



Minutes

Benchers

Date: Friday, November 09, 2018

Present: Nancy Merrill, QC, 1st Vice-President
Craig Ferris, QC, 2nd Vice-President
Jasmin Ahmad
Jeff Campbell, 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

Geoffrey McDonald
Steven McKoen
Christopher McPherson, QC
Phil Riddell
Elizabeth Rowbotham
Mark Rushton
Karen Snowshoe
Michelle Stanford
Sarah Westwood
Michael Welsh, QC
Tony Wilson, QC
Guangbin Yan
Heidi Zetzsche

Unable to Attend: Miriam Kresivo, QC, President
Pinder Cheema, QC
Claire Marshall
Carolynn Ryan

Staff Present: Don Avison
Gurprit Bains
Lance Cooke
Su Forbes, QC
Mira Galperin
Kerryn Garvie
Andrea Hilland
Jeffrey Hoskins, QC
David Jordan

Jason Kuzminski
Michael Lucas
Alison Luke
Jeanette McPhee
Doug Munro
Lesley Small
Alan Treleaven
Adam Whitcombe

Guests: Karena Williams	External Relations Executive Member, Aboriginal Lawyers Forum
Margaret Mereigh	President, Canadian Bar Association, BC Branch
Caroline Nevin	Executive Director, Canadian Bar Association, BC Branch
Kari Boyle	Interim CEO, Courthouse Libraries BC
Brenda Rose	Director, Community Engagement, Courthouse Libraries 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
Prof. Bradford Morse	Dean of Law, Thompson Rivers University
Dr. Susan Breau	Dean of Law, University of Victoria

CONSENT AGENDA

1. Minutes & Resolutions

a. Minutes

The minutes of the meeting held on September 21, 2018 were approved as circulated, subject to the correction of two attendees at the meeting; the title of Mr. Bill Veenstra as “Past President” of the CBABC and the omission of Professor Bradford Morse.

The *in camera* minutes of the meeting held on September 21, 2018 were approved as circulated.

b. Resolutions

The following resolution was passed unanimously and by consent.

2019 Fee Schedules

BE IT RESOLVED to amend the Law Society Rules, effective January 1, 2019, as follows:

1. *By rescinding Schedule 1 and substituting the following:*

SCHEDULE 1 – 2019 LAW SOCIETY FEES AND ASSESSMENTS

A. Annual fee

1. Practice fee (Rule 2-105 [<i>Annual practising fees</i>])	2,260.17
2. Liability insurance base assessment (which may be increased or decreased in individual cases in accordance with Rule 3-40 (1) [<i>Annual insurance fee</i>]):	
(a) full-time practice	1,800.00
(b) part-time practice	900.00
3. Liability insurance surcharge (Rule 3-44 (2) [<i>Deductible, surcharge and reimbursement</i>])	1,000.00
4. Late payment fee for practising lawyers (Rule 2-108 (3) [<i>Late payment</i>])	150.00
5. Retired member fee (Rule 2-4 (3) [<i>Retired members</i>])	125.00
6. Late payment fee for retired members (Rule 2-108 (4))	nil
7. Non-practising member fee (Rule 2-3 (2) [<i>Non-practising members</i>]) ...	325.00
8. Late payment fee for non-practising members (Rule 2-108 (5)).....	40.00

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| 9. Administration fee (R. 2-116 (3) [<i>Refund on exemption during practice year</i>]) | 70.00 |
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B. Trust administration fee

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| 1. Each client matter subject to fee (Rule 2-110 (1) [<i>Trust administration fee</i>]) | 15.00 |
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C. Special assessments

