



Minutes

Benchers

Date: Saturday, June 04, 2016

Present: David Crossin, QC, President
Herman Van Ommen, QC, 1st Vice-President
Miriam Kresivo, QC, 2nd Vice-President
Jeff Campbell, 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
Christopher McPherson
Nancy Merrill, QC
Maria Morellato, QC
Lee Ongman
Greg Petrisor
Phil Riddell
Elizabeth Rowbotham
Mark Rushton
Carolynn Ryan
Daniel P. Smith
Michelle Stanford
Sarah Westwood
Tony Wilson

Excused: Satwinder Bains
Pinder Cheema, QC

Claude Richmond

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

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

Guests:	The Honourable Chief Justice Christopher Hinkson	Supreme Court of BC
	Anne Kirker, QC	President, Law Society of Alberta
	Ardith Walkem	Nlaka'pamux Lawyer, Retreat Co-Chair
	Cori Ghitter	Director, Professionalism & Policy, Law Society of Alberta
	Gavin Hume, QC	Council Member representing the Law Society of BC, Federation of Law Societies of Canada
	Gillian Marriott, QC	President-Elect, Law Society of Alberta
	Jan Lindsay, QC	Past President 2014
	Jeff Hirsch	President, Federation of Law Societies
	Jonathan Herman	CEO, Federation of Law Societies
	Karen Wilford	Treasurer, Law Society of the Northwest Territories
	Ken Walker, QC	Past President 2015
	Kristin Dangerfield	CEO, Law Society of Manitoba
	Luc Marcoux	Treasurer, Law Society of New Brunswick
	Marc L. Richard, QC	Executive Director, Law Society of New Brunswick
	Michael McDonald	Treasurer, Indigenous Bar Association
	Perry Erhardt, QC	President, Law Society of Saskatchewan
	Susan LeDrew	President, Law Society of Newfoundland & Labrador
	Tom Schonhoffer, QC	Executive Director, Law Society of Saskatchewan
	Michael Welsh	Vice-President, Canadian Bar Association, BC Branch

INTRODUCTION

1. Introduction of Guests

Mr. Crossin began the meeting by acknowledging the traditional territories and hospitality of the Okanagan Nation. He then introduced the Honourable Mr. Justice Christopher Hinkson, Chief Justice of the Supreme Court of British Columbia, and the President and the CEO of the Federation of Law Societies of Canada, Mr. Jeff Hirsch and Mr. Jonathan Herman, respectively.

Chief Justice Hinkson thanked the Benchers for the invitation to their annual Retreat, and extended the regrets of Chief Justice Bauman and Associate Chief Justice Cullen. Acknowledging the Retreat Conference Agenda, he underscored the importance of the work of the Truth and Reconciliation Commission to the fabric of Canadian Society.

The Chief Justice also conveyed his respect for the time and efforts of those who run for Bencher, whose pro bono work giving back to the Bar sets an excellent example to members. He lauded Access Pro Bono as another example of members stepping into the breach to give of their time and expertise, and expressed his concern for the capacity of the Bar to meet the need moving forward. Additionally, he applauded the President and the Benchers for revisiting the issue of adequate legal aid funding with the new Legal Aid Task Force.

Noting the importance of Inns of Court to the members, he encouraged Benchers and members to provide support for the Inns of Court in Vancouver which is experiencing difficulty.

Finally, he also acknowledged the difficult task of the governors of the Law Society, and asked that they approach their governance work with compassion for the weaker members of the Bar.

He concluded his remarks by noting his sadness at seeing many senior members of the Bar passing away, adding that he is heartened as well by the addition to the Bar of so many capable young lawyers.

CONSENT AGENDA

2. Minutes

a. Minutes

The minutes of the meeting held on May 6, 2016 were approved as circulated.

The *in camera* minutes of the meeting held on May 6, 2016 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 3-55, by adding the following subrule:

(6) A lawyer may deposit funds that are fiduciary property to a pooled or separate trust account, provided that the lawyer complies with the rules pertaining to trust funds with respect to the fiduciary property.”

2. In Rules 3-60 (4) and 3-61 (3), by striking “funds other than trust funds” and substituting “funds other than trust funds or funds that are fiduciary property”.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

BE IT RESOLVED to amend the *Code of Professional Conduct for British Columbia*:

1. By deleting the title “Limited representation” and the existing rules 3.4-11.1 to 3.4-11.4; and
2. By inserting instead:
 - a. the proposed Commentary [7.2] to rule 3.1-2,
 - b. the title “Short-term summary legal services” and
 - c. the new rules 3.4-11.1 to 3.4-11.4, including Commentary [1] to [4],as proposed and recommended by the Ethics Committee.

