

Minutes for the Meeting of the Benchers Held Friday, June 25, 2021, via *Teams*

Present:

Foluke Laosebikan, Q.C., James Korpan, Q.C., Gerald Tegart, Q.C., Andrea Argue, Jeff Baldwin, Leslie Belloc-Pinder, Q.C., Jill Drennan, Monte Gorchinski, 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, Andrea Johnston, Christine Johnston, Jody Martin, Jenna Bailey, Kara-Dawn Jordan, Michelle Owolagba, Paul Westgate, Jakaeden Frizzell, Julie Sobowale, Stephanie Kievits, CPA, CA, Pamela Kovacs, Sydney Young and Liz Lynchuk, recording secretary

Riva Farrell Racette and Erin Kleisinger, Q.C., Federation Council.

The meeting was called to order at 10:01 am.

1. Approval of the Agenda

1.1 Apologies for Absence

None.

1.2 Confirmation of Agenda

Moved by John Morrall, seconded by James Korpan, Q.C. to approve the Agenda as written. The motion carried.

1.3 Bencher Conflict of Interest Disclosures

None.

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

- i. Appointments
- ii. Court House Closure

2. Consent Agenda

2.1 Approval of the Bencher Minutes

The following Bencher Minutes were provided for approval:

- a. Minutes from the Bencher meeting held April 30, 2021;
- b. *In-Camera* Minutes from the Bencher meeting held April 30, 2021;
- c. *In-Camera* Minutes from the Bencher meeting held May 10, 2021 to approve the audited financial statements for the year ended December 31, 2020.

Moved by Ian Wagner, seconded by James Korpan, Q.C., that the Minutes from the Bencher meeting held April 30, 2021, as well as the *In-Camera* Minutes from the Bencher meeting held April 30, 2021; and the *In-Camera* Minutes from the Bencher meeting held May 10, 2021 be approved as written. The motion carried.

2.2 Terms of Reference

- i. Discipline Policy Committee

The Discipline Policy Committee recommended minor amendments to its Terms of Reference.

Moved by Scott Moffat, seconded by James Korpan, Q.C., that amendments to the Discipline Policy Committee Terms of Reference be approved as written. The motion carried.

3. Decision Items

3.1 Terms of Reference

- i. Nominations Committee

The Nominations Committee recommended its Terms or Reference for approval. The Terms of Reference reflect the creation of the Nominations Committee and the transfer of responsibilities for recruiting, vetting and recommending Bencher candidates to fill vacancies that were formerly the responsibilities of the Governance Committee.

Moved by Crystal Norbeck, seconded by Lynda Kushnir Pekrul, that the Nominations Committee Terms of Reference be approved as written. The motion carried.

ii. Governance Committee

The Governance Committee reviewed amendments to its Terms of Reference and the Bencher Recruitment Policy to allow the Nominations Committee to take over the operational aspects of recruiting, vetting and recommending Bencher candidates.

Moved by Jeff Baldwin, seconded by Barbara Mysko, that amendments to the Governance Committee Terms of Reference be approved as written. The motion carried.

Moved by Jill Drennan, seconded by Suzanne Jeanson, that amendments to Policy C-XII: Bencher Recruitment and Election Policy to allow the Nominations Committee to take over responsibility from the Governance Committee regarding operational aspects of recruiting, vetting and recommending Bencher candidates, be approved as written. The motion carried.

3.2 Appointments

i. Queen's Counsel Selection Committee

The Committee consists of the past President, a Bencher, a Public Representative and a member-at-large.

Lynda Kushnir Pekrul was the only Public Representative Bencher who expressed interest in being on this committee, therefore, was acclaimed. Nolan Kondratoff moved to confirm the acclamation of Lynda Kushnir Pekrul. Barbara Mysko seconded. The motion carried.

The Benchers voted "live" via secret ballot and Will Lane was selected as the Bencher on the Queen's Counsel Selection Committee for 2021.

The Benchers voted "live" via secret ballot and Sherry Fitzsimmons, Q.C. was selected as the member-at-large on the Queen's Counsel Selection Committee for 2021.

Ian Wagner moved to confirm the election of Will Lane and Sherry Fitzsimmons, Q.C., Martin Phillipson seconded. The motion carried.

