

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING: Benchers

DATE: Friday, September 11, 2009

PRESENT:

Gordon Turriff, QC, President	Jan Lindsay
Glen Ridgway, QC, 1 st Vice-President	David Mossop, QC
Haydn Acheson	Thelma O'Grady
Rita Andreone	Peter Lloyd
Kathryn Berge, QC	Suzette Narbonne
Joost Blom, QC	David Renwick, QC
Leon Getz, QC	Meg Shaw, QC
Carol Hickman	Ronald Tindale
William Jackson	Art Vertlieb, QC
Patrick Kelly	Herman Van Ommen
Stacy Kuiack	James Vilvang, QC
Bruce LeRose, QC	Kenneth Walker
Barbara Levesque	Dr. Maelor Vallance
	David Zacks, QC

ABSENT:

Gavin Hume, QC, 2 nd Vice-President	Richard Stewart, QC
Terence La Liberté, QC	

STAFF PRESENT:

Tim McGee	Bill McIntosh
Michael Bernard	Jeanette McPhee
Stuart Cameron	Doug Munro
Lance Cooke	Lesley Pritchard
Su Forbes, QC	Susanna Tam
Jeffrey Hoskins, QC	Adam Whitcombe
Howard Kushner	Carmel Wiseman
Michael Lucas	

GUESTS:

Dom Bautista, Executive Director, Law Courts Center
Mark Benton, QC, Executive Director, Legal Services Society
Dean Mary Ann Bobinski, Faculty of Law, University of BC
James Bond, President, CBABC
Ron Friesen, CEO, CLEBC
Dean Donna Greschner, Faculty of Law, University of Victoria
Robert Holmes, President, Trial Lawyers Associations of BC
Jane Mundy, Reporter, Lawyers Weekly
Caroline Nevin, Executive Director, CBABC
Wayne Robertson, QC, Executive Director, Law Foundation of BC

CONSENT AGENDA

1. Minutes

The minutes of the meeting held on July 10, 2009 were approved as circulated.

Consent Resolutions

The following resolutions were **passed unanimously and by consent.**

2. **BE IT RESOLVED** to amend the Law Society Rule 1-7 by adding the following subrule:

- (7) A technical failure that prevents any member from participating in or voting at a general meeting does not invalidate anything done at the general meeting, and the meeting may continue if the members continuing to participate and vote adopt a resolution to that effect.

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

1. In Rule 1, by adding the following definition:
“appointed Bencher” means a person appointed as a Bencher under section 5;
2. In Rule 1-1(1), by deleting “A Bencher appointed under section 5 of the Act” and substituting “An appointed Bencher”.
3. In Rule 1-5 by deleting “other than a lay Bencher” and substituting “other than an appointed Bencher”.
4. By rescinding Rule 1-39(8) to (10) and substituting the following:
 - (8) At the first regular meeting of the Benchers in each calendar year, the appointed Benchers must elect one appointed Bencher to serve as a member of the Executive Committee for that calendar year and until a new member of the Committee is elected under this subrule in the following calendar year.
 - (9) All appointed Benchers are eligible for election to the Executive Committee under subrule (8).
 - (10) All appointed Benchers present are entitled to vote for the member of the Executive Committee under subrule (8).
5. In Rule 1-48, by deleting “one lay Bencher” and substituting “one appointed Bencher”.
6. By rescinding Rule 3-8(2) and substituting the following:
 - (2) If one or more Benchers have been appointed under section 5 of the Act, the President must appoint at least one of the appointed Benchers to the Complainants’ Review Committee.

7. In Rule 3-9(4)(b), by deleting “a lay Bencher member” and substituting “an appointed Bencher member”.
 8. In Rule 4-7(2)(b), by deleting “one or more lay Benchers” and substituting “one or more appointed Benchers”.
4. ***BE IT RESOLVED*** that the Benchers direct that a referendum of all members be held on the following two questions:
- a) Are you in favour of the Benchers amending the Rules respecting the term of office for Benchers to clarify that Benchers may be appointed under section 5 of the *Legal Profession Act* effective at dates other than January 1?
 - b) Are you in favour of the Benchers amending the Rules respecting term limits for Benchers so that one or more partial terms of service as a Bencher do not count toward the term limit unless the aggregate time in service exceeds one year or half of a term?

