



# Minutes

## Benchers

Date: Friday, July 10, 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
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
Dr. Jan Lindsay	

Unable to Attend: Paul Barnett

Staff Present:

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

Guests: Dom Bautista	Executive Director, Law Courts Center
Dr. Susan Breau	Dean of Law, University of Victoria
Jennifer Brun	Vice President, CBABC
Michelle L. Casavant	Member, Aboriginal Lawyers Forum
Paul Craven	Executive Director, Office of the Attorney General
Dean Catherine Dauvergne	Dean of Peter A. Allard School of Law
Dr. Cristie Ford	Associate Dean Research and the Legal Profession, Peter A. Allard School of Law
Catherine George	Associate, Farris LLP
Ludmila Herbst, QC	Partner, Farris LLP
Clare Jennings	Incoming Vice-President, Canadian Bar Association, BC Branch
Alexis Kazanowski	Assistant Dean of Law, Thompson Rivers University
Mark Meredith	Board Treasurer, Mediate BC
Ian Mulgrew	Columnist, Vancouver Sun
Josh Paterson	Executive Director, Law Foundation of British Columbia
Brenda Rose	Director, Community Engagement, Courthouse Libraries BC
Linda Russell	CEO, Continuing Legal Education Society of BC
Kurt Sandstrom	Assistant Deputy Minister, Office of the Attorney General
Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
Sharon Sutherland	Director of Strategic Innovation, Mediate BC

## **CONSENT AGENDA**

### **1. Minutes of May 29, 2020 meeting (regular session)**

The minutes of the meeting held on May 29, 2020 were approved as circulated.

### **2. Minutes of May 29, 2020 meeting (*in camera* session)**

The *In Camera* minutes of the meeting held on May 29, 2020 were approved as circulated.

### **3. 2020 Law Society Scholarship**

The following resolution was passed unanimously and by consent.

*BE IT RESOLVED* that the Benchers ratify the recommendation of the Credentials Committee to award the 2020 Law Society Scholarship to Catherine McMillan.

### **4. 2020 Law Society Indigenous Scholarship**

The following resolution was passed unanimously and by consent.

*BE IT RESOLVED* that the Benchers ratify the recommendation of the Credentials Committee to award the 2020 Law Society Indigenous Scholarship equally between Katelyn Beale and Darnell Tailfeathers.

### **5. Revisions to Bencher Meeting *In Camera* Policy**

The following resolution was passed unanimously and by consent.

*BE IT RESOLVED* that the Benchers approve revisions to the Bencher meeting in camera policy as recommended by the Governance Committee.

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

The following resolution was passed unanimously and by consent.

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

1. *By rescinding Rule 1-25 (2);*
2. *By rescinding Rule 1-26 (1) to (4) and substituting the following:*
  - (2) In this Division, a “**voter list**” is a list of voters for an electoral district containing, in alphabetical order, the names of all members of the Society eligible to vote in the electoral district.

- (2.1) For the purpose of this rule, an election is in progress from the day that nominations are opened until the last day that members are permitted to vote.
  - (3) When an election is in progress, a member of the Society may request a voter list from the Executive Director.
  - (3.1) The Executive Director may comply with a request for a voter list by providing the list in electronic form.
  - (4) A member of the Society who has reason to believe that a voter list improperly includes or omits a name, or contains an error respecting the district in which a member is entitled to vote may, when an election is in progress, report the error to the Executive Director.
3. ***In Rule 1-27 (1), by striking “each member of the Society whose name is on the voter list prepared under Rule 1-26” and substituting “each member of the Society entitled to vote in an election”; and***
4. ***By rescinding Rule 1-38 (3) and substituting the following:***  
 (3) Rules 1-21 to 1-37 apply to a by-election under subrule (1), except that the Executive Director may change the dates referred to in Rules 1-23 (c) [Nomination] and 1-27 (1) [Voting procedure].

## 7. Rule 2-74: Review of failed standing (PLTC)

The following resolution was passed unanimously and by consent.

