The Law Society of Manitoba
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AGENDA

Benchers

Date: Thursday, April 15, 2021

Time: 12:30 pm

Location: Via Videoconference and Teleconference

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1.0	**PRESIDENT'S WELCOME AND TREATY ACKNOWLEDGEMENT**				
	The President will welcome benchers and staff to the meeting.				
2.0	**IN MEMORIAM**				
	Walter James Kehler, who passed away on March 4, 2021 at the age of 83. Mr. Kehler received his call to the Bar on October 21, 1963. He practised with Richardson and Company for 15 years and then joined the firm which is known today as Taylor McCaffrey LLP, where he practised for 16 years. From 1994 until his retirement in 2019, Mr. Kehler practised as a sole practitioner. In 2015 he was recognized by the Law Society for having practised law for 50 years.				

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
3.0 CONSENT AGENDA The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or Chief Executive Officer prior to the meeting.					
3.1	Minutes of February 11, 2021 Meeting	5		Attached	Approval
3.2	Bencher Policy #5/Operations Policy #3 - Honoraria/Prizes			Attached	Approval
3.3	Rule and Code Amendments in Final Form: Civil Society Organizations			Attached	Approval
3.4	Report of the Complaints Investigation Committee			Attached	Approval
3.5	Reports of the Discipline Committee			Attached	Approval
4.0 EXECUTIVE REPORTS					
4.1	President's Report	5	Lynda Troup	Attached	Briefing
4.2	CEO Report	10	Leah Kosokowsky	Attached	Briefing
4.3	Strategic Planning	5	Leah Kosokowsky	Attached	Briefing
5.0 DISCUSSION/DECISION					
5.1	Admissions and Education Committee re: CPLED Articling and Subsidy, Administrative Suspensions and Housekeeping Rule Amendment	10	Sacha Paul	Attached	Discussion/ Decision

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
5.2	President's Special Committee on Health and Wellness	10	Vincent Sinclair	Attached	Discussion/ Decision
5.3	President's Special Committee on Regulating Legal Entities	10	Wayne Onchulenko	Attached	Discussion/ Decision
5.4	Law Society of Saskatchewan v Peter Abrametz - Possible Intervention in SCC Appeal	10	Leah Kosokowsky	Attached	Discussion/ Decision
6.0	**NOMINATING COMMITTEE**				
6.1	Report to Benchers	15	Anita Southall	Attached	Discussion/ Decision
6.2	Appointment of Election Scrutineers				Decision
6.3	Election of Incoming President				Decision
6.4	Election of Incoming Vice-President				Decision
6.5	Bencher Vacancy				Decision
7.0	**FOR INFORMATION**				
7.1	Paul Hesse - Reimbursement Payments			Attached	Information
7.2	FLSC E-Briefing February 2021			Attached	Information
7.3	Media Reports			Attached	Information

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MEMORANDUM

To:	Benchers
From:	Admissions and Education Committee
Date:	April 6, 2021
Re:	**- Two Year Period for Articling and CPLED** **- CPLED Tuition Subsidy** **- Administrative Suspensions and Resumption of Practice** **- Housekeeping Rule Amendment**

INTRODUCTION

At its final meeting of the year, the Admissions and Education Committee considered issues regarding:

- Extending the two year time limit within which students are required to complete both articling and CPLED;
- Limits on the application of the CPLED tuition subsidy; and
- Some proposed rule amendments relating to administrative suspensions and mandatory training on the *Code of Professional Conduct*.

In the paragraphs that follow you will find the committee's recommendations.

TWO YEAR PERIOD FOR ARTICLING AND CPLED

At the February benchers' meeting, as a result of the ongoing effects of the COVID-19 pandemic, you approved of the recommendation that for the 2021 year students will be permitted to complete the entire PREP course without having secured an articling position. As a result of this change in policy, the committee was asked to consider whether the Law Society should extend the period during which students are required to complete both CPLED and articling.

As currently drafted, Law Society Rule 5-5(1) stipulates that a student must successfully complete the bar admission program and a term of articles within two years from the earliest date they were started.

This rule has its origins in accommodating part-time articles for female articling students with young families. However, it also is consistent with the view of CPLED jurisdictions that greater benefit is derived from completing articling and bar admission within the same relative period of time. With that said, the committee recognized that in the current environment, there are several circumstances that may cause a student to not complete the two components of pre-call training in tandem.

Prior to the change in policy that now permits students to complete PREP without having secured an articling position, a student without articles could not proceed past the Foundation Modules (the first three month period). Accordingly, there was no real danger of the students not being able to complete both components within a two year period. However, with the change in policy, students who secure articles some time after completing PREP may complete the two components outside of the two year window. The current wording of the rule allows for no discretion if a student misses the two year window, even if by a short period of time. In that circumstance, the student would have to repeat the entire PREP program.

The committee took into account the current number of students participating in PREP with and without articles, the number of offerings of PREP available in a year, and the practices in the other CPLED jurisdictions (Alberta and Nova Scotia employ a three year window and Saskatchewan has a flexible approach), while considering the following six options:

1. Maintain the absolute two year limitation period.
2. Revise the rule to an absolute three year limitation period.
3. Provide the CEO with the discretion to extend the two year limitation in exceptional circumstances and only for a further limited period of time (for example, 8 to 12 weeks).
4. Provide the CEO with a more open-ended discretion to extend the two year limitation in exceptional circumstances.
5. Remove the two year limitation period in its entirety.
6. A different option entirely.

Recommendation

> *The Committee recommends that a new rule be drafted to replace 5-5(1) which will extend the current two year limitation period to three years, while also granting the CEO with the discretion to extend the three year limitation in exceptional circumstances.*

CPLED TUITION SUBSIDY

The CPLED tuition fee per student is $6,100. Last year the benchers determined that the Law Society would pay to CPLED a subsidy of $2,600 towards the PREP tuition for each student articling in Manitoba. Students who start PREP without an articling position are responsible for their entire tuition. Students who secure an articling position prior to the end of the Foundation Modules receive the benefit of the subsidy retroactively. Those who do not secure an articling position by that time are not permitted to continue in PREP and will not be responsible for the balance of the tuition. If a student secured an articling position in the months that followed, the student could register with the next offering of PREP and would receive the benefit of the subsidy.

Now that CPLED is in full delivery of PREP, questions have arisen as to the extent of the Law Society's obligation to pay a subsidy in a variety of scenarios where a student might have to repeat the PREP program or a portion of it. For example, a student may complete the entire PREP program before securing an articling position; a student may fail the Capstone and be required to make a second attempt at an additional cost of $1,525; a student may be removed from PREP for misconduct but be permitted to enroll again in the future; or, a student may leave PREP before completing the program but return for a future offering.

The committee considered a variety of circumstances affecting students' participation in PREP and articling and other financial resources available such as the Graham Garson Bursary Fund.

Recommendation:

> *The Committee recommends that a Manitoba articling student enrolled in PREP be eligible for one tuition subsidy only no matter the number of attempts at PREP or the Capstones which may be required. The subsidy amount can be applied across one or more offerings of PREP.*

ADMINISTRATIVE SUSPENSIONS AND RESUMPTION OF PRACTICE

There is an anomaly in the rules for members who apply to return to practice. Non-practising and inactive members must apply to resume active practice. Members must be competent to return to practice and those applications may be approved subject to the lawyer meeting educational requirements or other restrictions. The hurdles which members must overcome are proportional to the length of absence from practice and the members' activities while away from the practice of law.

This is not the case for administratively suspended members. Law Society members can be administratively suspended for failing to pay their practising fees or insurance contribution or for

failing to complete their annual continuing professional development requirements after receiving notice of their default. The rules that relate to administrative suspensions allow for an administratively suspended member to resume practice automatically if the member cures the reason for the administrative suspension.

