



# Minutes

## Benchers

Date: Friday, December 06, 2019

Present:

Nancy G. Merrill, QC, President	Claire Marshall
Craig Ferris, QC, 1 <sup>st</sup> Vice-President	Geoffrey McDonald
Dean P.J. Lawton, QC, 2 <sup>nd</sup> 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	Carolynn Ryan
Jeevyn Dhaliwal	Karen Snowshoe
Martin Finch, QC	Michelle D. Stanford, QC
Brook Greenberg	Sarah Westwood
Lisa Hamilton, QC	Michael Welsh, QC
Roland Krueger, CD	Tony Wilson, QC
Jamie Maclaren, QC	Heidi Zetzsche

Unable to Attend: Guangbin Yan

Staff Present:

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

Guests:	Kenneth Armstrong	Vice-President, Canadian Bar Association, BC Branch
	Dom Bautista	Executive Director, Law Courts Center
	Dr. Susan Breau	Dean of Law, University of Victoria
	Trudi L. Brown, QC	Partner, Brown Henderson Melbye
	Jennifer Brun	Vice President, Canadian Bar Association, BC Branch
	Dr. Catherine Dauvergne	Dean of Law, University of British Columbia
	Lisa Feinberg	2020 Bencher
	Derek LaCroix, QC	Executive Director, Lawyers Assistance Program
	Julie K. Lamb, QC	2020 Bencher
	Michael McDonald	Member of the Truth and Reconciliation Advisory Committee
	Mark Meredith	Treasurer, Mediate BC
	Prof. Bradford Morse	Dean of Law, Thompson Rivers University
	Caroline Nevin	CEO, Courthouse Libraries BC
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
	Thomas L. Spraggs	2020 Bencher
	H. William Veenstra	Member of the National CBA Board of Directors
	Ardith Walkem	Member of the Truth and Reconciliation Advisory Committee
	Chelsea D. Wilson	2020 Bencher

## CONSENT AGENDA

### 1. Minutes of October 25, 2019, meeting (regular session)

The minutes of the meeting held on October 25, 2019 were approved as circulated.

### 2. Minutes of October 25, 2019 meeting (*in camera* session)

The minutes of the *In Camera* meeting held on October 25, 2019 were approved as circulated.

### 3. Rules 3-99 and 3-107 – Client Identification and Verification

At the request of Mr. Wilson, this item was removed from the consent agenda for discussion. Following feedback from members of the profession, Mr. Wilson inquired about the support the Law Society is providing with respect to the implementation of the new rules. Mr. Avison responded that there has been quite a bit of activity by the Law Society and the Federation of Law Societies of Canada in an effort to help lawyers understand the new rules. While there was still some more work to be done before January 1, 2020 and beyond to assist with the implementation of the new rules, he assured Benchers of the considerable activity taking place and planned for the future.

Benchers discussed the risk of being too prescriptive with the rules and the intention for lawyers to think about how the rules apply to their own practice. Staff indicated the Law Society would continue to keep in mind concerns raised by members of the profession and continue efforts to ensure guidance material is readily available.

A motion to approve the following resolution was then moved and seconded, and passed unanimously.

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

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

- (3) In this division, the responsibilities of a lawyer may be fulfilled by the lawyer's firm, including members or employees of the firm wherever located.

#### ***2. In Rule 3-107, by rescinding subrule (3) and substituting the following:***

- (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 [*Requirement to verify client identity*],

(d) Rule 3-104 [*Use of an agent for client verification*], or  
(e) Rule 3-110 [*Monitoring*].

#### **4. Rule 5-24.1 – Preparation and Delivery of Record**

The following resolution was passed unanimously and by consent.

*BE IT RESOLVED to amend the Law Society Rules in Rule 5-24.1 (1) by rescinding paragraph (a) and substituting the following:*

(a) 6 copies to the President, and.

#### **5. Rule 3-3 et al. – Disclosure to Law Enforcement**

The following resolution was passed unanimously and by consent.

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

**1. *In Rule 2-53, by rescinding subrule (4) and substituting the following:***

(4) With the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence.

