



Minutes

Benchers

Date: Friday, January 27, 2017

Present:

Herman Van Ommen, QC, President	Jamie Maclaren
Miriam Kresivo, QC, 1 st Vice-President	Sharon Matthews, QC
Nancy Merrill, QC, 2 nd Vice-President	Steven McKoen
Jasmin Ahmad	Christopher McPherson
Satwinder Bains	Lee Ongman
Jeff Campbell, QC	Greg Petrisor
Pinder Cheema, QC	Claude Richmond
Jeevyn Dhaliwal	Phil Riddell
Craig Ferris, QC	Elizabeth Rowbotham
Martin Finch, QC	Mark Rushton
Brook Greenberg	Daniel P. Smith
Lisa Hamilton	Michelle Stanford
J.S. (Woody) Hayes, FCPA, FCA	Sarah Westwood
Dean P.J. Lawton, QC	Tony Wilson, QC

Unable to Attend: Thomas Fellhauer
Carolynn Ryan

Staff Present:

Tim McGee, QC	David Jordan
Deborah Armour	Michael Lucas
Taylor Ashlie	Alison Luke
Aaron Bockner	Jeanette McPhee
Renee Collins	Doug Munro
Lance Cooke	Lesley Small
Su Forbes, QC	Alan Treleven
Andrea Hilland	Adam Whitcombe
Jeffrey Hoskins, QC	

Guests:	The Honourable Robert J. Bauman	Chief Justice of British Columbia
	Dom Bautista	Executive Director, Law Courts Center
	Mark Benton, QC	Executive Director, Legal Services Society
	Nancy Carter	Executive Director, Civil Policy and Legislation Office, Justice Services Branch, Ministry of Justice
	Sonny Parhar	1 st Vice-President, Trial Lawyers Association of BC
	Raymond Lee	Program Lawyer, Continuing Legal Education Society of BC
	Richard Fyfe, QC	Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General
	Dennis Joseph - Xwechtaal Siem	Squamish Nation Councillor
	Suzette Narbonne	Chair, Legal Services Society
	Caroline Nevin	Executive Director, Canadian Bar Association, BC Branch
	Bill Veenstra	Vice President, Canadian Bar Association, BC Branch
	Ryan Williams	President, TWI Surveys Inc.
	Alexis Kazanowski	Assistant Dean, Faculty of Law, Thompson Rivers University

1. Administer Oaths of Office

Chief Justice Bauman administered oaths of office for new President Herman Van Ommen, QC, First Vice President Miriam Kresivo, QC, Second Vice President Nancy Merrill, QC and newly elected Benchers Jeevyn Dhaliwal and Jasmin Ahmad.

He thanked the Benchers for their dedication, diligent work and leadership. He also remarked on the valuable relationship between the judiciary and the Law Society, and the importance of collaboration between the two towards increased access to legal services for the public in the coming years.

2. President's Welcome

President Van Ommen began by acknowledging the hospitality of First Nations' hosts Squamish, Musqueam and Tsleil Waututh Nations, on whose territorial lands the meeting was being held. He then introduced Squamish Nation Counsellor Dennis Joseph, *Xwechtaal Siem*, to provide an opening prayer.

He also welcomed new Benchers Jeevyn Dhaliwal and Jasmin Ahmad to the table, as well as the new Ladder, First Vice President Miriam Kresivo, QC and Second Vice President Nancy Merrill, QC. For this first meeting of the year, he introduced both staff and the regular guests who attend Bencher meetings throughout the year.

CONSENT AGENDA

3. Minutes

a. Minutes

The minutes of the meeting held on December 9, 2016 were approved as circulated.

The *in camera* minutes of the meeting held on December 9, 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 by rescinding Rules 2-9 to 2-11 and substituting the following:

Definitions

2-9 In Rules 2-10 [*Business address*] and 2-11 [*Residential address*],

“address” includes

- (a) the name under which a lawyer carries on business, and
- (b) street address, including suite number if applicable, and mailing address, if that is different from the street address;

“contact information” includes the following for the purpose of a lawyer receiving communication from the Society, including confidential communication:

- (a) a telephone number;
- (b) an email address;

“place of practice” includes

- (a) a lawyer’s chief place of practice or employment, including the residence of a lawyer who carries on a law practice from the lawyer’s residence, and
- (b) any other location from which a lawyer conducts the practice of law or is held out to conduct the practice of law.

