discipline Committee, the Committee cannot be forced to authorize the issuance of a citation.

6. The Law Society's "Need to Know" about a Lawyer's Past Conduct

The Law Society is a self-regulatory body. Its statutory object and duty is to uphold and protect the public interest in the administration of justice by, amongst other things, establishing standards for professional responsibility and competence of lawyers.

The Task Force discussed the fact that, when determining what course is necessary to deal with a complaint of, for example, incompetence, the public interest may demand that the Law Society have regard to the previous history of the lawyer complained about. On some occasions, disciplinary or remedial action is determined to be necessary only after a review of a pattern of conduct exhibited by a particular lawyer over a period of time. The public interest may not be adequately protected if the Law Society did not have access to that information. The Task Force is mindful of the obligations placed on the Law Society by the *Legal Profession Act*, and has had regard to the recent judgment of the Supreme Court of Canada in *Finney v. Barreau du Québec* (2004 SCC 36) which held the Barreau liable to a complainant (member of the public) for having failed to take action against one of its members in a more diligent fashion (at para 44):

The nature of the complaints and the lawyer's professional record in fact made it plain that this was an urgent case that had to be dealt with very diligently to ensure that the Barreau carried out its mission of protecting the public in general and a clearly identified victim in particular.

Some members of the Task Force were concerned that if the complaint(s) which had given rise to a conduct review or the result of the review itself were not available to the investigative arm of the Society in the investigation of future complaints against the same member – particularly if the subsequent complaints were similar to the complaint which had formed the basis of the conduct review – then the Law Society might be unable to fulfill its obligations as described in *Finney*.

7. The "Invitation to Attend" process at the Law Society of Upper Canada

The Task Force considered the "Invitation to Attend" ("ITA") process used by the Law Society of Upper Canada, which bears some similarity to the Law Society's conduct review. It is described as an informal process allowing the Benchers to discuss the conduct in issue with the member and to determine his or her position on the matter. It is, the Task Force understands, used in circumstances where the lawyer complained about has used "poor judgment", rather than in a deliberate contravention of the rules. The Benchers' role at an ITA is to educate the member about the nature of the conduct and the goal of an ITA is that the lawyer will gain more knowledge about his or her obligations and the consequences of his or her actions. However, the ITA does not form part of the lawyer's "record" (other than the fact it was held) and it is not disclosed to anyone beyond the Law Society of Upper Canada. No references to prior ITAs can be made on subsequent complaints against the lawyer referred to the Discipline Authorization Committee, nor can material prepared for the ITA be referenced. Some members of the Task Force thought this latter provision was a good approach, while others thought it might compromise the Law Society's ability properly to investigate

misconduct or incompetence. The Task Force understands that the Law Society of Upper Canada is currently reviewing whether it should continue the practice of not disclosing the fact of a previous ITA in subsequent referrals to the Discipline Authorization Committee.

Recommendations

The Task Force examined methods to address some of the concerns expressed with the conduct review process without destroying the benefits of that process. In particular, the Task Force wanted to ensure that there were processes available through the Discipline Committee to permit some matters of complaint to be dealt with in a less formal manner than through a hearing of a citation. Hearings should be aimed at serious transgressions of ethical or professional standards where, if proven, fines, suspensions or disbarment should be ordered.

The original purpose of a Conduct Review seems to have been to permit the Law Society to deal with "grave indiscretions" not calling for citation but which bode ill for the future conduct of the member if his or her conduct is not addressed. A grave indiscretion dealt with through a less formal process than a hearing may indeed have benefits for the lawyer by being educated about errors rather than going through a hearing from which he or she may – but also may not – come to realize the error committed. The public interest can also be served by ensuring that the lawyer has learned from the error and understands how to avoid it in future. If, indeed, the error is a "grave indiscretion", a formal record – a "professional conduct record" – is probably called for. There are, however, other ethical or professional transgressions that are much less than "grave indiscretions" and call for a less formal result. Sometimes it will be because the conduct complained of is, in the overall analysis, relatively minor. Other times it will be because, while possibly serious, the lawyer did not set out to act in such a manner. Sometimes the inadvertence of the conduct will not be relevant and more formal process will be necessary.

The Task Force also considered that any particular matter examined by a Conduct Review Subcommittee may not always be indicative of a lawyer's general professional conduct. The matter being reviewed may be but a single example of an ethical error committed by the lawyer over the course of many years at the Bar. A Conduct Review Subcommittee is really asked to review an "incident" or, perhaps, series of incidents, of a lawyer's conduct, not the lawyer's conduct as a whole.

The Task Force makes the following recommendations:

1. The Law Society Rules should be amended to permit the Discipline Committee to
 - (a) authorize the Chair of the Committee to write a letter to a member whose conduct is the subject of a complaint before the Committee; and

(b) require a lawyer whose conduct is the subject of a complaint before the Committee to attend a meeting with one or more senior lawyers (who may or may not be a Benchers) to discuss the conduct of the lawyer.

In neither case would the letter or the meeting form part of the lawyer's "professional conduct record."

2. The Law Society Rules should be amended to permit the Discipline Committee, in appropriate circumstances, to rescind an requirement that a lawyer attend before a Conduct Review Subcommittee.
3. An effort should be made to improve the content of the minute of the Committee when resolving to require a lawyer to attend a conduct review. Disclosure to the lawyer of all the materials given to the Discipline Committee, including correspondence and documents should continue. The opinion given by staff to the Committee should not be disclosed to the lawyer, for reasons of privilege.
4. An effort should be made to ensure that complainants are properly and fully informed about the purpose of a conduct review, and how the public interest is served by the process. The Task Force recommends that
 - (a) a standard form of letter, explaining the purpose of and process involved in a conduct review, be created to send to complainants at the outset of the process;
 - (b) a list of suggestions be created that can be given to the members of the Conduct Review Subcommittee, in order to guide the Subcommittee when addressing the complainant at the meeting, and in particular to explain to the complainant why he or she is not invited to be present throughout the process;
 - (c) the Law Society website be updated to include a specific section on the process involved in the Conduct Review, including the purpose of such reviews, what they are intended to achieve, and how the public interest is served.

Discussion

1. Amending the Rules to Permit Additional Options by which the Discipline Committee can Deal with a Complaint.

Reasons for the Recommendation

Currently, when considering a complaint, the Discipline Committee has only three options³. It may:

³ See Rule 4-4(1)

- (a) decide that no further action be taken on the complaint;
- (b) require the lawyer to appear before a conduct review subcommittee; or
- (c) recommend that a citation be issued against the lawyer.

Taking no further action results, of course, in no professional conduct record being created. Recommending a citation or ordering a conduct review may result in a professional conduct record.

In addition to the outcomes provided for in the Rules, the Committee has developed a procedure (in minor cases of misconduct) of resolving that the Chair of the Committee write to the lawyer whose conduct is under consideration, advising the lawyer about where he or she erred, and how he or she may strive to improve their conduct in future. This "letter from the Chair" does not form part of a lawyer's professional conduct record.

The Task Force recommends that the "letter from the Chair" be included in the Rule 4-4 in order that the practice can be regularized.

Moreover, the Task Force recommends that Rule 4-4 be further amended to permit the Committee, in appropriate circumstances in the Committee's discretion, to order that the lawyer attend before a senior lawyer or lawyers to discuss his or her conduct. This process is envisaged by the Task Force as being slightly more "formal" than a letter from the Chair, but less formal than a Conduct Review. Like a letter from the Chair, it would *not* form part of the lawyer's professional conduct record. There would be no report, but the Task Force recommends that there be some closing document such as a letter from the Benchers conducting the process to ensure that the meeting has taken place and that the conduct which has given rise to the meeting has been discussed with the lawyer. The Task Force was divided as to whether this letter should be sent to each, or either, of the lawyer or the complainant.

The process would be focused on the education of the lawyer, rather than on his or her punishment. It would be the review, by a senior lawyer or lawyers, of an "incident" in which the lawyer, in the opinion of the Law Society, had not met the requisite standard of conduct required of a lawyer, but, in the opinion of the Committee, the conduct was not so egregious as to warrant a formal "record".

The Task Force believes that this recommendation meets the interests of both the public and the profession. Relatively minor misconduct could be addressed in a setting requiring the lawyer to attend to discuss his or her actions with a senior member of the Law Society, as is done with a Conduct Review, but there would be no creation of a "record", and therefore any arguments for a higher degree of procedural fairness than now exists in the conduct review process would be obviated.

This would leave more serious forms of misconduct to be dealt with through a Conduct Review where the Committee believes that a citation could be authorized, but that in the public interest a Conduct Review may suffice. In these circumstances, if the lawyer

disagreed with the recommendation, he or she could advocate against it either at the conduct review itself, or by disputing the report. If the Subcommittee accepted the lawyer's arguments, it could recommend that the order be rescinded (see recommendation 2, below). If either the subcommittee or the Committee rejected the lawyer's position, the Committee could then re-consider the matter to determine if a citation should now be authorized, which would give the lawyer the whole range of procedural fairness available through that process.

Implications

A rule change would be necessary to accomplish both of the above recommendations. The Task Force believes that there is authority to make such rules through a combination of ss. 36(e) and 11 of the *Act*.

Adding an option to the types of decisions that the Discipline Committee may make when considering a complaint should enhance the effectiveness of the disciplinary program by giving the Committee a wider array of choices. The Task Force believes that the three choices available now are unduly restrictive given the wide variety in type and seriousness of complaints considered by the Law Society. By adding an additional option, the Law Society will create a process by which the significance of the conduct can be discussed directly with the lawyer, but with no professional conduct record attaching. This, the Task Force believes, is appropriate for ethical transgressions or types of misconduct that need to be addressed, are not the sort of "grave indiscretion" that warrants a formal disciplinary consequence, and deserve personal discussion rather than a letter.

The conduct review process will remain open for "grave indiscretions" that do not warrant a formal hearing. Hearings will remain an available option for the serious complaints that require a serious sanction and penalty. Through this process, the Task Force believes that the public interest is enhanced. Member relations ought not to suffer, either, as an educative, but non-penal process will have been created. It is a process that ought to benefit those members who are currently ordered to attend a conduct review for matters that are misconduct or ethical transgressions, but perhaps not "grave indiscretions".

Determining the difference between a serious transgression warranting a conduct review and a less serious transgression warranting the proposed new procedure may prove to be somewhat difficult. The Task Force believes, however, that over time the distinctions will become easier to determine.

2. Amending the Rules to Permit the Discipline Committee to Rescind an Order for a Conduct Review

Reasons for the Recommendation

Rule 4-13 permits the Discipline Committee to rescind a citation at any time before a panel makes a determination on penalty. Theoretically, therefore, the Discipline Committee can rescind a citation even after a verdict has been given, provided that the penalty has not yet been determined. The Task Force recommends that there be a parallel process available for Conduct Reviews. The underlying rationale for the recommendation is that if a citation can be rescinded, why not also have a Rule permitting the rescission of a Conduct Review?

One matter for determination concerning this recommendation is whether the Discipline Committee could rescind the Conduct Review *after* the review itself had taken place. In other words, could the Committee order the undoing of an event that had already occurred? In light of the fact that the Committee can apparently rescind a citation after verdict, so long as the penalty has not been determined, perhaps there is no impediment to permitting the rescission of a Conduct Review prior to the Discipline Committee accepting the report of the Subcommittee.

The Task Force has considered the circumstances under which it would be appropriate to rescind a Conduct Review, and makes some recommendations to the Benchers in that regard. Circumstances could include the receipt by the Committee of new facts, a different take by the Committee on existing facts, or a re-examination by the Committee of the law or interpretation of the Rules or *Handbook* provisions giving rise to the original order for the Review. The Task Force notes that there are no limitations on the discretion given to the Discipline Committee with respect to the rescission of a citation.

The Task Force believes that the public interest is not adversely affected by permitting the Discipline Committee to rescind an order for a Conduct Review in appropriate circumstances. The public interest is not served by creating a professional conduct record concerning a lawyer where there is insufficient evidence that the impugned conduct supports an order for a Conduct Review. If further information comes to light after the Review has been ordered that changes the opinion of the Committee, the public interest does not require the lawyer to have a "record" simply because, on an analysis of incomplete information, the Committee originally ordered a Review to take place.

Implications

In order to implement this recommendation, the Task Force recognizes that a Rule change will be required. While there is authority to make rules requiring a lawyer to attend before the benchers (or a committee or other body) to discuss his or her competence, there is no specific authority to create a rule rescinding such an order. This is to be contrasted with rule making power concerning citations. Section 36(f) of the *Act*

authorizes the ordering of a hearing by way of citation, and section 36(g) permits the making of rules authorizing the rescission of a citation.

Despite the absence of a specific section in the *Act* permitting the rescission of a conduct review, the Task Force considers that a rule permitting the Committee to undo something it has resolved to do is consistent with sensible practice where there is a reason for the Committee to conclude that its original resolution was in error. Such a rule would therefore not be inconsistent with the *Act*. The *Act* permits the benchers to take any action they consider necessary for the promotion, protection, interest or welfare of the Society (s. 4) and to make rules for the carrying out of the *Act* (s. 11).

If the Rule is amended to permit the rescission of an order for a Conduct Review, one might expect that the Discipline Committee will begin receiving, and having to consider, applications from members to rescind Conduct Reviews which will add to the length of meetings. The number of such requests would be difficult to gauge in the abstract. For purposes of comparison, though, the Task Force understands that requests to rescind citations are not numerous.

This recommendation might be expected to have some positive effect on member relations, as it would permit a procedure whereby an order having a disciplinary consequence might be given a second look and, in some circumstances, rescinded. All that can happen in the present system is for the member to convince the Conduct Review Subcommittee itself that the underlying premise for the order is incorrect, which may result in a report from the Subcommittee to that effect. The existence of the order for the Review still persists, and the report, though favourable, still constitutes part of a professional conduct record, although in such cases there is little or no prejudicial consequence to the member by virtue of the record.

The Task Force recognizes that the recommendation might, however, have some negative effect on public relations. There is no mechanism by which a complainant can "appeal" a decision of the Discipline Committee with respect to a complaint referred to the Committee. If the Committee closes a complaint, the complaining member of the public has no avenue of review. The Task Force notes that the Ombudsman has raised these matters as criticisms of the current process.

By permitting the Committee to consider rescinding an order for a Conduct Review, however, lawyers would be given some limited ability to have the Committee reconsider an order having consequences against the member. The public may view this inequality of process as an example of lawyers looking out for themselves.

3. Disclosure Issues

Reasons for the Recommendation

The Task Force considers that in most situations, a lawyer who is required to attend before a Conduct Review Subcommittee will clearly understand the issue giving rise to

the Review. There are, however, circumstances where the issue will be less clear. There may be other circumstances where there may be several different possible reasons for ordering the Review, but the reasons have not been explained to the lawyer.

The Task Force understands that, currently, lawyers who are required to attend before a Conduct Review Subcommittee receive the correspondence and the documents that the Committee has considered when making its resolution. The lawyer does not receive the staff lawyer's opinion given to the Committee. While the lawyer does receive the minute from the Discipline Committee resolving that the review take place, there is no "charge" or "particulars" that are given to the lawyer. This is to be contrasted to the citation process. Attached to each citation is a schedule outlining the particular conduct and allegations which are to form the subject matter of the hearing.

The Task Force recognizes that a citation is a more formal and more serious process than a Conduct Review. The outcome of a hearing can result in a fine, suspension or disbarment. A Conduct Review, on the other hand, is an informal process. However, a Conduct Review is a process which can lead to the creation of a professional conduct record, and the Task Force believes that more precision should be taken in the disclosure process surrounding Conduct Reviews.

The Task Force recommends that

- (a) the lawyer continue to receive all the materials that were before the Committee when the Committee considered the complaint and resolved to hold a Conduct Review;
- (b) special care be taken when preparing minutes in which a resolution to hold a Conduct Review is made. The minute should, at a minimum, outline the facts considered by the Committee to be pertinent to its decision to resolve to require the lawyer to attend at a Conduct Review together with a brief narrative of the reasons that the Committee had for making the resolution. This will assist the lawyer in understanding the purpose behind the Conduct Review, and, in the view of the Task Force, will make the process more fair to the lawyer whose conduct is being reviewed. The educational and corrective aspects of the review will also be increased.

The opinion from the staff lawyer to the Committee in which the complaint is analyzed is not given to the lawyer, although it is given to the Conduct Review Subcommittee. The Task Force realizes that the opinion is the subject of solicitor-client privilege. The Task Force considers, however, that there may be circumstances where it is not contrary to the public interest or to the interest of the Society to waive that privilege. The implications of waiving privilege over the opinion are, however, complicated. For instance, if the privilege is waived, obligations under the *Freedom of Information and Protection of Privacy Act* may be triggered. The Task Force determined that it should not recommend that there be a blanket direction to waive privilege over staff opinions given to the Committee in cases where a Conduct Review was ordered.

Implications

The Task Force realizes that its recommendation may add some extra work, both for staff in preparing the minute, and for the Committee in giving direction as to its reasons for resolving to hold a Conduct Review. There are, however, benefits to be gained by more precisely identifying, in all cases, the reasons for ordering a Conduct Review and the facts upon which the Committee based its decision. The lawyer will be given a clear direction about the nature of the misconduct or incompetence forming the basis of the review and the review itself should, in all cases, be more informed. The Task Force notes that, as the member does not currently receive a copy of the staff lawyer's opinion, he or she may come into the review with a less clear understanding of the issues than does the review panel, who have had access to the opinion.

The Task Force expects that the complainant will also have the benefit of more clearly understanding the reasons of the Committee for ordering a Conduct Review. This may assist the complainant in a general sense by better understanding the Law Society's processes. It may also, in cases where the complainant is permitted to attend the review, assist the complainant by identifying specific, rather than general, concerns to the subcommittee.

4. Communication to the Public About the Conduct Review Process

Reasons for the Recommendation

The Task Force concluded that the Law Society should revisit its efforts to ensure that there is proper communication with the public about what a Conduct Review is intended to accomplish and how the Conduct Review serves the public interest by ensuring that a lawyer who has engaged in a level of misconduct that does not warrant a citation is still required to attend at a disciplinary process. Communicating to the public how the Conduct Review is also meant to ensure that the lawyer learns from the process so that the conduct is not repeated would, in the opinion of the Task Force, be beneficial.

This communication can, and should, be done in a number of manners. When the Discipline Committee has resolved to require a lawyer to attend before a Conduct Review Subcommittee, a standard form of letter should be sent to the complainant explaining the reasons that the Review was ordered, the process involved in the Review itself (including the complainant's ability to ask to attend at the meeting), and what the Conduct Review process intends to accomplish.

