



Minutes

Benchers

Date: Friday, September 25, 2020

Present:

Craig Ferris, QC, President	Jamie Maclaren, QC
Dean P.J. Lawton, QC, 1 st Vice-President	Claire Marshall
Lisa Hamilton, QC, 2 nd Vice-President	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
Lisa Feinberg	Thomas L. Spraggs
Martin Finch, QC	Michelle D. Stanford, QC
Brook Greenberg	Michael Welsh, QC
Sasha Hobbs	Chelsea D. Wilson
Julie K. Lamb, QC	Guangbin Yan
Dr. Jan Lindsay	Heidi Zetsche

Unable to Attend: Not Applicable

Staff Present:

Don Avison, QC	Michael Lucas, QC
Avalon Bourne	Alison Luke
Jennifer Chan	Tara McPhail
Natasha Dookie	Jeanette McPhee
Su Forbes, QC	Doug Munro
Andrea Hilland	Lesley Small
Gavin Hoekstra	Adam Whitcombe, QC
Jeffrey Hoskins, QC	Vinnie Yuen
Jason Kuzminski	

Guests: Dom Bautista	Executive Director, Law Courts Center
Mark Benton, QC	Executive Director, Legal Services Society
Dr. Susan Breau	Dean of Law, University of Victoria
Trudi Brown, QC	Licensed Paralegal Task Force Chair
Jennifer Brun	President, CBABC
Ian Burns	Digital Report, The Lawyer's Daily
Michelle Casavant	Member, Aboriginal Lawyers Forum
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, Faculty of Law, TRU
Derek LaCroix, QC	Executive Director, Lawyers Assistance Program of B.C.
Robert Lapper, QC	Lam Chair in Law and Public Policy
Mark Meredith	Treasurer and Board Member, Mediate BC Society
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
Karen St. Aubin	Membership Director, Trial Lawyers Association of BC
Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
Dr. Katie Sykes	Associate Professor, TRU Law

CONSENT AGENDA

1. Minutes of September 25, 2020, meeting (regular session)

The minutes of the meeting held on September 25, 2020 were approved as circulated.

2. Minutes of July 10, 2020 meeting (*in camera* session)

The *In Camera* minutes of the meeting held on July 10, 2020 were approved as circulated.

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

Mr. Ferris noted the minor change of “(b) (ii) to (iv)” to “(b) (ii) or (iii)” within the resolution.

The following resolution was passed unanimously and by consent.

BE IT RESOLVED to amend Rule 10-1 as follows:

1. *by rescinding subrule (1) and substituting the following:*

(0.1) In this rule, “recipient” means a lawyer, former lawyer, law firm, articled student or applicant.

(1) A recipient may be served with a notice or other document by

(a) leaving it at the place of business of the recipient,

(b) sending it by

(i) registered mail, ordinary mail or courier to the last known business or residential address of the recipient,

(ii) electronic facsimile to the last known electronic facsimile number of the recipient,

(iii) electronic mail to the last known electronic mail address of the recipient, or

(iv) any of the means referred to in paragraphs (a) to (c) to the place of business of the counsel or personal representative of the recipient or to an address given to discipline counsel by a respondent for delivery of documents relating to a citation, or

(c) posting it to an electronic portal operated by the Society to which the recipient has been given access and notifying the recipient of the posting by a method enumerated in paragraph (b) (ii) or (iv).;

2. *by adding the following subrule:*

(7.1) A document that is posted to an electronic portal operated by the Society is deemed to be served the next business day after the document is posted and notification is sent to the recipient.;

3. *by rescinding subrule (8) and substituting the following:*

(8) Any person may be notified of any matter by ordinary mail, registered mail, courier, electronic facsimile or electronic mail to the person’s last known address.

4. Rule 2-105 et al.: Payment of Practising Fees by Instalment

Mr. Ferris noted the minor revision of removing a superfluous “the” from the resolution.

The following resolution was passed unanimously and by consent.