**2. *In Rule 3-3, by rescinding subrule (5) and substituting the following:***

(5) Despite subrule (1), with the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence.

**3. *In Rule 3-23, by rescinding subrule (3) and substituting the following:***

(3) Despite subrule (1), with the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence.

**4. *In Rule 3-46, by rescinding subrule (5)(c) and substituting the following:***

(5) In the case of a claim under Part B of the policy of professional liability insurance, despite subrule (2), the Executive Director may do any of the following:

(c) with the consent of the Discipline Committee, deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence.

5. ***In Rule 4-8, by rescinding subrule (5) and substituting the following:***

- (5) Despite subrule (1), with the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence.

**6. Rule Amendments to Implement *Legal Profession Act* Amendments Concerning Insurance and Indemnity Provisions**

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. ***By rescinding Rule 2-16 (3) (a) (i) and substituting the following:***
  - (i) is reasonably comparable in coverage and limits to the indemnity coverage required of lawyers under Rule 3-39 (1) [*Compulsory professional liability indemnification*], and.
2. ***In Rules 2-16 (6) and 3-39 (3), by striking out “professional liability insurance” and substituting “professional liability indemnification”.***
3. ***In Rules 2-29 (2) (e) (i), 2-32 (b) and 3-43 (4) (b), by striking out “to that required of lawyers” and substituting “to the indemnity coverage required of lawyers”.***
4. ***By striking out “liability insurance” and substituting “liability indemnity coverage” in the following provisions:***
  - (a) *Rule 2-40 (2) (d);*
  - (b) *Rule 2-47 (1) (a);*
  - (c) *Rule 2-49 (1) (d);*
  - (d) *Rule 3-39 (1);*
  - (e) *Rule 3-41 (2);*
  - (f) *Rule 3-43 (1), (4) and (5);*
  - (g) *Rule 3-79 (6).*
5. ***In Rules 2-47 (1) (a) (i), 3-39 (1) and 3-39.1 (1), by striking out “Lawyers Insurance Fund” and substituting “Lawyers Indemnity Fund”.***
6. ***By rescinding Rule 2-47 (2) and substituting the following:***

- (2) If a non-lawyer member of an MDP agrees in writing, in a form approved by the Executive Committee, to engage in activities on behalf of the MDP for an average of 25 hours or less per week, the applicable indemnity base assessment is the part-time indemnity fee specified in Schedule 1.
7. ***In Rules 2-77 (1) (b), 2-79 (1) (d) and 2-82 (1) (d), by striking out “professional liability insurance application” and substituting “professional liability indemnity application”.***
8. ***By striking out “insurance fee” and substituting “indemnity fee” in the following provisions:***
- (a) Rule 2-47 (1) (a) (i);***
  - (b) Rule 2-77 (1) (c) (iii),***
  - (c) Rule 2-79 (1) (f) (iii);***
  - (d) Rule 2-82 (1) (e) (iii);***
  - (e) Rule 2-85 (4) (b);***
  - (f) Rule 2-105 (1) and (2);***
  - (g) Rule 2-115 (1) (b);***
  - (h) Rule 2-116 (1);***
  - (i) Rule 3-39 (1);***
  - (j) Rule 3-40 (1), (2), (3), (4) and (6);***
  - (k) Rule 3-41 (1);***
  - (l) Rule 3-42 (1) and (2);***
  - (m) Rule 3-43 (1), (4) and (5);***
  - (n) Rule 3-79 (6).***
9. ***In Rule 2-116 (1), by striking out “a portion of the fee” and substituting “a portion of the indemnity fee”.***
10. ***By rescinding Rule 2-117 (1) (d) and substituting the following:***
- (d) a deductible amount paid on behalf of the lawyer under the Society’s indemnity policy;***

