



Minutes

Benchers

Date: Friday, January 28, 2022

Present:

Lisa Hamilton QC, President	Geoffrey McDonald
Christopher McPherson, QC, 1 st Vice-President	Steven McKoen, QC
Jeevyn Dhaliwal, QC, 2 nd Vice-President	Jacqueline McQueen, QC
Paul Barnett	Paul Pearson
Kim Carter	Georges Rivard
Tanya Chamberlain	Kelly H. Russ
Jennifer Chow, QC	Gurminder Sandhu
Cheryl S. D'Sa	Thomas L. Spraggs
Lisa Dumbrell	Barbara Stanley, QC
Brian Dybwad	Michael Welsh, QC
Brook Greenberg, QC	Kevin B. Westell
Katrina Harry	Sarah Westwood
Sasha Hobbs	Guangbin Yan
Lindsay R. LeBlanc	Gaynor C. Yeung
Dr. Jan Lindsay	

Unable to Attend: Not Applicable

Staff:

Don Avison, QC	Michael Lucas, QC
Shelley Braun	Alison Luke
Barbara Buchanan, QC	Claire Marchant
Jennifer Chan	Jeanette McPhee
Lance Cooke	Cary Ann Moore
Natasha Dookie	Doug Munro
Su Forbes, QC	Lesley Small
Andrea Hilland, QC	Michael Soltynski
Kerryn Holt	Adam Whitcombe, QC
Jeffrey Hoskins, QC	Vinnie Yuen
Jason Kuzminski	

Guests:	Rhaea Bailey	Bencher Guest
	Dom Bautista	Executive Director & Managing Editor, Law Courts Center
	Michael Bryant	CEO, Legal Aid BC
	Samad Twemlow Carter	Bencher Guest
	Pinder K. Cheema, QC	Law Society of BC Representative on the Federation Council
	Christina Cook	Member, Aboriginal Lawyers Forum
	Indira Dhaliwal	Bencher Guest
	Jim Donaldson	Bencher Guest
	Nicholas Donaldson	Bencher Guest
	Joseph D'Sa	Bencher Guest
	Bryanna Dybwad	Bencher Guest
	Hallgier Dybwad	Bencher Guest
	Michele Dybwad	Bencher Guest
	Stan Dybwad	Bencher Guest
	Stephanie Fabbro	Bencher Guest
	Dr. Cristie Ford	Professor, Allard School of Law
	Norman Grant	Bencher Guest
	Alex Hamilton	Bencher Guest
	Keenan Hamilton	Bencher Guest
	Spencer Hamilton	Bencher Guest
	Lori Hildebrandt	Bencher Guest
	Chief Justice	Chief of Justice, Supreme Court of BC
	Christopher E. Hinkson	
	Clare Jennings	President, Canadian Bar Association, BC Branch
	Pat Johannson	Bencher Guest
	Carman Kane	Bencher Guest
	Jon Knuston	Bencher Guest
	Carolyn Lefebvre	Senior Director, Canadian Bar Association, BC Branch
	Katie Lever	Bencher Guest
	Mark Meredith	Treasurer and Board Member, Mediate BC
	Dr. Val Napoleon	Interim Dean of Law, University of Victoria
	Joven Narwal	Bencher Guest
	Caroline Nevin	CEO, Courthouse Libraries BC
	Jesse Olynyk	Bencher Guest
	Josh Paterson	Executive Director, Law Foundation of BC
	Michèle Ross	President, BC Paralegal Association
	Geoff Russ	Bencher Guest
	Sarah Russ	Bencher Guest

Linda Russell	CEO, Continuing Legal Education Society of BC
Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
Karen St. Aubin	Director of Membership & Education, Trial Lawyers Association of BC
Kerstin Stuerzbecher	Bencher Guest
Laura Tamblyn Watts	Bencher Guest
Ron Usher	General Counsel and Practice Advisor, The Society of Notaries Public of British Columbia

1. Administer Oaths of Office

The Honourable Chief Justice Christopher E. Hinkson administered oaths of office to President Lisa Hamilton, QC, First Vice-President Christopher McPherson, QC, and Second Vice-President Jeevyn Dhaliwal, QC, and to all appointed and elected Benchers, whose terms began on January 1, 2022.

Chief Justice Hinkson spoke about the work of the Law Society and the importance of balancing the many interests of the Law Society's stakeholders. He also spoke about the importance of the relationship between the Law Society and the judiciary.

2. Indigenous Welcome

Via a pre-recorded video, Rosalind Campbell, a member of the Musqueam Indian Band, introduced herself to Benchers and welcomed them to the meeting and to the ancestral lands of the Musqueam people. Ms. Campbell congratulated all of the newly elected Benchers, in particular the five newly elected Indigenous Benchers, and emphasized the importance of having Indigenous voices at the Bencher table.

CONSENT AGENDA

3. Minutes of December 3, 2021, meeting (regular session)

The minutes of the meeting held on December 3, 2021 were approved unanimously and by consent as circulated.

4. Minutes of December 3, 2021, meeting (*in camera* session)

The minutes of the *In Camera* meeting held on December 3, 2021 were approved unanimously and by consent as circulated.

