



Minutes

Benchers

Date: Friday, March 04, 2016

Present: David Crossin, QC, President
Herman Van Ommen, QC, 1st Vice-President
Miriam Kresivo, QC, 2nd Vice-President
Satwinder Bains
Jeff Campbell, QC
Pinder Cheema, QC
Lynal Doerksen
Thomas Fellhauer
Craig Ferris, QC
Martin Finch, QC
Brook Greenberg
Lisa Hamilton
J.S. (Woody) Hayes, FCPA, FCA
Dean P.J. Lawton
Jamie Maclaren
Sharon Matthews, QC
Steven McKoen
Nancy Merrill, QC
Maria Morellato, QC
Lee Ongman
Greg Petrisor
Claude Richmond
Phil Riddell
Elizabeth Rowbotham
Mark Rushton
Carolynn Ryan
Michelle Stanford
Sarah Westwood
Tony Wilson

Excused: Christopher McPherson

Staff Present: Tim McGee, QC
Deborah Armour
Taylore Ashlie
Lynn Burns
Renee Collins
Lance Cooke
Charlotte Ensminger
Su Forbes, QC
Andrea Hilland
Jeffrey Hoskins, QC
David Jordan
Michael Lucas
Jeanette McPhee
Doug Munro
Lesley Small
Alan Treleven
Adam Whitcombe
Vinnie Yuen

Guests:	Dom Bautista	Executive Director, Law Courts Center
	Johanne Blenkin	CEO, Courthouse Libraries BC
	Kari Boyle	Director of Strategic Initiatives, Mediate BC Society
	Ian Burroughs	Lawyers Assistance Program Guest
	Michael Welsh	Vice-President, Canadian Bar Association, BC Branch
	Dr. Catherine Dauvergne	Dean of Law, University of British Columbia
	Les Dellow	Lawyers Assistance Program Guest
	Aseem Dosanjh	President, Trial Lawyers Association of BC
	Susan Munro	Director of Publications, Continuing Legal Education Society of BC
	Gavin Hume, QC	Law Society of BC Member, Council of the Federation of Law Societies of Canada
	Arsen Krekovic	Lawyers Assistance Program Guest
	Derek LaCroix, QC	Executive Director, Lawyers Assistance Program
	Carmen Marolla	Vice President, BC Paralegal Association
	Prof. Bradford Morse	Dean of Law, Thompson Rivers University
	Caroline Nevin	Executive Director, Canadian Bar Association, BC Branch
	Wayne Robertson, QC	Executive Director, Law Foundation of BC
	Shannon Salter	Chair, Civil Resolution Tribunal
	Monique Steensma	Chief Executive Officer, Mediate BC
	Prof. Jeremy Webber	Dean of Law, University of Victoria

OATH OF OFFICE

1. Administer Oath of Office

Mr. Crossin administered oaths of office to Sharon Matthews, QC and Satwinder Bains, both of whom were absent from the January Bencher meeting.

CONSENT AGENDA

2. Minutes

a. Minutes

The minutes of the meeting held on January 29, 2016 were approved as circulated.

The *in camera* minutes of the meeting held on January 29, 2016 were approved as circulated

b. Resolutions

The following resolutions were passed unanimously and by consent.

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

1. In Rule 5-2 as follows:

(a) in subrule (2), by rescinding paragraphs (d) to (f) and substituting the following:

(d) the hearing is to consider a preliminary question under Rule 4-36 [Preliminary questions], or

(e) it is not otherwise possible, in the opinion of the President, to convene a panel in a reasonable period of time;

(b) by rescinding subrule (3) and (5) and substituting the following:

(3) A panel must

(a) be chaired by a lawyer, and

(b) include at least one Bencher or Life Bencher who is a lawyer.

(5) The chair of a panel who ceases to be a lawyer may, with the consent of the President, continue to chair the panel, and the panel may complete a hearing already scheduled or begun.

(5.1) If a member of a panel ceases to be a Bencher and does not become a Life Bencher, the panel may, with the consent of the President, complete a hearing already scheduled or begun.

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

- (2) If the chair of a hearing panel cannot, for any reason, complete a hearing that has begun, the President may appoint another member of the hearing panel who is a lawyer as chair of the hearing panel.

3. By rescinding Rule 5-4 (1) (b) and (c) and substituting the following:

- (b) a Benchers who made an order under Rule 3-10 [*Extraordinary action to protect public*], 3-11 [*Medical examination*] or 4-23 [*Interim suspension or practice conditions*] regarding a matter forming the basis of the citation;
- (c) a member of a panel that heard an application under Rule 4-26 [*Review of interim suspension or practice conditions*] to rescind or vary an interim suspension or practice condition or limitation in respect of a matter forming the basis of the citation.

