



Minutes

Benchers

Date: Friday, April 22, 2022

Present:

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

Staff:

Don Avison, QC	Andrea Langille
Avalon Bourne	Michael Lucas, QC
Shelley Braun	Alison Luke
Barbara Buchanan, QC	David MacLean
Jennifer Chan	Claire Marchant
Lance Cooke	Jeanette McPhee
Natasha Dookie	Cary Ann Moore
Su Forbes, QC	Michael Mulhern
Andrea Hilland, QC	Doug Munro
Kerryn Holt	Shalyn Norrish
Jeffrey Hoskins, QC	Lesley Small
Alison Kirby	Nick Wells
Jason Kuzminski	Adam Whitcombe, QC

Guests:	Dom Bautista	Executive Director & Managing Editor, Law Courts Center
	Aleem Bharmal, QC	First Vice President, Canadian Bar Association, BC Branch
	Pinder Cheema, QC	Law Society of BC Representative on the Federation Council
	Christina Cook	Member, Aboriginal Lawyers Forum
	Paul Craven	A/Assistant Deputy Minister
	Dr. Cristie Ford	Professor, Allard School of Law
	Cindy Jeklin	Member, Law Society of BC
	Derek LaCroix, QC	Executive Director, Lawyers Assistance Program of BC
	Ann Lee	Director of Operations , Mediate BC
	Julia Lockhart	Member, Law Society of BC
	Jamie Maclaren, QC	Executive Director of Access Pro Bono
	Caroline Nevin	CEO, Courthouse Libraries BC
	Josh Paterson	Executive Director, Law Foundation of BC
	Ngai Pindell	Dean of Law, Peter A. Allard School of Law
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Shannon Salter	Deputy Attorney General of BC
	Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
	Lana Walker	Assistant Dean, Thompson Rivers University

OATH OF OFFICE

President Hamilton administered the oath of office (in the form set out in Rule 1-3) to newly appointed Benchers Michèle Ross and Natasha Tony.

CONSENT AGENDA

1. Minutes of March 4, 2022, meeting (regular session)

The minutes of the meeting held on March 4, 2022 were approved unanimously and by consent as circulated.

2. Minutes of March 4, 2022, meeting (*in camera* session)

The minutes of the *In Camera* meeting held on March 4, 2022 were approved unanimously and by consent as circulated.

3. Rule Amendments: Approval of Alternative Discipline Process

The following resolution was passed unanimously and by consent:

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

1. Paragraph (b) of the definition of “professional conduct record” is rescinded and the following substituted:

(b) any conditions or limitations of practice or articles accepted or imposed under the Act or these rules, subject to Rule 3-9.8 [*Records and confidentiality*];

2. The following subrule is added to Rule 3-4:

(3) At any time before a complaint is referred to a Committee or the chair of the Discipline Committee under Rule 3-8 [*Action on a complaint*], the Executive Director may proceed on a complaint under Division 1.01 [*Health issues*], without further investigation of the matter.

3. In Rule 3-8

(a) subrule (2) is rescinded and the following substituted:

(2) The Executive Director may take no further action under this division on a complaint if the Executive Director is satisfied that the matter giving rise to the complaint has been resolved.

(2.1) Subject to Rule 3-9.9 [*Referral to complaint investigation process*], the Executive Director must take no further action under this division on a complaint if the Executive Director has proceeded on the complaint under Division 1.01 [*Health issues*].

(b) *in subrule (3), “Unless subrule (1) applies” is struck and “Unless subrule (1) or (2.1) applies” is substituted.*

4. *The following subrule is added to Rule 3-9:*

(3) Despite subrule (1), when proceeding on a complaint under Division 1.01 [*Health issues*], the Executive Director may delay notifying the complainant until health information has been collected and assessed.

5. *The following division is added to Part 3:*

Division 1.01 – Health issues

Proceeding on health issue

- 3-9.1** (1) In this division, “**health issue**” includes matters that may affect a lawyer’s physical or mental health.
- (2) The Executive Director may proceed under this division on the basis of information about a health issue that may affect a lawyer received from any source, including the lawyer.
- (3) The Executive Director may proceed under this division if
- (a) the lawyer acknowledges the existence of a health issue that may have contributed to an alleged discipline violation by the lawyer,
 - (b) the lawyer consents in writing to the Executive Director proceeding under this division, and
 - (c) the Executive Director is satisfied, in all the circumstances of the alleged discipline violation, including whether it involved substantial harm to the complainant or another person, that it is likely to be in the public interest to proceed under this division.

