

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING: Benchers

DATE: Friday December 14, 2007

PRESENT:

Anna Fung, QC, President	Jan Lindsay
John Hunter, QC, 1 st Vice-president	Thelma O'Grady
Gordon Turriff, QC, 2 nd Vice-president	June Preston
Rita Andreone	Robert Punnett
Kathryn Berge, QC	David Renwick
Joost Blom, QC	Glen Ridgway, QC
Ian Donaldson, QC	Allan Seckel, QC, Deputy AG
Leon Getz, QC	Dirk Sigalet, QC
Carol Hickman	Richard Stewart
Gavin Hume, QC	Ronald Tindale
William Jackson	Dr. Maelor Vallance
Patrick Kelly	Art Vertlieb, QC
Terry La Liberté, QC	James Vilvang, QC
Bruce LeRose, QC	Ken Walker
	David Zacks, QC

NOT PRESENT:

Ken Dobell	Barbara Levesque
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STAFF PRESENT:

Tim McGee, CEO	Melissa McConchie
Stuart Cameron	Jeanette McPhee
Brad Daisley	Doug Munro
Su Forbes, QC	David Newell
Jeffrey Hoskins	Susanna Tam
Howard Kushner	Alan Treleaven
Michael Lucas	Adam Whitcombe
Bill McIntosh	Carmel Wiseman

GUESTS:

Robert Brun, QC, David Mossop, QC, Meg Shaw, QC, Benchers Elect
Dean Andrew Petter, University of Victoria
Professor Claire Young, Associate Dean, University of BC
Professor John Borrows, University of Victoria, Faculty of Law
Elizabeth Hunt, LSBC Equity and Diversity Committee
Ken Walton, President, CBABC
Miriam Maisonville, Vice-president CBABC
Caroline Nevin, Executive Director, CBABC
Johanne Blenkin, Executive Director and Chief Librarian, BCCLS
Tom Fellhauer, Chair, CLE Society
Jack Huberman, QC, Executive Director, CLE Society
Wayne Robertson, Executive Director, Law Foundation of BC

1. MINUTES

The minutes of the meeting held on November 16, 2007 were approved as circulated.

2. CONSENT AGENDA

The following resolution was passed unanimously and by consent:

Resolved: to amend the Professional Conduct Handbook by rescinding paragraph 19 of Chapter 8 and substituting the following:

19. A lawyer must not act as surety for, deposit the lawyer's own money or other valuable security for or act in a supervisory capacity to an accused person for whom the lawyer acts³.

and by adding footnote 3 as follows:

3. This rule does not apply when the accused is in a family relationship with the lawyer and the accused is represented by the lawyer's partner or associate.

3. PRESIDENT'S REPORT

Ms. Fung welcomed guests and noted in particular the attendance of Benchers-elect Robert Brun, QC, David Mossop, QC and Meg Shaw, QC. Ms. Fung also noted that this was the last Benchers meeting Ken Walton would attend as President of the CBA BC Branch. She congratulated Mr. Walton on a successful year as CBABC President and presented him with a token of the Benchers' appreciation.

Ms. Fung reported that she was pleased to have had the opportunity to participate in the public forum held in conjunction with the Lawyers Without Rights exhibition in Vancouver and Victoria. The forum attracted lawyers, judges, and members of the public and was very well received.

Ms. Fung also reported on her participation in a meeting with lawyers and legal administrators from Shanghai Pudong New Area visiting to learn about the Canadian legal system and the role of the Law Society. A lot of ground was covered in a short time and the visitors left for Montreal happy and impressed with their visit to the Law Society.

4. CEO'S REPORT

The Benchers received a presentation from TWI Surveys summarizing the results of the second annual Law Society employee survey. The presentation highlighted areas where progress was made in relation to the previous year's survey as well as areas of focus for ongoing effort.

Mr. McGee commented on the very recently published report on self-governing professions by the Competition Bureau. From a management perspective the positive aspect of the report is that it makes specific suggestions that can be addressed directly. From a broader, policy perspective the report did not take the position that self-governance is an inappropriate way to regulate the professions, but made suggestions and recommendations for improvement that were directed back at the governing bodies. The Benchers agreed with Mr. McGee's recommendation to refer the report to the Executive Committee to consider in greater detail, to coordinate with the Federation of Law Societies' committee and report back to the Benchers.

