

# **Minutes for the Meeting of the Benchers Held Friday, February 17, 2023, In-Person and via Zoom Hotel Saskatchewan, Regina**

## **Present:**

Andrea Argue, K.C., Suzanne Jeanson, James Korpan, K.C., Jonathan Bodvarson, James Fyfe, K.C., Nolan Kondratoff, William Lane, Foluke Laosebikan, K.C., Jeff Lee, K.C., James Morrison, K.C., Tiffany Paulsen, K.C., Martin Phillipson, Adam Touet, Rochelle Wempe and Julie Ann Wriston

## **In attendance:**

Tim Brown, K.C., Tim Huber, Kara-Dawn Jordan, K.C., Valerie Payne, Michelle Owolagba, Andrea Johnston, Christine Johnston, Kiran Mand, Jody Martin, Pamela Harmon, CPA, CA, Stephanie Kievits, CPA, CA, Pamela Kovacs, Paul Westgate, Julie Sobowale and Shane Parker

The meeting was called to order at 9:03 am.

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

### **1.1 Apologies for Absence**

Apologies for absence were received from Erin Kleisinger, K.C., Lynda Kushnir Pekar, Zachery Solomon, Sonia Eggerman and Kaitlynn McArthur.

### **1.2 Confirmation of Agenda**

Moved by James Korpan, K.C., seconded by Will Lane, to approve the Agenda as written. The motion carried.

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

None.

### **1.4 Committee Reports and Documents Which Are Not Available to the Public**

Documents and Reports related to the following items were not available to the public.

- i. Bencher Training Session (*in-camera*) – Thursday, February 16, 2023
- ii. Appointments to Fill Member Bencher Vacancies
- iii. Informational Package – Operational reports, Committee Reports and reports from Representatives on outside organizations

## 2. Decision Items

### 2.1 Appointments to Fill Member Benchers Vacancies

Currently there are four member Benchers Vacancies which could be filled by appointment pursuant to section 20 of *The Legal Profession Act, 1990*.

As per the Member Benchers Vacancy Appointment Policy, the Nominations Committee is responsible for making recommendations to the Board regarding whether vacancies should be filled, and if so, for the recruitment, assessment and recommendation of candidates.

The Nominations Committee met on December 15, 2022 to discuss whether existing vacancies should be filled. A memo outlining the recommendation of the Committee and a draft recruitment package were provided for consideration and feedback.

As per the Policy, the Nominations Committee considered:

- the timing of the vacancy and whether an appointment is practicable, given its proximity to the next Member Benchers election;
- the size of the Board, including whether an appointment is required to comply with the *Act* and whether an appointment is required to adequately meet the obligations of the Board; and
- the needs of the Board, considering the overall diversity, knowledge, skills and experience of the Board, based on an analysis of the most recent assessment of existing Benchers as compared to the Assessment Criteria.

The Nominations Committee agreed that the current size of the Board did not in itself necessitate the filling of Benchers vacancies and additionally felt that the existing Board has a good range of skills. It was noted, however, that the Board could benefit from more diversity and the perspectives and knowledge that increased diversity brings. As a result, the Nominations Committee recommended that the Law Society proceed with a recruitment to fill Benchers vacancies without pre-determining the number of vacancies that will be filled. The ultimate number (up to four) would be determined by the quality of the candidates and whether or not potential candidates address gap areas in board skills, experience and perspectives.

A letter from the Prince Albert Bar Association regarding the filling of the vacancy arising in Prince Albert was also discussed by the Nominations Committee and it was noted that the policy as drafted does not specifically contemplate geographical diversity as a factor for consideration. Rather, the diversity focus is on other important forms of diversity that do not receive consideration under the current electoral structure.

#### Discussion:

- A question was raised as to whether we would take geography or electoral districts into consideration. Although not specifically referenced in the policy, the foundation of our governance structure is geography and electoral divisions and consideration for this should be given.

