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**Approved Public Minutes  
of the Four Hundred and Seventy-Eighth Meeting  
of the Benchers Board of the Law Society of Alberta (Law Society)  
held at the Law Society Offices  
Calgary, Alberta  
September 29, 2016**

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**Benchers Present:**

Anne Kirker, QC, President  
Anthony Young, QC, President-Elect  
Robert Armstrong, QC  
Glen Buick  
Arman Chak  
Brett Code, QC  
Sandra Corbett, QC  
Donald Cranston, QC  
Nancy Dilts, QC  
Robert Dunster  
Dennis Edney, QC  
Fred Fenwick, QC  
Josh Hawkes, QC  
Cal Johnson, QC  
Sarah King-D'Souza, QC  
Adam Letourneau, QC  
Julie Lloyd, QC  
Kathleen Ryan, QC  
Darlene Scott, QC  
Kent Teskey, QC  
Amal Umar  
Margaret Unsworth, QC  
Louise Wasylenko

**Regrets:**

Hugh Sommerville, 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:**

Paule Armeneau, General Counsel  
Chioma Ufodike, Manager, Trust Safety  
Ally Taylor, Manager, Communications  
Ruth Corbett, Governance Administrator

**Guests and Observers:**

Jenny McMordie, Vice-President, Canadian Bar  
Association, Alberta Branch  
Jennifer Flynn, Executive Director, Legal  
Education Society of Alberta  
Steve Raby, QC, Representative, Federation of  
Law Societies of Canada (FLSC)  
Shabnam Datta, Policy Counsel, Law Society  
David Weyant, QC, Chief Operating Officer,  
Alberta Lawyers Insurance Association  
Paul Paton, Dean of Law, University of Alberta  
Lorraine Champion, Manager, Early Intervention  
Program, Law Society  
Jessica Arts, Manager, Information Management,  
Law Society  
Stephan Ong, Business Technology, Law Society

The public meeting was called to order at 9:00 a.m. on September 29, 2016.

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**1 Remarks from the Chair**

Anne Kirker

The Chair welcomed Benchers and guests to the public meeting. Dr. Paton, Ms. McMordie, and Mr. Weyant were introduced to the Board. The Chair emphasized the meeting's focus on strategic issues, including the draft strategic plan developed by the Strategic Planning Task Force, the Law Society Business Plan, recommendations from the Policy Committee, next steps in relation to Trust Safety funding, and responding to the Truth and Reconciliation Commission (TRC) calls to action.

**2 Introductory Remarks from the Executive Director**

Don Thompson

The Executive Director's remarks included the following:

- The Executive Leadership Team retreat focused on the steps required to achieve greater operational effectiveness. The redevelopment of archaic processes will drive Rule changes and budget planning over the next year or so with the aim of increasing the level of customer service and decreasing cycle time and costs.
- Information emerging from the analysis of available data will facilitate and enhance decision making. The Board will receive a comprehensive report when the work is completed.
- The operationalizing of early intervention programs continues. An intake and early intervention pilot project will be launched in October. The redesigned intake system is intended to improve triaging of complaints and allow for proactive intervention and resolution where there is unlikely to be a regulatory response. Language will move away from talking about complaints and intake forms and scripts for staff are being revised accordingly. Issues identified during the pilot program will be addressed prior to the launch of the new system. A report on this work will be provided to the Board early in 2017.

**3 Draft 2017-2019 Strategic Plan**

Nancy Dilts/Adam Letourneau

The draft 2017-2019 Strategic Plan (the "Plan") was circulated with the meeting materials and a PowerPoint presentation provided an overview of the work of the Strategic Planning Task Force to refresh the Plan in accordance with the themes that arose during the Board's April 2016 planning session.

The Board's discussion and suggestions included the following:

- The draft three-year Strategic Plan does an excellent job of articulating the strategic priorities identified by the Benchers, including, in particular, the focus on proactive regulation.
- Consistency in the articulation of what is meant by *public interest* and *vision* is important to ensure a common frame of reference throughout the document that will help the public understand the Law Society's goals.
- Communicating that the indemnity program operates with *timeliness* and *independence* may help clarify the distinction between the Law Society's role in assessing conduct deserving of sanction and its role in compensating members of the public who suffer damages as a result of lawyer negligence.
- The Law Society's role in promoting access to justice and the rule of law and how to properly articulate the fact that the Law Society is just one of many stakeholders with responsibilities in these areas was discussed.
- Concepts expressed in the Plan related to the engagement of lawyers, and cultural competency and diversity, have been deliberately expressed at a high level. Further discussion about what success in achievement of these goals looks like will be ongoing during implementation of the Plan.