Risk mitigation

3-9.2 Unless a consent agreement is in effect under this division, if the Executive Director is satisfied on reasonable grounds that interim measures are necessary to protect the public, the Executive Director may enter into an interim agreement under which the lawyer agrees to do one or more of the following:

- (a) not engage in the practice of law indefinitely or for a specific period of time;

- (b) restrict the lawyer's practice to a specific area of law or other type of practice;
- (c) accept practice supervision on terms approved by the Executive Director;
- (d) any other measure that the Executive Director considers necessary in the public interest.

Health information

- 3-9.3** (1) The Executive Director may request that the lawyer provide health information that demonstrates to the satisfaction of the Executive Director that
- (a) a health issue may have contributed to an alleged discipline violation by the lawyer,
 - (b) the lawyer could benefit from remedial initiatives, and
 - (c) it is in the public interest for the lawyer to engage in remedial measures.
- (2) The Executive Director may request further health information from the lawyer as, in the judgment of the Executive Director, is required to determine whether a consent agreement under Rule 3-9.4 [*Consent agreement*] is appropriate.

Consent agreement

- 3-9.4** (1) The Executive Director may enter into a consent agreement with a lawyer if the Executive Director is satisfied that
- (a) proceeding under this division is permitted under Rule 3-9.1 [*Proceeding on health issue*], and
 - (b) the lawyer has provided sufficient health information requested under Rule 3-9.3 [*Health information*] for the Executive Director to make a decision under subrule (5).
- (2) Before entering into a consent agreement under this rule, the Executive Director must ensure that each complainant in the complaint giving rise to the agreement is given an opportunity to provide a statement regarding the effect on the complainant of the lawyer's conduct.
- (3) A consent agreement under this rule must include provisions addressing the following:
- (a) the duration of the agreement and, if different, of any obligation of a party;
 - (b) confidentiality and information sharing;
 - (c) the fulfillment of or amendment to the terms of the agreement;
 - (d) responsibility for reporting a breach of the terms of the agreement;
 - (e) the consequences of the lawyer's fulfilling or failing to fulfill the terms of the agreement;

- (f) responsibility for costs associated with fulfilling the terms of the agreement;
 - (g) the lawyer's undertaking not to assert delay or any other prejudice as the result of proceeding under this division if the matter is subsequently referred to the complaint investigation process under Rule 3-9.9 [*Referral to complaint investigation process*].
- (4) A consent agreement under this rule may also include other provisions, including but not limited to the following:
- (a) a recommended treatment plan;
 - (b) medical monitoring and reporting requirements;
 - (c) practice conditions and limitations;
 - (d) mitigation of loss or harm resulting from an alleged discipline violation;
 - (e) an apology, restitution or other remedial steps.
- (5) The Executive Director may enter into a consent agreement if the Executive Director is satisfied that the agreement is in the public interest having considered all the relevant circumstances, including the following:
- (a) the nature and scope of the terms of the agreement, including specific action to be taken to protect the public;
 - (b) the nature and seriousness of the alleged discipline violation;
 - (c) the impact of the lawyer's conduct on the complainant or others;
 - (d) any previous complaints concerning the lawyer proceeded on under this division;
 - (e) the effect of the agreement on the administration of justice and the public's confidence in the integrity of the legal profession;
 - (f) whether measures to be taken under the agreement are likely to improve the lawyer's ability to fulfill the duties of a lawyer in the practice of law;
 - (g) the presence of aggravating or mitigating factors, such as acknowledgement of a discipline violation or steps taken to redress a wrong where appropriate.
- (6) An agreement under this rule is
- (a) voluntary and requires the consent of the lawyer, and
 - (b) not valid unless signed by the Executive Director and the lawyer.
- (7) When a consent agreement is made under this rule, the Executive Director must notify the complainant in writing of that fact.
- (8) The Executive Director may report to the Benchers or the Executive Committee on a consent agreement made under this rule, but the report must not identify the lawyer concerned.

- (9) Subject to Rule 3-9.9 [*Referral to complaint investigation process*], the Society is bound by an effective consent agreement made under this rule, and no further action on the complaint that gave rise to the agreement is permitted.

