



Minutes

Benchers

Date: Friday, October 25, 2019

Present:

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

Unable to Attend: Carolynn Ryan

Staff Present:

Don Avison	Alison Luke
Lance Cooke	Jeanette McPhee
Natasha Dookie	Claire Marchant
Su Forbes, QC	Doug Munro
Mira Galperin	Michelle Robertson
Andrea Hilland	Annie Rochette
Kerryn Holt	Lesley Small
Jeffrey Hoskins, QC	Alan Treleaven
David Jordan	Adam Whitcombe, QC
Jason Kuzminski	Vinnie Yuen
Michael Lucas	

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
	Gabriel Boothroyd- Roberts	UBC Gold Medal Award Winner
	Nancy Carter	Executive Director, Family Policy, Legislation and Transformation - Ministry of Attorney General
	Dr. Catherine Dauvergne	Dean of Law, University of British Columbia
	Dr. Cristie Ford	Associate Dean, Research and the Legal Profession, Peter A. Allard School of Law, University of British Columbia
	Katrina Harry	Legal Services Society
	Isabel Jackson	Aboriginal Lawyers Forum
	Michael McDonald	Member of the Truth and Reconciliation Advisory Committee
	Shawnee Monchalin	2019 Law Society Indigenous Scholarship Winner
	Prof. Bradford Morse	Dean of Law, Thompson Rivers University
	Josh Paterson	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
	Karen St. Aubin	Membership Director, Trial Lawyers Association of BC
	Sharon Sutherland	Director of Strategic Innovation, Mediate BC
	Geoff White	Board Chair, Law Foundation of BC
	Herman Van Ommen, QC	Law Society of BC Member, Council of the Federation of Law Societies of Canada

RECOGNITION & ANNOUNCEMENTS

1. Presentation of the 2019 Law Society Indigenous Scholarship

President Merrill presented the 2019 Law Society Indigenous Scholarship to the recipient, Shawnee Monchalin. Ms. Monchalin is Algonquin and Huron descent from her grandmother, mixed with Metis stemming from her grandfather. Ms. Monchalin began the JD program at Peter A. Allard, School of Law, in 2016, and will complete her JD at the end of 2019 with a specialization in Aboriginal Law. Ms. Monchalin has participated as a clinician in the Indigenous Community Legal Clinic during the JD program and has been a member of the Indigenous Law Student's Association every year during the JD program. Ms. Monchalin also volunteers as an ambassador for Allard Hall in reaching out to incoming or perspective Indigenous students as a point of contact, mentor or friend. Outside the legal community, Ms. Monchalin participates as a dancer in a group called Butterflies in Spirit. In January 2020, Ms. Monchalin will commence her articles at Miller Thomson, where she previously secured a position as the first Indigenous Summer Student Intern in 2017.

2. Presentation of 2019 UBC Gold Medal Award Winner

President Merrill presented the 2019 UBC Gold Medal Award to Gabriel Boothroyd-Roberts. Mr. Boothroyd-Roberts earned four scholarships and awards during law school, where he specialized in Aboriginal Law and worked as a research assistant. He worked at the Indigenous Community Legal Clinic, where he interviewed and represented clients, performed legal research and provided legal advice. At the Law Society's Truth and Reconciliation Symposium in 2017, Mr. Boothroyd-Roberts presented his experiences of working at the Indigenous Community Legal Clinic. In addition to attending school and working, he volunteered for the UBC Law Students' Legal Advice Program and the Downtown Eastside's SRO Collaborative. He has a Bachelor of Arts in Geography with honours from Simon Fraser University. He is a musician, composer and business owner.

3. Announcement by Catherine Dauvergne about new UBC Initiative Focused on Law Student Debt Relief

Ms. Merrill introduced Ms. Catherine Dauvergne, Dean of Peter A. Allard School of Law at UBC, and invited her to speak about the new UBC initiative focused on law student debt relief.

Ms. Dauvergne introduced the new UBC program called the *Back-end Debt Relief Pilot (BEDR)*. The program is based on a survey of UBC alumni over the past 10 years to get a picture of what law school debt looks like for young lawyers. Ms. Dauvergne noted that the BEDR will be the first and only law school program in Western Canada to address post-graduate student debt and to offer a needs-based eligibility assessment.

