

Minutes

Law Society
of British Columbia

Benchers

Date: Friday, April 28, 2023

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

Geoffrey McDonald
Steven McKoen, KC
Paul Pearson
Georges Rivard
Michèle Ross
Gurminder Sandhu
Thomas L. Spraggs
Barbara Stanley, KC
Michael Welsh, KC
Kevin B. Westell
Sarah Westwood
Guangbin Yan

Unable to Attend: Tim Delaney
Katrina Harry
Dr. Jan Lindsay

Kelly H. Russ
Natasha Tony
Gaynor C. Yeung

Staff: Don Avison, KC
Gurprit Bains
Avalon Bourne
Barbara Buchanan, KC
Jennifer Chan
Natasha Dookie
Su Forbes, KC
Kerryn Holt
Jeffrey Hoskins, KC
Aara Johnson
Julie Lee
Michael Lucas, KC
Alison Luke

Claire Marchant
Fiona McFarlane
Tara McPhail
Jeanette McPhee
Cary Ann Moore
Rose Morgan
Doug Munro
Lesley Small
Arrie Sturdivant
Madison Taylor
Bill Thiessen
Adam Whitcombe, KC

Guests:	Dom Bautista	Executive Director, Courts Center & Executive Director, Amici Curiae Friendship Society
	Ian Burns	Digital Reporter, The Lawyer's Daily
	Christina Cook	Vice-Chair, Aboriginal Lawyers Forum
	Dr. Cristie Ford	Professor, Peter A. Allard School of Law
	Brittany Goud	Indigenous Engagement in Regulatory Matters Task Force Member
	Paul Hargreaves	CFO, Courthouse Libraries BC
	Andrea Hilland, KC	Indigenous Engagement in Regulatory Matters Task Force: Final Report main writer
	Derek LaCroix, KC	Executive Director, Lawyers Assistance Program of BC
	Jamie Maclaren, KC	Executive Director, Access Pro Bono Society of BC
	Mark Meredith	Treasurer and Board Member, Mediate BC
	Shawn Mitchell	CEO, Trial Lawyers Association of BC
	Scott Morishita	First Vice President, Canadian Bar Association, BC Branch
	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
	Rob Seto	Director of Programs, The Continuing Legal Education Society of BC
	Kerry Simmons, KC	Executive Director, Canadian Bar Association, BC Branch
	Megan Vis-Dunbar	Member, Law Society of BC / Staff Lawyer at BC Law Institute
	Lana Walker	Assistant Dean of Law, Thompson Rivers University & Continuing Legal Education Society of BC Board Director
	Terri-Lynn Williams-Davidson, KC	Co-Chair, Indigenous Engagement in Regulatory Matters Task Force

CONSENT AGENDA

1. Minutes of March 10, 2023, meeting (regular session)

The minutes of the meeting held on March 10, 2023 were approved unanimously and by consent as circulated.

2. Minutes of March 10, 2023, meeting (*in camera* session)

The minutes of the *in camera* meeting held on March 10, 2023 were approved unanimously and by consent as circulated.

3. Rule 4-47: Amending Public Notice of Suspension or Disbarment

The following resolution was passed unanimously and by consent:

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

1. ***Rule 4-47 (1) and (2) is rescinded and the following is substituted:***

Public notice of suspension or disbarment

4-47 (1) When a person is suspended under this part or Part 5 [*Tribunal, Hearings and Appeals*], is disbarred or, as a result of disciplinary proceedings, resigns from membership in the Society or otherwise ceases to be a member of the Society as a result of disciplinary proceedings, the Executive Director must immediately give effective public notice of the suspension, disbarment or resignation.

