



Minutes

Benchers

Date: Friday, July 12, 2019

Present: Nancy G. Merrill, QC, President
Craig Ferris, QC, 1st Vice-President
Dean P.J. Lawton, QC, 2nd 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
Jamie Maclaren, QC
Claire Marshall

Geoffrey McDonald
Steven McKoen, QC
Christopher McPherson, QC

Jacqui McQueen
Phil Riddell, QC
Elizabeth Rowbotham
Mark Rushton
Carolynn Ryan
Karen Snowshoe
Michelle D. Stanford, QC
Sarah Westwood
Michael Welsh, QC
Tony Wilson, QC
Guangbin Yan
Heidi Zetzsche

Unable to Attend: Not Applicable

Staff Present: Don Avison
Gurprit Bains
Natasha Dookie
Su Forbes, QC
Mira Galperin
Kerryn Garvie
Andrea Hilland
Jeffrey Hoskins, QC
David Jordan
Michael Lucas

Alison Luke
Tara McPhail
Jeanette McPhee
Jacqueline Maxwell
Eva Milz
Doug Munro
Michelle Robertson
Lesley Small
Alan Treleaven
Adam Whitcombe, QC

Guests:	Kenneth Armstrong	Vice-President, Canadian Bar Association, BC Branch
	Dom Bautista	Executive Director, Law Courts Center
	Dr. Lew Bayer	Founder, Civility Experts Inc.
	Richard Fyfe, QC	Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General
	Derek LaCroix, QC	Executive Director, Lawyers Assistance Program
	April Lemoine	CFO, Courthouse Libraries BC
	Shawn Mitchell	CEO, Trial Lawyers Association of BC
	Wayne Robertson, QC	Executive Director, Law Foundation of BC
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Herman Van Ommen, QC	Law Society of BC Member, Council of the Federation of Law Societies of Canada
	Bill Veenstra, QC	Past President, Canadian Bar Association, BC Branch

RECOGNITION

1. 2019 Rule of Law Essay Contest: Presentation of Co-Winners

President Merrill presented the award to the co-winners of the 2019 Rules of Law Essay Contest. This year's contest asked students to explain the rule of law to a new classmate who had recently arrived in Canada. Bret Van Den Brink and Vivian Osiek are the co-winners of this year's contest. Both winners wrote exemplary essays, which are posted on the Law Society website.

CONSENT AGENDA

2. Minutes of June 8, 2019, meeting (regular session)

The minutes of the meeting held on June 8, 2019 were approved as circulated.

3. External Appointment: Vancouver Airport Authority

The following resolution was passed unanimously and by consent.

BE IT RESOLVED to appoint Charlene Ripley to the Vancouver Airport Authority Board for a term of three years.

4. AGM Rule Amendments

The following resolution was passed unanimously and by consent.

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

1. *In Rule 1-8, by rescinding subrules (5) to (8) and substituting the following:*

- (5) At least 60 days before an annual general meeting, the Executive Director must, issue a notice of the date and time of the annual general meeting.
- (6) In order to be considered at the annual general meeting, a resolution must be
 - (a) signed by at least 2 members of the Society in good standing, and
 - (b) received by the Executive Director at least 35 days before the annual general meeting.
- (6.1) On receipt of a resolution under subrule (6), the Executive Director must promptly issue a notice of the resolution, including the text of the resolution and the names of the 2 members who signed it.
- (6.2) Not later than 21 days before the annual general meeting, the 2 members who signed a resolution submitted under subrule (6) may, by notifying the Executive Director in writing,

- (a) withdraw the resolution, or
- (b) make changes to the resolution.
- (7) Before advance voting is permitted under Rule 1-13.1 [Voting in advance of general meeting] and at least 16 days before an annual general meeting, the Executive Director must issue
 - (a) a notice containing the following information:
 - (i) the locations at which the meeting is to be held,
 - (ii) each resolution received in accordance with subrule (6), with any changes submitted under subrule (6.2), unless the resolution has been withdrawn under that subrule, and
 - (iii) notice of advance voting under Rule 1-13.1 if it is to be permitted, and
 - (b) the audited financial statement of the Society for the previous calendar year.
- (8) The accidental failure to comply with any requirement under subrule (5), (6.1) or (7) does not invalidate anything done at the annual general meeting.
- (9) A notice or other document required to be issued under this rule must be made available to Benchers and members in good standing by electronic or other means.;
- 2. ***In Rule 1-9, by rescinding subrule (3) and substituting the following:***
 - (3) The local chair must record the names of those in attendance and, unless the Executive Director directs otherwise, may dispense with registration and voting, non-voting and student cards under Rule 1-13 [Procedure at general meeting].
- 3. ***In Rule 1-11, by rescinding subrule (5) and substituting the following:***
 - (5) At least 21 days before a special general meeting, the Executive Director must, by electronic or other means, distribute to Benchers and members of the Society in good standing
 - (a) a notice of the meeting stating the business that will be considered at the meeting, and
 - (b) any resolution to be voted on under Rule 1-13.1 [Voting in advance of general meeting].
- 4. ***In Rule 1-13, by rescinding subrules (2), (4), (13) and (15) to (17) and substituting the following:***
 - (2) The Executive Director must register all persons attending a general meeting as follows:
 - (a) members of the Society in good standing who have not previously voted on any resolution under Rule 1-13.1 [Voting in advance of general meeting], who must be given a voting card;
 - (a.1) members of the Society in good standing who have previously voted on any resolution under Rule 1-13.1, who must be given a non-voting member card;
 - (b) articulated students, who must be given a student card;
 - (c) appointed Benchers and persons given permission to attend the meeting by the President, who may be given a card for

identification only.

