



Approved Benchers Public Minutes

Five Hundred Nineteenth Meeting of the Benchers of the Law
Society of Alberta (Law Society)

June 7, 2024

In person in Jasper, AB

ATTENDANCE

Benchers Deanna Steblyk, President
Ryan Anderson, President-Elect
A. Danielle Bourgeois
Glen Buick
Arman Chak
Stephanie Dobson
Kene Ilochonwu
Levonne Louie
Jim Lutz
Scott Matheson
Bud Melnyk
Kelsey Meyer
Sharilyn Nagina
Mary Ellen Neilson
Sandra Petersson
Stacy Petriuk
Ron Sorokin
Nicole Stewart
David Tupper
Maira Váně
Grant Vogeli
Louise Wasylenko



ATTENDANCE

Executive Leadership Team

Elizabeth Osler, CEO and Executive Director
Cori Ghitler, Deputy Executive Director and Director, Policy and Education
Nadine Meade, Chief Financial Officer
Kendall Moholityny, Director, Regulation and Professionalism
Andrew Norton, Chief Information Officer and Director, Business Operations
David Weyant, President and CEO, Alberta Lawyers Indemnity Association (ALIA)

Staff

Susannah Alleyne, Equity, Diversity and Inclusion Counsel
Nancy Bains, Tribunal Counsel & Privacy Officer
Barbra Bailey, Manager, Education
Colin Brandt, Senior Communications Advisor, Communications
Colleen Brown, Manager, Communications and Stakeholder Engagement
Jessica Buffalo, Indigenous Initiatives Counsel
Bernadette Charan, Manager, Trust Safety
Jennifer Freund, Policy & Governance Counsel
Jonathan Griffith, Practice Advisor and Equity Ombudsperson
Nicholas Maggisano, Senior Manager, Professionalism
Andrew McGrath, Support Staff, Business Technology
Tina McKay, Senior Manager, Business Operations
Noria Neuhart, Policy Counsel
Rachel Provencher, Senior Communications Advisor, Communications
Christine Schreuder, Supervisor, Governance
Greg Smith, Support Staff, Business Technology
Karly Walker, Coordinator, Governance
Rebecca Young, Education Counsel

Guest

Carsten Jensen, Federation of Law Societies of Canada Council Representative for Alberta.

Regrets

Erin Runnalls, Bencher



Call to Order and Introduction

Ms. Steblyk called the meeting to order at 1:32 p.m. and welcomed everyone.

Ms. Bourgeois delivered an Indigenous land acknowledgment.

1. Opening Remarks from the President

Ms. Steblyk acknowledged the conclusion of a successful retreat.

2. Leadership Report

Documentation for this item was circulated with the materials prior to the meeting.

Ms. Osler noted that the Practice Fundamentals program is a new Continuing Professional Development program to support new lawyers in their first five years of practice that will launch in September 2024 with new content being added annually each September until 2028. The program was developed in partnership with the Legal Education Society of Alberta (LESA) and the cost will be free for new lawyers who first acquired active status in or after 2024. Individual courses will be made available to all lawyers; some will be free, and some will be for fee, with free courses available on the Law Society website. A communications plan is underway with LESA, ALIA, Alberta Lawyers' Assistance Society, and the Canadian Bar Association Alberta to promote the Practice Fundamentals program to all Alberta lawyers.

3. Federation of Law Societies of Canada (FLSC) Model Code Consultation – Truth and Reconciliation Commission Call to Action 27 Proposed Amendments

Documentation for this item was circulated with the materials prior to the meeting.

Ms. Freund provided an overview of the Federation of Law Societies of Canada (FLSC) Truth and Reconciliation Commission's (TRC) Call to Action 27 proposed amendments to the Model Code (Code). As well, she summarized the work performed by the Law Society's internal working group, Calgary and Edmonton roundtable sessions, and the Law Society's Reconciliation Advisory Roster.

