



Minutes

Benchers

Date: Saturday, May 09, 2015

Present: Ken Walker, QC, President
David Crossin, QC, 1st Vice-President
Herman Van Ommen, QC, 2nd Vice-President
Haydn Acheson
Joseph Arvay, QC
Satwinder Bains
Edmund Caissie
Pinder Cheema, QC
David Corey
Jeevyn Dhaliwal
Lynal Doerksen
Thomas Fellhauer
Craig Ferris, QC
Martin Finch, QC
Miriam Kresivo, QC

Dean Lawton
Peter Lloyd, FCA
Sharon Matthews, QC
Nancy Merrill
Maria Morellato, QC
David Mossop, QC
Lee Ongman
Greg Petrisor
Claude Richmond
Phil Riddell
Elizabeth Rowbotham
Cameron Ward
Sarah Westwood
Tony Wilson

Excused: Jamie Maclaren

Staff Present: Tim McGee, QC
Deborah Armour
Taylore Ashlie
Renee Collins Goult
Lance Cooke

Jeffrey Hoskins, QC
Michael Lucas
Jeanette McPhee
Alan Treleaven
Adam Whitcombe

Guests: Anne Kirker, QC	President-Elect, Law Society of Alberta
Brenda Hildebrandt, QC	President, Law Society of Saskatchewan
Gavin Hume, QC	Law Society of BC Member, Council of the Federation of Law Societies of Canada
James Eamon, QC	President, Law Society of Alberta
Jon Festinger, QC	Principal, Festinger Law & Strategy & Adjunct Professor, UBC Law and TRU Law
Jonathan Herman	CEO, Federation of Law Societies
Karen Clearwater	President, Law Society of Manitoba
Kristin Dangerfield	CEO, Law Society of Manitoba
Marc L. Richard, QC	Executive Director, Law Society of New Brunswick
Robert M. Creamer, QC	Vice-President, Law Society of New Brunswick
Thomas G. Conway	President, Federation of Law Societies
Thomas Schonhoffer, QC	Executive Director, Law Society of Saskatchewan

PRESIDENT'S INTRODUCTION

Mr. Walker welcomed Benchers, staff and guests to the Law Society Retreat Bencher meeting in Sun Peaks. He noted Jamie McLaren's regrets, as well as those of Past President Jan Lindsay, QC.

CONSENT AGENDA

1. Minutes

a. Minutes

The minutes of the meeting held on April 10, 2015 were approved as circulated.

The *in camera* minutes of the meeting held on April 10, 2015 were approved as circulated

b. Resolutions

The following resolutions were passed unanimously and by consent.

BE IT RESOLVED to amend the Law Society Rules, effective on proclamation of Part 5 of the Chartered Professional Accountants Act, SBC 2015, c. 1, as follows:

1. In Rule 1, by inserting the following definition:

“qualified CPA” means a person in public accounting practice who is permitted to perform audit engagements by the Organization of Chartered Professional Accountants of British Columbia;;

2. In Rule 3-74.1 (5), by rescinding paragraph (a) and substituting the following:

(a) engage or assign a qualified CPA to complete the trust report;;

3. In Rule 3-75, by rescinding subrule (1) and substituting the following:

(1) The Executive Director may require a lawyer who is required to deliver a trust report under Rule 3-72 or a lawyer or former lawyer who is required to deliver a trust report under Rule 3-78 to deliver as part of the report required under the relevant Rule, an accountant's report completed and signed by a qualified CPA.;

4. In Rule 3-97(4), by rescinding paragraph (k) and substituting the following:

(k) professional accountant (Chartered Professional Accountant, Accredited Public Accountant, Public Accountant or Registered Public Accountant);.

