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**Approved Public Minutes  
of the Four Hundred and Seventy-Sixth Meeting  
of the Benchers Board of the Law Society of Alberta (Law Society)  
held at the Law Society Offices  
Edmonton, Alberta  
April 7-8, 2016**

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**Benchers Present:**

Anne Kirker, QC, President  
Gillian Marriott, QC, President-Elect  
Robert Armstrong, QC  
Glen Buick  
Arman Chak  
Sandra Corbett, QC  
Donald Cranston, QC  
Nancy Dilts, QC\*  
Fred Fenwick, QC  
Josh Hawkes, QC  
Cal Johnson, QC  
Sarah King-D'Souza, QC  
Adam Letourneau, QC  
Julie Lloyd, QC  
Darlene Scott, QC  
Hugh Sommerville, QC  
Kent Teskey, QC  
Amal Umar  
Louise Wasylenko  
Anthony Young, QC

**Regrets:**

Brett Code, QC  
Robert Dunster  
Dennis Edney, QC  
Kathleen Ryan, QC

**Executive Leadership Team:**

Don Thompson, QC, 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, Director, Corporate Services

**Senior Staff:**

Ally Taylor, Manager, Communications  
Ruth Corbett, Governance Administrator

**Guests and Observers:**

Shabnam Datta, Policy Counsel  
Jennifer Freund, Policy Counsel  
Len Polsky, Manager, Practice Review  
Jennifer Flynn, Executive Director, Legal  
Education Society of Alberta (LESA)  
Jeremiah Kowalchuk, Vice-President, Canadian  
Bar Association (CBA) Alberta Branch  
Sandra Petersson, Executive Director, Alberta Law  
Reform Institute (ALRI)  
Steve Raby, QC, Representative, Federation of  
Law Societies of Canada  
Philip Bryden, Deputy Minister, Justice and  
Solicitor General\*

*\*Secretary's Note: The arrival and/or departure of meeting participants are recorded in the body of these minutes. A flexible approach was taken to the order of business.*

The public meeting was called to order at 2:50 p.m. on April 7, 2016 following a Board strategy session and remarks from Deputy Minister Bryden.

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**1 Opening Remarks from the Chair**

Anne Kirker

The Chair welcomed Benchers and guests to the meeting. The Chair advised the Board and guests that agenda items will be reordered to accommodate guests.

The Chair led a tribute to the late Honorable William Kenneth Moore, C.M., LL.D., QC. All Benchers had the honor of interacting with Justice Moore during his tenure on the bench. The Chair spoke to Justice Moore's outstanding community and professional accomplishments, his work ethic, his measured, steady approach, and his sage advice.

**2 Agenda Item 5: Reinstatement Rule Amendments**Cori Ghitter/  
Shabnam Datta

Documentation for this item was circulated with the meeting materials. The proposal includes replacing existing guidelines with a new protocol to facilitate the process for reinstatement applications in keeping with the Law Society's strategic vision to be a model regulator. Assessment of reinstatement applications will be based on a competency profile consistent with that used for new admission applicants and an analysis of relevant risk factors, simplifying and expediting the reinstatement process for low risk applicants; for example, those returning to practice after parental leave. The Policy Committee reviewed detailed information on the proposed reinstatement process and Rule amendments, and is recommending their approval.

The Board's discussion focused on the proposal to implement a discretionary referral process in Rule 118 so that all reinstatement applications made under Rules 115 or 116 will be reviewed by the Executive Director and referred to the Credentials and Education Committee only if the Executive Director is of the opinion a review of the applicant's knowledge and practice experience is warranted.

