

**Minutes for the Meeting of the Benchers
Held Friday, June 21, 2019
Cypress Hills Resort, Maple Creek**

Present:

Leslie Belloc-Pinder, Q.C., Gerald Tegart, Q.C., Craig Zawada, Q.C., Andrea Argue, Jeff Baldwin, Monte Gorchinski, Cara Haaf, Glenn Hepp, Suzanne Jeanson, Nolan Kondratoff, James Korpan, Q.C., Lynda Kushnir Pekrul, Foluke Laosebikan, Ph.D, John Morrall, James Morrison, Q.C., Barbara Mysko, Crystal Norbeck, Martin Phillipson and Ian Wagner

In attendance:

Tim Brown, Q.C., Tim Huber, Valerie Payne, Stacey McPeck, Andrea Johnston, Jody Martin, Kiran Mand, Melanie Hodges-Neufeld, Jenna Kraushaar, Kara-Dawn Jordan, Jakaeden Frizzell and Paul Westgate

Greg Walen, Q.C, Donna Sigmeth, Q.C. and Erin Kleisinger, Q.C., Federation Council, were also in attendance.

1. Approval of the Agenda

1.1 Apologies for Absence

Apologies for absence were received from Kaitlynn McArthur, Jill Drennan and Scott Moffat.

William Lane was in attendance for Wednesday and Thursday, however, due to prior commitments, he departed after the session on Thursday.

1.2 Confirmation of Agenda

1.3 Bencher Conflict of Interest Disclosures

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

- i. Governance Reform Session
- ii. Firm Regulation

2. Approval of the Minutes of April 18, 2019

Moved by James Korpan, Q.C., seconded by John Morrall, that the Minutes from the Bencher meeting held April 18, 2019 be approved as written. The motion carried.

2.1 Amendments

2.2 Confirmation of Minutes

2.3 Business Arising from Minutes

3. Governance Reform Session (*In-Camera*)

This session was held *in-camera*.

4. Strategic Initiatives

4.1 Expanded Approach to Competency (Goal 1)

i. Membership Analytics

Tim Huber, General Counsel, met with the Law Society of Alberta Team on May 2nd. The meeting focused on their articling student/principal research. They have identified a direct correlation between high complaints principals and high complaints students/young lawyers. They have expanded their review to correlation in insurance claims. The next meeting is scheduled for July.

The next step is to move forward with a data sharing agreement. As a starting point, there is some interest in comparing our data and seeing if there is a difference in the correlation due to our stricter principal approval criteria. It is generally our policy to deny potential principals who have a discipline history or an open complaint. Alberta does not deny principals who have discipline or open complaints.

ii. Articling Experience

As part of our articling review process, in conjunction with Alberta and Manitoba, two surveys were sent to the membership on May 8th. One survey was directed to articling students and new lawyers; the other was directed at principals, recruiters and mentors.

A copy of the communication that went out to members in relation to the survey was attached for review. The survey closed the week of June 17th.

We trust the results of the survey will help us to assess whether our existing systems are preparing lawyers for the future. Results will be provided to the Competence Committee for evaluation.

iii. Legal Resources – Regina Space Update

Melanie Hodges Neufeld and Alan Kilpatrick met with Court Services on April 30th. They were advised that construction would not begin in June as

previously indicated, as a Design Consultant for the project had not yet been acquired. There is no confirmed start date, but Court Services is now aiming for August. Staff will be able to remain on site during construction.

Book disposal is nearly complete and the cost will be covered by Court Services. In mid-June, Court Services will contract movers to assist in moving part of the collection from the second floor to the basement. The remaining furniture and obsolete equipment will be relocated or disposed of by the end of June.

iv. Firm Regulation (*In-Camera*)

This discussion was held *in-camera*.

4.2 Trusted and Transparent Regulation (Goal 2)

i. Communications

a. Communications Report

A report from Melanie Hodges Neufeld was provided for information.

Melanie reported on the preliminary results of the Communications Survey which closed June 17, 2019. She also reported that the Communications Team is working on a public awareness campaign as well as expanding media contacts.

