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**[484]**

**APPROVED Public Minutes  
of the Four Hundred and Eighty-Fourth Meeting  
of the Benchers Board of the Law Society of Alberta (Law Society)  
Red Deer, Alberta  
August 31, 2017**

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**Benchers:**

Donald Cranston, Acting President  
Robert Armstrong  
Glen Buick  
Brett Code  
Nancy Dilts  
Robert Dunster  
Dennis Edney  
Fred Fenwick  
Robert Harvie  
Cal Johnson  
Sarah King-D'Souza  
Corinne Petersen  
Kathleen Ryan  
Hugh Sommerville  
Kent Teskey  
Margaret Unsworth  
Louise Wasylenko

**Regrets:**

Anthony Young, President  
Arman Chak  
Sandra Corbett  
Adam Letourneau  
Walter Pavlic  
Darlene Scott  
Amal Umar

**Executive Leadership Team members:**

Don Thompson, Executive Director and CEO  
Elizabeth Osler, Deputy Executive Director and  
Director, Regulation

**Staff:**

Jennifer Freund, Policy Counsel  
Ruth Corbett, Governance Administrator  
Christine Schreuder, Governance Assistant  
Stephen Ong, Business Technology

The public meeting was called to order at 10:05 am on August 31, 2017.

**1 Welcoming Remarks from the Acting Chair****Don Cranston**

The Chair opened the meeting and welcomed Benchers and staff, thanking everyone for their attendance on short notice. The purpose of the meeting was to continue the August 21, 2017 discussions about possible amendments to the *Legal Profession Act* (the "Act").

The Chair presented the agenda and invited Mr. Code to request the addition of an item of business proposed to the Benchers by Mr. Code on August 30, 2017 via email. Mr. Code requested the addition of a discussion, and possible resolution, about Bencher participation in any dialogue following the agreement or approval of any principles and whether the role of Benchers in that dialogue is restricted or unrestricted.

**Motion: Code/Edney**

**To approve the addition of the discussion described above to the August 31, 2017 agenda under other business.**

**Carried**

The Chair then outlined the order of business for the meeting.

The Legislation Task Force (LPA Task Force) met several times since August 21 to develop the design principles based on Bencher feedback. The proposed motion before the Board today seeks Bencher approval of the Key Features Document and directs the LPA Task Force to report to the Board no less than bi-weekly. A consensus among Benchers on the key features of the proposed legislative amendments would allow the LPA Task Force to continue work on the more detailed Design Document.

**2. What We Heard**

The “What We Heard” document which was circulated with the meeting materials. The document was intended to capture the key points of the August 21 discussion.

**3. Key Features Document**

The Key Features Document was circulated with the meeting materials. The document is intended to form a foundation for the principles for legislative amendments on which to engage the government and the profession.

The main motion was then put:

**Motion: Armstrong/Dilts**

- 1. To approve the Key Features Document, attached hereto, as a basis for engagement with the profession and the government;**
- 2. To direct the Legislation Task Force to bring changes to the Key Features Document back to the Benchers for discussion and decision; and**
- 3. To direct the Legislation Task Force to report no less than bi-weekly on the legislative amendment work, including but not limited to the following:**

- **Scope changes by government on the Key Features Document;**
- **Engagement with the profession and the public; and**
- **Communication plan updates.**

**The decisions will take effect immediately.**

The Chair then invited each Bencher in turn for their thoughts and feedback on the motion. A summary of the feedback on each key feature and key points of the discussion is attached to these minutes as Appendix A. During the discussion of the Key Features documents, suggestions were made for the amendment of the motion.

A revised motion was tabled in hard copy for the Benchers' review. The changes were to amend the wording in item 2 of the motion and the addition of a new item 4 to clarify that the LPA Task Force will bring forward a recommendation for legislative amendments following the consultation for the Board's discussion and decision.

**Revised Motion: Armstrong/Dilts**

- 1. To approve the Key Features Document, attached hereto, as a basis for engagement with the profession and the government;**
- 2. To direct the Legislation Task Force to bring changes (including changes arising from consultation with the profession and the public, and discussions with Government) to the Key Features Document back to the Board for discussion and decision; and**
- 3. To direct the Legislation Task Force to report no less than bi-weekly on the legislative amendment work, including but not limited to the following:**
  - **Scope changes by government on the Key Features Document;**
  - **Engagement with the profession and the public; and**
  - **Communication plan updates.**
- 4. After the consultations with the profession and public, and discussions with Government, the Legislation Task Force will bring forward a recommendation for legislative amendments to the Board for discussion and decision.**

**The decisions will take effect immediately.**

There was discussion of the revised motion, as summarized in Appendix A.