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

1. By rescinding Rule 2-105 and substituting the following:

Annual practising and indemnity fee instalments

- 2-105** (1) The annual practising fee and indemnity fee are payable in respect of each calendar year.
- (2) The date for payment of the first instalment of each of the annual practising fee and the indemnity fee is November 30 of the year preceding the year for which they are payable.
- (3) The date for payment of the second instalment of each of the annual practising fee and the indemnity fee is May 31 of the year for which they are payable.;

2. By rescinding Rule 2-108 (1) to (3) and substituting the following:

- 2-108** (1) If a lawyer fails to pay the instalment of fees by the date required under Rule 2-105 (2) [*Annual practising and indemnity fee instalments*] 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, the lawyer continues to be a member of the Society.
- (1.1) If a lawyer fails to pay the instalment of fees by the date required under Rule 2-105 (3) [*Annual practising and indemnity fee instalments*] but pays all of those fees before June 30 of the year for which they are payable, together with the late payment fee under this rule, the lawyer continues to be a member of the Society and is not suspended for non-payment of fees.
- (2) The Executive Director may extend the time for a lawyer or class of lawyers to pay an instalment of fees or a special assessment and, if the lawyer pays
- (a) the instalment of fees or special assessment by the date to which the time is extended, and
- (b) the late payment fee under this rule,
- the lawyer is deemed to be a member of the Society in good standing and to have been in good standing during the period of time that the lawyer’s instalment of fees or special assessment was unpaid.
- (3) A lawyer, other than a retired or non-practising member, who has failed to pay an instalment of fees in accordance with Rule 2-105 (2) or (3) [*Annual practising and indemnity fee instalments*], is required to pay the late payment fee for practising lawyers specified in Schedule 1.;

3. ***By adding the following rule:***

Failure to pay fees

- 2-108.1** (1) If a lawyer fails to pay the first instalment of the annual practising fee by December 31 of the year preceding the year for which it is payable, together with the late payment fee if required, the lawyer ceases to be a member of the Society.
- (2) If a lawyer fails to pay the second instalment of the annual practising fee by June 30 of the year for which it is payable, together with the late payment fee if required, the lawyer is suspended.
- (3) If a lawyer who is not exempt under Rule 3-43 [*Exemption from professional liability indemnification*] fails to pay the second instalment of the indemnity fee by June 30 of the year for which it is payable, together with the late payment fee if required, the lawyer must immediately cease the practice of law in accordance with section 30 (7) [*Indemnification*] and surrender to the Executive Director the lawyer's practising certificate and any proof of professional liability indemnity coverage issued by the Society.;

4. ***In Rules 3-25 and 3-81, by striking “the date set in Rule 2-105” and substituting “the date set in Rule 2-105 (2) or (3)”;* and**

5. ***By rescinding Rule 3-41.***

5. Rule Amendments: 2020 Call and Admission Ceremonies

The Benchers approved in principle to amend the rules to provide an extension of time for lawyers who have been called and admitted to be presented in open court before a judge of the Supreme Court until December 31, 2021 and to refer the matter to the Act and Rules Committee to develop the specific language.

6. Proposal to Amend Rules Addressing Law Society Form Approval

The Benchers approved in principle amending the rules to provide the Executive Director with the authority to approve forms, subject to the Executive Director implementing a policy that where substantive changes are being made, committee approval will be sought. The matter will be referred to the Act and Rules Committee to prepare proposed rule amendments to be returned to the Benchers for approval.

7. 2021 Fee Reduction for Qualifying Lawyers

The following resolution was passed unanimously and by consent.

Provided the firm has completed the required form and meets the criteria for an annual practising fee reduction, or if the Executive Director determines that there are extraordinary circumstances that would justify a firm receiving a 2021 annual practice fee reduction where no application was received, lawyers in each firm that qualifies shall be entitled to a percentage fee reduction on their 2021 annual practising fee as indicated.

8. Update on Fall Events and Revisions to 2020 Benchers & Executive Committee Meeting Dates

The updated 2020 Benchers & Executive Committee Meeting Dates was approved as circulated.

9. 2020 Law Society Award

The following resolution was passed unanimously and by consent.

