

Minutes for the Meeting of the Benchers Held Friday, December 4, 2020, via Zoom

Present:

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

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, Jackie Lane, Pamela Kovacs, Sydney Young, and Liz Lynchuk, recording secretary

Riva Farrell Racette, Erin Kleisinger, Q.C., Federation Council and Greg Walen, Q.C. (who attended a portion to make his presentation)

The meeting was called to order at 9:02 am.

1. Approval of the Agenda

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

1.1 Apologies for Absence

An apology for absence was received from Jeff Baldwin.

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. Appointments to the Law Foundation
- ii. Saskatchewan Legal Aid Commission
- iii. PREP Hearing Appeal Panel
- iv. Hearing Administrator
- v. Discovery Period Consultation Update and Notice Forms

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 are for review and approval:

- a. Minutes from the Bencher meeting held September 18, 2020;
- b. *In-Camera* Minutes from the Bencher meeting held September 18, 2020;
- c. Minutes from the Bencher Budget meeting held October 23, 2020.

2.2 Terms of Reference

The Trust Safety Committee approved the Terms of Reference at their November meeting and are recommending them for approval by the Benchers.

Moved by Suzanne Jeanson, seconded by Barbara Mysko, to approve the Minutes of the meeting held September 18, 2020, the *In-Camera* Minutes of the meeting held September 18, 2020 and the Minutes of the meeting held October 23, 2020, as well as the Trust Safety Committee Terms of Reference, as written. The motion carried.

3. Decision Items

3.1 Appointments (*In-Camera*)

- i. Law Foundation (*In-Camera*)

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

- ii. Saskatchewan Legal Aid Commission (*In-Camera*)

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

- iii. PREP Appeal Hearing Panel (*In-Camera*)

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

3.2 Regulation

- i. Rule Amendments

- a. Rules 1501, 1504 and 1514, Part 15 Accounting
Rules 1603 and 1609 – Part 16 Reporting Requirements

Further to her memo, Jody Martin explained that the changes to Part 15 included both substantive and housekeeping changes, as well as the added

definition of “Online Wire Payments Service” to support the substantive amendments to Part 15.

Changes to Part 16 were primarily housekeeping in nature to update references to reflect the renaming of certain forms, as well as to correct cross references.

Practice Directives 1 and 3 were considered at September Convocation to remove reference to a public emergency period and make them permanent. Practice Directive 2 was not amended at that time, as the change could be addressed through amendment to an existing Rule regarding wire transfers.

The amendments to Part 15 render the processes and procedures pursuant to Practice Directive 2 permanent. The effect of the amendments is to modernize trust practices and to ensure continuity of practice for the members once the “period of emergency” concludes. The Committee also considered procedures supporting the Rule amendments, as outlined in Appendix C *Wire Transfer Procedures via Online Wire Payments Service*, which will be posted to the website for the members ease of reference.

Moved by Monte Gorchinski, seconded by Andrea Argue, that Part 15, Accounting Rules 1501, 1504(3)(b), 1514(1), (2) and (5), and 1544(b)(v); as well as Part 16, Reporting Requirements Rules 1603 and 1609(1)(a) and (b), be approved as written in the memo provided by Jody Martin, dated November 24, 2020. The motion carried.

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

On second reading, the motion was presented by Will Lane, seconded by Crystal Norbeck, that Part 15, Accounting Rules 1501, 1504(3)(b), 1514(1), (2) and (5) and 1544(b)(v); as well as Part 16, Reporting Requirements Rules 1603 and 1609(1)(a) and (b), be approved as written in the memo provided by Jody Martin, dated November 24, 2020. The motion carried.

b. Rules 716, 728, 729 and 2302 – Housekeeping Amendments

Further to her memo, Andrea Johnston explained that the amendment to Rule 716(4) was to clarify that Law Professor Members pay only half of the active member fee. Rule 1401(2), Part 14 - Law Society Fees and Assessments, correctly indicates that Law Professor members pay one-half of the active member practice fee as set out in the Schedule of Fees appended to the Rules; for consistency, this should also be indicated in Rule 716(4).

Amendment to Rules 728(2)(b) and 729(1)(b)(c)(d) were simply made to correct incorrect Rule references that remained from the Rules overhaul in 2019.

