



Minutes

Benchers

Date: Friday, September 24, 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
Jamie Maclaren, QC
Geoffrey McDonald
Steven McKoen, QC
Jacqueline McQueen, QC
Elizabeth J. Rowbotham
Mark Rushton
Thomas L. Spraggs
Michael Welsh, QC
Kevin B. Westell
Chelsea D. Wilson
Guangbin Yan
Gaynor C. Yeung
Heidi Zetzsche

Unable to Attend: Karen Snowshoe

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

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

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| Guests: | Dom Bautista | Executive Director & Managing Editor, Law Courts Center |
| | Mark Benton, QC | CEO, Legal Aid BC |
| | Ian Burns | Digital Reporter, The Lawyer's Daily |
| | Harry Cayton | Advisor, Professional Regulation and Governance |
| | Richard Fyfe, QC | Deputy Attorney General of BC |
| | Jonathan G. Herman | CEO, Federation of Law Societies of Canada |
| | Clare Jennings | 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 |
| | Caroline Nevin | CEO, Courthouse Libraries BC |
| | Josh Paterson | Executive Director, Law Foundation of BC |
| | Stephen Raby, QC | President, Federation of Law Societies of Canada |
| | 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 |

OATH OF OFFICE

President Lawton administered the Oath of Office to new Bencher, Gaynor C. Yeung.

CONSENT AGENDA

1. Minutes of July 9, 2021, meeting (regular session)

The minutes of the meeting held on July 9, 2021 were approved unanimously and by consent as circulated.

2. Minutes of July 9, 2021, meeting (*in camera* session)

The minutes of the *In Camera* meeting held on July 9, 2021 were approved unanimously and by consent as circulated.

3. Rule 1-41: Election of Executive Committee

The following resolution was passed unanimously and by consent:

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

1. Rule 1-41 (11) is rescinded and the following substituted:

(11) If, because of a tie vote or for any other reason, the Benchers fail to elect 4 members of the Executive Committee under subrule (1), or if a vacancy occurs on or before August 31 of any year, the Benchers or the appointed Benchers, as the case may be, must promptly hold an election to fill the vacancy.

(11.1) Despite subrule (3), when a tie vote causes an election under subrule (11) the candidates who were tied are the only candidates.

4. Rule 2-84: Presentation to Court on Call and Admission

The following resolution was passed unanimously and by consent:

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

1. Rule 3-84 is amended as follows:

(a) by adding the following subrule:

(2.1) Despite subrule (2)

- (a) a lawyer who has been called and admitted in another Canadian jurisdiction before taking the barristers' and solicitors' oath under subrule (2) (a) is permitted but not required to be presented in open court under subrule (2) (b), and
- (b) the Executive Director may exempt a lawyer or a category of lawyers from the requirement to be presented in open court under subrule (2)(b).;

(b) by rescinding subrules (5) and (6) and substituting the following:

- (5) The Executive Director must not renew a practising certificate issued under subrule (4) unless the lawyer has been presented in open court if required under this rule.
- (6) Despite subrule (5)
 - (a) the Executive Director may renew a certificate issued under subrule (4) on or after September 1 of the same year as its expiry , and
 - (b) the Benchers may, by resolution, extend the time for a lawyer or a category of lawyers to be presented in open court.

5. Law Society Awards: Recognition, Selection, and Approval Process

The following resolution was passed unanimously and by consent:

BE IT RESOLVED THAT the approval of award recipients for the Equity, Diversity, and Inclusion Award; Excellence in Family Law Award; Award for Leadership in Legal Aid; the Pro Bono Award, and the Mark Andrews Excellence in Litigation Award be delegated from the Benchers to the Executive Committee.

6. BC Superior Courts Clerkship Program

The following recommended resolution was approved, in principle, unanimously and by consent:

BE IT RESOLVED that the Law Society Rules be amended to recognize that the completion of a judicial law clerkship fully satisfies the articling requirement for the purpose of admission to the bar.

The amendment has been referred to the Act and Rules Committee to develop rules to implement the recommendation, and to return the matter to the Benchers to approve the rule changes.

REPORTS

7. President's Report

Mr. Lawton began his report with an update on the Indigenous intercultural course, where he indicated that the course materials will be provided to a broader audience for input towards the end of September with a full launch planned for January 2022.

Mr. Lawton informed Benchers that the composition of the Indigenous Engagement in Regulatory Matters Task Force had been confirmed. The Task Force will be led by two co-chairs.

