



Minutes

Benchers

Date: Saturday, May 06, 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
Barbara Cromarty	Phil Riddell
Jeevyn Dhaliwal	Elizabeth Rowbotham
Thomas Fellhauer	Mark Rushton
Craig Ferris, QC	Carolynn Ryan
Martin Finch, QC	Daniel P. Smith
Brook Greenberg	Michelle Stanford
Lisa Hamilton	Sarah Westwood
J.S. (Woody) Hayes, FCPA, FCA	Tony Wilson, QC
Dean P.J. Lawton, QC	

Unable to Attend: Not applicable

Staff Present:

Tim McGee, QC	Michael Lucas
Deborah Armour	Jeanette McPhee
Taylor Ashlie	Doug Munro
Renee Collins	Lesley Small
Su Forbes, QC	Alan Treleven
Jeffrey Hoskins, QC	Adam Whitcombe

Guests:

Roberta Campbell	President, Law Society of Manitoba
Julia Cornish, QC	First Vice-President, Nova Scotia Barristers' Society
Kris Dangerfield	CEO, Law Society of Manitoba
Barry Fleming, QC	President, Law Society of Newfoundland and Labrador
Richard Fyfe, QC	Deputy Attorney General of British Columbia
Brenda Grimes, QC	Executive Director, Law Society of Newfoundland and Labrador
Michelle Haigh	Paralegal Bencher, Law Society of Upper Canada
Jonathan Herman	CEO, Federation of Law Societies
Chief Justice	Chief Justice of the Supreme Court of British Columbia
Christopher Hinkson	
Robert Lapper, QC	CEO, Law Society of Upper Canada
Luc Marcoux, QC / cr	Vice President, Law Society of New Brunswick
Malcolm Mercer	Bencher, Law Society of Upper Canada
Me Maurice Piette	President, Federation of Law Societies
Darrel Pink	Executive Director, Nova Scotia Barristers' Society
Marc Richard, QC / cr	Executive Director, Law Society of New Brunswick
Paul Schabas	Treasurer, Law Society of Upper Canada
Anthony Young, QC	President, Law Society of Alberta

CONSENT AGENDA

1. Minutes

a. Minutes

The minutes of the meeting held on April 7, 2017 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 1-9*

(a) *by striking the heading and substituting the following:*

Telephone and internet connections,

(b) *by rescinding subrule (1) and substituting the following:*

(1) The Benchers may conduct a general meeting by joining any number of locations by

- (a) telephone, or
- (b) internet connection.

(1.1) Persons participating in and entitled to vote at a general meeting who are connected by telephone or internet connection must be able to hear all others participating in person or by telephone.

(1.2) Persons participating in and entitled to vote at a general meeting who are connected by telephone must be able to speak at the meeting if recognized by the President.

(1.3) Persons participating in and entitled to vote at a general meeting who are connected by the internet must be able to vote in real time when called upon by the President to do so.,

(d) by rescinding subrule (7) and substituting the following:

(6.1) The Executive Director

- (a) may retain a contractor to assist in any part of a general meeting conducted by way of the internet,
- (b) must ensure that votes cast electronically in a secret ballot remain secret, and
- (c) must take reasonable security measures to ensure that only members entitled to vote can do so.

(7) A technical failure that prevents any member from participating in or voting at a general meeting does not invalidate anything done at the general meeting..

2. In Rule 1-13, by adding the following subrules:

(1.1) Despite subrule (1), a person participating in a general meeting by way of internet connection is not entitled to speak at the meeting.

(15.1) A member of the Society must not

- (a) cast a vote or attempt to cast a vote that he or she is not entitled to cast, or
- (b) enable or assist a person
 - (i) to vote in the place of the member, or
 - (ii) to cast a vote that the person is not entitled to cast..

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 2-57 (1) and (2) and substituting the following:

(1) A lawyer engaged in full-time practice may act as principal to no more than 2 articulated students at one time.

