

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING: Benchers

DATE: Saturday, June 12, 2010

PRESENT:

Glen Ridgway, QC, President	Peter Lloyd, FCA
Gavin Hume, QC, 1 st Vice-President	David Loukidelis
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	Alan Ross
E. David Crossin, QC	Catherine Sas, QC
Tom Fellhauer	Richard Stewart, QC
Leon Getz, QC	Herman Van Ommen
Stacy Kuiack	Art Vertlieb, QC
Barbara Levesque	Kenneth Walker
Jan Lindsay, QC	

ABSENT:

Satwinder Bains	Benjimen Meisner
Carol Hickman	

STAFF PRESENT:

Tim McGee	Michael Lucas
Deborah Armour	Bill McIntosh
Stuart Cameron	Jeanette McPhee
Robyn Cristanti	Doug Munro
Su Forbes, QC	Alan Treleaven
Jeff Hoskins, QC	Adam Whitcombe

GUESTS:

John Campion, President, Federation of Law Societies of Canada
Jean Cumming, Editor-in-Chief, Lexpert, Thomson Reuters
Allan Fineblit, QC, CEO, Law Society of Manitoba
Irene Hamilton, President, Law Society of Manitoba
Jonathan Herman, CEO, Federation of Law Societies of Canada
John Hunter, QC, LSBC Member of the Federation Council
Rod Jerke, QC, President, Law Society of Alberta
Patrick Kelly, Life Appointed Bencher
Eileen Libby, President, Law Society of Saskatchewan
Douglas Mah, QC, President-elect, Law Society of Alberta
Tom Schonhoffer, QC, Executive Director, Law Society of Saskatchewan
Don Thompson, QC, Executive Director, Law Society of Alberta
Dr. Maelor Vallance, Life Appointed Bencher

CONSENT AGENDA**1. Minutes**

The minutes of the meeting held on April 23, 2010 were approved as circulated.

Consent Resolutions

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

2. *BE IT RESOLVED to accept the recommendation of the Selection Committee, and to name the Honourable John C. Bouck, deceased, as the recipient of the 2010 Law Society Award.*

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

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

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

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

- (a) by rescinding the preamble and substituting the following:
 - (1) Before a lawyer may practise law as a member of an MDP that has not been granted permission under Rule 2-23.4, the lawyer must submit the following to the Executive Director:
- (b) in paragraph (b), by striking “for each lawyer member of the proposed MDP”

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

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

REGULAR AGENDA – for Discussion and Decision**5. 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 May (Appendix 1 to these minutes).

Mr. Ridgway welcomed our guests from the Federation of Law Societies of Canada and the Law Societies of Alberta, Manitoba and Saskatchewan.

Rod Jerke, QC, President of the Law Society of Alberta, thanked Mr. Ridgway and the Benchers for inviting the guest societies to the Benchers’ 2010 Retreat and June meeting. Mr. Jerke noted the

value to all in bringing different law societies' perspectives to discussion of the vital topic of enhancing access to legal services in Canada, and expressed appreciation on behalf of the Alberta delegation for the hospitality shown by the Benchers and staff of the Law Society of BC.

Mr. Ridgway recognized the recent appointments of Ms. Satwinder Bains, Mr. Benjimen Meisner and Mr. Claude Richmond as Law Society appointed Benchers, and he acknowledged the gratitude owed by the Society to Ms. Barbara Levesque, Mr. Patrick Kelly and Dr. Maelor Vallance for their years of devoted and invaluable service as appointed Benchers.

6. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (Appendix 2 to these minutes), including the following matters:

1. 2010 Law Society Communications Strategic Plan – preview
2. 2011 Budget and Fees – update
3. Core Processes Review – update
4. 2009 Law Society Annual Review – release
5. 2010 Annual Meeting of Stakeholders for YVR – attendance report and briefing
6. Law Society Retention of Aboriginal Lawyers Event on June 16, 2010 – preview

Mr. McGee thanked a number of Benchers for contributing their time and expertise to the Professional Responsibility classes of PLTC's June 2010 Session (Ms. Berge and Mr. Stewart in Victoria, and Ms. Bond, Mr. Brun, Mr. Mossop, Ms. O'Grady, Mr. Van Ommen and Life Bencher Jane Shackell, QC in Vancouver.