Ms. Dauvergne provided an outline of the process at-a-glance. Graduates can apply annually any time within ten years after their articling year. Factors taken into account include student loan obligations, some student commercial line of credit amounts, pre-law student debt, where you live, family size and after-tax income. If the applicants qualifies, UBC will cover some or all of the annual law school debt obligations with an interest-free loan (including during the articling year if students apply in their first year of articling). Ten percent of the loan is forgiven for each year a student qualifies. If a professional income increases and a person is no longer eligible, the remaining portion of the loan must be paid back, and if someone is in the program for ten years, all of the loan will be forgiven.

Ms. Dauvergne estimated approximately 27 students would be in the program each year. She confirmed people would be able to access the program while on maternity leave. Ms. Dauvergne indicated they were still developing their communications around the new program, but that they would be attending admission fairs and participating in legal education outreach. Ms. Dauvergne encouraged Benchers to share information about the program with lawyers around the province.

GUEST PRESENTATIONS

4. Licensed Paralegal Task Force Update

The presentation from Ms. Trudi Brown, QC was deferred to the December 6, 2019 Bencher meeting.

5. Provincial Court Family Rules Update

Ms. Merrill introduced Nancy Carter, Executive Director, Ministry of Attorney General, and invited her to speak about updates to the Provincial Court Family Rules.

Ms. Carter began with an introduction about the Provincial Family Court Rules Project, which is a joint project between the Ministry and the Provincial Court. She spoke about the Family Rules Consultation Report, which is a discussion paper proposing wholesale rule reform. Consultation on the discussion paper is open until December 16, 2019 and any feedback received will go to the working group for consideration.

Ms. Carter then provided some statistics, including that 82% of people reporting a family law problem experience a related health or social problem. Adverse Childhood Experiences research also identifies situations that can damage children in the long-term, divorce/separation being one of them. The project aimed to look at how processes can be designed to minimize the impact on children.

The discussion paper proposes a conceptual model which shifts parties into early resolution. There would be a phased implementation for some of the Rules, although many Parts will apply

across the province. New Part 2 and New Part 4 will apply in designated registries (Part 2 currently applies in Victoria).

She discussed learnings and feedback from the Victoria prototype, and indicated there has been an overall positive response to the Model in terms of the benefits to families, early access to mediation and the engagement of both parties. Many parties are resolving their issues without having to proceed to court, and the process for applying for extraordinary parenting matters, protection orders and consent orders is efficient and effective.

Ms. Carter then invited questions from Benchers. Benchers encouraged tracking of the processing times and the utilization of technology in the court process, and discussed the importance of quality legal advice remaining part of the process and being accessible in the beginning stages.

CONSENT AGENDA

6. Minutes of September 27, 2019 meeting (regular session)

The minutes of the meeting held on September 27, 2019 were approved as circulated.

7. Minutes of September 27, 2019 meeting (*in camera* session)

The minutes of the *In Camera* meeting held on September 27, 2019 were approved as circulated.

8. Minutes of 2019 Annual General Meeting held on October 2, 2019

The minutes of the Annual General Meeting held on October 2, 2019 were approved as circulated.

9. 2020 Fee Schedules

The following resolution was passed unanimously and by consent.

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

1. In Schedule 1, by striking “\$2,260.17” at the end of item A 1 and substituting “\$2,289.12”;
2. In Schedule 2, by revising the prorated figures in the “Law Society fee” column accordingly; and
3. In the headings of schedules 1, 2 and 3, by striking the year “2019” and substituting “2020”.

10. Election of the Executive Committee Rules

The following resolution was passed unanimously and by consent.

