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**Public Minutes**  
**of the Four Hundred and Seventy-Ninth Meeting**  
**of the Benchers Board of the Law Society of Alberta (Law Society)**  
**held at the Law Society Offices**  
**Edmonton, Alberta**  
**December 1, 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  
Hugh Sommerville, QC  
Kent Teskey, QC  
Amal Umar  
Margaret Unsworth, QC  
Louise Wasylenko

**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, Chief Financial Officer  
David Weyant, QC, Chief Operating Officer,  
Alberta Lawyers Insurance Association

**Staff:**

Ruth Corbett, Governance Administrator  
Avery Stodalka, Communications Advisor  
Stephan Ong, Business Technology, Law Society

**Guests, Presenters and Observers:**

Nancy Carruthers, Acting Tribunal Counsel  
Jennifer Freund, Policy Counsel  
Jenny McMordie, Vice-President, Canadian Bar  
Association, Alberta Branch  
Jennifer Flynn, Executive Director, Legal  
Education Society of Alberta  
Sandra Petersson, Executive Director, Alberta Law  
Reform Institute  
Steve Raby, QC, Federation of Law Societies of  
Canada (FLSC)

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

The public meeting was called to order at 9:05 am on December 1, 2016.

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**1 Remarks from the Chair**

Anne Kirker

The Chair welcomed Benchers and guests to the public meeting. The business of the meeting includes the election of the President-Elect and the Executive Committee for the 2017 year. The Chair thanked all those who put their names forward for consideration. The agenda includes presentations on strategic issues, the changing regulatory environment, the 2017-2019 Strategic Plan and the 2017 Business Plan and Budget.

The Chair congratulated Mr. Don Thompson on his sixteenth anniversary today as Executive Director of the Law Society. Mr. Cal Johnson was also congratulated for over 30 years of service to the profession.

**2 Election of the President-Elect and the Executive Committee**

Anne Kirker

Documentation for this item was circulated with the meeting materials.

**2.1 Election of the President-Elect**

The Chair introduced the elections for President-Elect and outlined the election procedures. Mr. Cranston and Mr. Fenwick put their names forward for President-Elect. The Chair called for further nominations from the floor and none were received.

**Motion:****To close the nominations for President-Elect.****Seconded  
Carried**

Mr. Cranston and Mr. Fenwick each addressed the Board. The ballots were distributed, collected and tallied. Mr. Cranston received the majority of the votes cast, and was declared the new President-Elect pursuant to Rule 27(1)(b) and 28(2)(a).

**2.2 Election of the Executive Committee**

The Chair outlined the election procedures for the Executive Committee, advising the Board that in addition to the statements of intention provided in the materials, Mr. Letourneau had expressed his willingness to stand. The Chair called for further nominations from the floor and none were received.

**Motion:****To close the nominations for the Executive Committee.****Seconded  
Carried**

Ballots were distributed, collected and tallied. Following three rounds of voting, the following individuals each received a majority of votes cast and were declared as the four elected Bencher members of the Executive Committee pursuant to Rule 27(1)(d) (in alphabetical order):

- Rob Armstrong
- Kathleen Ryan
- Darlene Scott
- Kent Teskey

### **2.3 The appointment by the Lay Benchers of the Lay Bencher member of the Executive Committee**

The Lay Benchers appointed Ms. Wasylenko as the Lay Bencher on Executive Committee for the one year term pursuant to Rule 27(1)(e).

## **3 Appointment of the Bencher to the Nominating Committee**

Anne Kirker

The Nominating Committee consists of the Past President, President, President Elect, and one other Bencher.

Five Benchers expressed their intention to be considered for this appointment this year. Recent practice has been to alternate Lay Benchers and elected Benchers for this appointment. This year the nominee recommended by the Executive Committee is Glen Buick. Mr. Buick stated his willingness to serve on the Nominating Committee.

### **Motion:**

**To appoint Glen Buick to the Bencher-at-large position on the Nominating Committee.**

**Seconded  
Carried**

## **4 The Changing Regulatory Environment**

Don Thompson/Elizabeth Osler

The Benchers received a presentation on how trends are changing the practice of law and the delivery of legal services and the challenges and opportunities these changes present. Changes in lawyer demographics, the nature of law firms, clients, and in the delivery of legal education, as well as the changing nature of the world at large, are all impacting law societies around the world. How the Law Society deals with this change will have consequences for the future of the profession, the delivery of legal services and the rule of law.

As the number of providers of legal services and legal information who are not lawyers increases, tension is created between change and tradition, and the Law Society could

be seen as an impediment to both. Tensions also arise between the Law Society and its membership and between the Law Society and the public. Businesses and professions may not survive if they do not respond to changing market conditions.

