



Minutes

Benchers

Date: Friday, July 08, 2022

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

Dr. Jan Lindsay
Geoffrey McDonald
Steven McKoen, QC
Jacqueline McQueen, QC
Paul Pearson
Georges Rivard
Michèle Ross
Thomas L. Spraggs
Barbara Stanley, QC
Natasha Tony
Michael Welsh, QC
Sarah Westwood
Guangbin Yan
Gaynor C. Yeung

Unable to Attend: Kelly H. Russ
Gurminder Sandhu

Kevin Westell

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

Michael Lucas, QC
Alison Luke
Claire Marchant
Jeanette McPhee
Cary Ann Moore
Doug Munro
Michelle Robertson
Lesley Small
Nick Wells
Adam Whitcombe, QC

Guests:	Dom Bautista	Executive Director & Managing Editor, Law Courts Center
	Pinder K. Cheema, QC	Law Society of BC Representative on the Federation Council
	Dr. Cristie Ford	Professor, Allard School of Law
	Ludmila Herbst, QC	Partner, Farris LLP
	Clare Jennings	President, Canadian Bar Association, BC Branch
	Derek LaCroix, QC	Executive Director, Lawyers Assistance Program of BC
	Robert Lapper	Lam Chair in Law and Public Policy, University of Victoria
	DJ Larkin	Director of Legal Service Grants, Law Foundation of BC
	Jamie Maclaren, QC	Executive Director, Access Pro Bono Society of BC
	Mark Meredith	Treasurer and Board Member, Mediate BC Society
	Ngai Pindell	Dean of Law, Peter A. Allard School of Law
	Allison Read	Rule of Law Essay Contest Winner Guest
	Brenda Rose	Director of Community Engagement, BC Courthouse Libraries
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Shannon Salter	Deputy Attorney General of BC
	Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
	Karen St. Aubin	Director of Membership & Education, Trial Lawyers Association of BC
	Ron Usher	General Counsel and Practice Advisor, The Society of Notaries Public of British Columbia
	Lana Walker	Assistant Dean, Thompson Rivers University
	Chris Zimmerman	Rule of Law Essay Contest Winner
	Grant Zimmerman	Rule of Law Essay Contest Winner Guest

RECOGNITION

1. 2022 Rule of Law Essay Contest: Presentation of Winner

President Hamilton introduced the winner 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. Christopher Zimmerman is the winner of this year's contest. He wrote an exemplary essay, which is posted on the Law Society website.

CONSENT AGENDA

2. Minutes of May 28, 2022, meeting (regular session)

The minutes of the meeting held on May 28, 2022 were approved unanimously and by consent as circulated.

3. Minutes of May 28, 2022, meeting (*in camera* session)

The minutes of the *In Camera* meeting held on May 28, 2022 were approved unanimously and by consent as circulated.

4. 2022 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 2022 Law Society Indigenous Scholarship equally between Mercediese Dawson and Jaxxen Wylie.

5. 2022 Law Society Scholarship for Graduate 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 2022 Law Society Scholarship for Graduate Studies to Oludolapo Makinde.

6. Law Society Nomination of a Member to the Federation of Law Societies of Canada Council – Revised Terms of Reference

The following resolution was passed unanimously and by consent:

BE IT RESOLVED the Benchers approve the revised Terms of Reference governing the nomination of the Law Society's member of the Federation of Law Societies of Canada Council to:

- a) nominate a current Bencher, preferably a member of the Executive Committee, as the Law Society's member of the Federation Council, and
- b) provide that, if the Council member is or becomes a Life Bencher, or is defeated in a Bencher election, the Council member will complete the current balance of their term but will not be eligible for a further term unless re-elected.

7. Rule 2-29: Amendment to provide for Executive Director's Discretion

The following resolution was passed unanimously and by consent:

BE IT RESOLVED that the Benchers approve in principle amending the Rules to provide that the Executive Director has the discretion to consider an applicant for a practitioner of foreign law permit's exceptional circumstances and to issue the permit notwithstanding that the applicant has not fully met all of the requirements and to impose conditions or limitations on the practice of the applicant as appropriate.