(2) When a person is suspended under Part 2 [*Membership and Authority to Practise Law*] or 3 [*Protection of the Public*], the Executive Director may give public notice of the suspension.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

4. General Rule Amendments and Corrections

The following resolution was passed unanimously and by consent:

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

1. ***Rule 4-15 (4) is amended by striking “under Rule 4-44 (5)” and substituting “under Rule 5-6.4 (5)”.***

2. **Rule 4-17 (3) is amended by striking “under Rule 4-44” and substituting “under Rule 5-6.4”.**
3. **Rule 5-6.4 (2) is amended by striking “under Rule 4-43 (2) (b)” and substituting “under Rule 5-6.3 (4)”.**
4. **Rule 10-1 (1) (b) (iv) is amended by striking “referred to in paragraphs (a) to (c)” and substituting “referred to in subparagraphs (i) to (iii)”.**
5. **Schedule 4 is amended as follows:**
 - (a) **in item no. 3, “under Rule 4-34” is struck and “under Rule 5-4.6” is substituted; and**
 - (b) **in item no. 5, “under Rule 4-40” is struck and “under Rule 5-5.2” is substituted.**

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

5. Amendments to the Code of Professional Conduct for British Columbia

The following resolution was passed unanimously and by consent:

BE IT RESOLVED to amend the *Code of Professional Conduct for British Columbia* as follows:

1. Rule 5.1-2.2 and its commentaries are added:

***Ex parte* proceedings**

5.1-2.2 In an *ex parte* proceeding, a lawyer must act with utmost good faith and inform a tribunal of all material facts, including adverse facts, known to the lawyer that will enable the tribunal to make an informed decision.

Commentary

[1] *Ex parte* proceedings are exceptional. The obligation to inform the tribunal of all material facts includes an obligation of full, fair and candid disclosure to the tribunal (see also rules 5.1-1 and 5.1-2).

[2] The obligation to disclose all relevant information and evidence is subject to a lawyer’s duty to maintain confidentiality and privilege (see section 3.3).

[3] Before initiating *ex parte* proceedings, a lawyer should ensure that the proceedings are permitted by law and are justified in the circumstances. Where no prejudice would

occur, a lawyer should consider giving notice to the opposing party or their lawyer (when they are represented), notwithstanding the ability to proceed *ex parte*.

2. Rule 5.1-2.3 and its commentaries are added:

Single-party communications with a tribunal

5.1-2.3 Except where authorized by law, and subject to rule 5.1-2.2, a lawyer must not communicate with a tribunal in the absence of the opposing party or their lawyer (when they are represented) concerning any matter of substance, unless the opposing party or their lawyer has been made aware of the content of the communication or has appropriate notice of the communication.

Commentary

[1] It is improper for a lawyer to attempt to influence, discuss a matter with, or make submissions to, a tribunal without the knowledge of the other party or the lawyer for the other party (when they are represented). A lawyer should be particularly diligent to avoid improper single-party communications when engaging with a tribunal by electronic means, such as email correspondence.

[2] When a tribunal invites or requests a communication from a lawyer, the lawyer should inform the other party or their lawyer. As a general rule, the other party or their lawyer should be copied on communications to the tribunal or given advance notice of the communication.

[3] This rule does not prohibit single-party communication with a tribunal on routine administrative or procedural matters, such as scheduling hearing dates or appearances. A lawyer should consider notifying the other party or their lawyer of administrative communications with the tribunal. Routine administrative communications should not include any submissions dealing with the substance of the matter or its merits.

[4] When considering whether single-party communication with a tribunal is authorized by law, a lawyer should review local rules, practice directives, and other relevant authorities that may regulate such a communication.

6. External Appointment: Vancouver Foundation

The following resolution was passed unanimously and by consent:

BE IT RESOLVED the Benchers put forward Amanda Baron as the Law Society of BC nominee, as recommended by the Vancouver Foundation, to the Vancouver Foundation Board of Directors for a three-year term commencing May 1, 2023.

7. Approval of 2023 Law Society Award Recipient

The following resolution was passed unanimously and by consent:

BE IT RESOLVED the Benchers resolve to grant the 2023 Law Society Award to Eloise Spitzer.

8. 2023 Annual General Meeting: Advance Voting

The following resolution was passed unanimously and by consent:

BE IT RESOLVED the Benchers authorize the Executive Director to permit members of the Society in good standing to vote by electronic means on general meeting resolutions in advance of the 2023 annual general meeting.

DISCUSSION

12. Indigenous Engagement in Regulatory Matters Task Force: Final Report

This item was moved on the agenda to be the first item of business following the consent agenda.

President Christopher A. McPherson welcomed Terri-Lynn Williams-Davidson, KC, Co-Chair of the Indigenous Engagement in Regulatory Matters Task Force, to the meeting and provided a brief introduction.