The Benchers resolved to recommend Leonard Doust, QC as the 2020 recipient of the Law Society Award.

REPORTS

10. President's Report

Mr. Ferris began his report by speaking about changes the Law Society and the legal profession are facing. Mr. Ferris referenced different types of change, speaking first of Jasmin Ahmad's recent appointment to the Supreme Court of BC and congratulating her on behalf of the Bencher table. Mr. Ferris also spoke about recent loss within the legal community, noting the passing of former Bencher and Life Bencher, Peter Lloyd; former Bencher and Life Bencher, Gerald Lecovin, QC; Judge Suzanne Macgregor of the Provincial Court of BC; Justice Ruth Bader Ginsburg of the Supreme Court of the United States; and Lance Finch, QC, former Chief Justice of BC.

Mr. Ferris then spoke about the Futures Task Force report and its focus on transformative change for the Law Society and the profession. Mr. Ferris noted that the recommendations in the report will require Benchers to engage in bold and innovative decision-making, as referenced in Recommendation 1 of the report, which states: *The Benchers need to recognize where changes are possible and be prepared to advance bold and innovative approaches to how law is practised and regulated in order to address its mandate in section 3 of the Legal Profession Act.*

Mr. Ferris then spoke about how the nature of the legal profession can hold lawyers back from change and innovation, citing the success of the current model; the profession's ethical rules, which embed a certain approach to business issues within the practice; and the tendency of the legal profession to look for fault and to be risk and change adverse. Mr. Ferris spoke about the

need to embrace change and shift this mindset in order to achieve measurable action in addressing access to justice and serving the public.

Mr. Ferris then invited Mr. Lawton to speak to Benchers about Orange Shirt Day. Mr. Lawton informed Benchers that Orange Shirt Day, which takes place on September 30, is a day that reminds us of our promise to Indigenous and non-Indigenous peoples in Canada that the Law Society is dedicated to truth and reconciliation. Mr. Lawton spoke about the importance of building relationships with Indigenous leaders and communities and advancing the objectives of the First Nations Justice Strategy.

Mr. Ferris updated Benchers on the delay of the implementation of the law firm survey to 2021 due to the increase of requirements starting in January 2021. He also updated Benchers on the changes to the Annual Practice Declaration based on the recommendation of the Equity, Diversity, and Inclusion Advisory Committee.

11. CEO's Report

Mr. Avison updated Benchers on a number of operational changes within the Law Society and reviewed specific initiatives of various departments of the Law Society, noting that PLTC will be resuming virtual classes at the beginning of October.

Mr. Avison updated Benchers on the Cullen Commission hearings. The Law Society will be called upon to testify the week of November 16, as will the Federation of Law Societies of Canada.

Mr. Avison then reminded Benchers about advance voting for the Annual General Meeting and the open call for nominations for the Bencher By-election taking place in the County of Vancouver.

Mr. Avison concluded his report by thanking Benchers for responding to the survey regarding the possibility of an in-person Bencher meeting, noting that the results will be reviewed by the Ladder and Executive Committee prior to a decision being made.

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

Ms. Cheema provided an update on recent Federation Council activities, informing Benchers that the Federation Conference would take place virtually on October 14 and 15, with the Federation Council meeting taking place on October 16. Ms. Cheema also informed Benchers that an invitation to attend the Federation Conference will be sent to Benchers of all law societies across Canada. Ms. Cheema noted that the topic of the Federation Conference would be the future of the legal profession in a changing and post-pandemic world.

Ms. Cheema updated Benchers on the recent activities of the National Committee on Accreditation (NCA), noting that policies regarding in-person assessments and exams have been revised due to the pandemic, and that exams had resumed virtually in August. Ms. Cheema then informed Benchers that the report containing the results of a gap analysis conducted by the Federation between Canadian lawyers and lawyers coming to Canada from other countries was available for Benchers review. Ms. Cheema noted that the report was not to be disseminated beyond the Benchers table. Ms. Cheema then informed Benchers that based on the results of the report, the Federation had engaged a service provider to develop a competency profile as recommended within the report.

