

Minutes for the Meeting of the Benchers Held Friday, April 28, 2017 Sheraton Cavalier Hotel, Saskatoon

Present:

Erin Kleisinger, Q.C., Craig Zawada, Q.C., Jeff Baldwin, 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, Sean Sinclair, Gerald Tegart, Q.C. and Ian Wagner

In attendance:

Tim Brown, Donna Sigmeth, Q.C., Barbra Bailey and Greg Walen, Q.C., Federation Council

Call to Order:

The meeting commenced at 9:20 am on Friday, April 28, 2017.

1. Approval of the Agenda

1.1 Apologies for Absence

Apologies for absence were received from Leslie Belloc-Pinder, David Rusnak, Q.C., Scott Moffat and Jay Watson. Gerald Tegart, Q.C. was in attendance for Friday Convocation only. David Bishop had to leave at 2:00 pm on Friday. Martin Phillipson left at 3:00 pm on Friday.

1.2 Confirmation of Agenda

Add to 5.2 a discussion about the upcoming amendments to *The Legal Profession Act, 1990*.

1.3 Bencher Conflict of Interest Disclosures

Ronald Parchomchuk has advised that he has a conflict for the selection of a new Bencher for the North East District, as one applicant is a colleague from his Rosthern office. Two other Prince Albert lawyers have also put their names forward.

Martin Phillipson has advised that, as Dean of the College of Law, he has a conflict of interest involving the Law Review Grant Request.

1.4 Agenda Items, Committee Reports and Documents which are Not Open to the Public

- a. Bencher Vacancies (background information)
- b. Senior Life Membership Award (background information)
- c. IT Update
- d. Law Foundation

- e. Update on the Public Representative appointment
- f. Discussion of risk management session

2. Approval of the Minutes held February 10, 2017

Moved by Ian Wagner, seconded by Ron Parchomchuk, to approve the February 10, 2017 Convocation Minutes. The motion carried.

2.1 Amendments

2.2 Confirmation of Minutes

2.3 Business Arising from Minutes

3. Strategic Initiatives

3.1 Work Plan

An updated Law Society Work Plan prepared by Barbra Bailey was provided to the Benchers for information. Tim Brown reported that we will be looking at other ways to report on progress of the work plan using more visuals for percentage of completion.

3.2 Improve Confidence in the Law Society among Stakeholders

i. Introduction of New Communications Director

Erin Kleisinger, Q.C. introduced Natalie Tomczak, Communications Director, who started work with the Law Society on April 3, 2017.

ii. IT Update

Tim Brown provided an update on the transition to a new provider.

iii. Governance Training

Tim Brown discussed the production of a training video for publicly appointed Benchers with Brenda Hildebrandt, Q.C. and Greg Walen, Q.C. The focus of the video will be investigation and adjudication and will be done in advance of the June Convocation.

Tim Brown has acquired good materials on governance from CSAE which will be posted to PBWorks for the benefit of Benchers and staff.

iv. Risk Management

On Thursday, the Benchers participated in a risk management session facilitated by David Jackson, CEO of CLIA. The results of both sessions will be compiled by David Jackson for use by Staff and Benchers at a joint session to be held at June Convocation.

3.3 Improve Capacity, Competency and Knowledge of Members

i. Innovating Regulation Update

The memo from Barbra Bailey regarding the “Innovating Regulation” initiative was provided to the Benchers for review and discussion.

ii. Legal Resources Survey Update

The Library surveyed the membership regarding funding to maintain legal resources available to Law Society members. The Benchers reviewed the final results provided by Melanie Hodges Neufeld. Melanie also provided a brief presentation to the Benchers to further explain what the results mean in terms of services for the members.

Overall, the responses indicated that the Law Society should continue to fund legal resources and that members would be prepared to pay an increased fee to continue to support this service.

Discussion:

- There were some suggestions that we should revisit whether the focus be on small and sole practices, rather than providing resources for all members; members practicing in larger organizations should have access to these materials. Perhaps we need to determine what type of resources these organizations are providing.
- We should do a communications piece to the members about the results of the survey and next steps.

iii. CPD Course on How to Read Financial Statements

In response to the request by the Benchers for a one hour training session on how to read financial statements, the Executive proposed that producing a CPD webinar for the benefit of the membership, as well as any new and existing Benchers, would be beneficial. Benchers will be offered the webinar free of charge and it will be available to the members, as well, for a fee. This should be available by June.

iv. CPLED Update

Tim Brown reported that the CPLED board continues to move towards identifying a uniquely qualified candidate capable of redesigning the Bar Course Program, such that it meets the requirements of national professional accreditation standards. Tim, along with the CEOs of Alberta and Manitoba, will be the hiring committee. Don Thompson, Q.C. from the Law Society of Alberta will be drafting a proposal for a plan to redevelop the CPLED program. Tim Brown will be meeting with CEOs from other law societies on May 15th to discuss the possibility of expanding the CPLED program to other jurisdictions.

