

# **Minutes for the Meeting of the Benchers Held Friday, November 29, 2019 Hotel Saskatchewan, Regina, SK**

## **Present:**

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

## **In attendance:**

Tim Brown, Q.C., Tim Huber, Stacey McPeck, Andrea Johnston, Kiran Mand, Melanie Hodges-Neufeld, Jenna Kraushaar, Kara-Dawn Jordan, Jakaeden Frizzell, Stephanie Kievits, CPA, CA, Paul Westgate, Don Hansen, FCPA, FCA and Julie Sobowale (regrets from Jody Martin and Valerie Payne)

Erin Kleisinger, Q.C., Federation Council, was also in attendance.

## **1. Approval of the Agenda**

### **1.1 Apologies for Absence**

An apology was received from Kaitlynn McArthur.

### **1.2 Confirmation of Agenda**

Jeff Baldwin moved approval of the Agenda. John Morrall seconded. The motion carried.

### **1.3 Bencher Conflict of Interest Disclosures**

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

- i. Governance Reform
- ii. Hearing Administrator Position

## **2. Approval of the Minutes**

- i. Bencher Minutes for the meeting held September 13, 2019

Nolan Kondratoff moved approval of the September 13, 2019 Bencher Minutes. Glenn Hepp seconded. The motion carried.

- ii. *In Camera* Bencher Minutes for the meeting held September 13, 2019

Nolan Kondratoff moved approval of the September 13, 2019 *In Camera* Bencher Minutes. Cara Haaf seconded. The motion carried.

- iii. Bencher Minutes for the meeting held October 25, 2019

Monte Gorchinski moved approval of the October 25, 2019 Bencher Minutes. James Korpan, Q.C. seconded. The motion carried.

- iv. *In Camera* Bencher Minutes for the meeting held October 25, 2019

Crystal Norbeck moved approval of the October 25, 2019 *In Camera* Bencher Minutes. Foluke Laosebikan, Ph.D seconded. The motion carried.

## **2.1 Amendments**

## **2.2 Confirmation of Minutes**

## **2.3 Business Arising from Minutes**

# **3. Governance Reform (In Camera)**

The Thursday afternoon session on November 28<sup>th</sup> was held *in-camera* and was devoted to approval of Rule amendments and Governance Reform. (*Rules Overhaul is item 6.1*)

# **4. Strategic Initiatives**

## **4.1 Expanded Approach to Competency (Goal 1)**

- i. CPLED

A combined board meeting/AGM were held October 29 – 30 in Winnipeg. Tim Brown, Q.C. reported that the pilots are going well.

One outstanding issue is how the appeals process might work if centralized. An opinion is being sought by an administrative law expert and we expect to have model rules to review by February. Consideration of the Rules will likely take place in April.

- ii. Legal Resources – Regina Space Update

Construction at the Court house will start next week. Library staff are able to remain on site for the majority of the construction. The library will have to close for a couple of days only.

iii. Change to CPD Term

The change of the 3-year rolling CPD Term to a 1-year CPD Term, along with the transitional requirements, was approved by the Benchers at September Convocation, effective January 1, 2020.

We have been communicating the upcoming changes to the membership. For information, a communication sent to the membership on October 11, 2019 was included for review. Andrea Johnston continues to work on implementation.

iv. Cloud Computing Checklist and Best Practices

The ISM Cloud Computing Guidelines prepared in 2018 called for the creation of a Cloud Computing Working Group. This working group was appointed by PSC and held their first meeting on October 24, 2019.

The Working Group consists of Josh MacFadden (Chair), Nathan Schissel, Joseph Gill and Cory Furman.

The Working Group reviewed its terms of reference and created a general plan to complete each of its assigned tasks. The first step the Working Group will do is design a survey of the membership to assess what and how the membership is currently using technology. They believe this will better inform their review of the Guide and Checklist, as well as the Rules.

Benchers should also be aware that one of the tasks assigned to the Working Group is to be available to consider any issues that relate to cloud computing that may be raised by the membership, Society, or others. This will be similar to how the Ethics Committee considers ethical issues.

