



# Minutes

## Benchers

Date: Friday, January 29, 2021

Present: Dean P.J. Lawton, QC, President  
Lisa Hamilton, QC, 1<sup>st</sup> Vice-President  
Christopher McPherson, QC, 2<sup>nd</sup> Vice-President  
Paul Barnett  
Pinder K. Cheema, QC  
Jennifer Chow, QC  
Barbara Cromarty  
Jeevyn Dhaliwal, QC  
Cheryl S. D'Sa  
Lisa Dumbrell  
Lisa Feinberg  
Martin Finch, QC  
Brook Greenberg, QC  
Sasha Hobbs  
Julie K. Lamb, QC

Dr. Jan Lindsay  
Jamie Maclaren, QC  
Claire Marshall  
Geoffrey McDonald  
Steven McKoen, QC  
Jacqueline McQueen, QC  
Elizabeth J. Rowbotham  
Mark Rushton  
Karen Snowshoe  
Thomas L. Spraggs  
Michelle D. Stanford, QC  
Michael Welsh, QC  
Kevin B. Westell  
Chelsea D. Wilson  
Guangbin Yan

Unable to Attend: Heidi Zetsche

Staff Present: Don Avison, QC  
Avalon Bourne  
Shelley Braun  
Lance Cooke  
Natasha Dookie  
Su Forbes, QC  
Andrea Hilland  
Jeffrey Hoskins, QC  
Jason Kuzminski

Michael Lucas, QC  
Alison Luke  
Jeanette McPhee  
Cary Ann Moore  
Doug Munro  
Michelle Robertson  
Lesley Small  
Adam Whitcombe, QC  
Vinnie Yuen

Guests:	Dom Bautista	Executive Director & Managing Editor, Law Courts Center
	Dr. Susan Breau	Dean of Law, University of Victoria
	Dr. Cristie Ford	Associate Dean Research and the Legal Profession, Peter A. Allard School of Law
	Chief Justice Christopher E. Hinkson	Chief Justice of the Supreme Court of British Columbia
	Clare Jennings	First Vice-President, Canadian Bar Association, BC Branch
	Alexis Kazanowski	Assistant Dean, Faculty of Law, TRU
	Derek LaCroix, QC	Executive Director, Lawyers Assistance Program of B.C.
	Mark Meredith	Treasurer and Board Member, Mediate BC Society
	Caroline Nevin	CEO, Courthouse Libraries BC
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
	Karen St. Aubin	Director of Membership & Education, Trial Lawyers Association of BC
	Carleen Thomas	Manager of Special Projects, Tsleil-Waututh Nation

## 1. President's Welcome

Mr. Lawton welcomed Benchers, staff, and guests to the first Bencher meeting of 2021. Mr. Lawton spoke about the challenges of 2020 and the importance of collaboration in surmounting them.

## 2. Indigenous Welcome

President Lawton welcomed Carleen Thomas, a member of the Tsleil-Waututh Nation in North Vancouver, to the Bencher meeting. Ms. Thomas introduced herself to the Benchers and provided information about her family history. She thanked Benchers for the invitation to attend and welcomed them to the meeting.

## CONSENT AGENDA

### 3. Minutes of December 4, 2020, meeting (regular session)

The minutes of the meeting held on December 4, 2020 were approved as circulated.

### 4. Minutes of December 4, 2020, meeting (*in camera* session)

The minutes of the *In Camera* meeting held on December 4, 2020 were approved as circulated.

### 5. Rule 3-3: Amendments to the confidentiality of complaints

The following resolution was passed unanimously and by consent:

*BE IT RESOLVED* to amend the Law Society Rules by rescinding Rule 3-3 (1) and (6) and substituting the following:

(1) The Society must treat as confidential all information and records that form part of the investigation of a complaint or the review of a complaint by the Complainants' Review Committee except for the purpose of complying with the objectives of the Act or with these rules.

(1.1) The Executive Director may require a lawyer, including the lawyer who is the subject of the investigation of a complaint, to treat as confidential any or all information and records that form part of the investigation or the review of the complaint by the Complainants' Review Committee.

(6) This division must not be interpreted to permit the disclosure of any information or records subject to solicitor and client privilege or confidentiality.

(7) This rule is subject to the rights and obligations of individuals under sections 87 [*Certain matters privileged*] and 88 [*Non-disclosure of privileged and confidential information*].

## **6. Code of Professional Conduct Rule 3.2-7: Amendment to Commentary [3.1] – Improper Use of Trust Accounts**

The following resolution was passed unanimously and by consent:

*BE IT RESOLVED* that rule 3.2-7 Commentary [3.1](a) of the Code of Professional Conduct for British Columbia be amended in accordance with the redlined version of that provision provided for the Benchers' review.