3.3 Regulation

i. Rule Amendments

a. Part 11 – Professional Responsibility

Rule 1101, Definitions; 1102, Examination of Complaints; and 1103, Notification to the Parties

The Professional Responsibility Department spends a significant amount of time dealing with complaint files that are ultimately dismissed for various reasons, such as complaints that are outside the Society's jurisdiction, complaints that are premature in relation to matters that are before the courts, or repetitive complaints, whereby the same complaint is received from the same client with minor additions. These complaints are dismissed under the current Rule 1102(11)(a) because they are found to be "not valid" or "trivial, frivolous or vexatious."

Administration is not requesting an addition to the dismissal powers; rather amendments to the Rules that clarify the circumstances under which a complaint can be dismissed in the early stage without further investigation.

Discussion:

The changes would make the process more transparent and will assist Discipline Counsel in more efficiently carrying out their work. There will also be an educational component, in that information will be updated on our website for complainants to review before submitting a complaint.

Moved by Jeff Baldwin, seconded by John Morrall, that amendments to Part 11, Professional Responsibility, be approved as written in the memo dated June 11, 2021 from Valerie Payne, pertaining to the following Rules:

- Rule 1101, Definitions, add the definition "Summary Dismissal";
- Amend Rule 1102(4) – (13), Examination of Complaints; and
- Amend Rule 1103(1) and (2), Notification to the Parties, housekeeping amendments to align with Rule 1102.

One opposed. The motion carried.

A motion to grant second reading on the same day was presented by Lynda Kushnir Pekrul, seconded by Leslie Belloc-Pinder, Q.C. One opposed. The motion carried.

Moved by James Morrison, seconded by Suzanne Jeanson, that amendments to Part 11, Professional Responsibility, be approved as written in the memo dated June 11, 2021 from Valerie Payne, pertaining to the following Rules:

- Rule 1101, Definitions, add the definition "Summary Dismissal";
- Amend Rule 1102(4) – (13), Examination of Complaints; and
- Amend Rule 1103(1) and (2), Notification to the Parties, housekeeping amendments to align with Rule 1102.

One opposed. The motion carried.

b. Part 11 – Professional Responsibility

Rules 1101 – 1124

Amendments to Rules 1101 – 1124 were proposed to establish the new Hearing Administrator position.

Rule 1115, *Hearing Committee Appointment Coordinator*, was deleted to remove the old definition of the role; the new definition of *Hearing Administrator* was added to define what a Hearing Administrator is, as well as outline the role of a Hearing Administrator.

Discussion:

The Benchers will approve the pool curated by the Hearing Administrator. Under the new process, the Hearing Administrator will be responsible for all case management (with the exception of contested pre-hearing motions, which will be handled by the Hearing Committee) and will provide a forum for pre-trial settlement in relation to every case, which will result in fewer hearings every year. Overall, the process will be quicker and more efficient.

Moved by Scott Moffat, seconded by Barbara Mysko, that amendments to Part 11, Professional Responsibility, Rules 1101 – 1124 be approved as written in the redlined Rules provided by Tim Huber, pertaining to the following:

- Rule 1101, Definitions - remove “Hearing Committee Appointment Coordinator” definition and add “Hearing Administrator” definition;
- Amend Rule 1114(1) and (3), Hearing Committee Roster;
- Delete Rule 1115 – Hearing Committee Appointment Coordinator;
- Amend Rule 1116, Conduct Investigation Committee to Direct Prosecution;
- Amend Rule 1117(1), Amendment to Formal Complaint Before Hearing;
- Amend Rule 1118(1) – (7), Appointment of Hearing Committee;
- Amend Rule 1124(1), Fixing a Date for Hearing

The motion carried.

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

Moved by James Korpan, Q.C., seconded by Crystal Norbeck, that amendments to Part 11, Professional Responsibility, Rules 1101 – 1124 be approved as written in the redlined Rules provided by Tim Huber, pertaining to the following:

- Rule 1101, Definitions - remove “Hearing Committee Appointment Coordinator” definition and add “Hearing Administrator” definition;

- Amend Rule 1114(1) and (3), Hearing Committee Roster;
- Delete Rule 1115 – Hearing Committee Appointment Coordinator;
- Amend Rule 1116, Conduct Investigation Committee to Direct Prosecution;
- Amend Rule 1117(1), Amendment to Formal Complaint Before Hearing;
- Amend Rule 1118(1) – (7), Appointment of Hearing Committee;
- Amend Rule 1124(1), Fixing a Date for Hearing

The motion carried.

c. Part 23 Withdrawal from Practice and Part 12 Insurance

Part 23 Withdrawal from Practice Rule 2302(2), Succession Plan; and Part 12 Insurance, Rule 1204 Liability Insurance Coverage

Our current mandatory succession plan Rules are limited in that they reference only temporary or long-term disability and death. However, the Society approaches successors regularly within the context of discipline related incapacity.

