

Minutes for the Meeting of the Benchers Held Friday, September 18, 2020, via Zoom

Present:

Gerald Tegart, Q.C., Foluke Laosebikan, Ph.D, 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, William Lane, Kaitlynn McArthur, 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 McPeek, Andrea Johnston, Christine Johnston, Jody Martin, Kiran Mand, Jenna Bailey, Kara-Dawn Jordan, Paul Westgate, Jakaeden Frizzell, Julie Sobowale, Pamela Harmon, CPA, CA, Stephanie Kievits, CPA, CA, Sydney Young and Liz Lynchuk

Riva Farrell Racette sent her regrets

Erin Kleisinger, Q.C., Federation Council and Jordan Furlong, Law21

The meeting was called to order at 9:06 am.

1. Approval of the Agenda

Moved by John Morrall, seconded by Andrea Argue, to approve the Agenda, as written.
The motion carried.

1.1 Apologies for Absence

Apologies for absence were received from Leslie Belloc-Pinder, Q.C., Jill Drennan and Scott Moffat.

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. Legal Services Task Team – Notice Forms
- ii. Appointments to the Law Foundation

- iii. Proposed Pilot Project: Contracting Spot Audits and Review Accountant's Report Requirement

2. Consent Agenda

The items included on the consent Agenda are set out in 2.1 and 2.2 below:

2.1 Approval of the Bencher Minutes

The following Bencher Minutes were for review and approval:

- a. Minutes from the Bencher meeting held June 19, 2020.
- b. *In-Camera* Minutes from the Bencher meeting held June 19, 2020.

Moved by Jeff Baldwin, seconded by Crystal Norbeck, to approve the Bencher Minutes from the meeting held June 19, 2020, as well as the *In-Camera* Bencher Minutes from the meeting held June 19, 2020. The motion carried.

2.2 Terms of Reference

The following revised Terms of Reference were presented for Bencher approval.

- i. Firm Regulation Committee

The Firm Regulation Committee approved the attached Terms of Reference at their meeting on August 30, 2020.

Moved by Foluke Laosebikan, Ph.D, seconded by Cara Haaf, to approve the Firm Regulation Terms of Reference, as written. The motion carried.

3. Presentation by Jordan Furlong

Jordan Furlong made a presentation exploring "If I knew then what I knew now," to shed some light on the number of changes that have occurred in the environment since his presentation in February.

This portion of the meeting was recorded for the benefit of Benchers who were unable to attend.

The meeting resumed a 10:32 am.

4. Decision Items

4.1 Strategic Initiatives

- i. Legal Services Task Team (Increased Access to legal Services – Goal 5)

a. *Notice Forms (In-Camera)*

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

4.2 Appointments

i. Law Foundation (*In-Camera*)

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

4.3 Regulation

i. Rule Amendments

a. Rule 1143 Temporary Practice Directives by Executive Director

Tim Huber reached out to the government in June to adapt the emergency measures relating to remote execution of documents to make them permanent. On August 7, 2020, the Government of Saskatchewan repealed those emergency regulations and made them permanent.

Law Society Practice Directives 1 and 3 were amended to remove reference to a public emergency period. Rule 1143.1 was added to allow issuance of enduring directives or to continue temporary directives in specific areas. The first specific area included in the Rule relates to the remote execution of documents via electronic means.

The next step in the process is amendment of Rule 1143, suggested as follows:

Temporary Practice Directives by Executive Director

1143(1) During a public emergency period, the Executive Director may, at the direction of the Executive Committee, issue temporary directives governing the provision of legal services and where a directive has been issued it shall have the same force and effect as a Rule.

(2) Directives issued pursuant to subrule (1) may apply to all legal service providers or any subset thereof, as stipulated within the directive.

1143.1 The Executive Director may, at the direction of the Executive Committee, issue enduring directives or continue temporary directives governing the following specific areas:

(a) the remote execution of documents via electronic means.

Tim Huber explained that the changes are required to deal with the change by the government to allow a permanent signing issue outside the emergency period. The Practice Directive provisions were originally geared to a public emergency period, however, in terms of transitioning, they

needed to be enduring. We retained the power of the Executive Director and the Executive Committee pertaining to temporary directives, but added in the power to make them permanent.

In the future, if other Practice Directives require Benchers oversight, we can add them to the Rules as subcategories under 1143.1.

Moved by Foluke Laosebikan, Ph.D, seconded by Kaitlynn McArthur, to amend *Part 11 – Professional Responsibility, D. Discipline*, by adding Rule 1143.1 to allow issuance of enduring directives or continue temporary directives governing the remote execution of documents via electronic means. The motion carried.