The Task Force also recommends that a list of suggestions be drafted to be given to Subcommittee members to assist them in dealing with questions or issues that may be raised during the meeting by either the complainant or the lawyer. These suggestions would be meant to address issues of process, such as why the complainant will be asked to leave at some point during the meeting in order that the Subcommittee may address the member directly.

Finally, the Task Force believes it would be advisable to include, on the Law Society's website, a section focused on the Conduct Review in order to explain to the public at large what is entailed in the process, the circumstances under which such Reviews are generally held, and what such Reviews are intended to accomplish.

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PART 4 – DISCIPLINE

Interpretation and application

4-1 ...

(2) This Part must be interpreted in a manner consistent with standards of simplicity, fairness and expediency, and so as to provide maximum protection to the public and to lawyers.

(3) In this Part, “**conduct meeting**” means a meeting that a lawyer is required to attend under Rule 4-4(1)(a.2).

[(1) amended 11/99; (3) added 07/05]

...

Consideration of complaints by Committee

4-3 The Discipline Committee must consider any complaint referred to it under these Rules and may instruct the Executive Director to make or authorize further investigation that the Discipline Committee considers desirable.

[heading and rule amended 07/07]

Action on complaints

4-4 (1) After its consideration under Rule 4-3, the Discipline Committee must

(a) decide that no further action be taken on the complaint,

(a.1) authorize the chair or other Bench member of the Discipline Committee to send a letter to the lawyer concerning the lawyer’s conduct,

(a.2) require the lawyer to attend a meeting with one or more Benchers or lawyers to discuss the conduct of the lawyer,

(b) require the lawyer to appear before the Conduct Review Subcommittee, or

(c) recommend that a citation be issued against the lawyer under Rule 4-13(1).

(2) In addition to the determination under subrule (1), the Discipline Committee may refer any matter or any lawyer to the Practice Standards Committee.

(3) In addition to any action taken under subrules (1) and (2), if a complaint discloses that there may be grounds for revoking a law corporation’s permit under Rule 9-11, the Discipline Committee may order a hearing on the revocation of the law corporation’s permit.

(4) At any time before the Discipline Committee makes a decision under Rule 4-9(6)(a) to (c), the Committee may resolve to rescind a decision made under subrule (1)(b) to require a lawyer to appear before the Conduct Review Subcommittee and substitute another decision under subrule (1).

[(1) amended, (4) added 07/05]

Consideration of complaints by Chair

4-4.1 (1) The Chair of the Discipline Committee must consider any complaint referred to him or her under these Rules and may instruct the Executive Director to make or authorize further investigation that the Chair considers desirable.

(2) After considering a complaint under subrule (1), the Chair of the Discipline Committee must

(a) order a hearing into the conduct or competence of a lawyer by directing that the Executive Director issue a citation against the lawyer, or

(b) refer the complaint to the Discipline Committee.

[added 07/07]

...

Conduct letter from the Chair

4-6.1 (1) When a letter authorized under Rule 4-4(1)(a.1) is sent to the lawyer, the Executive Director must provide the complainant with

(a) a copy of the letter, or

(b) if directed by the Discipline Committee, a summary of the letter.

(2) A letter authorized under Rule 4-4(1)(a.1)

(a) does not form part of the lawyer's professional conduct record, and

(b) is not admissible in the hearing of a citation under this Part.

[added 07/05]

Conduct meeting

4-6.2 (1) A conduct meeting must be held in private.

(2) No record of an order under Rule 4-4(1)(a.2) or of the conduct meeting forms part of the lawyer's professional conduct record.

(3) A Benchers or other lawyer who has participated in a conduct meeting is not permitted to testify in the hearing of a citation as to any statement made by the respondent during the conduct meeting, unless the matter is put in issue by the respondent.

[added 07/05]

Conduct Review Subcommittee

4-7 (1) The Discipline Committee or the chair of the Discipline Committee may appoint a Conduct Review Subcommittee to consider the conduct of a lawyer referred to the Subcommittee under Rule 4-4(1)(b).

(2) A Conduct Review Subcommittee

- (a) must include at least one lawyer,
- (b) may include one or more appointed Benchers, and
- (c) must be chaired by a Bencher or a Life Bencher.

[(2) amended 09/09]

Conduct review meeting

4-8 (1) A conduct review is an informal proceeding at which the lawyer

- (a) must appear personally, and
- (b) may be represented by counsel.

(2) Subject to subrule (3), a conduct review must be conducted in private.

(3) The Conduct Review Subcommittee may, in its discretion, permit the complainant to be present at all or part of the meeting, with or without the right to speak at the meeting.

[(2) amended 09/99]

Conduct Review Subcommittee report

4-9 (1) The Conduct Review Subcommittee must

(a) prepare a written report of its findings of fact, conclusions and any recommendations, and

(b) deliver a copy of that report to the lawyer, together with written notice that the lawyer has 30 days from the date of the notice to notify the chair of the Subcommittee in writing of any dispute as to the contents of the report and the reasons he or she disputes the contents of the report.

(2) If the Subcommittee considers it necessary for the effective consideration of the lawyer's dispute, it may order a further meeting.

(3) If a further meeting is ordered under subrule (2), Rule 4-8 applies.

(4) The Subcommittee must consider the lawyer's dispute and

- (a) amend its report as it considers appropriate, or
- (b) forward its report to the Discipline Committee without amendment.

(5) The Subcommittee must notify the lawyer in writing of its decision under subrule (4) and, if the report is amended, provide a copy of the amended report to

- (a) the lawyer, and
- (b) the Discipline Committee.

(6) After considering the Conduct Review Subcommittee's report, the Discipline Committee must do one or more of the following:

- (a) decide to take no further action on the complaint;
- (b) refer the lawyer to the Practice Standards Committee;

(c) recommend that a citation be issued against the lawyer;

(d) rescind the decision under Rule 4-4(1)(b) to require the lawyer to appear before the Conduct Review Subcommittee, and substitute another decision under Rule 4-4(1).

(7) A member of the Discipline Committee who has participated in the Conduct Review Subcommittee is not, for that reason, precluded from participating in and voting on a decision under subrule (6).

...

[(6) amended 07/05; (8) amended 10/07]

...

Publication and disclosure

4-11 (1) The Executive Director may publish and circulate to the profession a summary of the circumstances of a matter that has been the subject of a conduct review.

(2) A summary published under subrule (1) must not identify the lawyer or complainant unless that person consents in writing to being identified.

(3) If a complaint giving rise to a conduct review is known to the public or if a conduct review is ordered in a matter that was the subject of a citation that has been rescinded, the Executive Director may disclose

(a) the fact that the lawyer is or was required to appear before the Conduct Review Subcommittee, and

(b) the decision of the Discipline Committee under Rule 4-9(6).

...

[heading amended, (3) to (5) added 10/03]

Evidence of conduct review at the hearing of a citation

4-12 If a hearing is held on a citation issued following a conduct review,

(a) the Conduct Review Subcommittee's written report is not admissible at the hearing, and

(b) no member of the Conduct Review Subcommittee is permitted to testify as to any statement made by the lawyer during the conduct review, unless the matter is put in issue by the respondent.

Direction to issue or rescind citation

4-13 (1) The chair of the Discipline Committee or any 3 Benchers may order a hearing into the conduct or competence of a lawyer by directing that the Executive Director issue a citation against the lawyer.

(2) At any time before a panel makes a determination under Rule 4-35, the Discipline Committee may rescind a citation and substitute another decision under Rule 4-4(1).

[(2) amended 04/08]



For immediate release

September 15, 2009

Law Society orders two lawyers to undergo a conduct review

Vancouver — The Law Society of BC has ordered lawyers Mobina Jaffer and Azool Jaffer-Jeraj to undergo a conduct review to consider complaints that they engaged in excessive and inaccurate billing of the client and failed to fully and fairly inform a client about their retainer.

The decision by the Law Society's discipline committee follows a society investigation launched after a client – the Order of the Oblates of Mary Immaculate – sued the two lawyers and their firm, accusing them of overbilling the Order for legal work done from 2000 to 2004. The lawyers and their firm had billed the religious order \$5.1 million in legal fees.

The investigation was suspended pending the outcome of the law suit, which ultimately was settled out of court.

The conduct review will be scheduled for the first available date.

"Undergoing a conduct review is a serious matter for any lawyer," said Stuart Cameron, Director of Discipline.

A conduct review is one of several disciplinary responses available to the Law Society in regulating members of the legal profession in BC. When a review is ordered, the lawyer must appear before a Conduct Review Subcommittee.

The Subcommittee may make recommendations to the Discipline Committee, which may then decide to take no further action, refer the lawyer to the Practice Standards Committee or order a public hearing.

The Law Society of BC was incorporated in 1884 and is the governing body of the legal profession in BC. Under the provisions of the Legal Profession Act, the Law Society is responsible for the licensing, professional conduct and discipline of the more than 10,000 lawyers in BC.

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For immediate release

April 27, 2010

Law Society of BC concludes case

Vancouver – The Law Society of BC has concluded its investigation into the conduct of Mobina Jaffer, QC, and Azool Jaffer-Jeraj.

The Law Society launched an investigation following allegations of overbilling, made in a 2005 lawsuit against Jaffer, Jaffer-Jeraj, and their law firm, filed by the Order of the Oblates of Mary Immaculate. The lawyers settled with the client out of court, and the Law Society resumed its investigation, which had awaited the outcome of the lawsuit.

In 2009, the Law Society Discipline Committee ordered Jaffer and Jaffer-Jeraj to appear before conduct review subcommittees.

Jaffer and Jaffer-Jeraj have now appeared before separate subcommittees. The Law Society's Discipline Committee, at a regular meeting in March 2010, agreed with the recommendations of those panels that no further action be taken.

"Appearing before a conduct review panel is serious and it remains on a lawyer's conduct record," said Stuart Cameron, the Law Society's Director of Investigations. "The Discipline Committee was satisfied that no further action is required to protect the public."

The Law Society of BC is the governing body of the legal profession in the province. Under the provisions of the Legal Profession Act, the Law Society is responsible for the licensing, professional conduct and discipline of the more than 10,000 lawyers in BC.

-30-

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Conduct review

Following consideration of a complaint, the Discipline Committee may order a lawyer to appear before the Conduct Review Subcommittee.

Rule 4-11 permits the Executive Director to publish and circulate to the profession a summary of a matter that has been the subject of a conduct review. A summary published under this rule must not identify the lawyer or the complainant.

Since conduct reviews are private and confidential, publication of findings is not generally carried out unless the matter is of particular interest or instructive to the membership as a whole.

Lawyer 8

This conduct review arose from a complaint of sexual harassment received by the Law Society.

Lawyer 8 was a senior partner at the firm where the complainant was an articled student and later a junior lawyer. While the complainant was an articled student, Lawyer 8 made romantic advances toward her, which made her uncomfortable. She complained to the partnership of the firm, who spoke to Lawyer 8 and received a commitment from him not to act in such a way toward the complainant. They asked the complainant to report any further infractions.

The following year, an intimate relationship began between Lawyer 8 and the complainant, which lasted approximately three years.

Lawyer 8 disputed that sexual harassment had occurred, claiming that the events between himself and the complainant were consensual. The complainant stated that the relationship arose from unwelcome conduct; Lawyer 8 was persistent in his advances, he was in a position of authority and that eventually she gave in.

Sexual harassment was defined by the Supreme Court of Canada in *Janzen v. Platy Enterprises* as “unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of sexual harassment.”

Power plays a key role in the analysis of whether conduct is unwelcome. *Dupuis v. British Columbia (Ministry of Forests)* established that the burden rests with the manager to be certain that any sexual conduct is welcomed by the employee and continues to be welcome.

Lawyer 8 told the Subcommittee that he feels his colleagues and staff enjoy what he considered to be light-hearted, flirtatious but harmless banter around the office. The Subcommittee urged him to recalibrate his sense of what is small-talk and what is offensive behavior.

The Subcommittee found that Lawyer 8 betrayed his partners, potentially exposing them to both legal liabilities and potential public embarrassment by engaging in an affair with a junior lawyer. While the firm is not excused for its general failure to take any effective steps concerning the matter, the Subcommittee noted that Lawyer 8 made commitments to the firm that he did not keep.

The Subcommittee found that Lawyer 8 displayed remarkably little insight into his conduct. It is difficult for the Subcommittee to accept that after two decades of jurisprudence on the nature and legal consequences of sexual harassment that a senior lawyer could be so unaware of his obligations.

Lawyer 8 assured the subcommittee that he understood the matter and that his conduct would not recur.

Based on the above, the Conduct Review Subcommittee recommended no further action.

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Conduct review

Following consideration of a complaint, the Law Society's Discipline Committee may order that a lawyer appear before the Conduct Review Subcommittee.

Rule 4-11 permits the Law Society to publish and circulate to the profession a summary of the circumstances of a matter that has been the subject of a conduct review. A summary published under this rule must not identify the lawyer or the complainant.

The Discipline Committee has identified the following conduct review as one that would provide guidance to the profession.

Re: A Lawyer

Lawyer D felt personally offended by the actions of a union. While the union's actions did not affect him personally, he felt the organization was acting unlawfully and decided to launch a class action lawsuit against the union.

Lawyer D acknowledged that in addition to his concerns about the legality of the union's actions, he was also motivated to file the lawsuit by the publicity he felt it would generate for him.

The lawyer told the Conduct Review Subcommittee that he did not want to launch the class action in his own name because he did not want to risk being exposed to a judgment for costs. Consequently, he contacted a former client and asked her if she wished to be the nominal plaintiff in the class action. The former client agreed to meet the lawyer the following day to discuss the matter, but did not attend the appointment. Lawyer D filed the class action in her name without further discussion with his former client because he believed media coverage was important at an early stage to attract potential members for the class action.

The former client learned she had been named as the plaintiff in the class action when contacted by the media two days later. She stated publicly that she had not instructed the lawyer to file the lawsuit. Lawyer D filed a notice of discontinuance as soon as he learned that his former client did not wish to be the nominal plaintiff in the action.

The Conduct Review Subcommittee emphasized to the lawyer the critical importance of obtaining clear instructions before filing a lawsuit. The Subcommittee also noted that a lawyer should not commence litigation for personal reasons or to generate publicity for himself or herself.

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A look at the anti-discrimination rules

Sexual harassment in the profession: a conduct review

Plaintiff's counsel: "What is your position in this matter?"

Defendant's counsel: "I prefer the missionary position."

Discrimination by lawyers on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age is prohibited under Chapter 11, Rules 1-4 of the *Professional Conduct Handbook*, first passed in September, 1992 as Ruling G/13.

The ruling was considered in a lawyer's recent conduct review — an informal, private session where the lawyer comes before a Benchers and another practitioner. Conduct review panels consider the facts, point out problems, suggest possible alternative actions by the lawyer and give advice on solving the problem, which the lawyer frequently accepts.

Though conduct review reports are for consideration by the Discipline Committee, anonymous summaries are sometimes published to the profession for guidance.

With the new anti-discrimination rules, the Discipline Committee believes publishing the summary of this conduct review will make it clear the Law Society takes complaints about sexual harassment very seriously and will show the approach taken on these complaints.

The facts

While sitting in Chambers waiting for the hearing of a contested motion where several lawyers were acting for clients, plaintiff's counsel, a woman, asked counsel for one of the defendants, "What is your position in this matter?" His response was "I prefer the missionary position." Plaintiff's counsel said "That's sexual harassment." The defendant's counsel made no further response.

Three weeks later, after time for reflection, the plaintiff's lawyer wrote to the defendant's lawyer demanding a written apology. He immediately faxed her letter back with a handwritten reply that said "If I have offended you in any way I apologize."

The plaintiff's lawyer made a complaint to the Law

Society and the complaint was referred by the Discipline Committee for a conduct review under Rule 460 of the Law Society Rules. She also complained to the Gender Bias Committee of the Law Society, which was then holding hearings.

Though invited to attend the conduct review hearing, the complainant declined to do so.

At the conduct review, the member said that he had forgotten about the incident until he received the complainant's letter, but that when he received the letter he apologized immediately. He said that he was immediately and genuinely sorry and that he had no intention to sexually harass the complainant, but realized that his comment was completely stupid and inappropriate. He characterized the relationship between himself and the complainant in the litigation as acrimonious.

Sexual harassment

The conduct review panel said the member's comment was a clear instance of sexual harassment. Sexual harassment is speech or behaviour that demeans its target by imposing unwanted sexualized behaviour into a work-related context. The Supreme Court of Canada held, in *Janzen v. Platy Enterprises*¹ that sexual harassment is a form of sex discrimination. Sexual harassment underscores women's differences from, and implies inferiority with respect to, the dominant male group. The Court said:

Sexual harassment is not limited to demands for sexual favours made under threat of adverse job consequences should the employee refuse to comply with the demands ... This form of harassment, in which the victim suffers concrete economic loss for failing to submit to sexual demands, is simply one manifestation of sexual harassment. Sexual harassment also encompasses situations in which sexual demands are foisted upon unwilling

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Sexual harassment . . . continued from page 1

employees or in which employees must endure sexual groping, propositions, and inappropriate comments, but where no tangible rewards are attached to involvement in the behaviour. Sexual harassment in the workplace may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of harassment.²

Sexual harassment ranges from isolated incidents of sexual "jokes" to persistent sexual assaults.

Arjun P. Aggarwal³ sets out useful examples of sexually harassing verbal behaviour, which need not be specifically directed at the victim to constitute sexual harassment:

- continuous idle chatter of a sexual nature and graphic sexual descriptions
- offensive and persistent risqué jokes or jesting and kidding about sex or gender-specific traits
- suggestive or insulting sounds such as whistling, wolf-calls or kissing sounds
- comments of sexual nature about weight, body shape, size or figure
- pseudo-medical advice such as "You might be feeling bad because you didn't get enough" or "A little tender loving care (TLC) will cure your ailments"
- staged whispers or mimicking of a sexual nature about the way a person walks, talks, sits, etc.
- derogatory or patronizing name calling
- innuendoes or taunting
- unwelcome remarks
- rough and vulgar humour or language
- jokes that cause awkwardness or embarrassment
- gender-based insults or sexist remarks
- comments about a person's looks, dress, appearance or sexual habits
- inquiries or comments about an individual's sex life and/or relationship with sex partner
- remarks about a woman's breasts, buttocks, vagina and her overall figure
- speculations about a woman's virginity, her choice of sexual partner or practices
- verbal threats or abuse
- telephone calls with sexual overtones

Verbal sexual harassment may include comments that are self-evidently offensive, or comments that may not be self-evidently offensive but are objected to, and that then continue. Sexual harassment is not objectionable because

it is *sexual*: rather it is harassment because it transforms a working relationship of equality between people into a sexualized context in which women are systematically disempowered and thereby reinforces an inferior position for women.