- If geographical diversity is going to be considered, the policy should likely be amended to clarify this for the benefit of the Benchers, Nominations Committee and potential candidates.
- The policy as drafted does not exclude consideration of geographical diversity; there is discretion there. It is a pertinent factor and we should be up front about it and have it as a consideration. This would require amendment to the outreach materials at least.
- Geographical diversity should be one of the factors, but we would need to be cautious that this is not a return to just picking people by constituency. This would be disingenuous to our diversity efforts.
- It was suggested that the diversity criteria be amended to include geographical diversity as one factor for consideration.
- There was a question raised as to whether the Nominations Committee considered not filling any of the vacancies. The Nominations Committee did not feel that given the size and overall skills of the Board that there was an urgent need to make an appointment. There was discussion about not making an appointment for the sake of making an appointment. Rather, an appointment should be made with the view to supplementing the existing skills and perspectives of the Board.
- There was a question raised as to the number of elected terms an appointed Bencher could serve following appointment. It was noted that an appointed Bencher is eligible to serve two consecutive elected terms.

Moved by Will Lane, seconded by Tiffany Paulsen, K.C., to amend the Member Bencher Vacancy Appointment Policy to specifically list geographical diversity as an enumerated factor. The motion carried.

Moved by James Fyfe, K.C., seconded by James Morrison, K.C., that the Law Society proceed with a recruitment to fill up to four Bencher vacancies as per the recommendation of the Nominations Committee and the Policy as amended. The motion carried.

## **2.2 Regulation**

### **i. Rule Amendments**

#### **a. Practice Conditions and Restrictions**

New Rule 1137.1 Part 11 – Professional Responsibility; and  
New Rule 745(1) Part 7 – Membership and Practice Privileges

Administration proposed the addition of new Rules that explicitly clarify the Law Society's ability to publish practice conditions and restrictions arising out of both Admissions & Education and Complaints processes whether they occur within or outside of the hearing process.

A memo was included, providing an overview of the proposed Rule amendments and related policy.

Moved by Rochelle Wempe, seconded by Foluke Laosebikan, K.C., to approve the addition of new Rule 1137.1, Professional Responsibility, and the addition of new Rule 745(1), Membership and Practice Privileges, to authorize the Law Society to publish practice conditions and restrictions arising out of both Admissions & Education and Complaints processes, whether they occur within or outside of the hearing process, as written.

A motion to grant second reading on the same day was presented by Suzanne Jeanson, seconded by Will Lane.

On second reading, a motion was presented by Foluke Laosebikan, K.C., seconded by James Korpan, K.C., to approve the addition of new Rule 1137.1, Professional Responsibility, and the addition of new Rule 745(1), Membership and Practice Privileges, to allow the Law Society to publish practice conditions and restrictions arising out of both Admissions & Education and Complaints processes whether they occur within or outside of the hearing process, as written. The motion carried.

b. Approved Pro Bono Organizations

The Competency Committee recommended approval of the following Rule amendments with corresponding updates to related forms and communications:

- amendment to Rules 701, 702, 717, 728, 1202 and 1407 to clarify that Pro Bono member registration is an active category;
- update to Form P-5 to clarify that Pro Bono member registration is an active category;
- introduction of Form C-6 to facilitate application and review of organizations applying for and maintaining approved pro bono status in line with Rule 717;
- update to the forms for Annual Reports (Non-Trust, Trust) to include considerations for approved pro bono organizations; and
- website content for transparent information and communication for potential and approved pro bono organizations.

A memo outlining the amendments was included. It was noted that this is an updating of our approach to Approved Pro Bono Organizations after consultation with affected organizations. This helps us meet our obligations with respect to the Pro Bono Member category and insurance requirements. Rules are updated to clarify that this is an active category. A new form is introduced for organizations to apply to become Approved Pro Bono Organizations and we have integrated these organizations into our regular reporting and monitoring requirements.

Moved by James Fyfe, K.C., seconded by Will Lane, to amend Rules 701, 702, 717, 728, and 1202 and 1407 to clarify that Pro Bono registration is an active category, as written.

A motion to grant second reading on the same day was presented by Foluke Laosebikan, K.C., seconded by Jeff Lee, K.C.

On second reading, the motion was presented by Tiffany Paulsen, K.C., seconded by Jonathan Bodvarson, to amend Rules 701, 702, 717, 728, and 1202 and 1407 to clarify that Pro Bono registration is an active category, as written. The motion carried.

c. Exemptions from Unauthorized Practice

The Competency and Future of Legal Services Committees recommend approval of amendment to sub-Rule 1002(1)(a)(xi) regarding exemption from unauthorized practice for university law students which introduces terms and conditions and clarifies direct supervision requirements.