In the process of considering the succession plan Rule amendments, an amendment also needed to be made pertaining to administrative suspensions under Rule 1612. This relatively new form of administrative suspension was not added to the Rule relating to the impact of administrative suspensions on insurance liability coverage when it was created during the 2019 Rule overhaul. Amendments to Part 12 Insurance, Rule 1204, Liability Insurance Coverage, were housekeeping in nature to add reference to Rule 1612.

Moved by Suzanne Jeanson, seconded by Jill Drennan, that amendments to Part 23 Withdrawal from Practice, Rule 2302(2), Succession Plan, to include discipline related incapacity; and that amendments to Part 12 Insurance, Rule 1204 Liability Insurance Coverage to include reference to administrative suspensions under Rule 1612, be approved as written in the memo provided by Valerie Payne and Tim Huber dated June 11, 2021. The motion carried.

A motion to grant second reading on the same day was presented by Craig Zawada, Q.C., seconded by Monte Gorchinski. The motion carried.

Moved by Kaitlynn McArthur, seconded by James Korpan, Q.C., that amendments to Part 23 Withdrawal from Practice, Rule 2302(2), Succession Plan, to include discipline related incapacity; and that amendments to Part 12 Insurance, Rule 1204 Liability Insurance Coverage, to include reference to administrative suspensions under Rule 1612, be approved as written in the memo provided by Valerie Payne and Tim Huber dated June 11, 2021. The motion carried.

d. Part 7 Membership and Practice Privileges

Rule 714, Admission as a Lawyer Following the Bar Admission Program

With the untethering of articles from PREP, amendments to Rule 714 were proposed to address the issue of stale-dated PREP education upon admission to the Bar.

To address the issue, Administration proposed a 5-year recency requirement to the Rules, consistent with our reinstatement standard.

If someone applies to be a lawyer and it has been longer than 5 years since they successfully completed PREP, they would be required to re-take the course unless exceptional circumstances exist that justify something less than completion of the full program.

Discussion:

There was some discussion of whether 5 years was too long. It was noted, on the other hand, that shortening the period may create unnecessary barriers for graduates who face challenges finding opportunities to enter the profession.

Moved by James Korpan, Q.C. seconded by Kaitlynn McArthur, that amendments to Part 7 Membership and Practice Privileges, Rule 714, Admission as a Lawyer Following the Bar Admission Program, to add a PREP recency requirement, be approved as written in the memo provided by Andrea Johnston dated June 2, 2021. The motion carried.

A motion to grant second reading on the same day was presented by Jeff Baldwin, seconded by Lynda Kushnir Pekrul. The motion carried.

Moved by James Korpan, Q.C., seconded by Leslie Belloc-Pinder, Q.C., that amendments to Part 7 Membership and Practice Privileges, Rule 714, Admission as a Lawyer Following the Bar Admission Program, to add a PREP recency requirement, be approved as written in the memo provided by Andrea Johnston dated June 2, 2021. The motion carried.

3.4 Reconciliation Mapping Exercise

Earlier this year, the Truth & Reconciliation Advisory Group proposed that the Law Society participate in a Reconciliation Mapping Exercise developed by the Office of the Treaty Commissioner (OTC) to determine a baseline of reconciliation efforts and support the development of recommendations for forward progress.

Administration has since had an opportunity to learn more about the exercise and provided an overview of the significant work the OTC has done to develop a common vision for Truth and Reconciliation and a methodology for guiding

and measuring progress as well as the steps anticipated in the Reconciliation Mapping Exercise.

The OTC has piloted this project with another organization and is looking for other partners, presenting the Law Society with an opportunity to collaborate in advancing reconciliation in the province.

Administration has started initial discussions with the OTC regarding the development of an MOU and is seeking approval *in principle* to engage in an organization-wide Reconciliation Mapping Exercise, such that Administration can move forward a Memorandum of Understanding with the OTC.

Discussion:

- In order to determine how to advance reconciliation, it is critical to have an idea of where we are at in this critical journey.
- The OTC has significant expertise in this area and this is a good opportunity for partnership.
- It is important for the Law Society to take on a leadership role in moving reconciliation forward.
- There is much work to be done and we need guidance on this important issue.

