



Minutes

Benchers

Date: Friday, September 27, 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
Natasha Dookie
Su Forbes, QC
Mira Galperin
Andrea Hilland
Kerryn Holt
Jeffrey Hoskins, QC
David Jordan
Jason Kuzminski

Michael Lucas
Alison Luke
Jeanette McPhee
Claire Marchant
Doug Munro
Lesley Small
Alan Treleaven
Adam Whitcombe, QC
Vinnie Yuen

Guests:	Kenneth Armstrong	Vice-President, Canadian Bar Association, BC Branch
	Dr. Susan Breau	Dean of Law, University of Victoria
	The Honourable Justice	Justice of the Court of Queen's Bench of Alberta
	Michele H. Hollins	
	April Lemoine	CFO, Courthouse Libraries BC
	Prof. Bradford Morse	Dean of Law, Thompson Rivers University
	Caroline Nevin	CEO, Courthouse Libraries BC
	Josh Paterson	Executive Director, Law Foundation of BC
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
	Anna Summerfield	Canadian Bar Association, BC Branch

CONSENT AGENDA

1. Minutes of July 12, 2019, meeting (regular session)

The minutes of the meeting held on July 12, 2019 were approved as circulated.

2. Direction regarding Second Vice-President Election Process

The following resolution was passed unanimously and by consent.

BE IT RESOLVED that the Benchers direct staff to run any future elections for the Benchers' nominee for Second Vice-President in the same manner as the 2020 Second Vice-President election until directed otherwise.

3. The 2019 Law Society Indigenous Scholarship

The following resolution was passed unanimously and by consent.

BE IT RESOLVED that the Benchers ratify the recommendation of the Credentials Committee to award the 2019 Law Society Indigenous Scholarship to Shawnee Monchalin.

4. Anti-Money Laundering Working Group

The following resolution was passed unanimously and by consent.

BE IT RESOLVED that the Benchers approve the creation of an Anti-Money Laundering Working Group and the attached Terms of Reference.

REPORTS

5. President's Report

President Merrill announced the result of the election for the preferred candidate to nominate as the Law Society of BC member of the Federation of Law Societies of Canada Council. She congratulated Pinder K. Cheema, QC as the successful candidate.

Ms. Merrill also advised Benchers that informational videos about the upcoming Benchers Election had been posted to the Law Society website. The videos covered topics such as the mandate of the Law Society, the time commitment of Benchers and diversity. Ms. Merrill also advised that a series of videos on legal aid were in development.

Other matters reported on included Chief Justice Hinkson's concerns about workload pressures faced at the Supreme Court due to automatic bail review time frames, and concerns expressed by Chief Justice Bauman about diversity on the bench at the Court of Appeal level.

Ms. Merrill informed Benchers that Trudi Brown, QC, Chair of the Licensed Paralegal Task Force, would be providing an update at the October 25 Bencher meeting. She also reminded Benchers of the due date for nominations for the Law Society awards and encouraged people to submit nominations.

Ms. Merrill provided an overview of matters considered at the Executive Committee meeting on September 12, 2019, including consideration of the design for the Law Society awards and the award criteria, discussion of the number of Committees, Task Forces and Working Groups at the Law Society, and future consideration to be given to administrative support to be provided to the President.

Finally, Ms. Merrill reminded Benchers about Orange Shirt Day and encouraged Benchers to read her unsung heroes column posted to the Law Society website, featuring Katrina Harry.

6. CEO's Report

Mr. Avison began his report by thanking Benchers, Life Benchers and Staff Lawyers who taught ethics to PLTC students, including Lisa Hamilton, QC, Art Vertlieb, QC, Jim Vilvang, QC, Terry La Liberte, QC, Kate Bradley, Alison Kirby and Mandana Namazi.

He reported on the upcoming meetings of the Federation of Law Societies of Canada to take place mid-October in Newfoundland. The focus of the conference is on mental health and wellness, and the Law Society of BC has been involved in the planning for the conference. Michael Lucas would be chairing one of the panel discussions and Vancouver Bencher Brook Greenberg would be a lead speaker at the conference. Mr. Avison would also be participating in a session on development of the Federation's strategic plan for the next three years.