While the committee noted that in most cases members who are administratively suspended cure the default within a relatively short period of time, the committee also considered examples of situations where members failed to cure their defaults for a number of years. In those circumstances, the member could cure the default and resume practice automatically without having their competence or character assessed.

The committee was asked if the administrative suspension rules ought to be amended to be more consistent with the other rules that require the member to apply to resume practice. Committee members were also asked to consider whether there ought to be a grace period of 30 days, for example, beyond which the member would be required to apply to resume practice.

Recommendation:

> *The Committee recommends that a member who is administratively suspended for a period exceeding 30 days must apply to resume active practice.*

HOUSEKEEPING RULE AMENDMENT

Nearly a decade ago the *Code of Professional Conduct* underwent a complete revision resulting in rules being enacted that required all practising members to attend mandatory training and for those members who were out of practice when the new *Code* was adopted, to complete such training within six months of resuming practice. As the rule is no longer relevant, the committee was asked to consider whether the rule ought to be repealed.

Recommendation:

> *The Committee recommends that the rules relating to mandatory Code of Professional Conduct training be repealed.*

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REPORT

To: Benchers

From: President's Special Committee on Health and Wellness

Date: April 6, 2021

I. INTRODUCTION

In 2019-2020, the Health and Wellness Committee explored a variety of initiatives to help improve and sustain the well-being of the legal profession. In May 2020, the report of the committee was presented to the benchers for their consideration. In addition to determining that the health and wellness committee ought to continue its work for at least one more year, the benchers provided four directions and priorities, as follows:

1. Examine admissions documents and remove stigmatizing language as it relates to mental health and addictions.
2. Develop a comprehensive plan for the implementation of a diversion program.
3. Through the CPD department, provide additional programming and access to existing resources on health and wellness.
4. Explore the feasibility of partnering with another organization that offers a range of resources including peer support.

In 2020-2021 each of these initiatives is well underway. We previously reported on the progress that has been made in relation to revising the admissions documents and the additional programming and access to existing resources on health and wellness that are being offered by the CPD department. The Society is working on enhancing the library of resources available on the website and is also working with Blue Cross to identify ways to increase the responsiveness of their EAP program to lawyers and to the unique needs of the profession.

After having received the committee's direction and the benchers' approval regarding various aspects of the Diversion Program, we are pleased to report that the Law Society has contracted with Miriam Browne to implement the policy directives and make the program operational. Included within Miriam's mandate is the provision of training to the various stakeholders to the program. We anticipate reporting back to the benchers in the fall of 2021 regarding the status of the program.

Finally, the benchers enthusiastically approved of the committee's recommendation that the Society create a small working group with members of the Manitoba Bar Association to explore what a peer support program might look like. The working group has been established with Gerri Wiebe, Eileen Derksen, Stacy Nagle and Maria Mitousis as the four initial members. They have had two initial meetings and we will look forward to receiving reports regarding their progress.

II. WHAT'S NEXT

At the last committee meeting we considered a number of options for what may be the next priority for the Society in the area of health and wellness, recognizing that resources are not unlimited and therefore, some strategies may have to take priority over others.

Some of the options explored were:

1. Formally expanding the roles of the Director of Practice and Ethics and/or the Practice Management Advisor to include advice related to practice concerns arising from mental health or substance abuse issues and provide training to these individuals.

2. As the Society rolls out the Practice Check-up Program, include health and wellness as a component of the check-ups and provide training to those conducting the check-ups.

3. For the Law Firm self-assessment tool, build a library of best practices and resources for law firms to draw upon in the area of health and wellness.

4. Develop a communications strategy for the profession at large focused on the confidentiality of accessing resources and services through the Law Society or funded by the Law society.

5. Target the management committees of large law firms to make the business case for making the well-being of their personnel a priority.

6. Consult with and respond to segments of the profession that have been disproportionately affected by COVID-19.

The committee had an excellent wide-ranging discussion with differing views as to where the Society ought to focus our energies, noting that the Society does not have a designated health and wellness staff person. Rather the initiatives are supported by staff who have other pre-existing responsibilities to manage.

While the committee supports all of the project ideas, there was particular emphasis on two initiatives as being particularly key at this point in time, namely:

1. Developing a communications strategy for the profession at large which normalizes health and wellness conversations and encourages members to reach out and access the confidential resources and services that are funded and available to support them.

2. Consulting with and responding to segments of the profession that have been disproportionately affected by COVID-19.

Recommendation No. 1:

The Law Society give priority to:

1. Developing a communications strategy for the profession at large regarding health and wellness.

2. Identifying, consulting with and responding to segments of the profession that have been disproportionately affected by COVID-19.

However, the overarching recommendation from the committee was that the benchers include health and wellness as a priority during the strategic planning process. The committee also would like the benchers to consider making Health and Wellness a Standing Committee, with a nucleus of key committee members to provide continuity and a nimbleness to address issues as they arise.

Recommendation No. 2:

The benchers include health and wellness as a priority during the strategic planning process, with specific consideration given to establishing a Health and Wellness Standing Committee.

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REPORT

To:	Benchers
From:	President's Special Committee on Regulating Legal Entities
Date:	April 5, 2021

I. CIVIL SOCIETY ORGANIZATIONS

In 2019/2020 you decided to permit the delivery of legal services by lawyers through a "Civil Society Organization", defined as a registered charity or an incorporated not-for-profit organization with a regulatory framework that would include the following principles:

- The CSO must be registered with the Law Society;
- The delivery of legal services must be controlled by a practising lawyer;
- A lawyer providing services to clients of the CSO will be required to hold professional liability insurance;
- Solicitor-client privilege and client confidentiality must be protected and maintained;
- The fundamentals of professionalism must be maintained;
- The CSO will be required to provide annual updates to the Law Society with respect to the nature of the legal services being delivered and be subject to deregulation for non-compliance with the prescribed conditions for CSOs;
- The legal services must be provided at no cost to the clients of the CSO who are receiving those services.

Subsequently, you reviewed and approved of a Registration Form and the development of a Guide for CSOs and at the February 11, 2021 bencher meeting you approved of draft Rules and amendments to the *Code of Professional Conduct*. Elsewhere in this agenda, the rules have been translated into French and are presented for your final approval.

Recently, our committee was asked to consider an application from the First Nations Family Advocate Office (FNFAO) and the Public Interest Law Centre for permission to deliver legal services to the FNFAO's clients as a CSO. The application is unique not only because it is the first application of its kind but also because the FNFAO, which is an office of the Assembly of Manitoba Chiefs, is not

a registered charity or not-for-profit organization and therefore it does not fit within the definition of a CSO.

Nevertheless, the nature of the project is precisely the type of initiative that the Society would like to support. The two organizations, the FNFAO and PILC have received a special grant from the Manitoba Law Foundation for a two year pilot project titled "Bringing our Children Home Through Advocacy and Research."

The plan is for the FNFAO to hire two junior lawyers on a full-time basis as well as to hire on contract a senior lawyer to assist First Nations families in meeting their legal needs in relation to interactions with the child welfare system. Some of the grant money is ear-marked to support legal research by PILC to address child welfare law reform in a way that works towards reconciliation by supporting First Nation laws, institutions and solutions.

Committee members were of the view that it would be appropriate for the Law Society to approve the pilot project because:

a) The work of both organizations is widely known and respected;
b) The proposed program clearly supports the objective of improving access to justice; and,
c) It will be funded solely through the Manitoba Law Foundation grant and the legal services will be provided to clients on a pro bono basis.

The committee considered the following potential recommendations:

i) that the provision of legal services as contemplated should happen within a "regulatory sandbox" – under specific conditions to be determined at the discretion of the CEO; or
ii) that the definition of a CSO be broadened to afford some flexibility to the CEO where an organization not meeting the definition could still apply for permission to provide legal services through the organization for social justice purposes in an effort to improve/increase access to justice.

