



# Minutes

## Benchers

Date: Friday, February 03, 2023

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

Geoffrey McDonald  
Steven McKoen, KC  
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: Kelly H. Russ

Staff: Don Avison, KC  
Avalon Bourne  
Barbara Buchanan, KC  
Jennifer Chan  
Natasha Dookie  
Su Forbes, KC  
Kerryn Holt  
Jeffrey Hoskins, KC  
Alison Kirby  
Michael Lucas, KC

Alison Luke  
Claire Marchant  
Fiona McFarlane  
Jeanette McPhee  
Cary Ann Moore  
Lesley Small  
Christine Tam  
Bill Thiessen  
Adam Whitcombe, KC

Guests:	The Honourable Chief Justice Robert J. Bauman	Chief Justice of BC, Court of Appeal for BC & Court of Appeal for Yukon
	Dom Bautista	Executive Director, Courts Center & Executive Director, Amici Curiae Friendship Society
	Ian Burns	Digital Reporter, The Lawyer's Daily
	Barbara Carmichael, KC	A/Deputy Attorney General
	Christina Cook	Vice-Chair, Aboriginal Lawyers Forum
	Indira Dhaliwal	Bencher Guest
	Chief Janice George	Chief, Squamish Nation
	Elizabeth Kollias	President, BC Paralegal Association
	Jamie Maclaren, KC	Executive Director, Access Pro Bono Society of BC
	Scott Morishita	First Vice President, CBABC
	Dr. Val Napoleon	Interim Dean of Law, University of Victoria
	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
	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 of Law, Thompson Rivers University

## 1. Administer Oath of Office

The Honourable Chief Justice Robert J. Bauman administered the oath of office (in the form set out in Rule 1-3) to President Christopher A. McPherson, KC, First Vice-President Jeevyn Dhaliwal, KC, and Second Vice-President Brook Greenberg, KC, and to newly elected Bencher Tim Delaney, whose terms began on January 1, 2023.

Chief Justice Bauman spoke about the collaborative relationship between the Law Society and the judiciary, and the importance of working together during these challenging times. He also spoke about the importance of truth and reconciliation and working collaboratively with Indigenous people to interweave Indigenous legal traditions within the current legal system.

## 2. Indigenous Welcome

Chief Janice George, member of the Squamish Nation, introduced herself to Benchers and welcomed them to the meeting and to the ancestral lands of the Squamish people. She spoke about the importance of mentorship and supporting future generations, as well as the value in weaving together different traditions and working together.

## 3. Presentation of Law Society Indigenous Scholarship Co-Recipient

President Christopher A. McPherson, KC introduced and congratulated the co-recipient of the 2022 Law Society Indigenous Scholarship, Mercediese Dawson. By pre-recorded video, Ms. Dawson gave her thanks to Benchers.

## CONSENT AGENDA

### 4. Minutes of December 2, 2022, meeting (regular session)

The minutes of the meeting held on December 2, 2022 were approved unanimously and by consent as circulated.

### 5. Minutes of December 2, 2022, meeting (*in camera* session)

The minutes of the *in camera* meeting held on December 2, 2022 were approved unanimously and by consent as circulated.

### 6. Rule Amendments: Tribunal Chair Role

This item was removed from the Consent Agenda for discussion.

## 7. External Appointment: Legal Aid BC

The Benchers reappointed Allan P. Seckel, KC to the Legal Aid BC Board of Directors for a three-year term commencing February 12, 2023 and concluding February 11, 2026.

## REPORTS

### 8. President's Welcome and Report

Mr. McPherson welcomed Benchers, staff, and guests to the first Bencher meeting of 2023.

He confirmed that no conflicts of interest had been declared.

