

Minutes for the Meeting of the Benchers Held Friday, February 14, 2020 Hotel Saskatchewan, Regina, SK

Present:

Gerald Tegart, Q.C., Foluke Laosebikan, Ph.D., Leslie Belloc-Pinder, Q.C., Craig Zawada, Q.C., Jeff Baldwin, Jill Drennan, Monte Gorchinski, Glenn Hepp, Suzanne Jeanson, Nolan Kondratoff, James Korpan, Q.C., Lynda Kushnir Pekrul, William Lane, Scott Moffat, John Morrall, James Morrison, Q.C., Barbara Mysko, Martin Phillipson and Ian Wagner

In attendance:

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

Erin Kleisinger, Q.C., Federation Council, sent regrets.

1. Approval of the Agenda

1.1 Apologies for Absence

Apologies for absence were received from Kaitlynn McArthur, Andrea Argue, Crystal Norbeck and Cara Haaf.

(Erin Kleisinger, Q.C. attended only the Thursday afternoon session.)

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. Future Class re Innovation in Law
- ii. Non-Lawyer Service Providers

2. Approval of the Minutes

2.1 Bencher Minutes

- i. Bencher Minutes from the meeting held November 29, 2019
- ii. *In Camera* Bencher Minutes from the meeting held November 29, 2019

Ian Wagner moved that the Minutes of the Benchers meeting held November 29, 2019, as well as the *In Camera* Minutes of the meeting held November 29, 2019, be approved as written. James Korpan, Q.C. seconded. The motion carried.

2.2 Amendments

2.3 Confirmation of Minutes

2.4 Business Arising from Minutes

3. Thursday Afternoon Presentation on the Future of Law and the Future of Self-Regulation

On Thursday afternoon from 1:00 – 5:00 pm, a presentation on the future of law and the future of self-regulation, was presented by Jordan Furlong and Paula Littlewood.

Guests Melissa Craig and Brea Lowenberger from the U of S, as well as Erin Kleisinger, Q.C., Federation Council, were also in attendance.

Discussion:

- Several comparisons were made to health care during the presentation and it was noted that there are issues around how things have developed in that arena that the Law Society should be mindful of.
- There are some recent developments respecting the structure of the SRNA that may be worth following, as well.
- It was suggested that we make the session available to the members. Tim Brown, Q.C. suggested that we create a landing page on the website to make this and other similar resources available to members.
- It was noted that we should also try to get the topic on the CBA Mid-winter Meeting agenda for next year, as the meeting is well attended by the members.

4. Strategic Initiatives

4.1 Expanded Approach to Competency (Goal 1)

i. CPLED

Andrea Johnston provided an update on CPLED. She provided the Benchers with an overview of the structure of the new PREP course. Registration will open in Saskatchewan on March 2nd. Pilots of the program are currently in progress, with improvements being made to the program based on feedback received during the pilot phase.

Administration's focus is currently on logistical and operational matters. Rule changes will be required as a result and will be considered by the Competency Committee in March and by the Benchers in April.

CPLED is in need of volunteers for various roles in the course (volunteers will receive a nominal stipend). Andrea Johnston encouraged the Benchers and others in their firms who may have an interest, to look at the CPLED website at the volunteer opportunities available.

There has been some concern expressed in Alberta about the number of hours required for the new course; some adjustments have been made in this respect.

ii. Legal Resources – Regina Space Update

Construction at the Regina Courthouse began on December 4, 2019 and will take 3 months. The portion of the Library renovations are now complete.

iii. Change to CPD Term

The change of the 3-year rolling CPD Term to a 1-year CPD Term became effective January 1, 2020 and members were alerted in advance through a series of email communications. A copy of the *revised* CPD Policy was posted to our website on December 18, 2019 and a copy was attached for review.

As a result of the Alinity revamp, there will be changes coming in terms of how the year end will work with respect to the new CPD term. For now, members report hours as usual.