Sexual harassment is not a matter of intent. As in other human rights matters, it is no defence to say that one did not intend to harass the complainant. Nor is it relevant that there had been an acrimonious relationship over the course of the case between the complainant and the member.

In the view of the conduct review panel, the comment by the member ("I prefer the missionary position") is clearly an example of a sexually harassing remark. There is no ambiguity in the expression: it is one that explicitly imports, between the speaker and the hearer, a sexualized hierarchy in which the man is on top and the woman is subservient.

Where a comment may be objectionable to some people and not to others, it will become harassment if the hearer tells the speaker that she or he objects to that kind of remark. That might be the case, for example, if a person objects to the making of sexist remarks or the telling of sexist jokes even though the remarks or jokes are not specifically aimed at the person objecting.

Role of the Law Society

The Law Society has a clear role in governing conduct between members of the profession. The Benchers recently adopted a new ruling dealing with discrimination:

Chapter 11, Rules 1-4 [formerly Ruling G/13] Discrimination

1. A lawyer shall not discriminate on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age;
2. For the purposes of this Ruling, age means less than 65 years of age;
3. Sexual harassment is a form of discrimination on the basis of sex;
4. This Ruling does not preclude any program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups.

This ruling is consistent with human rights legislation that makes employers liable for sexual harassment in the workplace.

In carrying out its responsibilities governing conduct between members under this ruling, the Law Society has a sometimes difficult line to draw between ordinary banter and traded insults characteristic of an adversarial profession and comments that cross the line to sexual harassment. In this regard the report of the study on *Women in the Legal Profession* is sobering: 68.2% of women lawyers

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surveyed have experienced or observed other women lawyers subjected to unwanted teasing, jokes or comments of a sexual nature by other lawyers. It is highly unlikely that male lawyers believe that they themselves routinely inflict sexually harassing behaviour on the women in the profession. This difference in perception accounts for the schism of understanding between men and women in the profession over this issue. Most men do not understand the ways in which their own behaviour may be experienced as harassing.

There is a high cost for women lawyers complaining about behaviour of this kind. Ours is a profession in which women have often had to show that they are "just one of the boys" to succeed. Women making complaints may be faced with a risk of harm to their clients, to their continuing working relationships with male lawyers, or, if the harasser works in the same firm, to potentially adverse consequences to their own advancement.

The 1992 report of the Law Society Gender Bias Committee, *Gender Equality in the Justice System*, includes a model policy on workplace harassment, which the Committee urges law firms to adopt. The policy has three elements:

- a statement of principles committing the firm to a collegial working environment that promotes equal opportunities and is free of workplace harassment;
- the creation of a procedure within the firm to deal with complaints of workplace harassment (and a model procedure is set out); and
- the adoption of an education program for all

members and employees of the firm about workplace harassment.

The conduct review panel agreed that the measures proposed by the Gender Bias Committee are both necessary and appropriate to counter problem of sexual harassment in the profession effectively.

Disposition

The panel considered several factors on the conduct review. First, the member's comment was unambiguously one of sexual harassment. Second, of behaviour that constitutes sexual harassment (from an isolated occurrence of a verbal nature to persistent sexual assault), this incident falls at the less severe end of the spectrum. Third, although the member did not apologize immediately after the remark, he apologized immediately on receiving the complainant's letter. Fourth, the member was consistent in advising the panel that he considered his behaviour both rude and inappropriate and that he sincerely regretted having made the remark.

In general, when the Discipline Committee refers a matter to a conduct review panel for consideration, no further action is recommended if the conduct review panel is satisfied that the behaviour complained of is an isolated incident that the member will not repeat.

In the end, the panel recommended that the Discipline Committee take no further action.

¹ (1989) 59 DLR (4th) 352

² Janzen at 374-375

³ *Sexual Harassment in the Workplace*, Second Edition Butterworths, Toronto and Vancouver, 1992.□

Breach of accounting rules, confusion of law practice and business

GARY MALCOLM CAMPBELL

Vancouver, B.C.

Called to the Bar May 14, 1979

While conducting a law practice in partnership with another lawyer, the member breached Ruling B/8 [now Chapter 7, Rule 6] of the *Professional Conduct Handbook* by failing to distinguish between the law firm and TF Corporation, a business owned by the member.

The law firm and TF Corporation shared the same office space, and their names appeared together on both the lobby directory and the office door. In many instances the billing and trust accounting practices for client funds reflected a confusing overlap between the law firm and the business corporation.

TF Corporation on one occasion rendered a bill to a person who was not a client of the corporation, but rather of the law firm. In another instance, where TF Corporation had provided consulting services to a client, it was the law firm that issued an account for "professional services" even

though the firm had done no work for the client. Another client was billed by both the corporation and the law firm, and there was some confusion as to the services being performed by each. Most disbursements paid on behalf of the law firm's clients were in fact paid by TF Corporation and then billed to the client through the law firm.

As a partner in his law firm, the member also failed to ensure the firm complied with Law Society accounting rules on several client files. The firm breached the accounting rules by depositing client funds to the law firm general account prior to or without billing the client; transferring client money from the trust account to the general account prior to or without billing the client; transferring client money from the trust account by book entry and not by cheque; and holding client trust money in an account not designated as "trust." The firm failed to prepare monthly trust reconciliations, to record transactions promptly, to maintain client ledgers for non-trust transactions or a record of billings, and to prepare and file an accountant's

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In circumstances where lawyer or paralegal misconduct must be addressed but formal discipline proceedings are not warranted, the Law Society may authorize a Regulatory Meeting. At its conclusion, the Regulatory Meeting may be publicly noted. It may be authorized in circumstances where the lawyer's or paralegal's conduct occurred in a public forum, and the public would reasonably expect a Law Society response to the issue.

March 18, 2010

RE: Richard Emile Anka, 1968, Toronto (Lawyer/Licensee)

The Regulatory Issues

The Lawyer was alleged to have engaged in sharp practice on or about July 20, 2007, when he instituted default proceeding in court file no. 07-CV-329949PD3, without notice to the defendant's lawyer.

The Lawyer was also alleged to have written letters dated July 6 and 12, 2007 to the defendant's lawyer and others regarding court file no. 07-CV-329949PD3, in July 2007, in a manner that was uncivil and inconsistent with the proper tone of the professional communication from a lawyer.

Regulatory Meeting Outcome

Pursuant to the Law Society's policy on Regulatory Meetings, a discussion took place concerning the regulatory issues and the applicable *Rules of Professional Conduct*.

The members of the Proceedings Authorization Committee were of the view that it was improper for the Lawyer to institute default proceedings without notice to the defendant in the face of pending motions for orders:

- a. to dismiss the action for lack of jurisdiction; and

b. to extend the time for the filing of the Statement of Defence

and contrary to the arrangement not to note the defendant in default, which the defendant's lawyer believed to be in place in mid-May 2007.

The Committee also noted that the Lawyer's conduct was aggravated by the two letters the Lawyer wrote to the defendant's lawyer and copied to other members of the bar.

The Committee made particular reference to the comments on the Lawyer's conduct that were made in two decisions in the underlying litigation by the Hon. Mr. Justice Newbould, who wrote that the Lawyer's actions were "misleading in the extreme" and that ".....the correspondence that I have discussed are actions that should not be condoned but rather censured. The *Rules of Professional Conduct* and the Principles of Civility adopted by the Advocates' Society are intended to prevent the kind of correspondence that was sent...."

The Committee drew the Lawyer's attention to sub-rules 4.01 (6), 6.01 (1), 6.03 (3) and 6.03 (5) of the *Rules of Professional Conduct*. The Committee reminded the Lawyer that even in acrimonious, high-profile litigation, a lawyer's obligation is to avoid sharp practice, to act in good faith and to treat opposing counsel and all persons with whom the lawyer has dealings in the course of litigation with courtesy and civility. The Committee noted that the Lawyer is a senior member of the bar with the ability to influence junior lawyers as they develop their practice styles.

The Lawyer acknowledged that he conducted himself in a manner that was inconsistent with the *Rules of Professional Conduct*. In particular, he acknowledged that it was improper to institute default proceedings without notice to the defendant in the circumstances of this case, and that his letters to the defendant's lawyer were uncivil. In light of his discussions with the Committee, the Lawyer has committed himself to observing the principles of civility.

The members of the Proceedings Authorization Committee agreed that the discussion was useful, and concluded that having addressed the regulatory issues, there will be no further action regarding this matter.

(Counsel for the Society, Amanda Worley/the Lawyer attended in person and was represented by Sylvia Tint)

February 9, 2010

RE: Anthony Paas, 1984, Toronto (Lawyer/Licensee)

The Regulatory Issues

The Lawyer acted for a client who was the defendant in a private prosecution. He

was alleged to have failed to treat the Ontario Court of Justice with candour and to have engaged in sharp practice by asking the Justice of the Peace to have the matter dismissed for want of prosecution, without notice to the opposing party and in the absence of opposing counsel, when he knew that an order quashing a summons to his client was under appeal and that the opposing party intended to proceed with the prosecution, and thereafter by failing to notify opposing counsel that he had done so.

Regulatory Meeting Outcome

Pursuant to the Law Society's policy on Regulatory Meetings, a discussion took place concerning the regulatory issues and the applicable *Rules of Professional Conduct*. The Committee reminded the Lawyer that a lawyer's competing obligations - to the client, opposing counsel, and the tribunal - will sometimes be difficult to reconcile. However, when the information that the lawyer needs to provide to the tribunal in order to ensure they are meeting their obligation to be fair and candid is the procedural history and/or status of the very matter before the tribunal, there ought to be no such difficulty. Despite the potential advantage to his client of remaining silent, the Lawyer was obligated by his duty to treat the tribunal with candour to advise the Justice of the Peace of the relevant related proceedings. Similarly, he was obligated to notify opposing counsel of the steps he had taken to have the prosecution dismissed.

In the unusual circumstances that arose (of the prosecution being unrepresented) the Lawyer failed to advert to the broader obligations imposed upon him as a result. The Lawyer acknowledged that his conduct in this matter fell below the standards expected of him by the Law Society, in regards to both his lack of candour with the Ontario Court and his failure to advise opposing counsel of the dismissal of the charges thereafter.

The Committee noted that the Lawyer has had a long and otherwise unblemished career and, by virtue of the Judgment of the Court of Appeal, was already the subject of implicit criticism in a public forum for this conduct. The Committee concluded that having addressed the regulatory issue, there will be no further action regarding this matter.

(Counsel for the Society, Leslie Maunder / The Lawyer was unrepresented and attended in person)

October 21, 2009

Re: Gerald Sternberg, 1971, Toronto, (Lawyer/Licensee)

The Regulatory Issues

The Lawyer was alleged to have failed to treat the Ontario Racing Commission (the "ORC") with courtesy and respect, and failed to conduct himself in such a way as to maintain the integrity of the profession, contrary to subrules 4.01(1), 4.01(6) and 6.01(1) of the *Rules of Professional Conduct*.

While cross examining a witness in a hearing before the ORC's Hearing Panel, the Lawyer addressed the chairman of the panel in terms that were discourteous and disrespectful of the panel and the chairman.

Regulatory Meeting Outcome

Pursuant to the Law Society's policy on Regulatory Meetings, a discussion took place concerning the regulatory issues and the applicable *Rules of Professional Conduct*. The Lawyer conceded his conduct fell short of the standard expected of lawyers. He agreed his comments were very unfortunate and he regrets having made them. He indicated that the incident should never have happened, had never happened before and he hopes that it will never be repeated.

The members of the Proceedings Authorization Committee noted that at a meeting of the ORC held to review the Lawyers conduct before the ORC's Hearing Panel, the Lawyer had apologized three times for his remarks at the hearing.

The Committee reminded the Lawyer that while appearances in before tribunals can be stressful, and sometimes challenging, a lawyer's obligation is to maintain a civil and respectful demeanour at all times even if he or she feels provoked or that he or she has been treated unfairly. The Committee concluded that having addressed the regulatory issues, there will be no further action regarding this matter.

July 9, 2009

RE: Stephan Intraligi, 2007, Woodbridge (Lawyer/Licensee)

The Regulatory Issues

The Lawyer was alleged to have failed to encourage public respect for the administration of justice, contrary to subrule 4.06(1) of the *Rules of Professional Conduct*, and to have conducted himself in such a way that failed to maintain the integrity of the profession, contrary to subrule 6.01(1), in a *Highway Traffic Act* proceeding in which he defended himself. At the conclusion of the proceedings there was an exchange during which the Lawyer commented on his experience in the Court in terms that were sarcastic and disrespectful of the Court and the Justice of the Peace, and after he made the comments he failed to respond to a direction of the Court to return, prompting the Justice of the Peace to request the assistance of the attending police officer.

Regulatory Meeting Outcome

Pursuant to the Law Society's policy on Regulatory Meetings, a discussion took place concerning the regulatory issue and the applicable *Rules of Professional Conduct*. The Lawyer acknowledged that comments he made during the proceeding were discourteous and disrespectful to the Court. He further acknowledged that making sarcastic comments to a judicial officer is never an appropriate way to deal with feelings of agitation which arise during proceedings. The Committee noted that while appearances in court can be stressful, and sometimes challenging, a Lawyer's obligation is to maintain a civil and respectful demeanour at all times even if he or she feels provoked or is under stress. The Committee concluded that having addressed the regulatory issues, there will be no further action regarding this matter.

(Counsel for the Society, Lisa Freeman / The Lawyer was unrepresented and attended in person)

June 10, 2009

RE: Jeffrey Philip Viater, 2009, (Lawyer/Licensee - Applicant for L1 License at the time of the Regulatory Meeting)

The Regulatory Issue

The Applicant was alleged to have, while a law student working for the defence during the criminal trial of *R. v. Richard Wills*, contacted a witness on August 30, 2007 and arranged a three-way conversation with the witness and the accused. During the conversation, the accused attempted to prompt the witness's memory. The witness denied making the utterances suggested by the accused and said that he would not repeat them in court.

The Background Issues

The following incidents that were alleged to have occurred while the Applicant was a law student could have been the subject of a good character hearing, and are relevant as background to the regulatory issue considered:

- On February 28, 2007, the Applicant disregarded courthouse security procedures and arranged for Mr. Wills' two teenage children to attend within a secured area of the courthouse to visit Mr. Wills, without the knowledge or permission of court staff.
- On May 31, 2007, the Applicant, who was sitting next to Mr. Wills while court was in session, saw that Mr. Wills had typed a message on a laptop screen indicating that if the press had any questions, the defence lawyers could answer them. The message was visible to the public. The Applicant failed to

- alert counsel or the court to the incident.
- On June 4, 2007, defence counsel retained a friend of the Applicant as a photographer to reproduce autopsy photographs for defence presentation. On the instructions of counsel, the Applicant instructed the photographer to take confidential autopsy photographs of the murder victim for reproduction at Japan Camera Centre, and the photographer performed that task.

Regulatory Meeting Outcome

Pursuant to the Law Society's policy on Regulatory Meetings, a discussion took place concerning the regulatory issue and the applicable *Rules of Professional Conduct*. The Proceedings Authorization Committee noted that the Applicant has many letters of reference from upstanding members of the community, and that his conduct during the trial appeared to be a diversion from his usual character.

During the meeting, a discussion with the Applicant and his counsel took place. The Applicant stated that the process of the Law Society's investigation delayed the consideration of his admission to the bar, and he assured the Committee that he will never engage in similar conduct again. The Committee is satisfied that the Applicant now appreciates that he made errors in judgment during the course of the *R. v. Wills* trial.

The Committee is satisfied that the discussion was meaningful, and that the Applicant will never misconduct himself in the future. The Committee concluded that there will be no further action in this matter because it has now addressed the regulatory issue.

(Counsel for the Society, Elaine Strosberg/ Counsel for the Applicant, Stephen Traviss)

October 1, 2008

Re: Michael Philip Morse, 1975, Toronto (Lawyer/Licensee)

The Regulatory Issues

1. The Member was alleged to have been the dupe of an unscrupulous client. The Lawyer is also alleged to have signed a false declaration on a passport with respect to a client, which fact the Lawyer admitted during his testimony in conjunction with criminal charges laid against him on October 26, 2004.

Regulatory Meeting Outcome

Pursuant to the Law Society's policy on Regulatory Meetings, a discussion took place

concerning the regulatory issues and the applicable *Rules of Professional Conduct*. The members of the Proceedings Authorization Committee are mindful of the fact that the Lawyer signed an undertaking not to practise shortly after he was charged with a number of criminal offences, and that the Lawyer ceased practising law for twenty-three months. The members of the Committee are also mindful of the fact that in agreeing to a Regulatory Meeting, the Lawyer has saved his fellow licensees from bearing what would be substantial costs of a prosecution in this matter.

During the meeting a discussion with the Lawyer and his counsel took place. The members of the Committee are satisfied that the Lawyer appreciates that he blurred the line between a professional and a personal relationship with a client, and that he now appreciates the dangers inherent in so doing. The Lawyer informed the Committee that the process of the criminal trial and the Law Society interim suspension proceedings were such that he is unlikely to ever be duped by a client again. At the time of the misconduct, the Lawyer was practising out of his home and was isolated. He now practises in association and is undergoing treatment. The Committee is satisfied that the discussion was fruitful and that this Lawyer is unlikely to misconduct himself similarly in the future. The Committee concluded that having addressed the regulatory issue, there will be no further action regarding this matter.

(Counsel for the Society, Lisa Freeman / Counsel for the Lawyer, Anthony Bryant)



University
of Victoria

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→ Boncitals: INFO →

Fall 2010

Mr. Tim McGee, Executive Director
The Law Society of British Columbia
845 Cambie Street
Vancouver BC V6B 4Z9

Dear Mr. McGee,

Thank you for so generously supporting the University of Victoria through your contributions to the **Pamela Murray, QC Memorial Scholarship** Endowment Fund. Enclosed you will find an endowment report for the year ended March 31, 2010 along with our publication "Investing in Achievement" which highlights the benefits and impact of philanthropic support.

The University of Victoria Foundation board oversees over 1,000 endowments currently valued at approximately \$260 million. In the 2009-2010 fiscal year these endowments provided \$5.4 million in scholarships, bursaries, awards, fellowships, chairs and departmental funds. The endowments benefitted from the recovery of the financial markets during 2009-2010 and achieved an overall return of 22.5%. In the 2009 Canadian Association of University Business Officers' (CAUBO) survey, UVic's endowment performance was in the top 25% of Canadian universities.

