



Minutes

Benchers

Date: Friday, October 30, 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:

Don Avison, QC	Alison Luke
Avalon Bourne	Tara McPhail
Shelley Braun	Jeanette McPhee
Barbara Buchanan, QC	Doug Munro
Natasha Dookie	Michelle Robertson
Su Forbes, QC	Lesley Small
Andrea Hilland	Michael Soltynski
Jeffrey Hoskins, QC	Adam Whitcombe, QC
Jason Kuzminski	Vinnie Yuen
Michael Lucas, QC	

Guests:	Dom Bautista	Executive Director, Law Courts Center
	Chase Blair	Member, Law Society of BC
	Jennifer Brun	President, CBABC
	Michelle Casavant	Member, Aboriginal Lawyers Forum
	Harry Cayton CBE FFHP	International Advisor to the Professional Standards Authority
	Morgan Cooper	President, Federation of Law Societies of Canada
	Jonathan Herman	CEO, Federation of Law Societies of Canada
	Alexis Kazanowski	Assistant Dean, Faculty of Law, TRU
	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
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Pamela Shields	Member, Law Society of BC
	Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
	Ardith Walkem, QC	Co-Chair, Truth and Reconciliation Advisory Committee

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. 2021 Fee Schedule Amendment

The following resolution was passed unanimously and by consent.

BE IT RESOLVED to amend the Law Society Rules, effective January 1, 2021, as follows:

1. In the headings of schedules 1, 2 and 3, the year “2020” is struck and “2021” is substituted.
2. Schedule 2 is rescinded and the following substituted:

	Practice fee		Indemnity fee assessment	
	Payable	Payable by	Payable	Payable by
	prior to call	May 31	prior to call	May 31
Full-time indemnification				
January	1,144.56	1,144.56	900.00	900.00
February	953.80	1,144.56	750.00	900.00
March	763.04	1,144.56	600.00	900.00
April	572.28	1,144.56	450.00	900.00
May	381.52	1,144.56	300.00	900.00
June	190.76	1,144.56	150.00	900.00
July	1144.56	0.00	900.00	0.00
August	953.80	0.00	750.00	0.00
September	763.04	0.00	600.00	0.00
October	572.28	0.00	450.00	0.00
November	381.52	0.00	300.00	0.00
December	190.76	0.00	150.00	0.00
Part-time indemnification				
January	1,144.56	1,144.56	450.00	450.00
February	953.80	1,144.56	375.00	450.00
March	763.04	1,144.56	300.00	450.00
April	572.28	1,144.56	225.00	450.00
May	381.52	1,144.56	150.00	450.00
June	190.76	1,144.56	100.00	450.00
July	1,144.56	0.00	450.00	0.00
August	953.80	0.00	375.00	0.00

September	763.04	0.00	300.00	0.00
October	572.28	0.00	225.00	0.00
November	381.52	0.00	150.00	0.00
December	190.76	0.00	100.00	0.00

3. Futures Task Force Wind Up

The following resolution was passed unanimously and by consent.

BE IT RESOLVED that the Futures Task Force established by the Benchers in January 2019, having fulfilled its mandate, is hereby wound up.

4. Rule 2-84: Call and Admission

The following resolution was passed unanimously and by consent.

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 2-84 (6) and substituting the following:

- (6) Despite subrule (5)
 - (a) the Executive Director may renew a certificate issued under subrule (4) within four months of its expiry date, and
 - (b) the Benchers may, by resolution, extend the time for a lawyer or a category of lawyers to be presented in open court.

5. Law Society Forms Approval by Executive Director: Rule Amendments

The following resolution was passed unanimously and by consent.

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

1. Rule 1 is amended as follows:
 - (a) the definition of “articling agreement” is rescinded and the following substituted:

“articling agreement” means a contract in the prescribed form executed by an applicant for enrolment and the applicant’s prospective principal;;
 - (b) the following definition is added:

“prescribed form” means a form approved by the Executive Director;.
2. Rule 1-51 (d) is rescinded.