These trends and changes create challenges for the Board as the Law Society's decision-making body. The dual role of Benchers as governors and adjudicators complicates their leadership positions and responsibilities as strategy setters; however, the adoption of the Strategic Plan will ensure continued progress and provide further opportunities for constructive action.

## 5 2017-2019 Strategic Plan

Tony Young

The draft 2017-2019 Strategic Plan (the "Plan") was circulated with the meeting materials and a cover memo highlighted the changes made since the previous draft was discussed at the September 29, 2016 Board meeting. Hard copies of an additional suggestion for revised wording in the Cultural Competency paragraph was circulated at the meeting. The Board's discussion and suggestions included the following:

- The Benchers agreed with the proposed change to the Cultural Competency paragraph, which one small amendment.
- The Benchers discussed and amended language in the access to justice section to clarify the Law Society's role.
- The intersection between strategic governance and the operations of the organization and the Business Plan and Budget will determine how strategic goals are met. The Plan speaks to cost management and financial stewardship at a high level while the Business Plan and Budget sets out how strategic goals will be met operationally. The Board is responsible for advancing the Plan in a fiscal manner, in alignment with the Business Plan and Budget and on the advice and recommendations from management.

### **Motion:**

**To approve the Law Society of Alberta Strategic Plan 2017-2019 subject to the amendments discussed.**

**Seconded  
Carried  
One abstention**

## 6 2017 Business Plan and Budget

Drew Thomson/ ELT

The proposed 2017 Business Plan and Budget was circulated with the meeting materials. Management confirmed that no changes have been made to the version of the Budget that was presented to the Board at the Budget pre-meeting on November 9,

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2016 apart from condensing the material for posting on the Law Society's public website.

The Board's discussion focused on the potential impact of the Budget on the Practice Fee. The ALIA Management Fee was discussed and management advised the Board that a revised calculation of the management fee was developed this year to better reflect the actual services provided by the Law Society to ALIA. The Law Society charges this fee to ALIA to recover costs for services provided including accounting, communications, information technology, office space, human resources, and governance. The impact of this fee on the proposed Practice Fee was discussed. Management advised that there is already a differential between insured and non-insured lawyers and confirmed that insured lawyers do absorb the cost of these services through the annual levy for the indemnity program; however the cost would be higher if ALIA sourced such services externally through arms-length service providers.

It was confirmed that the budgets for ALIA and ALIEX are approved by the ALIA and ALIEX boards, and the insurance levy is approved by the ALIEX board.

**Main Motion:**

**To approve the Law Society 2017 Business Plan and Budget and set the 2017 Practice Fee at \$2,600.**

**Seconded**

It was proposed that a lower number for the Practice Fee would still leave the contingency reserve fund within the acceptable range and a motion to amend the main motion was put.

**Motion:**

**To amend the Main Motion to set the 2017 Practice Fee at \$2,580.**

**Seconded**

Discussion of the motion to amend the main motion:

In its discussions, the Audit and Finance Committee (AFC) recognized the challenges that the current economic environment and the Practice Fee have on practitioners; however, setting a Practice Fee of \$2,580 would result in a small deficit. The AFC reached a consensus that the proposed increase is not significant therefore the option to replenish the reserve and not run a deficit budget was preferred, resulting in the recommended Practice Fee of \$2,600.

**The motion was defeated**

Management committed to adding an explanatory note and detailed schedule to the Budget to provide clarity to the reader regarding how the management fee is determined and its impact on the annual insurance levy.

**The main motion was carried  
One opposed**

Ms. King D'Souza left the meeting.

## **7 Trust Safety Funding update and next steps**

Drew Thomson

The Board received an oral report and presentation on the recently-completed consultation on trust safety funding, including history and background, work done since the Trust Transaction Fee (TTF) was suspended, the consultations and what was heard and learned, the geographic locations of the consultations and demographics of the participants, and next steps. Alternate trust safety funding approaches discussed with the profession included differential fees and flat trust transaction fees.

Learnings and common themes that emerged from the consultations included:

- Location, date and time are important – lawyers were appreciative that the Law Society held sessions in many areas in Alberta; however, communication with the local Bars in advance is necessary in the future to determine the best locations and times for maximum participation.
- Participants appreciated advance distribution of the information being discussed to allow time for them to gain an understanding of the issues and prepare their questions.
- Participants appreciated the Law Society's response to concerns about the TTF and the Board's decision to suspend the TTF, and to further engage the profession in the trust safety funding issue.
- It was clear that many participants do not have a good understanding of what the Law Society does in terms of regulation of their profession. This insight suggests there is a significant opportunity to continue to engage directly and frequently.
- Most, however not all, participants generally do not see annual fees as a barrier to their ability to deliver legal services on a sustainable basis.
- There is a strong sentiment that all lawyers, regardless of the area of practice, benefit from the safe operation of trust accounts, both in terms of the collective reputation of the profession and in terms of how lawyers conduct business and add to the economy. However, it was noted that the majority of participants in the consultations were from private practice settings and this gap requires further analysis.
- Differential fees were generally thought to have the potential to create divisions within the profession, particularly given that there is already a differential with the levy for insured lawyers. Participants were therefore generally in favour of shoulder to shoulder fees.
- There was a discussion about whether lawyers who deliver legal services to ordinary Albertans, and who may be in need of assistance to sustain the viability

of their practices, should be eligible for some form of fee reduction on a fair means test basis.