3.4 Improve Access to Legal Services

i. National Access to Justice Roundtable

Tim Brown and Barbra Bailey attended the Roundtable discussions held in Vancouver in March. A report was included in the Executive Director's Report.

ii. Legal Technicians Task Team

The Benchers reviewed the memo provided by Barbra Bailey regarding the work completed to date by the Legal Services Task Team. A press release will be released next week and our email blast to members will include a link to the press release. Barbra was asked to assemble the background materials we have on this and provide them to the newer Benchers.

4. Society Governance

4.1 Operational Reporting

i. President's Report

Erin Kleisinger, Q.C. provided a verbal report about activities and events she attended since the last Convocation, which included:

- Meetings of the Provincial Court Judicial Council, which deals with complaints against provincial court judges and considers candidates for judicial appointments
- CSAE CEO and Chief Elected Officer Governance Symposium in Mississauga
- Dean's Forum on Access to Justice at the College of Law
- Federation of Law Societies of Canada meeting in Quebec City, which included a President's roundtable

ii. Executive Director's Report

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

iii. Federation Council Report

Gregory Walen, Q.C. provided a verbal report on the latest initiatives of the Federation Council:

- Council met March 13th & 14th in Quebec City.
- Council has a new strategic plan for 2017 - 2020, which focuses on: being a knowledge leader/facilitating the sharing of information and collaboration among law societies; best practices in regulation; and excellence in governance and service delivery.
- Current priorities include: national accreditation program review, responding to the Truth and Reconciliation Commission calls to action and anti-money laundering rules.
- The Council's Litigation Committee makes recommendations regarding whether the Federation should seek intervenor status in Supreme Court of Canada decisions that affect legal regulators (usually regarding solicitor-client privilege).

- The Committee recently approved seeking status in the Groia case which considers whether it is constitutional to discipline a lawyer for in-court conduct not faulted by a judge, issues of overzealous representation and free speech in the court room.
- The Committee is considering applying for status in another case regarding common interest privilege.
- The National Discipline Standards Committee will be assessing reports from all law societies next month to determine whether they are meeting the standards.
- The next Council meeting will be held in Iqaluit, Nunavut in June.

4.2 Financial Reporting

i. Current Financial Statements

Financial statements for the period ended February 28, 2017 and March 31, 2017 were not available. Due to IT difficulties, Ruth Armstrong was not able to complete the financial statements in time for Convocation. They will be provided at a later date.

ii. Audited Financial Statements

Audited financial statements for the year ended December 31, 2016, 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. John McIntosh, Q.C., 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. There were no significant issues reported.

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.

John McIntosh, Q.C. moved, David Bishop seconded a motion to recommend that Virtus Group continue to act as auditor. The motion was carried unanimously.

A motion to approve the December 31, 2016 financial statements for approval at the AGM was presented by John McIntosh, Q.C., seconded by David Bishop. The motion was carried unanimously.

Discussion:

- The Benchers requested some additional information on the special fund reserves and how the amount is determined.
- The Audit Committee will be examining some of the categories used and determine whether some changes are necessary so it is clearer regarding what is included in the reserves.

4.3 Excess Insurance Coverage for Staff and Benchers

A memo from Tim Brown and Brad Hunter, Q.C. was considered by the Benchers to determine whether insurance requirements for all Law Society staff and Benchers are sufficient.

Discussion:

- The Benchers did not feel they needed additional coverage.
- The question of additional coverage for staff should wait until we examine more closely how to allocate our surplus funds.
- The risk is low, as we do have some coverage already and we have reserve funds.

4.4 Appointments

i. Bencher Vacancy: Public Representative Bencher

Perry Erhardt, Q.C. reported on the search for a candidate to replace Rennie Harper. A candidate has been submitted to the Minister's office and we are expecting an order-in-council within the next couple of weeks. We anticipate that the new Public Representative Bencher will be able to attend June Convocation.

ii. Bencher Vacancy: North East Electoral District

Ronald Parchomchuk recused himself from this discussion, as he has a conflict.