- (4) At a general meeting, the President may allow a person who is not a Bencher, a member in good standing or a student to speak.
- (12.1) A resolution on which members have voted in advance of the general meeting must not be amended, postponed or referred at the general meeting.
- (13) The President must decide questions of procedure to be followed at a general meeting not provided for in the Act or these Rules.

5. *By adding the following rules:*

Voting in advance of general meeting

- 1-13.1 (1) The Benchers may authorize the Executive Director to permit members of the Society in good standing to vote by electronic means on general meeting resolutions in advance of the general meeting.
- (2) When advance voting is permitted under subrule (1), all members of the Society in good standing must have the opportunity to vote by electronic means on all general meeting resolutions.
- (3) The Executive Director
- (a) may retain a contractor to assist in any part of electronic voting on general meeting resolutions,
 - (b) must ensure that votes cast electronically in a secret ballot remain secret, and
 - (c) must take reasonable security measures to ensure that only members entitled to vote can do so.
- (4) A ballot on a general meeting resolution may be produced electronically, and to cast a valid vote, a member must indicate his or her vote in accordance with instructions accompanying the ballot.
- (5) The period of voting in advance of a general meeting must be at least 15 days ending at the close of business on the last business day before the general meeting.
- (6) A person who has voted electronically in advance of the meeting is present at the meeting for the purpose of calculation of a quorum under Rule 1-12 [Quorum].

Voting at general meeting

- 1-13.2 (1) A member of the Society in good standing who is present at a general meeting and has not previously voted on any resolution under Rule 1-13.1 [Voting in advance of general meeting] is entitled to one vote.
- (2) A member of the Society must not
- (a) cast a vote or attempt to cast a vote that he or she is not entitled to cast, or
 - (b) enable or assist a person
 - (i) to vote in the place of the member, or
 - (ii) to cast a vote that the person is not entitled to cast.

- (3) Voting at a general meeting must be by show of voting cards, or by show of hands if voting cards have not been issued, unless the President orders a secret ballot.
- (4) A member of the Society is not entitled to vote by proxy.

5. Extension of Time to File for a Review of a Decision of a Hearing Panel – Policy Issues Arising from the Johnson Decision

A Bencher requested that this item be moved from the Consent Agenda for discussion for the purposes of seeking clarification about whether the Law Society had jurisdiction to amend the rule. The Benchers referenced the August 2015 decision [see *Law Society of British Columbia v. Johnson*, 2015 LSBC 40] in which the majority determined that there was jurisdiction to extend the time to apply for a review of a decision of the hearing panel. President Merrill clarified that the decision sought was in principle approval that:

- a. there be an open-ended extension on the 30-day period in which to initiate a review of a hearing panel's decision;
- b. criteria for exercising discretion to grant an extension be developed through jurisprudence; and
- c. the President (or President's designate) is the appropriate decision maker for any requests for extension of time;

and further recommends that the matter be returned to the Act and Rules committee to prepare rules to reflect these policy directions. The motion passed with all but one Bencher in favour.

REPORTS

6. President's Report

President Merrill thanked Ms. Stanford and Ms. Hamilton for putting their names forward to be the Benchers' Nominee for 2020 Second Vice-President, and congratulated Ms. Hamilton who was successful. Ms. Merrill also congratulated Mr. Greenberg who was chosen as the recipient of the Zenith award for demonstrating leadership in addressing mental health and substance use issues in the legal profession.

Ms. Merrill provided a summary of the Executive Committee meeting that took place on June 27; including approval of certain expenditures, revision of the criteria for the pro bono award, that the rules be amended to allow the Discipline Committee to consider disclosure of information that may be evidence of an offence to law enforcement and indicated that guidelines will be developed regarding the exercise of the discretion. Ms. Merrill also discussed a recent

request from the RCMP for a list of members' email addresses for the purposes of excluding data from searches of a lawyer's mirror image hard drives or cell phones. She said staff have been directed to obtain further information about the request.

Ms. Merrill then announced the audio-conference locations that have been approved for the 2019 Annual General Meeting: Vancouver, Victoria, Courtenay, Cranbrook, Kelowna, Prince George, Fort St. John, Smithers, Terrace and Kamloops.

Finally, Ms. Merrill reported on various ceremonies, lectures and meetings she attended since the June 8 Bencher meeting.

7. CEO's Report

Mr. Avison discussed Bill C-75 that was passed by Parliament at the end of the session. In particular, he said that changes to the summary conviction rules and the increase of the mandatory minimum penalties results in a potential issue with respect to the capacity of agents, and in this case, the ability of articulated students and law students to appear in contested summary conviction matters. Mr. Avison said the Law Society is working with the provincial government and the Federation of Law Societies of Canada to find a way to address the issue and is hopeful it can be resolved in the coming weeks. The Courts have also been made aware of the nature of the issue that has arisen.

Secondly, with respect to the discussions between the Government of Canada (specifically, the Department of Finance and the Department of Justice) with Federation officials and Law Society officials, Mr. Avison reported that these discussions in relation to working co-operatively on anti-money laundering initiatives had gone quite well.

Mr. Avison then referred to positive engagement with the provincial government on key initiatives such as legal aid and anti-money laundering, and said he would be attending various meetings with Ministers and MLAs in August as well as caucus meetings that had been scheduled for late October.

