



Minutes

Benchers

Date: Friday, May 11, 2012

Present: Bruce LeRose, QC, President
Art Vertlieb, QC, 1st Vice-President
Jan Lindsay, QC 2nd Vice-President
Rita Andreone, QC
Kathryn Berge, QC
Patricia Bond
David Crossin, QC
Thomas Fellhauer
Leon Getz, QC
Miriam Kresivo, QC
Bill Maclagan
Nancy Merrill
Maria Morellato, QC
David Mossop, QC
Thelma O'Grady
Lee Ongman

Vincent Orchard, QC
Greg Petrisor
David Renwick, QC
Phil Riddell
Catherine Sas, QC
Richard Stewart, QC
Herman Van Ommen
Ken Walker
Tony Wilson
Barry Zacharias
Haydn Acheson
Stacy Kuiack
Peter Lloyd, FCA
Ben Meisner
Claude Richmond

David Loukidelis, QC, Deputy
Attorney General of BC, Ministry of
Justice, representing the Attorney
General

Absent: Satwinder Bains

Staff Present: Tim McGee
Deborah Armour
Robyn Crisanti
Jeffrey Hoskins, QC
Su Forbes, QC
Michael Lucas

Bill McIntosh
Jeanette McPhee
Doug Munro
Susanna Tam
Alan Treleaven
Adam Whitcombe

Guests: Katie Armitage, Associate, Watson Advisors Inc.
Dom Bautista, Executive Director, Law Courts Center

Mark Benton, QC, Executive Director, Legal Services Society
Johanne Blenkin, Executive Director, Courthouse Libraries BC
Kari Boyle, Executive Director, Mediate BC Society
Anne Chopra, Equity Ombudsperson
Donna Greschner, Dean, Faculty of Law, University of Victoria
Jeremy Hainsworth, Reporter, Lawyers Weekly
Gavin Hume, QC, the Law Society's Representative on the Council of the Federation of Law Societies of Canada
Marc Kazimirski, President, Trial Lawyers Association of BC
Jamie Maclaren, Executive Director, Access Pro Bono
Caroline Nevin, Executive Director, Canadian Bar Association, BC Branch
Wayne Robertson, QC, Executive Director, Law Foundation of BC
Rob Seto, Director of Programs, Continuing Legal Education Society of BC
Kerry Simmons, Vice-President, Canadian Bar Association, BC Branch
Elizabeth Watson, President, Watson Advisors Inc.

OATH OF OFFICE

Bruce LeRose, QC, President of the Law Society of BC, administered the swearing of the Bencher's Oath of Office by Vancouver Bencher Miriam Kresivo, QC. Ms. Kresivo was elected in the May 8, 2012 Bencher by-election for the balance of the 2012-2013 term.

PRESENTATION OF 2012 Law Society Scholarship to Jennifer Wai Yin Chan

Mr. LeRose presented the 2012 Law Society Scholarship to Jennifer Wai Yin Chan. Ms. Chan is a 2008 graduate of the University of Victoria Faculty of Law, and plans to pursue a Master of Laws at Harvard Law School. She intends to research and then propose a legal test for determining what situations will support a right to legal representation.

CONSENT AGENDA

1. Minutes

The minutes of the meeting held on April 13, 2012 were approved as circulated.

REGULAR AGENDA – for Discussion and Decision

2. President's Report

Mr. LeRose briefed the Benchers on various Law Society matters to which he has attended since the last meeting, including nine outside meetings and events. Mr. LeRose highlighted the following matters:

a) Bill 40 (*Legal Profession Amendment Act, 2012*)

Bill 40 has passed third reading in the provincial Legislature and is expected to be enacted by the end of May. Mr. LeRose noted with thanks the hard work by many Benchers and staff on this major initiative, led by Jeff Hoskins, QC, the Law Society's Legislative & Tribunal Counsel. Mr. LeRose thanked the Ministry of Attorney General staff for their cooperation and support in helping to guide the package of amendments to the *Legal Profession Act*, S.B.C. 1998, c. 9, through the legislative process

b) Proposed Expansion of BC Notaries' Scope of Practice

Mr. LeRose briefed the Benchers on the Law Society's submissions to the Minister of Justice and Attorney General. He noted that the focus of those submissions is the importance on ensuring effective regulation of the provision of legal services to British Columbians.

