



Minutes

Benchers

Date: Friday, April 06, 2018

Present: Miriam Kresivo, QC, President
Nancy Merrill, QC, 1st Vice-President
Craig Ferris, QC, 2nd Vice-President
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
Christopher McPherson, QC
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: Jasmin Ahmad

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

Eva Milz
Michael Lucas
Alison Luke
Jeanette McPhee
Lesley Small
Alan Treleaven
Adam Whitcombe
Vinnie Yuen

Guests:	The Honourable David Eby, QC	Attorney General and Minister responsible for ICBC, Liquor, and Gaming
	Priyan Samarakoone	Program Manager, Access Pro Bono Society of BC
	Michele Ross	Education Chair, BC Paralegal Association
	Rose Singh	Practice Manager/Paralegal, BC Paralegal Association
	Linda Russell	CEO, Continuing Legal Education Society of BC
	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
	Mark Benton, QC	Executive Director, Legal Services Society
	Ron Usher	General Counsel, The Society of Notaries Public of BC
	Prof. Bradford Morse	Dean of Law, Thompson Rivers University

CONSENT AGENDA

1. Minutes & Resolutions

a. Minutes

The minutes of the meeting held on March 2, 2018 were approved as circulated.

The *in camera* minutes of the meeting held on March 2, 2018 were approved as circulated

b. Resolutions

The following resolution was passed unanimously and by consent.

Proposed Terms of Reference for the Mental Health Task Force

BE IT RESOLVED that the Terms of Reference for the Mental Health Task Force are as follows:

Mandate

1. The Law Society of British Columbia's 2018-2020 Strategic Plan includes a focus on the mental health of the legal profession and provides that the Law Society will take steps to improve the mental health of the legal profession by:
 - (a) identifying ways to reduce the stigma of mental health issues; and
 - (b) developing an integrated mental health review concerning regulatory approaches to discipline and admissions.
2. The Mental Health Task Force has been created to make recommendations and take steps to assist the Law Society in achieving these goals (the "Goals") in order to further promote and protect the public interest.

Duties and Responsibilities

3. The Mental Health Task Force will:
 - (a) meet as required;
 - (b) prepare a mid-year and year-end report to the Benchers on its activities;
 - (c) assist and advise the Benchers in achieving the Goals, including by:

- (i) making recommendations to the Benchers with respect to the development of a “diversion” or other alternative discipline process;
 - (ii) making recommendations to the Benchers with respect to other aspects of the discipline process;
 - (iii) making recommendations to the Benchers with respect to the Law Society admissions process;
 - (iv) making recommendations to the Benchers with respect to the potential development of additional support resources for current, former and prospective Law Society members;
 - (v) making recommendations to the Benchers with respect to the potential development and promotion of education materials for Law Society members that increase awareness of mental health issues and reduce stigma;
 - (vi) making recommendations to the Benchers with respect to potential development of an education program and materials for Law Society staff, hearing panel members, and Benchers that increase awareness of mental health issues and reduce stigma;
 - (vii) making recommendations to the Benchers concerning the role that other Law Society committees could have in advancing the Goals; and
 - (viii) making recommendations to the Benchers as to the advisability, viability and scope of a potential voluntary, confidential member survey;
- (d) identify stakeholders and the role each can play in assisting the Task Force in fulfilling its mandate;
 - (e) collaborate with stakeholders, experts and other professional organizations as appropriate;
 - (f) collaborate with the Law Society Communications Department and the Executive Committee to ensure that promotion of any initiatives is included in the Law Society’s comprehensive communication plan; and
 - (g) establish a process to receive input from Law Society members at key stages of the Task Force’s work in regard to matters within the Task Force’s mandate.