Ms. Williams-Davidson presented the Final Report of the Indigenous Engagement in Regulatory Matters Task Force and thanked the members of the Task Force, along with staff, for their hard work and efforts in the development of the report. She provided an overview of the work of the Task Force in preparing the report, as well as an overview of the Bronstein decision and its impacts on the Tsilhqot'in Nation. Ms. Williams-Davidson also provided an overview of the meeting with the Tsilhqot'in Chiefs, at which the report was presented. She indicated that the Chiefs were keen to engage in consultation of the report, and that they would likely be providing input prior to the approval of the report by Benchers at the July Bencher meeting. Ms. Williams-Davidson then reviewed with Benchers the report's recommendations. She indicated that the report and its recommendations are part of a needed ongoing transformation and are meant to help the Law Society in meeting its ongoing commitments to truth and reconciliation.

Mr. McPherson spoke about the importance of the report and its recommendations. He spoke about the significance of dedicating the report to those who have traditionally been deterred from lodging complaints and to those who have lodged complaints, but who have not received reasonable outcomes, and the importance of the report's acknowledgement that the Law Society is a colonial enterprise, rooted in the disenfranchisement of Indigenous people and in the belief that the common law trumps Indigenous legal systems. Mr. McPherson spoke about the

significance of the development of the report being led by Indigenous people, as well as the importance of engagement with the Tsilhqot'in Chiefs on this matter.

Mr. McPherson then thanked all those who contributed to the report. He indicated that the implementation of the report would be a lengthy process, but a vital one, and that significant energy and resources would need to be devoted to implementation.

Brittany Goud, Task Force member, spoke about her experiences with the development of the report, as well as the impact of the Bronstein decision on the Tsilhqot'in Nation and the importance of ensuring that this does not occur again through the implementation of the report's recommendations. She also spoke about the need to move away from the current adversarial model and to consider new ways of doing things in an effort to decolonize the legal system.

Bencher engaged in discussion regarding the report and its recommendations and the importance of having regular progress reports. Mr. Avison advised that an overview of the plans for progress reports would be provided at the July Bencher meeting. He spoke about the importance of implementing the recommendations of the report and using them as a guide for making changes within the legal system, as well as within other administrative bodies. He also spoke about the need to recognize the disproportionate negative engagement of Indigenous people within the criminal justice system and child welfare system.

Bencher discussed the implementation of the report, including the importance of keeping the report top of mind beyond the discussions at Bencher meetings, the role of Bencher in being bold and advocating for change in terms of exploring more collaborative models beyond the current adversarial model used within the justice system. Bencher also discussed the problems with the Law Society's current discipline processes, and the importance of putting the public interest first in considering changes to the current models.

Mr. Avison indicated that the implementation of the report would include some profoundly challenging elements. He stressed the importance of dedicating the necessary time and energy to think about how to respond to the report's recommendations and to effect change.

Mr. McPherson indicated the report would be brought forward for decision at the July Bencher meeting.

REPORTS

9. President's Report

Mr. McPherson confirmed that no conflicts of interest had been declared.

Mr. McPherson began his report with a review of the Commonwealth Law Conference, which he had attended in Goa, India. He spoke about the significant declaration that had come out of the conference meetings regarding the importance of preserving and strengthening the independence

of the judiciary and of the legal profession, and the particular importance of this declaration in the face of the challenges faced by the profession in other jurisdictions.

Mr. McPherson informed Benchers that the call for nominations for the Benchers' Nominee for the 2024 Second Vice-President would open the following week. He also informed Benchers that with the appointment of Judge Jacqueline McQueen as a Provincial Court Judge, a by-election would be held in the County of Vancouver. An Executive Committee election would also be held to replace Judge McQueen, and Mr. McPherson indicated that further information would be provided to Benchers the following week.

Mr. McPherson then informed Benchers that the Law Society's Annual General Meeting would be taking place on June 27, 2023. He indicated that the first notice of the meeting would be sent to the profession shortly, which would include the date and time of the meeting, information regarding the business of the meeting, and information on how to submit a member resolution.

Mr. McPherson updated Benchers on work being done to update the lawyer directory to allow for the use of traditional names and spellings. He indicated that work was well in hand, despite some technical challenges.

