

# **Minutes for the Meeting of the Benchers Held February 18 and 19, 2016 DoubleTree Hotel, Regina**

## **Present:**

Perry Erhardt, Q.C., Erin Kleisinger, Q.C., Leslie Belloc-Pinder, Beth Bilson, Q.C., David Bishop, David Chow, Brenda Hildebrandt, Q.C., Judy McCuskee, Scott Moffat, Rosanne Newman, Q.C., Ronni Nordal, Sean Sinclair, 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, Stacey McPeek, Kiran Mand, Jody Martin and Melanie Hodges Neufeld.

## **Call to Order:**

The meeting commenced at 2:30 pm on Thursday, February 18, 2016.

## **1. Prairie ABS Project**

The Benchers considered the following:

- Memo from Barbra Bailey with an update on the project;
- Innovating Regulation;
- Abstract; and
- Consultation Paper.

The work plan for the project called for research and the publication of the findings to the profession. The second step in the project is consultation. The Benchers used this opportunity to act as a focus group to consider the research and the intended consultation questions.

The consensus was that even among the Benchers there continues to be some level of misunderstanding about the project and that consultation requires more thought. These are complex changes and it will be important to consider each phase separately starting with entity regulation. It will also be important to clearly explain the regulatory rationale for each phase.



Convocation re-convened on Friday, February 19, 2016 at 9:00 am.

**Present:**

Perry Erhardt, Q.C., Erin Kleisinger, Q.C., Leslie Belloc-Pinder, David Bishop, David Chow, Brenda Hildebrandt, Q.C., Judy McCuskee, Scott Moffat, Rosanne Newman, Q.C., Ronni Nordal, Sean Sinclair, 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, Stacey McPeek, Kiran Mand, Jody Martin and Melanie Hodges Neufeld. Gregory Walen, Q.C., Federation Council, was also in attendance.

**2. Approval of the Agenda**

Moved by Judy McCuskee, seconded by Brenda Hildebrandt, Q.C. to approve the Agenda as written.

The motion carried unanimously.

**2.1 Apologies for Absence**

Apologies for absence were received from Jeff Baldwin, Ronald Parchomchuk and David Rusnak, Q.C.

Beth Bilson, Q.C. will attend on Thursday, but will not attend Friday Convocation due to a previous engagement.

Dr. Greg Stevens will attend Friday Convocation only.

**2.2 Confirmation of Agenda**

**2.3 Bencher Conflict of Interest Disclosures**

Craig Zawada, Q.C., Rosanne Newman, Q.C. and Ian Wagner have a conflict on the Penalty Hearing for Peter Abrametz.

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

- a. Senior Life Members
- b. Paralegal Survey
- c. ABS Consultation Paper

### **3. Licensed Legal Technician Project**

The Law Society and the Department of Justice are discussing amendments to *The Legal Profession Act* to allow for licensed legal technicians.

The Benchers considered the following:

- a. Memo from Barbra Bailey with an update on the project;
- b. Consultation Paper;
- c. Memo dated May 28, 2015;
- d. Questionnaires (2); and
- e. Timeline and Work Plan.

This is potentially one of the most significant developments in the delivery of legal services in the history of the Law Society. It is still in an information-gathering stage and no decisions have been made. It is essential that the Benchers understand and have input in the development of the legislation and the industry.

The purpose of the discussion was two-fold.

The first is keeping the Benchers informed as to work that administration and the Access Committee are doing in conjunction with the Department of Justice. Considering the significance of this change, it is important to have a high degree of consensus among the Benchers as to the scope and direction of the project.

The second purpose was to once again act as a focus group for the consultation that is expected to occur in April.

Once again, there was a level of discomfort with the project at the Bencher table and it was decided to invest time at April Convocation to hold another focused discussion about this project.

### **4. Approval of the Minutes of November 27, 2015**

#### **4.1 Amendments**

#### **4.2 Confirmation of Minutes**

Moved by Jay Watson, seconded by Dr. Greg Stevens, to approve the Minutes of the Bencher meeting held November 27, 2015. The motion was carried unanimously.

#### **4.3 Business Arising from Minutes**

### **5. Bencher Accountabilities**

#### **5.1 Society Governance**

- a. Executive Director's Report

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

b. President's Report

Perry Erhardt, Q.C. provided a verbal report about activities requiring the attendance of the President for information.

