



# Minutes

## Benchers

Date: Friday, April 23, 2021

Present:

Dean P.J. Lawton, QC, President	Dr. Jan Lindsay
Lisa Hamilton, QC, 1 <sup>st</sup> Vice-President	Jamie Maclaren, QC
Christopher McPherson, QC, 2 <sup>nd</sup> Vice-President	Geoffrey McDonald
Paul Barnett	Steven McKoen, QC
Pinder K. Cheema, QC	Jacqueline McQueen, QC
Jennifer Chow, QC	Elizabeth J. Rowbotham
Barbara Cromarty	Mark Rushton
Jeevyn Dhaliwal, QC	Karen Snowshoe
Cheryl S. D'Sa	Thomas L. Spraggs
Lisa Dumbrell	Michael Welsh, QC
Lisa Feinberg	Kevin B. Westell
Martin Finch, QC	Chelsea D. Wilson
Brook Greenberg, QC	Guangbin Yan
Sasha Hobbs	Heidi Zetzsche
Julie K. Lamb, QC	

Unable to Attend: Claire Marshall

### Public Session – Staff Attendance:

Staff:

Avalon Bourne	Michael Lucas, QC
Don Avison, QC	Alison Luke
Barbara Buchanan, QC	Jeanette McPhee
Lance Cooke	Cary Ann Moore
Natasha Dookie	Doug Munro
Su Forbes, QC	Hilary Stoddart
Andrea Hilland	Lesley Small
Jeffrey Hoskins, QC	Adam Whitcombe, QC
Jason Kuzminski	Vinnie Yuen

Guests:	Dom Bautista	Executive Director & Managing Editor, Law Courts Center
	Janine Benedet, QC	Dean pro tem, Peter A. Allard School of Law
	Dr. Susan Breau	Dean of Law, University of Victoria
	Dr. Cristie Ford	Professor, Peter A. Allard School of Law
	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
	Kenneth M. Walker, QC	Life Bencher; Past President
	Tony Wilson, QC	Life Bencher

## **CONSENT AGENDA**

### **1. Minutes of March 5, 2021, meeting (regular session)**

The minutes of the meeting held on March 5, 2021 were approved unanimously and by consent as circulated.

### **2. Minutes of March 5, 2021, meeting (*in camera* session)**

The minutes of the *In Camera* meeting held on March 5, 2021 were approved unanimously and by consent as circulated.

### **3. Use of Bank Drafts by Lawyers**

The following resolution was passed unanimously and by consent:

That the Benchers agree in principle to permit the withdrawal of funds by way of bank draft from a trust account on the conditions described above, and to refer the matter to the Act and Rules Committee to amend the Rules accordingly.

## **REPORTS**

### **4. President's Report**

Mr. Lawton began his report by recognizing the work of the Rule of Law and Lawyer Independence Advisory Committee, informing Benchers of the recent op-ed penned by the Advisory Committee that was featured in the Globe and Mail. The op-ed reviewed the arrests of Hong Kong lawyers for representing those who participated in demonstrations protesting legislative changes imposed by the Chinese government, and discussed the importance of protecting the independence of the legal profession. Mr. Lawton noted that the situation in China is of concern, and the independence of lawyers is integral to ensuring the public's access to justice and barring against authoritarianism.

Mr. Lawton informed Benchers of the passing of Dr. Maelor Vallance and recognized his many contributions, including as a Lay Bencher of the Law Society. A letter of condolence is being prepared to send to Dr. Vallance's family.

Mr. Lawton then spoke about a recent meeting of the Truth and Reconciliation Advisory Committee, which he attended. At the meeting, the Advisory Committee previewed some of the videos for the Indigenous Inter-cultural Awareness program, which will be rolled out in June.

Mr. Lawton spoke about the student interviews that he is currently conducting, noting that though the students with whom he has met have been keen regarding their future careers as

lawyers, they've also expressed concerns regarding stress, isolation, and the lack of contact with lawyers, mentors, and colleagues. It is important that the profession support one another during these trying times.