## **7. Law Society Appointment: Hamber Foundation Board of Governors**

The following resolution was passed unanimously and by consent:

*BE IT RESOLVED* that the Benchers reappoint Paul Barbeau and appoint Greg Allen to the Hamber Foundation Board of Governors for three-year terms commencing March 1, 2021.

## **8. Law Society Appointment: Queen's Counsel Nomination Advisory Committee**

The following resolution was passed unanimously and by consent:

*BE IT RESOLVED* that the Benchers appoint President Dean P.J. Lawton, QC and First Vice-President Lisa Hamilton, QC as the Law Society's representatives on the 2021 QC Appointments Advisory Committee.

## **REPORTS**

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

Mr. Lawton began his report by reviewing the first month of his presidency and made announcements concerning Benchers and members of the profession, including the appointment of Madam Justice Ardith Walkem to the Supreme Court of British Columbia. Mr. Lawton also congratulated Mr. Greenberg and Ms. McQueen for receiving their Queen's Counsel title.

Mr. Lawton spoke about the recent passing of Joseph Arvay, QC, and the impact he had on BC's social and legal landscape. Mr. Lawton also spoke about the passing of Dr. Constance Isherwood, QC, senior-most counsel in Canada and oldest practicing BC lawyer, noting that Dr. Isherwood was the guest speaker at the last in-person call ceremony in BC before the declaration of the COVID-19 pandemic.

Mr. Lawton provided an overview of his activities over the last month, including meeting individually with each Bencher; speaking with Ian Mulgrew, journalist with the Vancouver Sun, regarding his interest in the Law Society's new initiatives; meeting with Steve Raby, President of the Federation of Law Societies; meeting with Len Doust, QC, recipient of the 2020 Law Society Award; speaking with the University of Victoria's Faculty of Law students regarding ethics and professionalism within the law profession; and meeting with Chief Justice Robert Bauman, who is very interested in advancing a holistic approach to advancing matters in family law. Mr. Lawton reviewed his upcoming activities including meetings next week with Chief Justice Christopher Hinkson and Chief Judge Melissa Gillespie.

Mr. Lawton spoke about the importance of social connection in maintaining relationships, particularly during these challenging times.

Mr. Lawton discussed his priorities for 2021, including determining a different name for the regulatory sandbox initiative, while continuing to examine new ideas for the provision of legal services, as well as examining the pathways to call and admission.

## **OATH OF OFFICE**

### **10. Administer Oaths of Office**

The Honourable Chief Justice Christopher E. Hinkson administered oaths of office to President Dean P.J. Lawton, QC, First Vice-President Lisa Hamilton, QC and Second Vice-President Christopher McPherson, QC, and the newly elected Benchers, Kevin B. Westell and Lisa Dumbrell, whose terms began on January 1, 2021.

Chief Justice Hinkson spoke about the importance of the Law Society and the role of the Benchers. He spoke about the work of the Supreme Court of BC in continuing to provide access to justice for British Columbians through these trying times, noting that the suspension of civil jury trials will continue for some time, and the Attorney General will be consulting with the Law Society about the use of civil juries. Chief Justice Hinkson noted that the demand for court hearings has lessened likely due to concerns over appearing in-person, though the Court has been able to provide access to the majority of people who do want trials. Chamber hearings have also taken place via telephone and video, though there have been challenges, and the Court is continuing to work with the Bar to provide as much access as possible. Chief Justice Hinkson informed Benchers that the new courthouse in Abbotsford would be opening on February 4 with three Supreme Court justices residing. Chief Justice Hinkson reviewed current vacancies, noting that the Attorney General had increased the complement of the Court by five positions, which are to be finalized once the federal budget has been approved. Chief Justice Hinkson asked Benchers to encourage members to put their names forward for federal judicial appointments.

Benchers asked Chief Justice Hinkson about case rescheduling due to COVID-19, and if there were opportunities to have cases heard earlier. Chief Justice Hinkson noted that the Bar is encouraged to move cases to Abbotsford, as there is flexibility in scheduling there.

Benchers also asked whether trials conducted entirely through the written record would be considered by the Court in the future. Chief Justice Hinkson noted the challenges in ensuring reliable evidence with such a method, and that hybrid trials will likely continue beyond the pandemic, but having cases conducted entirely through written applications wouldn't be likely.

Mr. Lawton thanked Chief Justice Hinkson for taking the time to attend the meeting, and noted the Court and the Law Society's common interest to protect the public.