c) Governance Review Task Force

Mr. LeRose updated the Benchers on the progress of the current review of Law Society governance review. He reported that the review is being led by Elizabeth Watson of WATSON Advisors, that the stakeholder interview and document review phases of the project are substantially complete, and that Ms. Watson will provide an interim report at the Benchers' Retreat in June. Mr. LeRose noted that the governance review project is proceeding well, on-time and on-budget.

d) Cowper Review of BC's Judicial System

The Law Society's draft response to the BC Government's Green Paper (*Modernizing British Columbia's Justice System*) has been completed, and will be circulated to the Executive Committee and then the Benchers for comment prior to submission to Mr. Cowper.

3. CEO's Report

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

- a) **First Quarter Financial Results**
- b) **Bill 40, *Legal Profession Amendment Act, 2012***
- c) **2012 Operational Priorities – Progress Report**
 - a. **Review of Performance Management Process and How it Ties into Recognition**
 - b. **Lawyer Advice and Support Assessment Project**
- d) **Law Society Privacy Review – Update**
- e) **Law Week – “Day-in-the-Life” Twitter Campaign and Law Society Speakers Bureau**
- f) **Re-design of the Employee Recognition Program**
- g) **Executive Committee Review of Key Performance Measures (KPM) Targets**
- h) **Indigenous Lawyers Mentoring Project Update**
- i) **Law Society Equity Ombudsperson's Annual Report for 2011**

4. Bill 40 (*Legal Profession Amendment Act, 2012*): Next Steps Planning

Mr. Hoskins provided the Benchers with a briefing on Bill 40's background, substance and implementation timeline. He reported that the bill is expected to be enacted as the *Legal Profession Amendment Act, 2012* by the end of May. Mr. Hoskins noted that while most of the provisions of the new Act will come into force on Royal Assent, many will require the Benchers to amend the Law Society Rules to take effect. Most of those will require the provincial Cabinet to proclaim sections of the amending Act.

Mr. Hoskins also noted the importance of ensuring comprehensive and effective communications with BC lawyers and the public regarding the purpose, effect and timeline for implementation of

the legislative changes. Ms. Crisanti confirmed that a range of communication initiatives are being planned, including an article in the upcoming *Benchers' Bulletin*.

David Loukidelis, QC, Deputy Attorney General of BC, expressed appreciation on behalf of Minister Bond and the staff of the Ministry of Justice and Attorney General for the cooperative approach shown by the Law Society throughout this amendment initiative and process.

5. Federation of Law Societies of Canada: Council Report by the Law Society's Council Representative

Gavin Hume, QC reported as the Law Society's FLSC Council representative on various Federation matters, including:

a. National Admission Standards

The National Admission Standards Steering Committee met in Calgary on May 2. Federation President John Hunter, QC, Law Society CEO Tim McGee, and Law Society Director of Education Alan Treleaven are Steering Committee members.

The Steering Committee is developing proposed strategies for implementing the national competency standards and good character standards. Work on both is well under way. The draft national competency standards are now being validated nationally by a survey of about 5,000 Canadian lawyers with five or fewer years of practice experience.

In the fall of this year, the Credentials Committee and the Benchers will be asked to approve the national competency standards and good character standards, and to consider national strategies for implementing those standards.

b. Federation Council Meeting and Fall Conference (September 20 – 22, 2012, Vancouver)

Planning is underway for the Federation's Annual Conference to be held September 20-22 in Vancouver. All law societies will attend, and conference topics will include next steps and strategies for National Admission Standards, including the role and future of articling.

c. Common Law Degree Approval Committee

This Federation committee has been struck to oversee implementation and administration of the Canadian Common Law degree standards that are now in place. Law school students who

graduate in 2015 (the 2012 entry class) will be the first to be subject to the Federation's law degree standards, developed by the Canadian Common Law Degree Task Force.

