



Minutes

Benchers

Date: Friday, March 10, 2023

Present: Jeevyn Dhaliwal, KC, 1st Vice-President
Brook Greenberg, KC, 2nd Vice-President
Paul Barnett
Kim Carter
Tanya Chamberlain
Jennifer Chow, KC
Tim Delaney
Brian Dybwad
Katrina Harry
Sasha Hobbs
Lindsay R. LeBlanc
Dr. Jan Lindsay
Geoffrey McDonald

Steven McKoen, KC
Jacqueline McQueen, KC
Paul Pearson
Georges Rivard
Michèle Ross
Gurminder Sandhu
Thomas L. Spraggs
Barbara Stanley, KC
Michael Welsh, KC
Kevin B. Westell
Sarah Westwood
Guangbin Yan
Gaynor C. Yeung

Unable to Attend: Christopher A. McPherson, KC, President
Cheryl S. D'Sa
Lisa Dumbrell

Kelly H. Russ
Natasha Tony

Staff: Don Avison, KC
Gurprit Bains
Avalon Bourne
Barbara Buchanan, KC
Jennifer Chan
Natasha Dookie
Su Forbes, KC
Kerryn Holt
Jeffrey Hoskins, KC
Alison Kirby
Julie Lee
Michael Lucas, KC

Alison Luke
David MacLean
Claire Marchant
Fiona McFarlane
Tara McPhail
Jeanette McPhee
Cary Ann Moore
Michael Mulhern
Doug Munro
Lesley Small
Christine Tam
Adam Whitcombe, KC

Guests:	Andrea Abbinante	Member of Public, Paralegal
	Katie Armitage	Legal Counsel, Ministry of Attorney General
	Karen St. Aubin	Director of Membership & Education, Trial Lawyers Association of BC
	Dom Bautista	Executive Director, Courts Center & Executive Director, Amici Curiae Friendship Society
	Ian Burns	Digital Reporter, The Lawyer's Daily
	Christina Cook	Vice-Chair, Aboriginal Lawyers Forum
	Dr. Cristie Ford	Professor, Peter A. Allard School of Law
	Lisa Hamilton, KC	Life Bencher; Past President
	Elizabeth Kollias	President & Education Chair, BC Paralegal Association
	Jamie Maclaren, KC	Executive Director, Access Pro Bono Society of BC
	John Mayr	Executive Director, The Society of Notaries Public of BC
	Scott Morishita	First Vice President, CBABC
	Caroline Nevin	CEO, Courthouse Libraries BC
	Mayette Ostonal	Member of Public, Paralegal
	Ngai Pindell	Dean of Law, Peter A. Allard School of Law
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kerry Simmons, KC	Executive Director, Canadian Bar Association, BC Branch
	Ron Usher	General Counsel and Practice Advisor, The Society of Notaries Public of British Columbia
	Lana Walker	Assistant Dean of Law, Thompson Rivers University & Continuing Legal Education Society of BC Director
	Ken Walker, KC	Life Bencher; Past President

CONSENT AGENDA

1. Minutes of February 3, 2023, meeting (regular session)

The minutes of the meeting held on February 3, 2023 were approved unanimously and by consent as circulated.

2. Minutes of February 3, 2023, meeting (*in camera* session)

The minutes of the *In Camera* meeting held on February 3, 2023 were approved unanimously and by consent as circulated.

3. External Appointment: Vancouver Airport Authority

The following resolution was passed unanimously and by consent:

BE IT RESOLVED the Benchers put forward Ken Kramer, KC as the Law Society nominee, as recommended by the Vancouver Airport Authority, to the Vancouver Airport Authority Board of Directors for a second three-year term commencing May 8, 2023.

REPORTS

4. President's Report

First Vice-President Jeevyn Dhaliwal, KC confirmed that no conflicts of interest had been declared.

Ms. Dhaliwal informed Benchers that she would be chairing the meeting as President Christopher A. McPherson, KC was attending the Commonwealth Law Conference in India. She then provided an overview of recent events and activities, including attending a session regarding the Supreme Court appointment process with the Honourable David Lametti, Minister of Justice and Attorney General of Canada hosted by the Law Society; attending the UBC Indigenous Law Students Gala, attending West Coast LEAF's Equality Breakfast, and attending the Kootenay Bar Association's winter meeting. Ms. Dhaliwal also informed Benchers that she would be attending the upcoming Federation of Canadian Law Societies (Federation) spring meetings, at which Don Avison, KC and herself would be presenting an update on matters in BC.