## **REPORTS (continued)**

### **11. CEO's Report**

Mr. Avison began his report by updating the Committee on the implementation of the Law Society's 2021-2025 Strategic Plan, which was approved at the December Bencher meeting. A great deal of progress was made last year, and the strategic plan sets the trajectory for this year and following years to continue with that momentum. Mr. Avison noted that the committees are also getting to work in relation to the strategic plan, as well as what is set out in their mandate letters. The next step will be to give shape to the plan through setting milestones for each year. Detailed progress reports will be presented at the May and September/October Bencher meetings.

Mr. Avison then updated Benchers on the Indigenous Inter-cultural Awareness Program. The Truth and Reconciliation Advisory Committee is reviewing the written material, and Mr. Avison noted the considerable amount of material, not including video content. In reviewing the timeline for implementation, Mr. Avison noted that the current plan is to launch the program sometime between the end of March and the end of April, and that a soft launch might be considered in order to receive feedback from the profession to make adaptations as necessary. Mr. Avison noted that Benchers would need to consider the timeline for requiring the profession to complete training.

Mr. Avison informed Benchers that the Lawyers' Indemnity Fund's new website is operational, and encouraged Benchers to visit the new website. LIF is currently focused on raising awareness regarding the lifting of the suspension of limitation periods happening in March.

Mr. Avison then spoke about succession planning, noting that he proposes to do a more detailed review of the Law Society's succession planning at the April meeting.

Mr. Avison updated Benchers on Law Society operations, noting that the first diagnoses of COVID-19 took place one year ago, and that dealing with the challenges of COVID-19 will likely continue for some time, due to delays in the production and provision of vaccines. Mr. Avison informed Benchers that staff productivity remains high and that changes to capital infrastructure have been made to ensure staff health and safety within the Law Society offices. Mr. Avison updated Benchers on schedule changes, noting that the Bencher Retreat would be moved to the fall. Mr. Avison also updated Benchers on recent staffing changes.

Mr. Avison ended his report by remembering Paula Littlewood, former Executive Director of the Washington State Bar Association, who passed away in December. Mr. Avison spoke about Ms. Littlewood's presentation at the March 2019 Bencher meeting and remarked upon her exemplary leadership in championing legal reform.

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

Ms. Cheema began her briefing by providing an overview of the Federation and Federation Council for the new Benchers. She then updated Benchers on the work of the Standing Committee on the Model Code, which has been focused on reviewing feedback from the law societies regarding the discrimination and harassment provisions to the code, as well as determining how to incorporate the Truth and Reconciliation Commission's guiding principles into every aspect of the model code.

Ms. Cheema updated Benchers on the December Council meeting, informing them of the formation of the NCA Assessment Modernization Committee, which is working towards a competency based model of assessment to address performance gaps between Canadian lawyers and lawyers from other jurisdictions.

Ms. Cheema informed Benchers that the national well-being survey was launched in November with the goal of collecting data on the mental health of legal professionals in Canada. The Federation has partnered with the CBA on this study.

Ms. Cheema also informed Benchers that a new joint working group has been formed between Canada's law deans and Federation members to work collaboratively in responding to the Truth and Reconciliation Commission's calls to action.

Ms. Cheema concluded her briefing by thanking all the Benchers and staff involved in the Federation committees.

## DISCUSSION/DECISION

### 13. AGM Member Resolutions Update

Mr. Avison gave a brief overview of all three resolutions and informed Benchers that a recommendation regarding Resolution 5 would be on the agenda for the March Bencher meeting.

#### **Resolution 3: Articling Agreement resolution and Employment Standards Act and Articling Agreement Survey responses**

Mr. Avison reviewed the survey responses from current articulated students, lawyers who had articulated in the past three years, and representatives of firms that currently have articulated students or had hired an articulated student in the past three years. Mr. Avison informed Benchers that there had been quite a bit of confusion regarding whether or not this resolution would be implemented by the Law Society with many members thinking it already had been implemented. Mr. Avison noted that the issue is quite complex, and that it had been directed to the Lawyer Development Task Force to consider. Mr. Avison also spoke about the concerning aspects from some of the reports of articling students, and that this matter will require careful consideration.

Benchers asked if there would be a public link to the survey results available for members. There were a great number of responses, and consideration will need to be given as to what is appropriate to share more broadly.

Benchers discussed the survey results, noting that the accounts of exploitation are quite alarming, and that these concerns need to be addressed. Benchers also considered whether the Law Society should make a public statement committing to addressing the concerns raised through the surveys. Benchers discussed the importance of protecting students and the need to address power imbalances, so that students are not exploited. Benchers suggested examining the demographic information of those students who are/were unpaid or underpaid to see if there are any trends.

Benchers discussed the need to examine how aspiring lawyers are mentored, as this will have an impact on their conduct within the profession. Benchers also discussed the need to consider alternative pathways to admission to the bar.

