



Minutes

Benchers

Date: Friday, May 06, 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
Martin Finch, QC
Brook Greenberg
Lisa Hamilton
J.S. (Woody) Hayes, FCPA, FCA
Dean P.J. Lawton
Jamie Maclaren
Sharon Matthews, QC

Steven McKoen
Christopher McPherson
Nancy Merrill, QC
Maria Morellato, QC
Lee Ongman
Greg Petrisor
Claude Richmond
Phil Riddell
Elizabeth Rowbotham
Mark Rushton
Carolynn Ryan
Dan Smith
Michelle Stanford
Sarah Westwood
Tony Wilson

Excused: Thomas Fellhauer
Craig Ferris, QC

Staff Present: Tim McGee, QC
Deborah Armour
Taylore Ashlie
Renee Collins
Lance Cooke
Charlotte Ensminger
Su Forbes, QC
Andrea Hilland

Jeffrey Hoskins, QC
Michael Lucas
Jeanette McPhee
Doug Munro
Alan Treleaven
Adam Whitcombe
Vinnie Yuen

Guests:	Dom Bautista	Executive Director, Law Courts Center
	Mark Benton, QC	Executive Director, Legal Services Society
	Johanne Blenkin	CEO, Courthouse Libraries BC
	Kari Boyle	Coordinator, BC Family Justice Innovation Lab
	Anne Chopra	Equity Ombudsperson, Law Society of BC
	Janine Benedet	Associate Dean of Law, University of British Columbia
	Gavin Hume, QC	Law Society of BC Member, Council of the Federation of Law Societies of Canada
	Anushka Kurian	Magna Carta Essay Contest Runner-Up
	Helen Luo	Magna Carta Essay Contest Winner
	Susan Munro	Director of Publications, Continuing Legal Education Society of BC
	Caroline Nevin	Executive Director, Canadian Bar Association, BC Branch
	Lana Piovesan	Lunch & Learn Chair, BC Paralegal Association
	Wayne Robertson, QC	Executive Director, Law Foundation of BC
	Monique Steensma	CEO, Mediate BC
	Tanya Vasto	Membership Chair, BC Paralegal Association
	Bill Veenstra	Secretary Treasurer, Canadian Bar Association, BC Branch
	Ardith Walkem	Nlaka'pamux Lawyer
	Michael Welsh	Vice-President, Canadian Bar Association, BC Branch

CONSENT AGENDA

1. Minutes

a. Minutes

The minutes of the meeting held on April 8, 2016 were approved as circulated.

The *in camera* minutes of the meeting held on April 8, 2016 were approved as circulated

b. Resolutions

The following resolution was passed unanimously and by consent.

BE IT RESOLVED that the Benchers re-appoint Ms. Anna Fung, QC as the Law Society's member of the Vancouver Airport Authority for a second three year term, effective May 31, 2016.

BE IT RESOLVED to amend the Commentaries to Appendix A, Rule 1 of the Code of Professional Conduct for British Columbia by:

1. Inserting "Rule 22-2(6)" in place of "Rule 51(5)" in Commentary [11];
2. Inserting "Rule 22-2(7)" in place of "Rule 51(6)" in Commentary [11];
3. Inserting "Rule 22-2(15)" in place of "Rule 51(12)" in Commentary [16]; and
4. Inserting "Rule 22-2(4)(b)(ii)" in place of "Rule 51(3)(b)(ii)" in Commentary [20], as recommended by the Ethics Committee.

2. SWEARING IN OF DAN SMITH

Mr. Crossin administered the oath of office to incoming appointed Bencher Dan Smith.

3. MAGNA CARTA ESSAY AWARD

Mr. Crossin remarked briefly on the historical importance of the Magna Carta to the rule of law as we know it, and provided background for the creation of Magna Carta essay contest by the Rule of Law and Lawyer Independence Advisory Committee. First Place, an award of \$1000, was presented to Ms. Helen Luo for her essay entitled "The Journey of the Magna Carta"; the \$500 Runner-up award was presented to Ms. Anushka Kurian for her essay entitled "The Ripple Effect of the Magna Carta".

Mr. Crossin commended the excellent work of each student, and encouraged all to read the winning essays which will be posted to the website.

GUEST PRESENTATIONS

4. Overview of the Truth and Reconciliation Commission

Mr. Crossin introduced Ardith Walkem, an accomplished Nlaka'pamux lawyer and mediator, to provide her important perspective on the work and recommendations of the Truth and Reconciliation Commission (TRC) in advance of the upcoming Law Society Retreat.

Ms. Walkem expressed how honoured she was at being invited to speak, and raised her hands to the Benchers. To begin, she related her family history, which included being raised in Spence's Bridge in a nation whose territory crosses the Canada/US border. Both her parents were sent to residential school and all 6 of her siblings either attended residential school or were part of the child welfare system.