Ms. Cheema also provided updates on the recent activities of the Public Affairs and Government Relations Committee and the Model Code Committee, noting that the Model Code Committee will be reviewing the incorporation of cultural competency and undergoing training.

Ms. Cheema concluded her report by informing Benchers that the Federation will be carrying out a national survey to determine the well-being of the profession. A steering committee has been formed and Brook Greenberg will be a member of the steering committee.

DISCUSSION/DECISION

13. Futures Task Force: Anticipated Changes in the Legal Profession

Mr. Ferris thanked the Task Force members and staff for their hard work and summarized the report for Benchers. Mr. Ferris then reviewed each of the recommendations within the Report, stating that he hoped that all of the recommendations would be adopted by Benchers and incorporated into the Law Society's strategic plan.

Benchers then engaged in discussions regarding the adoption of the recommendations of the Task Force's report with several Benchers speaking about the aspirational and innovative direction of the report and the importance of leading change within the profession. Benchers also mentioned the inward nature of some of the recommendations and the importance of engaging with the public to determine their needs and to make legal services more accessible and affordable, while also protecting the rule of law.

Benchers asked questions regarding the future of the Task Force and how the implementation of the recommendations would be overseen. Benchers will assume the responsibility for the recommendations within the Task Force, and the Executive Committee will consider how the committees should approach and implement the recommendations, and whether or not new committees will need to be established to achieve this. Benchers discussed the importance of identifying clear short-term and long-term priorities and determining the balance between strategy and operations.

Benchers discussed the need to consider how to provide opportunities for members of the public to get involved in the implementation of the reports' recommendations, noting the importance not to be prescriptive and to work with the communities who have the expertise to design programs and initiatives that meet the legal needs of the public.

Mr. Ferris asked Benchers to provide feedback regarding priorities in terms of the recommendations for the Executive Committee to discuss.

A motion to adopt the recommendations as presented within the final report of the Futures Task Force was unanimously approved.

14. Licensed Paralegal Task Force Report: Proposal for Developing and Regulating Alternate Legal Service Providers

Trudi Brown, QC, Chair of the Licensed Paralegal Task Force, attended to present the report of the Licensed Paralegal Task Force. Ms. Brown summarized the report for Benchers, noting that the report proposed a different approach from that provided in the Task Force's terms of reference, and that the Task Force recommended the shift as set out in the report. Based on the research and data reviewed in preparation of the report, the Task Force recommends a "grass roots" approach to advance the licensed paralegal initiative within a regulatory sandbox. This model would permit individuals to present proposals to the Law Society to provide legal advice or services in areas where it is determined that expanded service provision is needed.

Mr. Welsh added that the regulatory sandbox model would be more effective in that custom regulation could be developed based on the types of proposals brought to the Law Society, as opposed to developing a one size fits all model. Mr. Welsh also added that the recommendations of the Task Force are based on the models of other jurisdictions, which will provide helpful practices on which to build upon.

Benchers then engaged in discussion of the recommendations of the Task Force and the importance of approaching various advocacy and community groups across the province, particularly Indigenous advocacy groups and court workers for Indigenous.

Benchers discussed specifics of the regulatory sandbox model, including whether a bursary program or fund could be provided for groups that are able to provide access to justice solutions, but who may not have the funding available to put together a proposal; maintaining a public database of no action agreements; and developing a strategy to inform and educate the profession about this initiative and to address any concerns.

Mr. Ferris informed Benchers that the Executive Committee will consider the suggestions provided during the discussion.

A motion to approve the recommendations as presented within the report of the Licensed Paralegal Task Force was unanimously approved.

15. Lawyer Development Task Force Report: Exploring Alternatives to Articling

Mr. McKoen summarized the report and thanked the Task Force members and staff for all their help. Mr. McKoen then reviewed each of the recommendations within the report.

Benchers provided feedback on the recommendations of the Task Force, including utilizing more senior lawyers in training options, incorporating practitioners into the alternative pathways being considered, and ensuring that mentorship remains a significant component.