Additionally, the Future of Legal Services Committee recommends that the Board approve amendment to sub-Rule 1002(1)(a)(iv) in-line with consultation with the Office of the Registrar of Lobbyists Saskatchewan.

A memo outlining the amendments was provided to the Benchers. The first is respecting other Lobbyists. It was noted that the Law Society has been in touch with the Office of the Registrar of Lobbyists who have requested a minor amendment for clarity and reference to their legislation.

With respect to university law students, the Rule amendment was prepared in consultation with affected organizations. The language mirrors some of the language in relation to students-at-law and links to direct supervision requirements in the *Code of Conduct*. The amendments provide clarity, help meet policy objectives in relation to exemptions, and apply terms and conditions that protect the public from risk.

Moved by Rochelle Wempe, seconded by Julie Ann Wriston, that amendments to Rules 1002(1)(a)(iv) and 1002(1)(a)(xi) regarding exemption from unauthorized practice for lobbyists and university law students be approved, as written.

A motion to grant second reading on the same day was presented by Foluke Laosebikan, K.C., seconded by Adam Touet.

On second reading, presented by Martin Phillipson, seconded by Julie Ann Wriston, that amendments to Rules 1002(1)(a)(iv) and 1002(1)(a)(xi) regarding exemption from authorized practice for lobbyists and university law students be approved, as written. The motion carried.

- d. Principal Training Program  
Rule 704 Approval to Act as a Principal; and  
Rule 709 Secondment of Articles

The Competency Committee recommended approval of amendments to Rule 704 to require lawyers seeking to act as principals to have completed the principal training course and amendment to Rule 709 to exempt lawyers who are supervising a student for a secondment from this requirement.

A memo outlining the amendments was provided. It was noted that the Rule amendments come in response to the 2019 Articling Assessment Research Report, which identified mentorship and guidance as key challenges for principals and students. The Law Society has been piloting the course since 2022 and data indicates that users are satisfied and that the course has had a positive impact on feelings of preparedness to act as a principal.

Discussion:

- A question was raised as to how this requirement will be communicated to the members at large.
- It was noted that the communications have not been developed, but a comprehensive approach will be taken to communications. Although only free to principals, the Law Society will be encouraging all members to take the course and therefore all members will receive the communication.
- We will offer some flexibility in terms of completing the course this year, as principals will not have anticipated the requirement; but in future years, principals will have to complete the course prior to being approved.

Moved by James Fyfe, K.C, seconded by Suzanne Jeanson, to approve amendment to Rule 704 to make it mandatory for lawyers seeking to act as principals to complete the principal training course; and amendment to Rule 709 to exempt lawyers from completing the mandatory principal training course who are supervising a Student-at-law for a secondment.

A motion to grant second reading on the same day was presented by James Fyfe, K.C., seconded by Foluke Laosebikan, K.C.

On second reading, moved by Julie Ann Wriston, seconded by James Fyfe, K.C., to approve amendment to Rule 704 to make it mandatory for lawyers seeking to act as principals to complete the principal training course; and amendment to Rule 709 to exempt lawyers from completing the mandatory principal training course who are supervising a Student-at-law for a secondment. The motion carried.

ii. Complaints Involving Law Society Staff, Benchers, Members of Bencher Firms and Bencher Firms

The Discipline Policy Committee has considered and is recommending the adoption of updated policy for the management of complaints involving Law Society Staff, Benchers, Members of Bencher Firms and Bencher Firms.

The primary difference between the proposed policy and how things are dealt with now is that Professional Responsibility counsel would be able to do some work in-house before a complaint must go to a designate. If a complaint against a member of a Bencher Firm or Bencher Firm is summarily dismissible, this would be done in-house. With respect to complaints against staff, if the complaint is not an actual complaint but a complaint about the process, these would be dealt with in-house as well.

