

Minutes for the Meeting of the Benchers Held Friday, December 7, 2018 DoubleTree Hotel, Regina

Present:

Craig Zawada, Q.C., Leslie Belloc-Pinder, Erin Kleisinger, Q.C., Jeff Baldwin, David Bishop, David Chow, Perry Erhardt, Q.C., Monte Gorchinski, Glenn Hepp, 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

The newly elected and appointed Benchers were also in attendance:

- James Morrison, Q.C.
- Cara Haaf
- James Korpan, Q.C.
- Crystal Norbeck
- Jill Drennan
- Barbra Mysko
- John Morrall
- Suzanne Jeanson
- Nolan Kondratoff
- Andrea Argue
- William Lane (attended the New Bencher training session on Thursday only)
- Kaitlynn McArthur
- Lynda Kushnir Pekrul

In attendance:

Tim Brown, Q.C., Tim Huber, Valerie Payne, Stacey McPeek, Andrea Johnston, Christine Johnston, Jody Martin, Melanie Hodges-Neufeld, Jenna Kraushaar, Kara-Dawn Jordan, Don Hansen, FCPA, FCA, Jakaeden Frizzell and Barbra Bailey

Call to Order:

The meeting commenced at 8:05 am on Friday, December 7, 2018.

1. Approval of the Agenda

Item 3 was removed from the Agenda as the guests from the Law Society of Alberta were unable to attend. Item 4.3 (i), respecting the Innovating Regulation project, will be the first item dealt with under part 4 (strategic initiatives) of the Agenda.

Perry Erhardt, Q.C. moved, Jeff Baldwin seconded approval of the Agenda, as amended.

1.1 Apologies for Absence

An apology for absence was received from John McIntosh, 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. PBLIS Funding Request
- ii. Law Foundation Appointments

2. Approval of the Minutes

- a. Bencher Minutes from the meeting held September 14, 2018
- b. *In Camera* Bencher Minutes from the meeting held September 14, 2018
- c. Bencher Minutes from the meeting held October 26, 2018
- d. *In Camera* Bencher Minutes from the meeting held October 26, 2018

Moved by Scott Moffat, seconded by Martin Phillipson, that Minutes and *In Camera* Minutes of the Bencher meeting held September 14, 2018 be approved as written. The motion carried.

Moved by Jeff Baldwin, seconded by Scott Moffat, that Minutes and *In Camera* Minutes of the Bencher meeting held October 26, 2018 be approved as written. The motion carried.

2.1 Amendments

2.2 Confirmation of Minutes

2.3 Business Arising from Minutes

4. Strategic Initiatives

4.1 Work Plan

An updated work plan was provided by Barbra Bailey. This will be the final work plan report for the 2016-2018 strategic plan.

4.2 Improve Confidence in the Law Society among Stakeholders

- i. Communications
 - a. Communications Report

A Communications Report from Anna Willey was included for information.

b. Strategic Communications Plan

The *Phase Two* report was provided in *draft* to the Benchers at September Convocation. Completion of the *Phase Two* plan will be the task of the Communications Action Team.

ii. Strategic Planning

At October Convocation, the Benchers approved the 2019 budget, which was based on a 3-year strategic plan.

The Thursday afternoon session focused on the 2016 – 2018 wrap-up and transition to a new Strategic Plan. The Strategic Plan 2019-2021 was included for the discussion.

iii. TRC Advisory Committee

Administration has worked with some Indigenous members to finalize a list of invitees to join the Truth & Reconciliation Advisory Group. In providing their recommendations, consideration was given to regional representation (including treaty territory), age, gender, heritage, experience and perspectives. A final list of 8 was recommended, 7 of which are Law Society members and one Knowledge Keeper. The invitees have been approved by the President and are being contacted.

It is intended that the first formal meeting of the group will be arranged in conjunction with the first Convocation of 2019 and that information related to the mandate, governance and operations of the Society as well as an environmental scan of Indigenous initiatives undertaken by Societies across Canada will be provided to the group well in advance.

iv. CPLED 2.0

Dr. Kara Mitchelmore made a presentation to the Benchers regarding the 2019 pilot project.

v. Gladue Database (*information*)

A Free Law Society CPD course was scheduled on December 4, 2018 entitled, [TRC Training: Gladue Rights and Settler Colonialism in Saskatchewan](#). Due to the power outage, the webinar was rescheduled to December 12, 2018.

