
[485]

APPROVED Public Minutes
of the Four Hundred and Eighty-Fifth Meeting
of the Benchers Board of the Law Society of Alberta (Law Society)
held at the Law Society Offices, Calgary, Alberta
September 28, 2017

Benchers present:

Anthony Young, President
Donald Cranston, President-Elect
Robert Armstrong
Glen Buick
Arman Chak
Brett Code
Sandra Corbett
Nancy Dilts
Robert Dunster
Dennis Edney
Fred Fenwick
Robert Harvie
Cal Johnson
Adam Letourneau
Walter Pavlic
Corinne Petersen
Kathleen Ryan
Darlene Scott
Kent Teskey
Margaret Unsworth
Louise Wasylenko

Regrets:

Sarah King-D'Souza
Hugh Sommerville
Amal Umar

Executive Leadership Team members present:

Don Thompson, Executive Director and CEO
Elizabeth Osler, Deputy Executive Director and
Director, Regulation
Cori Ghitter, Director, Professionalism and Policy
Andrew Norton, Director, Business Technology
Drew Thomson, Chief Financial Officer

Staff present:

Paule Armeneau, General Counsel
Nancy Carruthers, Acting Tribunal Counsel
Colleen Brown, Manager, Communications
Loraine Champion, Manager, Early Intervention
Programs*
Koren Lightning-Earle, Indigenous Initiatives Liaison*
Shabnam Datta, Policy Counsel
Elizabeth Aspinall, Practice Advisor
Ruth Corbett, Governance Administrator
Christine Schreuder, Governance Assistant*

Guests present:

Frank Friesacher, Vice-President, Canadian Bar
Association, Alberta Branch
Paul Paton, Dean, Faculty of Law, University of
Alberta
Sandra Petersson, Director, Alberta Law Reform
Institute
Steve Raby, Federation of Law Societies of Canada
Representative

**Secretary's Note: The arrival and/or departure of participants, staff, and guests during the meeting are recorded in the body of these minutes.*

The public meeting was called to order at 8:35.

1 Welcoming Remarks from the Chair

Anthony Young

The Chair opened the meeting by acknowledging the that the land on which we gathered is the Treaty 7 territory and the traditional territory of the Niitsitapi (Blackfoot), Nakoda (Stoney), and Tsuu T'ina. The Chair then welcomed Benchers, staff and guests.

The Chair's additional remarks included congratulations to Benchers Sarah King-D'Souza, Sandra Corbett and Kathleen Ryan who each received a 2017 *Women in Law Leadership Award*.

2 Code of Conduct amendments

Nancy Carruthers

Documentation for this item was circulated with the meeting materials. The proposed amendments and the rationale for each were presented and it was confirmed that the Policy Committee reviewed and recommended the amendments.

The Board's discussion focused on the following:

- The rationale for the proposed amendment to 3.1-2 [9] that a lawyer should only express a legal opinion '*when it is genuinely held and is provided to the standard of a competent lawyer*' was questioned, specifically the definition of competence. It was explained that this was to address recommendations made in the CBA Legal Futures Report. It was suggested that increased clarity of purpose would assist with the interpretation of this Rule and the solution proposed was to stop the commentary after the word "*held*" and remove the rest of the sentence.
- Proposed new Rule 3.7-9 goes a step beyond the Model Code in providing guidance to lawyers leaving law firms and rules around lawyer-client relationships in those instances.
- The Board discussed a variety of viewpoints on the wording of Rule 3.2-13 including the suggestion that it could make innocent assistance in fraud a sanctionable offence and the alternate view that in fact the language provides hearing panels with the leeway to determine each individual case. There was general agreement that clarity is required in either case and it was proposed that the motion be amended to exclude this Rule change.

Amendments were made to the motion, indicated in italics and underlined.

Motion:

To amend the Code of Conduct in accordance with the amendments set forth in Schedule A, subject to:

- *The addition of a period after the word "held" and consequent deletion of the remainder of the proposed sentence in paragraph [9] of commentary following Rule 3.1-2; and*

- **The exclusion of the proposed amendments to Rule 3.2-13.**

**Seconded
Carried**

Ms. Lightning-Earle joined the meeting.