11. ***In Rules 2-117 (1) (e) and 3-39.1 (1) and (2), by striking “trust protection insurance” and substituting “trust protection indemnity coverage”.***
12. ***By rescinding Rule 3-39 (2) and substituting the following:***
- (2) A lawyer is bound by and must comply with the terms and conditions of the professional liability indemnity policy maintained under subrule (1).
13. ***By rescinding Rule 3-44 (1) and (2) and substituting the following:***
- (5) On demand, a lawyer must pay in full to the Society any of the following amounts paid under the Society’s indemnification program on behalf of the lawyer:
- a deductible amount;
  - any other amount that the lawyer is required to repay or reimburse the indemnity fund under the professional liability indemnity policy.
- (6) If indemnity has been paid under the Society’s indemnification program, the lawyer on whose behalf it is paid must
- pay the indemnity surcharge specified in Schedule 1 for each of the next 5 years in which the lawyer is a member of the Society and not exempt from the indemnity fee, and
  - if the payment was made under Part B of the professional liability indemnity policy, reimburse the Society in full on demand, for all amounts paid under Part B.
14. ***By rescinding Rule 3-45 and substituting the following:***
- (5) A lawyer may apply for indemnity coverage by delivering to the Executive Director
- (a) an application for indemnity coverage, and
  - (b) the prorated indemnity fee as specified in Schedule 2.
- (2) A lawyer who is indemnified for part-time practice may apply for coverage for full-time practice by delivering to the Executive Director
- (a) an application for full-time indemnity coverage, and
  - (b) the difference between the prorated full-time indemnity fee specified in Schedule 2 and any payment made for part-time indemnity coverage for the current year.
- (3) The Executive Director must not grant the indemnity coverage applied for under subrule (1) or (2) unless satisfied that the lawyer is not prohibited from practising law under Rule 2-89 [*Returning to practice after an absence*].

15. ***In Rule 3-46 (1) and (5), by striking out “the policy of professional liability insurance” and substituting “the professional liability indemnity policy”.***
16. ***In Schedule 1***
- (a) ***by striking out “Liability insurance” in item 2 and substituting “Indemnity fee”, and***
- (b) ***by striking out “Liability insurance surcharge” in item 3 and substituting “Indemnity surcharge”.***
17. ***In Schedule 2***
- (a) ***by striking out “Liability insurance assessment” and substituting “Indemnity fee assessment”,***
- (b) ***by striking out “Full-time insurance” and substituting “Full-time indemnification”, and***
- (c) ***by striking out “Part-time insurance” and substituting “Part-time indemnification”.***

By email dated December 20, 2019, in accordance with section 6 of the *Legal Profession Act*, more than 75% of the Benchers approved a correction to the rules that were approved at the December 6, 2019 meeting. The replacement paragraphs approved on December 20, 2019 are below:

### **RESOLUTION ON THE INDEMNITY PROGRAM**

13. ***By rescinding Rule 3-44 (1) and (2) and substituting the following:***
- (1) On demand, a lawyer must pay in full to the Society any of the following amounts paid under the Society’s indemnification program on behalf of the lawyer:
- (a) a deductible amount;
- (b) any other amount that the lawyer is required to repay or reimburse the indemnity fund under the professional liability indemnity policy.
- (2) If indemnity has been paid under the Society’s indemnification program, the lawyer on whose behalf it is paid must
- (a) pay the indemnity surcharge specified in Schedule 1 for each of the next 5 years in which the lawyer is a member of the Society and not exempt from the indemnity fee, and
- (b) if the payment was made under trust protection indemnity coverage, reimburse the Society in full on demand, for all amounts paid.



**15. In Rule 3-46**

- (a) *in subrule (1), by striking out “the policy of professional liability and trust protection insurance” and substituting “the professional liability indemnity policy and trust protection indemnity coverage”; and*
- (b) *in subrule (5), by striking out “trust protection insurance” and substituting “trust protection indemnity coverage”.*

**RESOLUTION ON THE INDEMNITY PROGRAM****4. In Rule 3-46, by rescinding subrule (5)(c) and substituting the following:**

- (5) In the case of a claim under trust protection insurance, despite subrule (2), the Executive Director may do any of the following:
  - (c) with the consent of the Discipline Committee, deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence..