We rejected the option to amend the approved definition of a CSO as we did not think it would be prudent to amend the CSO definition before the Law Society has had an opportunity to assess the approved model's impact on access. Instead, we discussed that the project ought to be allowed to proceed subject to appropriate conditions.

For those who would like further background information, attached as Appendix 1 is a briefing note from PILC in which they specifically request to be exempted from the requirement that the FNFAO-AMC meet the definition of a CSO as defined by the Rules.

Based on our review of the issues and our support of the pilot project, we make the following recommendation:

Recommendation No. 1:

The Law Society should grant a waiver or an exemption to the FNFAO-Assembly of Manitoba Chiefs and PILC in relation to this particular pilot project and the need to fall squarely within the definition of a CSO, subject to meeting other previously approved CSO regulatory requirements.

II. BILL 24 - CONSULTATION PROCESS

You will recall that in 2018, you sought legislative amendments to *The Legal Profession Act* that would permit the Society to authorize the provision of prescribed legal services by persons who are not lawyers either independently or under the supervision of a lawyer. In response, Bill 24 was introduced by the Provincial Government with amendments to the Act that permit the Society to:

a) Create additional exemptions to conduct that would otherwise amount to the unauthorized practice of law; and
b) Create a new category of regulated legal services providers called "Limited Practitioners."

Adopting an incremental approach, you also decided that the Society should engage in a consultation process regarding potential unmet needs in the area of family law. The consultation was delayed initially due to the many changes generating from the introduction of the Province's Family Law Modernization Project and new Court of Queen's Bench Family Law Rules. However, in December, the process began with the posting of a Consultation Document on the Society's website. We also actively sought feedback from the profession and other justice system stakeholders regarding:

a) Expanding the scope of services a person may provide in the area of family law under the supervision of a lawyer; and
b) Identifying a scope of services that Limited Practitioners both in and outside the realm of family law may provide independently.

The consultation generated an enormous response from members of the profession and the Society received more than 50 detailed submissions. The Society is in the process of reviewing and analyzing the responses received to date as well as feedback from the Judiciary.

As we began considering the next phase of broader public consultation, an opportunity arose that was brought to the Committee for its consideration.

Concurrently, the Law Society is engaged in ongoing conversations with government representatives who are working on the roll out of the Province's Family Law Modernization Act Project and initiatives. These discussions have proven to be valuable. For example, government staff involved in the Family Resolution Service are referring to the Law Library Hub (a Law Society collaborative initiative) some members of the public who are trying to resolve matters outside of the court system under the modernization project but who need some legal advice.

We expect that this increased collaboration and communication with key government representatives will result in improved legal services being made available to the public generally.

In its own consultation work, the Province frequently uses an online platform "Engage Manitoba" to obtain the public's opinions in a variety of areas. For example, the Family Law Modernization Project has used the platform to inform its work.

The Province has proposed a partnership with the Law Society to not only assess unmet legal needs in the context of its Modernization Project but also to obtain broad feedback from the public and other stakeholders relating to the Act amendments (Bill 24) by using Engage Manitoba together. To utilize the platform in this way, targeted communications would be prepared outlining the Law Society's partnership with the Province as well as a related press release.

The committee considered that this is an attractive opportunity that has the potential to reach a broad range of Manitobans at no cost to the Society. However, we also recognized that there are some risks associated with it. First, there is some potential for confusion as members of the public may associate the Act amendments with the Modernization Project. Secondly, and more importantly, is the lack of control over how the responses will be managed and the intrusion, real or perceived, into the independence of the legal profession and its self-governance.

As an alternative, the Province is willing to draw upon its many connections with a variety of stakeholders (for example, social workers, mediators, women's shelters) and informally share our consultation with those groups as well as with members of the public. This option will provide us with greater reach than we might have if we were to attempt the engagement on our own, but keep the Province's Modernization Project at arms-length from the Society's broader initiative and interests.

Two other options for the Society (in the context of a socially distanced world) are to prepare a survey monkey that we would distribute on our own or to retain the services of a research company to distribute our survey. With a survey monkey, the Society would maintain complete control over

the process at a minimal cost; however, we would not be able to reach as broad a range of the population. Retaining a research company such as Probe Research is considerably expensive (i.e. $1,250 per question), but would likely generate a greater response rate.

After considering all of the options, we make the following recommendations:

Recommendation No. 2 (a)

The Society should take advantage of the Province's resources and connections without posting on the Engage Manitoba website. That is, the Society should pursue an informal collaboration with the Province to widely distribute a survey/consultation.

Recommendation No. 2 (b)

The Society should also pursue other avenues of engagement on its own, utilizing the resources at its disposal to circulate a public consultation document and/or survey.

III. EXEMPTIONS - UNAUTHORIZED PRACTICE OF LAW

Committee members and benchers are aware that there already are legal service providers in Manitoba who are not lawyers and the committee discussed the value of formally identifying those service providers and granting them an exemption where appropriate. This is the current approach in Saskatchewan where the Law Society is searching for such organizations and providing them comfort letters while they consider whether or not to formally exempt them from the unauthorized practice provisions of *The Legal Profession Act* or to regulate them in some fashion.

While it is true that in order to formally recognize such service providers you need to first identify them, we view the Saskatchewan approach as unduly cumbersome and very resource intensive. We also note that the process ultimately may not result in tangible access to justice improvements or increases.

In the committee's view, the Society could use other means to identify categories of legal service providers and have the committee consider the merits of either creating a new unauthorized practice exemption or regulating those activities through a limited practitioner license. We discussed various options and make the following recommendation:

Recommendation No. 3

The Law Society should consider national and international unauthorized practice exemptions, work with other stakeholders and leverage the resources of the new Access to Justice Coordinator to inform the work of the committee going forward.

IV. SANDBOXES - WAIVERS

Other jurisdictions have been exploring how access to justice may be enhanced by permitting the delivery of legal services by persons who are not lawyers, either through legislative reform or through a regulatory sandbox, where the delivery is offside of the Act and regulations, but is permitted on an experimental basis – not unlike what we are proposing with the FNFAO/PILC pilot project.

British Columbia

The issue of licensing new categories of legal service providers has been examined in-depth by a variety of task forces in British Columbia over the last decade. The Law Society ultimately sought Act amendments to allow for the creation of a new category of licensee and also embarked on a consultation process. The proposed amendments were extremely controversial within the profession resulting in considerable push back. Although the government proceeded with the amendments**,** the benchers recently approved of a new Task Force's proposal to advance the licensed paralegal initiative within a "regulatory sandbox."

Under this new approach, alternate legal services providers may apply to provide legal services and if the Society approves of the proposal, the Society will set out the terms and conditions upon which applicants can deliver those services. The intention is that the sandbox will eventually provide the basis for the formal recognition of licensed paralegals. For those interested in reviewing the Final Task Force report, you may access it through the following link: https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/2020LicensedParalegalTaskForceReport.pdf

However, the shift to a regulatory sandbox has not been without controversy. For a good analysis of the resistance and a perspective on the value of having a testing ground for other service providers, please refer to the December 17, 2020 article by Jordan Furlong, titled "The Paradigm Shift of Regulatory Sandboxes."

United States

Several states in the USA have either already decided to create regulatory sandboxes (e.g. Utah) or are giving active consideration to the issue through task forces (e.g. California and Florida) in order to remove barriers to innovation by removing regulatory roadblocks that may impede improved access to justice or access to legal services.

Last August, the Supreme Court in the state of Arizona went further than Utah and decided to bypass any notion of a regulatory sandbox or testing program and moved directly to major reform. That is, they voted to remove the rule that prevents alternative business structures, non-lawyer ownership and multi-disciplinary practices.

In discussions with Leita Kalinowsky, Executive Director of (the new) Family Resolution Service, the Society has learned of the Province's interest in exploring a pilot project whereby some access to justice challenges might be addressed by persons who are not lawyers, in the public, private or community sectors but who have specific competencies, education and training. When the proposal is better articulated, the Society will be asked to consider whether to permit such a pilot project even without legislative and rule reform.