Mr. Lawton then spoke about the recent communications he had with Steve Raby, QC, President of the Federation of Law Societies, regarding the upcoming Federation Conference, which will no longer be held in-person. Mr. Lawton also spoke about recent communications he had with Justice Sheri Ann Donegan and Justice Mona Lynch of the International Association of Women Judges regarding the provision of a statement of support advocating for the protection of all members of the judiciary in Afghanistan. The Federation, in consultation with Canada's law societies, has issued a statement regarding this matter.

Mr. Lawton updated the Committee regarding consultations with Deputy Attorney General Richard Fyfe, QC regarding changes to the *Offence Act*, particularly in regard to requests to remove many of the requirements to appear in court in person, which would allow for virtual appearances. Mr. Lawton noted that the Law Society had also been asked by the provincial government to provide a response regarding possible amendments to the *Jury Act*.

The federal government recently passed legislation to make September 30 a federal statutory holiday called the National Day for Truth and Reconciliation. Mr. Lawton informed Benchers that the Law Society offices would be closed and staff have been encouraged to participate in this important day through reflection or education as related to truth and reconciliation.

Mr. Lawton then provided an update on call and admission ceremonies, noting that a return to in-person ceremonies is not yet possible due to the COVID-19 pandemic. Mr. Lawton reviewed with Benchers the rule amendments approved at the July Bencher meeting, which will provide the Law Society with some latitude in how to address the considerable backlog of students waiting to attend a call ceremony, while also ensuring that students are not penalized for not attending a call ceremony within a certain period of time.

Mr. Lawton concluded his report with a summary of his recent events and activities, including his continued involvement with the Council of Canadian Law Deans and the Federation joint working group, which is focused on creating more cohesion between law schools and the implementation of the Truth and Reconciliation Commission's calls to action; his recent

interview with Harry Cayton as part of Mr. Cayton's review of the Law Society's governance; and ongoing preparation for the Law Society's Annual General Meeting in October.

8. CEO's Report

Mr. Avison began his report with a status update on COVID-19 and Law Society operations, noting that the Law Society is currently looking into the development of hybrid workplace strategies.

Mr. Avison then spoke about the Indigenous intercultural course and thanked Benchers for their feedback regarding the program materials. Mr. Avison informed Benchers that the program is entering phase 2 of review, which will include providing the program to a number of organizations and individuals for input, while also making the program available to the profession with the caveat that the program is under review and has not yet been finalized, or made mandatory for the profession. The program will also be made available to Law Society staff with the intent of having all staff complete the program.

Mr. Avison updated Benchers on plans for the Bencher Retreat, which will include a working session on the Law Society's regulatory processes.

Mr. Avison then spoke about the Federation Fall Conference, which will focus on challenges to entry to practice.

Mr. Avison presented a progress report on the implementation of the Law Society's strategic plan, reviewing the status of each objective in detail. Mr. Avison noted that the next progress report would be provided at the December Bencher meeting, and would also be included within the new Bencher orientation materials for 2022. Benchers discussed the status of the strategic plan with some Benchers suggesting that further detail regarding categorization of priorities year by year could be helpful.

GUEST PRESENTATION

9. Update on the Federation of Law Societies of Canada

Mr. Lawton introduced Steve Raby, QC, President of the Federation of Law Societies of Canada, and Jonathan Herman, Chief Executive Officer of the Federation of Law Societies of Canada, and welcomed them to the meeting.

Mr. Raby spoke about the role of the Federation, as well as the relationship between the Federation and Canada's individual law societies, noting that the Federation's goal is to facilitate national conversation amongst the law societies. Mr. Raby thanked Benchers and Law Society staff for all their contributions and involvement with the Federation's committees and initiatives.

Mr. Raby updated Benchers on several of the Federation's current initiatives and priorities, including CanLII, anti-money laundering, the Model Code, the National Committee on Accreditation, and truth and reconciliation. Mr. Raby spoke about the Federation rules regarding money laundering, and the importance of collaboration between the Federation and the law societies regarding this matter.

Mr. Raby concluded his report by providing an overview of the Federation's fall conference, noting that the program was circulated to all law societies the day before the Bencher meeting. Mr. Raby encouraged all Benchers to attend the conference.

Mr. Herman spoke about the importance of the collaborative relationship between the Law Society and the Federation.

Benchers engaged in discussions regarding the formation of the Federation's national agenda and how regional initiatives become national initiatives. Mr. Raby noted that the consultation process for development of the Federation's strategic plan includes all the law societies so as to have a clear sense of what the priorities are across the country. The wellbeing of the profession was an area that came up during the consultation for the last strategic plan, and Mr. Raby spoke about the national wellness survey, which is being overseen by the Federation.

