



Minutes

Benchers

Date: Friday, May 29, 2020

Present:

Craig Ferris, QC, President	Dr. Jan Lindsay
Dean P.J. Lawton, QC, 1 st Vice-President	Jamie Maclaren, QC
Lisa Hamilton, QC, 2 nd Vice-President	Claire Marshall
Jasmin Ahmad, QC	Geoffrey McDonald
Paul Barnett	Steven McKoen, QC
Pinder K. Cheema, QC	Christopher McPherson, QC
Jennifer Chow, QC	Jacqueline McQueen
Barbara Cromarty	Elizabeth J. Rowbotham
Jeevyn Dhaliwal, QC	Mark Rushton
Cheryl S. D'Sa	Karen Snowshoe
The Hon. David Eby, 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 Zetsche

Unable to Attend: Not Applicable

Staff Present:

Don Avison, QC	Michael Lucas, QC
Barbara Buchanan, QC	Jeanette McPhee
Natasha Dookie	Doug Munro
Su Forbes, QC	Lesley Small
Kerryn Holt	Adam Whitcombe, QC
Jeffrey Hoskins, QC	Vinnie Yuen
Jason Kuzminski	

Guests: Dom Bautista	Executive Director, Law Courts Center
Dr. Susan Breau	Dean of Law, University of Victoria
Ian Burns	Digital Reporter, The Lawyer's Daily
Dr. Cristie Ford	Associate Dean Research and the Legal Profession, Peter A. Allard School of Law
Richard Fyfe, QC	Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General
Alexis Kazanowski	Assistant Dean of Law, Thompson Rivers University
Brenda Rose	Director, Community Engagement, Courthouse Libraries BC
Linda Russell	CEO, Continuing Legal Education Society of BC
Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
Sharon Sutherland	Director of Strategic Innovation, Mediate BC
Bill Veenstra, QC	Board of Directors, Canadian Bar Association

May 29, 2020 Bencher Meeting

OATH OF OFFICE

1. Administer Oath of Office

President Ferris administered the Oath of Office to new elected Bencher, Cheryl D'Sa.

CONSENT AGENDA

2. Minutes of April 17, 2020, meeting (regular session)

The minutes of the meeting held on April 17, 2020 were approved as circulated.

3. Minutes of the April 17, 2020 meeting (*in camera* session)

The *In Camera* minutes of the meeting held on April 17, 2020 were approved as circulated.

4. Revised Legal Aid Strategy

The revised Legal Aid Strategy was passed unanimously and by consent.

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

The following resolution was passed unanimously and by consent.

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 4-20 and substituting the following:

Publication of citation

- 4-20** (1) When there has been a direction to issue a citation, the Executive Director must publish on the Society's website the fact of the direction to issue the citation, the content of the citation and the status of the citation.
- (1.1) Publication under subrule (1) must not occur earlier than 7 clear days after the respondent has been notified of the direction to issue the citation.
- (2) The Executive Director may publish the outcome of a citation, including dismissal by a panel, rescission by the Discipline Committee or the acceptance of a conditional admission.
- (3) Publication under this rule may be made by means of the Society's website and any other means.
- (4) This rule must not be interpreted to permit the disclosure of any information that

is subject to solicitor and client privilege or confidentiality.

- (5) Except as allowed under Rule 4-20.1 [*Anonymous publication of citation*], a publication under this rule must identify the respondent.

Anonymous publication of citation

- 4-20.1**
- (1) A party or an individual affected may apply to the President for an order that publication under Rule 4-20 [*Publication of citation*] not identify the respondent.
 - (2) When an application is made under this rule before publication under Rule 4-20, the publication must not identify the respondent until a decision on the application is issued.
 - (3) On an application under this rule, where, in the judgment of the President, there are extraordinary circumstances that outweigh the public interest in the publication of the citation, the President may
 - (a) grant the order, or
 - (b) order limitations on the content, means or timing of the publication.
 - (4) The President may designate another Bencher to make a determination on an application under this rule.
 - (5) The President or other Bencher making a determination on an application under this rule must state in writing the specific reasons for that decision.

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

This item was removed from the consent agenda and it was requested that it be brought back for consideration at the July 10, 2020 Bencher meeting.

7. Rule 1-26: Proposed Amendments regarding the Voter List for Elections and By-elections

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

To amend Law Society Rule 1-26 as follows:

- a) provide that the voter list can be prepared and updated at any time during and up until the close of voting in an election or by-election to reflect member status and address changes; and
- b) remove the requirement that the voter list be made available at the Law Society office for in-person examination by members, and instead, provide that the voter list will be made available electronically.

REPORTS

8. President's Report

Mr. Ferris began his report by speaking about the disturbing rise in anti-Asian racism arising from the COVID-19 pandemic and made it clear that the Law Society's position is that racism, in any form, has no place in Canada, British Columbia or in our legal system. He said the Law Society condemns these acts of racism and will do our part to ensure that British Columbians are not subject to these sorts of horrendous attacks.

Mr. Ferris then spoke about people in the legal profession who are struggling financially as a result of the pandemic and indicated that 3 million dollars would be set aside to provide fee relief to those lawyers who have been hard-hit by COVID-19. He said the Law Society wants to do its part to help and more details of the proposed relief program would be discussed during the *In Camera* portion of the meeting.

