



Bencher Meeting: Minutes

To: Benchers

Purpose: Approval (Consent Agenda)

Date: Friday, July 5, 2024

Present:

Jeevyn Dhaliwal, KC, President	Benjamin D. Levine
Brook Greenberg, KC, 1st Vice-President	Dr. Jan Lindsay
Lindsay R. LeBlanc, KC, 2nd Vice-President	Jaspreet Singh Malik
Simran Bains	Jay Michi
Paul Barnett	Georges Rivard
Aleem Bharmal, KC	Michèle Ross
Tanya Chamberlain	Gurminder Sandhu, KC
Nikki L. Charlton	Thomas L. Spraggs
Jennifer Chow, KC	Barbara Stanley, KC
Christina J. Cook	James Struthers
Tim Delaney	Natasha Tony
Brian Dybwad	Michael F. Welsh, KC
Ravi R. Hira, KC	Kevin B. Westell
Sasha Hobbs	Gaynor C. Yeung
James A. S. Legh	Jonathan Yuen

Jeanette McPhee
Cary Ann Moore
Michael Mulhern
Doug Munro
Rashmi Nair
Maryanne Prohl
Michelle Robertson
Gregory Sexton
Lesley Small
Christine Tam
Adam Whitcombe, KC
Charlene Yan
Vinnie Yuen

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Recognition

1. 2024 Rule of Law Essay Contest: Presentation of Winner & Runner-Up

President Dhaliwal introduced the winner and runner-up of the 2024 Rule of Law Essay Contest. Pui Chi Lau is the winner of this year's contest, and Anita Pan is the runner-up. They both wrote exemplary essays, which are posted on the Law Society website.

Consent Agenda

2. Minutes of June 1, 2024, meeting (regular session)

The minutes of the meeting held on June 1, 2024 were approved unanimously and by consent as circulated.

3. Minutes of June 1, 2024, meeting (*in camera* session)

The minutes of the *in camera* meeting held on June 1, 2024 were approved unanimously and by consent as circulated.

4. 2024 Law Society Indigenous Scholarship

The following resolution was passed unanimously and by consent:

BE IT RESOLVED that the Benchers ratify the recommendation of the Credentials Committee to award the 2024 Law Society Indigenous Scholarship to Shirina Evans.

5. 2024 Law Society Scholarship for Graduate Legal Studies

The following resolution was passed unanimously and by consent:

BE IT RESOLVED that the Benchers ratify the recommendation of the Credentials Committee to award the 2024 Law Society Scholarship for Graduate Studies to Sopuruchi Godsfriend Christian.

6. Rule Amendments: Bencher Election Rule Revisions

The following resolution was passed unanimously and by consent:

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

1. In Rule 1-20, by deleting the words “on November 15 of each” in each of subrules (2) and (3):

2. In Rule 1-25, by

(a) deleting subrule (5) and replacing it with

“(5) The Executive Director may, on an application by or with the consent of a member, place the member on the voter list for a District other than the one required by this rule where satisfied that the member has a significantly greater connection to the District in which the member wishes to vote.”

(b) adding subrule (6) as follows:

“(6) A member whose application is rejected under subrule (5) may seek a review of the decision by the Executive Committee, whose decision is final.”

3. By deleting Rule 1-27 and replacing it with

Voting period and procedure

“1-27 (0.1) Bencher elections are held by electronic means.

(0.2) Despite subrule (0.1), the Executive Committee may, where circumstances require, authorize the Executive Director to conduct a Bencher election by means other than electronic means.

(0.3) For each election, the Executive Director must establish a voting period of no less than one week closing no later than the close of business on November 14 of the year the election is held.

(0.4) Votes received for a Bencher election held must be counted and results published on November 15 of the year the election is held.

