



# Minutes

## Benchers

Date: Friday, December 03, 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  
Jeevyn Dhaliwal, QC, 2<sup>nd</sup> Vice-President-Elect  
Paul Barnett  
Kim Carter  
Pinder K. Cheema, QC  
Jennifer Chow, QC  
Cheryl S. D'Sa  
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, QC  
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: Barbara Stanley, QC

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

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

Guests:	Dom Bautista	Executive Director & Managing Editor, Law Courts Center
	Mark Benton, QC	Executive Director, Legal Aid BC
	Aleem Bharmal	New President, Canadian Bar Association, BC Branch
	Greg Cavouras	Member, Law Society of BC
	Harry Cayton	Advisor, Professional Regulation and Governance
	Tanya Chamberlain	2022 Bencher-Elect
	Christina Cook	Member, Aboriginal Lawyers Forum
	Paul Craven	Superintendent, Professional Governance
	Brian Dybwad	2022 Bencher-Elect
	Dr. Cristie Ford	Professor, Allard School of Law
	Richard Fyfe, QC	Deputy Attorney General of BC,
	Clare Jennings	President, Canadian Bar Association, BC Branch
	Derek LaCroix, QC	Executive Director, Lawyers Assistance Program of BC
	Lindsay LeBlanc	2022 Bencher-Elect
	Mark Meredith	Treasurer and Board Member, Mediate BC Society
	Caroline Nevin	CEO, Courthouse Libraries BC
	Linda I. Parsons, QC	Member, Governance Committee
	Josh Paterson	Executive Director, Law Foundation of BC
	Paul Pearson	2022 Bencher-Elect
	Ngai Pindell	Dean of Law, Peter A. Allard School of Law
	Georges Rivard	2022 Bencher-Elect
	Michèle Ross	President, BC Paralegal Association
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Gurminder Sandhu	2022 Bencher-Elect
	Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
	Sarah Westwood	2022 Bencher-Elect

## **CONSENT AGENDA**

### **1. Minutes of October 16, 2021, meeting (regular session)**

The minutes of the meeting held on October 16, 2021 were approved unanimously and by consent as circulated.

### **2. Minutes of October 16, 2021, meeting (*in camera* session)**

The minutes of the *In Camera* meeting held on October 16, 2021 were approved unanimously and by consent as circulated.

### **3. Rules Governing Tribunal Procedures**

The proposed rule changes as recommended by the Act and Rules Committee were approved unanimously and by consent as circulated.

### **4. Law Society Appointments to Outside Bodies**

The following resolution was passed unanimously and by consent:

*BE IT RESOLVED* that the Benchers agree the Law Society should contact all outside bodies to which the Law Society makes appointments to discuss the Law Society's continued involvement in the appointments process.

### **5. Retired Member Fee Waiver Request**

The following resolution was passed unanimously and by consent:

*BE IT RESOLVED* that the retired member's request for waiver of his retired member fee be approved for 2022.

### **6. 2022 Committees, Task Forces and Working Groups**

This item was removed from the Consent Agenda and discussed after the For Information items.

Benchers discussed Ms. Hamilton's recommendations to wind up and dissolve the Governance Committee, the Act and Rules Committee, and the Unauthorized Practice Committee with some Benchers expressing concerns regarding the wind up and dissolution of the Act and Rules Committee. Ms. Hamilton provided additional clarification regarding her recommendations for the 2022 committees, noting that the mandate of the Act and Rules Committee is to implement decisions by the Benchers that require amendments to the Act and Rules and to recommend non-substantive improvements to the Act and Rules. Given the Committee's mandate and

recognizing that the majority of the drafting and presentation of amendments lies with staff, Ms. Hamilton noted that much of the work of this Committee could be done at an operational level with the Executive Committee brought in as needed.

Benchers also discussed the importance of reviewing the mandate and terms of reference of each of the Task Forces to ensure the relevance and purpose of each.

The following motion was moved and seconded:

*BE IT RESOLVED* that effective December 31, 2021, the Governance Committee, the Act and Rules Committee, and the Unauthorized Practice Committee are wound up and dissolved and the Ethics and Rule of Law and Lawyer Independence Advisory Committee are consolidated with a general mandate to consider issues of professional responsibility, interpret existing rules and provide advice to individual members and to the members at large and to consider and advise the Benchers on matters relating to the ethics and the rule of law and lawyer independence.

The resolution was passed unanimously.

