

Minutes

Benchers

Date: Friday, July 14, 2023

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

Dr. Jan Lindsay
Geoffrey McDonald
Steven McKoen, KC
Paul Pearson
Georges Rivard
Michèle Ross
Gurminder Sandhu
Thomas L. Spraggs
Barbara Stanley, KC
Natasha Tony
Michael Welsh, KC
Kevin B. Westell
Sarah Westwood, KC
Guangbin Yan
Gaynor C. Yeung

Not in Attendance Kelly H. Russ

Staff: Don Avison, KC
Avalon Bourne
Natasha Dookie
Su Forbes, KC
Vicki George
Kerryn Holt
Jeffrey Hoskins, KC
Aara Johnson
Alison Kirby
Julie Lee
Michael Lucas, KC

Alison Luke
Claire Marchant
Fiona McFarlane
Jeanette McPhee
Cary Ann Moore
Michael Mulhern
Doug Munro
Lesley Small
Christine Tam
Adam Whitcombe, KC
Vinnie Yuen

Guests:	Dom Bautista	Executive Director, Courts Center & Executive Director, Amici Curiae Friendship Society
	Ian Burns	Digital Reporter, The Lawyer's Daily
	Emma Chang	Rule of Law Essay Contest Runner-Up
	Dr. Paula Cook	Bencher Guest
	Jon Festinger, KC	Ethics and Lawyer Independence Advisory Committee Member
	Paul Hargreaves	CFO, Courthouse Libraries BC
	Nicholas Hayer	Articling Student, JFK Law LLP
	Freya Kodar	Dean of Law, UVic
	Derek LaCroix, KC	Executive Director, Lawyers Assistance Program of BC
	Meghan Little	Summer Student, British Columbia Law Institute
	Jamie Maclaren, KC	Executive Director, Access Pro Bono Society of BC
	Scott Morishita	First Vice President, Canadian Bar Association, BC Branch
	Josh Paterson	Executive Director, Law Foundation of BC
	Robin Phillips	Co-Chair, Board of Directors, Mediate BC Society
	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
	Megan Vis-Dunbar	Staff Lawyer, British Columbia Law Institute
	Lana Walker	Assistant Dean of Law, Thompson Rivers University
	Ethan Yang	Rule of Law Essay Contest Winner

OATH OF OFFICE

President McPherson administered the oath of office (in the form set out in Rule 1-3) to newly elected Bencher Christina J. Cook whose term began on July 12, 2023.

RECOGNITION

1. 2023 Rule of Law Essay Contest: Presentation of Winner & Runner-Up

President McPherson introduced the winner and runner-up of the 2022-2023 Rule of Law Essay contest. This year's contest asked students to explain how the rule of law affected – positively, adversely or otherwise – the advancement of minority rights in Canada. Ethan Yi-Cheng Yang is the winner of this year's contest, and Emma Chang is the runner-up. They both wrote exemplary essays, which are posted on the Law Society website.

CONSENT AGENDA

2. Minutes of June 3, 2023, meeting (regular session)

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

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

The minutes of the *in-camera* meeting held on June 3, 2023 were approved unanimously and by consent as circulated.

4. Memorandum of Understanding – Federal Government Lawyer Mobility

Jennifer Chow, KC recused herself from this item.

The following resolution was passed unanimously and by consent:

BE IT RESOLVED the Law Society of British Columbia execute the Memorandum of Understanding in the form attached as Appendix “A” to this memorandum.

5. Rule Amendments to Change Name of Equity Ombudsperson Program

The following resolution was passed unanimously and by consent:

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

1. *In Rule 1, the definition of “Ombudsperson” is rescinded and the following substituted:*

“**Equity Advisor**” means a person appointed by the Executive Director to provide confidential dispute resolution and mediation assistance to lawyers, articulated students, law students and support staff of legal employers, regarding allegations of harassment or discrimination by lawyers and includes anyone employed to assist the Equity Advisor in that capacity;

2. *Rule 5-4.6(3) is rescinded and the following substituted:*

(3) Despite subrule (2), Law Society counsel must not provide any information or documents about any discussion or other communication with the Equity Advisor in that capacity.