A Bencher vacancy was created due to the resignation of Rosanne Newman, Q.C. Resumes were provided from 12 interested applicants, along with a memo from the Executive Committee outlining the process used to determine a short-list of candidates and the Bencher skills matrix.

Ballots were provided to the Benchers for the selection process. Tim Brown and Donna Sigmeth, Q.C. counted the votes and proclaimed that Foluke Laosebikan was selected to be the new Bencher of the North East Electoral District.

It was moved by Ian Wagner, seconded by Brenda Hildebrandt, Q.C., that the Benchers appoint Ms. Laosebikan to fill the Bencher vacancy. The motion carried with 2 abstentions (Ron Parchomchuk and Perry Erhardt, Q.C.).

It was moved by Ian Wagner, seconded by Judy McCuskee, that the ballots be destroyed. Ron Parchomchuk abstained.

The unsuccessful applicants will be notified and we will also ask them to consider running in the 2018 fall election.

iii. Senior Life Membership

A memo from Barbra Bailey outlining 5 potential 2016 candidates was considered by the Benchers. The Law Society Policy was included within the context of the memo to assist the Benchers in deliberation.

It was moved by Ian Wagner, seconded by Craig Zawada, Q.C., that the following individuals be awarded a Senior Life Membership for 2017. Three opposed. Motion carried. Ron Parchomchuk abstained.

- Clifford Nimegeers
- Terence Leier, Q.C.
- Paul Lewans, Q.C.

Discussion:

- It is difficult to determine the contribution in accordance with the policy because we have information on some individuals and not on others; but that does not mean they have not made contributions.
- The Benchers requested that the policy come back to the table to determine whether the criteria should be revised.

It was moved by David Chow, seconded by Ronni Nordal, to also award Senior Life Membership to Delbert Dynna. There were 8 in favour, 6 opposed. The motion carried.

Therefore, the following individuals will be awarded a Senior Life Membership for 2017:

- Clifford Nimegeers
- Terence Leier, Q.C.
- Paul Lewans, Q.C.
- Delbert Dynna

iv. C. Willy Hodgson Award

This award was started by the Law Society in 2003/2004 in remembrance of the late Willy Hodgson, a former Bencher. Over the last few years, no nominations were received, despite that there are deserving members who qualify. Benchers were encouraged to identify deserving recipients for the award, which will be awarded at the AGM in June.

v. Pro Bono Service Award

The Benchers would like to approach Pro Bono Law Saskatchewan about renaming the pro bono service award to the Vic Dietz Pro Bono Service Award.

4.5 Federation 101

Jonathan Herman will attend June Convocation to provide “Federation 101” training to the Benchers. This was informational to the Benchers.

4.6 National Discipline Standards Report

A report produced by Stacey McPeck was provided to the Benchers for information. The Discipline Executive Committee is reviewing our performance in comparison to that of similarly-sized law societies.

4.7 How to Build a Better Benchers Table

A summary of the Benchers discussion held at February Convocation on “How to Build a Better Benchers Table” was reviewed by the Benchers.

The summary went before the Governance Committee to explore some options for reform and they will discuss the results of their discussion during their Committee report to the Benchers.

5. Regulation

5.1 Insurance Levy

Perry Erhardt, Q.C. reported that the Insurance Committee has been reviewing the management agreement with the Law Society with the intention to procure some additional services under that agreement, such as some policy development support and financial oversight.

The annual Insurance Levy for the year beginning July 1, 2017 was brought to the Benchers table for approval. To assist in the deliberation, the following documents were provided to the Benchers:

1. Recommendation – memo from Brad Hunter, Q.C.
2. Exhibit 2 – Recommended Minimum Surplus Level
3. Exhibit 4 – Insurance Fees by Jurisdiction

Brad Hunter, Q.C., SLIA Counsel, provided a summary of the Actuarial Report and the deliberations of the Insurance Committee. A recommendation was proposed to set the 2017 - 2018 Insurance Levy at \$1,280.00, plus GST; the same rate approved last year.

