

Law Society of British Columbia

Minutes

Benchers

Date: Friday, November 03, 2023

Present:	Christopher A. McPherson, KC, President Jeevyn Dhaliwal, KC, 1 st Vice-President Brook Greenberg, KC, 2 nd Vice-President Paul Barnett Kim Carter Tanya Chamberlain Jennifer Chow, KC Christina J. Cook Cheryl S. D'Sa Tim Delaney Lisa Dumbrell Brian Dybwad Sasha Hobbs Lindsay R. LeBlanc	Geoffrey McDonald Steven McKoen, KC Paul Pearson Georges Rivard Michèle Ross Thomas L. Spraggs Barbara Stanley, KC Natasha Tony Michael Welsh, KC Kevin B. Westell Sarah Westwood, KC Guangbin Yan Gaynor C. Yeung
Unable to Attend:	Dr. Jan Lindsay Kelly H. Russ	Gurminder Sandhu
Staff:	Don Avison, KC Gurprit Bains Avalon Bourne Barbara Buchanan, KC Natasha Dookie Jackie Drozdowski Vicki George Katrina Harry, KC Kerryn Holt Jeffrey Hoskins, KC Aara Johnson Alison Kirby Virginia Kwong Julie Lee Michael Lucas, KC	Alison Luke David MacLean Claire Marchant Jeanette McPhee Michael Mulhern Doug Munro Michelle Robertson Lesley Small Arrie Sturdivant Christine Tam Madison Taylor Herman Van Ommen, KC 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
	Bailie Copeland	Co-Recipient, Law Society Indigenous Scholarship
	Dr. Cristie Ford	Professor, Peter A. Allard School of Law
	Jess Furney	Manager, Policy & Advocacy, CBABC
	Derek LaCroix, KC	Executive Director, Lawyers Assistance Program of BC
	Jamie Maclareن, KC	Executive Director, Access Pro Bono Society of BC
	Mark Meredith	Treasurer and Board Member, Mediate BC
	Shawn Mitchell	CEO, Trial Lawyers Association of BC
	Scott Morishita	President, Canadian Bar Association, BC Branch
	Joven Narwal	Member, Law Society of BC
	Caroline Nevin	CEO, Courthouse Libraries BC
	Ngai Pindell	Dean of Law, Peter A. Allard School of Law
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Ron Usher	General Counsel and Practice Advisor, The Society of Notaries Public of British Columbia
	Lana Walker	Assistant Dean of Law, Thompson Rivers University
	Tara-Lynn Wilson	Co-Recipient, Law Society Indigenous Scholarship

RECOGNITION

1. Presentation of 2023 Law Society Indigenous Scholarship

Brook Greenberg, KC introduced and congratulated Bailie Copeland and Tara-Lynn Wilson as the 2023 Law Society Indigenous Scholarship co-recipients who were both in attendance at the meeting.

CONSENT AGENDA

2. Minutes of September 22, 2023, meeting (regular session)

The minutes of the meeting held on September 22, 2023 were approved unanimously and by consent as circulated.

3. Minutes of September 22, 2023, meeting (*in camera* session)

The minutes of the *in-camera* meeting held on September 22, 2023 were approved unanimously and by consent as circulated.

4. External Appointment: Land Title and Survey Authority

The following resolution was passed unanimously and by consent:

BE IT RESOLVED the Benchers approve putting forward all five eligible candidates as the Law Society nominees for consideration by the LTSA for appointment for a three-year term commencing April 1, 2024.

REPORTS

5. President's Report

Second Vice-President Brook Greenberg, KC confirmed that no conflicts of interest had been declared.

President Christopher A. McPherson, KC began his report by thanking Second Vice-President Brook Greenberg, KC for chairing the meeting in his stead. He then provided Benchers with an overview of the recent Federation meetings in Whitehorse, which had focused on the use of AI and technology within the legal profession.

Mr. McPherson provided an overview of the recent International Conference of Legal Regulators, which took place in Dublin, Ireland. He indicated that AI and the wellness of the profession were two topics of discussion.