3. *Rule 10-2.1 is rescinded and the following substituted:*

Communication with Equity Advisor confidential

10-2.1 (1) This rule must be interpreted in a way that will facilitate the Equity Advisor assisting in the resolution of disputes through communication without prejudice to the rights of any person.

(2) Communication between the Equity Advisor acting in that capacity and any person receiving or seeking assistance from the Equity Advisor is confidential and must remain confidential in order to foster an effective relationship between the Equity Advisor and that individual.

(3) The Equity Advisor must hold in strict confidence all information acquired in that capacity from participants.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

6. 2023 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 2023 Law Society Scholarship for Graduate Studies equally between Kaitlyn Cumming and Maxwell Philip Tristan Miller.

7. 2023 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 2023 Law Society Indigenous Scholarship equally between Bailie Copeland and Tara-Lynn Wilson.

REPORTS

8. President's Report

President Christopher A. McPherson, KC confirmed that no conflicts of interest had been declared.

Mr. McPherson began his report with some comments regarding the Law Society's recent Bencher Retreat and Conference, which he thought was a success. He also shared some positive feedback received from several of the guests who attended, including the Chief Justices and Chief Judge. Mr. McPherson indicated that the discussions on artificial intelligence were timely, particularly as the Judicial Council will be issuing guidelines on the use of Chat GPT and similar AI tools in litigation, and that the Supreme Court of Canada would likely issue a policy directive on this matter as well. Mr. McPherson spoke about the discussions with the Attorney General during the Bencher meeting regarding the single legal regulator initiative. He indicated that the debate format of the conference had worked well and thanked First Vice-President, Jeevyn Dhaliwal, KC and staff for organizing.

Mr. McPherson provided an update on the Law Society of Alberta's retreat, which had focused on the changing face of regulation with Harry Cayton, an advisor on professional regulation and governance, and Crispin Passmore, a consultant with Passmore Consulting, as speakers. He indicated that there had been a number of valuable discussions with the Law Society's counterparts from the other law societies, particularly in regard to the single legal regulator initiative.

Mr. McPherson then spoke about the current status of the single legal regulator initiative, which had been the primary topic of discussion with the Attorney General at the June Bencher meeting. He also spoke about the Law Society's recent Annual General Meeting, in particular the member resolution calling for a referendum to oppose the single legal regulator initiative, which did not pass. Mr. McPherson expressed his hope that the Law Society's message regarding the fundamental importance of the independence of the profession and regulator, which would require a majority of lawyers on the board of the new entity, is being made clear to the profession and to the public. He indicated that this message had been his focus at recent meetings and events he had attended over the last several weeks.

Mr. McPherson concluded his report with an overview of his recent activities, including attending the KC Ceremony and Reception, at which Benchers Katrina Harry, KC and Sarah Westwood, KC were honoured; a welcome ceremony for Judge Lynett Jung, and call ceremonies.

9. CEO's Report

Don Avison, KC began his report by speaking about the current status of the single legal regulator initiative, and echoed Mr. McPherson's comments regarding the importance of the independence of the profession and of the regulator. He indicated that the Ministry continues to expect to table legislation sometime in the fall legislative session this year, and that he was giving serious thought about making another overture to the Ministry regarding bringing into force the 2018 provisions, which would allow for the licensing of paralegals. He indicated that should legislation be tabled in the fall legislative session, it would still take quite some time for the new legislation to come into force, resulting in a delay to the licensing of paralegals. The Ministry had previously indicated that it would not be bringing into force the 2018 provisions, as there would be a number of ancillary or miscellaneous amendments that would need to be made; however, Mr. Avison indicated that he had asked staff to review the provisions in detail to see what amendments would be required. He further indicated that he would like to be in a position to push back on this to the Ministry, as in his view the licensing of paralegals remains one of the most significant elements of improving access to justice in BC.

Mr. Avison then provided an overview of the Law Society's recent Annual General Meeting and those member resolutions that were passed by the profession. He reviewed with Benchers his recommendations for consideration of each of the member resolutions, and indicated that the member resolution regarding the improvement of the Law Society's inclusion of persons with physical disabilities would be referred to the Equity, Diversity, and Inclusion Advisory Committee; the member resolution regarding amendments to Rule 3-10 would be referred to the Executive Committee to evaluate what was proposed; the member resolution regarding amendments to Rule 3-36(1)(b) and Rule 3-37(1)(b) would also be referred to the Executive Committee in its capacity as the regulatory policy committee; and the member resolution

proposing an exemption to Rule 2-89 in relation to parental leave would be referred to the Credentials Committee and the Equity, Diversity, and Inclusion Advisory Committee, as these committees are already considering the issue of parental leave and return to practice.