Mr. McPherson provided an overview of his upcoming activities including attending the Prince George Law Talks, the Solicitors' Central Vancouver Island Conference, welcoming ceremonies, a call ceremony, and the presentation of the Gold Medal Award to the top student at the University of British Columbia.

Mr. McPherson concluded his report with an update regarding the upcoming Bencher Retreat, which would be taking place at the beginning of June. He indicated that all three Chiefs of court would be in attendance, along with the Attorney General and Deputy Attorney General.

10. CEO's Report

Mr. Avison began his report by providing an update on the status of discussions with the Ministry regarding the single legal regulator initiative. He indicated that the Ministry intends to release a "What We Heard" Report, following upon the call for responses to the Ministry's Intentions Paper, and the Ministry continues to plan to bring forward legislation for the fall legislative session. Mr. Avison informed Benchers that there had not yet been a response from the Ministry regarding the request to proclaim the 2018 amendments to the *Legal Profession Act* to enable the licensing of paralegals, but that the Law Society would continue to advocate for the bringing into force of these amendments. He indicated that a great deal of work had already been done in terms of reviewing and developing rules for the licensing of paralegals, which would need to be done to support the implementation of the single legal regulator regardless.

Mr. Avison provided a further update regarding the Bencher Retreat. He indicated that the Attorney General would be in attendance for the President's Dinner and Bencher meeting. He

further indicated that the Presidents and Executive Directors from the Federation, Law Society of Alberta, and Law Society of Saskatchewan would also be in attendance, and that he was hoping to hold a roundtable session to discuss the most significant issues across each jurisdiction. Mr. Avison then spoke about the program for the Retreat, which would be focused on managing change within a rapidly changing environment.

Mr. Avison updated Benchers on recent Law Society staffing changes, including the hiring of Vicki George, Senior Advisor, Indigenous Engagement and the departure of Madeleine Holm-Porter, Senior Executive Assistant, Office of the Executive Director/Chief Executive Officer, who would be taking a leave of absence.

Mr. Avison spoke about the implementation of the Final Report of the Indigenous Engagement in Regulatory Matters Task Force, and provided some data related to the completion of the Indigenous Intercultural Course. He indicated that all lawyers are expected to have completed the course by the end of the year, and that all Law Society staff are encouraged to complete the course, with completion of the course now a condition of employment for all new employees. Mr. Avison spoke about some of the recommendations in the report and provided some data on trauma-informed training undertaken by staff.

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

Brook Greenberg, KC provided a brief overview of the written report he provided for Benchers' information, which included an overview of the recent Federation meetings. He indicated that the next Federation Council meeting would take place on June 5, and he would provide an update at the July Bencher meeting.

DISCUSSION/DECISION

13. Lawyer Development Task Force: Recommendation for Mandatory Principal Training Program

Steven McKoen, KC, Chair of the Lawyer Development Task Force introduced the item and provided some background regarding the recommendation to develop a mandatory online principal training course. He spoke about the challenges with having only one pathway to become a licensed lawyer in BC, which involves the successful completion of nine months of experiential training through articles. Mr. McKoen indicated that although the Task Force was in the process of considering alternatives to articles for lawyer licensing, there still existed a pressing need and responsibility for the Law Society to address the problems within its control within the current licensing pathway.

Benchers discussed the rationale for the mandatory nature of the proposed training program, and agreed that the benefits of having the program be mandatory far outweighed any risks, particularly in terms of providing guidance and support to principles and increasing value and

consistency across articling experiences. Benchers also discussed the importance of referencing the benefits of the program to principals and articulated students in its communication.

Benchers discussed the format of the program, including the importance of offering the program at no fee, the value in requiring principals to take the training program every five years, and whether an introductory course should be developed for articulated students. Mr. McKoen indicated that the Task Force would consider making available the content of the training program for articulated students. He advised that the Task Force had considered a course for articulated students, and that this could be further discussed with PLTC.

Mr. McKoen provided some additional information regarding the review process and consultation undertaken by the Task Force, which included reviewing data from a similar program implemented by the Law Society of Alberta, Jordan Furlong's report "A Competence-Based System for Lawyer Licensing in British Columbia", the surveys of the Law Society's articulated students, as well as the discussions from past Bencher meetings on this matter.

