

**Minutes for the Meeting of the Benchers
Held Friday, September 22, 2017
Radisson Hotel, Saskatoon**

Present:

Erin Kleisinger, Q.C., Craig Zawada, Q.C., Jeff Baldwin, Leslie Belloc-Pinder, David Bishop, Perry Erhardt, Q.C., Monte Gorchinski, Glenn Hepp, Brenda Hildebrandt, Q.C., Heather Hodgson, Foluke Laosebikan, Ph.D, Judy McCuskee, 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 and Greg Walen, Q.C., Federation Council

Call to Order:

The meeting commenced at 9:00 am on Friday, September 22, 2017.

1. Approval of the Agenda

1.1 Apologies for Absence

David Chow sends his regrets. John McIntosh, Q.C. attended the training session and committee meetings, but was unavailable for Friday, September 22nd. Sean Sinclair arrived at 10:00 am.

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. Saskatchewan Legal Aid Commission appointments
- ii. Senior Life Membership Policy
- iii. Bencher Self-Evaluation Questionnaire
- iv. Bencher Honoraria
- v. CanLII Update
- vi. IT Update
- vii. CPLED update
- viii. Lexum

2. Approval of the Minutes held June 16, 2017

Moved by Ian Wagner, seconded by Jeff Baldwin, to approve the June 16, 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 update from Barbra Bailey was provided for consideration. Improvements to this area of reporting have been identified as necessary by Administration; however, since this report may be influenced by future changes to our Bencher interface platform and the finalization of risk management, the status of this work is ongoing.

3.2 Improve Confidence in the Law Society among Stakeholders

i. Risk Management

A Risk Priority Analysis memo from Barbra Bailey was provided for discussion.

There were no changes to the risks as presented.

ii. Discussion and feedback on Glenn Tecker's Session on *Leadership Roles, Responsibilities and Relationships* held September 20, 2017

Tim Brown reported that he had received a lot of positive feedback about the session and posed a suggestion to the Benchers that time be allotted for discussion on Thursday at the next Convocation.

There was some confusion over how things are currently done, so this is an important part of the discussion. Some Benchers thought it would be important to have all Benchers fill out the matrix and submit it to Administration so we could identify the areas where there are significant differences. Staff should also fill out the matrix, as they were an important part of the discussion on Wednesday and should be going forward. There was support for having Glenn Tecker come back again to help us with next steps.

Administration will redistribute the matrix to the Benchers. We would like to obtain more clarity on these issues by June 2018, when we will be starting our next strategic planning cycle; this will also impact recruitment for the next Bencher election, as well as the discussion about Bencher honoraria.

3.3 Improve Capacity, Competency and Knowledge of Members

i. Innovating Regulation

The Law Firm Practice Management Pilot Project was launched in July and ran over the summer. At September Convocation, the Access Committee reviewed a preliminary report regarding the feedback received. Brenda Hildebrandt, Q.C. provided an update to the Benchers.

ii. Preparing Tomorrow's Lawyer

- a. Jasper Retreat Summary 2017 prepared by Law Society of Alberta (attached).
- b. Meeting of the Western Law Deans

Tim Brown reported the following:

- A lot of interest in coordinating delivery of more practical skills or at least the foundation for building those skills.
- The Universities of Calgary, Saskatchewan and Manitoba are involved in the discussions at this point, along with the Prairie Law Societies.
- Saskatchewan is hosting the next meeting on November 23, 2017.

3.4 Improve Access to Legal Services

i. Legal Services Task Team

Gerald Tegart, Q.C. provided an update, as well as the Project Consultation Plan. The Task Team was provided with reading material over the summer, but did not meet. The Staff Working Group will conduct stakeholder consultations in September and October and the Task Team will reconvene in late September when they will hear from selected stakeholders directly.

ii. Court House Closure Discussion

The Benchers decided to table the full discussion from June Convocation to September Convocation and discuss how to respond to external events such as the Weyburn Court House closure.

The Executive Committee Terms of Reference which, under IV, subsection b) describe roles and responsibilities in relation to external affairs, were included for reference.

Discussion:

- Advancing the administration of justice and access to legal services is part of our mandate, so we should discuss whether we do something about this issue – not necessarily a political statement, but to address it in some way.

