



Minutes

Benchers

Date: Friday, September 26, 2014

Present: Jan Lindsay, QC, President
Ken Walker, QC, 1st Vice-President
David Crossin, QC, 2nd Vice-President
(by telephone)
Haydn Acheson
Joseph Arvay, QC
Satwinder Bains
Pinder Cheema, QC
David Corey
Jeevyn Dhaliwal
Lynal Doerksen
Thomas Fellhauer
Craig Ferris
Martin Finch, QC
Miriam Kresivo, QC
Dean Lawton

Peter Lloyd, FCA
Jamie Maclaren
Sharon Matthews, QC (by telephone)
Ben Meisner
Nancy Merrill
Maria Morellato, QC
David Mossop, QC (by telephone)
Lee Ongman
Greg Petrisor
Claude Richmond
Phil Riddell
Elizabeth Rowbotham
Herman Van Ommen, QC
Cameron Ward
Sarah Westwood
Tony Wilson

Excused: Not Applicable

Staff Present: Tim McGee, QC
Deborah Armour
Jeffrey Hoskins, QC

Bill McIntosh
Jeanette McPhee
Adam Whitcombe

Guests:	Kevin Boonstra	Legal Counsel, Trinity Western University
	barbara findlay, QC	Member, Law Society of BC
	Gavin Hume, QC	Life Bencher
	Leonard Krog	MLA, Nanaimo and Justice Critic
	Bob Kuhn, J.D.	President, Trinity Western University
	Derek LaCroix, QC	Executive Director, Lawyers Assistance Program
	Michael Mulligan	Member, Law Society of BC
	Alex Shorten	President, Canadian Bar Association, BC Branch
	Geoffrey Trotter	Law Society Member, Geoffrey Trotter Law Corporation
	Art Vertlieb, QC	Life Bencher

CONSENT AGENDA

1. Minutes

a. Minutes

The minutes of the meeting held on July 11, 2014 were approved as circulated.

The *in camera* minutes of the meeting held on July 11, 2014 were approved as circulated

b. Resolutions

The following resolutions were passed unanimously and by consent.

- Amendment of Rule 5-10: Application to Vary Orders

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

By rescinding Rule 5-10 and substituting the following:

Application to vary certain orders

5-10(1) An applicant or respondent may apply in writing to the Executive Director for

(a) an extension of time

(i) to pay a fine or the amount owing under Rule 5-9 [*Costs of hearings*], or

(ii) to fulfill a condition imposed under section 22 [*Credentials hearings*],
38 [*Discipline hearings*] or 47 [*Review on the record*],

(b) a variation of a condition referred to in paragraph (a)(ii), or

(c) a change in the start date for a suspension imposed under section 38
[*Discipline hearings*] or 47 [*Review on the record*].

(1.1) An application under subrule (1)(c) must be made at least 7 days before the start date set for the suspension.

(1.2) The Executive Director must promptly notify the President of an application under subrule (1).

(2) The President must refer an application under subrule (1) to one of the following, as may in the President's discretion appear appropriate:

(a) the same panel that made the order;

(b) a new panel;

(c) the Discipline Committee;

(d) the Credentials Committee.

- (3) The panel or Committee that hears an application under subrule (1) must
 - (a) dismiss it,
 - (b) extend to a specified date the time for payment,
 - (c) vary the conditions imposed, or extend to a specified date the fulfillment of the conditions, or
 - (d) specify a new date for the start of a period of suspension imposed under section 38 [*Discipline hearings*] or 47 [*Review on the record*].
- (3.1) If, in the view of the President and the chair of the Committee to which an application is referred under subrule (2)(c) or (d), there is a need to act on the application before a meeting of the Committee can be arranged, the chair of the Committee may hear the application and make the determination under subrule (3).
- (6) An application under this Rule does not stay the order that the applicant seeks to vary.

Failure to pay costs or fulfill practice condition

- 5-10.1**(1) An applicant or respondent must do the following by the date set by a hearing panel, review board or Committee or extended under Rule 5-10 [*Application to vary certain orders*]:
- (a) pay in full a fine or the amount owing under Rule 5-9 [*Costs of hearings*];
 - (b) fulfill a practice condition as imposed under section 21 [*Admission, reinstatement and requalification*], 22 [*Credentials hearings*], 27 [*Practice standards*], 32 [*Financial responsibility*], 38 [*Discipline hearings*] or 47 [*Review on the record*], as accepted under section 19 [*Applications for enrollment, call and admission, or reinstatement*], or as varied under these Rules.
- (2) If, on December 31, an applicant or respondent is in breach of subrule (1), the Executive Director must not issue to the applicant or respondent a practising certificate or a non-practising or retired membership certificate, and the applicant or respondent is not permitted to engage in the practice of law.

