



Minutes

Benchers

Date: Friday, July 09, 2021

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

Sasha Hobbs
Dr. Jan Lindsay
Geoffrey McDonald
Steven McKoen, QC
Jacqueline McQueen, QC
Elizabeth J. Rowbotham
Mark Rushton
Karen Snowshoe
Michael Welsh, QC
Kevin B. Westell
Chelsea D. Wilson
Guangbin Yan
Heidi Zetzsche

Unable to Attend: Jamie Maclaren, QC
Thomas L. Spraggs

Staff: Don Avison, QC
Avalon Bourne
Barbara Buchanan, QC
Jennifer Chan
Lance Cooke
Natasha Dookie
Su Forbes, QC
Andrea Hilland
Jeffrey Hoskins, QC
Jason Kuzminski

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

Guests:	Dom Bautista	Executive Director & Managing Editor, Law Courts Center
	Janine Benedet, QC	Dean pro tem, Peter A. Allard School of Law
	Mark Benton, QC	CEO, Legal Aid BC
	Harry Cayton	Advisor, Professional Regulation and Governance
	Christina Cook	Member, Aboriginal Lawyers Forum
	Richard Fyfe, QC	Deputy Attorney General of BC
	Clare Jennings	First Vice-President, Canadian Bar Association, BC Branch
	Derek LaCroix, QC	Executive Director, Lawyers Assistance Program of BC
	Mark Meredith	Treasurer and Board Member, Mediate BC Society
	Michael McDonald, QC	Member, Truth and Reconciliation Advisory Committee
	Caroline Nevin	CEO, Courthouse Libraries BC
	Josh Paterson	Executive Director, Law Foundation of BC
	Michèle Ross	President, BC Paralegal Association
	Susan Ross	Member, Law Society of BC
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch

OATH OF OFFICE

Administer Oath of Office

President Lawton administered the Oath of Office to new elected Bencher, Kim Carter.

CONSENT AGENDA

1. Minutes of May 28, 2021, meeting (regular session)

The minutes of the meeting held on May 28, 2021 were approved unanimously and by consent as circulated

2. Minutes of May 28, 2021, meeting (*in camera* session)

The minutes of the *In Camera* meeting held on May 28, 2021 were approved unanimously and by consent as circulated.

3. Law Society Scholarship for Graduate Studies

The following resolution was passed unanimously and by consent.

BE IT RESOLVED that the Benchers ratify the recommendation of the Credentials Committee to award the 2021 Law Society Scholarship for Graduate Studies to Summer Somtochukwu Okibe.

4. Law Society Indigenous Scholarship

The following resolution was passed unanimously and by consent.

BE IT RESOLVED that the Benchers ratify the recommendation of the Credentials Committee to award the 2021 Law Society Indigenous Scholarship equally between Julia Hutlet and Madelaine Desaulniers.

5. External Appointment: Legal Aid BC

The following resolution was passed unanimously and by consent.

BE IT RESOLVED that the Benchers appoint Phil Riddell, QC to the Legal Aid BC Board of Directors for a term commencing July 12, 2021 and concluding December 31, 2023, and appoint Brad Daisley for a three-year term commencing September 7, 2021.

6. Abeyance Policy

The following resolution was passed unanimously and by consent.

BE IT RESOLVED that:

1. The Abeyance Policy be rescinded, such that the Executive Director's authority to grant or deny an abeyance will no longer be restricted by the requirements set out in that policy, and
2. Staff be directed to develop Guidelines for Abeyance Requests for consideration by the Executive Committee that can guide the Executive Director's exercise of discretion as to whether to grant or deny an abeyance and that permit a lawyer to request a referral to the Discipline Committee in circumstances where the Executive Director has denied the lawyer's abeyance request.

7. Revisions to Bencher Code of Conduct

The following resolution was passed unanimously and by consent.