- The cost of lawyers driving long distances to represent their clients in court can be prohibitive.
- The population has decreased a lot in these areas, but the courthouses that were closed served a large area, including reserves. This may raise a duty to consult. Some of these closures are also due to shifting of provincial court points that are directed by the Chief Judge according to traffic.
- Whether or not the Law Society agrees with the ultimate decision, our view is that fulsome (advance) consultation should occur (which has not always been the case).
- Consultation should include the profession (including the local bar, CBA, STLA), the public, the Law Society, and the courts.
- On a go-forward basis, we want to ensure the government consults on similar issues.
- In terms of the Executive Committee making statements or representations on issues such as this, they may circulate a *draft* communication to the Benchers for comments.
- We understand that often this is a budgetary decision for the Government and that process is not public. However, consulting after the decision is made is not preferable.
- We understand there are budgetary constraints, but we want to make sure that the Government is considering all impacts.
- The Law Society is the part of the profession that has a mandate of protecting the public, so we should take it upon ourselves to speak out when appropriate.
- With regard to Weyburn, the Executive raised the concern with the Deputy Minister, but in that case, the decision had already been made.
- At the next opportunity for the Executive Committee to meet with the Ministry, they will reiterate that the Benchers believe that consultation is imperative before these decisions are made. When Tim Brown meets with the Chief Judges, he will raise it with them, as well.

4. Society Governance

4.1 Operational Reporting

i. President's Report

Erin Kleisinger, Q.C. reported the following:

- The Provincial Court Bar Judicial Council has met a number of times.
- She attended the welcoming ceremony for first year students at the College of Law.
- Perry Erhardt, Q.C. addressed the CPLED students.

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 on the following:

- He attended the last meeting of the Council in June (Iqaluit).
- The preliminary report of the Truth and Reconciliation Commission Calls to Action Advisory Committee has been prepared:
 - The Advisory Committee proposed an amendment to the National Requirement Review to incorporate Call to Action 28 re requiring all law students to take a course in law school about residential schools, UNDRIP, Aboriginal-Crown relations, etc.
 - Council passed a motion to direct the NRR Committee to examine this proposal.
- The Anti-Money Laundering Committee is working on some changes to the Client ID Rules.
- The NCA Program Review Committee has completed its review of the national requirement for applicants who do not have a Canadian Common Law Degree:
 - There was a high failure rate for NCA applicants.
 - They hired a consultant to review the program and are recommending some changes.
 - This ties into the National Requirement Review Committee's work, which develops the criteria for lawyer competencies in Canada, as well as the accreditation for law schools based on competencies in their curriculum.
- The National Requirement Review Committee also made recommendations after consulting with the Canadian Council of Law Deans – see Agenda item 6.1.
 - Also have the mandate for exploring the possibility of including a non-discrimination clause in the national requirement which arose as a result of the TWU application for accreditation; this is on hold pending the Supreme Court hearings on this matter.

4.2 Financial Reporting

i. Financial Statements

Financial statements for the period ended July 31, 2017 were reviewed by the Benchers.

Discussion:

- A reminder to include the Special Fund in reporting going forward.
- Administration is considering offering some online CPD components that could have tests built in or have modules on certain areas of law.
- At last budget, we were not sure whether we would renew our lease; we have renewed the lease and are now renovating the office.
- Publications revenue has not caught up yet because of the timing of the release of the annotated QB Rules.

- If there is a discrepancy regarding a particular line item due to timing, the suggestion was made to highlight it grey; if there is a discrepancy of less than 5%, there is no need to draw attention to it.
- The cost of the IT system is also higher now, both on a monthly operating fee and a small increase in capital expenditures (replacing old computers), as well as some expense for meeting technology; we are planning to have a security audit of the office, so there may be some expense to address any recommendations.

ii. Quarterly Investment Report

The quarterly investment report for the period April 1 to June 30, 2017 was provided for information.

iii. Administration's Analysis on Payment by Credit Card

A report from Pamela Harmon, CPA, CA was provided to follow up on the Benchers' request regarding the cost of payment by credit cards.

Discussion:

- There is an administrative cost to other payment methods as well, but it would be lower.
- Some members will be impacted more significantly if we discontinue this practice, but if we provide significant lead time, perhaps that will be sufficient.
- We are not permitted to add the amount lost by payment by credit card to the fees of members paying by credit card and it would be difficult to discount for those who pay by other methods.
- We have spoken to the bank about trying to negotiate this down and perhaps we could shop around for next year, but the credit card companies are less willing to negotiate.
- The fee includes CPD payments as well, but 87% of it comes from payment of fees/levies. It may impact CPD revenue if we discontinue the use of credit card payment.
- We could also introduce the ability to do online transfers.
- If a change is made, it should not come into effect until next year (we could advise the membership that 2017 is the last year for payment by credit card).
- Approximately 70% of members pay by credit card.
- If we do this for effect this year, we need a very clear communication to members about why and it should happen as soon as possible to provide sufficient lead time.