4.2 Trusted and Transparent Regulation (Goal 2)

i. Communications

A report from Julie Sobowale was attached for information. She also gave the following updates:

- An Op Ed about how we are moving forward with the LSTT recommendations was published on Tuesday in the Star Phoenix and Leader Post. We have had a good response on Twitter with comments being mostly positive. The article was picked up by the London Free Press.
- Our blog and website have large audiences particularly given the size of our membership. We should be taking advantage of this and continue to push out communications.
- The average open email rate for our membership is significantly above the average for comparable organizations, which tells us that we need to be pushing out communications to our membership, as well. We should be doing this, making use of different platforms, as different demographics are accessing information differently. Julie Sobowale is currently working on a strategic communications plan.

ii. Hearing Administrator Position

At Convocation in November 2019, the Benchers approved *in principle* the creation of a Hearing Administrator position.

An *ad hoc* Recruitment Committee was established, consisting of Leslie Belloc-Pinder, Q.C. and Tim Brown, Q.C., as well as Lynda Kushnir Pekrul and James Korpan, Q.C.

This Committee will meet following Convocation to refine the position requirements and the job-posting, following which the position will be advertised. A “heads-up” Communication was sent to the membership on January 23rd and a further reminder will be sent to the membership prior to any public advertisements. A copy of the communication was attached for review.

Administration also conducted an initial review of the Law Society of Alberta Adjudicator Training program and will present its findings to the Committee.

Tim Brown, Q.C. reported that we are aiming to have the Hearing Administrator position filled and operational by June.

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

i. Law Society Podcast

Since the Legal Skies Podcast launched in August, four episodes have been published. The average number of listeners for each episode has been 130. Legal Skies was recently chosen as [one of four recommended Saskatchewan podcasts to listen to in 2020](#) by CBC Saskatchewan.

Administration is in the process of exploring topics for 2020. In February, Gerald Tegart, Q.C. and Foluke Laosebikan, Ph.D. agreed to be podcast guests. Arrangements were also made for renowned legal commentators Jordan Furlong and Paula Littlewood to meet with Julie Sobowale for a podcast that will be aired at a later date.

At the CBA Mid-winter Meeting, staff recorded 9 podcasts that will be used throughout the next 3 - 4 months as bite-sized podcast episodes. Julie Sobowale will also record podcasts at the ABA Techshow in Chicago.

In February, negotiator Marty Latz will be interviewed for a podcast. The episode will be released in early March and used to promote his seminar, which will be held in Saskatoon in late March.

- ii. Collaboration with the College of Law

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

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

- i. Equity & Diversity

The *draft* member Equity, Diversity and Inclusion Survey developed by Inclusion Factor, in consultation with Administration, was presented to the Truth and Reconciliation Advisory Group for feedback at its February meeting. The Group provided significant feedback that will need to be incorporated, as will suggestions coming from the Equity & Access Committee. The survey will come back before that Committee for approval before it is launched.

An update on responses to the demographic data questions included in the annual renewal was provided to the Benchers at November Convocation. A final report was provided for information.

4.5 Increased Access to Legal Services (Goal 5)

- i. Non-Lawyer Service Providers

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

- ii. Legal Information v. Legal Advice Guidelines

The Legal Services Task Team recommended the creation of guidelines to clarify the distinction between legal information and legal advice.

John Greacen, a principal of Greacen Associates, LLC, has agreed to assist with this project. Mr. Greacen wrote the seminal article on the difference between legal information and legal advice for court staff in 1995 and continues to publish regularly on the topic. He has also assisted numerous jurisdictions with the creation of similar guidelines, including the Nova Scotia Department of Justice Court Services.

At the end of March, Mr. Greacen will be facilitating a full-day session with staff and potentially members of the Equity and Access Committee to explore the grey areas identified by the Task Team and develop draft guidelines for Bencher consideration.

5. Society Governance

5.1 Operational Reporting

i. President's Report

Gerald Tegart, Q.C. reported the following:

- He went through the process of reconstituting Committees. No drastic changes were made. He does not see Committee constitution as an annual event; changes can be made as appropriate throughout the year.
- He attended a PBLS fundraiser in Regina.
- He attended a CLASSIC fundraiser in Saskatoon.
- He attended the Truth and Reconciliation Advisory Group meeting on February 4th.
- He and Foluke Laosebikan, Ph. D. participated in a Law Society podcast. He encouraged other Benchers to also participate if they have the opportunity.
- He participated in an interview for Canadian Lawyer Daily and a spot on the John Gormley radio show.
- He attended the CBA Mid-winter meeting and brought greetings on behalf of the Law Society at the award luncheon.
- He met with Minister Morgan, Q.C. and Deputy Minister Gardner, Q.C. with Foluke Laosebikan, Ph.D, Tim Brown, Q.C. and Tim Huber. It was a very positive meeting with fruitful discussion in relation to a number of issues.

ii. Executive Director's Report

A written report was included in the materials.

