

Minutes for the Meeting of the Benchers

Held Friday, April 29, 2022, In-Person and via Zoom

Bessborough Hotel, Saskatoon

Present:

James Korpan, Q.C., John Morrall, Andrea Argue, Q.C., Jonathan Bodvarson, James Fyfe, Suzanne Jeanson, Lynda Kushnir Pekrul, Jeff Lee, Q.C., James Morrison, Q.C., Crystal Norbeck, Q.C., Tiffany Paulsen, Q.C., Zachery Solomon, Adam Touet, Rochelle Wempe and Julie Ann Wriston

In attendance:

Tim Brown, Q.C., Tim Huber, Valerie Payne, Andrea Johnston, Christine Johnston, Jody Martin, Jenna Bailey, Kara-Dawn Jordan, Q.C., Michelle Owolagba, Julie Sobowale, Stephanie Kievits, CPA, CA, Pamela Harmon, CPA, CA, Pamela Kovacs, Sydney Young, Chinye Talabi and Liz Lynchuk, recording secretary

Erin Kleisinger, Q.C., Federation Council, Barbara Mysko, Chair of the Equity & Access Committee, Monte Gorchinski, Chair of the Audit Committee and Sheila Filion, CPA, CA Partner with Virtus Group (external auditor)

The meeting was called to order at 8:59 am.

1. Approval of the Agenda

As proposed at April Convocation, two separate Agendas have been prepared (a Public Agenda and a *Closed* Agenda). All decision items have been moved to the very beginning of the Agenda.

1.1 Apologies for Absence

Apologies for absence were received from Martin Phillipson, Foluke Laosebikan, Q.C., William Lane, Nolan Kondratoff and Sonia Eggerman.

1.2 Confirmation of Agenda

Moved by Rochelle Wempe, seconded by Crystal Norbeck, Q.C., to approve the Agenda as written. None opposed. The motion carried.

1.3 Bencher Conflict of Interest Disclosures

None.

2. Decision Items

2.1 Approval of Audited Financial Statements for the year ended December 31, 2021

Monte Gorchinski, Chair of the Audit Committee, explained that the role of the Audit Committee is to function within the guidelines of *The Legal Profession Act, 1990* and the Rules of the Law Society. The Audit Committee also oversees the preparation of the fiscal year end financial statements and oversees the audit process as conducted by independent external auditors.

The Committee met on February 14, 2022, at which time Pam Harmon, CPA, CA outlined the accounting processes and procedures that are followed to ensure financial statements are properly compiled. Sheila Filion, CPA, CA, Partner with Virtus Group, provided an overview of audit procedures and processes. The Committee met again on April 4, 2022 to review the December 31, 2021 financial statements and related reports in draft form. Sheila Filion, CPA, CA explained the findings of the audit process, which identified no issues, and are summarized within the Audit Completion Report provided.

Virtus Group intends to issue their opinion that the financial statements present fairly the financial position of the Society as at December 31, 2021 in accordance with Canadian Accounting Standards for Not-for-Profit Organizations (ASNPO).

The Audit Committee recommended adoption of the audited 2021 financial statements and recommended retaining Virtus Group as Auditor for the 2022 fiscal year.

A motion to approve the December 31, 2021 audited financial statements for approval by the members at the AGM, was presented by Suzanne Jeanson, seconded by Andrea Argue, Q.C. None opposed. The motion carried.

Moved by Crystal Norbeck, Q.C., seconded by Jonathan Bodvarson, to recommend that Virtus Group be appointed as auditor for the year ended December 31, 2022. None opposed. The motion carried.

2.2 Appointments

i. Judicial Advisory Committee

This matter was deferred to the next meeting of the Benchers scheduled on May 11, 2022 (Special meeting to consider the 2022 – 2023 Insurance Levy).

2.3 Regulation

i. Rule Amendments

- a. Part 7, Membership and Practice Privileges;
Part 12, Insurance; Part 14, Law Society Fees and Assessments; and
Schedule 1

Administration disqualification may result from CPD deficiencies, failure to complete annual renewal, failure to pay fees, assessments and penalties, failure to complete the Annual Report, Firm Registration, and other trust safety reporting requirements.

Administration is recommending a series of amendments to the Rules to improve efficiencies, create consistency in and streamline processes related to administrative disqualifications.

Additionally, Administration is recommending an amendment to Schedule 1 to increase the reinstatement fee as it relates to those who have been administratively disqualified. An exemption from reinstatement fees is also recommended for those on parental leave, medical leave or where it would cause undue hardship.

