



Minutes

BENCHERS

Date: Saturday, June 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
Anita Dalakoti
Martin Finch, QC
Brook Greenberg
Lisa Hamilton, QC
Roland Krueger
Jamie Maclaren, QC

Claire Marshall
Geoffrey McDonald
Steven McKoen
Christopher McPherson, QC
Phil Riddell
Elizabeth Rowbotham
Mark Rushton
Carolynn Ryan
Karen Snowshoe
Michelle Stanford
Michael Welsh, QC
Tony Wilson, QC
Guangbin Yan
Heidi Zetsche

Unable to Attend: Jeevyn Dhaliwal
Dean Lawton, QC
Sarah Westwood

Staff Present: Don Avison
Deborah Armour, QC
Renee Collins
Su Forbes, QC
Andrea Hilland

Jeffrey Hoskins, QC
Jason Kuzminski
Michael Lucas
Jeanette McPhee
Alan Treleven

Guests:	Donald Cranston, QC	President, Law Society of Alberta
	Jonathan Herman	CEO, Federation of Law Societies
	Elizabeth Osler	Deputy Executive Director, Law Society of Alberta
	Paul Schabas	Treasurer (President), Law Society of Ontario
	Ardith Walkem, QC	Member, TRC Advisory Committee
	Tuma Young	Member at Large, Council of the Nova Scotia Barristers' Society

1. ADMINISTER OATH OF OFFICE

Ms. Kresivo administered the oath of office to newly elected Bencher Karen Snowshoe.

CONSENT AGENDA

2. MINUTES & RESOLUTIONS

a. Minutes

The minutes of the meeting held on May 4, 2018 were approved as circulated.

The *in camera* minutes of the meeting held on May 4, 2018 were approved as circulated.

b. Resolutions

The following resolutions were passed unanimously and by consent.

Powers of Complainants' Review and Practice Standards Committees

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

1. *In Rule 3-14 by rescinding subrule (5) (b) and substituting the following:*

- (b) refer the complaint to the Practice Standards Committee or to the Discipline Committee with or without recommendation;
- (c) direct the Executive Director to conduct further investigation of the complaint to determine its validity..

2. *In Rule 3-17 by adding the following subrule:*

- (6) At any time, including after taking an action under Rule 3-19, the Practice Standards Committee may
 - (a) direct the Executive Director to conduct further investigation of the complaint to determine its validity, or
 - (b) refer any information that indicates that a lawyer's conduct may constitute a discipline violation to the Executive Director to be treated as a complaint under Division 1..

Correction to electronic transfer rules

BE IT RESOLVED to amend Rule 3-64 (4) (a) by striking “subrule (5) or (6),” and substituting “subrule (5) or Rule 3-65 (1.1) (a),” effective July 1, 2018.

2018 Law Society Scholarship

BE IT RESOLVED to award the 2018 Law Society Scholarship to Gabriella Jamieson.

2018 Law Society Indigenous Scholarship

BE IT RESOVLED to award the 2018 Law Society Indigenous Scholarship to Christina Gray.

EXECUTIVE REPORTS

3. PRESIDENT’S REPORT

Ms. Kresivo reported on her meetings with the Penticton Bar and members in Osoyoos and speaking in Prince George at their annual Law Talks. In the coming weeks, she will be speaking at the Kamloops Bar Association’s annual general meeting. She will also be attending convocation at Thompson Rivers University and will be presenting the Law Society gold medal there.

Ms. Kresivo noted the upcoming Vancouver call ceremonies on June 22 and encouraged Benchers to attend. She will also be attending the call ceremony in Victoria on June 28, which members of the Executive Committee will be attending in conjunction with an Executive Committee meeting in Victoria.

4. CEO’S REPORT

Mr. Avison advised that law firm registration is going well with 2000 plus firms registered so far. The self-assessment tool, which is the next phase in Law Firm Regulation, was approved by Executive Committee at its last meeting and the pilot project is expected to proceed following the conclusion of law firm registration.

Mr. Avison reported that he had met with the Deputy Minister of Finance, Lori Wanamaker, and had a good discussion, including touching on anti-money laundering and an expected white paper on beneficial ownership of real property. He also had the opportunity to discuss with her legal aid funding and areas for further investment and why that would be in the public interest, given the costs of unrepresented litigants.

