

Minutes for the Meeting of the Benchers Held Friday, February 26, 2021, via *Teams*

Present:

Foluke Laosebikan, Ph.D, James Korpan, Q.C., Gerald Tegart, Q.C., Andrea Argue, Jeff Baldwin, Leslie Belloc-Pinder, Q.C., Monte Gorchinski, Glenn Hepp, Suzanne Jeanson, Nolan Kondratoff, Lynda Kushnir Pekrul, William Lane, Kaitlynn McArthur, Scott Moffat, 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 and Liz Lynchuk, recording secretary.

Erin Kleisinger, Q.C., Federation Council.

The meeting was called to order at 10:03 am.

1. Approval of the Agenda

1.1 Apologies for Absence

An apology for absence was received from Jill Drennan.

1.2 Confirmation of Agenda

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

1.3 Bencher Conflict of Interest Disclosures

Gerald Tegart, Q.C. declared a conflict for item 3.2(iii) Practitioner Staff Appeals Tribunal. He can be present for that portion of the meeting, however, he will not participate in voting or in discussion.

Item 3.2(iii), CPLED Loan Waiver – Tim Brown, Q.C. is a CPLED board member and an officer of the Law Society and although he does not have a conflict in the true sense in that he is not eligible to vote, he wanted to bring it to the attention of the Benchers.

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

- i. Appointments
- ii. Hearing Administrator Position

2. Consent Agenda

The Consent Agenda includes items which are not considered controversial and will collectively be enacted by one motion.

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

2.1 Approval of the Bencher Minutes

The following Bencher Minutes are for review:

- a. Minutes from the Bencher meeting held December 4, 2020;
- b. *In-Camera* Minutes from the Bencher meeting held December 4, 2020;

Moved by Ian Wagner, seconded by Crystal Norbeck, to approve the Minutes of the Bencher meeting held December 4, 2020 and the *In-Camera* Minutes of the Bencher meeting held December 4, 2020, as written. The motion carried.

3. Decision Items

3.1 Strategic Initiatives

- i. Future of Legal Services Task Team
(Increased Access to legal Services – Goal 5)
 - a. Discovery Period Consultation Update and Notice Forms

One Notice Form was received since December Convocation and was not received in time for consideration at the February 9th FLS Committee meeting. It will be ready for discussion at April Convocation.

- b. Exceptions to Unauthorized Practice

This Agenda item will be discussed at Item 3.3, Rule amendments.

3.2 Appointments (*In-Camera*)

- i. Senate of the University of Regina

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

ii. CPLED Board

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

iii. Practitioner Staff Appeals Tribunal

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

3.3 Regulation

i. Rule Amendments

a. Rule 1002 – Exceptions from the Prohibition Against the Unauthorized Practice of Law

Comment was made that the format of the memo where key information can be found on the very first page was extremely useful, along with the summary and actions required. Administration is seeking additional feedback on the new memo format through the post-meeting feedback questions.

Recent amendments to the *Act* and Rules have created a legislative incongruity. Section 29.1 and section 30(1) of our new *Act* could be read as an absolute bar on non-lawyers appearing in court on behalf of others. That absolute bar is inconsistent with other legislation such as *The Small Claims Act* and the *Criminal Code*. The Zielke decision spelled out a balance that can be struck on this issue based on the wording of our old legislation, where the charging of a fee was a distinguishing factor that made our legislation able to function alongside the other legislation that authorizes agents.

The complete bar is subject to the exceptions set out in section 31 of the *Act* and the additional sections authorized by 1002. The proposed amendment is meant to spell out clearly that non-lawyer agents are allowed as long as they are in compliance with Section 30 of our *Act*, which says people who are appearing in court and are not lawyers cannot charge a fee.

The other amendment proposed is meant to modify our Rules relating to the administrative tribunal exemption to address tribunals that authorize paid agents.

