



Minutes

Benchers

Date: Friday, March 02, 2018

Present: Miriam Kresivo, QC, President
Nancy Merrill, QC, 1st Vice-President
Craig Ferris, QC, 2nd Vice-President
Jasmin Ahmad
Jeff Campbell, QC
Pinder Cheema, QC
Jennifer Chow, QC
Barbara Cromarty
Jeevyn Dhaliwal
Martin Finch, QC
Brook Greenberg
Lisa Hamilton, QC
Dean P.J. Lawton, QC

Jamie Maclaren, QC
Geoffrey McDonald
Steven McKoen
Claude Richmond
Phil Riddell
Elizabeth Rowbotham
Mark Rushton
Carolynn Ryan
Michelle Stanford
Sarah Westwood
Michael Welsh, QC
Tony Wilson, QC
Heidi Zetzsche

Unable to Attend: Christopher McPherson, QC

Staff Present: Don Avison
Deborah Armour, QC
Renee Collins
Su Forbes, QC
Andrea Hilland
Jeffrey Hoskins, QC
Lindsay Jalava
David Jordan
Jason Kuzminski

Michael Lucas
Alison Luke
Jeanette McPhee
Doug Munro
Michelle Robertson
Annie Rochette
Alan Treleven
Adam Whitcombe
Vinnie Yuen

Guests:	Bill Veenstra	President, Canadian Bar Association, BC Branch
	Caroline Nevin	Executive Director, Canadian Bar Association, BC Branch
	Shannon Salter	Chair, Civil Resolution Tribunal
	Kensi Gounden	CEO, Courthouse Libraries BC
	Rob Seto	Director of Program, CLEBC
	Herman Van Ommen, QC	Law Society of BC Member, Council of the Federation of Law Societies of Canada
	Dom Bautista	Executive Director, Law Courts Center
	Wayne Robertson, QC	Executive Director, Law Foundation of BC
	Ryan Williams	President, TWI Surveys Inc.
	Prof. Jeremy Webber	Dean of Law, University of Victoria

CONSENT AGENDA

1. Minutes & Resolutions Note that Exec Delegations came off to be discussed

a. Minutes

The minutes of the meeting held on January 26, 2018 were approved as circulated.
Amendment to take Dan Smith off attendance.

The *in camera* minutes of the meeting held on January 26, 2018 were approved as circulated

b. Resolutions

The following resolution was passed unanimously and by consent.

External Appointments: Vancouver Building Board of Appeal, City of Vancouver & Hamber Foundation

BE IT RESOLVED to nominate Michael Morgan for Vancouver City Council's appointment of the Law Society representative on the Building Board of Appeal.

BE IT RESOLVED to appoint Paul Barbeau as the Law Society's new representative on the Hamber Foundation Board of Governors, and that Todd Kerr be re-appointed to the Board for a second term.

Proposed Amendments: Rule 2-24 and the Sharing of Information with Other Law Societies

BE IT RESOLVED to approve the recommendations to amend Rule 2-24 made by the Executive Committee in its memorandum dated February 21, 2018 and to refer the matter to the Act and Rules Committee to draft rule amendments to address the recommendations.

Waiver of Late Trust Report / Accountants Report Filing Fees

BE IT RESOLVED to approve the recommendations to Rule 3-80 made by the Executive Committee in its memorandum dated February 21, 2018 and to refer the matter to the Act and Rules Committee to draft rule amendments to address the recommendations.

GUEST PRESENTATIONS

2. Civil Resolution Tribunal (CRT) Update

Chair Shannon Salter attended for this presentation, providing an overview for Benchers of the CRT, recent developments and anticipated future changes. She began by thanking Benchers for their invitation to speak, noting that since the time of her last visit, the CRT officially opened to strata claims and small claims under \$5,000.

Ms. Salter provided an overview of the CRT for Benchers, noting that it was the first public justice system online administrative tribunal in Canada and perhaps the world. Since its opening, other jurisdictions have followed suit, including the UK with Her Majesty's online court which was modeled largely on BC's CRT. The CRT's purpose is to bring the justice system to the people, and is built around the skills, abilities, challenges and limitations of the people who use the system, rather than the expectation that the people should fit themselves into the system.

Acknowledging the fact that only 2% of claims result in trial, the CRT is designed on the assumption that most people will not appear before a tribunal member, and with the aim of consensual and early settlement. Ms. Salter then described the process in full, beginning with the anonymous "Solution Explorer", and proceeding through the online application with an available "chat room" function for party to party negotiation, the possible mediated resolution stage, through to an adjudication. She emphasized that the majority of claims are settled before the adjudication stage. The CRT receives an average of approximately 5,000 small claims disputes per year and approximately 600 strata disputes.