Your support provides UVic students with a world class education. When our graduates take their education into the world, you can be assured that you have invested in a bright future for our community and for Canada. On behalf of our faculty, staff and students I extend my sincere thanks for your continued support of the University of Victoria.

If you have any questions on the endowment fund update, please contact Maureen Olson in the Donor Relations office at 250-721-8909 or email olsonm@uvic.ca.

Sincerely,

Shannon von Kaldenberg
President, University of Victoria Foundation and
Associate Vice-President, Alumni and Development

Endowment Fund Update 2009/10

Pamela Murray, QC Memorial Scholarship

This fiscal snapshot is based on the most recent audited financial statements of the University of Victoria Foundation, and the approved budget for the coming year.

Last Fiscal Year 2009/10:

Principal Balance on April 1, 2009 (Including matching of \$9,330) ¹	\$27,717
Capitalization from Expendable to Principal for 2009 ²	\$0
Donations to Principal for 2009/10	\$0
Principal Balance on March 31, 2010	\$27,717

Expendable Balance on April 1, 2009	\$-6,715
Investment Income earned in 2009/10	\$4,344
Top-up Donations for 2009/10	\$0
Disbursements to beneficiaries 2009/10 ³	\$-1,175
Disbursements to UVic (Provincial Matching Program) in 2009/10 ⁴	\$-76
Capitalization from Expendable to Principal for 2009 ²	\$0
Expendable Balance on March 31, 2010 ⁵	\$-3,622

Current Fiscal Year 2010/11:

Budget for disbursement for 2010/11 (approved by Fdn board)	\$1,175
Carry-forward from previous years ⁶	\$0
Total funds available to disburse for 2010/11	\$1,175

(For details on notes 1 through 6, please refer to the attached explanation.)



**University
of Victoria**

Explaining your matched fund update

1. **A matching donation** was received from the Provincial University Matching Program of the early 1990s and is included as part of the principal balance. See notes 3 and 4 regarding disbursement allocations.
2. **Capitalization from expendable to principal** ensures the fund provides inflation-adjusted income in perpetuity, an amount equal to the Consumer Price Index (CPI) is transferred from the expendable fund to the endowment principal fund annually. Canada's inflation rate was negligible in 2009; therefore, capitalization to principal was not done in 2009/10.
3. **Disbursements to beneficiaries** are based on current policy guidelines of 4.5% of the total endowment principal fund balance (less matching funds) plus 3.69% of the Provincial matching funds as of December 31. Disbursements may also include carry-forward from previous years.
4. **Disbursements to UVic** priority projects are based on current policy guidelines of .81% of the Provincial matching funds as of December 31.
5. **The expendable fund** balance has two components:
 - a) the **income stabilization account** which holds surplus investment earnings in reserve to smooth out fluctuations in investment returns and to help ensure spending distributions remain stable each year. Investment earnings are distributed first to the income stabilization account.
 - b) the **spending account** which may include carry-forward (unspent distributions from previous years). Each year the approved distribution of earnings will be transferred from the income stabilization account to the spending account.
6. **Carry-forward from previous years** may exist for a variety of reasons such as: the payment to the student crosses the fiscal year; or the student has deferred the award to the following year.

The **University of Victoria Foundation** policies that govern this fund are reviewed annually and can be found at:

Endowment Management Policy:

http://www.uvic.ca/shared/shared_obfoundations/UVic_Fdn_Revised_Endowment_Management_Policy_-_August_2009_revised.pdf

Statement of Investment Objectives and Guidelines:

http://www.uvic.ca/shared/shared_obfoundations/Investment_policy_8005_revised_November_2009.pdf

The **Audited Financial statements for the University of Victoria Foundation** can be found at:

<https://web.finance.uvic.ca/endowment/statements.php>

Questions about this report?

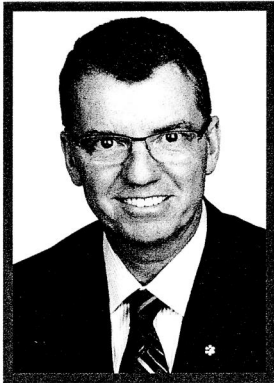
Please contact the Faculty Development Officer or Maureen Olson, Donor Relations Officer at (250) 721-8909/olsonm@uvic.ca.



University
of Victoria

University of Victoria, Canada
Vol. 1 No. 1 | 2010

Investing in achievement.



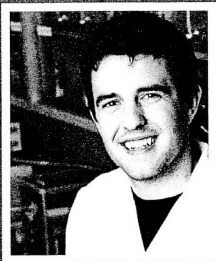
Thank you for your gifts in support of endowed student awards at the University of Victoria. It is both wonderful and inspiring to see your investments making a difference in the lives of our students. As you will read in the pages that follow, your generosity helps students realize their potential and fuels their success. Most of all, your generosity to our students reaches beyond the lives you touch directly; it helps build strong communities here and around the world.

We live in a time of rapid change and uncertainty. In these times, society looks to higher education to help shape the future, by contributing to innovation and by providing our students with a well-rounded education that cultivates thoughtful, enlightened citizens. As President of the University of Victoria, I have the honour and the privilege to work with you, our friends and supporters, who give so generously to create endowments that assist our students.

On behalf of the students, faculty, and staff of UVic, I am deeply grateful for your commitment and support. Your involvement makes it possible for the university to fulfil its mission, opening a world of possibilities for our students.

David H. Turpin, CM, PhD, FRSC
President and Vice Chancellor





“ Scholarships encourage and reward achievement. ”

Scholarships drive research and discovery

From breast cancer research to treating disease in Africa—for Brett Eyford, it's all part of a remarkable journey of discovery. And for this 3rd year PhD student in microbiology, it's a journey fuelled in part by the Donald Wagg Scholarship, awarded to outstanding graduate students for research excellence. Brett Eyford's passion for the sciences led him to the UVic lab of Dr. Terry Pearson, one of Canada's leading proteomics researchers. Proteomics is the study of the structure and function of proteins—the enzymes, antibodies and other molecules that make up our cells and tissues. Working with biomarkers (molecules in the blood that indicate the presence of disease), Brett assisted in the development of techniques that promise a radical improvement in early detection of breast cancer.

Graduating with an honours BSc in biochemistry in 2007, Brett went on to do graduate work with Dr. Pearson, shifting his focus from cancer research to parasitic diseases. In Kenya and Uganda, parasite-born sleeping sickness takes a deadly toll on both humans and domestic livestock. Brett traveled to Africa to assist in the development of new diagnostic tests for humans that can be utilized by doctors in the field where medical facilities are scarce.

“Scholarships encourage and reward achievement,” says Brett. “Receiving the Donald Wagg Scholarship allowed me to stay focused on my research without the worry of a financial shortfall. The Wagg family had a wonderful vision for what their gift could achieve—I'm very honoured to be a part of their hopes and aspirations.”



“ I feel I’ve had a good life and now I want to enhance the lives of others. ”

Philanthropic giving: supporting bright futures

As recent graduates of UVic’s school of music, Julie and Carli Kennedy’s adventures in music are just beginning. Both top music students, the identical twin sisters are pursuing a career in music as a performing duo—Carli on guitar and Julie, violin. And thanks to a scholarship given by Dr. Betty Kennedy (no relation), this dynamic duo got a boost in their studies too.

“The time commitment to study and practice is heavy, and the scholarships allowed us to focus on our musicianship without worrying about finances,” says Julie. “We’re so grateful for the support,” says Carli. “Scholarships provide the added inspiration that spurred us on.”

As a retired UVic professor of mathematics, Betty Kennedy wanted to make a difference in students’ lives. “I feel I’ve had a good life and now I want to enhance the lives of others.”

Betty chose to create scholarships in areas that reflect her personal interests: music, law, engineering and mathematics. “Mathematics was my own discipline,” she says, “law was my husband’s, engineering was my father’s and music because I love classical music.”

Award Types

The University of Victoria awards over \$3.9 million in entrance, transfer and in-course bursaries. Bursaries are non-repayable awards based on financial need and reasonable academic standing. These awards are for students who are receiving the maximum student loans available for their period of study and are Canadian citizens or permanent residents of Canada.

In recognition of outstanding students, UVic awards more than 3 million dollars in Entrance and In-Course Scholarships each year. Scholarships are non-repayable and are awarded to students on the basis of academic merit or excellence.

Fellowships are merit-based awards granted to outstanding students enrolled in graduate studies. These awards enable students to concentrate on their specialty, pursue their research and maintain a high academic standing.

1975 Vikes Men's Soccer Championship Award
Dr. Douglas Earl Alcorn Scholarship
Yvonne Allen Cancer Research Scholarship
Applebee's Vancouver Island Athletic Award
Kenneth L. Avio Honours Medal
John and Marilyn Bate Scholarship in Recreation & Health Education
British Columbia Masonic Foundation Bursary in Elementary Education
Beier Memorial Bursary
Dr. Shawn Cafferky Scholarship in Military History
Paige Cameron Memorial Bursary
Castaway Wanderers Men's Rugby Award
Helen Conlan Bursary
Kenneth H. Crook Memorial Scholarship in Law
C.T.W. Memorial Fellowship for Indigenous Students
Davison Undergraduate Scholarship in Germanic & Slavic Studies
Anthony Dawson Award
Dean's Entrance Scholarship
Department of Biochemistry & Microbiology Bursary
Department of Biochemistry & Microbiology Scholarship
Jack Ebbels Scholarship in Public Administration
Economics Alumni Scholarship
Faculty of Education Bursaries

Gordon and Hilda Fitch Scholarship
Friends of the Vikes Award
Thomas M. Hess Scholarship in Indigenous Language Revitalization
Dr. Mowafa Househ Entrance Scholarship
Steven A. Huesing Memorial Entrance Scholarship
Dr. Ed Ishiguro — Oak Bay Kiwanis Bursary
Christopher P. Kehler Memorial Prize in Family Law
Dr. David and Dorothy Lam Scholarship in Geography
Law Foundation Awards
Longton Scholarship
Mackay Family Scholarships
Ethel Dorothy McConnell Scholarship
Angus & Marjorie McPherson Memorial Scholarship
Michael Meloche Scholarship
Montalbano Scholars Fellowship
Bruce & Connie More Choral Music Scholarship
Joan E. Newton Scholarship in Nursing
Geoffrey & Alix O'Grady Scholarship in Linguistics
Eva Hannah Parlee Scholarship
Alfred and Adriana Potvin Scholarship in Ocean Science
Denis & Pat Protti Bursary
Ray and Sheila Protti Music Scholarship
Gavin Quiney Residence Life Leadership Scholarship
David Ritchie International Study Abroad Business Grants

Rotary Club of Saanich Scholarships
Don Rowlett Scholarship
Royal Victorian Fashion Society Costume Design Scholarship
Janos Sandor Scholarship
School of Nursing Undergraduate Bursaries
School of Public Administration Scholarship for Dispute Resolution
Margaret Catherine Seens Scholarships
Jack Shadbolt Scholarship
St. Andrew's & Caledonian Society Scholarship in Scottish Studies
John Stashuk Scholarship
R.K. Stewart Scholarship in Hispanic & Italian Studies
Jack and Margaret Todd Women's Golf Award
UNIGLOBE Geo Travel Athletic Award
UVic Foundation Scholarship
Marie E. Vertine Scholarship
Vikes Recreation Student Leadership Award
Vikes Men's Rowing Award
Vikes Swimming Award
Norma M. Wilson Graduate Scholarship
WIN Self Sufficiency Bursary
Zillah (Hobart) Wood Graduate Scholarship in the School of Nursing
Workplace-Family Wellness Graduate Scholarship

Contact us

Ms. Maureen Olson | Donor Relations Officer | 250-721-8909 | olsonm@uvic.ca | ISC 375G



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Photography | UVic Photo Services, UVic students, UVic Vikes Athletics (front left),
f8 Photographic arts/Gary McKinstry (UVic students/Donor inside pages)



University of Victoria

Annual Review September 2010



University
of Victoria

University of Victoria

Annual Review September 2010

The University of Victoria is driven to be the university of choice for outstanding students, faculty and staff who aspire to improve their world through exceptional learning and teaching, innovative research and real-life engagement within a welcoming and spectacular West Coast environment.



University
of Victoria



In June 2010, Canada's Governor General Michaëlle Jean visited campus to learn more about the work done by UVic's Institute for Child Rights and Development.



From the president

This June, I had the pleasure of greeting a most distinguished guest at the University of Victoria—the Governor General of Canada, Her Excellency the Right Honourable Michaëlle Jean—as she visited with UVic researchers improving children's rights and opportunities across the globe.

Of course we were delighted to receive Canada's titular head of state, but more importantly, this visit emphasized the drive she shares with our students, faculty, researchers and staff—a desire to improve our world. More than any singular quest for knowledge, the impulse to improve our understanding and to find solutions to a myriad of scientific and social problems connects all the pursuits of knowledge in a common cause: the improvement of the human condition.

The immense diversity of scholarly instruction and achievement is a defining characteristic of our university, helping UVic serve our community in many, many ways.

The many endeavours of our faculty, researchers, students and staff would not have been possible, however, without the support of our many community partners. The ongoing support of governments, foundations, corporations and individuals has been an essential element in helping UVic grow and become an international leader in a wide range of fields—from oceans and climate to health and society. At the same time, this support promotes an exceptional learning and teaching environment on one of North America's most vibrant and welcoming campuses.

I hope you'll agree, on perusing this year's Annual Review, that the breadth of achievement of our students, faculty and staff has been truly remarkable.

David H. Turpin, FRSC
President and Vice-Chancellor



Student experience

Real-life learning

At UVic, integrating research into the teaching curriculum is only the beginning for real-life learning. UVic has one of the largest experiential learning programs in Canada. With support and input from businesses, government and community partners, UVic students enrol in practicum courses to solve real-world problems, work in co-op placements around the globe, and engage in clinical education, service learning, laboratory and fieldwork opportunities. Every day, UVic students are receiving relevant, engaged and practical learning experiences far beyond the classroom.

A leader in co-operative education

The interest and support of employers around the world has helped UVic become a national leader in co-operative education. Nearly 2,700 co-op placements each year allow highly motivated students to alternate academic terms with paid, relevant work experience, while providing employers with assistance and a link to the most recent developments in their field. This year, geography and environmental studies student Amy Ganton worked as a research technician with Fisheries and Oceans Canada. “I was able to apply what I’ve learned about resource management to my co-op experience. This has really helped me focus my degree—something I wouldn’t have been able to do as well without the co-op program.”



Amy Ganton’s co-op work term was with the Department of Fisheries and Oceans.

UVic MBAs top national investment challenge

For the second time in five years, UVic MBA students have emerged on top in the *Financial Post* MBA portfolio management competition. The UVic team won by a “landslide” according to organizer David Pett of the *National Post*, ending the competition with a 43 per cent return. “Our strategy focused on three main areas of the market—energy, commodities and technology stocks,” says team member Kourosh Ahmadian. “By engaging in prudent stock analysis and research, we were able to identify value stocks that provided short-term gains and limited downside risk.”

Training lawyers in community service

Located in the heart of downtown Victoria, The Law Centre is a unique clinical education program that offers students a full term of experiential learning, providing advice, assistance and representation to clients who cannot afford to hire a lawyer. The Law Centre also runs public education programs and provides assistance in a number of specialized areas, including inmate legal services, shut-in and hospital aid, First Nations and Métis outreach, and a human rights clinic. The centre reflects UVic’s ongoing commitment to the integration of academic achievement, real-life learning and community service.

Profile UNCOVERING A LIVING HISTORY

Once every two years since 1998, historian Dr. John Lutz has taken graduate students on a month-long field school with the Stó:lō Nation in Chilliwack, BC. Students board for a week with Stó:lō families, and live in a longhouse for three weeks while they work together with Stó:lō mentors, staff and elders on a research project that the Stó:lō have identified as important to them. For the student participants, this kind of hands-on community research is education in its truest sense. It allows them to learn about history and community-driven research while expanding their horizons and forging new relationships based on respect and service to these communities. The field school has grown to include students and faculty from the University of Saskatchewan. Lutz’s research with and about First Nations reaches far beyond the classroom. His book *Makúk: A New History of Aboriginal-White Relations* won the Canadian Federation for the Humanities and Social Sciences’ 2010 Harold Adam Innis award for the best English language work in the social sciences.



Above (L to R): Ethnohistory field school co-instructor Dr. Keith Carlson (from the University of Saskatchewan) and members of the Stó:lō community. At left: Megan Harvey and Margaret Robbins also participated in the 2009 field school.

Supporting student excellence

UVic's academic programs, research projects and support services are all responding to a changing world. We constantly examine our support programs and teaching practices to ensure our students are challenged and engaged, so they develop a desire and capacity for learning and societal contribution that will last a lifetime.

A big boost for business students

As UVic Business celebrated its 20th birthday, entrepreneur and philanthropist Peter B. Gustavson gave the school and its future students a present to remember—\$10 million to finance scholarships, professorships, research and innovation. The funds will also support student experiences gained through competitions, case studies, and international exchanges, helping to ensure UVic Business remains competitive with other business schools in Canada and internationally. “I know what it's like to struggle to find the money for tuition and living expenses,” says Gustavson. “I'd rather see students spending their time pursuing their studies than coming up with ways to finance their education.”



Entrepreneur and philanthropist
Peter B. Gustavson

Supporting undergraduate research

This year, 53 undergrads from 33 academic units received new undergraduate research scholarships to support engaged research conducted alongside their professors. Initiated by the Vice-President Academic and administered by the Learning and Teaching Centre, these new scholarships sustain exceptional third and fourth year undergraduate students who might otherwise not be able to obtain direct research experience, providing them with a truly formative learning experience.

From hard knocks to Harvard

Graduating in June 2010 with a UVic degree in philosophy, Ryan Tonkin is already a world away from the life he found leaving home at the age of 14. Tonkin made his way to full-time studies at UVic after participating in UVic's University 101 program. This free 10-week introductory course in the humanities is offered to adults in Victoria whose economic and social circumstances normally post obstacles to university education. UVic philosophy professor Carrie Klatt, who instructed Tonkin for two summer courses in 2008, took note of his outlook and high GPA and helped Tonkin attain a full scholarship for his studies at UVic. Tonkin now plans to squeeze a master's degree in philosophy into just 16 months before he heads to Harvard in September 2011 to begin his law degree.

