

# **Minutes for the Meeting of the Benchers**

## **Held Friday, December 2, 2016**

### **Radisson Hotel, Saskatoon**

#### **Present:**

Perry Erhardt, Q.C., Jeff Baldwin, Leslie Belloc-Pinder, David Bishop, David Chow, Monte Gorchinski, Brenda Hildebrandt, Q.C., Heather Hodgson, Erin Kleisinger, Q.C., Judy McCuskee, John McIntosh, Q.C., Scott Moffat, Ronni Nordal, Ronald Parchomchuk, Martin Phillipson, David Rusnak, Q.C., Sean Sinclair, Gerald Tegart, Q.C., Ian Wagner, Jay Watson and Craig Zawada, Q.C.

#### **In attendance:**

Donna Sigmeth, Q.C., Tim Brown, Barbra Bailey, Stacey McPeck, Kiran Mand, Jody Martin, Melanie Hodges Neufeld and Jackie Lane. Greg Walen, Q.C., Federation Council, was also present. Jay Watson had to leave mid-way through the meeting.

#### **Call to Order:**

The meeting commenced at 9:03 am on Friday, December 2, 2016.

#### **1. Approval of the Agenda**

Moved by Ronni Nordal, seconded by David Bishop, to approve the Agenda as written. The motion carried unanimously.

##### **1.1 Apologies for Absence**

An apology for absence was received from Rosanne Newman, Q.C. and Rennie Harper. Rennie Harper has resigned from her position as Public Representative Benchers due to other commitments. Gerald Tegart, Q.C. and Leslie Belloc-Pinder were absent for committee meetings, but were present for Friday meetings.

##### **1.2 Confirmation of Agenda**

##### **1.3 Benchers Conflict of Interest Disclosures**

None.

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

Resumes of Law Foundation applicants and a discussion about appointees will not be made available to the public.

## **2. Approval of the Minutes of October 28, 2016**

Moved by Judy McCuskee, seconded by Jeff Baldwin, to approve the Minutes of the Benchers meeting held October 28, 2016. The motion carried unanimously.

### **2.1 Amendments**

### **2.2 Confirmation of Minutes**

### **2.3 Business Arising from Minutes**

## **3. Strategic Planning**

### **3.1 Improve Confidence in the Law Society among Stakeholders**

Informational items:

#### **i. Conduct Investigation Committee Refresher**

Greg Walen, Q.C. and Evert Van Olst, Q.C., former Benchers and current members of CIC, attended the meeting on December 1, 2016 to assist staff in providing refresher investigation training to members of the CIC.

#### **ii. Benchers Self-Evaluation**

This item was informational. Annual Benchers Self-Evaluation and Committee Evaluations will be sent to all Benchers following December Convocation via survey monkey.

### **3.2 Improve Capacity, Competency and Knowledge of Members**

Informational items:

#### **i. Lawyers Concerned for Lawyers**

This item was informational and has to do with the winding up of the Lawyers Concerned for Lawyers (LCL) Board. Tim Brown, as SLIA counsel, has taken over contract renewal with Homewood Human Solutions. Melanie Hodges Neufeld has dealt with minor amendments to the LCL website to remove reference to the board. Donna Sigmeth, Q.C. submitted an article for the Fall 2016 issue of the Benchers' Digest.

### **3.3 Improve Access to Legal Services**

#### **i. Paralegal/Non-Lawyer Legal Service Providers**

A memo from Barbra Bailey providing an update on this project was reviewed by the Benchers for information.

## ii. Innovating Regulation

A memo from Barbra Bailey with an update on the project was reviewed by the Benchers. A self-assessment tool was emailed to all Benchers and Practice Advisors on November 16<sup>th</sup> to seek input on the content and presentation of the tool. Benchers were encouraged to complete the forms and provide comments to Barbra by November 30<sup>th</sup>. Feedback can be provided at any time if the Benchers were unable to provide it by the deadline.

Barbra, along with Tim Brown, Donna Sigmeth, Q.C., Erin Kleisinger, Q.C. and Brenda Hildebrandt, Q.C. will be attending a meeting in Winnipeg on December 9<sup>th</sup> with representatives from the Law Societies of Alberta and Manitoba to discuss the next steps of this project. That group will report back to the Access Committee and the Benchers table with an update at next Convocation.

