

Minutes for the Meeting of the Benchers Held Friday, September 22, 2023, In-Person and via Zoom Hotel Saskatchewan, Regina

Present:

Andrea Argue, K.C., Suzanne Jeanson, James Korpan, K.C., Idowu Adetogun, Keith Amyotte, Sonia Eggerman, James Fyfe, K.C., Laura Klemmer, Lynda Kushnir Pekrul, William Lane, Foluke Laosebikan, K.C., Jeff Lee, K.C., Tiffany Paulsen, K.C., Martin Phillipson, Adam Touet, Christopher Triggs, Rochelle Wempe and Julie Ann Wriston

In attendance:

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

The meeting was called to order at 9:01 am.

1. Approval of the Agenda

1.1 Apologies for Absence

Jonathan Bodvarson, Nolan Kondratoff and James Morrison, K.C. sent their regrets.

1.2 Confirmation of Agenda

Moved by Adam Touet, seconded by Tiffany Paulsen, K.C., to approve the Agenda as written. The motion carried.

1.3 Bencher Conflict of Interest Disclosures

Provincial Court Judicial Council of Saskatchewan – Andrea Argue, K.C. declared a conflict.

Legal Aid Commission – Suzanne Jeanson and Idowu Adetogun declared conflicts.

Council of the Federation – Andrea Argue, K.C. declared a conflict.

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. Budget 2024
- ii. Appointments
- iii. Informational Items – Operational reports, Committee Reports and reports from Representatives on outside organizations
- iv. Truth and Reconciliation through Treaty Implementation Action Plan

2. Decision Items

2.1 Budget 2024

The 2024 Budget, practicing fee and special fund assessment for 2024, as well as a *draft* Reserve and Surplus Management Policy, were considered by the Benchers.

A motion to approve the 2024 Budget, as presented, was moved by William Lane, seconded by Foluke Laosebikan, K.C. The motion carried.

A motion to approve the Practice Fee for 2024, unchanged from 2023, in the amount of \$2,675 was moved by Jeff Lee, K.C., seconded by Rochelle Wempe. The motion carried.

A motion to approve the Special Fund assessment for 2024 in the amount of \$250 (an increase of \$50), was moved by James Korpan, K.C, seconded by Rochelle Wempe. The motion carried.

A motion to approve C-XV Reserve and Surplus Management Policy – General Fund (formerly C-XV General Fund Reserves Policy), was moved by Lynda Kushnir Pekrul, seconded by Foluke Laosebikan, K.C. The motion carried.

A motion to approve amendment to Schedule 1 Law Society Fees and Assessments, setting the Special Fund assessment at \$250, an increase of \$50 for 2024, was moved by James Fyfe, K.C, seconded by Julie Ann Wriston. The motion carried.

A motion to grant second reading on the same day was presented by Adam Touet, seconded by James Korpan, K.C. The motion carried.

A motion to approve amendment to Schedule 1 Law Society Fees and Assessments, setting the Special Fund assessment at \$250, an increase of \$50 for 2024, was made by Jeff Lee, K.C., seconded by Rochelle Wempe. The motion carried.

2.2 Appointments

- i. Provincial Court Judicial Council of Saskatchewan

Andrea Argue, K.C. excused herself from the meeting.

Section 53 of the *Provincial Court Act* sets out as follows:

(d) the president of the Law Society of Saskatchewan or a bencher or former bencher of the Law Society appointed by a resolution of the benchers;

The Saskatchewan Provincial Court Judicial Council is a body created under *The Provincial Court Act, 1998*. It is composed of the Chief Justice of Saskatchewan, the Chief Justice of the Court of Queen's Bench, the Chief Judge of the Provincial Court or their designates, the President of the Law Society of Saskatchewan or a Bencher or former Bencher of the Law Society appointed by a resolution of the Benchers, two additional judges, and two people who represent the community at large. It has two main purposes:

- recommending candidates for appointment to Provincial Court; and
- hearing complaints about the conduct of Provincial Court judges.

James Korpan, K.C. has now served 2 terms and his current term will expire on December 31, 2023. James Korpan, K.C. provided a recommendation to the Benchers on behalf of the Executive Committee to appoint Andrea Argue, K.C.

