



Minutes

Benchers

Date: Friday, September 23, 2022

Present: Lisa Hamilton KC, President
Christopher McPherson, KC, 1st Vice-President
Jeevyn Dhaliwal, KC, 2nd Vice-President
Paul Barnett
Tanya Chamberlain
Jennifer Chow, KC
Cheryl S. D'Sa
Lisa Dumbrell
Brian Dybwad
Brook Greenberg, KC
Katrina Harry
Lindsay R. LeBlanc
Geoffrey McDonald

Steven McKoen, KC
Jacqueline McQueen, KC
Paul Pearson
Georges Rivard
Michèle Ross
Gurminder Sandhu
Barbara Stanley, KC
Natasha Tony
Michael Welsh, KC
Sarah Westwood
Guangbin Yan
Gaynor C. Yeung

Unable to Attend: Kim Carter
Sasha Hobbs
Dr. Jan Lindsay

Kelly H. Russ
Thomas L. Spraggs
Kevin B. Westell

Staff: Don Avison, KC
Avalon Bourne
Barbara Buchanan, KC
Lance Cooke
Natasha Dookie
Jackie Drozdowski
Su Forbes, KC
Andrew Heinrichs
Andrea Hilland, KC
Kerryn Holt
Jeffrey Hoskins, KC
Michael Lucas, KC
Alison Luke
David Maclean

Meghan Maddigan
Claire Marchant
Tara McPhail
Jeanette McPhee
Cary Ann Moore
Michael Mulhern
Doug Munro
Shalyn Norris
Michelle Robertson
Lesley Small
Nick Wells
Adam Whitcombe, KC
Leanne Wood
Charlene Yan

Guests:	Katie Armitage	Legal Counsel, Ministry of Attorney General
	Dom Bautista	Executive Director & Managing Editor, Law Courts Center
	Aleem Bharmal, KC	President, Canadian Bar Association, BC Branch
	Laura Chapman	Communications & Media Coordinator, Canadian Bar Association, BC Branch
	Pinder K. Cheema, KC	Law Society of BC Representative on the Federation Council
	Christina Cook	Aboriginal Lawyers Forum
	Paul Craven	A/Assistant Deputy Minister
	Clare Jennings	Past President, Canadian Bar Association, BC Branch
	Derek LaCroix, KC	Executive Director, Lawyers Assistance Program of BC
	Robert Lapper, KC	Lam Chair in Law and Public Policy, University of Victoria
	Jamie Maclaren, KC	Executive Director, Access Pro Bono Society of BC
	Mark Meredith	Treasurer and Board Member, Mediate BC
	Daleen Millard	Dean of Law, Thompson Rivers University
	Caroline Nevin	CEO, Courthouse Libraries BC
	Josh Paterson	Executive Director, Law Foundation of BC
	Ngai Pindell	Dean of Law, Peter A. Allard School of Law
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Shannon Salter	Deputy Attorney General of BC
	Kerry Simmons, KC	Executive Director, Canadian Bar Association, BC Branch
	Lana Walker	Assistant Dean, Thompson Rivers University
	Julien Yuen	Rule of Law Essay Contest Runner-Up

RECOGNITION

1. Presentation of Law Society Indigenous Scholarship to Co-Recipient

This item was rescheduled for the November 4, 2022 Bencher meeting.

2. 2022 Rule of Law Essay Contest: Presentation of Runner-Up

President Hamilton introduced the runner-up of the 2022 Rule of Law Essay Contest. This year's contest asked students to explain how the right to freedom of expression is used to justify demonstrations for or against various causes in our society; how the freedom of expression intersects with the rule of law; in what circumstances can courts prohibit or limit a protest or demonstration; and whether their answer was affected by the popularity or unpopularity of the cause. Julien Yuen is the runner-up of this year's contest, whose essay is posted on the Law Society website.

