



Minutes

Benchers

Date: Friday, December 02, 2022

Present: Lisa Hamilton KC, President
Christopher McPherson, KC, 1st Vice-President
Jeevyn Dhaliwal, KC, 2nd Vice-President
Paul Barnett
Kim Carter
Tanya Chamberlain
Jennifer Chow, KC
Cheryl S. D'Sa
Lisa Dumbrell
Brian Dybwad
Brook Greenberg, KC
Katrina Harry
Sasha Hobbs
Lindsay R. LeBlanc
Dr. Jan Lindsay

Geoffrey McDonald
Jacqueline McQueen, KC
Paul Pearson
Georges Rivard
Michèle Ross
Gurminder Sandhu
Thomas L. Spraggs
Barbara Stanley, KC
Natasha Tony
Michael Welsh, KC
Kevin B. Westell
Sarah Westwood
Guangbin Yan
Gaynor C. Yeung

Unable to Attend: Steven McKoen, KC

Kelly H. Russ

Staff: Don Avison, KC
Avalon Bourne
Barbara Buchanan, KC
Jennifer Chan
Lance Cooke
Natasha Dookie
Su Forbes, KC
Andrea Hilland, KC
Kerryn Holt
Jeffrey Hoskins, KC
Alison Kirby

Michael Lucas, KC
Alison Luke
Claire Marchant
Jeanette McPhee
Cary Ann Moore
Michael Mulhern
Doug Munro
Michelle Robertson
Lesley Small
Adam Whitcombe, KC

Guests:	Dom Bautista	Executive Director & Managing Editor, Law Courts Center
	Aleem Bharmal, KC	President, Canadian Bar Association, BC Branch
	Ian Burns	Digital Reporter, The Lawyer's Daily
	Barbara Carmichael, KC	A/ Deputy Attorney General
	Christina Cook	Aboriginal Lawyers Forum
	Tim Delaney	2023 Bencher-Elect
	Dr. Cristie Ford	Professor, Peter A. Allard School of Law
	Derek LaCroix, KC	Executive Director, Lawyers Assistance Program of B.C.
	Jamie Maclaren, KC	Executive Director, Access Pro Bono Society of BC
	Mark Meredith	Treasurer and Board Member, Mediate BC
	Dr. Val Napoleon	Interim Dean of Law, University of Victoria
	Josh Paterson	Executive Director, Law Foundation of BC
	Ngai Pindell	Dean of Law, Peter A. Allard School of Law
	Brenda Rose	Representative, Courthouse Libraries BC
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kerry Simmons, KC	Executive Director, Canadian Bar Association, BC Branch
	Ron Usher	General Counsel and Practice Advisor, The Society of Notaries Public of British Columbia
	Lana Walker	Assistant Dean, Thompson Rivers University

CONSENT AGENDA

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

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

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

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

3. External Appointment: Land Title and Survey Authority

The following resolution was passed unanimously and by consent:

BE IT RESOLVED the Benchers approve putting forward all three eligible candidates as the Law Society nominees for consideration by the LTSA for appointment for a three-year term commencing April 1, 2023.

4. Recommendation to Adopt Changes to the Statement of Investment Policies and Procedures (SIPP)

The following resolution was passed unanimously and by consent:

BE IT RESOLVED to adopt the attached ‘Statement of Investment Policies and Procedures’ which replaces Appendix 1 - Investment Guidelines of the Bencher Governance Policies.