3 Publication and Redaction Guideline for Adjudicators

Shabnam Datta

Documentation for this item was circulated with the meeting materials. The proposed *Publication and Redaction Guideline for Adjudicators* is intended to provide guidance to adjudicators. It summarizes the requirements in the *Legal Profession Act (the “Act”)* and Rules of the Law Society of Alberta that reflect on publication issues and it includes privacy considerations for the protection of certain information obtained during adjudicative processes. The Policy Committee reviewed and recommended the new guideline.

The Board’s discussion included a request to add a reference to paragraph 51 of the new guideline to provide clarity on what is and is not published. It was also suggested that jurisdictional documents should mirror the new guidelines for private hearings with respect to privileged information.

The *Publishing Hearing Outcomes Guideline* was developed in 2006 and no longer reflects current practices and requirements for publication, nor does it consider the protection of private, privileged or confidential information in the context of current privacy concerns. The Policy Committee recommends that this guideline be rescinded.

An amendment was made to the motion, indicated in italics and underlined.

Motion:

- To approve the *Publication and Redaction Guideline for Adjudicators*, in Appendix A, *subject to the addition to paragraph 51 of a reference to the exclusion of practice review reports*; and
- To rescind the *Publishing Hearing Outcomes Guideline*, in Appendix B.

**Seconded
Carried**

4 National Requirement amendments

Steve Raby

Documentation for this item was circulated with the meeting materials. The Council of the Federation of Law Societies of Canada (the “Federation”) passed a resolution approving three amendments to the National Requirement, two of which require the

approval of all 14 Canadian law societies. The amendments and the rationale for each amendment were outlined.

Motion:

The Benchers approve the decision of the Council of the Federation of Law Societies of Canada for amendments to the National Requirement, as set out in i. a) and i. b) of Appendix A.

**Seconded
Carried**

5 Appointment to the Council of the Federation

Anthony Young

Mr. Raby recused himself from the meeting.

A recommendation from the Nominating Committee was circulated with the meeting materials and the Chair confirmed that Mr. Raby is willing to continue as the Law Society's representative on the Council of the Federation. The Board's support for Mr. Raby's reappointment was unanimous.

Motion:

To appoint Steve Raby, QC, as the Law Society of Alberta representative to the Council of the Federation of Law Societies of Canada.

**Seconded
Carried**

Mr. Raby rejoined the meeting.

6 2019 Board Meeting Dates

Don Thompson

Documentation for this item was circulated with the meeting materials.

Motion:

To approve the following 2019 Bencher meeting dates and locations:

- **February 21 – 22, 2019 – Calgary;**
- **April 25 - 26, 2019 – Edmonton;**
- **June 5 – 8, 2019 – Jasper;**
- **September 26 – 27, 2019 – Calgary;**
- **November 6, 2019 – Budget meeting via videoconference (1-4 pm); and**
- **December 5 – 6, 2019 – Edmonton.**

**Seconded
Carried**

7 2018 Business Plan overview

Drew Thomson

Documentation for this item was circulated with the meeting materials. Budget planning is underway and management expects to present the Audit and Finance Committee with a balanced budget without the need to increase the practice fee. Key activities during 2018 will include: continuing the work to secure changes to the *Legal Profession Act (the “Act”)*; initiatives to address the Truth and Reconciliation Committee recommendations; further examination of the revenue model; and continuing to improve business practices overall. The Board’s questions and discussion focused on the following:

- In response to a question as to when cost savings from the transition to proactive regulatory processes will be realised, management advised that while progress is evident it will take time for improvements to impact overall costs.
- Management clarified that the decision to not fill some budgeted staff positions during 2017 was not a strategy to build a surplus fund. Most of the proactive initiatives are still new or under development and it will take time to determine the resources required to support the programs.
- Formal complaints are trending downwards; however, given that the peak time for complaints and insurance claims is around 10-15 years of call it will take time and be challenging to quantify results. Proactive regulation is intended to teach lawyers how to avoid complaints and insurance claims and the sense is that positive progress is being made.
- It was suggested that the Board would benefit from regular reporting and benchmarking on the progress of proactive measures from a budgetary standpoint.
- A report on the impact of the adjudicator pool on Bencher workload will be shared with the Board at a later date.
- The surplus, including the appropriate amount to hold in surplus funds, will be a topic for the Audit and Finance Committee’s discussion during 2018.