7. Report on Outstanding Hearing and Review Reports

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

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

8. Law Society 2010 Strategic Communications Plan

Mr. Whitcombe introduced Robyn Crisanti, Manager of Communications and Public Relations and asked her to outline the Law Society's 2010 Strategic Communications Plan.

Ms. Crisanti outlined a number of practical ways the Communications department can support and strengthen delivery of the Law Society's key message to the public, the media and government, describing that message as:

- The Law Society of BC protects the public through effective and transparent regulation of BC lawyers

Ms. Crisanti outlined:

- the Law Society's Key External Communications Strategies

- maintain a consistent and strategic focus on regulation and transparency
- facilitate new rules around disclosure
- execute a comprehensive, proactive media relations plan
- develop communication policies and procedure
- update government relations strategy to support legislative changes
- the Law Society's Key Audiences
 - engaged public
 - media
 - government
 - Benchers
 - employees
 - lawyers/law students
 - general public
- the Law Society's Government Relations Goals
 - Awareness of Law Society's mandate, public policy interests and general achievements
 - Apolitical and positive working relations
 - Perceived as doing a good job of protecting the public interest in the regulation of the legal profession
- the Law Society's Key Messages to Government
 - acknowledge we need to do better job
 - KPMs must answer: "How can the public tell if we are doing a good job"?
 - internal review to assess efficacy
 - ask for government help to do a better job
 - Legislative changes

Ms. Crisanti identified several measures of the effectiveness of the Law Society's Strategic Communications Plan:

- Public opinion surveys
- Media coverage
- Organizational outcomes
- Adherence to established communication protocols
- Tactical evaluations

Ms. Crisanti described the development of the Society's Strategic Communications Plan as an on-going, iterative process, and welcomed the Benchers' feedback and input.

9. *Legal Profession Act: Proposed Amendments*

Mr. Getz referred to the memorandum at page 9000 of the meeting materials (Appendix 3 to these minutes). Noting that most of the memorandum's recommendations are already familiar to the Benchers, Mr. Getz moved (seconded by Ms. Andreone) that the Benchers adopt the various recommended legislative amendments as set out in Appendix 3.

A number of issues were raised in the ensuing discussion, including:

- the proposed new section 14.1 of the Act does not provide for certification of paralegals or other non-lawyers
 - the proposed new section only provides legislative permission to the Benchers to introduce a program for certifying paralegals at some future date if they decide to follow that course
- the proposed new section 23 of the Act reflects the Benchers' commitment to effective regulation and transparency
 - the new provision would both ensure and demonstrate that those regulated by the Law Society cannot limit the amount or effectiveness of that regulation by fixing a fee too low for effective regulation
- the Law Society needs to present any proposed legislative amendments quickly for inclusion in the government's pending legislative plan

The motion was carried.

REGULAR AGENDA – Other Matters for Discussion and/or Decision

10. *Professional Conduct Handbook: Proposed Amendments (Pro Bono)*

Mr. Hume reminded the Benchers that in July 2009 they adopted a number of recommendations in the *Access to Legal Services Advisory Committee: Mid-Year Report*, including a direction to the Ethics Committee: consider whether doing pro bono work is an ethical obligation for lawyers and, if so, whether the Rules and *Professional Conduct Handbook* need revision.

Mr. Hume reported that the Ethics Committee has concluded that the Law Society should encourage pro bono service by lawyers, but not make such service mandatory. He referred the Benchers to the Committee's memorandum at page 10001 of the meeting materials for background.