All Canadian common law degree programs require approval; so all law schools have been submitting detailed applications to the Federation. The Federation Common Law Degree Approval Committee meets in Toronto on June 7 and 8 to review the law schools' applications. UBC Law Dean Mary Anne Bobinski and the Law Society Director of Education Alan Treleaven serve on that committee.

d. Model Code Implementation Update

Mr. Hume updated the Benchers on Model Code implementation progress by the Federation's various member societies to date.

e. National Discipline Standards Pilot Project

This two-year initiative is underway, and the representatives of the Federation's member law societies, including members of the Law Society's Professional Regulation department, are working toward meeting the standards set for the pilot project.

f. June Meeting of the Federation Council

The Council's June meeting will be held in Ottawa. Review of the Federation's current Strategic Plan will be on the agenda.

6. Report on Outstanding Hearing & Review Reports

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

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

7. Strategic Plan Implementation Update

Mr. LeRose briefed the Benchers on a number of strategic plan implementation matters. He reported that the 2012 Advisory Committees will provide their mid-year reports to the Benchers at the July meeting.

Mr. LeRose also provided an update on the BC Courts Family Law Paralegals Pilot Projects (BC Supreme Court and BC Provincial Court). A Benchers' working group will be created to oversee

the two pilot projects, freeing the Access to Legal Services Advisory Committee to pursue its other responsibilities. The Family Law Paralegals Pilot Projects Working Group will comprise Mr. LeRose and Vertlieb as co-chairs, and Mr. Mossop, Mr. Stewart and Life Bencher Carol Hickman QC as members.

Mr. LeRose reported on planning for creation of a task force to carry out the work underlying Initiative 1-1(c) in the current Strategic Plan:

Initiative 1–1(c)

Examine whether the Law Society should regulate just lawyers or whether it should regulate all legal service providers.

This work was initially tasked to the Access to Legal Services and the Independence and Rule of Law Advisory Committees. Both advisory committees have noted that the scope of work will exceed the current year and would be more efficiently undertaken by a dedicated task force. The Executive Committee has been briefed and has approved the preparation of draft terms of reference and a mandate for presentation to the Benchers in July, with a request to strike such a task force.

Mr. LeRose also reported on:

Initiative 1–2(a)

Examine issues of governance of the Law Society generally including:

- ...
- developing a model for independent evaluation of Law Society processes;
- ...

A working group comprising Past-President Gavin Hume, QC, Mr. LeRose and Mr. McGee has been working on this matter since the fall of 2009. Stakeholder interviews have been concluded; Mr. McGee will prepare a paper with recommendations for the Benchers' review at the September meeting.

OTHER MATTERS – For Discussion and/or Decision**8. Ethics Committee: Review and Approval of BC Code Rule 5.01 and Professional Conduct Handbook (Paralegals)**

Mr. Getz briefed the Benchers, referring them to the Ethics Committee's memorandum at page 8000 of the meeting materials, and to the Committee's recommendations (at page 8007 of the meeting materials) that the Benchers:

- adopt amended Rule 5.01 and Appendix E of the BC Code, to be effective when the new Code is proclaimed on January 1, 2013, pursuant to the attached suggested resolutions [at page 8032-8037]
- adopt amended Chapter 12 of the *Professional Conduct Handbook* and Appendix 7 until the BC Code is in effect, pursuant to the attached suggested resolutions [at page 8038-8045].

Mr. Getz confirmed that the Ethics Committee's recommendations differ in two respects from those of the Delivery of Legal Services Task Force, which were approved in principle by the Benchers in October 2010. The Ethics Committee has recommended that there be no "cap" on the number of such paralegals that a lawyer would be allowed to supervise (the Task Force had recommended a cap of two), and that such paralegals be permitted to give and receive undertakings (the Task Force had recommended that paralegals not be permitted to do so).

