



# Minutes

## Benchers

Date: Friday, January 31, 2020

Present:

Craig Ferris, QC, President	Jamie Maclaren, QC
Dean P.J. Lawton, QC, 1 <sup>st</sup> Vice-President	Claire Marshall
Lisa Hamilton, QC, 2 <sup>nd</sup> Vice-President	Geoffrey McDonald
Jasmin Ahmad	Steven McKoen, QC
Paul Barnett	Christopher McPherson, QC
Jeff Campbell, QC	Jacqueline McQueen
Pinder K. Cheema, QC	Elizabeth J. Rowbotham
Jennifer Chow, QC	Mark Rushton
Barbara Cromarty	Karen Snowshoe
Jeevyn Dhaliwal, QC	Thomas L. Spraggs
Lisa Feinberg	Michelle D. Stanford, QC
Martin Finch, QC	Michael Welsh, QC
Brook Greenberg	Chelsea D. Wilson
Sasha Hobbs	Guangbin Yan
Julie K. Lamb, QC	Heidi Zetzsche
Dr. Jan Lindsay	

Unable to Attend: Not Applicable

Staff Present:

Don Avison, QC	Tara McPhail
Lance Cooke	Jeanette McPhee
Natasha Dookie	Eva Milz
Su Forbes, QC	Karen Mok
Andrea Hilland	Doug Munro
Kerryn Holt	Annie Rochette
Jeffrey Hoskins, QC	Lesley Small
Trevor Kaatz	Alan Treleven
Jason Kuzminski	Adam Whitcombe, QC
Michael Lucas, QC	Vinnie Yuen
Alison Luke	

Guests: Ian Aikenhead, QC	AMJ Law
The Honourable Chief Justice Robert Bauman	Chief Justice of British Columbia and Chief Justice of the Court of Appeal for the Yukon.
Dom Bautista	Executive Director, Law Courts Center
Mark Benton, QC	Executive Director, Legal Services Society
Jennifer Brun	Vice-President, Canadian Bar Association, BC Branch
Dr. Cristie Ford	Professor and Associate Dean, Research and the Legal Profession, University of British Columbia
Alexis Kazanowski	Assistant Dean, TRU Law
Sandra Kovacs	Kazlaw
Derek LaCroix, QC	Executive Director, Lawyers Assistance Program
Caroline Nevin	CEO, Courthouse Libraries BC
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
Jo-Anne Stark	Director of Advocacy, Canadian Bar Association, BC Branch
Carleen Thomas	Manager of Special Projects, Tsleil-Waututh Nation

## **OATH OF OFFICE**

### **1. Administer Oaths of Office**

The Honourable Chief Justice Robert J. Bauman administered oaths of office to President Craig Ferris, QC, First Vice-President Dean P.J. Lawton, QC and Second Vice-President Lisa Hamilton, QC, and all remaining Benchers, whose terms began on January 1, 2020. Later in the meeting President Ferris administered the oath of office to Ms. Hobbs, an appointed Bencher.

Chief Justice Bauman congratulated the Benchers and thanked them for their service. He spoke about a new generation of lawyers and community leaders coming through as Benchers, and the significant challenges faced by the legal profession. He said the essentials of lawyering are always constant and relevant, but the way lawyers must deliver these services is changing and lawyers need to recognize this and renew the Law Society's traditional role of proactive leadership. Sometimes this might have to be provocative leadership in the new reality faced by the profession and nothing assists more than new ideas from a fresh generation of leaders. Chief Justice Bauman asked Benchers to honour the past, but lead the profession into the future.

### **First Nations Acknowledgement**

President Ferris welcomed Carleen Thomas, a member of the Tsleil-Waututh Nation in North Vancouver, to the Bencher meeting. Ms. Thomas introduced herself to the Benchers and provided information about her family history. She thanked Benchers for the invitation to attend and welcomed them to the meeting.

### **2. President's welcome**

Mr. Ferris welcomed Benchers, staff and guests to the first Bencher meeting of 2020. In particular, he welcomed the six new Benchers: Lisa Feinberg, Julie Lamb, QC, Thomas Spraggs, Chelsea Wilson, Paul Barnett, Sasha Hobbs, and Dr. Jan Lindsay.