**7. BC Code Amendments Required to Follow Legislation Changes Affecting the Lawyers Insurance Fund (LIF)**

At the request of Ms. Cheema and Mr. Lawton, this item was removed from the consent agenda for the purposes of proposing a friendly amendment to the proposed changes. Ms. Cheema pointed to page 86 of the materials where it states “or other insurer” and suggested the removal of “other” wherever it is used to modify “insurer”.

A motion to approve the following resolution, including Ms. Cheema’s friendly amendment, was moved and seconded, and passed unanimously.

*BE IT RESOLVED* that:

The text of Chapter 7 of the BC Code be amended to reflect the changes indicated in the red-lined version of the rules and Commentary presented to the Benchers and that these changes be effective on January 1, 2020, simultaneously with the ‘coming into force’ date of the related amendment to the *Legal Profession Act*.

**8. Equity, Diversity and Inclusion Advisory Committee Name and Terms of Reference**

The updated Terms of Reference was passed unanimously and by consent.

## 9. Approval of Revised Bencher, Committee Member, Hearing Panellist and Other Volunteer Expense Reimbursement Policies

The following resolution was passed unanimously and by consent.

### *BE IT RESOLVED THAT:*

The Bencher Expense Reimbursement Policy and the Committee Member, Hearing Panellist and Other Volunteer Expense Reimbursement Policy be modified to exclude reimbursement of alcohol for individual Bencher, committee member, hearing panellist and other volunteer expense reimbursements.

## 10.2020 Committees, Task Forces and Working Groups

This item was removed from the consent agenda for discussion.

Some Benchers requested clarification about the scope and role of the proposed new and merged Committees. Mr. Ferris commented that the intention is for the Lawyer Development Task Force to look at lawyer development more comprehensively and how all the different pieces fit together. With respect to Practice Standards, Mr. Ferris acknowledged it is important to make it clear that the Practice Standards process is different from discipline, but said he thinks it is important to take a look at whether the Committee is doing what it needs to be doing.

1. **Access to Justice Advisory Committee:** The mandate of the Legal Aid Advisory Committee is a subset of the broader mandate of the Access to Legal Services Advisory Committee. While the creation of the Legal Aid Task Force and subsequent Legal Aid Advisory Committee were appropriate responses to the continued inaction of the government with respect to legal aid, the developments in legal aid over the last year have signaled that the concerted action by the Law Society and a number of other groups has had some impact. While having an advisory committee focused attention on the issue of legal aid in BC, going forward it was Mr. Ferris' view that we need only one advisory committee to look at the range of issues connected with the need for greater access to legal services. He proposed to the Benchers that the Access to Legal Services Advisory Committee and the Legal Aid Advisory Committee be consolidated into one advisory committee, to be renamed the Access to Justice Advisory Committee.
2. **Lawyer Development Task Force:** The Lawyer Education Advisory Committee was created in December 2007 as the successor to the Lawyer Education Task Force, which had been charged with considering continuing professional development for the profession. The Committee subsequently reviewed our professional legal training course and most recently has been charged with reviewing the Law Society's admission program. The

Lawyer Education Advisory Committee is unique in that we do not have standing advisory committees with respect to other Law Society program areas, such as professional conduct or trust assurance. The Lawyer Education Advisory Committee is also different from our other advisory committees, which tend to be more focused on external policy issues, such as access to legal services, lawyer independence, and truth and reconciliation. In Mr. Ferris' view, the better approach to issues arising in respect of program areas such as lawyer education is the creation of issue specific task forces. As such, he recommended that the Lawyer Education Advisory Committee be converted into the Lawyer Development Task Force. The Task Force would have a mandate to consider a "cradle to grave" review of how we are developing and maintaining a well-educated and qualified bar to serve the public of British Columbia. Its mandate would be to consider the life cycle of a lawyer as a whole, as opposed to looking at programs piecemeal without consideration of how those programs interact. The mandate would include completing the current admission program review by a fixed date, reviewing our pre-call education program in light of developments in other Canadian jurisdictions, our continuing professional development program, whether we should have specializations to allow for more directed continuing legal training and the issue of re-certification.