**The revised motion was then put and carried**

Mr. Code requested that his opposition to the motion be recorded in these minutes.

**Other Business**

The Board then dealt with the question of Bencher communications.

The Chair referred Benchers to the section from the Comprehensive Governance Plan addressing Bencher expectations and hard copies of this section were circulated at this point in the meeting. The Chair confirmed that Benchers are free to express their views as long as they are not purporting to speak on behalf of the full Board if their view is contrary to any decision and to let their audience know that. The Chair asked Mr. Code if the provisions provide the comfort he is seeking with regards to communications and Mr. Code advised that no motion would be put forward.

The Chair adjourned the meeting at 1:18 pm.

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## Appendix A

### Summary of Feedback on Key Feature - Innovation in Legal Service Delivery

- A recurring reference to legal services delivered by lawyers was observed. If the concept of the authorization of non-lawyer ownership of law firms is not part of the proposal to the government, then it was suggested that language should be used in the Key Features Document to ensure clarity regarding the definition of “law firm”.
- Concern was expressed that the Key Features Document seeks legislative changes that would permit non-lawyer ownership of law firms and allow the Benchers to approve alternative business structures (ABS). Others did not share this concern.
- The view that the modern legal regulator will have to consider ABS in the future was expressed; however, the intention in the Key Features Document is to be transparent and strike a balance between clarity that ABS is not part of the discussion today and the likelihood that ABS will require discussion in the future.
- It was suggested that the Key Features document needs to be clear that none of this is intended to authorize a particular ABS model.
- The point was made that entity regulation does not necessarily mean ABS; however, a modern regulator will need to consider ABS at some point, with an open mind and benefiting from the experience of other jurisdictions where this has occurred. We are currently one of a handful of regulators that does not have the ability to recognize entities.
- The view was expressed that entity regulation is not universally understood. Benchers need to come into it with an open mind and without pre-conceived notions. The danger is to equate entity regulation with ABS and which could encourage the profession to not even open the door. We would be encouraging a debate at a point we are not at yet and it’s a concern that if we do that we ignore a unique need that we need to look at now.
- The LPA Task Force intended that the proposed amendments would leave future decision-making about whether and what forms of service provision are to be regulated by the Law Society, in the hands of the Benchers.
- One Bencher suggested that if the Benchers don’t seize this opportunity, the Law Society will continue to make improvements within the existing legislation; however, the Benchers have the opportunity now to make changes that will help this Board and future Boards govern better.
- A Bencher noted that no decisions will be made on ABS or entity at this time. What we are talking about is giving future Board tables the ability to look at the issue if they feel that it is worthwhile.

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## **Summary of feedback on Key Feature – Governance Model**

- It was suggested that when determining the size of the board, an odd number of members would enable tie-breakers on decisions. Some felt that the proposed range between 9 and 16 board members may be too few and that a smaller board will be less diverse.
- The suggestion was made that the diversity gained through the election process would also be lost.
- A response to this was that election does not ensure diversity. It is very difficult for individuals on their own, in smaller firms, in rural areas to get elected as they are not known and also very difficult for them to make the time commitment.
- It was suggested that it should be made clear to the members that the government will likely seek 25% of board membership as appointed lay benchers. It will be important to ensure that appointed Benchers are independent and free from conflict. The delay in the current Lay Bencher appointment process was noted as a concern.
- There was agreement that Lay Benchers play an important role and that they need to be part of the composition.
- There was a concern expressed by one Bencher that by taking operational power from the Board we would be removing its ability to control the budget.
- A comment was made that when moving from an operational to a governance board it is important to have a governance plan to ensure there is continued control over the organizational structure, prices and costs.
- A few Board members said that they did not support having a smaller Board.

