

Minutes

Approved Public Minutes of the Four Hundred and Ninety-Third Meeting of the Benchers of the Law Society of Alberta (the “Law Society”)

April 25, 2019

#800, Bell Tower, 10104 - 103 Avenue NW, Edmonton

9:00 am

<p>Benchers present</p>	<p>Rob Armstrong, President Kent Teskey, President-Elect Ryan Anderson Arman Chak Corie Flett Elizabeth Hak Bill Hendsbee Cal Johnson Linda Long Jim Lutz Barb McKinley Bud Melnyk Walter Pavlic Corinne Petersen Stacy Petriuk Robert Philp Kathleen Ryan Darlene Scott Deanna Steblyk Margaret Unsworth Ken Warren Louise Wasylenko Nate Whitling</p>
<p>Regrets</p>	<p>Cora Voyageur</p>
<p>Executive Leadership Team members present</p>	<p>Elizabeth Osler, Executive Director and Chief Executive Officer Cori Ghitter, Deputy Executive Director and Director, Professionalism and Policy Paule Armeneau, Director, Regulation, and General Counsel Nadine Meade, Chief Financial Officer</p>



	<p>Andrew Norton, Director, Business Technology</p> <p>David Weyant, President and Chief Executive Officer, the Alberta Lawyers Insurance Association and the Alberta Lawyers Insurance Exchange</p>
Staff present	<p>Elizabeth Aspinall, Practice Advisor</p> <p>Colin Brandt, Senior Communications Advisor</p> <p>Nancy Carruthers, Manager, Professionalism & Ethics</p> <p>Ruth Corbett, Governance Administrator</p> <p>Jennifer Freund, Policy Counsel</p> <p>Avery Stodalka, Senior Communications Advisor</p> <p>Chioma Ufodike, Manager, Trust Safety</p> <p>Ryan Stephanson, Business Technology</p>
Guests and observers present:	<p>Loraine Champion, Executive Director, Alberta Lawyers' Assistance Society</p> <p>Ross MacLeod, Practice Advisor</p> <p>Nonye Opara, Executive Director, Pro Bono Law Alberta</p> <p>Sandra Petersson, Executive Director, Alberta Law Reform Institute</p> <p>Steve Raby, Federation of Law Societies of Canada representative</p> <p>Christine Sanderman, Interim Executive Director and Counsel, Legal Education Society of Alberta</p>

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

The meeting was called to order at 9:00 a.m.

Item	
I	<p>Opening Remarks from the Chair</p> <p>The Chair reflected on the purpose of the land acknowledgment statement to recognize the indigenous peoples' connection to the land and our ongoing commitment to reconciliation. The statement is a gesture of respect that is rooted in indigenous traditions of acknowledging relationships to space and place. The Chair then acknowledged that the land on which we gathered is Treaty 6 territory and a traditional meeting ground and home for many Indigenous Peoples, including Cree, Saulteaux, Blackfoot, Métis, and Nakota Sioux.</p>



	<p>The Chair's remarks included the following matters:</p> <ul style="list-style-type: none">- The public meeting is being video-recorded for the first time as part of the Law Society's efforts to increase transparency.- Ross MacLeod was invited to the table to be honoured on his retirement from his role as Practice Advisor with the Law Society since 2005. On behalf of the Benchers, the Chair thanked Mr. MacLeod for his commitment and dedication to the Law Society and the profession, his passion for the law, commitment to helping lawyers and his steady influence, which will resonate with colleagues and lawyers in Alberta and beyond for long after he has departed. Mr. MacLeod was presented with a gift in appreciation of his contributions.- The Chair reminded the Board that this is the last meeting in the Edmonton office and he thanked the staff who remained in Edmonton during the transition period.
<p>2</p>	<p>Big Issues Timeline update</p> <p>The Big Issues Timeline was circulated with the meeting materials. Ms. Osler advised the Benchers that activities are on-track with Bencher table diversity and diversity, equity and inclusion for discussion on this meeting agenda. An oral update on the third big issue – the regulation of Legal Aid – was provided as follows: senior staff at the Law Society met with the CEO of Legal Aid Alberta (LAA) and are now collaborating with LAA senior staff to implement portions of the LAA Governance Agreement. There remain a number of issues to be discussed by the LAA working group, which meets on April 26. A more detailed update will be provided to the Benchers after the working group has reached some decisions.</p>
<p>3</p>	<p>Equity, Diversity and Inclusion Initiatives</p> <p>Ms. Ghitter introduced Ms. Aspinall, Practice Advisor. Ms. Aspinall made a presentation on Law Society initiatives and current legislative requirements. Ms. Armeneau assisted in answering questions from time to time. Highlights and discussion included the following:</p> <ul style="list-style-type: none">- Harassment and discrimination continue to be problems in the profession and are under-reported.- There is gender parity in admission and graduation; however, the attrition rate of women in practice is high.- Under the provincial <i>Occupational Health and Safety Act</i> people are obliged to report if they know harassment is happening to someone else.- The Law Society's Code of Conduct has been revised to provide clarity with respect to harassment and discrimination.