D. Articled student fees

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| 1. Application fee for enrolment in admission program (Rules 2-54 (1) (e) [<i>Enrolment in the admission program</i>] and 2-62 (1)(b) [<i>Part-time articles</i>]) | 275.00 |
| 2. Application fee for temporary articles (R. 2-70 (1) (c) [<i>Temporary articles</i>]) | 150.00 |
| 3. Application fee for temporary articles (legal clinic) (Rule 2-70 (1) (c)) | 50.00 |
| 4. Training course registration (Rule 2-72 (4) (a) [<i>Training course</i>]) | 2,600.00 |
| 5. Remedial work (Rule 2-74 (8) [<i>Review by Credentials Committee</i>]): | |
| (a) for each piece of work | 100.00 |
| (b) for repeating the training course | 4,000.00 |

E. Transfer fees

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| 1. Application fee for transfer from another Canadian province or territory – investigation fee (Rule 2-79 (1) (f) [<i>Transfer from another Canadian jurisdiction</i>]) | 1,150.00 |
| 2. Transfer or qualification examination (Rules 2-79 (6) and 2-89 (6) [<i>Returning to practice after an absence</i>]) | 325.00 |

F. Call and admission fees

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| 1. After enrolment in admission program (Rule 2-77 (1) (c) [<i>First call and admission</i>]) | 200.00 |
| 2. After transfer from another Canadian province or territory (Rule 2-79 (1) (f) [<i>Transfer from another Canadian jurisdiction</i>]) | 200.00 |

G. Reinstatement fees

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| 1. Application fee following disbarment, resignation or other cessation of membership as a result of disciplinary proceedings (Rule 2-85 (1) (b) [<i>Reinstatement of former lawyer</i>]) | 700.00 |
| 2. Application fee following 3 years or more as a former member (Rule 2-85 (1) (b)) | 550.00 |
| 3. Application fee in all other cases (Rule 2-85 (1) (b)) | 450.00 |

H. Change of status fees

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| 1. Application fee to become retired member (Rule 2-4 (2) (b) [<i>Retired members</i>]) | 35.00 |
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| 2. Application fee to become non-practising member (Rule 2-3 (1) (b) [Non-practising members]) | 70.00 |
| 3. Application fee for non-practising or retired member applying for practising certificate (Rule 2-5 (1) (b) [Release from undertaking]) | 70.00 |

I. Inter-jurisdictional practice fees

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| 1. Application fee (Rule 2-19 (3) (b) [Inter-jurisdictional practice permit]) | 500.00 |
| 2. Renewal of permit (Rule 2-19 (3) (b)) | 100.00 |

J. Corporation and limited liability partnership fees

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|---|--------|
| 1. Permit fee for law corporation (Rule 9-4 (c) [Law corporation permit]) | 400.00 |
| 2. New permit on change of name fee (Rule 9-6 (4) (c) [Change of corporate name]) | 100.00 |
| 3. LLP registration fee (Rule 9-15 (1) [Notice of application for registration]) | 400.00 |

K. Practitioners of foreign law

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| 1. Application fee for practitioners of foreign law (Rule 2-29 (1) (b) [Practitioners of foreign law]) | 700.00 |
| 2. Permit renewal fee for practitioners of foreign law (Rules 2-29 (1) (b) and 2-34 (2) (c) [Renewal of permit]) | 150.00 |
| 3. Late payment fee (Rule 2-34 (6)) | 100.00 |

L. Late fees

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| 1. Trust report late filing fee (Rule 3-80 (2) (b) [Late filing of trust report]) | 200.00 |
| 2. Professional development late completion fee (Rule 3-31 (1) (c) [Late completion of professional development]) | 500.00 |
| 3. Professional development late reporting fee (Rule 3-31 (3) (b)) | 200.00 |
| 4. Late registration delivery fee (Rule 2-12.4 [Late delivery]) | 200.00 |
| 5. Late self-assessment delivery fee (Rule 2-12.4) | 500.00 |

M. Multi-disciplinary practice fees

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| 1. Application fee (Rule 2-40 (1) (b) [Application to practise law in MDP]) | 300.00 |
| 2. Application fee per proposed non-lawyer member of MDP (Rules 2-40 (1) (c) and 2-42 (2) [Changes in MDP]) | 1,125.00. |

2. *In Schedules 2 and 3,*

- (a) *in the headings of the schedules, by striking the year “2018” and substituting “2019”, and*
- (b) *by revising the prorated figures in each column according to 2019 fees set in Schedule 1.*

EXECUTIVE REPORTS

2. President's Report

As President Miriam Kresivo, QC was unable to attend the meeting, First Vice-President Nancy Merrill, QC chaired the meeting in her absence. There was no President's report.