Mr. McPherson began his report by speaking about his dedication to the profession and to the people of BC and the honour of serving as the Law Society's President for the 2023 term. He then spoke about the challenges facing the Law Society, as well as his priorities for the year, in particular continued engagement and discussion regarding the Ministry's intention to establish a single legal regulator. Mr. McPherson spoke about the importance of engaging with the profession and the public on this initiative, and then provided an overview of his recent and upcoming meetings and engagement activities, including a dinner held by the Westminster Bar Association, meetings with the Chief Justices and Chief Judge, and a meeting with the Attorney General. He then spoke about an upcoming webinar hosted by the Canadian Bar Association BC Branch (CBABC), in which he would be taking part, entitled *Access to Justice: Whose Job Is It Anyway?*. He provided an overview of the other participants, including representatives from government, CBABC, the BC Paralegal Association, the Federation of Asian Canadian Lawyers, and the BC Notaries Association. Mr. McPherson indicated that his intention was to conduct a great deal of engagement over the course of the year, including attending the Prince George Law Talks in May and other regional engagement sessions.

Mr. McPherson then spoke about a number of important considerations regarding the Ministry's intention to establish a single legal regulator, including the importance of ensuring the continued independence of the profession and of the regulator; the importance of ensuring that board composition remains diverse and avoids tokenism; and taking a bottom-up approach to regulation and not restricting scopes of practice. He also spoke about the importance of truth and reconciliation and addressing the injustices facing Indigenous people within the justice system. Mr. McPherson highlighted the work of the Truth and Reconciliation Advisory Committee and the Indigenous Engagement in Regulatory Matters Task Force, and the importance of weaving in Indigenous laws and traditions with the common law.

Mr. McPherson spoke about the efforts of the Law Society to address barriers to access to justice, including the implementation of the Innovation Sandbox, the development of a framework for legal aid in BC, and considering different pathways to licensure for lawyers. He

indicated that one of his priorities for the year would be to continue with these efforts and to take further steps to address these issues.

Mr. McPherson concluded his report by thanking Benchers for their dedication to the Law Society's strategic priorities. He indicated that he was looking forward to working with Benchers on these important matters over the course of the year.

## **9. CEO's Report**

Don Avison, KC began his report with an update on the recent meeting of Law Society CEOs and Deputy CEOs from BC, Alberta, Saskatchewan, and Manitoba, which was the first in-person meeting of this group since before the COVID-19 pandemic. He indicated that there was general agreement to work together on areas of common interest, to learn from each other, and to share best practices.

Mr. Avison then spoke about the upcoming meetings of the Federation of Canadian Law Societies, which would be taking place in Quebec City in March. He indicated that the discussions would likely be focused on further consideration of the National Study on the Health and Wellness Determinants of Legal Professionals in Canada, and that representatives from the Law Society would be in attendance, including himself, First Vice-President Jeevyn Dhaliwal, KC, the Law Society's Federation Council member Brook Greenberg, KC, and Adam Whitcombe, KC.

Mr. Avison spoke about the upcoming meeting with the Attorney General, Deputy Attorney General, and other Ministry staff. He indicated that while the key focus of the meeting would be the Ministry's intention to establish a single legal regulator, he was also planning on speaking about the contributions the Law Society has already made to address barriers to access to justice. He also provided an overview of upcoming engagement sessions taking place with the profession regarding the single legal regulator initiative, including CBABC's Access to Justice webinar, the Law Talks in Prince George, and the Kootenay Bar Association's winter meeting.

Mr. Avison then updated Benchers on the work of the Access to Justice BC Steering Committee. He commended Chief Justice Robert J. Bauman and Tina Parbhakar for leading the Committee in its work.

Mr. Avison informed Benchers that a series of sessions have taken place regarding the findings of the Cullen Commission. He referenced some of the discussions from the most recent session, which had focused on the use of the notwithstanding clause in relation to trust account reporting. He expressed his concerns regarding this viewpoint, and he indicated that a formal response from the Law Society might be needed on this matter.

Mr. Avison concluded his report with an overview of recent additions to the Law Society staff.

## DISCUSSION/DECISION

### 6. Rule Amendments: Tribunal Chair Role

This item was removed from the Consent Agenda for discussion.