Rule 2302(1) was amended to clarify that succession plans must be in *writing*. The intention is to have the plan in writing, not in an agreement, per say.

Moved by Barbara Mysko, seconded by Lynda Kushnir Pekrul, that Part 7, Membership and Practice Privileges Rules 716(4), 728(2)(b) and 729(1)(b)(c)(d), as well as Part 23, Withdrawal from Practice Rule 2302(1), be approved as written in the memo provided by Andrea Johnston, dated October 16, 2020. The motion carried.

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

On second reading, the motion was presented by Scott Moffat, seconded by Nolan Kondratoff, that Part 7, Membership and Practice Privileges Rules 716(4), 728(2)(b) and 729(1)(b)(c)(d), as well as Part 23, Withdrawal from Practice Rule 2302(1), be approved as written in the memo provided by Andrea Johnston, dated October 16, 2020. The motion carried.

- c. Rule 703, Part 7 Membership and Practice Privileges
Rules 815 and 817, Part 8 National Mobility and Interjurisdictional
Practice

Further to her memo, Kiran Mand explained that an individual applying for admission as a student-at-law, transfer lawyer, or Canadian Legal Advisor, must submit certificates of character.

Amendments to Rule 703(c), 815(1)(b) and 817(1) were made to remove the requirement to submit certificates of character, as the application process already includes more reliable ways to assess character, in that we have the ability to make enquiries regarding competence and suitability to practice. Additionally, this amendment is consistent with the practice across the country, except for the NWT.

Moved by Lynda Kushnir Pekrul, seconded by Suzanne Jeanson, that Part 7, Membership and Practice Privileges Rule 703(c), as well as Part 8, National Mobility and Interjurisdictional Practice Rules 815(1)(b) and 817(1), be approved as written in the memo provided by Kiran Mand, dated October 29, 2020. The motion carried.

A motion to grant second reading on the same day was presented by Nolan Kondratoff, seconded by John Morrall. The motion carried.

On second reading, the motion was presented by Kaitlynn McArthur, seconded by Barbara Mysko, that Part 7, Membership and Practice Privileges Rule 703(c), as well as Part 8, National Mobility and Interjurisdictional Practice Rules 815(1)(b) and 817(1), be approved as written in the memo provided by Kiran Mand, dated October 29, 2020. The motion carried.

4. Discussion Items

4.1 Society Governance

i. Operational Reporting

a. President's Report

President Tegart reflected on the year, expressing gratitude for working with a remarkable team of Benchers and staff, who can be proud of what was accomplished during the pandemic and who can be optimistic about what can be done throughout the remainder of the pandemic.

b. Executive Director's Report

A written report was provided by Tim Brown, Q.C. and he indicated that he would follow up with a year-end review at the end of December.

Tim expressed his appreciation on having an exceptional year working with the board and staff.

c. Federation Council Report

In addition to her written report, Erin Kleisinger, Q.C. made a few additional remarks. She noted that although the in-person Federation Conference could not go ahead, the virtual topics were very interesting.

Erin expressed a heartfelt thank you to Tim Brown, Q.C. and the rest of the Administration for their vision and courage to take the steps that positioned the Society to handle the challenges faced during the pandemic and thrive during this period. She thanked President Tegart and the Executive for rising to the occasion and showing leadership. She also expressed appreciation to the Benchers for letting her represent Saskatchewan at the Federation level.

ii. Financial Reporting

a. Financial Statements

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

Tim Brown, Q.C. reported that a reduction in expenses will more than offset revenue this year. We expect to end up slightly ahead of budget at the end of the year.

b. Greystone Reports

A copy of the Quarterly Investment Report for the period July 31 – September 30, 2020 was included for review.

c. Special Investment Report

The Audit Committee, Executive Committee and relevant staff met with Loren Gee, TD Investment Manager. A memo from Pam Harmon, CPA, CA provided a report of the meeting.

Tim Brown, Q.C. reported a very full discussion was had about the risks and benefits of altering our investments. There was no question from the meeting that at this time, we should stay the course. However, the group also raised the issue that in the not-too-distant future, it would be prudent to have a discussion and look at growth of funds vs. retention of capital. We will revisit this in the new year.

iii. Bencher Vacancy

Due to the appointment of Justice Cara Haaf on November 19, 2020 to the Queen's Bench court in Saskatoon, we have one Bencher vacancy.