Moved by Scott Moffat, seconded by Nolan Kondratoff, to approve *in principle*, that the Law Society of Saskatchewan engage in an organization-wide Reconciliation Mapping Exercise, such that Administration can move forward a Memorandum of Understanding with the Office of the Treaty Commissioner.

3.5 Member Data Collection and Usage

The Equity & Access Committee reviewed the Law Society's member data collection and usage practices with the aim to improve the data collected and its usability moving forward. Two options were presented for Benchers consideration, both of which are consistent with a human rights-based approach to data, which recognizes that data is key to identifying and understanding inequalities.

An important principle of data collection involves communicating to respondents why the data is collected, how it will be used and how it will be protected.

Option 1: Optional demographic data questions are part of the annual renewal (members have the option to indicate a choice not to answer any of the questions). Responses would be connected to internal member profiles and accessible to the Law Society but would be kept private in line with other confidential data housed by the Law Society and used only with member consent in line with a human rights-based approach.

Option 1 is the most straightforward and provides the highest level of data useability, but the lack of anonymity in relation to the Law Society may lead to fewer members choosing to self-identify.

Option 2 is similar to option 1, but adds a layer of anonymity which may increase response rates. Our software provider could collect and house the data in a manner that, while connected to internal member profiles, would not be directly accessible by the LSS but would allow for the creation of anonymized reports. Option 2 is more complex, both in terms of ensuring appropriate data management and transparent communications; it also could limit data useability and would be less efficient and cost effective.

Discussion:

- Confirmation was sought and provided that, in relation to Option 1, it would be made clear to members that the LSS would have access to responses.
- Concern was raised that Option 1 would lead to a reduction in self-identification rates.
- It was noted that useability should be weighed against the potential of lower self-identification rates.

A vote was held and 10 Benchers preferred option 1, while 6 Benchers preferred option 2.

Moved by Barbara Mysko, seconded by Crystal Norbeck, that Administration proceed with Option 1 - Optional questions connected to internal member profile (private but accessible to the LSS) for the collection of member demographic data as set out in the memo from Administration dated June 16, 2021. Three opposed. The motion carried.

3.6 Health and Wellness of the Legal Profession

A memo from Administration containing draft language for the 2019 – 2021 Strategic Plan was considered. The addition of Goal 6 and the related objectives and strategies attempt to capture the sentiments provided by the Benchers at the Health and Wellness session held in April.

When drafting the proposed language, Administration took cues from the Canadian Mental Health Association and other leading bodies in relation to the language used. The Benchers were satisfied with the proposed direction contained in the memo.

Moved by Suzanne Jeanson, seconded by John Morrall, that the LSS Strategic Plan be amended as set out in the memo of Tim Brown, Q.C. dated June 16, 2021 to include Goal 6 Increased Focus On Member Wellness. The motion carried.

4. Discussion Items

4.1 Society Governance

i. Operational Reporting

a. President's Report

President Laosebikan, Q.C. provided her written report on June 22, 2021.

b. Executive Director's Report

Tim Brown, Q.C. will provide his report by the end of June.

c. Federation Council Report

Erin Kleisinger, Q.C.'s audio was not operational, so she will submit a written report for circulation to the Benchers.

ii. Financial Reporting

a. Financial Statements

Financial statements for the period ended May 31, 2021 were provided for review.

The Society is forecasting to be closely in line with budget. Revenues are a bit higher than expected and expenses a bit less than expected, primarily due to governance. At this point, it is not certain whether or not the Federation Conference will proceed in person. All things considered, the Society is approximately \$50,000 ahead of budget, however, we are only half-way through the year.

b. Investment Reports

The May 2021 investment statement was provided for review.

Administration is satisfied with the recovery of our investments since the beginning of the year and reported that the Society is in extremely good shape.

c. Investment Review

Administration has been satisfied with TD Greystone over the years, but as part of due diligence and best practices, Administration will be working with an independent consultant to perform a review of our investments and investment policies.

Administration has been in discussions with potential consultants and further reporting will be provided at September Convocation.

iii. **September Convocation and Convocation 2022**

The Government's re-opening plan and good progress with the distribution of vaccines has increased the likelihood that we will be able to return to in-person meetings in September.

The Benchers decided that it is time to return to an in-person, hybrid meeting in September, whereby those who are vulnerable have the option to attend virtually.