Mr. Avison reported on a meeting of the Institute of Chief Executives he attended recently in Japan. He provided an overview of the conference material, which included business models, technology and the provision of legal services by non-lawyers. There was also discussion of data mining and the use of intelligent drafting tools. He said there was a continuing interest in technology and the Law Society would need to pay close attention to these developments in the years to come. Mr. Avison also participated in a panel discussion on mental health and wellness. His view was that Canada, and in particular BC, are seen as leaders on this front, but he acknowledged there is much more work still to be done. He referred to a commitment made to other jurisdictions with fewer resources to share and help develop resources in those regions.

Mr. Avison provided an update on the status of the Cullen Commission. The Law Society has received standing to participate in the public inquiry and the Law Society has retained counsel. Other participants include individuals as well as organizations, such as RCMP, the BC Civil Liberties Association and the CBABC. Mr. Avison estimated it would still be some time before hearings would be underway and said that staff would work closely with the newly established Anti-Money Laundering Working Group.

Mr. Avison reported that plans for the 2019 Annual General Meeting were well underway and that the rule changes made in 2019 had so far shown to be effective at making the process more efficient. As the meeting agenda was not particularly controversial, he said interest in attending the remote locations at that time was modest, which led to the Executive Committee's decision to reduce the number of satellite locations. Mr. Avison reported that planning for the 2019 Bencher Election was also well underway.

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

Mr. Van Ommen was unable to attend the meeting to provide an update.

GUEST PRESENTATIONS

8. "What I've learned about my mental health and why it's important"

Ms. Merrill introduced the Honourable Justice Michele H. Hollins as the guest speaker. Ms. Hollins spoke candidly about her personal experience and journey with mental health issues and how it had impacted her life. She spoke about her experiences both as a lawyer and as a judge, and the importance of self-awareness, reducing stigma surrounding mental health issues and seeking help early. In her view, more work could be done to look at judicial stressors and mental health, as well as mental health issues faced by young lawyers entering the profession and whether they have appropriate levels of support. Benchers thanked Ms. Hollins for making time to attend the Bencher meeting and for her impactful presentation.

DISCUSSION/DECISION

9. 2020 Budget & Fees

Mr. Ferris introduced the item, followed by a presentation to Benchers on the proposed 2020 budget and fees delivered by Mr. Avison.

Mr. Avison highlighted some of the key initiatives the Law Society would be focusing on in 2020, including anti-money laundering, mental health, law firm regulation, licensed paralegals, legal aid and the work coming out of the Futures Task Force.

Some of the operational areas of focus for 2020 included an increase in citations and the number of serious files, and additional work required in relation to a possible diversion program and recidivism. Additional resources are required to meet the demands and complexity faced in the Member Services department, as well as in the Policy and *Freedom of Information and Protection of Privacy Act* area. There are also some considerable projects underway relating to the use of artificial intelligence, data analytics and a virtual desktop infrastructure for staff that will require resources. An increase in demand with the PLTC program also necessitates additional support to ensure students are able to proceed through the program without delay.

Mr. Avison reported that the Law Society's revenue is expected to be \$29.3 million and expenses are expected to be \$29.3 million. External organization funding remains much the same as in 2019 except for a modest increase in funding to Courthouse Libraries BC and pro bono/access to justice funding.

The proposed annual Practice fee was \$1,904 (\$2,289), an increase of \$29.93 or 1.6%. The insurance fee would remain the same at \$1,800 for full-time and \$900 for part-time. This puts BC middle of the pack in terms of the membership fees charged across the country.

The following resolutions were passed unanimously.

BE IT RESOLVED THAT:

- Effective January 1, 2020, the practice fee be set at \$2,289.12, pursuant to section 23(1)(a) of the *Legal Profession Act*.

BE IT RESOLVED THAT:

- the insurance fee for 2020 pursuant to section 30(3) of the *Legal Profession Act* be set at \$1,800;
- the part-time insurance fee for 2020 pursuant to Rule 3-40(2) be set at \$900; and
- the insurance surcharge for 2020 pursuant to Rule 3-44(2) be set at \$1,000.

