



Minutes

Benchers

Date: Friday, September 30, 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
Dean P.J. Lawton
Jamie Maclaren
Sharon Matthews, QC

Christopher McPherson
Nancy Merrill, QC
Lee Ongman
Greg Petrisor
Claude Richmond
Phil Riddell
Elizabeth Rowbotham
Mark Rushton
Carolynn Ryan
Daniel P. Smith
Michelle Stanford
Sarah Westwood
Tony Wilson

Excused: Lisa Hamilton
J.S. (Woody) Hayes, FCPA, FCA

Steven McKoen

Staff Present: Tim McGee, QC
Deborah Armour
Taylore Ashlie
Renee Collins
Denise Findlay
Su Forbes, QC
Aaron Griffith
Andrea Hilland
Jeffrey Hoskins, QC

David Jordan
Michael Lucas
Alison Luke
Jeanette McPhee
Doug Munro
Annie Rochette
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
	Anne Chopra	Equity Ombudsperson, Law Society of BC
	Michael Welsh	Vice-President, Canadian Bar Association, BC Branch
	Richard Fyfe, QC	Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General
	Gavin Hume, QC	Law Society of BC Member, Council of the Federation of Law Societies of Canada
	Michele Ross	Education Chair, 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
	Monique Steensma	CEO, Mediate BC

CONSENT AGENDA

1. Minutes

a. Minutes

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

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

b. Resolutions

The following resolution was passed unanimously and by consent.

BE IT RESOLVED that the Benchers appoint Ardith Walkem to the JES for a two-year term effective September 1, 2016.

BE IT RESOLVED to confirm that commentary 2 to rule 3.4-11.4 is corrected and adopted as follows:

[2] The limited nature of short-term summary legal services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm. Accordingly, the lawyer is disqualified from acting for a client receiving short-term summary legal services only if the lawyer has actual knowledge of a conflict of interest between the client receiving short-term summary legal services and an existing client of the lawyer or an existing client of the *pro bono* or not-for-profit legal services provider or between the lawyer and the client receiving short-term summary legal services.

EXECUTIVE REPORTS

2. President's Report

Mr. Crossin thanked the guests who regularly attend Bencher meetings, and on behalf of the Benchers also provided heartfelt condolences to absent Bencher Lisa Hamilton for her recent loss. He then briefed the Benchers on various Law Society matters to which he has attended since the last meeting.

He noted that Kensi Gounden, Manager of Practice Standards, has shepherded a project to collect and review data on the nature of lawyers' practices to identify patterns of behavior that may represent areas of risk to lawyers. The goal is to develop tools to respond to such patterns and provide early intervention to help lawyers avoid potential pitfalls leading to possible disciplinary action. To build on this work toward more proactive regulation, the Executive Committee is

recommending the creation of a task force to engage Benchers, in collaboration with Mr. Gounden and his team, to develop a model for best use of the data collected. The Committee is recommending as members of this task force Michelle Stanford, Woody Hayes, FCPA, FCA, Craig Ferris, QC and Jeff Campbell, QC, with staff support to be provided by Gurprit Copeland, Manager, Intake and Early Resolution and Kensi Gounden, Manager, Practice Standards. He thanked them in advance for their willingness to serve.

Mr. Crossin called for a motion to create an Early Intervention Task Force (moved by Mr. Fellhauer, seconded by Mr. Richmond).

The question was asked about what specifically the Task Force would be looking at, and further, how the information at issue is collected. Mr. Crossin clarified that the Task Force will be looking at how best to use practice information collected to try to help lawyers avoid risk behaviours.

Regarding the collection of information, Mr. McGee clarified that this is one of our current Strategic Plan initiatives; the Task Force would review the collection and delivery of data, as well as models for use of that data to help lawyers avoid risk.

In response to another question, he clarified that this is a broader concept than that of diverting those with mental health or substance abuse issues to treatment rather than discipline. Ms. Ongman, a member of the Practice Standards Committee, described the tool as one that analyzes areas with the highest potential risk, rather than analyzing individuals.

