



Minutes

Benchers

Date: Friday, December 04, 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	Alison Luke
Avalon Bourne	Jeanette McPhee
Barbara Buchanan, QC	Doug Munro
Lance Cooke	Michelle Robertson
Jennifer Chan	Annie Rochette
Natasha Dookie	Lainie Shore
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
	Mark Benton, QC	Executive Director, Legal Services Society
	Dr. Susan Breau	Dean of Law, University of Victoria
	Jennifer Brun	President, CBABC
	Ian Burns	Digital Report, The Lawyer's Daily
	Lisa Dumbrell	2021 Bencher
	Dr. Cristie Ford	Associate Dean Research and the Legal Profession, Peter A. Allard School of Law
	Clare Jennings	First Vice President, CBABC
	Alexis Kazanowski	Assistant Dean, Faculty of Law, TRU
	Daniel Lee	Member, Law Society of BC
	Mark Meredith	Treasurer and Board Member, Mediate BC Society
	Caroline Nevin	CEO, Courthouse Libraries BC
	Josh Paterson	Executive Director, Law Foundation of BC
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
	Kevin B. Westell	2021 Bencher

CONSENT AGENDA

1. Minutes of October 30, 2020, meeting (regular session)

The minutes of the meeting held on October 30, 2020 were approved as circulated.

2. Minutes of October 30, 2020, meeting (*in camera* session)

The *In Camera* minutes of the meeting held on October 30, 2020 were approved as circulated.

3. Licensed Paralegal Task Force Wind Up

The Licensed Paralegal Task Force wind-up was removed from the consent agenda and moved to Other Business for further discussion.

4. Rule Amendments: Fees, Non-practising and Retired Member Fees and Refunds of Fees

The following resolution was passed unanimously and by consent.

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

1. ***Rules 2-3 (2) and 2-4 (3) and (4) are rescinded.***
2. ***The following rule is added:***

Annual non-practising and retired member fees

2-105.1(1) Non-practising and retired members must pay the applicable annual fee specified in Schedule 1 by November 30 of the year preceding the year for which it is payable.

(2) The Benchers may, by resolution, waive payment of the annual fee by a retired member or group of retired members..

3. ***Rule 2-108 is amended as follows:***

- (a) ***in subrule (4) by striking “in accordance with Rule 2-4 [Retired members]” and substituting “in accordance with Rule 2-105.1 [Annual non-practising and retired member fees]”;***
- (b) ***in subrule (5) by striking “in accordance with Rule 2-3 [Non-practising members]” and substituting “in accordance with Rule 2-105.1 [Annual non-practising and retired member fees]”.***

4. **Rule 2-115 (1) is rescinded and the following substituted:**

2-115 (1) A lawyer who has paid an instalment of the annual fee but who satisfies the Executive Director that the lawyer has totally abstained from practice in British Columbia during the portion of the year to which the instalment applies through disability, other than a suspension, is entitled to a refund of

- (a) the difference between the instalment of the practising fee set by the Benchers under section 23 (1) (a) [*Annual fees and practising certificate*] and the portion of the non-practising member fee specified in Schedule 1, and
- (b) a portion of the annual indemnity fee set under section 30 (3) (a) [*Indemnification*], in an amount determined by the Executive Director..

5. **Rule 2-116 is rescinded and the following substituted:**

2-116 (1) A lawyer who has paid the annual indemnity fee instalment for a portion of the year and ceases to practise for any reason other than suspension or who becomes exempt under Rule 3-43 [*Exemption from professional liability indemnification*] during that portion of the year, is entitled to a refund of a portion of the indemnity fee in an amount determined by the Executive Director.

- (2) If a lawyer becomes a non-practising or retired member during a portion of the year for which the lawyer has paid the annual practising fee instalment, the Executive Director must apply a prorated portion of the practising fee to the prorated non-practising or retired member fee and refund the difference, if any, to the lawyer.
- (3) A lawyer who ceases practising law under any of the following circumstances is entitled to a refund of the unused portion of the annual practising fee instalment paid, less the administration fee specified in Schedule 1:
 - (a) judicial appointment;
 - (b) death;
 - (c) total incapacity such that the lawyer is incapable of applying for non-practising status..

6. **Schedule 1 is amended as follows:**

- (a) **in line item A5 by striking** “(Rule 2-4 (3) [*Retired members*])” **and substituting** “(Rule 2-105.1 (1) [*Annual non-practising and retired member fees*])”;
- (b) **in line item A7 by striking** “(Rule 2-3 (2) [*Non-practising members*])” **and substituting** “(Rule 2-105.1 (1) [*Annual non-practising and retired member fees*])”.