(1.1) In this rule

“associated activities” includes practice management, administration and promotion and voluntary activities associated with the practice of law;

“full-time practice” means the practice of law and associated activities for an average of more than 25 hours per week;

“part-time practice” means the practice of law and associated activities for an average of not more than 25 hours per week.

- (2) Subject to subrules (2.1) and (3), to qualify to act as a principal, a lawyer must have
 - (a) engaged in full-time practice in Canada for 5 of the 6 years immediately preceding the articling start date, and
 - (b) spent at least 3 years of the time engaged in the practice of law required under paragraph (a) in
 - (i) British Columbia, or
 - (ii) Yukon while the lawyer was a member of the Society.

(2.1) When a lawyer engages in part-time practice

- (a) any period in which the lawyer engages in part-time practice is counted at a rate of 50 per cent for the purposes of the full-time practice requirement in subrule (2), and
- (b) the 6-year period in subrule (2) (a) is extended by the length of the period in which the lawyer engages in part-time practice, provided that the aggregate time in which the lawyer is not engaged in the practice of law does not exceed 24 months in the entire period.

GUEST REPRESENTATIONS

2. Remarks from Chief Justice Hinkson

Chief Justice Hinkson thanked the Benchers for their important work, and acknowledged their continued support for the judiciary which is very much appreciated.

He also noted the challenges associated with vacancies on the Bench, and the resulting effects on access to justice. He encouraged the Law Society to support timely appointments to fill those vacancies.

The Chief Justice closed his remarks by wishing the Benchers and guests well for the remainder of their Retreat.

3. Remarks from President of Federation of Law Societies

Mr. Van Ommen introduced Federation of Law Societies President Me. Maurice Piette, noting that Me. Piette has been a member of Council representing the Chambre des Notaires du Québec since November 2003, and a practicing notary since receiving his notarial law diploma in 1972.

Me. Piette thanked Mr. Van Ommen and the Benchers for their hospitality, and noted that one of the most gratifying aspects of his role as President is the opportunity to travel and visit council members and Benchers across the country. He congratulated Ms. Kresivo on the successful Retreat Conference the previous day, noting that it is with these types of meetings that we can generate innovative ideas and imagine a better future. He also noted the importance of continued focus on access to legal services and the role of alternative legal service providers.

He acknowledged the Law Society of BC's leadership role in the success of the Federation, underscoring the importance of collaboration and the notion that we are stronger together. He acknowledged that the strategic planning initiatives as well as the ongoing work of the Federation are made possible by individuals from law societies across the country, including the outstanding representatives of the Law Society of BC. He specifically acknowledged the significant contributions of current President and Federation Council member Herman Van Ommen, QC, Past Presidents Gavin Hume, QC and John Hunter, QC, CEO Tim McGee, QC, CIPO Adam Whitcombe, Director of Education and Practice Alan Treleaven, CLO Deb Armour, Policy and Legal Services Manager Michael Lucas, and Policy Staff Lawyer Andrea Hilland.

Finally, he looked forward to welcoming Law Society and Federation representatives to the Federation meetings to be held in Victoria in October. Mr. Van Ommen thanked Me. Piette for his remarks.

4. Remarks from Treasurer of Law Society of Upper Canada

Mr. Van Ommen introduced Law Society of Upper Canada Treasurer Paul Schabas, noting that he is a senior trail lawyer with Blakes in Toronto and has served 3 terms as Bencher at the Law Society of Upper Canada.

Mr. Schabas thanked Mr. Van Ommen and the Law Society of BC, remarking on the importance of gathering with and getting to know Presidents and Benchers across the country. Regulators across the country face similar challenges; sessions such as the conference on alternative legal service providers held yesterday provide opportunities to learn and collaborate together toward innovative solutions.

Issues facing the Law Society of Upper Canada include regulation of paralegals, and the potential expansion of the program into the area of family law as recommended by the Bonkalo Report.