4.3 Innovative and Flexible Leader of an Engaged and Forward Thinking Membership (Goal 3)

i. Sandboxing

We have been approached in relation to two projects aimed at addressing the same issue: the lack of a mechanism for clients to sign documents with their lawyers remotely. Two different companies have approached the Law Society to participate in initiatives to work towards the implementation of a means of virtual attendance with clients. Both projects are using different means to address the traditional deficiencies associated with signing documents remotely, similar to the difficulty with client verification. The Law Society of Alberta is currently working with one of these companies to initiate a pilot project over the summer. The Law Society of Saskatchewan has been invited to observe the progress and provide feedback.

ii. Tech Training Options

As reported at Convocation in April, Administration negotiated a comprehensive suite of technology training programs to be delivered by Barron Henley from Affinity Consulting Group, a renowned practical Legal

Tech guru. There are a number of considerations in the CPD world that may affect how we deliver this type of training in the future. Therefore, the CPD department will be looking at how we move ahead with this in the short term. More specifically, the CPD Department will be developing a strategy which will include decisions related to timing/scheduling (we expect to start offering some of these programs this fall), delivery methods (we intend to utilize various methods, including in-person, webinar, recorded and on demand/interactive), and registration cost (we may decide to offer certain programs free and charge for others depending on the specific topic).

4.4 Increased Equity, Diversity and Inclusion in the Law Society and Legal Service Provision (Goal 4)

i. Equity & Diversity

Administration is working with an Equity, Diversity and Inclusion Consultant to draft a survey to obtain member feedback about barriers faced by members of equity-seeking groups in the profession and suggestions for addressing them. The Equity and Access Committees will oversee this work.

Administration has received a first draft of the survey and will do some work with the consultant before bringing a draft to the Equity & Access Committee for consideration. The aim is to have the draft approved in August and to distribute the survey in the fall.

ii. TRC Advisory Committee

The Truth and Reconciliation Advisory Committee held its first meeting on May 6th in Saskatoon. Gerald Tegart, Q.C., reported that the meeting was successful. The members are an impressive group with a wide range of perspectives. Given that this is a new advisory group, it will take some time for the group to determine its scope and how it will work moving forward.

The Federation is reviewing structure and mandate of its TRC Calls to Action Advisory Committee to address some of the challenges it has faced to date. We may be able to learn from their experiences.

4.5 Increased Access to Legal Services (Goal 5)

i. Legal Services Task Team

Jody Martin and Melanie Hodges Neufeld recently held *Lunch'n Learns* with the Saskatchewan Administrative Tribunal Association. Presentations took place in both Regina and Saskatoon and were an excellent opportunity to begin outreach and conversation with stakeholders relating to the consultation process on the implementation of the Task Team recommendations. Participants were engaged in the discussions and expressed interest in working with the Law Society to the extent possible, in

implementing the recommendations. The presentations highlighted a lack of knowledge of the Task Team recommendations and the need to develop resources/communications to better inform stakeholders, members and the public.

Administration has begun planning the consultations regarding the definition of legal information and the exceptions to the practice of law (recommendations 2 and 5). A copy of the Consultation Proposal was attached.

Consultations with the relevant stakeholders are expected to start during the summer months and last into early fall. These consultations will assist and guide the development of the framework and guidelines to support the implementation of these recommendations. The Equity and Access Committee will be working with Administration on this initiative. During this process, Administration will continue to communicate with and educate members, and the public, on progress and next steps as appropriate.

ii. Saskatchewan A2J Network

From the last Benchers Minutes, it was reported that the Law Society will be involved in exploring the possibility of a Saskatchewan Access to Justice Website with other members of the Network. Administration recently met with the person tasked by the Ministry to manage the project and was advised that the focus of the project is on creating an online dispute resolution portal in a specific area (i.e. residential tenancy/small claims). While a positive development, it is unclear how this will affect the development of a website with navigated pathways for consumers, which was originally envisioned by the Law Society.

We expect this will be discussed at the next meeting of the A2J Network on June 26th in Regina.

5. Society Governance

5.1 Operational Reporting

i. President's Report

Leslie Belloc-Pinder, Q.C. reported the following activities since last Convocation:

- Attended meetings with the Saskatchewan Judicial Council.
- Attended the CBA Annual General Meeting and met with their Executive in advance.
- An Executive Committee meeting was held to plan June Convocation.
- Attended the 92nd Annual Jasper Park Retreat. She suggested that the Law Society may want to consider hosting people from other

Societies at a future meeting to give us an opportunity to learn from others who are also interested in regulation.