Practice conditions and limitations

- 3-9.5** (1) When a condition or limitation on the practice of a lawyer is agreed to under this division, the Executive Director may disclose the fact that the condition or limitation applies, the nature of the condition or limitation and its effect on the lawyer's practice.
- (2) A disclosure under this rule must not indicate that the agreement was made under this division.
- (3) If the Executive Director discloses the existence of a condition or limitation under this rule by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.

Amending consent agreement

- 3-9.6** (1) A consent agreement may be amended by agreement of the parties reduced to writing and given effect in accordance with Rule 3-9.4 [*Consent agreement*].
- (2) An agreement amended under subrule (1) has the same effect as if given effect under Rule 3-9.4.

Breach of consent agreement

3-9.7 If a lawyer is in breach of a consent agreement made under this division, the Executive Director may do any of the following as appears to the Executive Director to be consistent with the public interest:

- (a) terminate the consent agreement;
- (b) refer the matter under Rule 3-9.9 [*Referral to complaint investigation*] for investigation of the complaint that gave rise to the consent agreement;
- (c) enter into an amended consent agreement under Rule 3-9.6 [*Amending consent agreement*];
- (d) take any other appropriate action consistent with these rules.

Records and confidentiality

- 3-9.8** (1) Nothing done under this division forms part of a lawyer's professional conduct record.

- (2) Unless permitted under this division, no one is permitted to disclose any information or records related to a step taken under this division.
- (3) The Executive Director may do any of the following:
 - (a) disclose information related to a step taken with respect to a lawyer under this division if
 - (i) the lawyer consents to the disclosure, or
 - (ii) the disclosure is necessary to comply with a legal duty to accommodate;
 - (b) disclose or publish information about consent agreements or other steps taken under this division, but that information must not identify the lawyer, clients or complainants concerned;
 - (c) disclose information to the complainant to the extent necessary
 - (i) to comply with Rule 3-9 [*Notice*],
 - (ii) to comply with Rule 3-9.4 [*Consent agreement*],
 - (iii) to report to the complainant on the successful fulfillment of the terms of the consent agreement, or
 - (iv) to report to the complainant that the complaint has been referred for investigation or further investigation under Rule 3-9.9 [*Referral to complaint investigation process*].
- (4) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.

Referral to complaint investigation process

- 3-9.9** (1) The Executive Director may refer a matter that has been proceeded on under this division for investigation or further investigation under Division 1 [*Complaints*] if
- (a) a condition required under Rule 3-9.1 [*Proceeding on health issue*] is not present or no longer present,
 - (b) the lawyer fails or refuses to provide sufficient health information requested under Rule 3-9.3 [*Health information*],
 - (c) it is not possible, in the opinion of the Executive Director, to reach an interim agreement or a consent agreement within a reasonable period of time, or
 - (d) the lawyer breaches an interim agreement or a consent agreement made under this division.
- (2) The Executive Director must give the lawyer 30 days' notice in writing before taking action under this rule.

Dispute resolution

- 3-9.10** (1) This rule applies to resolution of a dispute arising from an allegation that the lawyer
- (a) has committed a breach of an interim agreement or a consent agreement, or
 - (b) has failed to successfully fulfill the terms of a consent agreement.
- (2) A lawyer may apply to the Tribunal for the determination of a dispute if the Executive Director has given notice under Rule 3-9.9 [*Referral to complaint investigation process*] that
- (a) an interim agreement or consent agreement will be terminated as a result of an alleged breach or failure to fulfill the terms of a consent agreement, and
 - (b) the matter that gave rise to the interim agreement or consent agreement will be referred for investigation or further investigation under Division 1 [*Complaints*].
- (3) The lawyer may make an application under subrule (2) within 30 days of receiving notice under Rule 3-9.9 [*Referral to complaint investigation process*] by filing with the Tribunal and delivering to the Executive Director written notice setting out the substance of the application, the grounds for it and the order that is sought.
- (4) On application by the lawyer, a motions adjudicator may extend the time to apply for a determination under this rule.
- (5) When an application is made under subrule (2), the motions adjudicator must do one of the following as appears to the motions adjudicator to be appropriate:
- (a) grant all or part of the order applied for, with or without conditions;
 - (b) refuse the order.
- (6) The motions adjudicator must provide written reasons for a decision under this rule.
- (7) For greater certainty, Rule 3-9.8 [*Records and confidentiality*] applies with respect to an application under this rule, and the written reasons for a decision must not be published or otherwise disclosed except as permitted by Rule 3-9.8.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

