



Minutes

Benchers

Date: Friday, March 05, 2021

Present: Dean P.J. Lawton, QC, President
Lisa Hamilton, QC, 1st 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
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
Heidi Zetzsche

Unable to Attend: Christopher McPherson, QC, 2nd Vice-President
Claire Marshall

Public Session – Staff Attendance:

Staff: Don Avison, QC
Barbara Buchanan, QC
Shelley Braun
Lance Cooke
Natasha Dookie
Su Forbes, QC
Andrea Hilland
Madeleine Holm-Porter
Jeffrey Hoskins, QC
Jason Kuzminski
Michael Lucas, QC

Alison Luke
Claire Marchant
Tara McPhail
Jeanette McPhee
Cary Ann Moore
Doug Munro
Lesley Small
Amy Tang
Adam Whitcombe, QC
Vinnie Yuen

Guests:	Dom Bautista	Executive Director, Law Courts Center
	Janine Benedet, QC	Dean pro tem, Peter A. Allard School of Law
	Dr. Susan Breau	Dean of Law, University of Victoria
	Jennifer Brun	President, Canadian Bar Association, BC Branch
	Dr. Cristie Ford	Associate Dean Research and the Legal Profession, Peter A. Allard School of Law
	Richard Fyfe, QC	Deputy Attorney General
	James Heller	Law Society of BC Member
	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.
	Carey Linde	Law Society of BC Member
	Mark Meredith	Treasurer and Board Member, Mediate BC Society
	Caroline Nevin	CEO, Courthouse Libraries BC
	Josh Paterson	Executive Director, Law Foundation of BC
	Michèle Ross	President, BC Paralegal Association
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
	Jo-Anne Stark	Director of Advocacy, Canadian Bar Association, BC Branch
	Karen St. Aubin	Director of Membership & Education, Trial Lawyers Association of BC
	Jody Wells	Member of the Public

CONSENT AGENDA

1. Minutes of January 29, 2021, meeting (regular session)

The minutes of the meeting held on January 29, 2021 were approved as circulated.

2. Minutes of January 29, 2021, meeting (*in camera* session)

The *In Camera* minutes of the meeting held on January 29, 2021 were approved as circulated.

3. Rule 4-30: Amendment re Admission and consent to disciplinary action

This item was removed from the Consent Agenda.

4. Rule 2-74(4)(b): Amendment re Review of Failed Standing

The following was passed unanimously and by consent:

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

Rule 2-74 (4) (b) is rescinded and the following substituted:

(b) any grounds, based on the student's past performance, that would justify opportunities for further remedial work;.

5. Rule 2-57: Amendment re Principals

The following was passed unanimously and by consent:

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

Rule 2-57 is amended as follows:

(a) Subrule (2) is rescinded and the following substituted:

(2) Subject to subrules (2.1) and (3), to qualify to act as a principal, a lawyer must

- (a) have engaged in full-time practice in Canada for 5 of the 8 years immediately preceding the articling start date,
- (b) have spent at least 3 years of the time engaged in the practice of law required under paragraph (a) in
 - (i) British Columbia, or
 - (ii) Yukon while the lawyer was a member of the Society, and

(c) not be prohibited from practising law under Rule 2-89 [*Returning to practice after an absence*];

(b) Subrule (2.1) (b) is rescinded and the following substituted:

(b) the 8-year period in subrule (2) (a) is extended by the length of the period in which the lawyer engages in part-time practice, provided that the aggregate time in which the lawyer was not engaged in the practice of law does not exceed 3 years in the 5 years immediately preceding the articling start date..

6. Code of Professional Conduct Rule 3.4-4: Correcting Commentary Reference to Screening Measures

The following was passed unanimously and by consent:

BE IT RESOLVED that rule 3.4-4 Commentary [4] 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.

GUEST PRESENTATION

7. The Canadian Bar Association of BC: Agenda for Justice

Mr. Lawton welcomed and introduced Ms. Brun, President of the Canadian Bar Association of BC (CBABC) to the meeting.