A motion to grant second reading on the same day was presented by Ian Wagner, seconded by Barbara Mysko. The motion carried.

On second reading, the motion was presented by Andrea Argue, seconded by Crystal Norbeck, to amend *Part 11 – Professional Responsibility, D. Discipline*, by adding Rule 1143.1 to allow issuance of enduring directives or continue temporary directives governing the remote execution of documents via electronic means. The motion carried.

b. Rule 1514 - Procedure for Withdrawing Funds from a Pooled Trust Account

Practice Directive 2, Wire Transfer Procedures via Online Wire Payments Service, will be addressed separately from Rule 1143 Temporary Practice Directives by the Executive Director.

To implement Practice Directive 2 on a permanent basis, draft amendments to the Trust Rules will be prepared to accommodate this change. Rule 1514 will be considered by the Committee, then referred to the Benchers at December Convocation for review and approval.

ii. Code Amendments

None.

4.4 Future of Legal Services Committee

The new *ad hoc* Committee held its first meeting August 31, 2020 and the first order of business was the creation of a Committee Terms of Reference. They also discussed a proposed workplan for the year.

Gerald Tegart, Q.C., Chair, provided a brief introduction about the formation of the new committee and advised that work of this committee is twofold:

- Providing support to the staff so that they may carry out their work efficiently and completely. It is an interactive Committee, in that staff are

encouraged to participate fully in the meetings. All have a voice at the table and we are expecting very complete discussions on the matters brought to the table.

- Better connection at the board table, in that issues will be vetted by the Committee first, so that when they come before the board table, they can go straight to the issues at hand.

Moved by Barbara Mysko, seconded by Crystal Norbeck, that the FLS Terms of Reference be approved, as written. The motion carried.

4.5 Proposed Pilot Project: Contracting Spot Audits and Review Accountant's Report Requirement (*In-Camera*)

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

5. Discussion Items

5.1 Society Governance

i. Operational Reporting

- President's Report
- Executive Director's Report (*Written reports have been provided on a weekly basis*)
- Federation Council Report

President Tegart, Q.C. reported on the following:

- The AGM was held virtually via *Zoom* on June 26th. A good number of the membership was in attendance and it went smoothly.
- He was involved in the production of videos for articling student orientation.
- He was also involved in the College of Law welcome video, with the assistance of Paul Westgate and Julie Sobowale.
- The Society received an invitation to attend the presentation of newly admitted lawyers at the court houses in Regina and Saskatoon in October. He will attend the Regina session in-person, adhering to social distancing guidelines, with others online.
- On August 24th, Tim Brown, Q.C. and Gerald participated on a conference call with the Queen's Bench court and other legal organizations dealing with changes taking place at the Queen's Bench court and how they are managing with Covid.
- Gerald commented on where things are going, based on Jordan Furlong's presentation. To date, we have dealt with Covid-19 issues effectively and efficiently, but we must increasingly commit

to a longer view of carrying out our responsibilities with restrictions in place.

- Gerald, Tim Brown, Q.C., Foluke Laosebikan, Ph.D, Erin Kleisinger, Q.C. and Craig Zawada, Q.C. meet virtually every week and the conversations are extremely beneficial. There was talk about the possibility of hosting some Benchers gatherings in Regina and Saskatoon on a social basis to keep in touch. We look to the Benchers to determine whether there is sufficient interest.
- He also recently participated on a Discipline panel.

Tim Brown, Q.C. provided an additional written report on September 15th, summarizing the events and experiences that occurred over the past 6 months, with a view on how to move forward. There was also discussion with Glenn Tecker to find out what other organizations are doing, and as an Administration and Executive, we are particularly concerned about doing our utmost to increase strategic discussions. Very soon we will bring forward some strategies and it will require some experimentation. Some ideas may work better than others and we must be prepared to accept the imperfect solutions.

Erin Kleisinger, Q.C. reported on the following:

- A written report was not provided, as there has not been a Federation Council meeting since last report.
- The Federation Conference scheduled for October 14 – 16 in Saskatoon was cancelled and has been replaced by a series of short virtual meetings. A report is planned for December Convocation.
- An initiative which is moving forward is the national well being study (University of Sherbrooke). A steering committee for the study has been created which includes representatives of the Federation, Law Societies and the CBA. She has been selected as one of the two Federation Council members to sit on that committee.

ii. Financial Reporting

a. Financial Statements

Financial statements for the period ended July 31, 2020 were provided for Benchers review.

