



Minutes

Benchers

Date: Friday, January 25, 2019

Present:

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

Staff Present:

Don Avison	Jason Kuzminski
Gurprit Bains	Michael Lucas
Chantal Broughton	Alison Luke
Lance Cooke	Tara McPhail
Su Forbes, QC	Jeanette McPhee
Mira Galperin	Veronica Padhi
Kerryn Garvie	Annie Rochette
Andrea Hilland	Lesley Small
Jeffrey Hoskins, QC	Alan Treleven
David Jordan	Adam Whitcombe, QC

Guests: Lawrence Alexander	Guest Presenter, Associate Counsel of Gall Legge Grant Zwack
Kenneth Armstrong	Vice-President, Canadian Bar Association, BC Branch
Chief Justice Honourable Robert Bauman	Chief Justice of British Columbia and Chief Justice of the Court of Appeal for the Yukon.
Dom Bautista	Executive Director, Law Courts Center
Richard Fyfe, QC	Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General
Dennis Joseph (Xwechtaal Siem)	Squamish Nation
Prof. Bradford Morse	Dean of Law, Thompson Rivers University
Ron Nairne	President, Trial Lawyers Association of BC
Caroline Nevin	CEO, Courthouse Libraries BC
Natasha Dookie	Incoming Chief Legal Officer, Law Society of BC
Herman Van Ommen, QC	Law Society of BC Member, Council of the Federation of Law Societies of Canada
Tina Parbhakar	CBABC Equity & Diversity Chair
Kerry Simmons, QC	Acting Executive Director, Canadian Bar Association, BC Branch
Bill Veenstra, QC	Past President, Canadian Bar Association, BC Branch
Karena Williams	External Relations Executive Member, Aboriginal Lawyers Forum

INTRODUCTORY MATTERS

First Nations Acknowledgement

The President welcomed Dennis Joseph (Xwechtaal Siem) from Squamish Nation to the Bencher meeting. Mr. Joseph led the Benchers in an opening prayer.

1. Administer Oaths of Office

The Honourable Chief Justice Robert J. Bauman administered the oaths of office to President, Nancy G. Merrill, QC, First Vice-President Craig Ferris, QC, Second Vice-President Dean P.J. Lawton, QC and newly elected Bencher Jacqueline McQueen, whose term commenced on January 1, 2019.

2. President's Welcome

Ms. Merrill welcomed various guests to the Bencher meeting.

CONSENT AGENDA

3. Minutes of December 7, 2018, meeting (regular session)

The minutes of the meeting held on December 7, 2018 were approved as circulated.

4. QC Advisory Committee Appointment

The following resolution was passed unanimously and by consent:

BE IT RESOLVED that the Benchers appoint President Nancy G. Merrill, QC and First Vice-President Craig Ferris, QC as the Law Society's representatives on the 2019 QC Appointments Advisory Committee.

5. Recruitment and Nominating Advisory Committee

At a Bencher's request, this item was moved to the discussion portion of the agenda.

Ms. Merrill spoke to the item and explained that, while the intention behind the Recruitment and Nominating Advisory Committee (RNAC) was laudatory, in practice the Committee has simply taken over the function of the Executive Committee's appointments subcommittee while adding more time, process and resources to get to the same recommendations.

Some Benchers expressed concern about the recommendation from an equity and diversity perspective and were of the view that, by disbanding the RNAC and losing the perspectives of

those additional Committee members, it may be restricting diversity when it comes to making selections for appointments. It was thought that a wider expression of views may lead to a broader range of input into who may be appropriate for certain appointments.

Benchers were reminded of the Law Society's Appointments Policy, which states that the Law Society promotes diversity in its internal and external appointments and should ensure adequate representation based on gender, Aboriginal identity, cultural diversity, disability, sexual orientation and gender identity.

Some Benchers expressed support for the recommendation and indicated the removal of the RNAC would not change anything in terms of the application of the appointments policy and equity and diversity considerations; however, it would reduce the administrative burden on staff that had to support the RNAC. In their view, as long as the Executive Committee acted appropriately with appointments, there would be no issue with removing the RNAC.

The motion was made as follows:

BE IT RESOLVED that the Recruitment and Nominating Advisory Committee be wound up and that in the future the Executive Committee exercise the authority given it under the Rules to oversee and recommend to the appropriate appointing person or body within the Law Society on appointments to outside bodies.

The motion carried with 14 in favour, 12 opposed and 2 abstentions.

6. BC Representative for Federation of Law Societies' Committees

The following resolution was passed unanimously and by consent:

BE IT RESOLVED that we should continue to appoint our Chief Legal Officer as our representative on this Committee and recommends that the new Chief Legal Officer be appointed after joining the Law Society.