Ms. Brun thanked Mr. Lawton for the welcome and then spoke to the Benchers about the CBABC's Agenda for Justice report, which provides a roadmap for action with over 40 recommendations across 22 issues in 4 areas, including access to justice for families, meaningful change for Indigenous peoples, modernizing BC's justice and legal systems, and ensuring fairness for British Columbians.

Ms. Brun spoke about access to justice for families, noting the emotional and financial stress experienced by many families undergoing separation or parenting disputes, particularly low income families. Ms. Brun also spoke about concerns regarding the child protection system, particularly for indigenous children who are disproportionately impacted by state intervention. The Agenda for Justice Report makes recommendations for a sustainable model of legal aid, an expanded scope for family law services, transformation of the child protection system, and a unified family court model.

Ms. Brun then spoke about the recommendations regarding meaningful change for Indigenous peoples. CBABC is deeply committed to promoting the objectives of truth and reconciliation. Indigenous communities require and deserve a unique and collaborative approach to justice, and CBABC is advocating for restorative justice and the improvement of access to lawyers in rural areas.

Ms. Brun then spoke about modernizing BC's justice and legal systems. CBABC is recommending investment in and enhancement of virtual technology, as well as the improvement of processes in civil courts. Ms. Brun also spoke about the need for streamlined, modernized legislation in the areas of virtual witnessing of legal documents, commercial leases, and the enforcement of money judgments.

Ms. Brun then spoke about ensuring fairness for everyone within BC's justice system, noting that the core principles of BC's justice system are equality, inclusion, and the protection of human rights for everyone. CBABC is recommending the reform of various public policies, programs, and legislation to ensure that BC's most vulnerable residents, including seniors, the LGBTQ2SI+ community, mental health detainees, and small business owners, among others, are treated fairly and with respect.

Ms. Brun informed Benchers that the Agenda for Justice was delivered to the provincial government February 17, and CBABC will be referencing it throughout the current government's mandate.

Many of these priorities align with the provincial government's Court Digital Transformation Strategy 2019-2023 and Modernizing Justice and Public Safety: a Digital Strategy for the Justice and Public Safety Sector, including continuing to modernize core operations, allocating funding for increased court staffing and enhanced training of existing court staff, funding for high-speed internet access and necessary computer equipment and training in rural communities and Indigenous communities to help them better access justice services, establishing a robust data collection and disclosure infrastructure with consistent protocols and standards across the justice sector. Ms. Brun noted that recommendations regarding modernization also apply to outdated legislation, including the *Power of Attorney Act* and the *Representation Agreement Act* to allow virtual witnessing of powers of attorney in representation agreements beyond the current state of emergency.

Ms. Brun concluded her presentation by informing Benchers that she would be speaking to key cabinet ministers about the Agenda for Justice over the coming weeks, and asked Benchers to raise awareness of the CBABC's recommendations with their colleagues.

Deputy Attorney General Fyfe thanked Ms. Brun for her presentation and noted that many of the CBABC's recommendations align with the Ministry of Justice's priorities, including

modernization. Deputy Attorney General Fyfe stressed the importance of voicing support for these recommendations, as the provincial government is facing financial pressures with COVID-19, and it's important not to lose sight of other areas of importance.

Benchers discussed access to justice for rural communities in BC, as well as legal advice for mental health detainees, particularly as BC is one of the only provinces that does not provide independent legal advice for people who are involuntarily detained for mental health treatment. Ms. Brun noted the challenges rural communities can face regarding internet access and ensuring confidentiality. Ms. Brun also spoke about having a student loan forgiveness program for the profession, similar to the medical profession's, that would encourage young lawyers to practice in rural communities in exchange for a decrease in their loans. Regarding the mental health detainee issue, Ms. Brun noted that BC's *Mental Health Act* was written in 1965 and needed updating.

Benchers discussed the CBABC's priorities, including the modernization of the legal and justice system. Ms. Brun noted that priorities would likely fluctuate over the next four years as issues emerge.