(0.5) The Executive Director

(a) must oversee the election process and procedure,

(b) may retain a contractor to assist in any part of an election,

(c) must ensure that votes cast remain secret,

- (d) must ensure that the voting process enables the voter to clearly and unambiguously record the names of the candidate or candidates voted for, and
 - (e) must take reasonable security measures to ensure that only members entitled to vote can do so.
- (1) On or before the commencement of the voting period, the Executive Director must make available to each member of the Society entitled to vote in an election
 - (a) a ballot containing, in the order determined under Rule 1-28 *[Order of names on ballot]*, the names of all candidates in the district in which the member is entitled to vote and stating the number of Benchers to be elected in that district,
 - (b) instructions on submitting the ballot and returning it to the Society in a way that will preserve the secrecy of the member's vote, and
 - (c) [rescinded]
 - (d) [rescinded]
 - (e) [rescinded]
 - (f) biographical information received from the candidates.
- (2) An election is not invalidated by
 - (a) the accidental omission to make the material referred to in subrule (1) available to any member of the Society or the non-receipt of the material, or
 - (b) an error in the delivery of a ballot that results in a member voting in an incorrect district.
- (3) For a ballot to be valid, the voter must
 - (a) vote in accordance with the instructions provided with the ballot,
 - (b) not vote for more candidates than the number of Benchers to be elected in the district, and
 - (c) [rescinded],
 - (d) [rescinded]
 - (e) [rescinded]
 - (f) submit the ballot before the close of the voting period and by the means provided to the Executive Director.
- (4) [rescinded]
- (5) The Executive Director may issue a new ballot to a member entitled to vote who informs the Executive Director in writing that the original ballot sent to the member relates to a district

other than the one in which the member is entitled to vote, provided the member has not already submitted the ballot initially received.”

4. *by deleting Rule 1-27.1;*
5. *by deleting Rule 1-31;*
6. *by deleting Rule 1-32;*
7. *by deleting Rule 1-33.*

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

7. Remote Execution of Affidavits – Proposed Amendments to Appendix A of the BC Code

This item was removed from the Consent Agenda for discussion.

James A.S. Legh raised some questions regarding paragraph 12(7) and (8), as (8) requires that the document be sent together with the exhibits, while (7) only states that the document be scanned and sent without mention of the exhibits.

Michael Lucas, KC, General Counsel/Senior Policy Counsel suggested that “together with the exhibits” be added to paragraph 12(7), so that the two sub-paragraphs are consistent.

Benchers discussed the proposed amendments to Appendix A of the *BC Code* regarding the remote execution of affidavits and practical ways of accommodating the process. Mr. Lucas advised that the new court rules will not come into effect until September 9, and the usual review would be done to accommodate any changes. Ms. Dhaliwal added that any necessary edits could be made as needed.

The following resolution was passed unanimously, subject to the addition of “together with the exhibits” to the end of paragraph 12 (7):

BE IT RESOLVED to amend Appendix A of the Code of Conduct for British Columbia as follows:

1. *In clause 1 (a), by deleting “is physically present” and replacing it with “appears personally”;*
2. *In the Commentary to Appendix A, by replacing paragraph [12] and its heading with:*

“Remote commissioning of affidavits or solemn declarations

[12] While it is preferable for the deponent to appear physically before a lawyer for the purposes of commissioning an affidavit or solemn declaration, a lawyer may discharge the lawyer's ethical and professional obligations regarding commissioning an affidavit or solemn declaration where the lawyer and deponent are not physically together through the use of electronic and video technology in the manner set out below.

Lawyers should keep in mind however that what is accepted as evidence is ultimately for a trier of fact to determine, and that complying with the process set out in this commentary is not a guarantee that an affidavit or solemn declaration commissioned using electronic and video technology will be accepted as evidence by the trier of fact. Moreover, if concerns are identified about the particular manner in which an affidavit or solemn declaration is commissioned remotely or if a remote process raises any issues, in particular the serious concerns that would arise from issues regarding the identity or capacity of the deponent, or whether coercion of the deponent is a concern, those issues may result in the affidavit or solemn declaration not being accepted, or being given less weight. Lawyers are also reminded to be cautious regarding the heightened risks of fraud and undue influence presented by engaging in virtual processes, and of their obligations under Code rule 3.2-7.

Lawyers are also reminded to ensure that there are no prohibitions to the commissioning of an oath or solemn declaration through electronic or video technology for the purposes of any particular document for which such a process is contemplated.

Where the deponent is not physically present in British Columbia, the process for remote commissioning of an affidavit or solemn declaration should not be used unless the lawyer is satisfied there is no other practical way to undertake the commissioning of the document in accordance with the procedures of the jurisdiction in which the deponent is situated.