Profile 20 YEARS OF FUN SCIENCE

Celebrating science education with a bang and a bounce, through summer camps and classroom workshops across Vancouver Island and BC, UVic's Science Venture program has been building excitement long enough that many of its student leaders can recall their own experiences with the program. In 2010, the program celebrates 20 years of inspiring youth to explore the possibilities of science, engineering and technology, safely exploding countless bottle rockets and batches of foaming elephant's toothpaste. Science Venture received the 2009 Actua and GE Canada Award for leadership and innovation, recognizing Science Venture's level of commitment to inspire youth, its willingness to share expertise with other non-profit science and engineering camps, and for its Aboriginal outreach programming. In addition to its summer day camps on the UVic campus, Science Venture keeps busy year-round with satellite camps and classroom workshops across BC.



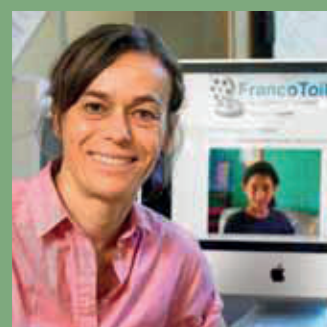
Science Venture instructors Lindsay Mackas-Burns and Maia Ludwig-Ives coach two camp participants in polymer ball production. At left: Science Venture Director Melisa Yestrau and education student Cameron Adam, also a Science Venture instructor

Inspiring teaching

The quality of our teaching sets the University of Victoria apart, securing our reputation as a supportive and stimulating learning community where students can realize their full potential. Backed by the resources of a leading research-intensive university, our faculty bring the fruits of their investigations into an engaging classroom setting that encourages creative problem solving and original thought. Our students consistently rank their learning experience among Canada's finest.

Bringing the francophone world to the classroom

Ensuring that real-world contexts are a part of language education is a driving passion for Dr. Catherine Caws, chair of UVic's Department of French. Caws developed a set of more than 40 computer-based French language video clips to help students explore and understand the vast diversity of francophone communities around the world and enrich her students' experience of language acquisition. Although it's proven to be a useful tool on its own, Caws has found that the value of the collection skyrockets as her students venture beyond the classroom, conducting their own interviews with Victoria-area francophones to further explore issues of immigration, language and cultural identity. The result, says Caws, is *extraordinaire*—"immersion in the video segments really seems to help the students feel more equipped to enter into a conversation, and stretch their own French skills to respond."



Catherine Caws with the database of video interviews she developed

Can you really *teach* creativity? Of course!

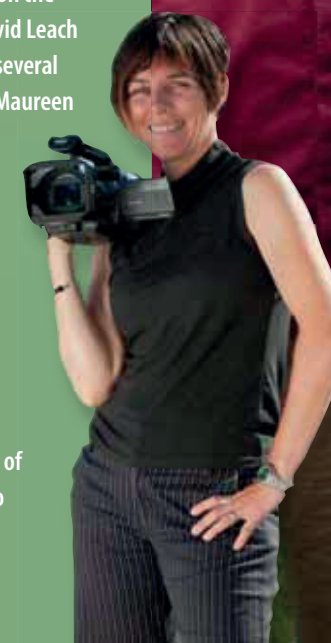
What does it mean to be engaged in the fine arts at a research-intensive university? Students and instructors are sharpening their senses around just that issue as part of a new interdisciplinary course launched this year, to explore and address the cognitive and behavioural science, as well as the aesthetics and skills, that underpin compelling creative processes. "The course approaches creativity as a complex and interesting research question with profound consequences for human beings," explains Faculty of Fine Arts Dean Dr. Sarah Blackstone. Open to students across all disciplines, this course is just the kind of creative leap that should help graduates unleash their own inventive potential for years and years to come.

A national award for distance education

From hitting the road in the '70s to teach public administration courses in the BC Interior to leading the development of Canada's only fully on-line MPA program, Dr. John Langford has spent his career pushing the boundaries of distance education. This life-long commitment to creative and effective teaching earned Langford the 2009 Pierre De Celles Award for excellence in teaching in public administration from the Institute of Public Administration in Canada. Early in Langford's career, teaching a distance course meant literally going the distance. "I did 'suitcase' courses where I'd go to another town for a weekend and teach public sector management courses," recalls Langford, who now relies more on the internet and sophisticated interactive teaching software to help students access lectures, interviews and even course readings online.

Profile WINNING WITH WORDS

With nationally recognized instructors including Lorna Crozier, Lynne Van Luven, Tim Lilburn and Bill Gaston shaping the curriculum, perhaps it's no surprise that UVic writing students and alumni are also rapidly gathering their own collection of literary prizes across Canada and the English-speaking world. A recent graduate, a current student, and an instructor in the program—Deborah Willis, Philip Kevin Paul and Joan MacLeod, respectively—were among the fiction, poetry and drama finalists for the Governor General's Literary Awards in 2009. In the space of a year, Canadian literary legend Lorna Crozier's memoir, *Small Beneath the Sky*, won the BC Book Prize for nonfiction, instructor David Leach followed up an award-winning book with several magazine writing awards, and filmmaker Maureen Bradley was awarded for short film direction at the Houston International Film Festival. Grad student Yasuko Thanh won the 2009 Journey Prize, and first and second place awards in the PRISM International story contest were won by UVic writers—student Eliza Robertson first, with recent graduate D.W. Wilson the runner-up. The many awards tell only the surface of the story, in which a community of writers seek the most compelling means to address a breadth of human experience.



(L to R) Writing instructors David Leach and Lorna Crozier, students Eliza Robertson and Yasuko Thanh, and instructor Joan MacLeod are just some of the UVic winners of significant literary prizes this year. At left: filmmaker and writing instructor Maureen Bradley.

Research depth

Climate, matter and energy



International
leadership
in climate,
oceans, matter
and energy

UVic's environmental achievements and basic science research have duly garnered international praise, and we continue to take strides to meet the challenges of the future. As issues of climate change assessment and mitigation and sub-molecular research into the nature of matter and energy bring these fields into the spotlight, UVic is playing an increasingly prominent role on the national and international stage.

TRIUMF builds powerful new accelerator

UVic is playing a leading role in a major expansion at TRIUMF, Canada's national laboratory for particle and nuclear physics. In June, the BC government announced a \$30.7-million investment to support ARIEL, a \$62.9-million facility that will allow TRIUMF to broaden its research in particle and nuclear physics, and in materials science. It will also develop the technology to advance Canada's supply of medical isotopes. ARIEL will house a powerful electron linear accelerator (e-linac), which is being built by a team led by UVic physicist Dr. Dean Karlen. The accelerator will be the first of its kind in Canada and will create a variety of isotopes for pure and applied research. In addition to BC's contribution, ARIEL is also supported by \$14.4 million from TRIUMF and its partners, with an additional \$17.8 million in support of the e-linac from the Canada Foundation for Innovation.

Funding forest knowledge

At risk from pests, fire, drought, overharvesting and from climate change too, Canada's forests are a defining feature of the nation's landscape. And over the next six years, NSERC funding to UVic's Centre for Forest Biology will help drive research on the interaction of forests and climate change, providing advanced scientific training to students in the field. "This is a tremendous boost for climate-related research in our centre," says Dr. Peter Constabel, a UVic biologist and director of

the Centre for Forest Biology. "Beyond the science, it will give the next generation of forest scientists and managers enhanced training and a broader understanding of the real-world implications of forest and climate interactions."

Circling new discoveries to unearth mysteries of matter

To the UVic-ATLAS team, all the important action in particle physics is buried 100 metres beneath the Earth's surface. More than two dozen UVic scientists, students, research associates, computer experts, technicians and engineers are now poring over data from the world's biggest science experiment—the Large Hadron Collider, built inside a 27-km circular tunnel straddling the French-Swiss border to accelerate trillions of protons into billions of head-on collisions deep underground—in the headlong pursuit of new discoveries about space, time and the very basis of nature. The UVic team designed and built several crucial components of the ATLAS detector which is recording debris from the proton collisions, the first of which occurred on March 30. As a founding ATLAS institute, UVic has closely collaborated with the other 10 Canadian institutions involved in the Canadian ATLAS adventure.

Profile STELLAR PURSUITS AT THE EDGE OF OUR GALACTIC HOME

The Pan-Andromeda Archeological Survey (PAndAS) has given humankind the first-ever panoramic image of the Andromeda Galaxy and its close neighbour, the Triangulum Galaxy. Based on a proposal by then-UVic postdoctoral fellow Dr. Alan McCannachie (now of the Herzberg Institute of Astrophysics), UVic physics and astronomy faculty members Drs. Arif Babul, Kim Venn and Julio Navarro joined McCannachie in charting Andromeda's unexplored outskirts. Since 2007, PAndAS has had its galactic sights set on Andromeda—more than 2.5 million light years from our Milky Way and the closest large galaxy visible to the naked eye from Earth—and also on Triangulum, from the vantage point of the Canada-France-Hawaii Telescope at the top of Mauna Kea, Hawaii. The PAndAS findings lend credence to the theory that larger galaxies have grown by "cannibalizing" smaller ones during galactic formation. The recent findings show wisps of stars left over from smaller galaxies devoured by Andromeda during its formation, charting the evolution of Andromeda over the last 13 billion years.



(L to R) Drs. Alan McCannachie and Arif Babul discuss the findings and implications of the PAndAS study in front of a visual representation of the galactic data. At left: Drs. Kim Venn and Julio Navarro.

Preparing Canada for a greener future

Harnessing the best of BC's intellectual capital in the service of a sustainable future, the Pacific Institute for Climate Solutions (PICS) has had a busy year. In 2009/10, PICS organized *FutureGrid: BC's Energy Options in a Changing Environment*, kicked off a lecture tour of Northern and rural communities and inaugurated a news scan, white paper and briefing note service. Special events webcast live have included a successful panel on climate change and the media, as well as local and international guest speakers on climate change adaptation and mitigation issues. Hosted and led by UVic, PICS is a collaboration between BC's four research-intensive universities, working to turn climate knowledge into climate action. Activities are organized around four research themes: the low carbon emissions economy, sustainable communities, social mobilization and resilient ecosystems. Each year, PICS also invests \$700,000 in fellowships to fund today's cutting edge research and tomorrow's climate solutions.

Profile OCEAN OBSERVATORIES

Groundbreaking ocean science pioneered by UVic's two cabled underwater ocean observatories is making a huge impact—not only in scientific knowledge and economic impact, but also in schools all across Canada. While students on Vancouver Island and mainland BC explore the wealth of undersea life on NEPTUNE Canada and VENUS video feeds, students in Quebec use data on oxygenation to enhance their understanding of natural processes and analytic methods. At John Abbott College in Montréal, students in Christian Levesque's biology courses are getting a research-enriched curriculum in oceanography and aquatic biology, thousands of kilometres away from the waters they're studying, thanks to internet-accessible information from NEPTUNE Canada and VENUS. "These are excellent resources to give students real learning experiences," says Levesque, who notes that student enthusiasm for the projects ran very high. A number of students "really went above and beyond," in exploring and asking questions of the information, methods and the guiding principles that help scientists shed light on natural phenomena. Beyond transforming how we study the oceans, the world's most innovative ocean observatories are already generating economic opportunities for Canada in marine technology, fibre-optic communications, power systems design, data management, and sensors and robotics. Long-term observations will inform public policy in areas such as climate and ecosystem change, natural hazard mitigation, resource management and national security. Our in-depth understanding of the ocean processes that regulate and transform our planet really begins here, with the world's leading 24/7, internet-linked cabled ocean observatories.



Above (L to R): NEPTUNE Canada project scientist Dr. Brian Bornhold and NEPTUNE Canada contractor Kim Wallace during Summer 2010 instrument installation. "Corky" the octopus was a regular visitor to the CORK observation site in both 2009 and 2010. Students in Christian Levesque's Montréal biology courses evaluated underwater oxygen concentrations at VENUS node sites. The ROPOS submersible, ready to start a summer 2010 dive to explore the Barkley hydrate field. At lower left: Benoît Pirenne, NEPTUNE Canada associate director of information technology.

Health and society

Health research at UVic isn't rooted in only one or two faculties or programs—the health of our society is of paramount concern across our campus. Every faculty from science and engineering to fine arts is actively engaged in improving our society's health. Applied theatre programs that explore the experiences of cancer survivors are as much a part of campus as the scientists who separate proteins and isolate viruses to better diagnose and treat illness. UVic is also home to seven research centres devoted to health issues—built on the specialized expertise of our faculty, and enhancing their ability to improve our lives.

An early warning system for cardiovascular disease

Cardiovascular disease is the leading cause of death and serious illness in North America, where an estimated one in three people have some form of it. To better detect cardiovascular problems in the early stages, researchers are on the hunt for reliable biomarkers—proteins in the blood that signal the presence of disease. A team led by Dr. Christoph Borchers, a world-renowned protein chemist and director of the UVic-Genome BC Proteomics Centre, is developing specialized proteomics technology for assessing 95 blood proteins that have been identified as biomarker candidates. “Proteins that successfully pass these trials could be used as diagnostic tools to screen for cardiovascular disease,” says Borchers. “Early detection would save countless lives and billions of health care dollars by enabling disease treatment instead of costly advanced disease management and palliative care.”



Dr. Christoph Borchers

Placing harmful radiation in the right places

Anyone who has had radiation therapy for cancer, or has seen relatives or friends go through it, knows how debilitating the side effects can be. Dr. Andrew Jirasek, a UVic physicist specializing in ionizing radiation, is working to reduce those side effects by improving the delivery of radiation to different parts of the body. Jirasek is working with researchers at the BC Cancer Agency on a technique that will ensure that radiation doses are hitting their intended mark —maximizing damage to cancer cells while minimizing damage to the surrounding healthy cells and, consequently, limiting the side effects. “It will allow us to say with more confidence that the dose we think we're giving is actually what the patient is receiving,” explains Jirasek.

Advancing our understanding of brain recovery

A group of neuroscientists at UVic, led by biology and Division of Medical Sciences researcher Craig Brown, is observing changes in brain function as they happen, shedding new light on how the brain heals itself. Brown's team monitored the brains of mice, and observed that the brain's ability to rebuild or redirect circuits around damaged areas is very limited in the brains of mice with diabetes. “No one really knew, for example, why stroke recovery was so difficult for diabetics,” says Brown. “This look into the brain's function is helping us understand how the brain adapts to and recovers from injuries.”

Profile TRAPPING A TINY VIRUS

UVic engineering professor Dr. Reuven Gordon's research is helping to create sensors for the early detection of cancers, new tools to study viral infection and more efficient solar devices that can be manufactured at less expense than current devices. The Canada Research Chair in Nanoplasmonics, Gordon made news this year when he—together with a colleague in Spain and two UVic graduate students—developed a new method to trap, manipulate and study tiny, active objects as miniscule as viruses without inflicting any damage. Using a new approach to an established technology called “optical trapping,” the team demonstrated that it is possible to use the force of light to hold and manipulate 50 nanometre particles—two thousand times smaller than the width of a human hair—something previously considered impossible. Since most viruses range from 10 to 300 nanometres in size, this new method of optical trapping is likely to significantly expand viral research.



(L to R) Engineering PhD student Yuanjue Pang and Dr. Reuven Gordon refined a system for trapping particles as small as viruses.

Community works

Improving our world

The University of Victoria has become a leading Canadian research university by promoting the mobilization and application of knowledge for societal benefit. Building research initiatives in Canada and across the globe that involve communities and address their priorities, we are helping our region thrive and are establishing national leadership in community-based research.



Building
opportunity
through
participation

Casting light on the margins

Over the past 20 years, Dr. Cecilia Benoit's community-based research with vulnerable populations has helped to improve the lives of those who are outside the mainstream. This year, Benoit, who is a scientist at UVic's Centre for Addictions Research and a professor of sociology, was recognized with a 2010 BC Community Achievement Award—the only Victorian to receive the award this year. Benoit studies the link between social determinants, risk behaviours, health status and access to health care services. "I am very humbled to be chosen," says Benoit, "and thank the awards committee for giving recognition to scholarship aimed at improving the health and well-being of the province's most vulnerable populations."

Making sense of electronic health records

Health Information Science researcher Dr. Francis Lau believes that active engagement is the best medicine for the burgeoning field of electronic health records. As the Canadian Institute for Health Research Chair in Applied eHealth, Lau has developed an electronic observatory to not only assess the effectiveness of electronic health records but to also improve the way doctors use those records as their use becomes more widespread throughout the industry.



Killam Prize winner James Tully

Rethinking law and diversity

In political and constitutional expert James Tully's world there is no political apathy—only citizens exercising their civic freedom cooperatively and effectively to address complex issues such as minority rights, the rights of Indigenous peoples and environmental challenges. Tully's work developing a public philosophy that draws on contemporary political theory and its history

to empower citizens earned him a \$100,000 Killam Prize for the Humanities from the Canada Council for the Arts, recognizing his distinguished career and exceptional contributions to Canadian scholarship and public life. Tully was the only scholar in Western Canada to receive the prestigious award this year. "I am deeply honoured and humbled by this award because the research that this prize recognizes would not be possible without the collaboration of a whole network of colleagues, students and staff over many years and universities who have helped to support, inspire and create it," says Tully. "I would also like to thank UVic, the best university in the world for this kind of interdisciplinary research and teaching."

Profile PRACTICAL RESEARCH IN OUR COMMUNITY

Does client-based governance make a difference for community service organizations working to house the homeless? It's a question that education grad student River Chandler helped the Victoria Cool-Aid Society answer, based on a survey of participation models used at other community service organizations around the world. Building on several years of immersive, research-based partnerships with federal and provincial agencies, UVic's interdisciplinary research practicum helped graduate student researchers like Chandler, working across a variety of fields, find answers to the real-world questions of local community service organizations this spring. Along with the Cool-Aid Society, the Victoria Native Friendship Centre and AIDS Vancouver Island put grad students under the direction of a seasoned community researcher to the task of providing solid, evidence-based solutions to managerial issues in human services delivery. The result, explains Cool-Aid Society Director Kathy Stinson, was really exciting. "River's summary of participation models helped show not only what we're already doing well as an organization, but also addressed some of the possible paths we might take as our organization responds to new challenges."



(L to R) Cool-Aid Society Director Kathy Stinson, education grad student River Chandler and Vic Murray, Cool-Aid board member and co-chair of its Planning and Governance committee.