Benchers discussed the use of technology in providing access to justice, particularly in rural areas, and whether or not circuit courthouses could be better utilized. Technology helps with increasing the availability of judges since the need to travel is lessened, in addition the use of technology helps with rescheduling if a judge becomes available/unavailable. Ms. Brun noted that the Agenda for Justice referenced the need to utilize available resources more effectively, and part of that will be increasing funding for court staff.

Mr. Lawton thanked Ms. Brun for her presentation on behalf of the Benchers.

REPORTS

8. President's Report

Mr. Lawton began his report by acknowledging all the assistance he's received from staff thus far. He then reported to Benchers on recent meetings, including with Chief Judge Gillespie to discuss a number of issues, including significant changes to family law practice; Chief Justice Hinkson regarding issues on which the Law Society and Chief Justice Hinkson could collaborate; the Arbitrator Association of BC to discuss the importance of arbitration in commercial law and future plans; and Steve Raby, QC, President of the Federation. Mr. Lawton noted that he had attended the Federation's Council meeting as a guest.

Mr. Lawton then informed Benchers of his participation in a video addressing issues relating to the mental health of the profession in relation to the ongoing pandemic. Mr. Lawton thanked staff for their technical support with that video.

Mr. Lawton informed Benchers that he would be attending the New Westminster Bar Association's Annual President's Dinner, which would be conducted virtually.

Mr. Lawton reported to Benchers on his recent meeting with the managing partners of Vancouver's large firms to discuss articles and student recruitment and other issues. These firms take on a significant number of students and new lawyers, and have quite well-designed education programs. Mr. Lawton noted that the discussions provided valuable insight, particularly in regard to the concerns raised by articling students and firms through the recent survey.

Mr. Lawton noted that he attended the University of Victoria's Faculty of Law webinar on the ways of Indigenous learning and teaching, moderated by John Borrows. This series is available, and Mr. Lawton encouraged Benchers to subscribe. Mr. Lawton also noted that he had recently completed the CBA's course *The Path: Your Journey through Indigenous Canada*, and invited Benchers to consider taking it.

Mr. Lawton informed Benchers of a letter he received from Chief Justice Hinkson inviting him to encourage senior counsel to permit junior counsel to have an active role in trials. Mr. Lawton noted that he was passing along this request to Benchers.

Mr. Lawton concluded by informing Benchers that he would be organizing small group meetings of Benchers to discuss various matters informally.

Benchers discussed the mental health video and the importance of focusing on mental health throughout the profession. It's important to send a timely message to the profession that existing resources are available for members.

Mr. Lawton thanked the Deputy Attorney General for taking the time to attend Bencher meetings and provide helpful updates.

9. CEO's Report

Mr. Avison began his report by discussing the current challenges faced by law students. Mr. Avison spoke about his participation in a recent webinar put on by Courthouse Libraries BC to provide information and advice to students during these challenging times. The webinar was attended by students from the law schools of the University of British Columbia, Thompson Rivers University, and the University of Victoria. Mr. Avison noted that Courthouse Libraries BC have been providing numerous sessions for students and thanked all those involved in putting on these sessions.

Mr. Avison noted that articling numbers seem relatively stable and registration for PLTC is similar to past years. Mr. Avison also noted the numerous issues in relation to students that are being considered by the Lawyer Development Task Force.

Mr. Avison then spoke about the recent encouraging news regarding vaccine availability, which will hopefully have an impact on the challenges facing students, as well as the profession as a whole.

Mr. Avison then spoke about Law Society operations, noting that there was still good engagement with people coming into the office, as well as with those working remotely. Changes have been made to the physical infrastructure in the office with changes to work stations and the addition of glass panels between work stations.

Mr. Avison informed Benchers that staff is working on a new enterprise risk management plan that will be reviewed by the Finance and Audit Committee before coming to Benchers. The organization has proved to be quite resilient in responding to significant pressure.

Mr. Avison informed Benchers that the Supreme Court of Canada has granted leave in *Abrametz v. Law Society of Saskatchewan*. Mr. Avison noted that this is one of the most significant decisions for professional regulatory bodies and that there will likely be intervention not just by some of the law societies, but perhaps by other regulatory bodies as well, since this will have implications well beyond the legal profession.