Tim Brown, Q.C. updated the Benchers that the Cullen Inquiry is focusing its attention on members of the legal profession and is in the process of attempting to subpoena trust information that has been shared between Law Societies as part of group initiatives.

iii. Federation Council Report

A written report was included in the materials.

5.2 Financial Reporting

i. Financial Statements

Financial statements for the period ended December 31, 2019 were included for review and discussion.

Tim Brown, Q.C. provided an overview of the operating fund variance for 2019. The total variance from budget was in the neighborhood of \$482,000. If uncontrollable expenses are taken out of the equation, the LSS came within 4.5% of budget.

Tim Brown, Q.C. reported that members' equity is higher than anticipated going into 2020 as a result of an upturn in the investment market. Even with the investments, we are on track to be within our estimated range of equity as at the end of the strategic cycle (the end of 2021).

Tim Brown, Q.C. also noted that the spike in investments is related to a temporary transfer of members fees to increase interest earnings.

ii. Reserves

a. Operating Reserve

The Law Society Reserves Policy provides that the target minimum Operating Reserve is equal to 3 months of average budgeted operating expenses. Based on the 2020 budget, 3 months of average operating expenses equals \$1,580,000.

Administration sought a motion from the Benchers to set the Operating Reserve at \$1,580,000 and reflect this amount in the April 2020 financial statements.

Moved by Ian Wagner, seconded by Craig Zawada, that the Operating Reserve be set at \$1,580,000 and be reflected as such in the April 2020 financial statements. The motion carried.

b. Strategic Reserve

The Law Society Reserve Policy provides that the Strategic Reserve shall be set by the Benchers on an annual basis, with consideration to initiatives contemplated by the Law Society which are consistent with its strategic goals.

Administration proposed that the Strategic Reserve be set at \$1,020,000 which represents the high end of our strategic spending estimates to the end of 2021. It should be noted that this is not intended to be an authorization of spending to that limit, as a budget of \$660,000 has been approved for 2020 and a budget for 2021 will be proposed later this year.

Ian Wagner moved that the Strategic Reserve be set at \$1,020,000 and be reflected as such in the April 2020 financial statements. Scott Moffat seconded. The motion carried.

iii. Quarterly Investment Report

A copy of the Quarterly Investment Report for the period October 1 to December 31, 2019 was provided for information.

iv. Financial Statements for the year ended December 31, 2019

Year-end books are closed by the end of January to allow for the late receipt of 2019 accounts.

The Benchers will need to approve the audited December 31, 2019 financial statements prior to the AGM. To this end, a conference call has been scheduled in advance for Thursday, April 2, 2020 from 2:30 – 3:30 pm.

v. Greystone Banking Resolution

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

Moved by Ian Wagner, seconded by Lynda Kushnir Pekrul, that the Greystone Banking Resolution be approved as written. The motion carried.

vi. TD Banking Resolution

A banking Resolution for the Toronto Dominion Bank authorizing signing authorities for 2020 was also included. With the change in titles for professional staff, an updated Resolution was required.

Moved by John Morrall, seconded by Nolan Kondratoff, that the TD Banking Resolution be approved as written. The motion carried.

5.3 Execution of Strategy

i. Action Plan Progress and Executive Strategic Dashboard Update

Tim Brown, Q.C. and Kara-Dawn Jordan met throughout January with Action Team leads to refine tactics and budgetary allocations for 2020. The Action Plan for each Action Team incorporating refinements and updates were attached (Competency, Modernizing Regulation, Communications and Data & Tech). As scheduling did not permit for full Action Team meetings in advance of Convocation, further refinements to tactics can be expected.

