

# **Minutes for the Meeting of the Benchers Held Friday, February 9, 2018 Hotel Saskatchewan, Regina**

## **Present:**

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

## **In attendance:**

Tim Brown, Q.C, Barbra Bailey, Christine Johnston, Stacey McPeek, Pam Harmon, CPA, CA, Kara-Dawn Jordan, Melanie Hodges Neufeld

## **Call to Order:**

The meeting commenced at 8:30 a.m. on Friday, February 9, 2018.

### **1. Approval of the Agenda**

Moved by Perry Erhardt, Q.C., seconded by Jeff Baldwin, to approve the Agenda as written. The motion carried unanimously.

#### **1.1 Apologies for Absence**

Apologies for absence have been received from Ronald Parchomchuk and Heather Hodgson.

Erin Kleisinger, Q.C. will attend Committee meetings on Thursday, but will be absent for Convocation on Friday. Jay Watson will be absent for Committee meetings on Thursday, but will be in attendance on Friday.

Federation Council, Gregory Walen, Q.C., also sent his regrets and provided a written report.

#### **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. Investment Strategies
- ii. Appointments
- iii. Report on Legal Services Task Team

## **2. Approval of the Minutes**

- i. Minutes held December 1, 2017
- ii. Minutes held *In-Camera* December 1, 2017

Moved by John McIntosh, Q.C., seconded by Ian Wagner, to approve the Minutes of the meetings held December 1, 2017, as well as the *In-Camera* Minutes held December 1, 2017. The motion carried.

### **2.1 Amendments**

### **2.2 Confirmation of Minutes**

### **2.3 Business Arising from Minutes**

## **3. Strategic Initiatives**

### **3.1 Work Plan**

The Benchers reviewed the updated work plan.

### **3.2 Improve Confidence in the Law Society among Stakeholders**

- i. Communications Strategy

Tim Brown, Q.C. updated the Benchers on the Strategic Communications Plan. Administration has been working with a communications consultant to develop a strategic communications plan for the organization and will continue to work with her to carry out the plan. Due to staffing changes, Administration has been working with a research and publication company to assist with the materials for the Annual General Meeting, the Annual Report and the Benchers' Digest for this year. The website redevelopment is underway and will be designed in a way that allows us to run analytics on usage and the research company will assist us in monitoring evaluation.

### **3.3 Improve Capacity, Competency and Knowledge of Members**

- i. Innovating Regulation

An Interim Report on the Pilot Project from Barbra Bailey was provided for information.

## ii. Legal Resources

A report was provided to the Benchers from Melanie Hodges Neufeld for information.

## iii. Digital File Management

To assist the membership, a webinar on *Creating and Managing a Digital Practice* is being offered on March 7, 2018; Jeff Scott, Q.C. and Colin Clackson, Q.C. will be presenting.

### **Discussion:**

- We continue to receive a lot of questions from members about how to use cloud computing securely and the Benchers would like to obtain an opinion on this practice so that we may provide further guidance to the membership.
- Valerie Payne has spoken to a couple of people about this and is arranging to obtain an opinion for the Benchers.
- Most law societies continue to follow the 2012 guidelines from the Law Society of B.C., but we would like to develop an updated resource.

## **3.4 Improve Access to Legal Services**

### i. Legal Services Task Team

Gerald Tegart, Q.C. provided an update to the Benchers.

### ii. Alternative Legal Service Providers

Paula Littlewood and Steve Crossland made a presentation to the Benchers on *Washington State's Limited License Legal Technicians* on Thursday afternoon at 1:00 pm.

### iii. Access to Justice

Tim Brown, Q.C. reported on the meeting of the Saskatchewan Access to Justice Working Group. The group has been doing some governance restructuring and as part of this, Administration will be hosting a Strategic Planning Session for the group on March 20, 2018.

## **4. Society Governance**

### **4.1 Operational Reporting**

#### i. President's Report

Craig Zawada, Q.C. reported the following:

- He attended the Queen's Counsel Ceremony on January 5<sup>th</sup>.

