

Minutes for the Meeting of the Benchers Held Friday, February 10, 2017 DoubleTree Hotel, Regina

Present:

Erin Kleisinger, Q.C., Craig Zawada, Q.C., Jeff Baldwin, Leslie Belloc-Pinder, David Bishop, David Chow, Perry Erhardt, Q.C., Monte Gorchinski, Brenda Hildebrandt, Q.C., Heather Hodgson, 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 and Jay Watson

In attendance:

Tim Brown, Donna Sigmeth, Q.C., Barbra Bailey, Andrea Johnston, Stacey McPeek, Kiran Mand, Melanie Hodges Neufeld and Jackie Lane. Stephanie Kievits, CPA and Pamela Harmon, CPA were in attendance to present the financial statements. Greg Walen, Q.C., Federation Council, sent his regrets.

Call to Order:

The meeting commenced at 9:06 a.m. on Friday, February 10, 2017.

1. Approval of the Agenda

Moved by Perry Erhardt, Q.C., seconded by David Chow, to approve the Agenda as written. The motion carried unanimously.

1.1 Apologies for Absence

Ian Wagner was not in attendance for committee meetings, but was in attendance for the Friday Bencher meeting. An apology for absence was received from Greg Walen, Q.C., Federation Council.

1.2 Confirmation of Agenda

1.3 Bencher Conflict of Interest Disclosures

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

- a. IT Update
- b. Appointments (background materials)
- c. Law Foundation

2. Approval of the Minutes of December 2, 2016

Moved by David Rusnak, Q.C. seconded by Jeff Baldwin, to approve the December 2, 2016 Convocation Minutes. The motion carried.

The Benchers requested that the most recent committee minutes are in the Bencher package. This time the minutes were from September rather than December, which are the most recent minutes.

- 2.1 Amendments**
- 2.2 Confirmation of Minutes**
- 2.3 Business Arising from Minutes**

3. Welcome to Special Guests (awarding of Honorary Membership)

Roberta Campbell, President, and Kristen Dangerfield, CEO of the Law Society of Manitoba were special guests in attendance.

Moved by Brenda Hildebrandt, Q.C., seconded by Perry Erhardt, Q.C., to approve Roberta Campbell as an honorary member of the Law Society of Saskatchewan. The motion carried unanimously.

President Kleisinger presented Ms. Campbell with a certificate and Ms. Dangerfield received a small gift in appreciation.

4. President's Message

Erin Kleisinger, Q.C. delivered a brief message and presentation about her outlook for the year.

5. Strategic Planning

5.1 Work Plan

The updated Law Society Work Plan was provided to the Benchers for information. Tim Brown addressed the Benchers with regard to a process that the Benchers will undergo this year to make adjustments to the Work Plan according to priorities. The professional staff and the Benchers will each undergo a risk assessment workshop to identify priorities. Dave Jackson (CEO of CLIA and President of the Risk and Insurance Management Society (RIMS) of Saskatchewan) has agreed to facilitate both sessions for some continuity. SLIA's professional staff will also be invited as they also need to make a strategic plan. Tim would also like to have the Insurance Committee become more involved at Convocation as many of our goals and challenges overlap. We will also be looking for some funding from them to contribute to some of our initiatives (including policy work). Tim will offer to help them with some strategic oversight.

In June, Tim Brown proposes that we hold a joint session with staff and Benchers to review the results of the risk management sessions and receive further training regarding staff/board relations. The Benchers would also be presented with a surplus policy

containing guiding principles that will help instruct on how to deal with surplus funds now and in the future.

The Benchers self-evaluation also showed trends of needing a more specific plan for the year, and to have more opportunities to receive governance and adjudicative training. Administration has also heard concerns from the Benchers that they need a more solid rationale for some of the financial decisions they make in order to respond to questions they receive from members. Finally, there were comments that the evaluation should happen earlier in the year. The Executive Committee proposes that this happen after June Convocation so there is time to make adjustments. The Governance Committee would also like to review the tool to make sure the questions are effective, so they would like feedback from the Benchers and committee Chairs.

Tim would also like the staff to do an evaluation about where we are in our work plan, measuring engagement, etc. that the Benchers would be able to review.