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

1. *By rescinding subrules (1) to (4) and (6) to (9) of Rule 1-41 and substituting the following:*

- (1) The Benchers must elect 4 Benchers to serve as members of the Executive Committee for each calendar year as follows:
 - (a) 3 elected Benchers;
 - (b) 1 appointed Bencher.
- (2) A person elected as a Bencher for a term that includes the calendar year for which members of the Executive Committee are to be elected is eligible for election under subrule (1) (a).
- (2.1) A Bencher appointed as a Bencher, or eligible to be appointed as a Bencher, for a term that includes the calendar year for which members of the Executive Committee are to be elected is eligible for election under subrule (1) (b).
- (3) A Bencher who is eligible for election under subrule (1) may become a candidate by notifying the Executive Director in writing by November 22.
- (4) If there are more candidates than there are positions to be elected, the Executive Director must conduct a ballot.
- (6) Benchers in office on the date specified under subrule (5) are eligible to vote for the Executive Committee as follows:
 - (a) all Benchers are eligible to vote for elected Benchers;
 - (b) appointed Benchers are eligible to vote for appointed Benchers.
- (12) The Executive Director may conduct an election for members of the Executive Committee partly or entirely by electronic means.
- (13) This rule applies, with the necessary changes and so far as applicable, to an election conducted partly or entirely by electronic means.

2. *By rescinding paragraphs (d) and (e) of Rule 1-50 and substituting the following:*

- (d) 4 other Benchers elected under Rule 1-41 [*Election of Executive Committee*]

11. Rule 4-55 – Investigation of Books, Records and Accounts

The following resolution was passed unanimously and by consent.

BE IT RESOLVED to amend the Law Society Rules by rescinding subrules (1), (3) and (6) of Rule 4-55 and substituting the following:

- (1) If the chair of the Discipline Committee reasonably believes that a lawyer or former lawyer may have committed a discipline violation, the chair may order that the Executive Director conduct an investigation of the books, records and accounts of the lawyer or former lawyer, including, if considered desirable in the opinion of the chair, all electronic records of the lawyer or former lawyer.
- (3) A request under subrule (2) must be made to the Executive Director in writing within 21 days after the lawyer concerned receives a copy of the order under this rule.
 - (3.1) In exceptional circumstances, the Executive Director may extend the time for making a request under subrule (2).
- (6) When an order is made under subrule (1), the lawyer or former lawyer concerned must do the following as directed by the Executive Director:
 - (c) immediately produce and permit the copying of all files, vouchers, records, accounts, books and any other evidence regardless of the form in which they are kept;
 - (d) provide any explanations required for the purpose of the investigation;
 - (e) assist the Executive Director to access, in a comprehensible form, records in the lawyer's possession or control that may contain information related to the lawyer's practice by providing all information necessary for that purpose, including but not limited to
 - (i) passwords, and
 - (ii) encryption keys.
- (7) When an order has been made under this rule, the lawyer concerned must not alter, delete, destroy, remove or otherwise interfere with any book, record or account within the scope of the investigation without the written consent of the Executive Director.

12. Proposed Rule 5-19.1 – Extension of Time to Initiate a Review

The following resolution was passed unanimously and by consent.

BE IT RESOLVED to amend the Law Society Rules by adding the following rule:

Extension of time to initiate a review

- 5-19.1** (1) A party may apply to the President to extend the time within which a review may be initiated under Rule 5-19 [*Initiating a review*].
- (2) When an application is made under subrule (1), the President must
- (a) refuse the extension of time, or
 - (b) grant the extension, with or without conditions or limitations.
- (3) On an application under this rule, the President may designate another Bencher to make a determination under subrule (2).

REPORTS

13. President's Report

Ms. Merrill provided an update on various meetings she attended since the last Bencher meeting, including the CBA Provincial Council meeting where she gave a short presentation, the UBC Dean's Advisory Council meeting, the Federation conference in St Johns in mid-October where the theme was "wellness", and the Law Society's 2019 Annual General Meeting. She and Mr. Ferris were involved in the QC selection process, she attended the Cowichan bar meeting and along with staff and other Benchers, also attended caucus meetings in Victoria with representatives from the Liberals and the NDP, which were both very successful events. Ms. Merrill also profiled Orange Shirt Day with an unsung heroes column on the Law Society website about Katrina Harry.

Ms. Merrill indicated the first meeting of the Anti-Money Laundering Working Group would be in November, and that the second Women's Leadership Workshop would be held on November 5. The Aboriginal Lawyers' Forum Dinner is being held on November 29, and a table of ten Benchers would be attending.

