



Minutes

Benchers

Date: Friday, December 05, 2014

Present: Jan Lindsay, QC, President
Ken Walker, QC, 1st Vice-President
David Crossin, QC, 2nd Vice-President
Haydn Acheson
Joseph Arvay, QC
Satwinder Bains
Pinder Cheema, QC
David Corey
Jeevyn Dhaliwal
Lynal Doerksen
Thomas Fellhauer
Craig Ferris
Martin Finch, QC
Miriam Kresivo, QC
Dean Lawton

Peter Lloyd, FCA
Jamie Maclaren
Sharon Matthews, QC
Nancy Merrill
Maria Morellato, QC
David Mossop, QC
Lee Ongman
Greg Petrisor
Claude Richmond
Phil Riddell
Elizabeth Rowbotham
Herman Van Ommen, QC
Cameron Ward
Sarah Westwood
Tony Wilson

Excused: Ben Meisner

Staff Present: Tim McGee, QC
Deborah Armour
Taylore Ashlie
Su Forbes, QC
Andrea Hilland
Jeffrey Hoskins, QC

Ryan Lee
Michael Lucas
Jeanette McPhee
Alan Treleaven
Adam Whitcombe

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| Guests: Dom Bautista | Executive Director, Law Courts Center |
| Mark Benton, QC | Executive Director, Legal Services Society |
| Johanne Blenkin | Chief Executive Officer, Courthouse Libraries BC |
| Kari Boyle | Executive Director, Mediate BC Society |
| Edmund Caissie | 2015 Westminster County Bencher |
| Jay Chalke, QC | Assistant Deputy Minister, Justice Services Branch |
| Anne Chopra | Equity Ombudsperson, Law Society of BC |
| Jennifer Chow | Vice President, Canadian Bar Association, BC Branch |
| Ron Friesen | CEO, Continuing Legal Education Society of BC |
| Richard Fyfe, QC | Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General |
| Gavin Hume, QC | Law Society of BC Member, Council of the Federation of Law Societies of Canada |
| Derek LaCroix, QC | Executive Director, Lawyers Assistance Program |
| Yves Moisan | President and Treasurer, BC Paralegal Association |
| Carmen Marolla | Non-Bencher Member, Legal Services Regulatory Framework Task Force |
| Caroline Nevin | Executive Director, Canadian Bar Association, BC Branch |
| Richard Parsons | President, Trial Lawyers Association of BC |
| Wayne Robertson, QC | Executive Director, Law Foundation of BC |
| Jeremy Schmidt | Executive Coordinator to the Dean, University of British Columbia |
| Ken Sherk | Non-Bencher Member, Legal Services Regulatory Framework Task Force |
| Alex Shorten | President, Canadian Bar Association, BC Branch |
| Rose Singh | Vice President, BC Paralegal Association |
| Art Vertlieb, QC | Life Bencher and Chair of the Legal Services Regulatory Framework Task Force |
| Prof. Jeremy Webber | Dean of Law, University of Victoria |

CONSENT AGENDA

1. Minutes and Consent Resolutions

a. Minutes

The minutes of the meeting held on October 31, 2014 were approved as circulated.

The *in camera* minutes of the meeting held on October 31, 2014 were approved as circulated.

b. Consent Resolutions

The following resolutions were passed unanimously and by consent.

- Appointment to the Legal Services Society Board of Directors

BE IT RESOLVED to appoint Dinyar Marzban, QC to the Board of Directors of the Legal Services Society, for a three-year term commencing January 1, 2015.

- Proposed Amendment to the *BC Code of Professional Conduct: Appendix C: Real Property Issues*

BE IT RESOLVED to amend BC Code of Professional Conduct (Appendix C – Real Property Transactions, Commentary [1(d)] and Commentary [2]), as set out in Appendix 1 to these minutes.

- Family Law Task Force: Extension of Time to Complete Mandate

BE IT RESOLVED to extend the time for completion of the Family Law Task Force's current mandate to July 2015.

- 2015 Fees Schedule

BE IT RESOLVED to amend the Law Society Rules, effective January 1, 2015, as follows:

1. In Schedule 1,

(a) by striking "\$1,940.00" at the end of item A 1 and substituting "\$1,992.00", and

(b) by rescinding items C 4 and 5 and substituting the following:

4. Training course registration (Rule 2-44(4)(a))

until August 31, 2015..... 2,250.00
 effective September 1, 2015 2,500.00

- 5. Remedial work (Rule 2-45(7)):
 - (a) for each piece of work50.00
 - (b) for repeating the training course
 - until August 31, 2015 3,500.00
 - effective September 1, 2015 3,900.00

- 2. *In Schedule 2, by revising the prorated figures in each column accordingly; and*
- 3. *In the headings of schedules 1, 2, and 3, by striking the year “2014” and substituting “2015”.*

- Tribunal Program Review Task Force: Interim Report and Recommendations

BE IT RESOLVED TO extend the appointment of those members of the hearing panel pool of non-Bencher lawyers and public representatives willing to accept the extension, to January 1, 2016.

