

Minutes for the Meeting of the Benchers Held Friday, June 16, 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, Glenn Hepp, Brenda Hildebrandt, Q.C., Heather Hodgson, Foluke Laosebikan, Ph.D, Judy McCuskee, John McIntosh, Q.C., 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, Greg Walen, Q.C., Federation Council and Evert Van Olst, Conduct Investigation Committee. Special guest, Jonathan Herman, CEO of the Federation of Law Societies, was also present.

Call to Order:

The meeting commenced at 10:11 am on Friday, June 16, 2017.

1. Approval of the Agenda

1.1 Apologies for Absence

Ronni Nordal was in attendance for committee meetings, but was absent for Friday Convocation. Scott Moffat was absent.

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. IT Update
- ii. Queen's Counsel Selection Committee
- iii. Senior Life Membership Policy
- iv. C. Willy Hodgson Award
- v. CPLED Reporting
- vi. Surplus Policy

2. Approval of the Minutes held April 28, 2017

Moved by David Bishop, seconded by Ron Parchomchuk, to approve the April 28, 2017 Convocation Minutes. The motion carried.

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

3. Federation 101 Training

Jonathan Herman, CEO, Federation of Law Societies, made a presentation to the Benchers regarding the operations of the Federation.

Moved by Brenda Hildebrandt, Q.C., seconded by Gerald Tegart, Q.C., that Jonathan Herman be awarded honorary membership in the Law Society of Saskatchewan. The motion carried unanimously and Mr. Herman was presented with a certificate.

4. Strategic Initiatives

4.1 Work Plan

The updated Law Society Workplan prepared by Barbra Bailey was provided for information.

4.2 Improve Confidence in the Law Society among Stakeholders

i. IT Update

Tim Brown reported to the Benchers *in camera*.

ii. Risk Management Session – follow up

On Thursday, the Benchers participated in a risk management session facilitated by David Jackson, CEO of CLIA. Results of the earlier sessions were compiled by Erin Kleisinger, Q.C. and Tim Brown, and were presented for discussion.

iii. Communications Strategy

Natalie Tomczak, Communications Director, provided the Benchers with an overview of her plan to develop a communication strategy for the Law Society.

Discussion:

- We should also consider ways to enhance communication amongst the Benchers and between Benchers and Administration, due to the long stretches of time between Convocations where Benchers do not receive a lot of information about what has been going on within the organization.

- The Benchers suggested that we make a conscious effort to promote good news stories on our website, rather than focusing so many of the news stories on discipline decisions.
 - The blog does this well, so perhaps we just need to better integrate the two sites.

A *draft* media strategy, as well as a copy of the Executive Committee Terms of Reference, were also provided for discussion.

Discussion:

- With regard to the draft media strategy policy:
 - We should add “special projects” or “specific Law Society initiatives” as an exception (along with discipline matters).
- Concerning special projects where there is a specific Benchers or staff person who is most familiar with the project and would be the most appropriate spokesperson, a strategy for that project should be developed, as well.
 - A communications strategy will be developed with the director for that project.
 - This mostly applies to the two main projects of the Access Committee, so Administration will draft a memo for that Committee to review.
- We will circulate an amended media strategy before September Convocation.

4.3 Improve Capacity, Competency and Knowledge of Members

i. Innovating Regulation – Update

Brenda Hildebrandt, Q.C. provided an update on the project. The Access Committee is approving the final materials to be used in the outreach, operation and assessment of the Law Firm Practice Management Pilot Project at this Convocation. The Pilot Project is expected to launch on Monday, with the first step being outreach to the firms that have been selected for participation. The Pilot Project will run over the summer and the Benchers will receive an interim report at September Convocation.

The assessment tool and comments form for use in the pilot project, as well as the roll-out plan, were provided to the Benchers.