Tim Brown, Q.C. explained that at the end of July, the general fund was \$980,000 over budget due to a number of factors. Investments income (including unrealized gains) is much higher than expected at this point. The rally of the markets has been a surprise to just about everyone. It is not possible to predict how investments will do by the end of the year,

but we have changed our forecast from zero to about half of where we are at now.

We are behind in terms of strategic spending, some of which is due to timing and some of which is due to prioritization of strategic items, so our forecast has been adjusted down.

Covid has impacted professional services, but it may well turn out to be a timing issue, as we see the uptake of Practice Advisors in relation to certain work with firms. We will also be incurring council fees in the last quarter of the year.

Meeting and travel expenses are also down significantly due to Covid.

Administration has adjusted its forecast of a budget deficit in the amount of \$675,000 to \$390,000. Heading into budget, we will continue to tighten our forecast.

b. Greystone Reports

With respect to our investment reports, the market continues to be strong. Equities may be overvalued and are expected to drop, which is reflected in our year-end report. The advice of our advisors at this stage is to continue to stay the course.

iii. Bencher Self-Evaluation Questionnaire

The Bencher Self-Evaluation Questionnaire was not administered following June Convocation, as is the usual practice, as the Governance Committee was in the process of revising the evaluation process. The Committee met September 1st for a final review of the revised evaluation process and Craig Zawada, Q.C. reported on the results of the meeting.

The same Bencher evaluation has been in place for the last 5 years, which was done by design in order to identify trends. While there were no major problems with the evaluation, there has been a drop in participation, perhaps due to its length. The Governance Committee spent a lot of time reviewing the evaluation and wanted to have a simpler process, while still covering the main areas of board effectiveness

The Committee decided to significantly pare down the number of questions at the Board and Committee level and to discard the June evaluation and simply have one full evaluation each year with a very short evaluation at the end of every meeting. Starting with today's meeting, Administration will send an email with a link to a survey before the *in-camera* session. The survey can be completed immediately if time allows or shortly following the meeting while memories are still fresh. Benchers were encouraged to spend some

time in the comments section to help the Chair identify whether there are any issues.

If the Benchers are comfortable with the new process, the revised full evaluation will be sent in October or early November.

No concerns were identified with the revised process presented.

President Tegart, Q.C. remarked that meeting evaluations are about making meetings more effective going forward. He receives very little feedback and feedback not only helps him, but will also assist the new President, as she takes over in 2021.

iv. Bencher Election 2021

The Governance Committee has completed a preliminary review of the election process to determine whether there are improvements that might be made for the 2021 Election.

Craig Zawada, Q.C. provided an overview of items considered by the Committee, which included the following:

- Reducing the Voting Window: the last few elections have been done electronically, which does not require a 4-week voting window. The Committee felt it was reasonable to reduce the voting window to two weeks, which is the shortest window that would not require a Rule change and AGM approval, and would provide members with a reasonable opportunity to vote.
- Platform: the Committee recommended the continued use of *Votenet* to manage the electronic vote, since the service experience has generally been good. If there are major changes to the platform or the cost, this could be reconsidered.
- Diversity of Candidates: the goal is to attract candidates from all regions and to ensure we are getting the proper mix of candidates by paying attention to diversity and encouraging individuals who may be under-represented to run. The 2018 election was successful in attracting record numbers of candidates. The Committee felt we should stay the course using video outreach and other communication strategies that were effective. The Committee will also look at other means of outreach, including consulting the TRC Advisory Group.
- Voter Engagement: Saskatchewan has close to the highest voting percentage in the country, which is a credit to our membership and communication.
- The Committee did not see a need to regulate submission of campaign materials. We do not have the contentious issues that some other jurisdictions have experienced, but this is a matter that will continue to be monitored.

There was a suggestion that the Law Society may want to consider publishing election results. This was not discussed at the Committee level, but if results are published, candidates should be advised in advance. This will be discussed at the next Committee meeting.

After discussion, there was no opposition to the recommendations and conclusions of the Committee.

6. Information Items

6.1 Strategic Initiatives

i. Expanded Approach to Competency (Goal 1)

a. CPLED (*Informational*)

1. PREP Statistics

The new PREP program launched on June 1st. Current Saskatchewan student numbers in PREP are as follows:

- 85 students total
- 71 students with articles
- 14 students without articles

2. Compressed PREP Consultations (*Informational*)

CPLED is considering introducing a compressed, full-time, 3 month PREP program in addition to the existing 9 month program in 2021. This option is being considered to provide more flexible alternatives to students and firms, prompted by Covid-19.

In order to identify the desirability and the implications of a compressed option, CPLED administration will be conducting market research in each of the CPLED jurisdictions in the fall of 2020.