Our committee considered that if the Law Society decided to create a "regulatory sandbox" it also may demonstrate the need for a limited licence practitioner which in turn could generate interest with Red River College, for example, to develop the necessary training. Some years ago, Red River College showed initial interest in creating a program but chose not to pursue it out of concern that there was an insufficient market for their potential graduates.

We noted that the Society's recent consultation process has revealed similar concerns as to whether there is a business case to be made that "Limited Practitioners" would be able to earn a living providing services meant to address unmet legal needs.

Creating a sandbox to enable social innovation may also demonstrate the need for other legal services providers who should be allowed to provide some limited services without being concerned that the Society might say they are engaged in the unauthorized practice of law. Other committees explored and then outlined some criteria for the Law Society to consider when determining on what basis the Society should carve out additional exemptions to unauthorized practice – which is part of Bill 24. For example, the Society would want to know whether the legal services being provided by organizations and persons who are not lawyers meet an otherwise unmet legal need and give consideration to issues of integrity, competence and risk to the public.

While it is important for the Society to continue its consultations relating to Bill 24 and obtain invaluable input from key stakeholders, particularly in the area of family law, we believe it would be

worthwhile to explore other ways that the Society could make room for innovation in the delivery of legal services and potential improvements in access to justice. Accordingly, we also make the following recommendation:

Recommendation No. 4

The work of this committee should continue and as part of its work, it should give further consideration to regulatory sandbox models and assess the advisability of the Law Society creating a comparable regulatory model.

Atc.

Briefing note for Manitoba Law Society

Overview

Together, the Assembly of Manitoba Chiefs (AMC) and the Public interest Law Centre (PILC) applied for and received the Special Initiative Grant Fund from the Law Foundation of Manitoba to work collaboratively on a two-year pilot project which will enhance the capacity of the First Nations Family Advocate Office (FNFAO)-AMC to deliver quality legal services to families in the child welfare system as well as conduct legal research elements focused on broader child welfare law reform including good practice examples of supporting and implementing First Nations laws relating to families and children.

The project contains two main elements – first, a legal advocacy component involving two junior lawyers hired on a full-time basis by FNFAO-AMC as well as a senior lawyer hired on limited contract to provide supervision and assistance as required to the two junior lawyers. The legal services which will be provided by the lawyers will be provided to FNFAO-AMC clients on a *probono* basis. The second component involves research which will be conducted by PILC. The focus of this briefing note is on the legal advocacy component.

The purpose of this briefing note is to request a regulatory exemption from the Law Society of Manitoba. While the project meets the spirit of the new Civil Society Organization rules of the Law Society of Manitoba, it is recognized that the project will require a regulatory exemption from the Law Society of Manitoba Benchers because the FNFAO-AMC is not a charity or a registered non-profit organization.

Background on the First Nations Family Advocate Office of AMC

The AMC officially opened the FNFAO on June 1, 2015. The office opened in ceremony, where the office was gifted the name "Abinoojiyak Bigiiwewag." This translates to "Our Children are Coming Home" in Ojibway.

Community engagements determined the need for an advocacy office. In May 2014, the AMC hosted Open Citizens Forums in Winnipeg and Thompson, Manitoba. Hundreds of First Nations citizens, families, you and Elders attended the sessions, where they shared the atrocities and challenges that were imposed on them, their families, and communities. The information gathered at the sessions prompted a report entitled *Bringing Our Children Home* (BOCH). The report identified 10 recommendations to immediately address many of the issues and concerns identified in the community engagement sessions. Recommendation #2 identified the need to establish a First Nations Advocate for Families.

Despite not having any funding commitments from government, the AMC began implementing the action items identified in the BOCH report. The AMC began by hiring a First Nations Family Advocate and Assistant Family Advocate.

The First Nations Family Advocate Office receives its mandate by resolution from the AMC Chiefs-in-Assembly; represent 62 of the 63 First Nations in Manitoba. Under the umbrella of the AMC, and through resolution APR -17.01 Expansion of the First Nations Women's Council Mandate to include Child and Family Matters, the AMC Women's Council provides direction and oversight to the First Nations Family Advocate Office through regularly meetings that include bi-monthly or more, if necessarily.

The mission of the FNFAO is to support and advocate for First Nations families involved with the Child and Family Services system by challenging existing jurisdictions, policies, laws, and organization using First Nations knowledge, customary laws, traditions, and belief systems to create positive change for our children, families, and communities.

By advocating action through prevention, education, culture, and collaboration, the FNFAO work towards strengthening the sovereign rights to empower First Nations individuals, families, and Nations while ensuring improved health, support, care, and safety for children.
FNFAO works with parents, grandparents, and/or care providers to challenge the Child and Family Services (CFS) or judicial system with the overall goal of "bringing our children home".

FNFAO Advocates work with children and families involved with CFS to ensure:

- Children are not placed in care for experiencing unique needs due to medical, behavioral, or mental health reasons.
- Children who have been through a traumatic experience receive full supports for at least one year before any consideration of Voluntary Placement Agreements with CFS agencies.
- Advocacy for children and families to receive other services within and external to the community.
- Family reunification by providing guidance and support to parents on their healing path.
- Access to healing supports for children and other family members to deal with system involvement and support families to move forward together.

About the Project

The pilot project is a collaborative initiative which aims to enhance access to justice for First Nations families, encourage self-government and self-determination of First Nations and promote reconciliation. The project seeks to enhance the capacity of FNFAO-AMC to delivery quality legal services by lawyers for families in contact with Child and Family Services (CFS) while its innovative legal research elements focus on broader child welfare law reform including good practice examples of supporting and implementing First Nations laws relating to families and children.

In terms of the legal advocacy component, it is contemplated that the FNFAO-AMC will hire two junior lawyers on a full-time basis to represent FNFAO-AMC clients in their child welfare matters and other legal matters which may arise. For example, the junior lawyers may also represent clients in their residential-tenancy or Employment and Income Assistance appeals or applications for guardianship. These junior lawyers will be full-time staff working for and with the FNFAO-AMC and representing clients on a *probono* basis.

In addition to the two full time junior lawyers, the FNFAO-AMC anticipates hiring on contract a senior lawyer who would provide assistance, mentorship and guidance to the junior lawyers. In the beginning, the senior lawyer may also be involved in helping the junior lawyers set up the practice and ensure that the systems are set up in a manner that respect the Law Society rules on conflict checks and respect for confidentiality. For the purposes of clarity, the senior lawyer would continue to practice in their own law firm and would ensure that they continue to follow the Law Society rules, including those around conflict of interest and confidentiality.

Both the junior and senior lawyers would be paid from the Manitoba Law Foundation funding available to FNFAO-AMC and legal services will be provided entirely on a *probono* basis.

It is also noted that Legal Aid lawyer, Meredith Mitchell, will also make herself available to provide informal guidance and assistance as required. Further, the Child Protection Defense Lawyers' Association will be a valuable resource for the junior lawyers hired by FNFAO-AMC. The Association is an organization whose members represent families and children involved in child protection litigation within Manitoba. There are approximately 35 members who meet monthly to troubleshoot, provide mentorship and education to its members. The members share a precedent bank and case law library for the benefit of members and share expertise throughout all levels of experience.

This pilot project comes at an important time. Manitoba has passed *The Path to Reconciliation* Act, C.C.S.M. c R30.5. The Federal Government has recognized the need for "renewed, nation-to-nation relationship with Indigenous people" based on "respect, co-operation, and partnership."[1] Since 2016, Canada is a full supporter without qualification[2] of the *United Nations Declaration on the Rights of Indigenous Peoples*, which protects the right of First Nations to distinct legal institutions.[3]

In addition, provincial and federal legislative efforts are paying growing attention to models which seek to support self-government initiatives, including First Nations institutions and knowledge systems. Of direct relevance to this proposed project is *An Act respecting First Nations, Inuit and Métis children, youth and families* (the "Act") which has the purpose of "affirming the rights and jurisdiction of Indigenous peoples in relation to child and family services and to set out principles applicable, on a national level, to the provision of child and family services in relation to Indigenous children." This Act came into effect in early January 2020.