Mr. Hume moved (seconded by Mr. Getz) that the Benchers approve the Committee's recommended addition of Rule 13 and Footnote 7 to Chapter 3 of the *Professional Conduct Handbook*, as follows:

COMPETENCE, QUALITY OF SERVICE AND RELATIONSHIP TO CLIENTS

Pro bono

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

FOOTNOTES

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

The motion was carried.

11. Family Law Task Force: Update and Clarification of Mandate

Mr. Stewart updated the Benchers in the absence of Task Force Chair Carol Hickman. Mr. Stewart referred to Mr. Munro's memorandum at page 11000 of the meeting materials and noted that the Family Law Task Force is seeking the Benchers' direction on whether the Law Society should participate in a standing family law committee as outlined in the memorandum, and if so, whether such participation should be under the auspices of the Family Law Task Force.

Pointing out that such action would not fit within the task force's current mandate to work with the BC Branch of the Canadian Bar Association to develop best practices guidelines for family lawyers, Mr. Stewart suggested that the Family Law Task Force be directed to explore the standing family law committee concept and then report back to the Benchers with a clear proposed mandate.

The Benchers' consensus was to adopt Mr. Stewart's suggestion.

11(a) Election of Benchers' Nominee for 2012 2nd VP: Close of Nominations

Mr. Ridgway announced that the time has passed for Benchers to put their names forward as candidates for the honour of being selected as the Benchers' nominee for the election of the Law Society's 2011 Second Vice-president, to be conducted on September 28 at the 2010 Annual General Meeting.

11(b) June 11, 2010 Benchers Retreat Workshop: *Enhancing Delivery of Legal Services in BC*

Mr. Ridgway advised the Benchers that the recommendations they endorsed at their June 11 workshop session will be delivered to the Executive Committee for further consideration.

11(c) Outgoing Appointed Benchers

Mr. Ridgway recognized the many contributions made by Patrick Kelly, Barbara Levesque and Dr. Maelor Vallance during their years as appointed Benchers (formerly known as "lay Benchers") and thanked them on behalf of the Benchers and staff of the Law Society.

Mr. Kelly thanked the Benchers for the friendship they have extended to the appointed Benchers over his years of his tenure and credited the Law Society for the commitment of its Benchers, volunteers and staff to supporting the public interest in the administration of justice.

FOR INFORMATION ONLY**12. Federation of Law Societies: 2010 Update**

John Champion, President of the Federation of Law Societies of Canada, delivered a presentation to the Benchers. He noted the connections between the theme of their June workshop (enhancing the delivery of legal services in BC), affordability of and access to legal services, and the efficacy of the rule of law.

He recognized the value of the contributions of a number of individuals to the work and growth of the Federation, including:

- Federation CEO Jonathan Herman, as a source of stability and good judgment, particularly in the areas of policy development and CanLII governance
- John Hunter, QC for his leadership and wisdom as Chair of the Federation's Task Force on the Canadian Common Law Degree
- Tim McGee and Alan Treleaven for their many and ongoing contributions, particularly in relation to CanLII governance and national admission standards

Mr. Champion paid tribute to the many and ongoing valuable contributions to the work and development of the Federation by the Benchers and staff of the Law Society. He also acknowledged the many and ongoing valuable contributions to the work and development of the Federation by Benchers and staff of the other law societies across Canada.

Mr. Champion concluded by thanking the Benchers and staff of the Law Society for their kindness and hospitality throughout the Retreat.

12(a) June 2010 Meeting of the Federation Council in Ottawa

John Hunter QC, the Law Society's member of the Federation Council, briefed the Benchers on the recent Council meeting in Ottawa. He noted Council's approval of:

- a plan for CanLII's corporate reorganization
- an agreement on mobility defalcation
- the two outstanding segments of the Model Code of Professional Conduct
 - conflicts of interest
 - the future harm exception to solicitor – client privilege

Mr. Hunter noted that there continues to be strong support at the Council table for harmonization of national standards.