## 5.2 Regulation

None.

### 5.2.1 Decision Items

a. Greystone Resolution

With the appointment of a new President and Vice-President, Greystone requires a resolution authorizing signing authorities.

A motion to approve the Greystone resolution was moved by Brenda Hildebrandt, Q.C., seconded by Craig Zawada, Q.C. The motion was carried unanimously.

b. Governance

The amended terms of reference for the Audit Committee, Executive Committee, PSC Committee and Governance Committee were presented to the Benchers for consideration.

It was moved by Della Stumborg, seconded by Scott Moffat, that the terms of reference for all 4 committees be approved. The motion was carried unanimously.

c. Appointments

i. Saskatchewan Legal Aid Commission

Moved by Sean Sinclair, seconded by Jay Watson, that Raymond Wiebe be appointed as the Law Society representative on the Saskatchewan Legal Aid Commission board for a two year term expiring on December 31, 2017. The motion was carried unanimously.

ii. College of Law Endowment Fund

Derek Maher was appointed as the Law Society representative on the College of Law Endowment Fund board for a two year term expiring on December 31, 2017.

iii. PLEA

Maya Scott was appointed as the Law Society representative on the PLEA board for a two year term expiring on December 31, 2017.

iv. Senior Life Members

A memo from Barbra Bailey outlining potential 2015 candidates was considered by the Benchers. The Law Society Policy was also included to assist the Benchers in deliberation.

It was moved by Brenda Hildebrandt, Q.C., seconded by Della Stumborg, that the following individuals be awarded a Senior Life Membership. The motion was carried unanimously.

- i. James Gary Anderson, Q.C.
- ii. William Dent Preston, Q.C.
- iii. Dale Roland Skelton
- iv. Franklin Alexander MacBean, Q.C.

d. South West Bencher Vacancy

There were no candidates from the South West Electoral district in the 2015 Bencher Election, therefore, the position is currently vacant.

A memo from Tom Schonhoffer, Q.C., along with an application from an interested candidate, was presented to the Benchers for consideration.

It was moved by Leslie Belloc-Pinder, seconded by Gerald Tegart, Q.C., that John McIntosh, Q.C. be appointed as Bencher for the South West Electoral District for a term commencing February 20, 2016 and expiring December 31, 2018. The motion was carried unanimously.

e. Rule Amendments

- i. Admissions & Education - Part 7, Membership and Practice Privileges and 7A National Mobility and Inter-jurisdictional Practice; Part 12 and Schedule 1 - Law Society Fees and Assessments

A memo from Andrea Johnston was provided to update the descriptions used to identify the various fees, which were either no longer accurate, ceased to exist, or had been implemented, but had not been added into Schedule 1. Blacklined versions of the Rules were included for explanation.

Moved by Jay Watson, seconded by Sean Sinclair, that amendments to the following Rules be approved:

- i. Part 7, Membership and Practice Privileges, Rule 151(h), student-at-law application fee;
- ii. Part 7, Membership and Practice Privileges, Rule 153(1)(c), articling fee;
- iii. Part 7, Membership and Practice Privileges, Rule 158(1)(c), articling assignment fee;
- iv. Part 7, Membership and Practice Privileges, Rule 159(1)(b), Bar Admission Program fee;
- v. Part 7, Membership and Practice Privileges, Rule 161(1)(b)(v), lawyer admission application fee;
- vi. Part 7, Membership and Practice Privileges, Rule 162(1)(a)(i) and (ii), lawyer enrollment fee or the admission on transfer enrollment fee;
- vii. Part 7, Membership and Practice Privileges, Rule 163(2)(b), removal of the law professor admission application fee. Further amendment to correct 163(4), as the fee was eliminated in the A & E Rule overhaul in 2014. Rule 163(6)