Mr. Griffith reported on the feedback provided by the review groups and noted the internal working group believes there are some important changes. Mr. Griffith commented that it would be helpful to have something in the Code to reflect Canadian lawyers' duty to support reconciliation. Lastly, he noted that the key feedback themes are included in the meeting materials.

Ms. Buffalo asked the Benchers for their feedback to inform the work of the Policy and Regulatory Reform Committee that would subsequently return to the Benchers for signoff by the end of the year. The FLSC is requesting specific feedback on whether the adoption of the amendments and enforcement should include a transition period to provide lawyers with time to gain the knowledge set out in the proposed amendments.

The Benchers' key discussion points included:

- Many of the proposed amendments, including ones that do not clearly state and define discipline measures do not belong in a Code of Conduct. Examples of proposed amendments that would benefit from increased clarity are the Competence language proposed at Rule 3.1-1 a), and the proposed Commentary [5A].
- The Code should not prescribe extensive knowledge requirements or impact a lawyer's ability to practice.
- There is risk that some of the proposed amendments may dissuade lawyers from representing Indigenous Peoples due to fear of being disciplined.
- There was an observation that Call to Action 27 places an emphasis on training and education; however, many of the proposed amendments go beyond education. A question was asked whether it is fair to mandate training in a certain area and to require that lawyers are competent in the mandated training.
- A comment was made that the required competence expectations should match the level of education provided.
- In response to the FLSC question regarding whether there should be a transitional period, support was expressed in providing lead time before Code changes come into force to allow time for lawyers to gain the additional knowledge needed.
- A request was made that the commentary clearly express that there will be no retrospective discipline for litigation that is underway before the updated Code comes into force.
- Consider whether the competency component should apply only to lawyers practicing with Indigenous Peoples or Nations.
- There was a question about how to reconcile the Criminal Code with the Model Code, and it was noted that the proposed amendments may influence clients to choose a lawyer for cultural competence over legal acumen.

Mr. Jensen reported that the proposed amendments are ambitious, aspirational, and have been informed by stakeholder engagement. The Standing Committee on the Model Code felt that an ethical requirement would complement the educational requirement for all lawyers, that lawyers whose practice intersects with Indigenous practice should be held to a higher standard.

In conclusion, Mr. Jensen reported that consultation feedback is ongoing. The information collected will be synthesized into themes and anonymized. The FLSC will be flexible to attribute feedback to specific Law Societies if requested. Depending on the feedback received from all law societies, the next steps may be further consultation or a final report. Mr. Jensen encouraged the Benchers to be candid in their feedback so the Standing Committee can clearly understand the issues raised for discussion.

An email will be sent to Benchers to advise where to direct any further feedback in writing. Benchers who have an interest and who are not on the Policy and Regulatory Reform Committee (PRRC) were encouraged to communicate their views with a member of the PRRC.

Staff will take feedback from this meeting and any written feedback received by the deadline to prepare materials for the PRRC to review. Upon review the PRRC will recommend a response to the Benchers for discussion and approval before the response is sent to the FLSC.

4. Code of Conduct Amendment 5.1-2B Single Party Communication

Documentation for this item was circulated with the materials prior to the meeting.

Ms. Freund provided an overview of the amendment being proposed. The intention is to provide clarity to the Model Code Single Party Communication rule, adopted at the October 5, 2024 Bencher meeting.

Motion: Petersson/Sorokin

That the Benchers amend Code of Conduct Rule 5.1-2B commentary [3] by inserting “apply in the context of mediation or” in the first sentence after “This rule does not” and before “prohibit single-party communication”.

Carried

5. Client Identification and Verification Rule Amendment

Documentation for this item was circulated with the materials prior to the meeting.

Ms. Freund provided an overview of the proposed Law Society Client Identification (ID) and Verification Rules amendments to take effect October 1, 2024. Law Societies are being asked to amend local rules concerning client ID and verification to align with National Anti-Money Laundering Rules. Guidance documents regarding the rule change are being created for the profession and a webinar will be offered. Ms. Charan was available to help answer questions.