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

Ms. Ferris attended the Federation of Law Societies of Canada meeting in June in place of Mr. Van Ommen, who was unavailable. He noted that the Federation Council does not permit substitutes for Council members so he did not have the ability to vote or participate at the meeting as if he was a Council member.

Mr. Ferris said it is important that the Benchers are aware of what the Federation of Law Societies of Canada is doing and remain engaged in that work. He reported that the Federation has started its strategic planning process and that it would be discussed over the course of the

next four meetings, with a new strategic plan likely being available in March 2020. He said it is therefore important for the Benchers to organize their comments and consider how they would like to report back at the next Federation meeting in the fall. In his view, the Benchers should play a role in driving the agenda at the Federation level to ensure positions taken nationally have been well considered at the provincial level.

Mr. Ferris provided an update to the Federation Council on the work happening in British Columbia on the anti-money laundering file. He observed there were differing levels of understanding regarding how BC has progressed on the file and a lot of interest was expressed in the work.

Standard Council updates followed on Federation priorities such as the National Committee on Accreditation modernization committee. Mr. Ferris said the work being done on the National Committee on Accreditation was ongoing and that the first stage was to develop a gap-analysis, to identify the different levels of competencies among students. The gap needs to first be identified before it can be determined if a different process should be adopted.

Mr. Ferris reported that there was some reorganization of the Truth and Reconciliation Committee and a sub-group was being established to work on competency.

Finally, there were a number of other updates and a presentation from the Vice-President of the International Bar Association on what the Association does and its engagement with the Federation.

GUEST PRESENTATIONS

9. Civility and its Measurable, Tangible Benefits to an Organization and the Practice of Law

Dr. Lew Bayer provided a presentation on civility, with specific reference to its impact on organizations and the practice of law. Dr. Bayer said she had been speaking about civility for over 20 years and that in the last 10 years she had experienced an increased interest in the field. She said studies had found that organizations that had implemented civility programs experienced 30% more profit and a 20% reduction in staff turnover, as well as other improvements such as staff engagement.

Dr. Bayer's focus was on civility in the workplace; in particular, repair behavior. She referred to different examples of social knowledge that can constitute repair behavior and the value in knowing when it is appropriate to adopt certain behaviours. She commented that a recent study from Harvard University indicated that certain behaviours previously categorized as uncivil now do not appear on people's radar as not normal and that what constitutes normal common courtesy has changed over time, particularly in the last 10 years.

Throughout her presentation, Dr. Bayer provided definitions of civility, and expanded on the four core skills to civility: social intelligence, systems thinking, cultural competence and continuous learning. She said these core competencies were measurable through a number of ways, such as observation and paper-based surveys. Dr. Bayer finished her presentation with a lively discussion of different situations people encounter in the workplace and suggested civil ways to respond to these scenarios.

DISCUSSION/DECISION

10. Bencher Code of Conduct

Mr. McKoen, Chair of the Governance Committee, spoke to the item and put forward a motion that Benchers approve and adopt the Bencher Code of Conduct provided in the materials. Some Benchers sought clarification on the interpretation of the language about conflicts of interest. Mr. McKoen distinguished between a conflict of interest and a conflict of duties, and explained that conflicts rules are typically pretty concise because they cannot cover all scenarios.

A Bencher proposed a friendly amendment to change the final sentence in paragraph 9 to “with the Bencher fulfilling the duties associated with the Bencher’s role.” The friendly amendment was accepted.

The motion passed unanimously.

11. Executive Committee Elections

Mr. McKoen introduced and spoke to the item. The Governance Committee looked at the issue from the perspective that all Benchers have the same rights and duties, and on that basis, it was of the view that the Rules should not contain unnecessary distinctions with regard to the process for electing members of the Executive Committee. The Governance Committee recommended that Benchers approve the following two resolutions.

1. Be it resolved that the Benchers approve amending Rule 1-41:
 - a. To recognize that there are four Benchers to be elected under the Rule;
 - b. To reconcile the voting methods described in the Rule such that the voting for both the elected and appointed Bencher positions, if necessary, occurs in the manner provided for the elected Bencher positions; and
 - c. To clarify the processes provided for in the Rule for nominating elected and appointed Benchers such that they are consistent.
2. Be it resolved that the Benchers approve amending Rule 1-41:

- a. To provide that, if a vote for the appointed Bencher position on the Executive is required, all Benchers, elected and appointed, would be eligible to vote for the appointed Bencher to sit on the Executive Committee.

The resolution to approve resolution 1 passed unanimously.

Benchers had differing views on resolution 2. Some Benchers were in favour of the motion and were of the view that it was problematic to continue to distinguish between elected and appointed Benchers when determining who is eligible to vote for the appointed Bencher member on the Executive Committee. It was suggested that, as the group of appointed Benchers is small, any election within that group may not be very democratic and may prevent people from putting their name forward as a candidate. Continuing a distinction between the way in which elected and appointed Benchers are elected to the Executive Committee may reinforce the fact that there are different ways in which Benchers arrive at the table.

Taking the opposite view, some Benchers expressed concern about the impact of allowing elected Benchers to vote for appointed Benchers and how this may affect the independence of appointed Benchers, as well as the public's perception of the election process. Reasons were advanced for maintaining the distinction and the election process where only appointed Benchers may vote for appointed Benchers to be elected to the Executive Committee.

With 9 votes in favour, 19 votes opposed and 2 abstentions, the resolution to approve resolution 2 failed.

