



Minutes

Benchers

Date: Friday, May 04, 2018

Present:

Miriam Kresivo, QC, President	Jamie Maclaren, QC
Nancy Merrill, QC, 1 st Vice-President	Claire Marshall
Craig Ferris, QC, 2 nd Vice-President	Geoffrey McDonald
Jasmin Ahmad	Steven McKoen
Jeff Campbell, QC	Phil Riddell
Pinder Cheema, QC	Elizabeth Rowbotham
Jennifer Chow, QC	Mark Rushton
Barbara Cromarty	Carolynn Ryan
Anita Dalakoti	Michelle Stanford
Jeevyn Dhaliwal	Sarah Westwood
Martin Finch, QC	Michael Welsh, QC
Brook Greenberg	Tony Wilson, QC
Lisa Hamilton, QC	Guangbin Yan
Roland Krueger	Heidi Zetsche
Dean P.J. Lawton, QC	

Unable to Attend: Christopher McPherson, QC

Staff Present:

Don Avison	Jason Kuzminski
Deborah Armour, QC	Michael Lucas
Renee Collins	Alison Luke
Su Forbes, QC	Lesley Small
Andrea Hilland	Alan Treleven
Jeffrey Hoskins, QC	Adam Whitcombe
Lindsay Jalava	Vinnie Yuen
David Jordan	

Guests:	Peter German, QC	Peter German & Associates Inc.
	Caroline Nevin	Executive Director, Canadian Bar Association, BC Branch
	Laura Selby	Manager of Online Education & Resources, Continuing Legal Education Society of BC
	Dom Bautista	Executive Director, Law Courts Center
	Wayne Robertson, QC	Executive Director, Law Foundation of BC
	Mark Benton, QC	Executive Director, Legal Services Society
	Prof. Bradford Morse	Dean of Law, Thompson Rivers University
	Prof. Jeremy Webber	Dean of Law, University of Victoria

CONSENT AGENDA

1. Administer Oaths of Office

Ms. Kresivo administered the oath of office to the newly appointed Benchers Anita Dalakoti, Roland Krueger, Claire Marshall, Guangin Yan.

2. Minutes & Resolutions

a. Minutes

The minutes of the meeting held on April 6, 2018 were approved as circulated.

The *in camera* minutes of the meeting held on April 6, 2018 were approved as circulated

b. Resolutions

The following resolution was passed unanimously and by consent.

Waiver of Late Trust Report / Accountants Report Filing Fees

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

1. *By rescinding Rule 2-85 (7) (b) and substituting the following:*

- (b) paid all assessments accrued under Rule 3-80 [*Late filing of trust report*] before and after the former lawyer ceased to be a member of the Society unless the Executive Director waives all of the assessments under Rule 3-80 (3) and any conditions have been fulfilled, and

2. *By rescinding Rule 3-80 (4) and substituting the following:*

- (4) When there are special circumstances, the Executive Director may, on application and in his or her discretion, waive payment of all or part of an assessment made under this rule unconditionally or on any conditions that the Executive Director considers appropriate.

3. *By rescinding Rule 5-14 and substituting the following:*

Recovery of money owed to the Society

- 5-14** (1) A lawyer or former lawyer who is liable to pay the costs of an audit or investigation must pay to the Society the full amount owing by the date set by the Discipline Committee.

- (1.1) A lawyer who is liable to pay an assessment under Rule 3-80 [*Late filing of trust report*] must pay to the Society the full amount owing by the date specified in that Rule or as set or extended by the Executive Director.
- (2) A lawyer who has not paid the full amount owing under subrule (1) or (1.1) by the date set or extended is in breach of these Rules and, if any part of the amount owing remains unpaid by December 31 following the making of the order, the Executive Director must not issue a practising certificate to the lawyer unless the Benchers order otherwise.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

GUEST PRESENTATIONS

3. Peter German, QC: Report on Anti-Money Laundering

Ms. Kresivo introduced Peter German, QC who has recently completed a report for the Provincial Government detailing his findings following his investigation into money laundering in BC casinos. While the report has not yet been made public, Mr. German provided Benchers with some thoughts on money laundering in BC and elsewhere.

