



Amended MINUTES

Benchers

Date: Thursday, June 22, 2023

Time: 1:00 p.m.

Location: Law Society Offices and via Videoconference

Present:

Wayne Onchulenko, President	Tehani Jainarine
Gerri Wiebe, Vice President	Dr. Richard Jochelson
Sacha Paul, Past President	Leah Klassen
Miriam Browne, Officer-at-Large	Mathieu Lafreniere
Susan Boulter	Christopher Lange
Mason Broadfoot	Kenneth Mandzuik
Kyle Dear	Brian McLeod
Serena Ehrmantraut	Christian Monnin
Blair Filyk	Carmen Nedohin
Sharyne Hamm	Joëlle Pastora Sala
Kameron Hutchinson	Kelli Potter
Sarah Inness, KC	Nikhilesh Verma
Teresa Jaenen	

Guests:

Omolola Agboola	Jill Perry, KC
Audrey Bews	Mikal Sokoloski
Samantha Harvey	Erin Wilcott
Zahra Hosseini	

Staff Present:

Leah Kosokowsky	Leah Neufeld
Rennie Stonyk	Deirdre O'Reilly
Noelia Bernardo	Richard Porcher
Tana Christianson	Sean Rivera

Eileen Derksen
Lee-Ann Harrison
Joan Holmstrom
Colleen Malone

Alissa Schacter
Darcia Senft
Betta Wishart

1.0 PRESIDENT'S WELCOME AND TREATY ACKNOWLEDGEMENT

Mr. Onchulenko , President, called the meeting to order at 1:30 pm and welcomed benchers, guests and staff to the meeting, including Jill Perry, KC, President of the Federation of Law Societies of Canada, and new benchers Sarah Inness, KC, and Christopher Lange.

2.0 IN MEMORIAM

Benchers observed a moment of silence for Brendan Terrill Surendra Mahatoo and Mathew Patrick Good.

3.0 CONSENT AGENDA

3.1 Minutes of May 18, 2023 Meeting

Benchers considered the minutes of the benchers' meeting held on May 18, 2023.

Motion: That the minutes of the meeting of the benchers held on May 18, 2023 be approved as presented.

MOVED: Mr. Paul
Seconded: Ms Browne
Carried.

4.0 PRESENTATION OF STUDENT PRIZE WINNERS

Congratulations were extended to the following University of Manitoba, Faculty of Law students for having attained the four highest standings in third year law:

Margaret Hypatia Crawford Award for highest standing in third year law	Samantha Harvey
Second highest standing in third year law	Audrey Bews
Third highest standing in third year law	Mikal Sokoloski
Fourth highest standing in third year law	Aiyana McKenzie

Benchers were advised that the prize money associated with each award had been paid to the award recipients.

Ms Harvey, Ms Bews and Mr. Sokoloski were excused from the meeting at 1:40 pm. Ms Nedohin and Mr. Verma also left the meeting at this time.

5.0 EXECUTIVE REPORTS

5.1 President's Report

Mr. Onchulenko reported to benchers on his attendance at several events since the benchers had last met on May 18, 2023.

5.2 Chief Executive Officer's Report

Benchers received for information Ms Kosokowsky's report dated June 5, 2023. Ms Kosokowsky provided a detailed update regarding the British Columbia government's move toward a single legal regulator in that jurisdiction. Benchers were reminded that the Law Society had provided feedback to the BC government which encouraged it to ensure that composition of the new regulatory board include majority lawyer representation to preserve the rule-making power of the newly formed regulator and the independence of the

profession. The Law Society also encouraged diversity in the board appointments to ensure diverse perspectives of both the profession and the public. Benchers were advised that the government intends to introduce a bill in the fall session which will propose a board comprised of two lawyers, two notaries, two paralegals and five public representatives. There is currently no indication whether the Law Society of British Columbia would be appointed as the regulator. Benchers were advised that the impact of this change could be far reaching - affecting the Law Society's membership within the Federation of Law Societies, national mobility of the profession, national law firm operations, and law society collaboration on current and future projects. Of greater concern is the affect this move could have on the independence of the profession from government interference.

Benchers expressed concern with the activities transpiring in BC and strongly encouraged all benchers to be vigilant and raise awareness of any measures taken by government, both nationally and locally, which would further erode the independence of the profession and put the public at risk.

Benchers also encouraged discussion with other local and national stakeholders on this issue. Consideration will be given to striking a working group or special Law Society committee to develop specific strategies in readiness to respond to this issue. Benchers can expect to receive more information in the near future.