The attached Action Plan reports take a different form than what had been previously provided to the Benchers, as they have been automatically generated from the Executive Strategic Dashboard. A new automated report (Goal Updates) has been developed to report on strategic status updates which streamlines the overall maintenance process.

Additional licenses have been added for the Benchers to securely view the Dashboard online. Setup and login instructions will be circulated by Paul Westgate who will be the main contact. Paul Westgate also provided a “how-to” demonstration of the new tool at Convocation.

5.4 Annual General Meeting

The AGM is scheduled for Thursday, April 30, 2020. Members will receive information about the upcoming AGM on February 13th via the *Re Source*. Work has already begun on the Annual Report.

Instead of an evening dinner, it is proposed that we convene for a luncheon over the noon hour on that date at which time, in addition to the standard AGM Agenda, guests will hear an update on recent Law Society activities which will provide attendees with 1 CPD Ethics hour credit.

According to Rule 403, Resolutions are required 30 days before the AGM, which means the deadline for Resolutions is March 31, 2020. This will also be included in the message to members.

5.5 Bencher Honoraria

Effective January 1, 2019, it was determined by the Admissions & Education Committee that the Law Society will grant 3 CPD ethics hours per calendar year to Benchers to acknowledge their significant contribution of time and expertise. This Ethics hour credit was also extended to non-Bencher lawyers who serve on one or more of the prescribed Law Society Committees (as set out in the Law Society Bencher Committee List each year).

Law Society staff have manually entered these 3 Ethics hours for Benchers and non-Bencher Committee members and they can be viewed under the Member Profile.

6. Regulation

6.1 Rule Amendments

i. Rules Overhaul 2019

At November Convocation, the Benchers approved amendment of the Consolidated Rules, subject to housekeeping amendments which Administration was authorized to make. The Rules were finalized by the end of December and were posted to the Law Society website on January 1, 2020.

A media inquiry from The Lawyer’s Daily was received and an interview was conducted with Melanie Hodges Neufeld and Jody Martin; the resulting article was posted to APRIO.

ii. Amendments to Rule 1612, Disqualified from the Practice of Law

Rule 1612 includes a reference to subrule 1606(2). This was an error in reference and should only reference Rule 1606. The amount of the fine was originally subrule 2, but when it was redrafted, the amount of the fine was changed to subrule 1; however, the administrative suspension applies to the whole of Rule 1606. Following are the redlined changes:

Disqualified from the Practice of Law

1612(1) The Executive Director may disqualify a member from the practice of law who is in breach of Rule 1602, 1604, 1609, or ~~subrule 1606(2)~~.

(2) The Executive Director may notify the member that the member will be disqualified within 30 days or such further period as may be determined by the Executive Director.

(3) A member who has been disqualified from the practice of law pursuant to subrule (1), may apply to the Executive Director for reinstatement by;

(a) complying with Rules 1602, 1604, 1609 or ~~subrule 1606(2)~~; and

(b) paying to the Society any fees, assessments, fines, costs, arrears or other amounts owing to the Society pursuant to this Part.

Moved by James Korpan, Q.C., seconded by Ian Wagner, to amend Rule 1612(1) and (3)(a) to remove reference to subrule 1606(2), as written.

A motion to grant second reading on the same day was presented by John Morrall, seconded by James Morrison, Q.C.

On second reading, the motion was presented by Nolan Kondratoff, seconded by Monte Gorchinski, to amend Rule 1612(1) and (3)(a) to remove reference to subrule 1606(2), as written. The motion carried.

iii. Terms of Reference – Insurance Committee

The Insurance Committee provided a redlined copy of their Terms of Reference for approval by the Benchers (attached).

Moved by James Morrison, Q.C. seconded by Jeff Baldwin, to approve amendments to the Insurance Committee Terms of Reference, as written. The motion carried.

6.2 Code of Professional Conduct

At November Convocation, amendments to the Code of Professional Conduct relating to Technological Competence were approved by the Benchers and the amended Code was posted to the website on December 16, 2019.

6.3 Firm Regulation

A Notice to the Profession was sent on December 18, 2019. As of January 7, 2020, we received 2 inquiries from members regarding timelines, but otherwise there has been a minimal response from the membership.