Mr. Ferris thanked Law Society staff for the warm welcome, assistance and orientation he received during his transition to the role of President for 2020. Mr. Ferris also acknowledged staff generally and said they are dedicated, hard-working and committed to the section 3 mandate of the Law Society. He thanked staff in advance for their hard work in 2020.

Mr. Ferris then welcomed Lisa Hamilton, QC, Second Vice-President, to the ladder and said he was very much looking forward to working more closely with First Vice-President Dean Lawton, QC, and Ms. Hamilton in 2020.

Finally, Mr. Ferris reminded Benchers of the oath of office they had just taken to act in the public interest, that they are answerable to the public only and the language of section 3 of the

*Legal Profession Act* provides “It is the object and duty of the Society to uphold and protect the public interest in the administration of justice by:

- (a) preserving and protecting the rights and freedoms of all persons,
- (b) ensuring the independence, integrity, honour and competence of lawyers,
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
- (d) regulating the practice of law, and
- (e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.”

Mr. Ferris asked Benchers to reflect on section 3, and what it includes and does not include, so that they can ensure they advance the Law Society’s mandate.

## **CONSENT AGENDA**

### **3. Minutes of December 6, 2019 meeting (regular session)**

The minutes of the meeting held on December 6, 2019 were approved as circulated.

### **4. Minutes of December 6, 2019 meeting (in camera session)**

The minutes of the *In Camera* meeting held on December 6, 2019 were approved as circulated.

### **5. Law Society Appointment to the Queen’s Counsel Advisory Committee**

The following resolution was passed unanimously and by consent:

*BE IT RESOLVED* that the Benchers appoint President Craig Ferris, QC and First Vice-President Dean P.J. Lawton, QC as the Law Society’s representatives on the 2020 QC Appointments Advisory Committee.

### **6. Law Society Appointment to the Legal Services Society**

The following resolution was passed unanimously and by consent:

*BE IT RESOLVED* that the Benchers appoint Allan P. Seckel, QC to the Legal Services Society Board of Directors, subject to consultation with the BC Branch of the Canadian Bar Association.

## **7. Law Society Appointment to the Land Title and Survey Authority**

The following resolution was passed unanimously and by consent:

*BE IT RESOLVED* that the Benchers nominate Scott Smythe as the Law Society's sole nominee to the Land Title and Survey Authority Board of Directors, to be re-appointed for a three-year term commencing April 1, 2020.

## **8. Terms of Reference – Access to Justice Advisory Committee**

The Terms of Reference for the Access to Justice Advisory Committee were removed from the consent agenda at the request of Mr. Campbell for further consideration by the Access to Justice Advisory Committee. A motion to bring revised Terms of Reference back to the Benchers in two meetings' time was unanimously approved.

## **9. Terms of Reference – Lawyer Development Task Force**

The Terms of Reference for the Lawyer Development Task Force were approved as circulated.

## **REPORTS**

### **10. President's Report**

Mr. Ferris reported that he sent a letter and flowers to Constance Isherwood, QC to acknowledge her 100<sup>th</sup> birthday. He received a phone call from Ms. Isherwood and she was very appreciative of the gesture.

Mr. Ferris then announced that the result of the election for the appointed Bencher position on the 2020 Executive Committee was a tie vote. Appointed Benchers were invited to meet and discuss whether they could reach a consensus on who should be the appointed Bencher representative on the Executive Committee. Later in the meeting the appointed Benchers advised they were not able to reach a consensus and asked for more time. Mr. Ferris indicated the aim would be to have this resolved by the March 6 Bencher meeting.

Mr. Ferris said presidents are often asked what they want to accomplish in their year as president. The first item on his agenda is to change the nature of the president's reports by focusing his comments on a policy issue or topic that is important and relevant to the Law Society's work.

The focus of Mr. Ferris' president's report at the meeting was to speak about leadership and, in particular, the leadership that Benchers need to exercise. He spoke about a re-orientation of what he would like to focus on in how to go about fulfilling the section 3 mandate – which he called his "Direction Statement".

