

Minutes for the Meeting of the Benchers Held Friday, December 1, 2017 Radisson Hotel, Saskatoon

Present:

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

In attendance:

Tim Brown, Donna Sigmeth, Q.C., Barbra Bailey, Tim Huber, Melanie Hodges Neufeld, Andrea Johnston, Jenna Kraushaar, Valerie Payne and Greg Walen, Q.C., Federation Council

Call to Order:

The meeting commenced at 8:30 am on Friday, December 1, 2017.

1. Approval of the Agenda

The Agenda was approved as written by consent.

1.1 Apologies for Absence

Regrets were received from Gerald Tegart, Q.C.

1.2 Confirmation of Agenda

1.3 Bencher Conflict of Interest Disclosures

None.

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

- i. CLASSIC/PBLS Funding Requests
- ii. Appointments for Saskatchewan Legal Aid, PLEA and College of Law Endowment Fund
- iii. Approval of Minutes of *in-camera* discussion from October 27, 2017 Convocation
- iv. CPLED Update
- v. CanLII Update

- vi. Litigation Update
- vii. Legal Resources Update
- viii. Media Inquiries
- ix. IT Update

2. Approval of the Minutes held September 22, 2017, October 27, 2017 and *In-Camera* Minutes from October 27, 2017

Moved by Perry Erhardt, Q.C., seconded by Leslie Belloc-Pinder, to approve the Minutes of the Meetings from September 22, 2017, October 27, 2017 and the *In-Camera* Minutes from October 27, 2017. The motion carried.

2.1 Amendments

2.2 Confirmation of Minutes

2.3 Business Arising from Minutes

3. Strategic Initiatives

3.1 Funding Requests

- a. Pro Bono Law Saskatchewan (PBLs)

In-Camera

- b. Community Legal Assistance Services for Saskatoon Inner City (CLASSIC)

In-Camera

3.2 Work Plan

The updated Work Plan from Barbra Bailey was reviewed by the Benchers.

3.3 Improve Confidence in the Law Society among Stakeholders

- i. Risk Management

At September Convocation, the Benchers reviewed a memo from Barbra Bailey setting out a categorization of risks identified by the Benchers and Staff through separate strengths, weaknesses, opportunities and threats (SWOT) discussions.

A discussion relating to the Risk Analysis Report of Barbra Bailey dated November 23, 2017, which includes a description of the controls in place for each risk, took place at the November 30th Governance discussion.

ii. Leadership Roles, Responsibilities and Relationships at September Convocation

At June Convocation, the Benchers approved a proposal for short-term and long-term reform/improvement initiatives that resulted from the “How To Build A Better Bencher Table” session in February. The Glenn Tecker session at September Convocation was the first step in implementing this reform. Tim Brown reported that he received a lot of positive feedback about the session and time was allotted on November 30th for a follow-up discussion.

iii. Communications Committee

Tim Brown provided an update relating to the progress of the Communications Committee. Administration has engaged two consultants to provide communications services. One will be providing media training and the other is helping us to create a strategic communications plan. Both consultants have a lot of experience. Media training will take place in December - January and the communications plan should be ready for Bencher review at February Convocation.

iv. Media Communications

In-Camera

3.4 Improve Capacity, Competency and Knowledge of Members

i. Innovating Regulation – Update

The pilot project is coming to a close and Barbra Bailey has been conducting an evaluation of the project through exit interviews and a survey. A report of those results will be reviewed by the Access Committee at a date to be determined, following November Convocation. An interim report should be ready for February Convocation, following which a joint meeting of the Prairie Provinces might be necessary in order to develop some joint recommendations for the Benchers of each Law Society to consider.

ii. CPLED

In-camera report provided by Tim Brown.

iii. Legal Resources

In-camera report provided by Tim Brown.

iv. CanLII

In-camera report provided by Tim Brown.

v. CPD Program Survey Results

The A & E Committee distributed a survey to the members over the summer asking for their feedback regarding the CPD program. A memo from Andrea Johnston provided earlier to the A & E Committee was provided for information.

