



Agenda

Benchers

Date: Friday, June 9, 2017

Time: **7:30 am** Continental breakfast

8:30 am Call to order

Location: Bencher Room, 9th Floor, Law Society Building

Recording: *Benchers, staff and guests should be aware that a digital audio recording is made at each Benchers meeting to ensure an accurate record of the proceedings.*

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1	Presentation of the Winner and Runner-up of Rule of Law Essay Contest	5	President		Presentation
<p>CONSENT AGENDA:</p> <p>The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Executive Support (Renee Collins) prior to the meeting.</p>					
2	Consent Agenda <ul style="list-style-type: none"> • Minutes of May 6, 2017 meeting (regular session) • Minutes of May 6, 2017 meeting (<i>in camera</i> session) • The 2017 Law Society Scholarship 	1	President	Tab 2.1 Tab 2.2 Tab 2.3	Approval Approval Approval
<p>GUEST PRESENTATIONS</p>					
3	LAP Presentation	15	Derek LaCroix		Presentation



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
DISCUSSION/DECISION					
4	Selection of Benchers' Nominee for 2018 Second Vice-President	5	President		Discussion/ Decision
5	Strategic Plan Review Process:				Discussion
	<ul style="list-style-type: none"> • Disclosure and Privacy • Economics of the Legal Profession 	15	Jeff Hoskins, QC & Michael Lucas		
		15	Adam Whitcombe & Michael Lucas		
6	Recommendations Concerning a Reconsideration of Policy Decisions on the Publication of Credential Hearing Reports	20	Martin Finch, QC	Tab 6	Discussion
7	Legal Aid Advisory Committee: Legal Aid Award	10	Sarah Westwood	Tab 7	Decision
8	CLE Society of BC Proposed Constitution and Bylaws – Input requested	15	Joost Blom, QC, Chair of CLE Governance Committee	Tab 8	Discussion
EXECUTIVE REPORTS					
9	President's Report	5	President		Briefing
	<ul style="list-style-type: none"> • TRC Advisory Committee Update 				
	<ul style="list-style-type: none"> • Bencher Calendar 	5			Briefing
	<ul style="list-style-type: none"> • Briefing by the Law Society's Member of the Federation Council 	5			Briefing



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
	<ul style="list-style-type: none"> Report on Outstanding Hearing & Review Decisions 	5		<i>(To be circulated at the meeting)</i>	Briefing
10	CEO's Report	10	CEO	Tab 10	Briefing
FOR INFORMATION					
11	<ul style="list-style-type: none"> Three Month Bencher Calendar – June to August 			Tab 11	Information
<i>IN CAMERA</i>					
12	Legislative Amendment: Update	10	CEO	Tab 12	Discussion/ Decision
	<i>In camera</i> <ul style="list-style-type: none"> Bencher concerns Other business 		President/CEO		Discussion/ Decision



Minutes

Benchers

Date: Saturday, May 06, 2017

Present:

Herman Van Ommen, QC, President	Jamie Maclaren
Miriam Kresivo, QC, 1 st Vice-President	Sharon Matthews, QC
Nancy Merrill, QC, 2 nd Vice-President	Steven McKoen
Jasmin Ahmad	Christopher McPherson
Satwinder Bains	Lee Ongman
Jeff Campbell, QC	Greg Petrisor
Pinder Cheema, QC	Claude Richmond
Barbara Cromarty	Phil Riddell
Jeevyn Dhaliwal	Elizabeth Rowbotham
Thomas Fellhauer	Mark Rushton
Craig Ferris, QC	Carolynn Ryan
Martin Finch, QC	Daniel P. Smith
Brook Greenberg	Michelle Stanford
Lisa Hamilton	Sarah Westwood
J.S. (Woody) Hayes, FCPA, FCA	Tony Wilson, QC
Dean P.J. Lawton, QC	

Unable to Attend: Not applicable

Staff Present:

Tim McGee, QC	Michael Lucas
Deborah Armour	Jeanette McPhee
Taylor Ashlie	Doug Munro
Renee Collins	Lesley Small
Su Forbes, QC	Alan Treleven
Jeffrey Hoskins, QC	Adam Whitcombe

Guests:

Roberta Campbell	President, Law Society of Manitoba
Julia Cornish, QC	First Vice-President, Nova Scotia Barristers' Society
Kris Dangerfield	CEO, Law Society of Manitoba
Barry Fleming, QC	President, Law Society of Newfoundland and Labrador
Richard Fyfe, QC	Deputy Attorney General of British Columbia
Brenda Grimes, QC	Executive Director, Law Society of Newfoundland and Labrador
Michelle Haigh	Paralegal Bencher, Law Society of Upper Canada
Jonathan Herman	CEO, Federation of Law Societies
Chief Justice	Chief Justice of the Supreme Court of British Columbia
Christopher Hinkson	
Robert Lapper, QC	CEO, Law Society of Upper Canada
Luc Marcoux, QC / cr	Vice President, Law Society of New Brunswick
Malcolm Mercer	Bencher, Law Society of Upper Canada
Me Maurice Piette	President, Federation of Law Societies
Darrel Pink	Executive Director, Nova Scotia Barristers' Society
Marc Richard, QC / cr	Executive Director, Law Society of New Brunswick
Paul Schabas	Treasurer, Law Society of Upper Canada
Anthony Young, QC	President, Law Society of Alberta

CONSENT AGENDA

1. Minutes

a. Minutes

The minutes of the meeting held on April 7, 2017 were approved as circulated.

b. Resolutions

The following resolution was passed unanimously and by consent.

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

1. *In Rule 1-9*

(a) *by striking the heading and substituting the following:*

Telephone and internet connections,

(b) *by rescinding subrule (1) and substituting the following:*

(1) The Benchers may conduct a general meeting by joining any number of locations by

(a) telephone, or

(b) internet connection.