Ms. Merrill provided a summary of the matters considered at the Executive Committee meeting on October 10, including the approval of a consultation initiated by the Licensed Paralegal Task Force, and discussion of a proposed Equity, Diversity & Inclusion audit, which the Executive Committee referred back to the Equity, Diversity & Inclusion Advisory Committee for further work. The Committee approved recommendations regarding hearing panel appointments.

14. CEO's Report

Mr. Avison reported on the Federation meetings that took place in St Johns in mid-October and spoke about the theme of the conference; mental health and wellness. His view was that that portion of the program was very good. There was a 2019 wellbeing survey that was developed for the conference that canvassed the current state of play with respect to the medical fitness

questions and supports provided by the law societies across the provinces and territories throughout Canada. An electronic copy of the report would be provided to Benchers.

Mr. Avison said one of the key moments during the conference portion were indications from the academic community about rising student debt and the impact that is having on student's mental health. In particular, he noted it was concerning that 30% of students who are seeking assistance at the undergraduate level stop doing so when they enter law school because of concerns about having to answer the medical fitness questions on the admission form.

The portion of the program that involved the Presidents, CEOs and senior staff was more structured and focused on law firm regulation and entity regulation. A number of CEOs in the West have begun a monthly teleconference call to keep each other informed on developments in each jurisdiction.

Regarding government engagement, Mr. Avison referred to the caucus sessions that took place with the opposition caucus and with the government caucus. He had also met previously with Andrew Weaver of the Green Party. In his view, the meetings went very well.

Mr. Avison reminded Benchers about the 150th anniversary of the Courthouse Library and provided an update on the Cullen Commission, noting that the public town hall portion had commenced that week. He indicated formal hearings will not commence for some time. Senior staff and counsel for the Law Society have met with some of the Commission lawyers to discuss preliminary items. Mr. Avison was hopeful an understanding could be reached about what is required of the Law Society in so far as document retention and disclosure.

Finally, Mr. Avison spoke about the tabling of Bill 41, a bill with respect to the rights of Indigenous peoples. The Minister categorized the tabling of the bill as "a historic event". The most significant aspect of the bill is Section 3 of the Act, where government has undertaken an obligation to "take all measures necessary to ensure that the laws of BC are consistent with the declaration" and the Minister has an obligation to provide an annual report with respect to those obligations. BC is the first jurisdiction to recognize the declaration in a formal way with legal responsibilities that flow from it. Mr. Avison said it was a profoundly significant event and Benchers would hear more about it in the coming months.

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

Mr. Van Ommen began his final report to the Benchers as the Law Society's member of the Federation Council with an overview of the four days of Federation meetings held in Newfoundland in mid-October.

The first day was dedicated to the strategic plan, where there was discussion of what the Federation ought to be doing and should stop doing. The process was not complete and

discussions would continue at the December Federation meeting. Consideration of the assessment of the NCA program would continue, as well as the focus on anti-money laundering and reconciliation. Mr. Van Ommen commented that the Federation needs to make sure what it is doing is useful to law societies across the country and said there seems to be a high degree of unanimity on the appropriate role of the Federation.

Day two of the meetings was spent on the conference, which focused on wellbeing and the role the regulator ought to play. Mr. Greenberg attended and spoke on a panel about mental health. Mr. Van Ommen commented that the issue of lawyers experiencing mental health problems is not new, but it is the way the law societies are responding that is changing. These issues are now talked about more openly and all jurisdictions are in agreement that it is important work to be doing.

On the final day of the meetings the regular council meeting took place, which dealt mainly with budgets. Mr. Van Ommen delivered a report as the Chair of the NCA Committee. He highlighted some statistics that he thought Benchers should be aware of; including that in 2018-2019 there were 2400 applications for accreditation, which is up 28% from the previous year and 300% in ten years. The number of certificates issued were the equivalent of three law schools worth of students. People entering the profession through the NCA process remains a significant issue in the legal landscape in Canada.

Mr. Van Ommen reported that the Council approved the model rule regarding lawyer technological competency. Both BC and Ontario abstained. He commented that it may be worth considering whether this is the best approach in the future, as it could have been an option not to abstain and request that further work be done to come up with an approach that would have been better supported.