Business address

2-10 A lawyer must advise the Executive Director of the address and contact information of all of the lawyer’s places of practice and inform the Executive Director immediately of a change of address or contact information of any of the lawyer’s places of practice.

Residential address

2-11 A lawyer who does not carry on the practice of law must advise the Executive Director of the address and contact information of the lawyer’s residence and any change in the address and contact information of the lawyer’s residence.

BE IT RESOLVED to amend Rule 3-97 by rescinding subrules (2) and (3) and substituting the following:

- (2) Subject to subrule (4), a person who is charged with an offence under a federal or provincial statute, or an equivalent offence in another jurisdiction, must immediately provide to the Executive Director written notice of the charge.

BE IT RESOLVED to dissolve the Legal Services Regulatory Framework Task Force, the Regulation and Insurance Working Group, and the Tribunal Program Review Task Force effective immediately.

GUEST PRESENTATIONS

4. Provincial Court Rules Reform Project – Family Law Matters

Nancy Carter, Executive Director, Civil Policy and Legislation Office, Justice Services Branch of the Ministry of Justice attended to provide the Benchers with a presentation on the Provincial Court Family Rules Working Group and their project to revise the Family Law Rules. The Working Group is raising awareness amongst stakeholders of the consensus being reached by the Ministry of Justice and the Provincial Court on key concepts.

The Working Group itself is comprised of judges, Ministry of Justice staff and members of the Bar from various stakeholder groups such as the Legal Services Society (LSS), the Canadian Bar Association, BC Branch (CBABC) and the Law Society, whose representative is Bencher Lisa Hamilton.

At their core, the revisions aim to reflect the results of a growing body of research confirming the effectiveness of consensual processes in family breakdown, which involves both legal and non-legal issues. Also recognized is that processes need to be more easily understood, and parties need more support navigating the system.

Ms. Carter summarized the three types of reform of focus:

- the pre-court process, which will build on existing processes such as the parenting after separation tool, and include additional processes such as early assessment of claims for referral to legal advice or community services and organizations as applicable, and mediation before any hearing date;
- case management, which will include more robust “triage” of cases before the first appearance to ensure readiness or provide support for the proper preparation of the file to

a “judge ready” state, and the possible addition of a Master-type judicial officer to assist with interim orders;

- adjudication process, which will consider reform of rules around adjudication to simplify processes and more effectively use judicial resources to encourage less adversarial and more flexible trial processes tailored to best resolve matters for the particular parties at hand;

Ms. Carter also stressed the importance of resources to the model being contemplated, which may require the addition of publicly funded services such as mediation, and an examination of how to build capacity in the Court. A resource analysis is currently underway, in concert with consultation of stakeholders to better identify issues that should be explored and any concerns that should be addressed. To that end, she invited Benchers to provide their ideas and feedback.

Questions from Benchers included whether duty counsel will be retained with the new model, and if the proposed new Master will have any dispute resolution role. Ms. Carter was uncertain about the retention of duty counsel, but noted that the Working Group is in discussions with LSS regarding what early legal advice might look like. She also noted that the decision-making role of the Master could make it challenging to also incorporate a formal mediator role, but that they are exploring all options for early resolution and settlement.

In response to the question of how parties will “enter” the program, Ms. Carter explained that the initial filing process will be less comprehensive, and will trigger an assessment appointment. If the matter continues through to adjudication, further filings will be necessary. She also confirmed, in response to another, that the Ministry is particularly interested in discussing the proposed model with the Indigenous community, and are currently exploring an appropriate forum to do so.

Mr. Van Ommen thanked Ms. Carter for her informative presentation.

