



# Minutes

## Benchers

Date: Friday, April 05, 2019

Present:

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

Unable to Attend: Jeff Campbell, QC

Staff Present:

Don Avison	Jeffrey Hoskins, QC
Gurprit Bains	Jason Kuzminski
Barbara Buchanan, QC	Jeanette McPhee
Bernice Chong	Eva Milz
Natasha Dookie	Doug Munro
Su Forbes, QC	Veronica Padhi
Mira Galperin	Lesley Small
Kerryn Garvie	Alan Treleaven
Andrea Hilland	Adam Whitcombe, QC

Guests:	Kenneth Armstrong	Vice-President, Canadian Bar Association, BC Branch
	Dom Bautista	Executive Director, Law Courts Center
	Mark Benton, QC	Executive Director, Legal Services Society
	Denise Cuthbert	Customer Success Manager, LifeWorks
	Dr. Catherine Dauvergne	Dean of Law, University of British Columbia
	Richard Fyfe, QC	Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General
	Prof. Bradford Morse	Dean of Law, Thompson Rivers University
	Caroline Nevin	CEO, Courthouse Libraries BC
	Wayne Robertson, QC	Executive Director, Law Foundation of BC
	Michele Ross	President & Education Chair, BC Paralegal Association
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
	Herman Van Ommen, QC	Law Society of BC Member, Council of the Federation of Law Societies of Canada
	Karena Williams	External Relations Executive Member, Aboriginal Lawyers Forum

## CONSENT AGENDA

### 1. Minutes of March 1, 2019 meeting (regular session)

A motion was made to amend the minutes of the meeting held on March 1, 2019 to replace “could” with “can perhaps” on page 11 of the minutes (page 13 of the agenda package) and to strike the sentence beginning “The Committee is hopeful...licensed paralegals.” on page 11-12 of the minutes (page 13-14 of the agenda package). The motion was carried.

The minutes were approved, as amended.

### 2. Disclosure and Publication of Interim Orders Under Rule 3-10

The following resolution was passed unanimously and by consent.

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

#### ***1. In Rule 2-53, by adding the following subrule:***

- (7) Subrule (6) does not apply to a decision of Benchers, a hearing panel or a review board.

#### ***2. In Rule 3-10, by rescinding Rule 3-10 (3) and substituting the following:***

- (3) An order made under subrule (2) or varied under Rule 3-12 [*Procedure*] is effective until the first of
  - (a) final disposition of any citation authorized under Part 4 [*Discipline*] arising from the investigation, or
  - (b) rescission, variation or further variation under Rule 3-12.
- (4) Subject to an order under subrule (6), when a condition or limitation is imposed under this rule on the practice of a lawyer or the enrolment of an articulated student, the Executive Director may disclose the fact that the condition or limitation applies and the nature of the condition or limitation.
- (5) The Benchers who make an order under subrule (2) (a) must consider the extent to which disclosure of the existence and content of the order should be made public.
- (6) Where, in the judgment of the Benchers who made an order under subrule (2) (a), there are extraordinary circumstances that outweigh the public interest in the disclosure of the order, those Benchers may order
  - (a) that the Executive Director not disclose all or part of the order, or
  - (b) placing limitations on the content, means or timing of disclosure.
- (7) An order made under subrule (6) does not apply to disclosure of information for the purposes of
  - (a) enforcement of the order,
  - (b) investigation and consideration of a complaint under this part or Part 4 [*Discipline*] or a proceeding under Part 5 [*Hearings and appeals*], or

- (c) obtaining and executing an order under Part 6 [*Custodianships*].
- (8) The Benchers who make an order under subrule (6) must give written reasons for their decision.
- (9) An order under subrule (6) may be made by a majority of the Benchers who made the order under subrule (2) (a).
- (10) If the Executive Director discloses the existence of a condition or limitation under subrule (2) (a) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.
- (11) Subrule (10) does not apply to a decision of a hearing panel or a review board.

**3. In Rule 4-50, by adding the following subrule:**

- (4) Subrule (3) does not apply to a decision of Benchers, a hearing panel or a review board.

**4. In Rule 9-11, by adding the following subrule:**

- (4) Subrule (8) does not apply to a decision of Benchers, a hearing panel or a review board.

**3. Transfer of Members of the Barreau du Québec**

The following resolution was passed unanimously and by consent.

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

***1. In Rule 2-80 (4) (b), by rescinding subparagraph (iii) and substituting the following:***

- (iii) was, when called and admitted in British Columbia, entitled to practise law in the jurisdiction of a governing body of which the applicant was a member..