Mr. Lawton updated Benchers on a Young Lawyers Sub-section meeting he attended. The focus of the meeting was a discussion regarding ethics in the profession.

Mr. Lawton then spoke about his recent meeting with Chief Judge Melissa Gillespie and her interest in the work being done through the Innovation Sandbox, as well as innovation within the court. Chief Judge Gillespie has offered to participate in one or more Inns of Court around the province.

Mr. Lawton attempted to attend the budget lock-up, but wasn't able to, so Mr. Kuzminski will provide an update at a later time.

Mr. Lawton concluded his report by updating Benchers on the small group Bencher meetings that have been organized. Mr. Lawton noted the concerns expressed regarding the impacts of isolation.

Benchers discussed the Indigenous Inter-cultural Awareness program, and whether or not it should be open to the public. This will require further consideration.

## **5. CEO's Report**

Mr. Avison began his report with an update on COVID-19, and its impacts on Law Society operations. Staff continue to come into the office in reduced numbers, and productivity remains high. There has been some uncertainty regarding the new provincial health restrictions, but greater clarity should be provided later today, and the restrictions will likely have little implication for Law Society operations. Mr. Avison informed Benchers that a staff committee had been formed to look into workplace operations post COVID-19 and to consider reforms based on the "new normal" regarding office operations. Mr. Avison provided demographic information regarding Law Society staff, noting that about 60% of staff members were at least able to register for the COVID-19 vaccine.

Mr. Avison reviewed with Benchers key points from the provincial and federal budgets, noting that both reflected substantial deficits with allocations for business recovery and support for people through these challenging times. Much of the new spending included in the provincial budget was allocated through contingency funds, so the Law Society will be requesting further details on the specifics of how this money will be spent. The provincial budget also included significant allocations to health care and to the tourism industry. The federal budget included funding commitments for the reestablishment of the Law Reform Commission of Canada and support for diversion and the reduction of over-representation within the justice system, as well

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as funding for Statistics Canada to implement a data aggregate action plan to reduce systemic racism and sexism in the professions. Funding allocations were also made for a variety of other initiatives related to the legal profession and access to justice, including: legal support for racialized communities, drug treatment courts, immigration and refugee legal aid, and Indigenous Justice Strategy engagement.

Mr. Avison spoke about the Cullen Commission hearings, noting that the evidentiary phase would soon be coming to a close. The Law Society's focus will now be on its submissions and recommendations for the Commissioner. The Commission received an extension regarding its final report, which is now due December 15. The Executive Committee and the Anti-Money Laundering Working Group along with the Law Society's Counsel will be convening to discuss the submissions in more detail.

Mr. Avison informed Benchers that planning continues for the Federation fall conference and council meeting, which is scheduled to take place in Saskatoon in person. If federal and provincial health restrictions preclude the event from taking place in person, it will be conducted virtually. The theme will be challenges facing new entrants into the profession. Mr. Avison also updated Benchers on the Abrametz case, which will likely be one of the more significant regulatory matters that the Supreme Court of Canada will be considering over the course of its current term. The Law Society of Saskatchewan has been granted leave by the Supreme Court of Canada, and the Federation will be seeking intervenor status. Other law societies may also seek leave to intervene directly.

Mr. Avison then provided an update regarding the Innovation Sandbox, noting that 41 proposals had been received to date, with 24 having been considered by the Executive Committee. Of those 24 that have been considered, 9 have been approved to receive no action letters, 6 require no further action, 4 were outside scope, 3 were denied, and 2 were deferred. The remaining 17 proposals are under review. For those requiring no further action, often the proponents didn't need to submit a proposal through the Innovation Sandbox. Mr. Avison reviewed the services being proposed by proponents, which have included legal advice and assistance for those with dementia, legal coaching, lawyer referral services, and online will services.