4. In Rule 5-16 as follows:

(a) by rescinding subrule (2) and substituting the following:

- (2) A review board must be chaired by a lawyer.;

(b) in subrule (4), by striking the words “a Benchers may” and substituting the words “a lawyer may”.

5. In Rule 5-18, by rescinding subrule (2) and substituting the following:

- (2) If the chair of a review board cannot, for any reason, complete a review that has begun, the President may appoint another member of the review board who is a lawyer as chair of the review board.

BE IT RESOLVED that the Law Society Strategic Plan 2015 – 2017 be amended to add Strategy 2-3: Respond to the Calls to Action in the Report of the Truth and Reconciliation Committee, 2015.

EXECUTIVE REPORTS

3. President’s Report

Mr. Crossin briefed the Benchers on matters considered by the Executive Committee at its last meeting. Members were given an update on the progress of the Truth and Reconciliation Commission (TRC) steering committee. Mr. McGee provided an update on the restoration efforts being made following the recent flooding of floors 9-6 of the Law Society building, as well as a briefing on the upcoming Federation Council meeting.

The Executive Committee also discussed the policy around distribution of Executive committee materials, referring to the Governance committee the question of whether committee materials generally should have any distribution beyond the committee members themselves. The prospect of a young lawyers' working group was also discussed, as was the Governance report regarding committee evaluations, about which Ms. Kresivo will report to the Benchers later this meeting.

4. CEO's Report

Mr. McGee provided highlights of his monthly written report. He briefed the Benchers on the recent flood of several floors of the Law Society, caused by the failure of the water connection to a coffee machine on the 10th floor; the resultant water leak caused extensive damage to floors 9-6. Operations have continued with the relocation of staff and the reorganization of meetings in the building and offsite. He anticipated restoration may not be complete until May, thanked staff for their efforts, and thanked the Benchers for their patience with alterations to their schedules and meeting spaces.

Mr. McGee commented on the year-end financial information, noting that the efforts of staff to mitigate cost increases associated with external counsel helped reduce the budget shortfall. He also briefed the Benchers on the addition of discipline history, practice restrictions and current regulatory proceedings to the information available on Lawyer Look-up, to comply with National Discipline standard 19. In answer to questions, he clarified that the digital information available since 2003 is available in perpetuity.

Mr. McGee also provided a report on Communications activities at the Law Society, noting a shift towards more proactive outreach with the public, with lawyers and with the media to promote a broader understanding of justice and the rule of law.

He noted his attendance with Mr. Crossin and Mr. Van Ommen at the annual Tecker Symposium, the focus of which is the governance relationship between chief staff, chief elected officers and their boards and committees.

On the issue of non-lawyer legal service providers, he referenced the recent American Bar Association resolution to guide states in the regulation of non-lawyer service providers. That the world's single largest lawyers' advocacy group is encouraging such measures to increase access to justice underscores the significance of the Law Society's own strategic initiatives.

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

Gavin Hume, QC briefed the Benchers as the Law Society's member of the Federation Council, highlighting the business to be discussed at the upcoming Council meeting in Banff.

Amongst the items to be discussed are the TRC's recommendations, with specific regard to the Federation's national role in the context of initiatives of the individual law societies. The proposed Governance Report will be reviewed for approval, as will the Finance and Audit Committee's recommendations on the budget and fees. Also to be reviewed are recommended changes to the Model Code.

Additional topics for discussion will include the proposed scope of review of processes of the National Committee on Accreditation, improvement of the National Mobility database, and strengthening the process for communication between the Federation Council and the CanLII Board.

GUEST PRESENTATIONS

6. Civil Resolution Tribunal Update

Shannon Salter, Chair of the Civil Resolution Tribunal (CRT) briefed the Benchers on the background surrounding the development of the CRT, as well as progress made to date.

The CRT, which will be the first online tribunal in Canada integrated into the justice system, will have jurisdiction over claims under \$25,000 and will handle consumer disputes, debt and contract, personal injury claims, orders on agreements and strata disputes. It will not handle claims for defamation or matters regarding an underlying interest in land.

Focus for development is on creating a system designed by the ultimate user to be as accessible as possible. Developers have consulted widely to elicit information on the public's current wants and needs. What has emerged clearly is that the vast majority of people use the internet daily for everything from texting to banking, want a justice system that is as accessible, and want to be empowered to actively participate in the resolution of their claims.