Moved by David Rusnak, Q.C. seconded by David Bishop, that the Law Society discontinue the practice of accepting payment by credit card for member fees and insurance levies for 2018 going forward. 10 in favour, 8 opposed. Motion is carried.

iv. Portfolio Diversification

An analysis of the Law Society's asset mix provided by Loren Ghee of Greystone Investments in August 2017, as well as an email containing information produced by

running an additional analysis on September 7, 2017, was provided as background information. Tim Brown summarized the reports and provided the following comments:

- Administration is working on updating the investment policy. Greystone Investments will propose a new policy and Loren Gee is prepared to make a presentation to the Benchers.
- SLIA recently updated its investment policy which may help with this process.

v. Pre-Budget Planning

Tim Brown provided an update respecting the Applications submitted to the Law Foundation for the Legal Resources Department and CPLED.

The following were attached for pre-budget discussion:

- a. Budget forecast memo prepared by Pamela Harmon, CPA, CA dated September 5, 2017;
- b. Financial spreadsheets;
- c. Surplus Policy Analysis from Tim Brown, dated September 13, 2017.

4.3 Appointments

i. Saskatchewan Legal Aid Commission

Amanda Dodge resigned from the Saskatchewan Legal Aid Commission. Four resumes from interested candidates were provided for consideration.

A secret ballot was held and Valerie MacDonald, Q.C. was selected as the new representative on the Saskatchewan Legal Aid Commission, effective September 22, 2017 to September 21, 2019.

Moved by Ian Wagner and seconded by Perry Erhardt, Q.C. Moved by Ian Wagner, seconded by Brenda Hildebrandt, Q.C., that the ballots be destroyed.

4.4 Senior Life Memberships – Appointment Policy

At April Convocation, and again at June Convocation, the Benchers requested that the Policy come back to the table for discussion about whether the criteria should be revised. Included were documents presented to the Benchers at last Convocation, as well as some research done on the topic.

Discussion:

- Look into impacts within the Rules, how to implement with regard to those who are currently exempt from paying fees due to SLM.

Moved by Judy McCuskee, seconded by Ian Wagner, to discontinue the category of Senior Life Membership. After discussion, the motion was withdrawn, pending an analysis from Administration about the impacts of discontinuing the Senior Life Membership category.

4.5 Bencher Honoraria

The memo from the Governance Committee provided options for consideration. The research done earlier by Melanie Hodges Neufeld and her library staff was also included for deliberation. Given the ongoing discussion about governance reform, which might impact this discussion, the two should be tied and considered on the same timeline, so this item will be tabled until further discussion about governance reform occurs.

4.6 Bencher Self-Evaluation Questionnaire

Discussed *in-camera*.

4.7 Virtual Committee Meetings

Tim Brown's memo discussing the pros and cons of virtual Committee meetings was discussed. There was agreement that we should experiment with this approach so Administration will assist the Chairs and obtain or develop a webinar and some guidelines about effective facilitation of meetings by phone or videoconference. For those who need to meet in person, Administration will make all necessary arrangements. It will be important for the Committees to meet in person at some point; however, where possible, we will try to convene Committee meetings remotely.

4.8 IT Update

Tim Brown provided an update to the Benchers regarding the benefits of new software for Convocation meetings which may be in place as early as November.

There was a question about whether this software can be used offline. Administration will clarify.

4.9 CPLED Update

In-Camera discussion.

4.10 Communications

A copy of the Minutes of the inaugural meeting of the Communications Committee held September 7, 2017 was considered by the Benchers and discussed *in-camera*.

5. Regulation

5.1 Parts 13 – 16 Accounting

The Trust Safety Committee has recommended extensive amendments to Parts 13-16 of the Rules which address changes in banking and accounting practices as well as difficulties and inconsistencies that have arisen from the current Rules. The proposed amendments were provided for Bencher review and approval.

Moved by Craig Zawada, Q.C., seconded by Ronni Nordal, that amendments to Part 13 – 16, Accounting and all necessary consequential amendments be approved as written. The motion carried.