Licensing of new lawyers is also creating new challenges; increasing numbers of law students are unable to get articling placement, and the experiential law practice program designed in part to address placement difficulties has experienced its own challenges. A comprehensive review of the entire licensing program has begun, which will include research as well as broad consultation

with membership across Ontario. All options will be considered, including graduated licencing, experiential learning and admission by exam only. The goal is to reach a solution for the long term by early 2018.

Additionally, the Law Society of Upper Canada is also preparing to engage in its first governance review in 7-8 years. The Governance Task Force will review governance generally, committee structures and board competencies. An Appointments Advisory Group has opened up the appointments process and improved transparency by advertising appointments criteria which include considerations of equity and diversity. Appointments under the new process have been well received. Other possible initiatives include holding convocation in a location better able to accommodate the large board as well as guests, and improving communication tools to make it easier for the public to make a complaint or find out more about lawyers.

In response to a question, Mr. Schabas confirmed that the Law Society is trying to gather data on how many students experience unpaid or underpaid articles. Acknowledging the problem in Ontario as well, Mr. Schabas also noted that the unfortunate consequence of increasing the rigour around articles has been a decrease in the number of lawyers willing to become principals. He confirmed that, to collect data, the Law Society has retained communications consultants who have conducted surveys and focus groups. They also compare how many people apply for licencing exams, and then need articling positions, with the number of lawyers called.

In response to another question, Mr. Schabas confirmed that challenges associated with the Lawyers Practice Program have included the perception that it is a “second class” way in to the profession, which is discouraging many from applying.

Mr. Van Ommen thanked Mr. Schabas for his remarks.

5. Remarks from Executive Director of Nova Scotia Barristers Society

Mr. McGee introduced Darryl Pink, Executive Director of the Nova Scotia Barristers Society, advising Benchers of his upcoming retirement, and acknowledging his extensive contributions to the profession. Mr. McGee congratulated Mr. Pink, and wished him well on his future endeavors.

Mr. Pink thanked Mr. McGee and the Benchers for their hospitality and the opportunity to speak. He noted that Nova Scotia has been engaged for the last 4 years in a “rethink” of the legal profession, seeking to transform legal regulation and governance. After much work in Canada and internationally, it has become apparent that the public interest in the delivery of legal services goes far beyond the regulation of lawyers.

More work needs to be done on the exploration of regulating firms rather than individual lawyers, particularly given that the majority of lawyers practice in firms. To increase the

accessibility of legal services, licencing of paralegals has also become a focus; the Barristers Society has requested a legislative amendment enabling it to set credentials and standards for paralegals delivering legal services.

Mr. Van Ommen thanked Mr. Pink for his remarks, and for his many contributions to the profession.

DISCUSSION/DECISION

5. Strategic Plan Review Process: Mental Health Initiative

Mr. Van Ommen introduced Benchers Brook Greenberg to provide his presentation on mental health issues and the legal profession, as part of the series of briefings to Benchers in advance of the strategic planning process.

Mr. Greenberg noted the importance of this issue to both lawyers and the public generally. He was first made aware of the impact of mental health issues experienced by students and lawyers when he began providing pro bono assistance to UBC students who were required by regulation to report mental health issues on their admissions applications. Such is the stigma associated with these issues that students were avoiding diagnosis or treatment for serious health concerns to avoid this obligation to report. He was struck by the impact of this stigma and the unintended consequences of otherwise well-meaning regulation.

He noted that society treats physical and mental health issues differently, but stressed that our physical and mental well-being should be treated equally. He advocated for the inclusion of a thoughtful and educated approach to mental health issues in the profession in the strategic planning process. Amongst his recommendations was the creation of a body to oversee the Law Society's approach to the collection of data and the implementation of tools to reduce stigma and help avoid unintended consequences of regulation, as well as a review of the mechanism of Diversion as a part of the discipline process.