Amendments to Law Society Rules re Law Firm Regulation

BE IT RESOLVED to amend the Law Society Rules as follows:

1. In Rule 1

(a) by rescinding the definitions of “complainant”, “complaint”, “conduct unbecoming a lawyer”, “firm”, and “trust funds” and substituting the following:

“complainant” means a person who has delivered a complaint about a lawyer or a law firm to the Society under Rule 3-2 [Complaints];

“complaint” means an allegation that a lawyer or a law firm has committed a discipline violation;

“conduct unbecoming the profession” includes a matter, conduct or thing that is considered, in the judgment of the Benchers, a panel or a review board,

(a) to be contrary to the best interest of the public or of the legal profession, or

(b) to harm the standing of the legal profession;

“law firm” or **“firm”** means a legal entity or combination of legal entities carrying on the practice of law;

“trust funds” includes funds received in trust by a lawyer or law firm acting in that capacity, including funds

(a) received from a client for services to be performed or for disbursements to be made on behalf of the client, or

(b) belonging partly to a client and partly to the lawyer or law firm if it is not practicable to split the funds;

(b) in the definition of “disciplinary record”, by rescinding paragraph (a) (iii) and substituting the following:

(iii) conduct unbecoming the profession., *and*

(c) in the definition of “disciplinary violation”, by rescinding paragraphs (b) and (e) and substituting the following:

(b) conduct unbecoming the profession;

- (e) conduct that would constitute professional misconduct, conduct unbecoming the profession or a contravention of the Act or these rules if done by a lawyer or law firm;.

2. By adding the following rules:

Law firms

Definitions and application

2-12.1 (1) In Rules 2-12.1 to 2-12.5

“deliver” means to deliver to the Executive Director;

“designated representative” means a practising lawyer designated by a law firm under Rule 2-12.5;

“registration form” means a form required under Rule 2-12.2 completed to the satisfaction of the Executive Director;

“self-assessment report” means a report required under Rule 2-12.3 in a form approved by the Executive Committee completed to the satisfaction of the Executive Director.

(2) Rules 2-12.1 to 2-12.5 do not apply to

- (a) a public body such as government or a Crown corporation,
- (b) a corporation that is not a law corporation, or
- (c) a law corporation that provides legal services solely as part of another law firm as a partner, associate or employee of the firm.

Registration

2-12.2 (1) A law firm that is engaged in the practice of law on May 1, 2018 or commences or resumes engaging in the practice of law after that date must deliver a registration form within 30 days.

(2) A law firm must inform the Executive Director immediately of a change of any information included in the registration form.

Self-assessment report

- 2-12.3** (1) From time to time, the Executive Director may require a law firm to complete and deliver a self-assessment report.
- (2) The Executive Director must notify the law firm of the requirement to deliver a self-assessment report at least 3 months before the date on which the Executive Director requires the law firm to deliver it.
- (3) All information and documents received by the Society under this rule are confidential, and no person is permitted to disclose them to any person.
- (4) Despite subrule (3), the Society may use information and documents received under this rule only for the purpose of statistical and other analysis regarding the practice of law.

Late delivery

- 2-12.4** (1) A law firm that fails to deliver a document required under Rule 2-12.2 [Registration] or 2-12.3 [Self-assessment report] by the time that it is due is deemed to have been in compliance with the rules if the law firm does the following within 60 days:
- (a) deliver the document required;
- (b) pay the late delivery fee specified in Schedule 1.
- (2) A law firm that fails to deliver a document required under Rule 2-12.2 [*Registration*] or 2-12.3 [*Self-assessment report*] beyond 60 days from the time that it is due is in breach of the rules and must immediately do the following:
- (a) deliver the document required;
- (b) pay the late delivery fee specified in Schedule 1;
- (c) pay an additional late delivery fee specified in Schedule 1.

Designated representative

- 2-12.5** (1) A law firm that is engaged in the practice of law must designate as its designated representative one or more practising lawyers engaged in the practice of law as members of the law firm.
- (2) A law firm that is engaged in the practice of law on May 1, 2018 or commences or resumes engaging in the practice of law after that date must

notify the Executive Director of the designation of designated representative as part of the registration process under Rule 2-12.2 [*Registration*].