## 4.2 Trusted and Transparent Regulation (Goal 2)

i. Communications

A report from Julie Sobowale and Melanie Hodges was provided for information.

Since the report was written, Julie Sobowale and Paul Westgate attended a CBC event for podcast providers. The Law Society received good public feedback and there was a lot of interest in our strategic goals.

ii. Hearing Administrator Position (*In Camera*)

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

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

##### **i. Law Society Podcast**

In August, the Law Society launched a new monthly series focused on Law Society initiatives and areas of interest to the profession. Three podcasts have been published about the Gladue Rights Research Database, resilience training and Access to Justice Week. The next scheduled podcast will be at the end of November focused on new changes at CanLII. The first two episodes each had more than 250 listeners.

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

##### **i. Equity & Diversity**

At September Convocation, the Benchers approved the process for the collection of demographic data at annual renewal, which includes requiring members to review and respond to the demographic questions, with the option to respond by selecting “I choose not to answer this question.” Communication went out to the membership on October 10<sup>th</sup> and again on October 29<sup>th</sup>. The written instructions that went out with the annual renewal letter contained similar messaging, as do the instructions contained in the database used for annual renewal.

To date, the response rate to the demographic questions has been good; between 85% - 94% provided an answer depending on the question. The Law Society has not received any direct feedback from the membership in relation to the demographic questions and there has been minimal concern raised around the survey results themselves.

Administration is reviewing what is hoped to be the final draft of the Equity, Diversity and Inclusion Survey. A decision has been made based on global change management considerations to hold back launch of the survey until the first quarter of 2020. The Survey will be provided to the Equity & Access Committee for review and approval at its next meeting, which will likely be held in either December or January.

#### **4.5 Increased Access to Legal Services (Goal 5)**

##### **i. Legal Services Task Team**

Consultations with relevant stakeholders to help create guidelines on the distinction between legal information and legal advice, as well as the exceptions to unauthorized practice, began in the fall and continue. Based on the feedback received, a new exception regarding administrative

tribunals, as well as an amnesty provision, was developed as discussed at Agenda Item 6.1 i.

ii. Saskatchewan Access to Justice Working Group

The Access to Justice Network met on November 18<sup>th</sup> in Saskatoon and Melanie Hodges Neufeld was in attendance. Updates were provided on:

- The new PLEA website: set to launch at the end of November;
- Ministry of Justice online dispute resolution initiative: first focus will be traffic violations and tribunal work;
- Law Society guidelines on the distinction between law information and legal advice;
- Legal needs assessment.

The Network also discussed two possibilities for future Dean's Forum topics (March 2020):

- Re-imagining Family Justice in Saskatchewan;
- Ideas for Limited Licensed Practitioner Pilot.

The Network meets next in June 2020.

## **5. Society Governance**

### **5.1 Operational Reporting**

i. President's Report

Leslie Belloc-Pinder, Q.C. reported that she has been working with Administration and others to prepare for the current Convocation. She also provided thanks to the Staff and to her fellow Benchers for their hard work and support over the past year.

ii. Executive Director's Report

A written report from Tim Brown, Q.C. was included in the November Convocation package of materials.

Tim Brown, Q.C. extended thanks to Leslie Belloc-Pinder, Q.C. on behalf of himself and the Staff for her service as President of the Law Society in 2019.

iii. Federation Council Report

Erin Kleisinger, Q.C., Federation Council, provided the following report to the Benchers:

- The last Federation meeting took place in October and included a day of strategic planning and a two-day conference focussed on mental health and wellbeing;
- Council meeting highlights included:
  - There are new officers, including a new President, Morgan Cooper, First Vice President, Stephen Raby, Q.C., and second Vice President, Nicolas Ploudre;
  - There are new council members from Alberta, Ontario and British Columbia;
  - The Risk Guidance documents related to Anti-Money Laundering will be out by the end of the year;
  - The NCA Modernization Committee has completed its gap analysis and a report to Council is expected for the December meeting;
  - The TRC Advisory Committee has paused its activities while a new approach is developed;
  - Council passed commentary related to tech competence;
  - There will also be a consultation package coming out in the New Year regarding revised harassment Rules;
  - There has been a 28% increase over last year in NCA applications – applications are being received from 80 different countries;
  - LEXUM has a net profit which will result in accelerated loan repayment.