Moved by Tiffany Paulsen, K.C., seconded by Sonia Eggerman, that Andrea Argue, K.C. be appointed to serve a one-year term on the Saskatchewan Provincial Court Judicial Council, from January 1, 2024 to December 31, 2024. The motion carried.

ii. Saskatchewan Legal Aid Commission

Suzanne Jeanson and Idowu Adetogun excused themselves from the meeting.

The Law Society makes two appointments to the Legal Aid Commission. Victoria Elliott-Erickson was re-appointed in December for a second term that will expire December 31, 2024. There is currently one Law Society vacancy resulting from the retirement of Raymond Wiebe, K.C. at the end of 2022, who held the position of Chair.

A call for volunteers was sent to the membership and interest was received from 4 members. The Nominations Committee made a recommendation to the Benchers to appoint Idowu Adetogun.

Moved by Foluke Laosebikan, K.C., seconded by Keith Amyotte, that Idowu Adetogun be appointed as the Law Society representative on the Saskatchewan Legal Aid Commission for a 2-year term, from October 1, 2023 to September 30, 2025. The motion carried.

iii. Council of the Federation

Andrea Argue, K.C. excused herself from the meeting.

Erin Kleisinger, K.C. will be joining the leadership ladder of the Federation of Law Societies of Canada, effective November 15, 2023, ending her term as the Saskatchewan's appointee to Council.

Recruitment for this position began in August. Given the importance to have a current understanding of issues facing the Law Society and legal regulators generally, the recruitment was open to current Benchers and recent past Benchers with Executive Committee experience.

Andrea Argue, K.C. was acclaimed.

Moved by Lynda Kushnir Pekrul, seconded by Rochelle Wempe, that Andrea Argue, K.C. be appointed to serve as Saskatchewan's appointee to Federation Council for for a 2-year term, commencing November 15, 2023. The motion carried.

2.3 Regulation

i. Rule Amendments

a. Part 12 - Insurance, Rule 1202 Saskatchewan Lawyers' Insurance Association Inc.

A memo was put before the Benchers containing proposed amendments to Rule 1202 to expand the exemption from the insurance program for members employed by the Federal Government of Canada and change the process by which eligibility for exemption is established.

The amendments would expand the current exemption available to members employed by the Department of Justice and the Public Prosecution Service of Canada to all members employed by the Government of Canada who are covered by the same or a comparable policy on legal assistance and indemnification.

It was proposed that all government members claiming exemption be required to provide an annual declaration that they do not practice outside the scope of their employment, as well as provide an undertaking that they will advise the Law Society and SLIA immediately and obtain professional liability insurance should their status change, such that they no longer qualify for the exemption.

The amendments were reviewed by the Insurance Committee and were recommended for approval.

Discussion:

- The importance of requiring the declaration and undertaking was noted.

Moved by Adam Touet, seconded by Foluke Laosebikan, K.C, to approve amendments to Rule 1202, Saskatchewan Lawyers' Insurance Association Inc., to expand the exemption from the insurance program for members employed by the Federal Government of Canada and change the process by which eligibility for exemption is established, as written in the memo dated August 21, 2023. The motion carried.

A motion to grant second reading on the same day was presented by Foluke Laosebikan, K.C., seconded by Rochelle Wempe. The motion carried.

On second reading, moved by Jeff Lee, K.C., seconded by James Fyfe, K.C., to approve amendments to Rule 1202, Saskatchewan Lawyers' Insurance Association Inc., to expand the exemption from the insurance program for members employed by the Federal Government of Canada and change the process by which eligibility for exemption is established, as written in the memo dated August 21, 2023. The motion carried.

b. Part 11 – Professional Responsibility, Rule 1102, Examination of Complaints

A memo was provided to the Benchers proposing amendments to Rule 1102(4) to recognize the difference in the regulatory impact of the use of the term “no further action” in the repetition clause and eliminate the risk of the looping effect resulting from allowing a Complainants' Review of a complaint determined to be repetitive pursuant to Rule 1102(4). This amendment would provide greater transparency and support for the non-acceptance of certain complaints without requiring the official “opening” of a complaint and triggering the right to a Complainants' Review.