The pre-filled Firm Registration Form was sent via email to the primary contact person at each of the firms.

The initial response was swift with approximately 25% of firms responding within the first two hours. Inquiries following receipt of the email have been minimal and have related only to general matters for clarification.

As of February 4th, 118 firms, which are mostly small/solo firms, have not completed registration. A reminder email will be sent to these firms and a general reminder was placed in the *Re Source* on February 6th. Firms were given until February 15th to register. However, the Benchers have previously authorized an extension of the deadline to the end of March 2020, so an extension can be granted, if necessary.

We received an initial informal media inquiry from CBC regarding Firm Regulation. We provided them with some background information on firm regulation and have heard nothing further in response to that information.

7. Committee Reports

a. Audit (Monte Gorchinski, Chair)

- The Committee met yesterday and received a presentation from Pam Harmon, CPA, CA about the development of financial statements and a presentation from Sheila Fillion, CPA, CA, outlining the audit plan.

b. Competency (Glenn Hepp, Chair)

- A meeting will be set up for March.

c. Conduct Investigation (Jeff Baldwin, Chair)

- The Committee met and started the process of updating its Terms of Reference to reflect the new investigation process and dealt with a few substantive matters.
- The new process continues to work very well and the competency of the staff is recognized as a contributing factor.

d. Discipline Policy (Leslie Belloc-Pinder, Q.C., Chair)

- Nothing to report.

e. Equity and Access (Martin Phillipson, Chair)

- The Committee met to discuss a draft workplan for the year, as well as the EDI survey which will take a little longer to complete than originally anticipated.

f. Ethics (Scott Moffat, Chair)

- The Committee met yesterday to deal with one substantive matter.
- The Real Estate Sub-committee continues to make progress and it is anticipated that the draft trust letter will be complete for next Convocation.

g. Executive

- Nothing to Report.

h. Firm Regulation (Ian Wagner, Chair)

- A meeting is being planned for the first week of March.

i. Governance (Craig Zawada, Q.C., Chair)

- Nothing to Report.

j. Insurance

- Nothing to report this time

k. Truth and Reconciliation Advisory Group (Gerald Tegart, Q.C., Co-Chair)

- The Advisory Group met last week in Saskatoon. The Group has now moved from the point of talking about how it will conduct business to discussing substantive issues.
- It was noted that the mandate of the Committee includes providing advice with respect to the Law Society's response to Call to action 27, but is also much broader than that. At the most recent meeting, the Group spent much of its time speaking about cultural competency education. It was a good discussion.

Riva Farrell Racette spoke about the diversity of the Group both in terms of being representative of Indigenous people in Saskatchewan and in terms of their practice areas and environments. She noted the importance of this type of diversity in attempting to address systemic issues and the importance of the Law Society having such a group to turn to for advice.

Gerald Tegart, Q.C. indicated that he anticipates that the Benchers will do some education this year to prepare to receive advice from the group and invited the Benchers to offer feedback in this regard.

It was suggested that we consider having one of our Convocations at Wanuskewin Heritage Park.

8. Informational Items

- a. Saskatchewan Legal Aid Commission – report from Valerie Macdonald, Q.C.
- b. University of Regina Senate – report from David Brundige, Q.C.
- c. Technology Task Force (Update Report) November 29, 2019 – Law Society of Ontario
- d. Honorary Membership with the Law Society of Saskatchewan – letter of thanks from Patrick Shea at Gowling WLG
- e. Self-regulation: the end of an era? Lawyer discipline and the role of law societies, by Anita Balakrishnan, Nov. 14, 2019, [Canadian Lawyer Magazine](#), Issue 43.10
- f. The Story So Far – California Regulatory Reform, [IAALS Blog](#), Andrew Arruda, February 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

(April 29, 30 and May 1, 2020 in Saskatoon. AGM scheduled Thursday at Noon)

9.5 Motion to Adjourn

Ian Wagner moved that the meeting be adjourned. James Korpan, Q.C. seconded. The meeting adjourned.

10. Bencher In-Camera Session with Executive Director

11. Bencher In-Camera Session without Executive Director

TIMOTHY J. BROWN, Q.C.
Executive Director