Mr. Ferris said his goal as President is not a particular initiative; but rather to re-orient the Bencher Table, and through that, the Law Society to ensure its effectiveness and relevance in the future. He said the Law Society needs to become more of a data driven and public facing regulator utilizing risk-based practices to regulate both legal providers and legal services to ensure we have a legal market and environment that works for all British Columbians. If not, both self-regulation and the Law Society are, in Mr. Ferris' view, at risk, and while self-preservation is not a goal in itself, he values the Law Society and self-regulation and believes that if done right, with the public interest as our defining principle, it remains the best model for legal regulation.

Mr. Ferris said the above statement is what he has written for himself and what he will remind himself of throughout his year as president. He then spoke about the leadership that is required from the Bencher table to move in that direction.

In terms of leadership, Mr. Ferris described the Bencher table as a round table with rotating leadership, that they all have the same role, and are leaders and not followers. There is no constituency other than the public, in whose interest they are required to act in at all times. This means Benchers are there to do what is best and not what is popular. He spoke about the responsibility of being a Bencher to make sure the lawyers and the legal system work for British Columbians, and that, while it is an honour to be a Bencher, it is not an end in to itself but rather is an opportunity to give back and make the system better. This is the type of leadership he hopes is expected from each other and the Bencher table as a whole, and without that type of leadership, in his view the moral underpinnings of self-regulation would be threatened. If done right, Mr. Ferris' view was that self-regulation remains the best model for legal regulation.

In terms of how the views expressed translate into the Bencher meetings in 2020, Mr. Ferris indicated he expects open, respectful and principled debate and that differing views ought to be discussed openly at Bencher meetings. Debate should not be stifled and Benchers should feel they can express dissenting or unpopular views. While committee recommendations should be respected, Benchers must not forget that committees are subgroups of the larger table with the addition of some outside members, and that Benchers must never hesitate to challenge committee recommendations. Mr. Ferris wanted to see Bencher agendas filled with ample time to debate and discuss issues.

The above approach will necessarily involve less education of Benchers during Bencher meetings and that an avenue for education will be provided outside of Bencher meetings. In 2020 a new strategic plan will need to be created and he will be working with staff to get this process started early to ensure there is a process leading up to the plan that engages Benchers meaningfully. Mr. Ferris also spoke about the mandate letters he prepared and sent to each committee, task force and working group setting out his expectations for those groups in the

coming year. He identified some difficult issues he would like each group to look at and these are the issues Mr. Ferris identified as important ones the Benchers need to take a position on.

Mr. Ferris then spoke about how he intends to operate as president in 2020. He will be a practising president and thinks it is important to demonstrate diversity in the president role so that different perspectives are represented. He also wants to be able to demonstrate to Benchers considering a position on the ladder that it is possible to continue practising.

Finally, Mr. Ferris commented on Law Society staff, indicating that they are smart, committed, hard-working and thoughtful. Sometimes they may hold strong views about policy and this should not be a cause for concern. As leaders, Benchers need to respect and consider the views of staff, while always remembering that it is the role of the Benchers to decide the policy direction of the organization.

## **11. CEO's Report**

Mr. Avison expanded on the five items identified in his written CEO's report. First, he spoke about the orientation session for new Benchers that was held on January 29, 2020 and said the tour of the offices in the Law Society building was a useful exercise.

Secondly, Mr. Avison spoke about the Cullen Commission and work underway to support that process. An extraordinary amount of work had taken place over the past few months and this would continue to be an area of focus throughout 2020. Opening statements would take place on February 24 for three days, with 19 parties formally part of the proceedings (of which the Law Society is one). There has also been a substantial increase in the level of activity regarding support provided to assist with the implementation of the new client identification and verification rules and limits on cash transactions. An increase in the volume of calls to the Practice Advice department indicates that the level of engagement with the legal profession in BC is high, which he thought was a positive sign.

Third, Mr. Avison provided an update on steps taken since the December 2019 Bencher meeting towards developing an indigenous cultural competency program. The goal is to have a course ready for piloting in September 2020 and that more information will be available in the coming days about possible contractors who may be able to assist with creating the course. To date the response from indigenous leaders and communities about the Law Society's decision to implement mandatory indigenous cultural competency training has been very positive.

Fourth, Mr. Avison announced some administrative updates, including the hiring of new Manager of Member Services, Lynwen Clark, and changes to convert the former insurance program into an indemnity program.