Mr. Greenberg then briefed Benchers on the pervasiveness and seriousness of mental health issues in the legal profession, stressing the importance of a comprehensive approach by the regulator. A recent comprehensive American study revealed the following statistics: 20.6% of American lawyers, compared to 11.8% of the broader professional population, show problematic drinking patterns; 36.4% demonstrated alcohol abuse and dependence, which is more than double the rate of doctors; 61% demonstrated clinical anxiety disorders at some point in their career, 45% experienced depression, 11.5% had suicidal thoughts and 0.7% had an actual suicide attempt. Studies from other institutions and from other jurisdictions have produced similar findings.

The two most common barriers to treatment are privacy and fear of others finding out. Thus, stigma is a main reason for our inability to deal effectively with these issues. Regulators should be interested in these statistics, and the apparent barriers to treatment, given the way in which mental health issues pervade the discipline process. Anecdotally, the impacts of substance use and mental health struggles are apparent in discipline hearings and conduct reviews, and also appear to affect all aspects of a lawyer's professional and personal lives, as well as contribute to complaints, competence and retention issues.

The Legal Professions Act provides ample scope to try to tackle these issues, which is squarely within the public interest protection mandate. Other Law Societies have instituted measures such as the implementation of a Mental Health Task Force in Ontario, and a diversion program in Nova Scotia; 27 US states also have some form of diversion program through their court system. Combatting these issues will require education, to enable lawyers to recognize the symptoms of anxiety, depression or substance abuse and know when to reach out. Arguably, it will also require a community culture change, something perhaps best addressed by law firm regulation.

Mr. Greenberg referred again to the Law Society of Upper Canada's Mental Health Task Force, commending its excellent, thoughtful and well-researched report to all Benchers for review. The report noted that long term strategies are required to increase education and reduce stigma. It also recommended two sets of policy tools, knowledge and education, and a review of regulatory processes; the former involves collaboration with other bodies, the provision of specialized education for Benchers and staff, model policies for firms and the consideration of the role of CPD; the latter includes incorporating early diversion processes, the focus on early intervention where mental health issues are resulting in impairment, and reviewing the Rules, Code and admissions forms and processes to eliminate provisions creating stigma.

He then made a series of recommendations for further consideration. Collaboration with other organizations and jurisdictions on policies, tools and communications strategies would be helpful; he particularly noted Ontario's Mental Health Implementation Task Force, the Canadian Mental Health Association, the CBA and the Lawyers Assistance Program (LAP). Initiatives that promote education and awareness amongst members to decrease stigma and encourage early assistance are important, as is the consideration of processes such as diversion. Surveying the membership could provide useful information in the development of initiatives, as well as the consideration of whether there are adequate resources, such as LAP, in place to support lawyers in need. Possible initiatives could include a practice advisor dedicated to mental health, stress and substance issues, or online tools specific to lawyers to help lawyers to privately understand and address emerging issues or symptoms.

Mr. Greenberg also suggested the consideration of providing more resources for Benchers to address mental health issues that arise in student interviews, and adding to the PLTC curriculum to increase knowledge and reduce stigma amongst young lawyers. The Law Society website

represents another vehicle for increasing awareness of the seriousness of the problem and the availability of treatment. He stressed that all of the possible recommendations would require resources and support.

Benchers provided individual thanks to Mr. Greenberg for his insightful and thought-provoking presentation, noting the significance of the issue across the profession.

EXECUTIVE REPORTS

6. President's Report

Mr. Van Ommen briefed the Benchers on TRC Advisory Committee issues, noting that the Federation TRC Working Group is scheduled to have its first meeting within the month, as well as various Bencher Calendar events.

7. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers. He noted that a priority for this year is the design and implementation of a cultural competency and training program. The program as a whole will be broad in scope, and cover both cultural and societal issues such as mental health; the first session next week will focus on indigenous issues.

He also briefed Benchers on the Law Society's research collaboration with the Legal Services Society on the cost of delivering legal services. To help address the dearth of knowledge of the economics of the profession, particularly regarding lower income earners, the Law Foundation has established a joint research fund of \$75,000 - \$80,000. The Executive Committee will provide oversight on this project and will report to Benchers as information becomes available.