5. Rule Amendments: Consent Agreements to Resolve Complaints

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

1. Rule 1 is amended as follows:

(a) paragraph (c) of the definition of “disciplinary record” is rescinded and the following substituted:

(c) a lawyer’s resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings, including resignation as a term of a consent agreement;;

(b) the following paragraph is added to the definition of “professional conduct record”:

(d.1) a consent agreement to resolve a complaint under Rule 3-7.1 [Resolution by consent agreement];;

(c) paragraphs (e) and (m) of the definition of “professional conduct record” are rescinded and the following substituted:

(e) any suspension or disbarment under the Act or these rules, including resignation requiring consent under Rule 4-6 [Continuation of membership during investigation or disciplinary proceedings];

(m) a payment made from the former special compensation fund on account of misappropriation or wrongful conversion by the lawyer;;

2. The following rules are added:

Resolution by consent agreement

3-7.1(1) At any time before a complaint is referred to a Committee or the chair of the Discipline Committee under Rule 3-8 *[Action after investigation]*, the Executive Director may resolve a complaint by agreement with the lawyer.

(2) A consent agreement under this rule must include admission by the lawyer of a discipline violation and one or more of the following:

(a) a requirement that the lawyer complete a course of study or remedial program to the satisfaction of the Executive Director;

(b) conditions or limitations on the practice of the lawyer;

(c) payment of a fine permitted under section 38 *[Discipline hearings]*;

- (d) suspension of the lawyer from the practice of law or from practice of law in one or more fields of law;
 - (e) resignation of the lawyer from membership in the Society;
 - (f) any other disciplinary action that could be ordered by a hearing panel under section 38.
- (3) A consent agreement is not effective unless it is
- (a) signed by the Executive Director,
 - (b) personally signed by the lawyer or, where the complaint is made against a law firm, by the representative of a law firm, and
 - (c) approved by the chair of the Discipline Committee or another member of the Discipline Committee designated for the purpose by the chair.
- (4) Under subrule (3) (c), the chair of the Discipline Committee or the chair's designate may
- (a) approve the agreement as proposed, or
 - (b) decline to approve the agreement.
- (5) Subject to Rule 3-7.2 [*Breach of consent agreement*], the Society is bound by an effective consent agreement, and no further action may be taken on the complaint that gave rise to the agreement.
- (6) An admission of conduct tendered in good faith by a lawyer during negotiation that does not result in an effective consent agreement under subrule (3) is not admissible in a hearing of a citation arising from the complaint.
- (7) When a complaint is resolved by means of a consent agreement, the Executive Director must notify the complainant in writing of the disposition.
- (8) Section 15 (3) [*Authority to practise law*] applies to a lawyer who is suspended or disbarred or is permitted to resign from membership in the Society under a consent agreement.

Breach of consent agreement

3-7.2 If a lawyer is in breach of a consent agreement, the Executive Director may do one or more of the following:

- (a) treat the breach as a complaint under this division;
- (b) reopen investigation of the complaint that gave rise to the consent agreement;

- (c) refer the matter to a Committee or the chair of the Discipline Committee under Rule 3-8 [*Action after investigation*];

Amending consent agreement

- 3-7.3(1)** A consent agreement may be amended by agreement of the parties reduced to writing and given effect as in Rule 3-7.1 (3) [*Resolution by consent agreement*].
- (2) An agreement amended under subrule (1) has the same effect as if given effect under Rule 3-7.1 (3) [*Resolution by consent agreement*].
- (3) Either party may apply to the chair of the Discipline Committee to approve a proposed amendment concerning
 - (a) a course of study, remedial program or other task to be completed by the lawyer,
 - (b) conditions or limitations on the practice of the lawyer, or
 - (c) an extension of time to pay a fine or begin a suspension.
- (4) On an application under subrule (3), the chair of the Discipline Committee may
 - (a) amend the agreement as proposed, or
 - (b) decline to amend the agreement.
- (5) The chair of the Discipline Committee may designate another member of the Committee to exercise the discretion under subrule (4).

Publication of consent agreement

- 3-7.4(1)** When a consent agreement has been reached and approved under Rule 3-7.1 [*Resolution by consent agreement*], the Executive Director must publish on the Society's website a summary of the circumstances of the consent agreement and the action taken.
- (2) In addition to that required under subrule (1), publication may be made by any other means.
- (3) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.
- (4) A publication under this rule must identify the lawyer who is a party to the consent agreement.
- (5) The Executive Director may publish a summary of an amendment to a consent agreement by any means used to publish the original agreement..

