



Minutes

Benchers

Date: Saturday, May 28, 2022

Present:

Lisa Hamilton QC, President	Geoffrey McDonald
Christopher McPherson, QC, 1 st Vice-President	Steven McKoen, QC
Jeevyn Dhaliwal, QC, 2 nd Vice-President	Jacqueline McQueen, QC
Paul Barnett	Paul Pearson
Kim Carter	Michèle Ross
Tanya Chamberlain	Kelly H. Russ
Jennifer Chow, QC	Gurminder Sandhu
Cheryl S. D'Sa	Thomas L. Spraggs
Lisa Dumbrell	Barbara Stanley, QC
Brian Dybwad	Natasha Tony
Brook Greenberg, QC	Michael Welsh, QC
Katrina Harry	Kevin B. Westell
Sasha Hobbs	Sarah Westwood
Lindsay R. LeBlanc	Guangbin Yan
Dr. Jan Lindsay	

Unable to Attend: Georges Rivard
Gaynor C. Yeung

Staff:

Don Avison, QC	Jason Kuzminski
Avalon Bourne	Alison Luke - virtual
Barbara Buchanan, QC – virtual	Michael Lucas, QC
Natasha Dookie	Claire Marchant
Su Forbes, QC	Jeanette McPhee
Kerryn Holt	Lesley Small
Jeffrey Hoskins QC - virtual	Adam Whitcombe, QC

Guests:	Dom Bautista	Executive Director & Managing Editor, Law Courts Center
	Aleem Bharmal, QC	First Vice President, Canadian Bar Association, BC Branch
	Pinder K. Cheema, QC	Law Society of BC Representative on the Federation Council
	Dr. Cristie Ford	Professor, Allard School of Law
	Jonathan G. Herman	CEO, Federation of Law Societies of Canada
	Elizabeth Kollias	President, BC Paralegal Association
	Robert Lapper, QC	Lam Chair in Law and Public Policy
	Dean Lawton, QC	Past-President, Law Society of British Columbia
	Jamie Maclaren, QC	Executive Director, Access Pro Bono
	Elizabeth J. Osler, QC	CEO & Executive Director, Law Society of Alberta
	Ngai Pindell	Dean of Law, Peter A. Allard School of Law
	Bâtonnier Nicolas Plourde, Ad.E.	President, Federation of Law Societies of Canada
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
	Lana Walker	Assistant Dean, Thompson Rivers University
	Ken Warren, QC	President, Law Society of Alberta

CONSENT AGENDA

1. Minutes of April 22, 2022, meeting (regular session)

The minutes of the meeting held on April 22, 2022 were approved unanimously and by consent as circulated.

2. Minutes of April 22, 2022, meeting (*in camera* session)

The minutes of the *In Camera* meeting held on April 22, 2022 were approved unanimously and by consent as circulated.

3. External Appointment: Legal Aid BC

The following resolution was passed unanimously and by consent:

BE IT RESOLVED the Benchers reappoint Karen Christiansen as recommended by Legal Aid BC, and agreed to by CBABC, to its Board of Directors for a three-year term commencing June 8, 2022 and concluding June 7, 2025.

4. Rule Amendments: Rule 3-77 to conform with *Canadian Deposit Insurance Corporation Act*

The following resolution was passed unanimously and by consent:

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 3-77 and substituting the following:

Canada Deposit Insurance Corporation

- 3-77** (1) A lawyer who holds pooled trusts funds in a designated savings institution insured by the Canada Deposit Insurance Corporation must meet the conditions required under the Schedule to the *Canada Deposit Insurance Corporation Act* to ensure that each client's funds, rather than the account itself, are insured up to the limit of CDIC insurance.
- (2) The lawyer must not disclose information that is subject to solicitor and client privilege or confidentiality without the consent of the client.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

5. Rule Amendments: Non-substantive Rule Corrections

The following resolution was passed unanimously and by consent:

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

1. ***Rule 1, definition of “professional corporation” is amended by striking “registered under Part 10 of the Business Corporations Act” and substituting “registered under Part 11 of the Business Corporations Act”.***
2. ***Rule 1-8 (7) (a) is rescinded and the following substituted:***
 - (a) a notice containing the following information:
 - (i) the locations at which the meeting is to be held;
 - (ii) each resolution received in accordance with subrule (6), with any changes submitted under subrule (6.2), unless the resolution has been withdrawn under that subrule;
 - (iii) notice of advance voting if it is to be permitted under Rule 1-13.1, and
3. ***Rule 1-10 (7) is amended by striking “to prepare his or her report” and substituting “to prepare the auditor’s report”.***
4. ***Rule 2-55 (1) (a) is rescinded and the following substituted:***
 - (a) whose application for enrolment has been rejected by a panel that is not satisfied that the person is of good character and repute and fit to become a barrister and solicitor of the Supreme Court,
5. ***Rule 2-69 (4) is amended by striking “in addition to her entitlement” and substituting “in addition to the student’s entitlement”.***
6. ***Rule 5-5.1 (8) (d) is amended by striking “an application under subrule (5) (f)” and substituting “an application under subrule (7) (k)”.***

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

REPORTS**6. President’s Report**

Lisa Hamilton, QC confirmed that no conflicts of interest had been declared.

Ms. Hamilton began her report by thanking staff for all their efforts in organizing and coordinating the Bencher Retreat.

The election for the Benchers’ nominee for 2023 Second Vice-President closed on May 25, and Ms. Hamilton informed Benchers that Brook Greenberg, QC was the successful candidate. She indicated that the Benchers’ nominee for 2023 Second Vice-President would be announced in the second notice of the Law Society’s Annual General Meeting sent to the profession in early June,

and then pursuant to Rule 1-19(1), the election of the Second Vice-President-elect would take place at the AGM on June 22, 2022. Ms. Hamilton thanked Mr. Greenberg and Jacqueline McQueen, QC for putting their names forward for consideration.

Ms. Hamilton spoke about her plans to engage with different regional bars on the Law Society's priorities, including the establishment of a single legal regulator.

Ms. Hamilton then spoke about her involvement as the Law Society's representative on the Judicial Council of BC, which advises the provincial government on the appointment of Provincial Court judges and judicial justices. She asked that Benchers give some thought as to good candidates and to encourage them to put forward their names.

Ms. Hamilton concluded her report by mentioning the outcome of the proposed Bencher Resolution for the upcoming AGM, which had been circulated to Benchers on May 16 for approval. The proposed resolution provided for rule changes respecting future AGMs to require that in order for a member resolution to be considered at an annual general meeting it must describe how it serves the public interest in a manner consistent with section 3 of the *Legal Profession Act* and what the potential financial implications of the resolution may be if the resolution were to be implemented. She indicated that a number of Benchers were concerned that requiring members to assess the financial implications, as proposed in the resolution, was not feasible and therefore were not in favour of putting it to the members. As the required threshold for approval was not met, Ms. Hamilton informed Benchers that the resolution would not be on the AGM agenda.

7. CEO's Report

Don Avison, QC began his report with an update on the Cullen Commission. The Final Report is expected towards the beginning of June, and he indicated that staff would brief Benchers on the Report and its recommendations once received.

Mr. Avison informed Benchers that Judge Kimberly Prost of the International Criminal Court would be speaking on August 11 at a Rule of Law lecture regarding the role of the International Criminal Court. He encouraged Benchers and others to attend.

The Law Society of Scotland hosted a virtual event to commemorate the *Donoghue v Stevenson* case on May 26, and Mr. Avison indicated that staff would confirm whether the session was recorded and could be made available. He noted that the session was eligible for CPD credits.

