

Minutes

Benchers

Date: Friday, December 08, 2023

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

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

Unable to Attend: Kelly H. Russ

Staff: Don Avison, KC
Avalon Bourne
Barbara Buchanan, KC
Natasha Dookie
Jackie Drozdowski
Su Forbes, KC
Vicki George
Katrina Harry, KC
Kerryn Holt
Jeffrey Hoskins, KC
Aara Johnson
Alison Kirby
Julie Lee
Michael Lucas, KC
Alison Luke

David MacLean
Claire Marchant
Fiona McFarlane
Tara McPhail
Jeanette McPhee
Cary Ann Moore
Doug Munro
Mimi Odkhuu
Michelle Robertson
Lesley Small
Arrie Sturdivant
Christine Tam
Adam Whitcombe, KC
Charlene Yan
Vinnie Yuen

Guests:	Simran Bains	2024 Appointed Bencher
	Dom Bautista	Executive Director, Courts Center & Executive Director, Amici Curiae Friendship Society
	Ian Burns	Digital Reporter, The Lawyer's Daily
	Nikki L. Charlton	2024 Bencher-elect
	Paul Hargreaves	CFO, Courthouse Libraries BC
	Ravi R. Hira, KC	2024 Bencher-elect
	Madeleine Holm-Porter	Law Society Guest
	Derek LaCroix, KC	Executive Director, Lawyers Assistance Program of BC
	James A.S. Legh	2024 Bencher-elect
	Benjamin D. Levine	2024 Bencher-elect
	Jamie Maclaren, KC	Executive Director, Access Pro Bono Society of BC
	Jaspreet Singh Malik	2024 Bencher-elect
	Jay Michi	2024 Bencher-elect
	Lee Nevens	First Vice-President, Canadian Bar Association, BC Branch
	Rob Seto	Director of Programs, CLEBC
	Kerry Simmons, KC	Executive Director, Canadian Bar Association, BC Branch
	James Struthers	2024 Bencher-elect
	Lana Walker	Assistant Dean of Law, Thompson Rivers University
	Jonathan Yuen	2024 Bencher-elect

CONSENT AGENDA

1. Minutes of November 3, 2023, meeting (regular session)

The minutes of the meeting held on November 3, 2023 were approved unanimously and by consent as circulated.

2. Minutes of November 3, 2023, meeting (*in camera* session)

The minutes of the *in-camera* meeting held on November 3, 2023 were approved unanimously and by consent as circulated.

3. Rule Amendments: Return to Practice

The following resolution was passed unanimously and by consent:

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

1. ***Rule 1 is amended in the definition of “qualification examination” by striking out “for the purposes of Rule 2-89 [Returning to practice after an absence]” and substituting “that may be required by the Credentials Committee as a condition for a lawyer’s or applicant’s return to practice;”.***
2. ***Rule 2-5 (2) is amended***
 - (a) ***by striking out “undertaking” and substituting “an undertaking” and***
 - (b) ***by adding “or 2-90 [Conditions on returning to practice]” at the end of the subrule.***
3. ***Rule 2-79 is amended:***
 - (a) ***in subrule (2) by adding “or 2-90 [Conditions on returning to practice]” at the end of the subrule,***
 - (b) ***in subrule (5)***
 - (i) ***by striking out “Rule 2-89 [Returning to practice after an absence] and substituting “the qualification examination”, and***
 - (ii) ***by striking out “the Executive Director’s decision ” and substituting “a decision”, and***
 - (c) ***in subrule (6), by striking out “Rule 2-89 [Returning to practice after an absence]” and substituting “the qualification examination.”***

