



Minutes

Benchers

Date: Friday, October 27, 2017

Present: Herman Van Ommen, QC, President
Miriam Kresivo, QC, 1st Vice-President
Nancy Merrill, QC, 2nd Vice-President
Jasmin Ahmad
Jeff Campbell, QC
Barbara Cromarty
Jeevyn Dhaliwal
Thomas Fellhauer
Brook Greenberg
Lisa Hamilton
J.S. (Woody) Hayes, FCPA, FCA
Dean P.J. Lawton, QC
Jamie Maclaren

Sharon Matthews, QC
Steven McKoen
Lee Ongman
Greg Petrisor
Claude Richmond
Phil Riddell
Elizabeth Rowbotham
Mark Rushton
Carolynn Ryan
Daniel P. Smith
Michelle Stanford
Sarah Westwood
Tony Wilson, QC

Unable to Attend: Satwinder Bains
Pinder Cheema, QC
Craig Ferris, QC

Martin Finch, QC
Christopher McPherson

Staff Present: Adam Whitcombe
Deborah Armour
Renee Collins
Su Forbes, QC
Andrea Hilland
Jeffrey Hoskins, QC
Michael Lucas

Alison Luke
Jeanette McPhee
Doug Munro
Lesley Small
Alan Treleaven
Vinnie Yuen

Guests:	Dom Bautista	Executive Director, Law Courts Center
	Michelle Casavant	Member, Aboriginal Lawyers Forum
	Kensi Gouden	CEO, Courthouse Libraries BC
	Alden Habacon	Diversity and Inclusion Strategist & Senior Advisor, Intercultural Understanding, UBC
	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
	Michele Ross	Education Chair, BC Paralegal Association
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Stephanie Spiers	Director of Regulatory Affairs, Federation of Law Societies
	Bill Veenstra	President, Canadian Bar Association, BC Branch
	Prof. Jeremy Webber	Dean of Law, University of Victoria

CONSENT AGENDA

1. Minutes & Resolutions

a. Minutes

The minutes of the meeting held on September 29, 2017 were approved as circulated.

The *in camera* minutes of the meeting held on September 29, 2017 were approved as circulated.

b. Resolutions

The following resolution was passed unanimously and by consent.

Temporary Articled Students and Prehearing Conferences

BE IT RESOLVED to amend Rule 2-71(2) of the Law Society Rules by rescinding the preamble and substituting the following:

- (2) A person enrolled in temporary articles is not permitted under any circumstances to do any of the following in a Supreme Court proceeding:.

Ombudsperson Rule

BE IT RESOLVED to amend the definition of “Ombudsperson” in Rule 1 of the Law Society Rules by striking “anyone employed by the Ombudsperson to assist in that capacity” and substituting “anyone employed to assist the Ombudsperson in that capacity”.

2018 Fee Schedules

BE IT RESOLVED to amend the Law Society Rules, effective January 1, 2018, as follows:

- 1. In Schedule 1,
 - (a) by striking “\$2,125.57” at the end of item A 1 and substituting “\$2,139.72”,
 - (b) by striking “\$1,750.00” at the end of item A 2(a) and substituting “\$1,800.00”,
 - (c) by striking “\$875.00” at the end of item A 2(b) and substituting “\$900.00”, and
 - (d) by rescinding items D 4 and 5 and substituting the following:
 - 4. Training course registration (Rule 2-72 (4) (a) [Training course])

until April 30, 2018	2,500.00
effective May 1, 2018	2,600.00

5. Remedial work (Rule 2-74 (8) [Review by Credentials Committee]):

- (a) for each piece of work 50.00
- (b) for repeating the training course
 - until April 30, 2018 3,900.00
 - effective May 1, 2018 4,000.00;

2. In Schedule 2, by revising the prorated figures in each column accordingly; and

3. In the headings of schedules 1, 2 and 3, by striking the year “2017” and substituting “2018”.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

Federation National Law Degree Requirement Amendment

BE IT RESOLVED that:

The Law Society of British Columbia approves the following recommendations as set out in the NRRC’s final report:

- i. The National Requirement be amended as follows effective January 1, 2018 by:
 - a. deleting the reference to “legal and fiduciary concepts in commercial relationships” from the list of required private law principles set out in paragraph 3.3(b) of Section B. Competency Requirements; and
 - b. remove the words “presumptively”, from paragraph 1.1 of section C Academic Program.
- ii. Council of the Federation should confirm that the mandate of the Approval Committee gives it control over its own process, including the timing of the review cycle, and the power to make such recommendations to Council, including changes to the National Requirement, as it deems appropriate.

