



MINUTES

Benchers

Date: Thursday, May 19, 2022

Time: 12:30 p.m.

Location: Law Society Offices and Via Videoconference

Present:

Grant Driedger, President	Patricia Kloepfer
Sacha Paul, Vice President	Tyler Koshowski
Lynda Troup, Past President	Mathieu Lafreniere
Susan Boulter, Officer-at-Large	Anna Maria Magnifico
Mason Broadfoot	Kenneth Mandzuik
Miriam Browne	Brian McLeod
Kyle Dear	Wayne Onchulenko
Blair Filyk	Anu Osborne
Kameron Hutchinson	Joëlle Pastora Sala
Tehani Jainarine	Kelli Potter
Anthony Kavanagh	Gerri Wiebe

Regrets:

Sharyne Hamm	Christian Monnin
Dr. Richard Jochelson	Jessica Saunders
Leah Klassen	

Guests:

Ashley Joyce	Erin Wilcott
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Staff Present:

Leah Kosokowsky	Joan Holmstrom
Rennie Stonyk	Sharon Kravetsky
Noelia Bernardo	Colleen Malone
Natasha Brown	Richard Porcher
Tana Christianson	Sean Rivera
Eileen Derksen	Karen Sawatzky
Lee-Ann Harrison	Alissa Schacter

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, including newly elected benchers, Mr. Filyk, Mr. Hutchinson and Mr. Lafreniere. Treaty territories 1, 2 and 5 were acknowledged with gratitude.

2.0 IN MEMORIAM

Benchers observed a moment of silence for Charles Jerome Phelan, Q.C., Robert Lorne Zaparniuk, Martin Searle Corne, Q.C., the Honourable Alan Reed Philp, Richard Ira Good, Melville Neuman, Q.C., George Ernest Ulyatt and Dennis Michael Troniak.

3.0 CONSENT AGENDA

3.1 Minutes of March 24, 2022 Meeting

The minutes of the meeting held on March 24, 2022 were approved as presented.

3.2 Complaints Investigation Committee Report

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

3.3 Discipline Committee Report

Benchers received for information the reports of the Discipline Committee.

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

MOVED: Ms Troup
Seconded: Mr. Paul
Carried.

4.0 EXECUTIVE REPORTS

4.1 President's Report

Benchers received for information Mr. Driedger's report dated May 11, 2022.

4.2 Chief Executive Officer's Report

Benchers received for information Ms Kosokowsky's report dated May 4, 2022. Ms Kosokowsky advised that the Society had received several applications for the Complaints Review Commissioner position and that interviews of a short list of candidates would be conducted in the near future.

Ms Kosokowsky advised that of the 119 students who had recently completed the PREP program in anticipation of being called to the Bar on June 16, 2022, seven of the students had failed the program and 12 students will each be required to complete one supplemental exam before they are eligible to receive their call. As the pass rate of the students from Manitoba (84%) was significantly lower than the overall pass rate (91%) of the full class, Ms Kosokowsky and Ms Holmstrom will be meeting with Ms Mitchelmore, the chief executive officer of CPLED, to review these results to determine if there were any specific anomalies unique to Manitoba.

Ms Kosokowsky advised that the Manitoba Law Foundation has retained the services of an organization to conduct a survey on unmet legal needs in Manitoba. As much of the information being collected in this survey is similar to what the Law Society had intended to collect in its own survey, the Law Society will now be partnering with the Foundation on the survey rather than continuing to develop its own survey. The Law Society has agreed to share in the cost of the survey but will receive substantial benefits in doing so, including preparation, broader dissemination and professional analysis of the survey results.

Benchers were advised that Dr. Jochelson had been selected to serve on the national selection committee tasked with recommending candidates for appointment to the Supreme Court of Canada.

4.3 Strategic Plan Progress Report - May 2022

Benchers received for information the May 2022 progress report on the Strategic Plan for the 2022 - 2025 period.

5.0 NOMINATING COMMITTEE REPORT

5.1 Appointment of Officer-at-Large Position

Benchers considered the report of the Nominating Committee, dated May 3, 2022, in which the committee recommended the appointment of Ms Browne to fill the position of Officer-at-Large for a two year term from May 2022 to May 2024.

Motion: That Ms Browne be appointed to serve in the role of Officer-at-Large for a two year term, effective May 19, 2022.

MOVED: Ms Wiebe
Seconded: Mr. Onchulenko
Carried.

Ms Troup thanked Ms Boulter for her contributions to the Law Society and the Executive Committee during her tenure as Officer-at-Large.