The Strategic Planning Task Force will consider the Benchers' comments and suggestions in finalizing the Plan for approval at the next Board meeting.

#### **4 2017 Law Society Business Plan**

Drew Thomson/ ELT

A high level overview of the Business Plan was circulated with the meeting materials. Highlights included the following:

- The shortfall in the 2016 operating budget resulting from the suspension of the Trust Transaction Fee (TTF) will be absorbed by the contingency reserve fund. A zero-growth budget is planned for 2017 to ensure reserve funds are not depleted further.
- Investments in process enhancements are proving successful in terms of process simplification, cost reduction and enhanced customer service, and it is expected that these initiatives will continue to show benefits in 2017.
- A comprehensive review of the Rules will begin in 2017 as part of the effort to simplify Law Society processes.
- The decision to reduce the budgeted increase to salary bands in 2016 was made in accordance with the Law Society's compensation philosophy to benchmark against the public sector industry.
- Budget overruns in some departments in 2016 are being offset by savings in other areas. It is expected that the 2016 budget will be within the operating envelope of approximately \$30 million by year-end.

### 3 Trust Safety Funding update and next steps

Drew Thomson

The Board received an oral report on the outcomes of the information gathering sessions held in Calgary and Edmonton with targeted groups of interested lawyers. The sessions were organized to obtain feedback on the planned approach to the profession wide consultation and the alternate scenarios for trust safety funding developed for discussion. Feedback and suggestions from these meetings included the following:

- There was an appreciation of the Law Society's approach to consulting more broadly with the profession on this and similar issues. Suggestions for improvement included distribution of information in advance to allow people to prepare and better timing of sessions to make it easier for people to attend.
- Appreciation was expressed for the Law Society's willingness to suspend the TTF and engage in further consultation.
- Participants demonstrated an understanding of the issues facing the Law Society in relation to trust safety funding and many participants had no objection to changing the Law Society's traditional funding model; however, opinions varied widely about whether shifting the burden based on areas of risk was advisable or could be effectively achieved. Response to the two possible funding scenarios presented was diverse.
- The feedback gathered in the sessions and from the Board will inform the province-wide consultation process and approach.

The Board's discussion included the following:

- The intention to build a trust safety funding model into the 2017 budget may not be realistic given the time-frame. It was suggested that maintaining the status quo and increasing the practice fee in 2017 might be a reasonable temporary measure and would signal the Law Society's willingness to take the time to meaningfully and transparently consult with the profession.
- The Board discussed the original principal and purpose of the TTF. Different models for funding areas of risk were explored; however, the decision was made to focus on trust safety because it represents such a significant area of risk. It was clarified that the total cost of funding trust safety in all aspects of the Law Society's regulatory obligation is approximately \$10 million annually, of which \$1.8 million is the price of operating the Trust Safety department within the Law Society.
- An examination of trust safety data informed discussions about alternative scenarios. Caps and floors on the original TTF formulation were explored; however, were deemed impractical because they would be too complex to administer. Complexity in administration also ruled out a number of options leaving the alternate

scenarios presented at the information-gathering sessions – the differential fee model and a flat fee per matter model – as the best alternatives for discussion

- It was suggested that time should be taken during the consultation to ask about the indirect cost of trust accounts so that the financial burden on the solo practitioner can be properly understood by the Law Society. The variety of ways lawyers are involved in trust accounts is also a consideration.
- Consideration of the needs of the public in accessing lawyer services should be considered in any new funding model.
- Lawyers bundle trust accounting services in their fees, making it challenging for the Law Society to separate the various pieces that comprise the total cost of trust safety.
- The issue of scale is another important factor. Many of those in favour of shoulder-to-shoulder fees work for large firms and have little trust safety risk.
- Participation in the consultation will be encouraged in all major centers at times that are convenient for the local Bar. Law firm administrators responsible for financial systems will also be invited to participate.

The President summarized the discussion re-iterating the history of the Benchers' decision to proceed with the development of an alternate trust safety funding model, subject to consultation with the profession. She confirmed the next step to proceed with the full consultation before all of the information gathered and the issues identified through the consultation process are presented to the Board for deliberation. The consultations will ensure the membership understands the process. In the likely event there is insufficient time to incorporate any new funding model in the 2017 budget, the reasonable alternative will be to maintain the status quo.