## **Summary of feedback on the Key Feature – Adjudication Model**

- Comments were made by some Benchers that they are okay with the separation of the adjudicative and governance functions as long as it is enabling and for future board tables to decide once we know how the profession feels about it.
- The comment was made that the profession may not have an opinion on the separation as many members of the profession are unaware of what Benchers do.
- The notion that a conflict is driving the separation of adjudication and governance was not shared by everyone. One suggestion was to adopt a process of an independent Tribunal, free of interference from the regulator. The proposed “centralized” tribunal consisting of employees of the Law Society could create more serious conflicts than one where Benchers sit on both sides.
- The right of appeal for complainants whose complaints are dismissed and the prosecutorial decision-making process which gives the Law Society’s prosecutors discretion that is not constrained by the Conduct Committee were raised by one Bencher as important amendments that should be included.

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- Generally, the table agreed that separating adjudication from governance is a positive step. For those not comfortable with this, the sentiment expressed was that they felt that participating in both sides, helped them to be better Benchers.
  - Sentiment of one Bencher was that the profession expects Benchers to be adjudicating.

### **Summary of feedback on Key Feature – Simplification**

There were no issues raised regarding the simplification feature.

### **Discussion on the motion, the amended motion, and suggestions for changes to the Key Features Document:**

- It was suggested that a lead-in sentence could be added to the document to acknowledge the role of the Board to govern the organization and to clarify that none of this is intended to detract from that overarching responsibility. And to add that these are some of the particulars that are going to occur as the agenda for legislative change proceeds.
- A purpose statement was also suggested to give comfort that this is an organization that has the public interest in mind.
- It was noted that the timing of this opportunity is dictated somewhat by the political process; however, it was suggested that this does not mean abdicating Bencher responsibilities. The view was also expressed that if the Benchers can't get past the details it will be a failure of leadership at the Board table.
- The Benchers are the final decision-makers and concerns were expressed that approval of the Key Features Document could be used in the future to hamper Bencher ability to participate in decision making. It was requested that Bencher approval on any decision items throughout the process be required and clarified in the document and the motion.
- The view was expressed that this is an opportunity to achieve the changes that need to be made and that will help us and future Boards govern better.
- The observation was made that an effective communication link has been established with government; able teams are in place to continue with the work; and there is an effective process that defines responsibilities for the governors and managers. What is required is trust in each group to move forward in support of each other.
- One Bencher expressed the view that the proposal is principled and thoughtful and the motion sends a message to the profession, staff and government that shows the Law Society's commitment to be modern regulator.
- The LPA Task Force did not intend the motion to usurp the governance role of the Board. While the government will have the final say on the actual drafting of the amendments, the Law Society's final position will be brought back for approval by the Board and the motion will be revised to reflect this commitment.

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- Concern was expressed that the motion leads Benchers to support all the concepts and is outside the Law Society's promise to consult with the profession before considering ABS. The comment was made that the consultation is happening and the proposed LPA changes are enabling so that future Board tables are able to consider the issues.
  - Support for the Key Features Document was also expressed.
  - Concern was expressed that the decision to move forwards is not unanimous.

### **Feedback on the plan for Consultation**

- The Key Features Document is intended to provide the opportunity for the Law Society to engage with the government and the profession on the legislative amendments. The profession's response during consultation will inform future discussions at the Board table.
- It will be important to ensure there is a way to know what people are saying. It was noted that town halls are hard for some people to confidently express their views; however, the point was made that there are many other ways for lawyers to share their views.
- Concern was expressed that the Board is being rushed into making a decision and it would have been helpful to have heard from the government and the membership sooner because that would inform decision-making. However, the comment was made that the Law Society could not speak to the profession until the Benchers approved the Key Features Document.
- Management described the plan for consultation with the members and the public which includes a variety of written documents, town hall meetings, targeted communications with specific groups, webinars, key stakeholder meetings, and online submissions. It will build on meetings where lawyers are already present, such as Canadian Bar Association section and sub-section meetings; Canadian Corporate Counsel Association meetings etc. The consultation is intended to be dynamic in that the process will be modified as key messages and views are heard. The consultation with the public will be carried out by a specialist firm and designed primarily to ask about access to legal services issues. Lawyers will be present at those consultations to listen and provide explanations.
- Given the probability that there will be a wide variety of views heard from the profession; it was suggested that the Benchers should demonstrate their leadership by moving forward with principled decision-making and a clearly articulated rationale, with the intention to ensure that should there need to be change we have latitude to do so in future.