BE IT RESOLVED TO

- 1. *approve in principle changes to the Law Society Rules to allow for*
 - (a) *the remaining two members of a hearing panel to continue to conduct a hearing when one member is unable to continue for any reason, and*
 - (b) *the remaining members of a review board to continue to conduct a review when one member is unable to continue for any reason;*
- 2. *refer the matter to the Act and Rules Committee to recommend rule amendments to implement the changes.*

DISCUSSION/ DECISION

2. 2015-2017 Strategic Plan Development Update

Mr. McGee briefed the Benchers on the draft 2015 – 2017 Strategic Plan (page 81 of the agenda package). He confirmed that the strategies and initiatives set out in the current draft plan were derived from Benchers’ input provided in an environmental scanning session in September, and from the Benchers’ responses to a survey conducted during the week of November 10.

Mr. McGee noted that there was nothing in the plan about feasibility, cost and resourcing. Those issues will be addressed by the Executive Committee and staff, following receipt of further input

from the Benchers in relation to the various proposed strategic initiatives and their relative priority.

Mr. McGee referred to page 82 of the agenda package for the three over-arching strategic goals proposed as the draft plan's framework:

To fulfil our mandate in the next three years, we have identified three specific goals:

1. The public will have better access to legal services.

We know that one of the most significant challenges in Canadian civil society today is ensuring that the public has adequate access to legal advice and services.

2. The public will be well served by an innovative and effective Law Society.

We recognize that the public expects and deserves effective regulation of the legal profession. To meet that expectation, we will seek out and encourage innovation in all of our practices and processes in order to continue to be an effective professional regulatory body.

3. The public will have greater confidence in the rule of law and the administration of justice.

We believe that the rule of law, supported by an effective justice system, is essential to Canadian civil society. The legal profession plays an important role in maintaining public confidence in both the rule of law and the administration of justice. We recognize the importance of working with others to educate the public about the rule of law, the role of the Law Society and the legal profession in the justice system and the fundamental importance of the administration of justice.

In the ensuing discussion, several Benchers suggested that Goal 1 be broadened to address access in the context of justice, rather than legal services.

Ms. Lindsay noted the evident consensus support for that view, and requested staff to re-work that portion of the plan accordingly. Mr. Walker encouraged all the Benchers to review the draft plan closely, particularly in the context of their 2015 Committee assignments, and to consider what they can accomplish next year through this strategic plan—personally and through their committees, task forces and working groups.

3. Election of an Appointed Bencher to the 2015 Executive Committee Elections

Ms. Lindsay announced that the Benchers have elected Vancouver County Bencher Miriam Kresivo, QC, Nanaimo County Bencher Nancy Merrill, and Vancouver County Bencher Tony Wilson to the 2015 Executive Committee. Ms. Lindsay thanked Mr. Doerksen, Mr. Maclaren, Ms. Morellato and Mr. Riddell for putting their names forward as candidates.

Ms. Bains announced that the appointed Benchers have chosen Haydn Acheson as their representative on the 2015 Executive Committee.

GUEST PRESENTATION

4. Continuing Legal Education Society of BC (CLEBC) Annual Update

CLEBC CEO Ron Friesen briefed the Benchers. Mr. Friesen described CLEBC as an effective, self-financing non-profit society. He reported that the organization conducts an annual financial review, as well as annual CEO and board reviews.

Mr. Friesen commented that the Law Society and the BC Branch of the Canadian Bar Association appoint the majority of CLEBC's directors. Noting that Westminster County Bencher Martin Finch, QC and Victoria County Bencher Dean Lawton have recently joined the CLEBC board of directors, he added that the Benchers should feel free to communicate their concerns about CLEBC to the Law Society's appointees to the board, including the Bencher members.

Mr. Friesen outlined areas of value added to the Law Society by CLEBC, including the provision of no-cost programming on the new *BC Code of Professional Conduct* to over 5,000 lawyers. Mr. Friesen noted that CLEBC provides about 85 CLE course titles per year, with an average participants' rating of 4 per course (5-point scale). He also noted that many of those courses can be accessed online through lawyers' offices.

Mr. Friesen thanked the Law Society for the support its Benchers and staff lawyers provide as volunteer lecturers. He particularly acknowledged Ms. Lindsay as a long-time supporter.

Mr. Friesen responded to a number of Benchers' questions:

- What are future developments for continuing legal education?
 - There is an increasing need for access to justice in legal services. CPD needs to do more to work for immediate support in "Just in Time" courses. These would be 5-minute presentations with related content that could be picked up quickly.