- Brenda Hildebrandt, Q.C. stood in for the President at the swearing-in of Justice Favel to bring remarks on behalf of the Law Society.
- He brought remarks on behalf of the Law Society at the Canadian Bar Association Mid-Winter Meeting where Gerald Tegart, Q.C. was awarded the Distinguished Service Award.
- Perry Erhardt, Q.C. spoke at the reception celebrating the retirement of Brenda Hesje (Executive Director of the Canadian Bar Association Saskatchewan Branch) in Regina.

ii. Executive Director's Report

Tim Brown, Q.C. provided a written report.

iii. Federation Council Report

Gregory Walen, Q.C. provided a written report.

## 4.2 Financial Reporting

For discussion are the following:

i. Financial statements for the period ended November 30, 2017.

The November 30, 2017 financial statements, along with a memo from Pam Harmon, CPA, CA, were provided for discussion.

ii. Financial Statements for the year ended December 31, 2017

The Benchers will need to approve the December 31, 2017 audited financial statements prior to the AGM, which has to be done via conference call.

An email was sent to the Benchers to determine if a conference call could be held in conjunction with the Executive Committee meeting on Thursday, March 29<sup>th</sup> between 1:00 pm – 4:00 pm.

iii. Quarterly Investment Report

The Quarterly Investment Report for the period October 31 to December 31, 2017 was provided to the Benchers for discussion.

### Discussion:

- There was discussion about making a plan for the surplus.
- The Governance and Trust Safety Committees are working on surplus plans which will also be impacted by the strategic planning session in June.

iv. Law Society Investment Strategies

Loren Gee, CFA, MBA from Greystone made a presentation to the Benchers on Thursday afternoon at 3:30 pm regarding investment strategies.

A motion to authorize Tim Brown, Q.C. to proceed with Greystone Investments' recommendation for making changes to the Law Society's investment strategy (invest in the funds recommended by Loren Gee) was moved by David Rusnak, Q.C., seconded by David Bishop. The motion was tabled until the March 29, 2018 Bencher conference call, at which time an amendment to the Investment Policy will also be considered.

**Discussion:**

- This would also require an amendment to the Law Society Investment Policy, so the item should be tabled until the Benchers have a chance to look at proposed amendments to the policy, as well.
- There was discussion about whether there is a consensus about risk appetite – further discussion should take place to make that determination.
- The changes recommended do not represent a big change in the level of risk involved and the changes would be made over time, rather than all at once.
- The timing may be good to make these changes because interest rates are poised to continue rising, which negatively affects bonds.
- To assist with this, we can look at the wording used by SLIA to amend their policy.
- Executive will work with Tim Brown, Q.C. on an amendment to the Investment Policy.

v. Resolutions

a. Greystone Investments

With the appointment of a new President and Vice-President, Greystone requires a resolution authorizing signing authorities. A Greystone Banking Resolution was included for Bencher approval.

A motion to approve the Greystone resolution was moved by Ian Wagner, seconded by David Bishop. The motion was carried unanimously.

b. Toronto Dominion Bank

A banking Resolution for the Toronto Dominion Bank authorizing signing authorities for 2018 was included for Bencher approval.

A motion to approve the TD Bank resolution was moved by Ronni Nordal, seconded by Brenda Hildebrandt, Q.C. The motion was carried unanimously.

### 4.3 Bencher Election 2018

2018 is a Bencher Election year, therefore, plans must begin over the next few months to plan for promotional material to attract new Benchers. Administration will begin this process over the next few months.

The Executive has asked Administration to review current Bencher Training material and to determine through this process whether improvements must be made to reduce the Bencher learning curve. Administration will also solicit feedback from the Benchers for any suggestions they may have.

We also need to start the process for appointing the new Public Representatives soon, as the process can take several months.

### 4.4 Appointments

#### i. Designated Complaints Counsel

Moved by David Rusnak, Q.C., seconded by Jay Watson, that the following individuals be appointed as Designated Complaints Counsel for a two-year term, from February 9, 2018 to February 10, 2020.