## **5.2 Financial Reporting**

### **i. Financial Statements**

Financial statements for the period ended October 31, 2019 were provided to the Benchers for review and discussion.

Tim Brown, Q.C. reported on the rebound of the equities market, as well as the expected budget overages as mentioned at October Convocation, which were related to not replacing staff and higher than anticipated fee revenue.

### **ii. Quarterly Investment Report**

The Quarterly Investment Report for the period July 1 to September 30, 2019 was provided for information.

## **5.3 Execution of Strategy**

### **i. Action Plan Progress Update**

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

ii. Metrics/Dashboard Update

A bespoke central data repository was developed in Q2 to house Strategic Tactical information, as well as the setup and connection to the Financial Database (Sage). This was followed by the development of a front-end App to specifically capture the progress of Strategic tactics. New requirements have required some updates to the database design, including the front-end app; these changes have been developed/applied in Q3 (accommodating for Budget periods, additional comment fields, as well as filter parameters). Testing is underway and an updated working version should be ready before the end of Q4. For the front-end (Dashboards/reports in PowerBI), we have sourced an expert PowerBI developer/consultant (Q3) to assist us in expediting the completion of the current dashboards, as well as assist and advise us in the 2020/2021 planning, development and implementation of the upcoming dashboard/reporting phases (which focuses on Operational Dashboards/Reports and the ability to do more detailed analysis across multiple data sources). Paul Westgate provided a demonstration of the dashboard capabilities in place to date.

## 5.4 Appointments

i. College of Law Endowment Fund

Derek Maher's second term will expire on December 31, 2019 and he is willing to serve a final term.

Moved by Ian Wagner, seconded by James Morrison, Q.C., that Derek Maher be re-appointed for a final term, from January 1, 2020 – December 31, 2021. The motion carried.

ii. Public Legal Education Association of Saskatchewan (PLEA)

Maya Scott's second term will expire December 31, 2019 and she is willing to serve a final term.

Moved by Ian Wagner, seconded by Foluke Laosebikan, Ph.D., that Maya Scott be re-appointed for a final term, from January 1, 2020 – December 31, 2021. The motion carried.

iii. Election of President and Vice President

Gerald Tegart, Q.C. was the only declared candidate for the President of the Law Society of Saskatchewan, commencing January 1, 2020. Lynda Kushnir Pekrul moved to confirm the election of Gerald Tegart, Q.C. Andrea Argue seconded. The motion carried unanimously.

Foluke Laosebikan, Ph.D. was the only candidate for the Vice-Presidential election and is acclaimed as Vice-President of the Law Society of Saskatchewan, commencing January 1, 2020. John Morrall moved to confirm her election. Jill Drennan seconded. The motion carried unanimously.

iv. Honorary Membership with the Law Society of Saskatchewan

In recognition of Patrick Shea, who worked diligently to honour the law students from Saskatchewan, including those who were lost in WWI, the Society wishes to bestow an honorary membership to Mr. Shea. We received positive feedback from the membership and are pleased to have the information posted on the Law Society website for all to see.

Moved by Jeff Baldwin, seconded by William Lane, that Patrick Shea be granted an honorary membership with the Law Society of Saskatchewan. The motion carried.

## **5.5 Bencher Committee Preferences**

The Benchers were asked to complete a form by indicating their preferences for Committee appointments in the new year. Gerald Tegart, Q.C. invited Benchers to reach out to him directly to discuss committee preferences in addition to filling out the form.

## **5.6 Convocation Dates 2020**

A revised list of 2020 Convocation Dates were provided to the Benchers for diarizing.

# **6. Regulation**

## **6.1 Rule Amendments**

i. Law Society Rules Overhaul

Amendments to *The Legal Profession Act* will come into force at year end.