GUEST PRESENTATION

2. Introductions:

President Van Ommen introduced new Director of Communications Jason Kuzminski, the newest member of the Executive Support team Sydney Snape, Michelle Casavant who will be a regular Bencher meeting guest from the Aboriginal Lawyers Forum, and Stephanie Spiers,

Director of Regulatory of Affairs at the Federation of Law Societies who is visiting to observe Law Society of BC regulatory processes.

3. Intercultural Fluency: The Need for Cultural Literacy for BC Lawyers

Diversity and Inclusion Strategist & Senior Advisor, Intercultural Understanding at UBC Alden Habacon presented to Benchers on cultural fluency.

Mr. Habacon began his presentation with an acknowledgement of the unceded territories of the Coast Salish peoples, noting the legacy of this land and the presence of multiculturalism amongst First Nations peoples even before European arrivals. He also provided his thanks to Benchers for the invitation to present today.

Mr. Habacon's presentation focused on the profound impact culture has on the lens through which we see world. Even when we practice empathy, we do so through our own lens which results in complexity and difficulty working across cultural difference.

He provided examples of cultural conflicts in our society, and noted that intercultural struggles occur when we internationalize faster than the time it takes to develop the resources required to adapt a changing environment. Ideally we need to take time to understand what a path of diversity looks like with the goal of developing an intercultural mindset.

Typically the first stage on the path is denial (there is no other culture); the second is defense (I know I can't deny the change but don't like it). Our aim is to move to adaptation, which involves not fully understanding but respecting each other nonetheless, and acceptance, which involves a degree of integration so complete people are unaware of any challenge.

Mr. Habacon noted that exposure to diversity does not necessarily result in understanding. A set of intercultural attitudes is required, which include aspirational empathy, conscientiousness of bias, tolerance of ambiguity, curiosity and the ability to suspend judgment. He also spoke of the need for cultural literacy regarding 'below surface' cultural attributes like attitudes towards elders, the role of the family, and the impact of oppression and abuse. With specific regard to First Nations peoples, a literacy of the residential schools experience is required to help us begin to understand.

Mr. Van Ommen and others thanked Mr. Habacon for his engaging and highly informative presentation.

DISCUSSION/DECISION

4. Consideration of Strategic Plan Initiatives

Mr. Van Ommen reviewed with Benchers the various options presented in the strategic planning session held the previous night. He noted that comments and suggestions would be incorporated into a final draft to be considered by the Executive Committee and then presented to Benchers for decision at the December meeting. He invited Benchers to provide any additional comments.

With regard to the articling program, it was suggested that priority of focus should be given to collecting data on the BC experience, rather than what is happening in Ontario. Also, approval was expressed of an earlier suggestion that the plan be framed around the people we are serving, which should include lawyers. It was also noted that the plan should continue to include a focus on cultural competence.

5. Continuing Professional Development (CPD) Review Final Report

Chair Dean Lawton, QC began by thanking members of this year's committee and last, and staff, with particular mention of Alison Luke, Annie Rochette, Lesley Small, and Alan Treleven.

He noted that this report was being brought to Benchers for information and consideration only at this meeting, to allow Benchers time to reflect before any motions are presented for decision in December. He summarized the report as a timely consideration of the liberalization and expansion of the CPD regime that contains recommendations for change that focus on maintaining and enhancing lawyers' ability to effectively serve the public.

The recommendation that the CPD requirement continue, as well as specific recommendations regarding what the program should include, are based on findings from research from other professions and jurisdictions as well as our own, a statistically relevant survey of the profession, and extensive consultations with legal organizations. Given the plethora of issues concerning mental health and wellness and lawyers' disproportionate exposure to the challenges of mental illness and substance abuse, one of the recommendations is to include a focus on professional wellness. Also included are recommendations allowing credit for educational programs from other disciplines that may relate to a lawyer's area of practice, as well as programs with a focus on multicultural and diversity issues.

