



# Minutes

## Benchers

Date: Friday, September 21, 2018

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

Jamie Maclaren, QC  
Claire Marshall  
Geoffrey McDonald  
Steven McKoen  
Christopher McPherson, QC  
Phil Riddell  
Elizabeth Rowbotham  
Mark Rushton  
Carolynn Ryan  
Karen Snowshoe  
Sarah Westwood  
Michael Welsh, QC  
Tony Wilson, QC  
Heidi Zetsche

Unable to Attend: Michelle Stanford

Guangbin Yan

Staff Present: Don Avison  
Deborah Armour, QC  
Su Forbes, QC  
Kerryn Garvie  
Andrea Hilland  
Jeffrey Hoskins, QC  
David Jordan  
Jason Kuzminski  
Drew Lamirande  
Michael Lucas

Alison Luke  
Jeanette McPhee  
Tara McPhail  
Doug Munro  
Lesley Small  
Sydney Snape  
Amy Tang  
Alan Treleven  
Adam Whitcombe

Guests:	Bill Veenstra	Past President, Canadian Bar Association, BC Branch
	Claire Marchant	Equity Ombudsperson, Law Society of BC
	Laura Selby	CLEBC's Director of Publications
	Kari Boyle	Interim CEO, Courthouse Libraries BC/Coordinator, BC Family Justice Innovation Lab
	Karenna Williams	External Relations Executive Member, Aboriginal Lawyers Forum
	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
	Monique Steensma	CEO, Mediate BC
	April Lemoine	CFO Courthouse Libraries BC
	Prof. Bradford Morse	Dean of Law, Thompson Rivers University
	Dr. Catherine Dauvergne	Dean of Law, University of British Columbia
	Dr. Susan Breau	Dean of Law, University of Victoria
	Christina Gray	Indigenous Scholarship Winner

## RECOGNITION

### 1. Presentation of the 2018 Law Society Indigenous Scholarship

President Miriam Kresivo, QC introduced the recipient of the 2018 Law Society Indigenous Scholarship, Christina Gray. Ms. Gray is a member of the Tsimshian Band of Lax Kw'alaams Dene from Lutel'ke and Metis. She obtained her undergraduate law degree from the Peter A. Allard School of Law at the University of British Columbia in 2013 and is currently working as a senior research associate at the Centre for International Governance and Innovation in Waterloo, Ontario. Ms. Gray will be attending the University of Victoria's Faculty of Law LLM program, where she plans to study the overlapping and distinct legal characteristics of Indigenous legal orders within existing cases at federal and provincial human rights tribunals.

## CONSENT AGENDA

### 2. Minutes & Resolutions

#### a. Minutes

The minutes of the meeting held on July 13, 2018 were approved as circulated.

The *in camera* minutes of the meeting held on July 13, 2018 were approved as circulated.

#### b. Resolutions

The following resolutions were passed unanimously and by consent.

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

1. ***By rescinding Rule 2-24 (1) and (2).***
2. ***By adding the following rule:***

### Information sharing

#### Sharing information with a governing body

**2-27.1 (1)** This rule applies to information collected in accordance with the Act and these rules about a lawyer, former lawyer, law firm, articled student, applicant, visiting lawyer or a person who has applied to be a member of a governing body.