3. CPD OnDemand (*Informational*)

a. Pandemic Pricing Extended for CPD OnDemand

Subscriptions for the Law Society's new CPD OnDemand streaming service increased significantly throughout the month of August. Despite an initial deadline of August 31st, the pilot period and pandemic pricing (\$349) has been extended until December 31, 2020 in an effort to continue to support member competency during the pandemic. This extension also gives the Society an opportunity to continue to monitor the COVID-19 situation and assess feedback throughout the fall.

b. CPD OnDemand Survey Feedback

A survey was sent in July and re-sent in August, asking subscribers to provide feedback about their experience using CPD OnDemand.

The results show that members find value in the bundling of registration and discounts to live events, with the majority of the respondents indicating that they would register and attend a live webinar; and half of the respondents indicating they would attend a live seminar instead of waiting for the recording of either to be added to CPD OnDemand. There was also the request for the addition of recording dates to the descriptions of videos and the release of “episodes” in bulk, as members do not check regularly whether new content is released.

Overall, the feedback was extremely positive and it is clear that members appreciate the service, while still seeing the value of participating in live and in-person CPD events, both from the Law Society and other providers.

ii. Trusted and Transparent Regulation (Goal 2)

a. Communications (*Informational*)

i. A report from Julie Sobowale was provided to the Benchers.

ii. Law Society Podcasts

In July, we published a [podcast](#) with Dr. Kara Mitchelmore, CEO of CPLED, about the PREP program.

The future of bar admissions education, particularly the fading out of the bar exam, is a hot button issue, so the podcast received significant attention and turned out to be the most popular episode so far this year.

b. Hearing Administrator Position

The process of building recommendations for the Office of the Hearing Administrator is now well underway.

Greg Walen, Q.C. will work on a proposal to be overseen by the Discipline Policy Committee for presentation at Convocation in November.

iii. Innovative and Flexible Leader of an Engaged and Forward-Thinking Membership (Goal 3)

a. Collaboration with the College of Law (*Informational*)

The Futures Class designed by Craig Zawada, Q.C., in collaboration with Dean Phillipson and Tim Brown, Q.C., was approved by the Curriculum Committee on August 12, 2020.

The class will now move to implementation and development and will be rolled out in January 2021.

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

a. Equity and Access Committee

Administration is in the process of finalizing a contract with Illumina to re-draft the EDI membership survey into a more user-friendly format. While it is anticipated that the survey will be ready to launch this fall, it is likely that we would postpone until the first quarter of 2021. The timing of the survey launch will be discussed at the next Equity and Access Committee meeting.

b. Saskatchewan's Judiciary (*Informational*)

Global News aired a video on July 3rd, titled "[Saskatchewan's Judiciary is 91% white; judge says diversity builds trust.](#)" Judge Mary McAuley and Foluke Laosebikan, Ph.D contributed to the video.

c. Truth and Reconciliation Advisory Group

The Administration, along with Riva Farrell-Racette, are still in the process of considering the Federation TRC Committee Report, as well as looking at the Canadian Bar Association's "The Path" which is a 5 module online series developed by a majority Indigenous company and was developed with First Nations, Inuit and Metis advisors and reviewers.

The Law Societies of Alberta and Manitoba are both considering this series with a view to determining whether there might be an opportunity to work with the CBA to add local content and negotiate an arrangement to provide the series to their memberships.

Additionally, Riva Farrell-Racette, with Administration support, is working on a proposed model to guide the Society's approach to responding to Call to Action 27.

v. Increased Access to Legal Services (Goal 5)

a. Legal Information Guidelines (*Informational*)

Administration has been working closely with John Greacen on the development of these Guidelines and they will be ready for December Convocation.

b. Consultation and Legal Needs Assessment (*Informational*)

The Administration worked with CREATE Justice on a plan for a Saskatchewan Legal Needs Assessment, as there is some intersection between our consultation goals and an understanding of legal needs in the province. The timelines for both projects have been impacted and may continue to be impacted by COVID-19, but the goal, ideally, is to have both projects completed by the end of 2020.

With the departure of Melanie Hodges Neufeld, this collaboration will be managed by Julie Sobowale and Jody Martin.

6.2 Society Governance

i. Execution of Strategy

a. Action Plan Progress Update

In an effort to streamline reporting and recognizing that communications and data & technology are integral to the work of the Society as a whole, Administration is shifting from four Teams to two Teams, Competency and Modernizing Regulation, with communications and data & tech expertise embedded in both Teams.

b. Website Migration (*Informational*)

On August 28, 2020, all content was migrated from the live website to the new WordPress Website platform.

