



MINUTES

Benchers

Date: Thursday, March 24, 2022

Time: 12:30 p.m.

Location: Law Society Offices and Via Videoconference

Present:

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| Grant Driedger, President | Anthony Kavanagh |
| Sacha Paul, Vice President | Anna Maria Magnifico |
| Lynda Troup, Past President | Kenneth Mandzuik |
| Susan Boulter, Officer-at-Large | Brian McLeod |
| Mason Broadfoot | Christian Monnin |
| Miriam Browne | Wayne Onchulenko |
| Kyle Dear | Anu Osborne |
| Paul Grower | Joëlle Pastora Sala |
| Tehani Jainarine | Kelli Potter |
| Dr. Richard Jochelson | Jessica Saunders |
| Ashley Joyce | Gerri Wiebe |

Regrets: Patricia Kloepfer Tyler Koshowski

Guests: Erin Wilcott

Staff Present:

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|-------------------|------------------|
| Leah Kosokowsky | Ayli Klein |
| Rennie Stonyk | Sharon Kravetsky |
| Will Barnstead | Deirdre O'Reilly |
| Noelia Bernardo | Richard Porcher |
| Pat Bourbonnais | Sean Rivera |
| Tana Christianson | Karen Sawatsky |
| Eileen Derksen | Alissa Schacter |
| Joan Holmstrom | Darcia Senft |

1.0 President's Welcome and Treaty Acknowledgement

Mr. Driedger, President, called the meeting to order at 12:35 p.m. and welcomed everyone to the meeting. Treaty territories 1, 2 and 5 were acknowledged with gratitude.

2.0 In Memoriam

Benchers observed a moment of silence for Janet Kay Baldwin, Ronald Dale Gibson, David Margolis, Q.C., Gerald Gregory Brodsky, Q.C., John Alan Davidson and Alan John Semchuk.

3.0 Consent Agenda

3.1 Minutes of February 3, 2022 Meeting

The minutes of the meeting held on February 3, 2022 were approved as presented.

3.2 Appointment of Bencher Election Officers

Benchers approved the appointment of Leah Kosokowsky and Colleen Malone as scrutineers for the 2022 bencher election and Grant Driedger as the substitute Chief Electoral Officer.

3.3 Governance Policies - Amendments

Benchers approved the proposed amendments to Ends 6 and 8 of the Governance Policies.

3.4 Complaints Investigation Committee Report

Benchers received for information the report of the Complaints Investigation Committee.

3.5 Discipline Committee Report

Benchers received for information the report of the Discipline Committee.

Motion: That the Consent Agenda items be approved as presented.

MOVED: Ms Troup
Seconded: Mr. Mandzuik
Carried.

4.0 Executive Reports

4.1 President's Report

Benchers received for information Mr. Driedger's report dated March 15, 2022.

4.2 Chief Executive Officer's Report

Benchers received for information Ms Kosokowsky's report dated March 16, 2022. Ms Kosokowsky advised that the Independent Advisory Board for Senate Appointments is seeking candidates to fill senate vacancies in Manitoba, Saskatchewan, British Columbia and Ontario. Information regarding the application process will be posted on the Law Society's website for anyone interested in applying for one of these positions.

4.3 Strategic Plan - Activity Plan

Benchers received a detailed Activity Plan which will be used to advance the strategic goals set by benchers under the Law Society's strategic plan for the 2022 - 2025 period.

With respect to the delivery of public engagement activities which are intended to enhance confidence in the work of the Law Society, it was suggested that an honoraria should be paid to participants who are, or who represent, members of vulnerable and historically disadvantaged groups and communities. Benchers were advised that in order to ensure broad and meaningful participation with representatives and residents who fall within this demographic, accessibility is and will continue to be a primary consideration when planning these engagement sessions. For this reason, it is intended that in addition to virtual participation, Law Society representatives will travel to these communities to attend public forums. This will hopefully alleviate any burden associated with travel. If, however, benchers wish to provide an honoraria to participants, the Law Society would need to obtain funding to cover this expense as funds have not been allocated within the budget for this specific purpose. It was suggested that consideration be given to including this expense in the next grant application that is submitted to the Manitoba Law Foundation for the Access to Justice Coordinator position.

5.0 Discussion/Decision

5.1 Articling Period Abridgement and Accelerated PREP Pilot

Benchers considered a memorandum from Ms Stonyk and Ms Holmstrom, dated March 15, 2022, which invited benchers to consider whether the policy which provided discretion to the chief executive officer to abridge articles by up to 16 weeks should be revoked for future PREP intake groups now that pandemic restrictions are being eased across the country.