- The Law Society's part time fees initiative is generating calls, particularly from women in the profession.
- Law Society staff are trained to deal with reports of harassment and discrimination that do come in.
- A safe workplace policy will be rolled out in conjunction with the implementation of the Canadian Bar Association (CBA) Safe Workplace Toolkit. The policy will provide guidelines for people who are experiencing harassment or who are not sure if what they are experiencing constitutes harassment. It was noted that the Law Society cannot provide advice on providers; however, the CBA Toolkit includes information on where to go for external help.
- Ms. Armeneau advised the Benchers that the Conduct department is trained and capable of handling sensitive prosecutions through the complaint process. As well, diversity and inclusion training for conduct counsel and investigators has begun.
- The larger question of systemic discrimination is one that the Law Society continues to deal with as a regulator. It is hoped that entity regulation will provide opportunities to have those discussions with law firms and determine what actions can be appropriately leveraged.
- Ms. Osler advised the Benchers that the Equity, Diversity and Inclusion initiative is a work in progress. It provides opportunities for the Law Society to engage the profession on important issues and will contribute to overall efforts to change the relationship with the profession. There will be a strong focus on communications on this issue. Benchers were invited to provide further comments at any time outside meetings.

Ms. Aspinall left the meeting.

4 **Bencher Vacancies**

Documentation for this item was circulated with the meeting materials. The Chair framed the discussion in the context of the strategic planning work that was done on April 17-18, 2019. The purpose of the discussion is to determine whether or not to continue discussing amendments to the Bencher vacancy appointment process. The Chair posed two questions:

- Is there a potential benefit to the Board and the Law Society if the Benchers have some control over the constitution of Board?
- If there was a well-qualified person from an under-represented group or demographic who could not win a seat in the election, and there was another avenue for that person to get to Bencher table, would that be worth considering?



Ms. Freund then presented the information in the materials, highlighting the current process, current best practices, and government guidelines for public agencies.

Ms. Osler reinforced that any change to the Bencher vacancy Rule would keep the “next in line” option in place. If the Rule were to be amended to allow the Board to appoint from outside the list of unsuccessful candidates, it would not be effective until after the 2020 Bencher election. The election process would not change; however, making this change would allow time to ensure that everyone running in the 2020 election understands the new Rule well in advance.

The Benchers’ discussion included the following comments and questions:

- A suggestion was made that a skills matrix should be prepared for the Board to determine whether gaps exist. The Chair confirmed that the Nominating Committee is developing a matrix and noted that this discussion is not about fixing a deficiency but about expanding options.
- One concern expressed was that an appointment process for vacancies could give people less of a reason to be engaged in the election, and that work on other tools and options, including how to create a more diverse group of people running in the election, should be considered.
- The view that the Board is not diverse and does not reflect the public that it serves or the profession it regulates was also expressed. Allowing for Benchers to be appointed to fill vacancies may allow members who face barriers to running in the election to consider the possibility that they could be at the Bencher table.
- A Bencher expressed the view that it would benefit the Board to have the ability to appoint a valuable candidate to fill a vacancy from time to time, and for the Board to have control over that decision.
- A Bencher expressed the view that the Board table is lacking subsets of lawyers in practice area alone, and that the discussion about filling vacancies is the only discussion that can be had because everything else is in the legislation and beyond the Law Society’s control.
- Some Benchers who were in favour of continuing the discussion about the Rule wanted it to be part of the bigger discussion about the election and how to encourage diversity of candidates.
- A Bencher suggested that there is no reason not to proceed with a Rule that would allow for appointed Benchers to fill vacancies because it would affect a small set of people, and that the Board should want to withstand scrutiny on best practices.
- A Bencher reminded everyone of their obligation to do what is best for the Law Society and the public, not for themselves or other candidates.