BE IT RESOLVED that the Benchers ratify the Credentials Committee’s recommendation to award the 2015 Law Society Scholarship to Sarah Pike.

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

1. In Rule 2-91:

(a) by rescinding subrule (1) (b), and

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

(1.1) The date, time and place for the hearing to begin must be set

(a) by agreement between counsel for the Society and the applicant, or

- (b) on the application of a party, by the President or by the Bencher presiding at a pre-hearing conference.
- (1.2) When a date is set under subrule (1.1), the President must notify the parties in writing of the date, time and place of the hearing.
 - (2) The notice referred to in subrule (1) or (1.2) must be served
 - (a) in accordance with Rule 10-1 [*Service and notice*], and
 - (b) not less than 30 days before the date set for the hearing, unless the applicant consents in writing to a shorter period.
- 2. ***In Rule 2-94:***
 - (a) ***in subrule (1), by striking “to the Executive Director” and substituting “to the President”,***
 - (b) ***by rescinding subrule (2), and***
 - (c) ***by rescinding subrule (3) (b) and substituting the following:***
 - (b) refer the question to a pre-hearing conference;
- 3. ***In Rule 2-95:***
 - (a) ***in subrule (1), by striking “to the Executive Director” and substituting “to the President”, and***
 - (b) ***by rescinding subrule (2).***
- 4. ***In Rule 2-98, by rescinding subrules (1) and (2) and substituting the following:***
 - (1) Before a hearing commences, the applicant or counsel for the Society may request that the hearing be adjourned by delivering written notice setting out the reasons for the request to the President and to the other party.
- 5. ***In Rule 2-101, by rescinding subrule (5) and substituting the following:***
 - (5) A copy of the panel’s reasons prepared under subrule (4) must be delivered promptly to the applicant and counsel for the Society.
- 6. ***In Rule 2-102, by rescinding subrule (3) and substituting the following:***
 - (3) An application under subrule (2) is made by written notification of the following:
 - (a) the applicant;
 - (b) the President.
- 7. ***In Rule 4-21 (1) (a), by striking “and the Executive Director,” and substituting “and the President,”***

8. In Rule 4-22:

- (a) in subrule (1), by striking “to the Executive Director” and substituting “to the President”,**
- (b) by rescinding subrule (3), and**
- (c) by rescinding subrule (4) (c) and substituting the following:**
 - (c) refer the application to a pre-hearing conference..

9. In Rule 4-32, by rescinding subrules (1) and (2) and substituting the following:

- (1) The date, time and place for the hearing to begin must be set
 - (a) by agreement between discipline counsel and the respondent, or
 - (b) on the application of a party, by the President or by the Bencher presiding at a pre-hearing conference.
- (2) When a date is set under subrule (1), the President must notify the parties in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the respondent consents to a shorter notice period.

10. In Rule 4-35:

- (a) in subrule (1), by striking “to the Executive Director” and substituting “to the President”,**
- (b) by rescinding subrule (2), and**
- (c) by rescinding subrule (5) (b) and substituting the following:**
 - (b) refer the application to a pre-hearing conference.

11. In Rule 4-36:

- (a) in subrule (1), by striking “to the Executive Director” and substituting “to the President”,**
- (b) by rescinding subrule (2), and**
- (c) by rescinding subrule (3) (b) and substituting the following:**
 - (b) refer the question to a pre-hearing conference.

12. In Rule 4-37:

- (a) *in subrule (1), by striking “to the Executive Director” and substituting “to the President”, and*
- (b) *by rescinding subrule (2).*

13. In Rule 4-38:

- (a) *by rescinding subrule (2) (a) and substituting the following:*
 - (a) set the date, time and place of the conference, and notify the parties, and, *and*
- (b) *by rescinding subrule (3).*

14. In Rule 4-40:

- (a) *in subrule (1), by striking “to the Executive Director” and substituting “to the President”,*
- (b) *by rescinding subrules (2) and (6), and*
- (c) *by rescinding subrule (4) (b) and substituting the following:*
 - (b) refer the application to a pre-hearing conference.

15. By rescinding Rule 4-43 (3) and substituting the following:

- (3) A copy of the panel’s reasons prepared under subrule (2) (b) must be delivered promptly to each party.

16. By rescinding Rule 4-44 (4) and substituting the following:

- (4) A copy of the panel’s reasons prepared under subrule (1) (d) must be delivered promptly to each party.

17. In Rule 5-12:

- (a) *in subrule (1), by striking “to the Executive Director” and substituting “to the President”, and*
- (b) *by rescinding subrule (3).*

18. In Rule 5-19 (1), (2), (5) and (6), by striking “to the Executive Director” and substituting “to the President”

19. In Rule 5-24.1:

- (a) *in subrules (1) and (4), by striking “to the Executive Director” and substituting “to the President”, and*

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

- (5) When an application is made under subrule (4), the President must decide whether to grant all or part of the relief sought, with or without conditions, and must notify the parties accordingly.