Mr. Avison then gave a presentation on the Innovation Sandbox, referencing the recommendations made by the Futures Task Force and the Licensed Paralegal Task Force to develop a sandbox in which to test legal service innovations. These recommendations were accepted by the Benchers at the September 2020 Bencher meeting. Mr. Avison reviewed the process by which proponents are invited to submit proposals that address the unmet legal needs of British Columbians, as well as the review and consideration process. To date, the Law Society has received 32 proposals covering a wide range of potential services. Of the 32 proposals, half have been considered by the Executive Committee and the remainder are still under review. Of those reviewed and approved by the Executive Committee, 3 have been approved with conditions, 2 have been deferred, and 2 have been fully approved. For those proposals that are approved, proponents will receive a “no action” letter tailored to the particulars of their proposal setting out the Law Society’s expectations and requiring regular reporting on the services they provide. As the Law Society continues to consider and approve (or reject) proposals, a directory will be developed and posted on the Law Society website to list the proposals that have been considered and to provide information about the services provided, as well as how to submit concerns about any of the services.

Mr. Avison noted that the Innovation Sandbox was still in its infancy, but the hope is that this initiative will provide the opportunity to identify and evaluate alternative legal service providers and to provide the groundwork for more formal recognition of providers as contemplated by the Futures Task Force and the Licensed Paralegal Task Force. Mr. Avison also noted discussions are ongoing with the courts and with administrative tribunals regarding those proposals that contemplate appearing before the courts and/or tribunals.

Benchers discussed the progress of the Innovation Sandbox, as well as similar initiatives in other jurisdictions. Benchers discussed the review and approval process, and whether or not an advisory group should be struck to help with the workload, to bring in additional perspectives, and to provide an arm's reach review to avoid any potential bias, unconscious or otherwise.

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

Ms. Cheema provided an update on the Federation Council's annual meeting, which took place on March 2. Ms. Cheema spoke about a presentation from a member of the Law Society of the Northwest Territories, Magnolia Unka-Wool, from the Dene nation. Ms. Unka-Wool's presentation discussed reconciliation in court practices. She noted that, particularly in the Northwest Territories, in court the oath is still taken by swearing on a bible, and the option of taking it with an eagle feather is not yet prevalent.

Ms. Cheema updated Benchers on the Federation's strategic priorities, including anti-money laundering, reconciliation, the national wellbeing study, and the modernization of the NCA assessment.

Regarding anti-money laundering, Ms. Cheema noted that the Barreau du Quebec and the Law Society of Ontario have not yet adopted the Federation rule amendments regarding client identification, which the Law Society of BC adopted 26 months ago. The Barreau du Quebec indicated that the amendments would be put before its council in March. The Law Society of Ontario indicated that the amendments would be before Convocation in late spring. Ms. Cheema noted that further amendments are being reviewed by the Anti-Money Laundering Working Group that will likely be reviewed by the Council towards the end of 2021. The Working Group is also considering the development of an online educational module to help members in understanding risks.

Regarding reconciliation, Ms. Cheema spoke about a number of options being considered to incorporate reconciliation into the work of the Council, including the formation of an Indigenous Advisory Council and/or a liaison group that would liaise between that Advisory Council and the Federation Council. The Working Group will explore how other organizations have addressed this, along with what other structures have been used.

Regarding the National Wellbeing Study, the Committee has met with the researchers, and the focus is now on the scope of the study. Articling students and paralegals in Ontario will be included in the study as well. A draft questionnaire has gone out to the Committee for review.

Regarding the National Committee of Accreditation's assessment modernization, the Committee is now in the process of developing and validating a competency profile for NCA candidates that will culminate in the development of benchmarks. The benchmarks will identify the level of competency required at each stage of the legal education and training process and entry to bar programs.

Ms. Cheema informed Benchers that each law society was asked to send a one-page memo indicating their priorities. Each law society indicated that truth and reconciliation is an important priority. Other common priorities identified were anti-money laundering, appropriate governance of a regulatory body (other law societies are also conducting a full governance review), health and wellness of the profession, equity and diversity beyond truth and reconciliation, and reviewing alternative pathways to the bar.