Mr. German said money laundering in BC involves relationships between organized crime, drug trafficking, casinos and real estate. Essentially, the laundering of money associated with the drug trade involves high interest loans to high stakes gamblers frequenting BC casinos. Similar means are used to enable international citizens to evade their country's currency controls and move money into BC. He noted that these mechanisms do not operate in isolation, but affect many aspects of the economy, significantly including the real estate industry in this province. To that end, he has been retained by the Attorney General to conduct a follow up investigations into real estate in BC.

He noted that while Canada is a signatory to international conventions aimed at combatting money laundering, neither the RCMP nor local police have the capacity or resources to effectively police money laundering; as a result detection and prevention is often left to industry regulators.

Though lawyers were not the focus of his pending report, concern remains that lawyers and accountants and others in the financial sector may be facilitators of money laundering, knowingly or unknowingly. The fact that solicitor client privilege serves to exempt lawyers from reporting suspicious transactions to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) amplifies the need for diligence on the part of the legal profession. He acknowledged that the Law Society of BC has been a leader in this area, but stressed that we must continue to find ways to avoid becoming outliers.

Ms. Kresivo thanked Mr. German for providing this valuable context to Benchers, noting the seriousness with which the Law Society of BC has taken the issue of money laundering, and the prevention, detection and enforcement mechanisms the Law Society has in place. She also noted that the Law Society remains committed to working with government to stay at the forefront of efforts to combat money laundering and protect the public interest.

EXECUTIVE REPORTS

4. President's Report

Ms. Kresivo welcomed the new Benchers, noting that they bring a wealth of experience from a variety of areas to the Bencher table. She provided an update on the Bencher By-election, noting that voting will end May 14 and votes will be counted May 15.

She thanked all of those who performed welcoming ceremonies on her behalf, and remarked on the wonderful celebration of Chief Justice McLachlin at the recent retirement dinner. She related her appearances at recent and upcoming events, and reminded Benchers of the upcoming Bencher Retreat as well as the Commemorative Certificate Luncheon.

She also provided details of the upcoming election for the Benchers' nominee for the 2019 2nd Vice-President, noting that if there is only one candidate, that candidate will be acclaimed at the June Bencher meeting; if there is more than one, an election will follow with results to be announced at the July meeting.

5. CEO's Report

Mr. Avison reported on the technical and procedural issues experienced at the start of the recent Bencher By-election, which resulted in the decision to re-start the election following a remedy of the technical issue and the balloting error. The voting period was also extended to help facilitate maximum participation and those who had already voted were contacted and advised of the need to vote again. Since going live, there have been no issues. Reminders will continue until the close of voting May 14. He noted that an election protocol would be developed to help avoid future issues.

He also noted that implementation of law firm registration will begin next week.

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

Mr. Van Ommen's was unable to attend but Bencher and Federation TRC Working Group member Dean Lawton, QC reported on that group's recent meeting, the agenda for which included discussion of how to move forward with increasing cultural competency in the profession. There were a variety of perspectives and philosophies expressed resulting in a

productive, if not definitive, dialogue. The Federation will continue to work towards development of an optional educational model for law societies to implement if they choose.

DISCUSSION/DECISION

7. Publication of Hearing Reports – Credentials

Credentials Committee Chair Lisa Hamilton, QC provided Benchers with background on this issue, noting that the matter had come before Benchers at their last meeting for discussion and was returning to the table for further discussion and decision. At issue was the publication of hearing decisions containing often sensitive personal information. Weighing privacy considerations against the need for openness and transparency, the Committee has recommended publication of decisions anonymously in all cases, to ensure no candidate's name is associated with a decision or the information it may contain. In so recommending, it was mindful that hearings are public, reasons can be requested and therefore connecting a decision with an individual would still be possible.

Following discussion, Ms. Hamilton moved (seconded by Ms. Stanford) that publication of the outcome of the hearing, with publication of reasons anonymously, be approved by Benchers in principle, and that the matter be referred to the Act and Rules Committee. The motion passed unanimously.

8. Law Firm Regulation Task Force: Update on Regulation and Recommendations for Participation Incentives

Chair Steve McKoen provided a brief background on law firm regulation, the rule changes required, and the upcoming pilot project. The pilot will include 10% of randomly selected firms, taking both geography and firm size into account to ensure a representative sample. With certain exceptions, participation of the selected firms will be mandatory to ensure meaningful participation. However, the Task Force is also making two recommendations to provide a benefit to pilot participants: CPD credit for lawyers who participate in the completion of the self-assessment tool; and, an exemption from participation if completion of the self-assessment is extended to all firms.