5. Law Society Representatives on the 2022 QC Appointments Advisory Committee

The following resolution was passed unanimously and by consent:

BE IT RESOLVED that the Benchers appoint President Lisa Hamilton, QC and First Vice-President Christopher McPherson, QC as the Law Society's representatives on the 2022 QC Appointments Advisory Committee.

6. Recommendation for Amendments to Law Society Rules: Rule 3-6, 3-81, and 3-86

The following resolution was passed unanimously and by consent:

BE IT RESOLVED that Rules 3-6, 3-81 and 3-86 be amended by replacing "the Discipline Committee" where it appears in each rule with "the Chair of the Discipline Committee or designate" and that "its," where it appears in Rule 3-6(2), 3-81(3) and 3-86(2) be replaced with "the Chair's or designate's."

7. Terms of Reference for Committees and Related Rule Amendments

The following resolutions were passed unanimously and by consent:

BE IT RESOLVED that the Benchers approve the attached terms of reference for the Ethics and Lawyer Independence Advisory Committee and the revised terms of reference for the Executive Committee and the Truth and Reconciliation Advisory Committee; and

BE IT RESOLVED to amend Rules 9-3 and 9-16 by striking "Ethics Committee" where it appears and substituting "Ethics and Lawyer Independence Advisory Committee".

8. Indigenous Intercultural Course – Late Fee

The following resolution was passed unanimously and by consent:

BE IT RESOLVED that the Benchers approve, in principle, that the Law Society Rules be amended to require a late fee associated with the late reporting and late completion by a practicing lawyer of the Indigenous Intercultural Course in the amount of \$200 and \$500 respectively, and that the matter be referred to staff to prepare draft Rules to present to the Benchers for approval.

9. Administrative Penalties

The following resolution was passed unanimously and by consent:

BE IT RESOLVED

THAT the general introduction of administrative penalties for breaches of Law Society Rules in amounts aimed at deterring recidivism be approved;

THAT rules necessary to accomplish administrative assessments set out a process that takes into account issues of procedural fairness and due process, including providing sufficient notice to lawyers, a right of response, and a potential avenue for review;

THAT at the outset, such assessments apply to standard contraventions of the CIV Rules (Rules 3-98 to 3-110) and cash transactions (Rule 3-59);

THAT the Law Society investigate the possibility of obtaining a legislative amendment to ensure the availability of administrative assessments for other matters not related to standards of financial responsibility; and

THAT the Benchers approve these changes in principle, and refer the matter to staff to draft rules to effect the policy direction, with the Rules as drafted being returned to the Benchers at a later date for consideration and approval.

10. Bencher Compensation

The following resolution was passed unanimously and by consent:

BE IT RESOLVED the Benchers approve the recommendation made by the Governance Committee that the Law Society retain an independent consultant to review and make recommendations on the appropriate compensation for the President, Vice-Presidents and Appointed Benchers.

REPORTS

11. President's Welcome and Report

Ms. Hamilton welcomed Benchers, staff, and guests to the first Bencher meeting of 2022.

Ms. Hamilton began her report with an overview of priorities for 2022, including considering the recommendations made by Harry Cayton in his report on the Law Society's governance, continuing progress on the review of the Law Society's discipline processes, and furthering the work of the Lawyer Development Task Force in looking at alternative pathways for entry to the profession.

Ms. Hamilton spoke about work being done in consideration of annual fee reform, and that the Executive Committee had agreed to conduct a survey to obtain data to assist with consideration of whether or not a differential model may be appropriate.

Mandate letters were sent to all committee chairs at the beginning of January, and Ms. Hamilton noted that many of the committees had been asked to provide a work plan for the year. She also indicated that each committee was asked to consider its work through the lens of equity, diversity, and inclusion, as well as how the work furthers the work of truth and reconciliation.

Ms. Hamilton indicated that her intention for 2022 was to have more robust, substantive discussions at the Bencher table, while at the same time ensuring Bencher meetings are as efficient and effective as possible.

12. CEO's Report

Mr. Avison began his report by speaking about the current situation with the COVID-19 pandemic, noting that the Bencher meeting fell on the second anniversary of the first diagnosis of COVID-19 in BC. He spoke about the remarkable work of staff in pivoting to remote work arrangements at the start of pandemic and thanked staff for their continued extraordinary efforts in managing the operations of the Law Society during a challenging and demanding time.

Mr. Avison informed Benchers that the Indigenous Intercultural Course was fully operational and available to all members of the profession. He noted that modifications to the Course would continue to be made as appropriate.

Mr. Avison spoke about the tenure of Richard Fyfe, QC, who would be stepping down from his role as Deputy Attorney General on February 14. Mr. Avison spoke about the excellent leadership that Mr. Fyfe had demonstrated over the course of his time as Deputy Attorney General. Mr. Avison also spoke about the tenure of Mark Benton, QC, who had stepped down from his long-serving position as the CEO of Legal Aid BC at the end of 2021. Mr. Avison indicated that Mr. Benton would be replaced by Michael Bryant. Mr. Avison spoke about how much he had enjoyed working with both Mr. Fyfe and Mr. Benton and wished them all the best in their future endeavours. Shannon Salter has been appointed as the new Deputy Attorney General, and Mr. Avison spoke about her work with the Civil Resolution Tribunal and on the Innovation Sandbox Working Group, and noted that the Law Society was looking forward to working with her in her new role.

