

Law Society *of British Columbia*

Bencher Meeting: Minutes

To: Benchers

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

Staff present:	Jessica Abells	Alison Kirby
	Don Avison, KC	Julie Lee
	Gurprit Bains	Michael Lucas, KC
	Avalon Bourne	Claire Marchant
	Barbara Buchanan, KC	Jeanette McPhee
	Natasha Dookie	Michael Mulhern
	Jackie Drozdowski	Doug Munro
	Su Forbes, KC	Rashmi Nair
	Vicki George	Mimi Odkhuu
	Katrina Harry, KC	Maryanne Prohl
	Andrew Heinrichs	Michelle Robertson
	Kerryn Holt	Lesley Small
	Jeffrey Hoskins, KC	Serena Small
	Aara Johnson	Christine Tam
	Alison Luke	Adam Whitcombe, KC

Guests:	Dom Bautista	Executive Director, Courts Center & Executive Director, Amici Curiae Friendship Society
	Ian Burns	Digital Reporter, The Lawyer's Daily
	Freya Kodar	Dean of Law, UVic
	Elizabeth Kollias	President, BC Paralegal Association
	Jamie Maclaren, KC	Executive Director, Access Pro Bono Society of BC
	Robert McDiarmid, KC	Life Bencher, Law Society of BC
	Mark Meredith	Treasurer and Board Member, Mediate BC
	Joven Narwal, KC	Narwal Litigation LLP
	Ngai Pindell	Dean of Law, Peter A. Allard School of Law
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kerry Simmons, KC	Executive Director, Canadian Bar Association, BC Branch
Lana Walker	Assistant Dean of Law, Thompson Rivers University	

Consent Agenda

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

The minutes of the meeting held on February 2, 2024 were approved unanimously and by consent as circulated.

2. Minutes of February 2, 2024 meeting (*in camera* session)

The minutes of the *in camera* meeting held on February 2, 2024 were approved unanimously and by consent as circulated.

3. Code of Professional Conduct: Technological Competence

The following resolution was passed unanimously and by consent:

BE IT RESOLVED that the commentary to BC Code rule 3.1-2 be amended to include the following:

[4A] To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer's duty to protect confidential information set out in section 3.3.

[4B] The required level of technological competence will depend upon whether the use or understanding of technology is necessary to the nature and area of the lawyer's practice and responsibilities and whether the relevant technology is reasonably available to the lawyer. In determining whether technology is reasonably available, consideration should be given to factors including:

- (a) the lawyer's or law firm's practice areas;
- (b) the geographic locations of the lawyer's or firm's practice; and
- (c) the requirements of clients.

4. Terms of Reference: Equity, Diversity, and Inclusion Advisory Committee

The following resolution was passed unanimously and by consent:

BE IT RESOLVED the Benchers adopt the amendments to the Equity, Diversity and Inclusion Advisory Committee's Terms of Reference, as laid out in the agenda materials, pursuant to the

recommendation of the Mental Health Task Force, as approved by the Benchers in December 2023.

5. Appointed Bencher and Tribunal Adjudicator Expense Policies

The following resolution was passed unanimously and by consent:

BE IT RESOLVED that:

- a) the Bencher expense reimbursement policy be revised to remove paragraph 5.09 *Per Diems for Appointed Benchers attending hearings as public adjudicators*;
- b) the LSBC Tribunal's Appointee Adjudicator Remuneration and Expense Policy be amended so that the rate in paragraph 4.01(a) for an hour or less of time spent within a given calendar day be increased from \$135 to \$225; and
- c) the LSBC Tribunal's Appointee Adjudicator Remuneration and Expense Policy will apply to appointed Benchers when acting as adjudicators.

Reports

6. President's Report

President Jeevyn Dhaliwal, KC confirmed that no conflicts of interest had been declared.

President Dhaliwal started her report by speaking about the West Coast Leaf Equality Breakfast, which was held earlier that morning to celebrate International Women's Day. She spoke about the importance of women's rights and gender equality, and the many ways that women have been facilitating positive change. Ms. Dhaliwal provided a brief overview of the Government of Canada's theme for International Women's Day, Invest in Women, and she spoke about the theme as a call to action for gender equality as one of the most effective ways to build healthier, more prosperous, and more inclusive communities. She spoke about the role that everyone has to play in building a future where everyone can reach their full potential. Ms. Dhaliwal also spoke about the work the Law Society has done to invest in women, including achieving gender parity on the board and supporting women to pursue senior leadership roles throughout the organization.

Ms. Dhaliwal provided a brief overview of some of her recent activities, including visits to the Kootenay Bar and the Law Society of Alberta, meeting with the Chief Justices and Chief Judge to speak about access to justice and judicial vacancies across the province, attending the BGuiled Debates, and attending welcoming ceremonies for Chief Justice Leonard Marchand and Judge Jacqueline McQueen.

