

# **Minutes for the Meeting of the Benchers Held Friday, September 14, 2018 Hotel Saskatchewan, 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, Brenda Hildebrandt, Q.C., Foluke Laosebikan, Ph.D, Judy McCuskee, John McIntosh, Q.C., Scott Moffat, Ronald Parchomchuk, Martin Phillipson, David Rusnak, Q.C., Sean Sinclair, Ian Wagner and Jay Watson

## **In attendance:**

Tim Brown, Q.C., Tim Huber, Valerie Payne, Stacey McPeek, Andrea Johnston, Christine Johnston, Kiran Mand, Melanie Hodges-Neufeld, Jenna Kraushaar, Kara-Dawn Jordan, Pamela Harmon, CPA and Barbra Bailey

## **Call to Order:**

The meeting commenced at 8:00 am on Friday, September 14, 2018.

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

The Agenda was approved by consent.

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

Apologies for absence were received from Ronni Nordal and Gerald Tegart, Q.C.

#### **1.2 Confirmation of Agenda**

The Agenda was approved by consent.

#### **1.3 Bencher Conflict of Interest Disclosures**

Item 4.3 i – Appointments – Two Benchers will recuse themselves from the selection process, being Erin Kleisinger, Q.C. and Judy McCuskee.

David Chow, Judy McCuskee and Leslie Belloc-Pinder, Q.C. will recuse themselves from the Special Fund discussion.

#### **1.4 Agenda Items, Committee Reports and Documents Which Are Not Open to the Public**

- i. Strategic Planning
- ii. Regina Court House – Library Space
- iii. CPLED 2.0
- iv. Federation Council

- v. Public Representative Benchers
- vi. Bencher Self-Evaluation Questionnaire
- vii. Bencher Honoraria
- viii. *The Legal Profession Act*
- ix. Special Fund Claims

## **2. Approval of the Minutes of June 22, 2018**

Moved by Erin Kleisinger, Q.C., seconded by Perry Erhardt, Q.C., to approve the Minutes from the meeting held June 22, 2018. 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 updated work plan was provided by Barbra Bailey.

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

#### **i. Communications**

##### **a. Communication Report**

For consideration of the Benchers, a Communication Report regarding Society progress towards communication objectives to date was prepared by Anna Willey. Also included, was a Visual Identity Renewal Update prepared by Anna Willey.

The Law Society launched a new e-communication yesterday. The Benchers' Digest will be phased out and communication will occur on a timelier basis through the e-newsletter, the blog and the website.

##### **b. Strategic Communication Plan**

The attached Strategic Communication Plan, Phase One Report, has been provided from Anna Willey. This plan is treated as concluded. Phase Two is currently in draft form, as work is under way to align the Strategic Communication Plan with the strategies to be discussed by the Benchers at September Convocation.

#### **ii. Strategic Planning (*In Camera*)**

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

iii. TRC Advisory Committee

At June Convocation, the Benchers approved the creation of an Advisory Group.

Administration reached out to advisors regarding the terms of reference and to obtain a list of appropriate candidates. A memo from Kara-Dawn Jordan was attached for consideration.

iv. Legal Resources – Regina Court House Space (*In Camera*)

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

v. CPLED 2.0 (*In Camera*)

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

vi. Gladue Database

Along with stakeholders, the Law Society purchased this resource as an asset for Legal Resources. Rather than paying for a subscription for our members, the Society's contribution would allow it to be free and open to all members as well as the public. The total yearly budget for the project is \$15,000. The Law Society's yearly contribution for maintenance of the database will be \$10,000, to be evaluated by management on an annual basis.

Melanie Hodges Neufeld and the Law Society Communication team are preparing a communication strategy to promote this resource both as a tool for professionals and as an educational resource to increase the cultural competence of our members.

vii. Equity & Diversity

A Blanket Exercise was arranged for September Convocation on Thursday, September 13<sup>th</sup> from 6:00 – 9:00 pm at the Ramada Hotel in Regina. Participants confirmed the value and importance of this exercise.

The Law Society will be hosting a full-day seminar titled "The Benefits of Diversity." It will be held October 23<sup>rd</sup> in Saskatoon and October 24<sup>th</sup> in Regina. A copy of the brochure was provided for information. The program will begin with a keynote speech about the benefits of diversity and inclusion, as well as the effects of unconscious bias and how to counter them. The rest of the day will focus on local demographics (how they have changed) and a panel of lawyers speaking about their own lived experiences. The final session will focus on strategies for embracing diversity in legal workplaces and the benefits of diversity.