Finally, Mr. Avison indicated that planning for the 2020 Law Society Retreat for Benchers was underway and that he would be in a position to provide more detailed information about the program at the March meeting of the Benchers.

## **12. Briefing by the Law Society's Member of the Federation Council**

Mr. Ferris welcomed Ms. Cheema as the new Law Society representative to the Federation of Law Societies of Canada Council.

Ms. Cheema began by thanking staff and others who have helped her with the transition into her new role as the Federation representative. She reported that she has been appointed to three committees: the Standing Committee on the Model Code, the Public Affairs Committee and the National Committee on Accreditation.

The Standing Committee on the Model Code reviews requests for changes to the model code. She said 2019 was a busy year for the Committee and one of the rules considered was Rule 6.3 regarding discrimination and harassment. A survey completed in the Alberta, Saskatchewan and Manitoba revealed that one third of articulated students in those provinces experienced harassment during recruitment and articling. Recommendations regarding changes to the rule were made and the consultation process is underway. Consultation is open until the end of May 2020.

The Canadian Judicial Council has also released a draft of its ethical principles for judges, which is available online. The Federation was asked to consult on the draft. The Standing Committee on the Model Code met and put forward comments. The final version of the principles is likely to be available in the spring of 2020.

The next issue for consideration by the Committee is Rule 7.1-3, which was raised by British Columbia. It was discussed at the Bencher table in December 2019 in the context of the lawyer-counsellor relationship and the duty to report. This issue will be raised in a general setting and Ms. Cheema will report back to Benchers as to that decision.

The Public Affairs Committee has only met once, but in that time, the Committee has discussed the McClellan Report – a report commissioned to review the roles of the Minister of Justice and Attorney General of Canada. The report was released mid-2019 and included eight recommendations. Recommendation four concerned the education of parliamentarians and cabinet ministers regarding the role of the Attorney General and the rule of law. The Law Society of BC's Rule of Law and Lawyer Independence Advisory Committee suggested it may have a role in implementing this recommendation given its expertise. The Federation will meet with government officials in late February and seek its views on the role the Federation might play.

Ms. Cheema said the National Committee on Accreditation had not yet met.

At a Federation meeting in December, discussion took place about the Federation's priorities and the development of the strategic plan. Priorities identified included legal technology, access to justice, lawyer competence, truth and reconciliation, wellness, data collection regarding the National Committee on Accreditation Modernization Committee. She said there was a robust discussion about what is driving change, the role of the Federation and how it could support the regional law societies.

The meeting concluded with a presentation from Chief Justice Wagner. He talked about new directions for the court going forward, politicization around the world where judicial independence is under attack, wellness, the use of technology and self-represented litigants.

## **DISCUSSION/DECISION**

### **13.2020 Objectives, Challenges and Program Area Overviews:**

- **Trust Assurance**

Mr. Ferris invited Mr. Avison and Ms. McPhee to provide an update on the Trust Assurance program area.

Mr. Avison began by saying this was the first of several program area updates that would be brought to the Bencher table. He said he had been meeting with different departments at the Law Society to discuss linking the strategic plan to what they do – taking the time to make sure staff know what is happening in other parts of the building. In his view, there has been significant progress made in many areas of the current strategic plan, approved in December 2017.

Ms. McPhee outlined the program objectives and provided an overview of the Trust Assurance Program. The purpose of the program is “To ensure high standards of professionalism and financial responsibility, and that the public, clients and lawyers can have confidence that lawyers are handling client trust funds in a careful and appropriate manner”. The four main goals of the program are: compliance, deterrence, detection, and credibility and accountability.

Ms. McPhee described the elements of the program: compliance audits, annual reporting requirements, mandatory self-report requirements, and education and outreach. Regarding annual trust reports, there are approximately 3,500 reports per year, 2,500 of which identify as holding trust funds. Law firms that hold trust funds may either file a self-report, or file an accountant's report. Annual trust reports and other reporting requirements submitted by lawyers are reviewed by an auditor and if issues are identified, they may result in further follow up and potentially a referral to the Investigations department for further examination.