(1.1) Persons participating in and entitled to vote at a general meeting who are connected by telephone or internet connection must be able to hear all others participating in person or by telephone.

(1.2) Persons participating in and entitled to vote at a general meeting who are connected by telephone must be able to speak at the meeting if recognized by the President.

(1.3) Persons participating in and entitled to vote at a general meeting who are connected by the internet must be able to vote in real time when called upon by the President to do so.,

(d) by rescinding subrule (7) and substituting the following:

(6.1) The Executive Director

- (a) may retain a contractor to assist in any part of a general meeting conducted by way of the internet,
- (b) must ensure that votes cast electronically in a secret ballot remain secret, and
- (c) must take reasonable security measures to ensure that only members entitled to vote can do so.

(7) A technical failure that prevents any member from participating in or voting at a general meeting does not invalidate anything done at the general meeting..

2. In Rule 1-13, by adding the following subrules:

(1.1) Despite subrule (1), a person participating in a general meeting by way of internet connection is not entitled to speak at the meeting.

(15.1) A member of the Society must not

- (a) cast a vote or attempt to cast a vote that he or she is not entitled to cast, or
- (b) enable or assist a person
 - (i) to vote in the place of the member, or
 - (ii) to cast a vote that the person is not entitled to cast..

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 2-57 (1) and (2) and substituting the following:

(1) A lawyer engaged in full-time practice may act as principal to no more than 2 articulated students at one time.

(1.1) In this rule

“associated activities” includes practice management, administration and promotion and voluntary activities associated with the practice of law;

“full-time practice” means the practice of law and associated activities for an average of more than 25 hours per week;

“part-time practice” means the practice of law and associated activities for an average of not more than 25 hours per week.

(2) Subject to subrules (2.1) and (3), to qualify to act as a principal, a lawyer must have

- (a) engaged in full-time practice in Canada for 5 of the 6 years immediately preceding the articling start date, and
- (b) spent at least 3 years of the time engaged in the practice of law required under paragraph (a) in
 - (i) British Columbia, or
 - (ii) Yukon while the lawyer was a member of the Society.

(2.1) When a lawyer engages in part-time practice

- (a) any period in which the lawyer engages in part-time practice is counted at a rate of 50 per cent for the purposes of the full-time practice requirement in subrule (2), and
- (b) the 6-year period in subrule (2) (a) is extended by the length of the period in which the lawyer engages in part-time practice, provided that the aggregate time in which the lawyer is not engaged in the practice of law does not exceed 24 months in the entire period.

GUEST REPRESENTATIONS

2. Remarks from Chief Justice Hinkson

Chief Justice Hinkson thanked the Benchers for their important work, and acknowledged their continued support for the judiciary which is very much appreciated.

He also noted the challenges associated with vacancies on the Bench, and the resulting effects on access to justice. He encouraged the Law Society to support timely appointments to fill those vacancies.

The Chief Justice closed his remarks by wishing the Benchers and guests well for the remainder of their Retreat.

3. Remarks from President of Federation of Law Societies

Mr. Van Ommen introduced Federation of Law Societies President Me. Maurice Piette, noting that Me. Piette has been a member of Council representing the Chambre des Notaires du Québec since November 2003, and a practicing notary since receiving his notarial law diploma in 1972.

Me. Piette thanked Mr. Van Ommen and the Benchers for their hospitality, and noted that one of the most gratifying aspects of his role as President is the opportunity to travel and visit council members and Benchers across the country. He congratulated Ms. Kresivo on the successful Retreat Conference the previous day, noting that it is with these types of meetings that we can generate innovative ideas and imagine a better future. He also noted the importance of continued focus on access to legal services and the role of alternative legal service providers.

He acknowledged the Law Society of BC's leadership role in the success of the Federation, underscoring the importance of collaboration and the notion that we are stronger together. He acknowledged that the strategic planning initiatives as well as the ongoing work of the Federation are made possible by individuals from law societies across the country, including the outstanding representatives of the Law Society of BC. He specifically acknowledged the significant contributions of current President and Federation Council member Herman Van Ommen, QC, Past Presidents Gavin Hume, QC and John Hunter, QC, CEO Tim McGee, QC, CIPO Adam Whitcombe, Director of Education and Practice Alan Treleaven, CLO Deb Armour, Policy and Legal Services Manager Michael Lucas, and Policy Staff Lawyer Andrea Hilland.

Finally, he looked forward to welcoming Law Society and Federation representatives to the Federation meetings to be held in Victoria in October. Mr. Van Ommen thanked Me. Piette for his remarks.

4. Remarks from Treasurer of Law Society of Upper Canada

Mr. Van Ommen introduced Law Society of Upper Canada Treasurer Paul Schabas, noting that he is a senior trail lawyer with Blakes in Toronto and has served 3 terms as Bencher at the Law Society of Upper Canada.

Mr. Schabas thanked Mr. Van Ommen and the Law Society of BC, remarking on the importance of gathering with and getting to know Presidents and Benchers across the country. Regulators across the country face similar challenges; sessions such as the conference on alternative legal service providers held yesterday provide opportunities to learn and collaborate together toward innovative solutions.

Issues facing the Law Society of Upper Canada include regulation of paralegals, and the potential expansion of the program into the area of family law as recommended by the Bonkalo Report.

Licensing of new lawyers is also creating new challenges; increasing numbers of law students are unable to get articling placement, and the experiential law practice program designed in part to address placement difficulties has experienced its own challenges. A comprehensive review of the entire licensing program has begun, which will include research as well as broad consultation

with membership across Ontario. All options will be considered, including graduated licencing, experiential learning and admission by exam only. The goal is to reach a solution for the long term by early 2018.