At this point, the intention is to be more open in certain circumstances, Small Claims Court for example, where someone who is not a lawyer might provide legal services because it is considered low risk. There are many reasons why that might be an option and further discussion needs to be held in relation to what non-lawyers can do in certain circumstances. For now, the intent is to resolve the incongruity which will

preserve the *status quo* while we determine how to regulate the non-lawyer service providers acting in these spaces.

Moved by Leslie Belloc-Pinder, Q.C., seconded by Jeff Baldwin, that Part 10, Alternative Legal Service Providers, Rule 1002(1)(a) be amended to add subsection (xiii) to accommodate legislatively authorized agents and avoid potential legislative incongruity; and Rule 1002(2)(e) be amended in relation to the administrative tribunal exemption to deal with tribunals that authorize paid agents, be approved as written in the memo provided by Tim Huber, dated February 17, 2021. The motion carried.

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

On second reading, the motion was presented by Scott Moffat, seconded by Kaitlynn McArthur, that Part 10, Alternative Legal Service Providers, Rule 1002(1)(a) be amended to add subsection (xiii) to accommodate legislatively authorized agents and avoid potential legislative incongruity; and Rule 1002(2)(e) be amended in relation to the administrative tribunal exemption to deal with tribunals that authorize paid agents, be approved as written in the memo provided by Tim Huber, dated February 17, 2021. The motion carried.

3.4 Resolutions

i. TD Asset Management Inc. - Investments

A TD Asset Management Inc. Resolution was provided for signatures. With the appointment of a new President and Vice-President, they require a resolution authorizing the signing authorities as set out therein.

Moved by Ian Wagner, seconded by Monte Gorchinski, that the TD Asset Management Inc. Resolution be approved as written. The motion carried.

ii. TD Bank Account

A TD Bank Resolution was provided for signatures. With the appointment of a new President and Vice-President, the bank requires a resolution authorizing signing authorities as set out therein.

Moved by Lynda Kushnir Pekrul, seconded by Kaitlynn McArthur, that the TD Banking Resolution be approved as written. The motion carried.

3.5 Governance Policy Manual

Over the course of 2020, all Committee Terms of Reference were updated to accord with the new *Act* and Rules. The remainder of the Governance Policy manual also needed to be updated and this round of amendments

are to update Rule and *Act* references, make the language used consistent with the amended *Act* and Rules and update other obvious out-of-date items. There was also an amendment to loosen the restrictions around meeting by video conference.

One of the policies that will be revisited in the near future is the Conflicts of Interest Policy, particularly in relation to Benchers with formal complaints. This will be referred to Discipline Policy and then come back to Governance before returning to the Bencher table. CIC is also discussing how Bencher referrals to CIC are dealt with now that we have a new CIC model. Further changes to the Governance Policy manual can be expected as the year goes on.

Moved by Barbara Mysko, seconded by Crystal Norbeck, that amendments to the Governance Policy Manual be approved, as written. The motion carried.

3.6 CPLED Loan Interest

i. Finance

a. CPLED Loan Interest

The Audit/Finance Committee of CPLED has indicated that it would be of great benefit if law societies were prepared to waive the interest payment due after the first year of operations. The additional resources are required to allow the program to continue to improve based on insight gained from the first year of operation. It was noted that if we were to collect the interest at this point, it would simply be clawed back in the form of a further cash-call by the organization. Alberta and Manitoba have agreed to waive interest for the first year. The issue was raised as a strong potential during budget discussions in October and Administration seeks a motion to that effect.

Moved by Leslie Belloc-Pinder, Q.C., seconded by Nolan Kondratoff, to waive the 2021 interest charges in the approximate amount of \$38,000 pertaining to the CPLED Loan, in support of the start-up of CPLED, be approved.

Discussion:

- None of the jurisdictions involved are prepared to waive repayment of the principal, just the interest.
- The proposal is a waiver not a deferral of interest, so is essentially a cash injection.
- The amount of interest being waived is different by jurisdiction based on the size of the loan; Alberta's loan is larger than Saskatchewan's and Manitoba's.

The motion carried unanimously.