3. Rule 4-6 (2) and (3) is rescinded and the following substituted:

- (2) A lawyer under investigation may not resign from membership in the Society except
 - (a) with the consent of the Executive Director, or
 - (b) under the terms of a consent agreement under Rule 3-7.1 [*Resolution by consent agreement*].
- (3) A respondent may not resign from membership in the Society except with the consent of the Discipline Committee..

6. Rule Amendments: Qualifications to Act as a Principal

The Benchers approved in principle amendments to the rules to extend the period for calculating the minimum experience in Rule 2-57 from 5 out of the previous 6 years to 5 out of the previous 8 years.

7. Retired Member Fee Waiver

The following resolution was passed unanimously and by consent.

BE IT RESOLVED that the retired member's request for waiver of his retired member fee be approved for 2021.

8. External Appointments: Land Title and Survey Authority

The Benchers reappointed Patrick Julian to the LTSA Board for a second term of three years commencing April 1, 2021.

9. External Appointments: Legal Aid BC Board of Directors

The Benchers appointed Nancy Merrill, QC to the Legal Aid BC Board for a term of three years commencing January 1, 2021.

REPORTS

10. President's Report

Mr. Ferris congratulated the Benchers that were elected to the 2021 Executive Committee and thanked them for putting forward their names.

Mr. Ferris reflected on his time as a Bencher and as President of the Law Society, and the lessons learned from past Presidents of the Law Society. Mr. Ferris provided advice for future Presidents, including the importance of planning and preparation and thinking about setting goals for the President term, planning for the unexpected and managing for change, furthering education on regulatory issues, understanding roles and responsibilities, engaging in challenging discussions, building and fostering a relationship with staff, managing relationships with different stakeholders, engaging with the Bencher table and leveraging the different perspectives, and finally letting the next President do their job.

Mr. Ferris spoke about how the practice of law has changed fundamentally through the years and that the Law Society should consider these changes in thinking about how it regulates the profession. Mr. Ferris also spoke about the Law Society's governance framework and recommended that Benchers consider whether or not elections are the best way to populate the Bencher table and to provide for a skills-based Board. There are other models that could be considered. Mr. Ferris also suggested that Benchers consider how the Board conducts business and whether or not the current meeting model is the most effective.

Mr. Ferris concluded his report by thanking all of the Benchers for their service.

Ms. Brun, President of the Canadian Bar Association, BC Branch (CBABC) gave a few words thanking Mr. Ferris for his service as President, and thanking the Law Society its collaboration with CBABC. Ms. Brun also presented Mr. Ferris with a gift from the CBABC.

11. CEO's Report

Mr. Avison provided an update on the Cullen Commission hearings. The Law Society and the Federation provided testimony the week of November 16th, and Mr. Avison thanked staff for their preparatory efforts. Mr. Avison also noted that the Law Society has been well represented by Ludmilla Herbst and Catherine George. The hearings are expected to conclude in late spring 2021.

Mr. Avison reviewed the recent provincial cabinet reshuffle, noting that several positions, including Attorney General and Solicitor General, remain the same. Meetings are being organized with Mr. Lawton and Mr. Avison with several key ministries.

Mr. Avison then spoke about zoom-enabled engagement both within the Law Society and with external organizations, including the International Conference of Legal Regulators, the International Institute of Law Association Chief Executives, the CEOs of Canada's law societies, and the BC Justice Summit, which took a different approach with their virtual summit and the various breakout sessions.

Mr. Avison provided an update regarding the Innovation Sandbox, noting the numerous proposals currently under consideration, which are expected to be before the Executive Committee early in 2021. Mr. Avison also noted media interest regarding the Innovation Sandbox, particularly from the Journal of the American Bar Association.

Mr. Avison concluded his report by reflecting on how the Law Society has risen to the challenge of COVID-19 with staff productivity continuing to remain high. Mr. Avison then provided a virtual tour of the Law Society, reviewing the roles and responsibilities of each department.

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

Ms. Cheema began her briefing by thanking Benchers and staff for their assistance and support in regard to the work of the Federation.

Ms. Cheema informed Benchers that the Federation Council would be meeting on December 7 with a number of initiatives on the agenda, including updates on anti-money laundering and the national wellbeing of the profession initiative, as well as numerous reconciliation initiatives, which include a statement on the Federation's commitment to reconciliation and discussion on options to ensure indigenous input into Federation initiatives. The meeting will also include a guest presentation from the federal Minister of Justice and from the Chief Justice of Canada.