4. ***Rule 2-85 (2) is amended by adding “or 2-90 [Conditions on returning to practice];” at the end of the subrule.***
5. ***Rule 2-88 (1) is amended by rescinding paragraph (a) and substituting:***
 - (1) In Rules 2-88 to 2-90, unless the context indicates otherwise, “**relevant period**” is the shortest of the following periods of time in the immediate past:
 - (a) 7 years;
 - (b) the time since the lawyer’s first call and admission in any jurisdiction;
 - (c) the time since the lawyer last passed the qualification examination.
6. ***Rule 2-89 is rescinded and the following is substituted***
 - 2-89** (1) If, for a total of between 3 years and less than 5 years in the relevant period, a lawyer has not engaged in the practice of law, the lawyer must not practise law without first completing the practice management course described in Rule 3-28 [*Practice management course*] or another course offered by the Society or by a provider approved by the Society.
 - (1.1) If, for a total of 5 years or more in the relevant period, a lawyer has not engaged in the practice of law, the lawyer must not practise law without first
 - (a) completing the practice management course described in Rule 3-28 or another course approved by the Executive Director, and
 - (b) certifying, in the prescribed form, that the lawyer has reviewed and understands all of the materials reasonably required by the Executive Director.
 - (2) Subrules (1) and (1.1) apply
 - (a) despite any other rule, and
 - (b) whether or not the lawyer holds or is entitled to hold a practising certificate.
 - (3) A lawyer may apply in writing to the Credentials Committee for permission to practise law without completing a requirement set out in subrule (1) or (1.1).
 - (4) On an application under subrule (3), the Credentials Committee may approve the application if, in its judgement
 - (a) the lawyer has engaged in activities that have kept the lawyer current with substantive law and practice skills, or
 - (b) the public interest does not require the lawyer to complete the relevant requirements.
 - (5) Before approving an application under subrule (4), the Credentials Committee may require the lawyer to enter into a written undertaking to do

any of the things set out in Rule 2-90 (5) (b) [*Conditions on returning to practice*].

7. Rule 2-90 is amended by rescinding subrules (4) and (5) and substituting the following:

- (5) As a condition of permission to practise law under subrule (1), the Credentials Committee may require one or more of the following:
- (a) successful completion of all or part of one or more of the following:
 - (i) the admission program;
 - (i.1) the qualification examination;
 - (ii) the practice management course described in Rule 3-28 [*Practice management course*] or another course approved by the Executive Director;
 - (iii) certification, in the prescribed form, that the lawyer has reviewed and understands all of the materials reasonably required by the Executive Director;
 - (b) a written undertaking to do any or all of the following:
 - (i) practise law in British Columbia immediately on being granted permission;
 - (ii) not practise law as a sole practitioner;
 - (iii) practise law only in a situation approved by the Committee for a period set by the Committee, not exceeding 2 years;
 - (iv) [rescinded]
practise law only in specified areas;
 - (vi) not practise law in specified areas.

8. Rule 3-45 (3) is amended by adding “or 2-90 [*Conditions on returning to practice*].” at the end of the subrule.

9. Schedule 1 is amended

(a) in the title, by striking out “2023” and substituting “2024”

(b) in Section E. Transfer fees, by striking out “2-89 (6) [*Returning to practice after an absence*]” and substituting “2-90 (5) [*Conditions on returning to practice*]”.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

4. Rule Amendments: Rule 1 Definition “Motions Adjudicator”

The following resolution was passed unanimously and by consent:

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

- 1. Rule 1 is amended in the definition of “motions adjudicator” by striking out the word “Bencher”***

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

5. External Appointment: Legal Aid BC

Brian Dybwad recused himself from this item.

This item was removed from the Consent Agenda for discussion *in camera*.

Following discussions *in camera*, the following resolution was passed unanimously:

BE IT RESOLVED the Benchers appoint Eloise Spitzer and Thomas Arbogast, KC, to the LABC Board for three-year terms commencing December 11, 2023 and concluding on December 10, 2026.

REPORTS

6. President’s Report

President Christopher A. McPherson, KC confirmed the recusals from Item 5 for Brian Dybwad and Item 10 for Gaynor C. Yeung. He confirmed that no further conflicts of interest had been declared.

Mr. McPherson began his report by congratulating the Benchers that were elected to the 2024 Executive Committee and thanking all those who put forward their names.

Mr. McPherson spoke about his time as a Bencher and reflected on his experiences and the people with whom he worked. He spoke about the dedication of Benchers and Law Society staff towards serving the public interest in the administration of justice and the important role of the Law Society. He spoke about his experiences as a member of the 2SLGBTQI+ community, and how this contributed to his desire to run for Bencher and for President. Mr. McPherson spoke about the responsibility of lawyers to advance the rights of every single person in the province and elsewhere, and to support clients, sometimes against the interests of government. Mr.

McPherson referenced the single legal regulator initiative and the importance of the independence of the profession and of the regulator.

Mr. McPherson spoke about his time as President of the Law Society and highlighted a number of the Law Society's accomplishments during his time as Bencher, in particular the work of the Mental Health Task Force, and the efforts made towards truth and reconciliation through the adoption by Benchers of the report of the Indigenous Engagement in Regulatory Matters Task Force. He indicated that the conclusion of his time as a Bencher was bittersweet, and he thanked everyone for their support.