- Tremendous amounts of information bombard lawyers and society on a daily basis, and CLE needs to get a better sense of what lawyers need.
- Self-represented litigants remain an issue. That topic will form the subject of the CLE's upcoming Retreat agenda. He noted that CLE supports lawyers, not the general public, but there are ways to help lawyers and Judges to deal with self-represented parties through appropriate education.
- If non-lawyer legal service providers are created, CLE will be able to address them?
 - Even now, CLE provides support programs for notaries, and they are looking at ways to provide legal education to designated paralegals as well.
 - If non-lawyers become involved in providing legal services, CLE will expect to address that demographic.
 - CLE's content is not aimed at the general public; it is aimed at people who have been licensed to provide legal services.

Mr. Walker thanked Mr. Friesen and CLEBC for the archival material that has been made available. He noted that CPD course cost remained an issue, particularly for lawyers outside of the lower mainland.

REPORTS

5. Legal Services Regulatory Framework Task Force Report

Task Force Chair Art Vertlieb, QC briefed the Benchers. Mr. Vertlieb introduced the task force members¹, noting the diversity of their backgrounds, perspectives and opinions. He noted that in December 2013 the Benchers unanimously approved the Legal Services Provider Task Force Report. One of that task force's recommendations was to determine if there was a marketplace for existing providers of legal services—other than lawyers or notaries—and to consider how to bring a structure into place to regulate those service providers.

Mr. Vertlieb advised that the focus of the task force's work and resulting recommendations was unmet need for legal services. Ms. Marolla, a Task Force member and Vice-President of the BC Paralegals Association, agreed and noted:

- unrepresented parties place a burden on court and opposing parties

¹ Art Vertlieb, QC (Chair), David Crossin, QC (Vice-chair), Satwinder Bains, Jeevyn Dhaliwal, Lee Ongman, Karey Brooks, Nancy Carter, Dean Crawford, QC, Carmen Marolla, Wayne Robertson, QC and Ken Sherk

- some representation instead of none will reduce those burdens
- appropriate education and credentials will ensure competence in skills
- a number of unknown economics exist, but the Law Society must act in the public interest to fill the justice gap
- it may be a leap of faith, but it's a leap that needs to be taken
- the BC Paralegals Association supports the Task Force's report

A number of Benchers expressed their approval and support for the Task Force's report and recommendations, while noting the importance of effective, timely communication by the Law Society with the legal profession.

Mr. Crossin moved (seconded by Ms. Ongman) that the recommendations of the Task Force (see page 95 of the agenda package) be adopted.

The motion was carried unanimously.

6. Justicia Project Recommendations: Demographic Data Collection, Parental Leave & Flexible Work Arrangements

Ms. Morellato briefed the Benchers as Chair of the Equity and Diversity Advisory Committee. She confirmed that the Committee is seeking approval of the three policies created by *Justicia*, as well as the Respective Workplace Model Policy that had been updated through a subcommittee of the Equity and Diversity Advisory Committee. The three *Justicia* policies in question are:

- (i) parental leave policy (page 151 of the agenda package);
- (ii) a flexible work arrangement policy (page 161 of the agenda package);, and
- (iii) a demographic collection policy (page 190 of the agenda package).

She noted that the final policy being submitted to the Benchers for approval was the respectful workplace model policy (page 213 of the agenda package).

Ms. Morellato confirmed that these policies were provided as guides, and not as mandatory practices. She noted that the aim is to have these policies taken up by other firms not involved in the *Justicia* project, and then, at the next stage, develop them for smaller firms as well.

A number of Benchers spoke in favour of the proposed policies.

Mr. Van Ommen moved (seconded by Ms. Matthews) that the proposed policies be adopted. The motion was carried unanimously.

7. Governance Committee: Year-end Report and Recommendations

Ms. Kresivo reported as Chair of the Governance Committee. She reviewed the work undertaken by the Committee since its mid-year report and referred the Benchers to page 235 of the agenda package for a summary of the Committee's recommendations:

- A. Each Chair of a regulatory committee should provide an orientation at the beginning of each year covering conflicts and bias issues and how they will be handled if situations arise during the course of the committee's work.
- B. A Rule or a clear Law Society direction should be developed to override the common law rule that the member of the committee is the one who decides whether recusal is warranted.
- C. The Bencher Code of Conduct be revised as set out in Appendix A (page 241 of the agenda package)

Ms. Kresivo commented that the Governance Committee provided guidance to the Act and Rules Committee over the past year regarding that body's review and renewal of its terms of reference. She noted the Governance Committee's intention to work with the Law Society's other committees in 2015 in review and renewal of their respective terms of reference.

8. 2014 Advisory Committees: Year-end Reports

a. Access to Legal Services Advisory Committee

Access to Legal Services Advisory Committee Chair David Mossop, QC briefed the Benchers: providing highlights of the Committee's work over the past year; outlining its recommendations for the coming year; and referring to the Committee's report at page 248 for details.

Discussion followed.

b. Equity and Diversity Advisory Committee

Equity and Diversity Advisory Committee Chair Maria Morellato, QC briefed the Benchers: providing highlights of the Committee's work over the past year; outlining its recommendations for the coming year; and referring to the Committee's report at page 260

for details. Ms. Morellato asked Ms. Bains to report on behalf of the Diversity on the Bencher Subcommittee (page 263).