Process

The process for remote commissioning of an affidavit or solemn declaration by a lawyer must include the following elements.

1. Any affidavit or solemn declaration to be commissioned using electronic and video technology must contain a paragraph at the end of the body of the affidavit or solemn declaration describing that the deponent was not physically present before the lawyer as commissioner, but was in the lawyer's electronic presence linked with the lawyer utilizing video technology and that the process described below for remote commissioning of affidavits or solemn declarations was utilized.

2. The affidavit or solemn declaration must contain a paragraph acknowledging the solemnity of making the affidavit or solemn declaration and acknowledging the consequences of making an untrue statement.
3. While the lawyer and the deponent are in each other's electronic and video presence, the deponent must show the lawyer the front and back of the deponent's valid and current government-issued photo identification. The lawyer must compare the video image of the deponent and information in the deponent's government-issued photo identity document to be reasonably satisfied that the name and the photo are of the same person and that the document is authentic, valid and current. The lawyer must record that these steps have been taken. The lawyer should also consider recording the session through which the affidavit or solemn declaration is made.
4. The lawyer and the deponent must both have the text of the affidavit or solemn declaration, including all exhibits, before each of them while in each other's electronic presence.
5. The lawyer and the deponent must review the affidavit or solemn declaration and exhibits together to verify that the language is identical.
6. At the conclusion of the steps outlined above, while still in each other's electronic presence, the lawyer, as commissioner, must administer the oath, the deponent will swear or affirm the truth of the facts contained in the affidavit or solemn declaration, and the deponent will affix the deponent's signature to the affidavit or solemn declaration.
7. Where it is not permissible to commission an affidavit or solemn declaration using an electronic signature, the deponent's signature must be affixed in ink to the physical (paper) copy of the affidavit or solemn declaration above, and the deponent must immediately scan the document, save a copy immediately after scanning it, and immediately forward it electronically to the lawyer.
8. Where it is permissible to commission an affidavit or solemn declaration using an electronic signature, the deponent must immediately save the document and immediately forward it, together with the exhibits, electronically to the lawyer.
9. Upon receipt by the lawyer of the sworn affidavit or of a solemn declaration that has been attested to bearing the deponent's signature and all exhibits, the lawyer should, after having taken steps to ensure that the document received is the same as the document reviewed under the steps set out above, affix the lawyer's name and signature, as commissioner, to the jurat and exhibits.

10. If an electronic process is used that allows the lawyer, as commissioner, access to the document being signed by the deponent while in video contact with the deponent, the lawyer will then affix the lawyer's signature to the document, provided such process is permitted by the tribunal or court in which the affidavit or solemn declaration is to be used.
 11. The version of the affidavit or solemn declaration that has been duly sworn or affirmed and contains the signatures of the deponent and the lawyer must then be saved by the lawyer, and may be filed with the Court or tribunal as may be required."
3. *In the Commentary to Appendix A, by renumbering clauses [12] to [20], together with their relevant associated headings, as [13] to [21]*

Reports

8. President's Report

President Jeevyn Dhaliwal, KC acknowledged Second Vice-President Lindsay R. LeBlanc, KC's and Christina C. Cook's recusals for Item 12 and confirmed that no other conflicts had been declared.

Ms. Dhaliwal began her report by announcing the results of the election for the Benchers' Nominee for the 2025 Second Vice President. She congratulated Thomas L. Spraggs, and thanked all those who put forward their names for consideration.

Ms. Dhaliwal spoke about the recent passing of Ralston S. Alexander, KC, former President of the Law Society, and P. Michael Bolton, KC, Life Bencher, and paid tribute to their service to the Law Society.

Ms. Dhaliwal then provided an overview of her recent activities, including a high volume of activity related to the single legal regulator matter; attending a call ceremony in Kelowna; presenting Gold Medal Awards to the top students at the University of British Columbia, the University of Victoria, and Thompson Rivers University; attending the Law Society of Alberta Bencher Retreat; the Trial Lawyers Association of BC's annual spring event; and the Bench and Bar dinner. Ms. Dhaliwal thanked Benchers for all their help in organizing and attending call ceremonies.