8. Various Rules: Non-substantive Corrections

The following resolution was passed unanimously and by consent:

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

1. **Rule 5-4.3 (2) (c) is amended by striking "at the hearing of the application" and substituting "at the hearing of the citation or credentials application".**
2. **Rule 5-4.8 is amended by adding the following subrule:**
 - (9) A party who has admitted or is deemed to have admitted the truth of a fact or the authenticity of a document under this rule may withdraw the admission with the consent of the other party or with leave granted on an application
 - (a) before the hearing has begun, under Rule 5-4.3 [Preliminary questions] or 5-5.1 [Pre-hearing conference], or

(b) after the hearing has begun, to the hearing panel.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

REPORTS

9. President's Report

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

Ms. Hamilton began her report by thanking Pinder Cheema, QC, the Law Society's Member to the Federation of Law Societies of Canada Council, for attending the meeting to answer any questions about the written briefing she had prepared that was included in the Bencher agenda materials for information.

Ms. Hamilton updated Benchers on a recent meeting with Paul Craven, the Superintendent of Professional Governance and other government representatives, as well as representatives from the Society of Notaries Public BC and the BC Paralegal Association, which took place on June 27 to discuss the creation of a single legal regulator. She indicated that Mr. Craven had confirmed that the Intentions Paper being developed by government was on track to be released in the summer, and that legislation establishing a single legal regulator of the legal professions in BC would likely be introduced during the fall 2023 legislative session.

Ms. Hamilton then provided an overview of recent events she had attended, including the QC Ceremony and Reception, which took place on July 6 at Government House and a welcoming Ceremony in Williams Lake for Judge Michelle Stanford. She indicated that she would be taking part in regional outreach events across the province, including in Kamloops and Kelowna. Ms. Hamilton encouraged Benchers to let her and Mr. Avison know if they would like to organize an outreach event in their regions of the province.

Professor Gerry Ferguson recently retired from the University of Victoria, and Ms. Hamilton acknowledged his many years of service, in particular his work in criminal law.

Ms. Hamilton then spoke about two upcoming events, starting with the Indigenous Engagement in Regulatory Matters Task Force's Summit taking place on August 5. Ms. Hamilton encouraged Benchers to attend, and she indicated that recommendations from the Task Force would likely be coming to the Bencher table in the fall. The second event is being held in collaboration with Doctors of BC on September 24, Ms. Hamilton indicated that the focus would be on developing ideas regarding how doctors and lawyers can work together to reduce harm on families navigating the family justice system.

Ms. Hamilton concluded her report with an update on the next quarterly meeting taking place with Kerry Simmons, QC, Clare Jennings, and the incoming President on July 18. Ms. Jennings term as President of the CBABC concludes in September, and Ms. Hamilton expressed her appreciation for the relationship between the Law Society and the CBABC.

10. CEO's Report

Don Avison, QC began his report by reviewing the recent Supreme Court of Canada decision on the Abrametz matter, which restored the decision of the Law Society of Saskatchewan. He noted that the matter had stemmed from a Law Society of Saskatchewan decision, which was overturned by the Saskatchewan Court of Appeal. Mr. Avison indicated that there had been a number of intervenors in the Supreme Court case, including the Federation, other Canadian law societies, and other Canadian regulatory bodies. Mr. Avison informed Benchers that a detailed summary of this significant decision would be provided to Benchers.

Mr. Avison informed Benchers that he had been asked to provide a Canadian perspective on anti-money laundering initiatives, the 2015 Supreme Court of Canada decision in the Federation case, and on the implications of the Cullen Commission Report at the June 28 meeting of the Commonwealth Lawyers Association. He indicated that the findings of the Cullen Commission would continue to be a key theme at future meetings of the Commonwealth Lawyers Association, as well as at future meetings of the Federation and the International Institute of Law Association Chief Executives.

Mr. Avison then spoke about the data provided in his CEO's Report analyzing the age distribution of the profession from 2002 to 2021, and how it has evolved over the last few years, particularly in higher concentrations of members under 40 and over 65. Mr. Avison indicated that these changes in age distribution would likely have policy implications for the Law Society that would need to be considered.

Mr. Avison informed Benchers that he would be attending a celebration of the implementation of the First Nations Education Jurisdiction Agreements on Seabird Island, which have been in development for some time. Mr. Avison expressed the significance of this important step for First Nations' law making authority.

