



# Minutes

## Benchers

Date: Saturday, October 16, 2021

Present: Dean P.J. Lawton, QC, President  
Lisa Hamilton, QC, 1<sup>st</sup> Vice-President  
Christopher McPherson, QC, 2<sup>nd</sup> Vice-President  
Paul Barnett  
Kim Carter  
Pinder K. Cheema, QC  
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  
Karen Snowshoe  
Thomas L. Spraggs  
Michael Welsh, QC  
Kevin B. Westell  
Chelsea D. Wilson  
Guangbin Yan  
Gaynor C. Yeung  
Heidi Zetzsche

Unable to Attend: Jennifer Chow, QC  
Barbara Cromarty

Staff: Don Avison, QC  
Avalon Bourne  
Lance Cooke  
Natasha Dookie  
Kerryn Holt  
Jeffrey Hoskins, QC  
Alison Kirby  
Jason Kuzminski  
Michael Lucas, QC  
Alison Luke  
Claire Marchant  
Tara McPhail  
Jeanette McPhee  
Lainie Shore  
Lesley Small

Guests:	Harry Cayton	Advisor, Professional Regulation and Governance
	Paul Craven	Superintendent, Professional Governance
	The Honourable David Eby, QC	Attorney General and Minister responsible for ICBC, Liquor, and Gamble
	Jane Morley, QC	Consultant, Restorative Solutions

## CONSENT AGENDA

### 1. Minutes of September 24, 2021, meeting (regular session)

The minutes of the meeting held on September 24, 2021 were approved unanimously and by consent as circulated.

### 2. Minutes of September 24, 2021, meeting (*in camera* session)

The minutes of the *In Camera* meeting held on September 24, 2021 were approved unanimously and by consent as circulated.

### 3. 2022 Fee Schedules

The following resolution was passed unanimously and by consent:

***BE IT RESOLVED to amend the Law Society Rules, effective January 1, 2022, as follows:***

1. ***In Schedule 1, by striking “\$2,289.12” at the end of item A 1 and substituting “\$2,289.00”;***
2. ***In Schedule 2, by revising the prorated figures in the columns headed “Practice fee” accordingly; and***
3. ***In the headings of schedules 1, 2 and 3, by striking the year “2021” and substituting “2022”.***

### 4. Recommended Amendments to the Code of Professional Conduct for British Columbia Commentaries

The amendments to the *Code of Professional Conduct for British Columbia* as recommended by the Ethics Committee were adopted as circulated by consent.

## REPORTS

### 5. President’s Report

Mr. Lawton began his report by updating Benchers on his recent events and activities, including chairing the Law Society’s recent Annual General Meeting (AGM), his continued involvement with the Council of Canadian Law Deans and the Federation joint working group, chairing an Executive Committee meeting focused on planning for the Bencher Retreat, and his involvement as an adjudicator in the Law Society’s Tribunal processes.

Mr. Lawton also spoke about the Bencher Retreat program, noting that discussions would continue at future Bencher meetings.

## **6. CEO's Report**

Mr. Avison began his report with a summary of the recent virtual Federation Conference, which focused on new entrants into the profession and the challenges they faced. Mr. Avison spoke about the different groups who presented during the conference, including students currently in law schools, current articling students, and newly called lawyers who spoke about their first five years of practice. Mr. Avison noted that the conference began with a welcome from Cree elder Sid Fiddler, who spoke about being in a time of difficult truths as a result of the continuing and pervasive harm of systemic racism. Mr. Avison then spoke about the issues raised by the Barreau du Québec, including whether or not new entrants have the skills and supports needed to be successful practitioners, and whether or not the processes and practices of law schools and law societies are equitable and free from barriers and discrimination. Over the course of the conference, Mr. Avison indicated that several barriers to the profession were identified, particularly in regard to the Law School Admission Test. Mr. Avison then reviewed several of the pilot projects that different jurisdictions were exploring to address the challenges facing new entrants to the profession.

Mr. Avison then provided an update on the Law Society's recent AGM, which took place on October 5. Mr. Avison noted that the technical format of the meeting proceeded smoothly, which enabled a high degree of participation, both in terms of voting and attendance at the meeting. He also indicated that the success of the AGM's technical format would help inform some of the Law Society's decisions regarding the virtual set-up for meeting rooms at the Law Society offices.

Mr. Avison informed Benchers that the call for nominations for the Bencher elections would close on October 18 at 5:00 pm. He indicated that voting would take place from November 1 to 15 with results announced on November 16.

Regarding the Bencher Retreat program, Mr. Avison indicated that a report would be developed based on the discussions that took place during the conference portion of the Retreat, and the report would be on the agenda for the December Bencher meeting. Mr. Avison also mentioned that Harry Cayton was expected to attend the December Bencher meeting to present his report on his review of the Law Society's governance.

