

**Minutes for the Meeting of the Benchers
September 9th, 2011
Elk Ridge Resort, Waskesiu**

Present:

Paul Korpan, Q.C., Dr. Sanjeev Anand, Loreley Berra, Thomas Campbell, Thomas Healey, Joel Hesje, Q.C., Peter Hryhorchuk, Laura Lacoursiere, Heather Laing, Eileen Libby, Q.C., Miguel Martinez, Michael Megaw, Q.C., Lorne Mysko, George Patterson, Darcia Schirr, Q.C., Lorraine St. Cyr, Dr. Greg Stevens, Della Stumborg, Gregory Walen, Q.C. and Reginald Watson, Q.C.

In attendance:

Tom Schonhoffer, Q.C., Tim Huber, Jody Martin, and Sam Bergerman

1. CALL TO ORDER

The meeting commenced at 8:40 a.m. on Friday, September 9, 2011.

2. APOLOGIES FOR ABSENCE

Apologies for absence were received from Evert Van Olst, Robert Heinrichs and Stephen Orlowski. Evert Van Olst attended the Admissions & Education Committee meeting via conference call.

3. ACCEPTANCE OF AGENDA

Greg Stevens, Vice-Chair of Admissions & Education, moved to add the Gordon Pritchard application to the Agenda. Sanjeev Anand seconded this motion and it was carried unanimously.

4. ADOPTION OF MINUTES

A motion to adopt the Minutes of the meeting held June 23rd and 24th, 2011 was presented by Della Stumborg and seconded by Michael Megaw, Q.C. The motion was carried unanimously.

5. MATTERS ARISING FROM THE MINUTES

There were no matters arising from the Minutes

6. AGENDA ITEMS FOR DISCUSSION

i. Reports

a. President's Report

Paul Korpan, Q.C. advised that there was limited activity over the summer and briefly discussed the upcoming Federation of Law Societies meetings.

b. Executive Director's Report

Highlights of the written report in materials included:

- i. Increasing transfer lawyers into Saskatchewan.
- ii. Financial statement review shows a current surplus of \$415,000. The 2012 Budget will be reviewed at October Convocation.

ii. Committee Reports

a. Admissions & Education

Minutes of the meeting held April 13, 2011 were provided for information.

i. Rule Waivers

Rule Waiver Process

Requests for Rule waivers from Michael Diep and Kylee Fawcett were tabled from June Convocation to allow for preparation of a legal opinion. The issue under consideration was whether the duty of fairness required allowing applicants to appear at a Hearing. A memorandum from Tim Huber opined that procedural fairness in the context of rule waivers did not require allowing the applicant an oral hearing, and was considered and approved for the Bencher Policy Manual.

a) Application for Waiver by Michael Diep

Mr. Diep's original application was a request to either eliminate or abridge the 12 month Articling period and to exempt him from the requirement to complete the Bar Course.

Mr. Diep amended his request to exempt him from completing Competency Evaluations in Modules 4 and 9 of the Bar Admissions Course.

The Admissions & Education Committee recommended that the applicant had failed to establish any exceptional circumstances to justify a waiver of the Rules.

Joel Hesje, Q.C. moved to accept the A & E recommendation to deny the application. The motion was seconded by Lorraine St. Cyr and carried unanimously.

b) Application for Waiver by Kylee Fawcett

Ms. Fawcett requested a waiver of the Rules to exempt her from completing 12 months in Articles, as well as exempting her from completing the Bar Course.

The Admissions & Education Committee recommended that the applicant had failed to establish any exceptional circumstances to justify a waiver of the Rules.

Joel Hesje, Q.C. moved to accept the A&E recommendation, seconded by Lorraine St. Cyr. The motion was carried unanimously.

c) Gordon Pritchard

Mr. Pritchard applied to waive the requirement that he either have a degree from a Canadian Common Law University or a Certificate of Equivalence from the National Committee on Accreditation.

The Admissions & Education Committee was of the view that incomplete NCA requirements would not significantly hamper Mr. Pritchard's participation in the Bar Admissions Course and Articling and were concerned that his articling start date would otherwise be delayed to spring.

Joel Hesje, Q.C. moved to waive Rule 150 (g) and to admit Mr. Pritchard as a student-at-law with the proviso that he be required to complete his NCA requirements prior to September 1, 2012, failing which he would no longer be a student-at-law. Seconded by George Patterson and carried unanimously.

ii. Rule Amendments

The Admissions & Education Committee proposed an amendment to the Rules to allow the committee to approve rule waivers under part 7.

Moved by Sanjeev Anand, seconded by Loreley Berra that the following Rule be amended. The motion was carried unanimously.

J. Rule Waivers

264.(1) Notwithstanding Rule 1903, an application to waive a Rule under this part shall be directed to the Committee.