The remainder of Mr. Ferris' report focused on steps being taken around in the world regarding alternative legal service providers and how different jurisdictions are addressing access to legal services issues. Topics covered included supervising innovation sandboxes, removing the ban on non-lawyer ownership of legal businesses and creating exceptions to unauthorized practice. Mr. Ferris indicated reports from the Licensed Paralegal Task Force and Futures Task Force would be coming before the Benchers in the fall. He hoped the reports would encourage the Benchers to have a vigorous discussion on these issues and help the Law Society to be part of the solution rather than an impediment because, in his view, the current number of people who are without legal help is unacceptable.

9. CEO's Report

Mr. Avison updated Benchers on phase one of the Law Society's return to the office plan for staff, indicating that most staff were still working from home and had been quite productive. He had been participating in weekly calls with CEOs of other Canadian law societies and indications were that many other law societies would not be returning to the office until the fall or later. The goal is never to have more than 50% of the staff compliment in the office over the next few months and arrangements were going well.

Mr. Avison then spoke about COVID-19 engagement both at the local level and beyond, reporting that it had been quite significant. He had been part of regular meetings with various parts of the provincial government, including the COVID-19 response group established by the Ministry of the Attorney General. These meetings have provided valuable opportunities for the exchange of ideas, updates on progress and have allowed the different parts of the justice system to be more connected. The Attorney General also established the external technical advisory

group, which is looking at a number of options for reform. More information about comments and questions from that group in the coming weeks.

At the last COVID-19 response group meeting, three key areas were identified by the Ministry of the Attorney General as the core areas of focus over the short-term: alternative dispute resolution, alternative legal service providers and the expanded utilization of virtual hearings. There will be more to be said about this in the coming weeks and months.

Regarding the opening of the courts, Mr. Avison said progress was being made and that the courts were working hard to find solutions. The use of technology was being expanded in different courts.

Mr. Avison also reported that he had taken part in a Zoom meeting with colleagues from around the world who are all impacted by COVID-19 to varying degrees, and said these open lines of communication provided valuable opportunities to be more connected, exchange ideas and identify common experiences, such as the impact of COVID-19 on the administration of the courts. Mr. Avison also participated in the Access to Justice BC group and some important themes were mentioned; including alternative legal service providers.

Mr. Avison then updated Benchers on the Cullen Commission hearings, timing and various context witnesses that were providing evidence. He said Mr. Lord's testimony was helpful and informative, and encouraged Benchers to view it online.

Regarding the 2021 budget, Mr. Avison indicated further discussions would take place *in camera*, and more information would be brought back for consideration by the Benchers at the July meeting.

In conclusion, Mr. Avison discussed Law Society operations, specifically the Professional Legal Training Course and call ceremonies, and talked about adjustments that had been made or were being contemplated to make these services more virtual.

10. Federation of Law Societies Report

Ms. Cheema provided an update on the three Federation of Law Societies committees she sits on: the Standing Committee on the Model Code, the Public Affairs Committee and the National Committee on Accreditation. The work of all committees has been impacted by the uncertainty of the current health situation, as has the council meeting scheduled for June 8, which will now be held virtually.

Ms. Cheema reported that the Standing Committee on the Model Code met earlier in May by teleconference and continued its discussions regarding the discrimination and harassment provisions. The Law Society of BC's Ethics Committee continues to follow up and review those

provisions. The consultations by the Standing Committee have been extended until September, and responses from the profession will be encouraged, which it is hoped will inform the Ethics Committee's final comments. A discussion also took place regarding the list of priorities for the Standing Committee.

The Public Affairs Committee also met online earlier in May, and Ms. Cheema indicated that the focus of the Committee's discussions were a response to the Federal government regarding the creation of a beneficial ownership registry, and submissions to the Cullen Commission regarding the anti-money laundering inquiry.

Finally, Ms. Cheema said the National Committee on Accreditation had been particularly impacted by the pandemic. Ordinarily there are 3500 applicants per year who apply for accreditation. It is expected that number will drop to 2800 because education has been halted due to the pandemic. The Committee is preparing for an increase in applications in 2021 as a result. The Committee is also reviewing its policy requiring students to take three courses in person. Ms. Cheema also indicated it is hoped a summary of the gap analysis report will be available by the end of June.

11. Attorney General Eby's Report

Attorney General Eby began by reporting on the latest developments in the provincial government and in the courts in response to COVID-19. He said court locations were being assessed to make sure they meet minimum health and safety requirements and that meetings with the judiciary and stakeholders were taking place regarding recommendations. The expectation was that a limited number of courtrooms would be open as of June 8. Attorney General Eby also recognized the backlog of cases and the need for virtual hearings and other technology to be available and utilized. The Ministry of the Attorney General faced some challenges in this regard, but would also be dedicating additional resources to deal with these issues in partnership with the judiciary.

Benchers then engaged in discussions about various access to justice issues they and other members of the profession had encountered, and offered possible solutions and insights for the Attorney's consideration. Suggestions included further embracing virtual technology in the court system, having set times for court appearances, funding for legal aid lawyers, and the backlog of issues in the courts.

UPDATES

12. Report on Outstanding Hearing & Review Decisions

President Ferris provided an update on outstanding hearing and review decisions and thanked Benchers for their efforts to get decisions in on time, as timeliness is important to the public and those involved in proceedings.

FOR INFORMATION

13. Wayne Robertson, Q.C. Access to Justice Award

There was no discussion on this item.

14. Annual Bencher Conflicts Disclosure Form

There was no discussion on this item.

15. Bencher *In Camera* Guidelines

There was no discussion on this item.

16. Three Month Bencher Calendar – June to August 2020

There was no discussion on this item.

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

KH
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