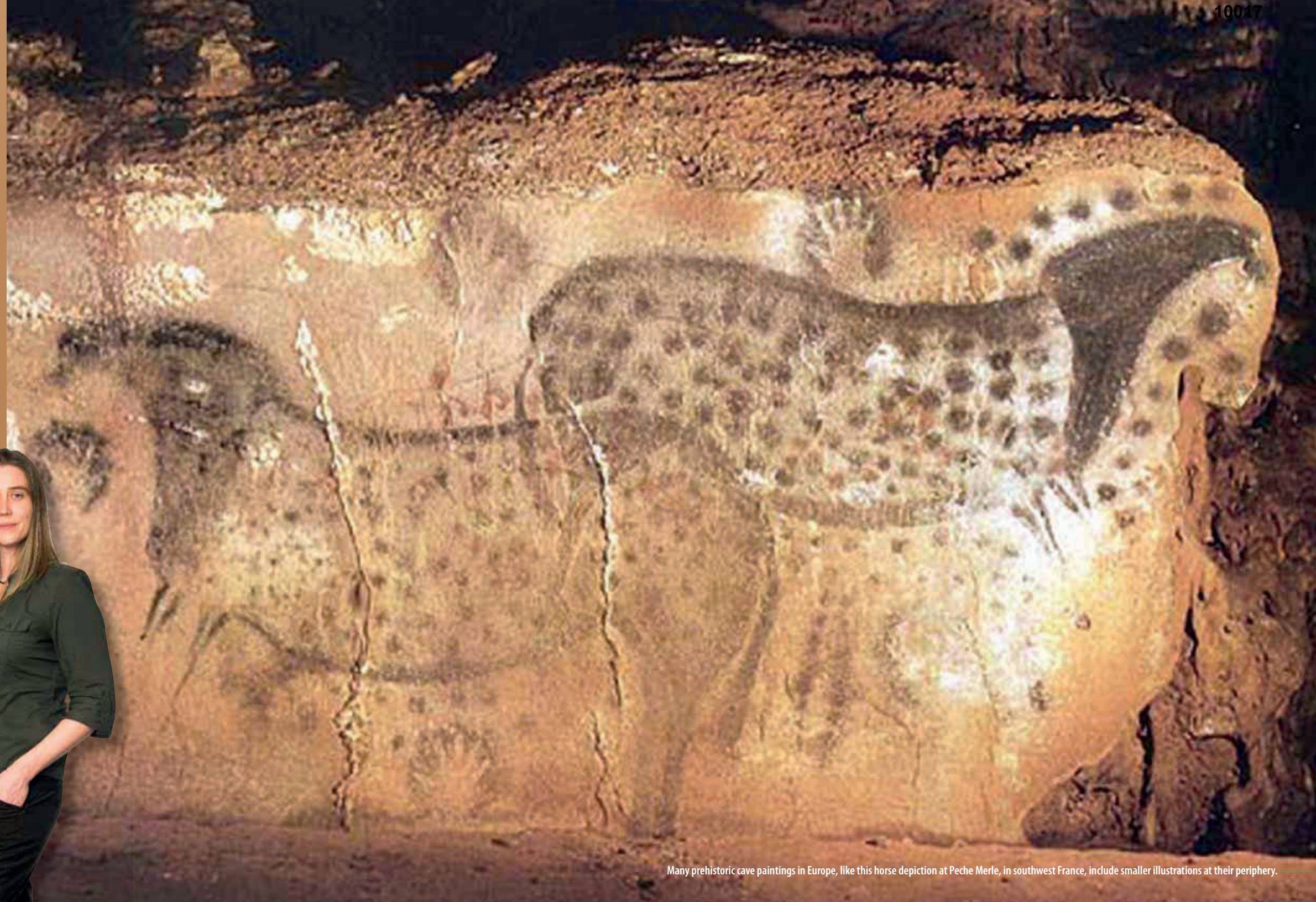
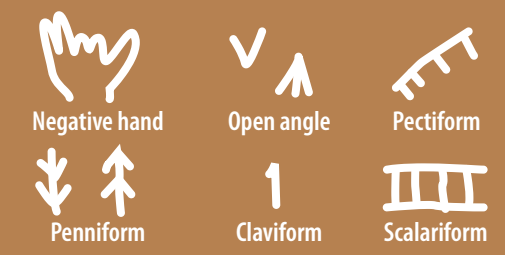
Profile

THE ANCIENT SECRET OF WRITING

Homelessness research

UVic health information science student Tyrone Austen knew he'd finally found the right master's thesis topic when he was introduced to the Greater Victoria Coalition to End Homelessness. "I wanted to work on something that would provide immediate benefit and involved the underprivileged community," says the recent graduate. "The coalition was a totally good fit. They needed a method of reporting back to the community and I needed a research topic I could really believe in." The result was the 2010 *Report on Housing and Supports*, delivered at the coalition's annual general meeting in June. Austen's report card framework provides the coalition with an annual means of evaluating and reporting the effectiveness of the many agencies, programs and initiatives involved in the complex issue of homelessness. Austen determined that better integration of data gathering among the more than 20 agencies addressing the homeless issue would improve both evaluation and service delivery. Based on these findings, several of the agencies involved in the research have already begun planning to advance their information management capabilities. "The data showed that Victoria's hostile housing market and unbalanced living wage mean that homelessness is not a choice people make," says Austen.

Although the great pictographs scattered across the caves of Europe have been the focus of scholarly research for generations, UVic anthropology grad student Genevieve von Petzinger found something truly remarkable this spring—the regularity and similarity of 26 smaller signs, scattered across 146 different cave sites in France. "Modern technology allowed me to compare inventories and digital images from nearly 150 locations, giving me the ability to observe and document the similarities among the different sites," recalls von Petzinger, explaining why such a large scale comparison hadn't been undertaken before. Her professor, Dr. April Nowell, was equally surprised by the clear patterning of the symbols across distance and time, noting that some of the symbols appear to have been in continuous use for over 20,000 years. The 26 distinct, repeated symbols von Petzinger has identified as significant may provide the first glimmers of proof that a graphic code—the foundation of written language—was being used by ancient humans shortly after their arrival in Europe from Africa, and may have been an imported cultural practice. If correct, these findings will contribute to the growing body of evidence that what anthropologists call the "creative explosion" leading to modernity occurred tens of thousands of years earlier than scholars once thought.



Many prehistoric cave paintings in Europe, like this horse depiction at Pech Merle, in southwest France, include smaller illustrations at their periphery.

Local and global initiatives

The discoveries and innovations emanating from universities profoundly affect the well-being of society, in our neighbourhoods and around the globe. As UVic develops programs that are both locally relevant and internationally significant, we demonstrate our commitment to communities through positive, transforming initiatives that can be applied throughout Canada and around the world.

Opening doors with community-based research

How does our food get from field to fridge, and how many miles must it go first? Where can a homeless person go after a midnight perch on rough pavement to find the warmth of reliable indoor shelter? These are some of the many questions for the University of Victoria's Office of Community-Based Research (OCBR). The office opened its doors in June 2007 and continues to draw researchers and community advocates together to identify realistic approaches to urgent local and regional issues that resonate on a national and global level. Highlights for this year include findings from the three-year Aboriginal Post-Secondary Transitions Research Project, carried out jointly by OCBR and UVic's Office of Indigenous Affairs to support and strengthen community-controlled Indigenous adult and higher education centres throughout BC and the beginning of a Vancouver Island food production action plan to explore how to source quality, sustainable food closer to home. The university's commitment to community-based research extended as well to the 2010 launch of a unique online MA program in community development. Offered by UVic's Department of Public Administration, the program is designed to prepare leaders for the challenges of today's global issues in communities around the world.

Advancing public health and policy

As the first new UVic school in 20 years, the School of Public Health and Social Policy in the Faculty of Human and Social Development will offer one undergraduate and two graduate programs beginning in September 2011. All three programs—aimed at protecting and promoting the health of the population—will provide practical experiences in the field. The areas of focus for the school include Indigenous Peoples health, public health informatics, public health nursing, disability studies, gerontology and social policy. UVic has delivered distance and on-campus health and community service programs in applied and professional practice for over 30 years. Establishing a new school will help UVic better support community-based practice that promotes health and social justice, as well as serving professionals seeking to further their education while working in the field.

Profile IMPROVING INDIGENOUS EDUCATION

The prospects for improving university graduation rates among Aboriginal students are growing brighter, based on the findings of UVic's groundbreaking LE,NONET project. The four-year pilot study, with six complementary student-focused programs and a workshop for faculty and staff, demonstrated remarkable improvements for retention and graduation rates among participating Indigenous students. Peer mentoring, preparation seminars, community internships, bursaries and an innovative research apprenticeship program all helped student participants feel part of the Aboriginal community on campus, and more likely see themselves as part of the general UVic community—key indicators of the improved persistence and retention rates the program achieved. The program is just part of the university's ongoing commitment to Indigenous education. Over the past ten years, Aboriginal enrolment at UVic has climbed from 87 to nearly 700 students.

(L to R) Dr. Jeff Reading (public health and social policy), Dr. Chris Lalonde (psychology), Lianne Charlie and Maxine Matilpi (law) all helped make the LE,NONET project a success. At lower left: Lianne Charlie—a former LE,NONET student participant who now coordinates UVic's Aboriginal service plan—and Chris Lalonde, LE,NONET co-principal investigator.



Care of our resources

Sustainability and stewardship

The availability, development and stewardship of financial, organizational and physical resources are key to the growth and success of our university. The University of Victoria is pledged to transparency in its stewardship of those resources—acquired from both public and private sources—that allow us to achieve our objectives in a sustainable manner.



Forward-
thinking
operations

One of Canada's Top 50 Green Employers

UVic has been recognized for its commitment to sustainability by the editors of the Canada's Top 100 Employers project, winning a place in this year's list of Canada's 50 greenest employers. "We are very pleased to have been chosen as one of Canada's greenest employers," said Neil Connelly, director of campus planning and sustainability. "The award recognizes UVic's strong commitment to integrating sustainability initiatives throughout our operations and across our campus." The university's support for sustainable transportation options, including cycling infrastructure and a subsidized bus pass program, new green buildings, a unique dual plumbing system in new buildings that recirculates treated waste water, a campus program to use green cleaning products, creation of native plant demonstration gardens, food waste composting initiatives, recreation programs and facilities, and a green vehicle fleet that includes electric, hybrid and biodiesel-fueled vehicles as well as bicycles were all cited by the awarding council as significant achievements towards this award.



UVic was named one of Canada's Top 50 Green Employers in 2010.

Third building on campus to strike gold

The Social Sciences and Mathematics Building, which opened in 2008, was the third campus facility to be certified for achieving the gold-level standard in environmental design and sustainability by the Canada Green Building Council's Leadership in Energy and Environmental Design (LEED) program. The building's two green roofs and several patio gardens help insulate and capture rain and moisture. Other sustainability features include energy-efficient lighting, natural ventilation, facilities for cyclists including showers and lockers, and the use of treated wastewater in toilets and urinals. The lobby areas feature the first architectural application of pine-beetle damaged wood in BC, while the courtyard contains the Ian Ross Memorial Garden, a living laboratory of native plants.

UVic's Medical Sciences and Engineering/Computer Science Buildings previously achieved LEED gold status. UVic is also targeting gold certification for its recently completed First Peoples House, and for the new South Tower student residence building, slated to open in January 2011. All new campus building and renovation projects incorporate sustainability initiatives, including efficient energy and water management measures, locally sourced materials, natural landscaping, storm water management systems and enhanced indoor air quality.

Profile BUILDING KNOWLEDGE

The University of Victoria is benefitting from a joint federal-provincial economic stimulus package that supports research and teaching infrastructure enhancement at Canadian institutions. UVic is receiving \$42.5 million through the Canada-British Columbia Knowledge Infrastructure Program to renovate six campus buildings averaging 40 years of age. The project will extend the useful life of campus buildings, including classrooms and laboratories, while improving safety and reducing maintenance and energy requirements. The work includes seismic upgrades, safety improvements (sprinklers and fire alarms), mechanical upgrades to water and heating systems, electrical improvements and hazardous materials abatement—with an impact on an estimated 1,300 jobs by the end of the project in 2011.



Construction workers dotted the landscape during seismic wall upgrades to the Elliott building. At lower left, Kim Fawthorpe, UVic manager of interior planning and logistics, and Gord Shirley, KIP project manager.



Accountable to our community

We are grateful for the support of individuals, corporations, foundations and government agencies that help make our accomplishments possible. We hold ourselves to the highest standards of stewardship of these resources and strive to provide a thorough accounting of our activities. Further elements of our accountability framework can be found in the Accountability section of the UVic website (<http://web.uvic.ca/president/accountability>).

Research capacity

Continued success in external research grant competitions at the national level attests to the importance and high quality of research conducted by UVic faculty and graduate students. Preliminary totals show that UVic researchers were awarded nearly \$100 million in outside research grants and contracts in 2009/10, more than triple the amount achieved 10 years ago.

For the seventh year in a row, UVic was ranked a Research University of the Year by *Research Infosource* based on 2008/09 research performance. *Research Infosource* says UVic has “demonstrated superior achievement in earning research income and in publishing research in leading Canadian and international scientific journals.”

According to the international newsletter *Science Watch*, UVic is the fifth most influential university in the world in the field of energy and fuels, as measured by the citation impact of the top 100 scientific articles per institution published between 1998 and 2008. In North America, only Princeton, Cornell and the US National Energy Lab ranked higher.

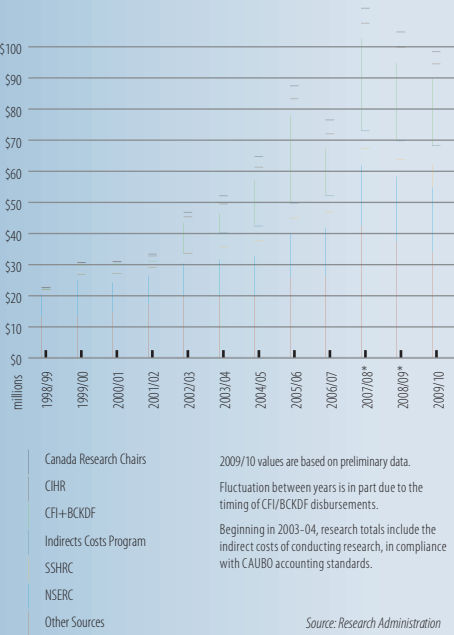
Supporting our students

Helping students achieve their full academic potential is our first priority, and removing financial barriers helps students meet their goals. UVic provided nearly \$10 million in aid to undergraduates during 2009/10. Financial support to graduate students in this same period, including teaching assistant stipends and funds provided by sponsored research grants and awards, rose to \$18.7 million.

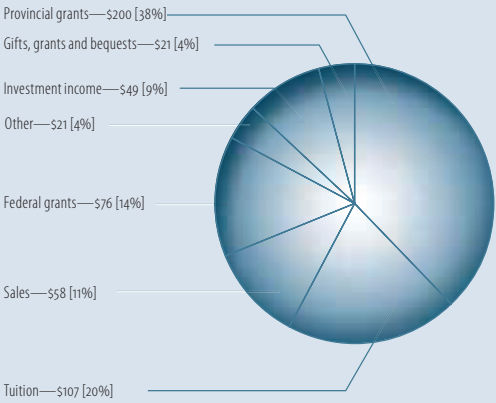
A warm thanks to our donors

Thanks to the generosity of our valued donors, we will be able to invest more than \$25 million to expand student support, educational programs and research initiatives. This support helps create a future full of promise for our students and for the wider community we serve.

External research grants and contracts

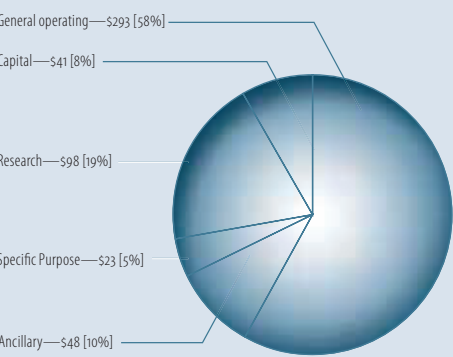


Revenues by source 2009/10
[Fund accounting basis. In millions.]



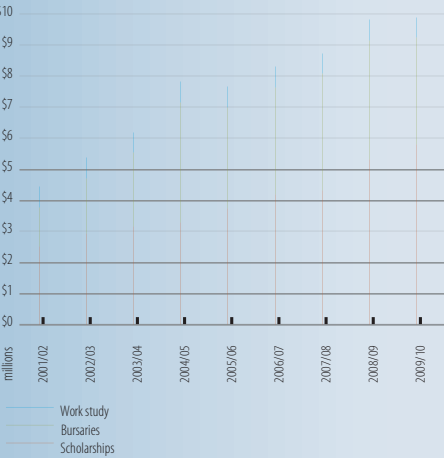
Total revenues \$532 million

Expenditures by fund 2009/10
[Fund accounting basis. In millions.]

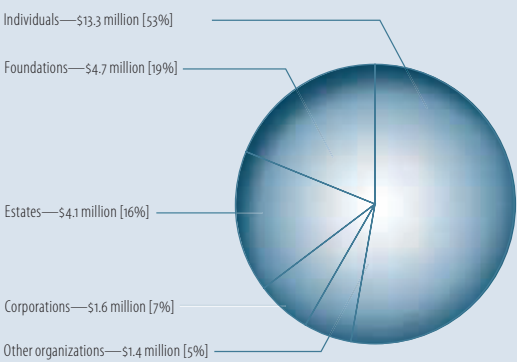


Total expenditures \$503 million

Student financial aid
[Primarily undergraduate.]

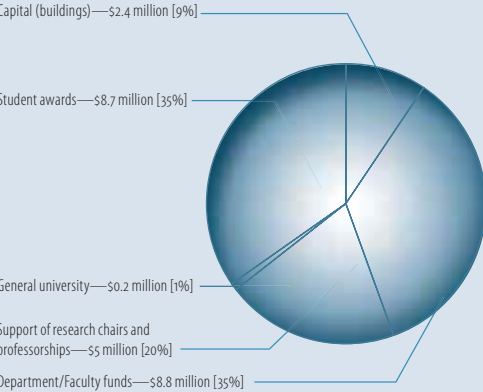


Fundraising sources 2009/10



Total fundraising \$25.1 million

Allocation of funds raised 2009/10



Total allocated \$25.1 million

Honours

UVic is, above all, a diverse community of extraordinarily gifted people, dedicated to the pursuit of knowledge and its application in the service of society. On these pages, we list some of the awards and honours bestowed in the past year upon our students, faculty and graduates in recognition of their outstanding achievements.

Students and graduates

■ **Nathan Bennett** (Geography), Pierre Elliott Trudeau Foundation Scholarship.

■ **Brittney O'Neill** (Linguistics), BC Premier's One World Scholarship.

■ **Philip Kevin Paul** (Writing), Governor General's Literary Award finalist.

■ **Eliza Robertson** (Writing), *PRISM International* short story award.

■ **Yasuko Thanh** (Writing), 2009 Journey Prize.

