

Resolutions

Resolution 1: Member Resolution submitted by James I. Heller and Shahdin Farsai

Filed prior to deadline

WHEREAS in December 2020 the judiciary issued PD-59 and NP-24 [the “Directives”] advising counsel to provide “correct” gender pronouns for themselves and parties when appearing in court;

AND WHEREAS the judiciary issued the Directives based solely on the guidance of the Sexual Orientation and Gender Identity Community of the Canadian Bar Association - BC Branch [“SOGIC”], and without any broader consultation with the Bar;

AND WHEREAS in its December 16th, 2020 press release, the Provincial Court sought to explain and justify the Directives by stating that one cannot assume what pronouns to use for others based solely on their “name, appearance or voice”;

AND WHEREAS the undersigned consider the above assertion to be radical, controversial and ideological in nature and that the Directives arguably amount to compelled speech, contrary to s 2(b) of the *Canadian Charter of Rights and Freedoms*, which protects everyone's right to “freedom of thought, belief, opinion and expression ...”;

AND WHEREAS Shahdin Farsai, one of the undersigned, submitted a critical opinion piece about the Directives to the *Advocate* (the “Article”), which the magazine intended to publish alongside a response it invited from SOGIC;

AND WHEREAS instead, SOGIC informed the *Advocate* that it would not directly respond to the Article;

AND WHEREAS, the *Advocate* subsequently decided not to publish due to, *inter alia*, being “dramatically cautioned” by a Member that doing so could well lead to a human rights complaint against the magazine;

AND WHEREAS the editor told the Law Society Benchers in a letter on February 17, 2021, that he had been advised by some Members “that there is nothing to debate and the mere idea of debate is a hateful enterprise.”;

AND WHEREAS Ms. Farsai then submitted an abridged version of her article to *Canadian Lawyer*, which did publish it on February 5, 2021 (“Opinion Piece”);

AND WHEREAS a group of more than 200 lawyers, students, and paralegals then penned a letter to *Canadian Lawyer* (the “Letter”) threatening to boycott the magazine if they did not remove the Opinion Piece and replace it with an apology declaring that “... this is not a ‘two-sides’ issue”;

AND WHEREAS three Benchers signed the Letter;

AND WHEREAS *Canadian Lawyer* withdrew the Opinion Piece on February 8, 2021 and posted an apology;

AND WHEREAS *the Advocate* has since published several Letters to the Editor in its March, May and July issues criticizing the Directives;

AND WHEREAS Jim Heller, one of the undersigned, wrote to the chief judges on February 17th, 2021 asking them to repeal the Directives and to engage in a more inclusive consultation process but that they replied on February 26th, 2021 declining his request and explaining that they were “satisfied with the advice [they] considered”;

AND WHEREAS the Canadian legal system is premised on the bedrock understanding that truth and justice must be sought through empirical, fact-based inquiry within the framework of an adversarial system in which lawyers zealously argue opposing sides of issues, thereby illuminating their relative strengths and weaknesses, irrespective of bias and emotion;

AND WHEREAS it is axiomatic in the law that all controversies, no matter how complex or sensitive, always have more than one side;

AND WHEREAS Members are duty-bound to fearlessly advance their clients’ interests pursuant to our oath just as judges are obliged to rule dispassionately irrespective of public opinion;

BE IT RESOLVED THAT:

- a) the Membership affirms its commitment to rational and unfettered discourse on any and all issues regarding the Directives;
- b) the Membership affirms that no topic that relates to our profession and the administration of justice should be exempt from open debate;

Resolution 2: Member Resolution submitted by Emma Wilson and Kyla Lee (*Amended September 14, 2021*)

After deadline

WHEREAS actual harm can come to trans, non-binary, and gender-nonconforming individuals when they are deadnamed or when the wrong pronouns are used; and

WHEREAS members of this profession have consistently for years been addressed by the wrong forms of address, deadnamed, or addressed using the wrong pronouns; and

WHEREAS the Law Society has made diversity and inclusivity a priority; and

WHEREAS diversity and inclusivity require real work and action to be taken, and not merely lip service to the concepts; and

WHEREAS the BC Provincial Court and BC Supreme Court have recently issued practice directions requiring counsel to state their pronouns and forms of address when appearing in court; and

WHEREAS the Law Society of BC Website does not currently support or allow the use of non-English characters in listing a lawyer's name; and

WHEREAS normalizing the practice of all individuals stating pronouns and forms of address reduces the burden on trans, non-binary, and gender-nonconforming people, by preventing them from being singled out;

Be it resolved that membership directs the Law Society:

To implement changes to the Member Portal and Lawyer Directory on the Law Society website to do all of the following:

- To allow members to list in their directory page the pronouns and forms of address to be used by members;
- To include technical support for Unicode characters, to allow members from diverse communities to also list their traditional names;
- To include support for audio pronunciation guides for non-English names;
- To include an easy way for members to change their names on the directory to prevent deadnaming.

That the Law Society will announce a timeline for such changes to be made within 90 days of this resolution passing, and with such changes to be effective no later than six months from the passing of this resolution, and the Benchers will be required to send a message to the membership to announce the changes, and to encourage updating their profile in the Member Directory.

Resolution 3: Appointment of Law Society auditors for 2021

BE IT RESOLVED that PricewaterhouseCoopers be appointed as the Law Society auditors for the year ending December 31, 2021.

Resolution 4: Benchers' Resolution

Believed filed after deadline

BE IT RESOLVED to authorize the Benchers to amend the Rules respecting general meetings to provide that in order to be considered at an annual general meeting, a resolution must be signed by at least 50 members of the Society in good standing at the time the request is received by the Executive Director.

Note:

Section 12 of the *Legal Profession Act* requires the approval of two-thirds of members voting in a general meeting or referendum to permit the Benchers to make rule changes with respect to general meetings.

Commentary:

Law Society Rule 1-8(6) presently requires that only two members of the Society in good standing are required in order to put forward a member resolution for consideration at an annual general meeting. Other provisions in the Act and Rules require the participation of at least 5% of the members to require a referendum to enforce a member resolution that has not been substantially implemented by the Benchers and at least 5% of the members to call for a special general meeting. The Bencher resolution to require 50 members to support including a member resolution on the annual general meeting agenda is intended to ensure that the resolution has the support of a meaningful constituency and not just two members while also ensuring the process is still reasonably accessible to members.

Resolution 5: Benchers' Resolution

Believed filed after deadline

BE IT RESOLVED to authorize the Benchers to amend the Rules respecting general meetings to provide the President as chair of the annual general meeting with the authority to determine in advance of any publication whether a member resolution submitted for consideration at the annual general meeting is in order, being reasonably related to the mandate or responsibilities of the Law Society or the Benchers, or to the regulation of the legal profession.

Note:

Section 12 of the *Legal Profession Act* requires the approval of two-thirds of members voting in a general meeting or referendum to permit the Benchers to make rule changes with respect to general meetings.

Commentary:

Law Society Rule 1-13(13) provides that the President can decide questions of procedure to be followed at a general meeting not otherwise provided for in the Act or the Rules. The extension of that Rule to the current annual general meeting process would allow the President to decide whether a resolution is in order prior to the present process for notification and comment on member resolutions. However, for certainty, this Bencher Resolution proposes to ensure that member resolutions reasonably relate to matters within the jurisdiction and authority of the Law Society and the Benchers. The Bencher resolution would provide the President with the authority to determine in advance of any notification and comment whether a member resolution is reasonably related to the mandate or responsibilities of the Law Society or the Benchers, or to the regulation of the legal profession.