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

On second reading, the motion was presented by Judy McCuskee, seconded by Perry Erhardt, Q.C., that amendments to Part 13 – 16, Accounting and all necessary consequential amendments be approved as written. The motion was carried.

It was noted that the Benchers very much appreciated how the material was presented, as it was very easy to understand.

5.2 Code of Professional Conduct Amendments

A memo from the Ethics Committee regarding proposed amendments to the *Code of Professional Conduct*, Section 3.3-3A, on Confidentiality, and deletion of sections 3.3-3, 3.3-5 and 3.3-6 on Permitted Disclosure, was provided to the Benchers.

Another memo was also presented, outlining amendments to the following:

- i. Rule 3.1-2, on Competence, Commentary [8] and [9];
- ii. Rule 3.2-7, on Dishonesty, Fraud by Client or Others, Commentary [2] and [3];
- iii. Rule 3.7-1, on Withdrawal from Representation, Commentary 4 deleted;
- iv. Rule 3.7-7A, Leaving a Law Firm (added);
- v. Rule 3.7-9, Manner of Withdrawal, Commentary [5];
- vi. Rule 5.1-2A, on Incriminating Physical Evidence, Commentary [4] and [5].

Moved by Ron Parchomchuk, seconded by Leslie Belloc-Pinder, that amendments to the *Code of Professional Conduct*, as outlined in the memos from the Ethics Committee, be approved as written. The motion carried.

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

On second reading, the motion was presented by Perry Erhardt, Q.C., seconded by Sean Sinclair, that amendments to the *Code of Professional Conduct*, as outlined in the memos from the Ethics Committee, be approved as written. The motion was carried unanimously.

6. Federation of Law Societies of Canada

Gregory Walen, Q.C. provided some background and summarized the following items for discussion.

6.1 National Requirement Review (NRRC) Amendments

The NRCC proposed two minor amendments to the National Requirements, effective January 1, 2018:

- i. Delete the reference to “legal and fiduciary concepts in commercial relationships” from the list of required private law principles set out in paragraph 3.3(b) of Section B. Competency Requirements; and
- ii. Remove the word “presumptively” from paragraph 1.1 of Section C.

Both changes are intended to improve the clarity – it was not clear whether Business Organizations should be a mandatory class and whether there was leniency on the number of course credits required. The University of Saskatchewan College of Law is considering curriculum changes to respond to the TRC’s call to action which they hope will come into effect in the 2018-2019 academic year.

Moved by Sean Sinclair, seconded by Dave Bishop, that amendments to the National Requirements, as presented, be approved as written. The motion carried.

6.2 Electing Federation Executives

The Benchers reviewed the following information:

- i. An email from Federation President Maurice Piette dated August 24, 2017 regarding the upcoming election of Federation Executives;
- ii. Letter of Recommendation re LSUC for Second Vice-President;
- iii. Resolutions for the upcoming AGM on October 20, 2017.

Moved by Brenda Hildebrandt, Q.C., seconded by David Rusnak, Q.C., to approve the appointment of Ross Earnshaw as the Second Vice-President for the Federation.

7. CanLII Update

In-Camera Discussion.

8. Committee Reports

- a. Access to Legal Services (provided by Gerald Tegart, Q.C.)
 - Most of the Committee’s business was already reported.
 - Martin Phillipson reported on the following:
 - Access to Justice week is coming up October 16 – 20, including a conference with public and law librarians and their role in providing legal information and two Town Hall meetings held by the Ministry/Law Society in conjunction with the Legal Service Task Team.
 - The College is redesigning its Career Services office which will include placing more focus on placing students in rural offices,

among other things. Dean Phillipson is looking for feedback about ways they can improve the services provided by this office.

- Tim Brown reported on the Access to Justice Provincial Roundtable's work:
 - Received a presentation from Jerry McHale of the University of Victoria about the absence of data regarding access to justice in Canada.
 - The working group also determined that they would like to redesign its governance structure to make sure there is an efficient decision-making structure, as currently the working group is very large.

- b. Admissions & Education (provided by Sean Sinclair)
 - The Committee is reviewing the CPLED policy with respect to the effects of failing a course module.
 - The Committee also reviewed the results of the survey of the members respecting the current CPD policy and programming; as a result, the Committee will consider some changes to the policy.