5. Rule Amendments: Superior Courts Clerkship Program

The following resolution was passed unanimously and by consent:

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

1. In Rule 1,

(a) the following definition is added:

“clerkship term” means the period during which a law clerk is employed to work for a judge, not including any period of vacation or leave of absence;

(b) the definition of “law clerk” is rescinded and the following substituted:

“law clerk” means a law clerk employed to work for a judge appointed under section 96 of the *Constitution Act, 1867*, or a judge of the Supreme Court of

Canada, the Federal Court, the Federal Court of Appeal or the Tax Court of Canada;

2. **Rule 2-51 (2) is amended by striking “articled student or applicant” and substituting “articled student, law clerk or applicant”.**
3. **Rule 2-59 (4) is rescinded and the following substituted:**
 - (4) Except in the case of an application made under Rule 2-63 (1) [*Law clerks*], the articling term must not be reduced by more than 5 months under any other rule or the combined effect of any rules.
4. **Rule 2-63 is rescinded and the following substituted:**
 - (1) An articled student who has been employed as a law clerk may apply in writing to the Executive Director for a reduction in the articling term by an amount of time equal to the time served as a law clerk.
 - (3) An application under subrule (1) must be accompanied by
 - (a) a written report on the student’s character and competence from the judge to whom the articled student clerked, and
 - (b) other documents or information that the Credentials Committee may reasonably require.
 - (4) A law clerk may apply for call and admission under Rule 2-77 [*First call and admission*] without enrolment in the admission program or completion of the articling term provided the law clerk otherwise qualifies for call and admission under Rule 2-76.
5. **Rule 2-72 (2) to (7) is rescinded and the following substituted:**
 - (2) The Credentials Committee may direct that a student be given priority in selection of the training course session that the student wishes to attend if the student is or will be
 - (a) articling outside the Lower Mainland,
 - (b) articling as the only student in a firm, or
 - (c) employed as a law clerk.
 - (3) Before registering in the training course,
 - (a) an articled student or applicant, other than a law clerk, must make application for enrolment under Rule 2-54 (1) [*Enrolment in the admission program*], and

- (b) a law clerk must deliver to the Executive Director written confirmation from the applicable court of the law clerk's acceptance as a law clerk.
- (4) To register in a training course session, an articled student, law clerk or applicant must
 - (a) pay to the Society the fee for the training course specified in Schedule 1, and
 - (b) deliver to the Executive Director
 - (i) an application for training course registration, and
 - (ii) in the case of an articled student, the principal's consent to the training course session chosen.
- (5) The Executive Director must deliver to each student who was registered in a training course session and to each student's principal, if applicable, a transcript stating whether the student passed or failed the training course.
- (7) An articled student or law clerk may apply in writing to the Credentials Committee for exemption from all or a portion of the training course, and the Committee may, in its discretion, grant all or part of the exemption applied for with or without conditions, if the student or law clerk has
 - (a) successfully completed a bar admission course in another Canadian jurisdiction, or
 - (b) engaged in the active practice of law in a common law jurisdiction outside Canada for at least 5 full years.

6. Rule 2-74 is amended as follows:

- (a) **by striking "an articled student" wherever it occurs and substituting "a student";**
- (b) **by rescinding subrule (9) (b) and substituting the following:**
 - (b) each such student's principal, if applicable.

7. Rule 2-76 (1) (a) is rescinded and the following substituted:

- (1) To qualify for call and admission, an applicant who is an articled student or a law clerk must complete the following satisfactorily:
 - (a) in the case of an articled student, the articling term;
 - (a.1) in the case of a law clerk who is not enrolled in the admission program, a clerkship term of not less than 9 months;

