

Minutes for the Meeting of the Benchers Held April 28 and 29, 2016 DoubleTree Hotel, Regina

Present:

Perry Erhardt, Q.C., Erin Kleisinger, Q.C., Jeff Baldwin, Leslie Belloc-Pinder, Beth Bilson, Q.C., David Bishop, David Chow, Brenda Hildebrandt, Q.C., Judy McCuskee, John McIntosh, Q.C., Scott Moffat, Ronni Nordal, Ronald Parchomchuk, David Rusnak, Q.C., Dr. Greg Stevens, Della Stumborg, Gerald Tegart, Q.C., Ian Wagner, Jay Watson and Craig Zawada, Q.C.

In attendance:

Tom Schonhoffer, Q.C., Donna Sigmeth, Q.C., Barbra Bailey, Tim Huber, Valerie Payne, Stacey McPeek, Kiran Mand, Jody Martin, Melanie Hodges Neufeld and Judy Langford.

Apologies for Absence:

Apologies for Absence were received from Sean Sinclair and Rosanne Newman, Q.C.

Call to Order:

The meeting commenced at 2:30 pm on Thursday, April 28, 2016.

3. Strategic Planning

3.3 Improve Access to Legal Services

i. Legal Services Technician

Thursday afternoon from 2:30 pm to 5:00 pm was scheduled for a discussion of legal services technicians. Benchers reviewed the following documents:

- Consultation paper
- Public survey
- Legal service provider survey
- Message to Convey re Legal Technician Project – information in bullet format

Special guests from the Ministry of Justice, Mary Ellen Wellsch and Stacy Muller, were in attendance. The Benchers held a discussion about the different settings in which a new category of legal service providers might be utilized.



Convocation re-convened on Friday, April 29, 2016 at 9:07 am.

Present:

Perry Erhardt, Q.C., Erin Kleisinger, Q.C., Jeff Baldwin, Leslie Belloc-Pinder, Beth Bilson, Q.C., David Bishop, David Chow, Brenda Hildebrandt, Q.C., Judy McCuskee, John McIntosh, Q.C., Scott Moffat, Ronni Nordal, Ronald Parchomchuk, David Rusnak, Q.C., Dr. Greg Stevens, Della Stumborg, Gerald Tegart, Q.C., Ian Wagner, Jay Watson and Craig Zawada, Q.C.

In attendance:

Tom Schonhoffer, Q.C., Donna Sigmeth, Q.C., Barbra Bailey, Valerie Payne, Tim Huber, Stacey McPeck, Kiran Mand, Jody Martin, Melanie Hodges Neufeld and Judy Langford. Gregory Walen, Q.C., Federation Council, was also in attendance.

Special guests from the Law Foundation, Bob Watt, FCA and Rob Gibbings, Q.C., as well as Tim Brown and Linda-Marie Straza from SLIA and Dave Jackson from CLIA were in attendance for presentations.

1. Approval of the Agenda

Moved by Jeff Baldwin, seconded by Ron Parchomchuk, to approve the Agenda as written.

The motion carried unanimously.

1.1 Apologies for Absence

Apologies for absence were received from Sean Sinclair and Rosanne Newman, Q.C.

1.2 Confirmation of Agenda

1.3 Bencher Conflict of Interest Disclosures

None.

1.4 Agenda Items, Committee Reports and Documents Which Are Not Open to the Public

None.

2. Approval of the Minutes of February 18 and 19, 2016

2.1 Amendments

2.2 Confirmation of Minutes

Moved by David Chow, seconded by Della Stumborg, to approve the Minutes of the Bencher meeting held February 18 and 19, 2016. Motion carried unanimously.

2.3 Business Arising from Minutes

3. Strategic Planning

3.1 Improve Confidence in the Law Society among Stakeholders

Informational items:

i. Trust Account Committee Memo

A memo from Tom Schonhoffer, Q.C. dated March 15, 2016 was reviewed by the Benchers.

The Benchers discussed the need for a Committee to review trust account regulation.

- Phase 1 is to review draft Rule amendments that have been prepared by the audit department which would be mostly housekeeping items.
- In phase 2 the new Committee would review the overall regime, including the Special Fund.
- There are many policy issues to consider and this would be a multi-year project.
- Craig Zawada, Q.C. was recommended as Chair of the Committee.

ii. Communications Coordinator

A memo from Tom Schonhoffer, Q.C. was provided to introduce the Law Society's recent hire of a Communications Coordinator, Judy Langford.

iii. Legislative Changes

A memo from Barbra Bailey provided an update for the Benchers on the legislative amendments we are seeking.

iv. Tribunal Training

A memo from Donna Sigmeth, Q.C. was an update for the Benchers on the Tribunal Training provided last fall and completed in January 2016.

v. Governance

A memo from Barbra Bailey was provided as an update regarding the work of the Governance Committee.

