

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

- MEETING:** Benchers
- DATE:** Thursday May 4, 2007
- PRESENT:**
- | | |
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| Anna Fung, QC, President | Thelma O'Grady |
| John Hunter, QC, 1 st Vice-president | June Preston |
| Gordon Turriff, QC, 2 nd Vice-president | Robert Punnett |
| Ralston Alexander, QC, Life Bencher | David Renwick, QC |
| Rita Andreone | Glen Ridgway, QC |
| Kathryn Berge, QC | Allan Seckel, QC, Deputy AG |
| Joost Blom, QC | Dirk Sigalet, QC |
| Ian Donaldson, QC | Richard Stewart |
| Leon Getz, QC | Ronald Tindale |
| Carol Hickman | Dr. Maelor Vallance |
| Gavin Hume, QC | Art Vertlieb, QC |
| William Jackson | James Vilvang, QC |
| Patrick Kelly | Ken Walker |
| Bruce LeRose, QC | |
- NOT PRESENT:**
- | | |
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| Terry La Liberté, QC | David Zacks, QC |
| Jan Lindsay | |
- STAFF PRESENT:**
- | | |
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| Timothy McGee, CEO | Michael Lucas |
| Stuart Cameron | Bill McIntosh |
| Brad Daisley | Melissa McConchie |
| Su Forbes, QC | Doug Munro |
| Jeffrey Hoskins | David Newell |
| Howard Kushner | Alan Treleaven |
- GUESTS:**
- Dean Mary Ann Bobinski, University of British Columbia
 - Jerry McHale, QC, Assistant Deputy Minister, Ministry of the Attorney General
 - Ken Walton, Vice-president, CBABC
 - Caroline Nevin, Executive Director, CBABC
 - Rose Keith, President, Trial Lawyers Association
 - Jamie McLaren, Executive Director, Pro Bono Law of BC
 - Paula Cayley, President, Interlock

1. MINUTES

The minutes of the meeting held on April 5, 2007 were approved as corrected.

2. PRESIDENT'S REPORT

Ms. Fung reported that the four amendments to the Legal Profession Act requested by the Law Society were introduced in the Legislature on April 25, 2007. Ms. Fung thanked Deputy Attorney General Seckel and the Attorney General and their staff for their work in getting the amendments

to this stage, and at the Law Society, Jeff Hoskins, Brad Daisley on staff, and past President Rob McDiarmid for laying the groundwork.

Ms. Fung reported that she and Mr. McGee would be meeting with the Minister of Labour to put forward a proposal that she hoped would allow the government to make up to date BC Statutes available online at no cost.

Ms. Fung reviewed the highlights of her written report, which included:

- Attending the second public forum hosted by the Law Society. The theme of the forum was access to justice for people with disabilities. Ms. Fung said she had received very positive comments from participants with respect to the quality of organization and the variety and enthusiasm of the speakers. Ms. Fung acknowledged the work of Kuan Foo, Brad Daisley, Melissa McConchie, Donna Kokot, Rebecca Garcia, and the leadership of Art Vertlieb.
- The annual certificate luncheon at which twenty-one 50-year certificates, four 60-year certificates and one 70-year certificate were handed out. That latter to Arthur Harper, a former Treasurer of the Law Society. Lloyd Wilson, the oldest practicing member of the Law Society received a 60-year certificate. Ms. Fung thanked Donna Kokot, Rebecca Garcia, Melissa McConchie, and Brad Daisley for their work organizing the event.
- With Kensi Gounden, Manager of Practice Standards, met with representatives of the Guangdong Law Society. Ms. Fung noted that the Guangdong Law Society requires all its members to do a minimum of fifteen hours of continuing legal education each year, which is provided by the society through online streaming video. Apparently the system works reasonably well although there have been some cases where members have had their assistants log in to the program and “attend” on their behalf.

3. CEO'S REPORT

Mr. McGee circulated the financial results for the first quarter of 2007. He reported that overall the General Fund results were on track. The positive variance shown in the report is largely the result of timing factors. He said senior staff would be paying particular attention to the cost of external counsel and audit costs. He noted that the cost of interventions could be an area of pressure. He reported that the costs in the Sheddy matter could be as much as \$100,000, which would be an unbudgeted expense. Mr. McGee said it was too early in the year to say much about the Trust Assurance Fee revenue, but it appeared to be tracking the budget.

Mr. McGee said the planning process for the 2008 budget was underway. The management team would be looking at a forecast for a three year rolling budget and both medium and long term capital budgets as well.