## 4. Society Governance

### 4.1 Financial Statements

Financial statements for the period ended September 30, 2016 were provided to the Benchers for information.

There was a request that Administration provide the most current statements in the future, as the statements in this Benchers package are two months old.

There was another request that any significant budget variances that are due to timing issues be noted as such on the statement so that the Benchers are not required to follow up as to the reason for those variances.

Finally, there was a request to Administration that the 2017 Practicing Fee letter which was sent to the members be circulated to the Benchers as well.

### 4.2 Quarterly Investment Report

The Quarterly Investment Report for the period July 1 – September 30, 2016 was also provided to the Benchers for information.

### 4.3 Election of President and Vice-President

#### i. Election of President

Erin Kleisinger, Q.C. was acclaimed as President of the Law Society of Saskatchewan commencing January 1, 2017.

#### ii. Election of Vice-President

Candidates Ronni Nordal, Sean Sinclair and Craig Zawada, Q.C. made brief presentations to the Benchers, outlining their reasons for wanting to be Vice-President.

A vote was cast via secret ballot and Craig Zawada, Q.C. was elected as Vice-President of the Law Society commencing January 1, 2017.

#### **4.4 Appointments**

##### **i. Law Foundation of Saskatchewan**

According to *The Legal Profession Act, 1990*, the Law Society may appoint 5 persons to the Foundation as chosen by the Benchers. The Law Society is also required to appoint a Chairperson. All 5 terms are up for renewal. The Benchers reviewed a memo from Donna Sigmeth, Q.C. setting out the recommendations of the Executive Committee regarding these appointments. The Benchers also considered resumes submitted by 5 candidates to fill two board positions.

Moved by David Chow, seconded by David Rusnak that:

- Eileen Libby, Q.C. be appointed as the Law Foundation Chair for a two-year term commencing January 1, 2017 and terminating on December 31, 2018;
- Melanie Baldwin, Q.C. be appointed as the Law Foundation Vice-Chair for a two-year term commencing January 1, 2017 and terminating on December 31, 2018;
- Evert Van Olst, Q.C. be re-appointed for a second term on the Foundation board, commencing January 1, 2017 and terminating December 31, 2018; and
- Brenda Walper-Bossence, Q.C. and Tom Schonhoffer, Q.C. be appointed as first term board appointees, commencing January 1, 2017 and terminating December 31, 2018.

13 in favour, 3 opposed. Motion carried.

#### **4.5 Electoral Reform**

Craig Zawada, Q.C. provided an update on electoral reform in preparation for a session planned for February 2017 Convocation. There will not be a facilitator, but President Roberta Campbell and Executive Director Kris Dangerfield from the Law Society of Manitoba will be in attendance in February to report on electoral reform in their province. This session would be for the purposes of discussing issues – there will no recommendations to be adopted or rejected at that time. It would be more of a blue-sky session about different governance models that we might consider as a Law Society – both with regard to the way Benchers are selected, but also about the composition of the Bencher table overall. There will be materials provided in advance about various models we might consider, but nothing is off the table.

Depending on the outcome of the session, we anticipate we would then consult with the membership about proposed changes, if any, that the Benchers would like to explore. Craig encouraged the Benchers to chat with members in advance of that session to help gather ideas about the type of changes we might consider.

#### **4.6 Trust Safety Committee – Terms of Reference**

Terms of reference for the Trust Safety Committee were presented to the Benchers for consideration and approval. Craig Zawada, Q.C. reported that the Terms of Reference followed the template used for all other committees.

Moved by Craig Zawada, Q.C, seconded by David Bishop, that the Terms of Reference for the Trust Safety Committee be approved and inserted into the Governance Policy Manual. The motion was carried.

#### **4.7 Surplus Usage Policy**

This issue was presented for information only. Administration is gathering information from other Law Societies about surplus usage. Tim Brown will be reviewing this issue in the New Year and will report on progress as part of a larger “risk management” review, which would be discussed by the Benchers at April Convocation. This discussion should help inform the development of a surplus policy. The Insurance Committee will also be discussing a strategy for dealing with their surplus, and this might result in a confluence with the way the Law Society surplus is allocated.