Discussion:

- There was a question about the possibility of establishing the ability to declare someone a vexatious litigant, as is possible in the Court of King's Bench, and it was noted that there is potential to consider this.

Moved by Lynda Kushnir Pekrul, seconded by Adam Touet, to approve amendments to Rule 1102(4), Examination of Complaints, to address complaints that are repetitive in nature, as written in the memo dated September 7, 2023. The motion carried.

A motion to grant second reading on the same day was presented by Sonia Eggerman, seconded by James Korpan, K.C. The motion carried.

Moved by Laura Klemmer, seconded by Tiffany Paulsen, K.C., to approve amendments to Rule 1102(4), Examination of Complaints, to address complaints that are repetitive in nature, as written in the memo dated September 7, 2023. The motion carried.

ii. Professional Code of Conduct, Chapter 5.7

- a. 5.1-2B Ex Parte Proceedings
5.1-2C Single-Party Communications with a Tribunal

Amendments to the *Model Code* regarding Ex Parte Proceedings and Single-Party Communications with a Tribunal were approved by the Federation in conjunction with the Harassment and Discrimination provisions, which were adopted by the Board at April Convocation. Both the Discipline Policy Committee and Model Code Sub-Committee were involved in and provided feedback through the two rounds of Consultation. The outstanding amendments adding s. 5.1-2B and C were reviewed by the Discipline Policy Committee on September 14th and are recommended for approval.

Moved by Will Lane, seconded by Foluke Laosebikan, K.C., to approve the addition of Rule 5.1-2B, Ex Parte Proceedings and Rule 5.1-2C Single-Party Communications with a Tribunal, as written. The motion carried.

A motion to grant second reading on the same day was presented by Adam Touet, seconded by James Fyfe, K.C. The motion carried.

On second reading, moved by James Korpan, K.C., seconded by Rochelle Wempe, to approve the addition of Rule 5.1-2B, Ex Parte Proceedings and Rule 5.1-2C Single-Party Communications with a Tribunal, as written. The motion carried.

2.4 Truth and Reconciliation through Treaty Implementation Action Plan

The Community of Practice has completed its work with the Office of the Treaty Commissioner to develop an action plan for the Truth and Reconciliation through Treaty Implementation recommendations.

The full Community of Practice held their final meeting in Regina on June 7th to review and validate the action plan which was shared with the Board as part of the strategic planning process at June Convocation.

The Action Plan was reviewed more fully at September Convocation and a motion was requested by the Administration for approval and public dissemination as part of the Annex in the Statement of Commitment to Reconciliation. For reference, a copy of the updated Statement of Commitment following consultation with the Federation of Sovereign Indigenous Nations and Métis Nation - Saskatchewan and the associated communication was provided for review.

Moved by Laura Klemmer, seconded by Foluke Laosebikan, K.C., to approve the Action Plan and public dissemination of the Action Plan as part of the Annex to the Statement of Commitment to Reconciliation. The motion carried.

3. Discussion Items

3.1 Society Governance

i. Standing Reports

a. President's Report

President Andrea Argue, K.C. reported the following activities:

- Meetings with recently appointed Benchers to discuss committee placements.
- Attendance at a Law Society of Manitoba meeting with Tim Brown, K.C. and Pam Kovacs. Pam presented on the Future of Legal Services Initiative which was well received.
- Meeting with the Minister of Justice along with other Executive Committee members. It was an opportunity to provide the Minister with a Law Society update and discuss the need for the appointment of Public Representative Benchers and the Future of Legal Services Initiative which will require collaboration with the Ministry. The information presented was well received and the Executive received some questions about Artificial Intelligence.
- Attendance at the College of Law to present a Scholarship.
- Attendance at the Canadian Judicial Council dinner.
- Attendance at a presentation of students to Court of King's Bench.

b. Executive Director's Report

Tim Brown, K.C. provided a written report prior to September Convocation.

Tribute was paid to Dr. Kara Mitchelmore for her instrumental role in the creation of CPLED.