Additionally, the Law Society of Upper Canada is also preparing to engage in its first governance review in 7-8 years. The Governance Task Force will review governance generally, committee structures and board competencies. An Appointments Advisory Group has opened up the appointments process and improved transparency by advertising appointments criteria which include considerations of equity and diversity. Appointments under the new process have been well received. Other possible initiatives include holding convocation in a location better able to accommodate the large board as well as guests, and improving communication tools to make it easier for the public to make a complaint or find out more about lawyers.

In response to a question, Mr. Schabas confirmed that the Law Society is trying to gather data on how many students experience unpaid or underpaid articles. Acknowledging the problem in Ontario as well, Mr. Schabas also noted that the unfortunate consequence of increasing the rigour around articles has been a decrease in the number of lawyers willing to become principals. He confirmed that, to collect data, the Law Society has retained communications consultants who have conducted surveys and focus groups. They also compare how many people apply for licencing exams, and then need articling positions, with the number of lawyers called.

In response to another question, Mr. Schabas confirmed that challenges associated with the Lawyers Practice Program have included the perception that it is a “second class” way in to the profession, which is discouraging many from applying.

Mr. Van Ommen thanked Mr. Schabas for his remarks.

5. Remarks from Executive Director of Nova Scotia Barristers Society

Mr. McGee introduced Darryl Pink, Executive Director of the Nova Scotia Barristers Society, advising Benchers of his upcoming retirement, and acknowledging his extensive contributions to the profession. Mr. McGee congratulated Mr. Pink, and wished him well on his future endeavors.

Mr. Pink thanked Mr. McGee and the Benchers for their hospitality and the opportunity to speak. He noted that Nova Scotia has been engaged for the last 4 years in a “rethink” of the legal profession, seeking to transform legal regulation and governance. After much work in Canada and internationally, it has become apparent that the public interest in the delivery of legal services goes far beyond the regulation of lawyers.

More work needs to be done on the exploration of regulating firms rather than individual lawyers, particularly given that the majority of lawyers practice in firms. To increase the

accessibility of legal services, licencing of paralegals has also become a focus; the Barristers Society has requested a legislative amendment enabling it to set credentials and standards for paralegals delivering legal services.

Mr. Van Ommen thanked Mr. Pink for his remarks, and for his many contributions to the profession.

DISCUSSION/DECISION

5. Strategic Plan Review Process: Mental Health Initiative

Mr. Van Ommen introduced Bencher Brook Greenberg to provide his presentation on mental health issues and the legal profession, as part of the series of briefings to Benchers in advance of the strategic planning process.

Mr. Greenberg noted the importance of this issue to both lawyers and the public generally. He was first made aware of the impact of mental health issues experienced by students and lawyers when he began providing pro bono assistance to UBC students who were required by regulation to report mental health issues on their admissions applications. Such is the stigma associated with these issues that students were avoiding diagnosis or treatment for serious health concerns to avoid this obligation to report. He was struck by the impact of this stigma and the unintended consequences of otherwise well-meaning regulation.

He noted that society treats physical and mental health issues differently, but stressed that our physical and mental well-being should be treated equally. He advocated for the inclusion of a thoughtful and educated approach to mental health issues in the profession in the strategic planning process. Amongst his recommendations was the creation of a body to oversee the Law Society's approach to the collection of data and the implementation of tools to reduce stigma and help avoid unintended consequences of regulation, as well as a review of the mechanism of Diversion as a part of the discipline process.

Mr. Greenberg then briefed Benchers on the pervasiveness and seriousness of mental health issues in the legal profession, stressing the importance of a comprehensive approach by the regulator. A recent comprehensive American study revealed the following statistics: 20.6% of American lawyers, compared to 11.8% of the broader professional population, show problematic drinking patterns; 36.4% demonstrated alcohol abuse and dependence, which is more than double the rate of doctors; 61% demonstrated clinical anxiety disorders at some point in their career, 45% experienced depression, 11.5% had suicidal thoughts and 0.7% had an actual suicide attempt. Studies from other institutions and from other jurisdictions have produced similar findings.

The two most common barriers to treatment are privacy and fear of others finding out. Thus, stigma is a main reason for our inability to deal effectively with these issues. Regulators should be interested in these statistics, and the apparent barriers to treatment, given the way in which mental health issues pervade the discipline process. Anecdotally, the impacts of substance use and mental health struggles are apparent in discipline hearings and conduct reviews, and also appear to affect all aspects of a lawyer's professional and personal lives, as well as contribute to complaints, competence and retention issues.

The Legal Professions Act provides ample scope to try to tackle these issues, which is squarely within the public interest protection mandate. Other Law Societies have instituted measures such as the implementation of a Mental Health Task Force in Ontario, and a diversion program in Nova Scotia; 27 US states also have some form of diversion program through their court system. Combatting these issues will require education, to enable lawyers to recognize the symptoms of anxiety, depression or substance abuse and know when to reach out. Arguably, it will also require a community culture change, something perhaps best addressed by law firm regulation.

Mr. Greenberg referred again to the Law Society of Upper Canada's Mental Health Task Force, commending its excellent, thoughtful and well-researched report to all Benchers for review. The report noted that long term strategies are required to increase education and reduce stigma. It also recommended two sets of policy tools, knowledge and education, and a review of regulatory processes; the former involves collaboration with other bodies, the provision of specialized education for Benchers and staff, model policies for firms and the consideration of the role of CPD; the latter includes incorporating early diversion processes, the focus on early intervention where mental health issues are resulting in impairment, and reviewing the Rules, Code and admissions forms and processes to eliminate provisions creating stigma.