Mr. Avison updated Benchers on discussions with government, the Society of Notaries Public BC, and the BC Paralegal Association regarding the creation of a single legal regulator. He indicated that discussions thus far have been technical in nature and focused on determining how the professions are currently operating. He informed Benchers that the most recent meeting had

focused on the background and operations of the Innovation Sandbox and different models for the licensing of paralegals. The next meetings are scheduled for June 6 and 27, and Mr. Avison indicated that the Deputy Attorney General would be in attendance at the latter meeting. Mr. Avison then informed Benchers that government is planning to release an intentions paper in July, and that discussions will continue after the paper has been released.

Benchers discussed the issues of board size and composition and whether the independence of the regulator would be included in the paper.

Mr. Avison indicated that further discussion was needed regarding the governance framework for the single legal regulator, particularly in regard to board size and composition, maintaining diversity at the board level, and the independence of the regulator and the professions.

GUEST PRESENTATIONS

8. Update on the Federation of Law Societies of Canada

Ms. Hamilton introduced Bâtonnier Nicolas Plourde, Ad.E., 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. Plourde spoke about the role of the Federation, as well as the importance of collaboration between the Federation and Canada's individual law societies, particularly in regard to the Model Code, anti-money laundering rules, the National Wellbeing Study, national discipline standards, the competency profile, the national admittance requirement, the evaluation of international lawyers, and the Canadian Legal Information Institute (CANLII). Mr. Plourde spoke about the importance of the relationship between the Federation and the law societies, and between the individual law societies in carrying out these important initiatives.

Mr. Plourde spoke about the importance of reconciliation with Indigenous peoples as a national priority, and that the Federation would be establishing an Indigenous Advisory Council to help continue this work.

Mr. Plourde concluded his report by recognizing Benchers, Law Society staff, and other volunteers for all their contributions and involvement with the Federation's committees and initiatives.

Mr. Herman spoke about the importance of the collaborative relationship between the Federation and the Law Society of BC. He emphasized the advocacy role the Federation plays at the national and international level, including as an intervenor at the Supreme Court of Canada and in speaking on behalf of Canada's law societies in regard to geopolitical matters.

Mr. Herman updated Benchers on several of the Federation's current initiatives and priorities, including the National Wellbeing Study, the work being done to combat money laundering, and lawyer formation and competencies for entrance to the profession.

Benchers discussed the composition and mandate of the Indigenous Advisory Council. Mr. Herman indicated that there would be representation from First Nations, Metis, and Inuit, and spoke to the pool of nominees for the Advisory Council. He also indicated that the competency profile being developed by the Advisory Council will be informed by consultation and engagement with a variety of different groups.

9. Update on the Law Society of Alberta

Ms. Hamilton introduced Ken Warren, QC, President of the Law Society of Alberta, and Elizabeth Osler, QC, Chief Executive Officer of the Law Society of Alberta, and welcomed them to the meeting.

Ms. Osler provided an overview of the Law Society of Alberta's acknowledgement of systemic discrimination within the justice system, which was approved by the board at its April meeting. Ms. Osler provided some background to the acknowledgement, which included interviews and consultation with lawyers, articling students, law students, and internationally trained lawyers regarding their experiences of racial discrimination with the Law Society of Alberta and within the legal profession. The Law Society of Alberta then retained an independent consultant to conduct an analysis of the submissions, and Ms. Osler indicated that three main barriers were determined: discriminatory culture, biased practices in hiring, and poor representation within the bar. Ms. Osler indicated that these barriers formed the basis of the acknowledgement and directed next steps in terms of addressing these issues, including building out the role of the equity ombudsperson and forming the first ever Equity, Diversity, and Inclusion Council.

Mr. Warren spoke about the Law Society of Alberta's strategic plan, and noted that two of the four objectives related to competence; wellness; and equity, diversity, and inclusion. He informed Benchers that the Law Society of Alberta's committees had been restructured to have greater focus on these objectives, and that board and committee composition was being considered through an equity, diversity, and inclusion lens.

