

MINUTES

Benchers

Date: Thursday, November 2, 2023

Time: 12:30 pm

Location: Law Society Offices and via Videoconference

Present:

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

Regrets: Blair Filyk Tehani Jainarine

Staff Present:

Leah Kosokowsky	Colleen Malone
Rennie Stonyk	Deirdre O'Reilly
Pat Bourbonnais	Sean Rivera
Tana Christianson	Karen Sawatsky
Eileen Derksen	Alissa Schacter
Sharon Kravetsky	Darcia Senft
Kathy Levacque	

1.0 PRESIDENT'S WELCOME AND TREATY ACKNOWLEDGEMENT

Mr. Onchulenko, President, called the meeting to order at 12:30 pm and welcomed new student bencher, Mason Geddes, benchers and staff to the meeting. Treaty territories 1 and 2 were acknowledged with gratitude.

2.0 IN MEMORIAM

Benchers observed a moment of silence for Reverend Gregory George Parker, Donald Robert Frederick Orchard, Samuel Isaac Wilder, KC and Gordon Charles Pollock.

3.0 CONSENT AGENDA

3.1 Minutes of September 7, 2023 Meeting

Benchers considered and approved the minutes of the benchers' meeting held on September 7, 2023.

3.2 Final Approval of *Code of Professional Conduct* Amendments re: Harassment, Discrimination and *Ex Parte* Proceedings

Benchers considered and approved the amendments to the *Code of Professional Conduct* pertaining to Rules 6.3 – Discrimination and Harassment and Rules 5.1-2B and 5.1-2C – *Ex Parte* Proceedings in both English and French as presented.

3.3 Report of the Complaints Investigation Committee

Benchers considered the report of the Complaints Investigation Committee.

3.4 Reports of the Discipline Committee

Benchers considered the reports of the Discipline Committee.

Motion: That the consent agenda items be approved as presented.

MOVED: Ms Pastora Sala
Seconded: Ms Nedohin
Carried.

It was agreed that staff would explore the feasibility of retaining a local translator to provide the French translation services required by the Law Society.

4.0 EXECUTIVE REPORTS

4.1 President's Report

Bencher received for information Mr. Onchulenko's report dated October 26, 2023.

4.2 Chief Executive Officer's Report

Bencher received for information Ms Kosokowsky's report dated October 25, 2023. Ms Kosokowsky reported on the programs relating to access to justice delivered by the Law Society, the Faculty of Law and the Manitoba Bar Association during national Access to Justice Week.

Mr. Paul joined the meeting at 12:55 pm.

5.0 DISCUSSION/DECISION

5.1 Bencher Seat Vacancy – City of Winnipeg Electoral District

Bencher considered the memorandum of the Executive Committee, dated October 20, 2023, which recommended the appointment of Kathrine Basarab to fill the bencher vacancy in the Winnipeg Electoral District following the appointment of Ms Inness, KC, as a judge of the Court of King's Bench. Bencher were advised that given the short period of time remaining until the next bencher election, it would be appropriate to have the vacancy filled

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by the candidate with the second highest number of votes (a variance of 39 votes) in the by-election which was held in this electoral district in April of 2023.

Benchers considered the direction provided within the Rules for filling bencher vacancies. It was agreed that staff would explore whether it would be beneficial to amend those provisions to provide greater guidance and authority in the filling of bencher vacancies.

Motion: That Katherine Basarab be appointed to fill the existing bencher vacancy in the City of Winnipeg Electoral District.

MOVED: Mr. Broadfoot
Seconded: Ms Unruh
Carried.

Benchers were advised that Ms Basarab would take office at their next meeting, scheduled for December 14, 2023.

5.2 Rule Amendments – Removal of Inactive Category of Membership Status

Benchers considered a memorandum prepared by Ms Stonyk, dated October 23, 2023. Benchers were reminded that at their September 7, 2023 meeting they had directed that the Rules be amended to remove the inactive category of membership. Benchers were advised that the draft rule amendments presented for their consideration also removed all reference to an annual fee being associated with holding a non-practising status as it had been agreed that this nominal fee should no longer be charged.

Motion: That the proposed draft amendments to the rules which remove the “inactive” category of membership and also remove reference to a fee associated with non-practising status be approved in principle as presented.

MOVED: Ms Brown
Seconded: Mr. Lafreniere
Carried.

Benchers were advised that these rule amendments would return to them for final approval in English and French in due course.

6.0 COMMITTEE REPORTS

6.1 Indigenous Advisory Committee

Ms Schacter reported to benchers on the launch of The Path on October 2, 2023. Benchers were advised that by month end 309 members had registered for the program, with 62 registrants having fully completed the course. Preliminary feedback from the optional survey included with the program was very positive, with 34% of respondents indicating they had found the program to be extremely helpful in increasing their Indigenous cultural awareness; 43% indicating they found the program to be very helpful in increasing their awareness; and 71.4% of respondents indicating they thought the program would be beneficial to their practice.

6.2 Nominating Committee

Mr. Paul reported to benchers on the meeting of the Nominating Committee which had taken place on October 30, 2023. Discussion at this meeting focused on: (a) the filling of the vacancies which will arise in 2024 when Ms Boulter, Ms Browne and Mr. McLeod conclude their final terms as lay benchers; (b) the propriety of having retired lay benchers continue to serve as public representatives on adjudicative hearing panels; and (c) establishing a new Strategic Planning Committee comprised of new and seasoned benchers to ensure a broad range of experience and perspectives and whether a lay bencher would remain eligible to serve on the committee if they no longer hold a seat at the bencher table.