3. The following rules are amended by striking out “in a form approved by the Credentials Committee” and substituting “in the prescribed form”:

- (a) Rule 2-5 (1) (a);
- (b) Rule 2-19 (3) (a);
- (c) Rule 2-29 (1) (a);
- (d) Rule 2-34 (2) (a);
- (e) Rule 2-40 (1) (a);
- (f) Rule 2-42 (2) (a);
- (g) Rule 2-49 (1);
- (h) Rule 2-54 (1) (a);
- (i) Rule 2-61 (2);
- (j) Rule 2-67 (1) (a) and (b);
- (k) Rule 2-70 (1) (a) and (b);
- (l) Rule 2-79 (1) (a);
- (m) Rule 2-82 (1) (a);
- (n) Rule 2-85 (1) (a).

4. The following rules are amended by striking out “in a form approved by the Executive Committee” and substituting “in the prescribed form”:

- (a) Rule 2-8 (1);
- (b) Rule 2-12.1 (1);
- (c) Rule 2-47 (2);
- (d) Rule 2-110 (3) (b);
- (e) Rule 3-40 (2);
- (f) Rule 3-96;

- (g) Rule 9-2 (1);
 - (h) Rule 9-4 (a);
 - (i) Rule 9-6 (1).
5. Rule 2-12.1 (1) is amended by rescinding the definition of “registration form” and substituting the following:
- “registration form” means the prescribed form required under Rule 2-12.2 completed to the satisfaction of the Executive Director;
6. Rule 2-19 (3) (c) is rescinded and the following substituted:
- (c) a certificate of standing dated not more than 30 days before the date of application, issued by each governing body of which the visiting lawyer is a member,.
7. Rule 2-40 (2) is amended by striking out “other requirement determined by the Credentials Committee, in the form referred to in subrule (1),” and substituting “other requirement in the prescribed form,”.
8. Rule 2-61 (2) is amended by striking out “60 per cent of his or her articling term,” and substituting “60 per cent of the student’s articling term,”.
9. Rule 2-67 (1) is amended by striking out “permission to assign his or her articles” and substituting “permission to assign the student’s articles”.
10. Rule 2-77 (1) (a) is amended by striking out “in the form approved by the Credentials Committee.” and substituting “in the prescribed form.”.
11. Rule 2-81 (3) is amended by striking out “in a prescribed form” and substituting “in the prescribed form”.
12. The following rules are amended by striking out “in a form approved by the Executive Director” and substituting “in the prescribed form”:
- (a) Rule 3-28 (1) (b);
 - (b) Rule 3-29 (3) (b);
 - (c) Rule 3-38 (3) (b).

13. The following rules are amended by striking out “in a form approved by the Discipline Committee” and substituting “in the prescribed form”:
 - (a) Rule 3-64.1 (1);
 - (b) Rule 3-79 (5) (a).
14. Rule 3-90 (1) is amended by striking out “in the form approved by the Executive Committee” and substituting “in the prescribed form”:

6. Rule 5-8, 5-9 & 5-12: Public Hearings

The following resolution was passed unanimously and by consent.

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

1. Rule 5-8 is amended as follows:
 - (a) in subrule (1), “in any circumstances it considers appropriate” is struck out;
 - (b) the following subrule is added:
 - (1.1) The panel or review board must not make an order under subrule (1) unless, in the judgment of the panel or review board
 - (a) the public interest or the interest of an individual in the order outweighs the public interest in the principle of open hearings in the present case, or
 - (b) the order is required to protect the safety of an individual.;
 - (c) subrule (2) (a) is rescinded and the following substituted:
 - (a) an order that specific information not be disclosed despite Rule 5-9 (2) [Transcript and exhibits].;
2. Rule 5-9 is rescinded and the following substituted:
 - 5-9 (1) All proceedings at a hearing must be recorded by a court reporter.
 - (2) Subject to the Act, these rules and the *Freedom of Information and Protection of Privacy Act*, any person may obtain, at the person’s own expense, a copy of
 - (a) a transcript of any part of the hearing that is open to the public, or

(b) an exhibit entered in evidence when a hearing is open to the public.