Discussion followed.

c. Rule of Law and Lawyer Independence Advisory Committee

Rule of Law and Lawyer Independence Advisory Committee Chair David Crossin, QC briefed the Benchers: providing highlights of the Committee's work over the past year; outlining its recommendations for the coming year; and referring to the Committee's report at page 269 for details.

Discussion followed.

d. Lawyer Education Advisory Committee

Lawyer Education Advisory Committee Chair Tony Wilson briefed the Benchers: providing highlights of the Committee's work over the past year; outlining its recommendations for the coming year; and referring to the Committee's report at page 277 for details.

Discussion followed.

9. President's Report

Ms. Lindsay briefed the Benchers on various Law Society matters to which she has attended since the last meeting, including:

a. 2014 Overview

The Benchers and staff of the Law Society have accomplished a great deal over the past year, under difficult circumstances. Ms. Lindsay asked Mr. McGee to update the Benchers on the TWU file.

b. Trinity Western University's Proposed School of Law: Next Steps

Mr. McGee briefed the Benchers. He advised that to date no communication has been received from Trinity Western University (TWU) regarding commencement of litigation proceeding arising from the Benchers' decision at their October 31 meeting to declare TWU's proposed School of Law to be not approved as a faculty of law, pursuant to Rule 2-27 (4.1). Mr. McGee confirmed that Peter Gall QC has been retained as the Law Society's counsel in anticipation of those proceedings. He updated the Benchers on the status of the legal proceedings initiated by TWU against the Nova Scotia Barristers' Society

and the Law Society of Upper Canada,² and regarding the BC Supreme Court proceeding challenging the decision of BC's Minister of Advanced Education to approve the proposed TWU School of Law.

Ms. Lindsay noted that the Litigation Subcommittee will continue to monitor these proceedings and provide advice to the Executive Committee, in the ordinary course.

c. CBABC Presentation and Introduction

Alex Shorten, President of the Canadian Bar Association, BC Branch (CBABC), noted that the end of today's meeting will mark the completion of Ms. Lindsay's responsibilities as chair of scheduled 2014 Bencher meetings. He paid tribute to the distinguished, effective leadership she demonstrated in guiding the Benchers and staff of the Law Society through the challenges of the past year, and to the quality of the Benchers' performance as the Law Society's directors over that period. Mr. Shorten presented a Vancouver Canucks jersey to Ms. Lindsay on behalf of the Executive, staff and members of CBABC.

Mr. Shorten then introduced Vice-President Jennifer Chow as CBABC's designated representative at Bencher meetings in 2015.

d. Presentation of the 2015 President's Pin

Ms. Lindsay presented the 2015 President's Pin to Ken Walker, QC.

e. Presentation of the 2014 Benchers' Gift to the Out-going President

Mr. Walker presented a gift to Ms. Lindsay on behalf of the 2014 Benchers.

Mr. McGee expressed appreciation to Ms. Lindsay on behalf of staff, noting Ms. Lindsay's dedication to the best interests of the Law Society, and her consideration for staff throughout the challenges of the past year.

10. CEO's Report

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

- Introduction
- Operational Updates

² Regarding the decisions of their Benchers not to approve the accreditation of graduates of TWU's proposed School of Law to practise law in their respective jurisdictions.

- Operational Priorities Plan Update
 - Implementation of Legal Service Providers Task Force Report Recommendations
 - Law Society as Insurer and Regulator Working Group
 - Implementation of Lawyer Support and Advice Project
 - Support for the Law Firm Regulation Review
 - Review and Renewal of Staff Performance Management Process
- 2014 Annual Employee Survey
- Events and Conferences
 - International Institute of Law Association Chief Executives (IILACE) – Annual Conference
 - Federation of Law Societies of Canada

11. Briefing by the Law Society's Member of the Federation Council

Gavin Hume, QC briefed the Benchers as the Law Society's member of the FLSC Council on various matters, including:

a. Change of Leadership of the Federation of Law Societies of Canada (FLSC)

On November 15 Tom Conway, QC (Past-Treasurer of the Law Society of Upper Canada) assumed the FLCC presidency for a one-year term.

b. Federation Governance Review Committee

Past-President Marie-Claude Belanger-Richard, QC will chair the Federation Governance Review Committee, which will consult with the Federation's member law societies in 2015 on a range of governance issues, including executive succession and whether the Federation should be more than a coordinating body for its member societies.

c. Bill C-44 (*An Act to Amend the Canadian Security Intelligence Service*)

The Federation has made a submission in relation to the connection between the nature and source of information leading to detention, and the potential for compromising the ability of counsel to provide effective representation to detainees.

d. Intervention in the *Minister of National Revenue v. Thompson* (Supreme Court of Canada)

The Federation's intervention is on the issue of protection of solicitor-client privilege.

e. Standing Committee on the Model Code of Professional Conduct

As of November 24, consultation has been completed on the Standing Committee's current round of proposed amendments to the Model Code.