Mr. McGee recalled for the Benchers that the Competition Bureau had initiated a review of many regulated professions, including law societies. The Bureau is examining the costs of regulated professionals and the implications of cost for consumers. The interest appears to be focused on advertising, fees, and inter-provincial mobility. Mr. McGee reported that a decision was made to coordinate submission of information from the individual law societies through the Federation. That work has been done with the assistance of counsel retained by the Federation. Mr. McGee said it was clear that there are issues of interest to the Competition Bureau that go beyond gathering simple statistics. The concern is that the Bureau may seek to review the efficacy of the regulatory scheme for professionals, including lawyers; therefore it is important that it receives an articulation of the constitutional context for the regulatory framework for lawyers. That piece also points out the difference between the Canadian regulatory model and the structures in other jurisdictions such as the United Kingdom and Australia. Mr. McGee said the draft submission would be considered at the Federation council meeting, with a view to sending it to the Bureau by the end of May.

In conclusion, Mr. McGee reported that Ms. Fung had been nominated for a YWCA Woman of Distinction award, and he congratulated Ms. Fung.

4. REPORT ON OUTSTANDING HEARING DECISIONS

The Benchers received reports on outstanding hearing decisions and outstanding matters on appeal or review.

5. PRESENTATION ON INTERLOCK

Paula Cayley, President and CEO of Interlock gave a presentation on the services provided by Interlock to the members of the Law Society. A copy of the presentation is attached as Appendix 1.

6. LAW SOCIETY RULE 2-45

Mr. Hume explained that the Credentials Committee has the ability to exempt from PLTC a person who has worked for five years or more as a lawyer in a common law jurisdiction other than Canada. In some cases such people are exempted from the PLTC program but are required to pass the examinations. If the person fails the examination, the Credentials Committee does not currently have the ability to require them to take PLTC. The purpose of the amendments proposed by the Regulatory Policy Committee is to enable the Credentials Committee to require a person in that situation to take some or all of the PLTC program.

It was moved (Hume/Ridgway) to amend Law Society Rule 2-45 by rescinding subrule (6)(d) and substituting the following:

- (d) require the student to complete or repeat and pass all or a portion of the training course;

Mr. Jackson asked if there was any inter-provincial arrangement with other law societies that impacted on the process.

Mr. Hume said that once a person is qualified in BC, they may use the mobility rules to move to another jurisdiction.

Mr. Jackson asked if the proposed change would make BC a relatively easy jurisdiction to qualify in, in order to gain access to other jurisdictions?

Mr. Treleaven said the admission programs in other provinces are not identical but are remarkably similar and he would not identify one jurisdiction as easier than others to qualify in.

The motion was carried by a majority of more than two thirds of the Benchers present.

7. APPOINTMENT TO THE LEGAL SERVICES SOCIETY BOARD OF DIRECTORS.

The Benchers considered the Executive Committee's recommendation to re-appoint John Hogg, QC for a further term as a director of the Legal Services Society.

It was moved (Ridgway/Jackson) to reappoint John Hogg, QC to the Board of Directors of the Legal Services Society for a further term of two years commencing on June 1, 2007, subject to consultation with the Canadian Bar Association, BC Branch.

The motion was carried.

8. APPOINTMENT TO THE CANLII BOARD OF DIRECTORS

Mr. Sigalet urged the Benchers to re-appoint Catherine Best to the CanLII board of directors for a further term of three years, despite the Benchers' general policy of not extending appointments beyond a total of six years. He said Ms Best made a particularly important contribution to the Board and was the *de facto* board leader.

It was moved (Donaldson/Sigalet) to re-appoint Catherine Best to the Board of Directors of CanLII for a further three-year term commencing on October 1, 2007

The motion was carried.

9. LAW SOCIETY SUBMISSION TO THE JUDICIAL JUSTICES OF THE PEACE COMPENSATION COMMISSION 2007

Mr. Newell reported that the Judicial Justices of the Peace Compensation Commission 2007 had invited the Law Society to make a submission. He briefly reviewed a memorandum proposing that the Law Society repeat the submission made to the 2004 commission, which reviewed the principles of judicial independence and security of tenure and compensation on which judicial remuneration should be based.

Mr. Vertlieb said the Law Society would be invited to make a submission to the Provincial Court Judge's Compensation Commission 2007, as well. Mr. Seckel confirmed that the Law Society would likely receive that invitation in the very near future.

Mr. Punnett said it was conceivable that there would be different issues with respect to remuneration of Provincial Court Judges. Mr. Donaldson noted that JJPs are different from Provincial Court Judges but there is a plan to move some functions from the Judges to the JJPs, in particular bail hearings.

Mr. Seckel said there was no doubt that JJPs would do bail hearings. He said the Judicial Council had resolved that henceforth JJPs would be legally trained.

Mr. Walker supported sending a different submission to the Provincial Court Judges Compensation Commission at the appropriate time.

It was moved (Walker/Donaldson) to send the Law Society's 2004 submission to the Judicial Justices of the Peace Compensation Commission 2007, and at the appropriate time, the 2004 submission to the Provincial Court Judge's Compensation Commission, with appropriate changes to the dates.