We will not make the package public until it has been sent out to the participating firms, but after that, the Benchers can provide it to members if they ask about it. We will send out a notice to the Benchers once the pilot project package been rolled out to the participating firms.

ii. Legal Resources

a. Next steps re: survey

Melanie Hodges Neufeld will be travelling around the province to meet with the various Bar Associations to gather more feedback about the legal resources provided by the Law Society.

b. Renewal of Westlaw Contract

Melanie Hodges Neufeld reported that the renewal date of our contract with Westlaw has been moved from July to December to allow for a deeper discussion about renewal that will occur during budget discussions.

c. ExLibris Project – memo from Melanie Hodges Neufeld

The Consortium of Academic and Special Libraries of Saskatchewan (CASLS) is looking at acquiring a new catalogue platform which will likely form a large part of the base of our new website. It will be more convenient for users, as they will only have to search in one place. It will also link different departments and services within the Law Society, so that when users conduct a search, related services will pop up. They are hoping to launch in the fall and at that time there will be information sent to the members. Administration is considering developing a free webinar to instruct members on how to use this platform.

iii. CPLED Update

Tim Brown attended the CPLED meeting in Calgary on May 16, 2017 and provided a report to the Benchers *in camera*.

iv. CPD Course – How to Read Financial Statements

This project was initially envisioned as something which could be applicable to the membership at large, as well as Benchers. However, since the primary focus of the video was to be a training tool for Benchers, management produced a video solely for the benefit of Benchers with the assistance of an arm's length facilitator -- Auditor Sheila Filion, CPA, CA, Virtus Group. Input for the video was provided by Pamela Harmon, CPA, CA, Stephanie Kievits, CPA, CA and Monte Gorchinski.

A link to the video "Analyzing Financial Statements" was provided to the Benchers for viewing at any time. Questions arising out of the presentation will be collected by the Audit Department and answers will be shared in the form of FAQ's at a later date.

4.4 Improve Access to Legal Services

i. Legal Services Task Team

A press release was posted May 5, 2017 on our website and an email was sent to the members, providing an update on work done by the Task Team.

Gerald Tegart, Q.C. provided a further update on the project. The goal is to have a work product by the end of the calendar year, but it is likely that the work will continue into next year. The first meeting of the Task Team was held on June 8, where the focus was orientation, team building and laying the foundation of knowledge for the work ahead. The second meeting will be held on June 23 and will focus on the stakeholder consultations, which will commence during the summer. The Task Team will reconvene in the fall, where the consultation results will be reviewed and the Task Team will hear from some stakeholders directly. The ultimate task of the Task Team is to develop recommendations

for consideration by the Benchers and the Ministry. These recommendations will not be binding, but the hope is that the Benchers will engage in a meaningful examination about their feasibility.

Discussion:

- There was a question about whether the Benchers will have a chance to meet with the Task Team – Gerald will take this suggestion back to the Task Team.
- The Task Team may hear from people from other jurisdictions about the experiences they have had on this topic (Ontario, Washington, for example).
- We do not have a clear idea of the number of people who might look to become designated as a new group.
- The Law Society and the Ministry are providing staff support to the Task Team and the Dispute Resolution Office has provided a facilitator – the staff will assist in writing the recommendation report based on the direction of the Task Team and with final approval by the Task Team.
- The Court of Queen’s Bench has asked about the project:
 - They have struck a committee to look at this topic which is Chaired by Justice Barrington-Foote.
 - The staff working group has discussed this topic at length and input from the courts is crucial - we want our recommendations to be viable and acceptable by the courts.
- The scope of this project is quite large – we are asking the Task Team to consider many different options, not just the question of establishing a group of paralegals.
- There was a request to add the power point presentations from the Annual General Meeting CPD presentations to the folder on PBworks with the resources for this project.

ii. Courthouse Closure Discussion

A discussion about the role of the Law Society with respect to certain matters affecting the legal profession, such as courthouse closures, was added to the Agenda at the request of one of the Benchers. The Executive Committee Terms of Reference were included, as they were relevant to the discussion. The Benchers were also provided with an update from Melanie Hodges Neufeld regarding access to the Weyburn Library.