On December 3, preliminary discussions took place between the Federation and CanLII regarding digitization of the Model Code, more particularly:

- hosting and linking together the Model Code and its provincial counterparts on CanLII's website, together with the discipline decisions of the provincial law societies
 - the Law Society of BC is one of two law societies to be asked by the Federation to work on initiating that project

12. Report on the Outstanding Hearing & Review Reports

Written reports on outstanding hearing decisions and conduct review reports were received and reviewed by the Benchers.

Ms. Lindsay noted that the availability of trained Benchers is a key challenge faced by the Law Society's Hearing Administrator in setting hearing and conduct review panels in a timely manner. Ms. Lindsay urged any Benchers who have yet to complete their required hearing panelist training to do so at earliest opportunity.

Mr. Walker stressed the importance of completion of written hearing decisions and conduct review reports within the target period of 90 days.

The Benchers discussed other matters *in camera*.

WKM
2014-12-23

Appendix C – Real Property Transactions

Application

1. This Appendix does not apply to a real property transaction between corporations, societies, partnerships, trusts, or any of them, that are effectively controlled by the same person or persons or between any of them and such person or persons.

Acting for parties with different interests

2. A lawyer must not act for more than one party with different interests in a real property transaction unless:

- (a) because of the remoteness of the location of the lawyer's practice, it is impracticable for the parties to be separately represented,
- (b) the transaction is a simple conveyance, or
- (c) paragraph [8-9](#) applies.

3. When a lawyer acts jointly for more than one client in a real property transaction, the lawyer must comply with the obligations set out in rule 3.4-5 to 3.4-9.

Simple conveyance

4. In determining whether or not a transaction is a simple conveyance, a lawyer should consider:

- (a) the value of the property or the amount of money involved,
- (b) the existence of non-financial charges, and
- (c) the existence of liens, holdbacks for uncompleted construction and vendor's obligations to complete construction.

Commentary

[1] The following are examples of transactions that may be treated as simple conveyances when this commentary does not apply to exclude them:

- (a) the payment of all cash for clear title,
- (b) the discharge of one or more encumbrances and payment of the balance, if any, in cash,
- (c) the assumption of one or more existing mortgages or agreements for sale and the payment of the balance, if any, in cash,
- (d) a mortgage that does not contain any commercial element, given by a mortgagor to a [bank, trust company or credit union](#) ~~institutional lender~~ to be registered against the

mortgagor's residence, including a mortgage that is

- (i) a revolving mortgage that can be advanced and re-advanced,
 - (ii) to be advanced in stages, or
 - (iii) given to secure a line of credit;
- (e) transfer of a leasehold interest if there are no changes to the terms of the lease,
 - (f) the sale by a developer of a completed residential building lot at any time after the statutory time period for filing claims of builders' liens has expired, or
 - (g) any combination of the foregoing.

[2] The following are examples of transactions that must not be treated as simple conveyances:

- (h) a transaction in which there is any commercial element, such as:
 - (i) a conveyance included in a sale and purchase of a business,
 - (ii) a transaction involving a building containing more than three residential units, or
 - (iii) a transaction for a commercial purpose involving either a revolving mortgage that can be advanced and re-advanced or a mortgage given to secure a line of credit,
- (i) a lease or transfer of a lease, other than as set out in subparagraph (e),
- (j) a transaction in which there is a mortgage back from the purchaser to the vendor,
- (k) an agreement for sale,
- (l) a transaction in which the lawyer's client is a vendor who:
 - (i) advertises or holds out directly or by inference through representations of sales staff or otherwise as an inducement to purchasers that a registered transfer or other legal services are included in the purchase price of the property,
 - (ii) is or was the developer of property being sold, unless subparagraph (f) applies, ~~or~~
- (m) a conveyance of residential property with substantial improvements under construction at the time the agreement for purchase and sale was signed, unless the lawyer's clients are a purchaser and a mortgagee and construction is completed before funds are advanced under the mortgage;
- (n) the drafting of a contract of purchase and sale, or
- (o) a mortgage given by a mortgagor to a mortgagee that is not a bank, trust company or credit union.

[3] A transaction is not considered to have a commercial element merely because one of the parties is a corporation.

Advice and consent

5. If a lawyer acts for more than one party in the circumstances as set out in paragraph 2 of this Appendix, then the lawyer must, as soon as is practicable,

- (a) advise each party in writing that no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned and that, if a conflict of interest arises, the lawyer cannot continue to act for any of them in the transaction,
- (b) obtain the consent in writing of all such parties, and
- (c) raise and explain the legal effect of issues relevant to the transaction that may be of importance to each such party.

Commentary

[1] If a written communication is not practicable at the beginning of the transaction, the advice may be given and the consent obtained orally, but the lawyer must confirm that advice to the parties in writing as soon as possible, and the lawyer must obtain consent in writing prior to completion.

[2] The consent in writing may be set out in the documentation of the transaction or may be a blanket consent covering an indefinite number of transactions.