12. Anti-Money Laundering and Terrorist Financing (Cash Transactions, Trust Accounts, and Client Identification and Verification)

Mr. Avison began by acknowledging the work of key staff in relation to anti-money laundering efforts and reminded Benchers of the resources devoted to anti-money laundering work at the Law Society. He then provided a background on the issue before Benchers. This item follows the Federation of Law Societies' Anti-Money Laundering and Terrorist Financing Working Group final report on changes to the model rules that are intended to enable law societies to better combat money laundering through the legal profession in Canada. The report and model rules included in the report have since been adopted by the Federation Council and referred to the law societies for implementation.

The decision before the Benchers was how to amend the BC Law Society Rules to give effect to the Federation model rules. The proposed rule amendments were divided into three parts: (1) regulation of cash transactions, (2) trust accounting and (3) client identification and verification.

For the rule changes regarding the regulation of cash transactions, two options were put forward for consideration by the Benchers. A motion was put forward to adopt Option 2 as set out below and the motion passed unanimously.

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

1. In Rule 3-53:

(a) by rescinding the definition of “public body” and substituting the following:

“public body” means

- (a) a ministry or department of the government of Canada or of a province or territory,
- (b) a local public body as defined in paragraphs (a) to (c) of the definition in Schedule 1 to the *Freedom of Information and Protection of Privacy Act*, or a similar body incorporated under the law of another province or territory,
- (c) a body incorporated by or under an Act of a province or territory for a public purpose, or
- (d) a subsidiary of a public body whose financial statements are consolidated with those of the public body., ***and***

(b) by adding the following definitions:

“disbursements” means amounts paid or required to be paid to a third party by a lawyer or law firm on behalf of a client in connection with the provision of legal services to the client by the lawyer or law firm that are to be reimbursed by the client;

“expenses” means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client that are to be reimbursed by the client;

“financial institution” means

- (a) an authorized foreign bank within the meaning of section 2 [*Definitions*] of the *Bank Act* (Canada) in respect of its business in Canada or a bank to which the *Bank Act* applies,
- (b) a co-operative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,
- (c) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
- (c.1) a financial services co-operative that is regulated by *An Act respecting financial services cooperatives*, CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins*, SQ 2000, c. 77, other than a caisse populaire,

- (d) a company to which the *Trust and Loan Companies Act* (Canada) applies,
- (e) a trust company or loan company regulated by a provincial or territorial Act,
- (f) a department or agent of Her Majesty in right of Canada or of a province or territory where the department or agent accepts deposit liabilities in the course of providing financial services to the public, or
- (g) a subsidiary of a financial institution whose financial statements are consolidated with those of the financial institution;

“professional fees” means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or law firm,.

2. ***By rescinding Rule 3-59 and substituting the following:***

Cash transactions

- 3-59** (1) This rule applies when a lawyer or law firm engages in any of the following activities on behalf of a client, including giving instructions on behalf of a client in respect of those activities:
- (a) receiving or paying funds;
 - (b) purchasing or selling securities, real property or business assets or entities;
 - (c) transferring funds or securities by any means.
- (2) Despite subrule (1), this rule does not apply when a lawyer or law firm receives or accepts cash in connection with the provision of legal services by the lawyer or law firm
- (b) from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity,
 - (c) pursuant to the order of a court or other tribunal for the release to the lawyer or the lawyer’s client of cash that has been seized by a peace officer, law enforcement agency or other agent of the Crown in an official capacity,
 - (d) to pay a fine, penalty or bail, or
 - (e) from a financial institution or public body.
- (3) While engaged in an activity referred to in subrule (1), a lawyer or law firm must not receive or accept cash in an aggregate amount greater than \$7,500 in respect of any one client matter.
- (4) Despite subrule (3), a lawyer or law firm may receive or accept cash in an aggregate amount greater than \$7,500 in respect of a client matter for professional fees, disbursements or expenses in connection with the provision of legal services by the lawyer or law firm.

- (5) A lawyer or law firm that receives or accepts cash in an aggregate amount greater than \$7,500 under subrule (4) must make any refund greater than \$1,000 out of such money in cash.
- (6) A lawyer or law firm that receives cash, unless permitted under this rule to accept it, must
 - (a) make no use of the cash,
 - (b) return the cash, or if that is not possible, the same amount in cash, to the payer immediately,
 - (c) make a written report of the details of the transaction to the Executive Director within 7 days of receipt of the cash, and
 - (d) comply with all other rules pertaining to the receipt of trust funds.
- (7) For the purposes of this rule, a lawyer who receives or accepts cash in foreign currency is deemed to have received or accepted the cash converted into Canadian dollars based on
 - (a) the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada's Daily Noon Rates in effect at the relevant time, or
 - (b) if no official conversion rate is published as set out in paragraph (a), the conversion rate of the Bank of Canada in effect on the most recent business day..

3. *In Rule 3-70, by striking the phrase “that is not the lawyer’s employer”.*

4. *In Rule 3-98,*

(a) by rescinding the definition of “financial institution” and substituting the following:

“financial institution” has the same meaning as in Rule 3-53; *and*

(b) by inserting the following definitions:

“disbursements” has the same meaning as in Rule 3-53;

“expenses” has the same meaning as in Rule 3-53;.

Regarding rule changes with respect to trust accounting, the following resolution was put forward for consideration. The resolution passed.