IN CAMERA SESSION

The Benchers discussed other matters *in camera*.

WKM
2010-06-24

PRESIDENT'S REPORT**June, 2010**

I am dictating this report on the evening of June 3, 2010, and accordingly, the events of June 4 through June 8 are prospective and may be altered by circumstances of which I am not aware on the evening of June 3.

Our Benchers' Meeting of April 23 concluded in the middle of the afternoon, after which I journeyed to the Westin Bayshore to prepare for the evening's events.

It was a great honour to be the Master of Ceremonies of the Court of Appeal's Centenary Gala Dinner at the Westin Bayshore, which was conducted in both official languages. Bear in mind that all present members of the BC Court of Appeal were once members of the Law Society of British Columbia. I can also indicate that after the public part of the evening, I did promise a Cowichan sweater to the Chief Justice of Ontario, who, like the Chief Justice of Canada, comes from Pincher Creek, Alberta, where I once vacationed. That promise has since been fulfilled. Thank you to the Law Society of British Columbia for its financial assistance with respect thereto.

I then did nothing until April 29, when I attended for meetings in Vancouver and the Welcoming Ceremony for Justice Christopher Hinkson of our Court of Appeal, who, incidentally, is a former member of the Law Society of British Columbia.

On May 5, I was in Vancouver for a series of meetings, namely, the weekly meeting with Tim McGee and a meeting with Gavin Hume at his office to finalize some matters relating to Mr. McGee's contract. I then attended the Vancouver Bar Association Judges' Luncheon at the Hotel Vancouver. That was followed by more activities at the Law Society offices in the afternoon and, finally, the Welcoming Ceremony for Justices Maisonville and Harris on the morning of Thursday, May 6.

On May 13, I was in Vancouver for a meeting of the Appointments Subcommittee and a meeting with Mr. McGee. I also attended at the Vancouver Airport for the Annual General Meeting and the Stakeholders' Meeting with the Vancouver Airport Authority. My evening was finalized by attending, along with Chief Justice Bowman, the Surrey Bar Association dinner in beautiful downtown Surrey.

On May 17, I journeyed almost to Alberta for the Welcoming Ceremony for Judge Grant Sheard in Cranbrook, which also involved a side trip to Slaterville. Traveling to Cranbrook is an all-day event, but I thought I was very lucky when I returned to Vancouver at 7:45 p.m., thereby making the 8 p.m. flight to Victoria, rather than having to stick around to catch the 10 p.m. flight. So I got on the 8 p.m. flight, along with another prominent British Columbian, Tony Parsons, to make my way to Victoria. Unfortunately, due to a gauge, the plane was unable to take off, and after sitting on the plane for an hour, we got off, dined at Tim Horton's and then got on a plane at 9:15 to return to Victoria.

My appointment book indicates that on May 18 I traveled to Vancouver. I can indicate that I have no recollection of this trip and no recollection of doing anything on this trip, and accordingly, I would appreciate someone letting me know what I did on Vancouver, if anything, on May 18.

On May 20, I journeyed to the Hub City of Vancouver Island, Nanaimo, for a Call Ceremony for three lawyers from the top of Vancouver Island. This was followed on May 21 by two Call

Ceremonies in Vancouver, as well as some meetings, including my weekly meeting with Tim McGee.

On May 25, I went to Vancouver for the first presentation of the Law Society budget, and I also sat in for awhile at the Act and Rules Committee Meeting.

On the evening of May 25, I was honoured by a dinner put on by the Cowichan Valley Bar Association. There were a large number of people from my own area, as well as from Victoria, Nanaimo, and up Island. I really appreciated the event.