REPORTS

7. President's Report

Ms. Merrill began by highlighting some areas of focus for 2019, including consideration of the resolutions that were passed at the 2018 Annual General Meeting.

Continuing to promote legal aid and pro bono work will be an ongoing focus. The Legal Aid Advisory Committee will continue to advocate for better funding of legal aid and the Access to Legal Services Advisory Committee will look at ways to incentivize pro bono work in the legal

profession. The pro bono questions on the Annual Practice Declaration are also being revised to give the Law Society a better sense of the pro bono landscape.

Ms. Merrill said the Legal Aid Advisory Committee is considering a robust communication plan and ways to lobby the government for better legal aid funding. The Committee will be recommending that the Law Society create and lead a coalition of like-minded organizations to strengthen the Law Society's advocacy efforts, and that it also continue to address the loss of training and mentoring of young lawyers within the legal aid system.

The second resolution at the Annual General Meeting essentially requested that the Law Society cease working on the Alternate Legal Service Provider initiative and not request proclamation of the necessary amendments to permit a framework for licensed paralegals. Ms. Merrill noted that, while the resolutions are not binding on the Benchers, it is appropriate to consider them in the context of our work in this area.

Ms. Merrill said the Governance Committee had been asked to look at a revised process for the 2019 Annual General Meeting and its recommendations may include advanced voting and no amendments from the floor at the meeting. She said the Governance Committee would report back to Benchers with recommendations.

Ms. Merrill said she wanted to see the Law Society establish a Futures Task Force and the Executive Committee would be making that recommendation at the meeting. The Task Force would provide guidance to the Benchers on anticipated changes and developments in the practice and regulation of law, and what the Law Society needs to do to be ready for those changes and developments.

Other areas of focus for 2019 included continuing to promote equity and diversity, and continuing work on the goals of the Truth and Reconciliation Commission Calls to Action.

Ms. Merrill said the Governance Committee was also asked to develop a more comprehensive Benchers Code of Conduct, which would address such matters as chronic absenteeism, the unlikely event of Benchers misconduct, and how to deal with conflicts of interest.

8. CEO's Report

Mr. Avison began his report by introducing the incoming Chief Legal Officer, Natasha Dookie. He provided background information about Ms. Dookie and welcomed her to the Law Society.

Mr. Avison referred to work being done to reform the Annual General Meeting format and structure, and indicated the Mental Health Task Force will be moving on to the implementation phase of its work, which will involve training opportunities for staff.

He said anti-money laundering will be another significant area of focus for 2019. Dr. Peter German will be invited back to the Benchers meeting to talk about the second phase of the review, which will focus on real estate and other areas where there is an expectation that anti-money laundering activity is taking place. A second process mandated by the Minister of Finance involves an expert panel on money laundering, chaired by Maureen Maloney, a former Deputy Attorney General, together with Tsur Somerville from the University of British Columbia's Sauder School of Business and Dr. Brigitte Unger from the University of Utrecht in the Netherlands. The panel will be meeting with a number of individuals and organizations, including a meeting with the Law Society presently scheduled for February 15. Mr. Avison said he would report back to Benchers following the meeting.

Mr. Avison then congratulated staff at the Law Society who contributed to the Law Society winning a national energy efficiency award.

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

Mr. Van Ommen reported on his attendance at the two-day December 2018 Federation Council meeting. The first meeting day focused on governance issues as there had been a number of changes at the Council table. One of the messages that came out of that meeting was that the judiciary generally would like to see law societies speak out publically more often, in particular, in defence of judges and the rule of law.

Mr. Van Ommen said the second meeting day consisted of regular business, including reviewing the Council's three strategic priorities. The first priority discussed was anti-money laundering. The Council's anti-money laundering group intends to continue to work closely with the Federal Ministry of Finance in 2019. The second priority discussed was the national assessment review process. Mr. Van Ommen reported that a work plan had been prepared. He said the first part of the plan is to assess the gaps between lawyers coming through the National Committee on Accreditation and lawyers trained in Canadian law schools, and suggest ways of addressing the problem. The third priority Mr. Van Ommen reported on was the Truth and Reconciliation Commission's Calls to Action, in particular call to action 28, which calls upon law schools in Canada to require all law students to take a course in Aboriginal people and the law. The Federation is reaching out to the legal academy to work together on implementation and ensure consistency across the country on this issue.