DISCUSSION

16. Law Firm Regulation Pilot Project and Recommendations Report

Mr. McKoen spoke about the final report of the Law Firm Regulation Task Force and began with an overview of the pilot project that ran from July 2018 until December 2018, which consisted of asking a sample of 10% of law firms in BC to complete a self-assessment form focused on firms' practice management systems. The pilot project was fairly well received, although he noted that only 75% of firms responded after follow up. In 2019, the Task Force looked at the results of the pilot project, what we could learn from the project, and came up with the recommendations contained in the final report that was now being presented to Benchers.

Mr. McKoen referred to studies in Australia, which previously found that merely requiring people at law firms to go through the self-assessment process was a worthwhile exercise, and

said that 2/3 of participating firms in the BC pilot project agreed that the content of the self-assessment was relevant to their practice and that the self-assessment was a useful project to undertake. 68% of firms took less than two hours to complete the self-assessment and 90% of firms took less than five hours. Approximately 85% of participating firms reported they did not find the self-assessment process onerous to complete.

The Task Force put forward the following seven recommendations for Bencher consideration and approval:

Recommendation 1: The Law Society commits to the profession-wide implementation of the self-assessment process.

Recommendation 2: The purpose of the self-assessment process will remain educational in nature, and information provided to the Law Society as part of the Self-Assessment Report will not be used as evidence in, or to inform the outcome of, a disciplinary action or proceeding.

Recommendation 3: Unless exempted from the requirement to self-assess under Rule 2-12.1 (2), all firms will be required to complete and submit a Self-Assessment Report to the Law Society once every three years. New firms will be required to submit their self-assessment within one year of their registration date. Firms may also be required to complete a self-assessment outside of the regular reporting period if the Executive Director considers it is in the public interest to do so.

Recommendation 4: The assessment cycle will operate on a rolling basis, in which one third of all firms that are required to self-assess under the Law Society Rules submit a Self-Assessment Report to the Law Society in each year of the three year assessment period.

Recommendation 5: The Law Society will commit to the completion of two assessment cycles of three years each in order to collect sufficient data to evaluate the impacts of the self-assessment over time. Mechanisms will be developed to ensure the continuous improvement of the self-assessment process throughout this period, including reports to the Benchers at the conclusion of each assessment cycle and ongoing opportunities for feedback from the membership.

Recommendation 6: The Self-Assessment Report will undergo several modifications to improve its format, functionality and content, including revising the rating scale, adding a goal setting component, rebuilding the Self-Assessment Report as an internally hosted web-based application and requiring firms to review the material contained in the Considerations and Resources sections of the Self-Assessment Report.

Recommendation 7: The Law Society will not develop prescribed policies and procedures, but may develop sample policies and procedures as part of the expanded set of practice resources that will be made available to all firms.

Mr. McKoen put forward a motion that the Benchers approve all seven recommendations from the Task Force that were contained in the report, which was seconded. The motion was carried unanimously.

17. Amendments to Rule 7.1-3 and Commentary of the BC Code, including the removal of potentially stigmatizing language

Ms. Cheema spoke to the item and reminded Benchers that it was on the agenda for discussion purposes only. She indicated she hoped to communicate with the government and apprise them of the changes to the rule and commentary before the issue comes before Benchers for decision at the December 6 meeting.

Ms. Cheema reminded Benchers the issue was first considered in November 2018, where Benchers opted to send the matter back to the Ethics Committee to consider changes to Rule 7.1-3. The Committee considered many iterations and the resolution for Bencher consideration is at page 157 of the materials (also reproduced below):

BE IT RESOLVED that:

The text of rule 7.1-3 of the BC Code and the text of the rule's associated Commentary be amended to reflect the changes indicated in the red-lined version of the rule and Commentary presented below.

The changes proposed are intended to remove stigmatizing language in (d) "the mental instability of a lawyer of such a nature that the lawyer's clients are likely to be materially prejudiced", a change that was originally proposed by the Mental Health Task Force. She said most of the discussion centred around Commentary 4, and the idea that it is not sufficient to have a lawyer counsellor encumbered in a particular way. Ms. Cheema said it was in that context that the Committee agreed to the proposed wording in the materials under Commentary 4.