Included as well is a recommendation for expanding credit for mentoring practices, training for principals and governance training. Also recommended is an expansion of learning methods, including allowance for solo viewing of educational recordings.

The Committee considered but is recommending against revising reporting requirements to allow for a cumulative, 3 year model, opting for a continuation of the 12 hour per year model.

However, it also recommending an allowance for some carry-over of credits to the following year.

The report contains a total of 26 recommendations for Benchers' review and consideration; Mr. Lawton invited comment and discussion.

Comment was made that the Committee's recommendations do not appear to reconcile with the report's observation that there is little empirical evidence that mandatory CPD improves the competence of lawyers. Queried also was rejection of a "rolling average" of credits over a 3 year period. In response, Mr. Lawton noted that the Committee concluded intuitively there is value to providing lawyers with continuing professional education; with the continuation of the 12 hours per year, it was the Committee's intention to avoid potentially lengthy breaks between study as could be the case with a "rolling average".

The possibility of including pro bono and legal work for some portion of CPD credit was raised, with the observation that such work provides unique and valuable learning experiences, and can be compared to the mentoring or teaching experience. However, it was also noted that, in the context of legal aid work, this could result in lawyers receiving compensation for their CPD efforts.

Caps on the number of hours of credit received for wellness, or potentially pro bono work, was discussed. The arguments for a cap included ensuring a high standard of competency and professionalism by encouraging a wider range of learning topics; the arguments against included the recognition that a cap could suggest a 'second tier' topic which in turn could perpetuate existing stigmas, and further, that lawyers should be permitted to focus learning as and where it is needed throughout the different stages of their careers, and that wellness and competency go hand in hand.

Mr. Lawton suggested that, on the return of this matter to Benchers for decision in December, motions on Recommendations 22A and B regarding caps on credit-hours for particular subject areas be bifurcated so that potential disagreement on this recommendation would not be fatal to approval of the recommendations package as a whole. It was suggested that the Committee also consider bifurcating Recommendation 10 regarding the exclusion of pro bono or legal aid work.

6. Governance Committee: Approval of Revised Annual Bencher Survey

Chair Steve McKoen briefed Benchers on the Committee's review and revision of the annual Bencher and committee survey questions. With last year's feedback in mind, the Committee discussed which questions should continue to be included, as well as how best to elicit helpful information. The revised questions are presented in the materials for Bencher consideration.

Mr. Campbell moved (seconded by Mr. Fellhauer) that the Bencher and Committee survey questions be approved as revised by the Governance Committee.

Ms. Hamilton then suggested a friendly amendment of a typographical error in the materials. Following this friendly amendment, the motion was approved unanimously.

7. Financial Matters:

- Financial Report - September YTD 2017

Chief Financial Officer Jeanette McPhee briefed Benchers on the financial results to September which are positive, and are projected to be positive to budget to the end of the year. Revenue is projected to be approximately 3% over budget to the end of the year due in part to an increase in electronic filings with the strong real estate market, despite projections of a decrease in the market in the second half of the year. Membership and PLTC enrollment are also up slightly, resulting in increased revenue, as is interest income due to the higher cash balances being held.

Operating expenses will have an approximately 2% variance, with savings in areas such as salary costs and HR consulting, as well external counsel fees and investigation costs due to the timing of files being worked on. With only the first 6 months of the year to review, TAF revenue appears ahead largely due to the strong real estate market, however we are approximately 5% behind last year.

LIF results are similar, with revenue over budget by approximately 3%, and expenses approximately 3% under budget. Investment returns are 6.2% which is ahead of the benchmark of 3.5%.

- Accountability Policy for External Funding

Chair of the Finance and Audit Committee Miriam Kresivo, QC briefed Benchers on the development of an accountability policy for funding of external organizations. She noted that, though the Law Society is not a funding organization per se, there are some externally operated organizations that are partially funded through the general practice fee. Currently, excluding funding for CANLII and the Federation of Law Societies, approximately 10% of the annual practice fee is allocated for these organizations.

As this funding is provided for in the annual practice fee, the Committee is making recommendations to Benchers to clarify how that funding is provided to ensure these external organizations are accountable. Specific principles recommended, which are modeled on Law Foundation funding requirements, include that the funds must be used for an intended purpose and in the manner proposed and approved on an annual basis, that the funds must be handled in a

manner that meets the standard acceptable to the Committee, and that all surplus funds must be returned unless otherwise approved.

