



MINUTES

Benchers

Date: Thursday, October 28, 2021

Time: 12:30 p.m.

Location: Law Society Classroom and Via Videoconference

Present:

Grant Driedger, President	Tyler Koshowski
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	Vincent Sinclair
Patricia Kloepper	

Regrets: Anthony Kavanagh Gerri Wiebe

Guests: Erin Wilcott

Staff Present:

Leah Kosokowsky	Kathy Levacque
Rennie Stonyk	Colleen Malone
Noelia Bernardo	Deirdre O'Reilly
Pat Bourbonnais	Richard Porcher
Natasha Brown	Sean Rivera
Tana Christianson	Karen Sawatzky
Eileen Derksen	Alissa Schacter
Joan Holmstrom	Darcia Senft
Ayli Klein	

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 Norman Marvin Tatelman.

3.0 Consent Agenda

Mr. Driedger advised that agenda items 3.3 and 3.6 were being removed from the consent agenda and would be addressed later in the meeting.

3.1 Minutes of September 9, 2021 Meeting

The minutes of the meeting held on September 9, 2021 were approved as presented.

3.2 Rule Amendments - Complaints Investigation and Discipline

The rule amendments pertaining to complaints investigation and discipline were approved in both the English and French versions as presented.

3.4 Complaints Investigation Committee Report

Benchers received for information the report of the Complaints Investigation Committee

3.5 Discipline Committee Reports

Benchers received for information the reports of the Discipline Committee.

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

MOVED: Mr. Onchulenko
Seconded: Mr. McLeod
Carried.

4.0 Executive Reports

4.1 President's Report

Benchers received for information Mr. Driedger's report dated October 18, 2021.

4.2 Chief Executive Officer's Report

Benchers received for information Ms Kosokowsky's report dated October 20, 2021. Ms Kosokowsky provided an update to her report on the status of the review of a complaint filed with the Manitoba Human Rights Commission in 2019 by a member of the Law Society. Benchers were advised that the complainant has been given a final extension of 30 days to submit an argument in response to the findings of the Commission that the complaint is an abuse of process and should be dismissed. The matter will be considered by the Board of Commissioners on November 17, 2021.

Ms Kosokowsky advised benchers that Ms Klein will appear before the Supreme Court of Canada on behalf of the Law Society on November 8, 2021 as intervenor in the matter of *Law Society of Saskatchewan v. Peter V. Abrametz*. Benchers were encouraged to watch the proceedings which will be live streamed on the SCC website.

4.3 Strategic Planning

Benchers received for information Ms Kosokowsky's memorandum, dated October 21, 2021, which summarized the conclusions contained within the final report of the strategic planning facilitator. Benchers were asked to respond to the following questions arising from the facilitator's report:

1. Do you agree that the six conclusions (listed below) are an accurate reflection of the discussions and conclusions reached at the strategic planning retreat?
 - (1) Overall, the Law Society serves the public interest well and continues to fulfill its aim that the public is served by a competent, honourable and independent legal profession.
 - (2) The Law Society must continue to be vigilant to protect self-regulation.
 - (3) The Law Society's mission continues to be relevant: "The aim of the Law Society of Manitoba is a public well served by a competent, honourable and independent legal profession."

- (4) The Law Society's stated values should be expanded to include a statement that reflects the fact that the Law Society values Canada's Indigenous history, the contribution of Indigenous Manitobans and truth and reconciliation.

The Society should consult with the Equity Committee and the Indigenous Advisory Committee regarding the inclusion of a stated value related to reconciliation and how that might be phrased.

- (5) Two of the Law Society's eight ends should be revised.
- a. Revise end #6 from "legal services are reasonably available to the public at a reasonable cost" by removing "at a reasonable cost."
- The basis for the proposed change is to clarify that the Law Society does not set the market rates for legal services but is committed to furthering access to justice for Manitobans.
- b. Revise end #8 by replacing "all persons may fully participate in the legal profession" with "the legal profession will reflect the diversity of Manitoba."

Revised wording would more clearly articulate that equity, diversity and inclusion within the legal profession in Manitoba requires that every Manitoban can see themselves in the profession.

6. The four strategic objectives continue to be relevant.
- Lawyer competence
 - Stakeholder confidence
 - Access to justice
 - Equity, diversity and inclusion.

Benches agreed that the six conclusions accurately reflected the discussion and conclusions reached at the strategic planning retreat.

2. Are there important conclusions that were missed in the facilitator's report that ought to be considered as we formulate our strategic priorities?