Benchers had a robust discussion about balancing lawyer wellness and removing stigma with also ensuring the public are protected and that an indication a future crime might be committed is dealt with appropriately. Overall, the Benchers' view was that the counselling interaction only occurs because a person has sought out counselling and is trying to get help, and that maintaining a direct line of communication between the lawyer counsellor and the Law Society may create barriers to people seeking help. It was recognized that there is still the ability for lawyer counsellors to disclose information in certain circumstances, if appropriate.

Ms. Cheema said the aim of the Committee was to create a framework, not to be prescriptive about how each individual relationship with a lawyer counsellor would work.

18. Indigenous intercultural competence education for BC Lawyers

Mr. Lawton, Co-chair of the Truth and Reconciliation Advisory Committee, began by introducing and speaking to the Joint Recommendation Report of the Truth and Reconciliation Advisory Committee and the Lawyer Education Advisory Committee. He gave a detailed account of the importance of this work and the path to reconciliation, reminding Benchers it can be a long and arduous process but a worthwhile one, in which education plays an important role.

Mr. Lawton said the two Committees worked together with respect to developing ideas, plans, approaches and recommendations. The proposal is to create an online course with modules, and require every lawyer to take the course over a two-year period. By requiring all lawyers to take the course, everyone will have a shared foundation and understanding. In his view, competent lawyers need to have a sound educational base with respect to all matters contained in the calls to action.

In terms of the course content, Mr. Lawton referred to the list of topics it is contemplated the course might embody. The Law Society would produce the course and ensure it is made available online for free to all BC lawyers. In his view, the course should be embraced by lawyers in BC.

Regarding the matter of whether the course should be optional or mandatory, Mr. Lawton reflected on the wording of Call to Action 27 and the use of the word “ensure”, pointing out that this did not favour an “optional” interpretation.

The two recommendations presented to the Benchers for discussion and decision are below:

Recommendation 1: The members of the Truth and Reconciliation Advisory Committee and the Lawyer Education Advisory Committee unanimously recommend that the Benchers endorse the Law Society developing an online Course comprising a series of modules that will cover the Topics identified in this report, and will be accessible to all BC lawyers at no cost.

Recommendation 2: All members of the Truth and Reconciliation Advisory Committee and the majority of the Lawyer Education Advisory Committee recommend Option 1 to the Benchers: that completion of the Course will be mandatory for all practising lawyers in BC.

Mr. Welsh, member of the Lawyer Education Advisory Committee, then spoke about the joint report presented on behalf of the two Committees. Mr. Welsh said, in the view of the majority of the Committee, optional education does not answer what the Law Society has been asked to do –

to ensure that all lawyers have a baseline of understanding. Optional education does not meet the mandate to ensure a baseline of intercultural competence for all members. Mr. Welsh also commented that he did not think that incentives were the answer either. In his view, it was not an onerous requirement that that lawyers would be required to take six hours of training over a two-year period. He said it is important to have this training be a stand-alone requirement to be a competent lawyer in BC at this time in our country's history.

Mr. McDonald, Co-chair of the Truth and Reconciliation Advisory Committee, spoke in favour of the recommendations contained in the joint report. Mr. McDonald provided an overview of the Law Society's steps towards reconciliation over the past few years. He referred to the theme "nothing about us, without us" and the internal training amongst staff and the Benchers that has taken place in recent years. In his view, it was in the public interest to make the training mandatory, as the training would involve educating people about laws and history, not people's views or opinions. The training would be about the founding peoples of Canada, and he emphasized the importance of building a knowledge base with that mindset and that approach being essential to addressing reconciliation and ensuring the public interest is met. In his view, helping lawyers understand the need for the training is a communications issue and not a question of whether or not the training should be mandatory.

Ms. Harry, a member of the Truth and Reconciliation Advisory Committee, spoke about her personal experience as an Indigenous lawyer in BC and the challenges she has faced because of a lack of awareness. In her view, it is about time that Indigenous peoples' values are recognized and that mandatory intercultural competence training is implemented. She pointed to the many existing mandatory requirements in the Law Society Rules and reiterated the view that "to ensure" does not mean optional or incentivize.