Mr. Getz outlined the Ethics Committee's rationale for its recommendations. He referred to page 8006 of the meeting materials for explanation of the proposed replacement of a hard "cap" with a regime that would focus on the qualitative and practical aspects of paralegals' supervision by lawyers, and the regulation of such supervision. Mr. Getz referred to page 8004 for explanation of the proposed amendment to the current subrule 5.01(3)(c) of the BC Code, to clarify that the undertaking given or accepted by a paralegal is not the paralegal's own undertaking, but rather is that of the lawyer responsible for the matter.

Mr. Getz alerted the Benchers to a clerical error in the Executive Committee's memorandum, such that in a number of instances the word "non-lawyer" was inadvertently used when "paralegal" was intended. He referred particularly to the following passage (at pages 8004-8005):

5.01(3) A lawyer must not permit a non-lawyer to:

- (c) give or accept undertakings or trust conditions, but a ~~non-lawyer~~ [paralegal] may give or accept undertakings on behalf of the lawyer responsible for a legal matter, at the direction of and under the supervision of that lawyer, provided that, in any communications, the fact that the person giving or accepting the undertaking or

accepting the trust condition is a ~~non-lawyer~~ [paralegal] is disclosed, the capacity of the person is indicated and the lawyer who is responsible for the legal matter is identified;

Mr. Getz moved (seconded by Mr. Crossin) that the Benchers adopt the Ethics Committee's recommendations (as set out above).

Mr. Vertlieb outlined the basis for the Delivery of Legal Services Task Force's recommendations.

Mr. Mossop advised the Benchers that if the motion were passed, he would present a motion to amend the *Professional Conduct Handbook*, Chapter 12, subrule 4(c) to add the words "or the Benchers" to the exceptions to subrule 3's limitations on the work that may be done by a non-lawyer under the supervision of a lawyer, as follows:

4. The limitations imposed by subrule (3) do not apply when a non-lawyer is
 - (a) a community advocate funded and designated by the Law Foundation;
 - (b) a student engaged in a legal advice program or clinical law program run by, associated with or housed by a law school in British Columbia; and
 - (c) with the approval of the Executive Committee [or the Benchers], a person employed by or volunteering with a non-profit organization providing free legal services.

In the ensuing discussion a number of issues were raised by the Benchers regarding both recommendations.

The motion was withdrawn, and the matter was referred to staff and the Executive Committee for consideration, to be returned to the Benchers for decision at their June meeting.

IN CAMERA SESSION

The Benchers discussed other matters in camera.

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The Law Society
of British Columbia



Chief Executive Officer's Monthly Report

A Report to the Benchers by

Timothy E. McGee

May 11, 2012

Introduction

My report this month attaches the financial results for the first quarter ending March 31, 2012, as well as a progress report on two of our 2012 operational priorities and updates on several other items.

1. First Quarter Financial Results

Highlights of the financial results for the first quarter ending March 31, 2012 are summarized in Appendix 1. These results have been reviewed with the Chair of the Finance Committee, Art Vertlieb, QC. Jeanette McPhee, our Chief Financial Officer, and I will be available to answer any questions you may have on the results at the meeting.

2. Bill 40, *Legal Profession Amendments Act, 2012*

At the time of writing, Bill 40, our package of proposed amendments to the *Legal Profession Act*, had received second reading in the Legislature. The comments from both sides of the House were supportive. Jeff Hoskins, QC will be at the meeting to provide an updated report on the progress of this important new legislation.

3. 2012 Operational Priorities – Progress Report

The 2012 Operational Priorities Plan sets out five priorities for 2012. Here is a progress report on two of those priorities.

(a) Review of Performance Management Process and How it Ties Into Recognition

At the April 2012 Town Hall meeting, I invited all staff to participate in small-group discussions to provide feedback on three questions related to performance recognition:

1. If you could design the recognition program, what would it look like?
2. What kinds of behaviours, achievements and activities do you think should be recognized at the Law Society?
3. What do you see as some of the potential pitfalls of a recognition program and how could they be averted?

Over 100 staff members participated in the group sessions, which were not attended by managers, and were facilitated by staff volunteers.

They provided invaluable feedback on how we can make the Law Society's recognition program more relevant to Law Society employees and more effective in engaging the behaviours we value and the performance we seek. Management is now reviewing the feedback and a follow-up targeted survey is being conducted to drill down further into certain key issues. Our plan is to have a redesigned employee recognition program in place for 2013.