Ms. Dhaliwal concluded her remarks by thanking Benchers for taking part in the call ceremonies.
DM4398685

7. CEO's Report

Don Avison, KC began his report with a brief update on the current status of the proposed single legal regulator legislation. He indicated that a third consultation draft had been received from the Ministry, and that the Law Society and the Ministry were not in agreement regarding fundamental elements of the proposed legislation. Mr. Avison spoke about the timing of the spring legislative session, and he indicated that if the draft legislation was to be tabled in its current form, his recommendation would be to pursue litigation to address the fundamental importance of the independence of the profession. He further indicated that he hoped that this option would not need to be pursued. Mr. Avison indicated that he was of the view that the Ministry should provide information to the profession and to the public regarding the significant changes that are being proposed, so as to facilitate meaningful and transparent discussion. He then encouraged Benchers to attend the "Through the Looking Glass: Independence and Regulation in BC" session being held by the CBABC regarding the importance of the independence of the profession and the judiciary, which would take place on April 12.

Mr. Avison informed Benchers that the Law Society Tribunal had released its annual report, which was available on the Tribunal's website. He encouraged all Benchers to take the time to review the report, and indicated that the Tribunal Chair would be attending a future meeting to provide some background in relation to the report and the work the Tribunal has been doing to improve the efficiency of Tribunal processes.

Mr. Avison then spoke about the recent Kootenay Bar Association event that he had attended along with Ms. Dhaliwal. He indicated that additional regional sessions would be held across the province to discuss Law Society initiatives and the implications of the proposed single legal regulator legislation.

Mr. Avison spoke about the tentatively scheduled April 26 Bencher meeting, and confirmed that this meeting would take place as a hybrid meeting. He indicated that additional meetings may be needed depending on whether or not the proposed single legal regulator legislation is tabled.

Mr. Avison informed Benchers that the consultation period on the Federation's proposed amendments to the Model Code in response to Call to Action 27 has been extended to November. He encouraged Benchers to bring the proposed amendments to the attention of lawyers within their communities.

Mr. Avison spoke about the upcoming Federation meetings, which would be taking place in Banff the following week. He indicated that the current state of affairs in BC in regard to the proposed single legal regulator legislation would be a main topic of discussion. He further indicated that meetings were also being held with the western law societies on this topic.

Mr. Avison announced that the Law Society has been named one of BC's Top 100 Employers for the third year in a row. He thanked staff for their dedication and hard work.

Mr. Avison concluded his report with some comments regarding judicial vacancies in BC. He indicated that five new appointments were made recently, but that a number of vacancies still need to be addressed. Mr. Avison spoke about a recent meeting that took place with the Minister of Justice and Attorney General of Canada on this topic, and he indicated that the Law Society would be putting together some materials to include on the website encouraging members of the profession to make applications to be considered for judicial appointment.

Discussion/Decision

8. Rule Amendments: Client Identification and Verification

Ms. Dhaliwal provided some background to the proposed Rule amendments regarding client identification and verification.

Benchers discussed the proposed Rule amendments and what would constitute an appropriate authentication process. Mr. Avison indicated that this would be included within the guidelines, along with some suggestions for programs, which would accompany the Rule amendments should they be approved.

The following resolution was passed unanimously:

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

1. Rule 3-102 is amended

- (a) in subrule (2), by striking out the word “original” and substituting “authentic”;***
- (b) in subrule (2) (a) (i) (B), by striking out the word “physical” and by striking out the word “client” each time it appears and by replacing it with “individual”;***
- (c) in subrule (2) (a) (iii)***
 - (i) by striking out “with respect to the individual” and by replacing it with “obtained by the lawyer from a reliable source”;***
 - (ii) in subrules (A) and (B), by striking out “from a reliable source”;***
- (d) in subrule (2) (b), by adding “obtained by the lawyer” between “a written confirmation” and “from a government registry”***
- (e) by adding the following as subrule 2.1***

“For the purposes of subrule (2) (a) (i), an electronic image of a document issued by the government of Canada, a province or a territory or a foreign government, other than a municipal government, may be treated as authentic provided the lawyer has used reliable technology to confirm that the identification document is genuine, and has confirmed that the name and photograph are those of the individual in the identification document.”

(f) by rescinding subrules (3) and (3.1)

2. *Rule 3-104 (5) is rescinded.*

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

9. Rule Amendments: Executive Committee Election Tie Votes

Ms. Dhaliwal provided some background to the proposed revision to Rule 1-41, which would allow all Benchers to vote if a second election is required to break a tie-vote in the initial election for the appointed Bencher position on the Executive Committee.

There was no discussion, and the following resolution was passed unanimously:

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

1. ***By rescinding Rule 1-41 (11.1) and substituting:***

(11.1) When a tie vote causes an election under subrule (11)

(a) despite subrule (3), the candidates who were tied are the only candidates, and

(b) despite subrule (6) (b), all Benchers are eligible to vote.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

10. Rule Amendments: Call Ceremonies

Ms. Dhaliwal provided some background to the proposed Rule amendments, which would allow for presentation in open court to be optional for all lawyers.