### **5. Regulation**

#### **5.1 Rule Amendments**

##### **i. Rule 92(10) and (15) Procedure at Meetings of the Benchers**

A memo from Barbra Bailey proposing amendments to Rule 92 “Procedure at Meetings of the Benchers,” along with a black-lined copy of the corresponding Policy that is maintained in the Governance Policy Manual, was provided to the Benchers for consideration.

The Governance Committee recommends amendments to Rule 92, which governs the procedure at Benchers meetings, to allow the Benchers to “meet” or hold a vote by email under limited circumstances. Further minor amendments were also proposed to modernize the language of the Rule.

Moved by Judy McCuskee, seconded by Sean Sinclair, that amendments to Rule 92(10) and (15) be approved to allow the Benchers to “meet” or hold a vote via email under limited circumstances. The motion was carried.

A motion to grant second reading on the same day was presented by Brenda Hildebrandt, Q.C., seconded by David Bishop. The motion was carried unanimously.

On second reading, the motion was presented by Brenda Hildebrandt, Q.C., seconded by Craig Zawada, Q.C., that amendments to Rule 92(10) and (15) be approved to allow the Benchers to “meet” or hold a vote via email under limited circumstances. The motion was carried unanimously.

The Governance Committee also approved an addition to Policy C-I of the Governance Manual: “Convocation – Meetings of the Benchers,” which provides guidance on the use of electronic meetings.

The Benchers noted one typo on the policy under the heading “Electronic meetings” section (a)(1): it should say Bencher “meeting” but the word meeting is missing.

Moved by David Chow, seconded by Leslie Belloc-Pinder, to approve the addition of item iv. to Policy C-1 to provide guidance on the use of electronic meetings. The motion was carried.

## ii. Schedule 1 - Law Society Fees and Assessments

A black-lined copy of *Schedule 1 – Law Society Fees and Assessments* was presented to the Benchers for consideration and approval. The Schedule contains various increases in fees for CPD, CPLED and the Bar Admissions Program as recommended by the Admissions & Education Committee. Although the 2017 budget was passed at October Convocation, a separate motion is required to approve the actual Schedule of Fees as it makes up part of the Law Society Rules.

Moved by David Chow, seconded by Jeff Baldwin, regarding amendments to *Schedule 1 – Law Society Fees and Assessments*, that the following fees be increased in accordance with the black-lined schedule:

- D. (1-5) Student-at-Law Fees;
- E. (1 – 4) Admission as a Lawyer Fees;
- F. (1 and 2) Interjurisdictional Practice Permit;
- G. (1 – 3) Reinstatement Fees;
- I. (2) License and Permit Fees;
- J. (1 and 2) Waiver of Rules.

The motion was carried.

A motion to grant second reading on the same day was presented by Brenda Hildebrandt, Q.C., seconded by Ian Wagner. 14 in favour, 2 opposed. The motion was carried.

## Discussion:

There are two primary reasons for increasing these fees: 1) costs for staff/administrative time have risen; and 2) a comparison of our fees to other jurisdictions shows that our fees were much lower than other jurisdictions. There was some discussion about the fact that students already face financial barriers and firms face financial barriers in taking on students so any increase to student fees is impactful. The response was that the cost of running the CPLED program has been steadily increasing and funding from the Law Foundation has decreased, so the fees needed to catch up somewhat.

The Benchers asked for clarification on what the “electronic payment fee” under Schedule 1 A(4) refers to. It should be amended to be called “quarterly payment administration fee.” This should be corrected.

On second reading, the motion was presented by Sean Sinclair, seconded by Brenda Hildebrandt, Q.C., that amendments to *Schedule 1 Law Society Fees and Assessments* be approved as presented above. The motion was carried.

## **6. Reports**

### **6.1 President's Report**

President Erhardt, Q.C. reported on the following:

- November 1<sup>st</sup> – Perry was guest lecturer at Brent Cotter's professional responsibility class at the College of Law.
- November 4<sup>th</sup> – Perry attended and spoke at the introduction of new barristers to the Court in Regina.
- November 9<sup>th</sup> – Executive Meeting in Regina.
- November 15<sup>th</sup> & 16<sup>th</sup> – Perry concluded the contract for the new Executive Director and held a staff reception on the 16<sup>th</sup> to make the announcement.
- November 24<sup>th</sup> – Perry attended the Law Society Library Christmas party.
- December 8<sup>th</sup> – Perry will be speaking to the CBA South Young Lawyer section about regulation.