Regarding CPD credit, the recommendation is to provide up to 2 hours of credit for time spent on the assessment, characterizing the exercise as a learning opportunity similar to completion of the Small Firm Practice Course which provides 6 hours of credit. Mr. McKoen noted that the Lawyer Education Advisory Committee (LEAC) had reviewed the recommendation; LEAC Chair Dean Lawton, QC raised the committee's concerns that providing credit for the pilot group only could be seen as unfair, but did support the recommendation after discussion.

Benchers discussed the merits of providing 2 hours of credit, or allowing a full 6 hours to reflect the time required to complete the assessment, as is provided for the Small Firm Practice Course. Ms. Stanford moved (seconded by Ms. Hamilton) to amend the proposed resolution in the materials to provide up to 6 hours of CPD credit. Benchers discussed this amendment, including the merits of providing any CPD credit for a regulatory requirement.

Also discussed was whether the proposal of offering CPD credit to Benchers participating in the pilot created a conflict of interest. Tribunal and Legislative Counsel Jeff Hoskins, QC advised that if the Benchers were voting on a rule of general application there was no conflict. Ms. Kresivo noted that those who remained concerned could abstain from voting. Following discussion, there was consensus that Benchers should be excluded from the potential benefit of CPD credits.

Following a call for a vote on the amendment, 7 were in favour, 18 opposed and 1 abstained. The motion to amend the CPD credits to 6 hours failed.

Mr. McKoen then moved (seconded by Mr. Ferris) the resolution that lawyers at firms that are selected for the pilot project will be eligible for up to 2 hours of CPD credit for time they personally spend on the self-assessment exercise, provided their firm submits the self-assessment report to the Law Society by the deadline for completion.

Mr. Wilson moved (seconded by Ms. Ahmad) for an amendment specifying that Benchers be excluded from eligibility for credits. The amendment was treated as a friendly amendment.

Ms. Kresivo called for a vote on the amended motion; the motion passed, with 23 votes in favour.

Mr. McKoen then reviewed the Task Force's second recommendation and moved (seconded by Ms. Ahmad) to exempt pilot project participants from participation in the first cycle of the profession-wide implementation of the self-assessment, if any. Discussion focused on whether this was needed at this stage, given that the pilot itself was to determine whether to move forward with the self-assessment at all.

Following a call for a vote, with 6 for and 22 opposed, the motion failed.

It was then noted that there was uncertainty amongst Benchers regarding the motion earlier voted on; specifically, it was unclear whether a vote had been called for amending the motion proposing 2 hours of CPD credit to exclude Benchers, or for an amended motion that included the Benchers exclusion. It was determined that Benchers were of the view that the vote was to amend the motion; with 23 in favour, that motion passed.

Ms. Kresivo then called for a vote on the amended motion, namely, that pilot participants, excluding Bencher participants, be eligible for up to 2 hours of CPD credit. With 20 in favour, 7 against and 3 abstentions, the motion passed.

9. 25 Year Retrospective Report: Gender Equity Report

Chair of the Equity and Diversity Advisory Committee Jasmin Ahmad reported on the retrospective analysis which was undertaken to track the Law Society's progress on the recommendations of the 1992 Report on Gender Equality in the Justice System,

She was pleased to report that the Law Society had implemented the initiatives recommended, including amending the Code to explicitly prohibit sexual harassment, creating a non-practicing category of membership, and creating model workplace policies that include alternative work arrangements and parental leave.

She also noted that since 1992, the percentage of women practicing overall has risen from 23% to 40%, and that the percentage of women Benchers had risen from 12% to over 50%. Additionally, the percentage of women Chairs of Law Society committees had increased from 0% to 40%.

Despite these moves forward, retention of women in the profession remains a challenge yet to be resolved. The attrition rate has increased from 19% in 1992 to 25.8% in 2018. Although a large portion of these women are assuming non-practicing status, the issue of retention remains of concern.

REPORTS

10. Report on Outstanding Hearing & Review Decisions

Mr. Ferris reviewed the list of outstanding decisions, and encouraged Benchers to be available for hearing dates given the long list of hearings to be set. Following up on a question from last meeting, he also advised that Michelle Robertson would notify adjudicators of any appeals.

12. Rule of Law Lecture

Chair Jeff Campbell, QC briefed Benchers on the upcoming Rule of Law Lecture, noting that further details would be provided shortly.

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