On May 27, my plane left Victoria Harbour at 7:20 a.m. to journey to Vancouver. I was able to sit on the left-hand side of the plane and watch Beacon Hill Park and the Royal Victoria Golf Club through my window. One of the things I was going to do in Vancouver was meet with Jim Vilvang, and perhaps because of this anticipation, I then, in the plane, dozed off. I woke up a short time later, and lo and behold, the Royal Victoria Golf Club and Beacon Hill Park were passing by the window on the right-hand side. In any case, we went back to Victoria and landed because the weather over the Gulf Islands was improvident; in other words, the clouds were down to sea level. I sat in the Harbour Air waterfront terminal until 10 a.m., when a resident of Esquimalt drove me out to the Ferry so that I could get the ferry over to Vancouver. I arrived at the Commemorative Luncheon for our fifty, sixty, and seventy-year members with a half an hour remaining.

After the luncheon, Mr. LeRose and I took a taxi out to UBC to present a gold medal to the recipient from this year's Graduating Class. Full details of this will appear in one of our upcoming publications, with, hopefully, a little different twist. Rather than the usual President and recipient photograph, this year's photographs, we are hopeful, will include a guest at the event, a seeing eye dog in training named "Silas." (sp)

We were then convoyed downtown by a specially arranged taxi so that we could arrive in time for the Executive Committee Meeting, which began at approximately 5 p.m.

On the morning of May 28, I met with Kathryn Berge and Jim Vilvang to select this year's recipient of the Law Society award. This was followed by a meeting with Steve Owen at our offices. Mr. Owen is re-thinking and re-working the Special Prosecutors appointment process on behalf of the Provincial Government and wanted input from the Law Society in that regard. Incidentally, Mr. Owen is of the view that Stockwell Day is a terrific Cabinet Minister. Mr. Owen will also be meeting with former Presidents McDiarmid and Hunter. This was followed up by the first meeting of the Canadian Bar Association's Commission on Legal Aid, which was held at the CBA office at 10 a.m.

On May 31, I again attended at the waterfront terminal of Harbour Air in Victoria. My intention was to travel to Vancouver to address the Professional Legal Training Course. Unfortunately, no planes flew in any direction on that morning, so I must say a hearty "thank you" to Alan Treleaven for doing what I understand was an excellent job filling in for me in Vancouver.

I did perform that function for the Professional Legal Training Course in Victoria, attending at UVIC (the course wasn't there) and at the Lansdowne Building of Camosun College (the course wasn't there), and finally enlisting the Office of the President of Camosun College to find the course, which was being presented at the Fisher Building. I arrived there fifteen minutes late; however, since I had been misinformed as to the start of the program, I was, in fact, fifteen minutes early.

On Tuesday, June 1, I traveled to Vancouver in mid-morning for my weekly meeting with Mr. McGee and to meet, along with Ms. Armour and Mr. Lucas, with the Public Accountability

Board. This is a Canadian body that will be the “auditors” of auditors. They wished to speak to us about the need for them to see materials that the auditor receives, but which are solicitor-client privileged documents. They wish to have access to this material in their review of how the auditors function. They have this access through some legislative process in Ontario and are pursuing this type of access throughout Canada. They will be providing us with a specific request and details of what we need, and Benchers will likely be making a decision on this once staff has an opportunity to review and advise.

On Wednesday, I journeyed from Victoria to Calgary, along with Kathryn Oliphant. We made it as far as Canmore, when we had to stop and play a round of golf at the Canmore Golf & Curling Club. We were greeted as we walked down the first hole by a coyote, but no other wildlife. We later dined at Tim Horton’s and then headed off to Jasper, Alberta, for the Law Society of Alberta’s retreat. Proving that I am always on the job, as were approaching Banff National Park, I received a telephone message from a British Columbia citizen expressing concern about the conduct of a British Columbia lawyer. At the park gate, I indicated to the attendant that I had met Stephen Harper; however, this did not result in reduced entrance fees. It did result in some negative comments about the aforesaid Mr. Harper because of a pay freeze. Apparently, there is someone in Alberta who is not high on Mr. Harper.

