



## Bencher Meeting: Minutes

**To:** Benchers

**Purpose:** Approval (Consent Agenda)

**Date:** Saturday, June 1, 2024

**Present:**

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

<b>Staff present:</b>	Don Avison, KC	Claire Marchant
	Avalon Bourne	Jeanette McPhee
	Barbara Buchanan, KC	Cary Ann Moore
	Natasha Dookie	Doug Munro
	Su Forbes, KC	Rashmi Nair
	Vicki George	Lesley Small
	Kerryn Holt	Christine Tam
	Jeffrey Hoskins, KC	Adam Whitcombe, KC
	Michael Lucas, KC	

<b>Guests:</b>	Ryan Anderson, KC	President-elect, Law Society of Alberta
	Dom Bautista	Executive Director, Courts Center & Executive Director, Amici Curiae Friendship Society
	Tim Brown, KC	Executive Director, Law Society of Saskatchewan
	Barbara Carmichael, KC	Deputy Attorney General of British Columbia
	Ian Donaldson, KC	Life Bencher
	Cori Ghitler, KC	Deputy Executive Director and Director of Policy and Education, Law Society of Alberta
	Jonathan G. Herman	Chief Executive Officer, Federation of Law Societies of Canada
	Erin M.S. Kleisinger, KC	President, Federation of Law Societies of Canada
	Freya Kodar	Dean of Law, University of Victoria
	Leah Kosokowsky	Chief Executive Officer, Law Society of Manitoba
	Suzanne LaLonde, KC	President, Law Society of Saskatchewan
	Mark Meredith	Treasurer and Board Member, Mediate BC
	Lee Nevens	First Vice-President, Canadian Bar Association, BC Branch
	Elizabeth Osler, KC	Chief Executive Officer & Executive Director, Law Society of Alberta
	Nicholas Peterson	Secretary/Treasurer, Trial Lawyers Association of BC
	Ngai Pindell	Dean of Law, Peter A. Allard School of Law
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Deanna Steblyk KC	President, Law Society of Alberta
	Gerri Wiebe, KC	Incoming President, Law Society of Manitoba

## Consent Agenda

### 1. Minutes of April 26, 2024, meeting (regular session)

The minutes of the meeting held on April 26, 2024 were approved unanimously and by consent as circulated.

### 2. Minutes of April 26, 2024, meeting (*in camera* session)

The minutes of the *in camera* meeting held on April 26, 2024 were approved unanimously and by consent as circulated.

### 3. Rule Amendments: Family Law Arbitrators / Parenting Coordinators

The following resolution was passed unanimously and by consent:

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

1. ***Rule 2-87 is amended by deleting the word “master” wherever it appears and by substituting “associate judge” in its place, and by deleting the word “a” where it appears before the words “associate judge” and replacing it with “an”;***
2. ***Rule 3-36 (1) (b) is amended by deleting “or sat as a judge or master,” and replacing it with “or sat as a judge, associate judge or the equivalent officer of a superior court in Canada, or member of an administrative tribunal,”;***
3. ***Rule 3-37 (1) (b) is amended by deleting “or sat as a judge or master,” and replacing it with “or sat as a judge, associate judge or the equivalent officer of a superior court in Canada, or member of an administrative tribunal,”.***

**REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT**

### 4. Rule Amendments: Bencher Election Rule Revisions

This item was removed from the consent agenda for discussion.

Some Benchers were of the view that the proposed amendments to Rule 1-27 (0.3) did not provide enough clarity as to the length of the voting period, and that specifying that voting would close no earlier, as opposed to no later, than the close of business on November 14 would provide better clarity. Other Benchers were of the view that the language in the proposed amendments was appropriate.

Mr. Avison advised that the intent of the proposed amendments was to provide a one-week voting period, as was approved in principle at the March 8 Bencher meeting, but to also have flexibility built into the Rules, in cases where election dates occurred on a weekend or a statutory holiday. He further

indicated that a significant amount of communication is provided in advance and during each Bencher election to ensure that the profession is aware of key dates and information.