The Law Society will pay for any Bencher that wants to attend and asked willing Benchers to encourage others in their firms and professional network to attend. Administration will distribute a proposed communication to those who feel they can assist. The event is being co-sponsored by the CBA, which is both a progressive step in our collaboration with the CBA and has allowed us to keep the cost to attend quite low: \$225 to attend for the day, with a discounted rate of \$150 for students.

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

#### i. Innovating Regulation

The Prairie Provinces met on March 14th in Winnipeg and the staff working group prepared a summary report based on the discussions held at the meeting. A follow-up conference call for the entire group was held June 18<sup>th</sup>, where a decision was made to proceed with incremental implementation. The staff working group from the Prairie Law Societies developed a draft plan for incremental implementation and accompanying Rules. The Access Committee reviewed this matter at their meeting on August 30<sup>th</sup>. Since there are many issues yet to be determined involving the proposed initial implementation, the Access Committee will want to review the matter again prior to December Convocation with a view to making a recommendation.

A memo from Barbra Bailey, along with the following two reports, were provided for the discussion:

- Prairie Law Societies: An Incremental Approach to Entity Regulation
- Summary Report – Prairie Law Societies Meeting Winnipeg – March 14, 2018

Discussion:

- This item was included on the Agenda to provide some background for a bigger discussion that will take place at the December meeting of the Benchers, to provide the Benchers with an opportunity to ask questions of the Access Committee before the next meeting.
- In December, the Benchers will discuss the overall goals of the initiative, which will help determine some of the finer details.

#### ii. Membership Analytics

On July 26, 2018, Tim Brown, Q.C. and Tim Huber met with Katherine Simaluk from ISM to discuss the results of the Data Project. A further presentation involving Craig Zawada, Q.C. will be held on September 12<sup>th</sup>. The results will be provided to the Benchers and the SLIA Board following Convocation by way of separate communication. ISM has advised that they have the capacity to assist us with performance measurements as well.

### 3.4 Improve Access to Legal Services

#### i. Legal Services Task Team

The final draft of the report was provided to the Benchers at June Convocation and was then released to the public on August 14, 2018. Since the report is lengthy, Barbra Bailey brought hard copies to the meeting. The report is also posted [online](#).

The Benchers were asked to decide whether or not to accept the recommendations of the Task Team.

It was moved by Brenda Hildebrandt, Q.C., seconded by Erin Kleisinger, Q.C., that,  
WHEREAS:

- a. The Law Society of Saskatchewan and the Ministry of Justice have collaborated to examine the possibility of allowing non-lawyers to provide some legal services to Saskatchewan residents;
- b. The Legal Services Task Team was appointed to study this issue, consider a spectrum of options, and develop recommendations regarding delivery of legal services in Saskatchewan;
- c. The Legal Services Task Team was mandated to, *inter alia*, keep the public interest (including protection of the public) in the consideration of a greater scope of legal service providers;
- d. The Legal Services Task Team, after extensive consultation, review and deliberation, has issued its final report dated August 2018 (the “Report”) setting out its recommendations; and
- e. These recommendations have been considered by the Law Society of Saskatchewan and, in its view, they will enhance access to legal services in Saskatchewan while maintaining protection of the public.

IT IS THEREFORE MOVED THAT:

1. The Law Society of Saskatchewan accept the recommendations outlined in the Report; and
2. Subject to acceptance of the recommendations by the Provincial Government, and the requisite legislative amendments, the Law Society of Saskatchewan will implement the recommendations.

IT IS FURTHER MOVED THAT:

1. The Law Society of Saskatchewan expresses appreciation to the Ministry of Justice for its collaboration on this initiative and thanks the Co-Chairs and members of the Legal Services Task Team, and the Staff Working Group which supported it, for their extensive work.

The motion was carried unanimously.

#### **4. Society Governance**

##### **4.1 Operational Reporting**

###### **i. President’s Report**

Craig Zawada, Q.C. reported the following:

- Brenda Hildebrandt, Q.C. made remarks at Madame Justice Zerr’s swearing-in; and
- Craig participated in filming the election video, as well as the Public Representative Bencher interviews.

ii. Executive Director's Report

Tim Brown, Q.C. reported the following:

- Going forward, Tim will be reporting monthly to the Benchers via a new newsletter entitled the *Benchers' Briefing*.

iii. Federation Council Report

Greg Walen, Q.C. reported the following:

- There have been some changes in Council personnel, as the Vice President passed away suddenly in August. The governance policies provide that the second VP will take his place, so Ross Earnshaw will move into this position on November 15<sup>th</sup> and the Atlantic representative will take Mr. Earnshaw's position.
- There are several new representatives coming to the table this coming year; and
- This is the last meeting for Greg Walen, Q.C. as Federation Council representative.