Discussion:

- The Benchers decided to table the full discussion to September and discuss how the Benchers should respond to other events such as this.

iii. Access to Justice

For information, materials were provided regarding the summer campaign:

- a. Email from Sarah McCoubrey, Strategist on Access to Justice
- b. Campaign brochure

5. Society Governance

5.1 Operational Reporting

i. President's Report

Erin Kleisinger, Q.C. reported the following:

- She attended the Law Society of Alberta retreat in Jasper last week, along with Craig Zawada, Q.C. and Tim Brown.
 - The theme was “The 21st Century Lawyer” and covered several facets of legal regulation and legal education.
- The Executive Committee attended the Queen's Bench Bar Judicial Council meeting, along with the executives of the Saskatchewan Trial Lawyers Association and the Saskatchewan Branch of the Canadian Bar Association this morning.

ii. Executive Director's Report

Tim Brown provided his written report in advance to the Benchers.

iii. Federation Council Report

Gregory Walen, Q.C. reported the following:

- They have not held a Council meeting since last Convocation.
- The next Council meeting is in Iqaluit next week.
- In May, the National Discipline Standards Committee discussed the implementation report for 2015 - 2016:
 - Saskatchewan has improved from 71% to 81% compliance during that time.
 - It is very difficult for all Law Societies to achieve 100% compliance due to variations in legislation across the country.

5.2 Financial Reporting

i. Financial Statements

Financial statements for the period ended April 30, 2017 were reviewed by the Benchers. Pam Harmon, CPA, CA provided an overview of the financials.

Discussion:

- There was a request that recovered fines be removed from sundry and stated as a separate line item.
- The Benchers also requested that the cost of hearings, such as paying honorarium, be broken out and itemized.
 - It may not be possible to break out the salary costs related to hearings, as there are differences in the ways that outside counsel account for their time.
- Administration will look at coming up with a reporting mechanism that indicates where the Law Society falls within its budget projection (as a percentage, for example).
- There was a request for analysis about whether the cost of accepting payment by credit card is justified by the number of members who pay by credit card.

- Administration will come back with an analysis next meeting.

ii. Quarterly Investment Report

The next quarterly investment report will be available for September Convocation. In the meantime, Greystone provided an interim report for information.

5.3 Surplus Policy - Update

Tim Brown provided a report *in camera*.

5.4 CLIA Update

Tim Brown reported on the CLIA AGM and subscribers meeting he attended in Calgary on May 16th and 17th.

5.5 Appointments

i. Law Foundation Auditor

Pursuant to Rule 76(7), the Benchers appoint the Law Foundation auditor. The Law Foundation has requested that the Benchers re-appoint Deloitte.

Moved by Ian Wagner, seconded by Martin Phillipson, that Deloitte be re-appointed as auditors of the Law Foundation of Saskatchewan. The motion carried unanimously.

ii. Queen's Counsel Selection Committee

The committee consists of the past President, a Bencher, a Public Representative and a member-at-large.

Ian Wagner was the sole Bencher applicant, therefore, he was elected by acclamation.

Judy McCuskee agreed to serve on behalf of the Public Representatives. The Agenda should be amended to reflect that the public representative Benchers agreed amongst themselves that Judy would continue to serve on the committee but that there was no meeting.

The Benchers voted via secret ballot for the member-at-large position and Leslie Sullivan, Q.C. was selected.

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

iii. C. Willy Hodgson Award

The Benchers voted via secret ballot for the C. Willy Hodgson Award and Mervyn Shaw, Q.C. was selected as the recipient.

Moved by Ian Wagner, seconded by Judy McCuskee, that the ballots be destroyed. The motion carried.

5.6 Terms of Reference – Equity & Diversity Committee

The Terms of Reference for the Equity & Diversity Committee were provided for Benchers approval.

Moved by David Chow, seconded by Heather Hodgson, that the Terms of Reference for the Equity & Diversity Committee be approved as written. The motion carried.

5.7 Terms of Reference – Legal Resources Committee

The Terms of Reference for the Legal Resources Committee were provided for Benchers approval.

Moved by Ian Wagner, seconded by Leslie Belloc-Pinder, that the Terms of Reference for the Legal Resources Committee be approved as written. The motion carried.