Discussion:

- There was a discussion about the increase in strategic complaints against opposing counsel to get them off of files and a question of whether this is working. It was suggested that the Law Society, and the Discipline Policy Committee, think about tracking some of this to determine if the strategy is working and how this is affecting our commitment to protecting the public.
- There was a question about whether consideration could be given to holding off the investigation and letting the parties know this will be the case, until the matter is reviewed by the Court.
- Proposed changes to the policy may go a way to addressing these issues, as the summary dismissal provisions in the Rules touch on both premature complaints and complaints brought for improper purposes.
- It was clarified that complaints are not coming from lawyers but litigants themselves.
- There was a question about whether expanding the designate complaints counsel pool has been considered. It was noted that this is something that is being considered.

Moved by James Morrison, K.C., seconded by Jonathan Bodvarson, to approve the adoption of updated Policy *Review of Complaints against Benchers, Bencher Firms/Members of Bencher Firms and/or Law Society Staff*. The motion carried.

## 2.3 Society Governance

### i. Resolutions

#### a. TD Asset Management Inc. – Investments

A TD Asset Management Inc. Resolution for signatures was provided for approval.

Moved by Tiffany Paulsen, K.C. seconded by Foluke Laosebikan, K.C., that the TD Asset Management Inc. Resolution be approved as written, subject to correcting a typographical error in Pam Harmon's title. The motion carried.

#### b. TD Bank – Bank Accounts

A TD Bank Resolution for signatures was provided for approval.

Moved by Martin Phillipson, seconded by Rochelle Wempe, that the TD Banking Resolution be approved as written. The motion carried,

## 3. Discussion Items

### 3.1 Society Governance

#### i. Standing Reports

##### a. President's Report

Andrea Argue, K.C. reported on the following:

- An interview with Terry Davidson of *The Lawyers Daily*. The focus of the article was on wellness.
- Attendance at the American Society for Association Executives Seminar with the other members of the Executive Committee. The seminar was focused on governance and it spawned good discussion amongst the Executive Committee.
- Preparation of Committee assignments. There is a lot of talent to work with and efforts were made to account for preferences.

##### b. Executive Director's Report

Tim Brown, K.C. provided a written report on February 10, 2023.

##### c. Federation Council Report

Erin Kleisinger, K.C. provided her written report in advance of Convocation.



## ii. Financial Reporting

### a. Financial Statements

The *draft* financial statements for the year ended December 31, 2022 were included for review, along with a memo from Pamela Harmon, CPA, CA, containing a variance analysis both from budget and most recent forecasts.

It was noted that the general fund ran a deficit of approximately 1.5 million dollars of which \$784,000 was budgeted to subsidize member fees. The remainder of the deficit relates to investments, the majority of which is unrealized loss. Similarly, in the Special Fund, the deficit was larger than budgeted mainly due to investments. Setting aside unrealized losses, the Law Society was very close to budget in both funds.

Virtus Group will be starting their Audit next week and we expect to have *draft* audited financial statements for presentation before the Benchers at April Convocation.

### b. Investment Reports

The December 31, 2022 TDAM Investments Summary and the TDAM Investment Performance Summary were provided for review.

The Quarterly Investment Report for the period October 1 to December 31, 2022 was also provided for review.

### c. Annual General Meeting and Approval of Audited Financial Statements for the year ended December 31, 2022

Audited financial statements for the year ended December 31, 2022 will be presented for approval by the members at the AGM to be held virtually over the lunch hour on June 22, 2023. In advance of this meeting, Benchers will be required to approve the Audited Financial Statements at April Convocation.

## iii. 2023 Workplan

The workplan will be revised once the new Strategic Plan is approved by the Board; in the meantime, the existing workplan will be updated as appropriate.

Administration is currently going through the process of distilling and synthesizing discussion based on the videos and notes taken at our December meeting. It is anticipated that a summary of discussions and draft wording for the updated Strategic Plan will be presented to the Benchers in April for feedback.

## 4. Strategic Initiative Updates

### 4.1 Strategic Initiatives

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

##### a. Firm Regulation

The Firm Culture Principles and resources have been integrated into the online platform and incorporated into the two workbooks. The next group of firms commencing on February 6<sup>th</sup> will be the first to complete the Assessment Tool with all Principles integrated. The Communication to the Designated Representatives, as previously reviewed by the Benchers, was sent out to the DR's on Friday, February 3<sup>rd</sup>. Nearly 44% of firms have successfully completed the self-assessment process to date. We continue to receive feedback through the anonymous survey, as well as through direct communications between the members and staff.