He then made a series of recommendations for further consideration. Collaboration with other organizations and jurisdictions on policies, tools and communications strategies would be helpful; he particularly noted Ontario's Mental Health Implementation Task Force, the Canadian Mental Health Association, the CBA and the Lawyers Assistance Program (LAP). Initiatives that promote education and awareness amongst members to decrease stigma and encourage early assistance are important, as is the consideration of processes such as diversion. Surveying the membership could provide useful information in the development of initiatives, as well as the consideration of whether there are adequate resources, such as LAP, in place to support lawyers in need. Possible initiatives could include a practice advisor dedicated to mental health, stress and substance issues, or online tools specific to lawyers to help lawyers to privately understand and address emerging issues or symptoms.

Mr. Greenberg also suggested the consideration of providing more resources for Benchers to address mental health issues that arise in student interviews, and adding to the PLTC curriculum to increase knowledge and reduce stigma amongst young lawyers. The Law Society website

represents another vehicle for increasing awareness of the seriousness of the problem and the availability of treatment. He stressed that all of the possible recommendations would require resources and support.

Benchers provided individual thanks to Mr. Greenberg for his insightful and thought-provoking presentation, noting the significance of the issue across the profession.

EXECUTIVE REPORTS

6. President's Report

Mr. Van Ommen briefed the Benchers on TRC Advisory Committee issues, noting that the Federation TRC Working Group is scheduled to have its first meeting within the month, as well as various Bencher Calendar events.

7. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers. He noted that a priority for this year is the design and implementation of a cultural competency and training program. The program as a whole will be broad in scope, and cover both cultural and societal issues such as mental health; the first session next week will focus on indigenous issues.

He also briefed Benchers on the Law Society's research collaboration with the Legal Services Society on the cost of delivering legal services. To help address the dearth of knowledge of the economics of the profession, particularly regarding lower income earners, the Law Foundation has established a joint research fund of \$75,000 - \$80,000. The Executive Committee will provide oversight on this project and will report to Benchers as information becomes available.

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Memo

To: Benchers
From: Lesley Small
Date: May 17, 2017
Subject: **2017 Law Society Scholarship**

The Benchers are asked to ratify the recommendation of the Credentials Committee to award the 2017 Law Society Scholarship to Naomi Minwalla.

The Law Society Scholarship of \$12,000 is offered annually to eligible candidates to encourage and financially assist those candidates in completing graduate studies which will, in turn, ultimately benefit the individual, the province, and the legal profession in British Columbia.

Eligibility

Candidates who are proceeding to a full program of graduate studies in a field of law at a recognized institution are eligible for the Scholarship if they are graduates or graduating students of the University of British Columbia, University of Victoria or Thompson Rivers University law school or, in some other way, can demonstrate a real or substantial connection to British Columbia. Candidates are advised that the Committee will only consider applications from candidates who have outstanding academic and other qualifications.

Guidelines

In addition to examining how the candidate's proposed graduate studies will benefit the individual, the province, and the legal profession in BC, the Committee also takes into consideration:

- i) the candidate's academic standing;
- ii) the candidate's positive social contributions, such as volunteer work;
- iii) whether the candidate intends to practise in BC after their graduate studies;
- iv) financial need; and
- v) importance or significance of proposed graduate work.

Candidates awarded the Scholarship are required to provide a reporting letter on the use of the Scholarship and a copy of the relevant work.

Documents Required in Support of the Application

Each candidate must apply by letter setting out the details of the candidate's academic career to date and proposed plans for graduate study.

The following must also be submitted with the application:

- i) official transcripts of the candidate's academic career; and
- ii) one letter of recommendation from the Dean and two letters from professors of the law school the candidate has graduated or will graduate from.

Conditions

Candidates are advised that the Scholarship will not necessarily be offered every year and, when offered, will be awarded only if there is a highly qualified candidate. The Scholarship must be used in the year it is awarded. The recipient may accept and receive other scholarships and awards up to an amount not exceeding the tuition of the graduate program in which the recipient enrolls, or such other amount as the Committee may determine.

Recipients

The Committee resolved to recommend to the Benchers that the \$12,000 Law Society Scholarship be awarded to Naomi Minwalla.

Naomi Minwalla

Ms. Minwalla obtained her law degree from McGill Law School in 1998, completing a joint L.L.B. and B.C.L., with distinction. She articulated with the Ministry of Attorney General and was called in September 1999. Ms. Minwalla has practiced law as a sole practitioner since May 2001. Her practice currently provides pro bono consultations while she studies and expands into new areas.

Ms. Minwalla is currently completing a Master of Studies at the University of Oxford in International Human Rights Law. Ms. Minwalla advises that her entire professional career has been devoted to representing the interests of marginalized people and her current studies in international human rights law at Oxford support that ongoing endeavor with her thesis entitled "The Right to Truth Re-Examined."

Ms. Minwalla advises that: “Throughout my studies deficiencies in the Canadian legal system, most profoundly in the areas of economic and social rights, have been illuminated. For instance, homelessness and the right to housing which are pressing issues in B.C. could be addressed more efficiently if economic and social rights were recognized.”

Attachments

- Application from Naomi Minwalla

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Memo

To: The Benchers
From: Credentials Committee
Date: May 19, 2017
Subject: Recommendations Concerning a Reconsideration of Policy Decisions on the Publication of Credential Hearing Reports

Introduction

1. The Credentials Committee has considered the current policies relating to publication of Credentials Hearing Panel decisions in light of developments in the laws of privacy having regard to some concerns that have been raised from time to time about the effect of the current policies. It recommends changes to the policies on the publication of Credential Hearing Panel decisions, as outlined below. It recommends that the rules be amended to reflect the proposed policy changes.