We spent the rest of the afternoon and the early evening driving between Banff and Jasper, past the Columbia Ice Fields. This is one of the most scenic, storied journeys in all of the world. I recommend it to everyone.

We arrived in Jasper at approximately 7:30 p.m., in time for some lukewarm pizza, pizza being the tradition of the Wednesday night commencement of the retreat. Mr. McGee, Mr. Treleaven, Mr. Hume, and Ms. Janzen were in attendance, as were a bunch of people from throughout Canada and a few, in fact, from Alberta. The Alberta retreat is certainly one of the treats of being the President, First Vice-President, and Second Vice-President of the Law Society of British Columbia. It is a great experience and seems to be expanding in terms of its membership, with many of the usual fellow travelers from the more eastern provinces in attendance. It is an intellectually stimulating as well as socially stimulating event, and those stories that Gavin Hume will tell about me dozing off are completely untrue. I will get the letter from my ophthalmologist indicating that you listen through your ears, not your eyes.

On Thursday afternoon, we played golf at the Jasper Park Lodge Golf Course. It is a terrific experience, and this year we saw many elk, but also a big black bear putting on the fourth hole. The Golf Course was opened in 1925.

At the twelfth tee, I received a telephone call from Bruce LeRose. He was calling me to let me know that he was in Calgary on his way to Saskatoon, the former residence of many great Canadians, such as myself and Gordie Howe. The airport in Saskatoon is called the John Diefenbaker Airport, and hopefully, landing there will have a similar effect upon Bruce as the trip to Damascus had on Saul of Tarsus.

June 4 and June 5 involved more activities at the Alberta retreat and then a journey back to Calgary to catch the 9 p.m. Calgary-Victoria express. We were able to meet with Gavin and Trish at the Chateau Lake Louise to discuss important Law Society business over lunch. Lake Louise is named after Princess Louise, the fourth of Queen Victoria’s daughters. Her husband was John George Edward Henry Douglas Campbell, the Duke of Argyll, more commonly called by his courtesy name, the Marquis of Lorne. Apparently the name “Lorne” is used in Canada to a far greater extent than anywhere else in the world. He was a Liberal member of the British House of Parliament. Princess Louise was the first royalty to reside in Canada as the spouse of a Governor General. She is the person who named “Regina” and “Alberta.”

On June 7, I participated briefly in the second CBA Legal Aid Commission Steering Committee Meeting. I did so by telephone.

On June 8, I journeyed to Vancouver for the second sitting of the Law Society Budget Committee.

On June 9, it is my intention to travel to Parksville to prepare for the Law Society retreat.

I would like to take this opportunity to remind Benchers that on June 16, at 10 a.m., at the First Nations Longhouse at UBC, the Law Society, as part of its focus on Aboriginal students and lawyers, will be sponsoring a function to bring Aboriginal students and lawyers together. The focus of the function will be Judge Alfred Scow, who was a Provincial Court Judge for many years, primarily on Vancouver Island. It would be very useful to have many Benchers at that event, which I think would stress our focus on increasing the number of First Nations law students and members of our Law Society.

GGR/kd



Chief Executive Officer's Monthly Report

A Report to the Benchers by

Timothy E. McGee

June 12, 2010

Introduction

My report to the Benchers this month is brief as the retreat program will update the Benchers on progress of our main strategic plan item. I will be giving a comprehensive mid-year report to the Benchers on a variety of items at the next meeting on July 9, that being the mid-point of the Bencher calendar for this year.

1. Communications Strategic Plan

One of Management's top operational priorities for the year as outlined at the Bencher meeting in January is the development and implementation of a strategic plan for all of our external and internal communications. This covers communications to all of the Law Society's key stakeholders including government, media, the public at large, members and employees. Our main objective is to strike an appropriate balance in two areas, proactive and responsive communications and content which our stakeholders need to know and content which they want to know. Since January we are very fortunate to have hired Robyn Crisanti as our Manager of Communications and Public Relations. Robyn will be presenting our new Communications strategic plan at the meeting for review and discussion, ably assisted by Kimanda Jarzebiak, our external Government and Public Relations advisor.