### **6.2 Executive Director's Report**

A written report from "Acting" Executive Director, Donna Sigmeth, Q.C., was provided to the Benchers for information.

### **6.3 Federation Council Report**

Greg Walen, Q.C. reported the following:

- A Federation Conference and Council meeting was held in New Brunswick October 19 - 22 (Perry Erhardt, Q.C., Erin Kleisinger, Q.C., Donna Sigmeth, Q.C. and Jody Martin also attended); the theme was legal education.
- Council has undergone some governance changes effective November 15<sup>th</sup>.
  - they have lost five Council members;
  - Executive is now as follows: President – Maurice Piette (Québec); First VP/President-Elect – Sheila MacPherson (NWT); Second VP – Richard Scott (New Brunswick).
- Council Committee updates:
  - The National Requirement Review Sub-committee reviewed the requirements for law school curriculum to consider whether a non-discrimination clause should be included precluding law schools from discrimination on the basis of gender or sexual orientation in response to the Trinity Western University (TWU) law school accreditation dispute.
    - The recommendation was that no requirement be added at this time; because there is active litigation between the law societies of BC and Ontario, and the outcome of the Federation's recommendation might affect that litigation, it has been tabled.

- The Federation is not involved with the TWU litigation other than the fact that the law school was approved in accordance with the Federation's accreditation policy.
- Greg is no longer Chair of the Litigation Committee (though he is still on the committee); he is now Chair of the National Discipline Standards Committee.
- A Consultant has been hired to review the National Committee on Accreditation.
- The Public Affairs Committee has been busy reviewing matters relating to the government regarding judicial discipline, judicial appointment committees, etc.

#### **6.4 CPLED Program**

As the National Admissions Standards project will not be proceeding, it is time to review the CPLED program. A report from Tom Schonhoffer, Q.C., CPLED Board member, was provided to the Benchers for information. The CPLED Board received a report from the consultant hired to review the program which identified some deficiencies in the current program. The Board is also reviewing their own governance structure, including the possibility of hiring a new CEO and consideration of whether additional staff is needed. There will be budgetary implications of this review and the Board will approach the Benchers about this at a later date.

### **7. Committee Reports**

a. Admissions & Education – provided by David Chow, Chair

- The Committee held a conference call on November 14<sup>th</sup> where they approved the increases to admission fees presented to the Benchers today.
- At the December 1<sup>st</sup> meeting, the Committee received an update from the TRC CPD planning committee. There will be a full day session for March 13, 2017 in Saskatoon and the Committee recommends that all Benchers attend this session. The cost will be covered by the Law Society.

b. Audit – None.

c. Conduct Investigation – provided by Jeff Baldwin, Chair

- There was a refresher session on process yesterday for the members of CIC.

d. Discipline – provided by Brenda Hildebrandt, Q.C., Chair

- The Committee had a discussion about whether future training is necessary for investigation and hearing processes to ensure we meet the National Discipline Standards.
- There was also discussion about legislative amendments and whether some process can be relocated to the Rules from the Act. In particular, the Committee discussed a gap in the legislation regarding the Law Society's ability to compel documents. The Committee intends to set as a priority for their 2017 work plan to



review the provisions of the Act pertaining to the discipline processes and prioritize amendments as necessary.

e. Ethics – provided by Ronald Parchomchuk, Chair

- The Real Estate Sub-committee is reviewing the uniform trust condition letter. There have been some discussions and an initial review to identify some issues. The Committee plans to collaborate with a couple of law firms that are also reviewing their processes. The sub-committee will require some resources and will approach the Benchers with a request at a later date.

f. Executive – provided by Perry Erhardt, Q.C., President

- The Committees will be reconstituted as of January 1<sup>st</sup> and Benchers are invited to contact Erin Kleisinger, Q.C. and advise if they have preferences about the Committees they are on.

g. Governance – provided by Craig Zawada, Q.C.