CONSENT AGENDA

3. Minutes of July 8, 2022, meeting (regular session)

The minutes of the meeting held on July 8, 2022 were approved unanimously and by consent as circulated, subject to minor wording corrections.

4. Minutes of July 8, 2022, meeting (*in camera* session)

The minutes of the *In Camera* meeting held on July 8, 2022 were approved unanimously and by consent as circulated.

5. Rule Amendments: Practitioners of Foreign Law

The following resolution was passed unanimously and by consent, subject to the removal of (1) from *Rule 2-29 (1) is rescinded and the following is substituted*:

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

1. ***In Rule 1, the definition of “practitioner of foreign law” is amended by striking “in British Columbia”.***

2. ***Rule 2-29 is rescinded and the following is substituted:***

2-29 (1) A person who qualifies under section 17 [*Practitioners of foreign law*] may apply to the Executive Director for a permit to provide foreign legal services by delivering to the Executive Director

- (a) a completed permit application in the prescribed form, including a written consent for the release of relevant information to the Society, and
 - (b) the application fee specified in Schedule 1.
- (2) The Executive Director may issue a permit to a person applying under subrule (1) if the Executive Director is satisfied that the person
- (a) is a member of the legal profession in one or more foreign jurisdictions,
 - (b) is not suspended or disbarred and has not otherwise ceased, for disciplinary reasons, to be a member of a governing body or of the legal profession in any foreign jurisdiction,
 - (c) is a person of good character and repute,
 - (d) has practised the law of a foreign jurisdiction for at least 3 of the past 5 years, or undertakes in writing to provide foreign legal services only under the supervision of a practitioner of foreign law who has practised law in that foreign jurisdiction for at least 3 of the past 5 years, and
 - (e) carries professional liability insurance or a bond, indemnity or other security
 - (i) in a form and amount at least reasonably comparable to the indemnity coverage required of lawyers under Rule 3-39 (1) [*Compulsory professional liability indemnification*], and
 - (ii) that specifically extends to the activities of the practitioner of foreign law in providing foreign legal services.
- (2.1) In exceptional circumstances, the Executive Director may issue a permit to a person applying under subrule (1) who does not meet the requirements set out in subrule (2) if the Executive Director is satisfied that it is in the public interest to do so.
- (3) The Executive Director may attach conditions or limitations to a permit issued or renewed under this rule.
- (5) A permit issued under this rule is valid for one year from the issue date shown on it.
- (6) Despite subrule (5), a practitioner of foreign law permit ceases to be valid if the practitioner of foreign law
- (a) is suspended as a result of proceedings taken under Part 4 [*Discipline*], or
 - (b) ceases to comply with any of the requirements of this Part.

3. Rule 2-30 is amended as follows:

- (a) ***in subrule (1) by striking “a permit issued under Rule 2-29 (2)” and substituting “a permit issued under Rule 2-29”;***
- (b) ***in subrule (2) by striking “in British Columbia”.***

4. Rule 2-32 is rescinded and the following substituted:

2-32 A lawyer, other than a retired or non-practising member, who is qualified to practise law in a foreign jurisdiction may provide foreign legal services without obtaining a permit, provided the lawyer maintains professional liability insurance that

- (a) specifically extends to the lawyer's activities in providing foreign legal services, and
- (b) is in a form and amount at least reasonably comparable to the indemnity coverage required of lawyers under Rule 3-39 (1) [*Compulsory professional liability indemnification*].

5. Rule 2-34 (2) (b) is rescinded and the following substituted:

- (b) evidence satisfactory to the Executive Director that the practitioner of foreign law continues to meet the requirements set out in Rule 2-29 (2) [*Practitioners of foreign law*] or, in exceptional circumstances, that it is in the public interest to issue the permit under Rule 2-29 (2.1), and

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

6. Rule Amendments: Tribunal Chairs

Christopher McPherson, KC recused himself from this item.