3. **The Practice Standards Committee:** This Committee has been in place since 1999 with responsibility for fulfilling the Benchers authority to set standards of practice for lawyers, establish and maintain a program to assist lawyers in handling or avoiding personal, emotional, medical or substance abuse problems, and establish and maintain a program to assist lawyers on issues arising from the practice of law. The work of the Practice Standards Committee is related to the work of the Discipline Committee, in that both committees may consider complaints about lawyers and take action with respect to those complaints. In addition, the Act permits the Benchers to make Rules allowing the Discipline Committee to consider the work of the Practice Standards Committee with respect to:
- (i) the findings of an investigation into a lawyer's competence to practise law,
  - (ii) any remedial program undertaken or recommended,
  - (iii) any order that imposes conditions or limitations on the practice of a lawyer, and
  - (iv) any failure to comply with an order that imposes conditions or limitations on the practice of a lawyer.

As such, there is a close connection between the responsibilities of both committees and which may provide an opportunity to achieve some efficiencies in the work of both committees and the related Law Society operations. This may be particularly so in light of the development of the diversion program which is currently being contemplated.

However, any significant changes to the Practice Standards Committee would require an amendment to the Rules but he intends to ensure that the Benchers consider and make a determination on this issue in 2020.

It was agreed the item was For Information purposes only and did not require a formal resolution.

## **REPORTS**

### **11. President's Report**

Ms. Merrill congratulated the Benchers that were elected to the 2020 Executive Committee and thanked them for putting their names forward. She then provided a summary of the decisions at the November 20 Executive Committee meeting; including appointments to the Law Foundation of BC, the anti-money laundering amendments coming into force on January 1, 2020 and other matters. Finally, Ms. Merrill indicated she had spoken with Derek LaCroix, QC Executive Director of the Lawyers Assistance Program, regarding the possibility of holding a course for Benchers in 2020 on peer counselling and that this would likely take place early in 2020.

### **12. CEO's Report**

Mr. Avison invited Mr. Armstrong, President of the Canadian Bar Association of British Columbia, to speak about Ms. Merrill. Mr. Armstrong spoke about her year of service to the legal profession as President of the Law Society and presented Ms. Merrill with a gift.

Mr. Avison then welcomed the newly elected Benchers and indicated an orientation session would be held in January 2020, followed by a tour of the Law Society building.

Work on the Cullen Commission is increasing and the Law Society is preparing for the commencement of hearings. Mr. Avison indicated some significant pieces of work have been completed to date in relation to document retention, briefings had been provided with respect to core areas of the Law Society and advice was being provided to the profession regarding related rule changes. At the national level, Mr. Avison referred to the anti-money laundering working group consisting of representatives from the Law Society, Federation of Law Societies of Canada, and government representatives. As part of that process, Law Society staff provided an overview of the trust audit process and investigations in British Columbia, which was well received. Indications are that the Government of Canada would be working closely with Canadian law societies on an ongoing basis.

In terms of engagement with the provincial government, Mr. Avison spoke about positive and productive meetings that took place with government representatives to discuss the work being considered by the Ethics Committee and the Mental Health Task Force.

Mr. Avison referred to the federal throne speech from the day before, which mentioned a number of significant items; including, introducing legislation to implement the Declaration on the Rights of Indigenous Peoples at a federal level.

Mr. Avison then spoke further about the implementation of the anti-money laundering rules across Canada and guidance material that was available for members of the profession.

Finally, Mr. Avison spoke about Professor Brad Morse, Dean of Law at Thompson Rivers University and thanked Mr. Morse for his exceptional work in establishing strong foundations for not only the law school at Thompson Rivers University, but for the institution more broadly and for the community of law schools within the province of British Columbia. Mr. Avison recognized Mr. Morse's many contributions and presented him with a gift from the Law Society.

## **UPDATES**

### **13. Licensed Paralegal Task Force Update**

Ms. Merrill introduced Ms. Brown, Chair of the Licensed Paralegal Task Force.

Ms. Brown said there were two stages to the work of the Task Force; first, identify unmet needs that lawyers are not meeting in our society, which may have a much broader focus than family law.