Mr. Avison spoke about the Indigenous Intercultural Course, noting that the course has entered the second phase of review, which included making the course available to a number of organizations and individuals for input, as well as to the profession with the caveat that the course has not yet been finalized. Mr. Avison noted the high degree of interest from members of

the profession seeking access to the course. Mr. Avison also spoke about timing for the profession in regard to completing the course, and that recommendations regarding dates for completion would be on the agenda for the December Bencher meeting.

Mr. Avison concluded his report with an update regarding the Cullen Commission hearings, noting that the final oral submissions had begun and would continue into the week following the Bencher meeting. He noted that counsel for the Government of Canada recognized the engagement of the Federation and the Law Society in regard to the work of the National Anti-Money Laundering Working Group.

## **6a. Attorney General's Report**

Mr. Lawton welcomed Attorney General David Eby, QC to the meeting.

Attorney General Eby began by thanking Benchers and the Law Society for all their work during the COVID-19 pandemic to help address the challenges facing the legal system.

Benchers then engaged in discussions with the Attorney General, including plans for the return of civil jury trials; steps being taken by the provincial government to expand access to non-adversarial resolution in family law matters for those who are on legal aid due to financial barriers; and work being conducted to increase the availability of internet access across the province. Benchers also discussed with the Attorney General the recent uncovering of the lost children from the residential schools and how the provincial government will be involved in terms of investigation. Attorney General Eby spoke about the importance of working with the First Nations communities to determine how best to move forward.

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

Ms. Cheema began her report with a summary of the recent Federation Conference, which focused on new entrants to the profession. She spoke about the program on Day 3, which focused on embracing change in the legal landscape with views from the Indigenous Bar. Ms. Cheema also spoke about the presentation given by Professor Val Napoleon, Interim Dean of the Faculty of Law at the University of Victoria and Law Foundation Chair of Indigenous Justice and Governance regarding the Indigenous Law program at the University of Victoria, which incorporates Indigenous legal traditions and processes. Ms. Cheema spoke further about Professor Napoleon's presentation, particularly the discussion regarding the jurisdiction of law societies over Indigenous practitioners and the development of Indigenous justice principles.

Ms. Cheema then provided a summary of the recent Federation Council meeting, which included a presentation from Stephen Rotstein, President of the CBA regarding the CBA's current priorities. Ms. Cheema informed Benchers that the executive officers of the Council had been elected, and that Batonnier Nicolas Plourde will be the next President of the Federation. Ms.

Cheema then provided an update on the Council's strategic priorities, including the national wellbeing survey. Data collection has been completed, and Ms. Cheema noted that a report was expected by the end of June 2022. Ms. Cheema then spoke about the Federation's truth and reconciliation initiatives, noting that the terms of reference for the Indigenous Advisory Council had been developed, and the next step would be to determine composition with input from the law societies.

Ms. Cheema informed Benchers that the Law Society of Ontario has now adopted the Model Rules regarding anti-money laundering with enforcement to start in January 2022. She also informed Benchers that the Barreau du Québec had also adopted the Model Rules, but they haven't yet been enforced as the Barreau du Québec is awaiting formal approval from L'Office Nationale in Québec. Ms. Cheema then spoke about proposed amendments in regard to client identification and verification rules, which would be circulated to the law societies for comment by the end of the year. She also spoke about educational modules being developed for the profession regarding the client verification and identification and anti-money laundering rules.

Ms. Cheema noted that KPMG had issued a clean audit of the Federation with no recommendations for changes. She also noted that the Federation's draft budget would be presented at the December Federation meeting.

Ms. Cheema concluded her report with an update on the activities of the National Committee on Accreditation (NCA), noting that in 2020 and 2021 the NCA issued 1,561 certificates of qualification, which is quite a considerable increase in comparison to prior years.

Benchers discussed the increase in numbers of applicants, as well as demographic information related to the applicants. Mr. Avison indicated that he would provide more detailed data on this matter.

## **DISCUSSION/DECISION**

### **8. Mental Health Task Force: Recommendation on the Development of an Alternative Discipline Process**

Mr. Lawton reviewed with Benchers the recommendations from the Mental Health Task Force regarding the implementation of an alternative discipline process, which had first been presented to Benchers for discussion at the September Bencher meeting.

Benchers discussed the provision of health information to the alternative discipline process counsel once threshold eligibility has been established, ensuring a coordinated approach across processes and discipline matters versus competency matters. In addition, Benchers discussed the types of cases that would be recommended through the alternative discipline process, as well as

the importance of taking care with how words are being defined to ensure a common understanding between lawyers and members of the public.

Mr. Greenberg noted that guidelines would be developed prior to the launch of the alternative discipline process pilot, which would help provide better clarity as to the mechanics of the program, and also guide operations. He also noted that the alternative discipline process would be an additional discipline process to use along with existing processes.