## REPORTS

### 7. President's Report

Mr. Lawton congratulated the Benchers that were elected to the 2022 Executive Committee and thanked them for putting forward their names.

Mr. Lawton also congratulated the 2021 recipients of the Queen's Counsel designation for their contributions to BC's provincial justice system through their work as lawyers.

Mr. Lawton informed Benchers of the passing of former Bencher Don Silversides, QC.

Mr. Lawton noted that this would be the first and last meeting he would be chairing in person in the Bencher Room. He also noted that it was the first in-person Bencher meeting to take place in the Bencher Room at the Law Society offices since March 2020.

Mr. Lawton updated Benchers on his recent events and activities, including attending a public gathering at which remarks were made about how human geography shapes cultural geography. Mr. Lawton noted that the comments made at this gathering related to the lessons learned over the course of the COVID-19 pandemic, in particular the importance of collaboration and in ensuring that our public institutions make change for the collective good, even when there is a history of causing harm. Mr. Lawton noted that he also attended the Canadian Institute for the Administration of Justice's (CIAJ) annual conference, which focused on Indigenous Peoples and the law. Mr. Lawton noted that the opening remarks provided by Chief Justice Bauman were

quite impactful and emphasized the issues of decolonization of legal institutions and reconciliation with Indigenous Peoples. Mr. Lawton emphasized the important work that would need to continue to help affect change within the legal system and within the Law Society for the benefit of the public.

Mr. Lawton concluded his report by acknowledging those Benchers who would be finishing their terms at the end of 2021.

## **8. CEO's Report**

Mr. Avison began his report with an overview of plans for the new Bencher orientation, which would take place in advance of the January Bencher meeting. Mr. Avison indicated that the orientation would be revised to be more comprehensive in recognition of the number of new Benchers starting their terms in 2022. He noted that the orientation would likely cover Mr. Cayton's report on the Law Society's governance, the Law Society's anti-money laundering initiatives, and a number of other matters.

Mr. Avison then updated Benchers on the appeal from the Court of Appeal for Saskatchewan's decision in *Abrametz v Law Society of Saskatchewan*, 2020 SKCA 81, which was recently heard at the Supreme Court of Canada. Mr. Avison noted the numerous intervenors, including the Attorney General of British Columbia.

Mr. Avison provided an overview of the Counter Illicit Finance Alliance of British Columbia (CIFA-BC)'s annual symposium.

Mr. Avison informed Benchers that the Select Standing Committee on Finance had recently reported on priorities for the 2022 provincial budget. Mr. Avison indicated that the report included focus on additional support for legal aid, as well as technical improvements to the infrastructure of the courts.

The Cullen Commission has received an extension for submission of its final report, and Mr. Avison noted that the report was expected to be delivered in May 2022.

Mr. Avison provided an overview of the recent International Institute of Law Association Chief Executives (ILACE) conference, which took place in Copenhagen. Day one of the conference focused on real and potential threats to the rule of law and the importance of preserving an independent legal profession as a fundamental component of the rule of law, and Mr. Avison noted that he had been responsible, along with Helen Hierschbiel, CEO of the Oregon State Bar, for the development of the Day one program. Mr. Avison reviewed each of the sessions with Benchers, noting that they had been well received. Mr. Avison spoke about the presentation given by Steven Wax, a former Public Defender for the District of Oregon in Portland, Oregon. Mr. Wax had defended several of the detainees of the Guantanamo Bay detention camp, and Mr.

Avison noted that he intended to invite Mr. Wax to attend a future Bencher meeting to speak about his experiences.

Mr. Avison concluded his report by updating Benchers on Law Society operations, noting that this Bencher meeting was the first hybrid Bencher meeting held at the Law Society offices. He noted that the hybrid features would continue to be tested with thought given to whether or not it was necessary for additional virtual technology to be added to the Bencher Room. Mr. Avison also noted that the Law Society's hybrid work policy would be fully in effect as of December 6.

## **DISCUSSION/DECISION**

### **9. Report of a Governance Review of The Law Society of BC**

Mr. Lawton welcomed Mr. Cayton to the meeting.