5.8 Governance Reform

A memo prepared by Barbra Bailey setting out a proposal for reform initiatives was reviewed by the Benchers. Based on the themes that developed from the HTBABBT discussion in February, the Governance Committee has proposed some short and long-term goals for governance reform/improvement initiatives. There were no concerns about the proposal so the Governance Committee will continue to work towards the proposal in the memo.

5.9 Senior Life Membership Policy

At April Convocation, the Benchers requested that the Policy come back to the table for discussion about whether the criteria should be revised. The current policy, as well as a memo from Donna Sigmeth, Q.C. was provided to assist in the deliberations. Also included was a memo from Barbra Bailey regarding process.

This item was tabled until next meeting. We will look at what other jurisdictions do and consider whether to change our process, including consideration about whether to continue awarding Senior Life Memberships at all.

6. Regulation

6.1 Amendments to *The Legal Profession Act, 1990* and Law Society Rule 605

A memo from Barbra Bailey discussed new section 11.1(4) of the *Act* and the resultant changes to our Rules, Part 10 – Insurance, Rule 605(4)(b), reflecting that most government lawyers will be exempt from payment of the Annual Assessment. These amendments would bring the language of the *Act* and the Rules into harmony.

Moved by Jay Watson, seconded by Ian Wagner, that amendments to Rule 605(4)(b) be approved as written to exempt government lawyers from payment of the annual assessment,

in accordance with the definition of “government institution” in *The Freedom of Information and Protection of Privacy Act*. The motion carried.

A motion to grant second reading on the same day was presented by Ron Parchomchuk, seconded by Dave Rusnak, Q.C.

On second reading, the motion was presented by Jeff Baldwin, seconded by Perry Erhardt, Q.C., that amendments to Rule 605(4)(b) be approved as written to exempt government lawyers from payment of the annual assessment, in accordance with the definition of “government institution” in *The Freedom of Information and Protection of Privacy Act*. The motion was carried.

Discussion:

- Discussion with senior government staff indicates 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, so we expect that proposed Rule amendments to insure government lawyers for the provision of *pro bono legal services* may be before the Benchers for consideration at September Convocation.

7. Committee Reports

a. Access to Legal Services (provided by Gerald Tegart, Q.C.)

- Legal Services Provider and Innovating Regulation projects were reported on earlier in the Agenda.
- With regard to rural initiatives, the Committee is examining some proposals from the College of Law about ways we might collaborate to address the issue of recruitment and retention of students and lawyers in rural communities.
 - The Committee will revisit consultations the Law Society undertook with rural bar associations a few years ago to guide this work.
 - The Committee would like to hear from the other Benchers who practice in rural communities for ideas on how to support recruitment and retention.
 - Succession planning is related to this issue, as a large proportion of the membership is nearing retirement and the Committee will also be considering how this should be incorporated into its work.

b. Admissions & Education (provided by Sean Sinclair)

- A survey will be distributed to members over the summer regarding whether changes should be made to the CPD policy.
- The Committee has approved a new accommodation policy for CPLED.

c. Audit

Nothing to report at this time.

d. Conduct Investigation (provided by Jeff Baldwin)

- The Committee met to discuss their mandate and hold a refresher about proper procedures.
- They will meet at least annually going forward for this purpose.

e. Discipline Executive (provided by Brenda Hildebrandt, Q.C.)

- The Law Society spoke with the government about amending *The Legal Profession Act, 1990* with regard to compelling disclosure of documents, but we were not able to address it during the recent amendments made to the *Act* regarding insurance coverage.
- The Committee is reviewing Rule 405 regarding potential disclosure of information about potential criminal activity to the authorities and considering clarifying and possibly expanding that authority.
- The Committee held a discussion about allowing more flexibility in the composition of hearing panels, as there are difficulties striking panels sometimes due to conflicts, etc. We have the ability to be more flexible, but have not done so in practice.
- The Committee is considering the possibility of creating the option to give a formal caution prior to the charging stage.

f. Equity & Diversity

Nothing to report. The Committee will be meeting by conference call next week.

g. Ethics (provided by Ronald Parchomchuk)

- The Real Estate sub-committee has been consulting with the Saskatchewan Lawyers' Insurance Association Inc., the Law Society of Manitoba staff and members of the Law Society to develop a new draft of the standard trust condition letter.
 - They will consult with members and real estate paralegals on the draft letter over the summer and then the draft will be considered by the Ethics Committee in September.
- *Model Code* amendments will be coming to the Bencher table in September.

h. Executive (provided by Erin Kleisinger, Q.C.)

