



Minutes

Benchers

Date: Friday, May 03, 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
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: Anita Dalakoti

Staff Present:

Don Avison	Jason Kuzminski
Barbara Buchanan, QC	Michael Lucas
Natasha Dookie	Alison Luke
Su Forbes, QC	Jeanette McPhee
Mira Galperin	Eva Milz
Kerryn Garvie	Doug Munro
Andrea Hilland	Annie Rochette
Jeffrey Hoskins, QC	Veronica Padhi
David Jordan	Lesley Small
	Adam Whitcombe, QC

Guests:	Dom Bautista	Executive Director, Law Courts Center
	Beatriz Contreras	Member of the Equity & Diversity Advisory Committee
	Richard Fyfe, QC	Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General
	Dr. Lisa Gunderson	Senior Consultant and Trainer & Associate Program Director for Masters of Counseling Programs at City University
	Shawn Mitchell	CEO, Trial Lawyers Association of BC
	Caroline Nevin	CEO, Courthouse Libraries BC
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Wayne Robertson, QC	Executive Director, Law Foundation of BC
	Kerry Simmons, QC	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

CONSENT AGENDA

1. Minutes of April 5, 2019 meeting (regular session)

The minutes of the meeting held on April 5, 2019 were approved as circulated.

2. Minutes of April 5, 2019 meeting (*in camera* session)

The minutes of the *in camera* meeting held on April 5, 2019 were approved as circulated.

3. Code Amendment – Removing Gender Specific Language

The following resolution was passed unanimously and by consent.

Be it resolved that:

The Commentary [5] to rule 3.3-3 of the BC Code be amended to reflect the changes indicated in the ‘red-lined’ version of the rule and Commentary presented below.

For convenience of review, the current text of the BC Code provision is also provided below, following the ‘red-lined’ version.

The ‘red-lined’ version of rule 3.3-3 and Commentary [5] of the BC Code (incorporating the Model Code’s language) is as follows:

Future harm / public safety exception

3.3-3 A lawyer may disclose confidential information, but must not disclose more information than is required, when the lawyer believes on reasonable grounds that there is an imminent risk of death or serious bodily harm, and disclosure is necessary to prevent the death or harm.

Commentary

...

[5] If confidential information is disclosed under ~~this~~-rule 3.3-3, the lawyer should prepare a written note as soon as possible, which should include:

- (a) the date and time of the communication in which the disclosure is made;
- (b) the grounds in support of the lawyer’s decision to communicate the information, including the harm ~~he or she~~ the lawyer intended to prevent, the identity of the person who prompted ~~him to~~the lawyer to communicate the information as well as the identity of the person or group of persons exposed to the harm; and
- (c) the content of the communication, the method of communication used and the identity of the person to whom the communication was made.

4. Discipline and Credentials Committee Terms of Reference

The Discipline and Credentials Committee Terms of Reference provided in the agenda package were passed unanimously and by consent.

5. Nomination Process for 2020 Second Vice-President

This item was removed from the consent agenda at Ms. Ahmad's request.

Ms. Ahmad observed that there are no formal rules about the Benchers' selection of a nominee for second vice-president. A practice has developed as to how the nomination process takes place, which is set out in the memorandum provided in the agenda package. In Ms. Ahmad's view, the nomination process could be improved by withholding the names of any candidates put forward until the end of the nomination process.

Benchers discussed the suggestion to improve the nomination process that was put forward by Ms. Ahmad. It was also suggested that the inclusion of a statement encouraging Benchers of diverse backgrounds to consider leadership positions might be helpful.

Ms. Merrill indicated she had asked the Governance Committee to look at a more formalized process and that, for the upcoming nomination process for the 2020 second vice-president, the best course of action would be for candidate names not to be published until the end of the nominations period.

REPORTS

6. President's Report

Ms. Merrill reported that planning for the Benchers Retreat is on course.

She said the Futures Task Force has had its first meeting and its work will be divided into two parts; first, consideration of the future of the legal profession, and secondly, exploring the future of the regulation of the legal profession. The Licensed Paralegal Task Force would also be having its first meeting in May.

Ms. Merrill reported that the anti-money laundering ad hoc group, which consists of Ms. Merrill, Mr. Ferris, Ms. Cheema and Mr. Riddell, had met. The group has both prosecution and criminal expertise and was established by Past President Miriam Kresivo, QC. Ms. Merrill emphasized the importance of Benchers being seen to be actively involved on this topic.

Ms. Merrill discussed her attendance at various meetings and events, including with the Law Foundation, Trial Lawyers Association of BC, Judicial Council, and MLA for Nanaimo, Sheila Malcolmson. She also attended and spoke at the ceremony for the unveiling of the bust of

Beverley McLachlin, PC, CC and she would be attending a call ceremony in Victoria shortly. Later in May Ms. Merrill would be attending the International Bar Association meeting overseas.