- Ms. Osler advised the Benchers that revising the Rule would not exclude initiatives to encourage participation in the election and that the Law Society's Bencher Election Working Group is working on this already. As well, in the fall of 2019 a task force of Benchers and senior staff will be struck to help finalize those ideas before the election.

Decision:

A majority of the Benchers voted in favour of pursuing discussions regarding amendments to the Bencher vacancy appointment process, with the specific manner of doing so to be determined through ongoing work.

Corie Flett and Arman Chak joined the meeting.

5 Articling Survey report

On behalf of the Practice Foundations Task Force, Ms. Ryan provided an oral report on the Articling Survey to be launched in May. The intention of the survey is to gain an understanding of the issues articling students experience. The law societies of Manitoba and Saskatchewan will participate in the survey and other law societies have expressed interest. Benchers were asked to communicate about the survey with their peers to encourage a high response rate.

6 Audit and Finance Committee (AFC) report and recommendations:

Documentation for this item was circulated with the meeting materials. Ms. Ryan, Chair of the AFC, reported.

6.1 Canadian Centre for Professional Legal Education (CPLED) Tuition Fees

The AFC discussed three scenarios and recommended maintaining the same proportion of funding to CPLED, resulting in a small increase in tuition fees for the 2019-2020 year.

Motion:

That the Benchers set the 2019/20 tuition fee at \$3,064 for Alberta students as described in scenario 2 of the Legal Education Society of Alberta report for Canadian Centre for Professional Legal Education Program Delivery Costs – 2019/20.

**Seconded
Carried**



6.2 Law Society Audited Financial Statements for the Year Ended December 31, 2019

PricewaterhouseCoopers (PwC), the Law Society's appointed auditor, did not encounter any material issues during their audit. PwC will issue their independent auditor's report once the financial statements have been approved. In response to a question, Ms. Meade advised the Benchers that the Law Society is currently in a strong financial position with a contingency reserve at the top of the desired range of \$2.5 to \$5 million.

Motion:

That the Benchers approve the Law Society of Alberta's audited financial statements for the year ended December 31, 2018, as circulated.

**Seconded
Carried**

7 Rule 45.1 – Business Contact Information

Documentation for this item was circulated with the meeting materials. The Chair introduced the proposal for amendments to Rule 45.1 that are intended to clarify the sharing of business contact information.

Ms. Osler advised that this amendment was drafted in in response to the high volume of negative feedback from lawyers protesting about the campaigning emails from candidates. The current Rule represents a reputational and resource issue for the Law Society. The Law Society is committed to ensuring that the election is inclusive and successful.

Motion:

That the Benchers amend Rule 45.1, as proposed.

**Seconded
Carried by at least 2/3 of Benchers present**

Ms. Petersson left the meeting.

8 Mandatory Conduct Advisory Guideline

Documentation for this item was circulated with the meeting materials. Ms. Freund presented the proposal for a new Mandatory Conduct Advisory Guideline to replace the previous version in its entirety.



Motion:

That the Benchers rescind the 2014 Mandatory Conduct Advisory Guideline and replace it with the newly drafted 2019 Mandatory Conduct Advisory Guideline, as circulated, subject to the addition of clarifying language in paragraph 25, as discussed.

**Seconded
Carried**

9 Rule 119.33 Amendment - Trust Accounting

Documentation for this item was circulated with the meeting materials. Ms. Freund presented the proposal for an amendment to Rule 119.33 to include the definition of law firm to expand the scope of practice types captured by the audit provisions. This would provide the Trust Safety department with comprehensive access to all of the accounts involved in a lawyer or law firm's practice. It was noted that the provision would only apply to Rule 119.33. Ms. Ufodike provided further detail and responded to questions.

In response to a concern that a person with no exposure would now be subject to an audit under the new Rule, Ms. Ufodike explained that the purpose of the amendment is to provide the Trust Safety department with the ability to follow the money, regardless of who is administering, to ensure proper accounting of trust funds. The lawyer with no exposure would not be accountable. Audit orders take time and the amended Rule would improve the process, save time and resources, and be as least disruptive as possible to the law firm.

Motion:

That the Benchers amend Rule 119.33, as proposed.