2. Update – 2011 Budget and Fees

The Finance Committee met on May 25 to review Management's initial report on the Law Society's draft operating and capital budgets for 2011 and recommendations for 2011 fees. A second meeting will take place on June 8 to review certain items in further detail. The Committee has indicated that it expects it will be in a position to make a recommendation on 2011 fees to the Benchers at the next meeting in July.

3. Update – Core Processes Review

Work on the Law Society's Core Processes Review is proceeding well and on schedule. Kensi Gouden, the project leader, will present a full status report at the July meeting. In the meantime, I would like to report that all regulatory departments have participated in phase 1, a review to identify all processes and steps followed in carrying out their work. We are now in phase 2, which is a detailed "mapping" of these processes and steps using software tools to ensure accuracy and flexibility for working with and analyzing the results in the next phase. The mapping phase will be completed by June 30 and phase 3, which is a department by department review to identify opportunities for greater efficiency and effectiveness, will be completed in the Fall timeframe. Cooperation to date from all staff involved has been good and we are on track

to make formal recommendations to the Benchers by year end. In addition, Kensi has been liaising with the Bencher Task Force on Discipline Guidelines chaired by Herman Van Ommen to ensure coordination of efforts and information sharing where helpful.

4. 2009 Law Society Annual Review

The Law Society's 2009 Annual Review has been distributed electronically to all members and is now available on our website. In addition electronic versions have been sent to various other interested organizations and hard copies have been provided to all provincial MLAs in keeping with our recent practice. If you haven't already done so please take a moment to read the Review. It covers progress on our Strategic Plan and the results of our Key Performance Measures in addition to features on other important activities of the Law Society. There is considerable discussion in the communications industry around the value of these types of reports and the best format to attract readership. We have tried in this edition to be succinct, to write in plain language and to focus on information which we think is most relevant to the public at large. We welcome your feedback on this edition of the Annual Review. Please contact Robyn Crisanti at rcrisanti@lsbc.org with your comments.

5. Annual Stakeholders and General Meeting of YVR

President Ridgway and I attended the 2010 Annual Meeting of Stakeholders for YVR accompanied by Carol Kerfoot the Law Society's representative on the YVR board of directors. The Law Society, together with other designated bodies such as the regulatory authorities for accountants and engineers, occupies a seat on the YVR board. The meeting updated stakeholders on the highlights of operations in 2009 and the key priorities for 2010 and beyond. YVR is a large and sophisticated business with a complex set of regulatory requirements. The impression we had from attending the meeting and our consultations with Carol Kerfoot is that YVR is well served by the diversity of skills sets required of its Board members including, in particular, the skills which a lawyer can bring to the table. We thanked Carol for her contributions as she takes on the role as Chair of YVR's Governance Committee.

6. Retention of Aboriginal Lawyers Event - June 16, 2010

This is a reminder that the event to aid in the networking and retention of aboriginal lawyers organized and sponsored by the Law Society as one of our Strategic Plan initiatives is being held at the First Nations House of Learning at UBC on Wednesday, June 16 from 9:00 AM to 2:00 PM. Further details are available on the Law Society's website at:

<http://www.lawsociety.bc.ca/utilities/whatsnew.html#aboriginal> or you may contact Susanna Tam, our Policy Counsel at stam@lsbc.org.