In September, the Benchers would be presented with a proposal for the surplus based on the new surplus policy and risk management plan, as well as a revised work plan. This would help create the Budget for 2018. At November Convocation, the Benchers should be in a better position to revisit performance measures. Perhaps we could benefit from a facilitator on this topic as well.

We will still use our work plan, but use the above-outlined process to identify priorities on the work plan and to add new initiatives as needed. This will also help inform our next strategic planning cycle.

5.2 Improve Confidence in the Law Society among Stakeholders

Informational items:

i. Communications Strategist

The Law Society has hired Natalie Tomczak on a one-year contract to help us develop a communications strategy. She has a lot of experience with strategic planning, project management, communications planning and execution. She will be starting her contract at the beginning of April. She has been invited to attend the professional staff retreat in March to add to the risk management conversation.

ii. Renovations Update

Tim Brown reported that an exhaustive search for an appropriate space for purchase was conducted, as well as other suitable rental space, but overall it was more attractive and less expensive to renovate our present location and renegotiate the lease.

The lease has now been signed; it is a 5-year lease with an option of another five and a first right of refusal for extra space in the building, more parking, etc. John Allen, CPA led this work. It will allow for growth over the years by adding 6 - 8 offices. There will have to be some construction during work hours, likely in the summer, and Administration is

considering ways to work around this (alternative working space in the building, having people work from home where possible, etc.) to minimize disruption.

5.3 Improve Capacity, Competency and Knowledge of Members

i. Innovating Regulation Update

A memo from Barbra Bailey summarizing the results of the self-assessment tool feedback emailed to all Benchers and Practice Advisors on a trial basis was provided to the Benchers for review.

Erin Kleisinger, Q.C., Tim Brown, Donna Sigmeth, Q.C., Brenda Hildebrandt, Q.C. and Barbra Bailey attended a meeting in Winnipeg on December 9th with representatives from the Law Societies of Alberta and Manitoba to discuss the next phase of this project. Minutes from the December 2016 meeting were provided for information.

The initiative is moving toward a pilot project which will help us test some of the big questions we still have about how this type of regulation would work. We are aiming for spring or early summer for the pilot project to begin. There is still some work to do to develop the resources needed for the pilot. Using the experiences and feedback from the pilot project, the Prairie Provinces working group would make some recommendations, but it would be vetted through the Access and Professional Standards Committees and ultimately come back to the Benchers for approval.

ii. Legal Resources Survey Update

This was informational, as the survey is still in-progress and there is no update since last Convocation. The survey would go to all members with attention to making sure the people who purchase products in their organizations are getting it. We are exploring the appetite for a rise in fees or add-on user fees if it meant having more access to legal resources. Melanie Hodges Neufeld is looking at holding some town halls about this topic as well (by May of this year).

5.4 Improve Access to Legal Services

i. Legal Technicians Project Update

Barbra Bailey reported that we are still waiting for the Task Force to be appointed by the Minister's office. As far as we know it is still moving forward, but has been delayed by the internal vetting process of the government.

6. Society Governance

6.1 Privacy/Confidentiality Refresher

Erin Kleisinger, Q.C. asked the Benchers to refer to the Governance Policy Manual for a reminder about communicating with the public and members about confidential Law Society matters and privacy measures we should all take.

6.2 TRC Training – CPD Course

At December 2016 Convocation, the A & E Committee recommended that all Benchers attend a full day session scheduled March 13, 2017 in Saskatoon. To encourage Bencher participation, the cost will be covered by the Law Society and qualifies for 6.0 hours (which qualify as ethics hours). A brochure outlining course information, cost and registration was included for Bencher consideration.

6.3 Bencher Self-Evaluation Survey

A memo from Tim Brown containing results of the Bencher Evaluation Survey was provided to the Benchers for review. The Governance Committee will be reaching out to other committee Chairs for feedback on the evaluation tool itself to determine if there are any concerns about the effectiveness of the questions, etc. Some themes that have already emerged are a need for better communication, annual planning and Bencher training.

6.4 “How to Build a Better Bencher Table” – post mortem

The session was held Thursday afternoon at 1:15 pm. A memo from Barbra Bailey provided some background information to begin the discussions.