The Benchers discussed the merits and potential issues associated with approving a mandatory intercultural competence course. Some Benchers commented that a customized course would be more useful for everyone, that better communications about the training requirement and course content will assist with implementation, and that more information about the course content would be useful to assist with making a decision on the recommendations.

Other Benchers strongly supported the position outlined in the joint report and commented that some of the issues raised could be addressed in the course content and design, the course would provide baseline knowledge and information about the history of Indigenous peoples in Canada and residential schools that everyone should know, and delaying implementation of such a program is not in the best interests of the public. In particular, providing the course online, for no cost and only requiring six hours of training over a two-year period was seen as very reasonable, and at this historic time in Canada's history, approving a mandatory intercultural competence course would recognize the importance of these issues.

Mr. Wilson reviewed his minority report and suggested that the only real issue in his view is the question of whether intercultural competence training should be mandatory or optional. He referred to Call to Action 27, which says “to ensure lawyers receive appropriate training” and said he did not think this language required mandatory training. Mr. Wilson observed that many students already receive training in law school on Indigenous intercultural competence and that lawyers whose practise involves First Nations should take the course. However, he maintained there may be some lawyers for whom the course is not as relevant. His view was that lawyers could be incentivized to take the training voluntarily and suggested law firms could require it as a condition of employment. In his opinion, there would be greater buy-in from lawyers if the course was voluntary.

UPDATES

19. Financial Report – September YTD 2019

Ms. McPhee provided a summary of the quarterly financial report to the end of September 2019, stating that the General Fund operations resulted in a positive variance to budget due to additional practice fees, PLTC revenue and the receipt of D&O insurance recoveries for legal fees. Revenue to date was \$22.0 million, which was \$1.6 million (8%) over budget, and operating expenses to date were \$18.3 million, \$1.9 million (9%) below budget.

Ms. McPhee then provided a forecast, stating that she expects the Law Society will be ahead of budget in key revenue areas, and total revenue is projected to be ahead of budget by \$1.5 million (5.5%) and expenses are projected to be lower than budget by \$1.3 million (5%), with a total positive variance of \$2.8 million. As 2019 budget was based on a deficit of \$1.2 million, the 2019 forecast is a surplus of \$1.6 million.

At September 30, 2019, TAF revenue was \$2.7 million, \$300,000 (10%) below the budget, most likely due to a decrease in real estate unit sales. Trust assurance program costs are expected to be close to budget by year end.

Year to date LIF assessment revenues are \$12.2 million, slightly ahead of budget. LIF operating expenses are \$5.0 million compared to a budget of \$6.4 million, with savings primarily related to staff vacancies, and a reduced requirement for external counsel.

The market value of the LIF long term investment portfolio is \$186.7 million at September 30, 2019. The LIF long term investment portfolio return for the first 9 months of the year was 11.55%, compared to the benchmark return of 10.28%, which is significantly higher than the budgeted returns of 5% for the year.

20. 2018 National Discipline Standards Implementation Report

Ms. Dookie provided an update on the Law Society's compliance with the National Discipline Standards for the year 2018. She noted that none of the Canadian law societies met all of the standards in 2018, but that overall, law societies are making progress.

Compared to other law societies, Ms. Dookie said the Law Society of BC's performance has exceeded the national averages for the last three years. There were some issues in 2018 with complying with Standard 7 (90% of hearings to be commenced within 12 months of the citation being authorized), due to staffing issues and an increase in the number of citations over the past couple of years. However, Ms. Dookie indicated she thinks the Law Society will perform better on this standard in 2019. She said a lot of work is being done to clear the backlog on files and to keep them moving. Early in 2020, once the statistics for 2019 are available, Ms. Dookie will provide another update.

21. Report on Outstanding Hearing & Review Decisions

Mr. Ferris provided an update on outstanding hearing and review decisions. He encouraged Benchers to keep up efforts to get decisions out on time and follow up with their fellow panel members to ensure reports are completed in timely fashion.

FOR INFORMATION

22. Three Month Bencher Calendar – November to January 2020

There was no discussion on this item.

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

KH
2019-10-25