



Minutes

Benchers

Date: Friday, April 11, 2014

Present:

Jan Lindsay, QC, President	Peter Lloyd, FCA
Ken Walker, QC, 1 st Vice-President	Jamie Maclaren
David Crossin, QC, 2 nd Vice-President (by telephone)	Sharon Matthews, QC
Haydn Acheson	Ben Meisner
Joseph Arvay, QC	Maria Morellato, QC
Pinder Cheema, QC	David Mossop, QC
David Corey (by telephone)	Lee Ongman
Jeevyn Dhaliwal	Greg Petrisor
Lynal Doerksen	Claude Richmond
Thomas Fellhauer	Phil Riddell
Craig Ferris	Elizabeth Rowbotham
Martin Finch, QC	Herman Van Ommen, QC
Miriam Kresivo, QC	Cameron Ward
Dean Lawton	Tony Wilson

Excused: Satwinder Bains
Nancy Merrill

Counsel Present: Geoffrey Gomery, QC

Staff Present: Tim McGee, QC
Jeffrey Hoskins, QC
Bill McIntosh

Guests:	Kevin Boonstra	Legal Counsel, Trinity Western University
	Anne Chopra	Ombudsperson, Law Society of British Columbia
	Cedric Hughes	Law Society Member, Hughes & Company Law Corporation
	Gavin Hume, QC	Life Bencher
	Bob Kuhn, J.D.	President, Trinity Western University
	Wayne Robertson, QC	Executive Director, Law Foundation of BC
	Kevin Sawatsky	Vice-Provost (Business) and Legal Counsel, Trinity Western University
	Alex Shorten	Vice President, Canadian Bar Association, BC Branch
	Krista Simon	Law Society Member, Hammerberg Lawyers
	Geoffrey Trotter	Law Society Member, Geoffrey Trotter Law Corporation
	Sandra Wilkinson	Law Society Member, Ministry of Justice – Legal Services Branch

CONSENT AGENDA

1. Minutes

a. Minutes

The minutes of the meeting held on February 28, 2014 were approved as circulated.

The *in camera* minutes of the meeting held on February 28, 2014 were approved as circulated.

The minute of the March 17, 2014 email approval of time limits on Benchers' speeches at the April 11 Bencher meeting was approved as circulated.

b. Resolutions

The following resolution was passed unanimously and by consent.

- Recommendation to Form the Legal Services Regulatory Framework Task Force, and Proposed Mandate

BE IT RESOLVED to create the Legal Services Regulatory Framework Task Force, and to endow that body with the mandate to develop a regulatory framework by which other existing providers of legal services, or new stand-alone groups who are neither lawyers nor notaries, could provide credentialed and regulated legal services in the public interest. Specifically, the Task Force should:

- (a) *identify areas of unmet needs for legal services or advice;*
- (b) *identify who in British Columbia and elsewhere, besides lawyers and notaries, currently provide legal services and assess the current value and skill that those providers bring to their work;*
- (c) *identify areas of legal practice suitable for the provision of legal services by non-lawyers;*
- (d) *identify the qualifications necessary for non-lawyers to be able to provide such services;*
- (e) *make recommendations to the Benchers for a regulatory framework to:*
 - (i) *credential non-lawyers to provide legal services in discrete areas of practice;*

- (ii) *set standards for the provision of such services; and*
- (f) *ensure that the framework developed is consistent with a unified regulatory regime for legal services.*

REPORTS

2. President's Report

Ms. Lindsay briefed the Benchers on various Law Society matters to which she has attended since the last meeting, including:

a. Legal Services Regulatory Framework Task Force Membership

The Bencher-members of the Legal Services Regulatory Framework Task Force are: Art Vertlieb, QC (Chair), David Crossin, QC (Vice-Chair), Satwinder Bains, Jeevyn Dhaliwal and Lee Ongman. The non-Bencher members are: Karey Brooks (Janes Freedman Kyle Law Corporation), Nancy Carter (Ministry of Justice), Dean Crawford (Canadian Bar Association, BC Branch), Carmen Marolla (BC Paralegal Association), Wayne Robertson, QC (Law Foundation of BC) and Ken Sherk (BC Society of Notaries).

b. BC Supreme Court Assessment Panels

The BC Supreme Court is seeking applicants for two new Vancouver Registry positions (Master and Registrar). Ms. Lindsay and First Vice-President Ken Walker, QC will serve on the assessment panels to review the applications.

c. Federation of Law Societies of BC Conference and Council Meeting in Regina

The Law Society is well-represented by its Federation Council representative, Gavin Hume, QC, who will report on the recent (April 2 – 5) Federation Conference and Council Meeting in Regina.

d. Replacement of Barry Zacharias as County of Prince Rupert Bencher

A Bencher by-election is underway (June 6) in the County of Prince Rupert, following Barry Zacharias's recent resignation as Bencher for that district. Mr. Mossop has replaced Mr. Zacharias as Chair of the Access to Legal Services Advisory Committee and Ms. Merrill is now Vice-Chair.

e. Legal Services Society Funding Update

A recent letter from the Honourable Suzanne Anton, QC (previously circulated to the Benchers) provided an update on Legal Services Society funding, and outlined a number of provincial government initiatives intended to enhance access to legal services.

f. Recent Honours

The following recent honours were announced:

- Past President Bruce LeRose, QC has been recognized by the City of Trail for his distinguished record of public service, most notably for serving as the Law Society's first President from Kootenay County in 2012;
- Vancouver Bencher Joseph Arvay, QC, is the recipient of the 2014 Robert S. Litvack Award, from the McGill University Centre for Human Rights and Legal Pluralism
- The Law Society's [Justicia Project](#) has been nominated for a provincial Nesika Award for the project's efforts to promote diversity and equity in the legal profession over the past year. The nomination came from a member of the public. "Nesika" (pronounced Ne-SAY-ka) is Chinook for "we, us, our" and comes from a trade language used by many different Aboriginal linguistic groups along the west coast of North America. The Nesika Awards were started in 2008 to recognize the people, organizations and businesses whose exceptional work helps bring our diverse cultures together.