Group awards

■ **Antidote network**, BC Representative for Children and Youth Award of Excellence for Cultural Heritage and Diversity.

■ **Business MBA team**, *Financial Post* MBA Portfolio Management Competition.

■ **EcoCar team**, six team awards at the 2010 North American EcoCar Challenge.

■ **History 481 students**, Liddell Award for Humanities Computing.

■ **Science Venture**, 2009 Actua & GE Canada Award for Leadership and Innovation.

■ **SPARCS program**, 2010 BC Educational Technology User's Group Innovation Award.

■ **UVic Child Care Services**, BC Ministry of Children and Family Development Child Care Legacy Award.

■ **UVic.ca review team**, Canadian Council for the Advancement of Education 2010 Prix d'Excellence.

■ **Malahat Review**, Gold and Silver awards for poetry, National Magazine Awards.

Faculty and staff

■ **Chris Barnes** (NEPTUNE Canada), Pander Society Medal and 2010 Logan Medal.

■ **Cecilia Benoit** (Sociology), BC Community Achievement Award.

■ **Jens Bornemann** (Engineering), Fellow of the Canadian Academy of Engineering.

■ **Maureen Bradley** (Writing), Houston International Film Festival Golden Remi Award.

■ **Brad Buckham** (Engineering), inaugural BC Innovation Council entrepreneurship fellow.

■ **Marilyn Callahan** (Social Work), 2009 Canadian Association for Social Work Education Award.

■ **N. Ross Chapman** (Earth and Ocean Sciences), Fellow of the Institute of Electrical and Electronics Engineers.

■ **Lorna Crozier** (Writing), Fellow of the Royal Society of Canada and winner of the BC Book Prize's Hubert Evans Prize.

■ **Ned Djilali** (Engineering), Fellow of the Canadian Academy of Engineering.

■ **Penny Draper** (Bookstore), Bolen Books Children's Prize.

■ **John Esling** (Linguistics) Fellow of the Royal Society of Canada.

■ **Andrea Giles** (Co-operative Education Program and Career Services), Award for Outstanding Contributions to the Association for Co-operative Education BC/Yukon (ACE).

■ **Ben Koop** (Biology) Fellow of the Royal Society of Canada.

■ **Andre Kushniruk** (Health Information Science), Fellow of the American College of Medical Informatics.

■ **John Langford** (Public Administration), 2009 Pierre De Celles Award

■ **John Lutz** (History), 2010 Harold Adams Innis Award.

■ **Joan MacLeod** (Writing), Governor General's Literary Award finalist.

■ **Michael Masson** (Psychology), Canadian Society of Brain, Behaviour and Cognitive Science 2010 Richard C. Tees Distinguished Leadership Award.

■ **Ian McDougall** (Music), Order of Canada.

■ **David Scott** (Engineering), Fellow of the Canadian Academy of Engineering.

■ **Gordon Smith** (Centre for Global Studies), Vanier Medal.

■ **James Tully** (Public Administration), Killam Prize.

■ **David H. Turpin** (President), Order of Canada.

Athletics

■ **Men's Rowing**, 2009 Canadian University Championship.

■ **Men's Rugby**, 2010 BC Premier Champions.

■ **Anne Balser**, 2010 Golf Canada University individual national champion.

■ **Kayla Dykstra**, 2009-10 Canadian Interuniversity Sport Academic Top Eight award.

Chancellor

Murray Farmer

Executive

David H. Turpin
President & Vice-Chancellor

J. Howard Brunt
Vice-President Research

Jamie L. Cassels
Vice-President Academic & Provost

Julia Eastman
University Secretary

Gayle Gorrill
Vice-President Finance & Operations

Valerie Kuehne
Vice-President External Relations

(as of September, 2010)

Board of Governors

James Coccola (elected by students)

Julia Eastman, Secretary

John deC. Evans

Tony Gage, Vice-Chair

Kelsey Hannan (elected by students)

Jane Butler McGregor

Susan Mehinagic, Chair

Erich Mohr

Chris Petter (elected by staff)

Raymond Protti

Eric Sager (elected by faculty)

David H. Turpin, President & Vice-Chancellor

Bev Van Ruyven

Barbara Whittington (elected by faculty)

(as of September, 2010)

Honorary degrees conferred

September 2009

Steve Nash, athlete and philanthropist

November 2009

Michael Audain, entrepreneur and arts philanthropist

Alex A. Campbell, entrepreneur

James Lockyer, lawyer and activist

Deepa Mehta, filmmaker

June 2010

Marie Cooper, advocate of Aboriginal education

David Dodge, public servant

Linda Hughes, trail-blazing journalist

Harold Kalman, heritage conservationist

Student athletics and recreation

Some of Canada's best athletes compete for the Vikes in 16 varsity sports. With 65 university national championships, an extraordinary Canadian Olympic tradition of 64 medals, and a number of student-athletes being selected each year for national teams, the Vikes have earned a reputation as one of the best athletic programs in Canada. Recreation facilities and programs also benefit students, faculty and staff who just want to stay fit and have fun—including intramurals, aquatics, sport clubs, racquet sports, aerobics and instructional classes.



Eco Audit

The University of Victoria *Annual Review* has been printed on Forest Stewardship Council-certified paper with 100 per cent post-consumer recycled fibre, manufactured with wind power—providing the following benefits to our natural environment, when compared with the use of virgin paper:

Trees saved	Greenhouse gases prevented	Wastewater saved	Solid waste not generated	Waterborne waste prevented	Energy saved
21	2,851 lbs	8,680 gallons	860 lbs	59 lbs	14 million BTUs

Above information is based on: 2128 lbs. of Mohawk Options

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Division of External Relations

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UVic Photographic Services

The untitled paddle pictured on page 14 is by John Livingston, from the Michael C. Williams Collection of the University Art Collections.

This publication can be made available, on request, in alternative formats such as large print or electronic file. For more information, please contact UVic Communications at 250-721-7636.



University
of Victoria

www.uvic.ca

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To Benchers
From Executive Committee
Date October 27, 2010
Subject **Benchers' Selection of New LSBC Member of FLSC Council**

Background

When John Hunter, QC becomes First Vice-President of the Federation of Law Societies of Canada (FLSC) on November 15 he will give up his current status as LSBC's member of FLSC Council, creating a vacancy effective that date. The Executive Committee decided at its August 19 meeting:

- to develop and implement the appointment process outlined in the report of the Federation Council Appointment Task Force, as amended and approved by the Benchers on November 16, 2007 (Tab A)
 - o such that the Benchers can elect the new LSBC member of the Federation Council at their November 5 meeting

Terms of Reference

At its September 16 meeting the Executive Committee approved terms of reference for the appointment and service of the LSBC member of FLSC Council (Terms of Reference)(Tab B). In doing so the Committee was guided by the Federation Council Appointment Task Force's recommendations (Tab A), and by the Law Society of Alberta's Position Description for its Federation Council Member (Tab C).

Nomination Process

A call for nominations was circulated by email dated September 20, 2010 to the Benchers and to all elected Life Benchers for whom the Law Society has email addresses, and by letter dated September 24, 2010 to the other elected Life Benchers.

Three nominations were submitted, all meeting the qualification criteria set out in the Terms of Reference and within the deadline of 5:00 pm, October 8, 2010. In alphabetical order, the nominees are

- Gavin Hume, QC, Benchers
- Robert McDiarmid, QC, Life Benchers
- James Vilvang, QC, Life Benchers

Selection Process

At its October 21 meeting the Executive Committee decided to invite all three nominees to attend the November 5 Benchers meeting for an informal discussion during the *in*

camera session. An email invitation was sent to Mr. Hume, Mr. McDiarmid and Mr. Vilvang on October 22.

On October 26, Mr. McDiarmid withdrew his nomination and the November 5 Benchers (*in camera*) selection process was outlined to Mr. Hume and Mr. Vilvang:

IN CAMERA SESSION		
11	Selection of LSBC Member of FLS Council	Tab 11
	Mr. McGee to report	p. 11000
	Mr. Ridgway to chair the selection process	(30 min)
	<ul style="list-style-type: none"> • Memorandum from the Executive Committee 	

- Mr. Ridgway will welcome Mr. Hume and Mr. Vilvang as the two nominees (Mr. McDiarmid withdrew his nomination earlier today), and open an informal discussion, expected to run about 20 minutes
- The Benchers will then vote by secret ballot

Mr. Hume's personal statement and resume are at Tab D; Mr. Vilvang's personal statement and resume are at Tab E.

Recommended Term of Office

The Executive Committee recommends a three-year appointment—as per the FCA Task Force report (Tab A)—effective November 15, 2010. Given the Federation ladder's regional rotation, it is unlikely that BC's new Council member will be selected to the Federation ladder; hence the Committee sees no need for a four-year term for this appointment.

The Law Society *of British Columbia*



Report of the Federation Council Appointment Task Force

To: The Benchers

Date: November 16, 2007

Approved as amended by the Benchers on November 16, 2007

Prepared by the Federation Council Appointment Task Force

Art Vertlieb, Q.C. Chair)

Kathryn Berge, Q.C.

Dr. Maelor Vallance

Alan Treleaven (Law Society staff)

Report of the Federation Council Appointment Task Force

Introduction

For each of the past four years, the Law Society President has represented the Society on the Federation Council for a one year term. The Benchers, at the June 1, 2007 Retreat, decided to revisit the process for naming the Society's Council representative. Accordingly, President Anna Fung appointed the Federation Council Appointment Task Force to review the process and report to the Benchers with recommendations.

The members of the Task Force are Art Vertlieb (Chair), Kathryn Berge and Dr. Maelor Vallance.

Historical Background

On April 4, 2003, the Benchers endorsed a Federation proposal for revamping the structure of the Federation, including the institution of the new Federation Council to replace the largely ineffective Federation Board. The new structure included each law society appointing one voting member to Council.

The Benchers designated Second Vice-President Peter Keighley as the Society's representative on the new Council. Life Bencher and former Treasurer Trudi Brown had represented the Society on the predecessor Federation Board for several years.

The principal reasons for designating the Second Vice-President were as follows.

- (a) Ensure full connectivity between the Benchers and the Council, reflecting both the increasing importance of the Federation and the weakness in connectivity with the former Federation Board.
- (b) Provide continuity, so that the Council member would serve for at least three years. It was anticipated that the three year term would enable the Council member to have greater influence at the Federation, including through being available to serve as the Chair of longer-term committees and potentially becoming President.
- (c) Ensure the Council member would continue to be in a leadership position at the Bencher table.

In early 2004 Peter Keighley, upon his appointment as a Master of the Supreme Court of BC, resigned both as First Vice-President of the Law Society and as Federation Council member. President Bill Everett became the Council member, and served until the conclusion of his presidential term on December 31, 2004. On January 1, 2005, President Ralston Alexander became the Council member and served until December 31, 2005, the conclusion of his presidential year.

In November 2005, outgoing President Ralston Alexander and First Vice-President Robert McDiarmid recommended that the Benchers reconsider the Society's approach to naming its Federation Council member, and in doing so identified weaknesses to the existing system, including in particular the disadvantage of a lack of ongoing continuity in the one year term system. Pending further Bencher consideration, Robert McDiarmid became the BC Council member on January 1, 2006.

At the February 3, 2006 Bencher meeting, the Benchers established the first Federation Council Appointment Task Force to recommend a process for designating the representative to the Federation Council. The Task Force members were Art Vertlieb (Chair), Kathryn Berge and

Michael Falkins. On March 3, 2006, the Benchers adopted the following Task Force recommendations, pursuant to which Presidents Robert McDiarmid and Anna Fung have represented the Society on the Council in 2006 and 2007, respectively:

1. that the Society continue with the status quo, namely, that the President serve as the Council member during the presidential year, and that the First Vice-President and Second Vice-President continue to participate in Council activities, including by attending at least two Council meetings each year,
2. that the Society consciously pursue through its Council member the objective of being appropriately represented on the Federation Executive, including as President, and on Committees, including as Chair,
3. that the Benchers revisit the process for selecting the Council representative in two years, to determine based on fuller experience whether changes would be warranted.

Federation Presidency - Regional Rotation

The Federation President is chosen according to a regionally based rotation. Four regions (Western, Ontario, Quebec and Atlantic) are each entitled to the presidency twice in a nine year cycle, which begins with appointment to the four year Executive Committee ladder as Second Vice-President. The northern territories' region place in the rotation is once in every nine year cycle.

According to the rotation, the next Federation Second Vice-President from the Western region begins a one year term on November 15, 2009, and becomes First Vice-President (President-Elect) on November 15, 2010, President on November 15, 2011, and Past-President on November 15, 2012.

The Second Vice-President continues as Council member for her / his law society but, during the ensuing three years on the ladder as First Vice-President, President, and Past-President, the law societies occupying the three positions are entitled to separate representation by their own new voting Council member.

On November 15, 2013 or 2014, the cycle should repeat itself with a new Western region Second Vice-President being chosen. The rotation timing has shifted in recent times because on three occasions a Federation President has left office during the Presidential term and has been replaced from another region. (In early 2007, the Council appointed Michael Milani from Saskatchewan to fill the vacancy created by Newfoundland's Bill Goodridge accepting a judicial appointment. A year earlier, in February 2006, the Council appointed Tracy-Anne McPhee from the Yukon as President to fill the vacancy created by the resignation of Ontario's George Hunter. Ms. McPhee filled the balance of the 2005-06 term, and then became Past-President. It is unclear whether her appointment from the north, outside of the ordinary rotation, will alter the timing of the future rotation by one year.)

The four Western law societies have traditionally adopted an informal consensus approach to choosing their regional representative in the rotation. However, assuming the informal consensus approach continues, there is no year in the rotation in which BC would be automatically entitled to move into the rotation in priority over the other three provinces, even though only BC among the four has not occupied the presidency.

Investigation of the Effectiveness of BC's Appointment Process

At the June 1, 2007 Benchers Retreat, the First Vice-President, John Hunter, reported that the system of naming the Law Society President to a one year Council term was not and could not

reasonably be expected to be optimal. BC continues to be alone in confining its Council member to a one year term, so that in comparison to all other law societies, BC's Council member does not have sufficient time to become established in a leadership role on Council.

The Task Force has consulted both internally and with other law societies in developing its recommendations.

(a) Law Society of BC Internal Consultation

The Task Force has obtained input from the Law Society President, Vice-Presidents and three former Presidents.

In particular, the Task Force has received the following input.

- The Council member is the voice of the Society at the Federation, and therefore ought to be seen at the Federation and the Benchers table in that light.
- There ought to be greater continuity of representation on the Council, to permit BC's Council member to establish a stronger presence, and because most national issues have a life extending beyond one year.
- The Council member ought to be considered for the Federation Executive Committee ladder, leading to the Presidency, at appropriate times in the regional rotation.
- The Council member ought to be considered for membership on longer term Federation committees, including as Chair.
- The Council member ought to be fully connected to the regular work of the Benchers, including the Executive Committee.

(b) Consultation with Other Law Societies

Most law societies are represented by former Presidents, and the Law Society of Upper Canada is currently represented by an elected Benchers. All law societies have individual criteria for selecting Council representatives. Other law societies' appointments exceed a one year term.

The Task Force, while highly valuing the input from other law societies, recognizes that the culture of how law societies operate, including in particular the role of past Presidents and former Benchers, varies considerably from society to society. For example, some law societies, such as Saskatchewan and Newfoundland, who have been represented on Council by former Presidents, appear to be satisfied with that arrangement and express no concern about who would be seen as the voice of the law society or about connectivity at the Benchers table. On the other hand, the Task Force learned that some law societies are having problems with connectivity, as former Presidents who serve on Council seem too far removed from the activities of their respective societies.

Some law societies express the view that, while BC is consistently represented by a strong Council member, it is unfortunate that BC's Council member is confined to a one year term. The principal disadvantage to the Federation is expressed as being that the BC Council member will less likely be appointed as Chair to a major ongoing Committee, because it is preferable that a Chair be selected from a law society whose member of Council will serve a longer term.

On the other hand, some law societies observe that BC appears to avoid the pitfall of a lack of connectivity between the Council member and Benchers, which some of them encounter.

Other law societies also observe that BC, by having its first Vice-President and Second Vice-President attend two Council meetings each year, ensures that a new Council member is experienced and well known at Council.

Analysis of the Appointment Process

The Task Force concludes that the following factors are significant in identifying a process for choosing a Council member.

(a) Voice of the Law Society

The Council member ought to be seen both at the Council and Bencher table as the Society's voice at the Federation. A significant feature of the Law Society President's role is to be the principal voice of the Society, which means there will be a shift if someone other than the President is to represent the Society on Council.

(b) Continuity on Council

There is a disadvantage in the term of the Council appointment being for only one year. That disadvantage is somewhat but not fully alleviated by the First Vice-President and Second Vice-President attending two Council meetings each year.

(c) Federation Presidency

A one year term for the BC Council member makes it less likely that BC will assume the Federation presidency.

(d) Federation Committees

A one year term similarly militates against the likelihood of BC's Council member becoming Chair of major ongoing Federation Committees.

(e) Connectivity

It is essential, particularly as the role of the Federation expands, that the BC Council member be meaningfully connected to and involved in the work of the Benchers and Executive Committee.

The Task Force has concluded that, while it is realistic to expect that a Council member who is a Life Bencher could remain connected to the Law Society by regularly attending and fully participating in meetings, although without a vote, this would represent a shift in the existing culture. Although traditionally some Life Benchers continue to serve on Law Society committees, they do not participate at Bencher meetings. Therefore, if the Society is represented by a Life Bencher, a change would be needed in this traditional practice.

Recommendations to Benchers for Change

1. Replace the system of the Law Society President being designated as Council member for a one year term.

2. Elected and Life Benchers will be eligible to volunteer for appointment.

Comment: The Task Force considered confining eligibility to elected Benchers for the duration of the Council term, but decided such a restriction would unnecessarily restrict eligibility, particularly because of the minimum three year term. To be eligible, a Life Bencher would have to be a Law Society member.

3. The Benchers will choose the Council member from the nominee or nominees presented by the Executive Committee.

Comment: The Executive Committee would manage the process for inviting volunteers or nominations, and would on an *in camera* basis decide which nominee or nominees to present to the Benchers.

4. The first term under the new process will be three years in duration (January 1, 2008 to December 31, 2010), reviewable on an annual basis by the Benchers on the recommendation of the Executive Committee.

Comment: This would mean that the Council member would be eligible to be chosen by the Western region as the Federation Second Vice-President for the November 15, 2009 to November 15, 2010 term. On November 15, 2010, when the Federation Second Vice-President becomes First Vice-President, a new Council member is named from that law society.