Following some further discussion, Mr. Avison recommended that this item be deferred to the July 5 Bencher meeting in order to address the concerns that had been raised. Benchers were in agreement with this approach. Ms. Dhaliwal reminded Benchers to provide advance notice to the Chair regarding any requests to remove items from the Consent Agenda.

## **5. External Appointment: Vancouver Airport Authority**

The following resolution was passed unanimously and by consent:

**BE IT RESOLVED** the Benchers appoint Suromitra Sanatani as the Law Society nominee, as recommended by Watson Board Advisors, to the VAA Board of Directors for three-year term commencing June 3, 2024.

## **6. Changes to the Code re: Single Party Communications Rule**

The following resolution was passed unanimously and by consent:

**BE IT RESOLVED THAT** the commentary to *BC Code* rule 5.1-2.3 be amended to add the language in red underlined text as follows:

### **Single-party communications with a tribunal**

**5.1-2.3 Except where authorized by law, and subject to rule 5.1-2.2, a lawyer must not communicate with a tribunal in the absence of the opposing party or their lawyer (when they are represented) concerning any matter of substance, unless the opposing party or their lawyer has been made aware of the content of the communication or has appropriate notice of the communication.**

### **Commentary**

**[1] It is improper for a lawyer to attempt to influence, discuss a matter with, or make submissions to, a tribunal without the knowledge of the other party or the lawyer for the other party (when they are represented). A lawyer should be particularly diligent to avoid improper single-party communications when engaging with a tribunal by electronic means, such as email correspondence.**

**[2] When a tribunal invites or requests a communication from a lawyer, the lawyer should inform the other party or their lawyer. As a general rule, the other party or their lawyer should be copied on communications to the tribunal or given advance notice of the communication.**

**[3] This rule does not apply in the context of mediation or prohibit single-party communication with a tribunal on routine administrative or procedural matters, such as scheduling hearing dates or appearances. A lawyer should consider notifying the other party or their lawyer of administrative communications with the tribunal. Routine administrative communications should not include any submissions dealing with the substance of the matter or its merits.**

**[4] When considering whether single-party communication with a tribunal is authorized by law, a lawyer should review local rules, practice directives, and other relevant authorities that may regulate such a communication.**

## Reports

### 7. President's Report

President Jeevyn Dhaliwal, KC acknowledged Christina J. Cook's standing conflict and confirmed that no other conflicts of interest had been declared.

Ms. Dhaliwal began her report by providing an overview of her recent events and activities, including attending Chief Justice Christopher Hinkson's retirement celebration, attending the Vancouver Bar Association's annual judges' luncheon, attending the CBABC Provincial Council meeting, hosting the Federation of Asian Canadian Lawyers at the Law Society for a screening of "But I Look Like a Lawyer", as part of Asian Heritage Month, attending the Northern BC Law Talks, presenting the UBC Gold Medal Award, and attending call ceremonies. She thanked Benchers for their assistance with the May call ceremonies and encouraged everyone to attend future ceremonies.

Ms. Dhaliwal spoke about Bill 21 and the significant media interest the Bill has received. She also spoke about the work the Law Society has done thus far to engage with media, the profession, and the public on the potential implications of Bill 21.

Ms. Dhaliwal then invited Brian Dybwad to speak about the initiatives being put forward to address access to justice challenges in the County of Nanaimo. Mr. Dybwad spoke about the challenges faced within the County of Nanaimo, including a lack of family law lawyers and lawyers taking on legal aid files, as well as challenges in finding court time to address the backlog of cases and senior lawyers retiring without replacements. He indicated that there had been some improvement, but waitlists in general for treatment and counselling continued to be an issue. Mr. Dybwad spoke about the limited space within care homes for children in care, and that often children have been removed from their homes in one community and placed into a care home in a different community, which creates a number of issues for families trying to stay connected. He then spoke about some of the initiatives being done to improve access to justice in the County of Nanaimo, including the opening of a safe house for mothers at risk of having their children taken into care, the opening of a BC First Nations

Justice Council Indigenous Justice Centre in Nanaimo, the opening of additional space within the Transition Home Society for women and children leaving domestic violence situations, and increased diversity in the appointment of judges. Ms. Dhaliwal thanked Mr. Dybwad for his comments.