Craig Zawada, Q.C., Chair of the Governance Committee, said the next step of the strategic planning process is to measure and report progress of the Work Plan. The Governance Committee is looking at an Activity Plan template that would summarize who the responsible parties are, the timelines for completion and measurements for each activity. The

Governance Committee will develop an example to offer guidance to the rest of the Committees.

vi. Information Sharing with Police

A memo from Tim Huber provided the Benchers with an update on the national committee's work.

3.2 Improve Capacity, Competency and Knowledge of Members

Informational item:

i. National Discipline Standards Report

Valerie Payne provided two reports for information:

- Status Update January 2015 to December 2015 – shows that item 9 has been amended.
- Status Update March 1, 2016 – shows the most recent performance measures.

3.3 Improve Access to Legal Services

i. Legal Services Technician

This item was covered on the Thursday afternoon session and is summarized on page 1 of these Minutes.

ii. Informational Items

A letter and attachments from the Saskatchewan Trial Lawyers' Association (STLA) was referred to the Access to Legal Services Committee at April Convocation and was provided to the Benchers for information.

Gerald Tegart, Q.C., Chair of the Access to Legal Services Committee, reported that the STLA is generally opposed to alternative business structures (ABS) and relies on the Ontario Trial Lawyers' Association brief. The Committee posed questions to Christine Hansen-Chad about the scope of the STLA's concern, as her presentation focused primarily on a concern about large conglomerate ABSs moving into the marketplace. The STLA does not appear to have concerns about entity regulation generally.

iii. Innovating Regulation

A memo from Barbra Bailey with an update on the project was provided to the Benchers for information.

4. Society Governance

4.1 Audited Financial Statements

Audited financial statements for the year ended December 31, 2015 were provided for approval prior to presentation at the Annual General Meeting in June. The Audit

Completion Report to the Executive Committee and management was provided for information. Judy McCuskee, Chair of the Audit Committee, provided an explanation of the statements.

The Committee met with the auditor to review the audited financial statements. It reviewed the process followed by the auditor and the internal processes within the Law Society. The Committee was comfortable with both the external and internal processes.

The Committee recommends the adoption of the audited financial statements as presented and retaining Virtus Group as the auditor. The Audit Committee will present a motion to appoint Virtus Group at the AGM.

A motion to approve the December 31, 2015 financial statements for approval at the AGM was presented by David Bishop, seconded by Brenda Hildebrandt, Q.C. The motion was carried unanimously.

4.2 Appointments

i. U of S Senate

Karen Prisciak, Q.C. is eligible for reappointment for a second term on the U of S Senate and is willing to serve another term. Ms. Prisciak has provided periodic reports and is now involved in the U of S Visioning project.

Moved by David Rusnak, seconded by John McIntosh, Q.C., that Karen Prisciak, Q.C. be appointed for a second term on the U of S Senate, effective July 1, 2016 to June 30, 2019. The motion was carried unanimously.

ii. Designated Complaints Counsel

Moved by Gerry Tegart, Q.C. seconded by Leslie Belloc-Pinder, that the following individuals be appointed as Designated Complaints Counsel, effective April 28, 2016 to April 29, 2018:

- Thomas Healey
- Darcia Schirr, Q.C.
- Gordon Mayer
- Michael Fisher, Q.C.
- Larry Zatlyn, Q.C.
- Thomas Campbell
- Eileen Libby, Q.C.
- Peter Hryhorchuk, Q.C.
- Paul Korpan, Q.C.
- Reché McKeague
- Leah Kosokowsky (Law Society of Manitoba)

The motion was carried unanimously.

4.3 Confidentiality and Conflict of Interest Form

The acknowledgment of confidentiality and conflict of interest form must be signed by all Benchers and Federation Council annually and retained in the records of the Law Society.

4.4 Whistle Blower Policy

A *draft* version of the Whistle Blower Policy was approved by the Governance Committee in February and was presented to the Benchers for final approval.

Moved by Craig Zawada, Q.C., seconded by Erin Kleisinger, Q.C., that the Whistle Blower Policy be approved as written and inserted into the Governance Policy Manual. The motion was carried.

4.5 Filling Bencher Vacancies

The “filling Bencher vacancies” policy was approved in *draft* by the Governance Committee in February and was presented for final approval to the Benchers.

There was discussion about whether the replacement should be elected by the members, either in a by-election or by considering the runner-up in the last election. That option is not precluded by the policy, as it only recommends a course of action, which is to use a skills assessment to focus on filling gaps in the Bencher skill set.

Moved by Craig Zawada, Q.C., seconded by Brenda Hildebrandt, Q.C., that the Bencher Recruitment and Election Policy, “filling Bencher vacancies” section, be approved with the addition of “Most Recent Election Results” as another factor for consideration under section B of the policy and inserted into the Governance Policy Manual. The motion was carried.