REGULAR AGENDA – for Discussion and Decision

5. President’s Report

Mr. Turriff opened the meeting by welcoming Suzette Narbonne as the new Bencher for Prince Rupert County. Ms. Narbonne was elected in a recent by-election to replace the Honourable Mr. Justice Punnett, who stepped down as a Bencher upon his appointment to the BC Supreme Court last June. Mr. Turriff noted that among the many excellent qualities Ms. Narbonne brings to the Law Society is her strength as a competitive runner.

Mr. Turriff briefed the Benchers regarding the Law Bodies Forum, a meeting of organizations with leading roles to play in the administration of justice in BC, to be hosted by the Law Society on October 19th. The purpose of the Forum is to bring together organizations with a common connection in the public interest aspect of law, to share information on goals and priorities and to identify opportunities for cooperation and collaboration. The majority of the sixteen invited organizations have already confirmed their attendance and Vancouver Bencher Leon Getz, QC has agreed to hold forth as lunch speaker.

Mr. Turriff reported that he and Mr. McGee recently met senior representatives of:

- the Justice Education Society of BC (JES), regarding JES’s funding crisis; and
- the Vancouver Foundation, regarding having the foundation’s request that the Law Society become a nominating authority for future appointments of Society members to the Vancouver Foundation’s board of directors.

Mr. Turriff also reported on a number of his recent attendances and speaking engagements on behalf of the Law Society, including:

- attending the Canadian Bar Association’s Canadian Legal Conference, in Dublin Ireland
- attending the Honourable Mr. Justice Robert Punnett’s Welcoming Ceremony in Prince Rupert
- delivering welcoming remarks to the UBC Faculty of Law’s first year class

- delivering 125th Anniversary speeches to
 - a community gathering on Saltspring Island, and
 - a meeting of Judicial Justices of the Peace in Burnaby

Mr. Turriff thanked Mr. Vivang for attending the Honourable Mr. Justice Willcox's welcoming ceremony on his behalf last week, and Ms. Hickman for her adroit handling of a sensitive matter on behalf of the Benchers.

Mr. Turriff reminded the Benchers that a general election will be held on November 16th. He stressed the importance of encouraging leading members of the profession in all corners of the province to consider running.

6. CEO's Report

Mr. McGee provided the Benchers with highlights of his written report for the month of September (at page 600 of the agenda package).

The focus of his September report was the Law Society's financial results for the first half of 2009.

Mr. McGee reported a positive variance of \$584,000 for the General Fund (no TAF included), attributing the variance mainly to higher than budgeted membership numbers and resulting practice fee revenue, and to interest income earned on positive cash balances. Mr. McGee also noted that operating expenses are at budget on a year to date basis. External counsel fees are slightly over budget, which has been offset by operating expense savings in other areas. Mr. McGee reported that TAF-related expenses show a positive variance of \$240,000, — mainly due to savings in staff and travel costs — and TAF revenue for the first and second quarter is 30% down from 2008. He also reported that Special Compensation Fund operating results are on track for the year, and that the overall market performance of LIF long term investments for the first half of 2009 was 6.3%, compared to the benchmark rate of 5%.

Mr. McGee updated the Benchers on preparations for the upcoming 2009 annual general meeting, to be held on September 29th. He briefed the Benchers on the successful outcome of the referendum held in conjunction with the Prince Rupert County by-election, reporting that over 80% of participating members voted in favour of adding an AGM-saving provision to the Rules.

Mr. McGee thanked the following Benchers and Life Benchers for their participation in PLTC's recently completed series of professional responsibility lectures: Rita Andreone, John Hunter, QC, Meg Shaw, QC, Ron Tindale, Art Vertlieb, QC and Karl Warner, QC.

Mr. McGee also briefed the Benchers on a number of pending matters, including:

- an interview and article by David Baines on Law Society operational and discipline issues
- a governance review of the Law Society as a nominating body
- a 'Blue Ribbon Panel' review of the Law Society's policy and procedure for remuneration of appointed Benchers
- plans for the 2009 Bench and Bar Dinner, scheduled for November 4th

Finally, Mr. McGee reviewed the Law Society's current policy for preparation of Benchers meeting minutes. He noted that the following objectives are consistent with best practices of Canadian law societies:

- Identify the issues brought forward with clarity and succinctness
- Record the highlights of the discussion and background to any decisions taken
- Ensure that background materials are available to all attendees

Mr. McGee noted that all Benchers meetings are digitally recorded.

7. Report on Outstanding Hearing and Review Reports

The Benchers received a report on outstanding hearing decisions.