Ms. Cheema informed Benchers that there were three items requiring decision: approval of the Federation's annual plan, which was approved; the Federation's international engagement plan, which was approved; and budget approval, which was approved.

Ms. Cheema then spoke about the Federation's Continuing Legal Education program, which was cancelled this year due to the pandemic.

Ms. Cheema informed Benchers that the Federation Conference will take place in Saskatoon in October. The theme will be regulatory response to generational change and the future of the legal profession with an emphasis on entry to the profession and how best to support new members.

Ms. Cheema concluded her report by informing Benchers that CANLII is continuing to provide services and has completed the Manual of BC Civil Litigation, which was funded by the Law Foundation.

Benchers discussed the NCA not accepting degrees obtained by virtual correspondence or distance learning, and whether or not this should be revisited. Ms. Cheema noted that this could be appealed and each case is reviewed, and that the NCA is attuned to this issue.

Benchers asked about the other law societies considering the conducting of a governance review. Ms. Cheema replied that the law societies of Saskatchewan and New Brunswick are considering amendments to their respective Law Society acts. The Law Society of Northwest Territories is considering reform in a number of areas. The Law Society of Prince Edward Island is considering changes to its bar admission course. The Law Society of Yukon is considering how to restructure their discipline process, as well as developing a strategic plan.

Bencher asked if any other jurisdictions are mandating Indigenous awareness training. The Law Society of Alberta has also mandated training.

Bencher requested that the one-page summary from other provinces be made available to Bencher.

DISCUSSION/DECISION

11. Law Society's 2020 Audited Financial Statements and Financial Reports: Review and Approval

Ms. Hamilton, Chair of the Finance and Audit Committee introduced the item, thanking Committee members and staff for all their hard work, which led to a 100% clean audit. Ms. McPhee then provided a summary of the Law Society's 2020 audited financial statements and financial reports.

Ms. McPhee provided an overview of the financial results and highlights for 2020, noting that the compensation fund has been wound up, and any remaining costs to finish the court document production fees will be funded through LIF. Ms. McPhee noted that the general fund operations resulted in a positive variance to budget, which is mainly due to lower operating expenses as a result of COVID-19. Revenue was slightly under budget, primarily due to lower D&O insurance recoveries, as well as significantly reduced expenses due to a number of cost-reducing measures.

Ms. McPhee reviewed practice fees, which were slightly ahead of budget, with the number of full-time practising lawyers at 12,893 compared to a budget of 12,846. Ms. McPhee noted that the number of practising lawyers usually increases by 2-3% each year. PLTC revenue is slightly behind budget.

Ms. McPhee reviewed operating expenses for the year, which were under budget by about 10%, likely due to significant efforts in reducing costs during the pandemic, as well as a hold on staff hires.

Ms. McPhee reviewed the TAF/Trust Assurance program, which was slightly over budget. Expenses were under budget mainly due to lower travel costs with audits being conducted remotely. In accordance with the TAF reserve policy, \$700,000 of the TAF net assets were transferred to LIF in 2020.

Actual revenue for the Lawyers Insurance Fund was slightly ahead of budget. Operating expenses were under budget with savings related to compensation costs, external fees, and stop loss insurance costs. The market value of the LIF long-term investment portfolio was \$213.2 million as December 2020.

Benchers discussed the financial results, noting the significant cost savings with Bencher and Committee meetings being conducted virtually. Benchers also discussed the contribution made towards the Advocate magazine and renewal fees would be discussed. The budget is dealt with in June. The Finance and Audit Committee reviews the budget and then brings forward a recommendation to Benchers with opportunities to provide input. Benchers discussed the increase in costs under building and equipment lease-hold, which is related to workstation upgrades and office space updating and maintenance.

Benchers discussed the fee relief program and the number of members that applied. Roughly 360 members took part in the program, with approximately \$500,000 provided in relief. Additional data will be provided to Benchers.

The following motion was moved and seconded:

BE IT RESOLVED to approve the Law Society's 2020 Combined Financial Statements for the General & Special Compensation Funds, and the 2020 Consolidated Financial Statements for the Lawyers Indemnity Fund.