- Thomas Healey
- Darcia Schirr, Q.C.
- Michael Fisher, Q.C.
- Larry Zatlyn, Q.C.
- Paul Korpan, Q.C.
- Reché McKeague
- Beth Bilson, Q.C.
- John Will, Q.C.
- Rob Heinrichs, Q.C.
- Jackie Lane
- Joleen McCullagh
- Russell Hart
- Patrick Zawislak
- Leah Kosokowsky (member in Manitoba)

#### **Discussion:**

- These members are vetted for discipline history, etc. before being put forward for approval.
- They are unpaid volunteers because their purpose is to be arms-length from the Law Society.

The motion carried.

## ii. Senior Life Membership

The Benchers approved elimination of this category at December 2017 Convocation. A memo prepared by Kara-Dawn Jordan with proposed suggestions on how to recognize long-standing members of the Society was considered by the Benchers.

Moved by David Chow, seconded by Sean Sinclair, that the red-lined version of the Certificate be approved as written, the Senior Life Policy be deleted, and that going forward, these members be recognized with a letter and be posted on the Law Society Blog/in the Benchers' Digest as being members of the Society for 50 years. The motion carried unanimously.

## iii. Federation Council

Gregory Walen, Q.C. is on his 3<sup>rd</sup> and final term as Federation Council, which will expire November 15, 2018.

A Nomination Committee must be struck, which in the past, has consisted of the President, Vice-President, Executive Director and two Benchers. Attached is a memo from Tim Brown, Q.C. regarding process. Interested Benchers will be given until the end of March to indicate their interest to either Tim Brown, Q.C. or Liz Lynchuk. Greg is prepared to consult with the Nomination Committee on this matter.

## 5. Regulation

### 5.1 Rule Amendments

#### i. Bar Admission Program – Rule 159

Enclosed is a memo from Christine Johnston, CPLED Program Director, with proposed amendments to Rule 159. The memo proposes revisions related to completion of the CPLED Program; including provisions respecting re-reads, supplemental evaluations and repeating Program modules. The A & E Committee proposes that the Rule be amended as set out therein.

Moved by Sean Sinclair, seconded by Jay Watson, that amendments to Rule 159, Bar Admission Program, with the addition of Rule 159.1, Limitations, be approved as written. The motion carried unanimously.

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

On second reading, the motion was presented by John McIntosh, Q.C., seconded by Monte Gorchinski, that amendments to Rule 159, Bar Admission Program, with the addition of Rule 159.1, Limitations, be approved as written. The motion carried unanimously.

ii. *Code of Professional Conduct*

In September 2017, the Benchers adopted the proposed changes to the *Code of Professional Conduct* to reduce some redundancies identified in the Confidentiality section of the *Code*. However, in consolidating rules 3.3-3 and 3.3-3A, we unintentionally changed a mandatory disclosure requirement to a discretionary one and the Ethics Committee recommends that this be corrected.

Moved by Ian Wagner, seconded by Scott Moffat, that amendments to the *Code of Professional Conduct*, be approved as follows:

- Re-addition of Mandatory Disclosure section (now 3.3-3A) - returns the section to its original standard of mandatory disclosure, its commentary from the Permitted Disclosure section. The exception is the addition of “Mandatory Disclosure” to the Heading to clearly mark the difference between the standards of disclosure between 3.3-3A and 3.3-3B.
- Section 3.3-3A, on Permitted Disclosure – renumbered 3.3-3B to reflect Model Code numbering conventions and the addition of 3.3-3A, remove item (f), and remove the commentary related to Mandatory Disclosure.

The motion carried unanimously.