Ms. Merrill encouraged Benchers to attend the Gillian Hadfield talk on May 14a and noted that the Vancouver Bar Association Judge's Luncheon would be held on May 21 and asked Benchers to contact staff if they wished to attend. She invited Benchers to put forward suggestions for her "unsung heroes" column, which is intended to showcase lawyers that go above and beyond.

Finally, Ms. Merrill provided a summary of the April 17 Executive Committee meeting.

7. CEO's Report

Mr. Avison brought five items to the attention of Benchers.

The first item was the First Nations Provincial Justice Forum that he attended along with Benchers and staff. He spoke about the Memorandum of Understanding signed in 2017 with regard to the development of an indigenous justice strategy, and said the core objective the strategy is to address the overrepresentation of indigenous peoples in the criminal justice and child welfare systems. The Attorney General and Solicitor General also attended, as well as federal ministers. Mr. Avison suggested that Benchers could invite Council Chair Douglas White to attend a future Benchers meeting to speak about this insights on the development of the strategy and work being done in that area.

Secondly, Mr. Avison reported on the Justice Summit that took place on April 26, 2019, which Ms. Merrill also attended. He said the forum focused on an examination of the summit process and that more information would be provided once the report on the summit has been made available.

Third, Mr. Avison spoke about the conference program for the Benchers Retreat in June and said the focus would be technology, artificial intelligence and the evolution of the practice of law. He provided an overview of the speakers for the conference portion of the retreat, which include Benjamin Alarie, Larry Alexander, Katie Sykes, Shannon Salter, and a panel of speakers in the afternoon. Members of the Futures Task Force will also be attending the retreat.

Fourth, Mr. Avison referred to the Cayton Report – a review of the College of Dental Surgeons and the Health Professions Act – and encouraged all Benchers to read the report.

Finally, Mr. Avison informed Benchers that the following week was Mental Health Week and mentioned that the Law Society had a number of awareness campaigns, activities and resources planned for the week.

GUEST PRESENTATION

8. Guest Presentation on Equity, Diversity and Inclusion in the Legal Profession

Dr. Lisa Gunderson provided a presentation on equity, diversity and inclusion in the legal profession. She began by defining equity as action to disrupt the status quo and that equity looks at how to change core structures and practices to be more equity focused. Dr. Gunderson discussed the origins of the legal profession and said it was not a system originally designed for a racialized person, for someone who is female or someone with a disability. She emphasized the importance of having conversations about what the system needs to change to be more inclusive.

Dr. Gunderson then led an interactive session inviting attendees to think about what privileges they each bring into their space and how people can effectively be allies to those without privilege. She then discussed trends in the legal profession in the United States and Canada, the impacts of explicit and implicit bias on people's actions and behavior, and distinguished between microassaults, microinsults and microinvalidations.

Finally, Dr. Gunderson made some suggestions for how the Law Society could do more in this area, including publishing information on its website, mentoring and sponsoring lawyers, and creating affinity groups within the Law Society.

DISCUSSION/DECISION

9. Law Society General Meeting Reform

Mr. McKoen spoke to the item and referenced the initial discussion that took place at the April 5 Bencher meeting. He reminded Benchers that the recommendation of the Governance Committee was to seek the membership's authority to proceed with the proposed general meeting reform and change the way the annual general meeting is conducted.

Ms. McKoen provided an overview of the recommendations in the report and asked Benchers to approve the recommendations and authorize a referendum. The Benchers unanimously agreed.

10. Anti-Money Laundering and Terrorist Financing: Cash Transactions and Trust Account Rules

Mr. Avison indicated staff had been working on possible solutions to the issue raised by Benchers at the April 5 meeting about the removal of the "court orders" exemption. He said the concern raised about ambiguity in the rules needs to be balanced with the need for a degree of consistency across the country with the model rules.

Benchers agreed to adjourn consideration of the matter until the July 12, 2019 Bencher meeting, at which time Mr. Avison will have attended the Federation Council meeting in June and be able to report back to Benchers on his efforts to communicate their concerns on a national scale.

11. Pro Bono Award

Ms. Stanford introduced the item and said the Access to Justice Advisory Committee supported the creation of a pro bono award to recognize the outstanding contributions of lawyers who have done pro bono work. She said the Committee also wanted to encourage and make members more aware of pro bono work in other ways and that the Committee would be discussing this further at its June meeting.

Benchers recognized the existence of other organizations with pro bono awards and indicated it would be important to encourage more nominations.

Benchers unanimously agreed to approve the creation of a pro bono award and delegate to the Executive Committee any edits to the criteria for the award.

UPDATES

12. Report on Outstanding Hearing & Review Decisions

There were no comments on the outstanding hearing and review decisions handout provided.

FOR INFORMATION

13. Correspondence from Attorney General dated April 11, 2019

There was no discussion on this item.

14. Three Month Bencher Calendar – May to July 2019

There was no discussion on this item.

KG
2019-05-03