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

1. *In Rule 1, by rescinding the definition of “trust funds” and substituting the following:*

“trust funds” means funds directly related to legal services provided by a lawyer or law firm received in trust by the lawyer or law firm acting in that capacity, including funds

- (a) received from a client for services to be performed or for disbursements to be made on behalf of the client, or
- (b) belonging partly to a client and partly to the lawyer or law firm if it is not practicable to split the funds;

2. ***By adding the following rule:***

Trust account only for legal services

3-58.1 (1) Except as permitted by the Act or these rules or otherwise required by law, a lawyer or law firm must not permit funds to be paid into or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm.

- (2) A lawyer or law firm must take reasonable steps to obtain appropriate instructions and pay out funds held in a trust account as soon as practicable on completion of the legal services to which the funds relate..

The following resolution regarding client identification and verification passed unanimously.

BE IT RESOLVED to amend the Law Society Rules effective January 1, 2020, as follows:

1. ***In Rule 3-98,***

- (a) ***by rescinding the definitions of “money”, “public body” and “securities dealer” and substituting the following:***

“money” includes cash, currency, securities, negotiable instruments or other financial instruments, in any form, that indicate a person’s title or right to or interest in them, and electronic transfer of deposits at financial institutions;

“public body” has the same meaning as in Rule 3-53;

“securities dealer” means an entity that is authorized under federal, provincial or territorial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services, other than an entity that acts exclusively on behalf of an entity so authorized.;

- (b) ***by adding the following definition:***

“professional fees” has the same meaning as in Rule 3-53.;

2. ***In Rule 3-99, by rescinding subrule (2) and substituting the following:***

- (1.1) The requirements of this division are in keeping with a lawyer's obligation to know his or her client, understand the client's financial dealings in relation to the retainer with the client and manage any risks arising from the professional business relationship with the client.
- (2) Rules 3-100 to 3-108 and 3-110 do not apply when a lawyer provides legal services
 - (a) on behalf of his or her employer, or
 - (b) in the following circumstances if no financial transaction is involved:
 - (i) as part of a duty counsel program sponsored by a non-profit organization;
 - (ii) in the form of pro bono summary advice.
- (2.1) A lawyer is not required to repeat compliance with Rules 3-100 to 3-106 when another lawyer or an interjurisdictional lawyer who has complied with those rules or the equivalent provisions of a governing body
 - (a) engages the lawyer to provide legal services to the client as an agent, or
 - (b) refers a matter to the lawyer for the provision of legal services..

3. ***By rescinding Rule 3-100 and substituting the following:***

Requirement to identify client

- 3-100** (1) A lawyer who is retained by a client to provide legal services must obtain and record, with the applicable date
- (b) for individuals, all of the following information:
 - (i) the client's full name;
 - (ii) the client's home address, home telephone number and occupation;
 - (iii) the address and telephone number of the client's place of work or employment, where applicable, and
 - (c) for organizations, all of the following information:
 - (i) the client's full name, business address and business telephone number;
 - (ii) the name, position and contact information for individuals who give instructions with respect to the matter for which the lawyer is retained;
 - (iii) if the client is an organization other than a financial institution, public body or reporting issuer

- (A) the general nature of the type of business or activity engaged in by the client, and
 - (B) the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number.
- (2) When a lawyer has obtained and recorded the information concerning the identity of an individual client under subrule (1) (b), the lawyer is not required subsequently to obtain and record that information about the same individual unless the lawyer has reason to believe the information, or the accuracy of it, has changed..

4. In Rule 3-101, by rescinding paragraphs (a) and (b) and substituting the following:

- (a) if the client is
 - (i) a financial institution,
 - (ii) a public body,
 - (iii) a reporting issuer, or
 - (iv) an individual who instructs the lawyer on behalf of a client described in subparagraphs (i) to (iii),
- (b) when a lawyer
 - (i) pays money to or receives money from any of the following acting as a principal:
 - (A) a financial institution;
 - (B) a public body;
 - (C) a reporting issuer,
 - (ii) receives money paid from the trust account of another lawyer or an interjurisdictional lawyer,
 - (iii) receives money from a peace officer, law enforcement agency or other public official acting in an official capacity, or
 - (iv) pays or receives money
 - (A) [rescinded]
 - (B) to pay a fine, penalty or bail, or
 - (C) [rescinded]
 - (D) for professional fees, disbursements or expenses, or.

5. ***By rescinding Rules 3-102 to 3-107 and 3-109, and substituting the following:***

Requirement to verify client identity

- 3-102** (1) When a lawyer provides legal services in respect of a financial transaction, the lawyer must
- (a) obtain from the client and record, with the applicable date, information about the source of money, and
 - (b) verify the identity of the client using documents or information described in subrule (2).
- (2) For the purposes of subrule (1), the client's identity must be verified by means of the following documents and information, provided that documents are valid, original and current and information is valid and current:
- (a) if the client is an individual
 - (i) an identification document issued by the government of Canada, a province or territory or a foreign government, other than a municipal government, that
 - (A) contains the individual's name and photograph, and
 - (B) is used in the physical presence of the client to verify that the name and photograph are those of the client,
 - (ii) information in the individual's credit file that is used to verify that the name, address and date of birth in the credit file are those of the individual, if that file is located in Canada and has been in existence for at least three years, or
 - (iii) any two of the following with respect to the individual:
 - (A) information from a reliable source that contains the individual's name and address that is used to verify that the name and address are of those of the individual;
 - (B) information from a reliable source that contains the individual's name and date of birth that is used to verify that the name and date of birth are those of the individual;
 - (C) information that contains the individual's name and confirms that the individual has a deposit account or a credit card or other loan amount with a financial institution that is used to verify that information;
 - (b) if the client is an organization such as a corporation or society that is created or registered pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and

address of the organization, including the names of its directors where applicable, such as