Benchers discussed the process by which members can submit resolutions to be considered at the Law Society's annual general meeting, noting that proposals with financial impacts should include a financial impact assessment, as the Law Society's fees should not be a barrier for advancing change. Benchers also discussed the importance of member resolutions demonstrating how they serve the public interest.

Mr. McKoen stated that as Chair of the Lawyer Development Task Force, the Task Force would appreciate input on how to best address this issue. Considering alternative pathways will take



time, and many of the concerns brought forward through the surveys need to be addressed now. Mr. McKoen asked that comments and ideas be sent to the Task Force to consider.

#### **Resolution 4: Sir Matthew Baillie Begbie resolution**

Mr. Avison noted that this matter was being considered by the Truth and Reconciliation Advisory Committee.

Mr. Lawton updated Benchers on the work of the Truth and Reconciliation Advisory Committee, noting that the Advisory Committee is anticipating the striking of a sub-committee to address this matter. The sub-committee would engage with consultants as part of its work, before eventually coming to a recommendation for Benchers to consider. Benchers discussed the potential for divisiveness with this matter, and the challenges with determining a single symbol to represent a diverse group.

#### **Resolution 5: Mediators, Arbitrators, and Parenting Coordinators resolution**

This item will be on the March Bencher meeting agenda.

### **14. Independent Review of Law Society Governance**

Mr. Lawton reviewed the report presented by the Governance Committee at the December Meeting, which reviewed the Law Society against the standards of governance developed by Harry Cayton and the Professional Standards Authority. The conclusion of the report indicated that the Law Society was in substantial compliance with the standards of governance; however, there could be areas for improvement. Mr. Lawton spoke about the importance of conducting regular independent governance reviews, and that his recommendation was to retain Mr. Cayton to conduct an independent governance review due to Mr. Cayton's background, qualifications, and expertise.

The following motion was made.

*BE IT RESOLVED* that the Law Society retain Harry Cayton, CBE to conduct a review this year of the Law Society's governance, substantially on the terms as set out in the provided memorandum.

Some Benchers expressed concerns regarding the lack of information included within the terms of reference and that the terms of reference should be more comprehensive in relation to what the governance review would actually entail prior to moving forward with retention of Mr. Cayton. Some Benchers also spoke about the importance of including important issues at the outset, particularly truth and reconciliation; equity, diversity, and inclusion; as well as access to justice.

Some Benchers expressed concerns regarding comments made by Mr. Cayton in relation to diversity and representation, and that while an independently conducted governance review is needed, alternate proposals to conduct the review should be solicited from various consultants. Benchers also spoke about how equity, diversity, and inclusion are intrinsically linked to governance, and should be a significant focus of any governance review and included in the terms of reference.

Benchers discussed the retaining of Mr. Cayton with some Benchers noting his particular expertise and qualifications in the governance field. Benchers also discussed that any governance review could elicit significant recommendations that would need to be considered seriously, including moving away from the current governance model to a competency-based Bencher table.

A motion was made and seconded that the resolution be amended so as to retain Mr. Cayton to conduct the governance review and to defer the approval of the terms of reference to the March Bencher meeting.

A procedural motion was made and seconded to defer the resolution to the March Bencher meeting.

Procedural motion passed.

## **UPDATES**

### **14a. Innovation Sandbox**

Mr. Avison gave a brief update on the Innovation Sandbox, noting that 28 proposals have been received thus far since the launch of the initiative at the end of November last year. A staff working group has been formed to review proposals prior to bringing them before the Executive Committee with recommendations. To date, the Executive Committee has considered 12 proposals and conditionally approved 4 with the approved proposals offering services to assist the public with matters before administrative tribunals, legal coaching services to navigate court processes, and legal guidance to families and individuals regarding advocacy support for people with dementia.

Mr. Avison noted that regular updates on the Innovation Sandbox would be provided.

### **15. 2020 Bencher and Committee Evaluations**

Ms. Dhaliwal provided a brief report on the 2020 Bencher and Committee annual evaluations, noting that less than two thirds of Benchers completed the evaluations and less than 40 percent of committee members completed their evaluations. These types of evaluations are an essential

component of ensuring the Law Society's good governance, and as a result of the relatively low response rate, Ms. Dhaliwal recommended revisiting the evaluation process to elicit better engagement and better feedback. The Governance Committee will review this matter and bring forward a proposed updated process.

## **16. Report on Outstanding Hearing & Review Decisions**

Mr. Lawton provided an update on outstanding hearing and review decisions.

## **FOR INFORMATION**

### **17. Minutes of January 14, 2021 Executive Committee Meeting**

There was no discussion on this item.

### **18. Law Society of BC External Appointments Opportunities**

There was no discussion on this item.

### **19. Three Month Bencher Calendar – February to April 2021**

There was no discussion on this item.

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

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