6.0 DISCUSSION/DECISION

6.1 Bencher Code of Conduct: Representation Before Law Society Panels

Benchers considered a memorandum prepared by Ms Kosokowsky, dated June 6, 2023, which invited direction on whether a bencher, life bencher or non-bencher member of the discipline committee or appeals committee ought to be permitted to resign from the committee to immediately act for a member in a discipline hearing or appeal hearing and if so, whether a waiting period ought to be put in place before the member could be reappointed to the committee. Benchers were advised that the Bencher Code of Conduct clearly prohibits benchers, life benchers and volunteer committee members from representing a member before a hearing panel while also serving as a member of that same committee. It was also noted that *The Code of Professional Conduct* prescribes a three year waiting period before retired judges are permitted to appear before the courts or hearing tribunals over which the court may exercises appellate or judicial review.

Benchers agreed that from a public perception perspective it would not be appropriate for a committee member to resign from the committee for the purpose of representing a member and then be eligible to return to the committee immediately after their

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representation as opposing counsel had concluded. Some benchers were of the view that a member of the discipline committee or appeals committee should not be permitted to resign from the committee during the term of their appointment for the purpose of representing a member before that same committee, while other benchers were of the view that the Law Society should not prevent a committee member from resigning from the committee if they wished to do so for this purpose.

Benchers agreed that a cooling off period was essential following the conclusion of the matter, however, there were differing views on what the length of the cooling off period ought to be. It was suggested that the member not be eligible for reappointment to the committee for a period of one year following the conclusion of the member's term as opposing counsel, and that consideration of reappointment coincide with the setting of the membership of all Law Society committees in May of each year. Other benchers recommended a three year cooling off period following the conclusion of representation as this would then be consistent with the cooling off period which is prescribed for retired judges returning to practice and that from a public perception perspective, this would eliminate potential conflict of interest concerns.

Benchers recommended that at the time of setting the membership of the discipline and appeals committees, all members of the committee should be advised in writing of the expectation that in agreeing to serve on the committee they will, to the best of their ability, complete their term of appointment on the committee. Committee members should also be made aware of the new cooling off period which would automatically come into effect for members resigning from the committee to serve as opposing counsel before a Law Society committee.

Motion: That committee members not be permitted to serve as counsel to a member while also serving on a Law Society hearing committee and that following the conclusion of the member's term of service as opposing counsel, a period of three years must pass before the member becomes eligible for reappointment to the committee.

MOVED: Mr. Paul
Seconded: Mr. Lafreniere
Carried.

It was confirmed that these new policies would not necessitate amendments to the Bencher Code of Conduct nor would they be applied retroactively as there are no committee members currently serving as opposing counsel on any active hearing matters.

6.2 Rule Amendments: Mandatory Indigenous Intercultural Awareness and Competency Training

Benchers considered Ms Stonyk's memorandum, dated June 13, 2023, which invited benchers to consider and approve proposed rule amendments which will provide the Law Society with the authority to require participation in one-time Indigenous intercultural awareness and competency training by members of the profession and to also impose sanctions for non-compliance with the rule requirements.

Motion: That the proposed draft amendments relating to participation in mandatory Indigenous intercultural awareness and competency training be approved in principle as presented.

MOVED: Mr. Hutchinson
Seconded: Mr. Lafreniere
Carried.

Benchers were advised that an extensive communication plan has been developed to ensure that all members are aware of the participation requirements as well as the associated deadlines for participation in advance of the October 1, 2023 commencement date of the program.

Ms Nedohin rejoined the meeting and Ms Wilcott left the meeting at 2:55 pm.

7.0 COMMITTEE REPORTS

7.1 Indigenous Advisory Committee - Exemptions to Mandatory Requirement to Take The Path

Benchers considered Ms Schacter's memorandum, dated June 12, 2023, which invited benchers to approve the recommendations of the Indigenous Advisory Committee with respect to providing exemptions from the mandatory Indigenous Intercultural Awareness and Competency Training program to be delivered by the Law Society. The recommendations of the committee were as follows:

- (I) That members who have already taken the CBA version of The Path only be required to take the new Manitoba components of the course.

- (II) That there not be a specific exemption from the mandatory requirement to take The Path for Indigenous lawyers. Indigenous lawyers, along with all other lawyers who have already taken the CBA version of the Path will only be required to take the new Manitoba components of the course.

Benchers were advised that the committee was of the view that this approach would ensure consistency in the form and content of the training received by all members of the Law Society.

Motion: That the recommendations of the Indigenous Advisory Committee with regard to exemption from mandatory participation in The Path be approved as presented.