- The Committee raised the question of whether the Benchers would like to receive additional governance training; this could include staff training, as part of the training would focus on the relationships between Benchers and staff. There was no opposition and many Benchers expressed support for this proposal.
- The Committee reviewed the honoraria paid to the President and VP and recommended that the current amounts be maintained (COLA increase only in accordance with the policy). The Committee reviewed the number of hours that the current President committed this past year, as well as information from other Law Societies about how much is paid to their Executive members.
- The Committee also recommended that the Benchers review the honoraria currently paid to all Benchers (President, VP, Public Representatives, but also the idea of whether all Benchers might receive some compensation).

h. Insurance – provided by David Rusnak, Q.C.

- The Insurance Committee will be meeting on December 5<sup>th</sup>.

i. Professional Standards – provided by Ronni Nordal, Chair

- The Committee did not meet at this Convocation.
- There have been some staffing changes, but work has been uninterrupted and the proactive practice review program continues to be successful.
- The Electronic Office Sub-committee will have a report for February Convocation.

j. Library Review – provided by Melanie Hodges Neufeld

- The Committee reviewed its Terms of Reference and would like to recommend that the Library Committee be established as a standing committee rather than an *ad*

*hoc* committee, as library issues persist beyond the initial review done by the Committee.

- The Committee proposes that consultation with members regarding library services be carried out through town hall meetings in various regions of the province during 2017.
- Melanie met with Kris Dangerfield from Manitoba about their library on November 26<sup>th</sup> and discussed some potential ideas for collaboration.

k. Access to Legal Services – provided by Brenda Hildebrandt, Q.C., Vice-Chair

- Brenda encouraged the Benchers to provide feedback on the draft self-assessment tool for entity regulation to Barbra Bailey. The Committee is discussing how the self-assessment tool should be used. They anticipate that there will be a pilot project using the tool before a wider implementation is rolled out. Brenda will report back to the Benchers after the meeting in Winnipeg next week with the other Prairie Provinces.
- The Committee also discussed access implications resulting from the closure of the Weyburn courthouse and raised this issue with the Benchers regarding the appropriate response from the Law Society. The Executive Committee will be meeting with the Minister soon and the Committee encourages them to raise this issue with him, and depending on the outcome of that discussion, the Benchers may wish to consider whether any other response is appropriate.

l. Justicia – provided by Ronni Nordal, Co-Chair

- There is now a Justicia page on the Law Society website with resources that have been developed by the Justicia Project participants, as well as a report with the results of the member survey report. There are also hard copies of the survey results report available if anyone would like them.
- The Committee will be hosting a panel presentation about the Project at the mid-winter meeting which will also serve as an official release for the report and the resources.

m. AGM Review – provided by Erin Kleisinger, Q.C.

- The Law Society has committed to meeting at the same time as the CBA once again this year, but the Sub-committee hopes to review this model in the future.
- This year the Sub-committee will plan to hold another CPD session at the meeting.

n. Trust Safety Committee – provided by Craig Zawada, Q.C.

- Auditor John Allen, CPA, CA has developed a new draft of the trust accounting Rules that the Committee has been reviewing. They are cleaning up the Rules and modernizing them, as they have been amended in a piece-meal fashion in the past and were due for a review, especially due to changes in the way our members keep records.
- A second phase of the review of the Rules will be to add new Rules that are tailored to modern technology. This will also tie into entity regulation.

- A third phase will be a review of the Special Fund Rules. When it comes time to review the Special Fund Rules, it would be helpful to have some SLIA involvement, as it operates akin to an insurance program.

## **8. Informational Items**

The following article was provided for information:

- a. *Access to justice or exposure to debt: Understanding a difficult choice for Canadians*, DAS Canada.

## **9. Meeting Finalization**

### **9.1 Review Actions to be Taken**

Ian Wagner moves to destroy the ballots from the VP election, Scott Moffat seconds. Motion carried unanimously.

### **9.2 Confirm Items under 1.4**

Resumes of Law Foundation applicants and a discussion about appointees will not be made available to the public.

### **9.3 Meeting Evaluation**

None.

### **9.4 Next Meeting – February 8, 9 and 10, 2017 in Regina at the DoubleTree**

### **9.5 Motion to Adjourn**

A motion to adjourn was presented by Ian Wagner, seconded by Heather Hodgson. The meeting adjourned at 12:02 pm.

## **10. Bencher In-Camera Session**

**DONNA SIGMETH, Q.C.**  
**Acting Executive Director**

DRS/el