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

Ms. Hamilton welcomed Ms. Cheema, the Law Society's representative on the Federation Council, to the meeting.

Ms. Cheema began her briefing by providing an overview of the Federation and Federation Council for new Benchers. She then updated Benchers on the national wellbeing survey, which is being conducted to obtain national data on the wellbeing of the profession across Canada. She indicated that the phase 1 report would be presented to the law societies in the fall, and that phase 2 would involve the conducting of qualitative interviews with the profession in each jurisdiction.

Ms. Cheema provided an update on *Abrametz v Law Society of Saskatchewan* appeal, which is before the Supreme Court of Canada. Ms. Cheema noted that arguments had been made and a decision was being awaited.

Ms. Cheema then provided an update on the work of the Standing Committee on the Model Code, which has completed a review of feedback received from the law societies with respect to proposed revisions regarding the discrimination and harassment provisions and ex parte communications sections of the Code. She noted that the amendments would be likely be on the agenda for approval at the March Council meeting. She also noted that the Standing Committee would be considering responsibilities to Indigenous groups in relation to the competence and quality of service provisions in the Model Code and the recognition of Indigenous legal traditions and processes.

Ms. Cheema then spoke about the work of the National Discipline Standards Committee and provided some background on the adoption and implementation of the national discipline standards by the law societies, as well as the work of the Anti-Money Laundering Working Group.

Ms. Cheema provided an update on the activities of the National Committee on Accreditation (NCA) and provided some statistical information on applicant numbers. She also noted that work was underway to develop a competency profile for NCA candidates that would culminate in the development of benchmarks to help identify the level of competency required at each stage of the legal education and training process and entry to bar programs. Ms. Cheema also informed Benchers that the National Requirement would be reviewed this year.

Ms. Cheema concluded her report with an update of the December Council meeting, noting that both Chief Justice Richard Wagner and the Honourable David Lametti, Minister of Justice and Attorney General of Canada, were in attendance. Ms. Cheema provided an overview of comments made by Chief Justice Wagner regarding the introduction of legislation to reform the Judicial Council, the mental health challenges being faced within the profession, and how technology can promote better access to justice. Ms. Cheema also provided an overview of comments made by the Honourable David Lametti regarding addressing systemic discrimination within the justice system, as well as the overrepresentation of Indigenous peoples within the legal system, and the importance of fostering judicial recruitment from marginalized groups.

DISCUSSION/DECISION

14. Governance Reform: Further Discussion

Ms. Hamilton provided some background regarding Harry Cayton's Report on the Law Society's Governance and indicated that the Report was currently for discussion, and she hoped Benchers would be in a position to make some decisions at the April Bencher meeting.

Mr. Avison provided an overview of the process by which the Law Society obtained Harry Cayton to conduct a review of the Law Society's governance. He also spoke about the work Mr. Cayton undertook in performing his review and preparing his report. Mr. Avison then presented on the key recommendations from Harry Cayton's Report. Mr. Avison spoke to a number of Mr. Cayton's recommendations, including considering the overall composition and size of the board; reducing the number of committees, task forces, and working groups; addressing conflict in the different roles of Benchers; changing the Law Society's nomenclature; and introducing an induction day as part of the Bencher election process. Mr. Avison spoke about those recommendations for which work was already underway, including the development of a public engagement strategy, the separation of the Tribunal, the implementation of administrative penalties, and the incorporation of regulatory impact assessments into policy reports.

Benchers then engaged in discussions regarding the recommendations in Mr. Cayton's report, including having greater separation between the Law Society's board and the tribunal, the best approach to the size and composition of the board and the term-lengths of Benchers, and increasing engagement with the public. Benchers also discussed how to approach those recommendations that would require legislative changes to sections 12 and 13 of the *Legal Profession Act*, having a clear understanding of the purpose of the Law Society and the functions of the board, public representation on the board, and the utility of Benchers providing confidential advice to lawyers.

Ms. Hamilton thanked Benchers for the fulsome discussion, and then indicated that discussions on this matter will continue at the March Bencher meeting and beyond.

UPDATES

15. Report on Outstanding Hearing & Review Decisions

President Hamilton provided an update on outstanding hearing and review decisions and thanked Benchers for their efforts to get decisions in on time, as timeliness is important to the public and those involved in proceedings.

FOR INFORMATION

16.2023 Bencher and Executive Committee Meeting Schedule

There was no discussion on this item.

17.Appointment of the Tribunal Chair: Minute of Approval by Email

There was no discussion on this item.

18.Law Society Appointment: Continuing Legal Education of BC

There was no discussion on this item.

19.Minutes of January 13, 2022 Executive Committee Meeting

There was no discussion on this item.

20.Three Month Bencher Calendar – February to April 2022

There was no discussion on this item.

The Benchers then commenced the *In Camera* portion of the meeting.

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