MOVED: Mr. Mandzuik

Seconded: Mr. Paul

Benchers discussed whether from a human rights perspective there ought to be an avenue for exemption to Indigenous members in circumstances where participation may cause harm to the member and if so, the nature of the information which would need to be disclosed by the member to support a request for exemption. Benchers were advised that accommodations are made for members who are unable to satisfy their annual continuing professional development obligations in appropriate circumstances. Although not advertised, in this instance accommodation would be extended to Indigenous lawyers on request if participation would be traumatizing to the member.

Mr. Onchulenko called for the question.

Motion Carried.

Abstention: Ms Klassen

Ms Ehrmantraut requested that the record reflect her vote in opposition to the motion.

8.0 MISCELLANEOUS BUSINESS

8.1 Western Entry to Practice Competency Profile Update

Benchers considered Ms Stonyk's memorandum, dated June 13, 2023, which provided a status report on the development of the entry to practice competency profile being developed by the western law societies.

8.2 Draft NCA Competency Profile - Request for Feedback

Bencher considered Ms Stonyk's memorandum, dated June 13, 2023, which reported on the development of a competency-based profile by the NCA Assessment Modernization Committee for candidates applying to the NCA and an invitation extended from the committee to law societies to provide feedback on the draft profile. Bencher were asked to provide direction on whether review of the draft profile ought to be undertaken by the Western Entry to Practice Advisory Committee which is working on the development of a Western entry to practice competency profile for articling students or by the Admissions and Education Committee.

Motion: That the Western Entry to Practice Advisory Committee be tasked with providing feedback on the draft competency-based profile presented by the NCA Assessment Modernization Committee.

MOVED: Ms Wiebe
Seconded: Ms Potter
Carried.

8.3 Insurance Levy 2023-2024

Bencher considered Ms Kosokowsky's memorandum, dated June 5, 2023, which reported on the setting of the insurance levy for the period July 1, 2023 to June 30, 2024 at \$2,014. Bencher were advised that the increase in the levy was attributable to a rise in the number of insurance claims received in the past year and also a significant increase in the dollar amount of those claims.

8.4 CLIA Audit of Claims Files

Bencher received for information a report on the first audit of the Law Society's Professional Liability Claims Fund conducted by the Canadian Lawyers Insurance Association. The report, dated May 31, 2023, confirmed that no irregularities or discrepancies had been identified.

8.5 Fair Registration Practices in Regulated Professions Act - Amendments and 2023 Registration Review

Bencher considered a memorandum prepared by Ms Stonyk and Mr. Porcher, dated June 14, 2023, which provided a detailed report on the results of the review of the Society's registration processes conducted by the Fair Registration Practices Office in March of 2023. The memorandum also reported on the recent passing of amendments to the *Fair*

Registration Practices in Regulated Professions Act which came into force on May 31, 2023 and largely pertained to: (a) the timely issuance of decisions and responses to domestic labour mobility applicants; and (b) language proficiency testing. Benchers were advised that these amendments further encroach on the independence of the legal profession by local government and will also impact the registration practices of the NCA and CPLED, both of whom have been made aware of these amendments. The Law Society will be sharing its concerns with both the Minister responsible for the *Act* as well as the official opposition and will continue to closely monitor this situation.

8.6 FLSC Council Report

Benchers received for information Ms Troup's report, dated June 5, 2023, which provided a detailed report on the Federation Council meeting held in Ottawa on June 5, 2023.

9.0 GUEST PRESENTATION

9.1 Remarks from the President of the Federation

Ms Perry thanked benchers for providing her with the opportunity to meet with them in her role as President of the Federation of Law Societies of Canada. She provided a detailed oral report on recent activities undertaken by the Federation in four strategic areas, namely: lawyer competence and training; anti-money laundering and protection of solicitor-client privilege; mental health and well-being of the profession; and reconciliation with Indigenous peoples.

9.2 Honourary Membership

Motion: That Ms Perry be appointed an honorary member of the Law Society of Manitoba.

MOVED: Mr. Onchulenko

Seconded: Ms Wiebe

Carried.

Ms Perry was presented with an Honourary Member Certificate and gift.

10.0 FOR INFORMATION

Benchers considered the materials provided for information.

10.1 In Camera Discussion

Mr. Onchulenko advised that benchers would be participating in a brief *in camera* discussion regarding the audited financial statements of the Law Society. All guests and staff were excused from the meeting at 3:50 pm.

Motion: That the meeting proceed *in camera*.

MOVED: Mr. Paul
Seconded: Mr. Mandzuik
Carried.

Motion: That the meeting return to regular format.

MOVED: Ms Browne
Seconded: Ms Pastora Sala
Carried.

There being no further business, Mr. Onchulenko adjourned the meeting at 3:55 pm.