3. CEO's Report

Mr. Don Avison informed Benchers the Annual General Meeting would be reconvened on December 4, 2018 and that online voting would be provided. He reported that the Executive Committee had agreed to three additional remote locations: Courtenay, Prince Rupert and Surrey.

Mr. Avison said the Bencher by-election was underway and going well.

Mr. Avison reported on his attendance at the Federation of Law Societies meeting in Charlottetown, Prince Edward Island, and in particular, his attendance at the Chief Executive Officers forum. Topics covered included developments in the regulatory landscape, CanLII and data analytics.

The 11th Justice Summit took place on November 2 and 3, which Mr. Avison attended. The focus of the summit was on indigenous peoples and the administration of justice. Both Chief Justices and the Chief Judge were in attendance, as well as the Attorney General and a number of other government representatives. Mr. Avison reported that topics covered included Gladue reports, including both the process and development of the reports, and potential areas for reform and engagement. He encouraged Benchers to read the report of the 11th Justice Summit once it is made available.

Mr. Avison referred to the re-dedication of our plaque recognizing lawyers and students who died in the First and Second World Wars that was to take place during the coffee break at the meeting. Mr. Avison noted the efforts of Emily McKinnon in making this event happen.

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

Mr. Herman Van Ommen, QC reported on his attendance at the Federation of Law Societies meetings in Charlottetown, Prince Edward Island. He mentioned that this year's conference centered on the topic of law and technology, artificial intelligence and what law societies should be doing about it. The discussion concerned how the current legal regulatory landscape is getting in the way of development of technology and the law, and that technology could be used to develop innovative solutions for clients. He suggested this was something the Benchers could consider. Mr. Van Ommen also reported on another lecture he attended on block chain

technology, which is another piece of technology he thinks will have a significant impact on how business is conducted.

Mr. Van Ommen referred to a poll that took place about how law societies should respond to new technology. Everyone in the room agreed that it is not feasible to maintain the status quo and not allow anyone but lawyers to provide legal services. He thought this showed a general trend in people's thinking about how technology will form a greater part of providing legal services in the legal profession.

The Federation Council met and discussed the model code rule amendments concerning anti- money laundering. Mr. Van Ommen raised some issues about the way the rules are currently drafted and then voted in favour of the motion to amend the rules and the motion passed. The rules will now come back before the law society for consideration by the Benchers. Mr. Van Ommen emphasized the importance of the law society responding to concerns about money laundering and implementing these rules across the country rather than adopting a patchwork approach. He asked Benchers to balance the benefits of consistency across the country with getting the wording precisely right when it comes time to consider the issue.

DISCUSSION/DECISION

5. Mental Health Interim Report with Interim Recommendations

Mr. Brook Greenberg, Chair of the Mental Health Task Force, thanked the other members of the Task Force and Ms. Luke, staff lawyer, for their work to date and in drafting the report. Mr. Greenberg explained the report was divided into two parts: Part 1 covered research and background on the topic of mental health and substance use in the legal profession, and Part 2 covers the Task Force's recommendations to Benchers. Mr. Greenberg reiterated the recommendations represent initial recommendations and that there will be further work by the Task Force. The recommendations are intended to be incremental, relatively uncontroversial and focused on moving the project forward in a way that maintains momentum and sends a message to the profession and the public about the importance of the work that is being done.

Mr. Greenberg said there were two main aims with the recommendations: (1) to increase awareness of mental health and substance use issues and (2) to reduce stigma. The underlying purpose is to change how these issues are seen and treated within the legal profession.