5. Regulation

5.1 Insurance Levy

The annual Insurance Levy for the year beginning July 1, 2016 was brought to the Bencher table for approval. To assist in the deliberation, the following documents were provided to the Benchers:

- i. Actuarial Report
- ii. Recommendation
- iii. CLIA Rules of the Reciprocal Proposed Revisions

Tim Brown, SLIA Counsel, provided a summary of the Actuarial Report and the deliberations of the Insurance Committee. A recommendation was proposed to set the 2016 - 2017 Insurance Levy at \$1,280.00, plus GST, down \$280.00 from last year.

The levy is payable by June 15th. Any member that has not paid by June 15th will be assessed a penalty of \$75/week for two weeks. Members who have not paid the insurance levy by June 30, 2016 will be suspended.

There was a question from the Benchers about the minimum coverage requirement. Tim explained that in a reciprocal insurance agreement, an increase would be CLIA-wide. The Law Society could require additional coverage on top of the CLIA requirement of \$1,000,000, but the average amount of a payout on a claim is \$52,000, so it is not something SLIA has pursued.

A discussion about the surplus requirements by CLIA explained the reason for the inherent conservatism.

Moved by David Rusnak, Q.C., seconded by Jay Watson, that the Insurance Levy for 2016 - 2017 be established at \$1,280.00. The motion was carried unanimously.

5.2 Code of Professional Conduct

A memo prepared by Stacey McPeek regarding revisions to the Model Code was provided to the Benchers for consideration.

Moved by Ron Parchomchuk, seconded by Leslie Belloc-Pinder, that amendments to the *Code of Professional Conduct* as outlined in Stacey McPeek's memo be approved as written. The motion was carried.

6. Reports

6.1 President's Report

Perry Erhardt, Q.C. provided a verbal report outlining activities which required the attendance of the President. His report was for information.

- On March 10th – 12th he attended a Federation meeting in Banff, which focused on the Truth and Reconciliation Commission recommendations.
- On March 31st he attended a meeting of the French jurists with Melanie Hodges Neufeld about increasing French legal resources.
- On April 6th he attended the CBA's Law Day Luncheon and reception where Justice Cromwell spoke.
- On April 7th he participated in a conference call with Dean Beth Bilson, Q.C. and students from the Law Students' Association to discuss the proposed National Admissions Standards project.
- On April 7th he attended the Executive Committee Meeting in Regina.
- On April 8th he met with Lawyers Concerned for Lawyers Board members in Davidson to discuss their strategic plan.

6.2 Executive Director's Report

A written report by Tom Schonhoffer, Q.C. was provided to the Benchers for information.

6.3 Federation Council Report

Gregory Walen, Q.C., Federation Council, reported the following:

- The meeting in Banff in March used a new format:
 - Rather than a topical semi-annual conference, it was more focused on Council business than usual.
 - There was a Council meeting and a CEOs forum which is described in the Report from Federation President Jeff Hirsch in the Convocation materials.
- The Federation's Governance review concluded at the March meeting and now the Council can proceed with strategic planning.
- The Truth and Reconciliation Commission's call to action number 28 was discussed at length and the Council concluded that the Executive would establish a working group to make broad recommendations to Law Societies on how to address it.
- The Supreme Court of Canada (SCC) issued a judgment that struck down regulations of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) that compelled to report suspicious transactions, including the names of clients to FINTRAC (federal government agency).
 - Law societies developed no cash rules and client ID rules as measures to provide some safeguards against activities that are the concern of the PCMLTFA and the Federation has decided those rules should be kept in place regardless of the outcome of the case.
 - Since the SCC case was decided, FINTRAC has raised concerns that lawyers are at high risk of exposure to money laundering activities and that lawyers are able to hide behind trust account privilege.
 - As a result of these reports, the government is now considering new provisions that would be constitutionally compliant.
 - The international Financial Action Task Force on Money Laundering (FATF) has indicated that law societies should be doing more to audit and enforce those rules.
 - The FATF has requested statistics about enforcement of client ID and no cash rules.

6.4 Law Foundation Report

Robert Gibbings, Q.C., Chair and Bob Watt, FCA, Executive Director, reported on the Foundation's Strategic Planning session.

The recent downturn in the natural resource sector and low interest rates will impact Foundation income by as much as 30%.

The strategic plan for 2016 - 2020 with strategic priorities is as follows:

- 1) manage resources prudently;
- 2) improve granting processes; and
- 3) increase involvement in access to justice initiatives.

The values of the Foundation are: stewardship, collaboration, innovation, positive impact and accountability.

There was discussion regarding raising more awareness about the Foundation's existence and its mandate, which includes the need to update the website. The Foundation is

developing a new website which will be live within the next 6 weeks. They will also open the lines of communication with past grantees and others.