4. Discussion Items

4.1 Society Governance

i. Operational Reporting

a. President's Report

President Laosebikan attended this year's virtual CBA Mid-winter meeting and one session in particular, hosted by Chief Justice Richards, was thought-provoking. He spoke about the duty of lawyers to support democracy and the rule of law. Democracy is not a given in any country. Lawyers need to be guardians of facts and truth and should educate others when the discussion of democracy arises. Especially in these times when the lines between fact and falsehood are becoming more and more blurry. The new virtual platform also provided the opportunity to visit booths just as we would have if attendance were in person.

The Executive met with Steve Raby, Q.C., President of the Federation, and Erin Kleisinger, Q.C., our delegate, two weeks ago. One topic for discussion was whether or not the Federation conference would go ahead this fall. Mr. Raby indicated that many are happy about the prospect, however, there is uncertainty as to whether travel will be allowed.

The invitation for Benchers to join the Executive on Thursday mornings at 8:30 am remains open during the year for any questions or issues of concern. Discussion can also be held through the Chat on *Teams*. Email or call the President to be included in the conversation.

b. Executive Director's Report

Tim Brown, Q.C. provided a written report and opened the floor to questions.

All of Jordan Furlong's reports have been aggregated into one single pdf and have a permanent home on our *Teams* site, along with the Executive Director communications.

A comment was made that the year in review was a well-written document. All were reminded about how the year progressed, along with the high points and the challenges. Having a balanced, fair and detailed assessment offered guidance in moving forward. It is also a document of historical significance.

A question was posed regarding whether the Administration has been considering what things will look like when some degree of normalcy returns and Tim Brown, Q.C. noted that it is a question every organization should be asking and it indeed forms part of Administration's regular discussions. It is an ongoing assessment. Some systems have permanently changed for the better since the pandemic and are already hard-baked into our process.

c. Federation Council Report

Erin Kleisinger, Q.C. provided a written report that highlighted matters discussed at the December 2020 Federation Council meeting.

She noted that there was discussion about where to go next in terms of implementing the recommendations of the Truth and Reconciliation Commission Calls to Action Advisory Committee. A new committee will be created to carry out the new phase of the Federation's work. The new committee will be supported by an Indigenous Advisory Counsel.

One recommendation coming from the previous committee was to make a formal statement of commitment to reconcile with Indigenous people. The Council has adopted a statement which was included in the materials.

The Model Code Committee is prioritizing the incorporation of Indigenous cultural competency into the *Model Code*. Proposed amendments will be sent out for consultation. Other committees are also looking at how the recommendations will play into their work.

Plans are in the works for an in-person Federation Council meeting in Saskatoon in October. Erin is Chair of the new planning committee, joined by Tim Brown, Q.C. and Martin Phillipson. Content will be around entry into the profession and supporting new members. We hope it will go ahead in person and that Saskatchewan can host in the fall.

ii. Financial Reporting

a. Financial Statements

Draft unaudited financial statements for the year ended December 31, 2020, along with a brief memo containing a variance analysis both from budget and most recent forecasts, were provided for discussion.

Last year, Administration went through the process of recasting our budget based on a new set of assumptions due to the pandemic. It was forecasted that declines in revenues would be offset by declines in expenses. By year end, we had exceeded our forecasting by \$600,000 as a result of unexpected gains in the

market; the markets were significantly stronger last year than many predicted and hoped. Administration was very satisfied with the end result.

In November 2020, Administration made the decision to stay the course with investments but did agree to have further discussion in 2021. There was also discussion around establishing an *ad hoc* committee to discuss the connection between fees and revenue. Administration was asked to consider investment advice from an independent consultant, however, it would cost between \$30,000 - \$40,000 for that service and Greystone already provides this service under securities guidelines. Further discussion can take place within the *ad hoc* committee.

b. TD Asset Management Inc. Reports

The Quarterly Investment Report for the period October 1 – December 31, 2020 was provided for review.

c. Annual General Meeting and Approval of Audited Financial Statements for the year ended December 31, 2020

Audited financial statements for the year ended December 31, 2020 will be approved by the members at the AGM to be convened on Thursday, June 24th over the lunch hour.