8 Early Intervention Presentation

Cori Ghitter/ Loraine Champion

The Board received a PowerPoint presentation on the status of early intervention initiatives. The presentation covered the rationale for early intervention; data on intake, assessed files, decisions and responsiveness; and intervention methods and resources. Processes require continuous improvement; however, results after the first 10 months of programming are promising.

The Board discussed the following:

- Various opportunities are utilized for promoting the small firm practice course, webinars and other online resources, and it was confirmed that the popularity of webpages is being monitored.
- It was suggested that practice tips for lawyers would be helpful and now that some early intervention initiatives are well underway this can be considered.

9 Indigenous Initiatives Report

Koren Lightning-Earle

Documentation for this item was circulated with the meeting materials. Ms. Lightning-Earle was introduced to the Benchers and welcomed to her first meeting. The report highlighted internal and external activities and strategies to respond to the Truth and Reconciliation (TRC) calls to action. Building relationships will be key to ensure past mistakes are not repeated. An Indigenous Initiatives Work Plan is being developed and will be shared with the Board at a future meeting. The Benchers expressed their appreciation for the work being undertaken to respond to the TRC calls to action.

10 President's Report

Anthony Young

The President's Report was circulated with the meeting materials. Highlights included the following:

- It is expected that the Alberta Law Libraries Board will be fully constituted in October and that Strategic Planning work will commence shortly thereafter.
- The government has restored funding to ALRI at historical levels and a new Continuation Agreement for the organization is being finalised.
- Legislative change was the main topic of discussion at the past presidents' dinner. Discussion points were similar to those around the Bencher table; i.e., the size of the Board, governance and adjudication, and entity regulation.
- Funding for the Reforming the Family Justice System Initiative has been confirmed for another fiscal year. The Theory of Change has been incorporated into the Court of Queen's Bencher Business Plan.

Ms. Champion left the meeting.

11 Legislative Amendments Update

Anthony Young

The Benchers received a memo from the Legislation Task Force on September 14, 2017, with an update on the project to amend the *Legal Profession Act*. Since that time steps have been taken to begin consultations with the profession. A meeting was held with the Alberta Civil Trial Lawyers' Association Executive in Edmonton to discuss their concerns about entity regulation and non-lawyer owned operations.

12 Innovating Regulation Task Force Report

Kent Teskey/Cori Ghitter

Documentation for this item was circulated with the meeting materials. The report highlighted the results to-date of the outreach across Alberta to engage law firms of various sizes and in different regions in the Law Firm Practice Management Assessment Tool pilot program. The next phase of the pilot will be the evaluation commencing later in the fall of 2017.

13 Audit and Finance Committee Report

Sandra Corbett

Documentation for this item was circulated with the meeting materials.

14 Policy Committee – Active Policy Inventory

Anthony Young

The Active Policy Inventory was circulated with the meeting materials for information.

15 ALIEX Advisory Board Report

Steve Raby

Documentation for this item was circulated with the meeting materials.

16 Alberta Law Foundation Report

Darlene Scott

No report.

17 ALRI Report

Sandra Petersson

Documentation for this item was circulated with the meeting materials. ALRI is pleased that the government has committed to funding and it is hoped the Continuation Agreement will be signed by all parties this week. In addition to the report, the Benchers were encouraged to review ALRI's report for discussion on *Property Division: Common Law Couples and Adult Interdependent Partners*.

18 Alberta Lawyers Assistance Society Report

Nancy Dilts

Documentation for this item was circulated with the meeting materials.

19 Canadian Bar Association (CBA) Alberta Report

Frank Friesacher

Documentation for this item was circulated with the meeting materials. Highlights included the Alberta Law Conference in Las Vegas in November and the CBA National Annual Meeting.

20 Federation Report

Steve Raby

Documentation for this item was circulated with the meeting materials. An additional information item was the recent announcement of the retirement of the CEO of the Law Society of Upper Canada.

21 Pro Bono Law Alberta Report

Robert Dunster

Documentation for this item was circulated with the meeting materials.

22 Other Business

Anthony Young

There being no further business the Chair adjourned the public meeting at 11:35 am.