GUEST PRESENTATION

8. Developments at UBC Faculty of Law

Dean Mary Anne Bobinski updated the Benchers on current developments at UBC's law school. Much of her presentation focused on plans and progress for the UBC Faculty of Law's new building. Dean Bobinski stressed the significance of the financial support the legal community, and of the matching grant provided by the Law Foundation of BC. She noted that a broad-based campaign is underway to raise the final \$3 million of the \$56 capital cost of the new facility.

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

9. Delivery of Legal Services Task Force Update

Mr. Vertlieb provided the Benchers with an update on the progress of the task force's research, particularly the development and conduct of a survey by Ipsos Reid on the nature of demand for legal services in BC. He thanked Mr. Acheson for his good work in guiding the survey process and advised that the task force plans to report to the Benchers in November with the survey results and with recommendations regarding decisions and steps the Law Society might take toward enhancing the delivery of legal services in BC.

REGULAR AGENDA – Other Matters for Discussion and/or Decision

10. Professional Conduct & Discipline Presentation

Mr. Turriff described this item as an opportunity for the Benchers to be briefed on the Law Society's current Professional Conduct and Discipline processes and timelines and to discuss how they could be improved. He then asked Mr. Kushner to deliver a presentation as a framework for that discussion.

Mr. Kushner opened by saying that his presentation would have three purposes and parts:

- i. Provide a general overview of the Law Society's complaint-handling process and to answer any general questions the Benchers may have about that process.
- ii. Initiate a discussion on timelines for either closing complaint files at the staff level or bringing the subject matter of the complaints to the Discipline Committee.
- iii. Identify some policy issues arising out of the Law Society's disciplinary process and seek the Benchers' direction on whether they wish to discuss these policy issues in greater detail.

He referred the Benchers to the staff papers set out at pages 1002 and 1020 of the meeting materials for detail and background, noting that his remarks would provide highlights, divided into those three sections to facilitate orderly discussion.

i. Overview of the Complaint-handling Process

Mr. Kushner described various ways the Law Society receives complaints, and outlined the Professional Conduct department's resources and working processes for reviewing complaints, closing complaints at a staff level, and referring complaints to the Discipline Committee.

One Bencher expressed the view that public representation on the Discipline Committee and involvement in the discipline process is insufficient, and suggested there should be public representation earlier in the process – before staff recommendations are made – and with declared support or dissent by the public representative. Another Bencher commented on the large proportion of less serious complaints received and dismissed at the staff level and stressed the need to recognize their cumulative impact of on public confidence. That Bencher also questioned the current policy of not communicating to other law societies regarding our conduct of discipline investigations involving lawyers and firms with offices in another law society's jurisdiction.

ii. Timelines

Mr. Kushner summarized the Professional Conduct department's timeline targets and actual results for closing or referring complaint files and referred the Benchers to pages 1012-1013 of the meeting materials for details.

He then referred to pages 1018-1019 for an outline of targets established by a national working group of law society Discipline administrators:

Timeline to Close or Refer a Complaint for Further Disciplinary Action

- 75% of all complaints will be closed or referred for a disciplinary response within 12 months
- 90% of all complaints will be closed or referred for a disciplinary response within 24 months

Timeline for Contact with Complainants and Members

- For every open complaint there will be contact with the complainant and member at least once every 90 days to report on progress and to manage expectations

Mr. Kushner asked the Benchers to consider whether they are comfortable with those targets, and if not, to consider what the targets should be and what such change would entail.

Some Benchers suggested that contact with the complainant and member at least once every 30 days would be more appropriate. A considerable number of Benchers expressed concerns with the working group's targets for closing or referring complaint files for disciplinary response. One Bencher argued strongly that 100% should be closed or referred within one year. Several Benchers agreed and several others indicated their preference for less than a year.

A question was raised about the impact of abeyance on timelines. Mr. Kushner responded that not all delays are result of abeyance: forensic audit are often needed in serious cases and can take considerable time, as can engaging or changing counsel midstream. He noted that requests to hold Law Society discipline proceedings in abeyance usually arise in the context of civil or criminal proceedings that are already underway.

Mr. McGee agreed and suggested that more focus should be directed at the abeyance issue. Not infrequently, those concurrent proceedings do not proceed expeditiously and are disposed of differently than the Law Society would hope or expect. Also, Mr. McGee noted the proportion of abeyance files rises dramatically as complaint files age, particularly beyond three years.

Mr. Ridgway noted that the Alberta and Saskatchewan law societies have recently moved to eliminate their abeyance policies.

Several procedural changes were suggested for reducing timelines, including mandatory use of the Law Society's online complaints form and conducting evening and weekend discipline hearings.