3. CEO's Report

Mr. McGee advised that since the February 28 Bencher meeting, preparations for the TWU debate and decision at today's meeting have occupied much of his time and attention, and that of many Law Society staff members. Mr. McGee's usual written report to the Benchers will be included in the agenda package for the May meeting.

Preparations for the third Justice Summit (May 4-5) are well underway. Convened by the Ministry of Justice, this summit will focus on issues of access to justice and legal services in family law matters. Mr. McGee will serve as moderator, and Policy & Legal Services Manager Michael Lucas is a member of the planning committee.

4. Federation Council Member's Report on the Federation's Council Meeting and Conference: April 3-5, Regina

Gavin Hume, QC briefed the Benchers as the Law Society's Federation Council member regarding the recent Federation Conference and Council meeting in Regina.

Key topics of the April 3 Council meeting were:

- National Discipline Standards Pilot Project
 - a set of national discipline standards were approved, to be sent to the member law societies for review and approval
 - a standing committee was created to monitor those standards
- Strategic Planning
 - review of the Federation's current strategic plan was begun, including the subject of Presidential succession planning
- National Mobility
 - The Territorial Mobility Agreement was signed by the Presidents of the Federation's member law societies

The theme of the Conference was Discipline: Understanding Today's Risks and Preparing for Tomorrow's Challenges: The focus was on proactive approaches to discipline. The Law Society's Chief Legal Officer, Deborah Armour, gave a presentation on the LSBC Sanctioning Guidelines Project. CBA President Fred Headon spoke and dealt with three topics:

- discontinuance of the CBA Code of Ethics because of the success of the Model Code
- continuing cooperation between the CBA and the Federation and its members on Access issues
- request for Federation input into the CBA Future s Project as it looks at Regulation of the profession.

5. Report on the Outstanding Hearing & Review Reports

Written reports on outstanding hearing decisions and conduct review reports were received and reviewed by the Benchers.

DISCUSSION/ DECISION

6. Trinity Western University Proposed School of Law

Ms. Lindsay opened the discussion by noting that the Benchers of the Law Society of BC were being asked to determine whether Trinity Western University's proposed School of Law is an approved faculty of law for the purposes of the Law Society's admissions program. She reviewed the history of the matter and then outlined the procedure to be followed in the discussion of the motion, notice of which was circulated to the Benchers at their February 28 meeting and then provided to TWU.

Mr. Walker moved (seconded by Mr. Crossin) that the Benchers adopt the following declaration:

Pursuant to Law Society Rule 2-27(4.1), the Benchers declare that, notwithstanding the preliminary approval granted to Trinity Western University on December 16, 2013 by the Federation of Law Societies' Canadian Common Law Program Approval Committee, the proposed School of Law of Trinity Western University is not an approved faculty of law.

In the ensuing discussion a number of Benchers spoke for or against the motion.

A number of Benchers who spoke for the motion indicated that they found the provision of the covenant requiring that TWU "community members voluntarily abstain from ... sexual intimacy that violates the sacredness of marriage between a man and a woman" (the Community Covenant) to be discriminatory, and inconsistent with the Law Society's mandate set out in [s. 3\(a\) of the Legal Profession Act](#).

A number of Benchers who spoke against the motion indicated that they did so reluctantly: having concluded that the determinative Canadian law remains as stated by the Supreme Court of Canada in [Trinity Western University v. BC College of Teachers](#) (2001 SCC 31); and without approving or supporting the provision of the Community Covenant.

A number of Benchers who spoke against the motion encouraged TWU to remove the offending words of the Community Covenant, and to consult with other BC legal institutions regarding the language of the Community Covenant and its application to the faculty and students of the proposed TWU School of Law

At the conclusion of the discussion, Ms. Lindsay re-read the motion and called for a vote by show of hands.

The following Benchers voted for the motion: Mr. Arvay, Mr. Lloyd, Mr. Maclaren, Ms. Matthews, Ms. Ongman, Ms. Rowbotham and Mr. Ward (7 votes).

The following Benchers voted against the motion: Mr. Acheson, Ms. Cheema, Mr. Corey, Mr. Crossin, Ms. Dhaliwal, Mr. Doerksen, Mr. Fellhauer, Mr. Ferris, Mr. Finch, Ms. Kresivo, Mr. Lawton, Mr. Meisner, Ms. Morellato, Mr. Mossop, Mr. Petrisor, Mr. Richmond, Mr. Riddell, Mr. Van Ommen, Mr. Walker and Mr. Wilson (20 votes).

The motion was defeated (7 for and 20 against).¹

There being no further business, Ms. Lindsay declared the meeting terminated.

WKM
2014-04-23

¹ Ms. Lindsay announced the result as “6 for and 20 against” but the confirmed tally is “7 for and 20 against.”