



# Minutes

## Benchers

Date: Friday July 13, 2018

Present:

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

Unable to Attend: Not applicable

Staff Present:

Don Avison	Michael Lucas
Deborah Armour, QC	Alison Luke
Lance Cooke	Jeanette McPhee
Su Forbes, QC	Doug Munro
Mira Galperin	Lesley Small
Andrea Hilland	Adam Whitcombe
Jeffrey Hoskins, QC	Vinnie Yuen
David Jordan	
Jason Kuzminski	

Guests:	Ken Armstrong	CBABC Vice-President
	Dom Bautista	Executive Director, Law Courts Center
	Mark Benton, QC	Executive Director, Legal Services Society
	Katy Berglund	2018 Rule of Law Essay Contest Runner-up
	Celeste Haldane	Chair, Legal Services Society
	Gabriella Jamieson	2018 Law Society Scholarship Winner
	Derek LaCroix, QC	Executive Director, Lawyers Assistance Program
	Michael McDonald	Truth and Reconciliation Committee Member
	Prof. Bradford Morse	Dean of Law, Thompson Rivers University
	Wayne Robertson, QC	Executive Director, Law Foundation of BC
	Michelle Rodrigues	2018 Rule of Law Essay Contest Winner
	Michele Ross	Education Chair, BC Paralegal Association
	Eileen Vanderburgh	Board Chair, Law Foundation of BC

## **CONSENT AGENDA**

### **1. Minutes & Resolutions**

#### **a. Minutes**

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

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

#### **b. Resolutions**

The following resolutions were passed unanimously and by consent.

#### **External Appointments: Justice Education Society and Legal Services Society**

BE IT RESOLVED to:

1. Reappoint Ardith Walkem, QC to the Board of the Justice Education Society for a second term; and
2. Reappoint Jean Whittow, QC to the Board of the Legal Services Society for a second term.

#### **Delegation of Bencher Authority to the Finance and Audit Committee**

BE IT RESOLVED that the Benchers delegate to the Finance and Audit Committee the authority to grant the Law Society approvals provided for under the External Funding Accountability Policy.

## **RECOGNITIONS**

### **2. Rule of Law Essay Contest: Presentation of Winner and Runner-up**

Ms. Kresivo presented the awards to the winner and runner-up of this year's Law Society essay Law contest. This year's topic was how social media interacts with the Rule of Law. Michelle Rodrigues was this year's essay contest winner. She is a grade 12 student at Little Flower Academy in Vancouver and she will be continuing her studies at UBC, majoring in political science and hopes to attend law school in the future. Katy Berglund was our runner up. She is a grade 12 student at Reynolds Secondary School from Victoria and will be attend the University of Victoria, majoring in political science and philosophy, and also hopes to attend law school in

the future. Both the winner and the runner-up wrote exemplary essays which will be published in the next Bencher Bulletin and available on the Law Society website.

### **3. Presentation of the 2018 Law Society Scholarship**

Ms. Kresivo presented the 2018 Law Society Scholarship to Gabriella Jamieson. Ms. Jamieson obtained her law degree from the University of Victoria and clerked at the Supreme Court of British Columbia and articulated with the federal Department of Justice. She will be attending McGill University to complete her LL.M. in comparative law.

## **GUEST PRESENTATIONS**

### **4. Presentation by Legal Services Society Chair**

Celeste Haldane, Chair of the Legal Services Society, attended to provide an update on the work of the Legal Services Society.

Ms. Haldane noted that the Legal Services Society is mandated by legislation to provide legal aid to the marginalized and poorest people in the province. The priorities of the board are greater access to family services, increasing the legal aid tariff and providing greater access to justice for indigenous peoples. She noted in particular that the Legal Services Society was able to open seven legal centres for child protection matters providing legal counsel, social workers, and other services needed to keep children in their home in communities recommended in Grand Chief Edward John's report. She also noted that the Legal Services Society has been less successful in achieving an increase in the legal aid tariff. She suggested that the legal aid bar, CBABC, the Legal Service Society and the Law Society might work together to develop a practical sustainable plan for the future of legal aid.