The 2022 Convocation dates were provided to the Benchers and it was noted that there was a conflict with the February 23 – 25 dates, due to the school break. February Convocation was changed to February 16 – 18, 2022 and none were opposed to the change.

4.2 Strategic Initiatives

i. **Future of Legal Services Task Team**
(Increased Access to legal Services – Goal 5)

a. **Discovery Period Consultation Update and Notice Forms**

No notices were received from legal service providers since last Convocation.

President Laosebikan thanked the facilitators for a job well done at the Thursday afternoon session on the Future of Legal Services. Discussion focussed on two main areas: criteria for exemptions and limited licensing case studies. Next steps are for Administration to come back to the Benchers with thinking coming out of the session and proceed from there.

4.3 Closure of Lloydminster Court House (*In-Camera*)

Discussion regarding the announcement of the Lloydminster Provincial Court House, which would be served by the North Battleford Court House, effective September 1, 2021, will be tabled to September Convocation.

5. Informational Items

5.1 Strategic Initiatives

i. **Expanded Approach to Competency (Goal 1)**

a. Firm Regulation

The performance, appearance and functionality of the Assessment Tool will continue to be evaluated and improved upon over the course of the soft launch.

ii. Trusted and Transparent Regulation (Goal 2)

a. Communications

A report from Julie Sobowale was provided for information, as well as a link to the latest Legal Skies Podcast, *Managing the Pandemic – Where We Are and Where We're Headed*.

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

a. Joint Law Society/College of Law Futures Class

In September 2021, Craig Zawada, Q.C.'s class titled *Transformation in Practice* will no longer be a seminar; it will be a full class.

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

a. Member Wide EDI Survey

The deadline for participation in the EDI Member Survey was extended from May 14, 2021 to May 31, 2021 in an effort to increase response rates. At survey close, 274 responses were received. A draft report is expected in mid-July.

v. Increased Access to Legal Services (Goal 5)

a. Legal Information Guidelines

The Guidelines are available online with a form for feedback and are being disseminated and presented by Administration to various stakeholders.

The Guidelines support the dissemination of credible legal information, outlining how legal information providers can assist the public with their information needs. For the public, the Guidelines outline what to look for when deciding on which provider to use and how a legal information provider can help.

b. Consultation and Legal Needs Assessment

Administration continues dialogue with CREATE Justice on this assessment. As well, Administration continues discussions with Statistics Canada regarding a Saskatchewan-specific report from the Canadian Legal Problems Survey.

5.2 Society Governance

i. Execution of Strategy

a. Action Plan Progress Update

Paul Westgate provided a brief demonstration to assist the Benchers in understanding what the new intuitive interface (Workplan Dashboard) can provide in reporting on the Law Society's workplan status (Activities).

ii. Public Representative Benchers 2021

We have two Public Representative Benchers vacancies to be filled and Administration has been in contact with the Ministry of Justice to start the process.

iii. Benchers Election 2021

The Governance Committee has been working on "election readiness" for this year's Benchers Election. *Votenet* will again provide services at a similar cost as the 2018 election.

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

The Law Society AGM was held on June 24, 2021 over the lunch hour. No Resolutions were received in 2021.

v. Law Foundation Grants

Annual grant requests are due August 20, 2021 for a meeting in Regina on September 13, 2021. Administration started work on the budget early in the year and will finish the grant request over the summer.

vi. Federation Conference and President's Dinner/Host Dinner 2021

If the Federation Conference proceeds in-person on October 12 and 13, 2021, the host dinner would occur on the evening of Thursday, October 14th. The Remai Modern in Saskatoon is tentatively booked for the dinner.

vii. 2022 Convocation Dates

Proposed 2022 Convocation dates are as follows:

- February 16 – 18, 2022 (was February 23 – 25)
- April 27 – 29, 2022
- June 22 – 24, 2022 – AGM in June
- September 21 - 23, 2022
- October 28, 2022 Budget Meeting and President's Dinner
- November 30, December 1 & 2, 2022

5.3 Committee Reports

A brief report was provided via memo on the activities of the Bencher Committees.

5.4 Other Informational Items

- a. University of Saskatchewan Senate – report from Max Bilson
- b. PLEA – report from Maya Scott
- b. Sask Legal Aid Commission – report from Victoria Elliott-Erickson

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 – September 22 – 24, 2021

6.5 Motion to Adjourn

The meeting adjourned at 12:41 pm.

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

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

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

Timothy J. Brown, Q.C.
Executive Director