Mr. Cayton presented his report on the Law Society's governance, starting with an overview of the standards of good governance, against which the Law Society had been assessed, noting that the standards had been developed by the Professional Standards Authority, as part of its overall performance review process for regulators. He then provided an overview of the work he undertook in performing his review and preparing his report. Mr. Cayton spoke about his assessment of the Law Society's governance framework against the standards of good governance, noting that there were only two of the nine standards that the Law Society did not meet, with the Law Society meeting or partially meeting the remaining seven standards. Mr. Cayton indicated that key areas for improvement included better engagement with the public's interests, addressing challenges with the Law Society's governance structure as a result of requirements provided for in the *Legal Profession Act* and the Law Society Rules, the nature of some roles that Benchers are expected to take on resulting in real or perceived conflicts of interest, and taking a more robust approach to identification and management of risks of harm to the public.

Mr. Cayton concluded his presentation by noting that good governance should flow from clarity of purpose, not the other way around, and that good governance should be a support for the delivery of the Law Society's strategic objectives. Mr. Cayton also noted that the standards of good governance are meant to be challenging and are meant to encourage regulators to think about their governance structure. He indicated that rarely would an organization meet all of the standards on a first assessment.

Benchers then engaged in discussions with Mr. Cayton regarding the findings in his report, including the importance of articulating the link to the protection and service of the public when considering policy decisions, increasing separation between the Law Society's board and the

Tribunal, making the complaints process more accessible, and making the best use of board meetings and the Benchers' time, so that the board is able to concentrate more on what matters.

Benchers discussed possible approaches to considering the recommendations made within the report. While Bencher support was expressed for many of the recommendations, some Benchers expressed concerns about possible unintended consequences of implementing some of the recommendations. Mr. Cayton suggested reviewing recommendations incrementally with a realistic sense of how long it would take to affect change on certain matters. He also suggested focusing on practical changes that could have a larger effect on processes overall.

Benchers discussed how to approach those recommendations that would require legislative changes and/or approval of the profession. Mr. Cayton spoke about the importance of having a concerted, consistent, and prolonged communication plan to help prepare for discussions with government regarding the value of the proposed changes, and how they would affect access to justice and access to legal services.

Benchers discussed the comments in the report regarding the Law Society's Annual General Meeting (AGM). Mr. Cayton noted that the Law Society's current governance model was more in line with that of an association, not a regulator, and that there were other ways to engage with the profession outside of an AGM.

Benchers discussed board composition, size, and possible board composition alternatives, including having more appointed Benchers. Mr. Cayton spoke about the importance of having regulation that is shared between the profession and the public to protect the interests of the public that is being served. He noted that he would recommend a blend of elected board members, government appointed board members, and those appointed by the board through a formal appointment process based on a set of competencies. He also suggested the forming of a Nominations Committee to encourage certain groups to stand for election.

Mr. Lawton thanked Mr. Cayton for his presentation and comments.

Mr. Avison noted that discussions regarding Mr. Cayton's report would continue at subsequent meetings. He also noted that the report would be made public and available on the Law Society's website.

A motion to receive the report was approved.

## **10. Responding to COVID-19 and Adjusting Regulation to Improve Access to Legal Services and Justice**

Ms. Hamilton reviewed with Benchers the recommendations from the Access to Justice Advisory Committee regarding responding to the impacts of COVID-19 on the delivery of legal services and access to justice and adjusting regulation to improve access to legal services and justice, which were presented for discussion.

Benchers discussed possible regulatory barriers and where rule amendments or changes could be made in order to make compliance to the Law Society's rules less challenging.

Benchers agreed that the recommendations should be put forth to staff for consideration with a report to follow at a future meeting.

## **11. Indigenous Intercultural Course – Rule Requirements**

Mr. Lawton reviewed with Benchers the proposed rule changes, which would require all practising lawyers to complete the Indigenous Intercultural Course (the Course) within two years, and which would also provide for an enforcement mechanism to address non-compliance. Mr. Lawton noted that the enforcement mechanism for non-compliance would be similar as to that for non-completion of annual CPD requirements. Mr. Lawton also noted that the proposed rule changes had been shared with the Truth and Reconciliation Advisory Committee, and the Advisory Committee had been supportive of treating a failure to complete the Course in the same fashion as a failure to complete CPD requirements.

Benchers discussed how best to deal with special circumstances in which an individual may be encountering difficulties in completing the Course. Some Benchers suggested referring decisions regarding special circumstances to the Chair of Credentials, as opposed to the Credentials Committee as a whole in order to keep the process timely and responsive, and that allowing exceptions for special circumstances should be approached carefully so as to not undercut the importance of the Course. Mr. Avison noted that there would be a great deal of communication regarding the importance of completing the Course, and the timeframe in which to complete it. He also noted that there could be circumstances where individuals may encounter difficulties completing the Course, so it would be prudent to have the flexibility to treat these requests on a discretionary basis with authority given to the Chair of the Credentials Committee.