DECISION

10.2022 Initiatives, Finances, and Fees

Ms. Hamilton introduced the item, followed by a presentation to Benchers on the proposed 2022 initiatives, finances, and fees delivered by Mr. Avison.

Mr. Avison began by informing Benchers that the Law Society will avoid a projected deficit for 2021 due to a higher number of lawyers, compensation savings, and continued savings in meetings and travel. He then highlighted some of the Law Society's key financial considerations for 2022, including a focus on strategic priorities and effective operations, ensuring the appropriate level of resources, and no increase to practice and indemnity fees. Mr. Avison reviewed expense highlights for 2022, including increased technology costs to support the digitization of the workplace, as well as an increase in external counsel fees in legal defence and Investigations, Monitoring, and Enforcement due to additional files in these areas and the special expertise required for certain files. He then reviewed the funding for external organizations, noting that the Federation fee will be reduced in 2022 as the Federation will use some net asset reserves to fund its operations for the next three years. Mr. Avison then provided an overview of the Lawyers Indemnity Fund (LIF), detailing the number of reports over the past three years and the average of claim payments, as well as net assets, revenue, and expenses.

Benchers discussed the COVID-related claims LIF had received over the past year, which have been primarily related to missed limitations. Benchers also discussed the education and training that LIF had been providing to the profession.

The following resolution was passed unanimously.

BE IT RESOLVED that:

- Effective January 1, 2022, the practice fee be set at \$2,289.00, pursuant to section 23(1)(a) of the Legal Profession Act.

The following resolution was passed unanimously.

BE IT RESOLVED that:

- the indemnity fee for 2022 pursuant to section 30(3) of the Legal Profession Act be set at \$1,800;
- the part-time indemnity fee for 2022 pursuant to Rule 3-40(2) be set at \$900; and
- the indemnity surcharge for 2022 pursuant to Rule 3-44(2) be set at \$1,000.

11. Indigenous Engagement in Regulatory Matters Task Force: Terms of Reference and Work Plan

Ms. Cheema reviewed with Benchers the Indigenous Engagement in Regulatory Matters Task Force's terms of reference and work plan, noting the revisions made to the terms of reference as a result of the Task Force's consultation with the Truth and Reconciliation Advisory Committee. Ms. Cheema noted that the Task Force is planning on providing its final recommendations to Benchers in September 2022.

A motion to approve the revised terms of reference was unanimously approved.

DISCUSSION

12. Mental Health Task Force: Recommendation on the Development of an Alternative Discipline Process

Mr. Greenberg reviewed with Benchers the recommendations from the Mental Health Task Force regarding the implementation of an alternative discipline process no later than September 2022, to address circumstances in which there is a connection between a health condition and a conduct issue that has resulted in a complaint investigation. The alternative discipline process

would begin with a pilot project, followed by an interim and final review of the pilot project in 2023 and 2025 respectively, at which point the matter would return to Benchers for a final determination as to whether to establish the alternative discipline process as a permanent regulatory program.

Benchers discussed the different types of behaviour that would be eligible for the alternative discipline process. Mr. Greenberg noted that there would be different categories for exclusions based on the seriousness of the conduct. He indicated that disbarment, misconduct leading to disbarment or a lengthy suspension, or misappropriation of funds would not be eligible for the alternative discipline process.

Benchers discussed what would constitute a mental health matter, and whether or not those lawyers suffering from debilitating stress or anxiety would be eligible for the alternative discipline process. Benchers also discussed what requirements would be in place in terms of treatment or counselling as a component of the alternative process.

Benchers discussed the importance of addressing mental health issues early in proceedings and training for Law Society counsel and staff to ensure that there is understanding of mental health issues.

Benchers discussed the decision-making authority in determining who would be eligible for the alternative discipline process. Some Benchers noted the importance of decisions needing to be made quickly, and Mr. Greenberg pointed out that there are other matters in the discipline process that are overseen by the Executive Director, so it made sense to have the Executive Director also oversee the eligibility for the alternative discipline process.

Benchers discussed the input of the complainant in determining whether a respondent should go through the alternative discipline process. Mr. Greenberg noted that the proposed process was modeled after complainant involvement within a conduct report, and that the complainant would be one of the factors in determining whether the alternative process was appropriate.

The report was on the agenda for discussion and will be on the agenda for the October Bencher meeting.