Mr. Avison then spoke about the significant contributions of the profession to access to justice in BC, including the pro bono work undertaken by many lawyers. He spoke about the impact of the practice fee, which funds numerous organizations and initiatives, including CanLII, the Law Foundation of BC, and the Courthouse Libraries BC, and highlighted the fact that BC was the first jurisdiction in North America to establish a law foundation. Mr. Avison indicated that he was highlighting these contributions to demonstrate what was already being done to address barriers to access to justice, and that once the Ministry tabled legislation in relation to the single legal regulator initiative, there would likely be a great deal of discussion about the importance of access to justice, and the role of the proposed legislation in addressing barriers to access to justice. Mr. Avison then referenced a decision made by the provincial government in 1992 to impose a tax on lawyers' accounts to redirect government resources towards legal aid. Mr. Avison indicated that in recent years, the provincial government has made modest increases to the legal aid budget, but that in his view, the amounts that have been dedicated to legal aid have not come close to addressing the amount of taxation that is collected. He also spoke about the ongoing litigation between the Centre for Family Equity and the provincial government, which has been focused on the absence of sufficient resources for people caught up in difficult family law situations to find the support that they need. Mr. Avison indicated that he intended to raise both the issue of moving ahead with the licensing of paralegals and to raise the issue of the amount of tax that is being collected and its distribution.

Bencher discussed the amount of pro bono work undertaken by the profession across the province, and the utility in reviewing the number of hours reported. Bencher also discussed whether or not it would be helpful for the appointed Bencher to approach the Ministry to discuss the single legal regulator initiative and the perspective of the publicly appointed Bencher. Mr. Avison advised that he would look into it.

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

Brook Greenberg, KC provided a brief overview of the written report he provided for Bencher's information, which included an overview of the recent Federation meetings. He indicated that the next Federation Council meeting would take place in Whitehorse in October, topic focused on generative AI and the effect on the profession, and he would provide an update at the November Bencher meeting.

DISCUSSION/DECISION

11. Indigenous Engagement in Regulatory Matters Final Report

President McPherson introduced the final report of the Indigenous Engagement in Regulatory Matters Task Force with a dedication to all those who did not receive the necessary assistance and support needed due to the Law Society's systemic barriers. He thanked all of the members of the Task Force, as well as the staff members who had contributed towards the development of the final report. Mr. McPherson then reviewed with Benchers in detail the recommendations contained within the final report, including that the Law Society should decolonize its institution, policies, procedures, and practices; that the Law Society should Indigenize its institution, policies, procedures, and practices; that the Law Society should build trust and relationships with Indigenous individuals, organizations, and communities; that the Law Society should be more proactive in the prevention of harm to the public, particularly Indigenous individuals; and that the Law Society should implement the recommendations contained within the final report.

Mr. Avison provided an overview of the changes and progress that have already been taking place in response to the recommendations made within the final report, including the addition of consent agreements, administrative penalties, and the ADP process; changes to the Tribunal and its processes; and the consideration of the role of an Indigenous Navigator to assist people going through the discipline process. He indicated that a progress report on the implementation of the recommendations would be provided at the November or December Bencher meeting.

Benchers discussed the final report and its recommendations with particular focus on how the recommendations would benefit the public as whole, the importance of recognizing the leadership of the Indigenous community in bringing about these changes, involving the Indigenous Court workers in the implementation of recommendations 3.1 and 3.2, and extending access to the Indigenous Cultural Awareness program to committee members. Benchers also discussed whether the Indigenous Cultural Awareness program should be made available to paralegals, in light of the impending implementation of the single legal regulator initiative. Mr. Avison advised that some thought would need to be given to the best approach. He indicated that the expectation would be that the program would be available for paralegals and notaries with the implementation of the single legal regulator, but consideration should be given as to making it more broadly available at this juncture.