Benchers were also asked to consider what the appropriate articling period ought to be for those students who participate in the accelerated three month PREP pilot program which is scheduled to begin in May of 2022 for articling students from Manitoba.

With respect to the discontinuation of the abridged articling period, benchers considered the recommendation contained within the memorandum which was as follows:

That benchers direct that the articling period of 52 weeks resume for:

- (a) those enrolling in the June 2022 PREP intake and all subsequent intakes; and
- (b) those enrolled in or having completed a prior PREP intake who begin their articles on or after July 1, 2022.

Benchers wondered whether it would be advisable for the chief executive officer to continue to have discretion to grant an abridgement of articles in appropriate circumstances. Benchers were advised that the chief executive officer would continue to have that authority.

Motion: That the articling period of 52 weeks shall resume: (i) for those students who enroll in the June 2022 PREP intake and all subsequent intakes; and (ii) for those students who are enrolled in or have completed a prior PREP intake and will begin their articles on or after July 1, 2022.

MOVED: Mr. Monnin
Seconded: Ms Browne
Carried.

With respect to the accelerated PREP pilot program, benchers were asked to consider whether the 38 week articling period should be available to those students who participate in the pilot program and if so, what the cut off date to begin articling ought to be to take advantage of the abridgement option. Benchers were reminded that students who are unable to meet the articling deadline would be required to complete the 52-week articling period instead. It was suggested that benchers might consider September 15, 2022 or December 31, 2022 as appropriate cut off dates. A straw poll indicated that some benchers favored a shorter period of time within which to secure articles as this would better support

knowledge and skills retention. Other benchers preferred the year end deadline as it would provide greater opportunity for students to secure their articles while remaining eligible to take advantage of the reduced articling period.

Motion: That the articling period for students who participate in the accelerated PREP pilot program be set at 38 weeks, provided they commence their articles by September 15, 2022.

MOVED: Mr. Mandzuik
Seconded: Mr. Monnin
Carried.

5.2 Report of the Indigenous Advisory Committee

Benchers considered the report of the Indigenous Advisory Committee, dated March 15, 2022, which provided a series of recommendations pertaining to (1) the Terms of Reference for the committee; and (2) mandatory Indigenous intercultural awareness and competency training.

Benchers were first invited to consider the three proposed amendments within the *Purpose* and *Governance Policies* sections of the Terms of Reference

Motion: That the proposed amendments to the Terms of the Reference be approved as presented.

MOVED: Mr. Paul
Seconded: Ms Troup
Carried.

Benchers were also asked to consider the recommendations contained within the committee's report regarding Indigenous intercultural awareness and competency training which were as follows:

1. The Society's benchers shall institute one-time, mandatory Indigenous intercultural awareness and competency training for practising members effective April 1, 2023.
2. The one-time mandatory training shall consist of the online course, The Path, which should be supplemented by the development of a Manitoba-specific module.
3. Indigenous lawyers should be able to apply for an exemption from taking either segments of the course, or the entire course. Requests for exemptions should be considered on a case-by-case basis and criteria will be developed for assessing these requests.

Benchers expressed support for mandatory participation in the training program but wondered how the Law Society would address members who fail to satisfy the training requirement. Benchers were advised that historically, members who are not in compliance with the annual continuing professional development requirements are given 60 days to satisfy any shortfall in CPD participation. Failure to satisfy the outstanding requirements within that timeframe can result in an automatic suspension, however, extensions have been granted upon request under reasonable circumstances. This is the practice which would be followed for any practising member who fails to participate in the training program.

Mr. McLeod excused himself from the meeting at 1:15 pm.

Benchers discussed whether members should be required to pay the proposed \$20 fee to participate in the training program. Many benchers were of the view that because participation will be mandatory, it should be available to all members at no cost. Instead, the Law Society should absorb the costs associated with the development, purchase and delivery of the program or include it within the practising fee levy. It was noted that once the first cohort of members completes the program, ongoing costs to the Society should be minimal as the majority of new members will be recent law school graduates who will have received cultural awareness and competency training while in law school or as part of the PREP program.

Benchers were advised that while it is intended that the training program will be available to members effective April 1, 2023, it is possible that the entire program will not be ready at that time. For this reason it was recommended that benchers defer setting an implementation date for training until staff are in a position to confirm when the entire program, including the Manitoba-specific portion, will be available for viewing.

Motion: That all practising members be required to participate in a one-time Indigenous cultural awareness and competency training program.

MOVED: Mr. Mandzuik
Seconded: Mr. Monnin
Carried.