- Plans are underway for the 2020 Federation Conference which will be held in Saskatoon next October.
- ii. Tim Brown, Q.C. indicated that most of his reporting items are contained in the “present” section of the Environmental Scan and in the Action Team Progress Reports. He also reported on the following:
- the CPLED CEO’s have been meeting regularly to work out the governance of its future Board. Nova Scotia is joining the new CPLED program as a subscriber. The biggest issue that the board must consider is the imbedded costs of the program which will affect how much Law Societies subsidize students. The aim is to have a standard cost across CPLED jurisdictions to avoid cost-havens. Further information will be reported to the Board in September.
 - A staff retreat will be organized for July or August. It was initially intended that the retreat would occur prior to June Convocation, but scheduling conflicts postponed the meeting into summer.
- iii. Federation Council Report

Erin Kleisinger, Q.C., reported on the following with respect to the June 10th Federation Council meeting in Ottawa:

- Council received a report from the Anti Money Laundering Working Group.
- Craig Ferris, Q.C., second vice-president of the Law Society of BC, gave an update on what is happening in British Columbia. The BC government is speaking to other provincial jurisdictions because they do not believe regulation can work if it is only in one jurisdiction. They are requiring regulators to adapt money laundering standards, dealing with training for Auditors, and looking for constitutionally viable ways to bring the Law Society into reporting structure so that members are required to report under the Proceeds of Crime and Anti-Money Laundering legislation. The Federal Ministry has also advised the Federation that they will be reaching out to provincial governments.
- Council heard a presentation from James Klotz of the International Bar Association.
- There was a discussion about improving the relationship with the Academy.
- There was a discussion about the Law Society of Ontario Bencher election and the significant changes that have occurred there.
- This fall, the Federation meeting in Newfoundland will be the start to strategic planning for the Federation. The Federation wants to know what member societies need from members. Jonathon Herman is coming to September Convocation. It would be helpful to have some

time set aside on the Agenda in September to discuss what role the Law Society of Saskatchewan would like the Federation to have.

5.2 Financial Reporting

i. Financial Statements

The following were enclosed for Bencher review and discussion:

- financial statements for the period ended May 31, 2019;
- budget variance analysis.

ii. Quarterly Investment Report

Quarterly Investment Report for the period January 1 – March 31, 2019.

Tim Brown, Q.C. has been in discussions with Greystone as well as our auditor, Don Hansen, FCPA, FCA, about our investment policy. He suggested a need to have some strategic discussions about our investment policy (i.e. the focus on preservation vs. growth) at a future meeting.

5.3 Execution of Strategy

i. Action Plan Progress Update

Team Action Plans (Competency; Modernizing Regulation, Communications, and Data & Technology) with updated progress reports were provided for Bencher consideration.

ii. Metrics Update

The leads of the four Action Teams have met to develop a preliminary list of metrics to measure execution of the strategic plan. At this stage, in most areas, we will be measuring the number of initiatives put in place to achieve certain goals as well as progress to plan on initiatives. We will also have to do some benchmarking to determine a baseline in several areas in order to measure the effectiveness of our initiatives down the road.

A memorandum from Kara-Dawn Jordan was provided for Bencher consideration.

iii. Reporting Update - Dashboard

Administration continues to work with MicroAge on the development of a dashboard that will allow for the effective/efficient tracking and reporting of information to inform decision-making both at the Board and management levels. As work has continued on this project and Administration has learned more about the work that is being done in Alberta to track and analyze data to inform decision-making, it has become clear that the development of such a system will be a long term project which we will build

and improve upon over time. Our current focus is on building an environment for the efficient tracking and measurement of the work that is being done to execute strategy.

Paul Westgate provided an overview and “sneak peek” of the prototype for the “strategic status” dashboard.

There was a discussion about the security that will be in place for the dashboard, both at an organizational and user level.

5.4 Appointments

i. Law Foundation Auditor

Pursuant to Rule 76(7), the Benchers appoint the Law Foundation auditor. Bob Watt, FCPA, FCA, Law Foundation CEO, advised that the board recommends re-appointment of Deloitte as auditors for 2019.

Moved by Ian Wagner, seconded by Jeff Baldwin, that Deloitte be re-appointed as auditors of the Law Foundation of Saskatchewan in 2019. The motion carried unanimously.

ii. Queen’s Counsel Selection Committee

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

The Benchers voted via secret ballot and selected John Morrall for the Bencher position.

Lynda Kushnir Pekrul is the sole Public Representative Bencher candidate and, therefore, is acclaimed.

We received applications from 4 interested members.

The Benchers voted via secret ballot and Jeff Grubb, Q.C. was selected as the member-at-large on the Queen’s Counsel Selection Committee for 2019.