The following resolution was passed unanimously:

BE IT RESOLVED that the Law Society of British Columbia develop an online principal training course comprising a series of modules that will be a mandatory requirement for all lawyers, regardless of experience, prior to serving as a principal to an articulated student. The course will qualify a lawyer to be a principal for a five-year period, will be offered at no cost, and will be eligible for CPD credit in an amount to be determined by the Executive Director.

14. Law Society's 2022 Audited Financial Statements and Financial Reports: Review and Approval

Jeevyn Dhaliwal, KC, Chair of the Finance and Audit Committee introduced the item, thanking committee members and staff for all their efforts, which led to a clean audit.

Jeanette McPhee provided an overview of the audited financial statements and highlights for 2022. She noted that the general fund operations resulted in a positive variance to budget, due to strong revenue performances for the year. She indicated that revenue was ahead of budget due to higher than expected revenues in almost all fee categories. Ms. McPhee reviewed practice fees and electronic filing revenue, both of which were ahead of budget, with the highest recorded increase in the number of practising lawyers. Ms. McPhee reviewed operating expenses for the year, which were under budget by 3%, likely due to expense savings in a number of areas, which was partially offset by higher external counsel fees.

Ms. McPhee reviewed TAF-related revenue and expenses. She indicated that TAF revenue was very close to budget with trust assurance program costs below budget primarily due to staff vacancies and lower travel costs with many audits being performed remotely.

Ms. McPhee reviewed revenue for the Lawyers Indemnity Fund, which was ahead of budget due to a higher number of practising indemnified lawyers. She indicated that operating expenses were under budget with savings primarily related to lower compensation costs, lower general office expenses, and lower general fund allocated costs. She indicated that expense savings were partially offset by increased investment management fees.

Ms. McPhee then reviewed the 2023 general fund forecast, which was forecasted to be ahead of budget. She indicated that expenses related to the single legal regulator initiative would be funded through net assets.

Ms. McPhee then provided an overview of the financial results and highlights to the end of February 2023, noting that year to date results are positive to budget, mostly due to higher interest income outweighing small negative variances and lower operating expenses.

Bencher discussed the 2022 highlights, particularly the trend of revenue being ahead of budget resulting in positive variances from year to year. Some Bencher questioned if this was an overly conservative approach in terms of budgeting, which could affect funding for programs and initiatives. Some Bencher referenced the challenges in estimating practice fees accurately. Ms. McPhee indicated that the approach to budgeting tended to be conservative as revenue and expenses changed year to year. She further indicated that the budgeting process took into account historical data from the past three to four years, which has shown an approximate increase in practice fees of 3% year over year. Ms. McPhee also referenced the annual timing of budgeting as lending itself to a conservative approach, since there was often a lag in terms of practice fee actuals, and that it was better to be under budget than over budget.

Bencher discussed whether a reduction in practice fees should be considered, particularly with a history of surpluses. Ms. McPhee advised that the intent was to have between three to four months of reserves. She indicated that the Law Society currently had a high amount of reserves, but that the Finance and Audit Committee had agreed that these would be used towards a number of upcoming strategic projects and initiatives, including the single legal regulatory initiative and mandatory courses. She further indicated that reducing practice fees could create a challenging situation if the Law Society had larger deficit budgets in the future, which in turn would likely require the increase of practice fees. Ms. McPhee added that the practice fees had remained static for the past several years.

The following resolution was passed unanimously:

BE IT RESOLVED to approve the Law Society's 2022 Financial Statements for the General Fund, and the 2022 Consolidated Financial Statements for the Lawyers Indemnity Fund.

UPDATES

15. 2023 First Quarter Financial Report

This item was incorporated into item 14.

FOR INFORMATION

16. Minute of Approval for Compensation for Public Adjudicators

Benchers reviewed the For Information items, which included a minute of approval for the following resolution, which had been approved via email on March 17, 2023.

BE IT RESOLVED that the compensation for the public members of our hearing panels be amended as proposed effective as of March 10, 2023.

There was no discussion on this item.

The Benchers then commenced the *in camera* portion of the meeting.

AB
2023-05-24