***2. In Rules 2-81 (1) and 3-43 (3) by striking the phrase “in the jurisdiction of a reciprocating governing body” and substituting “in the jurisdiction of a governing body”.***

**4. Anti-Money Laundering and Terrorist Financing Rules: Cash Transactions and Trust Accounting Rules**

This item was removed from the consent agenda as a result of a concern about the proposed removal of an exception to the general rule that a lawyer should not accept an aggregate amount in cash of \$7,500 or more in respect of any one client matter or transaction.

The exception is found in our present Rule 3-59(2)(b)(ii) and provides:

*2) This rule does not apply to a lawyer when*

*(a) engaged in activities referred to in subrule (1) on behalf of his employer, or*

*(b) receiving or accepting cash ...*

*(ii) pursuant to the order of a court or other tribunal ...*

While a court order directing the return of cash might not occur frequently, some Benchers suggested it could still arise. It was suggested the exception be retained but the language be amended to make it was clear the exception only applies to cash received by the lawyer pursuant to court order that deals specifically with the return of cash.

It was agreed that further work would be done by staff and the proposed amendments to Trust Rules would come back to Benchers for consideration at a future meeting.

## **REPORTS**

### **5. President's Report**

Ms. Merrill reported on the Federation meetings in Montreal in March and said some of the matters discussed included approaches in other Canadian jurisdictions to the orientation program for new Benchers and the Benchers code of conduct.

Ms. Merrill also attended a number of events, including a meeting of the New Westminster Bar Association, a meeting with the directors of the Association of Legal Aid Lawyers and the provincial judicial council meeting. She also reported on recent appointments to the Licensed Paralegal Task Force and the Futures Task Force, which now completes the composition of both Task Forces.

With the Bencher Retreat approaching in early June, Ms. Merrill provided Benchers with an update on the planning for the retreat. She then updated Benchers on guest speakers she had invited to attend future Bencher meetings, and reported on the Leadership Workshop for Women Benchers and Selected Guests that was held on April 3.

### **6. CEO's Report**

Mr. Avison circulated a handout to Benchers summarizing the priorities and activities of the various provincial and territorial Law Societies. He noted some key initiatives, including work on legal aid in many jurisdictions, entity regulation, new categories of legal service providers and how technology is impacting the profession and what that might mean for regulators.

Mr. Avison then provided an update on anti-money laundering and consultations that had occurred between the Law Society and Dr. Peter German and Professor Maureen Maloney. He said Dr. German may be prepared to come and speak to Benchers at a future meeting after his report has been released publicly.

Mr. Avison advised the planning for the Bencher Retreat is progressing and that he would be in a position to provide details of the full conference program at the next meeting.

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

Mr. Van Ommen reported on the Federation Council meeting he attended on March 5. He said the council meeting consisted of its ordinary business of approving the activity plan and budget, as well as reports on the Federation's three strategic objectives – anti-money laundering, modernization of the national committee on accreditation, and the truth and reconciliation calls to action.

Regarding anti-money laundering, Mr. Van Ommen referred to the proposed rule changes before Benchers for consideration at this meeting and said the Federation would continue to monitor the adoption of those rules across Canada. The Federation had also been working on a new collaboration between the Federation's anti-money laundering working group and the federal government, and that the working group was intended to share information and provide an opportunity to educate people about the current rules preventing lawyers from engaging in or assisting with anti-money laundering. To keep track of developments, a twice annual meeting of the CEO of the Federation and a senior official in the federal government is planned. The Federation sees this as a positive development and Mr. Van Ommen will keep Benchers informed as matters progress.

On the modernization of the national committee on accreditation, Mr. Van Ommen said the Federation was working towards a competency-based assessment. An outside expert had been selected to prepare a gap analysis and gather evidence on the differences, if any, between people educated outside Canada and the lawyers educated inside Canada. It would be a few more months before the next stage of that work will be underway.

Mr. Van Ommen said the Federation is in the process of engaging with law schools to determine what they are doing with Calls to Action 27 and 28, and how these efforts should be reflected nationally.

The next Council meeting would be held on June 10 and Mr. Ferris will attend in place of Mr. Van Ommen.

## **GUEST PRESENTATIONS**

### **8. Guest Presentation on LifeWorks**

Ms. Denise Cuthbert, Customer Success Manager at LifeWorks, provided a presentation to Benchers on the services provided by LifeWorks.

The presentation covered areas such as 24/7/365 support over the phone, counselling sessions, online resources and tools, coverage and confidentiality. The most common issues that arise fall into the following five categories: family, life, work, health and money.

Ms. Cuthbert then described what someone can expect when they first contact LifeWorks and the intake process. She then provided more detailed information about the broad range of services provided by LifeWorks, and the various ways you can seek help – from a phone call to using the mobile app.