A Brief History on Publication of Credentials Decisions

2. The Benchers made decisions about the publication of Credentials decisions following the work and recommendations of the Disclosure and Privacy Task Force in the early-mid 2000s. Credentials hearings and the decisions made by Hearing Panels concerning Credentials matters have been public since the late 1990s. In October, 2003, the Benchers resolved that Credentials decisions should continue to be made available to the public. In February, 2004, the Benchers resolved that Credentials hearing decisions be published anonymously when the applicant is not admitted. At the same meeting it was resolved that while decisions would be published naming the applicant where the application was successful, the successful applicant would be permitted to make an application for anonymous publication. However, such application would only be granted where the publication would result in “grievous harm” to the applicant or a third person.
3. Publication of the decisions was a relatively new phenomenon at the time. The Disclosure and Privacy Task Force, after consideration, recommended (and the benchers accepted) that some caution ought to be exercised with respect to the easy search availability through an applicant’s name. It noted:

- (a) That it saw no reason to publish the names of those applicants whose applications were rejected, because (it concluded) there was little regulatory purpose to be served as the applicant was never a member of the Law Society. The Task Force noted that this would not prevent the Law Society from disclosing, upon request, the fact that a person who had applied for admission had been rejected, and it would not prevent the Law Society from providing a copy of the decision to anyone requesting it, which would “fulfill the Law Society’s disclosure obligations without unduly harming the unsuccessful applicant.”
- (b) On the basis of its understanding of the technology as it existed at the time, and recognizing that after a period of time the information contained in the decision might be less relevant to the protection of the public interest, the Task Force recommended that credentials decisions should be posted in a “current” section of the Law Society’s website and then moved to an archive section after a period of six months. A rule to this effect was created. The removal of the record from the “current” section to the “archived” section was aimed at reducing the search capability for the decision on the rationale that after the 6 month period, the public interest did not require decisions naming successful applicant to be posted prominently on the website.
4. However, technological advances for search engines relatively soon thereafter rendered less effective the “archiving” of a record as method to make more difficult the retrieval of a record stored on a website. In January 2014, the Benchers rescinded the rule requiring the Executive Director to archive the decision after a 6 month period. This recommendation was made by the Act and Rules Committee, which commented that it was “of the view that the niceties of where information is located on the Law Society website are not appropriately dealt with in the Law Society Rules. Those considerations really go to the discretion of the Executive Director and his staff, like so many other aspects of the disclosure of information.”
5. In the result,
- Rule 2-103 permits the Executive Director to publish decisions of a hearing panel or review board given in connection with a credentials application and the reasons given for the decision.
 - Where publication occurs, Rule 2-104(1) requires that the applicant must be identified, *unless* the application is rejected resulting in an order that the applicant not be admitted, in which case Rule 2-104(2) requires that the publication must *not* identify the applicant unless the applicant consents.
 - The publication of Credentials decisions routinely is done through the Benchers’ Bulletin and news releases which are, of course, also published on the Law

Society website. These decisions are posted in a searchable database on the website.

- An applicant¹ who has been successful on an application for call and admission may seek an order from the panel that publication of the decision not identify the applicant if the applicant can convince the panel that the publication will cause grievous harm to him or her or another identifiable person that outweighs the interest of the public and the Society in full publication.
 - Where a disbarred lawyer is reinstated after a hearing, Rule 2-103(2) requires the Executive Director to publish.
6. If publication results, there is no direction given as to how long any decision that names the applicant should be kept posted to the website in a fashion that identifies the applicant.

Discussion

7. The Committee has considered whether the current publication regime strikes the right balance. A series of questions arose in its deliberations:
8. Are privacy interests of applicants, whether successful or not, properly balanced against the public interest in transparency of process and in knowing who was the subject of a decision?
9. Does it make sense to publish the name of a successful applicant, one who a hearing panel had found to be of good character, repute and fit to become a barrister and a solicitor of the Supreme Court once any conditions attached had been discharged, or, if no conditions were attached, at all?
10. Should a successful applicant for admission, having established his or her good character, be required to establish that publication naming the applicant would attract “grievous harm” in order to obtain anonymous publication of the decision?
11. Where an applicant was found *not* to meet the test for admission, would the public interest be better protected by knowing who the applicant was in the event he or she sought admission to another profession or admission to the legal profession in another jurisdiction?

¹ The application is only available where the applicant was admitted without conditions or limitations – see Rule 2-104(3)(a)

The Public Interest

12. The public interest in transparency and in knowing about Law Society decisions is fairly self-evident. Credentials hearings are open to the public, and it is therefore logical that the decisions made at a public hearing be published. The Committee makes no recommendation to change that aspect of publication. The public should know how the Law Society reaches a decision on admitting someone whose past conduct has raised questions about his or her character and repute and fitness to practise law. Posting credentials hearing reports to the website also mirrors the policy set by the Benchers that discipline decisions be posted to the website.
13. As the applicant is named during the hearing process, the Committee also noted that there is a certain logic in naming the applicant in the decision that results from the hearing. Naming applicants in a world where information is easily searchable through the internet can work hardships on the applicant, however, especially given the nature of the issues that give rise to a Credentials hearing. The Committee recognized that the policies on publication of Credentials Hearing Panel decisions that arose in the mid-2000s were an effort, based on the understanding of technology and the law at the time, to balance protection of the public interest against fairness to individuals subject to investigation and reflected the decisions of the benchers in 2004 following the report on the subject by the Disclosure and Privacy Task Force. The Committee, examining the matter again in 2016-17, has concluded that the policy needs revisiting.

The “Right to be Forgotten”

14. There is a developing discussion in privacy law called “the right to be forgotten.” It is a principle of law in Europe as a result of directives of the European Union, especially after the 2014 decision of the Court of Justice of the European Union in *Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González*.² In that case, the Court ruled that an internet search engine must consider requests from individuals to remove links to freely accessible web pages resulting from a search on their name where the results produced were incorrect, or were no longer relevant in light of the time that had elapsed. If the search engine rejects the request, the individual may ask relevant authorities to consider the case. Under certain conditions, the search engine may be ordered to remove the links from search results.
15. There is a tension between the right to be forgotten, the right to free speech and the right to access to information. The latter two rights are quite firmly entrenched in Canada, and the right to be forgotten is not formally part of the law in Canada. Google has said that the trend is “a troubling development that risks serious chilling effects on the web.”