The recommendations pay particular attention to educational initiatives within the Law Society itself, as this will better enable the Law Society to address these issues as they arise in a variety of contexts. The Law Society will lead by example by educating itself first. Mr. Greenberg said the hope is that, over time, there will be a culture shift and lawyers will be able to talk more openly about mental health and substance use issues, and seek support and guidance.

Mr. Greenberg highlighted some of the recommendations. First, he said there was a strong desire from staff for more education and training. Education and training would also be provided to committee members and others who encounter mental health and substance use issues in the course of their work. In particular, Practice Advisors would receive more education and training to enable them to better deal with these issues. The legal profession would be reminded that dealing with Practice Advisors is a confidential process, and Practice Advisors would be in a position to advise lawyers about available resources. The Task Force has already identified and met with some organizations that are willing to be involved and provide training.

Mr. Greenberg also referred to other recommendations, including having registered psychologists available to provide support and guidance to staff, and expanding and improving people's understanding of the support provided by the service provider LifeWorks. Also highlighted were recommendations involving consultation with the Lawyer Education Advisory Committee regarding mandatory continuing professional development concerning mental health and substance use issues, and consultation with the Law Firm Regulation Task Force on including wellness topics as part of the self-assessment process.

Mr. Greenberg mentioned issues surrounding the credentials process, in particular the Law Society form for enrolment in the admission program. The Task Force is of the view that the form should be amended to remove the question relating to substance use and medical issues, and instead focus on conduct. He said the inclusion of the question on the form means students often do not seek support or treatment for fear of having to answer this question.

Finally, Mr. Greenberg referred to the mandatory reporting requirement in the BC Code of Professional Conduct and said it contains stigmatizing language that requires amendment. He said the Task Force believes the language is very problematic and should be changed.

Ms. Merrill opened discussion of the report.

Ms. Heidi Zetzsche commented that she did not think the report dealt with the underlying problem of why there are mental health and substance use issues in the legal profession. Mr. Greenberg said this was something that would be considered as part of next steps in 2019 and that it was important to take an evidence-based approach to identifying the cause of the problem, which may mean a survey is conducted in the future.

Ms. Guangbin Yan asked about the prioritization of the recommendations and what the ongoing budgetary implications would be. Mr. Greenberg responded that, assuming the recommendations are approved at the Bencher meeting in December, the focus would then be on implementing those recommendations. Next the Task Force would consider additional recommendations, including looking at a possible diversion or an alternate discipline approach. Mr. Greenberg said an initial amount had been set aside in the budget for training and education, but that additional

resources would be required. His intention is that the recommendations would be implemented over time to spread out the cost.

Mr. Steven McKoen thanked Mr. Greenberg for his presentation and work on the Task Force to date, and encouraged the Task Force to consider how to incorporate wellness into the proposed training. Mr. McKoen also commented that he thought there was still an issue to be resolved in terms of the proposed changes to the model code.

Mr. Michael Welsh, QC inquired as to what happens once staff have identified an issue and asked what resources are available. Mr. Greenberg clarified that this is contemplated as part of the recommended education and training and that it will include what to do and not just how to identify if these issues exist.

Ms. Elizabeth Rowbotham asked about the service provider LifeWorks and whether the Law Society gets any information from them about how many people seek assistance and if people find it to be a useful resource. Mr. Greenberg responded that that has been identified as an area for further work. Greater consultation with LifeWorks is needed to figure out exactly what support they provide. Mr. Alan Treleavan, Director of Education & Practice, clarified that the Law Society receives regular reports from LifeWorks about the number of people they provide support to, broken down by lawyers, students and staff. He said the information is also broken down by the type of issue. Privacy of individuals is preserved as part of this reporting process. He recognized that there was scope for more useful data to be provided by LifeWorks that would have more practical value.

Ms. Dhaliwal asked if there was any movement in law schools to address the wellness issue and prepare people for the profession. Mr. Greenberg said the law schools are looking at ways to support students and remove barriers to seeking treatment. Studies show that mental health and substance use issues experienced in the legal profession start at law school. Students are not seeking help or accessing resources available because they do not want their ability to be called to the bar to be impacted.