**Motion: Young/Umar**

1. **Amend Rules 47.1, 64.2, 64.5, 115, 116 and 118, as proposed in Appendix 1.**
2. **Rescind the guidelines in Appendix 4:**
  - **Credentials and Education Committee Reinstatement Guideline;**
  - **Committee Guideline for Rule 115/118 Reinstatement Applications; and**
  - **Staff Guideline for Rule 115/118 Reinstatement Applications.**

**Carried****3 Agenda Item 4: The Evolution of Practice Review**

Len Polsky

Mr. Polsky's presentation focused on the changes that have and are occurring in Practice Review, including the following:

- New initiatives align with the Law Society’s strategic direction and drive to proactive regulation through increased interaction and positive engagement with lawyers.
- Practice Review works with referred lawyers on areas of concern, and makes recommendations that will help them organize and streamline their practice and avoid complaints. The majority of lawyers are welcoming and appreciative of the assistance.
- A handout was provided to the Board demonstrating how Practice Review can get involved in the complaint process. If Practice Review is able to report positively that the lawyer understands the issues and is willing to improve, Conduct can dismiss the complaint. Most complainants are receptive about positive steps in lieu of discipline or punishment.
- The Responsible Lawyer process has been in place for about one year. Exit surveys indicate a substantial increase in the number of lawyers that the Law Society is engaging with in a proactive way.
- The Mentor Connect program, which matches lawyers in need of guidance with a volunteer mentor, was put in place to assist lawyers, particularly small and solo practitioners, to develop their practices, connect with the legal community, and deal with personal issues. The demand for this program is increasing.
- Questions arising throughout Practice Review’s work and activities are documented and will form the basis of a website, articles, and other resources for lawyers.

The Board commended all involved in Practice Review for their efforts towards proactive regulation.

*Secretary’s Note: the public meeting was adjourned at 3:45 pm to accommodate the Law Society Annual General Meeting which was convened at 4:00 pm. The public meeting was reconvened at 10:00 am on Friday, April 8, 2016. Nancy Dilts was not in attendance at the April 8, 2016 portion of the public meeting.*

#### **4 Agenda Item 3: Truth and Reconciliation Commission (TRC) Recommendations**

Cori Ghitler

Chief Wilton Littlechild, TRC Commissioner, will join the Benchers following the meeting on April 8, 2016 at 1:00 p.m. for a presentation and discussion on improving cultural awareness and the provision of legal services to First Nations, Metis, and all Albertans. In advance of Chief Littlechild’s visit, the Board held a discussion about the TRC report and recommendations.

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A memorandum from the Director of Professionalism and Policy was circulated with the meeting materials, providing background information on the TRC, the two recommendations that are specifically directed to the legal profession, focusing primarily at increasing the cultural competence of lawyers and law students, and possible next steps. The importance of ensuring internal expertise and resources to address a response and how to effectively educate Alberta lawyers on the TRC recommendations were discussed.

The Federation of Law Societies of Canada's focus on the TRC recommendations indicates a clear consensus among law societies that there should be a collective response to the calls to action. On March 11, 2016 a Federation Council resolution committed to developing a response to the recommendations as a strategic priority, and authorized the Federation Executive to establish a working group to prepare recommendations for a process for responding. The Federation resolution, which was attached to the meeting materials, highlights a number of difficulties and questions for discussion, including which recommendations should be dealt and responded to, the Federation's role, how to deal with the jurisdictional imperfections in the draft recommendations, when and how to consult with aboriginal groups and other stakeholders, the urgency of the recommendations and whether the Federation should be shifting its priorities, particularly strategic planning, in order to deal with TRC matters.

It will be important for the Board to take a positive approach, in collaboration with law schools and Alberta's aboriginal lawyers, to ensure that any plan is properly resourced and brings about real change. It will be necessary to build trust. Policy work may be required to address systemic issues.

## **5 Agenda Item 6: Section 57 Reviews**

Elizabeth Osler

Documentation for this item was circulated with the meeting materials. Ms. Osler provided background information on the decision taken in February 2016 to repeal Rule 29 to remove the Professional Responsibility Committee (PRC), based on the redirection of policy work to the Policy Committee. The PRC was otherwise required to provide an opinion on rare occasions when dealing with Section 57 reviews.

The PRC was created in the Rules and is not defined in the *Legal Profession Act* (the "Act"); however, the *Act* references the PRC with respect to Section 57 reviews. External counsel, David Jones, provided an opinion on this matter and, while there is no requirement for a PRC, his advice is that the Law Society should consider re-establishing the PRC solely for the purpose of Section 57 reviews.