- (2) For applications under this Rule, applicants have the onus of proving that:
 - (a) the applicant's legal education and/or experience constitute exceptional circumstances sufficient to justify a waiver of the Rule;
 - (b) as a result of the applicant's legal education and/or experience, the applicant possesses the skills, competencies and qualifications equivalent to those required by the Rule sought to be waived;
 - (c) the waiver is not contrary to the best interests of the public, nor would it harm the standing of the legal profession generally; and
 - (d) to deny the waiver would result in significant hardship for the applicant.
- (3) The Committee may:
 - (a) grant with or without conditions or deny the application based on:
 - (i) written submissions of the applicant;
 - (ii) with leave of the Committee Chair, oral submissions;
 - (b) refer the application to a hearing panel appointed by the Chair of the Committee pursuant to Rule 230.

Moved by Eileen Libby, Q.C., seconded by Miguel Martinez, to hold the second reading of the Rule amendment on the same day. The motion was carried unanimously.

Moved by Tom Campbell, seconded by Greg Stevens, granting passage of the amendment. The motion was carried unanimously.

b. Discipline

Minutes of the meeting held April 14, 2011 were provided for information.

The committee reported on its discussion of discipline records and advised that it would not recommend removing discipline decisions after a period of time or the concept of pardons.

c. Ethics

Minutes of the meeting held April 14, 2011, as well as the meeting held via conference call on June 13, 2011, were provided for information.

A Policy Statement for managing conflicts in lateral hires was provided to the Benchers for information. It was developed by Melanie Hodges Neufeld and the Robertson Stromberg firm in Saskatoon after the recent decision by Justice Foley on firm transfer conflicts.

Paul Korpan, Q.C. summarized yesterday's Ethics meeting and advised that the committee is working on "Saskatchewanizing areas of the *Code*," including slight changes to the Preface to maintain the idea that the *Code* is not a strictly inclusive document. The new *Code* is also missing the idea that integrity underpins every other section of the *Code*. The future harm issue will require mandatory disclosure where it is needed to prevent a crime of

violence. All changes will be discussed when the entire package is presented at an upcoming Convocation.

d. Library Review

Miguel Martinez discussed the expansion of online services through Lexis Nexis QL to firms of 10 or fewer lawyers. The program began to provide service to rural firms that did not have access to libraries. The justification for the program is now to achieve incremental access with the goal of universal access. In the interim, concerns were expressed about the program not being all inclusive.

e. Professional Standards

Minutes of the meeting held April 14, 2011 were provided for information.

Heather Laing advised that small firms had a disproportionate volume of complaints and the committee is reviewing possible solutions.

f. Executive Committee

Minutes of the meeting held May 31, 2011 were provided for information.

7. AGENDA ITEMS FOR DECISION

a. Lawyers Concerned for Lawyers

Leanne Johnson made her presentation to the Benchers regarding their request for funding in the amount of \$73,320.01.

A motion to approve LCL's request for funding for 2011 was presented by Sanjeev Anand, seconded by Loreley Berra. The motion was carried unanimously.

b. National Mobility Agreement

In 2009, the Barreau established a form of mobility by creating a category of membership known as the Canadian Legal Advisor. It allows other lawyers in Canada to practice with respect to laws of their own province and federal law in Quebec. In 2010, the Law Society of Saskatchewan reciprocated, amending the Rules to create the category of Canadian Legal Advisor.

It is now proposed that *notaries* be included in the category of Canadian Legal Advisor.

A motion to authorize the President to execute an amendment to the QMA to allow notaries membership as Canadian Legal Advisors was presented by Laura

Lacoursiere, seconded by Darcia Schirr, Q.C. The motion was carried unanimously.

c. Appointments to Judicial Advisory Committee (Federal)

Applications from 5 potential candidates were presented to the Benchers. The Executive Committee recommended Grant Scharfstein, Colin Clackson and Michael Segu.

A motion to approve Grant Scharfstein, Colin Clackson and Michael Segu as candidates for the Judicial Advisory Committee was presented by Heather and seconded by Lorraine. The motion was carried unanimously.

The Minister of Justice will choose one of the three recommended candidates for the committee.

d. Use of Potential Complaints Records

Donna Sigmeth's memo was discussed by the Benchers.

Information from potential complaints will not be provided to the Bencher decision-makers, i.e., Investigation Committees or the A & E Committee. The use of potential complaints will be limited to internal administrative purposes and the appointment of Practice Advisors.

8. INFORMATION

The following articles were provided for information:

- a. *To article or not to article?* - Canadian Lawyer, August 2011 issue
- b. *Paradigm Shift* – ABA Journal, July 2011
- c. *A Question of Privilege* – CBA National, June 2011

9. DATE AND PLACE OF THE NEXT MEETING

The next Convocation is scheduled October 19th, 20th and 21st, 2011 in Regina at the Hotel Saskatchewan. The President's Dinner is scheduled for the evening of Friday, October 21st.

The meeting adjourned at 12:00 noon.

THOMAS J. SCHONHOFFER, Q.C.
Executive Director