BE IT RESOLVED to amend the Law Society Rules 2015, effective on proclamation of Part 5 of the Chartered Professional Accountants Act, SBC 2015, c. 1, as follows:

1. In Rule 1 [Definitions], by inserting the following definition:

“qualified CPA” means a person in public accounting practice who is permitted to perform audit engagements by the Organization of Chartered Professional Accountants of British Columbia;;

2. In Rule 3-81 (5) [Failure to file trust report], by rescinding paragraph (a) and substituting the following:

(a) engage or assign a qualified CPA to complete the trust report;;

3. In Rule 3-82 [Accountant’s report], by rescinding subrule (1) and substituting the following:

(1) The Executive Director may require a lawyer who is required to deliver a trust report under Rule 3-79 [Trust report] or a lawyer or former lawyer who is required to deliver a trust report under Rule 3-84 [Former lawyers] to deliver as part of the report required under the relevant rule, an accountant’s report completed and signed by a qualified CPA.;

4. In Rule 3-104 (4), by rescinding paragraph (k) and substituting the following:

(k) professional accountant (Chartered Professional Accountant, Accredited Public Accountant, Public Accountant or Registered Public Accountant);.

BE IT RESOLVED

1. To amend the Law Society Rules 2015, effective on proclamation of Part 5 of the Chartered Professional Accountants Act, SBC 2015, c. 1, and subject to approval of the members under section 12 of the Legal Profession Act, by rescinding Rule 1-10 (2) and substituting the following:

(2) The auditor appointed under subrule (1) must be a qualified CPA.;

2. To recommend to the 2015 Annual General Meeting the adoption of a resolution authorizing the amendment to be effected by para. 1 of this Resolution.

BE IT RESOLVED that the Benchers ratify the Credentials Committee’s recommendation to award the 2015 Law Society Scholarship to Yun Li-Reilly.

BE IT RESOLVED that the Benchers ratify the Credentials Committee’s recommendation to award the 2015 Aboriginal Scholarship to Darcy Lindberg.

BE IT RESOLVED that the CanLII 2015 levy be set at \$38.00 per lawyer.

DISCUSSION/ DECISION

2. 2015 First Quarter Financial Report

Chair of the Finance and Audit Committee, Peter Lloyd and Jeanette McPhee, Chief Financial Officer, briefed the Benchers on the Law Society's first quarter financial results. Although it is early in the year, the first quarter can be an indicator of impending challenges. At this time, the area of external counsel fees continues to be a pressure point, primarily due to the increasing complexity of professional conduct and discipline matters, and the number of hearing days. Management is in the process of reviewing all other budgeted areas to help offset this potential pressure. The second quarter report in July should provide a better indicator of the forecast for the year. In response to the question of how counsel work is allocated between internal and external counsel, Deb Armour, Chief Legal Officer, confirmed that as much work is done internally as possible; a matter is referred externally in the event of a conflict with a Bencher or a Bencher's firm, or due to the volume of file loads.

Investment results of 6.84% have outperformed the benchmark of 5.95%. It was noted that the current investment guidelines are being reviewed by the Committee, and a change to the asset mix will be recommended, and a Revised Statement of Investment Policy will come to the June Bencher meeting for Bencher consideration and approval.

Mr. Lloyd noted July 9 as the next Finance and Audit Committee meeting, and encouraged all Benchers to attend.

3. Tribunal Program Review Task Force

Mr. Walker briefed the Benchers on the draft recommendations of the Tribunal Program Review Task Force (the "Task Force"), seeking input at this stage, rather than decision.

In 2010 the Benchers decided to revise the Tribunal system to try to achieve more separation between the Benchers' overlapping responsibilities of regulation and adjudication, to help avoid any actual or perceived bias. To replace hearing panels composed solely of Benchers, a new panel model was created consisting of one Bencher, one experienced lawyer and one member of the public; the latter two members were drawn from pools created for the purpose ("Pool(s)").

At the time, the Benchers decided that there should be a review of the new approach after 3 years in operation. The Task Force was created to review the program and to provide recommendations for further improvement. The Task Force's draft recommendations suggest a need for increased separation to further delineate the Benchers' regulatory and adjudicative functions, to allow Benchers to focus their valuable time and efforts on regulation and policy,

and to ensure an adequate level of training and expertise for increasingly complex hearing requirements. The draft recommendations are based, in part, on consultations with other Canadian jurisdictions, some of which have completed separation and have no Benchers in their Tribunal system, such as Nova Scotia, and others that have a hybrid model of Benchers and lawyers, such as Ontario and Manitoba. In the latter, effectively most hearings proceed with non-Benchers, with successful results.