Mr. Avison then updated Benchers on the Indigenous Inter-cultural Awareness program. The course materials are being formatted and edited, and additional video content is being developed to go along with the written content. The intention is to have modules posted online and accessible to the profession by June. Mr. Avison noted that it would be an evolving program, with revisions being made as needed. Mr. Avison thanked staff for all their efforts and work on the program.

Mr. Avison provided a brief update on the Law Society's Enterprise Risk Management Plan, which would be presented at the May Bencher meeting.

Mr. Avison concluded his report with an update regarding the virtual sessions being organized to give the profession an opportunity to discuss the mental health impacts of COVID-19, and what could be done to improve mental health and the wellbeing of the profession. The sessions are being facilitated by Brook Greenberg, QC, Cheryl D'Sa, and Kendra Milne, and 160 registrants have signed up for the sessions thus far. Mr. Lawton will also be in attendance to provide opening remarks. Mr. Greenberg provided a brief overview of the sessions, and thanked staff for their efforts and work in planning and supporting the event.

Benchers discussed plans to resume holding in-person call ceremonies. Mr. Avison noted that in-person call ceremonies would resume as soon as health restrictions allow, and this remains a top of mind issue, as the volume will be quite significant. Staff is considering creative solutions and options to address the backlog. Communication will likely be posted to the website regarding plans for call ceremonies. Benchers also discussed the inclusion of all regions of the province in discussions regarding call ceremonies.

Benchers discussed the Innovation Sandbox and ensuring the protection of the public. Mr. Avison noted that the intention is to post the no action letters on the Law Society website, and to provide additional information on the range of proposals approved. Mr. Avison also noted that in order to help with the proposal review process, an Advisory Group was being considered in order to provide a broader review of the proposals and to make recommendations to the Executive Committee. Benchers also discussed the incorporation of technology and virtual opportunities into the services being proposed through the Innovation Sandbox.

Benchers discussed the scheduling of the articling student interviews, and opportunities to stagger and/or allocate the interviews to reduce the number of interviews being conducted at any one time. Staff will be looking into improvements into assignment allocation, including virtual options so that Benchers across jurisdictions could conduct interviews with students across the province.

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

Ms. Cheema began her report by informing Benchers that the Law Society of Alberta had invited her to its Bencher Retreat, which will be taking place in June in Jasper, and the theme will be alternatives to articling.

The University of Victoria's Dean of Law, Dr. Susan Breau, recently spoke at a meeting of the Victoria Bar Association on the impacts of COVID-19 on available articling positions, and how law schools are being asked to help fill the gap. Both Ms. Cheema and Mr. Lawton were in attendance.

Ms. Cheema noted that the list of priorities of other law societies, which was requested at the last Bencher meeting, would be provided to staff for dissemination.

Ms. Cheema provided additional information regarding the Abrametz case, noting that the matter first arose in 2012 as a consequence of a Law Society of Saskatchewan audit, which turned up irregularities in Mr. Abrametz's trust account. Ms. Cheema provided background information regarding the case, noting that the Saskatchewan Court of Appeal had been quite critical of the Law Society of Saskatchewan. Ms. Cheema noted that this case has resource implications due to the increased complexity of files, and reiterated the importance of the Federation's intervenor status.

Ms. Cheema concluded her report by informing Benchers that the next Federation Council meeting is Monday, June 7.

Mr. Greenberg provided an update regarding the National Wellbeing Study, noting that he had shared with the working group some of the videos that Communications had put together and suggested the working group do something similar with the communication plan for the study, which was greeted with enthusiasm.

## **DISCUSSION/DECISION**

### **7. Trust Account Use: Mediators, Arbitrators, and Parenting Coordinators**

Mr. Avison reviewed the item and the background leading up to the proposed recommendation to amend Rule 3-58.1 to allow retainers received by lawyers providing mediation, arbitration, and parenting coordination services to be deposited into their lawyer trust accounts.

