



Bencher Public Minutes

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

September 26, 2019

500, 919-11 Ave SW, Calgary, Alberta

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 Cora Voyageur Ken Warren Louise Wasylenko Nate Whitling</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 Andrew Norton, Chief Information Officer and Director, Business Technology</p>



Staff present	<p>Elizabeth Aspinall, Practice Advisor Barbra Bailey, Policy Counsel Nancy Bains, Associate General Counsel Colleen Brown, Manager, Communications Nancy Carruthers, Manager, Policy and Ethics Ruth Corbett, Governance Administrator Shabnam Datta, Policy Counsel Jennifer Freund, Policy Counsel Sharon Heine, Manager, Counsel Tina McKay, Senior Manager, Business Operations Kara Mitchelmore, CEO, Canadian Centre for Professional Legal Education Kendall Moholitny, Early Intervention Manager Jody Saunders, Tribunal Counsel Christine Schreuder, Coordinator, Governance Katie Shea, Membership Counsel Avery Stodalka, Senior Communications Advisor Stephen Ong, Business Technology</p>
Guests and observers present:	<p>Ola Malik, Canadian Bar Association, Alberta Branch Nonye Opara, Pro Bono Law Alberta Sandra Petersson, Executive Director, Alberta Law Reform Institute Steve Raby, Federation of Law Societies of Canada Angela Storozuk, Vice-President, Illumina Research Partners Svitlana Winters, Research Associate, Illumina Research Partners</p>

Secretary’s Note: The arrival and/or departure of participants during the meeting is 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 Mr. Armstrong opened the meeting by acknowledging that the land on which we gathered is the Treaty 7 territory and the traditional territory of the Niitsitapi, Nakoda, and Tsuu T’ina.</p> <p>Mr. Armstrong noted that this is the Board’s last meeting at the Law Society’s current location.</p> <p>At the Chair’s invitation, Ms. Scott announced to the Benchers that Ms. Osler is the recipient of the 2019 Women in Law Leadership (“WILL”) award for Leadership in the Profession “Broader Roles”. Ms. Osler will be publicly honoured at the WILL awards ceremony on November 21, 2019 at the Palliser Hotel.</p>



2 Training New Lawyers Survey

Mr. Teskey provided background information on the process the Benchers undertook to identify Big Issues. The training of lawyers was identified as a Big Issue and the Practice Foundations Task Force (“PFTF”) was struck to begin work on understanding the issues and preparing a response. The results of an articling assessment survey that was developed in partnership with the prairie provinces and sent to articling students, new lawyers, principals, recruiters and mentors, revealed some significant and troubling trends. Mr. Teskey added that he is proud that the Law Society is prepared to address these issues in a transparent manner and to be accountable for the results.

2.1 Articling Program Assessment Research Report

Ms. Storozuk and Ms. Winters presented the results of the survey which were detailed in the Articling Program Assessment Research Report circulated with the meeting materials. Highlights and discussion included the following:

- Key findings from the survey responses included the extent to which articling students experience discrimination and harassment during recruitment or articling; the inconsistency in competencies learned and the level of preparedness for practice; and the quality of mentorship.
- The response rate was higher than expected for this type of survey. Illumina outlined their process for checking and examining the data. The variety of responses and open-ended responses supported the numerical data, suggesting that the results fairly represent the sentiments of the targeted groups.
- Discrimination and Harassment were not defined terms in the survey; perceptions were captured through open-ended questions. The question as to whether the subjective experience would be backed up by the objective information was discussed by the PFTF and the sense was that the question should not invalidate the information or prevent any plan of action to address the issues; however, the Benchers may wish to discuss this further.

2.2 Practice Foundations Task Force Work Plan

Mr. Teskey invited feedback on the PFTF work plan which was circulated with the meeting materials. Highlights and discussion included the following:

- The PFTF recognized that although the survey data can't provide a perfect picture, there is no acceptable level of systemic harassment; therefore, the PFTF determined that discrimination and harassment issues demand immediate action and agreed that competency issues will be addressed at a later stage. As a result, the work plan is designed to respond to the discrimination and harassment data.
- A Practice Foundations Advisory Committee will be established to advise the PFTF and assist with the development of strategies. The PFTF will report to the Benchers regularly with recommendations as appropriate.
- A communications plan is in place to address the publication of the survey data and the work plan immediately following the Benchers meeting.