Benchers discussed the importance of giving consideration to the response of complainants, and that once the pilot is launched, further consultation should take place in order to incorporate necessary changes into the process.

Mr. Avison noted that the Professional Conduct department would be managing the operations of the alternative discipline process, and specialized staff members would be brought in as needed.

A motion to adopt the recommendations as presented within the report from the Mental Health Task Force was unanimously approved.

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

Mr. Lawton reviewed with Benchers the recommendations from the Lawyer Development Task Force regarding remuneration and hours of work for articled students, which had first been presented to Benchers for discussion at the September Bencher meeting.

Mr. Maclaren referenced the two additional recommendations he had brought forward for consideration at the September Bencher meeting and informed Benchers that he intended to put forward only the second recommendation regarding the establishment of an articles registry to determine the supply and demand gap for articling positions, and to obtain demographic data concerning the population of law graduates seeking articling positions.

Mr. McKoen noted that Mr. Maclaren's recommendation could stand as separate recommendation, as opposed to an amendment to the three recommendations put forward by the Lawyer Development Task Force. Mr. McKoen also clarified that the timing referenced in the Task Force's third recommendation was included, so as to give an opportunity to other organizations to bring forward ideas for alternative pathways to licensing.

Benchers discussed the role of the Law Society in creating alternative pathways to articling with some Benchers suggesting that the Innovation Sandbox could be used to pilot alternative pathway initiatives. Benchers also discussed the cost of law schools as a barrier to both access to practice and access to type of practice. Mr. Avison noted that dialogue has already begun with

the Law Society of Ontario regarding its alternate pathway program, so there is an opportunity for the Law Society to collaborate and build off of existing ideas.

Benchers discussed possible challenges in obtaining data from articling students, and the prevailing view was that additional information would be needed in order to make an informed decision on whether or not the Law Society should proceed with the collection of race-based data.

Based on the discussions of Benchers, Mr. Maclaren revised the wording of his recommendation regarding the establishment of an articles registry and made the following motion, which was seconded:

*BE IT RESOLVED* that the Law Society shall pursue means to collect information that would assist it to: i) determine the supply and demand gap for articling positions in British Columbia; and ii) obtain race-based data, and other demographic information concerning the population of law graduates seeking articling positions in British Columbia.

Some Benchers expressed concerns about the proposed data collection, indicating participation should be voluntary, and about how the data would be treated, particularly due to the sensitivity of the information. Some Benchers also expressed concerns regarding the need for further consultation prior to making a decision.

A procedural motion was made and seconded to defer the motion to the December Bencher meeting to allow time for additional information to be provided.

The procedural motion passed unanimously.

A motion to approve the recommendations as presented in the report of the Lawyer Development Task Force was unanimously approved.

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

Mr. Lawton reviewed with Benchers the recommendations from the Access to Justice Advisory Committee regarding access to non-adversarial resolution of family law matters, which had first been presented to Benchers for discussion at the September Bencher meeting.

Benchers discussed the importance of having publicly funded and accessible non-adversarial resolution of family law matters and how best to use the Law Society's resources to actively facilitate change in terms of providing greater access to non-adversarial dispute resolution. Benchers also discussed how the Law Society could further lobby for additional publicly funded alternative dispute options.



Benchers discussed the role of Adverse Childhood Experiences (ACEs) in non-adversarial resolution of family law matters, as well as the role of the Law Society in providing resources and guidance regarding ACEs to help educate the profession.

Ms. Hamilton noted that the Access to Justice Advisory Committee had spent a great deal of time viewing expert material and consulting with other groups in determining its recommendations. She noted that the goal of the Advisory Committee was to align its recommendations with the objectives of Access to Justice BC, so as to have a holistic approach to family law.

Benchers discussed the Access to Justice Advisory Committee's recommendations, particularly recommendation 7. Some Benchers expressed concerns about the operational nature of some of the recommendations, particularly recommendation 7.

A motion to approve all of the recommendations contained in the report of the Access to Justice Advisory Committee was made and seconded.

Some Benchers suggested approving the recommendations one by one.

Ms. Hamilton noted that the Committee came up with the recommendations as a package with many working inter-dependently. She suggested removing Recommendation 7 from the slate of recommendations and addressing it separately.

The motion to amend the resolution by removing Recommendation 7 was passed by the majority of Benchers with one abstention.

Benchers then voted on the amended motion to approve recommendations 1 through 6 and 8 through 12 as presented within the report of the Access to Justice Advisory Committee.

The motion was passed by the majority of Benchers with one abstention.

A motion to approve recommendation 7 as presented within the report of the Access to Justice Advisory Committee was made and seconded.

The motion failed with one abstention.

## **UPDATES**

### **11. 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**

**12. Three Month Bencher Calendar – November 2021 to January 2022**

There was no discussion on this item.

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

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2021-10-16