Craig Zawada, Q.C., Chair of Governance, outlined the process involved in filling the vacancy and the likely timeline for having a new Bencher at the table. The Benchers discussed whether to fill the vacancy, make a determination to wait until the 2021 general election, or defer until February 2021 Convocation, with the understanding that it will become less likely to fill the position as time passes.

Moved by Ian Wagner, seconded by Craig Zawada, Q.C., that the Society wait until the 2021 general election to fill the vacancy. One opposed. The motion carried.

iv. Bencher Evaluation

A memo from Kara-Dawn Jordan summarizing the results of the November 2020 Bencher Effectiveness Questionnaire was included for information.

4.2 Hearing Administrator (*In-Camera*)

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

4.3 Futures Class

The Futures Class will be presented as a seminar class at the College of Law, starting in January 2021. Professionalism and ethics form an important part of the course, as they reinforce professional obligations at the beginning of law school. The course will

also prepare students to acknowledge that lawyers will be working differently in the future.

Some of the Benchers were interested in taking the course. It will be available as an academic course for students first, then perhaps offered to the membership in the future.

4.4 Legal Information Guidelines

A memo from Jody Martin was provided for review, along with the draft Legal Information Guidelines and a copy of the *SALI Resource on Detecting Legal Problems and Legal Information Sources in Saskatchewan*.

There is a difficult line between legal information and legal advice and so the Legal Services Task Team recommended that we provide a definition for legal information and then provide some guidelines to help people understand the difference. There is an important distinction to be made between the two in order to enhance access to legal services by ensuring that self-represented litigants are able to obtain the information they require; and to do that without the Law Society impeding the process.

There is also a fine line between access to justice and protection of the public, creating some discomfort with the guidelines, however, there would be even more discomfort without any guidelines. There are currently a lot of providers of legal information out there and the guidelines as presented are the initial stages to the process. Once they are provided to the public, we will get feedback and suggestions regarding other areas we can provide further guidance on. We will also be able to identify areas that touch on additional exceptions.

The Benchers approved the draft guidelines, in principal, with the understanding that the guidelines will evolve and improve over time. It is a starting point that will create a broader understanding that will assist the public looking for legal information as opposed to legal advice.

5. Informational Items

5.1 Strategic Initiatives

- i. Expanded Approach to Competency (Goal 1)
 - a. Reduction in Minimum Articling Term – Extended to March 31, 2021

At its October 16th meeting, the Competency Committee passed a motion to extend the temporary waiver of Rule 706, to permit the reduction of the articling term requirement from 12 months to a minimum of 8 months, for students commencing articles up to March 31, 2021.

b. Firm Regulation

The Firm Regulation Committee considered an amended approach to implementation of the Assessment Tool at its meeting on November 9, 2020. The Society will implement the Assessment Tool on a voluntary basis for the first two quarters of 2021 to reduce the regulatory imposition during these challenging times, to allow firms to ease into this new process and to facilitate a mini-pilot of the Tool.

To support the successful integration of the Assessment Tool into the Society's regulatory structure, the implementation timelines and the Assessment Tool content may be subject to change to allow for improvement to the tool based on user feedback or to address other considerations as they arise. Administration will continue to work closely in partnership with the Firm Regulation Committee throughout the course of implementation and the Committee will update the Benchers accordingly through its regular reporting.

ii. Trusted and Transparent Regulation (Goal 2)

a. Communications

i. A report from Julie Sobowale was provided.

ii. Law Society Podcasts

On Thursday, October 29, we released our latest episode. Tim Brown, Q.C. was one of the guests discussing the Legal Needs Assessment. More information was outlined in the Communications Report.

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

a. Annual Demographic Data Collection

In preparation for the upcoming annual renewal process, a communication was sent to the membership on October 29th, advising that the Society would once again provide members an opportunity to anonymously volunteer information about themselves to assist us in learning more about the demographic makeup of the legal profession in Saskatchewan. The information gathered will assist the Law Society to understand the makeup of the profession, focus its efforts to develop programs and initiatives to promote equity, diversity and inclusion in the profession, and to monitor trends and progress over time.