She provided a background for the work of the TRC, noting that the TRC itself arose out of the largest class action in Canadian legal history, the settlement of which included a recognition of the damage inflicted by the Indian Residential Schools system (IRS). In the spirit of healing, and in recognition of the impacts of the IRS on future generations, on communities and the nation as a whole, the IRS survivors dedicated part of their settlement funds to establish the TRC. Thus, the very creation of the commission was an invitation to forge a new relationship, to emerge from one of pain and lack of understanding and move to one of knowledge, respect and collaboration. Ms. Walkem characterized it as an invitation to ask how such a thing as the IRS could have happened, and indeed, why the inequitable relationships between the Indigenous and the non-Indigenous persist today.

The TRC set out on a path toward accountability, with the recognition that to know the truth, one must begin by telling it. According to Ms. Walkem, the TRC's focus on the legal profession was intentional. Mr. Justice Sinclair (as he then was) commented that Canada waged war through the rule of law, using legislation to prohibit the practice of culture. The systemic child abuse of the IRS, which continues to impact across generations with higher suicide rates and violence towards women and children, was sanctioned by both the government and the law. Accordingly, the law must now make reparations.

Ms. Walkem then summarized the areas contained in the TRC report, opening with child welfare recommendations, and commenting on the disproportionate representation of Indigenous people in the child welfare and criminal justice systems and the prevalence of violence against Indigenous women. Ms. Walkem noted that one of the strongest calls to action in the TRC report is incorporation of Indigenous laws into Canada's legal system; Canada has not yet made space

for the fully developed legal systems of Indigenous peoples that govern how both individuals and neighboring nations relate to one another.

Finally, she queried how the legal profession can interpret the phrase “cultural competency” in the context of the IRS, and suggested the Australian approach:

- Be aware of its history, how it continues and is tied to today, to show empathy
- Search within ourselves and the law to ask how we are active participants, and what beliefs we hold that allow stereotypes and biases to continue; in other words, be self-aware as lawyers and as a profession
- Make a commitment to act individually, as well as on a broader level

The TRC pointed to the UN Declaration on the Rights of Indigenous Peoples as a guide to restructuring our relationship. Ms. Walkem summed up the path forward with the simple, profound phrase: “Nothing about us, without us”.

Mr. Crossin expressed his sincere gratitude to Ms. Walkem for her stunning commentary, confirming that the Law Society views these issues as one of most fundamental challenges of its lifetime. He reiterated the Law Society’s commitment and dedication to meeting these challenges with the collaboration of its members and Indigenous leaders across the province.

Dan Smith, Appointed Bencher, member of the Campbell River Indian Band and a citizen of the Laich Kwil Tach Nation rose on behalf of the Benchers also to express thanks to Ms. Walkem for the information she provided and to her family, for their own efforts towards recognition of Indigenous laws in our Constitution during its patriation.

EXECUTIVE REPORTS

5. President’s Report

Mr. Crossin briefed the Benchers on various Law Society matters to which he has attended since the last meeting, including the most recent Executive Committee meeting, at which the Committee received a presentation on enhancing the role and the profile of the paralegals. Its decision was that deliberation on the role of the paralegal should form part of the greater discussion of non-lawyer service providers generally. Accordingly, work on this issue will be deferred until that broader work can begin. The Committee also reviewed the issue of production of hearing records, hearing from both Jeff Hoskins, QC, Tribunal and Legislative Counsel, and Michelle Robertson, Hearing Administrator regarding pragmatic concerns, and made recommendations to the Benchers which will be reviewed later in this meeting. Policy and Legal

Services lawyer, Andrea Hilland, also updated the Committee on the progress of the Retreat Agenda and speakers, which the Benchers will also hear later in the meeting.

Additionally, Mr. Crossin attended the Victoria Bar Association dinner at Government House with First Vice-President Herman Van Ommen, QC, Second Vice-President Miriam Kresivo, QC, CEO Tim McGee, QC and Vancouver Island Benchers Pinder Cheema, QC, Dean Lawton and Nancy Merrill, QC. He noted the suggestion that a Fall Bencher meeting be held in Victoria; staff will look into the cost and logistics to determine the feasibility.

He also met with Dean Dauvergne of Allard Law at UBC to discuss their Indigenous Studies program, emphasizing to the Benchers the important work being done at UBC, UVic and Thompson Rivers to develop and expand curricula in this area.

Together with Mr. McGee and Bencher Jeff Campbell, QC, Mr. Crossin attended the Access Pro Bono breakfast event, an awards event for lawyers who serve in the pro bono regime. It is his intention to try to foster greater collaboration between Access Pro Bono and the Access to Justice BC Committee, organizations working toward similar ends. On a related note, he also attended the recent, productive retreat of the Legal Aid Task Force; Benchers will continue to be apprised by Chair Nancy Merrill, QC of ongoing developments.