##### b. Western Law Societies Competency Project

We have partnered with the law societies of British Columbia, Alberta and Manitoba to develop an entry to practice competency profile.

The Profile will set out the competencies the law societies believe are important for a lawyer at the time of entry into the practice of law. We are applying the same development process that was followed in Alberta in the recent development of their Professional Development Profile. We have also engaged the same consultants (ACT) used by Alberta. This process aligns with best practice for development of competency profiles and supports a defensible final product.

An Advisory Committee (consisting of two senior staff from each participating jurisdiction) will oversee the development of the Profile. The Advisory Committee will have decision-making authority and provide strategic direction on stakeholder engagement and the flow of information to law society competency committees and Benchers tables. Andie Johnston and Kiran Mand are the Saskatchewan representatives on the Advisory Committee.

A Task Force (consisting of 3 representatives from each participating jurisdiction) will work closely with our consultants (ACT) in carrying out the substantive drafting work involved in developing the Profile. The Task Force will be populated over the next month. Once a significant amount of drafting is completed by the Task Force, the draft document will be workshopped with several focus groups established in consultation with ACT and the Advisory Committee. Once the Profile is complete, a validation survey will go out to members.

The project has just recently commenced and is expected to be complete by March 2024.

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

a. Limited Licensing Pilot

The Pilot has been active since January 2022 and a summary of reporting information and data from the first year of the Pilot were provided.

b. Exemptions

Consultation is continuing with stakeholders regarding two exemptions from unauthorized practice, which will be considered by the Future of Legal Services Committee at upcoming meetings.

## 5. Truth & Reconciliation Initiatives

### 5.1 Statement on Commitment to Reconciliation

Following approval of the Statement at September Convocation and discussion on next steps, Administration reached out to the Métis Nation Saskatchewan as well as the Federation of Sovereign Indigenous Nations to provide an embargoed copy of the Statement and determine interest in engaging in dialogue in advance of the Statement's release.

Administration met with a representative of the Métis Nation Saskatchewan on January 19, 2023 and received contact details for a Michif translator as well as several inputs that would update the references to the Métis/Michif Nation and included references to the [Canada-Métis Nation Accord](#) and the [Métis Government Recognition and Self-Government Agreement](#).

We will also provide an embargoed copy to other Law Society jurisdictions as a courtesy, prior to release.

### 5.2 Final Report on Truth and Reconciliation Through Treaty Implementation

Administration has continued to exchange with the Office of the Treaty Commissioner and has advanced several items:

- *Recommendations*: work to develop a more accessible format that synthesizes the 38 recommendations from the final report for publication; and
- *Phase II implementation plan*: entering into a second Letter of Agreement to develop an implementation plan and indicators for the recommendations created in Phase I (Phase II tentative March - July 2023).

## 6. Informational Items

### 6.1 Society Governance

#### i. Bencher Honoraria

Since 2019, the Law Society has granted 3 CPD ethics hours per calendar year to Benchers to acknowledge their significant contribution of time and expertise. This ethics hour credit is 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, to provide free access to all recorded Law Society CPD resources.

#### Discussion:

- 3 hours does not seem sufficient, given all of the training Benchers are engaged in.
- It was clarified that training sessions like the one that occurred yesterday are CPD accredited, so Benchers receive the 3 hours and can claim credit for training sessions as well.

### 6.2 Information Package for Convocation

An information package was included in the materials.

## 7. New Business

## 8. Consent Agenda

### 8.1 Approval of the Bencher Minutes

The following Bencher Minutes were provided for approval:

- a. Minutes from the Bencher meeting held December 2, 2022;
- b. Minutes from the *In-Camera* Bencher meeting held December 2, 2022.

Moved by Foluke Laosebikan, K.C., seconded by Julie Ann Wriston, that Minutes of the Bencher meetings held December 2, 2022 as listed, be approved as written. The motion carried.

## 9. Meeting Finalization

### 9.1 Review Actions to be Taken

### 9.2 Meeting Evaluation

### 9.3 Next Meeting - April 27 and 28, 2023 at Dakota Dunes Resort near Saskatoon (Whitecap).

#### **9.4 Motion to Adjourn**

The Public meeting adjourned and the *Closed* Agenda portion of the meeting commenced.

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