8. ***Rule 2-77 is rescinded and the following substituted:***

- 2-77** (1) An articulated student or law clerk who applies for call and admission must deliver to the Executive Director
- (a) the following in the prescribed form:
 - (i) a petition for call and admission;
 - (ii) in the case of an articulated student,
 - (A) a declaration of the principal,
 - (B) a declaration of the applicant, and
 - (C) a joint report of the principal and the applicant certifying completion of their obligations under the articling agreement;
 - (iii) in the case of a law clerk who is not enrolled in the admission program,
 - (A) an application for call and admission,
 - (B) proof of academic qualification as required of applicants for enrolment under Rule 2-54 (2) [*Enrolment in the admission program*], and
 - (C) a written report on the law clerk's character and competence from the judge to whom the law clerk clerked;
 - (v) a completed questionnaire;
 - (vi) written consent for the release of relevant information to the Society,
 - (b) a professional liability indemnity application or exemption form,
 - (c) the following fees:
 - (i) the applicable call and admission fee specified in Schedule 1;
 - (ii) the prorated practice fee specified in Schedule 2;
 - (iii) the prorated annual indemnity fee specified in Schedule 2, unless exempt under Rule 3-43 [*Exemption from professional liability indemnification*], and
 - (d) any other information and documents required by the Act or these rules that the Credentials Committee or the Benchers may request.
- (2) An articulated student or law clerk may apply under this rule at any time.
- (3) If an articulated student or law clerk fails to meet the requirements of this rule, including the delivery of all documents specified, the Executive Director must summarily
- (a) reject the application for call and admission, and
 - (b) in the case of an articulated student, terminate the student's enrolment.

- (4) When the Credentials Committee has initiated a review under Rule 5-19 *[Initiating a review]* of a hearing panel's decision to enrol an articulated student, the articulated student is not eligible for call and admission until the review board has issued a final decision on the review or the Committee withdraws the review.

9. Schedule 1, part F is amended by adding the following item:

- 1.1 Without enrolment in admission program (Rule 2-77 (1) (c))..... 525.00

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

REPORTS

6. President's Report

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

Ms. Hamilton began her report by congratulating the Benchers that were elected to the 2023 Executive Committee and thanked all those who put forward their names. She informed Benchers that as the election for the appointed Bencher position on the Executive Committee had resulted in a tie, another election would be held the following week.

Ms. Hamilton provided an update on the annual presidential transition, and the work being done to prepare Christopher McPherson, KC for his term as 2023 President. She indicated that Mr. McPherson would be joining Don Avison, KC, Katrina Harry, and herself at a meeting with the Attorney General on Monday.

Ms. Hamilton then spoke about her time as a Bencher, and the changes she had witnessed over the past seven years. She also spoke about the dedication of Benchers and staff towards the protection of the public and ensuring that the Law Society continues to find more inclusive and equitable approaches to serving the public interest.

Ms. Hamilton spoke about her time as President of the Law Society and highlighted a number of the Law Society's accomplishments over the past few years, including the work of the Truth and Reconciliation Advisory Committee and the Indigenous Engagement in Regulatory Matters Task Force; the voluntary retention of Harry Cayton to conduct a review of the Law Society's governance model to ensure that it meets the needs of the Law Society's mandate; the review of discipline processes to ensure a prompt, fair, and equitable approach; the work of the Mental Health Task Force to address mental health stigma through an alternative processes program; the striking of the Trust Review Task Force to respond to the recommendations of the Cullen Commission; and the work of the Access to Justice Advisory Committee to increase non-

adversarial options for families going through the justice system. Ms. Hamilton also spoke about her lived experiences with family law and with navigating the challenges of the justice system, and expressed her view that more work needs to be done to make the justice system more accessible for families.

Ms. Hamilton then spoke about the Ministry's intention to establish a single legal regulator, which has been a significant area of focus for Benchers and staff. She spoke about the importance of the Innovation Sandbox, and the work that participants have done to increase access, and that attention was still needed on this initiative. Ms. Hamilton spoke about the importance of addressing access to justice barriers, and she indicated that she was of the view that this would take a joint, collaborative effort between the Law Society, government, other organizations, and the profession. Ms. Hamilton indicated that she was in favour of the establishment of a single legal regulator, assuming that the independence of the profession and of the regulator was maintained, but she expressed her concerns regarding the belief that the establishment of a single legal regulator would be able to address all access to justice issues. She spoke about the need to not lose sight of the importance of considering all of the ways access to justice can be addressed, including through the obtaining of better data regarding barriers, more funding for legal aid and counselling services, and tax incentives for mediation and parenting coordination. She also spoke about the work the Law Society has already done to increase access to justice, including through the Innovation Sandbox, and expressed her support for considering licensing paralegals based on a competency-based approach, rather than limiting scope of practice.