Mr. Crossin also noted that privacy considerations would be amongst the issues reviewed by the Task Force. Mr. Crossin then sought the Benchers' approval for the creation of the Early Intervention Task Force; it was approved unanimously.

He also reported on his attendance at the New Westminster Bar dinner, at which Chief Justice Bauman spoke about his interest in limited scope retainers as another means of achieving increased access to justice, and his implementation of a protocol to educate and engage judges on this important tool.

Finally, Mr. Crossin attended UBC and UVic law to speak to first year students and was advised of the declining enrollment of female law students at UBC. He proposed raising the issue with the Equity and Diversity Committee to engage that committee on a review of the continued challenges facing women in the legal profession. He has also been made aware of the challenges facing students hoping to obtain articles, training or mentorship in the area of criminal law. He cited the shrinking of the Criminal Bar as a significant problem for the Courts and the Bar in general. The Criminal Defence Advocacy Society has commissioned a report on these

challenges, which he has provided to Chair of the Legal Aid Task Force Nancy Merrill, QC for further review.

3. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers. He began by introducing Ms. Annie Rochette, the new Deputy Director of PLTC who started on August 15 and comes to the Law Society with an extensive and impressive background in legal education.

He reported on a recent meeting with the Attorney General, Deputy Attorney General and Ministry staff. In that meeting we stressed the need to focus on alternative legal service providers in order to increase access to justice and legal services, which require legislative amendments. We reiterated our commitment to coordinating with the Ministry to move those initiatives forward. On a related note, Mr. McGee also reported that the Notaries' Board recently confirmed its continuing interest in a possible merger of regulatory operations. He will report back to Benchers as developments occur.

Following up on a discussion begun at the last Bencher meeting, Mr. McGee also confirmed that the Equity and Diversity Advisory Committee will meet following this meeting to focus on completion of the review of the Ombudsperson program.

He also provided various operational updates, including an update on our skills enrichment and training program, as well as the upcoming employee survey. The latter is instrumental in gauging the level of staff engagement on key aspects of employment at the Law Society, and enabling us to respond and develop action plans around requests or concerns.

The annual performance review process is underway, which facilitates conversations between managers and staff using a comprehensive template as a guide to discussion about the year's progress and challenges as well as developing goals for the year ahead. The process provides opportunity to celebrate accomplishments, in conjunction with our REX awards program, and address challenges.

Staff are further engaged through our staff forums which are held three times a year. The forum planned for next week will focus on engaging staff on cultural competency training, recognizing the importance of consulting for different viewpoints and how best to move forward.

Mr. McGee then introduced Taylore Ashlie, Director of Communications and Knowledge Management to provide a presentation on our website redevelopment. Responding to feedback regarding difficulties with our current website, we have begun a four phase project to improve and redesign the site. Key features have been designed in response to the external consultations; pending feedback on the mock-up screens from Benchers today, we will begin a "build" phase with the ultimate goal of "going live" in January, 2017.

The goal with the redesign is to achieve effective navigation, and a professional and modern look with content that is both engaging and mobile friendly. Ms. Ashlie then presented mock-up screens and navigational tools to give Benchers an idea of the new design concepts.

With the new design, a significant amount of content has been removed from the home page, with white space and images being used to focus content. The areas of lawyer look-up, discipline history and policy objectives and initiatives are highlighted, with changes being made to terminology to provide clarity; for example, lawyer look-up will now be known as “Lawyer Directory”.

Several features have been added to aid navigation which was identified as one of the biggest difficulties with the current site. A bar has been added to the middle of the homepage to act as a rotating carousel for important items which can be selected by the viewer. In a move away from top level navigation, main items are now located on the left side with navigation icons available on every page of the site. A menu icon will be located on the top left providing more navigation choices and FAQ’s. This new navigation system is mobile friendly, enabling easier and more widespread access.

Benchers had specific questions regarding the look and feel of the site, the tools available and ease of navigation. In response, Ms. Ashlie confirmed that the photo on the home page will continually change to reflect the diversity of the province and its people. Mr. McGee noted that the Lawyer Directory feature is planned to remain functionally the same, and he acknowledged the suggestion that it become sortable by community or link to other lawyer referral services. In response to other very specific suggestions, Mr. McGee confirmed that this current phase of development is focused on the look of the site and navigational tools; he noted and welcomed all suggestions and invited Benchers to provide their ongoing feedback as the project progresses.