Ms. Dhaliwal then invited Barbara Stanley, KC to speak about the initiatives being put forward to address access to justice challenges in the Kootenay region. Ms. Stanley provided an overview of issues and challenges related to access to justice that the Kootenay bar was trying to address in the region, including a lack of lawyers due to retirement, a lack of family law and criminal law lawyers, and a lack of lawyers providing legal aid. Ms. Dhaliwal spoke about the importance of understanding the different access to justice challenges throughout the province.

5. CEO's Report

Don Avison, KC began his report by thanking Ms. Stanley and the Kootenay Bar Association for inviting Ms. Dhaliwal and himself to attend the winter meeting.

Mr. Avison then provided an overview of the recent meeting with the Attorney General, the acting Deputy Attorney General and other Ministry Staff, regarding the Ministry's intention to establish a single legal regulator, which took place on February 8. Mr. Avison informed Benchers that there had been an indication from the Attorney General that the Ministry intended to release a "What We Heard" Report, which would follow upon the call for responses to the Ministry's Intentions Paper. The timeline for release of this report was not made clear, but Mr. Avison indicated that he would keep Benchers informed on any new developments. Mr. Avison informed Benchers that the message from the Attorney General is that the Ministry continues to plan to bring forward legislation regarding the single legal regulator initiative for the fall legislative session. He indicated that Law Society staff continue to make preparations for the implementation of the single legal regulator initiative with that timeline in mind. Mr. Avison further informed Benchers that the discussions with the Attorney General had also included the importance of preserving diversity at the board table, and that Benchers would welcome the opportunity to engage with the Attorney General and the Ministry on this matter, which would likely take place at the June Bencher Retreat meetings.

Mr. Avison provided some further information regarding the Bencher Retreat, which would be taking place from June 1 to 3 in Whistler. He indicated that the program would focus substantively on managing significant change, including change in relation to the governance of the profession, but also in regard to changing technology, in particular artificial intelligence.

Mr. Avison spoke about the Final Report of the Indigenous Engagement in Regulatory Matters Task Force, which would be received at the April 28 Bencher meeting. Mr. Avison indicated that the April 28 meeting would be held as a hybrid meeting due to the significance of the Final Report, and he encouraged Benchers to attend in person if possible.

Mr. Avison then spoke about the upcoming meetings of the Federation which would be taking place in Quebec City the week following the Bencher meeting. He indicated that aside from himself, Ms. Dhaliwal, Brook Greenberg, KC, and Adam Whitcombe, KC would be attending, and the discussions would likely be focused on further consideration of the National Study on the Health and Wellness Determinants of Legal Professionals in Canada.

Mr. Avison provided a further overview of the session with the Minister of Justice and Attorney General of Canada regarding the Supreme Court appointment process. He indicated that the Law Society would be developing a short video about the importance of increasing the pool of

applicants, along with information regarding the application and selection process, and what the judicial experience is actually like.

Mr. Avison then spoke about the Commonwealth Law Conference that President McPherson was attending in India. He indicated that an important declaration had come out of the conference meetings regarding the importance of preserving and strengthening the independence of judiciary and of the legal profession, and that this would be circulated to Benchers. He further indicated that the report of the independent review of the statutory framework for legal services in Aotearoa New Zealand had been released, and this would also be circulated to Benchers.

DISCUSSION/DECISION

6. Rule Amendments: Public Notification of Disciplinary Action

Michael Lucas, KC introduced the item and provided some background to the proposal to amend Rule 4-47 to remove the specific directions set out in the Rule and instead provide the Executive Director with the discretion to determine how to give immediate effective public notice of the suspension, disbarment, or resignation.

Benchers discussed the proposed rule amendments, and some Benchers encouraged staff to maintain the publication of the notice in the Gazette, as it provides an accessible public record.

The following resolution was passed unanimously:

BE IT RESOLVED that the Benchers recommend, in principle, that Rule 4-47 be amended to remove the specific directions set out in the Rule and instead provide the Executive Director with the discretion to determine how to give immediate effective public notice of the suspension, disbarment or resignation.

7. Barristers' and Solicitors' Oath Revisions

Mr. Avison introduced the item and reviewed the proposed amendment to the Barristers' and Solicitors' Oath to better incorporate and reflect the Constitution's recognition and affirmation of the Aboriginal and treaty rights of First Nations, Inuit, and Métis peoples. Mr. Avison indicated that the language was in line with a recent amendment to Canada's Oath of Citizenship.

Benchers discussed whether further amendments to the oath should be considered. Mr. Avison advised that further modifications could be considered at a later date.