Mr. Vertlieb noted the tension between the Law Society's primary duty to protect the public interest and its duty under administrative law to provide fair process in conducting its discipline proceedings.

At the end of the timelines discussion, Mr. Kushner confirmed that he would work with staff to identify the processes and resources needed to achieve a "100% / 1 year Timeline" for closing complaint files or referring them to the Discipline Committee, and then report back to the Benchers.

iii. Policy Issues

a. Interim Measures

Mr. Kushner referred the Benchers to the staff paper at page 1020 of the meeting materials and outlined the issues underlying the imposition of interim disciplinary measures under section 39 of the *Legal Profession Act* and Rule 4-17. He noted that BC's current threshold requirement of the issuance of a citation does not exist in Alberta and Ontario, and asked the Benchers to consider whether the Law Society's current s. 39 threshold should be varied.

Some Benchers strongly endorsed greater focus on potential for public harm and re-framing the threshold for interim discipline measures. Others suggested stronger investigative authority and tools at the pre-citation stage.

There was discussion of whether the current interim measures threshold might be varied by amending the Rules or whether a statutory amendment is required. Mr. Kushner confirmed that an outside legal opinion on that issue has already been requested.

The Benchers asked Mr. Kushner to provide advice and recommendations regarding a two-track strategy:

- Rule amendment
 - Proceed with analysis and preliminary drafting of a Rule amendment to support pre-citation interim disciplinary measures in appropriate cases
- Legislative amendment
 - Apply for a suitable statutory amendment to support pre-citation interim disciplinary measures in appropriate cases

Preliminary work would proceed on both tracks with the expectation that one track would be abandoned at a future date. Mr. Kushner undertook to report back to the Benchers at their next meeting.

b. Abeyances

The Benchers agreed to consider this topic further at a future meeting.

c. Outcomes and Penalties

There was discussion of the need for greater clarity in the sentencing factors considered and applied by discipline panels in imposing penalties.

The Benchers agreed that this topic should be left to the Discipline Committee to pursue in the context of its ongoing deliberations and its instructions to staff and counsel.

d. Member's Duty to Cooperate in Disciplinary Proceedings

The Benchers agreed to consider this topic further at a future meeting.

e. Inter-Agency Cooperation

The Benchers agreed to consider this topic at a future meeting.

f. Greater Input for Public Representatives in the Discipline Process

Dr. Vallance will attend the next meeting of the Discipline Committee to discuss his concerns on this issue.

11. Governance Reform: Ordering Candidates' Names on Bencher Election Ballots - Alphabetically or by Lot

Mr. Getz referred the Benchers to Mr. Hoskins's paper (at page 1100 of the meeting materials) and said that the Act and Rules Subcommittee supports the paper's contention that the democratic

process might be better served by random ordering of the candidates' names on Bencher election ballot papers, than by the current alphabetical ordering. Mr. Getz moved (seconded by Mr. Jackson) that the Benchers adopt the resolution set out at page 1104 of the meeting materials and attached to these minutes as Appendix 1.

A discussion followed. Some Benchers were drawn to the "primacy" advantage noted in Mr. Hoskins's paper; others noted the strong presence at the current Bencher table of surnames starting toward the end of the alphabet; and still others pointed out the "searchability" of alphabetically listed names on a long ballot

The motion was carried unanimously (a two-thirds majority of Benchers present was required).

11a. Appointment of Law Society Representatives to the 2009 Queen's Counsel Appointments Advisory Committee

Mr. LeRose moved (seconded by Mr. Van Ommen) that the Benchers continue their long-standing practice by appointing the current President and First Vice-President to the 2009 Queen's Counsel Appointments Advisory Committee.

The motion was carried.

FOR INFORMATION ONLY

12. Retention of Women in Law Task Force: Updates on Implementing Recommendations

13. Report on CBA Canadian Legal Conference - Dublin, Ireland

Mr. LeRose referred the Benchers to his written report at page 1300 of the meeting materials. He stressed the courtesy and collegiality shown by the representatives of the BC Branch of the Canadian Bar Association, noting particularly out-going President Miriam Maisonville, in-coming President James Bond and Executive Director Caroline Nevin. Mr. LeRose also noted the quality of Mr. Vertlieb's contribution to the deliberations of the BC caucus, and the conviviality of the conference's various social events.

IN CAMERA SESSION

14. Discussion of Bencher Concerns

This matter was discussed *in camera*.

WKM
2009-09-17