- Some lawyers felt that a fee tied to trust activity could be problematic to pass on to clients.
- Overall, lawyers are experiencing a significant amount of change in the way legal services are delivered, and are generally apprehensive about changes to the fee structure and reporting requirements that may be imposed upon them by the Law Society.

Before coming back to the Board with any recommendations, the Law Society will seek external consultation and change management advice to assess the adequacy of the consultation process that was followed and to assist in determining what more needs to be done on the trust safety funding issue.

The Board's discussion included the following:

- Benchers may benefit from further education on trust safety and this will be planned for a future Board meeting.
- Practice Fees in Alberta are among the highest in the country; however, it is challenging to compare fees across provinces because fee structures differ for a variety of reasons. Management will provide the Board with an analysis that may provide some degree of clarity on this issue.
- Issues in the current funding model around sustainability and risk continue to be important topics in discussions about alternate funding approaches.
- It will take time for cost reductions resulting from the Law Society's transition from reactive to proactive regulation to become evident.

## **8 Policy Committee Report and Recommendations**

Anne Kirker

Documentation circulated with the meeting materials for this item included the Policy Inventory and a number of recommendations. All proposals presented in agenda items 8.1 through 8.4 were reviewed and recommended by the Policy Committee.

### **8.1 Delegation to the Chair of Conduct under Section 57**

Jennifer Freund

Documentation for this item was circulated with the meeting materials. This recommendation tied into agenda item 8.2.

#### **Motion:**

- 1. To appoint Darlene Scott QC, as Co-Chair of the Conduct Committee, effective December 1, 2016 for the sole purpose of completing a section 57 re-examination of complaint number CO2015 2227; and**



- 2. To automatically discontinue the above appointment of Co-Chair of the Conduct Committee once the section 57 re-examination is complete.**

**Seconded  
Carried  
One abstention**

## **8.2 Rule 88.1 Amendment: Section 57 Re-examinations**

Jennifer Freund

Documentation for this item was circulated with the meeting materials. The proposed Rule amendment will allow for a delegation in those rare situations of conflict or incapacity without the need for a special resolution of the Board in each instance.

### **Motion:**

**To amend rule 88.1 as proposed.**

**Seconded  
Carried**

## **8.3 Code of Conduct Amendments**

Nancy Carruthers

Documentation for this item included a cover report, proposed rule changes to the Code of Conduct, and proposed renumbering of the Code of Conduct. The Policy Committee is recommending that the Code of Conduct be amended to reflect recent amendments to the Model Code of Professional Conduct.

The Board's discussion focused on issues around communication with witnesses giving evidence and it was suggested that the necessary guidance to enforce the standards should be made more explicit in the Code of Conduct. A consensus of the Board agreed that rules 4.03 and 4.04 (1) and (2) require additional work and these rules will be deleted from the motion.

### **Amended Motion:**

- 1. To amend Rules 2.02 (1); ~~4.03; 4.04 (1) and (2)~~; 6.01 (3); and 6.07 (1) and (2) of the Code of Conduct, as set forth in Appendix "A"; and**
- 2. To amend the Code of Conduct, by renumbering the Code of Conduct as set forth in Appendix "B".**

**Seconded  
Carried**

*Secretary's note: amendment is indicated by blacklined text.*

## **8.4 Rule 119.46 Amendment – Trust Safety**

Jennifer Freund

Documentation for this item was circulated with the meeting materials and it was explained that as banks increase digitization of transactions, cheque certification is



being eliminated. Although this does not impact many lawyers, the proposed rule amendment will provide an alternate, less cumbersome, method of withdrawing funds from a trust account for those lawyers who are impacted.

**Motion:**

**To amend Rule 119.46 as proposed.**

**Seconded  
Carried**

**9 Terms of Reference (TOR) and Mandates for Committees**

Don Cranston

Documentation for this item was circulated with the meeting materials. There was a concern about the use of the term *Board* in place of *Benchers*, particularly given that the *Legal Profession Act* refers to *Benchers* and does not utilize the term *Board*. It was suggested that a footnote could be added to the TOR and Mandates to clarify that the *Board* means the *Benchers* collectively acting as a board of governors.