BE IT RESOLVED that the Bencher Code of Conduct section *Appearing as Counsel* be rescinded and replaced with the following:

Appearing as Counsel

1. *A current Bencher must not appear as counsel for the Law Society or any member in any proceeding.*
2. *A former Bencher must not appear as counsel:*
 - (a) for the Law Society in any proceeding;*
 - (b) any member in any Law Society proceeding until three years after ceasing to be a Bencher; and*
 - (c) for a member in a Law Society proceeding if the member was the subject of a hearing in which the Bencher was a member of the panel until 3 years after the completion of the hearing.*
3. *A committee member must not appear as counsel for the Law Society or any member in any proceeding that relates to the work of the committee while a member of that committee and for a period of three years after the member ceases to be a member of the committee.*

8. Code of Professional Conduct Rules 3.4-26.2: Amendments to Commentaries 1 and 2 regarding Insurance References and Gendered Language

The following resolution was passed unanimously and by consent.

BE IT RESOLVED that the Benchers adopt the amendments to the rule 3.4-26.2 commentaries as follows:

[1] Generally speaking, a lawyer may act as legal advisor or as business associate, but not both. These principles are not intended to preclude lawyers from performing legal services on their own behalf. Lawyers should be aware, however, that acting in certain circumstances may cause them to lose coverage as a result of Exclusion 6 in the B.C. Lawyers Compulsory Professional Liability Indemnity Policy and similar provisions in other insurance policies.

[2] Whether or not coverage under the Compulsory Policy is lost is determined separate and apart from the ethical obligations addressed in this chapter. Review the current policy for the exact wording of Exclusion 6 or contact the Lawyers Indemnity Fund regarding the application of the Exclusion to a particular set of circumstances.

9. Rule 1-7(2): Bencher Resignation Rule

The following resolution was passed unanimously and by consent.

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

Rule 1-7 is rescinded and the following substituted:

Bencher ceasing to hold office

- 1-7 (1)** A Bencher, other than an appointed Bencher, must be a member of the Society in good standing to take or hold office as a Bencher.
- (2)** A Bencher may resign by submitting a written resignation to the President stating the effective date of the resignation, and the resignation becomes effective on that date.

10. Rule 1-41(11): Executive Committee Elections

The following recommendations were approved, in principle, unanimously and by consent.

That Rule 1-41(11) be amended to provide that if the Benchers fail to elect four members to the Executive Committee for any reason or if there is a vacancy before September 1st during the term of any elected member of the Executive Committee, there will be an election to fill the

position at the earliest opportunity. If the reason for the election is a tie vote, then the election will only be among those candidates with tied votes.

The amendments have been referred to the Act and Rules Committee to develop rules to implement the recommendations, and to return the matter to the Benchers to approve the rule changes.

11. Rule 2-84: Call Ceremony Attendance

The following recommendations were approved, in principle, unanimously and by consent.

- (a) Rule 2-84 be amended to provide that transfers from other jurisdictions have the option whether to be called in accordance with Rule 2-84;
- (b) For a period of time to be determined by the Executive Director, that articulated students awaiting their first call and admission have the option whether to be called in accordance with Rule 2-84; and
- (c) The time for an articulated student or transfer lawyer to be presented in open court be extended to the end of 2022.

The amendments have been referred to the Act and Rules Committee to develop rules to implement the recommendations, and to return the matter to the Benchers to approve the rule changes.

12. Rule 3-58.1: Exception for Mediators, Arbitrators, and Parenting Coordinators

The following resolution was passed unanimously and by consent.

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

1. Rule 3-58.1 is rescinded and the following substituted:

- 3-58.1** (1) Except as permitted by the Act or these rules or otherwise required by law, a lawyer or law firm must not permit funds to be deposited to or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm.
- (2) A lawyer or law firm must take reasonable steps to obtain appropriate instructions and pay out funds held in a trust account as soon as practicable on completion of the services to which the funds relate.
- (3) Despite subrule (1), a lawyer or law firm may deposit to and withdraw from a trust account funds that are received as a retainer for services as a mediator, arbitrator or parenting coordinator.

- (4) Funds deposited to a trust account by a lawyer or law firm under subrule (3) are subject to all the rules pertaining to trust funds as if the funds were received from a client in relation to legal services provided by the lawyer or law firm.

2. ***Rule 3-60 (4) is rescinded and the following substituted:***

- (4) Subject to subrule (5) and Rule 3-74 [*Trust shortage*], a lawyer must not deposit to a pooled trust account any funds other than
 - (a) trust funds,
 - (b) funds that are fiduciary property, or
 - (c) funds the lawyer is permitted to deposit to a trust account under Rule 3-58.1 (3) [*Trust account only for legal services*].