Benchers were reminded that they would be meeting again on May 31, 2022 to receive a further report from the Nominating Committee with its recommendations to: (a) fill the remaining appointed bencher positions; (b) complete the membership of all Law Society standing and special committees; and (c) appoint representatives to serve on external boards and committees.

5.2 Awarding of Life Bencher Status to Grant Driedger and Ashley Joyce

Mr. Paul thanked Mr. Joyce for his eight years of service as a bencher of the Law Society and confirmed his appointment as a Life Bencher.

Mr. Paul thanked Mr. Driedger for the contributions he had made to the Law Society during his tenure as President and confirmed his appointment as a Life Bencher.

5.3 Thank You to Past President Lynda Troup

Ms Troup was recognized for the many contributions she had made to the Law Society during her tenure as a bencher and executive officer of the Law Society. Benchers were advised that as the Law Society's representative on the council of the Federation of Law Societies of Canada, Ms Troup would continue to report to benchers on the work of the Federation.

Mr. Paul also thanked Ms Osborne and Ms Saunders for their contributions as benchers of the Law Society. Benchers were advised that Ms Osborne and Ms Saunders had both elected to not reapply for appointment.

Mr. Paul assumed the role of President of the Law Society and chaired the balance of the meeting. Mr. Onchulenko assumed the role of Vice-President.

6.0 DISCUSSION/DECISION

6.1 Admissions and Education Committee - Good Character Requirement

Benchers considered the report of the Admissions and Education Committee, dated May 3, 2022, which provided a recommendation for benchers to consider flowing from the committee's review of the Society's good character assessment process. Benchers were reminded that this work had been undertaken by the committee based on direction provided by benchers at their meeting on October 28, 2021 in response to concerns raised by the Canadian Civil Liberties Association that the Society's processes were not transparent or fair and that they were discriminatory.

Benchers were advised that after a thorough review of the issue, the committee resolved to recommend to benchers that this matter be held in abeyance while the Federation of Law Societies continues its work to develop a consistent national approach to good character requirement and assessment practices. In the interim, the Law Society should turn its attention to improving communications about its good character requirement and assessment process.

Benchers advised that in order to satisfy the concerns raised by the CCLA, it is important that the Law Society actively pursue a multi-pronged communications strategy which not only improves communications about its good character requirement and assessment process, but also clarifies and educates law students, future law students and the public about the fundamental importance of the good character requirement to the practice of law.

Motion: That benchers accept the recommendation of the Admissions and Education Committee to hold the good character requirement issue in abeyance pending the Federation of Law Societies further work on this matter and, in the interim, direct staff to take steps to improve communication about the good character requirement and assessment process.

MOVED: Mr. Driedger
Seconded: Mr. Mandzuik
Carried.

6.2 Rule Amendments - Diversion Program

Benchers considered a memorandum prepared by Ms Stonyk, dated May 3, 2022, which outlined a series of proposed rule amendments necessary to: (a) provide the Chief Executive Officer and the Complaints Investigation Committee with the authority to recommend participation by a member in the diversion program; and (b) removes the authority of the Complaints Review Commissioner to have the chief executive officer's recommendation reviewed.

Motion: That the proposed amendments to rules 5-63(3), 5-66 and 5-74(1) be approved in principle as presented.

MOVED: Mr. McLeod
Seconded: Mr. Lafreniere
Carried.

Benchers were advised that the rule amendments would be presented for final approval once the French translation was received.

6.3 Access to Justice - Forgivable Loan Program

Benchers considered Ms Kosokowsky's memorandum, dated April 30, 2022, which provided benchers with historical information on the genesis of and participation in the forgivable loan program, as well as data on the number of lawyers practising in regions outside of Winnipeg in 2007 and at present. Benchers were asked to consider a series of questions relating to practice outside of Winnipeg and whether the forgivable loan program should be restructured to encourage greater participation, or if those resources should be redirected to initiatives which will increase the number of Indigenous lawyers practising in underserved communities. The questions posed to benchers and the direction provided in response were as follows:

1. Are there underserved communities in Manitoba for which meaningful legal services are inaccessible?

Benchers agreed that there were underserved communities, particularly in northern Manitoba, where access to legal services is a serious concern.

2. As part of the Law Society's commitment to increase access to justice for Manitobans, is it within the Society's mandate to develop a program to increase the number of lawyers practising in underserved communities?

Benchers agreed that the development of a program to increase the number of lawyers practising in underserved communities falls within the Society's mandate to ensure there is sufficient access to legal services throughout Manitoba. As some benchers were unaware of the forgivable loan program, it was suggested that consideration be given to either restructuring and promoting the program to make it more effective, or reallocating those resources to other initiatives which will increase the number of lawyers practising in underserved communities, with particular focus on northern Manitoba.