Mr. Van Ommen also reported on two Model Code items. The first issue was the technological competence rule proposed by the Federation. He said a decision on the rule had been put over to the March meeting. Ontario and BC are not currently supportive of the rule as drafted and Mr. Van Ommen said he would be seeking instructions shortly on how they would like him to respond. The second issue was the rule relating to the return to practice for judges. Mr. Van Ommen said this issue needs further discussion and he will be seeking instructions.

GUEST PRESENTATIONS

10. Presentation on Future Trends and the Legal Profession

Ms. Merrill welcomed and introduced Mr. Lawrence Alexander, who gave a presentation on Future Trends and the Legal Profession.

Mr. Alexander began by referring to a story from October 2018 where 20 top corporate lawyers in the United States challenged an artificial intelligence algorithm called LawGeex. The story illustrated some of the potential benefits of AI technology. The algorithm was asked to review five non-disclosure agreements and spot the legal issues, and the results were compared with that of the lawyers. The lawyers, who were very experienced in reviewing non-disclosure agreements, scored on average 85% for accuracy and LawGeex scored 94%. In terms of speed, the lawyers took on average 92 minutes and Law Geex took 26 seconds to complete the task.

Mr. Alexander then displayed information about a range of other AI applications in the law world. He also referred to the Ministry of Attorney General's announcement regarding the "AI Justice Challenge". The Ministry is seeking five different AI solutions, including assistance with streamlining completion of forms, document review, a Chatbot to provide legal information on matters or processes involving probate, wills and estates planning, faster and cheaper transcription, and an interactive platform for navigating the court process.

A number of stories followed that were in support of the proposition that the legal world is changing and Mr. Alexander asked the Benchers to think about what the legal profession would look like in 10 or 20 years. He asked how the legal profession can better protect the public interest in a changing world, and whether there are better ways to meet those objectives going forward.

Mr. Alexander suggested to Benchers that if AI is embraced by the legal profession, costs go down for clients, and access to justice and client satisfaction go up. For lawyers, the drudgery goes down and the high value work and mental health of lawyers could go up. This may also mean people who have been leaving the legal profession start to return.

Mr. Alexander also spoke about emerging trends that could impact the practice of law, such as entrepreneurs and investors that are disrupting the legal profession, investment by the legal profession in research and development, changes in legal publishing, and problems experienced by sole practitioners and small firms managing law practices.

Mr. Alexander then discussed what changes could mean for regulating the practice of law, such as the technological competence rule proposed by the Federation, the impact of technological solutions on lawyers' mental health and wellbeing, and whether skillsets are missing from the regulation of lawyers' competency/credentials. He summarized some statistics illustrating "the

unmet need”, which showed a gap between the number of people who experience a legal problem and the number of people who seek legal assistance. He said there is an 81% gap, where those people experience a legal problem and do not obtain legal advice. There are three main factors: people cannot afford legal advice, people do not understand the law and people do not feel welcome. Mr. Alexander questioned whether this gap could be filled by innovation, investment and technology.

Mr. Alexander then discussed what the changing legal world could mean for the regulation of lawyers, the concept of economic regulation and whether the Law Society is set up to embrace change and the future. His suggested next steps could include the following: find more data, set stretch goals, engage the profession, take a hard look at what will fill the gap, and broadly embrace talent and capital. Mr. Alexander then concluded his presentation.

DISCUSSION/DECISION

11. A Proposal for a Futures Task Force

Mr. Ferris said that he hoped, following Mr. Alexander’s presentation, the need for a Futures Task Force would be fairly self-evident. Mr. Ferris referred to the memorandum provided by the Executive Committee proposing the establishment of a Futures Task Force and encouraged the Benchers to support the following resolution:

The Benchers hereby establish a Futures Task Force with terms of reference as set out in the Appendix to this memorandum and that the Futures Task Force provide its final report to the Benchers no later than July, 2020.

The motion passed unanimously.

12. Annual Fee Review Working Group: Final Report

The Chair of the Annual Fee Review Working Group, Mr. Lawton, introduced and spoke to the item. He thanked staff and working group members for their contributions.

The Working Group consulted with the public, members of the profession, academia and other interest groups with respect to the concept of reduced practice and insurance fees for public interest practitioners. Mr. Lawton referred to the Terms of Reference and the directive from the President at the time the group was created, that:

The Working Group will investigate and duly consider providing public interest practitioners with reduced rates of practice fees and insurance fees and will report back to Benchers before the 2018 annual general meeting.