Benchers were invited to provide to Mr. Paul the names of potential candidates who would be well-suited to serve as a lay bencher. It was suggested that the committee consider whether it would be possible to stagger future lay bencher appointments to reduce the impact of losing so many long-term lay benchers at one time. Staff were asked to further consider, from a public perception perspective or for any other reason, if there was any harm in having lay benchers continue to serve as public representatives on Law Society hearing panels.

7.0 MISCELLANEOUS BUSINESS

7.1 FLSC Council Report

Benchers considered Ms Troup's report, dated October 16, 2023, which provided a detailed report on the meeting of the Federation Council held on October 14, 2023 in Whitehorse in conjunction with the Federation's fall conference.

7.2 Federation Conference – October 2023 – Generative Artificial Intelligence

Benchers considered a memorandum from the Executive Committee, dated October 25, 2023, which invited benchers to participate in a discussion on the use of generative artificial intelligence as a tool used by lawyers to improve the practice of law and the role of the Law Society to protect the public interest in the delivery of legal services while also ensuring that legal services are available to the public.

Benchers recognized that while generative A.I. offered many benefits to lawyers in their practices, there are inherent risks associated with the use of these products. Lawyers should be encouraged to use tools tailored specifically to legal professionals as these products are built with legal oversight and guardrail protections. Benchers were, however, generally satisfied that the provisions of the *Code of Professional Conduct* relating to competence, supervision and client confidentiality provide sufficient guidance to lawyers who choose to use A.I. as a resource in their practices. Education on the benefits, risks, and best practices while using A.I. would likely be sufficient for legal practitioners. Benchers were advised that the Law Society has already begun to take steps to educate its members on the use of A.I. in their practices.

It was noted that as the use of A.I. becomes increasingly popular, it may alter the core competencies which future lawyers will need to have acquired to be equipped to practice law and may also alter the demand for and nature of articling.

Benchers were of the view that the use of generative A.I. as a source for obtaining legal information posed a greater risk to the public and agreed that the Law Society should explore a broad range of opportunities to engage with and educate the public on the benefits and risks of using A.I. for their legal needs; highlighting, in particular, the circumstances in which it is best to retain a lawyer.

Benchers also recommended meeting with the Minister of Justice to discuss the risks A.I. poses to the profession and the public, and to the Law Society as the regulator of the legal

profession in Manitoba. They also noted the important role the Federation of Law Societies could play in the development of federal policy and regulation and the role it could play in developing uniform national (and possibly international) policy or standards for law societies on the development and delivery of A.I. applications which are designed to provide legal information to the public.

It was suggested that rather than attempt to regulate A.I. providers or direct the public to specific A.I. providers endorsed by the Law Society, the public might best be served by being made aware of important factors or criteria which ought to be contemplated when using A.I. as a source of information for their legal needs. Benchers agreed that this was one area where the Law Society could begin to take more immediate steps and directed staff to provide information which would assist them in generating a list of criteria for use by the public.

Benchers were advised that this year's Pitblado Lectures series was devoted entirely to respectful and responsible use of artificial intelligence. They were encouraged to attend the lectures or review the recording of the series when it becomes available.

7.3 Federation Council Representative

Benchers considered a memorandum from the Executive Committee, dated October 20, 2023, which recommended that Ms Troup be reappointed for an additional three-year term as the Law Society's representative to the Federation Council.

Motion: That Ms Troup be appointed to serve as Federation Council representative for the Law Society of Manitoba for a second term of three years.

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

7.4 Access to Justice Committee

Benchers considered a memorandum prepared by Ms Senft and Ms Kosokowsky, dated October 24, 2023, which outlined a project to be undertaken by the Law Society which would focus on the online dissemination of legal information, including training materials for trusted intermediaries and community workers, to assist the public with unmet legal needs. Funding for the project would come from a portion of the annual grant received from the Manitoba Law Foundation which is statutorily allocated for educational purposes.

Benchers were advised that at this stage it is proposed that the Access to Justice Committee would act primarily as an advisory board, providing guidance to staff in the drafting of a detailed proposal and plan for the project and ultimately presented to benchers for consideration and approval. Benchers confirmed their support for the proposed project in principle and directed that the Access to Justice Committee work with staff in the preparation of a detailed proposal, work plan and budget for the project.

7.5 National Discipline Standards – Anti-Money Laundering and Terrorist Financing

Benchers considered a memorandum prepared by Ms Kosokowsky, dated October 22, 2023, which reported on the provisions relating to anti-money laundering and terrorist financing which had recently been added to the National Discipline Standards. These standards will enable law societies to track and report on non-compliance in this area, thereby supporting a consistent national approach in the fight against money laundering and terrorist financing.

8.0 MONITORING REPORTS

8.1 National Discipline Standards - 2022

Benchers considered a memorandum prepared by Ms Kosokowsky, dated October 22, 2023, which provided a detailed report on the Law Society's performance for 2022 as against the national discipline standards which have been set for complaint investigations and discipline hearings. Benchers were advised that the strategies adopted by the Law Society in 2022 to address previous challenges in maintaining contact with complainants and counsel have proven to be effective. Although the Society continues to be challenged with meeting the standards in the area of service of citations and commencement of hearings, progress has been made in both areas as a result of the recent adoption of pre-hearing procedures. The effectiveness of these new practices will be fully reflected in next year's report.

9.0 FOR INFORMATION

Benchers considered the materials provided for information.

There being no further business, Mr. Onchulenko adjourned the meeting at 2:30 pm.