- (2) Subject to subrule (3), when it appears to the Executive Director to be appropriate in the public interest, the Executive Director may provide information to a governing body.
  - (3) The Executive Director must not provide confidential or privileged information to a governing body under subrule (2) unless the Executive Director is satisfied that the information
    - (a) is adequately protected against disclosure, and
    - (b) will not be used for any purpose other than the regulation of the legal profession in the jurisdiction of the governing body..
3. ***By rescinding Rule 2-53 (1) and (3) and substituting the following:***  
**2-53** (1) When a person makes an application under this division, the Executive Director may
  - (a) disclose the fact that the application has been made and the status of the application, and
  - (b) provide information to a governing body under Rule 2-27.1 [*Sharing information with a governing body*]..
4. ***By rescinding Rule 3-3 (2) (c) and substituting the following:***
  - (c) if, in the course of the investigation of a complaint, a lawyer has given an undertaking to the Society that restricts, limits or prohibits the lawyer's practice of law, disclose the fact that the undertaking was given and its effect on the lawyer's practice;
  - (d) provide information to a governing body under Rule 2-27.1 [*Sharing information with a governing body*]..
5. ***In Rule 3-23 by adding the following subrule:***
  - (2.2) The Executive Director may disclose information about Practice Standards Committee deliberations to a governing body under Rule 2-27.1 [*Sharing information with a governing body*]..
6. ***By rescinding Rule 4-8 (2) and substituting the following:***
  - (2) As an exception to subrule (1), the Executive Director may disclose information referred to in that subrule
    - (a) with the consent of the lawyer, in responding to an enquiry made for the purpose of a potential judicial appointment, or
    - (b) to a governing body under Rule 2-27.1 [*Sharing information with a governing body*]..

**7. In Rule 4-46**

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

(a) provide information to the governing body under Rule 2-27.1 [*Sharing information with a governing body*];; **and**

**(b) in subrule (5) by striking “when the Society agrees” and substituting “when the Discipline Committee agrees”.**

**8. By rescinding Rule 9-9 (2) (b) and substituting the following:**

(b) disclose information and documents to a governing body under Rule 2-27.1 [*Sharing information with a governing body*], and.

**9. By rescinding Rule 9-19 (2) (b) and substituting the following:**

(b) disclose information and documents to a governing body under Rule 2-27.1 [*Sharing information with a governing body*], and.

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

**1. In Rule 2-103 by rescinding subrules (1) to (3) and substituting the following:**

(1) When a hearing panel or review board issues a final or interlocutory decision on an application under this division, the Executive Director must

(a) publish and circulate to the profession a summary of the circumstances and decision of the hearing panel or review board,

(b) publish the full text of the decision on the Law Society website, and

(c) publish the final outcome of the hearing or review, including any conditions or limitations of practice or articles imposed or accepted.

(1.1) When a court issues a decision on a judicial review of or appeal from a credentials decision, the Executive Director must circulate to the profession a summary of the decision..

**2. By rescinding Rule 2-104 and substituting the following:**

(1) Except as required or allowed under this rule, a publication under Rule 2-103 (1) (a) or (b) [*Publication of credentials decision*] must not identify the applicant.

(2) A publication under Rule 2-103 (1) (a) or (b) may identify the applicant if

(a) the applicant consents in writing, or

(b) the subject matter of the application, including the identity of the applicant, is known to the public.

- (8) A publication under Rule 2-103 (1) (a) or (b) must identify the applicant if the applicant is a disbarred lawyer applying for reinstatement.
- (9) A summary circulated under Rule 2-103 (1.1) may identify an applicant who is identified by the court..

***BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 2-57 (2) (a) and substituting the following:***

- (a) be qualified to act as a principal to an articulated student under Rule 2-57 (2) and (2.1) [*Principals*], and.

Consideration of the proposed amendment to Rule 7.1-3 of the BC Code of Professional Conduct was moved to postponed to the November 9, 2018 Bencher meeting.

## **EXECUTIVE REPORTS**

### **3. President's Report**

Ms. Kresivo reported on her meeting with the Attorney General, David Eby, QC, and said more regular meetings would be beneficial. They discussed the Alternate Legal Services Providers work and what the Law Society is trying to do, as well as the Attorney's potential conflict between the Insurance Corporation of British Columbia and the Civil Resolution Tribunal. Also discussed was anti-money laundering and the German inquiry. Mr. Kresivo hoped Mr. German would come to speak to Benchers once the Terms of Reference for the second stage of the inquiry are set.