Finally, he encouraged Benchers to attend the 50th Year Certificate Lunch on June 23rd, to recognize the significant achievements of the members being celebrated.

6. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers.

He encouraged Benchers to review the recently released Annual Report on Performance. The Report, which can be found on our website, sets out highlights of the Law Society's activities as regulator, its strategic plan focus and key performance measures which reflect key regulatory functions. In presenting our regulatory operations in this way to the public, we are unique among regulators in Canada.

Mr. McGee also briefed Benchers on the progress of building restoration and repairs, and thanked Bernice Chong, Jeanette McPhee and the Operations group for their ongoing efforts. The goal is to have the Benchers Room on 9th floor ready and fully operational for the July meeting. Ninth floor work will also include renovations to the Benchers lounge to add a hearing room door as a security feature.

Under the leadership of Communications Director Taylore Ashlie, work on the development of a new website is underway and going well. He encouraged Benchers to respond to the survey sent

earlier, so that their feedback and suggestions may be included in the design phase. Completion of the project is targeted for the end of the year.

Mr. McGee thanked key staff on the Core Values Working Group who will be presenting to Benchers later in the meeting. The project, led by staff and supported by a high rate of volunteerism, reflects the sense of community and commitment aspired to by Law Society staff.

He noted his recent attendance, with President Crossin, at the Access Pro Bono breakfast, expressing his gratitude to that organization and the lawyers engaged in that important work. He also acknowledged the success of Access Pro Bono, due in large part to the stewardship of Jamie McLaren who is deserving of recognition for his work. The market value of services provided by Access Pro Bono in 2015 was approximately \$5 million. Over 15000 low income individuals received legal assistance, and approximately 7000 more received legal advice and information. Mr. McGee queried how the Law Society could further support the important work of this organization. One suggestion provided by a Benchers was to increase awareness amongst retiring members that they are able to provide pro bono assistance within the scope of their retired status.

On a related note, Mr. McGee also advised the Benchers of his recent appointment to the Planning Committee of Access to Justice BC, expressing his appreciation for the appointment and for the important work being done by that committee as well.

Finally, he took the opportunity to discuss with Benchers the benefits of reflecting back on key policy decisions from the past, to evaluate how they were received and how they have affected the organization. As an example, he cited the 2006 policy decision that we should be more transparent in disclosing the ongoing work of the Law Society, in support of our public interest mandate. Though such a policy is the standard now, at the time it represented a somewhat revolutionary shift for a law regulator. Reflecting back, we should be proud and encouraged by innovative policy decisions such as that one which have stood us in good stead over time.

7. Briefing by the Law Society's Member of the Federation of Law Societies Council (FLSC)

Gavin Hume, QC briefed the Benchers as the Law Society's member of the Federation Council. He provided details of the March 9-11 Federation meetings in Banff, describing the meetings as reflective of the important growth and evolution of the Federation as an organization. As part of the new governance structure, there was a half day meeting of the Presidents and Vice-Presidents to elicit their views and guidance in a structured way. Also included was the new CEO forum, created to enhance the role of the CEOs and enable them to provide their collective guidance to Council.

In place of the traditional Conference session, one and a half days were spent by Council on the business of the Federation, including a significant amount of time on the calls to action of the Truth and Reconciliation Commission. The latter culminated in a resolution committing the Federation to including response to the TRC calls to action as a strategic priority, in a manner that engages Indigenous peoples. A new working group will help guide that work.

The new Audit and Finance Committee delivered its report, including a detailed budget review and projection, which was followed by Council's approval of the proposed budget.

Richard Scott, Council member and former Batonnier of the Law Society of New Brunswick, was appointed as a liaison between CanLII and Federation Council.

Amendments to the Model Code, including communicating with witnesses and the duty to report to an insurer, were approved by Council.

Council passed a resolution approving a detailed plan to review the substantive work of the National Committee on Accreditation, which included striking a committee to review the standards for assessing for incoming lawyers to Canada.

The National Mobility Database is in need of enhancement, and the work is now underway.

Strategic planning process will be a focus of the June 14 Council meeting, and law societies' input will be sought in advance.

DISCUSSION/DECISION

8. Rule 5-24.1 (proposed) Record for Review of Hearing Decision

Mr. Van Ommen reviewed for the Benchers the discussion from last meeting concerning proposed rule changes, in which Benchers agreed with the basic premise that the party initiating a review would be responsible for preparing the record, but expressed concern with the requirements of affidavit on an application to be relieved of that responsibility due to financial hardship. The matter was referred to the Executive Committee which has recommended the removal of that provision, making the application consistent with other applications under the Rules.