Benchers also discussed the potential increase in costs for the program and suggested that the Task Force conduct a cost-benefit analysis of the recommendations.

A motion to approve the recommendations as presented within the report of the Lawyer Development Task Force was unanimously approved.

16. Unauthorized Practice Committee: Policy Statement on Unauthorized Practice Action

Mr. Maclaren thanked the Committee and staff for all their help and reviewed with Benchers the policy statement on unauthorized practice action. Benchers discussed the policy statement and recommended changing the word “demonstrable” within the statement. Possible alternatives were discussed and the policy statement was revised to amend “demonstrable” to “significant”.

The following motion was made and seconded.

BE IT RESOLVED that the Benchers adopt the following policy statement: The Law Society will not take action against persons who are apparently acting contrary to section 15 of the *Legal Profession Act* unless, as determined in the discretion of the Executive Director, there is significant risk of harm to a person or the public.

The motion was passed unanimously with one abstention.

17. Review of 2021 – 2025 Strategic Plan Survey Results and Priorities

Mr. Avison thanked Deputy Attorney General Fyfe for attending the Bencher meeting and for his support in navigating the COVID-19 pandemic. Mr. Avison informed Benchers that the Cullen Commission hearings will not reconvene until after the BC provincial election, which may affect the testimony timeline. More information will be provided once it is known.

Mr. Avison updated Benchers on the status of and next steps for the 2021-2025 Strategic Plan and reviewed the plan's elements. Mr. Avison also reviewed the themes that emerged from the breakout sessions related to the mission, vision, and values.

Benchers discussed the suggested mission and vision statements and strategic objectives. The preferred draft mission statement was option E, though Benchers suggested using clearer language and incorporating elements from options B and D regarding fostering public confidence, protection of the public, and fair and effective regulation. The preferred draft vision statement was a combination of both options, though several Benchers liked the short succinct format of option B. Several Benchers also disliked the use of the term "user-focused" suggesting public-focused instead.

Benchers discussed the draft strategic objectives with suggestions including building measurability into the objectives, removing the term "influencer", ensuring clarity between the public and the profession, and incorporating specific objectives regarding diversity and inclusion.

Mr. Avison thanked Benchers for their input and noted that the suggestions would be incorporated into the discussions for the October Bencher meeting. Mr. Avison also spoke about the importance of distinguishing between an overarching strategic objective and the specific initiatives attached to the objectives.

Mr. Avison informed Benchers that a public and internal staff consultation will be conducted, which will include publicizing the plan outline on the Law Society website and social media channels, direct engagement with justice sector partners and stakeholders, and outreach to BC's law schools.

18. Consent Agreements for the Resolution of Complaints without a Citation or Hearing: Professional Regulation Process Review

Ms. Dookie provided an overview of the process review proposal.

Benchers discussed the proposal and provided suggestions, including adding that the Chair and Vice-Chair of the Discipline Committee be able to delegate to another member of the Committee decisions referred to them, as is proposed in the report.

The following motion was made and seconded.

BE IT RESOLVED that the Benchers approve the use of consent agreements, where appropriate, to resolve complaint matters without a citation or hearing, and that the process for such consent agreements be as set out in this report; and that the Act & Rules Committee be directed to prepare the necessary rule amendments to be returned to the Benchers for approval.

The motion passed unanimously.

19. Equity, Diversity and Inclusion Advisory Committee: Maternity Leave Loan Review

Ms. Dhaliwal provided an overview of the maternity leave loan review performed by the Equity, Diversity, and Inclusion (EDI) Advisory Committee and reviewed the Advisory Committee's recommendation not to continue the Program due to low usage and to replace with alternative options aimed at supporting the retention of new parents in the legal profession.

Benchers discussed challenges with the current requirements of the Program, including the requirement that loan recipients take non-practising status, which renders them unable to serve their clients and to develop new client relationships. Benchers suggested the option of a parental leave member status, along with other leave options be considered as possible solutions to replace the Program. Benchers also discussed that the need to replace the Program was due to the lack of usage and challenges within the requirements, so the onus should be on finding better methods, as opposed to alternative methods.