With this in mind, the CRT is being developed to bring dispute resolution services to the public through computers and mobile devices in as quick and efficient a way as possible. The process will be "frontloaded" with ADR services and legal information and users will be given choice regarding resolution method. Costs will be staged and similar to small claims, with fee exemptions for financial hardship. Timelines and deadlines will be tailored to the nature of the case, communication will be in plain language and forms will be user-friendly and easy to fill.

Ms. Salter then described the four stages of the CRT process, which include initial questionnaire and guided pathway stages, a facilitator stage and an ultimate adjudicator stage if required. Focus at each stage is on early and facilitated resolution and the presumption will be that all will be self-represented. Every stage will be tested before implementation; it is hoped the CRT will open later this year.

7. Lawyers' Assistance Program (LAP)

Derek Lacroix, QC, Executive Director of LAP, introduced two members, Arsen Krekovic and Ian Burroughs, who attended to share their stories of challenge and then success with the caring support of LAP. Mr. Lacroix himself then briefed the Benchers on the importance of openly addressing the issue of addiction and removing the stigma attached to it and other mental health issues. He related disturbing statistics illustrating the prevalence of alcohol and substance abuse in the legal profession, and the culture that perpetuates the disease. He cited education as one of the most important factors in reversing this trend, and encouraged Benchers as influential community members to consider their own views on mental health and addiction.

The Benchers expressed their heartfelt thanks to Mr. Krekovic and Mr. Burroughs for their courage in sharing their stories, and their gratitude to Mr. Lacroix and LAP for its valuable service to the profession.

DISCUSSION/DECISION

8. Lawyer Education Advisory Committee Final Report

Mr. Wilson, Chair of the Lawyer Education Advisory Committee, presented the Committee's Admission Program Review Report in its final form to the Benchers for approval of the 22 recommendations contained therein. He recalled his presentation to Benchers at the December 2015 meeting, noting that the report had been presented at that time for Benchers' consideration and review rather than their decision.

He reiterated that the Committee's surveys of PLTC students, newly called lawyers and law firms showed strong support for the existing PLTC program. He also noted that, despite the support, the Committee undertook a critical review of the program, comparing it to other programs both nationally and internationally.

In the midst of this review, the Law Society received the National Admissions Standards Assessment Proposal from the Federation of Law Societies. The Committee and the Law Society have taken the position that the proposal in its current form is not in the public interest. Support for the proposal is divided nationally. Mr. Wilson stressed that the Committee's report does not preclude the possibility of a national assessment program. It recommends endorsement of the current PLTC model, with the ability to consider variations to the national proposals moving forward.

Finally, Mr. Wilson noted the Committee's review of online alternatives, and the Committee's conclusion that there are no current technologies that are effective to deliver the caliber of legal

education currently provided through the in-person PLTC program. However, he did not preclude the possibility of future developments that might be suitable.

Some concern was expressed regarding recommendation 17 to reduce the requisite years of experience required for principals. This topic is currently being considered by the Credentials Committee. Concern was also expressed about voting on the recommendations collectively, rather individually with discussion of each. The Benchers agreed that the recommendations would be voted on collectively.

Mr. Wilson moved (seconded by Mr. Finch) that the Benchers adopt the report and its recommendations. Motion passed, with 27 in favour, 2 opposed.

9. Governance Committee Report on 2015 Bencher and Committee Evaluations

Ms. Kresivo provided the report to the Benchers as the Chair of the 2015 Governance Committee which was responsible for compiling the evaluation results. She thanked the members of the committee as well as current Chair Mr. Van Ommen.

Ms. Kresivo reviewed the survey questions with the Benchers, including positive results as well as areas for improvement. The Governance Committee's recommendations flowing from the survey results will be reviewed with the Executive Committee to address specific Bencher concerns.

10. Review of the Law Society's 2015 Audited Financial Statements and Financial Reports

Finance and Audit Committee Chair Miriam Kresivo, QC introduced the report, and provided her thanks to the Committee members, and particularly to CFO Jeanette McPhee and her staff for their hard work on this report and throughout the year.

Ms. McPhee reviewed her report with the Benchers, noting that the results were more positive than originally forecast. As a result of staff efforts to reduce expenses wherever possible, and because of a greater than forecast increase in revenue, we achieved a positive variance of \$640,000.

In her review of the 2015 General Fund, she noted that the numbers of both fee paying members and PLTC students has increased from the previous year, and electronic filing revenues have increased due to the real estate market conditions. Operating expenses were approximately .5% under the projected amount due to the savings found in a number of areas including forensic accounting fees, building occupancy, property taxes and PLTC rental costs.