Mr. McGee reported on two awards received for the work of the Law Society communications group. The new Benchers Bulletin and the 2007 Annual Report were submitted to the MarCom

Group to gain some feedback, and both were singled out for awards. The Benchers Bulletin received a gold award for exceeding industry standards for publications of its kind, and the Annual Report received a platinum award for outstanding achievement. Later in the meeting Mr. McGee called on public affairs manager Brad Daisley to introduce and recognize the staff members of the communications group.

5. REPORT ON OUTSTANDING HEARING DECISIONS

The Benchers received a report on outstanding hearing decisions. Ms. Fung noted that there were no reports outstanding beyond the expected time limits and she congratulated the Benchers on their achievement of that goal.

6. PRESENTATION FROM DR. JOHN BORROWS

Elizabeth Hunt, a lawyer from Alkali Lake, BC and member of the Law Society Equity and Diversity Committee introduced Dr. John Borrows of the University of Victoria Faculty of Law.

Professor John Borrows addressed the Benchers on the subject of indigenous legal education. Dr. Borrows noted that both UVic and UBC law schools have good recruitment programs for aboriginal students and others interested in indigenous law. Both schools have established cultural academic support programs. Recently, UVic offered a three-year law degree program to students in Iqaluit, in Nunavut. Section 35 of the *Constitution Act of 1867* provides a framework for indigenous legal education. The courts have made it clear that aboriginal laws are presumed to have survived the assertion of crown sovereignty. The question for the law schools is how to reconcile the indigenous legal systems, common law, and civil law in a multi-juridical nation. The focus is on reconciliation of respective practices, claims and interests of aboriginal and non-aboriginal people.

Dr. Borrows said it is possible to offer a degree that combines the multiple legal systems and traditions. If people can see in the law some of their own norms and values, there will be greater respect for the law within communities. It is still on the development path and as such is a work in progress. The degree would likely be offered as a cohort program of four years duration. Students would get the same information as students in the regular three-year program but would have the additional component of indigenous law. The degree would help reveal how the common law, like other legal systems, has tradition and culture as part of its development. In particular indigenous systems examined would be based on the particular expertise of faculty.

Mr. Turriff asked Dr. Borrows if he made a distinction between tradition and law, and further, asked how it would be decided which traditions to teach and why?

Dr. Borrows said the proposed degree would help reveal how the common law has tradition and culture as part of its development. In terms of which traditions to focus on, with groups of six students, four faculty members would work with four traditions based on each of the professors' own areas of expertise.

7. LAW SOCIETY GOVERNANCE, PLANNING AND PRIORITIES

Mr. Hunter reviewed the combined recommendations of the Executive Committee and Planning and Priorities Steering Committee with respect to restructuring Bencher committees and task forces and development of an annual planning cycle. The three recommended reforms were:

1. Direct the cycle of Bencher meetings during the year toward development and consideration of strategic priorities and plans, and the resources necessary to support those plans.

2. Reform the content of Bencher meetings to permit the Benchers to focus on what is most important, and ensure that individual Benchers are sufficiently informed so they can meaningfully participate in knowledge-based decision-making.
3. Ensure that the relationship between the Benchers and the various committees, task forces and working groups supports the strategic priorities and plans, while also ensuring that the regulatory work of the Law Society is done.

The role of the Executive Committee will be realigned to focus primarily on setting priorities for strategic issues and overseeing the pre-board work necessary to bring those priorities to the Benchers for consideration. The Benchers will begin each year by selecting the matters that are most important to fulfilling the Law Society's mandate in the ensuing three years, and in the absence of compelling reasons to alter priorities, those matters will provide the focus for the Benchers policy-making function.