Keeping users of the system in mind, the website, content, forms and decisions are all written at an accessible reading level. Online application forms are user tested, first by legal advocates of the most vulnerable members of society, then by randomly chosen members of the public and lawyers. Wherever possible, barriers to access such as physical impairment, mental health challenges or language barriers are accommodated to achieve inclusivity. Decisions are transparent and searchable, with over 200 decisions to date published on LexUM by CanLII. Uniquely, users are also surveyed following the process, not to ask about the outcome of their claim, but to ask questions like whether they understood the process, whether the technology was easy to use, how they found the process and how fairly they were treated by staff.

Ms. Salter noted that the system remains responsive to change. She alerted Benchers to a possible change ahead to increase the small claims limit to \$10,000, and the anticipated expansion of CRT jurisdiction to include some motor vehicle claims. Regarding the latter, she noted that legislative changes were expected before June of this year, at which point consultation with stakeholders such as the Law Society could begin.

In response to questions, Ms. Salter confirmed that the Small Claims court has seen an approximate 40% reduction in its filings, which roughly corresponds to the previous proportion of its claims under \$5,000. She also confirmed that the average CRT small claims timeframe is 3-4 months from start to completion; they are working toward the goal of 60-90 days. Strata claims, which tend to be more complex, are currently about 6-7 months.

Ms. Kresivo thanked Ms. Salter for her informative presentation.

3. 2017 Employee Survey Results

Ryan Williams from TWI Surveys Inc. attended to provide Benchers with a summary of results for the annual employee survey, which provides a yearly gauge for Law Society employees' job satisfaction.

There was an 85% response rate for the voluntary survey. Consistent with previous years, the data shows that most employees are "engaged", inspired by the mandate, find the work meaningful, feel appreciated and believe their work makes a difference. Differing responses amongst departments indicates a somewhat "silo'ed" environment, but this has improved over previous years.

He provided a comparison of Law Society responses to those of other organizations, summarizing those areas that fall above the norm, and those falling somewhat below. He also provided a sampling of comments and suggestions, both positive and constructive.

In response to the question of whether there was a high staff turnover rate, Ms. McPhee confirmed that the rate of turnover is approximately 10%-12% which is not unusual for an organization of this size. She also noted that the turnover of staff under 5 years has been high for about 10 years. In response to another question, Mr. Williams confirmed that it was difficult to ask employees in the employee survey why they may leave, given that those who leave do not complete the survey, but Ms. McPhee noted that exit surveys are conducted. The suggestion was made that information from those surveys be incorporated into this presentation so Benchers have a more complete picture.

A question was asked about a comment suggesting there should be no tolerance for bullying. Mr. Williams noted there were 3 such comments, but that was not necessarily reflective of the broader culture. It was noted by a Bencher that there did not appear to be any questions related to interactions between Benchers and staff. Mr. Williams suggested that responses would be influenced by the specific staff role and the responses of those who work closely with Benchers would reflect their experiences.

In response to another question, Mr. Williams clarified that the benchmark 'norms' come from data collected over 20 years as well as industry standards. He and Ms. McPhee also clarified that

the P50 pay structure determines salaries based on the median in the marketplace, and that the survey comment on increased benefits refers to sick days and flexibilities, but could also relate to a recent change in benefits provider.

Ms. Kresivo thanked Mr. Williams for an informative presentation.

EXECUTIVE REPORTS

4. President's Report

Ms. Kresivo acknowledged the recent appointment of former Bencher Madam Justice Matthews, noting she will be missed at the Bencher table. The vacancy created will necessitate a by-election, notice of which will go out to members in the County of Vancouver March 12. She noted that we continue to await the appointment of new Appointed Benchers and are following up with government in that regard.

She also acknowledged those who would be receiving their QC appointments at a ceremony later that day, and thanked Benchers Jeevyn Dhaliwal, Elizabeth Rowbotham and Michelle Stanford for speaking at recent Welcoming Ceremonies on her behalf. She then administered the oath of office to Bencher Pinder Cheema, QC who had been unable to attend the January meeting.

Ms. Kresivo reported on the recent joint meeting of the Legal Aid, the Truth and Reconciliation and the Access to Legal Services Advisory Committees with a view to coordinating their efforts on common issues. She also noted the recent Provincial Budget announcement which, for the first time in many years, provided additional funding for the justice system. The Law Society has reached out to the Attorney General with its continued pledge to work with government on increasing access to justice through the licensing of alternate legal service providers.

