



Minutes

Benchers

Date: Friday, April 17, 2020

Present: Craig Ferris, QC, President
Dean P.J. Lawton, QC, 1st Vice-President
Lisa Hamilton, QC, 2nd Vice-President
Paul Barnett
Pinder K. Cheema, QC
Jennifer Chow, QC
Barbara Cromarty
Jeevyn Dhaliwal, QC
The Hon. David Eby, QC
Lisa Feinberg
Martin Finch, QC
Brook Greenberg
Sasha Hobbs
Julie K. Lamb, QC
Dr. Jan Lindsay

Jamie Maclaren, QC
Claire Marshall
Geoffrey McDonald
Steven McKoen, QC
Christopher McPherson, QC
Jacqueline McQueen
Elizabeth J. Rowbotham
Mark Rushton
Karen Snowshoe
Thomas L. Spraggs
Michelle D. Stanford, QC
Michael Welsh, QC
Chelsea D. Wilson
Guangbin Yan

Unable to Attend: Jasmin Ahmad, QC
Heidi Zetsche

Staff Present: Don Avison, QC
Barbara Buchanan, QC
Jennifer Chan
Natasha Dookie
Su Forbes, QC
Andrea Hilland
Kerryn Holt
Jeffrey Hoskins, QC

Jason Kuzminski
Michael Lucas, QC
Alison Luke
Jeanette McPhee
Doug Munro
Lesley Small
Adam Whitcombe, QC

Guests: Kenneth Armstrong	President, Canadian Bar Association, BC Branch
Dom Bautista	Executive Director, Law Courts Center
Dr. Susan Breau	Dean of Law, University of Victoria
Jennifer Brun	Vice President, Canadian Bar Association, BC Branch
Michelle Casavant	Member, Aboriginal Lawyers Forum
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
Alexis Kazanowski	Assistant Dean of Law, Thompson Rivers University
Shawn Mitchell	CEO, Trial Lawyers Association of BC
Ian Mulgrew	Columnist, Vancouver Sun
Caroline Nevin	CEO, Courthouse Libraries BC
Josh Paterson	Executive Director, Law Foundation of BC
Linda Russell	CEO, Continuing Legal Education Society of BC
Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
Karen St. Aubin	Membership Director, Trial Lawyers Association of BC
Sharon Sutherland	Director of Strategic Innovation, Mediate BC
Bill Veenstra, QC	Board of Directors, Canadian Bar Association

CONSENT AGENDA

1. Minutes of March 6, 2020, meeting (regular session)

The minutes of the meeting held on March 6, 2020 were approved as circulated.

2. Minutes of March 6, 2020 meeting (*in camera* session)

The minutes of the *in camera* session held on March 6, 2020 were approved as circulated.

3. Executive Committee Terms of Reference

The Executive Committee Terms of Reference were approved as circulated.

4. Access to Justice Advisory Committee Terms of Reference

The Access to Justice Advisory Committee Terms of Reference were approved as circulated.

5. Rule 3-102 (3): Proposed Amendment to Permit the use of Certain Electronic Documents and Information in Client Identification and Verification

The following resolution was passed unanimously and by consent.

BE IT RESOLVED to amend the Rule 3-102 by adding the following subrule:

- (3.1) Despite subrule (3), an electronic image of a document that is created by and obtained directly from a registry maintained by the government of Canada, a province or a territory or a foreign government, other than a municipal government, may be treated as a document or information for the purposes of subrule (2) (b).

6. Rules 2-105 and 3-41: Recommendations to Amend Rules Concerning the Payment of the Second Instalment of the Indemnity Fee

The following resolution was passed unanimously and by consent.

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

1. In Rule 2-105, by adding the following subrule:

- (3) The date for payment of the second indemnity fee instalment is prescribed under Rule 3-41 (1) [*Payment of annual indemnity fee by instalments*].

2. *In Rule 2-108, by rescinding subrules (1) and (3) and substituting the following:*

- (1) A lawyer who fails to pay fees by the date required under Rule 2-105 (2) *[Annual practising fees]* but pays all of those fees before December 31 of the year preceding the year for which they are payable, together with the late payment fee under this rule, continues to be a member of the Society.
- (3) A lawyer, other than a retired or non-practising member, who has failed to pay the annual practising fee in accordance with Rule 2-105 (2) *[Annual practising fees]*, is required to pay the late payment fee for practising lawyers specified in Schedule 1.