When deadlines are missed, several attempts are made to contact the members and resolve the deficiency via phone calls, emails and contacting the Designated Representatives where applicable. When it reaches the stage of disqualification, advising the Courts, the Minister and ISC, as well as updating the website is an additional administrative burden.

Current reinstatement fees are \$175 whether the reinstatement arises from administrative disqualification or any other return from inactive status, such as parental leave. Comparing the costs associated with other regulatory requirements, such as presentation of a remedial CPD plan at \$500 or reinstatement for failing to meet CPD Policy requirements at \$750, the reinstatement fee following disqualification is very low. There is little rationale for the low reinstatement fee, considering the amount of administrative output. An increase in fees may also work as a deterrent to encourage members to meet their regulatory requirements.

Administration is also recommending that consideration be given to an exemption from the reinstatement fee for members who are being reinstated following illness, parental leave or where it would cause undue hardship. These are the same circumstances where a refund of the annual fees would be considered in Rule 1407 and the financial impact would be minimal, as in 2021, reinstatement fees amounted to approximately \$5,000. An exemption, or even a reduction in the reinstatement fees under these circumstances, would also be a positive step towards member wellness.

There was a recommendation that the proposed language in Rule 1404(6)(a) be expanded to cover any child newly in the care of a member as opposed to just “newly born or newly adopted.” It was noted that an amendment would also be required to Rule 1407(2) to make it consistent with Rule 1404(6)(a).

Moved by Rochelle Wempe, seconded by Adam Touet, to amend the Rules, as written in the memo provided by Jody Martin dated April 19, 2022, “as drafted” for Rules 701, 725, 1202, 1204, 1401 and the Schedule of Fees; “as amended” for Rule 1404(6)(a) and Rule 1407(2) “as added.”

“as amended”

The draft amendment to Rule 1404(6)(a) was amended following Benchers discussion to strike out the reference to “newly born or newly adopted” and replace with “newly in the member’s care.”

“as added”

Following Benchers discussion, amendment to Rule 1407(2) was added to ensure consistency of drafting following the amendment to the language in 1404(6)(a).

None opposed. The motion carried.

A motion to grant second reading on the same day was presented by Zachery Solomon, seconded by Crystal Norbeck, Q.C.

Moved by Suzanne Jeanson, seconded by Jonathan Bodvarson, to amend the following Rules, as written in the memo provided by Jody Martin dated April 19, 2022, “as drafted” for Rules 701, 725, 1202, 1204, 1401 and the Schedule of Fees; “as amended” for Rule 1404(6)(a) and Rule 1407(2) “as added.”

“as amended”

The draft amendment to Rule 1404(6)(a) was amended following Benchers discussion to strike out the reference to “newly born or newly adopted” and replace with “newly in the member’s care.”

“as added”

Following Benchers discussion, amendment to Rule 1407(2) was added to ensure consistency of drafting following the amendment to the language in 1404(6)(a).

None opposed. The motion carried.

- b. Part 15, Accounting - Rule 1531, Filing Annual CDIC Report with Each Savings Institution

The Government of Canada has made changes to the rules governing deposit insurance protection for funds held in trust under the *Canada Deposit Insurance Corporation Act* (CDIC) coming into effect on April 30, 2022. The Trust Safety Committee proposed amendments to Rule 1531 to reflect those changes.

Essentially the change is a process change, rather than making an annual disclosure of the identities of the beneficiaries of trust accounts, as “professional trustees” legal professionals will be required to advise their financial institutions that their accounts are “professional trustee accounts.” To qualify as professional trustees, which is the only option given confidentiality requirements, legal professionals will have to meet certain requirements. In amending the Rule, it was determined that amendments should capture possible future CDIC reporting requirements.

Moved by Zachary Solomon, seconded by Jeff Lee, Q.C., to approve amendments to Part 15, Accounting, Rule 1531 Filing Annual CDIC Report with Each Savings Institution, to change the Heading of Rule 1531 to read *CDIC Compliance* and to amend Rule 1531 to reflect changes to the rules governing deposit insurance protection for funds held in trust under the *Canada Deposit Insurance Corporation Act*. None opposed. The motion carried.

A motion to grant second reading on the same day was presented by Suzanne Jeanson, seconded by Crystal Norbeck, Q.C. The motion carried.

Moved by Jeff Lee, Q.C., seconded by Jonathan Bodvarson, to approve amendments to Part 15, Accounting, Rule 1531 Filing Annual CDIC Report with Each Savings Institution, to change the Heading of Rule 1531 to read *CDIC Compliance* and to amend Rule 1531 to reflect changes to the rules governing deposit insurance protection for funds held in trust under the *Canada Deposit Insurance Corporation Act*. None opposed. The motion carried.