6.5 Appointments

i. CPLED Board

The Executive recommended that Tom Schonhoffer, Q.C. replace Eric Neufeld, Q.C. on the board and a resume from Tom Schonhoffer, Q.C. was included for review by the Benchers.

Moved by Ronni Nordal, seconded by Brenda Hildebrandt, Q.C., to appoint Tom Schonhoffer, Q.C. to the CPLED Board, from February 10, 2017 to February 9, 2019. The motion carried.

ii. University of Regina Senate

The term for David Brundige, Q.C. expires June 30, 2017 and the University enquired whether the Society wishes to reappoint him for a second term. Mr. Brundige, Q.C. is willing to serve another term.

Moved by Leslie Belloc-Pinder, seconded by Ian Wagner, to re-appoint David Brundige, Q.C. for a second term, from July 1, 2017 to June 30, 2020. The motion was carried.

Administration will let Mr. Brundige, Q.C. know that he was re-appointed and request regular reports from him.

iii. Request for Reports from Law Society Appointees

Tim Brown will contact each representative for timely reports. This was informational for the Benchers.

6.6 2017 Committees

i. Legal Resources

Library Review has been an *ad hoc* committee for some time and the committee made a request at December Convocation to become a standing committee and to change their name to the *Legal Resources Committee*. A memo from Melanie Hodges Neufeld was provided to support her position.

Moved by Ronnie Nordal, seconded by Sean Sinclair, that the Library Review Committee be renamed as the Legal Resources Committee and that it become a standing committee. The motion carried.

ii. Equity & Diversity

The Equity and Diversity Committee existed in the past and Barbra Bailey made a request to re-activate this committee to carry on work of the Justicia Committee, but also to deal with matters to implement the TRC recommendations and other such equity and diversity issues within the practice of law.

Moved by Leslie Belloc-Pinder, seconded by David Bishop, that the Equity & Diversity Committee be re-activated as a standing committee. The motion carried.

6.7 Public Representative Bencher Update

Perry Erhardt, Q.C. provided an update on the search for a new Public Representative. As per *The Legal Profession Act, 1990*, the replacement must reside outside of Regina and Saskatoon. We have submitted a name to the Minister who was a candidate in the last search and meets that criterion. The Minister has acknowledged that we would like to expedite this process and we hope to have this person appointed in time for the next meeting.

6.7.1 Bencher Vacancy

We also have a Bencher vacancy due to the resignation of Rosanne Newman, Q.C. The Executive Committee proposes that we advertise the vacancy, indicating the skills that we are seeking. We would advertise stating that anyone can apply but that preference may be given to residents of the North East district. It was clarified that we already have a policy for appointing Benchers when we have a vacancy that we will use; the process that the Governance Committee is going to undertake to examine the possibility of adding appointed Benchers will take a while and is a different process.

Barbra Bailey will circulate the Bencher Skills Matrix to everyone to make sure our assessment is up-to-date. If there's no change since last time, they can say so. The recommendation will come back to the Bencher table in April.

6.8 Law Foundation

President Erin Kleisinger, Q.C. provided a report *in-camera*.

6.9 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 David Bishop, seconded by David Rusnak, Q.C. The motion was carried unanimously.

7. Regulation

7.1 Rule Amendments

- i. None.

8. Reports

8.1 President's Report

For information, Erin Kleisinger, Q.C. provided a verbal report about activities requiring the attendance of the President, including:

- Prairie Provinces meeting in Winnipeg in December
- Several Executive Committee meetings since last Convocation
- Lunch with Glen Gardner, Q.C. the new Deputy Minister of Justice, in December
- Meeting with Minister Gordon Wyant, Q.C. in January
- Participation in a panel presentation at the Mid-Winter meeting last week, which led to some good discussion with members about a number of different Law Society initiatives
- Judicial Council meeting

8.2 Executive Director's Report

Tim Brown provided a written report to the Benchers for information.