Ms. Haldane commented that she had the privilege in her role as a treaty commissioner to experience both the cultural richness of Indigenous communities and their impoverished circumstances. Child protection matters are a huge concern. The leadership and people often feel lost in a system they did not create. Gladue rights are not enforced enough in the courts. First Nations courts are an opportunity to provide a meaningful impact on justice and the Legal Services Society provides and supports these through duty counsel and honorariums to elders, who are integral to their success.

Ms. Haldane encouraged the Law Society to continue its efforts towards truth and reconciliation and access to legal services. She suggested we build on the energy of the November 2017 Symposium and congratulated those involved in production of the video "But I was Wearing a Suit" which highlighted the experiences that she and others have experienced and applauded

those who shared their experiences so openly. Addressing these issues will require culturally appropriate education and competency.

Ms. Kresivo opened the floor to questions for Ms. Haldane.

Mr. McDonald noted that it takes a long time for Gladue reports to be prepared and asked whether there were any initiatives underway to improve the timeliness of these reports. Ms. Haldane noted that the challenge is system-wide. The Justice Institute used to do training for Gladue report writers but is no longer doing so. She noted they are looking at how to invest in training to increase the number of writers to ensure we do not have people waiting in jail or on parole for these reports.

Mr. McPherson suggested that it is the responsibility of the government to provide Gladue reports. Ms. Haldane agreed completely that government should be funding the production of Gladue reports. She suggested that the Aboriginal Justice Council could oversee the production but more funding needs to be provided.

Mr. Welsh asked about lawyers forming an action committee on the issue of the legal aid tariff. Ms. Haldane said that might be the motivation the province needs to move the process forward. The Legal Services Society is advocating it, but that there are different avenues available and there is the need to start a dialogue with the government.

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

## **5. Presentation by Law Foundation Board Chair**

Eileen Vanderburgh, Board Chair of Law Foundation of BC, attended to provide an update on the work of the Law Foundation.

Ms. Vanderburgh noted that next year will be the 50th anniversary of the BC Law Foundation and that BC was the first jurisdiction in North America to establish a Law Foundation. The mission of the Law Foundation is to be a force for change rather than simply a funnel for money. The Law Foundation is very active in seeking opportunities to invest and in recognizing the great work from the organizations that receive grants.

Ms. Vanderburgh noted that that issue the Law Foundation perennially faces is maintaining funding to programs in the face of the variability of interest income. The grant stabilization fund assists, as it allows the Law Foundation to maintain funding in an economic downturn. However, the reliance on interest income is a handicap and the Law Foundation aims to diversify funding so as not to be so reliant on interest income. Fortunately, rising interest rates have provided a helpful increase in available funding

As a result, the board has established priorities for the additional funding. The first is to ensure funding and access to family law and the second is serving Indigenous communities. On the former, the Law Foundation funded the establishment of the children and youth legal centre which opened in Nov 2017 with two lawyers and one legal assistant. The centre has been able to assist 110 youths. The Law Foundation has also funded 15 new family law advocacy programs, primarily providing assistance in document preparation and information/advice on how to participate in the justice system.

On the second priority, the Law Foundation is looking at funding for Gladue writers as there are not enough people that are trained properly at the moment. The Law Foundation is also working closely with provincial court on the expansion of the first nations courts, and providing assistance and funding for those parts.

Ms. Vanderburgh thanked the Law Society for its continued support for the work of the Law Foundation and Ms. Kresivo thanked her for her presentation.

## **EXECUTIVE REPORTS**

### **6. President's Report**

Ms. Kresivo thanked everyone for participating in a successful Bencher retreat. She expressed that it was helpful in the Law Society's journey towards cultural competency but noted that there is still a long way to go and that the retreat was a good start.

Ms. Kresivo reported meeting with the Kelowna and Kamloops bars and attending the Thompson River University law school graduation where she presented the Law Society gold medal to two recipients as there was a tie for highest law school GPA this year.

The recent Supreme Court of Canada decision in the Trinity Western University case was mentioned by Ms. Kresivo. She expressed the Law Society's satisfaction with the outcome and thanked our counsel Mr. Gall, QC and Ms. Armour, QC for their efforts in the litigation, and Mr. Avison and Mr. Kuzminski for an effective media release following the decision.