7. CEO's Report

Don Avison, KC began his report by welcoming Dr. Val Napoleon, Interim Dean of Law, University of Victoria and Ngai Pindell, Dean of Law, Peter A. Allard School of Law to the meeting. He congratulated the first graduating class of the Indigenous Law program at the University of Victoria.

Mr. Avison then provided an overview of recent changes within the provincial government. David Eby, KC was sworn into office as Premier on November 18, and Mr. Avison indicated that there would likely be cabinet changes over the coming days. He indicated that an update would be provided to Benchers following the changes. He then spoke about the number of potential items on the legislative agenda, including the intention to establish a single legal regulator and matters relating to the recommendations of the Cullen Commission. Mr. Avison indicated that further information would be available following the meeting with the Attorney General on the coming Monday.

Mr. Avison then spoke about the upcoming meeting of the Federation of Canadian Law Societies also taking place on the coming Monday. He indicated that it would be Brook Greenberg, KC's

first meeting as the Law Society's representative on Federation Council, and that he and Ms. Hamilton would be providing an update regarding the Ministry's intention to establish a single legal regulator.

Mr. Avison provided a brief overview of the Law Society of Ontario's recent convocation meeting, at which a proposal was approved, providing for a limited scope of practice license enabling paralegals to offer some family law legal services. He indicated that the Law Society was already conducting some exploration of this option through the Innovation Sandbox, but further consideration would be needed as to how licensing would work in a regulatory environment.

Mr. Avison spoke about the National Well-Being Study and the recent report of findings from the national survey conducted by Université de Sherbrooke and the Federation to gather data regarding the mental health and well-being of legal professionals in Canada. Mr. Avison indicated that copies of the report were available, and that recommendations would be communicated publicly over the course of the coming weeks. Mr. Avison indicated that he was of the view that the Law Society was well positioned to respond to the recommendations due to the work of the Mental Health Task Force; however, he also spoke about the consideration of the challenges identified in the report.

Mr. Avison then presented on the current status of the Law Society's Strategic Plan. He indicated that quite a bit of progress has been made on the plan's objectives, and provided an overview of the work being done for each of the initiatives supporting the objectives of the plan.

Mr. Avison concluded his report with some updates regarding Law Society operations and staff, including new additions, departures, and retirements. He also provided an overview of the recent town hall held with staff regarding the Ministry's intention to establish a single legal regulator. Mr. Avison indicated that the level of turnout and engagement was quite high, and that these town halls would continue over the coming months.

DISCUSSION/DECISION

9. Bencher, Committee and Tribunal Compensation Review

Christopher McPherson, KC, Jeevyn Dhaliwal, KC, Brook Greenberg, KC, and the appointed Benchers recused themselves from this item.

Mr. Avison provided an introduction to the item and reviewed the three recommendations for consideration, including increasing the honorarium paid to the President, increasing the per diems paid to the appointed Benchers, and providing additional compensation to appointed Benchers for time spent preparing for meetings. He provided some background regarding the

compensation provided to the President, Vice-Presidents, and appointed Benchers and then provided an overview of the report from Watson Advisors, the consultants retained to conduct a review of the Law Society's compensation. Mr. Avison then reviewed each of the recommendations from the report in detail, as well as the rationale for the proposed changes.

Ms. Hamilton indicated that the intent would be to review compensation every two years.

The following resolution was passed unanimously:

BE IT RESOLVED that the Bencher compensation policies be amended to provide:

1. The President's honorarium is \$120,000 for 2023 and shall continue to be adjusted annually based on the CPI Index for British Columbia.
2. The per diem for Appointed Benchers is \$450 and the half-day amount is \$225; and
3. The per diem for meeting preparation for Appointed Benchers is half the per diem amount for each meeting.

8. Unmet and Underserved Legal Needs

Lisa Dumbrell, Chair of the Access to Justice Advisory Committee, reviewed with Benchers the recommendation from the Access to Justice Advisory Committee regarding the exploration of the establishment of triage hubs to assist the public in obtaining information, guidance, and preliminary advice.