- Guiding principles from other organizations, as well as occupational health and safety and human rights legislation, will inform the PFTF's work going forward.
- The Law Society's new Respectful Workplace Model Policy, to be launched in October, will be used as an educational tool for lawyers and firms on how to address discrimination and harassment in their workplaces. It was noted that many law firms have similar policies in place; however, it's recognized that the effectiveness of law firms' policies varies considerably.

The Chair concluded that the consensus at the table was that the work plan is a reasonable starting point for responding to the issues in the short term; however, will evolve as the PFTF work progresses.

3 **Timeline updates**

The timelines for Big Issues and Engagement were circulated with the meeting materials. Ms. Osler updated the Benchers on Ms. Osler and Mr. Armstrong's meeting with the leaders of the Alberta Association of Professional Paralegals ("AAPP") to discuss its interest in being regulated by the Law Society. It was clear that AAPP has more work to do in organizing themselves before the Benchers can discuss this Big Issue. Accordingly, discussion on the Regulation of Paralegals will be brought forward to 2020.

4 **Regulatory Objectives**

Draft Regulatory Objectives for the Law Society were circulated with the meeting materials under cover of a memo from the Strategic Plan Task Force ("SPTF") and a Statement of Regulatory Objectives of the Law Society was handed out in hard copy. Mr. Armstrong summarized the process that was followed to identify issues, draft the objectives, and get Bencher feedback prior to the meeting. Generally, Benchers were satisfied that the Regulatory Objectives capture the will of the Bencher table.

Ms. Steblyk and Ms. Bailey's presentation outlined the purpose, background, and roadmap of the Benchers' strategic work that resulted in the development of two documents: one longer report elaborating on the meaning of Regulatory Objectives while the other is a simpler document which states the high-level objectives.

The Regulatory Objectives were then presented and discussed individually, including how they would be applied practically. The Benchers were invited to provide additional comments and suggestions before the Regulatory Objectives are finalized and brought for approval at the next Bencher meeting. The Benchers' discussion included the following:

- It was suggested that the two sentences about the core purpose could be confusing; however, Ms. Bailey explained that the first is a definition and the second elaborates on the definition of core purpose.
- Draft Regulatory Objective e) was discussed and the Benchers agreed with the suggestion to remove the words "freedom from discrimination" as they were felt to be unnecessary.



5 Draft Strategic Plan

The draft Strategic Plan was circulated with the meeting materials under cover of a memo from the SPTF. A document setting out the core ideology, core values, strategic goals, objectives and example strategies was circulated in hard copy.

Mr. Warren and Ms. Bailey presented the draft Strategic Plan, highlighting the strategic planning process; how identified Big Issues connect to the strategic goal; top challenges and opportunities for legal regulators over the next five years; and draft strategic goals. The SPTF endorsed a Strategic Plan that would guide the Law Society for five years, providing stability and continuity in planning; however, also being adaptable enough to adjust if required. The SPTF's objective was to create an aspirational Strategic Plan with attainable goals. An action plan will be used for tracking and evaluation and reporting back to the Benchers.

Mr. Armstrong noted that the draft Strategic Plan was first circulated to the Benchers for feedback in August, to provide time for the SPTF to make adjustments prior to this meeting. The feedback received indicated that most Benchers felt that the draft accurately represented the Benchers' strategic discussions; however, the area of Equity, Diversity and Inclusion was queried, particularly since it had not received high priority as a Big Issue. Mr. Armstrong invited further discussion on this goal.