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1 Rt Hon. Justin Trudeau, P.C., M.P, Prime Minister of Canada, "Minister of Crown-Indigeneous Relations and Northern Affairs Mandate Letter" (2017).

2 Indigenous and Northern Affairs Canada, "United Nations Declaration on the Rights of Indigenous Peoples" (2017-08-03).

3 *United Nations Declaration on the Rights of Indigenous Peoples,* 13 September 2007, A/61/295 at Article 5. Also see: Canada, Truth and Reconciliation Commission of Canada, "Truth and Reconciliation Commission of Canada: Calls to Action" (Ottawa: Library and Archives Canada, 2015) at 27, 28, 45, 50, 86, 92.

The proposed project will grapple with the implementation of the *Act* while building on past and existing work by the FNFAO-AMC and PILC relating to the reform of the child welfare system in Manitoba.

Proposed exemption

It is our understanding that only "law firms" and Civil Society Organizations are authorized by the Law Society of Manitoba to provide legal services. The FNFAO-AMC legal services do not meet the definition of a law firm nor a Civil Society Organization.

The FNFAO-AMC is not a "law firm" as it is not an organization of one or more lawyers practising together as per the definition in the Code of Professional Conduct.

It is our understanding that the Law Society of Manitoba Benchers recently approved amendments to the *Code of Professional Conduct* to add and approve lawyers to provide legal services to clients of a "civil society organizations". Civil society organizations are registered charities or not-for-profit corporations. The provision of legal services by lawyers to the clients of civil society organizations must be done on a *probono* basis. The FNFAO-AMC does not meet the definition of a civil society organization as it is not a charity or registered not-for-profit.

The FNFAO-AMC is requesting an exemption to the Law Society of Manitoba rules to allow them to hire two junior lawyers on a full-time basis as well as to hire on contract one senior lawyer. The junior and senior lawyers would be providing legal services to the FNFAO-AMC clients on a *probono* basis.

The Law Society of Manitoba
INCORPORATED 1877 | INCORPORÉ EN 1877

MEMORANDUM

To:	Benchers
From:	Executive Officers
Date:	April 5, 2021
Re:	**Law Society of Saskatchewan v. Peter Abrametz** **Possible Intervention in Supreme Court of Canada Appeal**

On January 18, 2018, a discipline hearing panel of the Law Society of Saskatchewan found Peter Abrametz guilty of four charges of conduct unbecoming a lawyer. Prior to the hearing date for submissions on penalty, Mr. Abrametz applied for a permanent stay of proceedings based, in part, upon unreasonable delay in the prosecution of the charges. The application was dismissed by the discipline committee which ordered that Mr. Abrametz be disbarred. See *Law Society of Saskatchewan v. Abrametz,* 2018 SKLSS 8 (CanLII)

Mr. Abrametz appealed to the Saskatchewan Court of Appeal both his conviction and the penalty imposed. The appeal was allowed in part. Applying *Blencoe v. British Columbia (Human Rights Commission)* 2000 SCC 44, the leading case on delay in administrative proceedings, the Court found that that the Law Society of Saskatchewan was responsible for undue delay, constituting an abuse of process. Accordingly, they determined that the hearing committee erred by dismissing Mr. Abrametz's application to stay the proceedings as a result of undue delay. In the result, the penalty and costs award imposed by the Penalty Decision were set aside while the findings of professional conduct were allowed to stand. See *Abrametz v. Law Society of Saskatchewan* 2020 SKCA 81

On February 25, 2021, the Supreme Court of Canada granted leave to appeal to the Law Society of Saskatchewan. The Law Society has requested the Federation of Law Societies to seek leave to intervene. They anticipate that other regulated professions will also be seeking leave to intervene in the proceedings.

The Law Society of Saskatchewan also has proposed that, regardless of whether the Federation of Law Societies seeks leave to intervene, individual Canadian law societies consider seeking leave to intervene so as to bring a number of perspectives to the attention of the Court, taking into consideration the relative size of the different jurisdictions.

There are two issues for your consideration.

1. Do you support the Federation of Law Societies intervening in this matter?

The Federation has a litigation committee established for the purpose of recommending that the Federation engage and/or intervene in litigation in accordance with its Intervention Policy. To make such a recommendation, the committee must conclude that the case raises issues of importance to law societies on which the Federation could make a significant contribution. A recent example of when the Federation intervened was *Green v. The Law Society of Manitoba* 2017 SCC 20, where the Federation made written and oral submissions that complimented those made by our very own Rocky Kravetsky.

The Federation Litigation Committee, with the support of the Executive Committee, has sought the approval of the Federation's Council to seek leave to intervene as the Abrametz case raises important questions about the threshold for finding abuse of process as a result of delay in law society disciplinary proceedings. If Council approves the recommendation, the Litigation Committee will provide the Executive with a list of counsel who would be willing to represent the Federation on a *pro bono* basis.

In order to seek leave, there must be unanimous agreement from all law societies. They have asked that our Council representative, Lynda, respond by no later than Friday, April 16, 2021.

We agree that the case raises significant issues for law societies and therefore recommend that you support the Federation of Law Societies seeking leave to intervene in the Law Society of Saskatchewan v. Abrametz appeal.

Recommendation: The Executive Committee recommends that you support the Federation of Law Societies seeking leave to intervene.

2. Do you wish for the Law Society of Manitoba to seek leave to intervene?

Regardless of whether the Federation seeks leave, there is a separate question of whether the Law Society of Manitoba would seek leave separately. This decision may be made at a later date for the following reasons.

The LSS has until May 24, 2021 to file an appellant's factum, following which other parties have four weeks to file a motion seeking leave to intervene.

If standing is granted, the Supreme Court of Canada Rules dictate that an intervenor is limited to a ten page factum and a five minute oral argument. Further, intervenors are reminded that the purpose of an intervention is to provide relevant submissions that will be useful to the Court and different from those of the other parties.

Accordingly, once the LSS's factum is filed, we can assess the argument and decide whether there is a separate issue that ought to be addressed. We might also coordinate with the Federation of Law Societies at that time to determine what issue they are addressing in their factum.

Based upon those findings, you may then make the decision on the value of intervening at that time. However, in the event that there is insufficient time (depending on the timing of the filings) for it to be considered at a bencher meeting, you may elect to leave the discretion to the Executive Committee to make the decision based on the advice of our General Counsel.

Recommendation: The Executive Committee recommends that you provide them with the authority to determine if the Law Society of Manitoba should seek leave to intervene following receipt and review of the factum filed by the Law Society of Saskatchewan.

A Note on Costs

With Rocky Kravetsky and Ayli Klein as our hearing counsel, we certainly have the in house expertise to conduct the hearing. As noted above, Rocky did all the heavy lifting on the successful outcome of the Green matter.

However, an agent in Ottawa is required for the purpose of preparing, copying and filing documents with the court. The Ottawa agent that we used for the Green matter estimates that the agent fees would be in the range of $4,500 to $6,000 plus tax and limited disbursements.