Benchers were generally in support of the recommendation and engaged in discussions with focus on the importance of collaborating with other organizations who may have existing models in place, including the Law Foundation; the value of the Law Society taking on a leadership role to help bring together the different services being provided in this space; and obtaining intersectional data to better determine barriers to accessing the current supports.

The following resolution was passed unanimously:

BE IT RESOLVED that in order to

- improve the collection of data about the extent and nature of the needs of individuals relating to the access to legal services,
- improve the take-up of existing low (or lower)-cost legal services and improve timely and appropriate referrals to needed services, and

- gather information about legal needs that will inform decisions on other initiatives to improve access to the delivery of legal services,

the Law Society will, through consultation with other justice-system stakeholders and the government, explore how to establish “triage hubs” through which people facing a problem that may include a legal element can obtain information, guidance and preliminary advice.

10. Finance & Audit Committee: 2022 Enterprise Risk Management Plan – Update

Jeevyn Dhaliwal, KC, Chair of the Finance and Audit Committee introduced the item. Mr. Avison then gave a presentation on the Law Society’s 2022 Enterprise Risk Management Plan with support from Jeanette McPhee. Mr. Avison summarized the Law Society’s major strategic risks and informed Benchers that the potential risk related to non-compliance of legal obligations was removed from the plan and replaced with the potential risk related to the transition to a single legal regulator. He indicated that while this risk had been removed from the plan, it would still be monitored to ensure compliance. Mr. Avison then reviewed each risk in detail, discussing the context, mitigating factors, potential impacts, and risk action plan if applicable. He also reviewed how the risks linked to the goals of the strategic plan.

Benchers discussed the difference between mitigation strategies and action plans. Ms. McPhee clarified that mitigation strategies refer to what the Law Society is currently doing, and the action plans refer to new or planned initiatives.

11. Single Legal Regulator

Ms. Hamilton updated Benchers on the current status regarding the Ministry’s intention to establish a single legal regulator. She indicated that the Law Society’s response to the Ministry’s Intentions Paper had been submitted, and a meeting was scheduled with the Attorney General for Monday of the following week. Ms. Hamilton then provided a detailed overview of responses submitted by other organizations and individuals, including the Law Society of Manitoba, the Law Society of Saskatchewan, the Society of Notaries Public of BC, the BC Paralegal Association, the CBABC, the Victoria Bar Association, the Federation of Asian Canadian Lawyers, and a number of law firms and other organizations and individuals. She also spoke about the frequent commonalities between the Law Society’s submission and other submissions.

Ms. Hamilton informed Benchers that all those who put forward submissions had expressed interest in being involved and engaged in this process with the Ministry. She also indicated that there was agreement across the submissions regarding the importance of increasing access to justice and working together in a collaborative manner. Ms. Hamilton expressed that she was of the view that the public required increased access to justice now, and that any potential litigation arising out of the move towards a single legal regulator would distract from this goal.

Mr. Avison indicated that a number of organizations submitted directly to the Ministry, and the Law Society had not received copies.

UPDATES

12. Report on Outstanding Hearing & Review Decisions

Christopher McPherson, KC, 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. Year-end Advisory Committee Reports

There was no discussion on this item.

14. External Appointments: Law Foundation of BC

There was no discussion on this item.

15. External Appointment: CBABC Provincial Council

There was no discussion on this item.

16. Three Month Bencher Calendar – December 2022 to February 2023

There was no discussion on this item.

Final Remarks

Mr. Avison and Mr. McPherson paid tribute to outgoing President Hamilton and thanked her for her dedication, commitment, and significant contributions to the Law Society over the past year. Ms. Hamilton thanked Mr. Avison and Mr. McPherson for their kind words, and then welcomed Mr. McPherson as President for 2023 and presented him with the President's pin.

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

AB
2023-01-23