3. Discussion Items

3.1 Society Governance

- i. Standing Reports
 - a. President’s Report

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

- An invitation was extended to all Benchers to join the weekly Executive meetings on Tuesdays at 9:00 am.

- Attendance by the Executive at the ABA TechShow provided insight into issues affecting American Law Societies, confirming that we are on track and in some cases ahead.
- Similarly, attendance at the Federation Meeting in Montreal provided an opportunity to hear the issues being considered by Law Societies across Canada. Again, confirming that the LSS is performing well in terms of its forecasting and responding to the regulatory environment. Thanks was provided to Administration and the Benchers.
- Attendance at Tecker International's CEO Symposium was valuable for the Executive and some tangible changes came out of the session, for example, moving the decision items to the beginning of the Agenda, leaving ample time for discussion items. Taking appropriate items straight to the Benchers table as opposed to using committees in every case was also a takeaway from the session.

b. Executive Director's Report

Tim Brown, Q.C. indicated that his report was provided in writing and that his next written report will occur at the end of May.

c. Federation Council Report

Erin Kleisinger, Q.C. provided a written report.

ii. Financial Reporting

a. Financial Statements

Financial statements for the three months ended March 31, 2022 were provided for review.

The General Fund generated a deficit of approximately \$507,000, which is higher than budgeted, but mostly due to the unrealized loss on investments. The financial markets continue to struggle and, as a result, the value of our investment portfolio has declined further. It is worth noting, however, that the loss in market value is still not as bad as the loss in value that occurred at the beginning of the pandemic.

We are transitioning to the new asset mix and will be selling a large portion of our investments and the hope is that at least some of our trades will occur during upswings in the market value so that we can limit our realized losses on redemptions.

Regarding membership fees, at the end of March, we were behind budget. There was a drop in membership fees due to a decline in our active membership base of 34 members. There is typically a small

decline after December year end as those intending to retire do so at December 31st. However, this year the decline is slightly larger than the year before. It is unclear at this time whether this is the beginning of the expected net decline in our membership due to the greying of the profession or if this decline will be offset by new members joining the Society. We will have students completing their articles and becoming active members in May/June as well as lawyers transferring in from other jurisdictions throughout the year. We expect to have a better sense of the membership trend in the next month or so.

b. Investment Reports

The March 31, 2022 TDAM investments Summary was provided for review.

A question was raised about TDAM's investment strategy should the markets continue to drop. The investment plan is still in the initial phases and will take 12 – 18 months to fully transition. This is a different market than experienced over the last few years. However, TDAM has demonstrated a good track record for generating gains and limiting losses realized on trades.

iii. Inaugural Adjudicator Hearing Pool

Hearing Administrator Gregory Walen, Q.C. brought forward a proposal to the Discipline Policy Committee ("DPC") in relation to the process that he will use to develop the inaugural adjudicator pool. The general sentiment of the DPC was that it is preferable to use a process that emphasizes a high level of independence for the Hearing Administrator in their work. The DPC believes that the Hearing Administrator should be empowered to present a roster of recommended appointees with justification for such choices, for approval.

There was discussion of issues for consideration:

The size of the pool is a relevant consideration. Our Rules contemplate that Benchers will be part of the pool. However, the intention is not that all Benchers who are not conflicted will be a part of the pool as was historically the case. The intention is to move to a professionalized pool, which will include Benchers, members and members of the public. The pool is intended to be large enough to deal with conflict issues; 20 to 25 members is proposed.

It was noted that in June, the Benchers will consider the Cayton report and that discussion will raise relevant considerations as well.

The matter of who ultimately approves the Hearing Pool is also an issue. The Rules contemplate that the Hearing Administrator will "assist" the

Benchers in the task of curating the adjudicator pool. The matter of ultimate approval of the pool remains an issue, given the conflict issues that will arise given that some Benchers will be candidates for potential appointment.

There were inquiries as to the process and criteria that would be used in recruiting and vetting candidates, and specifically consideration for diversity.

Feedback will be incorporated into further work on the proposal, which will be considered by the Discipline Policy Committee prior to returning to the Bencher table.

iv. 2022 Workplan

The Benchers will have already seen portions of the workplan, as it references strategic work of committees as well as strategic work that is occurring at the Administration level. The workplan is intended to be a living document that will evolve over time. We will continue to update it as the work progresses.