The Benchers' discussion included the following:

- Equity, Diversity and Inclusion was a theme that the SPTF felt required more attention than it had received in the Benchers' April 2019 Planning Session, as it is represented in several Big Issue discussions. As a result, it was added as Strategic Goal D for further discussion at the Bencher table. The Benchers affirmed that Goal D should remain in the Strategic Plan as this is a goal that should be stated explicitly.
- The Benchers supported the suggestion that the word "*proportionate*" effectively describes what the regulator does in terms of the costs and benefits to the profession and the public, and could replace the word "*appropriate*" in Goal A. This would also be consistent with the language in Regulatory Objective c).
- Also with respect to Goal A, it was suggested that the example strategy to "*consider ways to reduce regulatory oversight where possible and to otherwise incorporate proportional regulation*" is a significant, timely issue and should be included as an objective.

The SPTF will incorporate the Benchers' suggestions and finalize the draft Strategic Plan for approval at the next Bencher meeting.

6 The Role of the Law Libraries

Documentation circulated for this item included a memo from Policy Counsel and a report from Dale Barrie, Director, Alberta Law Libraries ("ALL").



Ms. Bailey presented background information on the issues facing ALL, an analysis and key questions for consideration by the Benchers, and comparative data on law library systems in Alberta, BC, Saskatchewan, Manitoba and Ontario. ALL and the Canadian Legal Information Institute (“CanLII”) have begun collaborating on joint projects and initiatives.

The Benchers’ discussion focused on the Law Society’s role with respect to law library services. Highlights included:

- The statement in the materials that ALL sees the Law Society’s funding as the Law Society’s largest investment in access to justice, as well as a way to facilitate lawyers supporting access to justice through member fees, was discussed, particularly whether this has been communicated to and fully understood by the members and the public. It was suggested that this issue may require further discussion as part of the overarching question of the Law Society’s role in ALL.
- The Law Society has explored options for providing members with full desktop access to digital library platforms; however, the cost is prohibitive.
- It was suggested that the Law Society’s funding should be viewed in the context of lawyer competence and access to justice.
- It was noted that there are still many lawyers who rely on the services that the law libraries provide. Through a modest annual fee, Alberta lawyers can access secondary legal references that would otherwise be prohibitive. The Benchers will need to consider whether that fee is an appropriate use of Law Society resources.

Mr. Armstrong thanked the Benchers for their attention to this matter. The discussion was productive and will inform upcoming discussions on the Law Society’s budget.

7 Canadian Centre for Professional Legal Education (“CPLED”) update

Ms. Mitchelmore provided a presentation on the status of the CPLED Program. The Competency Framework was circulated in hard copy. Other topics presented included a live demo of the Practice Readiness Education Program (“PREP”); an update on the pilot that was launched on August 1, 2019; business process improvement initiatives including the cost of the program and suggested subsidy; and policy changes including allowing students to start the PREP prior to securing articles. An additional policy change being proposed by the CPLED Board is to move student discipline matters from law societies to CPLED, which would require rule changes in all participating provinces.

The Benchers’ discussion included the following:

- The results of the Training New Lawyers Survey further validates the work being done on the CPLED program. It was suggested that aspects of the PFTF’s work plan could be incorporated into CPLED.
- The cost to deliver the program will increase and the CPLED Board is currently considering options for subsidizing the tuition fee. Options will be presented for the Benchers’ consideration as part of the 2020 budget. It was noted that costs will be



communicated transparently to registrants to ensure full understanding of the real cost of the program.

- The program hours have been streamlined and the total is currently 250 hours, down from an estimated 350 hours.
- In response to a question regarding how CPLED will prevent cheating, Ms. Mitchelmore advised that answers will not be released and questions will be randomized. The ethics module is the first module; however, the topic will be woven throughout the program and students must pass the ethics module to pass the program.
- The program will have a required submission schedule as opposed to an optional submission schedule and this is something that will need to be discussed with law firms as it is a significant shift from previous practice.

8 Reports for Information

The following reports were circulated with the meeting materials for information:

- 8.1 Alberta Law Foundation report
- 8.2 Alberta Law Reform Institute report
- 8.3 Alberta Lawyers' Assistance Society report
- 8.4 ALIA Claims Committee – Summary Trend Analysis
- 8.5 Audit and Finance Committee report
- 8.6 Canadian Bar Association report
- 8.7 Federation of Law Societies of Canada (FLSC) report
- 8.8 Jasper Retreat Summary
- 8.9 Legal Education Society of Alberta report
- 8.10 Pro Bono Law Alberta report

9 Early Intervention (“EI”) Presentation

Ms. Armeneau and Ms. Moholitny provided the Benchers with a presentation on the EI program, summarizing the Law Society’s shift to a proactive approach to the way complaints are handled. The intake and early intervention processes, statistics, the positive impact of the program on conduct and examples of successes with behavior modification were highlighted.