The newly constituted Alternate Legal Service Provider Working Group met for the first time yesterday. Its focus will begin with scope of work anticipated for these service providers. The Working Group is committed to transparency and will ensure consultation before any implementation.

She recently spoke at the Law Society Staff Forums, reporting on the strategic priorities for the year, including the focus on mental health, ongoing work toward reconciliation and the development of the law firm regulation program. She also recently completed an interview with Lawyers Daily, discussing the priorities and initiatives of the Law Society.

She will be attending the upcoming Federation Council meetings, the focus of which will include rules on money laundering and the NCA committee's review of competency based education. These meetings provide good opportunity for law societies to discuss issues of common interest and share insights, successful strategies and initiatives.

5. CEO's Report

Mr. Avison summarized the areas of the justice system included in this year's provincial budget, noting that it represented the first positive reference to the administration of justice in some years. He also reported on the finalization of the agreement between CanLII and LexUM, and briefed Benchers on Mr. William's presentation on the employee survey at the Staff Forums. While engagement by staff was largely positive, some concerns were also expressed. He will continue to follow up and keep Benchers apprised.

Finally, he extended his thanks and appreciation to those Benchers who have served as guest lecturers at PLTC over the last year.

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

- **Federation 101**

Law Society Federation Council member Herman Van Ommen, QC provided Benchers with a history and an overview of the Federation of Law Societies.

The Federation is a national coordinating body that began as a conference in 1926 and was incorporated in 1972. Today it has 14 provincial and territorial members, with the largest membership by lawyer population being Ontario, Quebec, Alberta and BC. Despite population differences, the Federation operates on a model of unanimity and consensus. Its strategic objectives include being a knowledge leader and facilitating collaboration and information sharing.

Its national initiatives include the National Mobility Agreement, which effectively created the modern Federation as it has come to be, the Model Code, which was spearheaded and chaired by the Law Society of BC's Gavin Hume, QC, the National Discipline Standards, the National Admissions Standards, and the National Committee on Accreditation (NCA), which is chaired by Mr. Van Ommen and is currently being reviewed.

In response to a question regarding whether the influx of foreign trained lawyers is having an increasing impact on the market, Mr. Van Ommen noted that the highest impact has been in Ontario, but confirmed there is also a significant impact in BC. Mr. Avison confirmed he would endeavor to provide that information for BC specifically. Mr. Treleven noted that the NCA report, posted to Bencher Resources, contains relevant statistics; Ms. Kresivo asked that a condensed summary of the NCA review report be provided to Benchers.

UVic Dean of Law Jeremy Webber suggested that an increase in Canadian law school positions could help address the issue of an increasing number of Canadian students seeking legal education abroad.

The Federation also owns CanLII, the free public legal search service, which is overseen by a skills based independent board. Additionally, it maintains a policy and advocacy department as well as a standing committee which reviews and coordinates potential higher court interventions on matters of common interest. It is a founder of the International Conference of Legal Regulators and builds and maintains international relationships. It is funded primarily through law society levies. The NCA and the two continuing legal education programs operate on a cost recovery basis.

The Federation Council meets 4 times per year, with the March meeting focused on CEOs and Presidents and the October meeting typically including a conference topic of current relevance.

- **Anti-Money Laundering**

Chief Legal Officer Deb Armour, QC provided Benchers with an overview of the measures taken over the years by the Law Society and the Federation of Law Societies of Canada to prevent money laundering. She noted that the Federation's success at the Supreme Court of Canada in *Canada (Attorney General) v. Federation of Law Societies of Canada*, in which it argued that the inclusion of law societies in a federal anti-money laundering regime was unconstitutional and represented an attack on solicitor client privilege and the duty of loyalty to clients, underscores the responsibility of law societies to maintain appropriate measures to prevent money laundering.

The Law Society of BC has had rules in place for some years. Those rules prohibit lawyers from accepting \$7,500 or more in cash except in limited circumstances. There are also detailed rules regarding client identification and verification which are part of a lawyer's "know your client" obligations.

We have a robust Trust Assurance program which uncovers breaches of those rules and misuse of trust accounts. Compliance issues discovered through the auditing process are referred to the Professional Conduct department. The Law Society disciplines as appropriate when we uncover those breaches and trust account misuse.

We have provided numerous educational materials to the profession including a "how to" video on client identification and verification. We have also issued Discipline Advisories to ensure lawyers are aware of the consequences of breaches of our rules.