Mr. Crossin reiterated that it would be helpful if Benchers could write to Ms. Ashlie with their feedback on the current site and suggestions for improvement in design and function. He also noted that the TRC Committee has had a preliminary discussion about the website regarding ease of accessibility to the members and the public concerning the ongoing work of that committee and the Law Society’s continuing efforts towards reconciliation and cultural competency.

4. 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. He provided a summary of the upcoming meetings in New Brunswick October 19-22; the conference portion will be focused on legal education and the collaboration between law societies, law schools and the Federation. There will also be a strategic planning meeting, which for the first time will engage the new governance structure and provide a more detailed focus.

Finally, there will be a council meeting with a full agenda which will include the usual committee reports, and a discussion of the terms of reference for the Public Affairs and Government Relations Committee, a committee that will be responsive to periodic requests from the Federal Government seeking Federation input on specific issues, such as anti-money laundering and judicial appointments. Also on the agenda will be a discussion on how to move forward with the review of the National Committee on Accreditation (NCA); Mr. Hume noted that the last full review of the NCA was in the late 1990's and there have been concerns regarding approval of candidates and their capacity to meet standards of bar admission programs across the country. Further, Mr. Hume anticipates that the issue of money laundering will be discussed, and the TRC Working Group will provide an update and report.

Finally, Mr. Hume reported that on October 7, 2016 the Supreme Court of Canada will hear the appeal in *Sidney Green v. Law Society of Manitoba* regarding the right of law societies to mandate requirements for continuing professional development. The Federation will intervene on the appeal.

In response to a question, Mr. Hume noted that the NCA review was likely to be a comprehensive one, given the significance of the issue of international mobility in many jurisdictions.

DISCUSSION/DECISION

5. Presentation of 2017 Budget & Fees

Chair of the Finance and Audit Committee Miriam Kresivo, QC briefed the Benchers on the proposed budget and fees for 2017. She thanked committee members David Crossin, QC, Herman Van Ommen, QC, Craig Ferris, QC, Tom Fellhauer, Sharon Matthews, QC, Woody Hayes, FCPA, FCA, Bill Maclagan, QC, Peter Lloyd, FCPA, FCA, and Peter Kelly for their hard work in bringing this proposed budget to the Benchers. She also provided particular thanks to staff for their countless hours of work in preparation, including CFO Jeanette McPhee, CLO Deb Armour, Director of Insurance Su Forbes, QC, Controller Aaron Griffith and CEO Tim McGee.

Ms. Kresivo emphasized that the process is one of balance, seeking to ensure the resources necessary to uphold our mandate to regulate in the public interest, while being mindful of what is reasonable to ask of our members. The process was also a rigorous one, with the current proposed budget having gone through several revisions to reduce it where possible.

She then summarized the proposed budget as follows:

General Fund:

Budgeted resources must ensure we are able to deliver core regulatory programs and meet key performance measures. With this budget, we face an increasing demand in key regulatory areas; proposed is an increase of 6.2% for internal resources in these areas, 60% of which will be funding the addition of resources in key regulatory areas to meet current demand. We are enhancing funding for delivery of PLTC, to ensure materials are updated regularly, and are providing for an upgrade of IT and Knowledge Management structures. In the result, the proposed fee is \$1,745.55, which represents an increase of 4.9%.

The assumption is that revenue will increase due to a projected 1.6% increase in the number of members. PLTC revenue is expected to remain similar to last year with a projection of 500 students. Revenue from electronic filings is also projected to be similar to last year, as is revenue from non-practicing fees. Revenues are also generated by building leases.

The Capital Plan remains similar to last year, and includes the loan repayment to LIF, various capital projects supporting operations, as well as particular projects such as structuring upgrading.

We also fund external programs as a mandatory component of the fees. This year \$380 of the practice fee will go toward funding of individual organizations or programs over which the Law Society collects the fee, but does not manage. Ms. Kresivo noted that the Law Society's role in the governance and the mandatory nature of these fees will be looked at in the coming year.