The Executive Committee is recommending the Rule change be made now, to alleviate the current administrative burden, but following suggestions from the Benchers last meeting, is also recommending consideration of electronic records.

Mr. Van Ommen noted an error in the proposed resolution found at page 123 of the Agenda materials, confirming that section of the resolution should read “*By rescinding Rule 5-25 (9) (c) and (d) and substituting the following*”.

Ms. Rowbotham expressed her appreciation to the Executive Committee for reviewing the matter, and her acknowledgement of Ms. Robertson’s hard work and the administrative challenges associated with hearing records, but noted her disappointment with the proposed resolution as inadequate to address concerns expressed last meeting.

The proposed resolution (moved by Mr. Van Ommen, seconded by Ms. Merrill and attached as Appendix A) was passed by a vote of 25 for and 1 opposed.

REPORTS

9. Core Values Presentation

Bernice Chong, Manager of Operations and Chair of the Core Values Working Group, thanked the Executive Committee for inviting the Working Group to speak to Benchers, and provided background on the Working Group’s formation and mandate. Originally focused on a code of conduct, the Working Group settled on the creation of a values statement instead, with the recognition that core values shape and provide constants for an organization. The resulting core values statement informs how we interact with each other and with our stakeholders; it aids in recruitment and shapes our work product as we pursue our public protection mandate.

To create the statement, the Working Group reviewed the Law Society mandate, consistent behaviours, witnessed behaviours, culture during recruitment and managerial practices; in determining a representative values statement, it also considered what was sustainable over time. After a challenging process which included good discussion and debate, the Core Values Working Group settled on two values embodied by Law Society staff: integrity and excellence.

Ms. Robertson characterized the two values as “umbrellas” which cover related values. Integrity includes the concepts of respect and fairness, which in turn include accountability, transparency, diversity and reliability. Blanka Natale, Operations Supervisor, and Ms. Lesley Small, Manager of Credentials and Member Services, noted that the value of excellence also includes the ideals of innovation, quality, performance, teamwork and recognition. Examples of how various projects, functions and departments embody integrity and excellence were provided.

Mr. Crossin expressed his thanks to the Working Group, and to the staff presenting to Benchers, recognizing that Law Society staff are not just employees but men and women of principle who care about the work they and the Benchers do in pursuit of our mandate.

10. Investment Review

As Chair of the Finance and Audit Committee, Ms. Kresivo began by acknowledging and thanking the members of that Committee as well as staff for their stewardship of the Law Society's finances. She then provided the Benchers with an overview of the Law Society's long term investment management; though the Committee is tasked with its ongoing review, it is important for Benchers to remain aware and informed.

Ms. Kresivo talked generally about basic investment principles, including our Statement of Investment Policies and Procedures, and touched on the questions of how and why we invest in specific investments. She referred the Benchers to the Report in the materials for more background as well as benchmarks for performance. She also reviewed with Benchers how our investment managers are chosen and periodically reviewed, noting that last year Benchers were asked to approve a change in investment managers.

Ms. Kresivo also briefed the Benchers on the Law Society's long term investment strategy, noting that our philosophy, based on the work we do and the requirements of our insurance program, is to achieve a long term rate of return with an acceptable degree of risk. Though values will fluctuate year over year, the target rate is 5.5%. She then reviewed the types of choices made in the context of our long term strategy, which included choices of active or passive funds, balanced or specialty funds and managerial style.

Finally, Ms. Kresivo provided an overview of investment performance, noting that a longer term view is essential. With the exception of one year, we have exceeded the benchmark of 5.5%. While there are no causes for concern, she emphasized the importance of Benchers remaining interested and informed, encouraging all to come to the Finance and Audit Committee meetings which are open to all.

11. 2015-2017 Strategic Plan Implementation Update

Mr. Crossin reviewed with Benchers the proposed plan for the upcoming Bencher Retreat conference agenda. Speaking on the Friday will be Grand Chief Ed John, Judge Len Marchand, Judge Marian Buller, Appointed Bencher Dan Smith, Michael McDonald, of the Indigenous Bar Association, Katrina Harry, lead counsel of the Legal Services Society's Parents' Legal Centre, and Bev Sellars, author and IRS survivor. Mr. Crossin noted that on May 11 the Steering Committee will have their last meeting before Retreat.

Mr. Van Ommen, as Retreat Chair, noted that the earlier comments of Ms. Walkem provided a good preview of what Benchers will hear at the Retreat, reminding all that it will be an opportunity to listen and to learn. Mr. Crossin echoed these sentiments, adding that

Ms. Walkem's entreaty of "nothing about us without us" should be a guiding principle in this process.

12. Report on the Outstanding Hearing & Review Decisions

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

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