3. *In Rule 3-41 (1), by rescinding paragraph (b) and substituting the following:*

- (b) the second instalment on or before June 30 of the year for which it is paid or a later date specified by the Executive Director.

7. Rule 4-20: Proposed Rule Amendments concerning the Publication of Citations

The following recommendations were approved, in principle, unanimously and by consent:

- amendments to Rule 4-20(1) to require the Executive Director to publish a citation on the website once the citation has been authorized and the respondent has been notified; and
- amendments to the rule that would permit an application to the Tribunal for an order that the citation be anonymized, and that the criteria that must be established be set out in the rule.

The amendments were referred to the Act and Rules Committee to develop rules to implement the recommendations, and to return the matter to the Benchers to approve the rule changes.

8. Rule 10-1: Proposed Amendments to Permit Service through Member Portal

Benchers approved unanimously and by consent the Executive Committee's recommendation that Rule 10-1 be amended to allow for the possibility of service through the Discipline Portal.

The recommended amendments to Rule 10-1 to give effect to this change were to:

- (a) expand the available electronic methods of service to include a provision describing a broad definition of "electronic method" or "electronic means" that would allow for service via an electronic portal; and

- (b) provide that service via this expanded electronic method or means is deemed to be served on the next business day after it is sent, in keeping with the current Rule 10-1(7) for service via electronic mail and electronic facsimile.

It was also agreed that, for service through the Discipline Portal to be effective, some provision must be built into the rule to ensure the party receiving service be required to be notified as well through some other form of communication, which could include email.

The amendments were referred to the Act and Rules Committee to prepare the necessary rule amendments to be returned to the Benchers for approval.

9. External Appointment: Vancouver Foundation Board of Directors

The following resolution was passed unanimously and by consent.

BE IT RESOLVED that Rita Andreone, QC be confirmed as the Law Society's nominee to the Vancouver Foundation Board of Directors, to be re-appointed for a second term of three years commencing May 1, 2020.

10. Students who Fail the Professional Legal Training Course: Recommendation to Amend the Law Society Rules

Benchers resolved, unanimously and by consent, that the Law Society Rules be amended to vest the discretion in the Executive Director to grant a second or third opportunity to complete a PLTC examination(s) or assessment(s).

The matter was referred to the Act and Rules Committee to prepare rule amendments to implement the Bencher decision, and to return the matter to the Benchers to approve the rule changes.

REPORTS

11. President's Report

Mr. Ferris began his President's Report by speaking about COVID-19 and the impact it has had on Law Society operations, the administration of justice, the legal profession and the court system. He provided a summary of various urgent matters that presented issues during the last month where immediate steps were required; such as the swearing of affidavits, the LTSA, articling students and the Professional Legal Training Course, forms, paper, the courts, access to justice and how to keep all of these processes operational. Mr. Ferris thanked the Attorney General and his department for their hard work to keep systems operating, for consulting with the Law Society and for listening to concerns that have been brought forward.

Mr. Ferris said now more than ever we ought to be talking about reform, and that not only is COVID-19 happening and impacting the justice system, but it is causing a fundamental change in society and in the legal profession – one in which there is no going back. Mr. Ferris spoke about the increased use of technology to conduct business, and the continued need to examine and challenge the ways in which we operate. He said there is no better time than right now to be talking about reforms, and referenced reforms already taking place in Utah and Arizona. Suggestions for further consideration included the intersection between independent paralegals, the limits of unauthorized practice and technology, reserved legal services versus a definition of practice of law that covers the field, and a regulatory sandbox to test and spur on innovation.

Mr. Ferris emphasized that the Law Society and the Benchers need to be part of the transformation that has been unleashed, and that the response needs to be quicker, more decisive and more innovative, while maintaining the core principles.