20. By adding the following rule:

Notice of review hearing

5-24.2(1) The date, time and place for the hearing on a review to begin must be set

- (a) by agreement between the parties, or
(b) on the application of a party, by the President or by the Bencher presiding at a pre-review conference.
- (2) When a date is set under subrule (1), the President must notify the parties in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the parties agree to a shorter notice period.

21. In Rule 5-25:

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

- (a) set the date, time and place of the conference and notify the parties, and, *and*

(b) by rescinding subrule (4).

22. In Rule 5-26:

(a) in subrule (1), by striking “to the Executive Director” and substituting “to the President”, and

(b) by rescinding subrule (2).

23. By rescinding Rule 5-27 (4) and substituting the following:

- (4) A copy of the review board’s written reasons prepared under subrule (2) must be delivered promptly to the applicant or respondent and counsel for the Society.

24. In Rule 5-28:

(a) in subrule (1), by striking “to the Executive Director” and substituting “to the President and the other party”, and

(b) by rescinding subrule (2).

25. *In Rule 10-1 by adding the following subrule:*

- (4.1) A document required under the Act or these rules to be delivered to the President or the Executive Director must be left at or sent by registered mail or courier to the principal offices of the Society.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

DISCUSSION/DECISION

3. TRC Retreat Agenda: Discussion

Mr. Crossin expressed his thanks and appreciation for the presenters who engaged the Benchers so thoughtfully at the Retreat Conference the day before. In reference to the metaphor provided by Grand Chief Ed John (quoting Truth and Reconciliation Commissioner Murray Sinclair), he invited the Benchers to offer their thoughts and views on what steps the Law Society might take in the coming months to keep going “up the mountain.”

The Benchers were united in offering their sincere thanks to the presenters for leading a day of helpful and informative dialogue. Several Benchers offered suggestions for moving forward, including the prioritization of one or two specific issues, such as child welfare, the creation of resource tools for the Bar, such as culturally specific practice guidelines or checklists, or the engagement of local First Nations to help give voice to their specific needs. There was also a consensus that a permanent advisory committee should be created, with the guidance and participation of Indigenous leaders, to help Benchers engage in issues and facilitate discussions at the Bencher table. Mr. Crossin confirmed that the formation and framework of the committee will be considered by the Steering Committee at its next meeting, and will report to Benchers thereafter.

Benchers also expressed their interest and desire to remain regularly engaged in these issues at the Bencher table.

4. Selection of Benchers' Nominee for 2017 Second Vice-President

Mr. Crossin announced the upcoming election of the nominee for Second Vice-President, noting the receipt of Nancy Merrill's candidacy, and called for any other candidates. Hearing none, Mr. Crossin confirmed Ms. Merrill as the Benchers' nominee for Second Vice-President, with the formal election to take place at the Annual General Meeting in October.

FOR INFORMATION

5. Briefing by President of the Federation of Law Societies

Jeff Hirsch, President of the Federation of Law Societies (the “Federation”), also acknowledged the traditional territories and hospitality of the Okanagan Nation, and expressed his appreciation for what he described as the outstanding program the day before.

He noted that the Federation is a vehicle for all law societies to work collaboratively toward consensus on issues germane to the public interest. Characterizing reconciliation as a clear issue of public interest, he underscored Grand Chief Ed John’s comments that the law societies should collaborate with each other on reconciliation, and continue to share discussions regarding individual approaches so that all can benefit. He also observed that reconciliation is tied to other important issues such as access to justice. The Federation and the law societies should continue to listen to each other and learn, to work together on these issues and build relationships with indigenous peoples. There exists now an historic opportunity to help shape the future through these relationships.

Mr. Hirsch closed by thanking the Law Society of BC for the initiative and leadership it has demonstrated through the Retreat Conference discussions, and through its contributions to the Federation’s advisory group on reconciliation.

6. Federation Council Representative Selection Process

Mr. Crossin noted that the term of Federation Council representative Gavin Hume, QC will expire later in the year. A call for nominations will go out in the coming weeks, to be considered by the Executive Committee and brought to the Benchers for selection in September.

7. CEO Report

Mr. McGee advised the Benchers of the retirement of Deputy Director of PLTC Lynn Burns, thanking her for her many years of service to the Law Society and dedication to the education of new lawyers in this province. He was also pleased to announce the hiring of Dr. Annie Rochette to assume the position.

Further, he confirmed that Retreat attendees will receive 6.5 CPD credits for this conference.

RTC
2016-06-04