5.5 Terms of Reference

Terms of Reference for the following committees were discussed at their respective Committee meetings and are provided to the Benchers for final approval:

- Ethics Committee Terms of Reference

Moved by Glenn Hepp, seconded by John Morrall, that the Terms of Reference for the Ethics Committee be approved, as written. The motion carried unanimously.

- Truth and Reconciliation Advisory Group Terms of Reference

The Terms of Reference were provided to the Benchers for review at June 2018 Convocation and again with amendments at September 2018 Convocation. The Benchers did not formally approve the Terms of Reference, as it was intended that they would go to the Advisory Group for comment once populated. The Group reviewed the Terms of Reference on May 6th and are not recommending any amendments at this time.

Moved by Monte Gorchinski, seconded by Craig Zawada, Q.C., that the Terms of Reference for the Truth and Reconciliation Advisory Group be approved, as written. The motion carried unanimously.

5.6 Law Foundation Grants 2020

Annual grant requests are due August 23, 2019 for a meeting in Regina on September 16th. Legal Resources and the CPLED Bar Admission Program will begin working on their grant requests over the summer.

5. Regulation

5.1 Rule Amendments

- i. Rule Revision Timeline

An updated rule revision timeline, prepared by Jody Martin, was provided for Bencher review.

- ii. New Part 9 – Professional Responsibility

A new set of Professional Responsibility Rules, representing the complete overhaul of these Rules to bring them up-to-date and import operational matters from the *Act*, have been prepared by Mary Ellen Wellsch, Q.C., Tim Huber, Valerie Payne and Jody Martin.

Formal cautions have been added to new rules as an alternative to an outright dismissal of a complaint. The formal caution allows a member to receive guidance from the Law Society as to future conduct. A formal caution is not a finding of misconduct. The intent is that it is for use where the issue is close to the line of misconduct or there are evidentiary issues in terms of establishing misconduct. It is intended that this is a tool that can be used by staff alone or by Committee.

There was discussion about how formal cautions might be used in relation to a future matter from an evidentiary perspective. It is possible that it could be used as evidence if the future matter involved the same or similar conduct, particularly in relation to penalty.

Changes have also been made to the Complainants Review Committee process. Essentially, a review of a decision to take no further action is limited to where the decision had been made by professional regulation counsel. A Committee decision to take no further action cannot be reviewed.

The rules in relation to direction of prosecution (rules 15 and 16) will be revisited at the Committee level before being considered by the Benchers. Currently, CIC directs prosecution. Given the new grand jury model, the Committee has been using a subset of CIC to direct prosecution. This will continue in the interim:

The Rule amendments, excluding those rules that relate to direction of prosecution, were provided for Bencher approval in principle.

Moved by James Korpan, Q.C., seconded by Barbara Mysko, that the new Professional Responsibility Rules, Part 9, be approved in principle, as written. The motion carried.

iii. Part 10, Insurance - Saskatchewan Lawyers' Insurance Association Inc.

A memo from Kara-Dawn Jordan outlining proposed amendments to Rules 605 and 195(4) were provided for Bencher approval.

A change in numbering of the subrules in Rule 605 resulted in a minor amendment to Rule 195(4), therefore both Rules were provided under this section.

The proposed amendments are intended to clarify which members are exempt from insurance and excluded from the professional liability program, and which members are exempt from paying, but still have coverage in limited situations.

James Morrison, Q.C. reported that at the time of considering amendments to Rule 605, the Committee considered the insurance status of students-at-law. SLIA is in discussions with CLIA in this regard and there is a possibility that Rule 605 could come back for revision at a future meeting to address coverage for students-at-law.

a. Part 10, Insurance – Rule 605, Saskatchewan Lawyers' Insurance Association Inc.

Moved by James Korpan, Q.C., seconded by Crystal Norbeck, that amendments to Part 10, Insurance, Rule 605, 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 Monte Gorchinski, seconded by Nolan Kondratoff.

On second reading, the motion was presented by Suzanne Jeanson, seconded by Cara Haaf, that amendments to Part 10, Insurance, Rule 605, Saskatchewan Lawyers' Insurance Association Inc., be approved as written. The motion carried.

- b. Part 7A - National Mobility and Interjurisdictional Practice, Temporary Mobility, Rule 195(4)

Moved by Jeff Baldwin, seconded by Craig Zawada, Q.C., that amendments to Part 7A - National Mobility and Interjurisdictional Practice, Temporary Mobility, Rule 195(4), be approved as written. The motion carried.