The Benchers discussed a forthcoming Fifth Estate piece about lawyer trust fund defalcation, focusing on specific instances in Ontario and Alberta. It also focuses on the authorities and whether they are responding appropriately. The defalcation rate in Canada has been less than 1% over the last five years. Compensation is made to the victims by defalcation funds across Canada as the first resort, but the story may focus on things like how long it takes to be compensated and caps on claims. The Federation has created a

media strategy for consistency (to the point that it's possible due to some differences in approach) across Law Societies for responding. Media inquiries should be forwarded to Tim Brown. The Trust Safety Committee is also going to be looking at this issue and examining what kind of improvements we might make to our approach. It should be noted that Sean Sinclair recused himself from this discussion because he acts for a number of media outlets.

8.3 Financial Report

i. Financial Statements – year ended December 31, 2016

A *draft* copy of the Balance Sheet and the Statement of Revenue & Expenses were provided to the Benchers. Tim Brown presented the financial statements and Law Society auditors Pamela Harmon, CPA and Stephanie Kievits, CPA were present to answer questions. The financial statements were presented differently than in the past, using explanatory notes as well as showing positive and negative changes to make them easier to read.

Tim Brown would like to do some analysis on member demographic projections and the impact that will have on our membership revenue. We expect that Law Foundation grant funding will continue to decrease so we may need to examine other sources of revenue. We also expect revenue from profession corporation fees to decrease due to some recent tax law changes. We also anticipate some expenses relating to salary and CPLED that the Benchers will need to consider soon. We are moving toward electronic reporting which will save us money.

The Benchers noted that some of the summary descriptions and the line items do not align very well. Pam Harmon, CPA, did report that the \$3.2 million discrepancy resulted from the Special Fund being omitted from the report. The Benchers also asked about a discrepancy in the Greystone Investments line item with the Investment Report provided by Greystone. Finally, the Benchers would like more annotations on the “interfund receivable” line items.

The Benchers suggested that an hour-long session on how to read financial statements generally might be a useful Bencher training session at a future meeting. Perhaps Monte Gorchinski or Pam Harmon, CPA and Stephanie Kievits, CPA would be willing to provide such training.

ii. Greystone Investment Report – October 1 to December 31, 2016

The Investment Report from October 1 to December 31, 2016 was provided to the Benchers. Tim Brown has been speaking with Greystone about making some improvements to our investment position. The Law Society needs to decide on a risk tolerance before Greystone can give us some sample alternative models.

8.4 Federation Council Report

Greg Walen, Q.C. provided a written report in advance, as he was not able to attend this Convocation.

9. Committee Reports

- a. Access to Legal Services – report provided by Gerald Tegart, Q.C.
- The Committee held a joint-meeting with the Professional Standards Committee (PSC) yesterday to discuss the possibility that responsibility for the entity regulation initiative would either move to that committee's purview or it would be transitioned to a joint sub-committee of those two committees to carry forth the project. The project began as an examination of alternative business structures (ABS) as an access initiative, but since it has become necessary to focus on regulation of entities first, and is based on a proactive practice management approach, it now seems to be a better fit with PSC and the Practice Advisor program at this point. It may become more of an access issue again if ABS returns to the conversation.
 - Terri Karpish and Brea Lowenberger from the College of Law will be attending the Committee's meeting in April to discuss opportunities for collaborating on an initiative to promote rural opportunities for law students.
 - The Dean's Forum will be held at the College on March 1st and will focus on two topics: 1) the difference between legal information and legal advice; and 2) potential for medical-legal partnerships, particularly in rural and remote areas. A number of representatives of the Law Society will attend.
 - The CREATE Justice Centre at the College will also have its official opening on March 1st.
- b. Admissions & Education – report provided by Sean Sinclair
- The Committee discussed the CPLED Accommodation Policy and changes that might need to be made to ensure compliance with the Human Rights Code, given recent case law.
 - The Committee was updated on the CPLED redevelopment plan.
- c. Audit – report provided by John McIntosh, Q.C.
- The Committee will meet in March to prepare for the audit.
- d. Conduct Investigation – report provided by Jeff Baldwin
- Jeff will continue to contact those in charge of investigations that may be delayed for various reasons, to check in and work with them to make best efforts to meet the timeline guidelines.
- e. Discipline – report provided by Brenda Hildebrandt, Q.C.
- The Committee will be looking at legislative amendments to propose to improve the process.
 - The Committee Chair reviews conditions imposed in sentencing when there are requests for variations and Brenda is working on creating a format to make sure

there is a consistent process for this, as they have become more frequent and sometimes require a hearing.