The recommendation from the Executive Committee is to re-establish the PRC as a two person committee composed of a chair and a vice-chair. The vice-chair would act should the chair be unable. Further, because it will be infrequently called upon, it is proposed that the chair of the Credentials and Education Committee serves as the chair of the PRC, with the chair of the Practice Review Committee serving as vice-chair of the PRC. It was suggested that the terms of reference to be developed for this committee should include a reference to the reason for the re-establishment of this committee.

**Motion: Scott/Letourneau**

**That the motion of the Benchers of February 4, 2016, to repeal Rules 29, 30, 31, Rules 36, 37.1, 37.2 and 38, be amended to remove Rule 29 from the list of rules repealed.**

**Carried**

**Motion: Scott/Letourneau**

**That Rule 29 be amended to read:**

**29 (1) The Professional Responsibility Committee is established.**

**(2) The Professional Responsibility Committee consists of two members.**

**(3) The Chair of the Credentials and Education Committee will serve as the Chair of the Professional Responsibility Committee and the Chair of the Practice Review Committee will serve as the Vice-Chair of the Professional Responsibility Committee.**

**(4) The Chair of the Professional Responsibility Committee may consult, on request, with the Chair of the Conduct Committee and the President under section 57 of the *Legal Profession Act* to determine if a matter should be re-examined.**

**Carried**

## **6 Agenda Item 7: President's Report**

Anne Kirker

The President's Report was circulated with the meeting materials. The President highlighted the following accomplishments and ongoing work:

- The new committee structure has been implemented and the work of the new Policy Committee is underway.
- A meeting with the ACTLA executive regarding their concerns about the transition of the Law Society's Edmonton office provided the opportunity to explain the reasons for the decision, address their concerns, and reassure them of the Law Society's commitment to maintain a presence in Edmonton and across the province.

- The Law Society's new expanded pool of adjudicators is in place and the Board will receive regular updates on the progress of adjudicator education and Tribunal Office activities generally.
- The President has reached out to Alberta law school deans regarding policy issues of interest to them and the work of the new Policy Committee.
- The Legal Aid Review stakeholder consultations are underway. The Board will continue to receive regular updates on the Legal Aid Review.
- The President and President-Elect attended Federation meetings on March 9-10, 2016 and a forum which provided the opportunity to hear from colleagues about work being done to meet the challenges in each jurisdiction.
- The Executive Committee held the annual dinner meeting with past presidents of the Law Society on April 6, 2016.
- Given the full schedule for this April Board meeting, governance learnings from the American Society of Association Executives symposium in February will be shared with the Board at a later date.

**7 Agenda Item 8: Access to Justice Report**

Anthony Young

This report was circulated with the Agenda for information.

**8 Agenda Item 9: Governance Committee Report**

Don Cranston

Mr. Cranston, Chair of the Governance Committee (GC), provided an oral report on the March 31, 2016 GC meeting. The GC's mandate includes developing terms of reference for all committees, dealing with enhancements to Bencher and volunteer recruitment, developing recommendations from the results of the Board evaluation to be conducted in June, and discussing the potential restructuring of the Board.

The Board evaluation process was discussed and historical information was provided on the rationale and evolution of the self-evaluation and peer evaluation components. The evaluation is confidential with the peer evaluation being conducted by an external consultant. The evaluation is voluntary, constructive and intended to provide an opportunity for reflection, learning and improvement. The evaluation was not conducted in 2015 because of the number of new Benchers at the table.

**9 Agenda Item 10: Alberta Law Foundation (ALF)**

Anthony Young

This report was circulated with the Agenda for information.

**10 Agenda Item 11: Alberta Law Reform Institute Report** Sandra Petersson

This report was circulated with the Agenda for information.

**11 Agenda Item 12: Alberta Lawyers Assistance Society Report** Julie Lloyd

This report was circulated with the Agenda for information.

**12 Agenda Item 13: CBA Report** Jeremiah Kowalchuk

This report was circulated with the Agenda for information.

**13 Agenda Item 14: LESA Report** Jennifer Flynn

This report was circulated with the Agenda for information.

**14 Agenda Item 15: Pro Bono Law Alberta Report** Robert Dunster

This report was circulated with the Agenda for information.

**15 Other Business** Anne Kirker

There being no further business the Chair adjourned the public meeting at 11:00 a.m. on Friday, April 8, 2016.