This migration improved website user experience by modernizing and improving functionality for both the profession and the public. Some notable improvements include:

- improved searchability;
- online payment for CPD courses, events and products;
- the ability to host CPD webinars on the website, along with online registration and payment;
- a chat feature that allows communication between Reference Librarians, members and the public who require assistance in legal research, thereby improving customer service.

Some Benchers found the new website fresher in appearance and easier to navigate for what they need. Others noted that they were finding some resources difficult to locate. Benchers were encouraged to site any difficulties, along with suggestions for improvement, and submit them to management for consideration. Overall, response from the membership was positive.

Feedback was also encouraged regarding the CPD OnDemand platform. Another link to the survey will be distributed after the meeting to determine the level of Bencher satisfaction. One comment was made that it has been difficult to take advantage of CPD due to other pressures in terms of the new environment and perhaps is the reason for the lack of feedback, therefore, the trial period extension was appreciated.

c. Data Analytics Strategy Update (*Informational*)

The hardware infrastructure for our data analytics warehouse is now in place. It will serve as one central hub that connects information stored in multiple software applications, which can be accessed to create reports and produce statistics.

d. Alinity Upgrade (*Informational*)

In July, the Law Society went live with the first modules of the upgraded Alinity platform, constituting a total revamp of the database, and changing the way things have been done over the last 10 years. The introductory release included the administration staff's database interface, online member profile management and updates, online find-a-lawyer functionality, and the entire complaints and discipline module.

Further development continues on the revamp of the CPD database and trust safety. The next phase will be an online complaints form that can be filed directly from our website, replacing the paper process. Testing is also in the works to ensure membership renewal is in place for November.

ii. Law Foundation Grants

Legal Resources submitted its 2021 grant request in time for the September 14th meeting.

iii. Strategic Planning Cycle

One of the issues that the Governance Committee will be considering over the next few months is how to increase Governance performance, particularly strategic discussions, should the pandemic persist. Gerald Tegart, Q.C., Craig Zawada, Q.C., Foluke Laosebikan, Ph.D , Tim Brown, Q.C., Kara-Dawn Jordan

and Tim Huber recently met with Glenn Tecker to discuss the approaches various organizations are taking and considering to improve performance during social distancing.

A major consideration is strategic planning. 2021 is technically the last year of the strategic cycle and therefore the Governance Committee will consider whether the existing plan needs to be tweaked, given changes in the environment, or completely overhauled. Craig Zawada, Q.C. advised that if our objectives and goals still hold, there is no need for a complete rewrite. In speaking to Benchers and others, it seems likely that we will largely stay the course with some adjustment and/or reprioritization of strategy, rather than develop a new plan in 2021.

iv. Convocation 2021 (*Informational*)

The Executive decided that it was best to postpone securing in-person bookings until the first quarter of next year, since it is impossible to make predictions about 2021. Virtual meetings can continue as they have until in-person meetings are possible.

6.3 Committee Reports

- a. Audit – the Audit Committee has completed its work for the year.
- b. Competency – the Competency Committee has not met since last Convocation. The next meeting is scheduled October 16, 2020.
- c. Conduct Investigation – the next meeting is Scheduled September 16, 2020.
- d. Discipline Policy – communicated *in-camera*.
- e. Equity and Access – the Equity and Access Committee has not met since last Convocation. The next meeting will be scheduled following Convocation.
- f. Ethics – the Ethics Committee has not met since last Convocation. The next meeting is scheduled September 24, 2020.
- g. Executive – no report.
- h. Firm Regulation – the Firm Regulation Committee met via email to review updated Terms of Reference included on the Convocation Agenda.
- i. Governance – items are covered in the Convocation Agenda.
- j. Insurance – no report.
- k. Truth and Reconciliation Advisory Group – the Advisory Group has not met. Work to support this Committee is covered on the Convocation Agenda.
- l. Future of Legal Services Committee – the FLS Committee met on August 31st to consider Terms of Reference and a workplan for the year. A subsequent meeting was held via email to review and discuss the notices as set out in the Convocation Agenda.

6.4 Other Informational Items

- a. *PLEA* – report by Maya Scott
- b. *Sask. Legal Aid Commission* – report by Valerie Macdonald, Q.C.
- c. *University of Regina Senate* – report by David Brundige, Q.C.

7. Law Society Litigation (*In-Camera*)

This new business item was held *in-camera*.

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**
- 8.5 Motion to Adjourn**

President Tegart, Q.C. asked the Benchers to complete the survey. The meeting adjourned at 11:58 am.

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

The Benchers met *in-camera* with the Executive Director.

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

TIMOTHY J. BROWN, Q.C.
Executive Director

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