The Benchers will need to approve the audited financial statements prior to the AGM, which means a *Teams* meeting will be arranged for mid-May. In March, the Benchers can expect to receive a link for a Doodle Poll.

iii. Bencher Honoraria

As done in 2019 and 2020, 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.

In addition, Benchers will continue to receive full access to CPD OnDemand, providing free access to all recorded Law Society CPD resources.

iv. Governance Refresher Training

Time was allotted on Thursday February 25, 2021 from 1 to 4 pm for Governance Refresher Training presented by Glenn Tecker.

Overall, the Benchers agreed that providing governance training early on is essential because it prepares new board members in their role and provides them with a common starting point. Glenn Tecker is helpful because he knows and understands our organization well and probes and prods the board, asking the right questions that force Benchers to think about their role, why they are here and what they want to accomplish.

One idea proposed for consideration was boards implementing a balanced scorecard – not only to measure strategic objectives, but for performance management as well. Scorecards are an easy way to measure performance and can be very useful. Consideration will be given to this concept.

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

In October 2020, 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.

An update will be provided at April Convocation.

- b. Firm Regulation

In order to accommodate shifting timelines and capacities of our Prairie Partners, as well as to increase the volunteer pool to participate in the soft launch, the launch date for the Online Assessment Tool has been extended to April 1st.

The extension will allow Practice Advisors more opportunity to provide feedback on and become familiarized with the Tool content and its resources during the pre-launch phase. The additional time also creates more distance between the launch of the Online Annual Report and the Online Assessment Tool, thus allowing the Designated Representatives to focus initially on completing their annual reporting requirement in its new format.

Initial communications went to the Designated Representatives in January 2021 seeking firms to volunteer in the soft launch process. Administration received several immediate responses from firms interested in completing the Online Assessment Tool, which is encouraging; however, we did not receive a sufficient number of

volunteers. In order to expand that group, staff will be engaged in direct outreach to the prior participants of the 2017 pilot project, as well as to sole practitioners over the next few weeks. The expanded volunteer group will increase the opportunity for feedback and help facilitate a successful launch of the mandatory requirement, which will be considered by the Firm Regulation Committee following assessment of the soft launch in June.

Bencher firms were encouraged to participate in the soft launch phase and were directed to contact Jody Martin.

ii. Trusted and Transparent Regulation (Goal 2)

a. Communications

- i. A report from Julie Sobowale was provided.
- ii. Law Society Podcasts – Planning is underway for the 2021 podcast schedule as part of the overall communications workplan.

b. Hearing Administrator Position (*In-Camera*)

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

c. Annotated Code of Conduct

A memo was provided from Stacey McPeck regarding the Annotated *Code of Professional Conduct*. The *Code* was provided as a resource only and will be released after Convocation.

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

a. Collaboration with the College of Law

In January 2021, the Futures Class went live with 11 student registrants. Craig Zawada, Q.C. is currently working with the Administration to consider alternative methods for converting the Futures Class into CPD and outreach programming for the benefit of the members.

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

a. Annual Demographic Data Collection

Results of the demographic data collection portion of the 2020 Annual Renewal were similar to the results obtained in the 2019 year, both in terms of the response rate and the demographic makeup of the membership.

A memo from Kara-Dawn Jordan regarding demographic data as part of 2020 Annual Renewal was provided for information.

v. Increased Access to Legal Services (Goal 5)

a. Legal Information Guidelines

The Draft Guidelines were approved at December Convocation and are currently publicly available on the LSS website. The Guidelines will be promoted more widely through our various stakeholders and partners. Feedback will be collected throughout the year for review and amendment as needed.

b. 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. Report for Phase 1 of the Legal Needs Assessment (comprehensive scan and evaluation of existing data on legal needs/gaps in Saskatchewan) is expected in Q1.