A working group has been established at the Federation that Ms. Armour and CFO Jeanette McPhee are on. The working group has reviewed the current Federation models rules and has proposed changes that are with the law societies for consultation. BC has established its own working group to review the proposed changes and accept feedback from stakeholder groups such as the CBA.

The next steps for the Federation working group include establishing best practices for law societies for monitoring and enforcement and developing guidance to the profession on the revised rules and more generally.

DISCUSSION/DECISION

6. Governance Committee Report: Year-End Survey Results

Governance Committee Chair Steve McKoen briefed Benchers on the results of the year-end Bencher and Committee Survey. He noted that a total of 20 Benchers provided responses, and encouraged greater participation in the coming year. In its review of responses, the Committee reviewed those questions with considerable agreement to determine if the correct questions are being asked, as well as those with a measure of disagreement, to identify issues of concern.

To summarize, Benchers expressed increased agreement with the statements that they receive sufficient input from committees and staff to support their decisions, they receive sufficient information on financial performance, their discussions are open, meaningful and respectful and they know what is expected of them.

There was disagreement with the statement that Benchers are up to date with the latest developments regarding supply and demand for legal services, and lower agreement with the statement that Benchers have no hesitation raising issues at meetings. These responses could be due to the wording of the questions, but they may also signal areas of concern.

As a result of its review, the Committee recommends revising the format for the committee survey to seek narrative information, rather than numerical responses, in an effort to increase the usefulness of responses. It also recommends a continuation of the two stage decision making process for complex issues. Also, despite some support for increased opportunities for debate of sensitive issues in camera, the committee recommends that the Benchers continue to discharge their public decision-making role openly.

Ms. Kresivo underscored the importance of the Benchers' public role, noting that the Bencher Governance Policies provide guidelines for the use of in camera discussion.

7. Composition of Review Boards

Craig Ferris, QC provided background for Benchers on the recommendation to reduce the composition of Review Boards from 7 to 5. He noted that the Executive Committee was unanimous in their recommendation to reduce the size, which will facilitate easier organization of review boards and more efficient decision-writing. He also acknowledged that the recommended composition of 2 Benchers, 3 lawyers and 1 non-Bencher member of the public

reduces the number of public review board members to 1 from 2, but also noted that this still represents 20% of the board.

Mr. Ferris then moved (seconded by Ms. Westwood) that the number of members of a review board be set at 5: 1 lawyer Bencher chair, 2 Benchers, at least 3 lawyers and 1 non-Bencher member of the public.

In discussion of the motion, it was noted that the composition of review boards was established in 2012 at 7 members, replacing the quorum of 7 or more Benchers previously required. In response to the question of how well the 2012 model worked, Mr. Ferris noted that, while he did not have statistics at hand, information relied upon for the recommended reduction confirmed the difficulty of organizing 7 people to write a decision; he also observed that the only court in Canada that sits as a 7 person panel is the Supreme Court of Canada.

Concern was expressed regarding the reduction of public members, and whether the single public member may feel reluctant to provide meaningful feedback. The question was asked whether appointed Benchers had ever been hesitant to participate fully, or noticed such hesitation in others. Appointed Bencher Claude Richmond confirmed he had no such concerns.

Following a vote, the motion was passed unanimously.

Mr. Ferris then reviewed the outstanding hearing decisions, encouraging those with outstanding decisions to complete them in a timely way. He also noted that Chief Information and Planning Officer Adam Whitcombe was working with Hearing Administrator Michelle Robertson to develop an electronic reminder system. Finally, to help facilitate efficient organization, he asked that hearing panel members notify Ms. Robertson, on completion of a hearing, of who would be primarily responsible for drafting the decision.

Tribunal and Legislative Counsel Jeff Hoskins, QC reminded all that the Tribunal Refresher Course would likely take place September 19, 2018 at 5 pm.

8. 2017 Audited Financial Statements

As Chair of the Finance and Audit Committee, Mr. Ferris introduced this item, noting that the auditors provided a clean audit opinion on the 2017 financial statements at the February 15 Finance and Audit Committee meeting.

Chief Financial Officer Jeanette McPhee then provided an overview of the 2017 Audited Financial Statements beginning with the General Fund.

She reported on a positive year, with revenue approximately 4% over budget, in part due to an increase in electronic filing fees as a result of an active real estate market. Other areas over

budget included the number of practicing members, interest income for cash balances, PLTC enrollment fees and discipline fines and penalties.