Mr. McPherson concluded his report with some remarks regarding the use of the notwithstanding clause contained in section 33 of the Charter of Rights and Freedoms by the Government of Saskatchewan to require that teachers inform parents if any students under 16 use a different name or pronoun. Mr. McPherson spoke about his personal experiences as a member of the 2SLGBTQI+ community and the challenges that he faced, as well as those that many young people within the community face. He spoke about the importance of lawyers standing up for the individual rights of everyone to prevent discrimination, regardless of gender identity.

6. CEO's Report

Don Avison, KC began his report by echoing Mr. McPherson's comments regarding the Government of Saskatchewan's use of the notwithstanding clause contained in section 33 of the Charter of Rights and Freedoms. He indicated that a number of provincial governments had been invoking the use of section 33 to override certain portions of the charter when passing legislation, and he expressed his concerns regarding the perceived comfort of some governments invoking this section. He spoke about the importance of the Federation and others, including the Attorney General, speaking out on those occasions when government invokes the notwithstanding clause in section 33.

Mr. Avison spoke about the new *International Credentials Recognition Act*, which is intended to help regulatory bodies improve the credential recognition process. He indicated that he was of the view that the substantial work the Law Society and the Federation have done in regard to the recognition of international credentials should be highlighted and that this has already been communicated to the provincial government. Mr. Avison also spoke about the significant number of lawyers in BC who have earned their credentials outside of Canada, and that he was of the view that the provincial government's focus would be more on other professions with this new statute.

Mr. Avison provided an overview of the recent International Conference of Legal Regulators, at which he had participated on a panel regarding building a better regulator with representatives from Ireland, New Zealand, Scotland, Germany, and the Netherlands. He indicated that there had been quite a bit of discussion regarding the issue of independence. He spoke about a presentation that was given regarding the use of AI within the context of the legal profession, and he indicated that he was in discussions with other Canadian law societies to make this presentation available to the profession as a whole. Mr. Avison informed Benchers that he had received quite a bit of interest from other law societies regarding the work the Law Society is currently doing in a number of areas, including trust accounting procedures and in-house audits.

Mr. Avison updated Benchers on the progress of the Indigenous Cultural Awareness Program. He indicated that quite a bit of work was taking place to ensure that all lawyers have completed the program by the deadline. He further indicated that if any lawyer has not completed the program by the deadline, there would be a financial penalty and then suspension if the program is not completed within 60 days beyond the deadline.

PRE-IN CAMERA SESSION

Mr. Avison indicated that representatives from the Ministry had offered to attend an *in camera* session with Benchers to provide a status update on the single legal regulator initiative. He further indicated that if Benchers were not prepared to hold this portion of the meeting *in camera*, the session could not take place as the Ministry is involved in a process of confidential discussions with the parties affected by the proposed legislation, and is not authorized to have these discussions publicly at this point in time.

A motion was made and seconded to go *in camera*.

The Benchers discussed the advantages and disadvantages of hearing from the Ministry staff on the confidential *in camera* basis. A motion to go *in camera* was made and was approved by the majority of Benchers.

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

6. CEO's Report continued

Mr. Greenberg provided a brief introduction of Virginia Kwong, Director of Registration and Licensee Services.

Ms. Kwong provided a presentation and demonstration of the Law Society's downloadable and printable member cards. She spoke about the history of Law Society member cards, the benefits of the new downloadable versions, and the timeline for the downloadable versions, which went into effect October 2023. Ms. Kwong also demonstrated how lawyers would be able to access the downloadable cards and reviewed the communications that had been sent as part of the change management plan.

Benchers discussed potential access concerns for lawyers who need to visit clients in correctional facilities, as many criminal lawyers currently rely on the printed cards for access. Benchers also discussed the importance of ensuring that administrative staff at correctional facilities were aware of the change and how best to address issues lawyers may face when visiting more remote jurisdictional areas, as internet service may not be available. Ms. Kwong advised that the Registration and Licensee Services department had met with a number of representatives from

correctional services and provided communication regarding this change. She also advised that lawyers had been encouraged to contact the Registration and Licensee Services department with any questions and concerns, and that the department would also be conducting check-ins with correctional staff to address any issues.