Mr. Avison advised that the implementation of the final report and its recommendations would not be easy, as it would require significant change to the practices and policies of the Law Society, and would likely be met with some resistance. He spoke about the importance of remaining committed to doing the work to facilitate this change.

A motion to adopt the recommendations as presented within the final report from the Indigenous Engagement in Regulatory Matters Task Force was unanimously approved.

Mr. McPherson thanked Benchers, and indicated that he was of the view that this was the most consequential decision to have been made by Benchers.

12. Amendments to the Discrimination, Harassment, and Sexual Harassment Provisions of the *Code of Professional Conduct for British Columbia*

Thomas Spraggs, Vice-Chair of the Ethics and Lawyer Independence Advisory Committee, introduced the item and provided an overview of the proposed amendments to the discrimination, harassment, and sexual harassment provisions of the *Code of Professional Conduct for BC*.

Cary Ann Moore provided an overview of the proposed amendments to the provisions, which included the rationale for the amendments, what the proposed amendments were attempting to address, as well as the value of the proposed amendments, which would provide better guidance, clarify expectations for lawyers, and educate those who work with lawyers on the standard expected of the profession.

Benchers discussed the communication of the proposed amendments to the profession and to the public and whether training sessions on the provisions as a whole should be considered, both to provide guidance on rights, roles, and responsibilities, and to hold people accountable. Mr. Avison advised that work would be done regarding the communications element, including the consideration of training, and this matter would warrant additional discussion.

Benchers discussed the language of the proposed amendments, and some Benchers also shared their personal experiences dealing with harassment. Some Benchers expressed concerns that the language used in terms of not condoning discriminatory or harassing behaviour was not strong enough. First Vice-President Jeevyn Dhaliwal, KC suggested that section 6.3-2[4] in the *Code of Professional Conduct for British Columbia* be amended from “Lawyers should avoid condoning or being willfully blind to conduct in their workplaces that constitutes harassment” to “Lawyers are expected to not condone or be willfully blind to conduct in their workplaces that constitutes harassment”. Ms. Moore advised that if the Benchers were in agreement with this amendment, this language should also be duplicated in sections 6.3-1[7] and 6.3-3[3] so as to be consistent. Following some discussion, Benchers were in agreement regarding Ms. Dhaliwal’s amendment to the provisions.

The following motion was passed unanimously:

BE IT RESOLVED the Benchers rescind rules 6.3-1 to 6.3-5 of the *Code of Professional Conduct for British Columbia*, and adopt amended rules 6.3-1 to 6.3-4 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 4, 2023, subject to amending the language used in sections 6.3-2[4], 6.3-1[7], 6.3-3[3] to the following: *Lawyers are expected to not condone or be willfully blind to conduct in their workplaces that constitutes harassment.*

UPDATES

13.2023 May Financial Report

Jeevyn Dhaliwal, KC, as Chair of the Finance and Audit Committee, introduced the item. She advised that the Committee was in the process of setting the budget for 2024, and an information session was being planned for September 21, 2023, the day before the September Bencher meeting. She indicated that the expectation was that all Benchers should be in attendance for this information session.

Jeanette McPhee provided an update on the financial results and highlights to the end of May 2023, noting that the General Fund operations resulted in a positive variance to budget, which was due to higher interest income, fine, and penalties review combined with lower operating expenses primarily due to timing differences. Ms. McPhee indicated that revenue was ahead of budget due to higher interest rates. She then reviewed TAF-related revenue and expenses, which were below budget as a result of the down turn in the real estate market in 2023, and the Lawyers Indemnity Fund fee revenue, which was close to budget. Ms. McPhee then provided an overview of forecasted results and noted that revenue was projected to be ahead of budget mainly due to higher interest rates, along with slightly higher practising lawyers.

Benchers discussed TAF and whether any thought would be given to resetting the fee. Ms. McPhee advised that a change in the fee would not be recommended. She further advised that the Law Society had a reserve of about six months, so there was some leeway to see what happens with the market.

FOR INFORMATION

14. Mid-Year Advisory Committee Reports

There was no discussion on this item.

15. Trust Review Task Force Status Update Report

There was no discussion on this item.

16. External Appointments: Continuing Legal Education of BC

There was no discussion on this item.

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

AB
2023-08-29