- amended as part of the overall correction pertaining to law professor membership;
- viii. Part 7, Membership and Practice Privileges, Rule 175(2)(b), application fee pertaining to reinstatement or change in membership category;
  - ix. Part 7A, National Mobility and Interjurisdictional Practice, Rule 196(2)(b), interjurisdictional practice permit renewal fee;
  - x. Part 7A, National Mobility and Interjurisdictional Practice, Rule 206(1)(b)(vi), admission on transfer application fee;
  - xi. Part 7A, National Mobility and Interjurisdictional Practice, Rule 208(1)(f), admission transfer application fee and the admission on transfer enrollment fee;
  - xii. Part 7A, National Mobility and Interjurisdictional Practice, Rule 211(1)(b), foreign legal consultant permit fee;
  - xiii. Part 7A, National Mobility and Interjurisdictional Practice, Rule 215(2)(c), foreign legal consultant renewal fee;
  - xiv. Part 12, Law Society Fees and Assessments, Rule 801, heading amended to insert the word “Annual”;
  - xv. Part 12, Law Society Fees and Assessments - many of the Rules served little purpose besides acting as “middle man” sub-rules between the substantive Rule and the related fee set out in Schedule 1. Therefore, some of the Rules were deleted in their entirety and others were amended, as follows:
    - Rules 820, 830 and 840 deleted in their entirety;
    - Rule 850 amended;
    - Rule 870 deleted in its entirety;
    - Rule 871 amended.
  - xvi. Schedule 1, Law Society Fees and Assessments, amended sections D, E, F, G and L to bring them up-to-date.

Sean Sinclair spoke on behalf of the Admissions & Education Committee, advising the Benchers that these amendments mainly clean up the Rules and do not change anything substantially. The motion carried.

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

On second reading, the motion was presented by Judy McCuskee, seconded by Ian Wagner. The motion carried unanimously.

## ii. Rule 154 – Articling Term

A memo by Jody Martin was provided to the Benchers regarding proposed amendments to Rule 154 to ensure that the amount of time students are away from articles is not detrimental to their articling experience.

Moved by Ronni Nordal, seconded by Rosanne Newman, Q.C., that Rule 154(2)(b) and (4), Articling Term, be amended to set the parameters for determining a student’s articling term.

Members of the Admissions & Education Committee spoke in favour of the motion, stating that the current Rule is not followed and does not work, as it does not allow for sick time on top of the standard 3 weeks of vacation. The Committee felt that principals should be given the discretion to determine what constitutes a reasonable time away from articles. The motion carried unanimously.

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

On second reading, the motion was presented by Leslie Belloc-Pinder, seconded by Jay Watson. The motion carried unanimously.

### iii. Rule 196(2), Temporary Mobility Requiring Interjurisdictional Practice Permit

A memo from Andrea Johnston regarding defalcation compensation coverage pertaining to temporary mobility was provided to the Benchers.

Other jurisdictions have defalcation compensation coverage, although it is not always comparable in coverage and amount to that maintained by the Law Society of Saskatchewan. Section 11 of the National Mobility Agreement does not require that defalcation compensation coverage be comparable from one province to another; since our Rules are inconsistent with the National Mobility Agreement, they require amendment.

Moved by Craig Zawada, Q.C., seconded by David Chow, that Rule 196(2), Temporary Mobility Requiring Inter-jurisdictional Practice Permit, be amended to remove the reference to comparable defalcation compensation coverage. The motion carried.

A motion to grant second reading on the same day was presented by Brenda Hildebrandt, Q.C., seconded by Leslie Belloc-Pinder. The motion carried unanimously.

On second reading, the motion was presented by Sean Sinclair, seconded by Scott Moffat. The motion carried unanimously.

## 5.2.2 Reports

### a. Federation Council

Gregory Walen, Q.C. reported the following about the Federation Council meeting on December 17, 2015.

- The Litigation Committee discussed recommending intervention on two cases at the Supreme Court. Council approved intervention in the following:
  - In *University of Calgary v. J.R.*, the applicant sought disclosure of all records regarding her employment with the University and the privacy commissioner pursued the case on her behalf. The Court of Appeal found that the federal *Freedom of Information and Protection of Privacy Act* does not override solicitor-client privilege. There are many interveners including many provincial privacy commissioners.

- In *The Law Society of Manitoba v. Green*, a lawyer challenged the Law Society's mandatory CPD requirements.
- Don Thompson, CEO of the Law Society of Alberta, spoke to the Council regarding the National Admissions Assessment. The Barreau du Québec has indicated that it will not participate and the Law Society of B.C. has also expressed great reservations to participating. This may be problematic for the continuation of the project.
- The Federation governance review should conclude at the meeting in Banff in March.
- A *Model Code* consultation report was distributed in January seeking feedback on further proposed amendments and a proposed new rule regarding lawyers leaving law firms and dealing with client files.
- The next Council meeting is in Banff in March.

b. Admissions & Education

Minutes from September 24, 2015 were provided for information.