13. Rule 3-64.3: Withdrawal from Trust by Bank Draft

The following resolution was passed unanimously and by consent.

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

1. ***In Rule 3-64 the following paragraph is added:***

- (b.1) by bank draft as permitted by Rule 3-64.3 [*Withdrawal from trust by bank draft*],

2. ***Rule 3-64.1 (2) (g) (i) is rescinded and the following substituted:***

- (i) the requisition, and

3. ***The following rule is added:***

Withdrawal from trust by bank draft

3-64.3 A lawyer may withdraw funds from a pooled or separate trust account by bank draft, provided all of the following conditions are met:

- (a) the recipient of the funds must provide the following in writing:
 - (i) consent in advance to receive the funds in the form of a bank draft;
 - (ii) acknowledgement of receipt of the funds;
- (b) the lawyer using a bank draft to withdraw trust funds must
 - (i) document the transaction on the client's file using the prescribed form,

- (ii) obtain the bank draft at a financial institution where the lawyer's law firm has a trust account, and
- (iii) maintain in the lawyer's records
 - (A) the documents obtained from the recipient under paragraph (a),
 - (B) the completed form required under subparagraph (i), and
 - (C) a copy of the bank draft.

REPORTS

14. President's Report

Mr. Lawton began his report by providing Benchers with a summary of recent events and engagements he had attended, such as virtually presenting the Gold Medal Awards to the top graduate at each of BC's law schools. Mr. Lawton congratulated Scott Garoupa (University of British Columbia), Amy Wong (University of Victoria), and Paige Mueller (Thompson Rivers University) for their significant accomplishments. Other engagements included virtually connecting with the Presidents of Canada's Law Societies, which he hoped would become a more common occurrence, and the Law Society of Alberta's annual retreat, which took place virtually on June 3 and 4. Mr. Lawton noted that the theme of the retreat focused on alternate paths to call and admission.

Mr. Lawton then spoke about his involvement as an adjudicator in the Law Society's Tribunal process and the importance of this work.

Other recent meetings Mr. Lawton attended, which he updated Benchers on, included the CBABC Provincial Council meeting, a meeting of the Council of Canadian Law Deans and the Federation joint working group regarding collaboration between the faculties of law and the law societies of Canada to advance the Truth and Reconciliation Commission's calls to action, and an Anti-Asian Racism roundtable hosted by the University of British Columbia.

Mr. Lawton then updated Benchers on his recent meeting with Chief Justice Hinkson regarding work around the Innovation Sandbox, particularly regarding applicants who may propose to appear before the BC Supreme Court.

Mr. Lawton concluded his report by informing Benchers of his participation in the Indigenous Legal Order Symposium, which was organized by the CLEBC. Mr. Lawton noted that a recording of the event would be available to review.

15. CEO's Report

Mr. Avison began his report with an update on COVID-19 and implications for Law Society operations. Mr. Avison noted that the province was currently within Step 3 of BC's Restart Plan

and the provincial state of emergency had been lifted. He indicated that the Law Society offices would reopen on July 19 with a staggered reopening plan in recognition of a continuing need for caution. Mr. Avison noted that it was likely some meetings, events and hearings would begin to resume in-person. Mr. Avison spoke about the role of technology in allowing the Law Society to continue with its operations throughout the pandemic, as well as the importance of considering continued opportunities to incorporate technology into Law Society processes. Mr. Avison informed Benchers that the fall session of PLTC would proceed virtually, as it would be too disruptive to return to an in-person format at this juncture. Additional information would be provided regarding PLTC at a future Bencher meeting, particularly around the possible continued use of technology in delivering the program.

Mr. Avison then spoke about call ceremonies, noting that the approval of Item 11 on the Consent Agenda will give the Law Society some latitude in how to address the considerable backlog of students waiting to attend a call ceremony by providing an element of optionality for transfer lawyers and new calls. Mr. Avison noted that the preference would be to keep call ceremonies substantially consistent, so the recommendation would be to have an increase in the number of ceremonies as opposed to an increase in the size of the ceremonies.