Benchers discussed making the Course available to the public. Mr. Avison indicated that the Course would not be made available for the public at this time, due to the associated costs; however, it could be useful for non-lawyer members of the Tribunal and Law Society committees to take the Course, so this will be considered.



Benchers discussed what could constitute circumstances for delay or non-completion of the Course, and whether or not more detail should be provided. Mr. Lawton noted that the intent was for all lawyers to take the Course, and that additional time to complete the Course may be offered to individuals on a case by case basis.

The following motion was moved and seconded:

*BE IT RESOLVED* that the Benchers approve the proposed Rule 3-28.1 requiring all practising lawyers to complete the Indigenous Intercultural Course within the specified timeframe and new Rule 3-28.2, which contains an enforcement mechanism to deal with non-compliance, subject to changing the authority in Rule 3-28.2 to Chair of the Credentials Committee, as opposed to the Credentials Committee.

The motion was passed unanimously.

## **12. Data on Law School Graduates Seeking Articles**

Mr. Avison reminded the Committee that a motion had been made at the October 16, 2021 Bencher meeting resolving 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. The motion had been deferred to the December Bencher meeting to allow time for additional information to be provided, and Mr. Avison indicated that further work would need to be done regarding the collection and use of data. He also indicated that there was a need for consultation with a number of groups prior to moving forward with this initiative, and that the matter had been raised with CBABC to engage with them and other groups. Mr. Avison noted that discussions had taken place with the Truth and Reconciliation Advisory Committee (TRAC) and concerns had been raised regarding the type of data that would be collected and how it would be used.

Mr. McPherson provided further information regarding the discussions with TRAC. He indicated that while there is a need to collect the data being proposed, some members of TRAC expressed concerns regarding the collection and use of the data, as well as placing individuals in a position where they would be asked to provide information about their identity, which could be viewed as intrusive.

Benchers discussed the importance of consultation with other groups regarding the collection of data from equity-seeking groups to ensure any data collection would be carried out sensitively, anonymously, and in accordance with data governance principles. Some Benchers indicated that not every equity-seeking group has a formal representative organization, so thought will need to be given as to making participation in the consultation process inclusive.

Mr. Maclaren noted that he had been in communication with the BC Human Rights Commissioner regarding how to go about collecting data in a respectful and appropriate way, and that the Commissioner had offered to come speak to Benchers on this matter.

Benchers agreed to refer the motion to staff for the purpose of consultation and further discussion.

## **UPDATES**

### **13. Financial Report – 2021 – Q3 and Forecast**

Ms. McPhee provided an overview of the financial results and highlights to the end of September 2021. Ms. McPhee noted that the general fund operations resulted in a positive variance to budget, which was mainly due to timing differences and permanent variances for both revenues and operating expenses. Ms. McPhee also provided an overview of forecasted 2021 year-end results, and noted that revenue was projected to be ahead of budget due primarily to an increase in projected practising lawyers and electronic filing revenues. Ms. McPhee also noted that operating expenses are projected to be under budget due to savings in meeting and travel expenses and general office savings.

### **14. 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**

### **15. Bencher and Committee Evaluation Surveys**

There was no discussion on this item.

### **16. Revision to Schedule of 2022 Bencher & Executive Committee Meeting Dates and Meeting Format**

There was no discussion on this item.

### **17. Year-End Advisory Committee Reports**

There was no discussion on this item.

**18. Practice Standards Committee Consideration of President’s Mandate Letter**

There was no discussion on this item.

**19. Continuing Professional Development for Pro Bono Work**

There was no discussion on this item.

**20. Report on the Benchers’ Retreat Conference – October 15, 2021**

There was no discussion on this item.

**21. Minutes of November 18, 2021 Executive Committee Meeting**

There was no discussion on this item.

**22. Three Month Bencher Calendar – December 2021 to February 2022**

There was no discussion on this item.

**23. External Appointments**

There was no discussion on this item.

**Final Remarks**

Mr. Avison and Ms. Hamilton paid tribute to outgoing President Lawton and thanked him for his dedication, commitment, and significant contributions to the Law Society over the past year.

Mr. Lawton thanked Mr. Avison and Ms. Hamilton for their kind words, and then welcomed Ms. Hamilton as President for 2022 and presented her with the President’s pin.

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

AB  
2021-12-03