## 4.2 Financial Reporting

i. Financial Statements

Financial statements for the period ended July 31, 2018 were provided for review.

ii. Quarterly Investment Report for the period ended April 1 to June 30, 2018.

The Quarterly Investment Report was provided for information.

iii. Pre-Budget Discussion

a. 2019 Law Foundation Grant Applications

Tim Brown provided an update respecting the Applications submitted to the Law Foundation for the Legal Resources Department and CPLED. Melanie Hodges Neufeld has been invited to attend the Law Foundation meeting on September 18<sup>th</sup> to speak to the Library's grant request.

b. Reserves Policy

For discussion, the following were attached:

- General Fund Reserves Policy and Surplus Assets Management – Memo from Kara-Dawn Jordan
- General Fund Reserves Policy – in *draft*

The Benchers voiced no objections in relation to the direction of the policy. It will come back to the Bencher table for final review in December. Administration will be guided by the policy in principle when preparing the budget.

### 4.3 Appointments

#### i. Federation Council (*In Camera*)

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

The Benchers voted via secret ballot and Erin Kleisinger, Q.C. was appointed as Federation Council Member for a two-year term, commencing January 1, 2019.

#### ii. Public Representative Benchers (*In Camera*)

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

#### iii. Law Foundation of Saskatchewan

Terms for Law Foundation board members will expire December 31, 2018. Management is going through the process of confirming each candidate's willingness to continue as appointees. Recommendations will be put before the Benchers at December Convocation.

### 4.4 Governance

#### i. Bencher Election 2018

A memo from Barbra Bailey providing an update on the upcoming election was informational for the Benchers.

#### ii. Conduct Investigation Committee (CIC) Review

At June Convocation, the Discipline Executive Committee was directed, in conjunction with Law Society of Saskatchewan staff, to develop a proposal for re-structuring of the CIC process and bring a recommendation to September Convocation.

A document titled *CIC Procedure Manual* was provided for discussion.

Discussion:

- The Discipline Executive Committee has collaborated with CIC and received much feedback from them which has been incorporated into the *draft* Procedure Manual.
- The Manual is modeled on other jurisdictions, with modifications suited to Saskatchewan's structure.
- General Counsel and Complaints Counsel have also contributed to the Procedure Manual.
- The Discipline Executive Committee will draft some proposed Rule amendments to operationalize the Procedure Manual to be presented to the Benchers in December.

#### iii. Bencher Self-Evaluation Questionnaire (*In Camera*)

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

iv. Benchers' Survey – APRIO Portal

Highlights from the Benchers' Survey conducted in June 2018 were provided for consideration. Tim Brown, Q.C. reported that the survey indicates a certain level of dissatisfaction with the current portal and that Administration is in the process of discussing potential fixes with APRIO. Other solutions, such as Sharepoint and the possibility of establishing a portal on the website for Benchers, are being considered by Administration.

v. Convocation 2019

Administration is in the process of securing 2019 dates and will advise once they are booked. Since we will have new incoming Benchers, returning Benchers are invited to attend Bencher training sessions at December 2018 Convocation, as well as February 2019 Convocation, but attendance is not mandatory. Administration will advise if there is any new content being developed.

*Tentative* 2019 Convocation Dates were provided to the Benchers to assist in planning for 2019 and are set out below:

- February 6 – 8, 2019, Saskatoon (3 days), with February 6<sup>th</sup> being devoted to Bencher Training
- April 16 - 18, 2019, Regina (including AGM)
- June 20 – 21, 2019 (prepare to drive on the 19<sup>th</sup> to Cypress Hills or Elk Ridge)
- September 11 - 13, 2019, Regina
- October 25, 2019, Saskatoon – Budget and President's Dinner. (Administration will attempt to book the new Remai Gallery in *Saskatoon* for the President's Dinner)
- November 27 - 29, 2019, location TBD

vi. Standard Operating Procedure for Virtual Meetings

The Governance Committee asked Administration to develop a Standard Operating Procedure for scheduling and holding virtual meetings to assist in both troubleshooting common problems and to ensure consistency across Committees. The procedural document was provided to all staff, as well, and can be used by both staff and Benchers to ensure that virtual meetings run smoothly.