Ms. McPhee then spoke about the objectives of compliance audits, compliance audit cycles and the different types of audits. There has been an increase in the number of audits completed from 2015 – 2018 (approximately 400-500 audits per year) to 2019 (675 audits per year – also projected for 2020). This has also resulted in an increase in the number of referrals to the Professional Regulation department, with an increase from 2015 – 2018 (40 – 70 referrals) to 2019 (111 referrals). A corresponding increase in the percentage of referrals from audits can also be seen, with 15.7% of audits referred in 2019.

Ms. McPhee spoke about some of the primary reasons for referrals; including, multiple matters, client identification and verification, breach of the no cash rule, digital signatures, no legal services provided and others. She then provided a breakdown of the outcome of referrals, within 41% closed at the staff level, 29% resulting in a conduct review and 11% leading to a citation.

In terms of education and outreach, the department provides key resources to lawyers, trust advice and support and works closely with the Practice Advice department to provide support.

Ms. McPhee then spoke about the data analytics and artificial intelligence program, which was developed to apply to large firms (15 or more lawyers) and large volume firms. It is a web-based application that conducts data validation and analysis. Auditors can adjust algorithms for specific firm information when conducting audits in the field. This program has resulted in auditor time reduction of 13.9% and 28.6%.

Ms. McPhee completed her presentation with discussion of some of the challenges and opportunities faced by the program. Challenges included turnover of new law firms (10% per year), recruitment of auditors, increasing numbers of audits and referrals as well as the percentage of referrals, pressure on resources with expanded scope of the audit program and others. Opportunities included continued refinement of audit program and processes to target areas of concern, active participation with the Federation and the Anti-Money Laundering Working Group, use of data analytics and artificial intelligence to improve efficiency and effectiveness, and increasing the education and resources available.

Bencher's asked questions about the use of the terrorist or persons of interest list in the data analytics process, how existing processes support anti-money laundering efforts, and how the audit process applies to sole practitioners and lawyers working in small firms. Further information was requested year over year about whether the seriousness of matters referred is also increasing or whether the matters being referred are lower level violations. Bencher's also sought clarification about the types of practices that do not have trust accounts and how these numbers compare to other provinces.

- **Professional Conduct**

Ms. Dookie outlined the program objectives and provided an overview of the Professional Regulation department. She referred to the section 3 mandate, to uphold and protect the public interest in the administration of justice. The regulatory approach of the department is guided by the objectives of: ensuring procedural fairness, treating all participants in the process with respect, being efficient and timely; and taking a risk based approach.

Ms. Dookie described the four different areas in the department: Professional Conduct (made up of Intake & Early Resolution, and Investigations, Monitoring & Enforcement), Discipline, Custodianships, and Unauthorized Practice.

Beginning with Custodianships, Ms. Dookie said the program becomes involved when membership of a lawyer ceases for some reason or they cannot continue their practice. The public is protected through the Law Society taking over management or closing of a law practice, which involves taking custody of the files and bank accounts, contacting clients, acting on behalf of clients and ensuring trust funds are accounted for and paid out. She then provided some statistics (43 active custodianships currently) and outlined some challenges for the department, including an aging population, decline in rural and small community practices, social isolation of lawyers, inability to sell a practice and increasing demand.

The Unauthorized Practice group investigates complaints of unauthorized practice of law, obtains undertakings or court injunctions to stop unauthorized practice and, in rare cases, seeks contempt orders. Following some statistics, Ms. Dookie explained that a challenge faced by the group is the tension between taking action and access to justice. In some cases the access to justice concerns are considered by the Unauthorized Practice Committee as more important than enforcing the law and, conversely, where there is risk to the public the Law Society will take action.

The two programs making up the Professional Conduct department are Intake & Early Resolution, and Investigations, Monitoring & Enforcement. Both groups investigate and address complaints. The Intake group is more remedially focused, whereas the Investigations group deals with more serious matters that will likely result in a referral to the Discipline Committee.

Ms. Dookie provided some background information about complaint frequency by origin and by area of law. Common types of complaints include communication issues, quality of service and client dissatisfaction, billing/fee agreements, conflicts of interest and others.

The Intake & Early Resolution group responds to over 1300 phone calls per year, which includes general inquiries and complaints. Complaints alleging less serious issues are referred to the Early Resolution lawyers and can be closed at the staff level. The Complainants' Review Committee

helps to ensure that no investigated complaints have been incorrectly closed with no further action. Only certain categories of complaints can be reviewed by this Committee.