The Trust Assurance Fund fee will continue at \$15 per transaction, and the 2017 budget is similar to the 2016 budget at \$2.6 million. Real estate sales are expected to decline by 8%. Next year, the Committee will be looking at allocating net assets to the Part B Insurance Program.

Ms. Kresivo noted that we compare favourably with other law societies; we are not the least expensive but we provide excellent service and are doing so efficiently.

Mr. Kresivo then reviewed the insurance fee. The number of insurance reports is trending up. Areas of risk for future potential claims include the 15% tax on foreign purchasers of real estate, the Limitation Act and the Wills and Estates and Succession Act. Offsetting these potential risks is the investment returns, on which we are exceeding the benchmark. Balancing risk against investment returns, we have determined there are sufficient assets to meet appropriate guidelines. As a result, the recommendation is to maintain the insurance fee at the current level of \$1750.

Accordingly, the fee for practicing insured lawyers for 2017, inclusive of the insurance fee, is \$3875.57. This amount puts us at the lower end of the scale country-wide.

When asked about whether the operating expenses associated with external counsel costs are an anomaly or represent a trend, Ms. Kresivo clarified that it did not appear to be a one-time anomaly. There was a comprehensive review done of the issue which determined that this was at least a 2-3 year issue, and very likely an ongoing trend. It was also determined that it would be more efficient to increase staff levels and handle more of the work internally, rather than hire more external counsel in the short term to alleviate additional pressures.

Ms. Armour noted that the in-depth review of the issue, involving outside consultants, internal management consultation and a thorough analysis of the data, was precipitated by legal fees increasing year over year. The size and complexity of investigations and hearings has been increasing, and legal defence costs have been rising. The number of citations has decreased, but the number of hearing days has increased dramatically. These findings are consistent with jurisdictions around the country. The review revealed a shortfall between resources, capacity and demand in three key areas: investigations, discipline and intake and early resolution. This shortfall is projected to persist through 2019. Without the addition of resources, the gap is projected to increase. Regulating in the public interest includes timely resolution; without adequate resources, the ability to do so declines. The recommended increases result from the determination that it is more cost effective to address this shortfall internally.

Ms. Armour encouraged any additional questions from Benchers, to alleviate any concerns they may have around the increase.

Several Benchers provided their thanks to the Committee and staff for the considerable work involved with the budget and fee recommendations. Some noted that the fees have an impact not just on lawyers, but by extension, on the public as well. Given the implications for access to justice, the efforts of committee members and staff to manage costs is appreciated.

Mr. Crossin raised for future consideration the possibility of extending insurance discounts to certain lawyer groups, such as young lawyers or those practicing in a legal aid context. Ms. Kresivo noted that this was something the Finance Committee could consider moving forward.

She then moved the following resolutions:

BE IT RESOLVED that, commencing January 1, 2017, the practice fee be set at \$2,125.57 pursuant to section 23(1)(a) of the Legal Profession Act, consisting of the following amounts:

General Fund	\$1,745.55
Federation of Law Societies contribution	\$28.12
CanLII contribution	\$39.24

Pro bono/Access to legal services contribution	\$28.91
REAL program contribution	\$4.25
CLBC contribution	\$185.00
LAP contribution	\$67.00
Advocate subscription fee	\$27.50
Practice Fee	\$2,125.57

(moved by Mr. Ferris, seconded by Mr. Fellhauer). Motion passed unanimously.

BE IT RESOLVED that:

- the insurance fee for 2017 pursuant to section 30(3) of the *Legal Profession Act* be set at \$1,750;
- the part-time insurance fee for 2017 pursuant to Rule 3-40(2) be set at \$875; and
- the insurance surcharge for 2017 pursuant to Rule 3-44(2) be set at \$1,000.

(moved by Mr. Ferris, seconded by Mr. Fellhauer). The motion was passed unanimously.