Andrea reported that we received a good response rate to the survey and that responses indicated that members are finding that CPD helps maintain competence. There were requests for more flexibility in the type of programming and things that are eligible to be counted towards the required number of CPD hours, but overall, members are satisfied with the policy.

It is the intention of the A & E Committee to discuss, and where appropriate, to proceed to implement some of the easily achievable policy changes by January 1, 2018. Some of the more significant changes will require further work.

vi. Practise Tips

A memo from Ronni Nordal, Vice-Chair of PSC, dated November 20, 2017, along with a paper titled *Digital File Management – Practice Tips* was provided for information.

A webinar is being planned for February or March on this topic, with presentation by Colin Clackson, Q.C. The Practice Advisors have reviewed the document and we hope it will be helpful to them when they review paperless practices.

Discussion:

- We may want to consider obtaining a legal opinion on obligations related to client information and cloud storage.
 - We have commenced discussions with MicroAge about designing some training on IT safety for our members, as well as creating a strategic plan for our own IT management and capacity. They may also be able to advise us about cloud storage obligations that would be relevant to our members.
- This might be one strategic initiative for us to focus on coming up to our next planning cycle. We could use this document as a model for practice tips in other areas.
- It is important to recognize that this is an issue that will be relevant to SLIA as well, so we should include them in these discussions.

3.5 Improve Access to Legal Services

i. Legal Services Task Team

Barbra Bailey provided an update on the work of the Legal Services Task Team, which is continuing to hold consultations with stakeholders and hopes to have recommendations for the Benchers to consider at April Convocation.

4. Society Governance

4.1 Election of President

Craig Zawada, Q.C. was acclaimed as President of the Law Society of Saskatchewan commencing January 1, 2018.

4.2 Election of Vice-President

Leslie Belloc-Pinder and Ian Wagner each made brief presentations to the Benchers, outlining their reasons for wanting to be Vice-President.

A vote was cast via secret ballot and Leslie Belloc-Pinder was elected as Vice-President of the Law Society commencing January 1, 2018.

Moved by Ian Wagner, seconded by Perry Erhardt, Q.C. that the ballots be destroyed. The motion carried.

4.3 Financial Reporting

i. Financial Statements

The financial statements for the period ended October 31, 2017 were provided for discussion.

ii. Quarterly Investment Report

The quarterly investment report from Greystone for the period July 1 to September 30, 2017 was provided for discussion.

iii. LSS Investments

Administration has been working with Loren Gee from Greystone to update the investment policy. Loren will be invited to February 2018 Convocation to discuss investment strategies.

Discussion:

- There was a discussion about whether we have ever investigated other options for management firms, but we have been very happy with Greystone's performance over the years.
- A request was made to ask Greystone for proposals with a variety of mixes so we have some options to consider.

4.4 Appointments

There was a request that we follow up with all appointees to reiterate the request that they provide reports to the Benchers. The Annual Reports would be helpful to review so Administration was also asked to provide those to the Benchers.

i. Saskatchewan Legal Aid

The term for Ray Wiebe expires December 31, 2017 and he is interested in serving a second term.

Moved by Perry Erhardt, Q.C., seconded by Leslie Belloc-Pinder, that Ray Wiebe be re-appointed for a second term on the Saskatchewan Legal Aid Commission, commencing January 1, 2018 and terminating December 31, 2019. The motion carried.

ii. Public Legal Education Association of Saskatchewan (PLEA Board)

The term for Maya Scott expires December 31, 2017 and she is interested in serving a second term.

Moved by Perry Erhardt, Q.C., seconded by Craig Zawada, Q.C., that Maya Scott be re-appointed for a second term on the PLEA board, commencing January 1, 2018 and terminating December 31, 2019. The motion carried.

iii. College of Law Endowment Fund

The term for Derek Maher expires December 31, 2017 and he is interested in serving another term.

Moved by Ian Wagner, seconded by David Bishop, that Derek Maher be re-appointed for a second term on the College of Law Endowment Fund, commencing January 1, 2018 and terminating December 31, 2019. The motion carried.

iv. Provincial Court Judicial Council

Craig Zawada, Q.C. provided his consent for Erin Kleisinger, Q.C. to continue as a Council member in 2018.