In response to a question, Ms. Kresivo clarified that each group receiving funding for 2018 appeared before the Committee during the budgeting process, and each was made aware of this policy development with the assurance that they would be provided with details on requirements and guidelines as early as possible for next year.

The question was asked whether any thought was given to allowing a certain percentage of variance for potential surpluses, given that some organizations run a small deficit one year that may be balanced by a small surplus the next. Ms. Kresivo noted that the policy contemplates return of surplus unless otherwise approved by the Law Society, which provides opportunity for consideration of situations such as this.

Kensi Gouden, CEO of Courthouse Libraries BC thanked the Chair and Committee for their work on this policy, and commented on the return of surplus issue, querying whether the policy could incorporate the ability of an organization to meet the principled approach but retain potential surpluses if operational efficiencies can be shown. Ms. Kresivo agreed that, to add more clarity, they would add “or unless otherwise approved by the Law Society” to Condition #2 of the policy.

Ms. Kresivo then moved (seconded by Mr. Fellhauer) approval of the policy and guidelines, with the language amendment discussed above. The motion was approved unanimously.

EXECUTIVE REPORTS

8. President’s Report

Mr. Van Ommen briefed the Benchers on various Law Society matters, including:

- TRC Advisory Committee Update

He noted the symposium planned for November 23 and encouraged all Benchers to make themselves available for this important educational opportunity. A focus will be what the Law Society can be doing regarding the TRC recommendations and reconciliation generally. The symposium will be co-chaired by himself and Grand Chief Ed John, with former Lieutenant Governor Judge Steven Point providing the key note speech.

- Bencher Calendar

Mr. Van Ommen reminded Benchers of the numerous events in the coming weeks, including the Bench and Bar Dinner November 7, the Aboriginal Forum dinner

December 1, and the Recognition Dinner December 8. He also noted the retirement dinner for Chief Justice MacLachlin being held in Ottawa on December 14, noting that a local dinner will be held in Vancouver in the spring as well.

- Briefing by the Law Society's Member of the Federation Council

As the Law Society's Council member, Mr. Van Ommen reported on the Federation conference held recently in Victoria, the focus of which was the National Committee on Accreditation (NCA). The NCA assesses the credentials of approximately 900 foreign trained lawyers each year; given anecdotal evidence questioning the strength of applicants being admitted, a review and reform of the program focused on improving the assessment regime is underway. The NCA Review Report has been posted to Bencher Resources and the Federation website. Federation consultation with Law Societies and law schools across the country will continue.

- Meeting with Government Caucuses

Mr. Van Ommen briefed Benchers on recent meetings with both the NDP and Liberal caucuses. He encouraged continuation of such meetings on an annual basis, to help facilitate regular communication and build on government relations.

- Report on Outstanding Hearing & Review Decisions

Pleased to report no decisions outstanding, Mr. Van Ommen thanked Benchers for their diligent work.

9. CEO's Report

Mr. Whitcombe provided highlights of his monthly written report, including a briefing on the CEO Forum held at the recent Federation conference, discussion at which included how better to facilitate participation of smaller law societies with few staff. There was also discussion regarding block chain technology, and given the relatively limited understanding of this potentially pivotal issue, there was agreement that further discussion was warranted. Finally, the issue of 'mining existing data' amongst law societies was raised, to help evaluate programs and provide better proactive support for members.

He reiterated the positive results for the third quarter financial report, noting that while we do plan for a balanced budget, we attempt to make adjustments in the following year's budget to reflect variances as we are able.

He also echoed Mr. Van Ommen's comments on the government caucus meetings, thanking Benchers Dean Lawton, QC, Pinder Cheema, QC, and Woody Hayes, FCPA, FCA, in addition to

President Van Ommen and First Vice-President Kresivo for their attendance, as well as Lindsay Jalava for her organization of the event.

Mr. Whitcombe also noted the completion of the 2017 Annual General Meeting, making reference to the online experience and noting that the source of initial difficulties was ascertained and we are optimistic will not be a factor next year.

Finally, he noted we are working with the Legal Services Society on gathering data and information around the economics of legal practice. While, the survey circulated by Price Waterhouse Coopers has not received a good response rate thus far, they remain confident they will still be able to draw conclusions.

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2017-10-20