4. Strategic Initiative Updates

Operational reports, Committee Reports and reports from Representatives from outside agencies are now dealt with in a single document under 4.3, "Informational Items." Significant informational updates involving strategic initiatives will remain on the Convocation Agenda for presentation and any resulting questions or discussion.

4.1 Strategic Initiatives

i. Expanded Approach to Competency (Goal 1)

a. Firm Regulation

i. Practice Management Assessment Tool Update

The next group of firms (small firms with 2 lawyers) received their notice to complete the Practice Management Assessment Tool and link on February 1, 2022 with a completion deadline of May 1, 2022.

To date, 80 firms have completed or are actively engaged in the assessment tool process and we expect to have 110 by May 3rd. We are coming close to a full year of having the assessment tool out and overall, it is going well, we have received good feedback and have made changes to the assessment tool as a result. The assessment has been well received to date.

b. Development of Online Training Program for Principals

Development of the online training program for principals continues and we plan to distribute it to the principals in May. We will evaluate it, obtain some feedback, and later in the year determine whether to make it mandatory.

ii. Increased Access to Legal Services (Goal 5) and Future of Legal Services Initiative

a. Limited Licensing Pilot Update

The Limited Licensing Pilot has been active for 4 months and we currently have 17 applicants. Twelve have been approved by the FLS Committee and the remainder are pending review by the Committee. 6 of the 17 are from outside of Regina and Saskatoon, which is important, given that the location of legal service providers is one of the issues for consideration.

Many of the individuals from the discovery period have moved to the pilot and we are seeing participants involved in various areas of law, including property tax assessment work, wills and disability benefit claims.

Work continues on communications to ensure members and pilot participants understand the process and to help the public understand who they are hiring. To advance public understanding, a chart has been added to the website to assist consumers in understanding where there may be more or less risk, and areas that are still under development or do not exist. Content will be updated as the regulatory environment evolves. There are also plans to do some public education and seek feedback to increase clarity for consumers.

Administration has received the Saskatchewan-specific report from the Canadian Legal Problems Survey which provides important data to inform decision making. The data shows that of 1,581 respondents, 306 experienced at least one serious legal problem in the three years preceding the survey. Key findings include that most Canadians resolve their most serious legal problems outside of the formal justice system, that Indigenous people are more likely to experience certain types of negative financial impacts from serious legal problems, and women more likely than men experience negative health impacts from their legal problems.

The most common problems reported were problems related to a large purchase or service, housing-related problems and problems related to receiving government assistance.

Of those people who experienced a serious legal problem, the vast majority did take action. Those actions included: 48% sought advice from friends or

family, 42% contacted the other party involved, 40% searched the internet, 28% contacted a legal professional and 5% contacted a court or tribunal.

The consequences are that people are not necessarily solving their legal problems – only 27% said their most serious problem was resolved, while another 28% said it was in progress. A further 16% said they gave up on resolving their most serious problem.

When looking at the impacts stemming from the most serious problem, women were significantly more likely than men to report experiencing at least one health impact (90% vs 79%).

Indigenous people living in Saskatchewan, people who identified as lesbian, gay, bisexual, or another sexual orientation, and people who identified as having a disability were more likely to report experiencing serious problems.

Analyzing the current findings and bringing in what we know about our demographics is also helpful. Considering 2016 and data regarding the profession from 2020, we learned that there was one lawyer for every 644 adults, and broken down, it showed 122 serious legal problems and 322 everyday legal problems would be allotted to one lawyer over a 3-year period.

This information helps us to see what and where the needs are, identify how to assist and helps us make good policy decisions.

Discussion:

- A question was raised as to access to professional legal services and its impact on health implications. It was noted that there are studies, for example, work done in the civil justice system where they found that access to legal services does help. In criminal justice, data from another national study done on 9 court sites (and Regina was one of the sites), showed that when you do not have access to legal services, outcomes are worse. Other studies suggest that the stress of the formal system could be alleviated using another system outside the court, such as mediation.
- Access to legal assistance improves outcomes, however, it may not always be lawyers who assist. Community advocates also help people, for example. Self-represented litigants want help because the system is complicated and having a lawyer or non-lawyer assist is beneficial.
- The Saskatchewan findings, based over a 3-year period, showed that Saskatchewan-specific results matched national results, with some uniqueness due to demographics and population.
- The Society does not have statistics to show whether the 40% who are using the internet to find legal services actually find legal services, but others are looking into this which will provide some insight. The Law Society is coordinating the Saskatchewan Access to Legal Information

Network which is focused on working to effectively connect people with accurate legal information.