Mr. Warren then spoke about the development process of the acknowledgement, noting that it went through several drafts and rounds of consultation. He indicated that the purpose of the acknowledgement was to recognize the existence of systemic discrimination and racism in the Law Society of Alberta itself, as well as within the justice system and the legal profession. He indicated that the acknowledgement was a commitment to reduce the barriers that BIPOC people face. Key messaging was developed for the board, and Mr. Warren noted that the acknowledgement had generated quite a bit of positive feedback.

Benchers discussed the Law Society of Alberta's development of a training course for principals. Mr. Warren noted that this program was developed through the Lawyer Competency Committee and involved a great deal of consultation. He further noted that feedback regarding the course has been positive, and that Alberta's Chief Justice is encouraging all principals within the courts to take the course. Ms. Osler added that the impetus for the course was to demonstrate to students that the Law Society of Alberta was taking seriously the challenges that students face. She noted that the Law Society of Alberta also has a roster of alternative articling placements for students with untenable situations.

Benchers discussed the Law Society of Alberta's mentoring programs. Mr. Warren spoke about the Mentor Express program, which matches mentors and mentees based on availability, interests, and subject matter expertise. He also spoke about the Mentor Connect program, which is a one-on-one program compulsory for new calls. He noted that the Law Society of Alberta was looking into better alignment between mentors and mentees for a more effective experience.

DISCUSSION/DECISION

10. Approval of the Law Society's 2021 Audited Financial Statements

Jeevyn Dhaliwal, QC, Chair of the Finance and Audit Committee introduced the item, thanking Committee members and staff for all their hard work, which led to a clean audit.

The following motion was passed unanimously:

BE IT RESOLVED to approve the Law Society's 2021 Financial Statements for the General Fund and the 2021 Consolidated Financial Statements for the Lawyers Indemnity Fund.

Benchers discussed challenges with the current one size fits all model for practice fees, as well as plans for the 2023 budget. Mr. Avison indicated that practice fees were being considered by the Finance and Audit Committee. He also spoke about the importance of considering a differential fee structure.

Ms. McPhee added that further information regarding the 2023 budget would be provided at the July Bencher meeting.

UPDATES

11. Report on Outstanding Hearing & Review Decisions

Christopher McPherson, QC, as Tribunal Chair, 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. Minutes of May 12, 2022 Executive Committee Meeting

There was no discussion on this item.

13. Three Month Bencher Calendar – June to August 2022

There was no discussion on this item.

Other Business

Paul Pearson indicated he intended to propose a motion, which he had mentioned at the April Bencher meeting, to appoint an Indigenous representative to the “working group” meetings with government to discuss the move towards a single legal regulator.

Mr. Avison indicated that the meetings with government to date had focused on issues related to the operations of the Law Society, the Society of Notaries Public of BC, and the BC Paralegal Association, and that the Law Society would need to have specific meetings with the government regarding board size and composition and the involvement of Indigenous representation at the appropriate time.

Some Benchers were of the view that the involvement of Indigenous Benchers at this stage would signal to the Attorney General the importance of Indigenous representation in these discussions, particularly when taking into consideration the number of Indigenous Benchers elected during the last Bencher election.

Other Benchers expressed concerns with the timing of the resolution, as the discussions with government to date have been at the staff and operational level, not at the political level, and have not yet included the President or any Benchers. There were also comments that once the discussions with government moved to the political stage, it would then be appropriate that an Indigenous Bencher should be involved in the discussions. Some Benchers also expressed concerns regarding the conflation of the operational role of staff with the strategic role of the board, and highlighted the importance of listening to the advice of staff regarding the approach to the discussions with government.

Ms. Hamilton informed Benchers that she would be asking an Indigenous Bencher to attend with her once she was involved in the discussions, which would likely occur in late June.

The following resolution was made and seconded:

BE IT RESOLVED that the Law Society request that the Ministry of the Attorney General invite an Indigenous Bencher to any meetings regarding the proposed changes to the regulatory framework for legal professionals in BC.

The motion failed.

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

AB
2022-06-30