4. Rule Amendments: Administrative Penalties

The following resolution was passed unanimously and by consent:

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

1. ***In Rule 1 the definition of “professional conduct record” is amended by adding the following paragraph:***

(d.2) an administrative penalty assessed under Rule 4-59 *[Administrative penalty]* unless cancelled under Rule 4-60 *[Review and order]*;

2. ***Rule 3-8 (3) is amended by striking*** “the Executive Director must refer the complaint to the Practice Standards Committee or to the Discipline Committee.” ***and substituting the following:***

the Executive Director must

- (a) refer the complaint to the Practice Standards Committee,
- (b) refer the complaint to the Discipline Committee, or
- (c) impose an administrative penalty under Part 4, Division 6.

3. ***Rule 4-48 is amended by adding the following subrule:***

(1.2) The Executive Director must publish and circulate to the profession a summary of the circumstances of the rule breach deemed admitted under Rule 4-59 *[Administrative penalty]* and the administrative penalty imposed.

4. ***Rule 4-56 is amended by adding the following subrule:***

(1.1) A lawyer must pay in full an administrative penalty by the date set under Division 6 *[Administrative penalty]*.

5. ***Part 4 is amended***

(a) ***by establishing the following divisions:***

- (i) ***Division 1 [Discipline Committee], comprising Rules 4-2 to 4-46;***
- (ii) ***Division 2 [Disclosure and publication], comprising Rules 4-47 to 4-51;***
- (iii) ***Division 3 [Criminal conviction], comprising Rules 4-52 to 4-54;***
- (iv) ***Division 4 [Investigation], comprising Rule 4-55;***
- (v) ***Division 5 [Enforcement], comprising Rules 4-56 to 4-57, and***

(b) ***by adding the following division:***

Division 6 – Administrative penalty

Application

4-58 (1) This division applies to allegations of breaches of the following provisions:

- (a) Rule 3-59 [*Cash transactions*];
 - (b) Rule 3-96.1 [*Electronic submission of documents*];
 - (c) Part 3, Division 11 [*Client Identification and Verification*].
- (2) This division applies to a law firm or an articulated student as it does to a lawyer.

Administrative penalty

- 4-59** (1) If the Executive Director is satisfied on a balance of probabilities that a lawyer has breached a rule, the Executive Director may assess an administrative penalty.
- (2) The maximum administrative penalty that the Executive Director may assess is as follows:
- (a) if no previous administrative penalty has been assessed against the lawyer, \$5,000;
 - (b) if one or more administrative penalties have previously been assessed against the lawyer, \$10,000.
- (3) At least 30 days before the effective date of an administrative penalty under this rule, the Executive Director must deliver to the lawyer notice in writing of the following:
- (a) the effective date of the penalty, by which the penalty must be paid if not disputed;
 - (b) the amount of the penalty;
 - (c) the reasons for the penalty, including the specific rule breach alleged;
 - (d) the means by which the lawyer may apply to the chair of the Discipline Committee for an order under Rule 4-60 [*Review and order*] and the deadline for making such an application before the effective date of the penalty.
- (4) A lawyer who has received a notice under this rule must do one of the following on or before the date specified in the notice:
- (a) pay the administrative penalty in the amount specified in the notice;
 - (b) apply to the chair of the Discipline Committee for an order under Rule 4-60 [*Review and order*].
- (5) A lawyer is deemed to admit the breach of the rule as alleged in the notice from the Executive Director under subrule (3) if
- (a) the lawyer pays the administrative penalty,
 - (b) the lawyer fails to comply with subrule (4), or
 - (c) the chair of the Discipline Committee orders under Rule 4-60 [*Review and order*] that a penalty be paid.

- (6) When an administrative penalty has been imposed under this division and the lawyer has paid the amount assessed, the Discipline Committee must not take any action against the lawyer under Rule 4-4 [*Action on complaints*] with respect to the rule breach giving rise to the administrative penalty.