Ms. Dhaliwal spoke about Indigenous History Month, Pride Month, Juneteenth, and Multiculturalism Day, which all took place in June, and the importance of raising awareness and promoting inclusivity in the legal profession. She also spoke about how it has been a priority for her over the course of the year to highlight matters of diversity, equity, and inclusion, including the work of the South Asian Bar Association of BC and the Federation of Asian Canadian

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Lawyers of BC, the latter of which recently held its first membership retreat. Ms. Dhaliwal then invited Gaynor Yeung, who had attended the retreat on her behalf, to speak about the presentation she gave at the retreat. Ms. Yeung provided an overview of her presentation, which she had presented along with Gurminder Sandhu, KC, and that focused on breaking barriers and navigating the path to partnership. She indicated that while the discussion was largely anecdotal, in preparation, she had reviewed a number of psychological and sociological studies on stereotypes and biases that plague Asian lawyers in North America. Ms. Yeung then highlighted one of those studies, entitled the Portrait Project, the purpose of which was to generate and compile data in an effort to provide empirical grounding for discussions on challenges facing Asian American lawyers. Ms. Dhaliwal thanked Ms. Yeung and Mr. Sandhu, and then spoke about the challenges in making evidence-based decisions without the required data.

9. CEO's Report

Don Avison, KC began his report by providing an update on the Law Society's injunction application against Bill 21 – *Legal Professions Act*. He indicated that the injunction application was heard over the course of three days in mid-June by Justice Gropper, whose decision is now on reserve. He further indicated that while it may take some time before a decision is received, he was of the view that the civil claim would proceed, and that the Society of Notaries Public of BC has made an application to be joined as a party to the litigation.

Mr. Avison spoke about a recent news article regarding anti-money laundering issues, which was focused primarily on a recent report from Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), which alleges the involvement of lawyers in a number of cases related to money laundering. He indicated that the Law Society has not heard from FINTRAC regarding the collection of information in relation to the alleged involvement of lawyers in money laundering activity, and that he was of the view that the information chain between FINTRAC and Canada's law societies was less than what it ought to be, particularly as legal regulators act as investigative entities in anti-money laundering activities. Mr. Avison informed Benchers that he intended to pursue this matter directly with FINTRAC to open up a line of communication, and to work closely with the Federation of Law Societies of Canada, whose fall conference will focus on anti-money laundering activities and initiatives.

Mr. Avison then spoke about the Innovation Sandbox and regularizing the status of those who have received no-action letters. He indicated that with the passage of and Royal Assent to the *Legal Professions Act*, a number of amendments to the current *Act* have come into force, including sections 311 and 312, which allow the Law Society to exempt a person from the prohibition against the unauthorized practice of law if satisfied that the provision of legal services by the person will facilitate access to legal services without posing a significant risk to the public. Mr. Avison indicated that he was of the view that this could be a potentially helpful mechanism to move people out of the Innovation Sandbox into a more permanent arrangement.

However, he further indicated that he was still of the view that the Law Society has not been able to make the same kind of progress on this matter that could have been achieved had the 2018 amendments to the *Legal Profession Act* been called into force, and he recommended continuing to have these discussions with the Ministry. Mr. Avison informed Benchers that the Ministry has created a regulated paralegal working group that will be populated over the course of the coming months. He indicated that further updates would be provided later in the year.

Mr. Avison spoke about the situation regarding the funding of legal aid in Alberta, which includes an agreement between the Law Society of Alberta, the provincial government of Alberta, and Legal Aid Alberta. He indicated that the agreement with the provincial government of Alberta had expired, and he expressed some concerns about the impact of this on those who rely on legal aid. He also expressed some concerns about the level of engagement and interference being exercised by the provincial government in Alberta on matters that ought not to be in the purview of government, and how this contributed to an increasing level of threat to the rule of law and the independence of the profession. Mr. Avison indicated that the situation in Alberta would be monitored very closely.