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

- 1. ***By rescinding Rule 2-72 (6); and***
- 2. ***By rescinding Rule 2-74 (1) to (3), (5) to (7) and (9) and substituting the following:***

### **Review of failed standing**

- 2-74** (1) Subject to subrule (2), an articulated student who has failed the training course may apply in writing to the Executive Director for a review of the student’s failed standing, not more than 21 days after the date on which the Executive Director issued the transcript under Rule 2-72 (5) [Training course].
- (2) An articulated student may not apply under subrule (1) if the student has failed in 3 attempts to pass the training course, including any of the following:
    - (a) the original attempt;
    - (b) a further attempt to pass examinations, assignments or assessments;
    - (c) any attempt to meet a requirement under subrule (7).
  - (3) The Executive Director may consider an application for review received

after the period specified in subrule (1).

- (7) After considering the submissions made under subrule (4), the Executive Director may do one or more of the following:
  - (a) confirm the standing, including any failed standing;
  - (b) grant the student an adjudicated pass in a training course examination, assignment or assessment, with or without conditions;
  - (c) require the student to complete further examinations, assignments or assessments, and to pass them at a standard set by the Executive Director;
  - (d) require the student to complete or repeat and pass all, or a portion of, the training course;
  - (e) require the student to complete a specified program of training at an educational institution or under the supervision of a practising lawyer, or both.
  
- (9) The Executive Director must deliver a transcript stating the student's standing and the extent to which any standards or conditions have been met to
  - (a) each student whom the Executive Director has required to do anything under subrule (7), and
  - (b) each such student's principal.

## **8. Rule 2-58: Offer Dates for Articled Students**

The following resolution was passed unanimously and by consent.

***BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 2-58 (4) and substituting the following:***

- (4) A lawyer must not offer articles to a student of any law school unless the offer is to remain open at least until the offer date designated under subrule (3).
  
- (6) If the Credentials Committee designates an offer date that is before September 1, subrule (4) does not apply to a student who has begun the third year of studies at any law school.

## **REPORTS**

### **9. President's Report**

Mr. Ferris began his report by referencing the Law Society's mandate to uphold and protect the public interest in the administration of justice and the need for continuous reform to ensure that

educated and competent lawyers are in place to help British Columbians. He said that reform needs to be grounded in the Law Society's mandate and our mandate's core principles.

Mr. Ferris then spoke to the core principle of the protection of the rule of law. As the Law Society navigates the COVID-19 pandemic, the rule of law needs to be at the forefront of the work we're doing. Mr. Ferris spoke to the need to find the right balance between pandemic response, reform, and rule of law. BC's current state of emergency is the longest in our history, and it provides the provincial government with extraordinary powers to make orders without normal parliamentary oversight, which demonstrates the need for the Law Society, as protector of the rule of law, to ensure that the right balance is being struck and that concerns need to be acknowledged and debated.

The remainder of Mr. Ferris' report focused on the many items under review by the Law Society, including the issue of licensed paralegals and court procedure reform. Mr. Ferris closed his report by stating that he was eager to pursue reform to ensure that all British Columbians have access to justice; however reform must be grounded in the Law Society's core principals, and we must protect the rule of law in any and all reform initiatives.

### **Attorney General's Report**

Attorney General Eby began by informing Benchers of the recently passed COVID-19 Related Measures Act, which clarifies the authority of the Solicitor General, incorporates current ministerial emergency orders so that the legislature may pass and formally recognize them, and puts in place safeguards to limit the power of any one minister.

Attorney General Eby then reviewed the specific proposals brought to the Law Society for their consideration. The first proposal regarded the resumption civil jury trials, taking into consideration the challenges presented by the provincial health regulations. Attorney General Eby stated that his office had been looking into other venues in which to hold civil jury trials, but hosting trials outside of the law courts brings a new slate of concerns, specifically in regard to security and logistics. Attorney General Eby asked the Law Society what its feedback would be if BC established a policy of not allowing civil jury trials until a vaccine or treatment program was developed for COVID-19. He also asked if there were areas in which civil jury trials were not serving British Columbians, as they are a lengthy process, and he would like to know what the impacts have been over the last few months with BC not having had any. Attorney General Eby then asked the Benchers for their feedback regarding offering plaintiffs in a motor vehicle injury claim the option of binding arbitration with the understanding that the outcome would be final without appeal. Attorney General Eby asked the Law Society to consider these proposals and to provide feedback in whatever format was appropriate.