(b) Lawyer Advice and Support Assessment Project

One of the three major strategic recommendations in the Core Process Review Report was the establishment of a cross-departmental staff working group to make a full assessment of the strengths and opportunities of our current model for delivering lawyer advice and practice support services.

The project objectives are to identify:

- what lawyer advice and practice support the Law Society should provide;
- who within the Law Society should provide the particular types of advice and support;
- what are the best means to provide the advice and support; and
- what are the resource implications and needs of providing these services?

Currently the Law Society provides a wide range of assistance and support to BC lawyers, including telephone practice advice about questions of ethics, professional responsibility and practice management, related web resources, email alerts to the entire profession about current frauds and scams, online courses for the small firm practitioner, and in-house trust compliance seminars, to name but a few.

While the Law Society is a regulator, it is very much in the Law Society's interests to assist and support BC lawyers to be aware of, understand, and comply with our regulatory standards. It is also very much in the interests of BC lawyers that there be an effective, integrated and coordinated program of lawyer support and assistance.

In the fall of 2011, Alan Treleaven, our Director of Education and Practice, delivered a preliminary report of the Lawyer Advice and Practice Support Working Group. The Working Group's preliminary findings will be shared with the Executive Committee in June. Our plan is to present the Benchers in the Fall with new options for consolidating and expanding the work the Law Society does today to support and assist BC lawyers with all aspects of regulatory compliance and professional competence.

4. Privacy Review – Update

As part of the risk management initiative, we have commenced a comprehensive privacy review to assess all aspects of our current privacy practices, policies and procedures, identify potential risks and identify controls that should be in place.

Following an RFP process, we retained Sara Levine, a lawyer specializing in this area, and Drew McArthur, a privacy and compliance consultant, to conduct the review. The consultants have met with Management Board and are now conducting interviews with managers and staff in all departments. Jeff Hoskins, QC and Jackie Drozdowski, the Information and Privacy Officer, are working with the consultants to complete this process.

The consultants will deliver a final report by mid-year, which will include recommendations for improvements to ensure compliance with all privacy laws and standards, and for ongoing monitoring, enforcement and compliance. We will be bringing that report forward to the Executive Committee and to the Benchers before the Fall.

5. Law Week – “Day-in-the-Life” Twitter Campaign and Law Society Speakers Bureau

The Law Society recognized Law Week in two ways. The first was our “Day-in-the-Life” Twitter Campaign which involved many staff and resulted in a fascinating Twitter narrative that touched on a broad range of different activities that go on at the Law Society. The campaign attracted four media reports, over 100 new Twitter followers, drove 129 people to the Law Society website and exposed more than 60,000 people via Twitter to Law Society information throughout the day. We also launched our Speakers Bureau during Law Week, which is available to the public through our website and features at least 15 speakers from the Law Society who are available to speak to the public, including organizations, on a variety of topics.

Robyn Crisanti, Manager, Communications and Public Affairs, will be at the meeting to answer any questions or to provide further details on these innovative communications initiatives.

Timothy E. McGee
Chief Executive Officer

Appendix 1

CFO Quarterly Financial Report – First Quarter 2012

Attached are the financial results and highlights for the first quarter of 2012.

General Fund

General Fund (excluding capital and TAF)

The General Fund operations resulted in a positive variance of \$217,000 to March 31, 2012.

Revenue

Revenue is \$4,679,000, \$113,000 (2.5%) ahead of budget due primarily to:

- \$28,000 in practice fee late payment charges
- \$60,000 in Members Manual and Benchers Bulletin revenue which is offset by the cost of producing the publications

Operating Expenses

Operating expenses for the first quarter were \$4.4 million, \$111,000 (2.5%) below budget due the timing of costs in various areas.

2012 Forecast - General Fund (excluding capital and TAF)

Operating Revenue

Practicing membership is expected to be on budget this year, with 10,787 members. With a projection of 420 PLTC students for the year, PLTC revenue will have a positive variance of \$60,000. We are also projecting \$50,000 in additional miscellaneous revenue.