Mr. Avison updated Benchers on the Law Society's plans regarding a hybrid workspace, noting that discussions have been ongoing with consultants as to how best to utilize the Law Society office space and how the Law Society can be a leading employer in the post-COVID environment in terms of flexibility. Mr. Avison also updated Benchers on a hybrid meeting pilot program being conducted in Room 914 over the summer and fall, which would help inform decisions regarding the set-up for the Bencher Room.

Mr. Avison informed Benchers that the Cullen Commission hearings had reconvened to hear from additional witnesses. The submission deadline had been extended to the day of the Bencher meeting, and Mr. Avison noted a copy of the Law Society's submissions would be provided to Benchers.

Mr. Avison then provided an update regarding the Indigenous Inter-Cultural Awareness program. Mr. Avison commented on the extraordinary amount of work, which had gone into the program, resulting in a six hour long course. Mr. Avison indicated that further editing of the materials would need to be done, and he encouraged all Benchers to review the program materials and provide feedback. Mr. Avison informed Benchers that a soft launch of the program would occur over the summer with edits and revisions being made as appropriate, then the final program would be ready for Bencher consideration, at which time Benchers would be asked to establish the date by which the profession would need to complete the program.

Mr. Avison spoke about the Law Society's third-party review of its governance structures, noting that Harry Cayton was the successful proponent selected to conduct the review following an RFP

process, and was attending today's Bencher meeting to observe proceedings. Mr. Avison encouraged all Benchers to reach out to Mr. Cayton to provide their perspectives.

Mr. Avison updated Benchers on the fall Federation conference, which would be focused on challenges faced by new entrants to the profession.

Mr. Avison then spoke about the 2022 budget development process, noting that the proposed budget would be on the agenda for approval at the September Bencher meeting. Mr. Avison informed Benchers that a budget briefing would take place the day before the September Bencher meeting, and he encouraged all Benchers to attend.

Mr. Avison provided an overview of the updated review process for Innovation Sandbox proposals, noting that a staff review takes place as a first step, then the Advisory Group reviews the proposals and makes recommendations to the Executive Committee to approve. Mr. Avison reviewed with Benchers the composition of the Advisory Group and also provided an overview of his recent discussions with Chief Justice Hinkson and with Chief Judge Gillespie regarding potential elements of protocol with those proponents who have received no action letters.

Mr. Avison then updated Benchers on the Saskatchewan Court of Appeal decision in Abrametz, noting that there have been a number of applications for intervention status before the Supreme Court of Canada. Mr. Avison indicated that the case would be heard in the coming months.

Mr. Avison then spoke about the Federation's National Wellbeing Survey, which has been launched with a reasonable degree of responsiveness received thus far. Mr. Avison noted that a report of the results was anticipated once the results had been analyzed.

Mr. Avison updated Benchers on the Law Society of Alberta's recent retreat, which had focused on the future of articles. Mr. Avison noted that of particular interest was the operation of a teaching law firm within Nottingham Law School.

Mr. Avison concluded his report with an update regarding the situation at Thompson Rivers University regarding recent enrollment issues. Mr. Avison indicated that he'd had a number of conversations with the Dean of Law and that the university was working hard to find solutions.

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

Ms. Cheema began her report with an overview of the Law Society of Alberta's retreat, which took place virtually on June 3 and 4. The theme of the retreat focused on the future of articles moderated by Jordan Furlong. Presentations focused on three different approaches to articling, including the integrated practice curriculum being conducted by Lakehead and Ryerson universities, the law practice program in Ontario, and the teaching law firm at Nottingham Law School. Ms. Cheema also spoke about a panel of deans from the western Canadian law schools.

Ms. Cheema then provided an overview of the June Federation Council meeting, which occurred shortly after the announcement of the findings at the Kamloops residential school. Ms. Cheema thanked Andrea Hilland for helping to prepare a land acknowledgement. The Council meeting agenda included a presentation from Drew Lafond, President of the Indigenous Bar Association, and Ms. Cheema indicated that he spoke about the placement of Indigenous persons across the justice spectrum. Ms. Cheema noted that Mr. Lafond also spoke about systemic barriers in the profession and how the Federation can support the Indigenous Bar Association. Ms. Cheema then reviewed the Federation Council's priorities, which include reconciliation and engagement with the Indigenous bar, as well as the National Wellbeing Survey. Ms. Cheema encouraged all Benchers to complete the survey. Ms. Cheema informed Benchers that the Law Society of Ontario had now approved the anti-money laundering provisions, and by January 2022 all law societies across Canada would have the provisions in force.