**Seconded
Carried by greater than a 2/3 majority of Benchers present**

10 Client Identification Rule Amendments

A report from the Policy Committee was circulated with the meeting materials. Ms. Ufodike and Ms. Carruthers presented the proposal for amendments to the Rules governing client identification. The proposed changes were drafted to track the Federation of Law Societies of Canada (the "Federation") Model Rules for anti-money laundering and terrorist activities. Highlights and discussion included the following:

- The amendment requires lawyers to record information about the source of funds. It does not create an obligation to report; however, it requires ongoing monitoring and a requirement to withdraw if the lawyer becomes



aware they are being used to facilitate fraud or other illegal conduct. The onus is on the lawyer to ask for information and be comfortable with the response.

- Ms. Ufodike also clarified the process from the perspective of the law firm and confirmed that there are no changes to the firm self-report for 2019 with respect to this requirement.
- Mr. Raby added background information on the Federation’s work on these specific Rules since 2015. As it is unlikely that there will be changes to the legislation, the Federation’s Model Rules are designed to ensure the Federation is doing as good a job as any organization in terms of our profession being used for these purposes.
- The Law Society is developing guidance materials and educational initiatives to assist lawyers with the new Rule. As well there will be plans for internal and external communications.
- Any areas of inconsistency in language (for example, the use of the word “retainer” in relation to the source of funds) will continue to be worked on.

The Benchers requested an amendment to the motion to add the implementation date of September 30, 2019. The amendment is shown in italics in the motion.

Motion:

To amend Rules 118.1 through 118.10, 119(1), 119.17, 119.26 and 119.38, as proposed in Appendices “A” through “D” of the meeting materials, to be implemented effective September 30, 2019.

Seconded

Carried by greater than a 2/3 majority of Benchers present

II Amendments to the Alberta Lawyers Insurance Exchange (ALIEX) Subscribers Agreement

Documentation for this item was circulated with the meeting materials. Mr. Raby, Chair of the ALIEX Advisory Board, presented the proposal to amend the ALIEX Subscribers Agreement to clarify the quorum provisions for ALIEX Annual Meeting and Advisory Board meetings.

BE IT RESOLVED THAT:

- I. **The Society enter into a Second Amendment to Subscribers Agreement among the Society, on its own behalf and on behalf of the members of the Society, and ALIA, in the form presented**



	<p>to the Benchers (the “Amendment”), to make the following amendments:</p> <p>(a) to set the quorum requirement for a Subscribers Meeting at ten (10) members of the Society as contemplated in sections 2 and 3 of the Amendment; and</p> <p>(b) to set the quorum requirement for meetings of the ALIEX Advisory Board to a majority of its directors, as contemplated in section 4 of the Amendment.</p> <p>2. The Amendment as approved herein be executed by the President and the President-Elect on behalf of the Society and its members, with such modifications or amendments to the said form as may be approved by the President and the President-Elect, their execution thereof being conclusive evidence of such approval.</p> <p style="text-align: right;">Seconded Carried</p>
12	<p>President’s Report</p> <p>The President’s report was circulated with the meeting materials.</p>
13	<p>Leadership Report</p> <p>The Leadership Report was circulated with the meeting materials. Ms. Osler highlighted the following:</p> <ul style="list-style-type: none">- The Board materials were released 10 days in advance of the meeting and the intention is to continue this practice.- The briefing note is a tool for Benchers to use to look at specific issues of interest on the agenda. The briefings will be added to the resource materials going forward.- The engagement timeline is a living document that will update continually. There may be items of interest for Benchers to participate in.- It is expected that interest in the Law Society and its activities will increase in anticipation of the Bencher election.- The success of the customer service team in formalizing the Law Society’s inward and outward customer service function has had a direct positive impact on the Law Society’s relationship with profession and the public.- Preparation for the Law Society’s office move is on time and budget.- The customer service team and the membership group were credited with the success of the annual fee billing process.



14	CONSENT AGENDA Consent agenda items were circulated with the meeting materials and were approved concurrently. <div style="border: 1px solid black; padding: 5px;">Motion: That the Benchers approve the following items: 14.1 February 21, 2019 Public Bencher meeting minutes; and 14.2 Nominating Committee recommendations.</div> <p style="text-align: right;">Seconded Carried</p>
15	Reports for Information The following reports were circulated with the meeting materials for information: 15.1 Alberta Law Foundation report 15.2 Alberta Law Reform Institute report 15.3 Alberta Lawyers' Assistance Society report 15.4 Canadian Bar Association report 15.5 Federation of Law Societies of Canada report 15.6 Legal Education Society of Alberta report 15.7 Pro Bono Law Alberta report
16	Other Business There was no other business. The public meeting was adjourned at 2:35 pm.