Ms. Kresivo said the Law Society had submitted a paper on the proposed *Land Ownership Transparency Act*, which is a new initiative of the government related to anti-money laundering. The Law Society supports the legislation; however, is concerned about privilege. Also discussed was the Law Society's submission to the Select Standing Committee on Finance and Government Services. The focus of the submission was legal aid funding, truth and reconciliation, and alternate legal service providers.

A summary of the Executive Committee meeting was then provided. Ms. Kresivo referred to the Alternate Legal Service Provider Working Group's Consultation paper, the submission to the Select Standing Committee on Finance and Government Services, the Land Owner Transparency Act, endorsing the Access to Justice Triple Aim, case management at the Law Society tribunals, amendments to the Model Code, and intervening in a Supreme Court of Canada case.

Ms. Kresivo reminded Benchers that the Annual General Meeting will be held on October 30, 2018. Three resolutions have been received that will be considered at the meeting.

#### **4. CEO's Report**

Mr. Don Avison introduced Kerry Garvie as the new Manager, Governance & Board Relations. He then reported on discussions with the provincial government on the *Land Ownership Transparency Act*; in particular, the concern about privilege being dealt with by regulation rather than in the legislation.

Mr. Avison recognised the work of Michael Lucas and Doug Munro on the Alternate Legal Service Provider Working Group's Consultation Paper, and provided Benchers with an update on the Law Firm Regulation Self-Assessment Tool.

Mr. Avison reported that he went to welcoming ceremonies for the first year class at Thompson Rivers University, which was particularly meaningful for him. He indicated the Justice summit would be held on November 2 & 3, 2018 and that he and Ms. Kresivo would be attending.

Mr. Avison also recognised guest PLTC instructors and thanked them for their contributions.

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

Herman Van Ommen, QC reported on changes in the executive and council of the Federation that required some reshuffling of certain positions.

Mr. Van Ommen highlighted some developments at the Federation level:

- Anti-money laundering – the Federation considers this the key file it is handling on behalf of law societies, and
- Intervention in the *Keatley* case – a case concerning section 12 of the Copyright Act, which may impact CanLII's ability to publish decisions.

The Annual Conference of the Federation is to be held October 17 to 19 in Charlottetown, Prince Edward Island, at which the ladder, Dean Lawton, QC and Mr. Avison will attend. Each day of the conference will have a different theme, ranging from trends in technology to regular council business.

### **DISCUSSION/DECISION**

#### **6. 2019 Budget and Fees**

Craig Ferris, QC, the Chair of the Finance and Audit Committee put before the Benchers the budget and operation of budgets and fees for 2019. He noted that the Committee spent a lot of

time in 2018 working on the budget and met three times. A Bencher information session was held on September 20, 2018, which was very well attended.

Mr. Ferris reported that it was a challenging budget and fiscal environment with operational changes and new taxes levied against the Law Society that needed to be implemented.

Mr. Avison highlighted some of the key elements of the budget. He identified a number of pressures in the budget for 2019, including volume increases with citations and hearing decisions. In some cases, in particular those involving trust misuse and anti-money laundering, the cases are inherently complex and have led to an increase in the resources required. Other external pressures, such as the health payroll tax put in place by the provincial government, have resulted in an approximate \$440,000 additional amount to be included in the budget.

For 2019, the budget contemplates an increase in member fees of \$120.06. Mr. Avison said this compares quite well nationally to other jurisdictions. The insurance program continues to be remarkably stable and the amount charged is similar to the amount charged when the program first began.

Mr. Avison said it was proposed that a significant amount of the additional expected cost in 2019 be taken out of reserve funding. It is because of the reserve funding that the increase to fees is confined to \$120.06. Ms. Jeanette McPhee, the Chief Financial Officer, noted that \$ 1.2 million of the 2019 budget was being funded from reserve and that the fee would have been approximately \$100 more if the reserve was not used.

Ms. Ferris moved (seconded by Sarah Westwood) the following motion:

Be it resolved that:

- Effective January 1, 2019, the practice fee be set at \$2,260.17 pursuant to section 23(1)(a) of the *Legal Profession Act*.