The strategic plan focuses on having the most direct benefit for individuals possible, for example, the Family Matters program and the CLASSIC service delivery model. Grants that were on the periphery of the Foundation's mandate will likely not receive funding in the future, especially if there is no clear potential of a direct benefit for individuals.

The Foundation wants to be transparent about the fact that there will be less funding available to their grantees and intends to work with past grantees to create efficiencies to offset the decrease. CPLED and libraries funding are Law Society programs which have traditionally been funded by the Foundation that may be impacted. These items should become priorities for our next budget cycle and receive consideration in our Work Plan priorities.

6.5 University of Saskatchewan Report

None.

7. Committee Reports

a. Admissions & Education

- The Committee had a conference call to deal with Rule waiver applications prior to Convocation.
- Yesterday, the Committee considered Rule amendments respecting requirements for student-at-law applicants to provide details about their status with other law societies.
- The Committee reviewed the LSUC national articling program which allows students to work for 10 months in other provinces and be called in Ontario.
 - the students were not required to notify the local regulator that they would be working in their jurisdiction or to complete CPLED.
 - the LSS flagged this to LSUC and now require these students to register with the LSS and to participate in CPLED.
- The Committee considered a request from the courts to review the fees paid by law clerks who are lawyers. The Committee was of the view that they were providing legal services and should pay full membership fees.

b. Audit – nothing further to report.

c. Conduct Investigation – nothing to report.

d. Discipline

- The Committee primarily discussed the obligation to report information to the authorities, which was reported earlier by Tim Huber.

e. Ethics

- Further *Code* amendments were reviewed and feedback will be provided to the Federation's Standing Committee.

- An *ad hoc* Real Estate Committee, overseen by the Ethics Committee, is reviewing the standardized trust letter.
- f. Executive
- g. Governance – nothing further to report.
- h. Insurance
- There will be a vacancy on the Committee, as Pat Kelly, Q.C. is retiring.
- i. Professional Standards
- Privacy Commissioner, Ron Kruzeniski, Q.C., made a presentation to the Committee focusing on electronic practices, Panama Papers and other relevant matters.
 - Brent Gough, Q.C. and Jeff Scott, Q.C. also reported to the Committee about the practice advisor program.
 - A sub-committee has been struck to develop guidelines on best practices for using a paperless practice, as this is something the practice advisors are encountering and there is a need for more guidance.
 - Locum registry is now running; it provides information and helps members to connect with each other.
- j. Library Review
- The Committee discussed the cutback in the funding received from the Law Foundation and how that will impact the library budget.
 - The Committee will canvass members about what they want from the library and will also consider innovative ways to raise funds.
 - Renegotiation of the WestLaw contract will increase prices anywhere from 2 - 5 times. Melanie Hodges Neufeld will begin canvassing firms about whether it is feasible to negotiate a bulk purchase on their behalf.
- k. Access to Legal Services
- Dean Beth Bilson, Q.C. provided a report on the 2016 Forum and any follow up initiatives, including:
 - The Law Foundation granted funding for three years for the Access to Justice Coordinator who is housed in the College. Her role is meant to network between many agencies/stakeholders.
 - The provincial Access to Justice working group will be focusing on implementation of the ideas that come out of the Forum.
 - Representatives from CLASSIC and the College have developed a proposal for an Access to Justice Research Centre at the College. They are in the process of seeking both University approval and funding.

8. Informational Items

The following was provided to the Benchers for information:

- a. *Does Law School Reflect the Realities of the Legal Profession?* Federation Blog posted March 18, 2016 by Doug Ferguson
- b. *Shaking up the Academy*, by Leo Singer, National CBA Magazine, Spring 2016
- c. Letter from Acting Dean Beth Bilson, Q.C. regarding the National Admissions Standards Proposal
- d. U of S Law Students' Association - Student Concerns Regarding the National Admissions Standards Project Proposal
- e. Entity Regulation – letter from CBA dated February 26, 2016
- f. Federation President's Report – April 2016

9. Meeting Finalization

9.1 Review Actions to be Taken

Create a Committee to review the Trust Account regime.

Appoint a replacement to the Insurance Committee to fill Pat Kelly's vacancy.

9.2 Confirm Items under 1.4

9.3 Meeting Evaluation

9.4 Next Meeting

The next Convocation is scheduled for June 15, 16 and 17 in Saskatoon. The Annual General Meeting is set for the evening of Thursday, June 16th and a CPD component has been added, which will begin at 4:00 pm. Cocktails and dinner will follow. All attendees must register with the CPD Department and are eligible to claim 2 Ethics hours.

9.5 Motion to Adjourn

Judy McCuskee moved to adjourn, seconded by Della Stumborg, at 12:23 pm.

10. Bencher In-Camera Session

THOMAS J. SCHONHOFFER, Q.C.
Executive Director

TJS/el