Moved by Brenda Hildebrandt, Q.C., seconded by Craig Zawada, Q.C., that Erin Kleisinger, Q.C. continue to serve on the Provincial Court Judicial Council until December 31, 2018. The motion carried.

4.5 Senior Life Membership Policy

The Benchers have been reviewing the policy and requested that Administration provide a memo setting out the implications of the options which were discussed at previous meetings. Documents presented to the Benchers at June Convocation, as well as some additional research done on the topic, were provided as follows:

- a. Memo from Kara-Dawn Jordan, dated November 23, 2017;
- b. Senior Life Membership Policy;
- c. Memo from Donna Sigmeth, Q.C. dated May 31, 2017;
- d. Memo from Barbra Bailey dated March 29, 2017;
- e. Research regarding the processes followed by other jurisdictions – memo from Barbra Bailey, dated August 31, 2017

Discussion:

- There are those who have been looking forward to receiving this category of membership but it does not impact many people and does not further the protection of the public.
- If the Benchers decide to eliminate this category of membership going forward, the discussion about whether to continue to recognize long-standing members in some way will be done through a policy and tabled to a later date.

Moved by David Chow, seconded by Jeff Baldwin, that amendments to Rule 150, Definition, and Rule 165, Senior Life Member, be approved as per the following:

150. In this part:...

(9) "**Senior Life Member**" means a person who has been granted a senior life membership by the Benchers pursuant to ~~Rule 165~~ prior to December 31, 2017.

And be amended to remove item (1)(a) – (c) and amend item (2) to read item (1), be approved as written:

Senior Life Member

165. ~~(1) The Benchers may confer a Senior Life Membership on a person who:~~

~~(a) has been a member of the Society for at least 50 years;~~

~~(b) is, or was in the immediately preceding year, a member of the Society; and~~

~~(c) has contributed significant public or legal service to the people of Saskatchewan.~~

~~(2) Senior Life Members are not required to pay the annual fee applicable to their category of membership but have all of the remaining rights and duties of membership and may practise law if they maintain professional liability insurance pursuant to Rule 605 and otherwise comply with these Rules and the Act.~~

20 in favour, 1 opposed. The motion carried.

A motion to grant second reading on the same day was presented by Brenda Hildebrandt, Q.C., seconded by Sean Sinclair.

On second reading, the motion was presented by Judy McCuskee, seconded by Craig Zawada, Q.C., that amendments to Rule 150, Definitions, and Rule 165, Senior Life Member, be approved as written. 20 in favour, 1 opposed. The motion carried.

4.6 Bencher Committees 2018

The Benchers were asked to complete a form, indicating their preferences for 2018 Committee appointments.

4.7 Operational Reporting

i. President's Report

Erin Kleisinger, Q.C. reported the following:

- Erin attended the Law Society of Manitoba's 140th Anniversary Dinner and Pitblado Lectures in Winnipeg on November 2 and 3, 2017.

ii. Executive Director's Report

Tim Brown provided his written report.

iii. Federation Council Report

Greg Walen, Q.C. reported the following:

- The Federation Council met in Victoria in October.
- The Anti-money Laundering Working Group will be providing draft amendments to these Rules in March.
- A new committee was created called the National CLE Program Advisory Group.
 - The committee is tasked with making recommendations to Council about whether the Federation should continue to support the National Criminal Law Program and the National Family Law Program.
 - They are undertaking a review to determine whether this continues to fall within the Federation's mandate.
 - A consultation process is underway.
- The next Council meeting is December 12th.
 - Proposed amendments to the Model Code with respect to technological competence and judges becoming lawyers after they retire will be considered.
- Litigation Committee
 - On December 12th, the committee will be recommending that the Federation intervene in *Queen v. Brassington* regarding informant information leading to charges and whether the names can be shared.
 - The case brings up issues regarding litigation privilege vs. solicitor-client privilege.
- The Trinity Western University matter regarding the accreditation of a new law college is being heard in the Supreme Court today.