² European Court of Justice, May 13, 2014, case number C-131/12

16. There does not appear to be any case law in Canada saying that the right to be forgotten can be used as a “sword” to remove publicly available information from the internet.³ Nevertheless, there are instances where the theory has “surfaced,”⁴ even as long ago as 1995 in a decision of the BC Privacy Commissioner.⁵ More recently, in *Niemela v. Malamas* the Supreme Court of BC denied an application to require Google to remove links to defamatory posts about a BC lawyer from worldwide search results.⁶ Commentary about this case has suggested, however, that “the court’s current approach (to applications requiring removal of information from search engines) is to consider whether the particular facts of each case warrant its intervention. In future cases, Canadian Courts will likely be required to explicitly consider whether there is a right to be forgotten in Canada.”⁷ Conversely, almost contemporaneously the Court of Appeal in another case, *Equustek Solutions Inc. v. Google*,⁸ upheld an injunction prohibiting Google from delivering search results pointing to certain parties’ websites. *Equustek* is probably not, strictly speaking, a “right to be forgotten” case, but the case does suggest that the law concerning the obligations of internet search engines concerning search results is under some development.
17. The “right to be forgotten” presents somewhat of a conundrum to the Committee. On the one hand, it is not a principle of law in Canada. Regulating in the public interest, the Law Society ought therefore to be guided by transparency and recognize the public’s interest in accessing information relevant to the Law Society’s efforts to regulate entry to the legal profession. On the other hand, the right to be forgotten reflects principles that are not inconsistent with the protection of personal information that exist in privacy legislation, and it is evident that the principle is being argued in litigation. The key issue is the relevance of the naming of the applicant in connection with the information published. Are there aspects of the principle that should be recognized in publication of Credentials Hearing Panel decisions? The Committee determined that there were.
18. The Committee therefore analyzed the issue of publication in light of the discussion points listed above. It divided its analysis under two headings: that of the successful applicant and that of the unsuccessful applicant.

³ Wagner and Li-Reilly, *The Right to be Forgotten*, The Advocate, Vol 72, pg 823 (2014)

⁴ For a discussion of the development of the theory in Canada and the USA, see *ibid*, pg 825

⁵ *Victoria Police Department, Re*, 1995 CanLii 1359

⁶ *Niemela v. Malamas* 2015 BCSC 1024. Google had voluntarily removed 146 URLs from searches conducted on google.ca

⁷ BLG Blog “Law of Privacy in Canada,” accessed July 13, 2015.

⁸ *Equustek Solutions Inc. v. Google* 2015 BCCA 265, leave to appeal to the Supreme Court of Canada granted February 18, 2016.

Analysis

(a) The Unsuccessful Applicant

19. Where an applicant is not admitted, the Disclosure and Privacy Task Force did not consider that the public interest required the applicant to be identified in the information published, and the Benchers accepted that proposition. Unfortunately, there is no analysis as to how the Task Force reached this conclusion. Presumably, the fact that the applicant would not be practising law and would not therefore pose a risk to the public seeking legal advice or services played a role in the recommendation. Moreover, the unsuccessful applicant would not become a member of the Law Society, so the Law Society's interest in the applicant terminated on the decision not to admit him or her. The Task Force noted that its recommendation would not prevent the Law Society from disclosing, on request, the fact that a person had applied for admission and had been rejected, nor would it preclude the Law Society from providing the report naming the applicant where it was requested.
20. However, the Committee notes that the decision made by a Panel on a Credentials matter goes to the character of the applicant. An unsuccessful applicant cannot establish his or her good character and repute. The Committee is not convinced that the public interest requires that such an applicant should be permitted to be disconnected from the Panel's decision through automatic anonymous publication. If that applicant were to apply for a license to practise law elsewhere in Canada, or perhaps anywhere in the world, other legal regulatory bodies may well have an interest in the decision made by this Law Society. While the Committee recognizes that the current policy permits the Law Society from disclosing the decision on request, it does not answer how other regulators may find out that such a decision exists in the first place. Were another regulator to admit the applicant and later find out that we had refused such an application but anonymized the decision so that the applicant's name could not be searched, the other regulator might well question why such relevant information was hidden.
21. Consequently, the Committee recommends a change to the current publication policy relating to unsuccessful applicants. The Committee recommends that all decisions be published naming the unsuccessful applicant. The Committee recommends that the applicant, should he or she wish, be permitted to apply to anonymize the publication of the decision provided the applicant can establish "grievous harm" arising from publication naming the applicant.

(b) The Successful Applicant

22. The Disclosure and Privacy Task Force noted that the issue of whether a successful applicant should be able to apply for anonymous publication was complicated. Where the applicant is admitted, perhaps the public should know the outcome of a public hearing in

which the applicant has been named and, because that applicant will now be practising law, prospective clients may be entitled to full information to know relevant related history about their lawyer. However, the Task Force also recognized that publication naming the applicant could cause harm to the applicant, his or her family, or to third parties. A hearing that dealt with a criminal charge on which the applicant had been acquitted could, the Task Force recognized, harm the standing of that applicant in the legal community. That outcome was addressed with a suggestion that the applicant be able to seek anonymous publication in circumstances where the applicant is admitted without conditions where naming the applicant will cause “grievous harm” to the applicant or a third party. This is an onerous test. The “archiving” of the decision after 6 months was an effort to mitigate the publication of the applicant’s name, but technology has superseded that desired result and the rule has now been removed.