(3) This rule must not be interpreted to permit the disclosure of any information, files or records that are confidential or subject to a solicitor client privilege.

3. Rule 5-12 is amended as follows:

(a) the following subrule is added:

(2.1) A party or anyone with an interest in information subject to an order made under Rule 5-8 (2) (a) [*Public hearing*] may make an application in writing to the President for rescission or variation of the order.;

(b) subrule (5) is amended as follows:

(i) “that hears an application” is struck out and “that decides an application” is substituted;

(ii) paragraph (a) is rescinded and the following substituted:

(a) dismiss the application,;

(c) the following subrule is added:

(5.1) The panel, review board or Committee that decides an application under subrule (2.1) must

(a) dismiss the application,

(b) rescind the order, or

(c) vary the order to one that the original panel or review board was permitted to make under Rule 5-8 (2) (a) [*Public hearing*].

7. Rule 3-3: Confidentiality of Complaints

The Benchers approved in principle amending Rule 3-3 to reflect the policy considerations to better ensure that the rule is consistent with the statutory provisions on disclosure set out in s. 87 of the Act, and that the matter be preferred to the Act and Rules Committee to prepare rules for approval by the Benchers at a later date.

8. Tribunal Hearing Procedures

The Benchers approved referring the following to the Act and Rules Committee:

1. Consolidation of the tribunal hearing rules into a single “Part” of the Law Society Rules;
2. Mandatory publication of all Tribunal decisions by the Executive Director, subject only to a determination by the Tribunal that extraordinary circumstances dictate that the public interest is best served by not publishing the decision;
3. Establish the role of “Tribunal Chair,” in the Rules. The Tribunal Chair will be appointed for a two-year term by the Benchers;
4. Establish the role of “Chambers Bencher” in the Rules to replace “President’s designate,” with all lawyer Benchers being eligible for the position (subject to committee conflicts);
5. Develop a standardized process in the Rules for any application for an order before a hearing starts. All matters should be directed to the President/Chair, potentially with some guidance regarding who should decide the matter: Chambers Bencher, panel or pre-hearing conference;
6. Create a standard procedure to apply for variation of any order. The procedure should be similar to the procedure for an interlocutory application;
7. With respect to interim suspensions under Rule 3-10 and Rule 4-23, that the three or more Benchers hearing the matter include an Appointed Bencher in circumstances where an Appointed Bencher is available;
8. The parties on review should be:
 - a. “Applicant” for Credentials hearings;
 - b. “Respondent” for responding to a citation;
 - c. Choose either “hearing on” and “hearing of” and applying it in all cases in the Rules.

The Benchers approved referring to staff the following:

1. Determine what services and/or technology might be used to supplement the use of court reporters.

9. Recovery of Investigation Costs: Required Legislative Amendment

The following resolution was passed unanimously and by consent.

BE IT RESOLVED that the Law Society seek an amendment to the Legal Profession Act to permit the Law Society to recover investigation costs from lawyers in appropriate circumstances.

REPORTS

10. President's Report

Mr. Ferris began his report by noting that this would be his penultimate report. He spoke about the challenges that the Law Society and the legal profession had faced during the past year with the COVID-19 pandemic. However, in spite of these challenges, the Law Society has tackled an ambitious agenda. Mr. Ferris reviewed the accomplishments achieved thus far in 2020, including the adoption of the report of the Futures Task Force, significant progress made on the implementation of an innovation sandbox, the adoption of an unauthorized practice policy, the implementation of a one-time fee relief program, the development of a legal aid strategy, and significant progress made in reimagining practice standards.