Foreclosure proceedings

6. In this paragraph, “mortgagor” includes “purchaser,” and “mortgagee” includes “vendor” under an agreement for sale, and “foreclosure proceeding” includes a proceeding for cancellation of an agreement for sale.

If a lawyer acts for both a mortgagor and a mortgagee in the circumstances set out in paragraph 2, the lawyer must not act in any foreclosure proceeding relating to that transaction for either the mortgagor or the mortgagee.

This prohibition does not apply if

- (a) the lawyer acted for a mortgagee and attended on the mortgagor only for the purposes of executing the mortgage documentation,
- (b) the mortgagor for whom the lawyer acted is not made a party to the foreclosure proceeding, or
- (c) the mortgagor has no beneficial interest in the mortgaged property and no claim is being made against the mortgagor personally.

Unrepresented parties in a real property transaction

7. If one party to a real property transaction does not want or refuses to obtain independent legal representation, the lawyer acting for the other party may allow the unrepresented party to execute

the necessary documents in the lawyer's presence as a witness if the lawyer advises that party in writing that:

- (a) the party is entitled to obtain independent legal representation but has chosen not to do so,
- (b) the lawyer does not act for or represent the party with respect to the transaction, and
- (c) the lawyer has not advised that party with respect to the transaction but has only attended to the execution and attestation of documents.

8. If the lawyer witnesses the execution of the necessary documents as set out in paragraph 7, it is not necessary for the lawyer to obtain the consent of the party or parties for whom the lawyer acts.

9. If one party to the real property transaction is otherwise unrepresented but wants the lawyer representing another party to the transaction to act for him or her to remove existing encumbrances, the lawyer may act for that party for those purposes only and may allow that party to execute the necessary documents in the lawyer's presence as witness if the lawyer advises the party in writing that:

- (a) the lawyer's engagement is of a limited nature, and
- (b) if a conflict arises between the parties, the lawyer will be unable to continue to act for that party.

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Acting for parties with different interests

2. A lawyer must not act for more than one party with different interests in a real property transaction unless:

- (a) because of the remoteness of the location of the lawyer's practice, it is impracticable for the parties to be separately represented,
- (b) the transaction is a simple conveyance, or
- (c) paragraph 9 applies.

3. When a lawyer acts jointly for more than one client in a real property transaction, the lawyer must comply with the obligations set out in rule 3.4-5 to 3.4-9.

Simple conveyance

4. In determining whether or not a transaction is a simple conveyance, a lawyer should consider:

- (a) the value of the property or the amount of money involved,
- (b) the existence of non-financial charges, and
- (c) the existence of liens, holdbacks for uncompleted construction and vendor's obligations to complete construction.

Commentary

[1] The following are examples of transactions that may be treated as simple conveyances when this commentary does not apply to exclude them:

- (a) the payment of all cash for clear title,
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- (d) a mortgage that does not contain any commercial element, given by a mortgagor to a bank, trust company or credit union to be registered against the mortgagor's

residence, including a mortgage that is

- (i) a revolving mortgage that can be advanced and re-advanced,
 - (ii) to be advanced in stages, or
 - (iii) given to secure a line of credit.
- (e) transfer of a leasehold interest if there are no changes to the terms of the lease,
- (f) the sale by a developer of a completed residential building lot at any time after the statutory time period for filing claims of builders' liens has expired, or
- (g) any combination of the foregoing.

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 - (iii) a transaction for a commercial purpose involving either a revolving mortgage that can be advanced and re-advanced or a mortgage given to secure a line of credit,
- (i) a lease or transfer of a lease, other than as set out in subparagraph (e),
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- (l) a transaction in which the lawyer's client is a vendor who:
 - (i) advertises or holds out directly or by inference through representations of sales staff or otherwise as an inducement to purchasers that a registered transfer or other legal services are included in the purchase price of the property,
 - (ii) is or was the developer of property being sold, unless subparagraph (f) applies,
- (m) a conveyance of residential property with substantial improvements under construction at the time the agreement for purchase and sale was signed, unless the lawyer's clients are a purchaser and a mortgagee and construction is completed before funds are advanced under the mortgage,
- (n) the drafting of a contract of purchase and sale, or
- (o) a mortgage given by a mortgagor to a mortgagee that is not a bank, trust company or credit union.

[3] A transaction is not considered to have a commercial element merely because one of the parties is a corporation.

Advice and consent

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- (a) advise each party in writing that no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned and that, if a conflict of interest arises, the lawyer cannot continue to act for any of them in the transaction,
- (b) obtain the consent in writing of all such parties, and
- (c) raise and explain the legal effect of issues relevant to the transaction that may be of importance to each such party.

Commentary

[1] If a written communication is not practicable at the beginning of the transaction, the advice may be given and the consent obtained orally, but the lawyer must confirm that advice to the parties in writing as soon as possible, and the lawyer must obtain consent in writing prior to completion.

[2] The consent in writing may be set out in the documentation of the transaction or may be a blanket consent covering an indefinite number of transactions.