The Benchers’ discussion focused on the potential financial benefits of the program and whether the overall cost of regulation is decreasing. Successes to-date include improved relationships with lawyers and signs that lawyers want the help; however, it will take time before any financial impact can be measured. Lastly it was noted that the ALIA Claims Committee looks at insurance claims trends; however, it is unlikely that specific trends could be correlated to the EI program.

10 Rule 85 Amendment

Documentation for this item was circulated with the meeting materials. Ms. Freund presented the recommendation from the Policy Committee for amendments to Rule 85



that would help facilitate the current work of the EI department in the conduct process. It was clarified that the three-year limitation for summary dismissal in the intake and EI protocols is not codified in Rule 85 because the Rule was designed to provide the discretion to deal with exceptional circumstances outside the limitation, when appropriate. The Benchers agreed that a non-substantive correction was required to proposed Rule 85 (6) (g).

Motion:

That the Benchers approve the amendment to Rule 85 to strike the current text and replace it, in its entirety, with the proposed text, subject to a correction to (6) (g) to be made at the discretion of Policy Counsel.

**Seconded
Carried unanimously**

II Privacy Policies

Documentation for this item was circulated with the meeting materials.

Ms. Freund presented the recommendation from the Policy Committee for a suite of housekeeping items to update or replace a number of policy documents.

Motion 1:

That the Benchers rescind the following privacy policy documents:

- *Disclosure of Lawyers' Personal Information for Tributes and Speeches*
- *Privacy Guidelines: Benchers', Committee Members' and Volunteers' Records*
- *Guidelines for Protecting Personal and Confidential Information*
- *Privacy Statement*
- *Website Privacy Statement*

and state that the *Privacy Procedures for Contractors* document is of no force and effect.

**Seconded
Carried unanimously**

Motion 2:

That the Benchers remove the *Privacy Guidelines* and the *Guidelines for Protecting Personal and Confidential Information*, on pages 29-37 of the *Governance Plan* in their entirety.

**Seconded
Carried unanimously**

Motion 3:

That the Benchers adopt the newly drafted *Privacy Policy* and the *Policy on the Retention and Destruction of Information Held by the Law Society of Alberta*.

**Seconded
Carried unanimously**



Motion 4:

That the Benchers amend the Governance Plan, *Conflict of Interest Policy*, paragraph 25 on page 42, as proposed.

**Seconded
Carried unanimously**

12 Section 76 (11) Dismissal of Appeals

Documentation for this item was circulated with the meeting materials. Ms. Datta and Ms. Heine presented the recommendation from the Policy Committee for new Rules and Rule amendments for the appeal process and dismissals, as well as a new Guideline for section 76(11) dismissals of appeals. The proposed new Rules are intended to resolve the issue that there are no provisions in the *Legal Profession Act* or the Rules to guide Benchers when determining whether to dismiss an appeal as otherwise abandoned by a lawyer. The new Guideline is intended to guide the Benchers in the dismissal of a lawyer’s appeal, and to provide clarity to lawyers regarding the appeal process.

Motion 1:

To approve the amendments to Rules 100 and 102 and the creation of Rules 100.1, 100.2, 100.3 and 100.4 as proposed.

**Seconded
Carried unanimously**

Motion 2:

To approve the *Section 76(11) Appeal Dismissal Guideline*, as proposed.

**Seconded
Carried unanimously**

13 President’s Report

The President’s report was circulated with the meeting materials.

Mr. Armstrong added an update on the Nominating Committee’s work to populate the Bencher Election Task Force. Applications for the two non-Bencher positions were received and reviewed by the Nominating Committee and references are currently being checked. Following the references checks a recommendation will be prepared for approval by the Benchers.