He mentioned the 10th B.C. Justice Summit which is focusing on Indigenous justice issues. The Summit is currently underway and Mr. Lawton and Mr. Whitcombe are participating in the Summit on behalf of the Law Society. He had been advised that this Summit was focused on the core issues with another Summit scheduled for November to follow up on an action plan. He also reported that he and Ms. Merrill met with Doug White, Co-Chair of the BC Aboriginal Justice Council for Criminal Justice. Mr. White welcomed a level of direct engagement with the Law Society.

Finally, Mr. Avison noted that PLTC had a record 250 students attending the current session at several locations around the province. He also mentioned that the 2019 budget is under development and will be coming forward to the Finance and Audit Committee in July.

5. FEDERATION PRESENTATION

Mr. Herman expressed appreciation for the invitation to attend the Benchers' retreat and for the opportunity to speak about the Federation. He extended greetings from President, Sheila MacPherson, who was unfortunately unable to attend.

Mr. Herman noted that the Federation of Law Societies of Canada (FLSC) is a voluntary association of all 14 Canadian regulators of lawyers plus the notaires in Quebec. It does not have an independent mandate and derives its mission and strategic plan from its members collectively.

One of the key roles of the FLSC is addressing interprovincial mobility. This involves necessary cooperation and collaboration amongst all regulators to give full faith and credit to the qualifications established by each provincial regulator.

Another key role for the FLSC is support for CanLII. The FLSC has just finished supporting the purchase of LexUM by CanLII. As a result, the FLSC and its members now own a sophisticated tech company which provides the best assurance of sustained access to case law and legal information in what has become a very competitive environment.

The FLSC's current strategic priorities include following up on the calls to action issued by the Trust and Reconciliation Commission and anti-money laundering policy, rules and enforcement.

On the latter issue, Mr. Herman noted that we are the only country where our constitution supports lawyers not participating in reporting suspicious transactions. This is not well understood outside the legal profession. The perception is that, as lawyers do not have to report to FINTRAC, there is a gaping loophole and huge risk. He suggested that we must fight this narrative and to do so, we must have robust rules that are at least comparable to ones imposed in other jurisdictions around the world and they must be enforced consistently. In his view, it would be better to persuade the Canadian government that there is no gap but rather the opposite.

Mr. Herman acknowledged the work of our Council member, Mr. Van Ommen, who chairs the National Committee on Accreditation and is a member of National Requirement Review committee. He also mentioned Mr. Lawton, who is a member of the FLSC's Trust and Reconciliation Committee, supported by Andrea Hilland as one of the staff to the Committee. He also noted that there is direct involvement of law societies through our staff, mentioning Mr. Treleven, Ms. Armour, Ms. McPhee, Mr. Lucas and Mr. Whitcombe.

Ms. Kresivo thanked Mr. Herman for his presentation and expressed agreement with his observation that the anti-money laundering narrative has to change and we need to reiterate frequently our work with the rules, enforcement and education.

6. REMARKS FROM MR. SCHABAS, TREASURER OF THE LAW SOCIETY OF ONTARIO

Mr. Schabas expressed appreciation for the invitation to attend the retreat and for the opportunity to speak to the Benchers.

He commented that he very much appreciated the retreat yesterday. He noted that the Law Society of Ontario (LSO) has had an Equity and Indigenous Affairs Committee for 20 years but more recently has established an Indigenous Advisory Group of elders and lawyers. This group has been instrumental in all LSO has accomplished to date, including the establishment of an Indigenous specialist certification and an Indigenous framework. The LSO has also released a guide to representing Indigenous clients and released a report on regulatory process in relation to Indigenous issues. The latter report was commissioned as the result of a LSO discipline proceeding and Ovid Mercredi was retained to reach out to Indigenous communities and to investigate and provided recommendations.

Mr. Schabas mentioned the LSO's Statement of Principles, which turned out to be controversial last year. He noted that the statement arose for a report from the racialized licencees working group that made hard findings regarding systemic racism and barriers to entry and advancement in the legal profession. He noted that a small minority of licensees objected on the basis of free speech but that the vast majority of licencees have signed the statement.

Mr. Schabas commented on the current review of lawyer licensing underway. He said that the challenge is that there are more law students wanting to enter the profession and not enough articling positions to meet the demand. The consultation underway has proposed four options for discussion: the status quo, the status quo with enhancements (such as a minimum wage requirement), articling and then skills exam, or eliminate articling and the LPP and have exams only. He noted that the LSO was conscious of the mobility issues inherent in any revision of the admission requirements in Ontario and noted that the LSO was looking for feedback until October.