Mr. Ferris also spoke about the importance of keeping up momentum and managing through a period of significant change. Mr. Ferris reviewed the Law Society's mandate of protecting the public and referenced access to justice as a driving force for many of the new initiatives that the Law Society is overseeing. He then spoke about the importance of celebrating progress, communicating milestones, and staying the course. Mr. Ferris concluded by stating that the path the Law Society has chosen is important and meaningful and not to let barriers alter that course for the future that the Law Society is envisioning.

11. CEO's Report

Mr. Avison began his report by echoing Mr. Ferris' words on maintaining momentum. Mr. Avison then informed Benchers that work is already underway on several of the initiatives approved at the last Bencher meeting, including exploring alternatives to articling and the implementation of an innovation sandbox.

Mr. Avison spoke about the Law Society's and other jurisdictions' use of technology to continue to get work done, regulate the legal profession, and to protect public interest, despite the challenges faced by COVID-19. He referenced the International Conference of Legal Regulators, which has been an entirely virtual conference. Mr. Avison provided an overview of the conference, noting sessions on remote regulation were of particular interest.

Mr. Avison spoke about the provincial election and changes to cabinet based on the results of the election. After the election and the appointment of cabinet, staff will provide a briefing note to Benchers.

Mr. Avison gave an update on Law Society operations, noting staff changes within PLTC and preparations underway regarding the changes to the Lawyer's Indemnity Fund, noting that Ms. Forbes would be attending the December Benchers meeting to provide an in-depth update.

Mr. Avison concluded his report by updating Benchers on the Cullen Commission hearings, noting that the Law Society would be providing testimony the week of November 16

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

Ms. Cheema provided a recap of the Federation Conference, which was focused on the COVID-19 pandemic and its effects on the legal profession. Ms. Cheema spoke about the conference presentations including one given by Jordan Furlong, a legal industry analyst, which reviewed the potential impacts of the pandemic on not only lawyers, but regulators and the justice system as a whole, as well as presentation given by Nathalie Cadieux, an Associate Professor at L'Université de Sherbrooke, which focused on the impacts of the pandemic on the legal profession. Professor Cadieux will also be leading the research study undertaken by the Federation and the CBA on the wellbeing of legal professionals. Ms. Cheema recapped additional conference sessions including the digitization of legal services.

Ms. Cheema also provided an update on the Council meeting that followed the conference, informing Benchers that the Federation will be providing testimony at the Cullen Commission hearings on November 16.

GUEST PRESENTATIONS

13. Update on the Federation of Law Societies of Canada

Mr. Ferris welcomed and introduced Morgan Cooper, President of the Federation and Jonathan Herman, Chief Executive Officer of the Federation.

Mr. Cooper spoke about the work of the Law Society and the Federation, and the importance of resource and information sharing to contribute to organizational success. Mr. Cooper thanked Benchers and Law Society staff for all their contributions and involvement with the Federation's committees and initiatives.

Mr. Cooper spoke about the Federation's strategic plan and main priorities including truth and reconciliation and anti-money laundering initiatives. Mr. Cooper provided an overview of the Federation's truth and reconciliation initiatives, including the development of a reconciliation

framework to be applied to all aspects of the Federation, cultural competency training, and a formal statement of commitment to reconciliation. Mr. Cooper also spoke about the reestablishment of a truth and reconciliation working group in partnership with the Canadian Council of Law Deans, as well as collaborative discussions with the Indigenous Bar Association of Canada to share information.

Mr. Cooper updated Benchers on the Federation's efforts to address mental health challenges within the legal profession and the national research study that Nathalie Cadieux from L'Université de Sherbrooke will be conducting on the wellbeing of those in the legal profession.

Mr. Cooper then updated Benchers on the work of the National Committee on Accreditation including the development of a competency-based assessment program.