- 2014 Law Society of Award Recommendation to Benchers

BE IT RESOLVED that John Hunter, QC be named as the recipient of the 2014 Law Society Award.

DISCUSSION/ DECISION

2. 2015 Fees and Budgets: Finance and Audit Committee Recommendations to the Benchers

2014 Finance & Audit Committee Chair Ken Walker, QC introduced the other Committee members¹ and addressed the Benchers. Mr. Walker confirmed the Committee's 2015 fee recommendations and outlined the budget preparation and review process that was employed by senior management and the Committee in arriving at those recommendations.² CEO Tim McGee, QC provided further background on management's budgeting process.

Mr. Walker moved (seconded by Mr. Lloyd) that the following resolutions be adopted by the Benchers:

BE IT RESOLVED THAT, commencing January 1, 2015, the practice fee be set at 1,992.00, pursuant to section 23(1)(a) of the *Legal Profession Act*, consisting of the following amounts:

General Fund	\$1,605.46
Federation of Law Societies contribution	30.00
Canadian Legal Information Institute contribution	36.98
Pro Bono contribution	30.06
Courthouse Libraries BC contribution	195.00
Lawyers' Assistance Plan contribution	67.00
Advocate subscription fee	27.50
Practice Fee	\$1,992.00

BE IT RESOLVED THAT:

- the insurance fee for 2015 pursuant to section 30(3) of the *Legal Profession Act* be set at \$1,750;
- the part-time insurance fee for 2015 pursuant to Rule 3-22(2) be set at \$875; and
- the insurance surcharge for 2015 pursuant to Rule 3-26(2) be set at \$1,000.

¹ Peter Lloyd, FCA (Vice-Chair), Thomas Fellhauer, Craig Ferris, Peter Kelly, Miriam Kresivo, QC and Bill Maclagan, QC.

² See page 57 of the meeting materials for the Finance and Audit Committee's presentation to the Benchers (2015 Fees and Budget: *Effective and Innovative Regulation*).

BE IT RESOLVED THAT:

- effective September 1, 2015, the training course registration fee be set at \$2,500, pursuant to Rule 2-44(4)(a); and
- effective September 1, 2015, the registration fee for repeating the training course be set at \$3,900, pursuant to Rule 2-44(4)(a).

Following discussion, the motion was carried unanimously.

Mr. Walker thanked CFO Jeanette McPhee for her valuable support to the Law Society and the Committee.

REPORTS**3. Legal Services Regulatory Framework Task Force Update**

Art Vertlieb, QC addressed the Benchers as Chair of the Legal Services Regulatory Task Force. Mr. Vertlieb introduced the other task force members³ and noted that the body was created early this year, following the Benchers' adoption of the recommendations of the Legal Service Providers Task Force in December 2013. Mr. Vertlieb outlined the mandate of the current task force⁴ and provided highlights of its work through 2014, including consultations with the Chief Justices of the BC Court of Appeal and Supreme Court, the Chief Judge and two Associate Chief Judges of the BC Provincial Court, the Chairs of BC's administrative tribunals, and representatives of the Law Society of Upper Canada and the Washington State Bar Association. Mr. Vertlieb noted that following consultation with the legal profession and the public in the fall, the task force expects to report with recommendations to the Benchers at their December meeting. Mr. Vertlieb thanked Mr. McGee, Mr. Lucas and Mr. Munro for their valuable assistance and support to the task force throughout the year.

4. President's Report

Ms. Lindsay briefed the Benchers on various events she has attended and matters she has undertaken on behalf of the Law Society since the last meeting, including:

- a. The Canadian Bar Association Mid-year Meeting in St. John's, NL.
- b. Welcoming Ceremonies for First Year Law Students at UBC and University of Victoria

³ Benchers David Crossin, QC (Vice-Chair), Satwinder Bains, Jeevyn Dhaliwal, Lee Ongman, and non-Benchers Karey Brooks, Nancy Carter, Dean Crawford, Carmen Marolla, Wayne Robertson, QC and Ken Sherk.

⁴ See: <http://www.lawsociety.bc.ca/page.cfm?cid=3902&t=Legal-Services-Regulatory-Framework-Task-Force>.