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

MEMORANDUM

FROM: Executive Committee

TO: Council of the Federation
Law society Presidents and CEOs (for information)

DATE April 5, 2021

SUBJECT: Appeal of *Law Society of Saskatchewan v. Abrametz*

AT A GLANCE: FOR DECISION

- Council is asked to approve the recommendation of the Litigation Committee that the Federation seek leave to intervene at the Supreme Court of Canada in the matter of *Law Society of Saskatchewan v Abrametz* and authorize the Executive Committee to appoint counsel

- The following motion is proposed:

  WHEREAS leave to appeal has been granted by the Supreme Court of Canada in *Law Society of Saskatchewan v. Abrametz;*

  WHEREAS the case raises important questions about the threshold for finding abuse of process as a result of delay in law society disciplinary proceedings;

  WHEREAS the Litigation Committee has concluded that the case raises issues of compelling interest to the law societies on which the Federation could make a significant contribution;

  WHEREAS the Law Society of Saskatchewan has requested that the Federation seek leave to intervene;

  RESOLVED THAT the Federation seek leave to intervene in the case of *Law Society of Saskatchewan v. Abrametz* and that the Federation Executive be authorized to appoint appropriate counsel to represent the Federation in this matter.

ISSUE

1. The Council is asked to approve the recommendation of the Litigation Committee that the Federation seek leave to intervene in the appeal of *Law Society of Saskatchewan v Abrametz,* 2020 SKCA 81 ("*Abrametz"),* a case that has implications for all law societies in regard to the timeliness of disciplinary proceedings.

BACKGROUND

2. Detailed background information is set out in a memorandum from Litigation Committee Chair George Filliter, attached as Appendix A. As identified in the attached memorandum, the case raises important questions about the threshold for finding that there has been an abuse of process as a result of delay in law society disciplinary proceedings. The Litigation Committee has concluded that the case raises issues of importance to law societies on which the Federation could make a significant contribution. The Executive supports the recommendation of the Litigation Committee that the Federation seek leave to intervene.

RECOMMENDATION

3. It is recommended that the motion set forth on page 1 of this memorandum be adopted.

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

MEMORANDUM

FROM:	George Filliter, Chair, Litigation Committee
TO:	Executive Committee
DATE	March 26, 2021
SUBJECT:	Appeal of *Law Society of Saskatchewan v. Abrametz* 2020 SKCA 81

ISSUE

1. The Litigation Committee is recommending that the Federation seek leave to intervene in the appeal of *Law Society of Saskatchewan v Abrametz,* 2020 SKCA 81 ("*Abrametz"),* a case that has implications for all law societies in regard to the timeliness of disciplinary proceedings.

INTERVENTION POLICY

2. The Litigation Committee is a standing committee of the Federation mandated to review requests that the Federation intervene in court proceedings on matters of national interest. The Committee may also raise matters on its own initiative.

3. The current members of the Committee are:

- George Filliter, Q.C., Chair - Council Member representing the Law Society of New Brunswick
- Sara Siebert - Council Member representing the Law Society of Nunavut
- David McWhinnie – Council member representing the Law Society of Yukon
- Megan Shortreed – Bencher, Law Society of Ontario
- Sylvie Champagne - Secrétaire de l'Ordre, Barreau du Québec
- Don Avison, Q.C. – Executive Director and Chief Executive Officer, Law Society of British Columbia
- Tilly Pillay, Q.C. – Executive Director, Nova Scotia Barristers' Society

4. Pursuant to the Federation's Intervention Policy (attached as Appendix "A"), the Federation only intervenes in cases that raise issues of compelling interest to the law societies, and in which it can make a significant contribution to the court's consideration of the issues. Paragraph 2(c) of the policy also provides that an intervention will usually be considered only when the matter is in "the highest court in which an issue is likely to be finally decided."

5. The Intervention Policy stipulates that a decision to intervene in a matter requires the unanimous approval of the members of Council. In recent years the Federation has intervened in a number of cases on the recommendation of the Litigation Committee, including *R v Brassington, Iggillis Holdings Inc. and others v Minister of National Revenue, et Al, Sidney Green v Law Society of Manitoba,* and *University of Calgary v J.R.*

ABRAMETZ **BACKGROUND**

6. This case raises significant questions about appellate review of delay in disciplinary proceedings against lawyers. In setting aside the disbarment decision of the Law Society of Saskatchewan (LSS) Hearing Committee, the Court of Appeal found that the almost 3-year delay attributable to the LSS in pursuing a discipline matter was an abuse of process, and also found that the lawyer subject to the disciplinary proceedings had experienced significant prejudice in the form of stigma and sickness.

7. The practical result of this decision may be the imposition of an arbitrary timeline for disciplinary investigations and proceedings, impacting how law societies invest in, and allocate resources to, complaints against lawyers. Similarly, the Court of Appeal's finding that Mr. Abrametz was significantly prejudiced by the delay may leave law society proceedings vulnerable to claims of abuse of process for undue delay in circumstances that are otherwise quite ordinary in lawyer disciplinary proceedings.

8. Briefly, the history of the LSS disciplinary proceedings is as follows:

(a) The LSS began its investigation into Mr. Abrametz in 2012 following reports of trust account irregularities attributed to a lawyer with whom he had practiced; Mr. Abrametz had self-reported.

(b) In January 2013, the LSS Conduct Investigation Committee (CIC) served Mr. Abrametz with a Notice of Intention to Interim Suspend alleging a series of breaches including payments from trust to a fictitious person; endorsing the name of a fictitious person on trust cheques; obtaining payments from clients in a manner that bypassed law firm records to avoid paying tax; making loans to clients, some of whom were vulnerable; and charging clients fees or interest on the loans.

(c) There was no suspension, as Mr. Abrametz signed an undertaking to permit a supervisor to oversee and monitor his practice and trust account activities while the investigation continued.

(d) A second Notice of Intention to Interim Suspend was issued in November 2014, with the LSS agreeing that Mr. Abrametz could continue practicing on the conditions specified in his 2013 undertaking, with the addition of an alternate supervisor. A refusal by Mr. Abrametz to provide personal and corporate tax records to the CIC resulted in separate disciplinary proceedings and subsequent appellate review, now adjourned pending the outcome of this immediate appeal.

(e) In July 2015, the CIC recommended the appointment of a Hearing Committee. Following litigation in which Mr. Abrametz unsuccessfully sought an adjournment pending a final determination about a related tax dispute, the hearing on the merits occurred over 6 days in May, August, and September of 2017.

(f) In January 2018, the Hearing Committee released its decision finding Mr. Abrametz guilty on four of the charges. Mr. Abrametz had given evidence that the stress caused by the lapse of time had affected his health and that he had been the subject of adverse publicity. The Hearing Committee concluded those impacts were the result of the allegations and the Conduct Decision, not the delay.

(g) The penalty hearing was scheduled for August 2018. In July 2018, Mr. Abrametz applied to the Hearing Committee to dismiss his prosecution for delay. The Hearing Committee rejected the application, finding that the allegations, number of files, and lengths to which Mr. Abrametz had gone to conceal his conduct were extensive and complex, and subsequently ordered Mr. Abrametz disbarred.

9. The Saskatchewan Court of Appeal set aside the Hearing Committee's refusal to stay proceedings against Mr. Abrametz on the grounds of undue delay. Noting that *Canada (Minister of Citizenship and Immigration) v Vavilov*[1] did not directly address the standard of review relating to a statutory appeal, the Court of Appeal applied the standard of correctness, finding that the issue in deciding whether delay amounts to abuse of process is one of procedural fairness (thus raising a question of law).

10. Relying on the principles relevant to assessing delay in an administrative proceeding set out in *Blencoe v British Columbia (Human Rights Commission)*[2], the Court of Appeal's inquiry concerned delay for which it found that there was no "real explanation". Of the 53 months between December 2012 (the date of Mr. Abrametz's self-report) and May 2017 (the start of the discipline hearing), the Court of Appeal attributed 32.5 months to undue delay caused directly by the LSS.

11. At paragraph 215, the Court of Appeal found that "the undue delay was inordinate and caused actual prejudice of such a magnitude that the public's sense of decency and fairness would be offended. In these circumstances, the delay would bring the LSS disciplinary process into disrepute. This was the clearest of cases."