The resolution was passed unanimously.

12. Independent Review of Law Society Governance

Mr. Lawton reminded Benchers that the motion regarding this matter had been deferred to this meeting. Mr. Lawton stated that if the Benchers were in agreement, it would be appropriate to leave aside the existing motion on the floor from the January Bencher meeting, and a new motion substituted. Mr. Lawton noted that based on the input from Benchers, the terms of reference have been revised and the new motion includes of a request for proposal process.

Mr. Lawton recused himself and Ms. Hamilton took over as Chair of the meeting.

There was no objection to the replacement of the existing motion.

The following motion was moved and seconded:

BE IT RESOLVED that a Law Society governance review be conducted in accordance with the proposed Terms of Reference and seven review steps attached in the memorandum of February 25, 2021 to the Benchers from the Executive Committee and that the Benchers develop a request for proposals based on the proposed Terms of Reference and review steps.

The motion was passed unanimously.

13. Conduct Assessment and Disposition Guidelines: Revisions

Ms. Dookie reviewed the revisions made to the conduct assessment and disposition guidelines, noting that the guidelines are not intended to be directives, rather the guidelines are to provide a framework to assist the Discipline Committee in assessing complaints and making appropriate, fair, and consistent decisions. Those revisions reflect a few changes.

Benchers discussed the guidelines and in particular the guideline regarding allowing one's trust account to be used in the absence of legal services. The issue of arbitrators, mediators, and family coordinators depositing retainers in their trust accounts was raised in the context of this guideline. This is something that will be taken into consideration by staff and by the Discipline Committee. This matter is also being considered by the Executive Committee and will be discussed at the Committee's next meeting.

A motion to approve the revised Conduct Assessment and Disposition Guidelines was unanimously approved.

13a. Rule 4-30: Amendment re Admission and consent to disciplinary action

This item was removed from the consent agenda.

Some Benchers expressed concerns regarding the proposal to eliminate the conditional aspect of what were previously conditional admissions, and members who have made conditional admissions and had the agreed outcome rejected still have the chance to withdraw that admission and proceed to a citation hearing. The rejection of a joint submission is very rare; however, even though it's unlikely, it could make lawyers less willing to enter into conditional submissions.

Benchers discussed the proposed rule change and possible alternative options to address the concerns raised, including either allowing the panel to receive further submissions, or allowing the lawyer to withdraw their joint submission and proceed the usual way to a citation hearing.

Ms. Dookie noted that the downside to allowing the withdrawal of the admission is the inefficiency that brings into the process. It is important to set the process at the outcome and be upfront with the respondent lawyer about what the outcome could be. Benchers discussed the importance of ensuring that members understand the risks.

The following motion was moved and seconded.

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

- 1. Rule 1, definition of "professional conduct record" paragraph (h) is rescinded and the following substituted:***

- (h) an admission accepted and disciplinary action imposed by a hearing panel under Rule 4-30 [*Admission and consent to disciplinary action*];.

2. ***Rule 4-30 is rescinded and the following substituted:***

Admission and consent to disciplinary action

4-30 (1) Discipline counsel and the respondent may jointly submit to the hearing panel an agreed statement of facts and the respondent's admission of a discipline violation and consent to a specified disciplinary action.

- (5) If the panel accepts the agreed statement of facts and the respondent's admission of a discipline violation
 - (a) the admission forms part of the respondent's professional conduct record,
 - (b) the panel must find that the respondent has committed the discipline violation and impose disciplinary action, and
 - (c) the Executive Director must notify the respondent and the complainant of the disposition.
- (6) The panel must not impose disciplinary action under subrule (5) (b) that is different from the specified disciplinary action consented to by the respondent unless
 - (a) the respondent and discipline counsel have been given the opportunity to make submissions respecting the disciplinary action to be substituted, and
 - (b) imposing the specified disciplinary action consented to by the respondent would be contrary to the public interest in the administration of justice.
- (7) An admission of conduct tendered in good faith by a lawyer during negotiation that does not result in a joint submission under subrule (1) is not admissible in a hearing of the citation..