The Task Force has designed a survey, which has been sent out to between 20 and 30 organizations to ask them where they believe the unmet needs are. 15 responses had been received so far and the Task Force will meet again in January 2020 to the responses. The intention is then to go back to the profession to make sure there is general agreement about where the unmet needs lie. The issue would then be brought back to Benchers for consideration, before the Task Force moves on to consider the second stage.

The second stage is to identify what training would be provided to licensed paralegals and in what areas of law, provided the answer to the first stage leads to exploring the second question.

Ms. Brown indicated the Task Force is approximately half-way through stage one. Ms. Merrill thanked Ms. Brown for attending the Bencher meeting and for her work to date chairing the Task Force.

#### **14. Enterprise Risk Management Plan - 2019 Update**

Mr. Ferris introduced the item and indicated the plan was developed by staff and reviewed by the Finance & Audit Committee before being brought to Benchers. The plan identifies risks to the Law Society, how significant the risks are and what strategies exist to mitigate those risks. He referred to pages 127-128 of the materials, which provide an update on the top 10 risks and any adjustments that have been made since they were last reviewed. In particular, Mr. Ferris spoke about three main risks. He said Risk 10: Emergence of new technologies challenging the ability to regulate legal services, had been moved out of the top 10, and the risk rating for Risk 5: Failure to sanction, or deal with, a lawyer in an appropriate way, had been upgraded as it continues to be an important issue. Finally, Risk 8: Admission decisions, including those made by the National Committee on Accreditation, are not reflective of the character, fitness and competencies of a prospective lawyer, which moves this risk into the top 10.

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

Mr. Ferris thanked everyone for their work throughout the year on hearing panels. He also reminded panel members it is their joint responsibility to ensure time requirements are met.

### **DECISION**

#### **16. Report from the Governance Committee**

Mr. McKoen, Chair of the Governance Committee, spoke to the report and the recommendations on page 147 of the materials. First, he discussed the recommendation that the Law Society approach organizations whose legislation or bylaws require that one or more appointees to the board be Benchers and request that they amend their legislation or bylaws to eliminate the requirement that the appointment be a Bencher, but instead give the Law Society the power of appointment in its discretion. Mr. McKoen said this would allow the Law Society to better serve organizations by identifying people in the community that could sit on these boards, which would give more flexibility to the Law Society in the appointments process.

Secondly, Mr. McKoen spoke about the Committee's recommendation that Benchers launch a new semi-annual Bencher evaluation process that would commence in 2020 with statements set out in Appendix A and B of the report for each of the first and second semi-annual evaluations respectively. The rationale behind the recommendation is that conducting the evaluation once a year only allows Benchers to provide feedback at one point in time and may reflect issues that are top of mind at that point in time. For this reason, the Committee considered the existing questions asked and divided them into two lists; with half the questions to be asked in the first half of the year and half of the questions to be asked in the second half of the year.

Finally, the Committee recommended to the Benchers that a new semi-annual Committee evaluation process commence in 2020 with the statements set out in Appendix C of the report.

A Bencher queried the history of the Bencher appointment requirement and the possible need for Bencher oversight on a board. Mr. McKoen further discussed the problem the Committee was trying to address, that there is often an expectation that Benchers appointed to boards would be in a position to report back to the Bencher table, but that this is not the case because of the duties board members owe to the board.

A motion to accept the Committee's recommendations contained in the report was moved and seconded, and the motion was carried (with one abstention).

### **17. Recommendation to Adopt Changes to the Statement of Investment Policies and Procedures (SIPP)**

Mr. Ferris introduced the item and spoke about the recommendation of the Finance & Audit Committee for the Benchers to adopt the following resolution:

*BE IT RESOLVED:*

To adopt the attached 'Statement of Investment Policies and Procedures' which replaces Appendix 1 - Investment Guidelines of the Bencher Governance Policies"

The recommendation is the result of a review of the Law Society Statement of Investment Policies and Procedures and the Lawyers Insurance Fund long term investment portfolio. The review consisted of examining the investment structure, the current manager performance and the asset mix. As the current asset mix was not expected to earn the required rate of return for the portfolio, the Committee recommended that the benchmark asset mix be set in accordance with the table on page 154 of the materials.