<b>3</b>	<b>Truth and Reconciliation Committee (TRC) – FLSC Task Force update and proposed next steps for the Law Society</b>	Cori Ghitter/ Adam Letourneau
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An oral report was provided on the work of the FLSC TRC Task Force and the next steps for the Law Society in Alberta. Some provinces have taken steps which resulted in some negative feedback from indigenous community leaders because of the lack of time taken to consult with those leaders about whether the steps contemplated were likely to be effective.

Despite the pressure to move quickly, it is important for the Law Society take care to consider the complexity of the issues and the time to ensure any action ultimately taken incorporates the perspectives of the indigenous communities in our Province. It is important that the Law Society develop an approach to consultation and problem-solving that incorporates and respects indigenous culture and values. A group of advisors with diverse perspectives and expertise in the area is required to help lead this

work. Any approach to engagement will require a long term commitment. The need to coordinate our local work with the work being done at the FLSC level as well was noted.

The Law Society does not have the capacity or the internal expertise to identify and recruit suitable individuals for an advisory; therefore, as a first step, funds have been set aside for the cost of an expert to assist with this task. The Board discussed the importance of finding someone with the right knowledge and skill set, and a few names were suggested.

## 7 Hearing Committee Appointment Protocol

Anne Kirker/Nancy Carruthers

The proposed Hearing Committee Appointment Protocol (the “Protocol”) was included with the meeting materials. Highlights and discussion included the following:

- The latest draft document circulated includes recent changes suggested by the Executive Committee; i.e., clarification that the Protocol contains *guiding principles* for the Chair of the Conduct Committee when appointing adjudicators to Hearing Committees; and the addition of a paragraph confirming that the protocol will be reviewed after a period of use.
- The Protocol is consistent with policies implemented by other jurisdictions and ensures a transparent process for appointing committees.
- The intention at this time is, whenever possible, to have an elected Bencher as chair, together with one lawyer and one public adjudicator on each hearing committee. The Protocol includes a provision for appointing more than one Bencher to a committee in those limited circumstances where a new Bencher requires hearing experience before being appointed as the chair of future hearing committees.
- Training is mandatory, consistent with National Discipline Standards. The goal is to maintain the same standards for all adjudicators. Online and in-person training programs have been developed and implemented and the feedback to-date from participants is positive. The online training course will be kept current and available, providing the opportunity for adjudicators and Benchers to catch up if they have not been able to complete.
- Participation in hearing committees will be tracked to ensure equal opportunities for adjudicators to have experience on hearing committees.
- The Protocol addresses the rare circumstance where a Bencher or lawyer adjudicator is the subject of a conduct process, providing clarity of process for determining whether or not that person can sit on a hearing committee.

**Motion:**

**To approve the Hearing Committee Appointment Protocol, as set forth in Appendix “A” of the report in Tab 7 of the meeting materials.**

**Seconded  
Carried**

**8 Policy Committee Report and Recommendations**

Anne Kirker

Documentation circulated with the meeting materials for this item included a report from the Policy Committee, the Policy Inventory, and a number of proposals for changes to Rules and Guidelines. All proposals for Rule and Guideline amendments in agenda items 8.1 through 8.8 have been reviewed and are being recommended by the Policy Committee. The Chair noted that the Policy Committee is working effectively to meet its mandate and extended thanks to all those involved.

The Policy Committee continues to review and update all Law Society guidelines, including extracting internal operational staff procedures from the various guidelines and organizing these into protocols for staff use.

**8.1 Rule Amendments – Continuing Professional Development**

Cori Ghitler

Documentation for this item was circulated with the meeting materials. Management provided an overview of changes made to the Continuing Professional Development (CPD) program in 2015 and presented the background and rationale for further changes at this time. The current proposal to change the timing of the planning cycle and to introduce an administrative suspension for failure to meet CPD requirements is intended to assist lawyers with planning and implementing their CPD programs. The changes will align the CPD program with practices in other Canadian jurisdictions and professions. Communication to lawyers about the CPD program is ongoing.

The Board’s discussion included the following:

- A number of Benchers were concerned that the administrative suspension may be an unfair consequence of non-compliance with CPD. A concern that clients may not be protected in situations where a lawyer was administratively suspended during proceedings was also expressed. However, the requirement for CPD was generally recognized as important and not onerous. The administrative suspension implemented for non-payment of fees has been successful with compliance now close to 100% and management expects that the proposed administrative suspension for CPD will be equally effective in increasing compliance rates and improving lawyer competency.

- Management clarified that an administrative suspension is not the same as a suspension for conduct deserving of sanction. The administrative suspension reinstatement process was streamlined in 2015, providing a fast-track process for reinstatement outside conduct.
- The Board encouraged clear communications and ongoing messaging to ensure lawyers fully understand the process and the penalty, including that support is available to them for preparing and submitting their professional development plans.