The following resolution was passed unanimously and by consent:

BE IT RESOLVED to amend the Law Society Rules effective January 1, 2023, as follows:

1. In Rule 1, the definition of "Tribunal chair" is rescinded and the following substituted:
"Tribunal Chair" means the practising lawyer appointed under Rule 5-1.3 [*Tribunal Chair*];

2. Rule 5-1.3 is rescinded and the following substituted:

5-1.3(1) The Benchers must appoint a practising lawyer as Tribunal Chair.

(2) The Tribunal Chair must not be a Bencher or a member of the Discipline, Credentials or Practice Standards Committee.

(3) The term of office of the Tribunal Chair is two years.

(4) If the office of Tribunal Chair becomes vacant for any reason, the Benchers must promptly appoint a practising lawyer to complete the term of office.

(5) The functions of the Tribunal Chair may be exercised by another practising lawyer designated by the Tribunal Chair.

(a) if the Tribunal Chair is absent or otherwise unable to act, or

(b) with the authorization of the Tribunal Chair.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

7. External Appointment: Federation of Law Societies of Canada Council

Brook Greenberg, KC recused himself from this item.

The following resolution was passed unanimously and by consent:

BE IT RESOLVED the Benchers confirm Brook Greenberg, KC as the Law Society's nominee for the position of Director on the Federation of Law Societies of Canada Council for a three year term commencing on November 15, 2022.

8. Code of Professional Conduct Rule 3.4-1 & Commentaries

The following resolution was passed unanimously and by consent:

BE IT RESOLVED the Benchers adopt the amendments to the commentaries to rules 3.4-1 and 3.4-2 of the *Code of Professional Conduct for British Columbia*, as recommended by the Ethics and Lawyer Independence Advisory Committee, and set out in the red-lined version of those Provisions included in the Committee's memorandum to the Benchers dated July 6, 2022.

REPORTS

9. President's Report

President Lisa Hamilton, KC confirmed that no further conflicts of interest had been declared, beyond Mr. McPherson and Mr. Greenberg's recusals from items 6 and 7, respectively.

Ms. Hamilton began her report by congratulating Sasha Hobbs on her new role as Chief Strategy Officer for the Métis Nation and congratulating Aleem Bharmal, KC, for starting his term as President of the Canadian Bar Association of BC.

Ms. Hamilton then provided an overview of recent events she had attended, including regional engagement sessions in Kelowna and Kamloops, welcoming ceremonies in Williams Lake and Smithers for newly appointed judges, and witnessing Justice Michelle O'Bonsawin being sworn into the Supreme Court of Canada.

Ms. Hamilton informed Benchers that the majority of her time is being spent on single legal regulator matters. She indicated that her areas of focus have included engaging with the Society of Notaries Public of BC, the BC Paralegals Association, and the Deputy Attorney General on this matter and inviting feedback from the profession and from the public to incorporate into the Law Society's response to Ministry's Intentions Paper. She noted that a common theme of the

feedback has been the importance of preserving the independence of the profession and of the regulator.

Ms. Hamilton then spoke about the importance of the Law Society's truth and reconciliation initiatives. She provided an overview of the recent summit organized by the Indigenous Engagement in Regulatory Matters Task Force, and the important recommendations that will be brought forward later this year as a result of this engagement. Ms. Hamilton concluded her report by speaking to the importance of the National Day for Truth and Reconciliation taking place on September 30, and provided Benchers with a copy of the book *First Nations 101*, by Lynda Gray, as well as a resource guide on how to become a great ally for reconciliation. She commented on the essential and informative content of the book and resource guide, and encouraged Benchers to make use of both.

10. CEO's Report

Don Avison, KC began his report by thanking Deputy Attorney General Shannon Salter for attending the meeting to discuss the Ministry's Intentions Paper. He indicated that the Law Society would be providing a response to the Paper. He also spoke about the regional sessions he had taken part in with Ms. Hamilton in Kelowna, Kamloops, and Prince George and noted that additional sessions would take place in the fall. Mr. Avison emphasized the importance of providing these opportunities to engage with the profession on the implications of a single legal regulator model.