4.3 Improve Capacity, Competency and Knowledge of Members

i. Innovating Regulation

A Bencher discussion took place on Thursday afternoon at 1:45 pm to consider this initiative. Administration summarized the work completed to date, outlined the takeaways from the pilot project, and explained the incremental approach to entity regulation discussed by the Prairie Working Group.

The Benchers were asked to consider a proposed regulatory framework for law firm regulation for approval in principal, in order to start moving forward to secure some of the operational pieces if the proposed framework is to go ahead. The discussion was also intended to benefit the incoming Benchers to provide them with the history behind this project and provide them with some direction on how to move forward next year.

Two documents were attached for this discussion:

- a. Executive Summary – Proposed Regulatory Framework for Law Firm Regulation
- b. Memo from Barbra Bailey regarding a Regulatory Framework to Support Implementation of Law Firm Regulation

Discussion:

- The Benchers felt that the Prairie Working Group (PWG) proposal was appropriate overall, but whereas the PWG proposal recommended that the requirement for firms to submit the Assessment Tool on an identifiable basis be phased in gradually, the Benchers felt that it would be more effective to require all firms to submit the completed Assessment Tool to the Law Society so that appropriate follow-up could be conducted based on each firm's responses.

Moved by Erin Kleisinger, Q.C. seconded by Judy McCuskee to move approval of the proposed regulatory framework, as amended. Carried unanimously.

Moved by Erin Kleisinger, Q.C., seconded by Perry Erhardt, Q.C. to strike an *ad hoc* Bencher committee to oversee the drafting of new Rules and amending of existing Rules to implement the approved regulatory framework. The motion carried unanimously.

ii. Cloud Computing Checklist and Best Practices

As previously discussed at Convocation, the Professional Standards Committee (PSC) obtained an opinion on cloud computing from ISM Canada. Attached for review were the following:

- a. Cloud Computing Guide – Best Practices & Checklist for Law Practices in Saskatchewan
- b. Cloud Strategy Review – Final Report

David Rusnak, Q.C., Chair of PSC, spoke to this matter. PSC would like the Benchers to review and comment on implementation of this strategy going forward.

Discussion:

- The Committee sees this as another method for focusing on education of the membership and being proactive about dealing with change.
- The working group consulted with members who have worked closely with these technologies to get some practical input from lawyers.
- This will have to be a living document, as technology changes rapidly.
- One recommendation in the report from ISM is that the Law Society should consider establishing rules with respect to breaches of client files in the cloud (i.e., should it be a mandatory duty to report?) This should receive further consideration by the working group.
- There was an inquiry about SLIA coverage for data breaches – the CLIA policy includes some data breach coverage, which includes a 24-hour hotline that lawyers can call for advice on these matters.

iii. Expanding the Practice Advisor Role

The PSC Committee has been discussing whether to expand the Practice Advisor Role to allow members to contact them directly with practice concerns. A background memo was provided from Stacey McPeck, Foluke Laosebikan, Ph.D. and Jeff Scott, Q.C. regarding the program and its potential challenges.

Discussion:

- The working group sees no conflict in having members being able to ask practice advisors for advice.
- This is yet another proactive measure and may also be an opportunity to collaborate with SLIA.
- Tim Brown has begun discussions with SLIA and will be looking at proposing some options in the new year.

4.4 Improve Access to Legal Services

i. Legal Services Task Team

Legislative Services has drafted a Bill to be introduced into the Legislature based on consultations with Administration and we are awaiting the completion of the legislative process. The Benchers were encouraged to continue speaking with stakeholders about these issues to continue our consultation.

5. Society Governance

5.1 Operational Reporting

i. President's Report

Craig Zawada, Q.C. reported that, since last Convocation, he:

- Attended the Annual Federation Conference in Charlottetown October 17-19.
- Hosted the Benefits of Diversity seminar in Saskatoon on October 23.
- Attended the welcome to first year law students.
- Law Review Dinner with speaker Orlando Da Silva about mental health (available on College of Law YouTube channel).
- Addressed the College of Law Professional Responsibility class.

ii. Federation Council Report (Erin Kleisinger, Q.C.)