Ms. Kresivo noted that the Peter German's recent report on Money Laundering matters included a favourable comment about the Law Society. She noted that a second inquiry by Mr. German into real estate and money laundering was expected and that we need to understand what the terms of reference are for this review. She suggested that once the terms of reference have been settled and he has started his work, the Society should meet with him.

The White Paper on the proposed Land Ownership Transparency Act has been issued and Ms. Kresivo noted that submissions were called for by August 19<sup>th</sup>. She noted that we need to

communicate our appreciation for government's efforts to create a registry of beneficial ownership and consider what else might require comment.

The Executive Committee met in Victoria at its June meeting and attended the call ceremony in Victoria that same day. Ms. Kresivo thanked Ms. Cheema and Mr. Lawton for their efforts in coordinating the call ceremony with the executive committee meeting.

The recently-held Commemorative Certificate Luncheon recognized those who have been members of the Law Society for 50, 60, and 70 years. Ms. Kresivo thanked those Benchers who made time to attend the luncheon and noted that the event was appreciated by all who attended.

## **7. CEO's Report**

Mr. Avison noted that law firm registration had proceeded well, with over 3000 law firms completing the process. The next phase in the initiative is the self-assessment pilot project in which approximately 10% of law firms will be asked to complete the self-assessment form online. The pilot is expected to start on Monday.

Mr. Avison noted that we will be making a submission regarding the proposed Land Ownership Transparency Act and that Mr. Lucas and Mr. Munro will be preparing a draft for consideration before the deadline in mid-August. He invited Benchers to provide any comments they may have.

CLEBC and Law Society were recognized by the Association of Continuing Legal Education for the Truth and Reconciliation Symposium last November and Mr. Avison noted that the "But I Was Wearing a Suit" video was being picked up by other law societies.

## **8. Financial Report – May Year-to-Date**

Ms. McPhee presented the financial report to the end of May. She noted that there was a positive variance to budget, although she noted that this was largely due to timing. Revenue has been slightly higher than budgeted and expenses are good in most areas of operation, although the Discipline area is under pressure, with a greater than expected number of citations and files, which is expected to result in \$500,000 over budget which will be partially offset by the greater than expected revenue. We expect to be \$200,000 over budget by end of year.

Ms. Yan asked about the timing of expenses and whether they are accrued. Ms. McPhee advised that they are. Ms. Yan asked about quarterly reports and Ms. McPhee advised that we report on the five months to the end of May because there are no meetings in the summer and that the 3rd quarter results are reported in the fall. Ms. Yan asked if a year-to-year comparison could be provided and Ms. McPhee advised that this could be done.

## **9. Briefing by the Law Society's Member of the Federation Council**

Mr. Van Ommen was unable to attend. Ms. Kresivo reported that the Federation Council had received a report on anti-money laundering and that there would be consultations with the law societies. Ms. Armour noted that the Federation was working on the Model Code to make sure there are no gaps in our regulatory oversight with the expectation that changes will come out in the fall.

## **DISCUSSION/DECISION**

### **10. Truth and Reconciliation Action Plan**

Ms. Merrill noted that the Truth and Reconciliation Advisory Committee had developed an action plan that will provide a map to guide the Law Society on the road to trust and reconciliation and that it was before the Benchers for approval.

Ms. Merrill introduced Michael McDonald, a member of the Committee, and invited him to provide some thoughts on the plan.

Mr. McDonald acknowledged that the meeting was on the traditional territory of the Squamish, Musqueam and Tsleil-Waututh First Nations. He is a member of Peguis First Nation from Manitoba. He noted that the Truth and Reconciliation Advisory Committee has a keen interest in grappling with TRC Report Calls to Action and extended thanks for establishing a partnership between the Law Society and First Nations people. He suggested the work was truly a collaboration and acknowledged the work, effort, skill and patience of Andrea Hilland, staff support to the Advisory Committee.

Mr. McDonald stated that truth and reconciliation is about a relationship; an effort to bring Indigenous peoples to their rightful place in society. He suggested that to do so, the Law Society must acknowledge the past and the current situation and embrace the calls to action as a great opportunity to benefit from the tremendous contributions of Indigenous lawyers, leaders, and communities.