Administration has costed out the provision of tablets for those Benchers who do not have a second screen to use for virtual meetings to further assist in this process. Tim Brown, Q.C. provided an update.

Discussion:

- There was a suggestion that Administration consult with other organizations that provide tablets to board members, including the Law Society of Alberta, about whether it has been a successful practice.



vii. Bencher Honoraria (*In Camera*)

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

## 5. Regulation

### 5.1 Rule Amendments

i. Rule Amendments – Special Fund

The Trust Safety Committee has been reviewing the Special Fund structure and policies. The Committee held a meeting on August 1<sup>st</sup> to consider Rule amendments and policy manual amendments.

A memo from Tim Huber, with recommended Rule amendments for consideration and approval by the Benchers, was provided for review and consideration.

Discussion:

- It was noted that there is a typo in Rule 709 – missing a “may” after “as the case may be, \_\_ order.”

Moved by Monte Gorchinski, seconded by John McIntosh, Q.C. that amendments to Part 11, Special Fund Rules, be approved as written, with the additional amendment to Rule 709 as noted.

A motion to grant second reading on the same day was presented by Ian Wagner, seconded by Foluke Laosebikan, Ph.D.

On second reading, the motion was presented by Jay Watson, seconded by Erin Kleisinger, Q.C., that amendments to Part 11, Special Fund Rules, be approved as written, with the additional amendment to Rule 709 as noted. The motion carried.

ii. Rule Amendments – Rule 871(4), Rule 1903 and Schedule 1(L)

The Admissions & Education Committee recommends raising the CPD non-compliance reinstatement fee from \$100; and adding a late fee of \$200 for members who have completed their CPD requirements, but have not reported their hours. This, in turn, affects the CPD Policy, item 16 on non-compliance, which also requires amendment to add a late fee as prescribed in Rule 871.

There is also a minor amendment to correct Rule 1903 which was inadvertently omitted from a previous amendment. Reference to subrule 470(6) can be deleted, as Rule 470 was deleted June 17, 2010 and no longer exists.

Andrea Johnson provided a memo outlining in more detail the above amendments.

Discussion:

- There is a lot of administrative burden associated with disqualifying someone, so an increase is appropriate.
- The Benchers felt it would be important to do a communication piece to the membership about this change and why it is important.

Moved by Sean Sinclair, seconded by David Chow, that amendments be made as follows:

- That an item 4 be added to Rule 871, respecting a late fee payable, which also affects the CPD Policy, so that item 16 on non-compliance in the CPD Policy also include the late fee payable as prescribed in Rule 871;
- correction to Rule 1903 to remove reference to “or subrule 470(6),” which no longer exists;
- amendments to Schedule 1(L), item 3, to reflect the reinstatement fee increase from \$100 to \$750; and adding item 4, a late compliance fee, in the amount of \$400, 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 carried.

On second reading, the motion was presented by David Bishop, seconded by Scott Moffat, that amendments be made as follows:

- That an item 4 be added to Rule 871, respecting a late fee payable, which also affects the CPD Policy, so that item 16 on non-compliance in the CPD Policy also include the late fee payable as prescribed in Rule 871;
- correction to Rule 1903 to remove reference to “or subrule 470(6),” which no longer exists;
- amendments to Schedule 1(L), item 3, to reflect the reinstatement fee increase from \$100 to \$750; and adding item 4, a late compliance fee, in the amount of \$400, be approved as written.

The motion carried.

### iii. Rule Amendments – Rule 166

At its June meeting, the Equity & Diversity Committee considered the administration of the Demographic Data Survey as part of the annual renewal process. The Committee passed a motion to recommend to the Benchers that the Survey be a part of annual renewal, with an option to decline to answer the questions. As the Rules currently require that the Benchers approve the Annual Declaration form, the Equity & Diversity Committee recommends that the Benchers approve the implementation of the survey for the upcoming annual renewal process.

However, the Committee is of the view that the annual renewal form is an operational matter and therefore recommends that Rule 166, Practising Certificate, be amended such that the Executive Director, rather than the Benchers, approves the form of Annual Declaration to

avoid the necessity of having the Benchers approve the Annual Practice Declaration form each year going forward.

A memo from Barbra Bailey containing background information regarding the demographic data survey, as well as proposed amendments to Rule 166, was provided for consideration.

Moved by David Chow, seconded by Jay Watson, that amendments to Rule 166(2)(b) be changed from approval by the “Benchers,” to approval by the “Executive Director,” be approved as written. 19 in favour, 1 opposed. The motion carried.