Draft recommendations include:

- reduction of lawyer and public Pool sizes to 15-18 people per Pool, thereby increasing hearings and thus experience levels for each person;
- combination of the Bencher and lawyer Pools, resulting in a single Pool of 30 to 36 members, from which 2 panel members would be drawn to sit alongside one member from the public Pool, thereby helping facilitate improved administration
- appointing the most experienced lawyer panel member Chair of the panel, rather than automatically appointing the Bencher who may be relatively new;
- mandatory training, which is being done currently;
- mandatory participation of a public member on panels, also currently being done;
- periodic replacement of 4-5 Pool members, to ensure both continuity and experience, and renewal
- creation of a part-time Independent Chair for the Tribunal system, to avoid conflicts created by the Executive Director's and President's overlapping regulatory and adjudicative functions.

Though not a specific recommendation, the Task Force also suggests a continued progression toward complete separation between the regulatory and adjudicative functions, proposing either the continued inclusion of all *current* Benchers in adjudicative panels for their terms as Bencher, but ceasing involvement of new Benchers.

Feedback from the Benchers included support for the continued inclusion of Benchers on panels, as it enhances collaboration and understanding between Benchers and the public, it helps ensure continued deference to decisions by the Courts, and it remains an integral Bencher function. Some expressed concern regarding Bencher function being limited to policy-making only.

Conversely, it was noted that the continued participation of Benchers as adjudicators limits staff's ability to share certain information with them, given the potential apprehension of bias

that may result. Separation of the adjudicative function could ensure the Benchers are more fully informed of issues that arise at the staff level. Additionally, it was observed that the increasing complexity of hearings is putting a greater demand on the time and resources of Benchers, with the result that it is becoming harder to constitute hearing panels with Benchers.

Marc Richard QC, Executive Director of the Law Society of New Brunswick, shared their experiences with a completely separate Tribunal system. Since 1997, Benchers have not been at all involved in the New Brunswick Tribunal system, but solely focused on policy. Any associated fears have been unfounded; rather, the system has worked well.

In response to questions, Mr. Walker noted that the Task Force opted not to suggest the payment of adjudicators; however, Brenda Hildebrandt QC, President of the Law Society of Saskatchewan, recommended paying adjudicators, which, in their experience, has helped ensure timely reporting, commitment and initiative.

Mr. Walker thanked the Benchers and guests for their thoughtful questions and commentary, noting that he will take all of the feedback to the Task Force for their further consideration.

GUEST PRESENTATIONS

4. Update on Federation

Tom Conway, President of the Federation of Law Societies, spoke on the changing regulatory landscape of law societies and the legal profession, and both the successes and challenges of the Federation.

Amongst the Federation's successes are the National Mobility Agreement, the constitutional protection of lawyer/client confidentiality, the Model Code of Conduct, the National Competency profile, and national Standards of Discipline. Mr. Conway stressed these successes flowed from inter-jurisdictional cooperation, both nationally and internationally.

Emerging challenges include issues around access to legal services; one such issue is the provision of legal services on internet-based platforms. Another is technological innovation that will revolutionize searching for legal information, saving time, effort and money, but that will also replace the labour of lawyers and students with software.

Recognizing its strength as a unified body of regulators, the Federation will be reviewing the upcoming Governance Review Committee report with a view to improving processes that have created past successes, and developing concrete solutions to the challenges that lie ahead.

REPORTS

5. Report on Outstanding Hearing & Review Decisions

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

6. President's Report

Mr. Walker briefed the Benchers on his attendance at recent events, including the funeral of Ben Meisner, at which the Law Society was well represented; the Thompson Rivers University ("TRU") Bursary established in Mr. Meisner's memory has been established, and Benchers can donate through the Law Society or directly through TRU.

Mr. Walker also attended and spoke at Judge Parrett's retirement dinner, and travelled to Glasgow, Scotland to attend the Commonwealth Law Conference on behalf of the Law Society.