Timothy E. McGee
Chief Executive Officer



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

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

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

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

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

section 4 — Benchers

section 17 — Practitioners of foreign law

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

JGH

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LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

SECTION 1 – DEFINITION OF “PRACTICE OF LAW”

SECTION 15 – AUTHORITY TO PRACTISE LAW

Rationalize the definition and prohibition on unauthorized practice

NATURE OF CHANGE PROPOSED

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

WHY CHANGE IS NEEDED

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

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

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

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

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

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

HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

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

CONSEQUENTIAL AMENDMENTS

None

HISTORY OF PROPOSED AMENDMENT

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

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

RECOMMENDATION

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

LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010**SECTION 4 – BENCHERS*****Bencher oath of office*****NATURE OF CHANGE PROPOSED**

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

HISTORY OF PROPOSED AMENDMENT

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

RECOMMENDATION

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

LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

SECTION 14.1 (PROPOSED) – PARALEGALS

Certification of paralegals and/or other non-lawyers

NATURE OF CHANGE PROPOSED

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

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

Paralegals

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

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

WHY CHANGE IS NEEDED

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

HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

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

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

CONSEQUENTIAL AMENDMENTS

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

HISTORY OF PROPOSED AMENDMENT

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

RECOMMENDATION

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

LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010**SECTION 17 – PRACTITIONERS OF FOREIGN LAW****NATURE OF CHANGE PROPOSED**

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

RECOMMENDATION

No change.

LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

SECTION 23 – ANNUAL FEES AND PRACTISING CERTIFICATE

Benchers to set annual practice fee

NATURE OF CHANGE PROPOSED

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

WHY CHANGE IS NEEDED

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

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

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

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

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

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

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

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

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

HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

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

CONSEQUENTIAL AMENDMENTS

Section 24 – Fees and assessments

HISTORY OF PROPOSED AMENDMENT

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

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

RECOMMENDATION

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

LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

SECTION 24 – FEES AND ASSESSMENTS

Removing reference to collecting CBA fees

NATURE OF CHANGE PROPOSED

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

WHY CHANGE IS NEEDED

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

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

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

HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

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

CONSEQUENTIAL AMENDMENTS

None

HISTORY OF PROPOSED AMENDMENT

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

RECOMMENDATION

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

LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

SECTION 26 – COMPLAINTS FROM THE PUBLIC

Mediation of disputes

NATURE OF CHANGE PROPOSED

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

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

WHY CHANGE IS NEEDED

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

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

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

HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

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

CONSEQUENTIAL AMENDMENTS

None.

HISTORY OF PROPOSED AMENDMENT

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

RECOMMENDATION

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

LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

SECTION 38(5) – DISCIPLINE HEARINGS

Maximum disciplinary fines to be set by Benchers

NATURE OF CHANGE PROPOSED

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

WHY CHANGE IS NEEDED

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

HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

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

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

CONSEQUENTIAL AMENDMENTS

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

HISTORY OF PROPOSED AMENDMENT

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

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

RECOMMENDATION

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

LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

SECTION 38(5) – DISCIPLINE HEARINGS

Disciplinary suspension pending compliance with conditions

NATURE OF CHANGE PROPOSED

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

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

WHY CHANGE IS NEEDED

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

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

HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

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

CONSEQUENTIAL AMENDMENTS

None

HISTORY OF PROPOSED AMENDMENT

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

RECOMMENDATION

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

LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

SECTION 39 – SUSPENSION

Interim suspension before citation

NATURE OF CHANGE PROPOSED

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

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

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

This is what the section as amended would look like:

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

WHY CHANGE IS NEEDED

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

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

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

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

The motion was carried.

HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

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

CONSEQUENTIAL AMENDMENTS**Section 40 – Medical examination**

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

HISTORY OF PROPOSED AMENDMENT

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

RECOMMENDATION

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

LEGAL PROFESSION ACT AMENDMENT REQUESTS 2010

SECTION 47 – REVIEW ON THE RECORD

Review of award of costs

NATURE OF CHANGE PROPOSED

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

WHY CHANGE IS NEEDED

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

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

HOW CHANGE WILL CONTRIBUTE TO PUBLIC INTEREST

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

CONSEQUENTIAL AMENDMENTS

None

HISTORY OF PROPOSED AMENDMENT

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

RECOMMENDATION

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