5. LSS: Plans and Priorities for the Coming Year

Suzette Narbonne, Chair of LSS, attended to provide Benchers with a report and update on the work of LSS and the impact of that work on individuals in our communities. She began by sharing an anecdote of a client who lacked education, training, and even basic life skills, who endured a 30 year emotionally abusive relationship and suffered substance abuse as a result and faced financial and emotional ruin. After being connected with legal aid through a transition house support worker, the client was able to slowly build confidence and a legal claim which led to spousal support, a divorce and a renewed life. There are countless stories of how legal aid assists people in communities all across BC, people whose only way to access justice is through legal aid.

Ms. Narbonne acknowledged the leadership role of the Law Society, and congratulated Benchers on their establishment of a permanent TRC Advisory Committee, noting the disproportionately high rate of Indigenous legal aid clients. LSS has made legal assistance to the Indigenous community a priority and is exploring funding for a centre for culturally appropriate support for child protection, as currently 40% of all child protection matters involve Indigenous children.

She also applauded the establishment of the Law Society's Legal Aid Task Force, expressing gratitude for the chance to participate in the recent colloquium with members of government, the judiciary, other lawyers and academics.

She also noted other leadership opportunities for the Law Society, including possible partnership with LSS to research the cost of practicing law in BC with a view to increasing fees for legal aid lawyers. At the current rate, the sustainability of legal aid is uncertain, as fewer and fewer lawyers can afford to continue to assist marginalized people.

A discussion followed regarding the provision of legal advice for those who do not qualify for legal aid, and the possibility of including within the proposed new Provincial Court model early legal advice through duty counsel. Also discussed was the reality that, as the right to counsel is constitutionally protected for criminal cases but not family cases, there is often insufficient funding to provide for aid family cases as well.

6. 2016 Employee Survey Results

Ryan Williams, President of TWI Surveys Inc., attended to provide his report on the 2016 Employee Survey results, which is the 10th such survey conducted at the Law Society.

As an overall summary, Mr. Williams reported that 75% of employees participated in the survey, which is considered a healthy response considering the survey is not mandatory. A majority of respondents indicate they understand the work the Law Society does and are inspired to do it. Challenge areas include work flow and resources, although these appear to represent unique situations within the organization and do not necessarily reflect the organization as a whole.

He then reviewed results for more particular areas of reporting, including awareness of strategic goals, opportunities for job development, trust in management and the demographics of respondents.

Comments indicate people are generally happy with their jobs, and value the people with whom they work.

Benchers queried about the rate of response, wondering whether it was a particular indicator of apathy or dissatisfaction; Mr. Williams confirmed that, while 80-90% response has been more

typical, a 75% rate of response is considered normal, and may just reflect survey apathy or the reduced “encouragement” to complete the survey. However, he would not recommend reducing the frequency of the survey given its importance as a tool for employee engagement.

EXECUTIVE REPORTS

7. President’s Report

In his first President’s Report, Mr. Van Ommen noted that he would not be providing a regular listing of all of his activities, but would focus on items and events pertinent to the work being done at the Bencher table.

He also noted that, going forward, the Executive Committee meeting Minutes will be posted to Bencher Resources in the week of the Bencher meeting to keep Benchers apprised of Executive Committee discussions and decisions.

At the January Executive Committee meeting, the Committee discussed the creation of a Recruitment and Nominating Committee to source qualified applicants for both internal and external committee appointments. Staff will provide a review of the possibility for further discussion at the next meeting. Also discussed was strategic planning in advance of the new plan anticipated for 2018-2020. The Committee agreed that Benchers could benefit from presentations on possible strategic plan options, as well as a session on strategic planning generally, to help familiarize them before the strategic planning process begins in the Fall.

Finally, the Executive Committee discussed a review and refresh of the Key Performance Measures (KPM’s), about which Mr. McGee will be reporting, to ensure we are taking the appropriate measurements and setting appropriate levels.

8. CEO’s Report

Mr. McGee began his report by welcoming Mr. Van Ommen as the Law Society President for 2017, as well as newly elected Benchers Jeevyn Dhaliwal and Jasmin Ahmad.