## **8. CEO's Report**

Don Avison, KC began his report by recognizing the significant support of staff over the last several months in organizing the Bencher Retreat. He also thanked the representatives from the Federation and from the Western law societies for attending the retreat and for their support.

Mr. Avison provided an overview of the regional sessions regarding Bill 21 that were being organized over the course of the coming months, and encouraged Benchers to reach out if they would like to have a session organized in their region. He spoke about the recent session held in Victoria and the robust discussions that had taken place.

Mr. Avison then spoke about the engagement sessions that Vicki George, Senior Advisor of Indigenous Engagement and Jillian Currie, Indigenous Navigator had held in Northern BC regarding the role of the Law Society and the work being done regarding the implementation of the report and recommendations of the Indigenous Engagement in Regulatory Matters (IERM) Task Force. He also spoke about the work Ms. George has been doing to provide opportunities for staff to learn more about the Law Society's truth and reconciliation work.

Mr. Avison then invited Ms. George to provide some additional remarks regarding the regional sessions and the work that Ms. Currie and her have been doing. Ms. George spoke about the regional sessions that had taken place across northern BC in Terrace, Prince Rupert, Smithers, Prince George, and Williams Lake, and the importance of this in-person engagement as referenced in the report of the IERM Task Force. She then provided an overview of the sessions and the focus of discussions, which included the implementation of the recommendations of the report of the IERM Task Force and what led to the creation of the Task Force, as well as the roles of Ms. George and Ms. Currie and Law Society processes regarding complaints. Ms. George spoke about the importance of building these relationships with Indigenous people and communities across the province, and that along with Ms. Currie, she would be holding similar sessions across Vancouver Island.

## **Discussion/Decision**

### **9. Articling Placement Pilot Program**

Ms. Dhaliwal provided an overview of the item and some background regarding the proposal to develop an articling placement pilot program in BC.

Mr. Avison spoke about the proposal and referenced the Law Society of Alberta's program, which was piloted in February 2022 and made permanent in February 2023. He indicated that Cori Ghitter, KC, Deputy Executive Director and Director, Policy and Education at the Law Society of Alberta, would be providing a presentation regarding the Law Society of Alberta's experiences with this type of program. He spoke about the importance of learning from others and having a degree of consistency across the law societies in how these types of matters were addressed, referencing the Western Competency Profile, which has been developed by the four western law societies.

Mr. Avison introduced Ms. Ghitter, and she provided an overview of the Law Society of Alberta's articling placement pilot program, including the beginnings of the program, the consultation process with firms, the program criteria and framework, and program usage, including the number of inquiries and a breakdown of demographics. Ms. Ghitter also provided an overview of some of the challenges encountered by the program, including firms declining to take a student, capacity issues with firms, and how to address the behaviour of principals who have had their students removed, as well as the successes, including placing a number of students, providing a much better articling environment for some students, and providing good opportunities for firms with the students. She also spoke about the next steps and iterations for the pilot program, indicating that the Law Society of Alberta Benchers are committed to funding and continuing the program.

Benchers discussed the articling placement pilot program, with focus on the mechanics of the program, the resources available to students, and the demographics of those participating. Benchers also discussed ways to incentivize law firms to participate in the program. Ms. Ghitter advised that some of the incentives that the Law Society of Alberta had put in place included a list of participating firms on the Law Society of Alberta's website and subsidizing the cost of tuition for bar admission programs, and that more time would be spent considering other ways that firms are able to participate, so that financial constraints are not a barrier to participation.

Benchers discussed the regulator's duty of care. Ms. Ghitter provided an overview of some of the Law Society of Alberta's other initiatives, including an Indigenous summer school program and supports for internationally trained lawyers.

Benchers discussed steps taken once a student has requested a change in articles, as well as what would happen should a principal who had a student removed apply to be a principal again. Ms. Ghitter advised that the Law Society of Alberta centres the student in the process, and that generally students do not wish to take formal action against their principals. She further advised that any principals who have had students removed through this program would be denied the opportunity to be principals again, though this has not yet occurred. Ms. Ghitter indicated that the response to the principal would depend on the current status of the student.