Communication has also been initiated with Justice and Statistics Canada regarding a national population-based 2021 Canadian Legal Problems Survey and Saskatchewan-specific data.

5.2 Society Governance

i. Execution of Strategy

a. Annual Activity Plan Progress Update

Administration has gone through the process of:

- identifying the work anticipated to go ahead across the organization in 2021 to further strategy; and
- reconfiguring how this work is tracked to allow for improved and more digestible reporting.

A *draft* document was included for information and will be finalized with the addition of strategic references once committees have had a chance to review and approve the annual workplans. It is intended to be a living document. Following Convocation, technical work to integrate the content into the appropriate format for recording and reporting will be done.

The impulse to create an annual activity plan was prompted by workplans spread across several documents that were difficult to manage and not user-friendly for the Benchers. Once complete, it will be stored on the *Teams* dashboard where all the information is in one place and reported in real time. Administration hopes the Benchers will find it useful.

ii. Strategic Planning Cycle

2021 is the last year of the 3-year strategic cycle and the Benchers decided at September 2020 Convocation to stay the course with some adjustment and/or reprioritization of strategy, rather than develop a new plan in 2021.

The issues of wellness and mental health have been identified as noticeable gaps in our Strategic Plan which will be addressed this year.

iii. Public Representative Benchers 2021

The appointments of both Kaitlynn McArthur and Lynda Kushnir Pekrul are up for renewal this year and both are interested in serving a second term. Monte Gorchinski's term ends December 31, 2021 and his vacancy must be filled. The process will begin on March 2nd via a meeting with the Minister. A plan for how the process will work now that we have a new Nominations Committee will have to be developed and this is hoped to be accomplished by late March.

iv. Bencher Election 2021

2021 is a Bencher Election year, therefore, plans will begin over the next few months to advertise the election to the members and attract candidates.

There are several items to be considered in relation to "election readiness" and they have been included in the Annual Activity Plan for discussion by the Governance Committee.

v. Annual General Meeting

An email communication will be sent to the membership at the end of April, advising that the AGM is scheduled for June 24, 2021 over the lunch hour.

According to Rule 403, Resolutions are required 30 days before the AGM, which means the deadline for Resolutions is May 24, 2021. This will also be included in the message to members.

vi. Standardized Board Materials

Administration proposes the use of standardized Board memos to provide focus on issues for consideration by the Board. These memos will also make materials more efficient and compact and will utilize the cloud-based capabilities of the new *Teams* environment.

5.3 Committee Reports

- a. Audit – report contained in the Agenda.
- b. Competency – next meeting scheduled March 12, 2021.
- c. Conduct Investigation – next meeting scheduled February 23, 2021.
- d. Discipline Policy – nothing to report.
- e. Equity and Access – currently scheduling a meeting March 2021.
- f. Ethics – next meeting scheduled February 25, 2021.
- g. Executive – no report.
- h. Firm Regulation –scheduling a meeting for mid-March.
- i. Governance – report contained in the Agenda.
- j. Insurance –scheduled to meet in advance of February Convocation.
- k. Trust Safety – scheduling a meeting prior to April Convocation.
- l. Truth and Reconciliation Advisory Group – meeting scheduled February 24, 2021.
- m. Future of Legal Services – report contained in the Agenda.

5.4 Other Informational Items

- a. *Saskatchewan Legal Aid Commission* – Report provided by Ray Wiebe

6. Meeting Finalization

- 6.1 **Review Actions to be Taken**
- 6.2 **Confirm Items under 1.4**
- 6.3 **Meeting Evaluation**
- 6.4 **Next Meeting – Friday, April 30, 2021**
- 6.5 **Motion to Adjourn**

The meeting adjourned at 12:10 pm and the Benchers went *in-camera* with the Executive Director. Moved by Ian Wagner, seconded by Kaitlynn McArthur that the meeting be adjourned. The motion carried.

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

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

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

TIMOTHY J. BROWN, Q.C.
Executive Director