A Bencher queried whether the Law Society makes any efforts to inquire into the activities and endeavours the Law Society invests in, in so far as human rights. Another Bencher asked if there was any environmental component to the Law Society's investments.

Mr. Ferris indicated these questions could be sent back to the Finance & Audit Committee for consideration, and indicated that he did not see an issue with asking these questions of our managers if that is what the Bencher table would like.

Mr. Ferris then made a motion for the Benchers to approve the amendments to the Statement of Investment Policies and Procedures on page 156 of the materials. The motion was seconded, and was passed unanimously.

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

Ms. Cheema, Chair of the Ethics Committee, spoke to the item. She indicated the amendments had been adjourned to this meeting for decision for two reasons: (1) to allow for consultation with the provincial government, and (2) to respond to concerns raised at the last meeting about possible future crimes that may be committed and how these would be dealt with if the amendments were approved.

Ms. Cheema said she, along with Mr. Lawton and Mr. Avison, consulted with the government on the proposed changes and no further concerns were raised by the government.

Regarding the disclosure of a future crime by a lawyer seeking assistance, Ms. Cheema commented that the Committee spoke with Mr. LaCroix, QC, Executive Director of the Lawyers Assistance Program (LAP), about the process in this type of scenario. He advised that as soon as a lawyer client comes through the door, they have usually reached rock bottom and they come to LAP because they are prepared to turn their life around and need assistance in order to be able to do so. The context of the relationship is not one that is conducive to a situation where a lawyer client would be disclosing an intention to commit a future crime. When the lawyer counsellor relationship is underway, as soon as the lawyer counsellor is aware of a legal issue that may have arisen, the lawyer counsellor transfers the file to Mr. LaCroix. He would then interview the lawyer client in his capacity as a lawyer and not as a lawyer counsellor, and after he determines what the issue is, the lawyer client would be referred to appropriate counsel to help them resolve their issue. In the event the lawyer client refuses legal advice and responds to assistance in an adverse way, LAP's policy is to call the police. There are benefits to this approach as the police are best placed to take action at short notice if required.

Ms. Cheema said it is in many ways illusory to put in place a requirement that a lawyer counselor must notify the Law Society as it may or may not be effective, and practically speaking, the chances of success go down.

Ms. Cheema then made a motion that the proposal put forward on pages 201-202 of the materials be approved, which was seconded.

### ***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 to the Benchers.



A Benchers still expressed concerns about the removal of the sentence regarding disclosure if someone has or is going to participate in a criminal activity. While there were no concerns expressed about LAP procedures, there was a concern the risk to the public outweighed the benefit to the lawyer of removing this requirement. Some other Benchers were of the view that they are satisfied it is not a significant risk and the public interest includes assisting lawyers so that they may in turn assist the public. In any event, it was pointed out that there is the discretion to disclose in a situation where there is an imminent risk of harm or death and that this discretion still remains if the changes were to be approved.

The motion was carried, with two abstentions and one opposed.

### **19. Joint Recommendation Report of the Truth and Reconciliation Advisory Committee and the Lawyer Education Advisory Committee on Indigenous intercultural competence education for BC Lawyers**

Ms. Merrill began by asking people not to restate the discussion from the previous meeting and invited people to raise any new points. Mr. Lawton then spoke to the item, stating there was considerable discussion at the October 25, 2019 meeting and said it was time for lawyers in British Columbia to embark upon appropriate cultural competence training with respect to Call to Action 27. The two motions before the Benchers for decision were on page 240 of the materials and are restated 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 in 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. Lawton moved that the Benchers approve Recommendation 1, which was seconded. The motion was carried unanimously.

Mr. Lawton then made a motion that the Benchers approve Recommendation 2, which was also seconded. Discussion on the substance of Recommendation 2 then followed.

Mr. Wilson made a motion that the vote on whether or not to adopt Recommendation 2 be delayed until the Benchers meeting in December 2020, which in his view, would allow time for

the course to be developed and reviewed before the mandatory nature of the Course is voted on. The motion to delay the vote on Recommendation 2 was seconded by Mr. Riddell.