Providing highlights of his monthly written report to the Benchers, he noted that Leadership Council met and discussed departmental, national and international issues that could form part of the new strategic plan. Topics for consideration will be presented to Benchers over the course of several Bencher meetings in advance of the Fall strategic planning process.

He also noted that the annual budget is in the process of being finalized, and we expect to end the year positive to budget overall.

Turning to a review of the KPM's, Mr. McGee reviewed with Benchers the objectives behind the measurements, noting that the KPM's are intended to provide a "dashboard" of the core regulatory activities of the Law Society.

He highlighted the overall rating of 83%, which, while one or two percentage points below last year, still represented strong competency in key areas. Results in the area of complaints and insurance show a slight increase in the frequency of complaints, and a slight decrease in insurance reporting, both of which accord with trends in the profession generally. Neither should signal cause for concern, but represent areas to watch and understand better from a resource perspective. Results in the area of discipline show a reduction in citations but an increase in conduct reviews.

In the area of Professional Conduct, the survey of users of the complaint system shows strong results for timeliness, fairness, courtesy and thoroughness, as well as a willingness to recommend the process. These are key indicators of whether the way we conduct the process, including intake and investigations, is on the right track.

In the area of Custodianships, the KPM of timeliness was missed, which was due to two very complex files; all other custodianships in the year were closed in accordance with the target. However, this result is of concern given that timeliness was one of the original drivers of the development of the in house program. We are seeing an increase in the number and complexity of custodianships, and further analysis will be important to ensure our program is well supported to respond to increasing demands.

The area of Trust Assurance may be one suitable for a review and refresh of core objectives. Though there has been a long term reduction in referrals to Professional Conduct, there has been debate in this area regarding whether success might best be measured by finding problems, which could result in an increase of referrals. It is important both to monitor and to ensure compliance; as results are flat in this area, we should be asking what that means for this program going forward.

In response to a question, Deb Armour, Chief Legal Officer, confirmed that the KPM's do confirm that the Law Society ended the year with an increased number of discipline files, but the growing backlog is expected to be alleviated with the additional resources approved by Benchers with the 2017 budget.

Responding to another question, Alan Treleaven, Director, Education and Practice, confirmed that last year's reduced number of PLTC students is likely just a normal fluctuation and not necessarily indicative of a reduced number of articling placements; indeed the number of PLTC students has increased this year.

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

Mr. Van Ommen briefed the Benchers as the Law Society's member of the FLSC Council. He identified two issues of importance: the first is a review of the National Committee on Accreditation program, the report for which will be presented to Council in March; the second is the approval of terms of reference for the Federation's Truth and Reconciliation Commission Calls to Action Advisory Committee. He noted that the latter was based on the BC model but adapted for the Federation. He also noted that while the Committee has not yet been populated, he has recommended the appointment of Past President David Crossin, QC. Law Society Policy and Legal Services staff lawyer Andrea Hilland will provide staff support to the Committee as well.

DISCUSSION/DECISION

10. Qualifications to Act as Articling Principal

Chair of the Credentials Committee Lisa Hamilton briefed Benchers on the Committee's report and recommendations. She began by thanking committee members and staff for their hard work in preparation of the report.

She identified the three main recommendations of the report as follows:

- Reduce qualifications to act as an articling principal from 7 years to 5 years;
- Reduce the number of years of BC and Yukon practice required for principals from 5 of 7 years to 3 of 5 years;
- Remove the unclear concept of "active practice", and refer instead to full time practice (with an accounting for every two years of part time practice as one full time year).

She also noted the recommendation that, in exceptional circumstances, a person could apply to the committee to be a principal despite their inability to meet one or more of the requirements.

Ms. Hamilton provided Benchers with background for these recommendations. Prior to 2002, principals required four years of practice and there were no restrictions on the number of students one could have. In an effort to improve the articling experience, a task force on the admissions program recommended, and Benchers approved, an increase in the number of years of practice required and a restriction on the number of students per principal. However, she noted that the Credentials Committee regularly receives applications for exceptions to the current rules, many of which are only slightly below the requirements. The Committee uses its discretion on a

case by case basis. In many cases, without the exception the student would not otherwise have an articling position.