10. Fiduciary Property (Rule 3-55): Proposal to Amend Rules

Mr. Ferris introduced the item and Mr. Lucas expanded on the reasons for the proposed amendments.

Mr. Lucas advised Benchers that the Executive Committee had considered the rules relating to fiduciary property (and in particular Rule 3-55), which were created in 2015 and amended in 2016. He spoke about the history of the Rule, referring to the various rule changes relating to the use of trust accounts and fiduciary property.

Since the amendment to the rules that permitted fiduciary property to be held in a trust account, the Law Society has become increasingly focused on clarifying the use of a lawyer's trust account to reduce the likelihood of such accounts being used for improper purposes, including the possibility of money-laundering. Permitting non-trust funds such as fiduciary property to be held in a trust account complicates efforts to draw a clear line respecting the use of the trust account.

Mr. Lucas drew Benchers attention to the Federation of Law Societies Model Trust Accounting Rule and new Law Society Rule 3-58.1, and approaches in other Canadian jurisdictions. Some consultation with the profession was completed earlier in the year but very few responses were received.

The Executive Committee recommended that Benchers amend Rule 3-55 by deleting Rule 3-55(6). Mr. Lucas said this will result in a requirement that fiduciary property must be held outside of a trust account. The Committee recognized that in some limited circumstances, where a lawyer is acting in a dual role (such as executor and lawyer to an estate), the funds in question may be directly related to the provision of related legal services and may thereby be deposited in a trust account, but these circumstances are expected to be limited. Consequential amendments will also be needed to Rules 3-60(4) and 3-61(3). The Committee also recommended that staff develop guidelines to assist the bar in the discharge of its responsibilities in handling fiduciary property.

The motion to approve the Executive Committee's recommendations as stated above and in the materials was carried.

11. Reporting to Law Enforcement: Proposal to Amend Rules

Mr. Ferris introduced the item and Ms. Dookie expanded on the reasons for the proposed rule change.

Ms. Dookie said it was important there be a consistent approach within the Law Society for considering when and what information should be disclosed to law enforcement. Outlined in the memorandum provided in the materials is past consideration of the issue by Benchers, policy considerations, and a review of how other law societies have dealt with the issue.

Ms. Dookie said there were two overarching rationales for disclosing information to law enforcement: (1) the role of the Law Society is to investigate issues of lawyers' conduct and not criminal offending. Disclosure to the proper authorities allows agencies to conduct the investigations needed; and (2) the proposed amendment provides for a more consistent process by having a centralized committee that is responsible for considering requests, which looks at standardized guidelines.

The Executive Committee recommended that Benchers approve the following resolutions:

- the Law Society Rules be amended so that the Executive Director may disclose information or documents that may disclose an offence to law enforcement agencies that have been gathered in the course of a complaint investigation, a practice standards investigation, an application for admission, enrolment or reinstatement, or a claim made under trust protection insurance, with the consent of one committee, rather than one of the three existing committees;
- the single committee be the Discipline Committee;
- that a set of guidelines be prepared by staff that outline considerations that should be taken into account by the committee when considering a request from the Executive Director to disclose information or documents to law enforcement agencies.
- In the event the recommendation is accepted, the matter should be referred to the Act and Rules Committee to prepare the necessary rule amendments to be returned to the Benchers for approval.

The motion to approve the Executive Committee's recommendations as outlined above and in the materials was carried.

12. Report of the Annual Fee Review Working Group

Mr. Lawton, Chair of the Annual Fee Review Working Group, spoke about the Reduced Practice and Insurance Fees Report provided in the materials and the work undertaken and considered by the working group since the issue was last before the Benchers. He highlighted some areas considered by the working group, including the possibility of reducing rates based on low income, and lawyers who predominantly provide pro bono legal services. He advised that the recommendation of the working group was to maintain the status quo.

Mr. Lawton advised that the consensus of the working group is that there is not sufficient principled justification for changing the Law Society's present practice of charging all members the same annual fee, regardless of areas of practice. The working group, however, was of the view that the Benchers give consideration to whether some of the variable costs incurred by the Law Society in some areas, such as the professional conduct and discipline programs, should be allocated to a greater degree to those members creating those costs, either on a per file basis or as an addition to their annual practice fee.