**Motion:**

**That the Benchers approve the General Terms of Reference for Adjudication Committees; General Terms of Reference for Board Committees; and Committee Mandates, subject to clarification in the General Terms of Reference and the Mandates documents that the “Board” refers to the “Benchers” throughout.**

**Seconded  
Carried**

**10 Adjudicator Guideline – Resignations**

Anne Kirker

Documentation for this item was circulated with the meeting materials. The proposed revisions are intended to address issues raised by the Benchers during the most recent changes made in November 2015, specifically, additional guidance to assist Resignation Committees in determining whether disbarment would be a likely result if the matter were to proceed to a hearing; and a review of the oath section to ensure consistency with the *Alberta Evidence Act*.

The Board discussed the proposed amendments, particularly issues relating to joint submissions and the question about whether the language in the guideline regarding joint submissions could be more explicit. The Board agreed with the suggestion to approve the proposed guideline and direct the Policy Committee to consider how guidelines for joint submissions can be incorporated into all adjudication guidelines where questions related to joint submissions may arise.

**Motion:**

**To approve the Adjudicator Guideline – Resignations as proposed.**

**Seconded  
Carried**

<b>11</b>	<b>Honoraria for Alberta Lawyers Insurance Exchange (ALIEX) Advisory Board Independent Directors</b>	Steve Raby
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Documentation for this item was circulated with the meeting materials and the Board was presented with background information on the current honoraria program for independent directors serving on the ALIEX Board, approved by the Bencher Board in 2016, retroactive to July 2014. Research into honoraria was conducted by an external consultant and the results were wide-ranging. The ALIEX Advisory Board discussed at length the need to balance the cost with the requirement to attract the necessary skill sets, including the Superintendent of Insurance's expectation for actuarial knowledge on the Advisory Board. The ALIEX Advisory Board recommended a modest increase to the honoraria program to bring it closer to market for 2017, when new directors will be recruited. It was confirmed that the honoraria program is only for independent directors, as defined in the motion. The impact on the levy for insured lawyers has been calculated to be \$1.62 each should the proposed honoraria be approved. The motion allows for the program to remain in effect until further amended by the Bencher Board.

**Motion:**

**That the Benchers set honoraria, to be paid by Alberta Lawyers Insurance Exchange ("ALIEX"), effective January 1, 2017 until such time as the Benchers set new honoraria, as follows:**

- 1. to each director serving on the ALIEX Advisory Board who is not a member or employee of the Law Society of Alberta or an employee of Alberta Lawyers Insurance Association ("Qualifying Director"), an annual honorarium in the sum of \$8,500; and**
- 2. to each Qualifying Director who attends an ALIEX Advisory Board or committee meeting, an additional honorarium in the sum of \$500 per meeting.**

**Carried  
One opposed**

<b>12</b>	<b>Agenda Item 25: Federation of Law Societies of Canada (FLSC) Report</b>	Steve Raby
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A written FLSC Report was circulated with the *in camera* meeting materials; however, the Board received an oral update at this time and confirmation that the report will move to the public agenda in future, now that policy issues around public and in-camera meetings have been resolved. The current report will remain with the *in camera* materials.

**13 Agenda Item 12: Entity Regulation update**

Cori Ghitler/Kent Teskey

The Innovation in Regulation Task Force (IRTF) has developed a draft self-assessment tool which was presented to small groups of sole practitioners and small firms through workshops held in November. Participants were generally supportive of the management principles and objectives; however, were concerned that the tool should be efficient and not too time consuming. There was also a strong response that the Law Society should provide adequate resources to support the completion of the tool and achievement of the objectives. The principles within the tool specific to equity and diversity and access to justice management principles were met with some hesitation and will require more discussion by the IRTF.

Each prairie province will share the outcomes of their consultations, with the goal of creating a largely harmonized self-assessment tool that will then be piloted across the prairie provinces.

**14 Agenda Item 13: President's Report**

Anne Kirker

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

**15 Agenda Item 14: Access to Justice Report**

Anthony Young

There was no Access to Justice report for this meeting.

**16 Agenda Item 15: Alberta Law Reform Institute (ALRI) Report**

Sandra Petersson

This report was circulated with the agenda for information.

**17 Agenda Item 16: Alberta Lawyers Assistance Society Report**

Julie Lloyd

This report was circulated with the agenda for information.

**18 Agenda Item 17: Canadian Bar Association Report**

Jenny McMordie

This report was circulated with the agenda for information.

**19 Agenda Item 18: Legal Archives Report**

Fred Fenwick

There was no Legal Archives report for this meeting.

**20 Agenda Item 19: Legal Education Society of Alberta Report** Jennifer Flynn

This report was circulated with the agenda for information.

**21 Agenda Item 20: Pro Bono Law Alberta Report** Robert Dunster

This report was circulated with the agenda for information.

**Other Business** Anne Kirker

There being no other business the public meeting was adjourned at 3:55 pm.