With the recommendations, the Committee has tried to strike a balance between ensuring the necessary experience and expanding the potential pool of qualified principals. It was noted that many potential principals applying for an exception had 5 years of practice, and many with less than 5 years of experience in BC had additional years of experience in other jurisdictions.

Ms. Hamilton also noted that the recommendation of allowing part time equivalency to full time practice was aimed at expanding the pool of potential principals to include these otherwise well qualified lawyers.

There was discussion of whether lowering the year of practice requirement would have the effect of increasing the number of unpaid or underpaid articles, given the likelihood that less experienced lawyers are less financially successful. Ms. Hamilton was not aware of a correlation between a principal's practice experience and unpaid articles.

There was also discussion of any additional criteria to be principal, other than practice experience; Lesley Small, Manager, Member Services and Credentials, confirmed that staff check principals for any disciplinary proceedings, open complaints or past practice standards issues, and refer any matters of concern to the Committee.

Also discussed was the types of exceptional applications received by the Committee. Ms. Small noted that most of the applications are more than 5 years of practice but under 7 years, and that the recommendations have been based in part on the types of applications the Committee has been approving.

Following discussion, Ms. Hamilton moved that the Benchers approve the recommendations in the report, and refer them to Act and Rules to provide draft Rules revisions for Bencher approval (seconded by Ms. Stanford).

The motion was passed unanimously.

REPORTS

11. Report on the Outstanding Hearing & Review Decisions

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

12. National Discipline Standards Report

Ms. Armour provided her annual report on National Discipline Standards, which are standards to address the principles that are foundational to the Law Society's role as regulator in protecting the public. She emphasized that the standards are aspirational, noting that they have only been met in their entirety once by only one law society. However, she also noted that the Law Society of BC has improved significantly, meeting 18 of the 21 standards in 2016, and improving on the remaining three.

She advised that, for the first time, we are now meeting standard 7, which is the commencement of a hearing within 9 months, 75% of the time. She recognized the efforts of staff and hearing panelists in this achievement.

The standard most often referenced is the closure of 80% of all investigation files within one year. The Law Society met that standard 91% of the time in 2016.

The Law Society continues to fall short on the standard which requires the rendering of decisions within 90 days of submission, 90% of the time. Our 2016 result was 70%.

While we now have easily accessible discipline information from 2003 on, information prior to that date is not available online.

Mr. Van Ommen observed that though we are experiencing an increase in files, we are now closing files faster and achieving a higher satisfaction rate; he applauded the efforts of all involved.

13. TRC Advisory Committee Update

Mr. Van Ommen briefed Benchers as Co-Chair of the Committee, which met last December. At that meeting the Committee received a report from Annie Rochette, Deputy Director, PLTC, on the steps being taken to implement call to action 27. Revisions to the PLTC program include adding a half day of instruction on child protection issues, a full day on Gladue reports in criminal procedure, and revising the practice materials and examinations in all subject areas to include Indigenous legal issues.

He also noted that Ms. Hilland has had the opportunity to speak publicly about the work of the Committee and the Law Society in this area on several occasions and to various community groups.

The next scheduled meeting will be in February at which the Committee will be developing its Agenda. It continues to be a vibrant and dedicated group.

14. Equity Ombudsperson Report

Following discussion of this matter In Camera, Ms. Merrill moved (seconded by Ms. Westwood) that the position of Equity Ombudsperson be brought in house within the Practice Standards Department of the Law Society.

The motion was passed unanimously.

FOR INFORMATION

14. Three Month Bencher Calendar – January to March

Mr. Van Ommen noted that staff is in the process of developing a calendar to collate numerous events of relevance to Benchers, to encourage Benchers to be more engaged with local Bar associations and the legal community in general.

He encouraged Benchers to refer to the calendar often, and to provide input on events of note for inclusion, as well as suggestions to help make it as useful as possible.

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