Mr. Avison spoke about the upcoming Pulling Together Canoe Journey, which would be taking place from July 11 to 20 in the Shuswap and North Thompson regions. The event is organized by the Pulling Together Canoe Society to enhance the understanding between public service agencies and Indigenous peoples, and Mr. Avison noted that it represented an important step in the Law Society's work towards reconciliation. He further noted that several staff members and Benchers would be attending, and that he hoped the Law Society would continue to be involved in future years.

Mr. Avison concluded his report with an update on the return to in-person call ceremonies. He indicated that two ceremonies would take place in June and two would take place in July at the Vancouver Law Courts.

DISCUSSION/DECISION

11. Cullen Commission Report – Trust Review Task Force

Mr. Avison provided some background to the recommendation to establish a Trust Review Task Force. He spoke about the importance of taking a comprehensive look at the Law Society's trust accounting and related rules, and referenced the 13 recommendations specific to the Law Society in the Cullen Commission Report. Mr. Avison then reviewed with Benchers each of the 13 recommendations in detail to provide additional context and background. Mr. Avison spoke to the necessity of establishing a Trust Review Task Force and provided some commentary on the composition and mandate, as set out in the draft Terms of Reference.

Benchers discussed the mandate of the Task Force and whether the Task Force should consider the comments made in the Cullen Report regarding unexplained wealth orders. Mr. Avison indicated that he was of the view that these matters already fall within the scope of the Task Force's proposed mandate, and that the Task Force would have sufficient latitude to consider these matters.

A motion to approve the establishment of a Trust Review Task Force was passed unanimously.

12. An Independent Tribunal Chair

Mr. McPherson introduced the item and spoke about the importance of increasing the independence of the Tribunal from the investigative and rule-making functions of the Law Society, so as to improve public confidence in the administration of the disciplinary function of the Law Society. Mr. McPherson indicated that this was of particular importance with government's intention to establish a single legal regulator.

Mr. Avison referenced the discussions that took place at the October 2021 and May 2022 Bencher retreats regarding the independence of the Tribunal, noting that this had been under consideration for quite some time. He also spoke about the importance of ensuring that disciplinary cases are managed effectively, particularly in light of the Abrametz matter.

Benchers discussed whether or not the role of Tribunal Chair should be held by a lawyer, and whether or not former Benchers would be eligible. Mr. Avison advised that the job description would include specific requirements, but that the nature of the role would necessitate someone with significant legal and regulatory experience.

The following resolution was passed unanimously:

BE IT RESOLVED to amend Rule 5-1.3 along with any necessary consequential amendments to provide for the appointment of an independent Tribunal Chair who is compensated, who is not a current Bencher, and whose appointment is based on the skills, experience and character necessary to carry out the duties of Tribunal Chair.

UPDATES

13. 2022 May Financial Report

Jeevyn Dhaliwal, QC, as Chair of the Finance and Audit Committee, introduced the item.

Jeanette McPhee provided an update on the financial results and highlights to the end of May 2022, noting that the General Fund operations resulted in a positive variance to budget, which was due to an increase in revenue mainly comprising permanent variance and timing differences. Ms. McPhee indicated that revenue was ahead of budget due to an increase in the number of practising lawyers in BC, and operating expenses were below budget; however, external counsel fees are projected to be over budget due to the increase in number and complexity of files. Ms. McPhee indicated that these costs would be partially offset by savings in meeting and travel expenses.

Mr. Avison provided additional clarification regarding the increasing complexity of some of the files that are utilizing external counsel, particularly those involving securities and anti-money laundering. He indicated that these complex files require additional time, which increases costs as well. He further indicated that discussion on this matter would continue at future Bencher meetings.

14. 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

15. Mid-Year Updates on Work Plans

There was no discussion on this item.

16. Mental Health Task Force: Progress on Implementing Past Recommendations

There was no discussion on this item.

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

There was no discussion on this item.

18. Report of the Special Committee to Review FIPPA

There was no discussion on this item.

19. Minutes of June 23, 2022 Executive Committee Meeting

There was no discussion on this item.

20. Three Month Bencher Calendar – July to September 2022

There was no discussion on this item.

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

AB
2022-09-15