Some Benchers expressed concerns about the conclusion reached by the working group and felt there may be other opportunities for fee reductions that had not yet been canvassed or considered. There was general agreement from Benchers that more data would be useful to assist

with analyzing the issue and that staff should do some further work on the issue and report back to Benchers at a future date.

Three areas identified for further work and consideration were: (1) the insurance fee and the possibility of a risk adjustment, (2) the practice fee being determined based on the type of law practised or the provision of a fee reduction for lawyers practising in poverty law, and (3) a recidivism surcharge.

No motion was required from the Benchers and staff were directed to complete further work and report back to the appropriate individual Committees or the Benchers as needed.

13. Law Society Awards: Design Selection, Nominations and Criteria

Ms. Hamilton provided an update to the Benchers on the new designs of the Law Society awards recognizing excellence in the legal profession. She thanked Mr. Kuzminski for his work researching and supporting the Design Selection Committee in this regard.

Ms. Hamilton also spoke about the Executive Committee's consideration of the awards criteria; in particular, that it was too narrow and should be expanded to include all current and former members of the Law Society of BC.

The motion to approve the Executive Committee's recommendation as set out below was carried.

BE IT RESOLVED that the Benchers approve amendments to the awards criteria for all four Law Society awards:

- a) to include "all current and former members" and allow for the award to be given posthumously, and
- b) require the person nominating an individual for the award to be a current member of the Law Society of BC, except in the case of the Equity, Diversity and Inclusion Award, where the criteria provides that any person may submit a nomination for the award.

UPDATES

14. Equity Ombudsperson Program: 2018 Annual / 2019 Interim Report

Ms. Marchant, Equity Ombudsperson, provided an update to Benchers on the work undertaken as part of the Law Society of BC Equity Ombudsperson Program from July 1, 2018 to June 30, 2019. Her written report provided anonymized data about the volume and nature of contact received by the Program, in addition to describing the other work undertaken by the Program during the Term.

Ms. Marchant reviewed the statistics in the report during that period and noted that she was contacted by 42 individuals, which resulted in 76 emails and phone calls to the Program. Of the 42 individuals who contacted her, 21 of the new matters were within the mandate of the Program.

Ms. Marchant made some overall observations about the Program and noted that the issue of sexual harassment may continue to generate a high contact volume. She also noted a number of the contacts were outside the mandate of the Program and made some suggestions for how the role of the Equity Ombudsperson could be more clearly understood and utilized.

Bencherers expressed gratitude for the work done by Ms. Marchant and for her informative presentation.

15. Report on attendance at the International Conference of Legal Regulators in Edinburgh and re-populating the pools for Tribunal Members

Mr. Ferris reported on his attendance at the International Conference of Legal Regulators in Edinburgh. Representatives from over 26 countries attended, with over 100 delegates in total. There were three themes at the conference; upholding standards, encouraging innovation and sustaining trust.

Mr. Ferris also provided an update on the work being done to repopulate the pools for Tribunal members. He said there was a diverse group of people making up the public, lawyer and Bencher pools and a recommendation to approve candidates would be considered at the next Executive Committee meeting on October 10, 2019.

16. Report on Outstanding Hearing & Review Decisions

There was no discussion on this item.

FOR INFORMATION

17. Correspondence from the Minister of Justice dated August 12, 2019

There was no discussion on this item.

18. Correspondence from the Attorney General dated August 12, 2019

There was no discussion on this item.

19. Correspondence from the Attorney General dated August 14, 2019

There was no discussion on this item.

20. Federation of Law Societies of Canada submission to Immigration, Refugees, and Citizenship Canada: Amendments to the Immigration and Refugee Protection Act and Citizenship Act, and new College of Immigration and Citizenship Act

There was no discussion on this item.

21. 2020 Bencher and Executive Committee Meetings Schedule

There was no discussion on this item.

22. Three Month Bencher Calendar – October to December 2019

There was no discussion on this item.

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

KH
2019-09-27