A large majority of the members who completed annual renewal shared their demographic information, while approximately 6% - 15%, depending on the question, indicated a preference not to answer. A further report will be provided after annual renewal closes.

b. Equity and Access Committee

Administration has been working with Illumina on a revised version of a member-wide EDI Survey. The survey is intended to identify barriers to entry and advancement in the legal profession and seek feedback on steps the Law Society can take to address these barriers. The survey will be reviewed by the Equity & Access Committee at its next meeting in December. At this time, it is anticipated that the Survey will be launched in the first quarter of 2021.

iv. Increased Access to Legal Services (Goal 5)

a. Consultation and Legal Needs Assessment

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 by COVID-19, however, consultations and outreach have been reinvigorated and the Final Report for Phase 1 of the Legal needs Assessment (Comprehensive scan and evaluation of existing data on legal needs/gaps in Saskatchewan) is expected at the end of January.

Phase 2, which is a survey of legal and near legal service professionals, social service agencies, and practicing lawyers, is expected to go ahead in the second quarter of 2021.

b. Future of Legal Services (*In-Camera*)

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

5.2 Society Governance

i. Execution of Strategy

a. Action Plan Progress Update

Team Action Plans were provided (Competency and Modernizing Regulation), with updated progress reports, for review by the Benchers.

ii. Bencher Committee Preferences 2021

The Benchers were asked to submit their preferences for 2021 Committee appointments.

iii. Practicing Fee 2020 – 2021

The Budget was approved at October Convocation, with no increase to the practice fee as recommended in the 3-year Strategic Plan.

iv. Convocation Dates 2021

The Executive selected the following Convocation Dates for 2021:

- Friday, February 26, 2021
- Friday, April 30, 2021
- June 23 – 25, 2021
- September 22 – 24, 2021
- October 13 – 14, 2021 – Federation Conference (tentative)
- Friday, October 29, 2021 – Budget
- December 1 – 3, 2021

5.3 Committee Reports

- a. Audit – the Audit Committee has completed its work for the year.
- b. Competency – a written report was attached.
- c. Conduct Investigation – met on October 20, 2020 to conduct its regular business of considering referrals. Nothing new to report.
- d. Discipline Policy – nothing new to report.
- e. Equity and Access – expected to have its next meeting in December.
- f. Ethics – met on September 24, 2020, reviewed 4 matters and discussed the proposal from the Real Estate Sub-Committee regarding uniform trust conditions. It was recommended the sub-committee further consult with Randy Sandbeck, Q.C. The next meeting was scheduled for December 3, 2020.
- g. Executive – no report.
- h. Firm Regulation – a written report was attached.
- i. Governance – expected to have its next meeting in December.
- j. Insurance – a written report was provided.
- k. Trust Safety – a written report was attached.
- l. Truth and Reconciliation Advisory Group – scheduled to meet on December 2, 2020.
- m. Future of Legal Services Committee – a written report was attached.

5.4 Other Informational Items

- a. *Senate of the University of Saskatchewan* – report from Max Bilson

6. Election of President and Vice-President

Foluke Laosebikan, Ph.D was the only declared candidate for the President of the Law Society of Saskatchewan, commencing January 1, 2021.

Moved by Ian Wagner, seconded by Crystal Norbeck, to confirm the election of Foluke Laosebikan, Ph.D. The motion carried unanimously.

After speeches were made by the two Vice Presidential candidates, James Korpan, Q.C. and Andrea Argue, the Benchers voted by secret ballot and James Korpan, Q.C. was selected as Vice President, commencing January 1, 2021.

7. Meeting Finalization

- 7.1 Review Actions to be Taken**
- 7.2 Confirm Items under 1.4**
- 7.3 Meeting Evaluation**
- 7.4 Next Meeting - Friday, February 26, 2021**
- 7.5 Motion to Adjourn**

The meeting was adjourned at 12:12 pm and the Benchers went *in-camera* with the Executive Director.

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

In-camera meeting with Tim Brown, Q.C.

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

TIMOTHY J. BROWN, Q.C.
Executive Director