Benchers also discussed the security of using a downloadable PDF. Ms. Kwong advised that the PDF version of the card would only be available once the lawyer had logged into the Member Portal and that the QR code would only take users to the landing page of the lawyer directory. Adam Whitcombe, KC added that the previous process involved printing and mailing the physical cards, and that this new process would not be perfect, but would be an improvement over the old process.

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

Mr. Greenberg provided a brief overview of the written report he provided for Benchers' information, which included an overview of the recent Federation meetings. He indicated that the next Federation Council meeting would take place on December 11, 2023.

DISCUSSION/DECISION

8. Return to Practice Rules

Cheryl D'Sa, Chair of the Equity, Diversity and Inclusion Advisory Committee introduced the item and provided a brief overview of the proposed amendments to the return to practice rules. She indicated that the proposed amendments were a joint recommendation from the Equity, Diversity, and Inclusion Advisory Committee and the Credentials Committee, and that the amendments were being proposed to address barriers to practice, while also ensuring an important touchpoint to ensure that those who return to practice return with refreshed knowledge.

Benchers discussed the proposed amendments, including whether or not the Law Society's Practice Management Course was applicable to all lawyers and the best approach for ensuring competency, whether or not flexibility in the return to practice process should be captured in the Rules, and the importance of moving quickly on this matter due to the disproportionate impact of the current return to practice requirements on women.

Ms. D'Sa indicated that the Practice Management Course was selected because the subject matters in the modules aligned with those areas that come up most frequently in disciplinary conduct reviews. In addition, Ms. D'Sa indicated that use of the Practice Management Course ensured a consistent approach for those returning to practice. Ms. D'Sa also reminded Benchers that if those returning to practice were of the view that they did not need to take the course, they could apply to the Credentials Committee.

The following resolution was passed unanimously:

BE IT RESOLVED to amend Rules 2-88 to 2-90 along with any necessary consequential amendments to change the Law Society's approach to its return to practice requirements as set out in this memorandum.

9. Appointee Adjudicator Expense and Reimbursement Policy

Herman Van Ommen, KC Tribunal Chair introduced this item and provided some background on the proposed Appointee Expense and Reimbursement Policy, which would expand per diem payments to include lawyer adjudicators. Mr. Van Ommen spoke about how hearings have grown longer and more complex, and that the Tribunal had need to attract people to serve on panels. He also spoke about how the policy would help in improving the quality and timeliness of writing decisions, which in turn would serve the public interest through a more expedient hearing process as a whole.

Benchers discussed the budget for the proposed policy, how the amount was determined, and whether remuneration was the best approach for recruiting people to serve on panels. Mr. Van Ommen indicated that the rates had been based on the Law Society of Ontario's Tribunal and other administrative rates in BC. He also indicated that recruitment had become more challenging, and that he was of the view that compensation would help address this. Benchers also discussed instituting a review of the rates every three years, and Mr. Van Ommen was in agreement.

Benchers discussed metrics for adjudicator performance. Mr. Van Ommen advised that the Tribunal's annual report was public, which included adjudicator performance. He indicated that there was not a formal process for tracking or reviewing adjudicator performance, but that he was of the view that if an adjudicator was struggling or not meeting expectations, he would intervene.

The following resolution was passed unanimously:

BE IT RESOLVED the compensation for appointee adjudicators of the LSBC Tribunal be amended as proposed in the Appointee Adjudicator Expense and Reimbursement Policy and Rates, effective January 1, 2024.

FOR INFORMATION

10.2024 Fee Schedules

There was no discussion on this item.

11.2024 Executive Committee and Bencher Meeting Dates

There was no discussion on this item.

OTHER BUSINESS

Prior to Benchers moving *in camera*, Tanya Chamberlain spoke about the recent passing of Sally Lee, and gave tribute to her many years of contribution to the legal profession through her work as a court interpreter.

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

AB
2023-11-29