Mr. Avison spoke about the upcoming Federation meetings taking place in October. He indicated there would be a session during the meetings regarding the implications for the profession and for the public of the Ministry's intent to establish a single legal regulator in BC.

Mr. Avison informed Benchers there would be some delay in the finalizing of the Indigenous Engagement in Regulatory Matters Task Force's final report. Mr. McPherson indicated that following the significant amount of feedback received following the Task Force's summit in August, the Task Force decided that, considering the importance of this initiative, further consultation should be done prior to determining the recommendations of the Task Force's final report.

Mr. Avison informed Benchers that a great deal of work was being done in response to the recommendations made in the Cullen Commission Report, including communicating to the profession about the recommendations, their significance, and the Law Society's plans to address some of the matters raised within the recommendations. He spoke about his participation in a webinar hosted by the Peter A. Allard School of Law's Anti-Corruption Law Program to discuss the Report, and indicated that CLEBC would be holding a session on the Report as well. He indicated that he would also be participating on a panel on anti-money laundering regulation at the International Conference of Legal Regulators in October.

Mr. Avison informed Benchers that he would be speaking about the Innovation Sandbox on an international panel with Justice Deno Himonas, formerly of the Utah Supreme Court, who spearheaded Utah's regulatory Sandbox.

Mr. Avison concluded his report by informing Benchers that the Law Society offices would be closed on September 30 in recognition of the National Day of Truth and Reconciliation. He indicated that he would provide some updates regarding the Law Society building at a later meeting.

DISCUSSION/DECISION

11.2023 Initiatives, Finances, and Fees

Jeevyn Dhaliwal, KC introduced the item, followed by a presentation to Benchers on the proposed 2023 initiatives, finances, and fees delivered by Mr. Avison and Jeanette McPhee.

Mr. Avison began by informing Benchers there would be no increase in 2023 to practice fees or indemnity fees, except for a very modest increase to the contribution to the Lawyers Assistance Program, due to increased usage. He then highlighted some of the Law Society's key operational priorities for 2023, including the establishment of a single legal regulator, lawyer development and alternate pathways to licensing, anti-money laundering initiatives, the implementation of alternate process programs, enhanced practice support, the innovation sandbox, and the Law Society's Diversity Action Plan.

Ms. McPhee informed Benchers that the Law Society would likely avoid a projected deficit for 2022 and break even, due to a higher number of practice fees and electronic filing revenue than expected. She then reviewed expense highlights for 2023, including market-based salary increases, modest increases in staff resources, increased technology costs to support the digitization of the workplace, and strategic projects.

Mr. Avison reviewed the funding for external organizations, noting that the majority of the funding would remain the same for 2023, with the exception of the contribution to the Lawyers Assistance Program, as previously indicated. He then provided an overview of the Lawyers Indemnity Fund, detailing the number of reports and severity of claim payments.

The following resolution was passed unanimously:

BE IT RESOLVED:

- Effective January 1, 2023, the practice fee be set at \$2,303.00, pursuant to section 23(1)(a) of the Legal Profession Act.

The following resolution was passed unanimously:

BE IT RESOLVED:

- the indemnity fee for 2023 pursuant to section 30(3) of the Legal Profession Act be set at \$1,800;
- the part-time indemnity fee for 2023 pursuant to Rule 3-40(2) be set at \$900; and
- the indemnity surcharge for 2023 pursuant to Rule 3-44(2) be set at \$1,000.

12. Indigenous Framework Report

Mr. McPherson introduced the item and provided some background to the recommendation to endorse the principles set out in the report from the Truth and Reconciliation Advisory Committee. He spoke about the importance of taking meaningful action in regard to truth and reconciliation and provided a detailed overview of each of the principles included within the report.

The following resolution was passed unanimously.