Mr. Riddell was concerned about voting on the mandatory nature of the course, or considering any exemptions, before the course has been developed. In his view, it makes sense for the Benchers to consider the complete package with the content, information about comparable programs or courses and exemptions at a later date once those matters have been developed. He agreed with the policy behind the program, but felt there were operational decisions that needed to be addressed first.

Many Benchers spoke against the motion to delay the vote on Recommendation 2. The view was advanced that it is the better approach to make a strong policy decision now and that now is the time to send the message that mandatory cultural competence training is timely and necessary, especially in light of the provincial government's steps to recognize the Declaration on the Rights of Indigenous Peoples. However, Benchers did recognize that there would need to be time allowed for appropriate consultation and feedback from indigenous members of the profession on the proposed course and how it could be improved before it is implemented.

The vote was called on the motion to delay voting on Recommendation 2. The motion failed, with two in favour, one abstention and the remaining Benchers opposed.

Mr. Greenberg then introduced a motion to amend Recommendation 2 by inserting "or an equivalent course that is approved or accredited by the Law Society of British Columbia" after "that completion of the course" to provide for equivalent courses to be offered. In his view, if the Law Society course is the only one able to be taken to meet the mandatory requirement, the Law Society runs the risk of crowding out innovation and development of materials by others who would be appropriate to provide a course of this nature. For example, some people may prefer an in-person course to an online course and if the Law Society is only offering one type of course this may be unnecessarily limiting.

Some Benchers expressed support for the amendment proposed by Mr. Greenberg, stating that the focus should be on making legal education mandatory and not on the specific course. Other Benchers were opposed to the amendment on the basis that it is an important aspect of the policy to roll out the training to the profession as a whole and have confidence that all members of the profession will be exposed to the same material. Benchers debated whether the original motion would impair the future development of other courses and whether this was a real risk. Some Benchers were of the view that it was safe and appropriate to proceed with the original motion in terms of still providing for other courses to be developed in the future.

Ms. Merrill then called the question on the amendment to the motion as proposed by Mr. Greenberg. With 9 in favour and 20 opposed, the motion failed.

Mr. Maclaren expressed that it had been his intention to propose an amendment with respect to timing, but instead wished to encourage a process that allows substantial room for feedback and consultation with indigenous members of the profession, and all members, and a process that also develops the course quickly while still ensuring the quality of the course remains a priority.

Mr. Lawton then repeated the original motion to adopt Recommendation 2. The motion carried with 2 opposed, 2 abstentions and 25 in favour.

## **FOR INFORMATION**

### **20. Year-End Advisory Committee Reports:**

There was no discussion on the Year-End Advisory Committee Reports.

- **Equity, Diversity and Inclusion Advisory Committee**
- **Legal Aid Advisory Committee**
- **Access to Legal Services Advisory Committee**
- **Lawyer Education Advisory Committee**
- **Rule of Law and Lawyer Independence Advisory Committee**
- **Truth and Reconciliation Advisory Committee**
- **Mental Health Task Force**

### **21. Three Month Bencher Calendar – December to February 2020**

There was no discussion on this item.

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

### **Final remarks**

Mr. Avison paid tribute to outgoing President Merrill and thanked her for her passionate and significant contribution to the organization and many of the issues dealt with throughout the course of 2019. On behalf of Law Society staff, Mr. Avison presented Ms. Merrill with a gift as a

token of appreciation for her many efforts and achievements during her time as President. He said the energy and leadership she brought to many issues was instrumental in bringing about changes.

Ms. Cromarty presented Ms. Merrill with a gift from the Kootenay Bar Association.

Ms. Merrill thanked the Benchers for their hard work throughout 2019 and gave special thanks to Mr. Ferris, Mr. Lawton, Mr. Avison, and Mr. Whitcombe, as well as other Law Society staff who assisted her during her presidency.

Ms. Merrill then welcomed Mr. Ferris as President for 2020 and presented him with the President's pin.

KH  
2019-12-06