Benchers asked about confidentiality when contacting LifeWorks, the types of reports provided by LifeWorks to the Law Society, and how the Law Society might ensure lawyers are aware of the services provided by LifeWorks. Other matters discussed included collecting feedback from people who have used LifeWorks, and whether someone from LifeWorks would be able to attend events in rural communities to provide a similar presentation to the one provided to Benchers.

## **DISCUSSION/DECISION**

### **9. Law Society General Meeting Reform**

Mr. Steven McKoen, QC, Chair of the Governance Committee, reviewed the proposed reform of the Law Society's general meeting rules. He revisited the issues that occurred at the 2018 Annual General Meeting (AGM) in October 2018 and the continued meeting in December 2018. The main issue with the initial AGM in October was the failure of online voting, which led to the adjournment and rescheduling of the meeting at considerable inconvenience to the Benchers, staff and the membership. The continued AGM in December was too long at over 4.5 hours, there were multiple live amendments that led to confusion about what people were voting on, and online attendees would see amendments but lost connections or had difficulty joining the meeting at all.

Mr. McKoen said the view of the Governance Committee was that the status quo is not an option, but it is important to preserve the essential elements of the AGM. When considering possibilities for reform, the Committee's goals were to enhance opportunities to vote, retain the ability to effectively make member resolutions, and reduce the time needed to hold the meeting.

The recommendation of the Governance Committee was for a hybrid meeting that allows advance online voting and ample opportunity to consider resolutions but avoids overly complicating the process of the live meeting itself.

The key features of the Committee's recommendation were:

- (1) provide for and publish member resolutions prior to the meeting

(2) allow amendments to resolutions pre-meeting, but not at the meeting, and  
(3) allow online voting on any member resolutions in advance of the meeting,  
(4) no online voting at the meeting, and  
(5) procedure at the meeting, not otherwise provided for in the Rules, would not be determined by Robert's Rules of Order.

Mr. McKoen explained that the Governance Committee recommends a process that preserves the ability to make and amend member resolutions, while recognizing that with the addition of advance voting the result is that by the time the live meeting is held most votes may already have been cast. The following timeline was proposed:

Day 1 – Notice of meeting – invite member resolutions  
Day 2-30 – Publish resolutions on website as received  
Day 31-45 – Amendment/Withdrawal period  
Day 46-59 – Advance online voting  
Day 60 – Live meeting

Bencher's discussed possible issues, such as the low threshold for submitting resolutions, the impact advance voting may have on the ability of members to advocate for or against a resolution before voting begins, and the difficulties with the current model where amendments from the floor are permitted at the meeting. The focus then became the broader policy issue of member engagement and ensuring the Law Society provides a forum that allows not just those members who are able to attend the AGM in person to express their views, but also the thousands of members who are not able to attend the AGM but still wish to have their vote count.

If Bencher's approve the Committee recommendations at the May 3 Bencher meeting, an electronic referendum of members would need to be held in May in order to amend the rules applicable to general meetings. If the proposed new format is approved as a result of the referendum, Bencher's could adopt rule changes at their July meeting and the 2019 AGM would be conducted under the new format in September and October, with the live meeting taking place on October 2.

## **UPDATES**

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

Mr. Ferris provided a brief update on the outstanding hearing and review decisions, noting that it was a very busy period right now and there would be a lot of decisions coming up that needed to be written. He thanked everyone for keeping on top of the busy workload.



## **11. 2019 February YTD Financial Report**

Chief Financial Officer Jeanette McPhee briefed Benchers on the Year to Date Financial Report, noting there was a positive variance to date and two main areas where it was expected the positive variance would continue until the end of 2019 – the practice fee revenue and net revenue from the PLTC program.

With practice fee revenue, there is a forecast of 12,467 members, which equates to 84 practising lawyers over the budgeted 12,383. This amounts to about an additional \$140,000 in practice fee revenue. Regarding revenue from PLTC students, the projected number of students for 2019 is 645, which is 105 students more than budgeted (normally 540) resulting in an additional \$285,000 in revenue. Additional expenses incurred relating to higher PLTC student numbers means the general fund variance is \$300,000.

Ms. McPhee reminded Benchers that the 2019 budget projected a deficit of \$1.2 million, largely due to expected hearing costs, but that a lot of these costs would be funded out of reserve. She added that the Law Society's investment income for the first two months of 2019 was very good.

## **12. National Discipline Standards**

Chief Legal Officer Natasha Dookie briefed Benchers on the Law Society's compliance with the National Discipline Standards. She said the objective of the National Discipline Standards is to create uniformly high standards for management of complaints and discipline matters by law societies throughout Canada. The focus of the standards is to address timeliness, openness, public participation, transparency, accessibility and the training of adjudicators and investigators.