BE IT RESOLVED the Benchers endorse the principles set out below in this report as a framework to guide the Law Society's application of the *Act*, Rules, *Code*, policies, procedures, and practices.

13.A Competence Framework for Lawyer Licensing

Steven McKoen, KC introduced the item and provided some background to the recommendation to develop a competence framework for lawyer licensing in BC. He spoke about the work conducted by Jordan Furlong, a legal sector analyst and consultant who had been retained by the Lawyer Development Task Force, in particular Mr. Furlong's summary report, which was presented to Benchers at the May 2022 Bencher Retreat. Mr. McKoen noted that if the Task Force's recommendation was approved by Benchers, it would be the first step in a series of changes towards a new lawyer licensing system.

Benchers discussed the timing of the proposed resolution and the possible next steps indicated within the report. Mr. McKoen stated that the process to establish a competence framework for lawyer licensing would take time, but emphasized the importance of moving forward and not delaying making these changes. He further indicated that the proposed resolution should be seen as a preliminary step to gauge what competency means and it is not suggesting what should come after developing the framework.

Some Benchers were of the view that additional information and analysis would be needed prior to making a decision on this matter, though some Benchers were of the view that further data

would be gathered through the actual development of a competence framework. Some Benchers also expressed concerns regarding whether the establishment of a single legal regulator would have an impact on the development of a competence framework. Mr. McKoen indicated that the Law Society does not currently have a system of measurement by which to determine if the current path to licensure is adequate. The development of a competence framework would be the first step in establishing a set of criteria by which to measure the current system and new pathways to licensure, and he spoke about the extensive consultation process that would take place to help the Task Force in its work on this initiative. Mr. McKoen also spoke about how establishing standards to ensure the competency of the profession was an essential component of the Law Society's mandate to protect the public interest.

Benchers discussed the need to identify what competencies are needed for licensing as an important first step in determining alternate pathways to licensure. Benchers also discussed how having alternate pathways could address barriers to practice.

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

BE IT RESOLVED the Law Society develop a competence based system for lawyer licensing in British Columbia beginning with the development of a Competence Framework that identifies the knowledge, skills, and other attributes necessary to perform the essential duties expected of, and entrusted to, lawyers in BC, as well as the threshold levels at which these competencies should be performed at the point of licensure.

14. Ministry of the Attorney General Intentions Paper

Ms. Hamilton welcomed Deputy Attorney General Shannon Salter to the meeting. She then provided a brief summary of the discussions that had taken place to date regarding the Ministry's intention to establish a single legal regulator leading up to the release of the Ministry's Intentions Paper. Ms. Hamilton indicated that the Law Society would be providing a response to the Paper.

Ms. Salter thanked Ms. Hamilton for the opportunity to join the meeting and discuss the Paper. Ms. Salter then provided a brief overview of the Paper and the Ministry's current engagement initiatives to seek feedback on the Paper. She encouraged Benchers to share the engagement survey link with their lawyer and public networks. Ms. Salter indicated that the Ministry's goal in establishing a single legal regulator is to ensure that the people of BC have access to a wide range of regulated providers of legal services. She informed Benchers that the Ministry was interested in hearing input from the Law Society on these matters.

Benchers engaged in discussions with Ms. Salter on a number of matters related to the Paper, including how standards of practice for the three professions would be established, monitored, and enforced; the importance of preserving diversity and Indigenous representation on the regulator's board; the value of licensing paralegals from a competency perspective; not limiting

the scopes of practice for the three professions in the statute; and the importance of preserving the independence of the profession and of the regulator.

Ms. Hamilton thanked Ms. Salter for attending the meeting and for engaging with Benchers on their questions and concerns related to the Paper.

UPDATES

15. Report on Outstanding Hearing & Review Decisions

Christopher McPherson, KC, 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

16. Three Month Bencher Calendar – September to November 2022

There was no discussion on this item.

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

AB
2022-10-19