Mr. Cooper concluded his presentation by reviewing the Federation's efforts to address money laundering, noting the role of Canada's law societies in combatting money laundering. Mr. Cooper also spoke about the amended Federation rules being implemented by law societies to combat money laundering, as well as the development of additional educational materials on how to comply with law society rules. Mr. Cooper ended by reiterating the importance of the relationships between law societies, and between law societies and the Federation in addressing common challenges.

Mr. Herman provided an update on Federation operations and the impacts of COVID-19, as well as the collaborative relationship between the Law Society and the Federation.

Benchers engaged in discussions regarding the priorities of the Federation, including truth and reconciliation and providing additional information to the public regarding the work of the Federation in this area. Benchers also discussed the Federation's initiatives to address discrimination and racism within the legal profession.

Mr. Ferris thanked Mr. Cooper and Mr. Herman for their presentation.

14. Governance Standards

Mr. Ferris welcomed and introduced Harry Cayton, author of the report "An Inquiry into the performance of the College of Dental Surgeons of British Columbia and the Health Professions Act".

Mr. Cayton reviewed the main points of his presentation regarding trends in professional regulation governance, including the changing expectations of public institutions due to social changes and the impact of these changes on regulatory bodies.

Mr. Cayton spoke about factors that affect board performance, including board size, the method of selection of board members and board/committee chairs, terms of office, and overall competencies of board members. Mr. Cayton also spoke about governance in the public interest and the key features needed to be effective, including understanding the link between responsibility and accountability, addressing behaviour that runs contrary to the holding of a public office, exercising corporate responsibility, cultivating effective relationships between the board and staff, managing conflicts of interest appropriately, having transparency in decision-making, and ensuring Board focus on organizational strategy.

Mr. Cayton spoke about the effect of COVID-19 on regulatory bodies, as well as other areas of change that will affect regulatory bodies, including the #metoo movement, the Black Lives Matter movement, the effects of climate change, economic and political tensions, digital developments and artificial intelligence, and the potential recurrence of future pandemics.

Bencherers engaged in discussion with Mr. Cayton on the points of his presentation, including the importance of diversity and expertise in board composition and the differences between representation and diversity, as well as the independence of the legal profession, and the necessity of ensuring public understanding of the importance of independence.

Bencherers discussed elected vs. appointed boards and the process by which appointments could be made. Mr. Cayton noted the importance of determining what sort of Board is required, and then determining how that composition could be achieved. He also spoke about the role of government in making appointments vs. the role of an independent third-party appointing body.

Bencherers discussed the standards of good regulation and how regulatory bodies can demonstrate that they're meeting these standards. Bencherers also discussed the role of committees in effective governance, including dividing committees into three types: board committees essential to running the organization, statutory committees that are generally written into law, and advisory committees that need to have clear focus in order to be effective. Mr. Cayton recommended reviewing committees annually to ensure that they're functioning efficiently and adding value to the board.

Mr. Ferris thanked Mr. Cayton for his presentation and comments.

DISCUSSION/DECISION

15. Review of 2021 – 2025 Strategic Plan Objectives

Mr. Avison updated Bencherers on the status and next steps for the 2021-2025 Strategic Plan and reviewed the mission, vision, and values. Mr. Avison then presented the objectives of the

strategic plan. Mr. Avison asked Benchers to review the objectives and the initiatives related to each objective with a lens of what will be achievable within the next five years.

Benchers discussed the strategic plan objectives and initiatives, noting the importance of considering timeframes for some of the initiatives under the objectives. Once the strategic plan is approved, timelines and operational considerations will be developed for the initiatives. Benchers also discussed the objectives relating to innovation, as well as including reference to, in addition to the rule of law, the just and civil society.

Mr. Ferris encouraged Benchers to review the objectives, take part in small group discussions about the objectives, and to provide any feedback to Mr. Ferris, Mr. Avison, and Mr. Lucas.

16. Rule 4-30: Conditional Admissions with Consent to Disciplinary Action

Ms. Dookie summarized the proposal to amend Rule 4-30 regarding conditional admissions.