- (i) a certificate of corporate status issued by a public body,
 - (ii) a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or
 - (iii) a copy of a similar record obtained from a public body that confirms the organization's existence;
- (c) if the client is an organization that is not registered in any government registry, such as a trust or partnership, a copy of the organization's constating documents, such as a trust or partnership agreement, articles of association, or any other similar record that confirms its existence as an organization.
- (3) An electronic image of a document is not a document or information for the purposes of this rule.
- (4) For the purposes of subrule (2) (a) (iii)
- (a) the information referred to must be from different sources, and
 - (b) the individual, the lawyer or an agent is not a source.
- (5) To verify the identity of an individual who is under 12 years of age, the lawyer must verify the identity of a parent or guardian of the individual.
- (6) To verify the identity of an individual who is 12 years of age or over but less than 15 years of age, the lawyer may refer to information referred to in subrule (2) (a) (iii) (A) that contains the name and address of a parent or guardian of the individual and verifying that the address is that of the individual.

Requirement to identify directors, shareholders and owners

- 3-103** (1) When a lawyer provides legal services in respect of a financial transaction for a client that is an organization referred to in Rule 3-102 (2) (b) or (c) [*Requirement to verify client identity*], the lawyer must
- (a) obtain and record, with the applicable date, the names of all directors of the organization, other than an organization that is a securities dealer, and
 - (b) make reasonable efforts to obtain and, if obtained, record with the applicable date
 - (i) the names and addresses of all persons who own, directly or indirectly, 25 per cent or more of the organization or of the shares of the organization,

- (ii) the names and addresses of all trustees and all known beneficiaries and settlors of the trust, and
 - (iii) information identifying the ownership, control and structure of the organization.
- (2) A lawyer must take reasonable measures to confirm the accuracy of information obtained under this rule.
- (3) A lawyer must keep a record, with the applicable dates, of the following:
 - (a) all efforts made under subrule (1) (b);
 - (b) all measures taken to confirm the accuracy of information obtained under this rule.
- (4) If a lawyer is not able to obtain the information referred to in subrule (1) or to confirm the accuracy of that information in accordance with subrule (2), the lawyer must
 - (a) take reasonable measures to ascertain the identity of the most senior managing officer of the organization,
 - (b) determine whether the following are consistent with the purpose of the retainer and the information obtained about the client as required by this rule:
 - (i) the client's information in respect of its activities;
 - (ii) the client's information in respect of the source of the money to be used in the financial transaction;
 - (iii) the client's instructions in respect of the transaction,
 - (c) assess whether there is a risk that the lawyer may be assisting in or encouraging fraud or other illegal conduct, and
 - (d) keep a record, with the applicable date, of the results of the determination and assessment under paragraphs (b) and (c).

Use of an agent for client verification

- 3-104** (1) A lawyer may retain an agent to obtain the information required under Rule 3-102 [*Requirement to verify client identity*], provided the lawyer and the agent have an agreement or arrangement in writing for this purpose in compliance with this rule.
- (5) A lawyer must retain an agent to obtain the information required under Rule 3-102 [*Requirement to verify client identity*] to verify the person's identity and must have an agreement or arrangement in writing with the agent for that purpose if the client

- (a) is not present in Canada, and
 - (b) is not physically present before the lawyer.
- (6) A lawyer must not rely on information obtained by an agent under this rule unless the lawyer
- (a) obtains from the agent all of the information obtained by the agent under that agreement or arrangement, and
 - (b) is satisfied that the information is valid and current and that the agent verified identity in accordance with Rule 3-102 [*Requirement to verify client identity*].
- (7) A lawyer may rely on an agent's previous verification of an individual client if the agent was, at the time of the verification
- (a) acting in the agent's own capacity, whether or not the agent was acting under this rule, or
 - (b) acting as an agent under an agreement or arrangement in writing entered into with another lawyer required under this division to verify the identity of a client.

Timing of verification for individuals

- 3-105** (1) At the time that a lawyer provides legal services in respect of a financial transaction, the lawyer must verify the identity of a client who is an individual.
- (2) When a lawyer has verified the identity of an individual, the lawyer is not required subsequently to verify that same identity unless the lawyer has reason to believe the information, or the accuracy of it, has changed.

Timing of verification for organizations

- 3-106** (1) A lawyer who provides legal services in respect of a financial transaction must verify the identity of a client that is an organization promptly and, in any event, within 30 days.
- (2) When a lawyer has verified the identity of a client that is an organization and obtained and recorded information under Rule 3-103 [*Requirement to identify directors, shareholders and owners*], the lawyer is not required subsequently to verify that identity or obtain and record that information, unless the lawyer has reason to believe that the information, or the accuracy of it, has changed.

Record keeping and retention

- 3-107** (1) A lawyer must obtain and retain a copy of every document used to verify the identity of any individual or organization for the purposes of Rule 3-102 (1) [*Requirement to verify client identity*].
- (2) The documents referred to in subrule (1) may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.
- (3) A lawyer must retain a record of the information, with applicable dates, and any documents obtained or produced for the purposes of
- (a) Rule 3-100 [*Requirement to identify client*],
 - (b) Rule 3-103 [*Requirement to identify directors, shareholders and owners*],
 - (c) Rule 3-102 (2) [*Requirement to verify client identity*], or
 - (d) Rule 3-104 [*Use of an agent for client verification*].
- (4) The lawyer must retain information and documents referred to in subrule (3) for the longer of
- (a) the duration of the lawyer and client relationship and for as long as is necessary for the purpose of providing services to the client, and
 - (b) a period of at least 6 years following completion of the work for which the lawyer was retained.