A motion to grant second reading on the same day was presented by James Korpan, Q.C., seconded by Lynda Kushnir Pekrul .

On second reading, the motion was presented by Foluke Laosebikan, Ph.D, seconded by Crystal Norbeck, that amendments to Part 7A - National Mobility and Interjurisdictional Practice, Temporary Mobility, Rule 195(4), be approved as written. The motion carried.

- iv. Parts 13 and 15 – Accounting and Trust Rules, Anti-Money Laundering, Member Reporting

The Trust Safety Committee will be meeting on July 8th to review draft amendments to Part 13 of the Law Society Rules, reflecting the recommendations made by the Federation and the development of Anti-Money Laundering and Terrorist Financing Model Rules. This is part of a national initiative to implement consistent rules for implementation nationally by the end of 2019. The *draft* Rules are expected to be considered by the Benchers as a whole for review and approval at September Convocation.

The issue of money laundering has gained traction in the media recently, and as a result, Minister Morgan's office requested a Briefing Note on the Law Society's awareness of, and approach to, money laundering. The briefing note was prepared in consultation with Bob Linney from the Federation to ensure consistency of messaging and approach and was included for Bencher information and review.

6.2 Legal Profession Act, 1990 - Amendments

Bill 163, *The Legal Profession Amendment Act, 2019*, received Royal Assent on Wednesday May 15th. Until the 2019 Separate Chapters are available, if you would like a printed version of the Bill, please use this link <http://docs.legassembly.sk.ca/legdocs/Bills/28L3S/Bill28-163.pdf>.

The required amendments to the Rules to accommodate the changes to the *Act* are ongoing and remain on schedule.

6. Committee Reports

- a. Audit (Monte Gorchinski, Chair)
 - Nothing to report.
- b. Competency (joint Committee of Admissions & Education and Professional Standards) (Glenn Hepp, Chair)
 - The Competency Committee has not met since last Convocation, but has a meeting scheduled.
- c. Conduct Investigation (Jeff Baldwin, Chair, reported)
 - The Conduct Investigation Committee met on June 19, 2019 to consider 4 matters. The Committee is running smoothly and the staff prep work has been excellent.
- d. Discipline Executive (Greg Walen, Vice-Chair)
 - Nothing further to discuss.
- e. Entity Regulation (Ian Wagner, Chair)
 - Nothing further to discuss.
- f. Equity and Access (joint Committee of Equity & Diversity and Access to Legal Services) (Foluke Laosebikan, Ph.D, Chair)
 - The Committee is reviewing the matter of collecting demographic data from the membership and will be bringing a recommendation to the Benchers in September.
- g. Ethics (John Morrall, Vice-Chair)
 - The work of the Real Estate Subcommittee is continuing.
- h. Executive
 - Nothing further to report.
- i. Governance (Craig Zawada, Q.C., Chair)
 - The Committee did not meet after last Convocation, as its heavy work starts following the June meetings. The Committee will be scheduling a meeting after the first two weeks of July to move forward with the work that came out of the June Bencher retreat.
 - The Committee will be starting work on a Code of Ethics.
- j. Insurance (James Morrison, Q.C., Vice-Chair)
 - The Committee has been considering the amount of its investment portfolio and insurance coverage costs.
- k. Legal Resources (Dean Martin Phillipson, Chair)
 - Nothing to report.

- I. Trust Safety (Monte Gorchinski, Chair)
 - The Committee will be meeting July 8th.
- m. Truth and Reconciliation Advisory Group (Gerald Tegart, Q.C., Chair)
 - Nothing further to discuss.

8. Informational Items

- a. University of Saskatchewan Senate – report from Max Bilson
- b. University of Regina Senate – report from David Brundige, Q.C.
- c. PLEA Board – report from Maya Scott
- d. Convocation Dates 2020 - Tentative

Tentative dates for Convocation 2020 were provided for information:

- Feb 12 – 14, 2020
- April 29, 30 and May 1, 2020
- June 17 – 19, 2020
- Sept. 16 – 18, 2020
- October 16, 2020 (President's Dinner in conjunction with Federation Conference in Saskatoon)
- October 23, 2020 (budget via webinar)
- Dec 2 – 4, 2020

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 – September 11 – 13, 2019 in Regina**
- 9.5 Motion to Adjourn**

John Morrall made a motion to adjourn, seconded by Andrea Argue.

10. Bencher In-Camera Session with Executive Director

11. Bencher In-Camera Session without Executive Director.

TIMOTHY J. BROWN, Q.C.
Executive Director

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