5. Each successive term will be of sufficient length for a Council member to be eligible to serve as the Western region's Second Vice-President (typically a three or four year term, according to the timing of the regional rotation).

Comment: Assuming the timing of the current rotation, the next term would begin on November 15, 2010.

6. The Council member, on completing a first term, will be eligible for reconsideration by the Executive Committee to be named by the Benchers to one further term.

Comment: The Benchers Governance Policies Manual says in appendix 3, section 2: "Law Society appointments to any position will normally be up to a total period of six years, provided that other considerations relating to that particular appointment may result in a shortening or lengthening of this period. An initial appointment to a position does not carry with it an expectation of automatic reappointment for up to six years."

7. The Council member, as a condition of accepting the position, will agree to make genuine efforts to complete the full term and then, if offered, to accept and complete the term on the Federation Executive Committee ladder. More particularly, the Council member will not accept a judicial appointment or other position that requires withdrawing from Council.

8. If the Council member is or becomes a Life Bencher, or is defeated in a Bencher election, the Council member will complete the full term, and will make genuine efforts to attend and participate fully at Bencher meetings, with the exception of being unable to vote or to move and second resolutions.

9. If the Council member is not a member of the Law Society's Executive Committee, the Council member will make genuine efforts to attend the Executive Committee meetings at which national or Federation-related matters are being considered.

Comment: The Task Force considered recommending that the Council member automatically be a member of the Executive Committee, changing the number on the Committee from seven to eight. The Task Force decided that a requirement to commit both to attending all Bencher and all Executive Committee meetings would be too onerous.

10. Rules should be enacted where appropriate to implement these changes. [*Note: It was subsequently decided that new rules would not be necessary to implement the Bencher decision.*]



LSBC Member of the Federation of Law Societies of Canada Council

TERMS OF REFERENCE

To: Benchers and Life Benchers

From: Executive Committee

Date: September 16, 2010

LSBC Member of the Federation of Law Societies of Canada Council

TERMS OF REFERENCE

Background

[The Federation of Law Societies of Canada](#) (FLSC) is the national coordinating body of [Canada's 14 law societies](#) mandated to regulate Canada's 95,000 lawyers and Quebec's 3,500 notaries. The Federation is the common voice of Canada's law societies on a wide range of issues critical to the protection of the public and the rule of law, including solicitor-client privilege, the importance of an independent and impartial judiciary, and the role of the legal profession in the administration of justice. The Federation is governed by a national [Council](#) that includes a representative from each of the 14 member law societies.

Appointment

1. All current elected and Life (elected) Benchers are eligible to be nominated and to serve as LSBC's FLSC Council Member, provided that they are members in good standing.
2. The Benchers appoint LSBC's Council member from the pool of nominees presented by the Executive Committee.
3. The Executive Committee manages the appointment process, which includes:
 - setting the term of appointment (generally a period of three years, unless the Executive Committee directs otherwise);
 - inviting and reviewing nominations;
 - preparing a pool of nominees from the nominations received for the Benchers' consideration; and
 - notifying the nominees and FLSC of the Benchers' appointment decision.
4. The Council member, on completing a first term, may be considered by the Executive Committee to be appointed by the Benchers for one further term.

Note that Appendix 3, section 2 of the [Bencher Governance Policies](#) applies: "Law Society appointments to any position will normally be up to a total period of six years, provided that other considerations relating to that particular appointment may result in a shortening or lengthening of this period. An initial appointment to a position does not carry with it an expectation of automatic reappointment for up to six years."

Service

1. The Council member, as a condition of accepting the position, will agree to make genuine efforts to complete the full term and then, if offered, to accept and complete the term on the FLSC Executive Committee ladder. More particularly, the Council member will not accept a judicial appointment or other position that requires withdrawing from Council.
2. If the Council member is or becomes a Life Benchers, or is defeated in a Benchers election, the Council member will complete the full term of the Council appointment.
3. The Council member will strive to:
 - attend all FLSC Council meetings (currently three in person and one telephone meeting per year)
 - report after each Council meeting to the Benchers at their next meeting, and where appropriate, to the Executive Committee at their next meeting
 - provide supporting documentation received from FLSC to LSBC as appropriate to ensure that LSBC is fully informed about national initiatives and the FLSC agenda
 - attend Benchers meetings to facilitate this obligation and answer questions
 - attend all FLSC Conferences (currently semi-annual)
 - obtain instructions from LSBC, where necessary regarding matters on the FLSC agenda
 - which instructions may come from the President in consultation with the First Vice-President, Second Vice-President and the CEO, or the Executive Committee, or the Benchers
 - Benchers approval will generally be obtained for matters touching on regulatory issues such as rule or policy changes, and financial commitments
 - remain fully informed about the work of LSBC and in particular, the Benchers' strategic priorities and current issuesⁱ
 - where appropriate, use such information to inform the work of the Council and manage Council's expectations regarding LSBC's ability to deal with FLSC agenda issues
 - as appropriate, convey LSBC 's desire for FLSC to achieve certain objectives
 - facilitate an exchange of information between LSBC and other law societies on matters of common interest
 - participate fully in the national deliberations and work of whatever Council committee(s) the Council member may join

ⁱTherefore the Council member will be included in the distribution of agendas and supporting materials (including *in camera*) for Benchers and Executive Committee meetings.

LAW SOCIETY OF ALBERTA

FEDERATION OF LAW SOCIETIES OF CANADA COUNCIL MEMBER POSITION DESCRIPTION

The Council member appointed to represent Alberta at the Federation of Law Societies will strive to:

- Attend all FLSC Council meetings (currently 3 in person and 1 telephone meeting per year)
- Report after each meeting to the Alberta LSA Benchers, and where appropriate, before that time to the Executive Committee or the President, President-Elect and CEO
- Provide supporting documentation received from the FLSC to the LSA as appropriate to ensure that the LSA is fully informed about National initiatives and the FLSC agenda
- Attend Alberta Benchers meetings to facilitate this obligation and answer questions
- Attend all FLSC Conferences, currently semi annual
- Obtain instructions from Alberta, where necessary regarding matters on the FLSC agenda, which instructions may come from the President in consultation with the President-Elect and CEO, or the Executive Committee, or the Benchers. Bencher approval will generally be obtained for matters touching on regulatory issues such as rule or policy changes, and financial commitments.
- Remain fully informed about the work of the LSA and in particular, the Benchers' priorities and agenda
- Where appropriate, use such information to inform the work of the Council and manage Council's expectations regarding Alberta's ability to deal with FLSC agenda items
- As appropriate, convey Alberta's desire for the FLSC to achieve certain objectives
- Facilitate an exchange of information between Alberta and other law societies on matters of common interest
- Participate fully as a committee member on whatever committee(s) the Council representative is invited to participate on the national level

December 2009

MEMORANDUM

To: The Benchers
The Law Society of British Columbia

Date: October 25, 2010

From: Gavin Hume, Q.C.

Re: British Columbia Law Society Federation Representative

As requested, I outline below my reasons for putting my name forward as the British Columbia representative on the Federation of Law Societies' Council.

While not part of our Strategic Plan, my understanding is that the LSBC Benchers are generally of the view that it is desirable to develop, where reasonably possible, a common approach to the regulation of the profession in Canada. In addition, I understand that the Benchers believe that the Law Society of B.C. should play an active role in the development of those standards, as well as have an active voice in the various issues dealt with by the Federation. I also believe that those objectives are appropriate.

As a result, I am prepared to put time and effort at this stage in my career into continuing to ensure that the Law Society of British Columbia has an effective voice at the Federation Council table. At the same time I will put the appropriate effort into ensuring that I am up to date with the LSBC perspective and to ensure that Federation matters are brought to the attention of the Executive Committee and Benchers, as appropriate and on a regular basis.

I will also be chairing a Standing Committee for the Federation to deal with the Federation's objective of developing, to the extent reasonably possible, a Common Code of Conduct (Model Code). I anticipate that to be a two or three year project. As a result, a commitment to the position of B.C. representative to the Federation Council will complement my appointment as chair of that Standing Committee.

Gavin



Gavin Hume, Q.C.

Partner

Vancouver

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Areas of Practice

Labour, Employment and Human Rights

Collective Bargaining

Employment Law Advice

Employment Standards

Human Rights

Labour Relations

Education

BA,
University of British Columbia,
1964

LLB,
University of British Columbia,
1967

Year of Call

British Columbia, 1968

Gavin Hume is a senior member of the Labour, Employment and Human Rights Group. His focus is labour relations and employment law. Gavin's experience includes representation of management clients before Labour Relations Boards, Arbitration Boards and the courts, the conduct of collective bargaining on behalf of management clients and provision to those clients of legal and tactical advice and long-term planning strategies in the employment and labour relations area.

Gavin is a Benchers and First Vice-President of The Law Society of British Columbia. He is also a founding member and Past President of the Canadian Association of Counsel to Employers. He has authored numerous articles and papers on employment and labour issues and is a frequent speaker for numerous organizations including: Canadian Bar Association, the Human Resource Management Association and the BC Business Council.

LEXPERT has consistently recognized Gavin as a leading practitioner in Employment and Labour Law, as well as one of the top 500 lawyers in Canada. He is listed as one of Canada's leading Labour and Employment lawyers in the most recent edition of Who's Who Legal (ABA Section of International Law), and recognized as one of forty lawyers from Canada and the U.K. as a leader in his practice area in a 2009 survey conducted by U.K.-based Practical Law Company. Gavin is also listed in Euromoney's Guide to the World's Leading Labour and Employment Lawyers for 2009.

Presentations

- Labour, Employment and Human Rights 2010 Seminar, Labour, Employment and Human Rights Group, October 28, 2010
- Multidisciplinary Partnerships in British Columbia, International Bar Association Conference 2010, October 2010
- CACE 7th Annual Conference, Canadian Association of Counsel to Employers, September 23-25, 2010
- Navigating New Age Marketing Ethically, Legal Marketing Association, September 2010
- Mirror Imaging, CBA FOI & Privacy Law Section, June 2010
- Ethical Issues in the Practice of Labour Law, CBA Labour Law Subsection, May 2010
- 2009 Labour, Employment and Human Rights Update, Fasken Martineau Labour, Employment and Human Rights Seminar, October 30, 2009
- Ethics Panel, CBA Employment Law Subsection, September 2009
- Solo and Small Firm Conference 2009, Protect, Strengthen, and Tech up your Practice!, January 22, 2009
- CBA Midwinter Meeting, November 22, 2008
- 2007 Labour, Employment & Human Rights Update, Fasken Martineau National Labour, Employment and Human Rights Seminar, October 26, 2007

- Legal Update - Latest on All Fronts, 2007 Annual Conference, Human Resources Management Association of British Columbia, May 2007
- Western Canada Labour Relations Conference, Insight Information, January 2007
- Canadian Association of Counsel to Employers Conference, September 29-30, 2006
- Legal Potpourri of Recent Developments in Privacy, Human Rights, Employments and Labour Relations, 2006 Annual Conference, Human Resources Management Association of British Columbia, April 19-21, 2006
- Surviving in a Sea of Change: New Solutions for Recurring Problems, National Administrative Law and Labour/Employment Law CLE Conference, Canadian Bar Association, November 18-19, 2005

Publications

- "Multi-Disciplinary Partnerships in British Columbia", International Bar Association Conference 2010, October 2010
- "Acting for and Against a Client: When is it Permissible?", The Advocate, Vol. 67 Part 3, May 2009
- "CLE Labour Law, Annual Review of Law & Practice", by Gavin Hume, Q.C., 1991-1993
- "Recent Developments in B.C. Labour Relations Law", by Gavin Hume, Q.C., September 2004
- "CLE Annual Review of Law and Practice, Labour Relations Board Update", by Gavin Hume, Q.C. and David McDonald, 2000-2009

Memberships and Affiliations

- Human Resources Management Association of British Columbia
Member and Volunteer (1990 – date); Executive Member and Past President (1992 –1996)
- Benchers, The Law Society of British Columbia (2004 – date) and First Vice-President (2010);
Chair - Ethics Committee; Member - Executive Committee; Chair - Finance Committee; Member - Litigation Sub Committee; Member - Retention of Women in Law Task Force; Past Chair-Regulatory Policy Committee; Past Chair - Women in the Legal Profession Task Force
- Labour Law Section, Canadian Bar Association (BC Branch)
Executive Member and Provincial Chair, Labour Law Subsection, Canadian Bar Association, 1976-1989, (BC Branch)
Executive Member and Chair of the National Labour Law Subsection of the Canadian Bar Association, 1980 – 1986
- Past President, (2007-2008) Canadian Association of Counsel to Employers (CACE);
Director 2002 – 2008

Rankings and Awards

- Best Lawyers in Canada 2010, Labour and Employment
- Canadian Legal Lexpert Directory 2009, Consistently Recommended, Labour Relations Management; Repeatedly Recommended, Employment Law - Management
- Honorary Life Member, Human Resources Management Association of British Columbia
- 2003 Community Service Award, Canadian Bar Association (BC Branch)
- The YMCA Fellowship of Honour
- Honorary Life Member - YMCA

- Queen's Counsel, 1992
- Listed as a leading lawyer in the area of Labour and employee benefits (Canada: Western Provinces) by Practical Law Company Cross border Insurance Handbook 2009/10
- Chambers Global 2010, Employment, Labour & Pensions: Labour for Employers: Canada (Band 1)

Community Involvement

- Director, The Y.M.C.A. of Greater Vancouver (1997-date)
- Former Chair, Y.M.C.A. Endowment Fund (1994-2002)
- Honorary Solicitor, The Y.M.C.A. of Greater Vancouver (1985-date)
- Trustee, Y.M.C.A. Endowment Fund (1985-date)
- Former President, The Y.M.C.A. of Greater Vancouver (1983-1984)
- Former Executive Member, The Y.M.C.A. of Greater Vancouver (1978-1986)
- Former Member, Board of Governors, The Y.M.C.A. of Greater Vancouver (1972-1987)

Personal Statement of James D. Vilvang, Q.C.

I am a firm believer in the value of an independent bar. I also believe that self-governance is an essential element of that independence.

At a time of increased government scrutiny of self-regulated professions, it is vitally important that all Canadian law societies adopt "best practices" to insure that we maintain our self-governing status. I believe that a strong, well funded, proactive Federation of Law Societies represents the best mechanism for insuring that all law societies in Canada perform their role of regulating the profession in the best interests of the public in the most effective manner possible.

I believe that the most important projects for the Federation in the next few years will be:

1. Enhancing the profession's awareness of the importance of the work of the Federation. This will hopefully enable the Federation to procure better funding and more "buy-in" from the individual law societies.
2. Working to complete the conflicts and confidentiality portions of the Model Code of Professional Conduct and having the Code adopted by the member societies.

I also believe that the Federation needs to focus attention on the following matters:

1. Implementing the recommendations in the report of the Common Law Degree Task Force.
2. Improving the functioning of the National Committee on Accreditation.
3. Promoting increased uniformity in articling programs, the credentialing process, and the disciplinary process.
4. Coordinating professional liability insurance programs.
5. Improving CanLII and promoting greater usage.

James D. Vilvang, Q.C.

James D. Vilvang, Partner

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Education

1973, LL.B., University of British Columbia, Faculty of Law, Awarded

Bar Admission

January 1996, Appointed Queen's Counsel
1994, Yukon
1974, British Columbia

Profile

Practised with Sutton Braidwood and merged firm Richards Buell Sutton LLP to date

Jim Vilvang is a partner in the Litigation group at Richards Buell Sutton LLP. His preferred areas of practice are Civil and Criminal Litigation with an emphasis on personal injury claims. Jim graduated with his LL.B. from The University of British Columbia in 1973. He was called to the Bar in British Columbia in 1974 and the Yukon in 1994. He was appointed as Queen's Counsel in January of 1996. He has been a Qualified Commercial Mediator since 1994.

Jim has been a distinguished and recognized trial lawyer for over 30 years and is highly regarded by all sectors of the bar for his work ethic, insight, and love of the legal profession. His clients hold him in equally high regard, thanking him for his concern, consideration and frequent communication. "The key thing is organization. Ninety per cent of what happens in a courtroom is pre-determined by preparation. That's the key. A good understanding of the rules of evidence is also important." His greatest strength as a trial lawyer is his ability to learn. "Experience is important but you always have to keep learning from your losses as well as your wins."

The most important thing to Jim for his clients is that they are objectively advised before they go to trial. "I don't build expectations to an unrealistic level. The best client is easy to contact and communicate with, takes an interest in their own case and accepts their lawyer's advice."

Jim is one of the founding partners of RBS. "It's a nice atmosphere, comfortable, a good fit. I like the partners, the general ethic, the attitude towards work, business and partner relations."

Jim notes how he and RBS distinguish themselves in servicing their clients. "We have an efficient system for moving cases to trial. Each case gets my personal attention. We devote the proper energy and resources to putting together the appropriate medical and employment documentation to substantiate the case. We communicate frequently and we are accessible. I always use my negotiating skills to try to achieve a favourable settlement but if the case does go to trial we'll do a good job."

Jim has a family with three children. He enjoys playing hockey, horseback riding, running, and working out.

Areas of Practice

Personal Injury and Criminal Litigation, with an emphasis on personal injury claims
Qualified Commercial Mediator since 1994 (conducted over 650 mediations to date)

Professional / Business Affiliations

Trial Lawyers Association of British Columbia - Award for Outstanding Contribution, 2003
President, B.C. Branch of Canadian Bar Association, 1988-1989
President, Trial Lawyers Association of British Columbia, 1993-1994
Life Benchers, Law Society of B.C.
Member, American Trial Lawyers Association
Co-Chair, 11th Commonwealth Law Conference Organizing Committee, Vancouver, B.C. held in August 1996
Member, Executive Committee - B.C. Branch of Canadian Bar Association, 1985-1990
Canadian Bar Association, National Executive, 1986-1987; 1990-1992
Member, Board of Governors of Trial Lawyers Association of British Columbia
Co-Chair, B.C. Branch Provincial Mid-Winter Meeting, 1986 and 1987
Chair, Canadian Bar Association National Mid-Winter Meeting held at Whistler, 1992
National Legal Aid Liaison Committee, 1989-1991
Attorney General's Committee to Hire Supreme Court Masters, 1989
Attorney General's Committee on Court Reporting, 1991-1992
Canadian Bar Association Contingency Fee Committee: prepared report and submissions to Law Society
Member, Editorial Advisory Board of Continuing Legal Education Publication; Motor Vehicle Accident Claims Manual, 1996-2003
Co-Chair, Person Injury Conference (CLE), May 1994-2010

Community

Vancouver Lawn Tennis and Badminton Club
Southlands Riding and Polo Club