Ms. Cheema then provided an update on the activities of the National Committee on Accreditation, which met on November 24. All of the exams were conducted virtually and concluded at the end of October. There was also a review of assessment and appeal policies based on the switch to virtual exams. Ms. Cheema also noted that she had agreed to be the representative to the NCA's Modernization Sub-committee and would be reporting on its activities at the January Bencher meeting.

DISCUSSION/DECISION

13. Approval of 2021 – 2025 Strategic Plan

Mr. Ferris summarized the process of the development of the Law Society's 2021-2025 Strategic Plan, noting that the plan had undergone several drafts and several rounds of Bencher feedback.

Mr. Avison thanked Benchers for their contributions and engagement in developing the Strategic Plan. He then provided a detailed review of each of the components of the plan.

Benchers discussed the strategic plan objectives, including the focus on support for in-house counsel and government lawyers, which was driven by the findings of the Futures Task Force.

Benchers also discussed the development process for the Strategic Plan and the difference between the broad policy directives included in the plan and the specific committee work-plans, which would be focused on determining the best approach to achieving the individual objectives. This could include engaging with experts as well as with the committee members themselves. Benchers then discussed the revision process, which was an iterative process that brought together the contributions of Benchers into a draft for the Executive Committee to review and then recommend for Bencher's approval.

Benchers also discussed the objective regarding increasing the role of non-adversarial dispute resolution in family law matters, and if this objective should be expanded. The challenge with broadening objectives is that the identification of gaps and areas that require more direct support could be lost. Benchers also discussed the lack of publicly funded non-adversarial dispute resolution services, and that advocating for increased use of non-adversarial dispute resolution in the absence of accessible, available, and affordable services doesn't address the access issue. Benchers discussed focusing on increasing accessibility or availability of non-adversarial dispute resolution as opposed to increasing the role.

Benchers also discussed consistency in the language used for the values, as well as opportunities to be more innovative in processes, particularly with the impact of COVID-19.

Benchers reviewed the objectives related to reconciliation and noted the absence of wording referencing the United Nations Declaration on the Rights of Indigenous Peoples or the Truth and Reconciliation Commission of Canada.

A motion was made and seconded to adopt the Strategic Plan.

Some Benchers expressed concern regarding the wording of the Access and Advocacy section of Objective 3. A motion was made and seconded that the Strategic Plan be amended to replace the first point of the Access and Advocacy section of Objective 3 with *Advocate for greater access to non-adversarial dispute resolution in family law matters.*

The motion to amend the Strategic Plan was passed.

Some Benchers expressed concern regarding the lack of specific support for the United Nations Declaration on the Rights of Indigenous Peoples within the Strategic Plan. A motion was made and seconded that the Strategic Plan be amended to replace the fourth point of the Reconciliation within the Justice System section of Objective 2 with *Support the advancement of the principles set out in the Declaration of the Rights of the Indigenous Peoples Act and the implementation of the First Nations Justice Strategy and support the continued implementation of the recommendations of the Truth and Reconciliation Commission.*

The motion to amend the Strategic Plan was passed.

A motion was made and seconded to adopt the Strategic Plan as amended.

The resolution was passed with one abstention.

14. Standards of Governance: Review of Law Society Compliance

Ms. Hamilton thanked the Governance Committee and staff for their help in conducting the review of Law Society compliance with Harry Cayton and the Professional Standards Authority's standards of governance. Ms. Hamilton reviewed the Committee's approach to conducting the review and areas that may require further consideration, including the conduct of general meetings, determining whether or not the Law Society is meeting its mandate in measurable terms, and having better communication and engagement with the public to ensure that the Law Society is meeting the needs of the public.

Bencher discussed how to best determine whether or not the Law Society is meeting its mandate and increasing access to justice for the public. Bencher also discussed the recommendations of the report, noting the importance of developing terms of reference for an independent assessment for Bencher to review. Bencher also discussed possible consultants to perform the governance assessment.

Bencher agreed that the report recommendations should be referred to the Executive Committee for further discussion.

15. Law Society of British Columbia's Access to Justice Vision

Ms. Stanford thanked the Access to Justice Advisory Committee and staff for their efforts and reviewed with Bencher the Law Society's access to justice vision.

The Bencher discussed the vision and recommended changing *improving access to all British Columbians* to *improving access for all British Columbians* within item 3 of the vision.