- (3) A law firm that changes its designation of designated representative must inform the Executive Director within 7 days.
- (4) A designated representative must respond promptly and completely to any communication from the Society.
- (5) A designated representative
 - (a) is not responsible for a disciplinary violation by a law firm as a result of being a designated representative, and
 - (b) must not knowingly or recklessly provide false or inaccurate information in any form or report required under Rules 2-12.1 to 2-12.5..

3. *By rescinding Rule 3-1 (e) and substituting the following:*

- (e) a law firm..

4. *By rescinding Rule 3-2 and substituting the following:*

- 3-2** Any person may deliver a written complaint against a lawyer or law firm to the Executive Director..

5. *In Rule 3-3 by adding the following subrule:*

- (4.1) Despite subrule (1), the Executive Director may disclose any information concerning a complaint to a designated representative of a law firm in which the lawyer who is the subject of the complaint engages in the practice of law..

6. *By rescinding Rule 3-5 (9) (b) and substituting the following:*

- (b) a representative of the law firm, if the complaint is about a law firm..

7. *In Rule 3-23 by adding the following subrule:*

- (2.1) The Executive Director may disclose information about Practice Standards Committee deliberations to a designated representative of a law firm in which the lawyer who is the subject of the deliberations engages in the practice of law..

8. *In Rule 3-51(2), by striking the phrase “in a manner unbecoming a lawyer” and substituting the phrase “in a manner unbecoming the profession”.*

9. *In each of Rules 3-53, by adding the following definition:*

“lawyer” includes a law firm,;

10. *By rescinding Rule 3-88 and substituting the following:*

3-88 In this division:

“efforts to locate” means steps that are reasonable and adequate in all the circumstances, including the amount of money involved;

“lawyer” includes a law firm.

11. *In Rule 4-1*

(a) *by rescinding subrules (1) and (2) and substituting the following:*

(1) In this part,

“conduct meeting” means a meeting that a lawyer or a law firm is required to attend under Rule 4-4 (1) (c) [*Action on complaints*];

“conduct review” means a meeting with a conduct review subcommittee that a lawyer or a law firm is required to attend under Rule 4-4 (1) (d).

(2) This part applies to a former lawyer, an articulated student, a law firm, a visiting lawyer permitted to practise law under Rules 2-16 to 2-20 and a practitioner of foreign law as it does to a lawyer, with the necessary changes and so far as it is applicable., *and*

(b) *by adding the following subrule:*

(4) In this part, a law firm may act through its designated representative or another lawyer engaged in the practice of law as a member of the law firm..

12. *In Rule 4-4 (1), by rescinding paragraphs (c) and (d) and substituting the following:*

(c) require the lawyer or law firm to attend a meeting with one or more Benchers or lawyers to discuss the conduct of the lawyer,

(d) require the lawyer or law firm to appear before a Conduct Review Subcommittee, or.

13. In Rule 4-7, by striking the phrase “the lawyer or law corporation” and substituting “the lawyer or law firm”.

14. In Rule 4-8, by adding the following subrule:

- (4.1) Despite subrule (1), the Executive Director may disclose information about Discipline Committee deliberations to a designated representative of a law firm in which the lawyer who is the subject of the deliberations engages in the practice of law..

15. In Rule 4-10, by striking the phrase “to meet with a lawyer required to attend” and substitute “to meet with a lawyer or a law firm required to attend”.

16. In Rules 4-12 (1), 4-13 (6) (d) and 4-15 (3) (a), by striking “the lawyer” and substituting “the lawyer or law firm”.

17. In Rule 4-16 (b), by striking “the lawyer” and substituting “the respondent”.

18. In Rule 4-38, by rescinding subrule (7) and substituting the following:

- (7) If the Bencher presiding at a pre-hearing conference considers it appropriate, he or she may allow any person to participate in a conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of this rule..