The report of the Indigenous Engagement in Regulatory Matters Task Force was received and approved by Benchers one year ago, and Mr. Avison called upon Vicki George, Senior Advisor, Indigenous Engagement to provide an update on the implementation of the recommendations from the report. Ms. George reviewed the recommendations from the report and provided an overview of current implementation and initiatives for each, including ensuring that all staff have completed the Indigenous Intercultural Course, meeting in person with Indigenous people and communities in Northern BC and other regions of BC, rolling out Indigenous-specific trauma-informed training to a number of Law Society departments, developing apology guidelines in line with the *Apology Act* to have as a resource for the profession on the Law Society website, and launching the Indigenous library to provide resources and Indigenous-authored books to staff. Ms. George indicated that a further update would be provided later in the year.

10. Briefing by the Law Society's Member of the Federation Council

First Vice-President Brook Greenberg, KC provided a brief overview of the written report he provided for Benchers' information, which included an overview of the recent Federation meetings. He spoke about the numerous initiatives implemented by the Law Society to support the mental health of the profession, and expressed concerns about the lack of support for these initiatives in Bill 21 – *Legal Professions Act*. He also expressed concerns about the provisions in the new *Act* relating to compelled medical treatment and how this approach is not in keeping with the findings and recommendations of the Mental Health Task Force, as they dissuade people from using the supports that are available to them and potentially create discriminatory practices, which is not in the public interest.

Benchers spoke about the importance of the Law Society's mental health initiatives and speaking about these in the legal communities across the province.

Update

11. 2024 May Financial Report

Jeanette McPhee, Chief Financial Officer and Senior Director of Trust Regulation provided an update on the financial results and highlights to the end of May 2024. She indicated that Q2 results are quite positive to budget due to lower expenses, with revenue also quite close to budget, though this is likely due to the timing of a number of expenses that are expected to be spent by the end of the year.

Ms. McPhee then provided an overview of forecasted results and noted that revenue was projected to be ahead of budget mainly due to a slightly higher number of practising lawyers, which would result in a projected net deficit of \$238,000. She indicated that costs associated with the single legal regulator initiative and transition, if any, have not been included in the forecast and would be funded from net asset reserves. Ms. McPhee reviewed TAF-related revenue and expenses, which are projected to be below budget, as a result of the down turn in the real estate market in 2023 and the Lawyers Indemnity Fund fee revenue, which are expected to be close to budget.

Discussion/Decision

12. Law Foundation Access to Justice Fund 2024 Allocation and Future Process

Second Vice-President Lindsay R. LeBlanc, KC and Christina J. Cook recused themselves from this item.

Ms. Dhaliwal introduced the item and provided some background regarding the Law Foundation Access to Justice Fund, which is supported by a portion of the funding that the Law Society provides annually to the Law Foundation. She indicated that the Law Foundation ultimately decides how the fund is administered, following discussions with, and recommendations by, the Law Society on an annual basis, and that the Law Foundation had provided a recommendation for allocation of this year's funds. Ms. Dhaliwal spoke about how the process has worked in previous years, where the discussions of worthwhile projects and recommendations was delegated by Benchers to the Access to Justice Advisory Committee; however, this committee has not been populated for this year and that issues that might otherwise have been considered by the committee would instead come to the Bencher table as a whole.

Claire Marchant, Director of Policy and Practice provided some further information regarding the recommendation from the Law Foundation and the proposal to eliminate the need to meet with the Law Foundation annually to review how the fund is administered, and to instead, allow the Law Foundation to manage the allocation of the Access to Justice Fund independently.

Benchers discussed both the recommendation for allocation of this year's fund, as well as the proposed recommendation to eliminate the discussion component of the allocation process, and were generally of the view that there did not appear to be a need to have the Law Society involved due to the Law Foundation's history of, and experience with, funding important and worthwhile initiatives.

The following resolutions were passed unanimously:

BE IT RESOLVED THAT the Benchers support the Law Foundation's recommendation that the 2024 allocation of the Access to Justice Fund be applied to the Grant of Probate Applications Project operated by the Indigenous Community Legal Clinic; and

BE IT RESOLVED THAT the need to meet with the Law Foundation annually regarding the Fund be eliminated, and the Law Foundation report to the Law Society in regard to allocation of the Access to Justice Fund.

The Benchers then commenced the *in camera* portion of the meeting.

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