The following four motions were made concurrently:

Motion 1: Petersson/Sorokin

That the Benchers amend Rule 119.50 by:

- **striking out subrule (3) in its entirety,**
- **amending subrule (4) to strike out “or (3)” after “referred to in subrule (2)” and before “must”, and**
- **amending subrule (6) to strike out “original” after “which must be valid,” and before “and current” and insert “authentic” in its place, and to strike out “and which must not include an electronic image of a document” at the end of the opening words,**

as well as

- **amending subrule (4) to**
 - **renumber the subrule as subrule (3),**

- **strike out “(6)” and insert “(5) in its place at the end of clause (b),**
- **amending subrule (5) to**
 - **renumber the subrule as subrule (4), and**
 - **strike out “(6)” and insert “(5)” in its place at the end of clause (b),**
- **amending subrule (6) to**
 - **renumber the subrule as subrule (5), and**
 - **strike out “(6)” and insert “(5)” in its place in clauses (b) and (d),**
- **amending subrule (7) to**
 - **renumber the subrule as subrule (6), and**
 - **strike out “(6)” after “organization in clause” and before “(e) or (f), and insert “(5)” in its place in the opening words,**
- **amending subrule (8) to**
 - **renumber the subrule as subrule (7), and**
 - **strike out “(7)” and insert “(6)” in its place at the end of the subrule,**
- **amending subrule (9) to**
 - **renumber the subrule as subrule (8), and**
 - **strike out “(7)” and insert “(6)” in its place in both clause (a) and (b),**
- **amending subrule (10) to**
 - **renumber the subrule as subrule (9),**
 - **strike out “(7)” and insert “(6)” in its place and strike out “(8)” and insert “(7)” in its place in the opening words, and**
 - **strike out “(10)” and insert “(9)” in its place in clause (d),**
- **amending subrules (11) through (13) by renumbering them as subrules (10) through (12), and**
- **amending subrule (14) to**
 - **renumber the subrule as subrule (13), and**
 - **strike out “(7)” and insert “(6)” in its place,**

with a coming into force date of October 1, 2024.

Motion 2:

That the Benchers amend Rule 119.51 by striking out “119.50(7)” and inserting “119.50(6)” in its place in subrule (3), with a coming into force date of October 1, 2024.

Motion 3:

That the Benchers amend Rule 119.53 by striking out “119.50(1), (7) or (10)” and inserting “119.50(1), (6) or (9)” in its place in subrule (1), with a coming into force date of October 1, 2024.

Motion 4:

That the Benchers end the temporary exemption from the requirement under subclause 119.50(6)(a)(i) that a lawyer be in their client’s physical presence when using the government-issued photo ID method, effective October 1, 2024.

The Benchers’ key feedback and staff responses included:

- The client ID rules presume that a lawyer can assess whether a document is authentic.
- There has been no evidence presented that there is a problem with the current process.
- The proposed amendments will be a step backwards from virtual advancements within the profession due to the COVID-19 Pandemic.
- The use of a virtual technology platform would likely incur a cost that would need to be passed on to the client.
- The proposed client ID and verification rules amendments would decrease access to justice and are not in the public interest.

Ms. Charan explained that the internal working group considered risks including how lawyers are not trained to identify fake ID. However, the proposed amendments align with guidance from the Government of Canada Financial Transactions Analysis Centre of Canada (FINTRAC). Ms. Charan confirmed that there will be associated costs and that it will be up to the profession to determine whether they will absorb them or pass them on to the client.

The Benchers raised the following questions:

- How would in-person or technological ID authentication work for those in custody? What if the lawyer is out of town and a vulnerable client does not have access to or the ability to pay for a technological authentication?
- How many more fees would be passed on to the vulnerable sector? Who would take on the additional cost in a Legal Aid file? Has Legal Aid Alberta been consulted?