- The Committee is looking at a mediation off-ramp option for an alternative to full discipline when the conduct does not reach the level of conduct unbecoming but still requires a response.
- f. Equity & Diversity – report provided by Ronni Nordal
- The Committee held its first meeting and mostly discussed what its mandate would be and some possible projects for the year.
 - The Committee will be creating Terms of Reference which will come to the Benchers for approval.
 - There was a Justicia Project presentation at the mid-winter meeting last week with a panel including Leslie Belloc-Pinder, Barbra Bailey and volunteers from the working groups. We continue to promote the Project and encourage firms to sign on as “Justicia Firms.” The Benchers were encouraged to sign up their firms.
- g. Ethics – report provided by Ronald Parchomchuk
- The Committee did not have enough time to deliberate on all their agenda items and would like more time at future Convocations (they only had one hour this time). They may try to deal with some issues by conference call.
 - With respect to the Bencher self-evaluation, the Committee felt it would be more helpful to have it mid-year. Ron will collect further feedback from the committee members and forward to Barb.
 - The Real Estate Sub-Committee is reviewing the Standard Trust Letter as well as some concerns that have been raised regarding title insurance. They hope to consult with SLIA and have some more resources dedicated to this issue (staff and other resources).
 - The Model Code Sub-Committee is reviewing a request for consultation on proposed *Code* changes.
 - The Committee is reviewing a referral regarding provision of legal advice via technology and attestation of documents using technology – they anticipate more questions of this nature as technology becomes more and more prevalent in the practice of law.
- h. Executive
- i. Governance – report provided by David Chow
- The Committee discussed using conference calls and maximizing time between Convocations.
 - The Committee will be discussing Bencher honoraria, Bencher training and implementing exit interviews for departing Benchers this year.
 - The Committee will review the results of yesterday’s governance session and take that work forward using guidance from the session.

- The Benchers evaluations will now be completed after June Convocation and the Committee will review the tool for improvements in effectiveness.
- j. Insurance
- The committee did not meet this Convocation, but will be meeting soon to discuss surplus and strategic planning.
- k. Legal Resources – report provided by Scott Moffat
- The Committee is in the process of creating a survey of the membership about their use of Law Society legal resources and their willingness to pay for same.
 - The user statistics for the library continue to improve.
- l. Professional Standards – report provided by David Rusnak, Q.C.
- The Committee received a report from Jeff Scott, Q.C. about the Practice Advisor program which led to a discussion about the work of the Electronic Office Sub-Committee and the need to either develop or expand expertise in this area or add additional Practice Advisors.
 - The Committee reported that the practice standards referrals are being completed on a timely basis.

10. Informational Items

The following articles were provided for information:

- a. *Column: B.C. law society sidelines paralegal access-to-justice initiative*, Vancouver Sun, by Ian Mulgrew, print and online, posted January 9, 2017
- b. *Letter to the Editor: Law Society supports affordable legal services*, by Herman Van Ommen, Q.C., Vancouver Sun, print and online, posted January 16, 2017
- c. *The Transforming Profession*, Blog, Above the Law, Bloomberg Law, by Scott Mozarsky, posted January 10, 2017
- d. *California Split – Under fire from the legislature, state bar faces the possibility of being divided into two separate entities*, by Lorelei Laird, ABA Journal, Jan 2017

11. Meeting Finalization

- 11.1 Review Actions to be Taken**
- 11.2 Confirm Items under 1.4**
- 11.3 Meeting Evaluation**
- 11.4 Next Meeting - April 26, 27 and 28, 2017 in Saskatoon**
- 11.5 Motion to Adjourn**

A motion to adjourn was presented by David Rusnak, Q.C., seconded by Heather Hodgson. The meeting adjourned at 12:24 p.m.

12. In-Camera Session with Executive Director

13. In-Camera Session without Executive Director

TIMOTHY J. BROWN
Executive Director

TJB/el