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Fighting Over History at a Special Meeting of the Law Society of Alberta

By: Drew Yewchuk

Commented on: [Resolution on Rule 67.4 Defeated at The Special Meeting of the Law Society of Alberta held February 6, 2023](#)

This post describes the procedure and results of the [Special Meeting of the Law Society of Alberta](#) held on Monday February 6, 2023, and then comments on what it all meant. The purpose of the special meeting was described on ABlawg in a previous post by Koren Lightning-Earle, Hadley Friedland, Anna Lund, Sarah N Kriekle, Heather (Hero) Laird [here](#), and I refer readers needing background on the Resolution, and the purpose of the Special Meeting, to their post. I attended the special meeting and this post follows up with notes on the meeting itself.

In brief, the resolution sought to cancel the Law Society of Alberta (LSA)'s power under Rule 67.4 to mandate training on specific topics to ensure that lawyers in the province are minimally competent, with the specific target being the only use the LSA has made of that power: to mandate Indigenous Cultural Competency training via an online course called [The Path](#).

Procedure of the Special Meeting

Special Meetings of the Law Society are rare, and the procedure organized by the LSA in order to hold the special meeting online was organized in less than a month. The meeting was held over Zoom using the webinar function, meaning that no one was visible except the President of the LSA who chaired the meeting. Participants used the 'raise hand' function if they wanted to be called to speak and were called on in the order that they raised their hands by the chairperson.

There were 3,740 people who joined the meeting, most of these were active members, but that number also included some LSA staff observing and facilitating. There was an initial discussion of procedure followed by a series of initial motions. One member raised a concern that the chairperson had a reasonable apprehension of bias, but the chair noted that the purpose of the meeting was to vote on the resolution and the chairperson was not a decision-maker. Another member asked for a roll call vote, meaning that there would be a record of how each member voted on the petition. The chair indicated that it would not be logistically feasible to carry out such a vote. The matter then moved to debate on the resolution.

The Benchers had voted to extend the time for debate on the motion from the default maximum of 20 minutes to a maximum of 60 minutes. Each member recognized was given 2 minutes to speak, either in favour of the resolution or in opposition to the resolution. The chairperson also gave the option to speak 'for any other reason' but no member called during debate chose that option. The debate was structured to alternate between those in favour and those opposed to the resolution.

When two members recognized consecutively took the same position on the motion, the second member called would be asked to stand down until another member spoke to the contrary view.

Due to the delays occasioned by calling on members and the points of procedure raised, only 23 members of the LSA were recognized by the chairperson and given the chance to speak to the resolution.

The Debate

There were two general types of arguments made: arguments specifically about the Indigenous cultural competency training, and more general arguments focused on Rule 67.4 and mandatory training generally.

For those favouring the resolution, only two speakers made arguments specifically attacking the mandatory Indigenous cultural competency training. The remaining ten speakers favouring the resolution made arguments about the general power to impose mandatory education, often stating they did not take issue with the general idea of Indigenous cultural competency training and a couple noting that they enjoyed the course or found it worthwhile. These speakers described concerns about the risk of future overreach by the LSA, the effectiveness of the particular method of on-line delivery for the Indigenous cultural competency training program, the resentment that mandatory education would create, the slippery slope that would lead to the LSA requiring members to learn about other disadvantaged groups, and the LSA improperly over-stepping into ‘social policy’.

For those opposed to the resolution, the split was more even. Six speakers argued specifically for the importance of mandatory Indigenous cultural competency training as a component of competency to practice law in Alberta. Five speakers made arguments responding to the general arguments made by those favouring the resolution. They described the reasonableness of LSA’s relatively light requirements for professional development, defended the need and legality of the LSA setting mandatory education requirements, or emphasized the importance of the LSA taking responsible self-regulation measures to fulfill its mandate.

The rule against incivility (Rule 7.2 of [the Code of Conduct](#)) was applied once to prevent a member from alleging other members were racist, and again to prevent a different member from alleging other members did not understand ‘the rule of law’. It was found not to apply when a third member compared the “top-down” implementation of a 5-hour online course to the “top-down” implementation of harmful colonial policy including residential schools.

The Vote

[The resolution was defeated](#), meaning the Law Society Benchers are not required to consider the petitioners’ request to remove the Rule that allows Benchers to mandate specific continuing development programs. A total of 3,473 votes were cast, 864 votes in favour of the resolution (25%), and 2,609 votes against the resolution (75%). The difference between the number of members who initially signed on to the meeting and the number who voted probably reveals the

number of lawyers who left the meeting before the vote – not surprising given that the meeting ran about two hours in the middle of a Monday, and members are practicing lawyers.

Procedurally, during the vote at least one member indicated uncertainty about how to indicate their vote. In response, detailed instructions for a variety of devices and scenarios was posted, and the voting time was extended. After the vote, one member objected to the voting system and implied they believed the vote had not been properly secure and may have been tampered with.

Commentary

The challenge to mandatory Indigenous cultural competency training in Alberta follows on the heels of a comparable dispute in 2019 about a ‘statement of principles’ about equality that the Law Society of Ontario required its members to affirm. Most of what can be said about these kinds of challenges was said by [Joshua Sealy-Harrington on ABlawg during that dispute](#). In each case, mild regulatory requirements of the law societies were compared to totalitarian regimes and implausible specters of sudden government overreach were raised to avoid a direct discussion of the issue at hand.

In my view, having attended the LSA’s special meeting, the stated purpose of the petition – focused on law society overreach in mandating prescribed professional development – was intended to provide a more digestible workaround to the perspective that lawyers should not be required to participate in addressing structural and systemic racism in the profession. This was another skirmish in the ‘[history wars](#)’, the political struggle over whether the realities of colonialism, imperialism, and racism will be remembered, acknowledged, accepted, and learned from – or whether they will be ignored in favour of a retreat into a happy and patriotic fantasy of an imagined past. Alberta lawyers voted 3 to 1 to learn from the past and heed the [Calls to Action of the Truth and Reconciliation Commission](#). I leave it to the reader to determine what those numbers mean for the legal profession.

Thanks to Sarah Kriekle, Anna Lund, Heather (Hero) Laird, Koren Lightning-Earle, and Hadley Friedland for reviewing an earlier draft of this post, filling in details of the meeting, and identifying omissions. Any remaining errors are mine.

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