Ms. Kresivo reviewed one additional matter with Benchers. She noted that the Finance and Audit Committee established an insurance sub-committee to maintain a review of insurance matters. She confirmed the Committee's complete confidence in the management and operation of LIF, but given the considerable value of the fund, due diligence dictates appropriate oversight be in place. The sub-committee members will be Craig Ferris, QC, Herman Van Ommen, QC, Peter Kelly, Peter Lloyd, FCPA, FCA and Ms. Kresivo herself. This sub-committee reports to the Finance Committee periodically.

Mr. McGee thanked the Benchers for their review and approval of the fees, which represents the culmination of considerable effort and emotional energy on the part of staff and committee members alike. He specifically thanked Ms. Kresivo for her leadership during challenging times, and her facilitation of constructive discussion.

6. Trust Shortages: Extending Current Insurance Coverage

Mr. Crossin introduced Su Forbes, Director, Lawyers Insurance Fund (LIF) to brief Benchers on the recommendations from LIF to expand the existing coverage for "bad cheque scams" to other "social engineering scams" that result in trust shortages, such as fraudulent client instructions.

She referred Benchers to the materials for a more thorough analysis. The framework in place in Part C has a sub-limit of \$500,000 per claim, per lawyer, per firm, with a deductible of 35% to ensure lawyers remain diligent about avoiding such scams, which results in a maximum of \$325,000 in coverage. There is a profession-wide annual aggregate of \$2,000,000, though Ms. Forbes estimates no more than two such claims in a year would be likely. For more thorough details of the coverage and costs, Ms. Forbes referred the Benchers to the accompanying materials.

Mr. Crossin called for the motion to expand Part C coverage for the ‘bad cheque scam’ to include other social engineering frauds that result in shortages in lawyers’ trust accounts because of a lawyer’s mistaken belief that funds held in trust are properly payable to a fraudster (moved by Ms. Matthews, seconded by Ms. Ongman). The motion passed unanimously.

Ms. Kresivo then took the opportunity to provide public recognition of Ms. Forbes, her team and their impeccable operation of LIF, as evidenced by the recent independent audit.

7. Federation Council Representative Selection

Mr. Crossin recognized the acclamation of First Vice-President Herman Van Ommen, QC as the Law Society’s new Federation Council representative. His term will commence November 15, 2016.

8. Family Law Legacy Award

Ms. Nancy Merrill, member of the former Family Law Task Force introduced the motion to establish an award to recognize excellence in family law, particularly in areas of non-adversarial practice, pro bono and access to justice. Members of the former Task Force believe so strongly in the establishment of an award that they provided an initial \$1200 in support. Details such as the name of the award and the nomination and selection process will be worked out following Bencher approval.

Ms. Merrill moved (seconded by Ms. Ryan) that, to support the Law Society in advancing the importance of family law from an access to justice perspective, the Law Society establish a legacy award to advance the Law Society’s public interest mandate in the area of family law.

In response to a question, Ms. Merrill clarified that Law Society staff would administer all aspects of the award, including publicity, the nominations process and the organization of the presentation of the award which was anticipated to be at the Bench and Bar Dinner.

The motion was passed unanimously.

Ms. Matthews congratulated the Family Law Task Force members on this important initiative, noting that there are profound access to justice issues in the area of family law, and members of that Bar are deserving of credit for their ongoing efforts in that regard.

REPORTS

9. Report on the Outstanding Hearing & Review Decisions

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

10. TRC Advisory Committee Update

Mr. Crossin briefed the Benchers on recent meetings of the TRC Advisory Committee, noting that focus has centered on the development of Terms of Reference which have been provided for Bencher review and approval.

The Committee will be meeting again shortly to begin discussion of concrete steps to address the TRC Calls to Action. He noted that a possible focus might be legal education, both at law schools and post-graduation; he also noted this will be the topic of discussion at the upcoming Federation Conference.

He reported that the Law Society has been invited to speak at the First Nations Summit in October. In his absence, due to his attendance at the Federation Conference and Council meetings, he has asked Appointed Bencher and TRC Advisory Committee member Dan Smith to speak on behalf of the Benchers and the Law Society.

Mr. Van Ommen moved the adoption of the TRC Advisory Committee Terms of Reference (seconded by Mr. Fellhauer). The motion was passed unanimously.

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2016-09-30