The Benchers have completed a review of substantive Rule changes over the past few months and have approved several parts of the Rules in principle. The Benchers were provided with a complete consolidated Rules package for review and consideration.

Mary Ellen Wellsch, Q.C. provided an overview of amendments to the Rules. There have been several housekeeping changes to the Rules to bring the language up-to-date and to make the Rules more intuitive, which has led to a renumbering of the Rules. A table of concordance was included with the Rules package. There will need to be a couple of substantive changes to



the consolidated *draft* Rules presented to the Benchers to correct errors. Substantive changes include:

- 309(5) should refer to subrule (4) instead of subrule (3); and
- Subrule 1123(3)(c) was left out of the consolidated Rules and will need to be added in.

Administration will be doing a final reading and are seeking approval to change any non-substantive errors that are discovered.

In addition, the Benchers were asked to consider some substantive changes to the Rules which had not been reviewed previously. At their meeting on November 25, 2019, the Discipline Policy Committee approved amendments to Rule 1002 as set out in the memo from Tim Huber dated November 25, 2019. Tim Huber and Barbara Mysko provided an overview of the Committee's recommendations which include the following:

- amendments to 1002(1)(a)(ii) and the addition of 1002(1)(a)(xiii) which addresses legal service providers appearing before tribunals;
- the addition of 1002(2) to clarify those who are ineligible for an exemption; and
- the addition of 1002(1)(b)(i) and (ii) which allows for the Benchers to allow for a temporary reprieve from enforcement against providers while their permanent status is determined (i.e. while it is determined whether they will fit into an exemption or qualify for a limited license).

Discussion included:

- the importance of having a period of discovery; learning about existing service providers will assist in developing criteria for permanent placement;
- the importance of viewing the amnesty provision from a beta testing framework;
- the need to ensure that people understand the temporary nature of any amnesty, and that it is not a guarantee of a future exemption or limited license or an endorsement of providers;
- this is a formalization of the current policy not to prosecute those who are providing a good service to the public;
- criteria has not been developed but the focus is on existing providers during this discovery phase;
- other professions are a separate focus;
- the need to be clear in communications that this process is about improving access to legal services, while ensuring public protection.

Developing the process for the discovery phase will be the focus of the Staff Retreat following Convocation. A communication will go out to Benchers prior to sending out a communication to service providers in advance of the new legislation coming into force.

Moved by James Korpan, Q.C., seconded by Jeff Baldwin, that the overhaul of the Law Society of Saskatchewan Rules be approved in their entirety, as written, in the final consolidated *draft* copy of the Rules provided by Mary Ellen Wellsch, Q.C. including:

- amending subrule 309(5) to reference subrule (4) instead of subrule (3);
- adding subrule 1123(3)(c) as written in the redlined version of that Rule provided to the Benchers;
- amending Rule 1002 as written in the memo of Tim Huber dated November 25, 2019; and

subject to housekeeping amendments which the Administration shall be authorized to make.

A motion to grant second reading on the same day was presented by Foluke Laosebikan, Ph.D, seconded by Lynda Kushnir Pekrul.

On second reading, the motion was presented by John Morrall, seconded by Scott Moffat, that the overhaul of the Law Society of Saskatchewan Rules be approved in their entirety, as written, in the final *draft* copy of the Rules provided by Mary Ellen Wellsch, Q.C. including:

- amending subrule 309(5) to reference subrule (4) instead of subrule (3);
- adding subrule 1123(3)(c) as written in the redlined version of that Rule provided to the Benchers;
- amending Rule 1002 as written in the memo of Tim Huber dated November 25, 2019; and

subject to housekeeping amendments which the Administration shall be authorized to make. The motion carried unanimously.

## ii. Part 10 – Alternative Legal Service Providers

See Agenda item 6.1 i.

## 6.2 Code of Professional Conduct

At its October 19, 2019 meeting in Newfoundland, Federation Council approved the recommendation of the Standing Committee on the Model Code of Professional Conduct to add guidance on technological competence to the commentary to Rule Model Code 3.1-2 (Competence) in the form of two new Commentary, 4A and 4B.