Further, he advised that Karen Nordlinger, QC has been appointed as the Law Society's representative on the Federal Judicial Advisory Committee, which now fully constituted, can resume its work.

Finally, he thanked guests and Benchers for travelling to Kamloops for the annual Retreat, and for contributing to a successful program and meeting.

7. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (attached as Appendix 1).

He noted the recent release of the 2014 Law Society Report on Performance, the principal vehicle for communicating the Society's Strategic Plan, objectives and goals, key performance measures and Benchers information, and encouraged all Benchers to review it.

As was noted in Mr. Conway's presentation, the Federation Governance Review Committee has completed an intensive process culminating in several options for consideration. Emerging as a fundamental point is the autonomy of individual law societies, which will be a cornerstone of any future governance structure.

RCG
2015-05-09

CEO's Report to the Benchers

May 4, 2015

Prepared for: Benchers

Prepared by: Timothy E. McGee

First Quarter Financial Results

The financial results for the first quarter ended March 31, 2015 have now been reviewed by the Finance and Audit Committee, and are attached as a separate item in your Bencher Agenda Package. As you can see, we are tracking well to budget through the first three months of this year. Finance and Audit Committee Chair Peter Lloyd, FCA, Chief Financial Officer Jeanette McPhee and I will be available to answer any questions you might have regarding these items.

TWU Hearing – Update

At a judicial management conference on April 28, a date was set for the hearing of TWU's petition against the Law Society. The hearing before Chief Justice Hinkson will take place in BC Supreme Court commencing August 24 for five days. The Law Society has also filed an Amended Response which is available on the website.

2014 Law Society Report on Performance

The Law Society's 2014 Report on Performance is now available and has been posted on our website. This report describes the achievements under the Law Society's 2012-2014 Strategic Plan, including a review of strategic initiatives related to:

- regulation of law firms;
- regulation of all legal services providers;
- retention of women lawyers;
- mentoring Aboriginal lawyers.

For the eighth year, we also reviewed key performance measures for our core regulatory functions to evaluate the overall effectiveness of Law Society programs. These performance measures form a critical part of our regulatory transparency, informing the public, government, the media and the legal community about how we are meeting our regulatory obligations.

I encourage all Benchers to take a few minutes to review the Report on Performance. As always, we welcome any of your comments or suggestions.

Working Groups re: Notaries Discussion – Update

Both the Qualifications Working Group and the Governance Working Group have met since the last Bencher meeting. There will be an update and discussion on developments from those sessions at the meeting at Sun Peaks.

FLSC Governance Review Committee

I attended a meeting of the Federation Governance Review Committee in Toronto on April 27 and 28. At that meeting the Committee discussed in detail the feedback from the Federation Governance Conference in Ottawa held in April. The committee is now preparing an Interim Report to be discussed at the next Council meeting in Ottawa on May 31 and June 1, 2015.

Conferences and Events

The month of April was a busy one for special events:

Victoria Bar Association Spring Dinner

On April 16 I attended the Victoria Bar Association spring dinner. There was an excellent turnout, particularly among younger members of the local bar. Benchers Pinder Cheema, QC and Dean Lawton were on hand as well as Life Bencher Kathryn Berge, QC.

Ben Meisner Memorial

On April 18 I attended the memorial service for Ben Meisner in Prince George, together with Benchers Walker, Crossin, Van Ommen and Ongman. Also, special thanks to Greg Petrisor for his hospitality and chauffeur services.

UBC Alumni Association Lunch for Dean Bobinski

On April 21 The Law Society purchased a table at the UBC Law Alumni Association celebration luncheon for Dean Mary Anne Bobinski to celebrate her many accomplishments prior to her upcoming retirement. I attended as part of a 10 person contingent from the LSBC in a sold out Hotel Vancouver ballroom.

CBABC Women Lawyers Forum Awards Luncheon

On April 23 along with several others from the Law Society, I attended the CBABC Women Lawyers Forum Awards luncheon honoring the BC WLF Award of Excellence recipients as well as the recipients of the Debra Van Ginkel, QC Mentoring Award.

Timothy E. McGee
Chief Executive Officer