Discussion:

- The base levy has increased due to a loss of 170 payors.
- SLIA recommends subsidizing the levy to keep it at the 2016 amount, which would require using surplus funds.
- There are no restrictions on how to spend the excess surplus, but the Insurance Committee is currently in the process of drafting some guidelines.
- We should consider a communications piece to the members about the levy and how the amount was determined.
- CLIA and its subscribers have talked about whether the mandatory minimum per lawyer is sufficient, but there has not been an appetite to raise it; the Insurance Committee has discussed this a great deal and if there is an appetite to raise the minimum, we would have to require it of our own members, whether it was through SLIA or another insurer.

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, 2017 will be suspended.

Moved by Perry Erhardt, Q.C., seconded by Ian Wagner, that the Benchers set the Insurance Levy for 2017 - 2018 at \$1,280.00. The motion was carried unanimously.

5.2 Rule Amendments

i. Rule 110(1) – Part 6 Committees and Rule 1502(b) – Part 18, Contingent Fee and Retainer Agreements

At February 2017 Convocation, the Benchers voted to establish the Legal Resources and Equity & Diversity Committees as standing committees, resulting in amendments to Rule 110(1).

It was brought to our attention by Gregory Walen, Q.C. that Rule 1502(b) refers to “matrimonial” dispute rather than family dispute and the term “matrimonial” has not been used since the omnibus legislation in 2001.

Moved by Perry Erhardt, Q.C, seconded by Sean Sinclair, that amendments to Rule 110(1) be approved to include the Legal Resources Committee and the Equity & Diversity Committee as standing committees and that Rule 1502(b) be approved to remove the word “matrimonial” and replace it with the word “family.” There was a friendly amendment that Rule 1502(b) be amended to read “family law dispute” instead of “family dispute.” The motion was carried.

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

On second reading, the motion was presented by John McIntosh, Q.C., seconded by Craig Zawada, Q.C., that amendments to Rule 110(1) be approved to include the Legal Resources Committee and the Equity & Diversity Committee as standing committees; and that Rule 1502(b) be approved to remove the word “matrimonial” and replace it with the words “family law,” making it read as “family law dispute.” The motion was carried.

ii. Amendments to *The Legal Profession Act, 1990*

A memo by Tim Brown regarding amendments to the *Act*, excluding government lawyers from the insurance levy, was presented to the Benchers for consideration. Amendments to Law Society Rules to bring the language of the *Act* and the Rules into harmony will be tabled to June Convocation.

Discussion with senior government staff indicate that they hope the Law Society will entertain Rule amendments to insure government lawyers for the provision of *pro bono* legal services. The Government has been asked to supply wording for suggested Rule amendments, however we will not receive this in time for June Convocation. Therefore, proposed Rule amendments to insure government lawyers for the provision of *pro bono* legal services will be deferred to September Convocation.

Brenda Hildebrandt, Q.C., Chair of the Discipline Executive Committee, also recommended to the Benchers to approve a motion for the Law Society to seek further legislative amendments to allow the Law Society to make a demand to produce documents relating to

an investigation. Brenda Hildebrandt, Q.C. moves, and Monte Gorchinski seconds, that the Benchers authorize the Law Society staff to seek an amendment to section 40 of *The Legal Profession Act, 1990*, as outlined in the memo from Tim Huber dated April 10, 2017, in consultation with Legislative Services, and to also seek any consequential amendments to sections 39 and 63 of the *Act*. The motion was carried.

6. Law Review Grant Request

Dean Martin Phillipson recused himself from the discussion and vote, as he had a conflict.

The Law Society has historically contributed \$35,000 each year towards the Law Review, which is advanced in May. Benchers were asked to review the annual grant request and decide whether or not to approve such request.

Discussion:

- This is different than other legal resources, as it is a grant and it represents 80% of the production of the resource (not just the purchasing of the resource itself).
- This is the only Saskatchewan-specific law journal.

Moved by Ian Wagner, seconded by David Chow, to approve the grant in the amount of \$35,000 for the Law Review. Martin Phillipson abstained. The motion was carried.

7. Law Foundation

Erin Kleisinger, Q.C. and Tim Brown met with the Chair and CEO of the Law Foundation on March 30, 2017 and provided a report *in-camera*.

8. Reports from Representatives to Other Organizations

8.1 Legal Aid Commission

For information, a written report from Ray Wiebe, Law Society representative on the Commission board, was provided to the Benchers.

8.2 Law Foundation of Saskatchewan

For information, a written report from Tom Schonhoffer, Q.C., Law Society representative on the Foundation board, was provided to the Benchers.