Benchers discussed the need to establish transparent policies in regard to the proposed procedural changes, particularly for tribunal members to ensure clarity. Benchers also discussed developing a procedure guidebook for the tribunal.

The following motion was made and seconded.

BE IT RESOLVED that Rule 4-30 be amended to allow for the following:

- a. proposals for resolution of a disciplinary action cannot be brought unilaterally and must be jointly agreed upon by both the respondent and the Law Society; and
- b. such proposals be brought directly to the hearing panel once the hearing has commenced with no necessary involvement from any other bodies, i.e. the Discipline Committee

The motion was passed unanimously.

17. Rule 3-43: Amendments to Permit In-house Lawyers to Participate in the LIF Program

Ms. Forbes summarized the proposed amendments to permit in-house lawyers to participate in the Lawyers Indemnity Fund Program. Ms. Forbes also noted the 50th anniversary of the Program.

The following motion was made and seconded.

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 3-43 (1), (2), (4) and (5) and substituting the following:

3-43 (1) A lawyer is exempt from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee if the lawyer is not engaged in the practice of law, other than providing pro bono legal services, anywhere as a member of the Society.

(1.1) A lawyer may apply in the prescribed form to the Executive Director for exemption from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee if the lawyer is employed by or seconded to one of the following:

- (a) a federal, provincial, territorial or municipal government department or a Crown corporation;
- (b) a society, association, partnership or corporation, other than a law firm;
- (c) a trade union or a similar organization;
- (d) a regulatory body,

and is not engaged in the practice of law, other than providing legal services to that employer or a related organization or providing pro bono legal services.

(2) A lawyer must not be exempted under subrule (1.1) if the lawyer engages in the practice of law in any way other than as described in that provision.

(4) A lawyer may apply in the prescribed form to the Executive Director for exemption from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee, if, in another Canadian jurisdiction, the lawyer

(a) is resident or is deemed resident under the National Mobility Agreement, and

(b) maintains the full mandatory professional liability insurance coverage required in the other jurisdiction that is reasonably comparable in coverage and limits to the indemnity coverage required of lawyers in British Columbia and extends to the lawyer's practice in British Columbia.

(5) A Canadian legal advisor may apply in the prescribed form to the Executive Director for exemption from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee.

The motion was passed unanimously.

18. Discussion of 2020 AGM Member Resolutions

Mr. Ferris reviewed the member resolutions from the Law Society's 2020 annual meeting and noted that the discussion of the member resolution regarding mediators, arbitrators, and parenting coordinators and trust funds had been moved *in camera* in accordance with the Law Society's *in camera* policy.

Mr. Ferris informed Benchers that the Executive Committee is currently gathering information in relation to the member resolutions.

He noted that a survey of current and former articling students and law firms will be conducted to obtain data to assist in the consideration of the member resolution regarding articling students and the *Employment Standards Act*.

He also noted that consultation has begun with the Truth and Reconciliation Advisory Committee in consideration of the member resolution regarding the determination of a new symbol to replace the statue of Sir Matthew Baillie Begbie.

Mr. Ferris suggested there would be a substantive conversation at the December Bencher meeting regarding the member resolutions. Mr. Ferris also stressed the importance of consultation in considering the responses to the member resolutions and taking a thoughtful approach.

The Benchers discussed the need to form an additional committee to decide on what would replace the statue of Sir Matthew Baillie Begbie, particularly when the Law Society has an existing Truth and Reconciliation Committee. Benchers noted the complexity of the issue and the importance of being sensitive and thoughtful in considering possible responses to this member resolution.

UPDATES

19. 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

20. Anti-Money Laundering Strategic Plan

There was no discussion on this item.

21. Message from Len Doust, QC re Law Society Award

There was no discussion on this item.

22. Three Month Bencher Calendar – November 2020 to January 2021

There was no discussion on this item.

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

AB
2020-10-30