23. The Committee believes that a decision admitting an applicant should be published. The public has an interest in knowing the rationale for the Law Society to admit someone whose past conduct has put into question their character and fitness to practise law. The precedential value of the decision is also relevant. The Committee therefore does not recommend that decisions not be published. However, the Committee does question the need to name the applicant when publication is made.
24. The Committee believes that it is important to recognize that a successful applicant has had to meet the burden of proof to establish his or her good character, repute, and fitness to practise law. Where the Law Society has determined, after a hearing, that the applicant should be admitted to the profession, then the applicant stands on the same legal position as an applicant who has not undergone a hearing. While the Committee recognizes that the right to be forgotten is not yet part of Canadian law, and recognizes that there are issues with respect to that principle where it intersects with regulation, the Committee wonders whether, having admitted the applicant to practise, it is relevant to connect the person whose character has been established with the events that caused the character to be questioned.
25. On the other hand, the Committee recognizes that the hearing giving rise to the decision is held in public. The applicant is named in the process. It may not, therefore, make sense to conclude a hearing by admitting the applicant and then immediately anonymizing the decision when it is published. The Committee accepts that the public has a right to know the outcome of a public hearing and to connect it to the person the hearing was about. But that does not mean that the publication should forever name the applicant. This is what the Committee understands the Task Force was trying to accomplish with the recommendation for archiving. The Committee believes it can be accomplished by anonymizing the publication after a set time⁹. However, an applicant

⁹ For example, the decision could be titled “Re Applicant 1 (John Smith), with the bracketed words being removed after a set time. This would permit the decision to be cited consistently as “Re Applicant 1.”

should be permitted to apply to anonymize immediately if grievous harm to publishing the reasons naming the applicant can be established. Such cases will be rare.

26. The Committee also recognizes, of course, that there are times when the applicant is admitted on conditions. So long as those conditions are in force, it *is* relevant to publish the name of the applicant with the conditions. The Committee recommends that publication of a decision that admits the applicant on conditions be done naming the applicant. However, once the conditions are fulfilled, the Committee is not convinced that it is any longer relevant to name the applicant, and recommends that the decision should be anonymized at that point.
27. The Committee understands that anonymizing a decision after it has been posted naming the applicant will not necessarily make it “disappear” from the internet. If another website has cached the decision naming the applicant, that site will still appear on a web search of the applicant’s name.

Conclusion and Recommendations

28. Developments in the law and changes in the ways that information is disclosed have warranted a reconsideration of policy.
29. There are valid policy rationales for recommending that decisions relating to successful applicants anonymize the name of the applicant after a period of time to recognize the interest of the applicant to be “forgotten,” given that he or she has met the admission standard. However, given the ubiquity of the internet, anonymizing the decision at a date after it has been posted will not necessarily remove the applicant’s name from pages where the information has been cached on other websites. The only way to avoid this result is to not name the successful applicant at all in the decision, and there are policy reasons not to do that, particularly where conditions have been attached to the admission.
30. Consequently, the Committee recommends a general policy of naming all applicants in the publication of hearing decisions. This permits transparency in Law Society processes and is consistent with the principle that Credentials hearings are held in public. However, the Committee recommends that:
 - hearing reports for applicants who are admitted without conditions be anonymized after a given period of time. The Committee suggests six months as an appropriate time period. Applications to anonymize the decision immediately will still be permitted, with the applicant having to meet the grievous harm test that is currently established.

- hearing reports for applicants who are admitted with conditions be anonymized after a given period of time following when the conditions have been fulfilled. Again, the Committee suggests six months as appropriate.
- hearing reports in which the applicant has been denied admission be published naming that applicant. The applicant will be entitled to apply to anonymize the decision if he or she can meet the current grievous harm test.
- The Committee also debated anonymizing a hearing report where the applicant was denied admission if, on a subsequent application, the applicant was admitted. It concluded that after ultimately meeting the good character test, the applicant's past admission should also be anonymized, although further consideration of this conclusion may be warranted.
- The Committee also concluded that, if these proposed policy changes are accepted, consideration ought to be given to past hearing decisions and whether to apply the new policies.

31. The Committee recommends that the rules be amended accordingly.



Memo

To: Benchers
From: Legal Aid Advisory Committee
Date: June 9, 2017
Subject: Proposed Legal Aid Award

Purpose of Memorandum

The Legal Aid Advisory Committee seeks Benchers approval for the creation of a Law Society legal aid award.

Background

The Legal Aid Advisory Committee, in its March 2017 report to the Benchers, identified a number of ways the Law Society might promote lawyer engagement in legal aid. One concept was to have a legal aid award that recognized the efforts of leaders amongst the legal aid Bar. The Committee considers creating such an award an easy first step in the work that lies ahead for the Law Society regarding legal aid. Appended to this memo is a proposed award and framework for its implementation (**Appendix 1**). If the award is approved at the June meeting, it is the Committee's understanding the award can be streamlined with the process that is underway for the Equity and Diversity Inclusion Award and the Family Law Award, both of which will be awarded later this year.

Recommendation

The Committee recommends that the Benchers approve the creation of a Law Society legal aid award, in the appended form.

/DM

/Appendix

Appendix 1: Law Society Legal Aid Award

Title: The Law Society Award for Leadership in Legal Aid (“The Award”).

Purpose of The Award: The purpose of The Award is to recognize lawyers who have demonstrated exceptional commitment to the provision of legal aid in British Columbia, exhibiting professionalism and a high degree of competence, in one or more of the following ways:

- 1) by consistently taking on legal aid files over a number of years; and
- 2) by performing legal aid duty counsel.

(Collectively, “The Purposes of the Award”)

Eligibility: Lawyers practising in British Columbia who are in good standing with the Law Society are eligible for The Award. Employees and members of the board of the Legal Services Society of British Columbia are not eligible for The Award.

Criteria for nomination: Lawyers who act in a manner that meets and advances The Purposes of the Award. Additional consideration may be given to lawyers who publicly demonstrate a commitment to legal aid, whether through public advocacy, writing articles or performing research designed to support a strong legal aid system, engaging in law reform to improve the state of legal aid, participating in the governance of Legal Services Society, etc.