He observed that the action plan is quite general, intended to be a living, breathing document and that the details will continue to emerge. It has taken a long time to come to this point and the action plan is a good start that will give us good guidance.

Mr. McPherson observed that taking steps to improve the intercultural competence of Law Society Benchers, staff, and committee members, and all lawyers and Admission Program candidates in British Columbia makes sense. He wondered if the use of the word "Mandating" in

subsection (i) was intentional. Mr. McDonald said it was intentional but the particulars have not yet been developed.

Mr. Ferris noted that law schools and PLTC are teaching cultural competency but that those who are already members need to get up to speed as well.

Mr. Welsh suggested that, in addition to focusing on collaborating with law schools and legal organizations, the Law Society should also consider working with law firms.

Moved (Ms. Merrill/Ms. Hamilton) that, subject to adding law firms to items 2(v), 4(iv) and 5(ii), the Benchers approve the Action Plan. The motion passed unanimously.

## **11. Governance Committee Mid-Year Report**

Mr. McKoen presented the Governance Committee's mid-year report. He noted that the committee was reviewing the Bencher Governance Manual, which had not been revised for a number of years.

There was one recommendation before Benchers for consideration. The Recruitment and Nominating Advisory Committee (RNAC) asked the committee to look at our present policy on appointing Benchers to the boards of other organizations. The current policy has a presumption against appointing Benchers unless the bylaws of the organization require a Bencher. The committee was of the view that there may be a perception of bias in favour of the familiar and recommends that the appropriate methodology for RNAC in making a recommendation to appoint a Bencher is to bring the recommendation to the Bencher table for approval. This will make the recommendation open and transparent.

After some discussion, it was moved (McKoen/Stanford) that the existing policy regarding Bencher appointments to external bodies be revised as provided in paragraph 18 at page 43 of the materials. The motion passed unanimously.

## **12. Publication or Disclosure of Interim Orders – Rule 3-10: Proposed Rule Amendments**

Mr. Lucas introduced the recommendation for a proposed amendment to Rule 3-10. Currently, Rule 3-10 permits publication of suspensions ordered under that rule but not any restrictions or conditions that might be imposed on a lawyer. While there is no rule that says restrictions and conditions cannot be disclosed, it would be appropriate to make the authority to do so explicit.

He noted that the recommendation can be found at paragraph 25 on page 49 of the Agenda materials.

Mr. McKoen expressed concern that orders made in proceedings under Rule 3-10 are made before any investigation is completed and suggested that caution should be exercised when considering publication of the results of these types of proceedings. Mr. McPherson agreed with Mr. McKoen.

Mr. Lucas observed that the publication intended was with respect to limitations and conditions placed on a lawyer's practice. While appreciating the concern about the interim nature of the Rule 3-10 proceedings, he suggested that it is in the public interest for the Law Society to let the public know a lawyer's practice is limited or restricted in some manner.

The motion was moved (Riddell/Ahmad) and passed unanimously.

## **REPORTS**

### **13. Counsel Resource Plan: Report on Progress**

Ms. Armour reported on the status of the Counsel Resource Plan. She reviewed the origin of the current plan which was intended to reduce a back log of files older than one year. She noted that the National Discipline Standards set a target of 80% of complaint files closed within one year and that we always exceed that target by a good deal. In addition, we set targets as to how many files we expected to have open at different intervals and we have been meeting those targets this year. On the other hand, we recognize that it is not possible to close all files within a year. For example, in some cases we are awaiting the results of forensic audits and in others, the conclusion of other proceedings including criminal proceedings. The goal, however, is to have no more than 20 such files open for more than a year.

Reducing the backlog of files has, however, had the consequence that the number of serious files that will be sent to Discipline will be higher than in previous years. Due to the increased seriousness of the matters, Ms. Armour expects a greater number of hearings over the balance of this year and into at least 2019. This will put pressure on resources over the medium term.

## **FOR INFORMATION**

### **14. Mid-Year Reports**

#### **Access to Legal Services Advisory Committee**

Mr. Campbell reported on the work of the Access to Legal Services Advisory Committee.

The committee was examining the feasibility of a non-profit law firm for people who cannot afford market rates. The idea came out of discussion with a number of Vancouver firms. The

Law Society's role in this is advisory and we would not be the service provider if the concept moves ahead.