Mr. Welsh moved (seconded by Ms. Chow) the following amendment to the resolution:

Be it resolved that:

- The practice fee be set at \$2,262.28 to include \$2.11 to be allocated to the REAL program.

Ms. Kresivo invited debate on the motion.

Mr. Welsh noted that, while he acknowledges the Law Society is not in the business of funding other organizations, he supports funding the REAL program for one additional year until the



organization has an opportunity to secure other funding. The funding would only require approximately \$2 per member and he thought this was a reasonable amount for members to pay in order to support the REAL program. Mr. Welsh asked Benchers to vote in favour of his motion to amend the practice fee to include the funding for the REAL program.

Ms. Westwood said does not support funding the REAL program. Her view was that alternative funding could have been available through the Canadian Bar Association and that, what the REAL program was trying to do was seek compulsory funding from the Law Society. She also questioned the value of the REAL program, in light of the data provided about the program.

Ms. Chow spoke in favour of the motion. She said some of the issues raised do not take away from the importance of the REAL program and that the Law Society should be sending a message that there are opportunities for young and new lawyers.

Mr. McKoen spoke against the motion. He said the Law Society was primarily a regulator and was not a funding body. The Law Foundation is the appropriate body to consider such requests, as it is an organization dedicated for this purpose. The Law Society should focus on funding its core mandate. His view was that there are a lot of worthy causes in British Columbia and that the Law Society is not set up to determine which are the right causes to fund.

Mr. Riddell echoed Mr. McKoen's comments and said the member fee was essentially a tax being imposed on the membership, in the way of a practice fee. He said the Law Society is not in the business of funding organizations and that he was opposed to the motion.

Ms. Ahmad said it was not accurate to say the Law Society is not a funding organization because it has already been funding the REAL program. However, she raised some questions about the program review in 2018.

Mr. Finch agreed with Ms. Ahmad's comments. Mr. Finch said he was involved in the REAL program in the early days. For some people, the reality of practising in rural communities can be an overwhelming challenge. He said the cost of a cup of coffee was all members would be asked to give up and thought it was worth funding REAL for another year.

Mr. Maclaren said he would like to see the Law Society extend funding of the REAL program for another year until there are better strategies in place to deal with practising law in rural communities.

Mr. Wilson agreed with Mr. McKoen that the Law Society needs to focus on its core mandate. However, he also said he thought the Law Society should fund \$2.11 for another year.

Mr. McDonald was in favour of access of justice in rural areas, and thought the Law Society is a combination of a regulating and funding agency. However, we was concerned about setting the Bencher table up to have the exact same discussion conversation in one year's time.

Mr. Krueger commented that he is from a rural community and does not think the REAL program has improved access to justice in his community.

Mr. Ferris said he would not want the Benchers to mix up the goal of providing access to justice in rural communities with the REAL program. He is in favour of access to justice, but said the REAL program had not been meeting its goals over the last two years.

Mr. Welsh reiterated that the motion to amend the resolution was primarily to give the REAL program one more year to find other funding, rather than immediately stopping funding while there was no substitute in place.

After discussion on the amendment had concluded, Ms. Kresivo called for a vote. The motion to amend the resolution failed (14 in favour, 14 opposed, 1 abstention).

Ms. Kresivo then called for the vote on the original resolution moved by Mr. Ferris. The motion passed (20 in favour, 3 opposed, 6 abstentions).