Benchers discussed the proposed Rule amendments. Some Benchers were not in agreement with making presentation in open court optional, as this tradition has been in place for some time and serves an important ceremonial function, provides a sense of belonging for newly called lawyers, and demonstrates the diverse representation of Benchers, while also providing an opportunity for the Law

Society to speak about important issues such as the mental health of the profession and access to justice initiatives. In the event newly called lawyers need to seek an exemption from the requirement to be presented in open court, some Benchers were in favour of permitting those lawyers to make such a request to the Executive Director.

Other Benchers agreed that presentation in open court should be voluntary, with the rationale being that newly called lawyers should be provided with the freedom of choice as to whether or not they wish to attend, as it can be difficult for some lawyers to do so, and this should not be a barrier to practising law. Some Benchers were also of the view that the Law Society should be open to adapting its traditions and practices in line with its goal of being an innovative and modern regulator.

The following resolution was passed by a 2/3 majority of the Benchers:

BE IT RESOLVED that Law Society Rule 2-84 is amended as follows:

- 1. By deleting the word “must” in subrule (2):***
- 2. By adding the word “must” at the beginning of subrule (2) (a);***
- 3. By adding the word “may” at the beginning of subrule (2) (b);***
- 4. Subrules (2.1), (5) and (6) are rescinded.***

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

11. In Principle: Disclosure and Privacy Review

Ms. Dhaliwal provided some background regarding the proposed review of the Law Society’s disclosure and privacy practices and Rules.

Benchers discussed the importance of conducting the proposed review, particularly in regard to Rules relating to the publishing of decisions. Some Benchers also discussed the importance of finding the right balance between transparency and the confidentiality of complaints.

The following resolution was passed unanimously:

BE IT RESOLVED that the Benchers approve, in principle, staff conducting a review of the Law Society’s disclosure and privacy practices and Rules, and developing specific proposals regarding Rule amendments for consideration by the Benchers at future meetings.

12. In Principle: Bencher Election Rules Revisions

Ms. Dhaliwal provided some background regarding the proposed amendments to the Rules governing Bencher elections, so as to provide for electronic elections to be the default election format, to shorten DM4398685

the voting period from two weeks to one week, and to grant authority to the Executive Director to determine the validity of any electoral district change requests, with the opportunity to appeal the decision of the Executive Director to the Executive Committee.

Bencher discussed shortening the voting period from two weeks to one week and what the timing would be. Ms. Dhaliwal advised that the period would be a full calendar week so as to allow for voting to occur over a weekend. Some Bencher expressed concerns regarding shortening the voting period as it could potentially affect voter turn-out. Other Bencher were of the view that the two week voting period was too long, and since elections were conducted electronically, shortening the voting period likely would not affect voter turn-out.

The following resolution was passed by a majority of the Bencher:

BE IT RESOLVED that the Bencher approve, in principle, revisions to the election rules to:

- a) provide for electronic elections to be the default election format, revise or rescind those rules pertaining to paper-based elections, and authorize the Executive Director to establish election procedures should a paper-based election be required at any point in the future;
- b) shorten the voting period from two weeks to one week; and
- c) grant authority to the Executive Director to determine the validity of any electoral district change requests, with the opportunity to appeal the decision of the Executive Director to the Executive Committee.

Updates

13. National Discipline Standards Report: Update & Implementation

Natasha Dookie, Chief Legal Officer, provided background information on the National Discipline Standards and then presented the Law Society's progress for 2023 for each of the standards. She indicated that the Law Society had met 24 out of 26 standards, a performance similar to the previous two years, with standards 9 and 10 not being met. Ms. Dookie then spoke about contributing factors to not meeting these two standards, as well as mitigation methods.

Bencher discussed the level of complexity of files and if this has an impact on timing for hearings. Ms. Dookie advised that a number of factors contributed to the timing, including the availability of external counsel and the complexity of files. She also advised that the use of consent agreements have been a helpful tool to bring resolution to files more quickly. Mr. Avison added that although two of the standards were not met, staff continue to make efforts to improve performance in regard to these standards.

14. Alternative Discipline Process: Program Update

Ms. Dookie and Jessica Abells provided an update on the Alternative Discipline Process program, including an overview of the program, guiding principles and key features, the operationalization of the process, and observations of the program since its conception.

Benchers discussed the Alternative Discipline Process, including the oversight process, the complainant's involvement with the process and outcome, and maintaining privacy.

For Information

15. What We Heard – Access to Justice Priorities for the Law Society in 2024

There was no discussion on this item.

Closing Remarks

Ms. Dhaliwal provided some closing remarks regarding some events, which had been cancelled since 2020 as a result of the COVID-19 pandemic, including the Life Bencher dinner. She indicated that this event would likely take place in some form in the fall of this year and that further details would follow. Life Bencher, Robert W. McDiarmid, KC was then invited to speak and provided some comments on his experiences attending the Life Bencher dinners.

Benchers discussed the Life Bencher dinner, as well as Commemorative Certificate events. Mr. Avison advised that the two events were separate, and that he was of the view that a Life Bencher event would likely be held in September, and that it would also include appointed Benchers who had completed the maximum allowable terms under the Government of BC's policy.

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

AB
2024-04-18