The following resolution was passed unanimously:

BE IT RESOLVED that the Benchers rescind the Barristers and Solicitors' Oath and substitute the following:

Do you sincerely promise and swear (or affirm) that you will diligently, faithfully and to the best of your ability execute the offices of Barrister and Solicitor; that you will not promote suits upon frivolous pretences; that you will not pervert the law to favour or prejudice anyone; but in all things conduct yourself truly and with integrity; and that you will uphold the rule of law and the rights and freedoms of all persons according to the laws of Canada and of the Province of British Columbia, including the Constitution, which recognizes and affirms the Aboriginal and treaty rights of First Nations, Inuit and Métis peoples.

8. Single Legal Regulator Update

Mr. Avison provided a brief update about the work being done by staff in preparation for the likely implementation of the single legal regulator initiative. He indicated that staff were currently working on identifying all of the matters that would need to be considered in preparation for the implementation of the single legal regulator initiative. Mr. Avison further indicated that the expectation was that legislation would be tabled in the fall of 2023, which would likely be followed by a period of transition prior to the implementation of the legislation and new statute.

9. Licensing Paralegals

Ms. Dhaliwal introduced the item and provided some background regarding the proposal to ask the government to permit the Law Society to license paralegals by bringing into force the amendments to the *Legal Profession Act* in Bill 57 - 2018 *Attorney General Statutes Amendment Act, 2018*. Ms. Dhaliwal spoke about the Law Society's history with licensing paralegals and indicated that this matter was not new, but had been considered in various forms since the 1980s.

Mr. Avison reviewed the proposal with Benchers and referenced the correspondence received from the Attorney General towards the end of 2021, which indicated that the Ministry was considering bringing into force the 2018 amendments; however, these discussions evolved into consideration of the establishment of a single legal regulator. Mr. Avison indicated that he was of the view that the licensing of paralegals was an important part of the equation in addressing access to justice gaps in BC, and that it would be timely to put forward this proposal to government. He further indicated that this proposal had a strong level of support from the BC Paralegal Association. Regarding next steps, Mr. Avison informed Benchers that he had indicated to the Attorney General at the February 8 meeting that a resolution would be considered by the Benchers on this matter, and if the Benchers were in agreement with the

proposal, formal correspondence would be sent to the Attorney General requesting that the 2018 amendments be brought into force.

Bencher engaged in discussions regarding the proposal with focus on the need to have an exit strategy for the Innovation Sandbox through the licensing of paralegals, the importance of providing the public with a wider range and choice of legal services provided by competent legal practitioners, the value of the experience and knowledge that exists within the paralegal profession, and how increasing both the availability and range of cost of legal service providers will help in increasing access to justice.

Bencher discussed the work that would need to be done regarding scope of practice for paralegals, as well as the importance of moving away from a one size fits all approach. Mr. Avison advised that a great deal of work was being conducted by staff in preparation. He further advised that should the proposal be approved and accepted by government, not all current paralegals would be regulated, as some would choose to continue with their current arrangements.

Some Bencher expressed concerns regarding potential backlash to the proposal, but there was general agreement amongst Bencher that the licensing of paralegals was in the public interest as an important component of addressing access to justice gaps through the provision of increasing access to legal service providers.

The following resolution was passed unanimously:

BE IT RESOLVED that:

1. the Law Society request that the licensed paralegal amendments to the *Legal Profession Act* and the related transitional provisions in *Bill 57 – 2018 Attorney General Statutes Amendment Act, 2018* be brought into force; and
2. in anticipation of the amendments being brought into force, the Executive Director is directed to take the necessary steps to provide for the licensing of paralegals, including the development of processes and procedures and proposing to the Bencher any required changes to the Law Society Rules consistent with the authority provided in the amendments once granted.

UPDATES

10. National Discipline Standards Report

Natasha Dookie provided background information on the National Discipline Standards and then presented the findings of the 2022 Report, along with Tara McPhail. She indicated that in 2022,

the Law Society met 21 of the 23 standards, a performance similar to previous years; the two standards not met were 9 and 10.

Benchers discussed the use of consent agreements and whether or not their use had an impact on the Law Society's performance in terms of meeting the standards. Ms. McPhail advised that there had been quite a bit of interest in the use of consent agreements since their implementation. She indicated that agreement had not been reached on all of them, but that respondents requesting a consent agreement are generally motivated to reach agreement. Ms. Dookie added that the consent agreements were an excellent tool to reach a more expeditious resolution. She also added that there would be value in considering using consent agreements as a regulatory tool for less serious matters.

Ms. Dhaliwal encouraged Benchers to render their decisions in a timely manner, so as to help improve the Law Society's rating for standard 10.

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

AB
2023-04-19