3. ***Rule 4-31 (2) to (5) is rescinded and the following substituted:***

- (2) An admission tendered under Rule 4-30 [*Admission and consent to disciplinary action*] must not be used against the respondent in any proceeding under this part or Part 5 unless the hearing panel accepts the admission and imposes disciplinary action..

4. Rule 4-41 (3) (d) is rescinded and the following substituted:

(d) the respondent's admission of a discipline violation and consent to a specified disciplinary action submitted jointly by discipline counsel and the respondent under Rule 4-30 [*Admission and consent to disciplinary action*], and

5. Rule 4-44 is amended as follows:

(a) **in subrule (1) (d) by striking "taken under subrule" where it occurs and substituting "taken under paragraph"; and**

(b) **subrule (2) is rescinded and the following substituted:**

(2) A panel may proceed under subrule (1) before written reasons are prepared under Rule 4-43 (2) (b)

(a) if the panel gives reasons orally for its decision under Rule 4-43 (2) (a) [*Submissions and determination*], or

(b) when the panel accepts an admission jointly submitted by discipline counsel and the respondent under Rule 4-30 [*Admission and consent to disciplinary action*].

6. Rule 4-48 is amended as follows:

(a) **subrule (1) (g) and (h) is rescinded and the following substituted:**

(g) when a lawyer or former lawyer is suspended or disbarred under Rule 4-52 [*Conviction*],

(h) when an admission is accepted under Rule 4-29 [*Conditional admissions*], or

(i) when an admission is accepted and disciplinary action is imposed under Rule 4-30 [*Admission and consent to disciplinary action*].

(b) **in subrule (2) (a) by striking "accept a conditional admission" and substituting "accept an admission".**

7. Rule 5-2 (2) (b) is amended by striking "to consider a conditional admission" and substituting "to consider an admission".

8. Schedule 4, item 25 (c) is amended by striking "respondent elected to make conditional admission" and substituting "respondent agreed to make an admission".

The motion passed with more than two thirds of Benchers in favour.

UPDATES

14. National Discipline Standards Report

Ms. Dookie provided background on the National Discipline Standards and then reviewed the findings of the 2020 report. In 2020, the Law Society met 20 of the 23 standards, which is similar to previous years. The three standards not met were 9, 10 and 19. Standard 19 requires easily accessible information on discipline history for each lawyer, and discipline history dating back to 1983 is currently posted. Staff will continue to post information to ensure this standard is met. Standard 10 requires 90% of hearing panel decisions be made within 90 days of the last submission. The Law Society is currently at 67% for last year, due to hearings not occurring in the first few months of the pandemic. Standard 9 requires 75% of hearings to be commenced within 9 months of the citation being authorized. The challenges in meeting this standard include a doubling in the amount of citations; the pandemic, which caused hearings to be cancelled from March to May 2020; the increased complication of files; and a record number of review appeals. Staff are working on the backlog and new processes, including the new consent resolution process to address these challenges.

Benchers discussed the increased combativeness of respondents, noting that the pandemic has been a challenge for many. In addition the Law Society has been taking strong positions on dealing with respondents, which likely also contributes to combativeness.

Benchers discussed the directory of discipline history and the lack of available records beyond 1983. Benchers also discussed staffing and plans for additional resources to help with the backlog.

FOR INFORMATION

15. Minutes of February 18, 2021 Executive Committee Meeting

There was no discussion on this item.

16. Equity Ombudsperson Program: July 2019 – December 2020 Report

There was no discussion on this item.

17. Judicial Advisory Committee for BC Appointment

There was no discussion on this item.

18. Three Month Bencher Calendar – March to May 2021

There was no discussion on this item.

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

20. Compulsory Cyber Insurance | LIF's Program

The Benchers discussed this item *In Camera*.

The following motion was moved and seconded:

BE IT RESOLVED that The Law Society purchase a compulsory cyber insurance policy, to provide coverage for BC law firms that we indemnify, as part of the Indemnification Program, and may use the indemnity fund and fees to pay for the coverage.

The motion was passed unanimously.

AT
2021-03-05