- Erin attended the Annual Conference in Charlottetown on technology and other disruptors in the delivery of legal services and regulation.
- Erin also attended the Federation Council Meeting in October and reported the following:
 - Council approved amendments to the Model Rules respecting no cash, client identification and verification, as well as a new trust accounting Model Rule.
 - The Federation's Anti-Money Laundering and Terrorist Financing working group that has been working on this for some time to respond to pressure from the federal government to address these issues – a recent report from the House of Commons highlighted the need for proactive and effective regulation by law societies in these areas.
 - The Law Society's Trust Safety Committee will receive the Model Rules for review and will be asked to put forth a proposal to harmonize our Rules with the Federation's Model Rules.
- The next Council meeting will be in Ottawa December 10 and the agenda will include:
 - Governance workshop with Glenn Tecker.
 - Discussion about CanLII fees for 2019.
 - Discussion about whether technical competence should be part of the Model Code of Professional Conduct.
 - A strategic discussion on enhanced engagement with the legal academy.

iii. Executive Director's Report

Tim Brown, Q.C., reported that, since last Convocation, he:

- Spent most of October developing the budget, which included incorporating the new strategic plan; the staff, led by Kara-Dawn Jordan, has been working on developing the Action Team plans to operationalize the strategic plan.
- Attended the Federation Conference in Charlottetown in October, where he:

- Facilitated a session on “Robots and Rule Makers” about artificial intelligence (AI), online providers, etc., as they relate to the legal profession; and
- Made a presentation to the CEO group about the LSS data project and asked them to consider collaborating on a larger data project.
- Hosted the Benefits of Diversity seminar in Regina on October 24.
 - This event was a successful collaboration with the CBA and Tim has met with Nicholas Cann, CBA President, to discuss further opportunities to collaborate, including a two-day session on mental health and wellness for lawyers.
- Met with the Minister of Justice in November to have a final discussion about Bill 163 to amend *The Legal Profession Act, 1990* before it was introduced.
- Met with ISM to speak about AI, Blockchain, cloud computing and ways they can collaborate and involve other law societies.
- Met with the Access to Justice Network at the College of Law to discuss opportunities to collaborate, particularly on a central website to act as a hub for information about all Saskatchewan justice stakeholders.

He also reported that:

- Jakaeden Frizzell has joined the staff as the new CPD Coordinator.
- We welcome back Jody Martin who has returned from leave; she will be working with the policy department to assist in transitioning the entity regulation framework into implementation.
- The final issue of the Benchers’ Digest will be coming out in the next couple of weeks.
- The new website will launch on December 17, and one of the things it will feature will be a new video explaining the functions of the Law Society.

5.2 Financial Reporting

i. Financial Statements

Financial statements for the period ended October 31, 2018 were provided for information.

ii. Special Fund Statements

The Special Fund statements for the period ended October 31, 2018 were also provided for information.

ii. Quarterly Investment Report

The Quarterly Investment Report for the period July 1 to September 30, 2018 was included for review.

iii. Pro Bono Law Saskatchewan (PBLs) Funding Request (*In Camera*)

This portion of the meeting was held *in camera*.

5.3 Election of President and Vice-President

Leslie Belloc-Pinder was acclaimed President of the Law Society of Saskatchewan, commencing January 1, 2019. Ian Wagner moved, Judy McCuskee seconded to confirm the election. The motion carried unanimously.

5.4 Election of Vice-President

Gerald Tegart, Q.C. was the only candidate for the Vice-Presidential election and is acclaimed as Vice-President of the Law Society of Saskatchewan, commencing January 1, 2019. Ian Wagner moved, Foluke Laosebikan, Ph.D seconded to confirm the election. The motion carried unanimously.

5.4 Appointments

i. Law Foundation of Saskatchewan (*In Camera*)

The Law Society appoints members to the Law Foundation. A memo from Tim Brown, Q.C. was included to outline process.

Moved by Jeff Baldwin, seconded by Erin Kleisinger, Q.C. that:

- Tom Schonhoffer, Q.C. be re-appointed for a two-year term commencing January 1, 2019 and terminating on December 31, 2020;
- Evert Van Olst, Q.C. be re-appointed for a third term on the Foundation board, commencing January 1, 2019 and terminating December 31, 2020; and
- Brenda Walper-Bossence, Q.C. be appointed as second term board appointee, commencing January 1, 2019 and terminating December 31, 2020.