Review and order

- 4-60** (1) A lawyer who has received a notice of administrative penalty under Rule 4-59 [*Administrative penalty*] may apply before the effective date of the penalty to the chair of the Discipline Committee for a review of the penalty and an order under this rule.
- (2) The chair of the Discipline Committee must consider submissions regarding the administrative penalty received within the time allowed under subrule (1) from the lawyer and, if satisfied that the lawyer has breached a rule as alleged, make an order
 - (a) confirming that the penalty must be paid in accordance with the notice delivered under Rule 4-59 [*Administrative penalty*],
 - (b) reducing the amount of the penalty, or
 - (c) extending the date by which the penalty is to be paid.
 - (3) If not satisfied that the lawyer has breached a rule as alleged, the chair of the Discipline Committee must make an order cancelling the administrative penalty.
 - (4) The chair of the Discipline Committee must promptly notify the lawyer and the Executive Director of a decision under this rule.
 - (5) The lawyer must pay an administrative penalty as ordered under this rule.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

REPORTS

5. President's Report

Lisa Hamilton, QC confirmed that no conflicts of interest had been declared.

Ms. Hamilton informed Benchers that, as there was more than one candidate nominated for the Benchers' Nominee for the 2023 Second Vice-President-elect, an election would be held with the results announced at the May 28 Bencher meeting.

Ms. Hamilton thanked Pinder Cheema, QC, the Law Society's Member of the Federation Council, for attending the meeting to answer any questions about the written briefing she had prepared that was included in the Bencher agenda materials for information.

Ms. Hamilton acknowledged the significant decisions made by Benchers to approve the development of an alternative discipline process and the use of administrative penalties, which would help provide support to those in the profession struggling with mental health challenges. She thanked the Mental Health Task Force for their efforts. Ms. Hamilton then spoke about her own experiences with mental health challenges early in her career, and the importance of reducing stigma, showing empathy, and supporting those struggling with mental health challenges.

6. CEO's Report

Don Avison, QC began his report by echoing Ms. Hamilton's comments regarding the significance of the approval of an alternative discipline process and the use of administrative penalties.

Mr. Avison provided an update on plans for the technical configuration of the Bencher Meeting Room. He noted that the current set-up is quite similar to what the permanent set-up will be, which will continue to accommodate virtual attendees.

Mr. Avison updated Benchers on discussions with government, the Society of Notaries Public of BC, and the BC Paralegal Association. He indicated that a full day of meetings would be taking place on May 17, after which he would update Benchers.

Mr. Avison then reviewed with Benchers plans for a number of upcoming events, including Welcoming Ceremonies, the QC Reception, and in-person Call and Admission Ceremonies. He also informed Benchers that planning for the Bencher Retreat was well underway.

Federation meetings will be taking place in Montreal the week following the Bencher meeting, and Mr. Avison noted he would be reporting back to Benchers regarding the outcome of the discussions.

Mr. Avison concluded his report by informing Benchers that links to the annual reports of the Supreme Court of BC and Court of Appeal had been included in the meeting materials, as well as a copy of the action plan released by the province of BC in relation to the declaration of the rights of Indigenous persons.

Benchers discussed the implementation of Administrative Penalties, and Mr. Avison noted that guidelines were being developed that would be circulated at a later date.

7. Remarks

Ms. Hamilton welcomed Deputy Attorney General Shannon Salter to the meeting. Ms. Salter thanked Ms. Hamilton for the welcome, and noted that Paul Craven, Superintendent of

Professional Governance and Acting Assistant Deputy Minister of the Justice Services Branch of the Ministry of Attorney General was attending the meeting virtually.

Ms. Salter spoke about the government's intention to establish a single legal regulator, noting that the project was in its early stages. She spoke about the development of a modern regulatory framework, clear scopes of practice, an updated mandate for the regulator, and that these changes may help address BC's access to justice crisis. She indicated the importance of evolving regulation in terms of governance best practices, while also understanding the importance of independence of the legal profession. Ms. Salter recognized the work of the Law Society in keeping the public at the forefront, particularly through the work of the Innovation Sandbox. She also recognized the diversity of the Bencher table.

Ms. Salter reviewed next steps in the process, noting that a brief intentions paper would likely be published in late summer. She also indicated that the intention would be to introduce legislation sometime in 2023.

Bencher's discussed how the scope of practices would be determined. Ms. Salter noted that discussions regarding this matter were at a very early stage, and would include environmental scans of other jurisdictions, conducting benefit/risk analyses to the public, identifying opportunities to address unmet need, as well as consultations.