Foreclosure proceedings

6. In this paragraph, “mortgagor” includes “purchaser,” and “mortgagee” includes “vendor” under an agreement for sale, and “foreclosure proceeding” includes a proceeding for cancellation of an agreement for sale.

If a lawyer acts for both a mortgagor and a mortgagee in the circumstances set out in paragraph 2, the lawyer must not act in any foreclosure proceeding relating to that transaction for either the mortgagor or the mortgagee.

This prohibition does not apply if

- (a) the lawyer acted for a mortgagee and attended on the mortgagor only for the purposes of executing the mortgage documentation,
- (b) the mortgagor for whom the lawyer acted is not made a party to the foreclosure proceeding, or
- (c) the mortgagor has no beneficial interest in the mortgaged property and no claim is being made against the mortgagor personally.

Unrepresented parties in a real property transaction

7. If one party to a real property transaction does not want or refuses to obtain independent legal representation, the lawyer acting for the other party may allow the unrepresented party to execute the necessary documents in the lawyer's presence as a witness if the lawyer advises that party in writing that:

- (a) the party is entitled to obtain independent legal representation but has chosen not to do so,
- (b) the lawyer does not act for or represent the party with respect to the transaction, and
- (c) the lawyer has not advised that party with respect to the transaction but has only attended to the execution and attestation of documents.

8. If the lawyer witnesses the execution of the necessary documents as set out in paragraph 7, it is not necessary for the lawyer to obtain the consent of the party or parties for whom the lawyer acts.

9. If one party to the real property transaction is otherwise unrepresented but wants the lawyer representing another party to the transaction to act for him or her to remove existing encumbrances, the lawyer may act for that party for those purposes only and may allow that party to execute the necessary documents in the lawyer's presence as witness if the lawyer advises the party in writing that:

- (a) the lawyer's engagement is of a limited nature, and
- (b) if a conflict arises between the parties, the lawyer will be unable to continue to act for that party.



CEO's Report to Benchers

December 1, 2014

Prepared for: Benchers

Prepared by: Timothy E. McGee

Introduction

My report this month sets out progress to date on the 2014 Operational Priorities plan and updates on two specific matters of interest.

Operational Updates

In my initial report to the Benchers in January, I outlined management's top five operational priorities for the year. These items are areas or initiatives which receive special focus and attention during the year. The annual operational priorities are in addition to our standing objective of achieving all of the Key Performance Measures established by the Benchers for our core regulatory functions. I have reported on progress against those priorities below.

Operational Priorities Plan Update

At the start of each year I outline for the Benchers five specific areas which management has identified as requiring special focus and attention by staff in the year. This is known as the Operational Priorities plan. Typically these areas include both support for the most pressing priorities in the Strategic Plan as well as areas of greatest operational need in the year. I am always careful to point out that the annual Operational Priorities plan is in addition to and does not detract from the day to day operations of our core regulatory functions which, by definition, are always a priority.

Implementation of Legal Service Providers Task Force Report Recommendations

The central recommendation of the Legal Service Providers Task Force Report was to develop a regulatory framework for non lawyer providers of legal services to provide credentialed and regulated legal services in the public interest. Following on this recommendation, the Legal Services Regulatory Framework Task Force chaired by Art Vertlieb, QC was formed and has had a series of meetings and consultations throughout the year. This Task Force is unique among those established by the Law Society in recent history because it includes among its members (in addition to Benchers) senior representatives of each of the CBABC branch, the Society of Notaries Public of BC, the BC Paralegal Association and the policy branch of the Ministry of Justice of British Columbia.

The Task Force has examined regulatory frameworks for non-lawyers in Ontario and Washington State, as well as how the regulation of multi service providers is accomplished in the health professions in BC. The Task Force has also examined the unmet needs for legal services in BC, and has developed the case for legislative amendments to permit the Law Society to regulate legal service providers other than lawyers. A report is being finalized for the December Benchers meeting. Leading the staff support for this important project are Michael Lucas, Manager, Policy and Legal Service and Doug Munro, Policy Counsel.

A related but separate recommendation of the Legal Services Regulatory Framework Task Force was to merge the regulatory operations of the Law Society and the Society of Notaries Public of BC. We are pursuing with the Notaries the possibility of such a merger. This work is still in the exploratory stage and a half day due diligence session is scheduled for December 2. This work is being led by me, Adam Whitcombe and Jeanette McPhee.

A third recommendation of the Task Force was to create a program to certify paralegals who have met specific, prescribed education and/or training standards. Lesley Small and Alan Treleaven are working on the Paralegal Certification project, and are developing a proposed certification framework and options. Factors being taken into account include, distinctions between certification and accreditation, the relationship to how the Law Society decides to accredit non-lawyer legal services providers, how to approve qualifying educational programs and lessons learned from the Washington State Bar's approach in developing its Limited License Legal Technician program. Lesley has visited and is consulting with the Law Society of Upper Canada staff on their experience with paralegal accreditation and specialist certification.