**Motion:**

**To amend rules 67.2, 165.1(1) and 167(1)(b), and add rule 67.3, as proposed.**

**Seconded  
Carried  
Four Opposed**

**8.2 Rule Amendments: Section 68 – Early Retirement Applications**

Shabnam Datta

Documentation for this item was circulated with the meeting materials. In April 2015 the Board directed management to identify an alternative to Board approval of applications to go Inactive (Retired) prior to the required 25 years of active practice. The Policy Committee reviewed the procedure and analyzed the issues and is now recommending that the decision-making process be transferred to the Executive Director to eliminate the need for Board approval of each application.

**Motion:**

**To amend rule 68(3) to:**

- 1. insert a new rule 68(3)(d),**
- 2. amend all subsequent numbering within rule 68(3), and**
- 3. amend the current rule 68(3)(d), now rule 68(3)(e),**

**as proposed.**

**Seconded  
Carried**

**8.3 Rule Amendment: Rule 119.15 – Trust Safety**

Shabnam Datta

Documentation for this item was circulated with the meeting materials. The interpretation of one of the Trust Safety Rule amendments approved by the Board in June 2016 has since come under debate. The current proposed amendment is intended to provide clarity.



**Motion:****To amend Rule 119.15, as proposed.****Seconded  
Carried****8.4 Rescind the Trust Safety Approvals Guideline**

Shabnam Datta

Documentation for this item was circulated with the meeting materials. Since the approval of Trust Safety Rule amendments in June 2016 the *Trust Safety Approvals Guideline* is out of date.

**Motion:****To Rescind the *Trust Safety Approvals Guideline*.****Seconded  
Carried****8.5 Rule and Guideline Amendments: Section 57 –  
Complaint Re-examination**

Shabnam Datta

Documentation for this item was circulated with the meeting materials. Section 57 is rarely used in practice; however, it is necessary to comply with this section of the *Legal Profession Act* and the proposed amendments to Rule 88.1 will provide the consistency required. A *Section 57 Guideline* is also being proposed to increase clarity and consistency in the review process, and to provide parameters and guidance to Chairs who may encounter a request under Section 57.

**Motion:****To amend rule 88.1, as proposed, and to approve the Section 57 Re-Examination Guideline.****Seconded  
Carried****8.6 Pre-Hearing Conference – Rule Amendments and Guidelines**

Shabnam Datta

Documentation for this item was circulated with the meeting materials. The chair and vice-chairs of the Conduct Committee were consulted in the preparation of the proposed amendments.

The proposed amendments to Rule 90.1 clarify the role of the chair of the pre-hearing conference, and are aimed at improving the effectiveness, efficiency, fairness and

timeliness of the process. These amendments would result in a consequential amendment to Rule 97.

Amendments to the current *Pre-Hearing Guideline* were drafted to reflect the pre-hearing conference process proposed. A new *Pre-Appeal Guideline* was drafted to reflect the pre-hearing conference process that is applicable to appeals. It was confirmed that there is provision for the pre-hearing Chair to determine if notice has been given or notice pursuant to a substitutional service order.

**Motion:**

1. To amend Rule 90.1 and Rule 97, as proposed.
2. To amend the *Pre-Hearing Guideline*, as proposed.
3. To approve a *Pre-Appeal Guideline*, as proposed.

**Seconded  
Carried**

**8.7 Appeal from Complaint Dismissals Guideline amendments** Shabnam Datta

Documentation for this item was circulated with the meeting materials. The Board approved the *Appeal from Complaint Dismissals Guideline* on June 11, 2016 and directed management to refine some of the language around the standard of review, for the Policy Committee's review. The Policy Committee was satisfied with the revisions; however, recommended one additional revision which required Board approval.

**Motion:**

**To amend the *Appeal from Complaint Dismissals Guideline*, as proposed.**

**Seconded  
Carried**

**8.8 Rescind the Complaints and Inquiry Guideline** Paule Armeneau

Documentation for this item was circulated with the meeting materials. The current *Complaints and Inquiry Guideline* is the 2006 reiteration of the *Complaint Guideline* originally adopted in 1999 and no longer reflects Law Society practices. Rescinding the guideline is part of the Law Society's efforts to ensure that policies, guidelines and protocols are accurate and reflect current practices.

**Motion:**

**To rescind the *Complaints and Inquiry Guideline*.**

**Seconded  
Carried**

**9 Nominating Committee Recommendations**

Anne Kirker

A memo from the Nominating Committee providing background information to the recommendation for appointments was circulated with the meeting materials.