12. CEO's Report

Mr. Avison echoed Mr. Ferris' comments that this period of time is one of fundamental transition that we will look back in years to come. He provided a summary of the activities that have taken place since the March 6 Bencher meeting; including, a call ceremony in Vancouver on March 13 and Law Society staff transitioning to working remotely mid-March. The transition to remote working has gone well and he recognized there are parts of the business that will never be the same again. A number of committee meetings have already taken place virtually and improvements will continue to be made over time. Internal Law Society meetings have proceeded, including a senior leadership response team, the ladder meetings and management team meetings. A number of communications pieces have also been distributed to the profession.

The Law Society has been working closely with the courts regarding the swearing of affidavits, work has been underway on issues with land title documents with the support of the Ministry of the Attorney General and the Deputy Attorney General, and additional work has been required with respect to builder's liens and to improve the capacity for meetings to be held virtually in the strata context. There have also been regular weekly calls with the CEOs from all Canadian law societies, which has provided a valuable opportunity for increased information sharing.

Regarding the second indemnity fee instalment, Mr. Avison referred to the recommendation before Benchers to provide the Executive Director with a general discretion to delay the payment of the fee, and indicated other areas for relief were being considered. He also said more information would be available in the coming days about the PLTC program and plans for completing the current session as well as beginning future sessions.

Mr. Avison then invited members of the Senior Leadership Team to provide an update to Benchers on each of their areas of responsibility.

Benchers asked Mr. Avison for additional information about the impact of COVID-19 on articling students and their ability to observe court proceedings, arrangements in place for PLTC, and regional call ceremonies.

13. Attorney General Eby's Report

Attorney General Eby began by sharing details of work done by the Ministry of the Attorney General to address issues raised by COVID-19 and its impact on the justice system. He identified three stages of response: the first stage focusing on immediate support needed and trying to keep services operating; the second stage focusing on clearing any backlog and the third stage focusing on preparations for the end of restrictions being in place. The majority of efforts to date have been focused on stage one and determining which matters are the most urgent or take priority. A lot of work is underway to deal with pressing matters in a timely way so that systems are transformed and people's constitutional rights are protected. Attorney General Eby then spoke about some areas of focus for the next stage and was supportive of the continued involvement and cooperation between the Law Society, Canadian Bar Association BC Branch, all levels of the courts and the Ministry of the Attorney General to work together to respond to the impacts of COVID-19.

DISCUSSION/DECISION

14. Roundtable on implications of COVID-19 for the legal profession and the administration of justice

Benchers shared concerns about the impact of COVID-19 on the legal profession and the administration of justice and identified some areas for further consideration or work. Matters discussed included in-person attendance at court versus virtual appearances, improvements to court procedures and rules, fee relief for members of the Law Society, the impact of COVID-19 on young lawyers and articling students, accessibility of the courts, a review of the Law Society tribunals processes, continuing professional development requirements and the use of technology in the legal profession. Mr. Ferris thanked Benchers for their thoughtful contributions. He indicated it would be helpful if staff looked further at the matters raised and report back to Benchers at future meetings.

15. Legal Aid Strategy for Law Society

After discussion of the proposed Legal Aid Strategy, Benchers agreed to refer the strategy back to the Access to Justice Advisory Committee for further revision with a view to it coming back before Benchers for approval at the May 29 meeting.

UPDATES

16.2020 First Quarter Financial Report

With reference to the report included on page 74 of the materials, Ms. McPhee provided an overview of the financial results and highlights to the end of February 2020 and noted some areas likely to be impacted by COVID-19, such as practice fees, PLTC revenue, electronic filing revenue, miscellaneous revenue and interest revenue.

17. Report on Outstanding Hearing & Review Decisions

Mr. Ferris thanked people in advance for advising him of the status of outstanding hearing and review decisions, and 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 a timely manner.

FOR INFORMATION

18. Revisions to 2020 Bencher and Executive Committee Meeting Dates

There was no discussion on this item.

19. Letter from President Ferris to family of Alan Hope, QC

There was no discussion on this item.

20. Letter from Craig Ferris, QC to Attorney General Eby dated March 30, 2020 regarding the current state of affairs

There was no discussion on this item.

21. Three Month Bencher Calendar – April to June 2020

There was no discussion on this item.

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

KH
2020-04-17