The Executive Committee, Finance Committee, and Audit Committee will remain to provide necessary oversight. The "regulatory" committees: Discipline, Complainants Review, Practice Standards, Credentials, Ethics, Special Compensation Fund, and Unauthorized Practice, will continue their existing functions. The Access to Justice, Equity and Diversity, Lawyer Education, and Independence and Self-governance Committees will continue as Standing Advisory Bodies. Advisory task forces will be determined on an as needed basis depending on Bencher decisions on priorities. The existing task forces will meet in January to consolidate their work to date and provide their views on priorities for the Executive Committee and Benchers to consider.

It was moved (Hunter/Turriff) to amend the Law Society committee and task force structure as follows, effective January 1, 2008:

1. by eliminating the following groups:
 - a. Financial Planning Subcommittee of the Executive Committee;
 - b. Government Relations Subcommittee of the Executive Committee;
 - c. Paralegals Task Force; and
 - d. Title Insurance Issues Task Force.
2. by establishing a Finance Committee
 - a. with the current responsibilities of the Financial Planning Subcommittee and investment decisions and capital planning, and
 - b. composed of the following Benchers:
 - the First Vice-president and Second Vice-president,
 - two Benchers nominated by the Benchers, at least one of which is not a member of the Executive Committee,
 - the Chair of the Audit Committee,
 - a Lay Bencher nominated by the Lay Benchers.

The motion was carried.

It was moved (Berge/Hunter) to terminate the Governance Review Steering Committee.

The motion was carried.

8. FEDERATION OF LAW SOCIETIES MODEL CODE OF CONDUCT

Mr. Hunter referred the Benchers to the draft model code of conduct developed by the Federation of Law Societies. He said the Ethics Committee had examined the model code in some detail and in general was impressed with it, subject to a few concerns, which were set out in the memorandum to the Benchers.

Mr. Jackson referred to the list of matters identified as things the Law Society of BC would feel obliged to change if the model code was implemented in BC, and specifically to the third item regarding interviewing witnesses. He asked if the provision would limit the ability of the Crown to interview employees and agents of corporations in relation to criminal prosecutions?

Mr. Zacks responded that the specific question had not surfaced in discussion but he did not think the rule was intended to apply to criminal prosecutions and probably ought to say so. Mr. Hunter said the question could be returned to the Ethics Committee for further consideration or a comment could be added to the response saying the Law Society would be concerned if the provision was intended to apply to crown prosecutors interviewing witnesses.

Mr. Donaldson referred to item number 23 regarding disclosure of information about improper conduct by a member of a jury panel or by a juror toward another member of the jury panel, another juror, or to the members of a juror's family. He said the provision raised a number of thorny issues. For example, "information" is not defined.

Mr. Zacks suggested expanding on the commentary to highlight the complexity of the issues that can arise in relation to juror conduct. Ms. Berge suggested adding a comment that there should be reasonable grounds before requiring disclosure.

Mr. Jackson referred to item number 25 regarding delegation of tasks to an affiliated entity or an affiliated entity's staff, and commented that it might tread into the area of title insurance and the arrangements between them and affiliated law firms.

Mr. Zacks said the model code was intended to be broad enough to deal with multi-disciplinary partnerships as permitted in Ontario.

Mr. Brun commented on the duty to report misconduct. He said the comment with respect to breaches of undertaking suggested that every breach of undertaking must be reported but there are some inadvertent breaches that may be waived that need not be reported.

Mr. Mossop referred to the commentary on item number 24 regarding supervision of non-lawyers. He said there were situations in British Columbia, such as community advocates paid through the Law Foundation rather than a provincial legal aid plan who give advice on landlord and tenant matters.

Mr. Zacks acknowledged Mr. Mossop's point but said it also raised a question with respect to the Law Society's existing rules respecting unauthorized practice. Mr. Getz said the situation might be unique to British Columbia, therefore, the Law Society of BC's comments ought to be made but the model rule left in place.

Mr. Vilvang said it was important to note that the model code involved a lot of compromises and no one would be entirely happy with all the rules. Unless a provision is completely repugnant, the model code should move forward. No Law Society is obliged to enact model code provisions.

9. NOMINATIONS FOR APPOINTMENT TO THE LAND TITLE AND SURVEY AUTHORITY.

The Benchers considered the Executive Committee's recommendations with respect to nominations for appointment to the Land Title and Survey Authority.