Erin Kleinsinger, K.C. was acknowledged for her contributions to the Law Society as a Bencher, President and Federation Representative.

c. Federation Council Report

Erin Kleisinger, K.C. reported on the following:

- Legal action initiated by the Federation challenging the constitutionality of amended mandatory reporting obligations under the *Income Tax Act*.
- Launch of Anti-money Laundering Educational Program.
- Consultation in relation to review of requirements for Canadian Common Law Degree Programs.
- Upcoming Federation Conference in Whitehorse – Topic “Regulating Legal Services in the Era of AI.”

ii. Financial Reporting

a. Financial Statements

Financial statements for the month ended August 31, 2023 were provided for review.

b. Investment Reports

The August 31, 2023 TDAM investments Summary was provided for review.

The Quarterly Investment Report for the period April 1 to June 30, 2023 was also provided for review.

Pamela Harmon reported that the remaining transition to the new asset mix is now expected to be complete in Q2 2024.

iii. 2023 + Workplan and Strategic Plan (2023 - 2026)

A new workplan, detailing work currently contemplated to implement the new Strategic Plan for the remainder of 2023 and beyond, was provided for review and discussion.

The workplan is intended to be a living document and will be built out as further consideration is given to areas of strategic priority and appropriate direction is received.

4. Informational Items

4.1 Strategic Initiatives Update

i. Strengthen Regulation (Goal 1)

a. Legal Guided Pathway Project

Administration has contracted a consultant to support in the development of a Legal Guided Pathway (LGP) in the complaints area. An LGP provides a tailored, plain-language information and self-help tool to aid the public in understanding legal professional obligations. The LGP will empower the

public to take informed next steps to resolve an issue with a legal professional including:

- seeking the appropriate process for legal professionals outside of the Law Society's jurisdiction (e.g. Judiciary);
- seeking the appropriate process for issues outside the Law Society's jurisdiction (e.g. fee assessment);
- attempting to resolve the dispute with their lawyer in appropriate circumstances (e.g. if they feel more communication with their lawyer is required); and
- efficient filing of a complaint against a lawyer if the issue is within the jurisdiction of the Law Society complaints process.

The LGP asks users simple questions and provides customized information and options based on those answers.

The LGP complaints project is expected to have a significant positive impact both for the public and the Professional Responsibility Department. The public will be served by the LGP by receiving assistance in:

- understanding the varied responsibilities of different legal professionals;
- facilitating navigation and understanding of the complaints process; and
- the provision of legal information and direction if their matter is not a complaint issue within the Law Society's jurisdiction.

The LGP will assist the Professional Responsibility Department in the delivery of service by allowing for the more effective and timely review of complaint matters, and by allowing greater focus on those complaint matters properly within the Law Society's jurisdiction. Members of the public will continue to be able to contact the Law Society for assistance in completing a complaint form in the event they are unable to access the LGP or continue to have questions following completion of the LGP.

The expected timeline for completion of the project is March 2024.

Discussion:

- A question was raised as to whether the LGP would be expanded beyond complaints and be considered through an access to legal services lens. It was noted that if this pilot project is successful, consideration would be given to expanding to other areas.

ii. Enhance Competence (Goal 2)

a. Firm Regulation

The largest firms in the province completed the Assessment Tool in the last quarter ending at the beginning of August. This was the second group to complete the Assessment Tool with the Principles of Equity, Diversity and Inclusion, and Access to Justice incorporated. A preliminary review of the firms reporting indicates a high level of thoughtful engagement in these areas; many having identified the desire to enhance training in these areas for their staff and lawyers. Several firms have also specifically indicated that they have created an internal committee to review their Assessment Report and develop and implement policies and procedures in their identified areas of need. To date, 213 firms (approximately 60% of all firms) have completed or are actively engaged in completing the Assessment Tool. The vast majority of firms continue to engage positively with the assessment process.