14 Leadership Report

Ms. Osler thanked Ms. Scott for nominating her for the WILL award, Mr. Armstrong and Justice Kirker for their letters of support.

The Leadership Report and a link to the Podcast were circulated with the meeting materials. Ms. Osler highlighted the following:

- The focus of the Leadership Report and Podcast was the process for budget and business planning for the Law Society. Changes to the budget process will improve the



transparency and shared knowledge base between the Executive Leadership Team (“ELT”) and the Board.

- Ms. Osler and Ms. Ghitter have met one-on-one with over half of the Benchers so far. Ms. Osler thanked the Benchers for taking the time to meet, noting that the conversations are helpful to Law Society planning.
- Benchers were invited to reach out to ELT members if they have questions or need information at any time between meetings.
- Excitement is building about the Law Society’s move to new premises. Mr. Norton’s presentation on New Office Services will include more detail.
- Frank Bosscha, QC, is the new Deputy Minister and Deputy Attorney General. Mr. Bosscha has been with the Ministry for a number of years as a member of the Health legal team.
- The QC process has begun. Although there have only been a few applications so far, many more are expected this year.

15 2020 Business Plan Overview

Ms. Meade presented the 2020 Business Plan overview, which was circulated with the meeting materials. The process for the preparation and review of draft budgets was outlined. As a new Leadership Team, it was important to take a step back and review the historical approach to the budget process. Changes to the process for 2020 included:

- Managers were required to submit a business case for staffing changes for 2020. This provided managers and ELT with a greater understanding of staffing, which comprises 60% of costs.
- Membership data was reviewed more closely this year to help understand the long-term sustainability of the Law Society.

The key areas of focus during 2020 will be: innovation and proactive regulation; articling; part-time fees; the Benchers election; CPLED PREP implementation; and the Digital by 2022 initiative.

The detailed draft budget will be presented to the Audit and Finance Committee in October and to the Benchers in November.

Mr. Raby left the meeting.

16 Introduction to New Office Services

Mr. Norton provided the Benchers with a presentation on the Law Society’s new office space. Topics covered included an overview of the design; information on delivery partners; comparisons with the current space; floorplans; the status of construction on each floor; and risks and issues. Renderings of the dedicated hearing room and office spaces were presented.



17 CONSENT AGENDA

Documentation for each consent agenda item was circulated with the meeting materials.

There were no requests to remove any items from the consent agenda. The motions were moved, seconded and approved concurrently.

Motions:

That the Benchers approve the amendments to Rules 48(1), 57.3(3), 115(1), 115(1.3), 165.1, 167 and 168, as proposed.

That the Benchers approve the amendments to subrule 148(2), as proposed.

That the Benchers approve the amendments to Rules 67.3(1), 119.30(15), and 165(1), as proposed.

That the Benchers rename the *Board Relations Protocol*, the *Board Relations Guideline*, and adopt the consequential amendments, as proposed.

That the Benchers rename the *In-Camera Protocol for Bencher and Audit Committee Meetings*, the *In-Camera Guideline for Bencher and Audit Committee Meetings*, and adopt the consequential amendments, as proposed.

That the Benchers approve the June 6, 2019 Public Bencher meeting minutes.

That the Benchers approve the June 12, 2019 Public Bencher meeting minutes.

That the Benchers approve the 2021 Bencher meeting dates.

**Seconded
Carried unanimously**

18 Other Business

Mr. Armstrong recognized this meeting was Mr. Raby’s last meeting as the Federation of Law Societies of Canada (“FLSC”) representative for Alberta. Mr. Raby will become the first Vice-President of the FLSC in November and will be replaced at the Bencher table by Carsten Jensen. Mr. Raby was elected as a Bencher in 2004 and was President in 2012. He chaired the Board of the Alberta Lawyers Insurance Exchange from its inception in 2014 until June 2019 and continued as Chair of the Alberta Lawyers Indemnity Association Board. Mr. Raby’s countless contributions to the profession and his service and dedication to the organization will be greatly missed.

There being no further business the public meeting was adjourned at 3:20 pm.