Benches did not identify any conclusions that had been missed or ought to be considered when developing the new set of strategic priorities for the Law Society.

3. Do you agree that a small working group should return to you with a proposal containing a range of strategic options for your consideration?

Benchers supported the recommendation that a working group, comprised of the members of the Executive team, be tasked with preparing a report for benchers which would outline potential options for the setting of priorities in each of the four strategic objectives based upon the information contained within the facilitator's report. Benchers would then be in a better position to identify the priorities within the Law Society's new Strategic Plan.

It was recommended that the working group give particular attention to the strategic objectives relating to access to justice and equity, diversity and inclusion. As noted within the facilitator's report, these were two areas where the Law Society had not achieved as much progress in comparison to the strategic objectives relating to lawyer competence and stakeholder confidence.

5.0 Discussion/Decision

5.1 Membership Admission Issues: Good Character and Language Testing

Benchers considered a memorandum prepared by Ms Kosokowsky and Ms Stonyk, dated October 21, 2021, which invited them to provide direction on whether the Law Society should:

- (1) conduct a thorough review and consider revising its "good character" assessment process in response to a request made by the Canadian Civil Liberties Association; and
- (2) explore the possibility of requiring NCA candidates to pass an English or French language test in order to be admitted as an articling student in Manitoba.

As part of their discussions on the "good character" assessment review, benchers were asked to also consider whether this issue ought to be a priority for the Law Society and if so, which committee ought to be tasked with completing that analysis. Alternatively, benchers could elect to defer the matter until the Federation of Law Societies of Canada has concluded its efforts to achieve consistency among law societies on good character assessment practices, with recognition that consensus building would invariably slow down this work. Benchers were advised that other Canadian law societies are at various stages in completing their review of this issue.

Benchers were advised that from time to time the Law Society will receive inquiries from people considering a career in law about the good character requirement, however, these inquiries are infrequent and applicants are always assured that there is almost no absolute bar to admission. An examination of the Law Society's assessment process would provide the Society with an opportunity to conduct a broad review of its practices in this area while also trying to achieve some consistency with other jurisdictions.

Some benchers were of the view that while the concerns raised by the CCLA are important, there were other more meaningful measures which could be considered by the Law Society to address impediments to practice in Manitoba by persons who identify as being Indigenous or from other racialized or marginalized groups. As such, it was recommended that the Law Society continue to monitor the work of the FLSC on this issue and instead, as part of its strategic planning process, consider what priority ought to be assigned to this particular concern within the priorities set by benchers to address equity, diversity and inclusion and then proceed on that basis.

Other benchers were of the view that this was an issue that should be reviewed and analyzed by a Law Society committee, even if it is not seen as a top priority, rather than wait for the FLSC to complete its work. In addition to addressing the concerns of the CCLA, the committee could also consider changes which would make the assessment process more transparent, thereby hopefully alleviating concerns which may deter future applicants from pursuing a career in law in Manitoba based on an assumption that they might not pass the "good character" assessment. This might entail developing a policy statement which explains the importance of "good character" within the profession and clarifies for potential applicants what the Law Society looks for when conducting an assessment.

It was recommended that the Admissions and Education Committee be tasked with surveying other law societies on their good character assessment practices and, in particular, by those law societies who have recently changed their practices in response to concerns raised by the CCLA. The committee would then be in a position to consider and make recommendations to benchers regarding the changes which the Law Society would need to make to its good character assessment practices to address the concerns raised by the CCLA specifically, while also ensuring that its processes are transparent and defensible. Benchers would then be in a better position to provide direction on how the Law Society ought to proceed based upon the information and recommendations provided by that committee.

With regard to the consultation process recommended by the CCLA, it was noted that while this was something which the Indigenous Advisory Committee might consider once the committee has completed its review, this was an issue which affects a variety of marginalized groups and would need to be looked at with a broader lens.

Motion: That the Admissions and Education Committee conduct a review of the good character assessment practices adopted by law societies across Canada and based on the information collected, consider the measures which the Law Society would need to take to address the concerns of the Canadian Civil Liberties Association and to also ensure that its assessment processes are transparent.

MOVED: Ms Troup
Seconded: Mr. Paul
Carried.

Benchers were also asked to provide direction on whether the Admissions and Education Committee should consider whether the Law Society ought to require that NCA candidates with language barriers complete enhanced language testing as part of the eligibility criteria for admission as a member. This would address difficulties identified by both the courts and the administrators of the PREP program which are primarily believed to be attributable to language barriers.