Nomination Process: A member of the BC Law Society in good standing may nominate a practising lawyer for The Award. The nomination is by way of letter in which the nominator explains why the nominee is deserving of The Award, based on The Purposes of the Award.

Selection Process: The President of the Law Society will appoint a panel of Benchers to review nominations and recommend to the Benchers the name of an individual who should receive The Award.

Award: [description of award TBD]

Presentation: The Award will be presented on a biennial basis at the Life Bencher Dinner.

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CEO's Report to the Benchers

June 2017

Prepared for: Benchers

Prepared by: Timothy E. McGee, QC

Recruitment Update

In my report this month I would like to update you on the progress we are making on filling a number of important positions at the Law Society.

There are four senior management positions that have become vacant in the past few months. Kensi Gounden, Manager, Standards, Professional Development and Practice Advice, is moving on to the Courthouse Libraries BC as CEO. Sandra Sukstorf, Manager, Intake and Early Resolution, has been appointed as a Military Judge. Aaron Griffiths, Controller, has accepted an offer at UBC in the role of Director, Finance & Resources. Jaia Rai, Manager, Discipline & Unauthorized Practice, will be returning to private practice.

Our Human Resources team has been working diligently to find candidates to fill these significant positions and I am pleased to report that two of the four vacancies have now been filled, a third is in the final stages, and the last is in the process of identifying and interviewing candidates.

Manager, Standards, Professional Development and Practice Advice (filled)

On July 4, Sheila Redel will be replacing Kensi Gounden as the new Manager, Standards, Professional Development and Practice Advice. Sheila's extensive background includes having been Director, Professional Development and Competence at the Law Society of Manitoba, Founding Director of the Canadian Centre for Professional Legal Education (the prairie law societies' PLTC), and Director, Professional Development at the CBA National. Sheila is best known here for having taught several sessions of PLTC in Vancouver and Victoria.

In this role, Sheila will be responsible for managing the Law Society's post-call practice support and quality assurance programs, including the Practice Standards program, Practice Advice program, and strategic projects as delegated by the CEO or Director of Education and Practice. Sheila will also be the senior legal advisor who directly supervises two separate teams (Practice Standards and Practice Advice) consisting of in-house lawyers, external counsel, paralegals and short-term contract staff who align with the executive leadership team. We are excited to welcome Sheila to the Law Society of BC and look forward to benefitting from her experience.

Manager, Intake and Early Resolution (filled)

Tara McPhail will be our new Manager, Intake and Early Resolution as of July 10, filling the vacancy left when Sandra Sukstorf was appointed a Military Judge. Tara

previously worked at the Law Society of BC as a professional conduct lawyer from 2011 to 2013. In the role, she had responsibility for both serious and less serious complaint files including preparing and presenting opinions for Discipline Committee and closing other files at the staff level after appropriate remediation and resolution. During her time with us, Tara developed positive relationships both inside and outside the department. She was recognized for the high quality of her work and her ability to work with others.

Tara comes to us from the Metro Vancouver Transit Police where she had responsibility for all aspects of employee relations. Prior to joining the Law Society, Tara was an associate at McCarthy Tétrault LLP in both the Vancouver and Toronto offices.

I would like to take this opportunity to recognize Karen Mok who has done an excellent job as Acting Manager, Intake and Early Resolution. Karen has been at the Law Society for 9 years, working in what was originally Professional Conduct and what has latterly been Intake and Early Resolution. Karen will continue in that role until Tara assumes her new role.

Controller

Aaron Griffiths' last day was May 19. Our Human Resources team is in the final stages of interviewing and will be completing the selection process in the coming days.

Reporting to the Chief Financial Officer, Jeanette McPhee, the Controller is responsible for the management and oversight of the Law Society's financial operations, ensuring the adherence to general accepted accounting principles, regulatory rules and approved financial policies. The Controller has administrative oversight over the Society's budget and investment portfolio and provides financial reporting and management support to the Executive Team and Benchers.

Manager, Discipline & Unauthorized Practice

Jaia Rai's last day was May 31. We have retained a search firm and they are currently in the process of identifying candidates for this position and we have begun the interview process.

Reporting to the Chief Legal Officer, Deb Armour, the Manager, Discipline & Unauthorized Practice is responsible for the overall effectiveness and efficiency of the Discipline and Unauthorized Practice groups of the Professional Regulation Department within the requirements of the Legal Profession Act and Law Society

Rules. The Manager provides leadership and direction to the groups to ensure high quality representation at disciplinary hearings, Bench reviews, interim proceedings and proceedings in the BC Supreme Court and BC Court of Appeal.

We are looking for a candidate who brings a successful track record of litigation and administrative law experience. He or she has experience managing a department or personnel in a high volume and fast-paced environment, and experience with budget management. Knowledge of rules of evidence, the law of privilege, and application of the Charter to regulatory bodies is essential. Regulatory experience is highly desirable.

If you know of any lawyers who you think might be a good candidate for this position, please contact Deb Armour.

Cultural Competence: Truth & Reconciliation Initiatives - Lunch & Learn

On Thursday, June 1, we had our first cultural competence training session in the form of a Lunch & Learn. In her presentation, Andrea Hilland, Staff Lawyer in the Policy and Legal Services Department, provided a background and overview of the Truth & Reconciliation Commission, the principles of reconciliation, as well as the intergenerational impacts. Andrea also addressed how the Truth & Reconciliation Commission relates to lawyers and the Law Society's mandate. We are planning to hold a "Blanket Exercise", an interactive educational session, as part of our Truth and Reconciliation competency training for staff in the weeks ahead. We will report back as this and other initiatives are completed.

Timothy E. McGee, QC
Chief Executive Officer