12. In reaching that conclusion, the Court of Appeal held that the Hearing Committee's determination that Mr. Abrametz's conduct "strikes a blow against the fundamental principles of the legal profession's code, namely: honesty, trustworthiness" overstated the severity of the charges. The Court of Appeal also found it significant that Mr. Abrametz was a very long-standing practitioner with no prior disciplinary record, practised under his conditions without incident, and the charges did not arise from client complaints.

13. The Court of Appeal's assessment of the significant prejudice against Mr. Abrametz was influenced by the potential harms to reputation arising from the ever-increasing dissemination of digital information, opining that delay in the "online age" has taken on a new meaning.

14. In this decision, the Saskatchewan Court of Appeal took a strong stand on delay in administrative proceedings, apparently emboldened by the recent SCC decisions of *Hryniak v Mauldin*[3] and *R. v. Jordan.*[4] The decision also appears to deviate, at least in its result, from

[1] 2019 SCC 65.
[2] 2000 SCC 44 at para. 142.
[3] 2014 SCC 7.
[4] 2016 SCC 27.

Merchant v Law Society of Saskatchewan[5] and other administrative proceeding delay decisions since *Blencoe*. The Court of Appeal is mindful of this and states:

> [4] *Blencoe*, for very good reasons, unambiguously set a high threshold for finding an abuse of process where hearing fairness has not been compromised. As Mr. Abrametz acknowledged, the outcome he seeks is not an easy fit with much of the case law which has applied *Blencoe* in the 19 years since it was decided. I have nonetheless concluded Mr. Abrametz is entitled to the relief he seeks.
> ….
>
> [10] ... In my view, this outcome is consistent with *Blencoe*. If it does represent a step forward from *Blencoe*, I would characterize it as an incremental step that is necessary to enable *Blencoe* to better serve its remedial purpose for the benefit of both those caught up in the machinery of the administrative state and, ultimately, administrative decision-makers themselves.

THE CASE ON APPEAL

15. The Saskatchewan Court of Appeal decision raises significant questions about whether delay in administrative proceedings should be assessed against the access to justice concerns expressly referenced in recent criminal and civil cases. The decision also raises the fundamental issue of the standard of review or deference directed towards the disciplinary proceedings of a regulator acting in the public interest. Finally, the Court of Appeal's decision raises important questions about whether publication and dissemination of information digitally contributes to significant prejudice.

16. Practical consequences of the Saskatchewan Court of Appeal's approach may be that regulators feel pressured to rush disciplinary proceedings, forego preliminary alternatives to discipline in order to expedite proceedings, and have less time to wait for related matters to be decided in civil or criminal courts.

17. As the coordinating body for legal regulators in Canada, the Federation could bring an important national perspective to the issues under consideration, including the differential impact this decision would have on law societies of different sizes. It is likely that the Federation would argue that the case sets too rigid a standard for assessing delay and that potential prejudice must be assessed against other important interests.

18. Leave to appeal was granted on February 26, 2021. A hearing date for the appeal has not yet been set. Pursuant to the Rules of the Supreme Court of Canada, a motion for leave to intervene must be brought no later than 4 weeks from the date of the filing of the Appellant's factum. This puts June 22, 2021 as the outside deadline for filing a motion for leave to intervene.

COUNSEL

19. If Council approves the recommendation that the Federation seek leave to intervene, the Litigation Committee will provide the Executive with a list of counsel who would be willing to represent the Federation in this matter on a *pro bono* basis.

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[5] 2014 SKCA 56.

RECOMMENDATION

20. The Litigation Committee has considered the issues raised by this appeal and has concluded that it is of sufficient national importance to merit an intervention by the Federation. The committee recommends that Council be asked to approve the recommendation that the Federation seek leave to intervene in this matter.

Intervention Policy

Politique d'intervention

General

1. "Intervention" in this policy includes an intervention in a matter before a court, tribunal or other judicial or quasi-judicial body including a board or commission of inquiry, and the filing of an affidavit in support of an application for leave to appeal.

2. Generally, the Federation of Law Societies of Canada ("Federation") will intervene only,

   a. where the intervention would contribute significantly to the consideration of the issue or issues involved;

   b. when the position sought to be advanced in the intervention is a matter of compelling interest to the members of the Federation; and

   c. in the case of a matter under appeal, in the highest court in which an issue is likely to be finally decided.

3. The Federation may intervene after the court grants leave to appeal, on the application for leave to appeal, or both.

4. The Federation may participate at the leave to appeal stage, without seeking intervener status, if expressing the Federation position would likely assist the court to determine whether leave should be granted.

5. Where the Federation intervenes on a leave

Général

1. Dans la présente politique, « intervention » inclut une intervention dans une affaire devant une cour, un tribunal ou autre organisme judiciaire ou quasi judiciaire, incluant un comité ou une commission d'enquête, et le dépôt d'un affidavit à l'appui d'une demande d'autorisation d'appel.

2. De façon générale, la Fédération des ordres professionnels de juristes du Canada (la « Fédération ») interviendra uniquement :

   a. dans des situations où l'intervention contribuerait de façon importante à l'examen de la question ou des questions en cause;

   b. lorsque la position que l'on cherche à avancer dans l'intervention est une question d'intérêt pressant pour les membres de la Fédération; et

   c. dans le cas d'une affaire en appel devant le plus haut tribunal où un jugement définitif sera probablement rendu.

3. La Fédération peut intervenir une fois que la cour donne l'autorisation d'interjeter appel, dans la demande d'autorisation d'appel ou les deux.

4. La Fédération peut participer à l'étape de l'autorisation d'appel, sans demander d'avoir qualité d'intervenant, si le fait de faire connaître sa position peut aider la cour à déterminer si l'autorisation devrait être accordée.

5. Lorsque la Fédération intervient dans une

to appeal request, it is not committed to intervene on the appeal if leave is granted.

6. Where,

   a. a matter is before the courts in more than one jurisdiction,

   b. more than one Law Society wishes to intervene at the highest appellate level of their jurisdiction, and

   c. the matter satisfies this intervention policy,

   the Federation may coordinate interventions in the various jurisdictions and may assume carriage of the intervention in the Supreme Court of Canada.

7. Documents filed by the Federation in support of an intervention should not merely restate arguments the parties advance. The documents should explain the Federation's particular interest in the case and how it differs from that of the parties. Where Federation policy relevant to the matter at issue is clear and a matter of public record, the Federation should cite the policy and explain in it any documents it files.

8. The President of the Federation will swear or affirm documents filed by the Federation when required. All documents will be filed in the name of the Federation and not in the name of a Federation member.

Recommendations and Requests for Intervention

9. A recommendation to the Council of the Federation to file a motion for intervention

demande d'autorisation d'appel, elle n'est pas tenue d'intervenir au moment de l'appel si la demande est acceptée.

6. Lorsque :

   a. une affaire est portée devant des tribunaux dans plus d'une juridiction;

   b. plus d'un ordre professionnel de juristes désire intervenir devant le plus haut tribunal d'appel de sa juridiction; et

   c. la cause répond aux exigences de la présente politique d'intervention;

   la Fédération peut coordonner les interventions dans les différentes juridictions et peut se charger de l'intervention devant la Cour suprême du Canada.

7. Les documents déposés par la Fédération à l'appui d'une intervention ne doivent pas simplement énoncer de nouveau les arguments formulés par les parties. Les documents doivent expliquer l'intérêt particulier de la Fédération pour l'affaire et comment cet intérêt se distingue de celui des parties. Là où la politique applicable de la Fédération est claire et bien établie, la Fédération doit citer et expliquer cette politique dans tous documents qu'elle déposera.

8. Le président ou la présidente de la Fédération confirmera ou attestera la conformité des documents déposés par la Fédération lorsqu'il le faudra. Tous les documents seront déposés au nom de la Fédération, et non pas au nom d'un membre de la Fédération.