Ms. Dookie highlighted some matters in the report provided to Benchers with respect to the Law Society's performance on the standards. In 2018, the Law Society's performance was the same as in 2017, with 17 of the 21 standards being met. Of significance was standard 16 – the sharing of information about lawyers with other law societies in a manner that protects solicitor-client privilege - which the Law Society met for the first time in 2018. The Law Society met that standard because of the creation of Rule 2-27.1, which permits information sharing with another governing body where it is in the public interest.

Ms. Dookie reported that, for many of the other standards, the Law Society not only met the standard but exceeded it. For example, with timeliness for responding to telephone inquiries, the standard requires inquiries be acknowledged within 1 business day 75% of the time and the Law Society met that standard 100% of the time. For hearings, the standard requires that 75% of citations be issued and served upon a lawyer within 60 days of being authorized and we met that standard 98% of the time.

Of the four standards the Law Society did not meet, standard 2 requires 100% of written complaints be acknowledged within 3 business days. The Law Society met this standard 99.68% of the time and the ones not met were due to administrative oversight. For standard 7, the requirement is for 75% of hearings to commence within 9 months of authorization and 90% to commence within 12 months of a citation being authorized. In 2018, the Law Society was only able to meet this standard 16% of the time due to significant staff turnover and a higher than normal volume of citations. Ms. Dookie said her department was in the process of dealing with that issue and she hoped the Law Society would be able to comply with this standard by 2020.

Ms. Dookie summarized the results by saying that, while the standards are aspirational, they inform every aspect of the complaints management process, and while there are some areas for improvement, in many areas the Law Society not only met but exceeded expectations.

### **13.2018 Year-End Report for the Lawyers Insurance Fund**

Director of the Lawyers Insurance Fund, Su Forbes, QC, provided Benchers with the LIF year-end report for 2018. Ms. Forbes began by providing data on the number of lawyers in British Columbia – there are a total of 14,900 lawyers, made up of 12,200 practising lawyers and 2,700 non-practising or retired lawyers. Of the practising lawyers, 3,200 are in-house lawyers and not insured under the program, and 9,000 are in private practice and are insured lawyers.

Ms. Forbes then compared the 2019 fees across the country. British Columbia has the third largest program but the 10<sup>th</sup> largest fee. The insurance fee in BC includes the defalcation risk under Part B, and with the exception of Alberta, none of the other programs include this cost in the insurance fee.

Regarding the number of full-time and part-time insured lawyers, the number of part-time insured lawyers has remained fairly consistent since 2014 with between 1156 and 1174 part-time insured lawyers. The number of full-time insured lawyers, however, has increased over the last five years. Ms. Forbes then reviewed the number and frequency of reports, indicating that the frequency of reports trend line is relatively flat. She said this was one of the main drivers of the stability and predictability of the program in BC.

Ms. Forbes said the practice areas generating the greatest number of reports in 2018 is consistent with previous years, with “Civil Litigation – plaintiff” and “Motor Vehicle – plaintiff” accounting for a third of all reports. The areas generating the least number of reports in 2018 is also consistent from year to year. In terms of the severity of claims by area of law, for the first time in many years “Civil Litigation – plaintiff” was eclipsed by “Real estate – commercial”, as a result of a number of large commercial real estate claims in 2018.

Ms. Forbes then provided an overview of the causes of claims in 2018 and examples of the different types of situations that give rise to claims.

Regarding claims payments, Ms. Forbes provided information about claim payments between 2014 and 2018. Expense payments were fairly consistent year over year, with indemnity payments being more variable. Total payments are usually in the \$12 to \$15 million range. Ms. Forbes said the program closes roughly as many files as it opens each year and that a lot of files close without any payment at all.

For Part B claims, Ms. Forbes reported there were a total of 278 reports since the introduction of the Part B coverage. The number of reports has trended slightly to the positive over time. She then provided an overview of Part B claims in 2018, and said there were 22 reports, and payments were made on 19 claims on behalf of 6 lawyers totaling \$1.4 million.

Ms. Forbes reported on other results of the program in 2018, including the number of indemnity payments, risk management presentations provided by staff, and the number of matters taken to trial. Feedback provided as a result of the service evaluation and risk management forms was positive, with 99% of people expressing a high degree of satisfaction with the handling of their claim.

## **FOR INFORMATION**

### **14. LifeWorks 2019 First Quarter Newsletter**

There was no discussion on this item.

### **15. “Roads to Revival”: An External Review of Legal Aid Service Delivery in British Columbia, conducted for the Attorney General of BC by Jamie Maclaren, QC, January 2019**

There was no discussion on this item.

### **16. Letter from Nancy Merrill, QC to Attorney General dated March 27, 2019 Re: Roads to Revival**

There was no discussion on this item.

### **17. Three Month Bencher Calendar – April to June 2019**

There was no discussion on this item.

KG  
2019-04-05