- c. Civil Review Tribunal Update
- d. Judicial Access Centre (JAC) Open Houses in Vancouver and Victoria

Ms. Lindsay attended in Vancouver and Mr. McGee attended in Victoria. Ms. Lindsay noted that about 50 people per day attend the Vancouver JAC.

- e. Law Firm Regulation Task Force Update

Ms. Lindsay introduced the members⁵ of the Law Firm Regulation Task Force⁶ and confirmed that the work of this new body is underway.

5. CEO's Report

Mr. McGee reported orally to the Benchers on the following matters:

- a. 2015-2017 Strategic Plan Development

Mr. McGee thanked the Benchers for their attendance and valuable contributions at yesterday's 'environmental scan' strategic planning session, facilitated by Nic Tsangarakis, principal of Kwela Leadership and Talent Management. The strategic issues identified at that session will be mapped against the elements of the Law Society's statutory mandate, for review by the Executive Committee, with the goal of presenting a draft outline of the Society's next three-year strategic plan for the Benchers' review and discussion at their October 31 meeting.

- b. Discipline Counsel Advocacy Workshop

This important training session for Law Society Discipline Counsel also took place yesterday. Led by Deborah Armour, Chief Legal Officer, and Jaia Rai, Manager, Discipline, the workshop featured conduct of simulated hearings, with three preeminent BC counsel (Ian Donaldson, QC, Leonard Doust, QC and Glen Ridgway, QC) volunteering their time to attend – answering questions, providing feedback and generally supporting the professional development of the Law Society's Discipline Counsel.

- c. Guest Lecture at the University of Victoria, Faculty of Law

Mr. McGee recently delivered a guest lecture to a Legal Ethics and Professionalism class at the University of Victoria law school. The level of engagement and interest shown by the

⁵ Benchers: Herman Van Ommen, QC (Chair), Martin Finch, QC, Peter Lloyd, FCA, Sharon Matthews, QC; and non-Benchers: Jan Christiansen, Lori Mathison, Angela Westamacott, QC and Henry Wood, QC.

⁶ For the task force's mandate, see: <http://www.lawsociety.bc.ca/page.cfm?cid=3966&t=Law-Firm-Regulation-Task-Force>.

attending students was noteworthy, and validates the decision by the Federation of Law Societies to include this course in the 'nation requirement' – i.e. a mandatory element of the Canadian law schools' curricula. Mr. McGee thanked Dean Jeremy Webber and Professors Martha O'Brien and Andrew Pirie for the invitation to attend.

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

Gavin Hume, QC briefed the Benchers as the Law Society's member of the Council of the Federation of Law Societies of Canada. Mr. Hume reported on the following matters:

a. Recent Conferences

In July Mr. Hume represented the Federation at two international conferences: a gathering of legal regulatory bodies, and a meeting on legal ethics.

b. Federation Council Meeting (June 2014)

Decisions were made to proceed with three significant initiatives:

- a national requirements review regarding the curricula of Canada's law schools
- a Federation governance review
- development of the Federation's next strategic plan

c. Federation Council Meeting and Conference (October 9-10, 2014, Halifax)

Council agenda matters will include:

- National Requirement Review Committee or Task Force
 - Among the issues to be considered by this new body will be the matter of a non-discrimination requirement, including but not limited to the recommendation of the Federation's special advisory committee on Trinity Western University's application for accreditation of its proposed School of Law
- Federation Governance Review Update
 - The Task Force conducting the review will provide a preliminary progress report

- Model Code Standing Committee Update
 - The Federation's Standing Committee on the *Model Code of Professional Conduct* (chaired by Mr. Hume) will propose several amendments to the Code, having engaged in extensive consultation with law societies across the country
- Strategic Planning
 - The Conference theme will be access to legal services. The program will include a presentation by the United Way on the effects of poverty on access, and site visits to several organizations in Halifax that deliver pro bono legal services to persons in need.

7. Report on the Outstanding Hearing & Review Decisions

Written reports on outstanding hearing decisions and conduct review reports were received and reviewed by the Benchers.

DISCUSSION/ DECISION

8. Consideration of Special General Meeting Members' Resolution

Ms. Lindsay reviewed the meeting protocol⁷ for presentation, discussion and voting on motions relating to implementation of the members' resolution passed at the special general meeting of the members of the Law Society held on June 10, 2014.