Benchers expressed concerns that removing the Program entirely without a concrete replacement may send the wrong message and better clarity is needed regarding the intentions of replacing the Program.

The following motion was made and seconded.

BE IT RESOLVED that based on the findings from the review of the Maternity Leave Benefit Loan Pilot Program, the EDI Advisory Committee recommends that:

- i. The Program should be phased out by the end of the calendar year (i.e. December 31, 2020); and
- ii. Staff should identify and analyze better methods of supporting the retention of new parents in the legal profession, and in particular birth mothers, and report back to Benchers within the next six months.

Some Benchers expressed concern with the inclusion of “particularly birth mothers” within the motion, stating that in this day and age both women and men take parental leave. A motion was made that the resolution be amended to remove the phrase “particularly birth mothers”.

The motion to amend the resolution was passed.

Some Benchers expressed concern with the inclusion of an end date for the Program without clear alternatives that would be replacing the Program. A motion was made that the resolution be amended to remove sub-paragraph (i).

The motion to amend the resolution failed.

Benchers then voted on the following motion as amended:

BE IT RESOLVED that based on the findings from the review of the Maternity Leave Benefit Loan Pilot Program, the EDI Advisory Committee recommends that:

- i. The Program should be phased out by the end of the calendar year (i.e. December 31, 2020); and
- ii. Staff should identify and analyze better methods of supporting the retention of new parents in the legal profession and report back to Benchers within the next six months.

The resolution was passed.

20. Equity, Diversity and Inclusion Advisory Committee: Action Plan

Ms. Dhaliwal summarized the Equity, Diversity, and Inclusion Advisory Committee’s Action Plan.

Mr. Ferris requested that the Advisory Committee provide an annual or six-month progress report on the initiatives contained within the action plan.

A motion to approve the Action Plan as recommended by the Equity, Diversity, and Inclusion Advisory Committee was unanimously approved with one abstention.

21. 2021 Budget & Fees

Mr. Lawton introduced the item, followed by a presentation to Benchers on the proposed 2021 budget and fees delivered by Mr. Avison.

Mr. Avison began by informing Benchers that the Law Society will avoid a projected deficit for 2020 due to the cost savings achieved as a result of the measures taken to minimize the impact of COVID-19.

He then highlighted some of the key financial considerations the Law Society would be focusing on for 2021, including a one-time fee relief for lawyers most in need, no increase to practice and indemnity fees, and a provision for semi-annual instalments of practice and indemnity fees. External organization funding remains the same as 2020 on a per lawyer basis. Mr. Avison reviewed additional areas of operational focus for 2020, including implementation of the new Strategic Plan, a continued focus on anti-money laundering initiatives, education and practice initiatives, and an increased focus on technology.

Benchers discussed the fee required for the Advocate, and whether or not an opt-out option would be appropriate. Mr. Ferris requested that this item be raised and debated in January 2021 with the Finance & Audit Committee.

The following resolution was passed unanimously with one abstention.

BE IT RESOLVED THAT:

- Effective January 1, 2021, the practice fee be set at \$2,289.12, pursuant to section 23(1)(a) of the *Legal Profession Act*.

The following resolution was passed unanimously with one abstention.

BE IT RESOLVED THAT:

- The indemnity fee for 2021 pursuant to section 30(3) of the *Legal Profession Act* be set at \$1,800;
- The part-time indemnity fee for 2021 pursuant to Rule 3-40(2) be set at \$900; and
- The insurance surcharge for 2021 pursuant to Rule 3-44(2) be set at \$1,000.

UPDATES

22. National Discipline Standards: 2020/2021 Implementation Report

Ms. Dookie reviewed the background of the development of the national discipline standards and presented the results of the 2020/2021 Implementation Report. Ms. Dookie reviewed the performance of the Law Society of BC versus the national average, noting that the Law Society of BC consistently meets the standards beyond the national average.

23. 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

24. Three Month Bencher Calendar – October to December 2020

There was no discussion on this item.

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

AB
2020-09-25