13. Lawyer Development Task Force: Recommendations Concerning Remuneration and Hours of Work for Articled Students

Mr. McKoen reviewed with Benchers the recommendations from the Lawyer Development Task Force regarding remuneration and hours of work for articled students. In particular, the Task Force recommends that the Benchers endorse, in principle, the Law Society establishing limits on the number of hours of work during articles, with limited exceptions; and that the Benchers

endorse, in principle, the Law Society establishing minimum levels of financial compensation during articles, with limited exceptions. Mr. McKoen noted that the Task Force also recommends that the standards included in the Task Force's report not be implemented until the Law Society has established at least one alternative to articling, through which candidates' ability to fulfill the experiential training portion of the licensing process will no longer entirely be dependent on the availability of articles.

Mr. Maclaren proposed two additional recommendations for consideration; the first relating to the development of an alternative pathway to licensing where the Law Society would accept a period of nine months of experiential learning at an approved clinical law program (inside or outside of law school) as an alternative to articling, and the second that the Law Society establish an articles registry.

Benchers discussed timing regarding recommendations for alternative pathways for licensing. Mr. McKoen noted that the Task Force was engaging in discussions with BC's law schools regarding adding experiential learning to programs. Benchers also discussed the need for a well-formed definition of what experiential training should accomplish. Mr. McKoen noted that the Task Force had approached Jordon Furlong to help with establishing criteria that an experiential learning program should meet, which could be used as a measurement for review.

Benchers discussed the relationship between articling students and their law firm/principle and how best to address any issues of exploitation that may exist. Benchers discussed the challenges in acquiring feedback and data as the best sources to date are the students, who are generally reluctant to provide information until their articles are complete. Benchers also discussed the importance of having standards and training for law firms and/or principals. Mr. McKoen noted that the Task Force is considering a certification program for principals with an alternate complaints process for students.

Benchers discussed challenges facing law firms and principals in accommodating the number of students seeking articles, as well as possible funding options for communities that may struggle to meet the proposed minimum salary requirements for students. Mr. McKoen noted that an option could be having several principals take on a group of students with the costs shared amongst the principals.

Benchers discussed the role of the Law Society and law schools in determining the formal learning requirements for call in BC.

The report was on the agenda for discussion and will be on the agenda for the October Bencher meeting.

14. Access to Justice Advisory Committee: Increasing Access to Non- Adversarial Resolution of Family Law Matters

Ms. Hamilton reviewed with Benchers the recommendations from the Access to Justice Advisory Committee regarding access to non-adversarial resolution of family law matters.

Benchers discussed the weight and impact of making decisions that affect children, as well as the importance of not oversimplifying the approach to dealing with family law matters. Some Benchers suggested additional information regarding Adverse Childhood Experiences (ACEs) would be helpful in determining a decision in regard to the Advisory Committee's recommendations. Ms. Hamilton noted additional supporting material could be provided to Benchers.

The report was on the agenda for discussion and will be on the agenda for the October Bencher meeting.

UPDATES

15. Bencher and Committee Mid-Year Evaluation Results

Ms. Dhaliwal briefed Benchers on the results of the mid-year Bencher and Committee surveys, noting low participation rates. Ms. Dhaliwal highlighted to Benchers the questions which elicited the most agreement, as well as those that elicited the least agreement, and also noted the questions regarding the effects of the COVID-19 pandemic on Benchers and Committee members.

Ms. Dhaliwal then reviewed next steps regarding the surveys, noting that the Governance Committee will be considering some changes to the evaluation process for 2022. In the meantime, the Governance Committee will be proposing that the process be changed for the 2021 End-of-Year Evaluations to encourage higher participation.

16. 2020 National Discipline Standards Report

Ms. Dookie reviewed the background of the development of the national discipline standards and presented the results of the 2020 implementation report. She also reviewed the performance of the Law Society of BC versus the national average, noting that the Law Society of BC consistently meets the standards beyond the national average.

17. Report on Outstanding Hearing & Review Decisions

President Lawton provided an update on outstanding hearing and review decisions and thanked Benchers for their efforts to get decisions in on time, as timeliness is important to the public and those involved in proceedings.

FOR INFORMATION

18. Minutes of September 9, 2021 Executive Committee Meeting (regular session)

There was no discussion on this item.

19. 2021 Annual General Meeting: Second Notice to the Profession

There was no discussion on this item.

20. Three Month Bencher Calendar – October to December 2021

There was no discussion on this item.

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

AB
2021-09-24