3. Should a Law Society committee be tasked with conducting a survey and developing proposals and recommendations for the benchers to consider to increase the number of lawyers practising in underserved communities?

Benchers agreed that a committee should be struck to consider this issue and provide recommendations on how the Society might proceed. It was suggested that as part of its survey, the committee should: (a) consult with the practitioners who have left an underserved community to determine the reason for their departure; (b) consult with the existing firms in these regions to obtain their perspectives on this problem and invite input on potential solutions; and, (c) consider the supports which are needed to attract new practitioners to these communities and how those could be put in place. It was recommended that the committee work with the Access to Justice Steering Committee as there will be overlap in the work of these two committees.

Benchers were advised that the Manitoba Law Reform Commission has recently received funding to study the effect the use of new innovations and technologies has had on the administration of justice in remote and rural areas of Manitoba. The findings of the Commission will be of interest to all stakeholders who are committed to improving access to legal services.

4. Should the Law Society devote its resources to exploring possible initiatives to increase the number of Indigenous lawyers in Manitoba?

Benchers agreed that the Law Society should actively explore the implementation of a variety of initiatives which encourage members of Indigenous communities to become lawyers, particularly in rural and remote areas of Manitoba where access to legal services continues to be a concern.

7.0 COMMITTEE REPORTS

7.1 Access to Justice Steering Committee

Ms Wiebe provided a progress report to benchers on the work of the Access to Justice Steering Committee, advising that the four Access working groups are continuing to make

progress on the priorities which have been set for each group. Benchers were advised that membership of the working groups which are focused on increasing access in rural and remote communities has been expanded to include representation from individuals and stakeholder organizations. These two groups are expected to meet before the end of June, 2022.

Benchers were advised that Ms Brown would be attending the annual summit of the National Action Committee on Access to Justice in Civil and Family Matters being held in Saskatoon on May 25 to 27, 2022. Additionally, the Law Society and the Manitoba Bar Association have both agreed to host a keynote event in October of 2022 as part of National Access to Justice week.

7.2 President's Special Committee on Health and Wellness

Benchers considered the report of the President's Special Committee on Health and Wellness, dated May 4, 2022, which provided a progress report on the development of the diversion program (the Health Recovery Program) and the peer support wellness program [Law(yer) Strong]. Benchers were advised that with these two programs now being largely operationalized, the work of this committee was now concluded.

8.0 MONITORING REPORTS

8.1 Professional Liability Claims Fund

Benchers received for information a detailed monitoring report on the operations of the Professional Liability Claims Fund dated May 5, 2022.

9.0 MISCELLANEOUS BUSINESS

9.1 National Discipline Standards - Pre-Hearing Procedure

Benchers considered a memorandum prepared by Ms Kosokowsky, dated May 4, 2022, which reported to benchers on the Society's performance against national standards which have been set for the conduct of complaints investigations and discipline hearings. Benchers were advised that strategies have been developed to address the two standards which continue to be a challenge for the Society, namely: (a) the procurement of a document management system will assist complaints staff to ensure that they are meeting the requirement to have contact with the complainant and the lawyer at least once every 90 days; and (b) the creation of a pre-hearing procedure document and a pre-hearing checklist

which will assist discipline staff in meeting the deadlines set for service of citations and commencement of hearings following the authorization of charges.

9.2 Marketing Professional Services - Qualitative Superiority

Benchers considered a memorandum prepared by Ms Kosokowsky, dated May 2, 2022, which reported to benchers on a request received from a member that the Society either relax or enforce the provisions within the *Code of Professional Conduct* which prohibit members from claiming qualitative superiority to other lawyers or from advertising expertise in a particular field of law. Benchers were advised that the Executive Committee had considered the matter and directed that staff should inquire of the Federation's Model Code of Conduct Committee as to whether this concern has been raised by other jurisdictions and whether the committee would be prepared to consider the issue. In the interim, as the issue of specialist designations had been considered by benchers previously, staff should review the decision made by benchers at that time with a view to requesting that the Practice and Ethics Committee revisit the issue and report to benchers with its recommendations.

Benchers recognized that while strict enforcement of the *Code* provisions may put Manitoba practitioners at a disadvantage to lawyers practising in other jurisdictions, consideration of whether specialist designations would assist the public or put them at risk ought to be the primary focus.

10.0 FOR INFORMATION

Benchers considered the materials provided for information.

There being no further business, Mr. Paul adjourned the meeting at 2:20 p.m.