Mr. Ferris then moved (seconded by Ms. Merrill) the following resolution:

Be it resolved that:

- Effective January 1, 2019, the following Law Society Fees and Assessments be set:
  - Late payment fee for practising lawyers at \$250, pursuant to Rule 2-108(3)
  - Retired member fee at \$125, pursuant to Rule 2-4(3)
  - Non-practising member fee at \$325, pursuant to Rule 2-3(2)
  - Late payment fee for non-practising members at \$40, pursuant to Rule 2-108(5)
  - Administration fee at \$70, pursuant to Rule 2-116(3)
  - Application for enrollment in the admission program at \$275, pursuant to Rules 2-54(1)(e) and Rule 2-62(1)(b)
  - Application fee for temporary articles at \$150, pursuant to Rule 2-70(1)(c)
  - Application fee for temporary articles (legal clinic) at \$50, pursuant to Rule 2-70(1)(c)

- Remedial work at \$100, pursuant to Rule 2-74(8)
- Application fee for transfer from another Canadian province or territory – investigation fee at \$1, 150, pursuant to Rule 2-79(1)(f)
- Transfer or qualification examination at \$325, pursuant to Rules 2-79(6) and 2-89(6)
- Call and admission fees:
  - o After enrolment in the admission program at \$250, pursuant to Rule 2-77(1)(c)
  - o After transfer from another Canadian province or territory at \$250, pursuant to Rule 2-79(1)(f)
- Reinstatement fee:
  - o Application fee following disbarment, resignation or cessation of membership as a result of disciplinary proceedings at \$700, pursuant to Rule 2-85(1)(b)
  - o Application fee following 3 years or more as a former member at \$550, pursuant to Rule 2-85(1)(b)
  - o Application fee in all other cases at \$450, pursuant to Rule 2-85(1)(b)
- Change of Status fees:
  - o Application fee to become retired member at \$35, pursuant to Rule 2-4(2)(b)
  - o Application fee to become non-practising member at \$70, pursuant to Rule 2-3(1)(b)
  - o Application fee for non-practising or retired member applying for practising certificate at \$70, pursuant to Rule 2-5(1)(b)
- Permit fee for law corporation at \$400, pursuant to Rule 9-4(c)
- New law corporation permit on change of name fee at \$100, pursuant to Rule 9-6(4)(c)
- LLP registration fee at \$400, pursuant to Rule 9-15(1)
- Application fee for practitioners of foreign law at \$700, pursuant to Rule 2-29(1)(b)

- Permit renewal fee for practitioners of foreign law at \$150, pursuant to Rule 2-29(1)(b)

The motion was passed unanimously.

Mr. Ferris then moved (seconded by Ms. Merrill) the following motion:

Be it resolved that:

- The insurance fee for 2019 pursuant to section 30(3) of the Legal Profession Act be set at \$1,800;
- The part-time insurance fee for 2019 pursuant to Rules 3-40(2) be set at \$900; and
- The insurance surcharge for 2019 pursuant to Rule 3-44(2) be set at \$1,000.

The motion was passed unanimously.

## **7. Alternate Legal Service Providers Working Group: Update**

Ms. Kresivo said the purpose of the item is to provide background information to Benchers as it has generated discussion amongst the profession. She thanked Mr. Lucas and Mr. Munro for their efforts in preparing the consultation paper.

The consultation paper was intended to define the proposed scope of practice for alternate legal service providers. Some focus groups were held with lawyers, people who may use the services and the judiciary over the summer. The broader consultation with the public and profession is currently underway.

The proposal outlined in the consultation paper is closely linked to what Ontario is considering doing. The response from some lawyers was less than enthusiastic and it is a challenge to come up with a scope of practice that provides useful distinctions between the types of work permitted and not permitted. The reaction of the judiciary was mixed; however, most of the judiciary was supportive of alternate legal service providers acting as a navigator or facilitator, rather than providing legal advice on a claim.

The consultation period will close on November 16, 2018. Ms. Kresivo said it would be most useful if people submitted feedback in writing and explained why they have concerns, rather than simply saying they do not like the initiative. She said there is nothing more for Benchers to do at this stage, and that once feedback has been received, further consultation has been conducted and the working group has made a decision as to how to progress, the issue will be brought to the Bencher table for consideration.

The Benchers discussed the reaction of the family bar, as well as feedback they had individually received from members of the profession. Benchers also discussed the importance of consulting with the profession and affected people, being open to feedback on the consultation paper, and some Benchers commented that often positive change does not occur without some opposition.