The following motion was made and seconded.

BE IT RESOLVED that the Bencher adopt the amended Access to Justice Vision for the Law Society of British Columbia as prepared by the Access to Justice Advisory Committee.

The resolution was passed unanimously.

UPDATES

16. Financial Report – September 2020 - Q3 and Forecast

Mr. Lawton introduced the item and provided a brief overview of the work of the Finance and Audit Committee over the past year.

Ms. McPhee provided an overview of the financial results and highlights to the end of September 2020. Ms. McPhee noted that the general fund operations resulted in a positive variance to budget, which is mainly due to lower operating expenses. Ms. McPhee also provided an overview of forecasted 2020 year-end results, which are projected to be below budget due to the impact of COVID-19 on operations, travel, and meeting costs, as well as other efforts by staff to contain costs.

Benchers discussed the practice fee reductions, which have been funded out of the Law Society's reserves.

17. Practice Standards Update

Ms. McQueen thanked the Practice Standards Committee and staff for their contributions over the past year. Ms. McQueen then provided an update on the mandate of the Committee, which was focused on considering whether the current practice standards model is the most effective, and if there are alternative models that should be considered. Ms. McQueen noted that additional data was required to determine the success of the current program, and this work would continue into 2021. Ms. McQueen also noted that it may be helpful to have a physician or mental health practitioner on the Committee in the future.

18. Discipline Committee Update

Ms. Hamilton thanked the Discipline Committee and staff for their contributions over the past year. Ms. Hamilton then provided an update on the work of the Committee, particularly regarding process improvements and rule changes related to process efficiencies.

Benchers discussed the increased volume of the Committee's workload and what was driving the number of files. The increase in audits conducted by the Law Society has contributed to the increase in caseload for the Committee. Additionally, the Committee has been addressing several complex matters, which has contributed to volume. The Committee requested further data breaking down the caseload by demographic and expertise areas. Benchers also discussed the possibility of having two Discipline Committees in the future if the volume of work continued to remain high.

19. LIF Reorganization – Progress Report

Ms. Forbes reviewed the background structure of the Lawyers' Indemnity Fund (LIF) and provided context as to the reorganization of the program. Ms. Forbes then provided a progress report on the corporate restructuring and rebranding.

The Committee discussed the LIF reorganization and suggested the incorporation of diversity into the photographs displayed on the LIF website.

20. 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

21. Year-End Advisory Committee Reports

There was no discussion on this item.

22. Rule of Law and Lawyer Independence Advisory Committee Report on Lawyer Independence

There was no discussion on this item.

23. Ethics Committee Report on the Code of Professional Conduct

There was no discussion on this item.

24. 2021 Bencher Meeting Dates

There was no discussion on this item.

25. Three Month Bencher Calendar – December 2020 to February 2021

There was no discussion on this item.

26. Other Business

Mr. Welsh noted that the Licensed Paralegal Task Force did not fully fulfill its mandate this year; however, with the implementation of the Innovation Sandbox, this has provided a different

avenue for addressing the objectives of the Task Force. Based on the types of proposals that come through the Sandbox, a new Task Force may be struck. Mr. Welsh also thanked the members of the Task Force for all their contributions.

Benchers discussed the criteria of the Innovation Sandbox, which are focused on addressing access to justice barriers and serving the public. Submitted proposals will be reviewed by the Executive Committee prior to approval.

The following motion was moved and seconded.

BE IT RESOLVED that the Licensed Paralegal Task Force established by the Benchers in March 2019, having completed its work, is hereby wound up.

The resolution was passed unanimously.

Benchers discussed Item 7 regarding the Retired Member Fee Waiver with discussions focusing on if discretion should lie with the Executive Director to waive fees and whether or not fee waiving should be examined on a broader basis. Benchers requested staff to bring materials regarding where fee waiving discretion should lie to the Executive Committee for consideration.

27. Final Remarks

Mr. Avison paid tribute to outgoing President Ferris and thanked him for his dedication, commitment, and significant contributions to the Law Society over the past year. Mr. Avison also thanked Mr. Ferris for his leadership and guidance through the turbulence and challenges of COVID-19. On behalf of Law Society staff, Mr. Avison virtually presented Mr. Ferris with a gift as a token of appreciation for his many efforts and achievements during his time as President.

Mr. Ferris thanked Mr. Avison for his kind words, and then welcomed Mr. Lawton as President for 2021 and virtually presented him with the President's pin.

Mr. Lawton provided a few words to thank Mr. Ferris for his service.

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