Mr. Vilvang was concerned about sending the submission without more knowledge of the JJP program and without seeing the final version of the submission.

Ms. Fung noted that the submission did not comment on the program itself or on specific amounts, but simply reiterated high level principles to be considered in setting the compensation of JJPs.

Mr. Donaldson said the since the Law Society had received an invitation to make a submission it ought to say something, and the principles articulated in 2004 remained applicable in 2007.

Mr. LeRose said the submission was based on high level principles and nothing had changed in relation to those principles.

The motion was carried.

10. LAW SOCIETY RESPONSE TO THE CIVIL JUSTICE REFORM WORKING GROUP REPORT

Mr. Punnett introduced this topic, noting that the Civil Justice Reform Working Group report recommends sweeping reforms but many details are not included in the report. For example, the report recommends changes to the discovery rules but there are no draft rules to comment on. Consequently, developing a response to the report was challenging. The response prepared by the Access to Justice Committee is structured to achieve two objectives. The first is to identify that the report is preliminary in nature and there is still much to be done, and the Law Society wants to be involved as an active participant. The second is that simply providing access to a process is not necessarily the same as providing access to justice. The response encourages government to identify the essential components of a just system, and ensure that they are not diluted or given short shrift in order to deal with economic issues. The response tries to raise public policy issues and seeks to ensure that public confidence in the justice system is based more on the cost associated with it.

Ms. Forbes explained that the separate submission prepared by the Lawyers Insurance Fund deals with issues that are specific to the Law Society as a litigant, and more particularly to the Lawyers Insurance Fund. The submission concerns reforms that would touch on the ability to defend lawyers' reputations, as well as procedural matters.

Ms. Fung said the Executive Committee had reviewed both draft submissions and thought it was appropriate to bring both to the Benchers for review. The Executive Committee was of the view that the LIF submission should be sent out immediately regardless of what is done with the Access to Justice Committee submission because delay could significantly reduce the impact of the response. Mr. Punnett confirmed that the Access to Justice Committee agreed.

Mr. Turriff suggested two points that ought to be included in the response. First, he said, information hubs should not be located in courthouses. Second, consideration should be given to the criticisms made by other commentators with respect to the "front loading" of costs through the case management process.

It was moved (LeRose/Stewart) that both presentations be sent to the Justice Review Task Force.

The motion was carried.

11. DISCUSSION OF BENCHER CONCERNS

This portion of the meeting was *in camera*.

12. ALTERNATIVE DISPUTE RESOLUTION TASK FORCE REPORT

Mr. Hunter assumed the Chair in Ms. Fung's absence. He welcomed Ralston Alexander, QC and Jerry McHale, QC, two of the task force members.

Mr. Alexander recalled that the task force had presented an earlier draft report approximately one and a half years previously but it did not meet with wide approval. The task force added John Hunter and Stan Lanyon to its membership and received input from Gordon Turriff. The report presented endeavored to address the concerns expressed in 2005, and the task force sought the Benchers' authorization to publish the report to the members, and possibly the public, and obtain feedback before publishing its final recommendations.

Mr. Hunter confirmed that the Benchers were not being asked to endorse the report's recommendations at this time but only to authorize publication for comment.

Mr. Stewart said that as a family law lawyer he had participated in many mediations as counsel, and was in favour of mediation. He said he appreciated the skill that good mediators bring to the task. He was somewhat concerned that the report did not include a recommendation that commercial mediators be required to have some form of training or experience to do their work.

Mr. McHale said it was possible that when the profession has an opportunity to comment on the report enough people will raise that concern that the Benchers may want to pursue the idea. However, the task force tried to look at the experience with mediation so far. The status quo is that family law mediators require some training while commercial mediators do not. While there is a plausible argument for requiring commercial mediators to have some training, the fact is that most of them do have some training notwithstanding that there is currently no requirement. To some extent the marketplace drives the need for training. Family law is different in that the parties are often unsophisticated, emotionally attached, and unempowered. There may also be unrepresented third parties (children) in family law matters. The task force's recommendations were to maintain the status quo with some expansion of the training requirements to relationship disputes in general for the same reasons that training is required in family law matters.

Mr. Vilvang asked if it was possible to give the Benchers a "snapshot" of what was taken away from the discussion of the previous draft report, and what was changed in the current draft.

Mr. Alexander said the general sense of the previous discussion was that the language of the report suggested a bias against conventional litigation solutions to disputes. A close examination of the report suggested that was a legitimate criticism. The thrust of the revision was to remove the language that tended to indicate that litigation was inherently less desirable, as opposed to be one alternative form of dispute resolution.

Mr. Turriff thanked the task force for accepting the revisions and said he was content with the report.

It was moved (Stewart/LeRose) to receive the report and seek comment from the members and others as appropriate.

The motion was carried.

DMGN
07-05-20