Mr. Lawton explained the report was delayed due to the need to complete the consultation process. He brought to Benchers' attention the following recommendation from the report (page 35, paragraph 10):

The voting members of the Working Group recommend against providing public interest practitioners with reduced rates of practice fees and insurance fees but suggest that the Benchers give consideration to our current practice of charging all lawyers largely the same amount for practice and insurance fees regardless of factors such as type, volume of work, and area of legal practice, income from practice, risk, geography, clientele and other considerations identified in the consultation.

Mr. Lawton said approximately 35 written submissions were received through the consultation process and the Working Group met with one of the two people who originally proposed the resolution for the 2017 AGM.

Mr. Lawton said the Committee found it challenging to define "public interest practitioner" and that type of work in a non-arbitrary way. Although the Working Group was recommending against providing public interest practitioners with reduced rates of practice fees and insurance fees at this time, it suggested to Benchers that the issue should be considered and reflected on in the future, which may include consultation with other jurisdictions and other professions.

Benchers then engaged in a discussion about the proposed recommendation. Some Benchers commented that they agreed with the recommendation not to provide reduced rates of practice and insurance fees for a particular area of law, and strongly supported the latter part of the recommendation for work on this to continue, such as consideration of the UK model where the fee structure is based on different income-levels. The model is not arbitrary and seemed well-received in the UK. More work could be done to see how the UK model is working, and the pros and cons of that model.

Clarification was sought about whether or not the Working Group considered, and if the recommendation contemplated, providing incentives for lawyers to do public interest-type work. Mr. Lawton repeated the recommendation and the Chair clarified that the motion contained two parts; the first part was a recommendation against providing public interest practitioners with reduced rates of practice fees and insurance fees, and the latter part was a suggestion that Benchers give further consideration to our current practice of charging all lawyers largely the same amount for practice and insurance fees.

Concern was expressed about the impact of making changes to the fee structure, the implications this may have for Law Society operations and other members of the profession who do not qualify for reduced rates of practice or insurance fees. Benchers

supported working closely with the Finance and Audit Committee before any changes to the practice or insurance fee are made.

Benchers commented that other solutions could be considered to support and recognize the valuable work public interest practitioners do, such as paying membership fees in installments. It was suggested that it may also be worthwhile to review the timing of membership fee payments (currently due by the end of November each year) to take into account the pressures faced by low-income practitioners, or look at a monthly debit system supported by the Law Society.

There was support around the Bencher table for further work to be done on the question of reduced rates of practice and insurance fees; in particular, rephrasing the question so that the focus is on looking at reduced rates for lawyers with different income-levels rather than lawyers who practice particular areas of law. There was also a desire to see the recommendation framed more positively to demonstrate that this issue is important but that the Law Society needs more time to come up with concrete ways of addressing the problem.

Benchers expressed concern about the timeframe in which this further work would be done and suggested the matter could come back before Benchers for consideration within the next year. Benchers expressed broad agreement with the idea that further work on the issue of reduced rates of practice and insurance fees should be considered in the near future, particularly before the practice fee for 2020 is due.

Other suggestions included considering risk-adjusted premiums, issuing a Law Society credit card to members, and sending the issue back to staff to capture some of the ideas discussed before bringing the matter back before the Benchers at a future date.

A motion was then made to refer the broad question of reduced rates of practice and insurance fees back to the Annual Fee Review Working Group so it could consult with staff and other committees as appropriate before bringing the matter back to the Bencher table. The motion passed unanimously.

13. Implementation of National Mobility Agreement 2013

Mr. Lucas introduced the item and spoke to the memorandum included in the materials. He said the Benchers approved the National Mobility Agreement 2013 (NMA 2013) in principle in May 2013, which would allow mobility between the Law Society of British Columbia and the Barreau once both societies had implemented its provisions.

The Law Society has already adopted Rules designed to implement the terms of the NMA 2013 in order to recognize members of the Barreau with civil law degrees. While the Barreau has

sought approval to implement the NMA 2013, it has not to date been granted and Quebec has therefore been unable to reciprocate.

Mr. Lucas advised Benchers that New Brunswick and Saskatchewan have unilaterally implemented the NMA 2013. Applicants can therefore become a member of one of those jurisdictions, which do reciprocate with BC, and then transfer to BC from that jurisdiction, thereby creating an indirect and costly route to becoming a member in BC.

He said Benchers were asked, in principle, to adopt a rule change to permit Quebec lawyers to transfer to BC under the terms of the NMA 2013 regardless of reciprocity.

The motion to approve the recommendation was passed unanimously.

UPDATES

14. Report on Outstanding Hearing & Review Decisions

As the President's designated Tribunal Chair, Mr. Ferris updated the Benchers on outstanding hearing and review decisions.

KG
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