Operating expenses were approximately 3% under budget, with savings realized in the areas of staffing, HR recruiting and consulting costs, PLTC operations, and external counsel and investigations costs.

TAF revenue was \$4.5 million, which was over budget in 2017, but this was due to the 2016 budget being set prior to the increase in activity in the 2016 real estate market. She noted that a reduction is expected for the coming year given market conditions. Trust Assurance expenses are close to budget for the year.

Ms. McPhee provided an overview of the General Fund Balance sheet, which includes approximately \$21 million consisting of \$11.7 million invested in capital, \$3.3 million in trust assurance, after the transfer of \$3.2 million transferred to the Lawyers Insurance Fund (LIF), and \$2.7 million in capital funding for planned capital projects associated with maintenance for the 845 Cambie building and operational space costs.

The Special Compensation Fund is winding down, and there was approximately \$120,000 in expenses related to collecting recoveries and document production on an older file. Pursuant to Section 50 of the Legal Profession Amendment Act, 2012, excess reserves of \$1 million has been transferred to LIF. This leaves \$276,000, which has been retained for anticipated future expenses related to collections and document production.

Providing an overview of LIF, Ms. McPhee confirmed that assessment revenue was 2% over budget, and operating expenses were 6% under budget. The claims provision in 2016 was unusually high; it returned to more normal levels in 2017. For investment returns, the goal is to exceed the benchmark by 1.3%; this year the benchmark is 7.1% and returns were 10.3%. The insurance fund has net assets of \$84.2 million, with an adequate claims provision reserve in place.

In response to a question regarding whether PLTC students have ever received any refund or reimbursement for fees given our excess, Ms. McPhee noted that the additional PLTC fees related to having more students than budgeted at 510. She also noted that the PLTC fees compare positively to other provinces.

Mr. Ferris moved (seconded by Ms. Merrill) approval of the Law Society's 2017 Combined Financial Statements for the General & Special Compensation Funds, and the 2017 Consolidated Financial Statements for the Lawyers Insurance Fund.

The motion passed unanimously.

REPORTS

9. Lawyers Insurance Fund: 2017 Year-End Report

Director of LIF Su Forbes, QC provided Benchers with the LIF year-end report for 2017, beginning with the background statistics showing there are 14,400 lawyers in BC, 2,600 of whom are non-practicing or retired and 2,900 of whom are in house and therefore not insured through LIF. She reported that frequency of reporting has remained stable, as have the areas with the most (civil litigation plaintiff and motor vehicle) and least (creditors' remedies and commercial lending) claims. While claim payments on expenses remain consistent year over year, indemnities are more volatile. Total claim payments of \$12.3 million put last year slightly below the annual average of \$14 million.

Ms. Forbes reported that LIF closes approximately as many files as it opens each year. On average 76% are closed without payment, which is a testament to the skill of claims counsel in resolving matters and the diligent reporting patterns of lawyers in BC regarding potential claims. 48% of reports never develop into claims, and fully 17% are repaired, which is more than the number of defended and settled claims combined. She also detailed the numerous LIF educational initiatives to raise awareness regarding risks and coverage, and noted LIF's consistent success rate at trial and on appeal.

Reporting on Part B coverage for lawyer theft, she noted there have been 99 lawyers involved since its launch in 2004 and only 25 have generated paid claims. The vast majority of thefts involve small amounts, typically less than \$25,000. The areas of practice involved include administrative (predominantly in the area of immigration), real estate, criminal, wills and estates, civil litigation and plaintiff's motor vehicle, family and commercial.

Payments are made in a timely way, on average within 7 months, compared to almost 2.4 years under the special compensation fund. Claimant service evaluation forms indicate high levels of satisfaction with the fairness, courtesy and timeliness of LIF's service.

Insurance fees have remained stable since 2000, and compare positively to other provinces. Though we are the 3rd largest program we have the 10th largest fee. Market uncertainty has affected investment returns, but it may still be possible to maintain the current fee level for the coming year.

Ms. Kresivo thanked Ms. Forbes and all the LIF staff for their good work and results.

In response to a question regarding the feasibility of offering lower coverage limits for lower risk areas, Ms. Forbes noted that that all provinces have agreed to provide a minimum of \$1 million per claim in coverage. Additionally, the fees are set on principles of universality, which makes sense given how low our fee is in comparison with others.

Responding to a further question, she noted that small claims matters are all handled in house, but most Supreme Court matters are outsourced to external counsel given LIF's available resources.

RTC
2018-03-02