19. In Rule 4-44 (1) (b), by striking the phrase “in section 38 (5) or (6)” and substituting “in section 38 (5) to (7)”.

20. By renumbering Rule 5-1 as Rule 5-1 (1) and adding the following subrule:

- (2) In this part, a law firm may act through its designated representative or another lawyer engaged in the practice of law as a member of the law firm..

21. In Rule 5-5, by rescinding subrule (1) and substituting the following:

- (1) In this rule “respondent” includes a shareholder, director, officer or representative of a respondent law firm..

22. In Rule 9-11 (1), by rescinding paragraph (a) and substituting the following:

- (a) in the course of providing legal services the corporation does anything that, if done by a lawyer, would be professional misconduct or conduct unbecoming the profession,.

23. In Schedule 1, section L, by adding the following line items:

- 4. Late registration delivery fee (Rule 2-12.4) 200.00
- 5. Late self-assessment delivery fee (Rule 2-12.4) 500.00.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

Amendments to Rule 5-12 (Application to Vary Certain Orders) and 2-104 (Anonymous Publication - Credentials decisions)

BE IT RESOLVED to amend the Law Society Rules as follows:

- 1. ***In Rule 2-104, by striking the phrase “to the Benchers under subrule (4)” and substituting “to the review board under subrule (4)”.***

- 2. ***In Rule 5-12:***

(a) by rescinding subrule (4) (a) and substituting the following:

- (a) the same panel or review board that made the order;; ***and***

(b) by rescinding the preamble to subrule (5) and substituting the following:

- (5) The panel, review board or Committee that hears an application under subrule (1) must.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

EXECUTIVE REPORTS

2. President’s Report

President Miriam Kresivo, QC acknowledged the traditional territories of the Coast Salish peoples, noted the attendance and welcomed the Attorney General, the Hon. David Eby, QC to the meeting. She also noted a Bencher request to move the proposed Law Firm Regulation Rules revisions from the Consent Agenda to the Discussion portion of the Agenda.

She then briefed the Benchers on her recent activities including her attendance at the Federation Council meetings, at which a focus was anti-money laundering initiatives. She noted that BC was acknowledged as a leader in its development of compliance and educational initiatives. She also briefed Benchers on the President's round table, which provides a valuable opportunity to discuss common issues amongst law societies.

Ms. Kresivo also briefed Benchers on Mr. Avison's and her recent meetings with Peter German, QC and with the Attorney General regarding money laundering, and Law Society's anti-money laundering initiatives.

She also thanked those Benchers who have attended Welcoming Ceremonies on her behalf, reminded Bencher of the upcoming deadline for candidate nominations in the May 9 Vancouver County Bencher by-election, and provided an update regarding the anticipated appointment of 4 new Benchers, taking the opportunity to thank Appointed Bencher Claude Richmond for continuing to serve in the interim. Ms. Kresivo also discussed logistics concerning the upcoming Bencher Retreat, and briefed Benchers on her anticipated visits to Bar associations in the Okanagan, Victoria, Prince George and the Kootenays.

3. CEO's Report

CEO Don Avison provided Benchers with a number of updates. He briefed Benchers on his recent attendance with Ms. Kresivo and others at the Federation Council meetings, noting that there have been a number of changes at the CEO level at law societies in several provinces.

On the legislative front, he noted that the Law Society continues to have productive discussions with government on proposed statutory reforms, and will brief Benchers as developments occur.

On the operational front, he noted that remediation work will begin on the Law Society building in the coming weeks for waterproofing, which may cause some minor disruption.

Retreat planning is going well, with the confirmation of keynote speakers Dr. Marie Wilson, who was one of three commissioners on the historic Truth and Reconciliation Commission, and Dr. Jeanette Armstrong, Canada Research Chair in Okanagan Indigenous Knowledge and Philosophy and Executive Director of the En'owkin Centre.

Mr. Avison also updated Benchers on recent changes to the Board of the College of Dental Surgeons, noting the importance of maintaining an awareness of other self-regulated professions.