- Some of the perceived obstacles to seeking legal assistance revolve around cost and intimidation, perception about affordability and not knowing where to start (who to contact, what questions to ask) are the main issues.
- Providing information to assist the public in finding legal assistance as well as guidance on considerations when seeking legal assistance are good places to start.

b. Direct Supervision Requirement

Amendments to the Code of Conduct are being considered to allow greater flexibility for non-lawyers working under the supervision of a lawyer.

The Future of Legal Services Committee has conducted an initial review of the proposed amendments and the redlined amendments are presented for Benchers feedback at this stage. The amendments will also be reviewed by the Model Code Sub-Committee, the Discipline Policy Committee and SLIA. The amendments will be brought back for consideration once all groups have done their review.

A concern was raised around the reference to assessment of character before determining whether or not a non-lawyer can take on a task. Education, experience and training seem to be the appropriate qualification factors. This feedback will be incorporated into the further review of the amendments.

c. Exemptions

Administration continues to review exemptions from the prohibition against the unauthorized practice of law based on the associated policy framework and identify amendments as appropriate for consideration also in light of the developing framework for limited licensing. Consultation with relevant stakeholders remains ongoing in relation to amendments identified for further review (Rule 1002(1)(a) (i), (iv), (xi), and (xii)) and will be considered further by the Future of Legal Services Committee for recommended follow-up.

A note that when we compare what we have been doing around exemptions with the results of the legal needs survey, moving some of our discovery period form providers into exemptions meets an identified need. This is helping people access services without regulatory barriers.

4.2 Reconciliation Mapping Exercise Update

A meeting of the Law Society Community of Practice (which includes Law Society representatives from all corners of the organization) with Office of the Treaty Commissioner (OTC) facilitators took place on March 28, 2022.

The session was led by the Aboriginal Friendship Centres using their *Honouring Her Spark* framework. The outcome is a report that identifies several suggested areas where action could be taken. The findings of the report will be combined with other information provided through documentation, the organization wide survey, and other sessions and will result in a final set of recommendations.

Two further sessions will occur. The next one will look at the survey results and the last one will focus on the full report and final recommendations.

4.3 Information Items

An information package was included in the materials, providing a Communications report and a report on the activities of all Bencher Committees.

5. New Business

None.

6. Consent Agenda

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

The items included on the consent Agenda are set out in 6.1 and 6.2 below:

6.1 Approval of the Bencher Minutes

Moved by Crystal Norbeck, Q.C., seconded by Adam Touet, that Minutes from the Bencher meeting held February 18, 2022 and Minutes from the *In-Camera* Bencher meeting held February 18, 2022 be approved as written. None opposed. The motion carried.

a. Minutes from the December 2021 Bencher Meeting

At February Convocation, the Benchers were unable to approve the Minutes from December 2021 Convocation, as a quorum of Benchers from the December meeting were not present. As a follow up, the Minutes were distributed via email to all 10 Benchers present at the December 2021 Convocation and the following Minutes were approved:

- i. Minutes from the Benchers meeting held December 3, 2021 – moved by James Korpan, Q.C., seconded by Foluke Laosebikan, Q.C. The motion carried; and
- ii. Minutes from the *In-Camera* Benchers meeting held December 3, 2021 – moved by James Korpan, Q.C., seconded by John Morrall. The motion carried.

6.2 Terms of Reference

Moved by Tiffany Paulsen, Q.C., seconded by Jonathan Bodvarson, that amendments to all eleven Committee Terms of Reference as listed below be adopted as written. None opposed. The motion carried.

- i. Audit Committee
- ii. Competency Committee
- iii. Conduct Investigation Committee
- iv. Discipline Policy Committee
- v. Equity & Access Committee
- vi. Ethics Committee
- vii. Firm Regulation Committee
- viii. Governance Committee
- ix. Model Code Sub-Committee
- x. Nominations Committee
- xi. Trust Safety Committee

7. Meeting Finalization

7.1 Review Actions to be Taken

7.2 Confirm Items under 1.4

7.3 Meeting Evaluation

7.4 Next Meetings

A special meeting of the Benchers has been scheduled for Wednesday, May 11, 2022 from 1:30 – 3:00 pm to consider the 2022 - 2023 Insurance Levy.

June Convocation will be held June 23 & 24, 2022 at Dakota Dunes.

7.5 Motion to Adjourn

The public meeting adjourned at 11:24 am and the *Closed* Agenda portion of the meeting was announced. All guests and Erin Kleisinger, Q.C., Federation Council left the meeting so that the *Closed* Benchers meeting could begin.

TIMOTHY J. BROWN, Q.C.
Executive Director