Ms. Zetzsche commented on the availability of resources and if the Task Force has considered other funding options, such as asking members to pay another \$25 per year so the entire profession could automatically have 10 counselling sessions. Mr. Greenberg recognized availability of resources is a problem and said the Task Force wants to do a survey to find out why people are not using resources, what resources would be useful, and make decisions in an informed and logical way. Mr. Treleavan clarified that members currently have access to counseling sessions with the LifeWorks program and that if anyone has a concern about anyone not being able to access appropriate services, please follow up with him.

Mr. Tony Wilson, QC acknowledged and thanked Mr. Greenberg for the work he has done to date to further this issue.

6. Amendment to Rule 7.1-3 of the Code of Professional Conduct

Mr. Craig Ferris, QC, as Chair of the Ethics Committee, introduced the item. He said the purpose of the memorandum before the Benchers was to seek approval to amend rule 7.1-3 of the BC Code and the text of the rule's associated commentary to reflect the changes indicated in the memorandum.

One of the goals of the Ethics Committee has been to maintain, wherever possible, consistency with the Model Code. Mr. Ferris referred to Mr. Greenberg's comments and the Mental Health Task Force's recommendation that rule 7.1-3(d) be amended to remove stigmatizing language. He outlined three options: (1) the Benchers could make no changes until the Ethics Committee had the opportunity to provide advice to the Benchers about what the Mental Health Task Force is proposing. The existing rule would be left in place, even though most people accept that the language is problematic. (2) The Benchers could adopt the language proposed by the Mental Health Task Force even though the Ethics Committee has not had an opportunity provide advice to the Benchers or discuss it with the Federation Council. (3) The Benchers resolve at this meeting to adopt the changes proposed by the Ethics Committee to make the rule incrementally better. The Ethics Committee would then work with the Federation to see if the rule could be improved further. If the Federation does not want to change the language as suggested, then the issue could come back before Benchers for consideration of a BC only alternative. Mr. Ferris favoured the third option.

Several Benchers expressed concern about approving the amendment to the rule as proposed by the Ethics Committee, as they thought it had the effect of approving stigmatizing language even though it was incrementally better than the current language. It was suggested that it would be better to change the language now rather than do an incremental change, only to have to come back at a later date to make further amendments. Or at minimum, make it clear that Benchers are looking to make further changes so people do not think we are in support of the stigmatizing language.

Other Benchers expressed concern about approving any changes to the Rule without the advice of the Ethics Committee and which had not been discussed with the Federation. While the change suggested by the Mental Health Task Force was seen as a worthwhile change to consider and possibly make, concern was expressed by some Benchers about there being a risk of getting a fractured Code after many years of trying to achieve consistency nationally. Some Benchers commented that changes to the Code should be done in an organized, systematic way to ensure uniformity across the country.

Mr. Ferris reiterated that he was committed to going back to the Federation and discussing further changes to the Rule. However, he said if the Benchers do not approve the amended language proposed at today's meeting that would be leaving in place language that was even more stigmatizing.

Mr. Ferris then moved that the text of rule 7.1-3 of the BC Code and the text of the Rule's associated Commentary be amended to reflect the changes indicated in the red-lined version of the Rule and Commentary presented in the memorandum. Mr. Riddell seconded the motion.

Ms. Stanford then moved an amendment to the motion to substitute the language from the Mental Health Task Force report. Mr. Jamie Maclaren seconded the motion.

Mr. Geoffrey McDonald proposed an amendment to Mr. Ferris' motion which would omit the last two sentences of Note 3 of the commentary. Mr. McDonald moved the amendment to the proposed amendment. Ms. Lisa Hamilton seconded the motion.

Mr. Greenberg said it was the Mental Health Task Force's intention to consult with the Ethics Committee about the stigmatizing language, that he was troubled by the possibility of voting for a provision that contains stigmatizing language and that the Benchers should not engage in drafting at the Bencher table. However, he suggested that the language needed to be revisited soon.