Ms. Charan reported that the Financial Action Task Force (FATF) is evaluating the entire national anti-money laundering regime, including that of the Law Society of Alberta, at the end of 2024 through to the beginning of 2025. Law Societies are exempt from FINTRAC due to solicitor-client privilege; however, Canadian Law Societies employ their own regulatory diligence to prevent being a money laundering conduit. A FLSC joint working group with the Department of Finance maintains a mutual awareness of the national anti-money laundering regulatory efforts being made despite the FINTRAC exemption. In response to a question, Ms. Charan responded that lawyers' professional fees are one of the many client ID exemptions because they do not involve a trust fund.

The Benchers discussed the future of client ID and verification, and the impacts of removing videoconference verification options. Opinions varied from maintaining the status quo virtual option adopted during the COVID-19 Pandemic and in-person ID verification to exclusively using third-party authentication. A request was made that more information on preferred technological authentication platform options and pricing be available to the profession. Ms. Ghitter responded that considerable guidance will be provided before this option comes into force.

Motion to Amend Motion 4: Matheson

That the Benchers amend motion 4 to strike out “October 1, 2024” and insert “at a later date pending further consultation with Legal Aid Alberta and other stakeholders regarding the impact of this change on vulnerable populations” in its place.

Prior to the proposed amendment to motion 4 being seconded and placed on the floor for debate, Ms. Freund clarified that there is a difference between client identification for fee for service transactions and client verification when trust funds are involved. The proposed Rule amendments apply only to transactions described in Rule 119.48 where a lawyer who has been retained by a client to provide legal services engages in or gives instruction in respect of the receiving, paying or transferring of funds that involve trust funds.

The Benchers discussed considering the coming into effect timeline and whether it provides enough time to explore technological authentication options, pricing, budgeting, and training staff. As PRRC Chair, Ms. Petersson recommended postponing this discussion to the fall.

Ms. Charan and Ms. Freund confirmed that despite the FATF audit scheduled for the Law Society in 2025, the decision could be tabled until September when more information can be provided including technological ID authentication providers and costs.

Mr. Matheson requested to amend his proposed amendment to Motion 4 to replace October 1, 2024 with January 1, 2025.

Amendment to Motion 4: Matheson/Buick

That the Benchers amend motion 4 to strike out “October 1, 2024” and insert “January 1, 2025” in its place.

Carried

Motion to postpone: Petersson/Sorokin

Motion to postpone the four motions until the September 26, 2024 Bencher meeting.

Carried

6. Policy and Regulatory Reform Committee Update

Documentation for this item was circulated with the materials prior to the meeting.

7. Audit and Finance Committee Update

Documentation for this item was circulated with the materials prior to the meeting.

8. Indigenous Initiatives Counsel Update

Documentation for this item was circulated with the materials prior to the meeting.

Ms. Buffalo announced that this is her last Bencher meeting as she has accepted another professional opportunity. On behalf of the Benchers, Ms. Váně expressed appreciation for Ms. Buffalo’s service in her role with the Law Society.

9. Real Estate Practice Advisory Update

Mr. Anderson provided an oral update on discussions with the Alberta Real Estate Association Board regarding payment options and his meeting with the Government of Alberta Land Titles Committee that is working on rolling out its online platform.

10. Tribunal Office Update

Documentation for this item was circulated with the materials prior to the meeting.

11. CONSENT AGENDA

Documentation for this item was circulated with the materials prior to the meeting. The consent agenda included the April 25, 2024 Public Bencher Meeting Minutes. No requests were made to remove the item from the consent agenda.

Motion: Louie/Buick

That the Benchers adopt the consent agenda.

Carried

12. EXTERNAL REPORTS

The following external reports were circulated with the materials prior to the meeting:

12.1 Alberta Lawyers' Assistance Society Report

12.2 Canadian Bar Association Report

12.3 Canadian Centre for Professional Legal Education Report

Ms. Ghitter answered some clarifying questions and committed that supplemental data will be provided at the September 26, 2024 Benchers meeting to explain contributing factors to the 25 per cent capstone failure rate in September 2023 and what is being done to provide support and reduce the failure rate.

12.4 Pro Bono Law Alberta Report

Other Business

There was no other business and the public meeting adjourned at 3:35 p.m.