Bencher's discussed how the proposed governance framework would be compared against principles of best practices. Paul Craven spoke about the number of changes in regulatory areas, including the *Professional Governance Act*, the *Health Professions Act*, as well as reviewing the practices of other jurisdictions. Mr. Craven noted that these general principles would need to be applied in the context of the legal profession. Mr. Avison added that lessons learned from the regulatory changes in other professions could be helpful to take into consideration, as well as lessons learned from the Innovation Sandbox regarding determining competencies.

6. CEO's Report (continued)

Mr. Avison introduced Jason Kuzminski, who then presented on the Law Society's communications and engagement strategy. Mr. Kuzminski provided an overview of each of the components of the strategy, including the strategic objectives, the Law Society's key stakeholder groups, the specific strategies to be employed in implementing the strategy, and the proposed activities to support the strategy.

Mr. Avison provided a brief update regarding the Cullen Commission hearings, noting that the report should be released later in the spring. He also informed Bencher's that Judge Kimberly Prost of the International Criminal Court would be available in August to speak at a Rule of Law lecture regarding the role of the International Criminal Court and he encouraged people to attend.

Mr. Avison introduced Su Forbes, QC who then presented on the Lawyers Indemnity Fund year in review for 2021. Ms. Forbes provided an overview of the program, statistics for 2021, and priorities for 2022. She also thanked the Continuing Legal Education Society of BC (CLEBC) for its assistance with organizing the Junior Lawyers Risk Management Conference.

DISCUSSION/DECISION

8. Continuing Professional Development Course Accreditation

Lesley Small provided background information on the recommendation to discontinue the CPD accreditation process.

Bencher discussed the current frequency of requests for CPD approval, as well as the process by which lawyers report to the Law Society the CPD they have taken, and whether an attestation form to ensure compliance with CPD requirements was necessary. Ms. Small indicated that lawyers would continue to complete a declaration form, and that the Law Society would continue to provide guidance on any questions and how CPD criteria categories should be interpreted.

Some Bencher expressed concerns about maintaining quality control of CPD reports, while others spoke about trusting that lawyers will take what is required in terms of CPD. Some Bencher spoke about the importance of keeping the Law Society's mandate front of mind when directing Law Society resources.

The following resolution was passed by a majority of Bencher:

BE IT RESOLVED that the Bencher approve that the CPD accreditation process be discontinued and that lawyers instead simply report to the Law Society the learning activities they have engaged in.

9. Continuing Professional Development Credit for Pro Bono Legal Services

Lisa Dumbrell, Chair of the Access to Justice Advisory Committee, provided background information on the recommendations relating to providing CPD credit for pro bono legal services.

Bencher discussed the provision of pro bono legal services as a method to support access to justice for those who are unable to afford legal services, and those who do not qualify for legal aid, particularly in the Indigenous community.

Bencher also discussed the ensuing amendments to the Rules to ensure that the educational component of CPD would not be lost, while also increasing opportunities for pro bono. Many

Benchers were of the view that giving lawyers the choice of how to use their CPD credits would help encourage lawyers to provide pro bono legal services.

Some Benchers expressed concerns regarding providing credit for pro bono services, as the CPD guidelines do not permit credit for legal work. Some Benchers also expressed concerns regarding the resource implications of implementing the recommendations.

Benchers agreed to vote on each recommendation separately.

The following resolution was passed by a majority of Benchers.

BE IT RESOLVED the Benchers approve providing CPD credits to lawyers who provide minimum levels of pro bono service delivery for people with limited means or non-profit organizations, and that the matter be referred to staff to develop the number of available hours to be credited and the amount of pro bono services that must be provided to obtain the credits.

The following resolution was passed by a majority of Benchers.

BE IT RESOLVED the Benchers refer to the Lawyer Development Task Force as part of its anticipated review of the CPD program, the consideration of extending the intended purpose of the program beyond conventional educational program to include developing in lawyers the knowledge, competence, professionalism and experience that also support the policy objective of advancing the public interest in the administration of justice.

10. Governance Reform

Ms. Hamilton spoke about those recommendations in Mr. Cayton's report about which there was a consensus at the last meeting. She also noted that there were some recommendations that would require further discussion, but the approach to many of these would be dependent on the developments with the government's intention to establish a single legal regulator. She then informed Benchers that she had surveyed past Law Society presidents regarding extending the length of the President's term, and that the majority had expressed concerns about extending the term length past one year, as a longer term may present barriers to serving as President. She also informed Benchers that the induction session for Bencher candidates would likely occur in advance of the 2023 general election, though reference material would be considered for November's by-election.