Attorney General Eby updated Benchers on the activities of the legislature, letting Benchers know that the COVID-19 Recovery Act had been passed and will come into effect once the current state of emergency comes to an end to ensure the stable unwinding of orders made under the Emergency Program Act. Attorney General Eby also spoke to some of the measures that the provincial courts are taking to continue to meet the legal needs of BC during this time of crisis. He then concluded his report speaking to BC's transition from Phase II to Phase III of recovery, detailing a proposal being drafted for Phase III recovery to address the current backlog within the courts through increased virtual options and other reforms to allow people to resolve their legal matters without appearing before court.

Benchers then engaged in discussions regarding the Attorney General's proposals and update, and offered insights for the Attorney General's consideration. Suggestions included incorporating mediation into the arbitration model to address motor vehicle collision claims. Benchers also discussed plans for the resumption of circuit courts and criminal jury trials.

## **10. CEO's Report**

Mr. Avison updated Benchers on the Law Society's response to COVID-19 now that BC is entering Phase III of the recovery protocols. Mr. Avison gave an update on several department's activities and priorities, stating that technology options have allowed operations to continue effectively. Staff continues to operate in accordance with the public health guidelines with no more than 50% of staff working in the office at any one time.

Mr. Avison then spoke to the high degree of engagement the Law Society has had with all levels of justice administration, particularly through the COVID-19 Response Group. Mr. Avison gave an update on the three working groups established by the Ministry of the Attorney General: alternative dispute resolution, alternative legal service providers, and the expanded utilization of virtual hearings. Mr. Avison also informed Benchers that the Cross Jurisdiction Technical Advisory Group (XJ-TAG) is expected to report at the end of July. Regarding the opening of the courts, Mr. Avison noted that all court registries are expected to re-open on July 13, 2020.

Mr. Avison mentioned his weekly telephone calls with Deputy Attorney General Richard Fyfe, and thanked him for his openness, accessibility, and action oriented approach during these challenging times. The support that he has provided to the Law Society has been greatly appreciated.

Mr. Avison also reported on the national CEO group meetings in which he has taken part and noted how useful these meetings have been in providing a sense of what is taking place in other jurisdictions and where common challenges lie.

Mr. Avison then updated Benchers on the Cullen Commission hearings, noting that the Commission recently completed 17 days of witness testimony and will reconvene in the fall.

Mr. Avison concluded his report by updating Benchers on his conversations with BC's law schools and offered his congratulations to Catherine Dauvergne, QC, who has been appointed as Vice-President, Academic and Provost at Simon Fraser University.

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

Ms. Cheema provided an update on the recent Federation meeting, which included a check-in on the impact of the pandemic across the representatives' jurisdictions and practices. She noted two particular challenges: the impact on administrative tribunals in New Brunswick, and the impact of closed borders in the northern territories due to the dependence on visiting lawyers and judges.

Ms. Cheema also spoke to the Federation's response to the Cullen Commission and the submission of the Anti-Money Laundering Working Group to the Cullen Commission, which details the history of the 2015 Federation case, litigation history, and addressed the regulation of the profession through the law societies. It is expected that the Federation will make its submission to the Commission in November.

Ms. Cheema then spoke to the report and recommendations of the Truth and Reconciliation Committee. Nine recommendations were accepted by the Federation, including recommending that the Federation make a formal commitment to reconciliation, and recommending that law societies review their regulatory processes, provide ongoing opportunities for competency training, build relationships with indigenous groups, and collaborate with these groups to provide support, and to consider mandatory cultural competency training. The Committee does not recommend changing the national requirement for education of law students, as that should be left to the law schools.

Ms. Cheema updated Benchers on the impacts of the pandemic on the National Committee on Accreditation (NCA), which has seen a drop in revenue due to the cancelling of exams in May and the cancelling of CLE programs. The NCA is contemplating a wider application of virtual attendance to address these impacts.

Finally, Ms. Cheema concluded her report with an update on the National Well-Being Survey, which has been approved by the Council. The steering group is being set up, and the study will be led by L'Université de Sherbrooke. The study will be paid for by the Federation with assistance from the Canadian Bar Association. Further details to come after the October meeting.