7. 2024 Committees, Task Forces, and Working Groups

First Vice-President Jeevyn Dhaliwal, KC introduced the item and provided some background on her recommendations for the 2024 committees, task forces, and working groups. She spoke about the essential importance of the independence of the profession and of the regulator with the Ministry moving towards tabling the proposed single legal regulator legislation in the spring of 2024. She also spoke about access to justice being the central driver of the Ministry's proposal, and that these critical matters should be addressed by the Bencher table as a whole and not delegated to committees. Ms. Dhaliwal indicated that she would not be appointing members to the Access to Justice Advisory Committee or the Ethics and Lawyer Independence Advisory Committee, and that these issues would be discussed and considered directly by Benchers with staff bringing forward materials as necessary.

8. CEO's Report

Don Avison, KC began his report by updating Benchers on completion rates for the Indigenous Cultural Awareness Program. He indicated that a considerable number of lawyers have not yet reported completion of the program, and that communication efforts regarding this requirement and consequences of not completing the program by the due dates had increased and become more direct. Mr. Avison informed Benchers that staff completion rates of the program are quite high, and that completion of the program is a condition of new employment with the Law Society.

Mr. Avison updated Benchers on the status of *Federation of Law Societies of Canada v. Canada (Attorney General)*, 2023 BCSC 2068, which sought an injunction against sections 237.3 and 237.4 of the *Income Tax Act*, requiring legal professionals to report certain client transactions to the Canada Revenue Agency. He indicated that the injunction was granted, and that he would keep Benchers informed as to the final ruling. He also indicated that it would be necessary from time to time to enforce the independence of the profession and the profession's obligations to clients.

Mr. Avison informed Benchers that the focus of the 2024 International Conference of Legal Regulators would be on engagement with Indigenous populations, and that the Law Society would have the opportunity to play a role with the program conference.

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.

Vicki George, Senior Advisor, Indigenous Engagement, from the Wet'suwet'en First Nation provided an overview of the work being done in support of the Law Society's truth and reconciliation objectives. She also gave an overview of the work that was being done to implement the recommendations included within the report of the Indigenous Engagement in Regulatory Matters Task Force (IERM). She spoke about the work that was done to commemorate Indigenous History Month, the National Day of Truth and Reconciliation (Orange Shirt Day), and Indigenous Veterans' Day. Ms. George also spoke about the importance of Indigenous people and non-Indigenous people working together on these matters. She also spoke about the distinctive history of Indigenous Peoples that needs to be addressed. Mr. Avison spoke about the development of the IERM Task Force as a result of the Bronstein decision. He also spoke about the Law Society's engagement with the Tsilhqot'in Chiefs, along with Terri-Lynn Williams-Davidson, KC, on this matter, and that the Law Society would continue with this engagement.

DISCUSSION/DECISION

9. Mental Health Task Force Final Report

Second Vice-President Brook Greenberg, KC, Chair of the Mental Health Task Force introduced the item and provided some background regarding the recommendations included within the Final Report of the Task Force. Mr. Greenberg provided a brief overview of the recommendations contained within the report, many of which had been developed following the Task Force's comprehensive review of the *National Study on the Health and Wellness Determinants of Legal Professionals in Canada*. He also reviewed those recommendations regarding the Law Society's continued engagement with mental health and substance use issues once the Mental Health Task Force completes its work at the end of the year.

Benchers discussed the report and the Task Force's recommendations, including a system for dispatching lawyers on an emergency basis to act as custodians for a short period of time in situations in which a lawyer is undergoing medical treatment or dealing with a health issue. Benchers also discussed how to manage custodianships in a transparent manner that also addressed the stigma associated with mental illness. Mr. Greenberg advised that the Task Force

had considered these items and recommended that a working group of three Benchers be appointed as a sub-committee of the Equity, Diversity, and Inclusion Advisory Committee to look into these issues.

Benchers discussed the role of the Federation of Law Societies of Canada in the national wellbeing of the profession. Mr. Greenberg advised that he expected the Federation would likely be creating a standing committee on the wellbeing of the profession, and that the Law Society's Equity, Diversity, and Inclusion Advisory Committee could monitor the status of discussions at the national level and make recommendations to Benchers on this work. Mr. Greenberg concluded the discussion by recognizing that this was the fifth and final report of the Mental Health Task Force and thanked Benchers for supporting the work of the Task Force.

The following resolution was passed unanimously:

BE IT RESOLVED that the Benchers approve the six recommendations contained in the Mental Health Task Force's Final Report.

10. Access to Justice Report: Alternative Business Structures

Gaynor C. Yeung recused herself from this item.