David Chow, Chair, reported the following:

- The Committee had a lengthy discussion about enforcing mandatory CPD with respect to the outcome of the *Law Society of Manitoba v. Green* case. The committee has asked Administration for a draft recommendation to improve the clarity of our authority to impose mandatory CPD in *The Legal Profession Act*.

c. Audit

None.

d. Conduct Investigation

None.

e. Discipline

Minutes from September 24, 2015 were provided for information.

Brenda Hildebrandt, Q.C., Chair, reported the following:

- The Committee received an update on the Law Society's performance with respect to the National Discipline Standards:
  - We are performing reasonably well, deficiencies can be explained, for example, due to unexpected staffing issues.
  - There may be some changes to the way statistics are collected, but otherwise there are no changes to the standards.
  - We met requirement 20 and part of 21 for the first time with the development of our new Bencher training this year. We have received requests from other Law Societies to use our training materials.



- The Committee is in the early stages of discussing legislative amendments pertaining to the discipline process.

f. Ethics

Minutes from September 24, 2015 were provided for information.

Sean Sinclair, Vice-Chair, reported that the Committee:

- Constituted a new sub-committee on the *Model Code*.
- Will also be forming a real estate sub-committee to review the model Trust Condition Letter.
- Discussed five matters for which they will release conduct rulings in the near future.

g. Executive

Minutes from November 12, 2015 were provided for information.

h. Governance

Minutes from September 24, 2015 were provided for information.

Craig Zawada, Q.C., Chair, reported the following:

- The Committee recommended that the Public Representative Bencher terms be set for a term of 2.5 years in order to align with the elected Bencher terms. The Committee considered different options for staggering the terms, but could not agree on a feasible option at this time. Given the potential for greater changes to the way Benchers are selected over the next couple of years, the Committee decided to postpone making any recommendations to address this issue.
- The Committee had some recommendations on improving Bencher governance processes. Committee and Bencher Minutes will now be made available for review within 14 days. Once they are approved by the Committee, the Committee Minutes will be available on PBWorks for all Benchers.
- The Executive Committee will be experimenting with the re-organization of the Agenda to keep the strategic plan at top of mind.
- The Committee has approved a *draft* Whistle Blower Policy which will be before the Benchers at the next Convocation for discussion.

i. Insurance

None.

j. Professional Standards

Minutes from September 24, 2015 were provided for information.

Ronni Nordal, Chair, reported the following:

- Jeff Scott, Q.C. and Vic Dietz, Q.C. gave an update on the practice advisor program which continues to be successful. The addition of Linnea Goodhand has helped alleviate the workload of the other Practice Advisors.

k. Library Review

None.

l. Access to Legal Services

Minutes from September 23, 2015 were provided for information.

Gerald Tegart, Q.C., Chair, reported the following:

- The Committee is primarily focused on the Legal Technician Project and the Prairie Regulation Project.
- This year, the Dean's Forum will be held at the College of Law on February 29<sup>th</sup>, where a wide range of stakeholders in the Saskatchewan justice community will come together to discuss issues affecting justice. It also contains a seminar class that supports the work of the forum through student research. Members of the Committee and Administration staff will attend on behalf of the Law Society.

### **5.2.3 Other Matters for Bencher Approval**

None.

## **6. Informational Items**

- a. PLEA – update from Heather Jensen, Law Society representative on the PLEA board.

## **7. Meeting Finalization**

### **7.1 Review Actions to be Taken**

Schedule a Bencher discussion about legal technicians at April Convocation.

### **7.2 Confirm Items Under 1.4**

### **7.3 Meeting Evaluation**

The Benchers like this hotel for a meeting location.

### **7.4 Next Meeting**

The next Convocation has been scheduled for April 28 and 29, 2016 in Regina again at the DoubleTree Hotel. Overnight rooms have been reserved for April 27<sup>th</sup> and 28<sup>th</sup>.

**7.5 Motion to Adjourn**

Jay Watson moved to adjourn, Gerry Tegart, Q.C. seconded at 11:21 am.

**8. Bencher In-Camera Session**

**THOMAS J. SCHONHOFFER, Q.C.**  
**Executive Director**

TJS/el