The motion carried.

Moved by Jeff Baldwin, seconded by Perry Erhardt, Q.C. that:

- Tom Schonhoffer, Q.C. be appointed as the Law Foundation Vice-Chair for a two-year term commencing January 1, 2019 and terminating on December 31, 2020; and
- Melanie Baldwin, Q.C. be appointed as the Law Foundation Chair for a two-year term commencing January 1, 2019 and terminating on December 31, 2020.

The motion carried.

David Chow was appointed as a first-term board appointee, commencing January 1, 2019 and terminating December 31, 2020 by secret ballot. A motion to confirm the

appointment and destroy the ballots was moved by Ian Wagner and seconded by Gerald Tegart, Q.C. The motion carried.

5.5 General Fund Reserves Policy

The Benchers voiced no objection to the *draft* policy provided at September Convocation.

A memo from Kara-Dawn Jordan, as well as the *draft* policy, were provided for final review and approval. As part of this process, the Benchers are being asked to consider approving an allocation of \$750,000 from the surplus to the Capital Reserve.

Moved by David Bishop, seconded by Ian Wagner, that the proposed General Fund Reserves Policy be approved, as amended. The motion carried.

Discussion:

- It was noted that section v. of the policy should be amended to state that “Operating Reserve funds” will be comingled with the general cash and investment accounts of the Law Society, rather than the reserves themselves.
- The Benchers directed Governance to look at including a definition of capital assets, particularly whether it only refers to tangible capital.

Moved by Glenn Hepp, seconded by Jeff Baldwin, that the allocation of \$750,000 from the surplus to the Capital Reserve be approved. The motion carried.

5.6 Bencher Committee Preferences

The Benchers were asked to complete a form, indicating their preferences for Committee appointments. This is to assist in setting up new Committees for 2019.

Discussion:

- It was noted that, as we will have a large turnover of Benchers this year, it would make sense to leave continuing Benchers remain on the committees they are currently on so that we have some corporate memory.
- We can also consider having past Benchers on some committees.

6. Regulation

6.1 Rule Amendments

- i. Part 7A - National Mobility and Interjurisdictional Practice
 - a. Definition of “entitled to practise law”

Andrea Johnston provided a memo dated November 22, 2018, explaining that the Admissions & Education Committee proposed amendments to the Rules to modify the definition of “entitled to practice” for the purposes of mobility. Therefore, amendments are required to Rule 192, Definitions and Rule 605(4), Saskatchewan Lawyers’ Insurance Association (SLIA) Inc.

Moved by Sean Sinclair, seconded by Jay Watson, that amendments to Rule 192, Definitions and Rule 605(4), Saskatchewan Lawyers' Insurance Association Inc., 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. The motion carried.

On second reading, the motion was presented by Glen Hepp, seconded by Ron Parchomchuk, that amendments to Rule 192, Definitions and Rule 605(4), Saskatchewan Lawyers' Insurance Association Inc. be approved as written. The motion carried.

ii. Part 12 - Law Society Fees and Assessments

a. Rule 880 – Refund of Fees

Kiran Mand provided a memo dated November 23, 2018. The Admissions & Education Committee proposed amendments to Rule 880 related to the circumstances in which a refund of fees may be issued.

Moved by Sean Sinclair, seconded by Scott Moffat, that amendments to Rule 880 Refund of Fees be approved as written. The motion carried.

A motion to grant second reading on the same day was presented by Foluke Laosebikan, Ph.D, seconded by Monte Gorchinski. The motion carried.

On second reading, the motion was presented by Jeff Baldwin, seconded by David Rusnak, Q.C. that amendments to Rule 880 Refund of Fees be approved as written. The motion carried.

iii. Conduct Investigation Committee (CIC) Review

The Discipline Executive Committee, CIC, General Counsel and Complaints Counsel developed a *draft* Procedure Manual which was provided to the Benchers at September Convocation. The Discipline Executive Committee drafted the attached proposed Rule amendments to operationalize the Procedure Manual.

Moved by Jeff Baldwin, seconded by Ian Wagner, that amendments to the Law Society Rules, as outlined in the memo provided by Tim Huber dated November 29, 2018, and which are too numerous to list, be approved as written. The motion carried.