Mr. Martin Finch, QC suggested the issue be put off for another month to allow the matter to be considered further. Mr. Finch then made a motion to defer the consideration of Mr. Ferris' proposed resolution. The motion was seconded by Mr. Mark Rushton.

Ms. Merrill clarified that the motion before the Benchers was now if they should defer the matter so that it could be given further consideration.

Members of the Ethics Committee commented that they were in support of Mr. Ferris' motion and had full faith that he would bring the concerns expressed at the Bencher table today before the Federation.

In light of Mr. Finch's motion to defer, Mr. McDonald withdrew his motion.

Ms. Merrill clarified that the motion being considered, moved by Mr. Finch, was referral of the matter to the Ethics Committee to bring back before the Benchers at a later date. Ms. Merrill then called the question on the motion put forward by Mr. Finch. With 17 in favour of the motion and 7 opposed, the motion passed.

REPORTS

7. New dual JD/JID degree at the University of Victoria Faculty of Law

Mr. Dean Lawton, QC and Ms. Karen Snowshoe reported that they attended the opening of the dual JD/JID program at the University of Victoria Faculty of Law in September. It is a brand new program, the first of its kind in the world. Students who go through the program will receive professional degrees in both Canadian common law and indigenous law.

Ms. Snowshoe gave a meaningful account of her experience attending the opening and how it impacted her personally. She said the program offered a beacon of hope and that the celebration of such a program was overwhelming, given the many years of indigenous laws and practices having to go underground. A lot of the leadership on indigenous issues in the past has been done by non-indigenous people, and the program reflects the opportunity to more fully engage the Indigenous community in providing that leadership. Mr. Lawton added a few observations; that the gift exchange was a symbol of the responsibility being taken on to continue the exchange of skills and knowledge. It was an optimistic experience and there was a real sense of something new happening.

8. Report on Outstanding Hearing & Review Decisions

Mr. Ferris gave a brief oral update on outstanding hearing and review decisions and thanked Benchers for making themselves available for hearings. He said they have started the new case management program and will be setting dates soon.

9. Financial Report – September YTD 2018

Ms. Jeanette McPhee, Chief Financial Officer, spoke to the materials in the package on the financial report for the third quarter. She said the forecast is a good news story, and that there will be a positive result by the end of the year. Revenue is ahead and will likely be ahead of budget at year-end.

Ms. McPhee reported that membership is up 3% (normally it is around 2%), and that we have the highest projection ever for Professional Legal Training Course students. There have been some cost increases in the Investigations and Monitoring, Discipline and Custodianships departments, but there savings to offset this. There will be additional costs incurred in 2019, but there are reserves to deal with this. Ms. McPhee confirmed the Trust Assurance program and Lawyers Insurance Fund are in good shape.

Mr. Ferris commented that we need to see if the increase in students is temporary or if it represents an upward trend. He referred to statistics presented to the Finance and Audit Committee that show 12% of all audits lead to a referral to the Professional Conduct department.

He said we need to start thinking about different ways to approach what appears to be a lot of problems with accounting in the legal profession.

In response to some questions from Benchers about the reserve funding and expected expenditure in the future, Ms. McPhee confirmed we have a working capital reserve that will be used to account for the expected increase in costs for 2019. In addition, any positive result from 2018 will be added to the reserves for 2019.

Ms. Guangbin Yan asked if staff could do more work to look at potential savings opportunities in other areas to reduce inefficiencies, for example, with the claim reimbursement system. Ms. McPhee confirmed this was something she would be looking at shortly.

Ms. Dhaliwal asked about whether it would be worth doing a deep dive into the Trust Assurance program. Mr. Ferris said it would be worth taking a serious look at the Trust Assurance program and how costs are recovered. Mr. Don Avison said this conversation had already been started at Leadership Council and that he would be looking at how the Law Society deals with a number of matters. He recognized that some of our operations have been done a certain way for a while and that there was likely room for improvement. He anticipated that in the New Year he would be in a position to come to the Benchers with some recommendations.