Mr. Schabas observed that LSO has recently approved a limited license for paralegals in family law. He also observed that LSO has a legal aid task force investigating the state of legal aid and it was expected to make a recommendation that LSO be a liaison between the Legal Aid Ontario and the Bar.

Ms. Kresivo thanked Mr. Schabas for speaking with us about events unfolding in Ontario and expressed appreciation for his comments on the articling review as it will have an effect on us.

DISCUSSION/DECISION

7. SELECTION OF BENCHERS' NOMINEE FOR 2019 SECOND VICE-PRESIDENT

Ms. Kresivo reviewed the process for selection of the Benchers' nominee for 2nd Vice-President. She noted that, to date, the only declared candidate was Mr. Lawton and called for any further nominations. As there were no further nominations, Mr. Lawton was declared the Benchers' nominee for 2019 2nd Vice President for election at the Annual General Meeting.

8. TRUTH AND RECONCILIATION ADVISORY COMMITTEE

- **Proposed Action Plan**

Ms. Merrill noted that the Action Plan was being presented for discussion only. The Action Plan sets out a proposed framework for future work. She suggested that the Law Society has an obligation to advance truth and reconciliation and that the Action Plan supports that obligation. She noted Ms. Hilland's efforts to develop the Plan and she welcomed any questions or suggestions.

- **Scholarship Recommendations**

Ms. Merrill introduced the discussion of the Indigenous Law Graduate Scholarship. The scholarship was created in 2012 to enhance the retention of Indigenous lawyers by assisting the development of Indigenous leaders in the legal academic community. The scholarship has been available since 2013, but was not awarded in 2016 or 2017 because no applications were received. The Committee has suggested four options for the scholarship and is recommending that the Benchers approve the third option: expanding the eligibility criteria to include Indigenous Juris Doctor students enrolled in BC law schools. Ms. Merrill, seconded by Ms. Hamilton, moved the approval of the third option.

A number of Benchers expressed support for the resolution and several made suggestions for consideration by the TRC Advisory Committee. One suggestion was that the Law Society

consider creating twenty \$1000 scholarships for high school students, to be awarded based on a 500 word essay about why they want to be lawyers. Another suggestion was that the scholarship should only be awarded to those going into their 3rd year in law school. It was also suggested that it was a good idea to expand the pool of eligible applicants but we should make the change incrementally as the proposed change might result in a number of good applicants but if not, we could expand the criteria further in the future.

The motion passed unanimously.

REPORTS

9. REPORT ON OUTSTANDING HEARING & REVIEW DECISIONS

Mr. Ferris called for assistance with populating a panel for the following week. He noted there was only one item outstanding.

10. DEBRIEF OF RETREAT CONFERENCE AGENDA

Ms. Merrill reviewed the retreat program. She noted that Dr. Jeannette Armstrong provided an interesting perspective on what is law and that Dr. Marie Wilson provided us with reasons for not tolerating the intolerable. She said the blanket exercise was impactful and moving and that every lawyer and judge should participate in such an exercise.

A number of Benchers expressed appreciation for the retreat program and the speakers. It was suggested that the retreat illustrated the challenges for the Law Society and for lawyers and that Benchers might think about incorporating the issues into the student interviews. There was a suggestion that we need to think about retraining and relearning to understand the various forms of legal traditions and laws of the Indigenous communities and that there needs to be specific knowledge about Indigenous legal orders, especially in courts in those communities. It was suggested that we might call upon legal education service providers to include this type of content in educational conferences. There was also interest in extending the blanket exercise to more of the profession and even consider making it mandatory. There was also a caution that the work of truth and reconciliation involves a different realm where hearts and spirits are being touched and that it could be helpful to have healing support or spiritual support available for a day when emotions are likely to be evoked. It was also suggested that using the terms story or tale in describing the experience of survivors might be taken as minimizing the experience and that experiences was a better term. Finally, it was noted that the Law Society has a duty to uphold the administration of justice and that if we are to truly engage in truth and reconciliation, we have to stop minimizing other sovereigns in BC who have laws. We may need to reframe our activities so as to support justice in all its manifestations in BC.