Benchers were invited to provide comment on whether they supported the committee's recommendation that the training course consist of the online course, The Path, supplemented with the development of a Manitoba-specific module. It was suggested that the committee might also consider a similar course developed by Coursera which included a significant portion of Manitoba-specific content and may assist the consultant in the development of the Manitoba segment of the program.

Motion: That the one-time mandatory training consist of the online course, The Path, which should be supplemented by the development of a Manitoba-specific module.

MOVED: Ms Troup
Seconded: Ms Wiebe
Carried.

Motion: That an exemption to participation in the entire course, or either segment of the course, shall be available to Indigenous lawyers and will be considered on a case-by-case basis based upon criteria which will be developed to aid in the assessment of a requested exemption.

MOVED: Ms Troup
Seconded: Ms Wiebe
Carried.

5.3 President's Special Committee on Regulating Legal Entities

Bencher's considered the report of the President's Special Committee on Regulating Legal Entities, dated March 16, 2022, which provided a series of recommendations pertaining to the formation of a framework to support the development of a regulatory sandbox. Bencher's were asked to consider and approve the recommendations contained within the report which were as follows:

1. That:
 - a) The Law Society should develop a "made in Manitoba" sandbox;
 - b) The Law Society should be the entity responsible to provide oversight;
 - c) The proposed delivery model must advance access to justice; and
 - d) Participation should be open to any service providers who meet established criteria and applications should be considered on a case-by-case basis.
2. With the exception of suspended lawyers, disbarred lawyers and lawyers who have been given permission to resign following a discipline hearing, no blanket prohibition to participation should be imposed on lawyers and each application ought to be considered based on its merits, taking into account the member's record with the Law Society.
3. Applicants should be required to identify risks to the public that are associated with their proposal and to identify how any such risks would be addressed or mitigated.
4. Applicants should be required to declare to the Law Society and to their clients whether they carry errors and omissions (or other) insurance.

5. Applicants should be asked if they have a planned exit strategy and, if so, be required to provide those details to the Society.
6. When considering applications for the sandbox, the following policy considerations should be applied to the approval process:
 - access to justice
 - competence
 - integrity
 - accountability
 - diversity
7. That:
 - a) Conditions under consideration to protect the public should be proportionate to any risk posed and, therefore, the Law Society should have some flexibility when imposing conditions.
 - b) Applicants must be made aware of and agree that the Law Society maintains the right to add or alter existing conditions at any time.
8. Applicants must advise their clients, in writing, of certain issues as contemplated above and clients of approved applicants must sign an acknowledgement that the required information has been disclosed to them.
9. Successful applicants must provide regular reports to the Society (semi-annually/quarterly) and provide the information outlined.
10. Successful applicants must also provide a final report to the Society outlining the issues contemplated.
11. That:
 - a) Applicants should be required to implement an internal complaints process to the satisfaction of the Law Society.
 - b) Applicants must cooperate in any complaint investigation that may be conducted by the Law Society.
 - c) Law Society staff should be responsible for investigating the complaints considered by the Law Society.
12. The Society should, in its discretion, suspend, modify or revoke its approval of the delivery of legal services where the protection of the public is implicated.
13. Agreements should include certain provisions and acknowledgements such as those outlined within the report.

14. Applications for inclusion in the sandbox pilot should be considered and approved by Law Society staff based upon criteria and parameters established by the benchers.
15. Applicants should be required to pay a nominal application fee as well as a nominal annual “practising fee” in order to participate in the sandbox.
16. The sandbox pilot program should operate for a minimum period of five years, at which time decisions should be made about which service providers may be permitted to continue to offer services to the public beyond the conclusion of the pilot.

Benchers wondered whether payment of the annual practising fee would be waived in instances where such a requirement would be an undue financial hardship for the applicant. Benchers were advised that the proposed model provides sufficient discretion to the chief executive officer to waive payment of the practising fee in appropriate circumstances.

Motion: That the recommendations contained within the report of the President's Special Committee on Regulating Legal Entities, dated March 16, 2022, be approved as presented.

MOVED: Ms Troup
Seconded: Ms Boulter
Carried.

6.0 Committee Reports

6.1 Access to Justice Steering Committee

Ms Wiebe reported to benchers on the meeting of the Access to Justice Steering Committee which had taken place on March 16, 2022. At this meeting the committee: (1) reviewed and refined the parameters of the priorities which have been set for each of the committee's working groups; and (2) considered proposed amendments to the Terms of Reference. The committee also appointed Stacey Soldier as the Manitoba representative on the national Action Committee on Access to Justice in Civil and Family Matters. She and Ms Brown will attend the Action Committee's annual summit in May of 2022. Benchers were advised that National Access to Justice Week will take place in October of 2022 and that the tentative theme will be people-centered data collection.