- **Motion 1 – Jamie Maclaren**

Mr. Maclaren moved (seconded by Ms. Bains) that the Benchers adopt the following resolution:

BE IT RESOLVED that the Benchers implement the resolution of the members passed at the June 10, 2014 special general meeting, and declare that the proposed law school at Trinity Western University is not an approved faculty of law for the purposes of the Law Society's admissions program.

⁷ See the minutes of the July 11 Bencher meeting (item 4) regarding the protocol for presentation and debate of motions, and the minute of the Benchers' September 17, 2014 email approval regarding order of voting on motions.

- **Motion 2 – Tony Wilson**

Mr. Wilson moved (seconded by Ms. Kresivo) that the Benchers adopt the following resolution:

BE IT RESOLVED THAT:

1. A referendum (the "Referendum") be conducted of all members of the Law Society of British Columbia (the "Law Society") to vote on the following resolution:

"Resolved that the Benchers implement the resolution of the members passed at the special general meeting of the Law Society held on June 10, 2014, and declare that the proposed law school at Trinity Western University is not an approved faculty of law for the purpose of the Law Society's admissions program."

Yes _____ No _____ (the "Resolution")

2. The Resolution will be binding and will be implemented by the Benchers if at least:
 - (a) 1/3 of all members in good standing of the Law Society vote in the Referendum; and
 - (b) 2/3 of those voting vote in favour of the Resolution.
3. The Benchers hereby determine that implementation of the Resolution does not constitute a breach of their statutory duties, regardless of the results of the Referendum.
4. The Referendum be conducted as soon as possible and that the results of the Referendum be provided to the members by no later than October 30, 2014.

- **Motion 3 – David Mossop, QC**

Mr. Mossop moved (seconded by Mr. Walker) that the Benchers adopt the following resolution:

WHEREAS:

1. The Benchers have before them for consideration at the September 26 meeting two motions in relation to the proposed law school at Trinity Western University;
2. There is currently litigation in British Columbia, Ontario and Nova Scotia that relates directly to approval of the proposed law school and the proceedings are expected to be heard before the end of this year; and
3. The Benchers have the discretion under Rule 2-27(4.1) to make a decision at any time on whether to adopt a resolution declaring that the proposed law school is not an approved faculty of law;

THEREFORE BE IT RESOLVED that consideration of the motions before the Benchers for decision at the September 26 meeting be postponed until the next regular meeting of the Benchers at least 14 days after the Benchers and the members of the bar have had an opportunity to consider the reasons of a trial decision in one of the legal actions now before the courts.

The Benchers then addressed Motions 1, 2 and 3 concurrently, speaking in the following order⁸:

- Round 1
 - Jamie Maclaren, Satwinder Bains, Tony Wilson, Miriam Kresivo, QC, David Mossop, QC, Ken Walker, QC, David Crossin, QC, Joseph Arvay, QC, Cameron Ward, Lee Ongman, Craig Ferris, Phil Riddell, Ben Meisner, Claude Richmond, Dean Lawton, Pinder Cheema, QC, Lynal Doerksen, Martin Finch, QC, Greg Petrisor, Sharon Matthews, QC, Maria Morellato, QC, Herman Van Ommen, QC, Elizabeth Rowbotham, Peter Lloyd, FCA, Nancy Merrill, Jeevyn Dhaliwal and David Corey.

⁸ For the webcast of the September 26 Bencher meeting, including the Benchers' debate of these three motions, see: <http://new.livestream.com/mediaco/lbcb09262014>

- Round 2
 - Jamie Maclaren, Joseph Arvay, QC and Tony Wilson.

Ms. Lindsay confirmed the conclusion of discussion of the three motions before the meeting, was concluded, and called for voting in the order that the Benchers had received notice of the motions.⁹

Voting on Motion 1 (Implement SGM Resolution):

The motion was defeated (9 in favour and 21 opposed).

Voting on Motion 2 (Hold Binding Referendum):

The motion was carried (20 in favour and 10 opposed).

Motion 3 was withdrawn by Mr. Mossop and Mr. Walker; Ms. Lindsay confirmed that no vote was required.

The Benchers discussed other matters *in camera*.

WKM
2014-10-20

⁹ Pursuant to the following Bencher resolution adopted as of September 17, 2014:

BE IT RESOLVED that the order of voting on any TWU-related motions presented and seconded at the Bencher meeting to be held on September 26, 2014 shall be the order in which notice of such motions have been provided to the Benchers; Mr. Maclaren's motion shall be voted on first, followed by Mr. Wilson's motion, followed by Mr. Mossop's motion.