The Investigations, Monitoring & Enforcement group is responsible for investigating conduct concerns that are likely to result in disciplinary action. There are a range of investigative steps and avenues available, as well as mitigation measures and cooperation with other agencies if needed. From 2015 to 2019, the number of referrals from the group to the Discipline Committee has ranged from 75 to 120 per year. On the monitoring and enforcement side, monitoring takes place to ensure compliance with undertakings obtained during investigations and disciplinary hearing orders. Approximately 35 new monitoring and enforcement files are opened each year.

The Discipline group represents the Law Society in citation hearings, judicial and internal reviews, and applications and appeals. The group also conducts Rule 3-10 interim proceedings where necessary, manages external counsel and litigation, and administers conduct meetings and reviews. There were 64 hearings in 2019, which is up from an approximately 30 hearings per year in 2017 and 2018.

Finally, Ms. Dookie discussed some challenges faced by each of the four groups in the department. Challenges included disproportionate use of resources by a few lawyers, staff changes, specialized files (e.g. AML) and an increase in the volume of files. She then covered some ways to address each of the challenges, which included changes to processes and rules, using technology and increasing staff training and specialized skill sets.

Bencher asked about the use of outside counsel vs. in-house lawyers, “frequent flier” complainants, the development of the proposed Solutions Explorer, analysis of the demographics or complainants and lawyers complained about, and timeframes in relation to hearings.

### **Lawyers Assistance Program of BC Presentation**

Mr. Derek C. LaCroix, QC, Executive Director of the Lawyers’ Assistance Program, Ian Aikenhead, QC and Sandra Kovacs attended the Bencher meeting to speak about the program and their personal involvement and experiences.

Mr. LaCroix provided an overview of the Lawyers Assistance Program and said the path to lawyer well-being is “...seeking to create a movement towards improving the health and well-being of the legal profession.” He provided some background information about mental health issues in the legal profession and spoke about the importance of removing barriers to seeking help and reducing the stigma.

Mr. Aikenhead, QC, followed by Ms. Kovacs, then provided detailed and personal accounts of their experience in the legal profession and involvement with the Lawyers Assistance Program. Both speakers spoke very positively about the program, the impact it had on their lives, and the

importance of seeking help early and reducing stigma associated with mental health and substance use issues.

#### **14. Mental Health Task Force Second Interim Report**

Rather than making a motion that the Benchers adopt all recommendations contained in the Task Force's report, Mr. Greenberg addressed each recommendation separately and provided background information to support the recommendations. He spoke about research indicating there are a troubling number of mental health and substance use issues in the profession.

The first recommendation presented to Benchers for discussion and decision was as follows:

**Recommendation 1:** The Law Society will consult and collaborate with BC law schools to improve the exchange of information about the availability of support resources for mental health and substance use issues within the profession and to assist students in transitioning to these supports from those provided during law school.

Mr. Greenberg indicated feedback received during Bencher-Student interviews and through the Professional Legal Training Course Program suggests students are not aware of the support and resources available to them and that work was needed to assist students with making the transition from law school to professional practice.

A motion to approve Recommendation 1 beginning at page 53 of the materials was passed unanimously.

The second recommendation presented to Benchers is below:

**Recommendation 2:** Revise the material in the Bencher Orientation Manual and expand in-person training to improve the manner in which mental health and substance use issues are addressed during the Bencher interview process.

Mr. Greenberg said the purpose of this recommendation was to create space in Bencher interviews to discuss mental health issues in an appropriate way. A Bencher commented that it would be appropriate for Benchers to pass along relevant information to students or put them in touch with the right resources, but that Benchers should not be talking about mental health issues in a substantive way.

A motion to approved Recommendation 2 on page 56 of the materials was passed unanimously.

The third recommendation presented to Benchers is below:

**Recommendation 3:** Host a town hall to encourage lawyers and firms and other legal employers to engage in a discussion about mental health and substance use within the profession, including the role that legal employers can play in improving lawyer wellness.

Mr. Greenberg referred to the town hall as more of a “forum”, where a much wider group of people can attend and be part of an interactive session which would include problem-solving, and the generation of ideas. He said this is an important step in showing that the Law Society is continuing its leadership role in this area and that it places importance on these issues.