Administration recently completed an update and clean-up of the master library connected to the Assessment Tool, adding nearly 100 additional resources and CPD sessions to maintain the most up-to-date and relevant resources available to support law firms.

iii. Increase Equity, Diversity and Inclusion (Goal 3)

a. Equity and Access Committee

Administration is advancing the Committee workplan and additional information is included in the memo with Information Items. This includes background work to launch a mentorship program in 2024. In relation to outreach, a meeting occurred with the Saskatchewan Human Rights Commission regarding referrals related to matters that may arise via the Law Society's Equity Office. The Law Society was also invited to present to first year law students on human rights and the *Code of Conduct* as part of a new series of presentations to guide law students through their legal careers.

iv. Advance Truth and Reconciliation (Goal 4)

a. Statement on Commitment to Reconciliation

The Law Society is progressing work to identify translators and implement the communications plan in preparation for the Statement's release.

b. Truth and Reconciliation through Treaty Implementation

The Law Society was invited to co-present with the Office of the Treaty Commissioner at a workshop titled "Unlearn and Learn: Truth and Reconciliation" with the Canadian Network of Agencies of Regulation on September 6, 2023. There were 191 registrants and 163 attendees at the session and Elder Doug Pee-Ace provided Opening and Closing prayers.

v. Increase Access to Legal Services (Goal 5) and Future of Legal Services Initiative

A presentation on the Future of Legal Services Initiative, with an emphasis on the Limited Licensing Pilot, was provided to the Manitoba Law Society at their recent Board meeting.

a. Limited Licensing Pilot

The Pilot remains active and below are several fast facts about the Pilot current to the end of June 2023:

APPLICANTS	PARTICIPANTS - APPROVED	PARTICIPANTS - NOT APPROVED	PARTICIPANTS - WITHDRAWN	APPLICATIONS PENDING REVIEW
29	26	2	1	0
CLIENT INQUIRIES	CLIENTS SERVED	CLIENT GEOGRAPHIC LOCATIONS	CONSUMER REVIEW – POSITIVE	CONSUMER REVIEW – ISSUE RAISED
11,029 *In some Pilot service contexts there is a high volume of inquiry regarding legal services, but not all clients will elect or be candidates for services.	3,265	300+ locations outside of Regina / Saskatoon	28	5

An update current to the end of June 2023 (1.5 years of the Pilot) will be posted online. Additionally, work is progressing on the development of a *Code of Conduct* and mandatory ethics training for Limited Licensees, as well as Rules to guide the licensing process. The Future of Legal Services Committee considered several issues raised by lawyers in relation to Pilot participants at its September meeting.

b. Exemptions from the Prohibition Against the Unauthorized Practice of Law

In relation to exemption 1002(1)(a)(i), a survey was sent to lawyers and dispute resolution practitioners for their input around potential changes in the area of mediation and family law dispute resolution, with a deadline of July 21st. Responses and related recommendations to the Rules and *Code* are being analyzed by the Future of Legal Services Committee, the Model Code Sub-Committee and the Discipline Policy Committee, and will be brought to the Board in due course.

4.2 Convocation Dates 2024

2024 Convocation dates were proposed at June Convocation and the change from 6 full in person Convocations to 4 full in person Convocations per year, with issue specific virtual meetings as required, was approved.

Below are the final dates selected.

- March 27 and 28, 2024, in-person and virtually.
- April 30, 2024, virtual meeting to approve Audited Financial Statements and consider the SLIA Insurance Levy.
- June 19 - 21, 2024, in-person and virtually.
- Convocation was originally indicated to be in September. However, is now planned to occur on October 3 - 4, 2024, in person and virtually.
- December 5 and 6, 2024, in-person and virtually.

5. Information Package for Convocation

An informational package was included in the materials.

6. New Business

None.

7. Consent Agenda

7.1 Approval of the Bencher Minutes

The following Bencher Minutes were provided for approval:

- a. Minutes from the Bencher meeting held June 23, 2023; and
- b. Minutes from the *CLOSED* Bencher meeting held June 23, 2023.

Moved by Foluke Laosebikan, K.C., seconded by Rochelle Wempe, that the Open and *Closed* Minutes of the Bencher meetings held June 23, 2023 be approved as written. The motion carried.

8. Meeting Finalization

8.1 Review Actions to be Taken

8.2 Confirm Items under 1.4

8.3 Meeting Evaluation

A September Convocation survey was released.

8.4 Next Meeting

The last Convocation of the year will be held on November 30th and December 1st in Saskatoon.

The President's Reception has been scheduled for Saturday, November 18, 2023 in Swift Current.

8.5 Motion to Adjourn

Moved by Adam Touet, seconded by William Lane, to adjourn the meeting.

The meeting adjourned.

TIMOTHY J. BROWN, K.C.
Executive Director