Benchers discussed the proposed recommendation and whether or not there would be benefit to providing a comment noting that these services were not the practice of law. Mr. Avison expressed caution in specifically defining the work of mediators, arbitrators, and parenting coordinators as legal services as it could cause considerable harm to those who perform these services.

The following motion was made and seconded:

*BE IT RESOLVED* that Rule 3-58.1 be amended to allow retainers received by lawyers providing mediation, arbitration, and parenting coordination services to be deposited into their lawyer trust accounts.

The motion was passed by the majority of Benchers.

Mr. Lawton noted that the matter would be referred to the Act and Rules Committee to amend the Rules accordingly.

## **8. Law Society Motto and Crest**

Ms. Dhaliwal introduced the item to Benchers, and noted that in his mandate letter to the Committee, Mr. Lawton had requested that the Committee consider modernizing the Law Society's crest and Latin motto. Ms. Dhaliwal reviewed the background of the crest and motto, and the Committee's discussions regarding whether or not the Law Society has need of a crest and motto, or whether a more contemporary logo or symbol might be sufficient. Ms. Dhaliwal noted that it was the Committee's preliminary view that a motto was no longer required, and that the crest should be replaced with a more representative symbol. Ms. Dhaliwal noted that the Governance Committee would liaise with the Truth and Reconciliation Advisory Group as appropriate on this matter.

The following motion was made and seconded:

*BE IT RESOLVED* that the Benchers direct the Governance Committee to conduct a review of the Law Society's crest and to engage in the necessary consultations using the Law Society's resources as may be required in order to devise recommendations for a replacement.

Some Benchers suggested holding a contest to help redesign the logo, which could serve as a public engagement exercise and bring in interest from the public. Benchers also discussed the importance of being inclusive and having an emblem reflective of that.

The motion was passed unanimously.

## **9. Recognition of Law Society Members Policy**

Mr. Lawton reviewed the proposed recognition of Law Society Members policy, which came about due to a request received from a member proposing that the Law Society determine a form of recognition for a recently deceased member. Mr. Lawton noted that the item was for discussion only.

Benchers discussed the proposed policy, and whether or not the decision to recognize members should be determined by the President and/or Benchers as requests are received. Some Benchers expressed concerns in developing policies that could bind future Benchers from being able to recognize members, or commemorate other areas of law, and that these decisions could be made on a one-by-one basis.

Benchers discussed the appropriateness of Benchers recognizing members, particularly as this could be difficult for the Law Society to manage, and there are other organizations that could and



already are doing this. Some Benchers also expressed concerns with naming awards, as there could be an exclusionary risk. Some Benchers noted that the Law Society should remain neutral and impartial and shouldn't be weighing in regarding who should or shouldn't receive endorsement.

Benchers discussed the usefulness of having a general policy that could help guide decision making for staff and the Ladder when these sorts of requests are received.

Mr. Lawton noted that this matter would be discussed further at a subsequent meeting.

## **UPDATES**

### **10.2021 First Quarter Financial Report**

Ms. Hamilton, Chair of the Finance and Audit Committee introduced the item, and then Ms. McPhee provided an overview of the financial results and highlights to the end of March 2021, noting year to date results are positive to budget, mostly due to timing differences in revenue and expenses.

## **FOR INFORMATION**

### **11. Minutes of April 8, 2021 Executive Committee Meeting**

There was no discussion on this item.

### **12. Three Month Bencher Calendar – May to July 2021**

There was no discussion on this item.

### **13. Fall 2020 Justice Summit Report**

There was no discussion on this item.

### **14. 2021 Bencher and Executive Committee Meeting Dates**

There was no discussion on this item.

### **15. 2022 Bencher and Executive Committee Meeting Dates**

There was no discussion on this item.

## **Executive Committee Election**

The election for the vacant elected Bencher position on the Executive Committee was held.

Mr. Lawton reported the results of the election, indicating that Ms. McQueen was the successful candidate. Mr. Lawton thanked all of the candidates for putting forth their names for consideration.

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

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