5. Regulation

5.1 Rule Amendments

- i. Part 8 – Professional Standards and Discipline
 - a. Rule 403(3), Appointment to Hearing Committee

A memo from Tim Huber, regarding an amendment to Rule 403 governing who may be appointed to sit as a Hearing Committee Chair, was provided to the Benchers.

Presently, only Benchers may sit as Hearing Committee Chairs. The proposed amendment would allow former Benchers and non-Bencher lawyers to sit as a Hearing Committee Chair when a Bencher is not available. The Discipline Executive Committee considered this option and several others before agreeing to endorse the wording set out in option #6 in the memo.

Discussion:

- This option provides the best option to allow for flexibility.
- There are times when so many people are conflicted out that we need to have some flexibility.
- There is still a preference in the Rule to have a Bencher as chair, but this allows for that flexibility when needed.

Moved by Brenda Hildebrandt, Q.C., seconded by Sean Sinclair, that amendments to Rule 403(3), Appointment of Hearing Committee, be approved as per option #6 as written in the memo as follows:

403(3) Where possible, the Chairperson of a hearing committee appointed in accordance with section 47 of the Act shall be a Bencher;

(a) If for any reason it is not possible to appoint a bencher as a Chairperson of a hearing committee, a former bencher or member may be appointed as the chairperson of the hearing committee.

20 in favour, none opposed, 1 abstention. The motion carried.

A motion to grant second reading on the same day was presented by Perry Erhardt, Q.C., seconded by Ronni Nordal.

On second reading, the motion was presented by Ronni Nordal, seconded by Foluke Laosebikan, that amendments to Rule 403(3), Appointment of Hearing Committee, be approved as per option #6 as written. 20 in favour, none opposed, 1 abstention. The motion carried.

- b. Rule 405, Confidentiality

Tim Huber provided two memos to the Benchers regarding an amendment to Rule 405, clarifying the ability of the Executive Director to make reports to the authorities when confronted with lawyers engaging in criminal activity. The first memo outlines the rationale

for the proposed change. The second memo deals with the Benchers' ability to make the change as a rule amendment rather than an amendment to *The Legal Profession Act, 1990*. The Discipline Executive Committee has endorsed the proposed amendment as set out in the attached memos.

Discussion:

- This is a public interest concern to be able to report criminal activity without restriction. Currently, the Executive Director is required to wait until a charge has been laid, which does not allow the public to be protected on a timely basis. It does not create an obligation, rather the discretion, to report.
- Does our general liability and D&O liability cover this? If not, we should address this. This does provide further protection.

Moved by Brenda Hildebrandt, Q.C., seconded by Jeff Baldwin, that amendments to Rule 405, Confidentiality, be amended to include the addition of 405(3), be approved as written, as follows:

Possible Criminal Activity

(3) Notwithstanding subsection (1), the Executive Director, in his or her sole discretion may, at any time, disclose to a law enforcement authority any information about possible criminal activity on the part of a member that is obtained during an investigation or audit pursuant to the Act.

The motion carried unanimously.

A motion to grant second reading on the same day was presented by Glenn Hepp, seconded by Monte Gorchinski.

On second reading, the motion was presented by Ron Parchomchuk, seconded by Judy McCuskee, that amendments to Rule 405, Confidentiality, be amended to include the addition of 405(3), be approved as written. The motion carried unanimously.

ii. Schedule 1 – Practicing Fees

Schedule 1 – Law Society Fees and Assessments was presented for approval by the Benchers. Although the 2018 budget was passed at October Convocation, a separate motion is required to approve the actual Schedule of Fees. Schedule 1 is located within the Rules of the Law Society.

Moved by David Bishop, seconded by John McIntosh, Q.C., that amendments to *Schedule 1 - Law Society Fees and Assessments*, to increase the practice fee to \$1,875 (from \$1,750) and to reduce the Special Fund Assessment to \$100 (from \$200), be approved as written.

A motion to grant second reading on the same day was presented by Ian Wagner, seconded by Ronni Nordal.