Criminal activity, duty to withdraw

- 3-109** (1) If, in the course of obtaining the information and taking the steps required in Rule 3-100 [*Requirement to identify client*], 3-102 (2) [*Requirement to verify client identity*], 3-103 [*Requirement to identify directors, shareholders and owners*] or 3-110 [*Monitoring*], or at any other time while retained by a client, a lawyer knows or ought to know that he or she is or would be assisting a client in fraud or other illegal conduct, the lawyer must withdraw from representation of the client.
- (2) This rule applies to all matters for which a lawyer is retained before or after this division comes into force.

Monitoring

- 3-110** (1) While retained by a client in respect of a financial transaction, a lawyer must monitor on a periodic basis the professional business relationship with the client for the purposes of
- (a) determining whether the following are consistent with the purpose of the retainer and the information obtained about the client under this division:

- (i) the client's information in respect of their activities;
 - (ii) the client's information in respect of the source of the money used in the financial transaction;
 - (iii) the client's instructions in respect of transactions, and
- (b) assessing whether there is a risk that the lawyer may be assisting in or encouraging dishonesty, fraud, crime or other illegal conduct.
- (2) A lawyer must keep a record, with the applicable date, of the measures taken and the information obtained under subrule (1) (a)..

13. Amendments to Rule 4-55 (Investigation of Books and Accounts): Policy Considerations

Ms. Bains, Deputy Chief Legal Officer, spoke to the item and said the issue arose out of practical issues associated with applying the rules relating to the mirror imaging of electronic records during an investigation. The two issues identified were (1) Executive Director designations and (2) the time period allotted to a lawyer who wishes to request that certain records be excluded from an investigation. She said the requirement that the Executive Director must specifically designate a person to conduct an investigation created procedural layers that served no apparent purpose and that compliance with the rule was hindered by staff changes. In terms of the requirement in Rule 4-55(3) that a lawyer must make a request to exclude personal records that are not relevant to an investigation within 7 days of receiving an investigation order, Ms. Bains said often lawyers need more time to review their records and submit such a request.

Three recommended amendments to Rule 4-55 were put forward for consideration by the Benchers:

- a) Amend Rule 4-55(1) to state, for example, that "the chair may order that the Executive Director investigate the books, records and accounts."
- b) Repeal Rule 4-55(6)(a).
- c) Amend Rule 4-55(3), replacing "7 days" with a longer period of time, such as "21 days," as well as to require that the request be made in writing to the Executive Director, and to clarify that extensions would only be granted in exceptional circumstances.

The Executive Committee recommended that the Benchers, in principle, amend the rules as stated above. The motion passed unanimously.

UPDATES

14. 2019 May YTD Financial Report

Ms. McPhee, Chief Financial Officer, provided an update on the financial results and highlights to the end of May 2019. The General Fund operations resulted in a positive variance to the budget mainly due to additional practice fee revenue, the timing of expenses, along with some permanent expense savings, primarily with external counsel fees. Staff were forecasting to be ahead of budget in key revenue areas, including practice fee revenue, PLTC student revenues, D&O insurance recoveries, along with expense savings, mainly in external counsel fees.

Trust Administration Fee revenue was below budget with a significant decrease in real estate unit sales. Staff are forecasting TAF revenue to be below budget for the year.

Lawyers Insurance Fund assessment revenues were slightly ahead of budget and there were savings with operating expenses. The LIF long-term investment portfolio return for the first five months of the year was higher than the budgeted amount for the entire year, resulting in additional income in the first five months.

15. Mid-Year Reports

- **Equity, Diversity and Inclusion Advisory Committee**

Ms. Ahmad, Chair of the Equity, Diversity and Inclusion Advisory Committee, thanked Committee members and staff for their work to date and provided a summary of the Committee's work. She said there had been a focus on inclusion, which has led to an extension of the scope of the Committee's work. "Inclusion" was added to the Committee's name at the June Bencher meeting. The Committee also made recommendations to the Governance Committee about leadership issues, and the processes for electing and nominating leaders, such as the second vice-president.

Ms. Ahmad indicated the Committee would be seeking Benchers' approval for the retention of an independent firm to conduct an equity, diversity and inclusion audit of the Law Society and the legal profession. The goals of the audit would be to: 1) establish benchmarks for diversity within the organization, and 2) identify the Law Society's strengths and areas for improvement in relation to advancing its EDI goals. The data gathered in an EDI audit would help to inform policy options to enhance EDI throughout the organization.

Other areas considered by the Committee included lawyer roles regarding return to practice and eligibility to become a principal because of the requirement to be practising for a minimum number of years, which the Committee believes are two areas where women are disproportionately affected. The Committee also recommended to the Law Society

Communications department that photos of call ceremonies be posted on the Law Society website so that people have a greater awareness of diversity in the legal profession around the province.

- **Lawyer Education Advisory Committee**

Mr. Wilson, Chair of the Lawyer Education Advisory Committee, thanked the Committee and staff for its work to date and provided a summary of the Committee's work.

The Committee has focused on three areas to date. First, the Committee is in the process of reviewing the articling process. A preliminary discussion of the results of a survey of articling students would be brought to the Benchers in the fall.