Operating Expenses

There are a number of Bencher approved items after the 2012 budget was set, resulting in a negative variance of \$250,000. The negative variance includes the Governance Review \$100,000, the CBA REAL program \$75,000, the Federation levy \$40,000, the CBA conference sponsorship \$25,000 and the Aboriginal Scholarship \$12,000.

Offsetting this, we are projecting \$50,000 savings related to hearing panelist training costs.

845/835 Building – net results

845/835 Cambie lease revenue is projected to be below budget.

The Benchers approved the forgiveness of CLE rent for two months, resulting in a reduction in lease revenue of \$60,000.

In addition, for the first time since 1992, we have vacant space in the 835 Cambie building. Our leasing agent, CB Richard Ellis continues to actively market the space, but with no confirmed tenants yet in place, we have assumed that this space will not be leased by year end, which results in a revenue reduction of \$325,000.

Building expense savings of \$45,000 are projected, mainly due to a reduction in property taxes. Management initiated the reclassification of the 9th floor space as a non-profit meeting area, resulting in a lower property tax rate and savings of \$20,000 per year on a go-forward basis.

TAF-related Revenue and Expenses

The first quarter TAF revenue is not received until the April/May time period.

TAF operating expenses had a positive variance in the first quarter, with savings in travel costs.

Special Compensation Fund

There was little activity in the Fund during the first quarter.

Lawyers Insurance Fund

LIF operating revenues were \$3.6 million in the first quarter, very close to budget.

LIF operating expenses were \$1.4 million, \$223,000 below budget. This positive variance was due to staff vacancies and lower investment management fees.

The market value of the LIF long term investments was \$98 million, an increase of \$4.5 million in the first quarter. The year to date investment return was 4.8%, compared to a benchmark of 3.6%.

Summary of Financial Highlights - March 2012
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2012 General Fund Results - YTD March 2012 (Excluding Capital Allocation & Depreciation)				
	Actual	Budget	\$ Var	% Var
Revenue (excluding Capital)				
Membership fees	3,620	3,594	26	0.7%
PLTC and enrolment fees	254	256	(2)	-0.8%
Electronic filing revenue	215	215	-	0.0%
Interest income	126	120	6	5.0%
Other revenue	464	381	83	21.8%
	4,679	4,566	113	2.5%
Expenses before 845 Cambie (excl. dep'n)	4,349	4,460	111	2.5%
	330	106	224	
845 Cambie St. - net results (excl. dep'n)	211	218	(7)	-3.2%
	541	324	217	

2012 General Fund Year End Forecast (Excluding Capital Allocation & Depreciation)				
	Avg # of Members			Actual Variance
Practice Fee Revenue				
2008 Actual	10,035			
2009 Actual	10,213			
2010 Actual	10,368			
2011 Actual	10,564			
2012 Budget	10,787			
2012 Actual YTD	10,538			
Revenue				
PLTC				60
Misc Revenues				50
				110
Expenses				
FLS Contribution - rate increase *				(40)
Exec Comm - CBA Canadian legal conference sponsorship contribution *				(20)
CBA REAL Initiative *				(75)
Governance Review *				(100)
Aboriginal Scholarship*				(12)
Hearing Training Costs - some incurred in 2011				50
				(197)
845 Cambie Building				
CLE Lease Forgiveness*				(60)
835 Vacancy - assume not leased during 2012				(325)
Other Savings				45
				(340)
2012 General Fund Forecast Variance				(427)
2012 General Fund Budget				-
2012 General Fund Actual				(427)

* Bencher approved items

Trust Assurance Program Forecast				
	2012 Forecast	2012 Budget	Variance	% Var
TAF Revenue	2,364	2,500	(136)	-5.4%
Trust Assurance Department	2,388	2,468	80	3.2%
Net Trust Assurance Program	(24)	32	(56)	

2012 Lawyers Insurance Fund Long Term Investments - YTD March 2012 Before investment management fees	
Performance	4.8%
Benchmark Performance	3.6%