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

On second reading, the motion was presented by John McIntosh, Q.C., seconded by Jay Watson, that amendments to the *Code of Professional Conduct*, be approved as follows:

- Re-addition of Mandatory Disclosure section (now 3.3-3A) - returns the section to its original standard of mandatory disclosure, its commentary from the Permitted Disclosure section. The exception is the addition of “Mandatory Disclosure” to the Heading to clearly mark the difference between the standards of disclosure between 3.3-3A and 3.3-3B.
- Section 3.3-3A, on Permitted Disclosure – renumbered 3.3-3B to reflect Model Code numbering conventions and the addition of 3.3-3A, remove item (f), and remove the Commentary related to Mandatory Disclosure.

The motion was carried unanimously.

## 6. **Committee Reports**

- a. Access to Legal Services – a report was provided by Gerald Tegart, Q.C. earlier in the Agenda.
- b. Admissions & Education – none.
- c. Audit – none.
- d. Conduct Investigation – none.



- e. Discipline (provided by Brenda Hildebrandt, Q.C.)
  - On December 5, 2017, a Hearing Committee Training/Refresher session was delivered via webinar to all Benchers and volunteers who sit on Hearing Committees.
  - The Committee held a meeting on December 12<sup>th</sup> to debrief from the webinar and create a work plan for the coming year, which includes providing background information to the Executive Committee and the Benchers as we go into strategic planning about the discipline processes.
  
- f. Equity & Diversity (provided by Ronni Nordal)
  - The Committee heard a presentation from another member of the profession who has faced some barriers in the legal profession.
  - Ronni encouraged the Benchers to watch a video developed by the Law Society of B.C. called “But I was Wearing a Suit” about the experiences of Indigenous lawyers in the courtroom.
  - The Law Society will be forming a TRC Advisory Committee consisting of members of the Indigenous community to assist us in our efforts towards reconciliation and responding to the TRC Calls to Action.
  - Ronni has spoken with the Executive Committee about devoting some time at September Convocation to equity and diversity at the Bencher table so the Committee can share what they have been hearing from members facing barriers relating to equity and diversity issues.
  - Administration is working on setting up a Blanket Ceremony for participation by staff and Benchers.
  
- g. Ethics (provided by Judy McCuskee, Vice-Chair)
  - The Committee made a Conduct Ruling about providing prizes to clients who gave firm reviews on social media - the Committee felt this was not appropriate.
  - The Committee had a discussion about whether people should be able to post comments on blog postings about Conduct Rulings and decided they will not be enabled, but that the Law Society will respond to questions about decisions directly.
  
- h. Executive – covered in President’s Report.
  
- i. Governance (provided by David Chow)
  - Bencher Self-Evaluation has been completed and the results will be reported at the next Convocation.
  
- j. Insurance (provided by Perry Erhardt, Q.C.)
  - The Committee had a discussion about usage statistics for Lawyers Concerned for Lawyers programming and about making more efforts to promote the program.
  - The Committee reviewed the audit report.

- k. Legal Resources – none.
- l. Professional Standards (provided by David Rusnak, Q.C.)
  - The Committee will be working on the cloud computing initiative.
  - There will be a webinar on digital practice tips at the beginning of March.
- m. Trust Safety (provided by Monte Gorchinski)
  - The Committee is reviewing the Special Fund structure and policies.
  - The Committee is also reviewing a consultation paper from a working group of the Federation looking at making changes to the anti-money laundering rules.

## **7. Informational Items**

The following were provided for information:

- a. Update from Maya Scott, Representative on the PLEA Board
- b. Update from Ray Wiebe, Representative on Legal Aid Commission
- c. *Law Society of Ontario vows to crack down on harassment faced by articling students; CBA says culture shift needed*, by Amanda Jerome, *The Lawyer's Daily*, posted January 31, 2018
- d. Thank you card from recipient of the Law Society Scholarship from Andrea MacDonald, U of S

## **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** – April 25, 26 & 27, 2018, Bessborough, Saskatoon
- 8.5 Motion to Adjourn**

David Bishop moved to adjourn at 11:22 a.m., seconded by Jeff Baldwin.

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

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

**TIMOTHY J. BROWN, Q.C.**  
**Executive Director**