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

Herman Van Ommen, QC briefed Benchers on the recent spring Federation Council meetings, noting that this meeting gathers all law society Presidents for a round table discussion, followed

by a regular Council meeting, the focus of which included the budget, terms of reference for the NCA review and a discussion on the review of whether to continue provision of CLE programs.

The next meeting will be in June, with a continued focus on the NCA review.

DISCUSSION/DECISION

5. Anti-money Laundering Initiatives

Ms. Kresivo summarized the current Law Society initiatives aimed at combatting money laundering in BC, and encouraged Benchers to familiarize themselves with the Federation submissions to the House of Commons Committee, which were created with input from all law societies including our own. She noted that the Law Society of BC working group charged with providing that input would now be tasked with reviewing our procedures to ensure we are taking all appropriate measures to protect the public. Referring to the recent meetings with the Attorney General and Peter German, QC, she emphasized the Law Society's continuing commitment to work with government on this issue.

Mr. Avison referred briefly to the Federation's proposed revisions to the Model Code, the objective of which is to make the model rules more robust. He noted that BC has moved in advance of the Model Code revisions to enhance our own anti-money laundering provisions, and to increase education to ensure the risks are top of mind with members. He echoed Ms. Kresivo's comments that the Law Society will continue to work closely with government on areas of concern.

6. Remarks by The Honourable David Eby, QC, Attorney General and Minister responsible for ICBC, Liquor, and Gaming

Minister Eby spoke to Benchers on the government's concerns regarding money laundering in BC. He referred to the findings of Peter German, QC, who has been investigating money laundering in BC casinos, describing how some have been evading Chinese currency controls to get money out of China through investing in BC. He noted that the next phase of the investigation will focus on real estate.

He also noted that concern has been expressed regarding the exemption from reporting to Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) with respect to lawyers' trust accounts. However, he confirmed his support for the independence of lawyers and the importance of solicitor-client privilege, noting specifically his confidence in the Law Society of BC on this issue. He observed that money laundering has been occurring in casinos despite their FINTRAC reporting requirements, and in fact, the Law Society's anti-money laundering requirements may be far more robust and effective than FINTRAC's.

Given the upcoming investigations into money laundering through real estate transactions, there may be increased focus on lawyers. The Minister observed that it will be important for the Law Society to demonstrate its leadership in this area and be able detail the procedures it has in place to ensure that lawyers are not facilitating illicit activity.

Ms. Kresivo thanked the Minister for his remarks, noting her appreciation for the good relationship between government and the Law Society. She assured the Minister that the Law Society understands the gravity of the money laundering issue and the onus on us to continue to develop, maintain and enforce processes that are appropriate, robust and effective.

7. Creating Additional Investigation Powers for Complainants' Review Committee (CRC) and Practice Standards Committee (PSC)

Mr. Avison briefed Benchers on the proposed changes to the Rules to facilitate a more efficient investigative process.

Mr. McKoen moved (seconded by Ms. Rowbotham) a resolution to approve in principle an amendment to the Rules to permit CRC to refer matters to the Executive Director for investigation and to permit the PSC to do likewise as outlined in the accompany materials, and that the Benchers refer the issue to the Act and Rules Committee to prepare the amendments accordingly for consideration by the Benchers at a future date.

The resolution was passed unanimously.

8. Amendment to Rules re Law Firm Regulations

This item was originally included on the Consent Agenda, but was placed on the regular Agenda for discussion following the expression of concern regarding the proposed wording of the revised Rules. The matter was reviewed by the Act and Rules Committee and the proposed Rules revised to reflect a designated representative's duty to respond to correspondence and messages directed by the Society to the designated representative's law firm "promptly and completely" rather than "within 2 business days".

Act and Rules Chair Pinder Cheema moved (seconded by Mr. Welsh) that Benchers approve the revised resolution in the materials. The resolution was passed unanimously.

Ms. Kresivo thanked Benchers and committee members for their diligence in review of the materials and responsiveness to concerns expressed.