It was agreed to nominate Christine Elliott and Geoffrey Plant, QC for appointment to the Land Title and Survey Authority.

10. PROPOSED AMENDMENTS TO THE *NOTARIES ACT*

Mr. Daisley reported that the government had issued a consultation paper on proposed amendments to the *Notaries Act* that would remove geographical limitations on notaries' practices and remove the limitation on the number of notary's seals in the province. The proposed changes are supposedly being driven by the TILMA agreement with Alberta. The Law Society received ten responses from members, which break down into a few categories of concerns: competition, lack of training for notaries, and differences between BC notaries and Alberta notaries. Mr. Daisley reviewed a proposed response to the consultation paper by the Law Society which would draw the government's attention to the difference between BC and Alberta notaries.

Mr. Vilvang was concerned that there are not enough lawyers in some small towns, and if notaries are likely to leave remote areas for the Lower Mainland, people in those towns will have no resources at all.

Mr. Hoskins said existing vacant notary seals were mostly in the Lower Mainland and lifting the geographical limits was more likely to result in an increased number of notaries outside the Lower Mainland.

Mr. Turriff said this touched on one of the big issues that might come to the Benchers, but the proposed response was satisfactory. He raised a concern that the Law Society had not received advanced notice of the proposed changes from its government relations consultants.

Mr. Daisley said the proposed amendments came from an unexpected source, the Ministry of Economic Development. The Society of Notaries Public was taken by surprise as well.

Mr. Zacks said the proposed response seemed somewhat weak in terms of addressing the mobility of Alberta notaries. Should the Law Society be concerned that Alberta notaries will be able to come into BC and give advice they are not trained to give? That issue is not something the government merely may wish to consider, it is something the government needs to consider.

Mr. Punnett did not think the proposed amendments would make much difference in most areas. For example, he said, there is a vacant notary seal in Prince Rupert. However, Mr. Punnett shared Mr. Zacks' concerns.

Mr. Hunter did not think TILMA would allow Alberta notaries to do things in BC that they are not permitted to do in Alberta.

Mr. Zacks said he understood that TILMA is intended to reduce differential licensing standards. Mr. Hunter said that if that was the case, then he too shared Mr. Zacks concerns.

Mr. Daisley said the issue was not at all clear. However, if complete mobility is allowed, there would have to be significant changes to the regulatory provisions of the *Notaries Act*.

Mr. Walker supported the suggestion that it may not be in the public interest for notary seals to be permitted to leave their geographical area. He also agreed with Mr. Zacks that the Law Society

should make a stronger point that the government should take into account the potential problems with interprovincial mobility of notaries with different levels of qualification.

Ms. Berge commented that there are notaries who get around geographical limitations using electronic communications.

It was agreed to authorize the President to send the letter following revision by Ms. Fung, Mr. Daisley and Mr. McGee to incorporate the concerns expressed by Mr. Zacks.

11. ACKNOWLEDGEMENTS

Mr. Hunter thanked Ms. Fung on behalf of the Benchers for her efforts as President in 2007 and presented her with a commemorative photograph.

Mr. McGee thanked Ms. Fung on behalf of the Law Society staff.

Dean Petter spoke on behalf of the regularly attending guests at Benchers meetings and thanked Ms. Fung for her effort and the courtesy shown to others around the province.

Ms. Fung said it had been a pleasure and privilege to serve as president and thanked the Benchers for the opportunity to do so. Ms. Fung said she could not have succeeded without the Benchers' support or without the support of the Law Society staff. She said the staff are first class, work very hard to serve the public interest. The senior staff are true leaders and deserve the Benchers respect and gratitude.

Ms. Preston noted that it was possibly her last Benchers meeting as a Lay Bencher. She said it had been a great pleasure to serve as a Lay Bencher. Although the learning curve was steep, she said the Benchers had welcomed her and helped her. Ms. Preston said she took great pride in the appointment and had told everyone she could about the work the Law Society does to protect the public.

12. UPDATE ON CLAIMS AND RECOVERIES IN THE WIRICK MATTER

This matter was considered *in camera* .

DMGN
08-01-15