Recommandations et demandes d'intervention

9. Une recommandation de déposer une requête en intervention peut être présentée

may be formulated at the initiative of the Litigation Committee or upon a request from a member of the Federation. A member of the Federation wishing the Federation to file a motion for intervention must contact the Chair of the Litigation Committee as soon as it considers the possibility of requesting the intervention.

au Conseil de la Fédération à l'initiative du Comité sur les litiges ou à la demande d'un membre de la Fédération. Un membre de la Fédération qui désire que la Fédération dépose une requête en intervention doit communiquer avec le président ou la présidente du Comité sur les litiges dès qu'il envisage la possibilité de faire une demande d'intervention.

10. The Litigation Committee is responsible for reviewing the member's request for intervention and providing a report on the merits of the request to Council in a timely manner.

10. Le Comité sur les litiges est chargé d'examiner la demande d'intervention du membre et de présenter au Conseil un rapport sur le bien-fondé de la demande en temps utile.

11. A request for intervention to the Litigation Committee shall contain the following information, as applicable:

    a. The name of the case or board or commission of inquiry.

    b. Identification of the last court to render a decision in the case.

    c. The court in which it is proposed that the Federation intervene.

    d. A copy of the decision or order being appealed.

    e. Any accompanying reasons including the identification of any other parties that have expressed an interest in obtaining intervener status or are likely to seek same.

    f. The date by which the Federation must file the proposed intervention.

    g. Identification of the issue thought to require intervention and the implications of that issue to the Federation, the governing bodies, or

11. Une demande d'intervention présentée au Comité sur les litiges doit contenir les renseignements suivants, selon le cas :

    a. l'intitulé de l'instance ou le nom du comité ou de la commission d'enquête;

    b. l'identification du dernier tribunal qui a rendu une décision dans l'affaire;

    c. le tribunal devant lequel on demande que la Fédération intervienne;

    d. une copie de la décision ou de l'ordonnance de laquelle on a interjeté appel;

    e. toutes raisons à l'appui incluant l'identification de toute autre partie qui s'est montrée intéressée à avoir qualité pour intervenir ou qui pourrait demander d'avoir qualité pour intervenir;

    f. la date à laquelle la Fédération doit, au plus tard, déposer la requête en intervention;

    g. l'identification de la question qui semble nécessiter une intervention et les répercussions de cette question sur la Fédération, les ordres

the legal profession, as well as the proposed position for the Federation to take on this issue.

h. The names of lawyers who are prepared to represent the Federation in the intervention on a pro bono basis and according to this intervention policy.

i. Any other material, information or document that may assist the Council to make its decision respecting the request for intervention.

12. The Litigation Committee's report to Council shall include (i) all documents considered by the Committee where the recommendation to intervene is at the initiative of the Committee or (ii) all documents submitted with the request for intervention.

13. Where the Litigation Committee considers it necessary, it may obtain an independent legal opinion on the merits of the appeal and/or intervention request, as applicable. The opinion will be shared with members of the Council to assist them to make their decision.

14. If time permits, the recommendation or request for intervention, as the case may be, will be placed on the agenda of the next scheduled Council meeting.

15. If time does not permit, the Federation President may schedule a special meeting of Council to consider the recommendation or request, as the case may be.

16. A member who makes a request for intervention will make every effort to ensure that the Litigation Committee has sufficient time to thoroughly consider the

professionnels ou la profession juridique, ainsi que la position qu'on propose à la Fédération d'adopter sur cette question;

h. le nom des juristes prêts ou prêtes à représenter la Fédération bénévolement et conformément à la présente politique d'intervention;

i. tout autre renseignement ou document qui pourrait aider le Conseil à prendre sa décision au sujet de la demande d'intervention.

12. Le rapport que le Comité sur les litiges présentera au Conseil doit inclure (i) tous les documents qui ont été examinés par le Comité si la recommandation d'intervenir est faite à l'initiative du Comité ou (ii) tous les documents présentés avec la demande d'intervention.

13. Lorsque le Comité sur les litiges le juge nécessaire, il peut obtenir un avis juridique indépendant sur le bien-fondé de l'appel et sur la demande d'intervention, ou l'un des deux, selon le cas. L'avis sera transmis aux membres du Conseil afin de les aider à prendre leur décision.

14. Si le temps le permet, la recommandation ou la demande d'intervention, selon le cas, sera portée à l'ordre du jour de la prochaine réunion du Conseil prévue au calendrier.

15. Si le temps ne le permet pas, le président ou la présidente de la Fédération peut convoquer les membres du Conseil à une réunion extraordinaire dans le but d'examiner la recommandation ou la demande, selon le cas.

16. Un membre qui présente une demande d'intervention doit faire tous les efforts possibles afin de donner suffisamment de temps au Comité sur les litiges pour

request, process it and obtain the authorization of the Council to proceed with the intervention.

17. The Council must unanimously approve recommendations and requests for interventions in the name of the Federation.

18. The Litigation Committee may review any document to be filed on behalf of the Federation.

19. The Litigation Committee will instruct counsel that the Federation retains for any intervention. If the Litigation Committee is unable to act in this capacity, the President of the Federation may do so.

Legal Fees and Disbursements

20. Generally, the Federation will not pay legal fees relating to interventions.

21. Subject to paragraph 23, the Federation will reimburse counsel all direct, necessary and actual disbursements and expenses incurred in connection with an intervention, including the following:

    a. invoiced costs of third-party service providers for photocopying, printing or binding of documentation;

    b. in-house costs of photocopying at the maximum rate of ten (10) cents per page;

    c. long-distance telephone charges; and

    d. travel expenses at the rate and pursuant to the conditions applicable from time to time for members of the Federation Council.

examiner à fond la demande, la traiter et obtenir du Conseil l'autorisation de présenter la requête en intervention.

17. Le Conseil doit approuver à l'unanimité les recommandations et les demandes d'intervention au nom de la Fédération.

18. Le Comité sur les litiges peut examiner tout document qui sera déposé au nom de la Fédération.

19. Le Comité sur les litiges donnera les directives à l'avocat engagé ou l'avocate engagée par la Fédération pour toute intervention. Si le Comité sur les litiges n'est pas en mesure d'assumer cette tâche, celle-ci pourra alors être confiée au président ou à la présidente de la Fédération.

Honoraires d'avocat/d'avocate et débours

20. De façon générale, la Fédération ne paiera pas d'honoraires d'avocat ou d'avocate pour les interventions.

21. Sous réserve du paragraphe 23, la Fédération remboursera l'avocat ou l'avocate de toutes les dépenses et tous les débours directs, nécessaires et effectifs qu'il ou elle a engagés dans le cadre d'une intervention, incluant :

    a. les coûts facturés par de tiers fournisseurs de services pour la photocopie, l'impression ou la reliure des documents;

    b. les coûts internes de photocopie au taux maximum de dix (10) cents la page;

    c. les frais d'interurbain; et

    d. les frais de déplacement au taux et conformément aux conditions

22. The Federation will not reimburse counsel for any expenses which are part of counsel's costs of overhead.

23. Unless otherwise agreed to by the Federation Executive, counsel will not incur disbursements which exceed the aggregate of $5,000.00 without the Federation's prior consent.

applicables, lorsqu'il y a lieu, aux membres du Conseil de la Fédération.

22. La Fédération ne remboursera pas à l'avocat ou l'avocate des dépenses faisant partie des frais généraux de l'avocat ou l'avocate.

23. Sauf convention contraire du Comité exécutif de la Fédération, l'avocat ou l'avocate n'engagera pas de débours au-delà d'un montant global de 5 000,00 $ sans le consentement préalable de la Fédération.

This Policy was adopted in August 1997 and amended in September 2004, November 2007, and March 2008.

Cette politique a été adoptée en août 1997 et modifiée en septembre 2004, puis en novembre 2007, et mars 2008.