- c. Audit (none)

- d. Conduct Investigation (none)

- e. Discipline Executive (provided by Brenda Hildebrandt, Q.C.)
 - Rule amendments will be coming to the Bencher table in November:
 - One regarding the Rule stating the requirements for Chairs of Hearing Committees.
 - Another amendment regarding the Rule regarding the discretion of the Executive Director to report information regarding potential criminal activity.
 - Considering updates for Hearing Committee training – non-CIC members and non-Bencher Hearing Committee volunteers will be asked for feedback on ways the hearing process might be improved.
 - Discussed discipline off-ramps such as formal cautions, but given the discussion about governance reform, they want to consider how they might amend the process of involving Benchers in the discipline process.
 - Staff were asked to provide further information to inform this discussion.

- f. Equity & Diversity (provided by Ronni Nordal, Chair)
 - The Committee heard remarks from representatives of the Federation of Asian Canadian Lawyers and they plan to hear presentations from other groups at upcoming meetings.
 - There is a new area on the Law Society website dedicated to TRC.

- Will be reaching out to our Justicia Project volunteers to determine whether they are interested in continuing their work.
- g. Ethics (provided by Ronald Parchomchuk)
- The Model Code Standing Committee has solicited feedback from Law Societies about changing the prohibition against fee-sharing. The Committee felt it was premature to discontinue this prohibition, as it will impact a number of things and be impacted by our consideration of concepts such as alternative business structures.
- h. Executive (none)
- i. Governance (provided by David Bishop)
- Administration will provide some guidelines/tips on facilitating Committees by phone or videoconference.
- j. Insurance (provided by Perry Erhardt, Q.C.)
- Amended Terms of Reference.
 - Amended investment policy.
 - Working on surplus management policy.
- k. Legal Resources (provided by Scott Moffat)
- The Law Foundation funding application was submitted at the end of August and they will hear whether it is approved next week at which time they can begin finalizing their budget.
 - Melanie Hodges Neufeld has been holding member consultation meetings around the province about resources.
 - The website is undergoing major redevelopment.
 - Portions of the Saskatchewan Access to Legal Information conference October 20 - 21 will be webcast for CPD credit.
- l. Professional Standards (provided by David Rusnak, Q.C.)
- Colin Clackson, Q.C. presented to the Committee about digital practice tips. He has been working with Ronni Nordal and some other members to develop a resource on this for the membership; they will also develop a webinar on this topic.
 - Two of the practice advisors also attended the meeting.
 - They discussed concerns about storing information on U.S. servers and discussed the possibility of encrypting particularly sensitive information.
 - The Committee discussed some fraud scams to alert the members about.
 - They also discussed the issue of repeat offenders in the practice review program and how to determine when that program is no longer effective. The Committee continues to review this aspect of the program.

- Also tracking the timeliness of the reviews – there are some problems with the material provided by members.
- The Committee discussed the letters written by Benchers reviewing the matter; there should be some consistent explanation about the decision.

m. Trust Safety (provided by Monte Gorchinski)

- The Committee's work has primarily focused on the Rule amendments presented earlier.
- The Committee received presentations from Patrick Mahoney, CEO of Axxima, about CLIA's coverage respecting the Special Fund and actuarial requirements for the Special Fund.
- The Committee will be turning its attention to the Special Fund and improvements that might be made to that program.
- Tim Brown has received an opinion from Deloitte about software analytics to review trust accounts that might help us detect problems.

9. Informational Items

The following articles were provided for information:

- Legal Information Innovation in Saskatchewan*, by Alan Kilpatrick, Law Society Reference Librarian, Partnership vol. 12, no. 1 (2017).
- Are Law Firms Too Sophisticated for Their Own Good?* By Hugh A. Simons, The American Lawyer Daily, July 12, 2017.
- Goodbye Guild – Law's Changing Culture*, by Mark A. Cohen, Forbes Business, July 3, 2017.
- Blockchain 101 for Lawyers Part 1*, by Caitlin Moon, January 10, 2017, Law Technology Today
- Update from Maya Scott, Representative on the PLEA Board.
- Update from Derek Maher, CPA, CA, Representative on the College of Law Endowment Fund.

10. Meeting Finalization

10.1 Review Actions to be Taken

10.2 Confirm Items under 1.4

Report about Communications should also be closed to public.

10.3 Meeting Evaluation

10.4 Next Meeting (October 27, 2017 in Regina)

10.5 Motion to Adjourn

A motion to adjourn was presented by Sean Sinclair, seconded by David Rusnak, Q.C. The meeting adjourned at 1:50 pm.

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

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

TIMOTHY J. BROWN
Executive Director

TJB/el