Secondly, the Committee has been working with the Mental Health Task Force on consideration of mandatory continuing professional development requirements for wellness. Mr. Wilson said this would likely come to the Benchers for consideration towards the end of 2019 or beginning of 2020.

And lastly, Mr. Wilson reported that the Committee had been looking at the Call to Action 27 and how to incorporate a greater program for mandatory cultural competency in the legal profession. A memorandum on the issue had been prepared and the Committee was consulting with the Truth and Reconciliation Advisory Committee. The matter would likely come to Benchers for consideration initially at the October meeting, and for decision at the December meeting.

- **Rule of Law and Lawyer Independence Advisory Committee**

Mr. Campbell, Chair of the Rule of Law and Lawyer Independence Advisory Committee, thanked the Committee members and staff for their work to date, and provided a summary of the Committee's work.

Mr. Campbell referred to the Rule of Law lecture that was recently held, where approximately 225 people were in attendance and 60 people watched the lecture online. Favourable feedback was received about the lecture and a video of the lecture can be viewed online.

Mr. Campbell reported on other work of the Committee, such the annual rule of law essay contest, engaging in public commentary on rule of law issues, and a meeting with a delegation from the Ukraine who were particularly interested in issues relating to attacks on the judiciary and the culture of the bar in Canada in terms of defending the judiciary.

The Committee has also been monitoring other legal issues, such as Bill C-75, and has made a submission to the Provincial Government on the impact of the Bill. The Committee also prepared

a submission to the Federal Government on Bill C-58 that relates to the disclosure of judicial expenses. Concerns were expressed in the submission to the Federal Government and ultimately that legislation was abandoned.

Mr. Avison added that he is satisfied that the provincial government is taking the concerns expressed about Bill C-75 seriously and is moving towards a solution.

- **Truth and Reconciliation Advisory Committee**

Mr. Lawton, Co-Chair of the Truth and Reconciliation Advisory Committee, thanked Committee members and staff for their work to date and provided a summary of the Committee's work. He started with a brief history of the Committee.

Mr. Lawton reported that the Committee was working on two particular subjects in 2019: (1) mandatory cultural competency training for lawyers in BC, and (2) outreach, which involves improving Law Society engagement with indigenous peoples, organizations and individuals.

A memorandum that creates a pathway towards mandatory cultural competency would come before Benchers in the fall. Mr. Lawton also mentioned intercultural competency training that had taken place with staff at the Law Society and the incorporation of intercultural competency into the Professional Legal Training Course materials.

The recent Tribunal Refresher course focused on indigenous intercultural competence in the tribunal context, and a targeted call for Indigenous applicants for the Law Society of BC's hearing panel pools was sent to Indigenous organizations in British Columbia on May 30, 2019.

Mr. Lawton referred to various events where representatives from the Law Society and the Truth and Reconciliation Advisory Committee participated; including, the First Nations Provincial Justice Council Forum, the 12th Annual Justice Summit, the Reception for the Canadian Bar Association of BC Aboriginal Lawyers Forum Retreat and Mr. Lawton gave a presentation at the University of Victoria Faculty of Law to 38 visiting judges from Thailand on truth and reconciliation matters.

- **Mental Health Task Force**

Mr. Greenberg, Chair of the Mental Health Task Force, thanked Committee members and staff for their work to date and provided a summary of the Committee's work.

He reported that the Committee had been focusing on implementing three recommendations that were approved by Benchers in December 2018. The Committee also focused on outreach more generally, and were working on further recommendations to put before Benchers in the fall.

One of the recommendations the Committee had been working on relates to educating people within the Law Society on mental health and substance use issues. Staff have partnered with the Canadian Mental Health Association to develop specialized training sessions, which will be rolled out in the fall. The cost of the sessions is minimal and it is intended they will continue. The Task Force has also consulted with Lifeworks on the services it provides and how to make those programs more accessible generally.

Mr. Greenberg said the Task Force were consulting with the Credentials Committee regarding the medical fitness questions, and explained the Task Force's concerns with asking those questions. He was hoping there would be a joint recommendation on this matter to bring to the Benchers in the fall.

The Task Force also consulted with the Ethics Committee regarding removing stigmatizing language on the Code, and Mr. Greenberg said he was hoping there would be a joint recommendation to bring to Benchers in the fall.

Mr. Greenberg spoke about outreach generally and said the Task Force had been doing education outreach to discuss mental health and substance use issues with members of the legal profession. He noted a positive change in people's willingness to attend wellness-themed presentations in person and said he had observed change taking place in terms of the work to reduce the stigma surrounding mental health and substance use issues.

Finally, Mr. Greenberg said work was ongoing on recommendations to be included in a further report to Benchers and that there would be more to come on this at a later date.

16. Report from Ad Hoc Bencher Election Working Group

President Merrill indicated this item was for information only and encouraged Benchers to reach out to the members of the Working Group if they had any suggestions.

17. Report on Outstanding Hearing & Review Decisions

Mr. Ferris thanked Mr. McKoen for taking on additional hearing duties, and reminded Benchers of their responsibility to follow up with other panel members to make sure the timing for completion of reports is met.

FOR INFORMATION

18. Letter from David Stuart: Commemorative Certificate Luncheon

There was no discussion on this item.

19. Pro-Bono Award Criteria

There was no discussion on this item.

20. Recognition of Mental Health Task Force Efforts – award given to Brook Greenberg

There was no discussion on this item.

21. Three Month Bencher Calendar – July to September 2019

There was no discussion on this item.

The Benchers then commenced the *In Camera* portion of the agenda.

KH
2019-09-18