9. Publication of Hearing Reports – Credentials

Ms. Kresivo reminded Benchers that this item has come back before them for their reconsideration following concerns expressed at the June 2017 Bencher meeting when this issue was first considered. The Committee has subsequently reviewed the issue and provides revised recommendations.

Chair of the Credentials Committee, Lisa Hamilton, QC briefed Benchers on the underlying issue as well as the proposed recommendations. Currently, following a credentials hearing in which an applicant successfully establishes his or her good character, repute and fitness to practise, the hearing report is published without anonymization and may contain considerable private and sensitive information; conversely, an unsuccessful applicant's hearing report may also contain private information but is anonymized.

The Committee proposed alternative options to address this anomaly, and to balance the public interest effectively and transparently while recognizing legitimate privacy concerns respecting the applicant. The option recommended by the Committee is for all hearing reports to be published anonymously, but that there be published an outcome for each decision that names the applicant, identifies whether he or she was admitted or not, and, if admitted, what conditions (if any) are attached to the admission. The outcome and the reasons will both be made public, but the reasons will be anonymized and will be published separately.

Benchers discussed the various options presented, including how each option balances privacy and openness. In response to a question, Ms. Hamilton confirmed that while this recommendation applies to publication of hearing reports only, the Committee agreed in principle on the importance of being able to share information with other law societies; it was noted that the Act and Rules Committee is currently considering a proposed Rule revision on that topic.

Following discussion, Ms. Kresivo noted Benchers will have time to consider the recommendations before the item returns to the table next meeting for decision.

REPORTS

10. Law Firm Regulation Task Force – Update

Chair Steve McKoen updated Benchers on the anticipated timeline for implementation of the pilot project and the self-assessment tool, noting that the mandatory registration phase should begin in early May. Following the completion of the registration period, the pilot project will begin which will involve a cross section of approximately 10% of firms in the province and will include all the Benchers' firms. The pilot project aims to collect information on how firms are

performing in key areas of practice management and feedback on the self-assessment tool. The tool itself will be presented to the Executive Committee for its review by the end of May, and can be rolled out to those firms selected for the pilot project in June for anticipated completion by September.

Mr. McKoen also reviewed with Benchers the Law Firm Regulation “primer” which provides quick answers to potential questions about law firm regulation, encouraging Benchers to familiarize themselves with it.

11.2018 February YTD Financial Report

Chief Financial Officer Jeanette McPhee briefed Benchers on the Year to Date Financial Report, noting the small positive variance based on timing of revenues and expenses. Revenue from membership and PLTC are expected to be on budget, and TAF revenue is expected to be lower than last year. Operating expenses are also expected to be on budget, with the caveat that an expected increase in citations will increase discipline resource costs.

The Lawyers Insurance Fund is on track, and while there has been a downturn in the equity markets, investment returns are flat given that we hold an asset mix that includes bonds, mortgage and real estate holdings.

12. Report on Outstanding Hearing & Review Decisions

Craig Ferris, QC reviewed the report with Benchers, thanking them for their prompt decision writing and reminding all to notify Ms. Robertson of the member responsible for the first draft decision.

In response to a question, Mr. Ferris confirmed he would review the protocol for notifying panel members and Benchers if and when a decision is appealed.

13. Executive Director’s Delegations

Following an in camera discussion, Benchers passed the following resolution:

BE IT RESOLVED to amend the Law Society Rules as follows:

1. ***In Rule 1, by rescinding the definition of “Executive Director”;***
2. ***By adopting the following rule:***

Executive Director's delegate

- 1-44.1** (1) Any power or authority delegated to the Executive Director under these rules may be exercised by the Executive Director's delegate.

- (2) In the absence of evidence to the contrary, an employee of the Society or a person retained by the Society is the Executive Director's delegate when acting within the scope of his or her employment or retainer to exercise a power or authority delegated to the Executive Director under these rules.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

RTC
2018-04-06