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

On second reading, the motion was presented by David Chow, seconded by Perry Erhardt, Q.C. that amendments to Rule 166(2)(b) be changed from approval by the “Benchers,” to approval by the “Executive Director,” be approved as written. 19 in favour, 1 opposed. The motion carried.

Moved by David Chow, seconded by Jay Watson that the survey be part of the annual renewal process, with the ability to decline to answer the questions at the outset. 18 in favour, 2 opposed. The motion carried.

#### Discussion:

- The Benchers clarified that it is not accurate to say it is mandatory, rather that it is part of the annual renewal form, but members can decline to answer that part.
- It is anticipated that some people will not want to complete the survey, but having the option to decline to answer should address this.
- The Benchers felt we should begin in this first year by having one question at the beginning of the survey that allows them to decline to participate at all; eventually people will become more accustomed to it and we may not need that option.
- The Benchers stressed the importance of communicating clearly with the members about the survey.

## **5.2 Legal Profession Act, 1990 – Amendments (*In Camera*)**

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

## **5.3 Code of Professional Conduct – Amendments**

The Model Code Sub-Committee has reviewed a proposed amendment to Rule 7.7-1 of the Model Code of Professional Conduct dealing with appearances in Court by former judges. The amendment proposed by the Federation’s Model Code Standing Committee completely prohibits former Judges from appearing in court, whereas the current Rule prohibits such appearances for a period of 3 years.

Following discussion, the Sub-Committee was not in favour of the amendment. Administration has been advised that unanimous consensus of the jurisdictions within the Federation is required for amendments to proceed to the Federation Council for

consideration. For this reason, the Sub-Committee is seeking direction from the Benchers as to how it should respond to the Federation Standing Committee's request for feedback.

A memo from Jenna Kraushaar, along with attachments, was provided for consideration.

#### Discussion

- The Sub-committee does not support a lifetime ban, but it does not mean they want to instruct our Federation Council representative to vote against it; instead they will recommend that Saskatchewan does not adopt the Rule if the *Model Code* is amended.
- The Benchers determined that they will not take a position of opposing the amendment at this stage in the process; instead the Sub-Committee should advise the Federation Standing Committee that the Benchers are prepared to have the matter proceed to Federation Council for consideration and defer a final decision until the matter comes back to the Bencher table for a determination as to whether to implement the new Rule in Saskatchewan's Code of Conduct.

### 6. Special Fund Claims (*In Camera*)

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

### 7. Committee Reports

- Access to Legal Services (provided by Gerald Tegart, Q.C.)
  - Covered elsewhere on the Agenda.
- Admissions & Education (provided by Sean Sinclair)
  - Covered elsewhere on the Agenda.
- Audit (None)
- Conduct Investigation (provided by Jeff Baldwin)
  - Covered elsewhere on the Agenda.
- Discipline (provided by Brenda Hildebrandt, Q.C.)
  - Covered elsewhere on Agenda.
- Equity & Diversity (written report provided by Ronni Nordal)
- Ethics (provided by Ronald Parchomchuk)
  - The Committee considered requests on matters relating to the following:
    - How to proceed with money being held in trust for a holdback, with no instructions from the client and no request from the other party to return it.
    - A request to change the long-standing rule against representing both a developer and buyer; they determined the Rule should remain as it is.
    - A dispute arising in a third-party providing retainer and a question as to who has the right to those funds.

- Executive
  - Covered elsewhere on the Agenda.
- Governance (provided by David Chow)
  - Covered elsewhere on the Agenda.
- Insurance (provided by Perry Erhardt, Q.C.)
- Legal Resources (provided by Scott Moffat)
  - Covered elsewhere on the Agenda.
- Professional Standards (provided by David Rusnak, Q.C.)
  - The Committee is exploring the possibility of expanding the practice advisors' role to provide proactive assistance to members.
  - The Committee is awaiting a cost analysis on digital file storage resources.
- Trust Safety (provided by Monte Gorchinski)
  - Covered elsewhere on the Agenda.

The Benchers determined that, going forward, they would consider whether to submit written reports for each Committee rather than providing verbal updates, now that most Committee meetings are held further in advance of Bencher meetings.

## **8. Informational Items**

- a. College of Law Endowment Fund – Report from Derek Maher, CPA, CA.
- b. Senate of the University of Regina – Report from David Brundige, Q.C.
- c. Don Thompson, Q.C., Executive Director at the Law Society of Alberta, is retiring at the end of the year.

## **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**

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

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

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