Mr. Avison advised that this program would be one component of a larger approach to addressing challenges with articling and the current path to licensure. He indicated that he was of the view that

since the Law Society required articles in order to become a lawyer in BC, then the Law Society had an obligation to ensure a safe experience for students. He further indicated that the Law Society already denied some former principals the opportunity to be principals again, and that it would be better to have a permanent program to help the Law Society more proactively address these issues. Mr. Avison spoke about the importance of considering the articling experience as a whole, and thinking about whether the current lawyer development programs and processes are working well, and if new lawyers have the skills and education to help them succeed, or if new ways of doing things need to be considered. He indicated that staff would bring forward some ideas regarding lawyer development for discussion at a future Bencher meeting.

The following resolution was passed unanimously:

**BE IT RESOLVED** that the Benchers approve the development of an Articling Placement Pilot Program in British Columbia.

## **10. Bencher Oath of Office**

This item was deferred to a future meeting.



## **12. Updates from Federation of Law Societies of Canada and Western Law Societies**

Ms. Dhaliwal introduced Erin M. S. Kleisinger, KC, President of the Federation of Law Societies of Canada and Jonathan Herman, CEO of the Federation of Law Societies of Canada.

Ms. Kleisinger provided some remarks on the role and function of the Federation. She spoke about the constitutional challenge launched by the Federation in the BC Supreme Court in regard to provisions of the *Income Tax Act* that expanded mandatory reporting obligations for lawyers, which threatened solicitor client privilege. Ms. Kleisinger then provided an overview of some of the Federation's current priorities and initiatives, including CanLII, recent amendments to the Model Code sections on harassment and discrimination, anti-money laundering initiatives, the National Study on the Wellbeing of the Legal Profession, revising the national requirement for entry to the profession, and truth and reconciliation. She then spoke about Bill 21 and expressed some concerns regarding the implications of legislative intrusion upon the independence of the legal profession. She referenced the communication sent by the Federation to the Attorney General regarding Bill 21, which urged the Attorney General to engage in meaningful consultation, and to ensure that there was an opportunity for robust debate on the provisions of the legislation. Ms. Kleisinger indicated that the communication went unanswered. Ms. Kleisinger concluded her remarks by recognizing all of the Law Society staff and Benchers who participate in the work of the Federation.

## **11. Bill 21 – Legal Professions Act**

Ms. Dhaliwal introduced the item and indicated that Mr. Avison would provide a public update.

Mr. Avison provided a brief summary of the current status of Bill 21, which had been introduced in the Legislative Assembly on April 10. Mr. Avison spoke about the Law Society's position, which continues to be that due to the nature of the significant changes contemplated by Bill 21, there should be full, open, and transparent public debate about the implications of the legislation, which did not happen before the matter was brought forward to the Legislative Assembly for consideration. He expressed his concerns regarding the implications of the Bill, not only in respect to the Law Society, but for regulation generally.

Mr. Avison then spoke about the committee debate of the Bill, which was truncated with only 30 sections of the Bill receiving debate before closure was invoked and the Bill received Royal Assent on May 16. He expressed the view that it would have been far more beneficial for the public interest and for the profession to have had the opportunity for a fulsome public discussion.

Mr. Avison then indicated that the Law Society was supportive of a number of aspects of Bill 21, but that there were some fundamental components of the Bill with which the Law Society was not in agreement. As a result, the Law Society had filed a Notice of Civil Claim in the Supreme Court of BC on May 17, and a week later, an injunction application was also filed with the Supreme Court of BC with a hearing date set to commence on June 17. He indicated that there were a number of parties that

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would likely seek intervener status or otherwise participate in the litigation. Likewise, the situation in BC will be a topic of discussion at the International Conference of Legal Regulators later this year. Mr. Avison concluded his remarks by noting that this matter would continue to occupy a great deal of the Law Society’s attention over the course of the year, and that Benchers would be kept apprised of any new developments.

## **For Information**

### **13. External Appointment: British Columbia Law Institute**

There was no discussion on this item.

### **14. Briefing by the Law Society’s Member of the CBA Provincial Council**

There was no discussion on this item.

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

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