A motion to approve recommendation 3 was moved and seconded.

A Bencher inquired as to whether it would be a one-off event and if there would be ongoing cost implications. Mr. Greenberg indicated the intention is to hold one event at this stage and see how it goes. It will be important to reach remote areas and that the event not be Vancouver-centric. Suggestions included providing online participation.

Mr. Ferris suggested a friendly amendment to the motion to include a completion date of “in 2020”. The friendly amendment was accepted and the motion to approve Recommendation 3, as amended, passed unanimously.

The fourth recommendation presented to Benchers is below:

**Recommendation 4:** Staff will develop a style guide that provides guidance on the use of non-stigmatizing and non-discriminatory language in all future Law Society publications and communications and update the current practice resource on respectful language and ensure that this material is prominently displayed on the Law Society’s website.

Mr. Greenberg said the purpose of the recommendation is to provide guidance on the use of non-stigmatizing and non-discriminatory language in all future Law Society publications and communications and that this guidance material would be updated from time to time as appropriate. A Bencher asked if the *Law Society Rules* could also be reviewed with this in mind to ensure the rule do not contain stigmatizing language.

A motion to approved Recommendation 4 on page 59 of the materials was passed unanimously.

The fifth recommendation for Bencher consideration was:

**Recommendation 5:** Conduct a voluntary, confidential member survey exploring mental health and substance use among BC lawyers.

Mr. Greenberg referred to other studies conducted and indicated the need for British Columbia based data. A recent Quebec survey shows similar results to earlier studies based in the United

States, but also indicate there may even be more of a problem in Canada. He said it was important to know the state of the legal profession in British Columbia and that some level of baseline is also needed in order to provide a comparator for future results. A nationwide survey is being considered at the Federation level and the potential efficiencies in participating in this survey will need to be considered.

A motion to approve Recommendation 5 on page 62 of the materials was moved and seconded.

A Bencher asked if it would be prudent to include a timeline for completion of the survey in the motion. Mr. Greenberg said this would be possible if the Law Society decides to do its own survey, but if the Law Society decides to take part in the nationwide survey it may not be possible to meet this timeline. Comments were also made that the survey should include different regions in the province to see if lawyers are experiencing these issues differently throughout the province. A comparative analysis with the Quebec survey would be helpful to determine if there are additional questions we need to ask in British Columbia.

A friendly amendment to “conduct the survey in 2020” was accepted and the motion to approve Recommendation 5, as amended, was passed unanimously.

No motion was required in respect of Recommendation 6, as outlined below, as events at the Bencher meeting in December 2019 have overtaken this recommendation:

**Recommendation 6:** Amend BC Code Rule 7.1-3 (“duty to report”) and the associated Commentary.

The final recommendation for Bencher consideration and decision is below:

**Recommendation 7:** The medical fitness questions in Schedule A of the LSAP Application Form be removed.

Mr. Greenberg indicated that this recommendation was the one that generated the most discussion at the October Bencher meeting. Mr. Greenberg said the medical fitness questions are ineffective and unhelpful to the Law Society as a regulator, they are not predictive of anything and are not useful. He weighed the policy value of the questions to the Law Society against the harm asking the questions may cause people. He indicated law students may avoid treatment and diagnoses because they know they will need to answer these questions, and the existence of the questions creates a presumption that answering the questions positively will impact your ability to be a lawyer. Mr. Greenberg said the focus should be on conduct and not on the existence of a particular condition.

A motion to approve Recommendation 7 as set out on page 64 of the materials was moved and seconded. Benchers discussed whether approval of this recommendation would take effect

immediately. Some Benchers were of the view that the questions should be removed immediately and others commented that some consideration may need to be given as to what questions (if any) would go in the form instead. The consensus of the table was that the questions could be removed immediately and any replacement questions could be considered separately at a later date.

Benchers commented on the importance of removing the questions and the need to remove barriers to law students and lawyers seeking help.

The motion to approve Recommendation 7 was passed, with one Bencher abstaining from voting.

## **UPDATES**

### **15. 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**

### **16. 2021 Bencher and Executive Committee Meeting Dates**

There was no discussion on this item.

### **17. Three Month Bencher Calendar – February to April 2020**

There was no discussion on this item.

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

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2020-01-31