Additionally, there were three items funded from reserves, but the amount coincidentally corresponded to the savings achieved, with the result that we ended on budget.

Reviewing the area of Trust Assurance, Ms. McPhee noted a significant increase in revenue, largely due to real estate market conditions. Operating costs were slightly below budget.

She reported little activity on the Special Compensation Fund. We are currently assessing viability of certain recoveries; once that is completed, we will transfer the remaining \$1.3 million to the Lawyers Insurance Fund (LIF).

Regarding LIF, she reported being 1.4% over budget in revenue and 9% below budget in expenses. Though we experienced a lower rate of return on our long term portfolio than in 2014, the sale of the building at 750 Cambie put our investment revenue higher overall than the previous year. However, we are still slightly ahead of the benchmark for long term portfolio return. We are also maintaining an adequate level of reserves for the insurance program.

For the year ahead, both membership numbers and PLTC appear to be on budget, we continue to manage costs associated with external counsel fees and the remaining expenses appear to be on track.

Ms. Kresivo moved (seconded by Mr. Ferris) that the Benchers approve the Law Society's 2015 combined financial statements for the general and special compensation fund and the 2015 consolidated financial statements for the Lawyers Insurance Fund.

Motion was passed unanimously.

11. Rule Allowing Executive Director to Set Hearing Dates

As the President's designate for Tribunal matters, Mr. Van Ommen recommended that the Benchers approve in principle changes to the Rules to shift the authority to set hearing dates unilaterally in the case of disagreement from the Executive Director to the President, thereby further separating the prosecutorial and adjudicative roles. Other proposed changes would simplify the procedure for interlocutory applications by allowing a party to apply directly to the President. Mr. Van Ommen noted that the proposed changes to the Tribunal processes were consistent with the larger changes approved by the Benchers last year, but not captured by the package voted on. If approved, the proposed changes will be referred to Act and Rules for drafting.

Benchers agreed by consensus that the recommended changes be referred to Act and Rules.

REPORTS

12. Lawyers Insurance Fund: Program Report for 2015

Due to timing issues, Mr. Crossin confirmed this item would be carried over to the next Bencher meeting.

13. Access to Justice BC: Update

Mr. McLaren provided a brief report on the Access to Justice BC committee chaired by Chief Justice Bauman, noting that the committee had been formed in response to Mr. Justice Cromwell's National Action Committee on access to justice in civil and family matters. Access to Justice BC is a large, diverse and inclusive committee that encourages open dialogue to help achieve its goal of reviewing the justice system from a user perspective. It employs a triple aim approach to make changes to the system that balance improved justice outcomes and user experiences while minimizing per capita costs. Mr. McLaren noted that the committee relies on the considerable volunteer efforts of all of its members, but to continue its important work will likely require additional funding.

Mr. Crossin thanked Mr. McLaren, and underscored the importance of this committee as a facilitator of ideas and thoughts on the justice system in this province.

14. 2015-2017 Strategic Plan Implementation Update

Ms. Morellato briefed the Benchers on the formation of a committee to assist the Law Society on its path toward fulfillment of the TRC's recommendations. Several respected aboriginal leaders and lawyers have enthusiastically agreed to engage with the Law Society, including Grand Chief Ed John, Judge Steven Point, Judge Marian Buller and Judge Len Marchand. All have stressed the importance of developing relationships which begins with listening and learning.

Mr. Van Ommen noted that listening to and learning from this esteemed group of aboriginal leaders will be the focus of this year's Retreat, which will differ in tone and substance from past Retreats.

Mr. Crossin thanked both Ms. Morellato and Mr. Van Ommen, and Andrea Hilland for her collaborative work to facilitate this group and its discussions.

14. National Discipline Standards

Chief Legal Officer Deb Armour reported on the Law Society's compliance with National Discipline Standards, the country-wide standards set for discipline processes from the beginning of a complaint to the end of a hearing. This Federation initiative, which organizes the standards

into categories of important regulatory principles such as timeliness, openness and public participation, has led to improvements at every law society across the country.

In the last year, the Law Society of BC has met 15 out of the 21 standards set as compared with 17 out of 21 last year. Areas of challenge remain, particularly in the category of timeliness of hearing panel decisions. Ms. Armour noted the significant increase recently in the number of hearings and reviews and acknowledged the challenges associated with reaching consensus amongst 7 review board members. She will be providing that feedback to the National Discipline Standards Committee.

15. Report on the Outstanding Hearing & Review Decisions

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

RTC
2016-03-04