A motion to grant second reading on the same day was presented by Ronni Nordal, seconded by Sean Sinclair. The motion carried.

On second reading, the motion was presented by Perry Erhardt, Q.C., seconded by Erin Kleisinger, Q.C., that amendments to the Law Society Rules, as outlined in the memo provided by Tim Huber dated November 29, 2018, and which are too numerous to list, be approved as written. The motion carried.

iv. Ethics Committee

In November 2017, changes were made to the Law Society website to change “Professional Conduct Rulings” to “Ethics Rulings.” As a house keeping matter, the Rules should be changed as well.

Moved by Ron Parchomchuk, seconded by Ronni Nordal, that amendments to Rule 303(3)(c) to change “Professional Conduct Rulings” to “Ethics Rulings,” be approved as written. The motion carried.

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

On second reading, the motion was presented by Perry Erhardt, Q.C., seconded by Foluke Laosebikan, Ph.D, that amendments to Rule 303(3)(c) to change “Professional Conduct Rulings” to “Ethics Rulings,” be approved as written. The motion carried.

7. Committee Reports

- a. Access to Legal Services (provided by Gerald Tegart, Q.C.)
 - Nothing further.
- b. Admissions & Education (provided by Sean Sinclair)
 - The CPD Policy has been amended to include presentations that are aimed at the public-at-large, rather than specifically at lawyers, subject to approval by the Law Society; client development presentations will not qualify.
 - The Committee made a determination that Benchers should be granted 3 Ethics hours per year automatically in recognition of the work they do as Benchers.
- c. Audit
 - None.
- d. Conduct Investigation (provided by Jeff Baldwin)
 - Now that the Rules respecting CIC procedure have been amended, the CIC will implement the new procedure of a total panel reviewing each charge recommendation.
- e. Discipline (provided by Jeff Baldwin, Vice-Chair)
 - Nothing further.
- f. Equity & Diversity (provided by Ronni Nordal, Chair)
 - A voluntary demographic data survey was included in the annual renewal this year.
 - Administration is exploring retaining a consultant to conduct a profession-wide survey about personal experiences with barriers relating to equity and diversity.

- A Benefits of Diversity Seminar was held in Regina and Saskatoon in October.
- g. Ethics (provided by Ronald Parchomchuk)
- Four rulings were considered at the last committee meeting.
 - The Uniform Trust Conditions Sub-Committee continues its work and has sought some advice from Randy Sandbeck, Q.C.
- h. Executive
- None.
- i. Governance (provided by David Chow)
- Bencher evaluations will go out after Convocation.
 - There was increased engagement in the election from both candidates and voting members.
 - A new exit interview process is being implemented for outgoing Benchers and the responses will be analyzed by the Committee who will report to the Executive Committee.
- j. Insurance (provided by Perry Erhardt, Q.C.)
- The Committee approved year-end financial statements; SLIA is in a strong financial position.
 - The Committee is reviewing the evaluation questions to consider whether they should be revised to reflect their unique role as a corporate board.
 - The Committee received a report from Homewood Health about the Lawyers Concerned for Lawyers program containing usage statistics.
- k. Legal Resources (provided by Scott Moffat)
- The website will re-launch December 17, 2018.
- l. Professional Standards (provided by David Rusnak, Q.C.)
- Work on expansion of the practice advisor program and cloud computing continues.
 - The Committee is reviewing the Rules respecting contingency fee agreements.
- m. Trust Safety (provided by Monte Gorchinski)
- The Special Fund policy has been updated to reflect recent Rule changes.

8. Informational Items

- i. Recipient of the 2018 Law Society Scholarship in law is Jordan Mulligan.
- ii. University of Saskatchewan Senate – report from Max Bilson, Law Society Representative.
- iii. PLEA – report from Maya Scott, Law Society Representative.

9. Meeting Finalization

- 9.1 Review Actions to be Taken**
- 9.2 Confirm Items under 1.4**
- 9.3 Meeting Evaluation**
- 9.4 Next Meeting**
- 9.5 Motion to Adjourn**

The meeting adjourned at 11:25 a.m.

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

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

TIMOTHY J. BROWN, Q.C.
Executive Director

TJB/el