Dr. Jan Lindsay, Chair of the Access to Justice Advisory Committee introduced the item and provided some background on the proposal regarding multi-disciplinary practices and alternative business structures. She reviewed in detail the proposed recommendations contained within the report to, in principle, consider whether a liberalization of the current requirements in the rules for multi-disciplinary practices regarding lawyer ownership and control, and to permit alternative business structures in BC might result in improved access to legal services. However, Dr. Lindsay indicated that any proposed reforms would need to be considered carefully to ensure that adequate safeguards would be in place. She spoke about the need to create greater flexibility in the market in terms of how legal services are delivered, recognizing that the public's need for legal needs are often intertwined with other issues, and that many members of the public currently struggle to access legal services within the existing regulatory framework.

Benchers discussed multi-disciplinary practices with some Benchers raising concerns about ownership of these practices being dispersed amongst groups where the enterprise may be driven by profit without appropriate risk mitigation in place, particularly as the Law Society is only able to regulate lawyers. Benchers also discussed whether or not the Law Society would be able to regulate these types of structures effectively. Dr. Lindsay advised that the proposal was in early stages, and that caveats and safeguards would be developed to mitigate these possible scenarios.

Benchers discussed the overarching aim of the recommendations, with many Benchers in agreement that the goal was not necessarily to create large corporations within this structure, but

rather to encourage the creation of smaller collaborative models, in which the group of professions would all generally be regulated, and that it would be helpful to think about how to incentivize those interested in these new structures and practices to focus on an access to justice approach. Benchers also discussed how these models have worked in other jurisdictions and how to gather and track data to determine if these models are helpful in improving access to justice. Dr. Lindsay advised that it could be helpful to incorporate client feedback into the model, so as to gather data. Geoffrey McDonald, Vice-Chair of the Access to Justice Advisory Committee added that it would be helpful to think about gathering data regarding how the public is being served by the current model. Mr. McDonald also suggested that promoting access to justice could be added to both of the proposed recommendations to help clarify the purpose of these proposed structures and practices.

The following resolution was passed unanimously, subject to amending the recommendations to include “and promote access to justice” at the end of each recommendation:

BE IT RESOLVED that the Benchers support, in principle:

- a. the relaxation of the current requirements in the rules for multi-disciplinary practices regarding lawyer ownership and control, subject to determination as to what safeguards are necessary to preserve lawyer independence, professionalism and ethics, *and promote access to justice*; and
- b. permitting alternative business structures in BC, subject to determination as to what safeguards are necessary to preserve lawyer independence, professionalism and ethics, *and promote access to justice*.

UPDATES

11. Financial Matters

Ms. Dhaliwal, as Chair of the Finance and Audit Committee, introduced the item and thanked the members of the Finance and Audit Committee and staff for all of their efforts and work. Mr. Avison then gave a presentation on the Law Society’s 2023 Enterprise Risk Management Plan, along with changes from previous years. Mr. Avison summarized the Law Society’s major strategic risks, and indicated that risks related to cyber security and loss of key personnel had been moved higher on the register. He then reviewed the mitigation plans for these risks.

Jeanette McPhee provided an overview of the financial results and highlights to the end of September 2023. Ms. McPhee indicated that the General Fund operations had resulted in a positive variance to budget, due to higher interest income, additional practising lawyers, and fines and penalties revenue, along with permanent savings and expense timing differences. Ms. McPhee also provided an overview of forecasted 2023 year-end results, noting that revenue was

projected to be ahead of budget due to much higher interest income, a slightly higher number of practising lawyers, and additional administrative penalties revenue. Ms. McPhee indicated that total operating expenses were projected to be below budget for the year due primarily to savings with external counsel fees. Ms. McPhee concluded her remarks with an overview of the Law Society's investment portfolio.

FOR INFORMATION

12. Indigenous Engagement in Regulatory Matters Progress Update Report

There was no discussion on this item.

13. Year-End Advisory Committee Reports

There was no discussion on this item.

14. Equity, Diversity and Inclusion Committee: Diversity Action Plan Implementation Report

There was no discussion on this item.

15. External Appointment: Law Foundation of BC

There was no discussion on this item.

16. 2024 Schedule of Bencher and Executive Committee Meetings

There was no discussion on this item.

FINAL REMARKS

Mr. Avison and First Vice-President Dhaliwal paid tribute to outgoing President McPherson and thanked him for his dedication, commitment, and significant contributions to the Law Society over the past year. Mr. McPherson thanked Mr. Avison and Ms. Dhaliwal for their kind words, and then welcomed Ms. Dhaliwal as President for 2024 and presented her with the President's pin.

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