Law Society as Insurer and Regulator Working Group

The work of this group flows from the recommendations of the April 2013 report of the Rule of Law and Lawyer Independence Advisory Committee entitled "*Report of the Rule of Law and Lawyer Independence Advisory Committee on its Examination of the Relationship Between the Law Society as Regulator of Lawyers and as Insurer of Lawyers*" which was adopted by the Benchers in September 2013. The working group chaired by First Vice President Ken Walker, QC has met several times this year and has discussed in detail the options presented to it in the Report for analysis. It has debated, in particular, operational steps that could be taken to more transparently separate or distinguish the regulatory functions from the insurance functions of the Law Society. A report based on progress and areas of consensus reached has been prepared and pending the completion of certain related developments will be presented to the

Benchers for consideration at a future meeting. Leading the staff support for this project are Su Forbes, QC, Deb Armour and Jeanette McPhee, together with Michael Lucas.

Implementation of Lawyer Support and Advice Project

The Lawyer Support and Advice Project is a staff driven initiative started in October 2012 to fully examine and assess ways in which the Law Society can better support and advise lawyers in all areas relating to regulatory compliance including, in particular, the practice advice area. This work included the completion of a needs and preferences survey of lawyers throughout the province in 2013 and ultimately the preparation of a report, including recommendations, submitted to me in July 2013. This formed the basis for a plan of implementation including financial support being approved by the Benchers as part of the budget and fees approval process for 2014. Earlier this year we formed the Knowledge Management (KM) Working Group led by Taylore Ashlie our Director, Communication and KM.

The working group has started project plan development and is researching KM systems. In November, group representatives met with the Director of KM at the Lawson Lundell firm in Vancouver for a demonstration of their system. Further site visits are planned as part of the research phase. The group plans to have the project plan, including recommendations, finalized at the end of the first quarter of 2015.

Support for the Law Firm Regulation Review

As part of the package of amendments to the *Legal Profession Act*, which were adopted in 2012, the Law Society obtained the statutory authority to regulate entities in addition to individual lawyers. This authority is widely regarded by law regulators across Canada and indeed around the world as an important tool in being a more efficient and effective regulator in the public interest.

Under the direction of the Executive Committee, staff have undertaken significant preparatory work over the past year in anticipation of the creation of a Bencher task force or working group in 2014 to formally pursue this area. To date this preparatory work has focused on compiling and examining models of law firm or entity regulation from other jurisdictions and collecting data and statistics regarding the demographics of individual and firm practice here in BC.

Due to the demands of the TWU matter in the first half of the year the formation of a task force for this review was delayed. The Law Firm Regulation Task Force has now been formed under the guidance of Herman Van Ommen, QC as Chair. The Task Force has had its initial meeting and has requested staff to generate a list of issues for

discussion over a planned series of meetings in 2015. Deb Armour and Michael Lucas are leading the staff support on this project.

Review and Renewal of Staff Performance Management Process

We made it a priority to complete a thorough review of all aspects of our staff performance management process in 2014 and to have recommendations for consideration by the Leadership Council by year end. Leading this staff-driven project is Donna Embree our Manager, Human Resources, together with a working group of staff and managers drawn from all levels and areas of the organization.

Our Human Resources group, in collaboration with the Performance Management Working Group and with extensive feedback from Leadership Council and Management Team, has developed a new performance management worksheet and a performance management toolkit for employees that is designed to foster greater clarity and consistency in staff performance evaluations, prompt better communication between employees and managers/supervisors, and foster greater confidence on the part of employees in the evaluation process.

To assist managers and employees with completing the worksheet and to help them conduct meaningful and constructive performance reviews, a “Performance Management Toolkit” was developed that includes:

- Reviewer “Tips” Sheet
- Employee “Tips” Sheet
- Performance Management Policy
- Guidelines on Writing Smart Goals
- Introduction of a Calibration Process (that will ensure that all managers apply a consistent set of standards when evaluating performance)

This new performance management system will be in place for all staff evaluations commencing in 2015.

2014 Annual Employee Survey

Our ninth consecutive employee survey was conducted in November of 2014, focusing on employee engagement. I think you will find the results both interesting and encouraging on several fronts. As we have done in the past, Ryan Williams, President

of TWI Surveys Inc., the survey administrators, will attend a future Bencher meeting to provide an overview of the results and to respond to any questions.

The results of our annual employee survey are used to help us measure how we are doing as an organization and to help management develop action plans to better engage employees in the work and life of the Law Society.

Events and Conferences

International Institute of Law Association Chief Executives (IILACE) – Annual Conference

I recently returned from the IILACE Annual Conference in Cape Town. The conference was once again very successful and I will be presenting my full report at the Bencher meeting in January.

Federation of Law Societies of Canada

I will also be attending meetings of the Governance Review Committee and the Standing Committee on Access to Legal Services in Toronto on November 30 and December 1. I will be providing an oral report on the highlights of those meetings.