On second reading, the motion was presented by Perry Erhardt, Q.C., seconded by Ian Wagner, that amendments to *Schedule 1 - Law Society Fees*

and Assessments, to increase the practice fee to \$1,875 (from \$1,750) and to reduce the Special Fund Assessment to \$100 (from \$200), be approved as written. The motion carried.

6. Committee Reports

- a. Access to Legal Services (provided by Brenda Hildebrandt, Q.C.)
 - Reported earlier in the Agenda.
- b. Admissions & Education (provided by Sean Sinclair)
 - None.
- c. Audit (provided by John McIntosh, Q.C.)
 - None.
- d. Conduct Investigation (provided by Jeff Baldwin)
 - None.
- e. Discipline Executive (provided by Brenda Hildebrandt, Q.C.)
 - There will be a webinar on December 5th providing the annual training for all hearing committee members (Benchers and non-Benchers) as per the National Discipline Standards.
- f. Equity & Diversity (provided by Ronni Nordal, Chair)
 - The Committee heard from a member who spoke to the Committee about his experiences as a disabled lawyer.
 - Ronni and Barbra Bailey also met with an internationally-trained lawyer about her experiences in Saskatchewan.
- g. Ethics (provided by Ronald Parchomchuk, Chair)
 - The Committee considered rulings regarding:
 - Completing documents electronically rather than in person.
 - The Committee will be bringing a recommendation to the Benchers about seeking changes in the legislation governing this issue for access to justice reasons.
 - Fee-splitting between a member and a non-member.
 - They will continue to meet in person for the time being due to the nature of their deliberations and their mandate.
- h. Executive
 - Craig Zawada, Q.C. invited Benchers to contact him if they would like to recommend any members or non-members to sit on any of our Committees, as it will help Committees to gain valuable expertise and to succession plan for the upcoming Bencher election.
- i. Governance (provided by David Chow)
 - The Committee held their first meeting by video conference on November 20th and will continue to meet that way.

- The Committee had a discussion to prepare for yesterday's governance session.
 - The Committee also discussed the results of the matrix, but would like to reach out to Glenn Tecker for some assistance interpreting the results.
- j. Insurance (provided by Perry Erhardt, Q.C.)
- a. The Committee met on October 11th to review the financial statements for SLIA and to meet with the auditor.
 - b. The Committee made the decision that SLIA will also no longer accept payment for insurance levies by credit card.
 - c. The Committee has been meeting by conference call and will continue to do so.
 - d. Their next meeting is next week.
- k. Legal Resources (provided by Scott Moffat)
- None.
- l. Professional Standards (provided by David Rusnak, Q.C.)
- The Committee has a telephone conference meeting coming up.
 - Their primary project recently has been the Practise Tips for Digital File Management and they will be focusing on launching that initiative.
- m. Trust Safety (provided by Monte Gorchinski)
- The Committee is in the process of reviewing the Rules and policy regarding the special fund.

7. Informational Items

The following articles were provided for information:

- a. *The Use (And Overuse) of In Camera Meetings* – by Craig Zawada, Q.C., Saskatchewan Business Magazine, September 2017
- b. *SALI Conference Summary* – Memo from Melanie Hodges Neufeld
- c. Law Society Gets a Toll Free Number
- d. Pilot Project – Legal Advice/Information for Survivors of Sexual Violence (Government of Saskatchewan)
- e. Recipient of the 2017 - 18 Law Society Scholarship in law is Andrea MacDonald
- f. U of S Senate Report – Karen Prisciak, Q.C.
- g. CLIA Subscribers Report – Tom Schonhoffer, Q.C.
- h. Convocation Dates 2018

8. Meeting Finalization

8.1 Review Actions to be Taken

8.2 Confirm Items under 1.4

8.3 Meeting Evaluation

8.4 Next Meeting (February 7 – 9, 2018 in Regina, Hotel Sask)

8.5 Motion to Adjourn

A motion to adjourn was presented by Ian Wagner. The meeting adjourned at 1 pm.

9. Bencher *In-Camera* Session with Executive Director

10. Bencher *In-Camera* Session without Executive Director

TIMOTHY J. BROWN
Executive Director

TJB/el