The committee also produced a paper on whether pro bono work should be eligible for CPD credits. Mr. Campbell noted that there were discussions last year over a number of meetings, and divergent views on whether allowing CPD credit for pro bono work would follow the mandate of the CPD program. There was no consensus reached but the committee produced a memorandum on the different views.

The committee made a recommendation to The Law Foundation about the use of our access to justice contribution to the Law Foundation. This year the recommendation was to support RISE, a legal center for women who cannot afford legal services.

The committee is interested in being involved in a joint conference being planned by the three law schools.

### **Rule of Law and Lawyer Independence Advisory Committee**

Mr. Campbell reported on the work of the Rule of Law and Lawyer Independence Advisory Committee.

The committee has supported various initiatives to increase public awareness of the rule of law. The annual rule of law lecture took place on June 7. The lecture was on the rule of law and social justice. It was attended by 170 people and was webcast live. A video of the lecture was posted on the LSBC website.

The committee raised a concern about a conflict of interest the Attorney General has in being responsible for ICBC, which is actively trying to reduce personal injury awards, and appointing the people to the Civil Resolution Tribunal, which now has jurisdiction over some personal injury matters. The committee prepared a letter to the Attorney General for the President to sign expressing concerns.

The committee has also been discussing section 3 of *Legal Profession Act* in light of the recent Trinity Western University decision, which discusses the broad mandate of the law society including maintaining the competence of lawyers.

### **Equity and Diversity Advisory Committee**

Ms. Ahmad reported on the work of the Equity and Diversity Advisory Committee.

Some members of the committee attended a symposium on unconscious bias for managing partners of a number of Vancouver firms. The committee assisted with the development of the

law firm regulation self-assessment form, particularly element 8, and looking at the resources available on the website and in the self-assessment tool.

The committee also completed a retrospective on the 1992 Gender Equality Report and is looking at the issue of maternity leave in the legal profession.

The committee continues to support inter-cultural competency training for Law Society staff.

Ms. Ahmad thanked Ms. Hilland for the support she has provided this year.

### **Lawyer Education Advisory Committee**

Mr. Lawton reported on the work of the Lawyer Education Advisory Committee.

As a side note, Mr. Lawton thanked the Benchers for his nomination as 2019 Second Vice-President for consideration by the members at the 2018 Annual General Meeting.

The committee has been reviewing the role of articling, looking at the availability of articling positions, remuneration for articling and the quality of the articling experience. The committee expects to have a report for Bencher consideration by year end.

The committee is currently reviewing the recommendation that CPD credit should not be given for pro-bono work and expects to provide a final recommendation on the eligibility of pro bono work for CPD credit this fall.

Mr. Wilson noted there is an articling review currently underway in Ontario and asked whether we would be making submission. Mr. Lawton indicated the committee is reflecting on whether to do so. Mr. Welsh observed that, in light of the interprovincial mobility of lawyers, whatever the Law Society of Ontario decides to do about articling, it will affect all other law societies.

### **Legal Aid Advisory Committee**

Ms. Merrill reported on the work of the Legal Aid Advisory Committee.

The committee has commissioned research on the economic analysis on legal aid in order to have better data regarding the need for increased funding. The Legal Aid Advisory Committee, the Truth and Reconciliation Advisory Committee and the Access to Legal Services Advisory Committee had a mini-retreat earlier in the year to explore issues of common interest.

There will also be another Legal Aid Colloquium in November.

## **Mental Health Task Force**

Mr. Greenberg reported on the work of the Mental Health Task Force.

Since its creation earlier this year, the Task Force has been consulting and gathering information. The Task Force has noted there is a lack of resources and education to support what staff are trying to do in relation to mental health issues, and there is a lack of a unified approach. The Task Force is also working on education and policy development issues relating to substance abuse.

The Task Force hopes to take what we have learned and bring recommendations to the Benchers in the fall. He expects that the initial set of recommendations will relate to education and resources. The Task Force then hopes to tackle some of the larger policy issues.

## **15. Report on Outstanding Hearing & Review Decisions**

Mr. Ferris reviewed the report.