7.0 Nominating Committee Report

7.1 Report to Benchers

Ms Troup referred benchers to the report of the Nominating Committee, dated March 16, 2022, which outlined the recommendations of the committee with respect to the nomination of candidates for president and vice-president and also for the filling of one of the appointed practising bencher positions.

Ms Troup advised that a motion was required to temporarily suspend Rule 2-55 to allow for the counting of the ballots which had been cast in advance by those benchers who were not able to be present to participate in the election of the vice-president.

Motion: That Rule 2-55, which provides that only benchers in attendance at the meeting may participate in the election, be temporarily suspended.

MOVED: Ms Browne
Seconded: Ms Boulter
Carried.

7.2 Appointment of Election Scrutineers

As the election was being conducted both in person and by electronic ballot, benchers were advised that Ms Kosokowsky, Ms Stonyk and Mr. Rivera would oversee the casting and counting of ballots and then review the election results with Ms Troup.

Motion: That Ms Kosokowsky, Ms Stonyk and Mr. Rivera be appointed scrutineers and ballot counters for the election of the incoming vice-president.

MOVED: Mr. Mandzuik
Seconded: Ms Dear
Carried.

7.3 Proposed Practising Bencher Appointment

Ms Troup confirmed the recommendation of the Nominating Committee that Mr. Paul be appointed to fill one of the four practising bencher vacancies.

Motion: That Mr. Paul be appointed a practising bencher for a two year term, effective May 19, 2022.

MOVED: Ms Wiebe
Seconded: Mr. Monnin
Abstention: Mr. Paul
Carried.

7.4 Election of Incoming President

Ms Troup confirmed the recommendation of the Nominating Committee to put forward the name of Mr. Paul as candidate for the position of incoming president. She then invited nominations from the floor. As none were received, Ms Troup declared nominations to be closed and announced the acclamation of Mr. Paul as president of the Law Society, effective May 19, 2022. It was noted that Mr. Paul would serve as the first Indigenous president in the history of the Law Society.

7.5 Election of Incoming Vice-President

Ms Troup confirmed the recommendation of the Nominating Committee to put forward the names of Mr. Onchulenko and Ms Wiebe as candidates for the position of incoming vice-president. She then invited nominations from the floor. As none were received, Ms Troup declared nominations to be closed.

With the exception of Ms Kosokowsky, Ms Stonyk, Mr. Rivera and Ms Bourbonnais, all staff and guests were excused from the meeting while ballots were distributed, cast and counted.

Benchers took a break at 2:30 pm. The meeting was reconvened for all meeting participants at 2:45 pm. Mr. McLeod rejoined the meeting at this time.

Ms Troup announced the election of Mr. Onchulenko as incoming vice-president. Congratulations were extended to Mr. Onchulenko and Ms Wiebe was thanked for having agreed to have her name stand for election.

7.6 Motion to Destroy Ballots

Motion: That the paper ballots and electronic data for the election of the incoming vice-president be destroyed.

MOVED: Mr. Mandzuik
Seconded: Mr. McLeod
Carried.

8.0 Miscellaneous Business

8.1 Report of Federation Council Member

Benchers received for information Ms Troup's report, dated March 7, 2022.

8.2 In Camera Discussion

Mr. Driedger advised that the meeting would be proceeding in camera for discussion on a matter pertaining to the Complaint Review Commissioner position. With the exception of Ms Kosokowsky, Mr. Rivera and Ms Bourbonnais, all staff and guests were excused from the meeting at this time. Mr. Monnin was also excused from the meeting due to a conflict on this matter.

Motion: That the meeting proceed in camera.

MOVED: Ms Troup
Seconded: Mr. Paul
Carried.

At the conclusion of discussions, Mr. Driedger requested that the meeting return to regular meeting format.

Motion: That the meeting proceed out of camera.

MOVED: Ms Troup
Seconded: Mr. Mandzuik
Carried.

Motion: That the current Complaints Review Commissioner be immediately removed from his position and notified accordingly.

MOVED: Ms Dear
Seconded: Ms Boulter
Carried.

It was confirmed that staff would begin the process to find a new candidate to fill the Complaints Review Commissioner position and, in the interim, complainants who request a review will be advised that there will be a small delay in having their matter reviewed.

9.0 For Information

Benchers considered the materials provided for information.

There being no further business, Mr. Driedger adjourned the meeting at 3:10 p.m.