9. Committee Reports

- a. Access to Legal Services - provided by Brenda Hildebrandt, Q.C.
 - Rural initiatives:
 - Terri Karpish and Brea Lowenberger from the College attended the meeting and presented to the committee about the challenges in encouraging students to seek articles in rural and smaller urban centres.

- They included several ideas for initiatives the Law Society might partner with them on to increase access to legal services in rural areas.
- The Committee will examine those ideas, identify which ones would be appropriate for the mandate of the Law Society, and follow up with the College about opportunities for partnership.
- Innovating Regulation initiative:
 - The Committee is recommending that we proceed with the pilot project using the 5 core management principles and the 2 other principles (equity, diversity and inclusion and access to legal services) as firm culture principles.
 - We will notify members that this is coming and that we might be approaching them as participants; then phone those firms we have selected and follow up with a formal invitation and further information.
 - The Benchers asked to see the outreach materials once they are finalized so they can be on the same page about this project.

Brenda Hildebrandt, Q.C. moves that the Benchers authorize the Access Committee to oversee the rollout of the pilot project, anticipating that communication strategies will be in place and potential participants for the pilot chosen by the end of May, with the actual assessments provided to participating firms by July 17, 2017. Ian Wagner seconds. Motion carried unanimously.

- b. Admissions & Education – provided by Sean Sinclair
 - The Committee has reviewed proposed amendments to the accommodation policy for CPLED which will come back for approval in June.
 - A proposal for CPLED redevelopment will come back to the Bencher table in June.
 - The Committee has begun reviewing the CPD policy to determine whether the mandatory CPD policy requires amendment – they will survey the members on this.
- c. Audit (None)
- d. Conduct Investigation (None)
 - CIC will be meeting at June Convocation for a discussion about its procedures.
- e. Discipline Executive – provided by Brenda Hildebrandt, Q.C.
 - The Committee formalized the policy on joint submissions
 - A discussion about amendments to Rule 405 regarding authorization to report to authorities where criminal activity is suspected will come back to the Benchers in June

- f. Equity & Diversity – provided by Ronni Nordal
 - The Committee is compiling a list of contacts from equity-seeking groups to consult with on equity and diversity issues.
 - Administration is in the process of developing a structure for collecting demographic data from the membership to help inform our work in this area.
 - The Benchers' Digest will highlight the Truth and Reconciliation Commission calls to action and Aboriginal Day and will include updates from the Committee on other upcoming initiatives.
- g. Ethics – provided by Ronald Parchomchuk
 - The Real Estate Sub-committee has been working on a new standard trust letter in consultation with real estate practitioners.
- h. Executive – covered in Erin Kleisinger, Q.C.'s President's report
- i. Governance – provided by David Chow
 - The Committee will be presenting the Benchers with a two-staged plan for items to follow-up on February's "how to build a better bencher table" discussion.
 - The Committee will also be providing a report on options for adjusting the remuneration paid to Benchers which will likely come to the Benchers in September. The Benchers are asked to think about how much time they spend on Bencher-related activities annually to assist in this examination.
 - An amended Bencher self-evaluation will be circulated again after June Convocation and we will now do this twice annually so there are opportunities to make adjustments.
- j. Insurance (None)
- k. Legal Resources – none.
- l. Professional Standards – none.
- m. Trust Safety – provided by Monte Gorchinski
 - The Committee reviewed the proposed Rule amendments once more and they will go to the Bencher table in June after they have been reviewed by Administration for formatting, consistency with the rest of the Rules, etc.
 - The second major project for the Committee is to review the operation of the special fund.

10. Informational Items

The following review was provided for information:

Indigenous History in Saskatchewan – Review on Residential Schools - Heather Hodgson's review of "A National Crime" by John Molloy (1999).

11. Meeting Finalization

11.1 Review Actions to be Taken

11.2 Confirm Items under 1.4

Same as above with the addition of the CPLED redevelopment plan.

11.3 Meeting Evaluation

The new Agenda format in PBworks was appreciated, but some of the links did not work and this needs to be addressed.

11.4 Next Meeting – June 14, 15 and 16, 2017 in Regina (Annual General Meeting on Thursday, June 15th)

11.5 Motion to Adjourn

A motion to adjourn was presented by Heather Hodgson, seconded by David Chow. The meeting adjourned at 3:00 pm.

12. In-Camera Session *with* Executive Director

13. In-Camera Session *without* Executive Director

TIMOTHY J. BROWN
Executive Director

TJB/el