**Motion:**

- To appoint Darlene Scott to the Alberta Law Foundation Board to replace Anthony Young, QC; and
- To appoint Anthony Young, QC, to the Legal Aid Agreement Task Force, to replace Gillian Marriott, former President-Elect.

Both appointments will take effect immediately.

**Seconded  
Carried**

**10 Alberta Lawyers Insurance Exchange (ALIEX)  
Subscribers Agreement Amendment**

Don Thompson

Documentation for this item was circulated with the meeting materials. The intention behind the resolution to amend Section 4.8 of the Subscribers Agreement is to allow for staggered terms on the ALIEX Advisory Board.

**BE IT RESOLVED THAT:**

1. The Subscribers Agreement be amended to remove the first sentence of Section 4.8 and replace it with the following: "*The term of office of a Director shall be for such term as determined by the Benchers at the time of the appointment of such person as a Director, such term not to exceed three (3) years.*"
2. The Society enter into a First 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 to the Benchers (the "**Amendment**").
3. The Amendment 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 approved by the President and the President-Elect, their execution thereof being conclusive evidence of such approval.

**Seconded  
Carried**

**11 2018 Board Meeting Dates**

Don Thompson

The proposed meeting dates for 2018 were circulated with the meeting materials.

**Motion:****To approve the following 2018 Bencher meeting dates and locations:****February 8 – 9, 2018 – Calgary****April 12 - 13, 2018 – Edmonton****June 6 - 9, 2018 – Jasper****September 27 - 28, 2018 – Calgary****November 7, 2018 – Budget meeting (1-4 pm)****November 29 - 30, 2018 – Edmonton****Seconded  
Carried****12 University of Alberta Faculty of Law Report**

Paul Paton

Dr. Paton's oral report to the Board highlighted Faculty of Law activities and initiatives, including the recruitment of new faculty members; funding for visiting professors for equity and diversity issues; strategic planning; enrolment and articling; legal education; the expansion of experiential learning opportunities; upcoming events on mental health and wellness; and current issues such as the TRC recommendations. Articling was discussed with the Board, particularly the impact of the economy on the availability of placements and the Faculty of Law's efforts to ensure incoming students are aware of the array of opportunities available for getting placements.

**13 President's Report**

Anne Kirker

The President's Report was circulated with the agenda for information.

**14 ALIEX Advisory Board Report**

Steve Raby

This report was circulated with the agenda for information. Highlights included the following:

- The Advisory Board welcomed Mr. Weyant as the new Chief Operating Officer of ALIA and ALIEX.
- The process for Advisory Board succession is underway. The Bencher's approval of the Subscribers Agreement amendment will allow for staggered terms on the Advisory Board.
- As ALIEX matures the skills and attributes of directors will be a focus to ensure a wide variety of appropriate competencies on the Advisory Board.

- Policy work currently includes the Own Risk and Solvency Assessment Policy which is important in determining the amount of money to keep in reserve.
- The levy reduction in 2016 was based largely on the strength of investment returns; however, this year investment returns will be lower.

**17 Access to Justice Report**

Anthony Young

There was no Access to Justice report for this meeting.

**18 Alberta Law Foundation (ALF) Report**

Anthony Young

Mr. Young provided an oral report on recent developments in ALF, particularly the establishment of a strategic plan; increased capacity through the recruitment of an investment manager and other professionals to assist with finances and grant evaluations; the transition from paper to a digital environment; and the move to permanent space in the Kanahoff Centre. The Board expressed their appreciation to Mr. Young for his long service on ALF and dedication to their cause.

**19 Alberta Law Reform Institute (ALRI) Report**

Don Cranston

This report and the 2015-2016 Annual Report of ALRI were circulated with the meeting materials for information.

**20 Alberta Lawyers Assistance Society Report**

Julie Lloyd

This report was circulated with the agenda for information.

**21 Canadian Bar Association Report**

Jenny McMordie

This report was circulated with the agenda for information.

**22 Legal Archives Report**

Fred Fenwick

Legal Archives would like to provide access to old files to historians; however, solicitor client privilege issues arise. A formal memo exploring solutions will be brought back to the Board for discussion at a later date. Mr. Fenwick invited Benchers to send him any comments and suggestions in the meantime.

**23 Legal Education Society of Alberta Report**

Jennifer Flynn

This report was circulated with the agenda for information.

**24 Pro Bono Law Alberta Report**

Robert Dunster

This report was circulated with the agenda for information.

**25 Other Business**

Anne Kirker

There being no other business the Chair adjourned the public meeting at 3:40 pm.