Ms. Cheema then spoke about the National Requirement Review for 2021, noting that the National Requirement is the standard that applies to the competencies that every Canadian law student must possess prior to commencing articles. A review of the National requirement occurs every three to five years, and Ms. Cheema indicated that 2021 would be a review year.

Ms. Cheema spoke about the Federation's intervention in the Abrametz decision and the selection process for litigation counsel.

Ms. Cheema concluded her report with an update regarding the Federation conference in October, which would focus on deconstructing barriers on the road to practice.

UPDATES

18.2021 May Financial Report

Ms. McPhee provided an update on the financial results and highlights to the end of May 2021, noting that the General Fund operations resulted in a positive variance to budget, which was primarily due to a combination of timing differences and permanent variances. Ms. McPhee, indicated that revenue was ahead of budget due to higher than expected practice fees and

electronic filing revenue for the period, and operating expenses were below budget due to a combination of permanent variances and timing differences, mainly in the areas of compensation, meeting and travel costs, and external counsel fees.

Ms. Hamilton thanked Ms. McPhee and staff for all their efforts, particularly with the implementation of the fee relief program.

Benchers discussed the savings incurred with not having in-person Bencher or Committee meetings.

DISCUSSION/DECISION

17. Regulatory Review: Terms of Reference

Mr. Lawton reviewed with Benchers the proposed terms of reference for the Indigenous Engagement in Regulatory Matters Task Force, noting that the intention would be to have the Task Force provide a workplan for the September Bencher meeting.

Benchers discussed the formation of the Task Force and the proposed terms of reference, and agreed that the Truth and Reconciliation Advisory Committee should be consulted on the terms of reference. Specifically, Benchers discussed suggested revisions to the Duties and Responsibilities section of the terms of reference, notably the inclusion of the Truth and Reconciliation Advisory Committee as a key stakeholder with whom the Task Force would conduct interviews, as well as any others that the Task Force would consider necessary for the purpose of preparing its report.

Benchers discussed the need for Task Force members to have a recognizable level of experience regarding the challenges faced by Indigenous people. Benchers also discussed the importance of removing bias when creating bodies and allowing the body to have the option to make amendments to its own mandate. Benchers suggested that the input of the Truth and Reconciliation Advisory Committee be sought as part of the Task Force's review of its mandate, and that the Task Force could come back to Benchers with any proposed amendments to the terms of reference.

A motion was made and seconded to establish an Indigenous Engagement in Regulatory Matters Task Force with a mandate to examine the Law Society's regulatory processes specifically its complaints, investigation, prosecution and adjudication processes, as they relate to vulnerable and marginalized complainants and witnesses, particularly Indigenous persons, and make recommendations to the Benchers to ensure that the Law Society's regulatory processes accommodate the full participation of vulnerable and marginalized complainants and witnesses.

The resolution was passed unanimously.

A motion was made and seconded to refer the draft Terms of Reference to the Truth and Reconciliation Advisory Committee for consultation with the following amended Duties and Responsibilities:

- Add “The workplan would also include any proposed changes or additions the Task Force after consultation with the Truth and Reconciliation Advisory Committee would recommend with respect to their mandate.” to the end of paragraph 1
- Add “members of the Truth and Reconciliation Advisory Committee” to paragraph 2.

The resolution was passed unanimously.

FOR INFORMATION

19. Mid-Year Advisory Committee Reports

There was no discussion on this item.

20. Rule of Law Secondary School Essay Contest

There was no discussion on this item.

21. External Appointment: Continuing Legal Education Society of BC

There was no discussion on this item.

22. External Appointment: Supreme Court of BC Rules Committee

There was no discussion on this item.

23. Minutes of June 24, 2021 Executive Committee Meeting (regular session)

There was no discussion on this item.

24. Three Month Bencher Calendar – July to September 2021

There was no discussion on this item.

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

AB
2021-07-09