## **DISCUSSION/DECISION**

### **12. Introduction to the 2021 – 2025 Strategic Planning Process**

Mr. Avison updated Benchers on the process for the development of the Law Society's fifth strategic plan and spoke to the importance of the process in determining the Law Society's mission and values, prioritizing attention and resources to achieving the objectives of the strategic plan, and promoting accountability and transparency in reporting on progress. Mr. Avison also spoke to the three phases of the process and Benchers' involvement throughout with the intent of having Benchers approve the plan at the December Bencher meeting.

Mr. Avison then provided an overview of each of the components of the strategic plan and spoke to examples that staff had researched in determining the Law Society's approach, including the Nova Scotia Barristers' Society, Barreau du Québec, Queensland Law Society, and the College of Dental Surgeons of BC. Mr. Avison reviewed how each of these organizations approached the development of their respective missions, visions, values, objectives, and initiatives.

Mr. Avison concluded by reviewing the next steps in the planning process, which will include a survey sent to Benchers for their input on the various components of the strategic plan. The results of the survey will then be reviewed in breakout sessions prior to the September Bencher meeting.

Benchers then engaged in discussions regarding the strategic planning process, including engagement with the public and the logistics and composition of the working groups.

### **13. Bencher and Committee Mid-Year Survey Results**

Ms. Hamilton briefed Benchers on the results of the mid-year Bencher and Committee Survey. She noted that a total of 25 Benchers provided responses. Ms. Hamilton highlighted to Benchers the questions which elicited the most agreement, as well as those with the most disagreement, and also noted the questions regarding how Benchers are feeling with the switch to virtual Bencher meetings.

## **UPDATES**

### **14. Equity, Diversity & Inclusion Work Plan**

Ms. Dhaliwal thanked Committee members and staff for their work to date and updated the Benchers on the Equity, Diversity, and Inclusion (EDI) work plan. Ms. Dhaliwal spoke to the Committee's mandate to identify issues and advocate meaningful change both within the Law Society and within the profession at large and to create a work plan of tangible initiatives with measurable outcomes aimed at addressing racism within BC's legal profession. Ms. Dhaliwal

spoke to the existing EDI initiatives and resources of the Law Society, which the Committee is building upon, including fostering diversity within the organization at all levels, fair and equitable hiring practices, intercultural competency training for all Law Society representatives, expansion of CPD accreditation criteria to include EDI issues arising in legal practice, law firm regulation requiring self-assessments, model policies and guidelines, and recognition of significant contributions to EDI in the legal profession through the Law Society EDI award. Ms. Dhaliwal also spoke to the collaboration between the Committee and the Ethics Committee in responding to the Federation of Law Societies' consultation on proposed amendments to the non-discrimination and harassment sections of the Model Code of Professional Conduct. Ms. Dhaliwal then spoke to the importance of tracking progress on these initiatives and of collecting and monitoring demographics data. Ms. Dhaliwal concluded by noting that the EDI action plan had been completed and will be before the Benchers for approval at the September meeting.

The Benchers discussed the statements made by President Ferris on behalf of the Law Society condemning racism and the importance of reiterating that EDI issues are rule of law issues and concern the protection of the public interest.

### **15.2020 May YTD Financial Report**

Ms. McPhee, Chief Financial Officer, provided an update on the financial results and highlights to the end of May 2020. The General Fund operations resulted in a positive variance to budget mainly due to lower operating expenses from a combination of permanent savings as well as the timing of expenses. Revenue is slightly behind budget, mainly due to D&O insurance recoveries having been received in 2019, earlier than expected, as well as lower practice fee revenue. PLTC student revenue is on track with little change. Investment revenue is slightly ahead of budget, but will likely drop by the end of the year due to interest rate reductions. Operating expenses are much lower than anticipated and will likely continue to be lower for the balance of the year, due to timing differences for expenses, as well as internal cost savings due to the pandemic. These savings are expected to continue through to the end of the year and will help balance any revenue shortfall. TAF revenue from the second quarter has not yet been received, but is expected to be lower than budgeted. Ms. McPhee noted that the Law Society had sufficient reserves to address anticipated shortfalls in revenue.

### **16. 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**

**17. 2020 Mid-Year Advisory Committees Report**

There was no discussion on this item.

**18. Rule of Law Secondary School Essay Contest**

There was no discussion on this item.

**19. Three Month Bencher Calendar – July to September 2020**

There was no discussion on this item.

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

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