## **8. Professional Regulation Update: Presentation**

Ms. Deborah Armour, QC, Chief Legal Officer, provided an update to Benchers on the Professional Regulation department, some key statistics, challenges the department is currently facing and possible solutions being considered.

Ms. Armour began by explaining the role of the Intake and Early Resolution group, whose role is to respond to inquiries from the public and resolve complaints. Many of the inquiries received are matters not within the responsibility of the Law Society. Staff are well trained and able to point people in the right direction to help them solve their problem. The work of this group is not generally well known but they have a large volume of files and do important work. Ms. Armour said one of the best ways to protect the public is to support lawyers to practice competently and ethically, and one way the group does this is through remediation.

The Investigations, Monitoring and Enforcement group investigates complaints raising serious concerns that are likely to proceed to the Discipline Committee. There have been some changes in the practices of this group over the years, including interviewing subject lawyers and reaching out to third parties to obtain forensic evidence.

The Discipline group represents the Law Society in hearings through in-house and external counsel. The number of Rule 3-10 interim proceedings hearings has increased, which allows the Law Society to take immediate steps to protect the public before a citation is issued. The group is also responsible for administering conduct meetings and reviews.

Ms. Armour said Custodianships is an area that people do not know much about. The Law Society steps in to close or manage a practice when the need arises. The issues faced in that group are challenging and time-consuming.

Ms. Armour then provided a road map of what 2017 looked like for the Professional Regulation department. Approximately 1150 complaints were received and 85% of those were closed at the staff level, where there may be an issue but staff are able to work with the lawyer to deal with any competence issues.

More cases than usual went to the Discipline Committee and additional meetings took place to deal with the increase in workload.

The largest number of complaints received were in the area of family law, and this is largely because of the emotional content of the matters. One third of complaints are from clients. There has been an increase in the number of complaints falling into the category of compliance and audit referrals from the Trust Assurance department at the Law Society.

Some of the challenges faced by the department are a few lawyers consuming a disproportionate amount of staff resources, and there is a similar issue with complainants. A lot of staff time is spent dealing with vexatious and frivolous complaints. Ms. Armour reported there has also been an increase in the number of complex and serious files, which has required additional staff resource. The group is in the process of developing good criteria to decide when it is appropriate to remediate and when a file should proceed to the Discipline Committee.

Ms. Armour also said her staff are involved on National working groups, and have conducted extensive outreach to the profession; e.g. guidance provided to the profession on anti-money laundering.

The number of discipline files has increased because the department is in the process of clearing a backlog of files. However, there has also been an increase in the seriousness of the files. The Discipline group is always looking for solutions and ways to do things better. One example is developing junior counsel to work on files to bring the cost down.

Ms. Armour identified some challenges faced in the Custodianships group, including an aging profession, decline of lawyers practising in rural communities, and cases where a locum was used and perhaps should not have been. The size of the Custodianships group has not increased in 12 years despite the number and complexity of the files increasing. Further work could be done on succession planning and lawyers could be better educated about how to wind up their practice.

## **REPORTS**

### **9. National Discipline Standards: Presentation**

Ms. Armour explained that the National Discipline Standards is an initiative of the Federation of Law Societies of Canada, and is an attempt to set high standards for all adjudicative processes. The purpose of the report is to look at how the Law Society is doing as compared to other law societies in Canada. Ms. Armour reported that the Law Society is doing well, better than the national average, and highlighted which standards the Law Society is not currently meeting. Due to recent changes, the Law Society will shortly be able to meet information sharing requirements.

Ms. Armour invited Benchers to move (moved by Mr. McKoen and seconded by Ms. Hamilton) the following resolution:

Be it resolved:

- that the National Discipline Standards attached as attachment 3 be approved for implementation effective January 1, 2019.

The motion passed unanimously.

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

Mr. Ferris provided a report to Benchers on outstanding hearing and review decisions, and clarified the date of hearing with reference to when a panel had met.

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2018-09-21