Federation Council has also notified us of typographical corrections to the section on Doing Business with Clients; Code numbers referenced within Commentary 1 to Rule 3.4-32, and in Rule 3.4-34 were incorrect. The Federation has rectified these typographical errors in the material they provided.

Three attachments were provided to the Benchers for consideration: a memo from the Discipline Policy Committee explaining amendments to the Code, a Commentary from David Swayze on Technological Competence, as well as tracked changes to the Code.

Moved by Ian Wagner, seconded by Barbara Mysko, that amendments to the *Code of Professional Conduct* be approved, as proposed in the memo dated November 21, 2019 from the Discipline Policy Committee, and as outlined below:

- Competence Rule 3.1-2 – addition of technological competence, Commentary items [4A] and [4B] added;
- Conflicts Rule 3.4-32, Borrowing from Clients – Commentary [1] amended to correct typographical errors;
- Conflicts Rule 3.4-34, Guarantees by a Lawyer - amended to correct a typographical error.

## **7. Committee Reports**

### **a. Audit (Monte Gorchinski, Chair)**

- Waiting on appointment of new Audit Committee before developing an audit plan.

### **b. Competency (joint Committee of Admissions & Education and Professional Standards) (Glenn Hepp, Chair)**

- Practice Advisors were invited to participate in the last Committee meeting. The Committee had a discussion on data focussed practice reviews which will be considered further in the New Year.

### **c. Conduct Investigation (Jeff Baldwin, Chair)**

- Met prior to Convocation to review 5 complaints - 3 will proceed to a charge and 2 to a Conduct Review.

### **d. Discipline Policy (Barbara Mysko, Vice-Chair)**

- Nothing further to report.

### **e. Entity Regulation (Ian Wagner, Chair)**

- Nothing further to report.

Tim Brown, Q.C. sought authority to adjust the deadline for Firm Registration by two weeks to a month, if needed, for proper communication purposes. Ian Wagner moved that Administration have the discretion to move the deadline as far as March 31, 2019. James Korpan, Q.C. seconded. The motion carried.

- f. Equity and Access (joint Committee of Equity & Diversity and Access to Legal Services) (Foluke Laosebikan, Ph.D, Chair)
  - Nothing further to report.
- g. Ethics (Scott Moffat, Chair)
  - Some Ethics Rulings have been put in abeyance, as they are subject to court proceedings.
- h. Executive
  - Met several times by phone, in person, and by Skype to prepare for Convocation.
- i. Governance (Craig Zawada, Q.C., Chair)
  - Nothing further to report.
- j. Insurance (James Morrison, Q.C., Vice-Chair)
  - There has been discussion at the Board level about the need to expand the number of people on the Board to deal with conflict issues.
- k. Legal Resources (Dean Martin Phillipson, Chair)
  - Nothing to report.
- l. Trust Safety (Monte Gorchinski, Chair)
  - AMLTF rules project has been concluded.
- m. Truth and Reconciliation Advisory Group (Gerald Tegart, Q.C., Chair)
  - Last meeting was cancelled, as a suitable date could not be found.
  - Aiming to find dates when most can attend, given that this is a new group.

## 8. Informational Items

- a. University of Saskatchewan Senate – report from Max Bilson
- b. Saskatchewan Legal Aid Commission – report from Valerie Macdonald, Q.C.
- c. *Hello from the other side*, by Luc Rinaldi, Pivot Magazine, June 26, 2019, posted to CPA website
- d. [SALI Promotional Video](#)
- e. Legal Coaching and Unbundling Project [website](#) and CBC Article: [If you can't afford legal services, team up with a lawyer, says expert](#)

## 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 – February 12 – 14, 2020 in Regina
- 9.5 Motion to Adjourn

## 10. Bencher *In-Camera* Session with Executive Director

## 11. Bencher *In-Camera* Session without Executive Director

**TIMOTHY J. BROWN, Q.C.**  
Executive Director