Ms. Hamilton then spoke about the recommendations regarding limits on the role of Benchers, including conducting interviews with articled students and providing confidential advice to the profession, which had not been discussed at the last Bencher meeting.

Bencher discussed the interviews with articulated students and whether different models could be utilized, including group interviews, incorporating an interview component into PLTC, and having Life Bencher assist with conducting interviews. Many Bencher were in agreement regarding the value of student interviews, particularly for those students who are encountering challenges in their articles. Some Bencher were of the view that students could be given the option of a one-on-one or group interview.

Bencher also discussed the purpose of the interviews with articulated students, and whether the intended outcome was currently being achieved. Many Bencher were of the view that data should be obtained from students regarding the interviews as a first step in determining the best path forward.

Bencher discussed the role of Bencher in providing confidential advice to the profession. While many Bencher thought there was value in the provision of confidential advice, particularly for small law firms and sole practitioners, Bencher also discussed the importance for the profession of having a dispassionate third party provide confidential advice.

Ms. Hamilton indicated that further discussion would take place and that obtaining data would be a helpful first step in determining how to address these matters.

UPDATES

11. Financial Matters

Jeevyn Dhaliwal, QC, Chair of the Finance and Audit Committee introduced the item, thanking committee members and staff for all their efforts.

Jeanette McPhee, provided an overview of the unaudited financial results and highlights for 2021, noting that the audited financial statements would be presented for approval at the May Bencher meeting. Ms. McPhee noted that the general fund operations resulted in a positive variance to budget, which is mainly due to positive variances in both revenues and operating expenses. Revenue was slightly ahead of budget, primarily due to higher than expected practice fees and electronic filing revenue.

Ms. McPhee reviewed practice fees and electronic filing revenue, both of which were significantly ahead of budget, with the number of full-time practising lawyers at 13,317 compared to a budget of 12,673. She noted an error in the report regarding the number of lawyers for 2022; the report had indicated that the number of lawyers was 2.5% ahead of budget, but should read 2.5% ahead of 2021 numbers.

Ms. McPhee reviewed operating expenses for the year, which were under budget by about 6%, likely due to significant efforts in reducing costs during the pandemic, as well as lower recruiting

fees. Ms. McPhee indicated that offsetting these savings was an increase in external counsel fees and costs associated with the governance review.

Ms. McPhee reviewed the TAF/Trust Assurance program, which had revenue ahead of budget, due to higher than expected real estate unit sales. Expenses were under budget mainly due to lower travel costs with audits being conducted remotely.

Ms. McPhee reviewed actual revenue for the Lawyers Insurance Fund, which was slightly ahead of budget with a higher than expected number of practising indemnified lawyers. She indicated that operating expenses were under budget with savings primarily related to compensation costs, external counsel fees, and general office expenses. Investment income was significantly ahead of budget due to higher investment returns and a larger portfolio value, and Ms. McPhee indicated that investment returns were 12.8%.

Ms. McPhee then provided an overview of the financial results and highlights to the end of February 2022, noting that year to date results are positive to budget, mostly due to an increase in revenue. Ms. McPhee also provided a forecast for 2022 and indicated that the Law Society is forecasting to be ahead of budget due to an increase in the expected number of practising lawyers.

Bencher discussed the Law Society's investment policy. Ms. McPhee indicated that the Law Society invests with different financial managers across a number of funds, including Canadian equity and bonds, a real estate fund, and a mortgage fund. She also noted that the Law Society has an independent firm that provides a third-party viewpoint on how funds are being managed.

12. Report on Outstanding Hearing & Review Decisions

Christopher McPherson, QC, as Tribunal Chair, 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

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

There was no discussion on this item.

14. Submission to the Special Committee to review FIPPA

There was no discussion on this item.

15. Minutes of April 7, 2022 Executive Committee Meeting

There was no discussion on this item.

16. Three Month Bencher Calendar – April to June 2022

There was no discussion on this item.

17. Other business

Paul Pearson indicated that he intended to bring forward a motion at the May Bencher meeting, which would seek to appoint an Indigenous representative to the “working group” meeting with government to discuss the move towards a single legal regulator. Ms. Hamilton indicated that she and Mr. Avison would discuss with Mr. Pearson prior to the May Bencher meeting.

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

AB
2022-04-22