Covered by the President's report.

i. Governance (provided by David Chow)

- A discussion about Bencher honorarium will come to the Bencher table in September.
- The Committee has revised the Bencher evaluation form and it will be circulated to the Benchers after this Convocation (next week).
 - The Committee will review the results in August and they will come to the Bencher table in September.

- It will then be circulated again at the end of the year, and from now on, it will be completed twice a year.
- The Committee will be making a recommendation that the budget for Benchers training be increased.
- A webinar on understanding financial statements was recently distributed to all Benchers.
- We will revisit performance measures at the end of this year/at the beginning of next year.

j. Insurance

Nothing to report. The Committee will be meeting in the next couple of weeks.

k. Legal Resources (provided by Ian Wagner)

- The Committee had a significant discussion about their budget – there is a significant shortfall due to a decrease in funding from the Law Foundation.
 - The Law Society will have to reconsider the funding model for legal resources due to the fact that the Law Foundation has signaled that they will not continue to fund legal resources at the level that they have in the past.
 - The next meeting with the Law Foundation will be held in August.
 - We may have to consider having members pay a legal resources fee – the survey of the membership seemed to indicate an openness to this idea.
- The survey also indicated that these resources do support member competence (in their own estimation).
- The Annotated QB Rules will be available in electronic format this year.

l. Professional Standards (provided by David Rusnak, Q.C.)

- The Committee welcomed new members Foluke Laosebikan, Ph.D and Glenn Hepp, as well as new Practice Advisor Sheila Denysiuk, Q.C.
- The Committee is considering how to deal with requests from members for practice advisor assistance.
 - It is a positive sign that members are finding this to be a valuable service, but when it is not prompted by a competence or practice issue, we should consider whether it be provided on a fee-for-service basis.
- The Paperless Office sub-committee is working on a proposal respecting an approach to this issue – they are debating between best practice guidelines and a more rigid protocol (which would likely need to be updated fairly regularly to stay current).

m. Trust Safety (provided by Monte Gorchinski)

- The Trust Accounting Rules require a second-stage review for some revisions respecting formatting and technical language which will be considered by the Committee over the summer.
- The Committee is also developing a proposal for the Special Fund surplus, as well as the Rules and framework respecting the Special Fund.
 - The Committee will receive a presentation from Patrick Mahoney at Axxima at its next meeting.

8. Informational Items

The following articles were provided for information:

- a. *Law society discovers “systemic weaknesses” in protecting Indigenous people from unscrupulous lawyers*, by Judy Porter, CBC News, Posted April 26, 2017.
- b. *Liberals reshape judicial bench with appointments of women*, by Sean Fine, The Globe and Mail, Posted May 12, 2017.
- c. *The Role of Today’s Board Member*, by Glenn H. Tecker, Associations Now Supplement, 2017.

9. Meeting Finalization

9.1 Review Actions to be Taken

9.2 Confirm Items under 1.4

Items respecting staff particulars relating to personal circumstances and salary should not be open to the public going forward (meaning they should not be included in the Executive Director’s Report).

9.3 Meeting Evaluation

- The Benchers would like to have plug-ins or extension cords at all Bencher meetings.
- It would be good to have Liz or someone from the staff present at the start of Bencher meetings to deal with questions from banquet services.
- The Benchers would like to have the dates for 2018 Convocations as soon as possible.

9.4 Next Meeting (September 20 – 22 in Saskatoon)

9.5 Motion to Adjourn

A motion to adjourn was presented by Leslie Belloc-Pinder, seconded by Gerald Tegart, Q.C. The meeting adjourned at 3:39 pm.

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

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

TIMOTHY J. BROWN
Executive Director

TJB/el