Benchers discussed the role of the Tribunal Chair, in particular the dual responsibilities of adjudication and administration, and whether this could present an issue in terms of public perception.

Mr. McPherson provided some background information on the shift to an independent Tribunal model, which was approved by Benchers at the July 2022 Bencher meeting. Mr. McPherson spoke about the rationale for the change, which was to ensure the independence of the Tribunal and the Tribunal Chair, and to move away from a model in which the Law Society was both prosecutor and adjudicator. He noted that the intention would be for the Chair to not just oversee administrative matters, but to also serve as an adjudicator, similar to the role of the Associate Chief Justice, who also acts as both an administrator and adjudicator.

Benchers discussed the role of the Tribunal Chair and agreed that the dual role would help ensure the smooth facilitation of the Tribunal process, as well as preserve the independence of the Tribunal. Mr. Avison advised that the Law Society's Tribunal model was quite similar to those of other law societies.

The following resolution was passed unanimously:

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

- 1. In Rule 1, the definition of "motions adjudicator" is rescinded and the following substituted:***

**"motions adjudicator"** means the Tribunal Chair or a lawyer Bencher designated by the Tribunal Chair to decide a matter or conduct a pre-hearing or pre-review conference under these rules;

- 2. Rule 5-2 (3) (a) is rescinded and the following substituted:***

(3) A panel must

(a) be chaired by the Tribunal Chair or by another lawyer, and

- 3. Rule 5-16 (2) is rescinded and the following substituted:***

(2) A review board must be chaired by a Bencher who is a lawyer or by the Tribunal Chair.

**REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT**

## 10. Fourth Recommendation Report of the Mental Health Task Force

Brook Greenberg, KC introduced the item and provided some background to the recommendations included in the Report of the Mental Health Task Force. He indicated that the Task Force had been working on the recommendations for quite some time, but had held off on bringing them forward for Benchers to review, so as to include recommendations in response to the findings of the National Study on the Health and Wellness Determinants of Legal Professionals in Canada. As the National Study recommendations were not released until December 2022, and the Task Force required further time to review the findings before putting forward its own recommendations, it was agreed to bring forward the three recommendations included in the Report, rather than holding off until the review of the National Study was complete. Mr. Greenberg then provided an overview of each of Task Force's recommendations, as well as how the recommendations would support the public interest.

Benchers discussed the proposed recommendations, as well as the importance of removing stigma from mental illness and taking an intersectional approach in supporting mental, cultural, and social health.

Benchers discussed the recommendation regarding the creation of a roster of pro bono support counsel to assist with the resolution of "failure to respond" matters and the role of those support counsel beyond the initial call. Mr. Greenberg advised that the role would be dependent on the preferences of the support counsel and the lawyer facing the discipline matter. He added that the usual restrictions on Benchers' involvement with discipline matters would apply, but former Benchers could participate as support counsel. Benchers also discussed confidentiality in terms of the discussions between the support counsel and the lawyer facing the discipline matter. Mr. Greenberg advised that solicitor/client privilege would still apply and the only information disclosed to the Law Society would be whether the lawyer facing a discipline matter had responded to the support counsel.

Mr. Avison spoke about the existing resources the Law Society had available to support those encountering mental health challenges, and that the proposed recommendations would add additional resources to assist individuals who have found themselves in significant difficulty.

A motion to adopt the recommendations as presented within the report from the Mental Health Task Force was unanimously approved.

## IERM Report

Mr. McPherson informed Benchers that while the intention was to have the Report of the Indigenous Engagement in Regulatory Matters Task Force on the Bencher meeting agenda for discussion, in order to allow the opportunity to consult with the Tsilhqot'in Nation, the Report would now be on the April Bencher meeting agenda for discussion.

## **FOR INFORMATION**

### **11. 2024 Bencher and Executive Committee Meeting Dates**

There was no discussion on this item.

### **12. Minute of Approval for Appointment of Tribunal Chair**

There was no discussion on this item.

### **13. External Appointment: Law Foundation of BC**

There was no discussion on this item.

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

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2023-03-01