Benchers recognized this as falling squarely within the mandate of the Law Society to protect the public interest by ensuring members are qualified and competent on entry to the profession. Some benchers expressed discomfort with imposing additional testing as it may not be the correct solution to the problem.

Given that this concern is expected to be addressed by the FLSC as part of its review of the NCA assessment process and will also be addressed by CPLED as part of its future PREP intake processes, benchers agreed that it would be appropriate to defer further discussion on this matter for at least one year. Staff will continue to monitor this issue in the interim.

Mr. Joyce joined the meeting at 1:00 pm.

5.2 Rule Amendments - Admissions and Membership

Benchers considered a memorandum prepared by Ms Stonyk, dated October 21, 2021, which invited benchers to consider and approve rule amendments in final form pertaining to admission and membership practices. Benchers were advised that these amendments had been removed from the consent agenda because an error in the English version of the amendment to Rule 5-5(1)(a) had been identified. The rule, as presented in English, incorrectly referenced the successful completion of the bar admission program and terms of articles within two years rather than three. The French version of this rule had, however, been correctly translated.

The correct wording for Rule 5-5(1) was confirmed to be as follows:

5-5(1) Subject to subsection (4), every articling student must:

- (a) successfully complete the bar admission program and the term of articles within 3 years from the date of commencement of either the bar admission program or the student's articles, whichever is commenced earlier. The chief executive officer may extend the completion time for the bar admission program and the term of articles beyond 3 years in exceptional circumstances.

Motion: That the rule amendments pertaining to Part 5- Division 1 and Part 2 - Divisions 8.1, 9 and 10 be approved in both the English and French versions as presented, subject to the amendment to the English version of Rule 5.5(1)(a) as noted above.

MOVED: Mr. Mandzuik
Seconded: Mr. Onchulenko
Carried.

5.3 Reimbursement Claims Fund Committee - Hesse Payments

Benchers considered Ms Kosokowsky's memorandum, dated October 20, 2021, which provided a report on the claims considered by the Reimbursement Claims Fund Committee at its meeting on October 12, 2021. Ms Kosokowsky provided an oral report on the meeting of the committee held on October 25, 2021, advising that the committee had considered three additional claims pertaining to Mr. Hesse. Benchers were advised that one claim was approved for payment at the capped amount of \$300,000; one claim was partially approved at \$110,000; and one claim was denied as it did not meet the criteria for eligibility. Accordingly, the committee has now approved 20 claims for a combined total of \$3,588,870.

6.0 Monitoring Reports

6.1 Audit Department

Benchers considered a monitoring report prepared by Ms Kosokowsky and Ms Levacque, dated October 20, 2021, on the operations of the Audit Department. Benchers were advised that due to the pandemic, the period to complete the rotation of regular spot audits now sits at five years rather than four years; however, higher risk firms continue to be audited more frequently. The Society continues to maintain regular contact with firms through check-ups and the annual reporting of trust account supervisors.

Benchers were also advised that implementation of the Trust Safety Program has resulted in the need for additional resources to assist the Director in addressing non-compliance concerns. A plan to redeploy staff resources has been developed to alleviate this problem.

6.2 Cyber Security Measures

Benchers received for information a monitoring report prepared by Mr. Rivera, dated October 18, 2021, on cyber security measures which the Law Society has in place.

7.0 Committee Reports

7.1 Access to Justice Steering and Stakeholders Committees

Mr. McLeod reported to benchers on the meeting of the Access to Justice Steering Committee which had been held on September 17, 2021. At that meeting the committee discussed: (a) the *Access to Justice: Indigenous Perspectives* CPD program (presented on October 25, 2021); (b) funding from the Provincial Government to update the Manitoba Justice website; (c) revised Terms of Reference for the committee; and, (d) increasing the frequency of meetings to four times per year.

Mr. McLeod also reported on the meeting of the Access to Justice Stakeholders Committee meeting which had taken place on October 5, 2021. At this meeting committee stakeholders provided progress reports on access initiatives undertaken by their respective organizations. Consideration will be given as to how this committee can provide more meaningful contributions towards improving access.

7.2 Indigenous Advisory Committee

Ms Sanders reported to benchers on the meeting of the Indigenous Advisory Committee which had taken place on October 7, 2021. At this meeting the committee discussed: (a) establishing a working reference point for the definition of Indigenous to assist in identifying people who would be qualified to provide cultural competency training; (b) the differences between cultural and intercultural competence and cultural awareness; and (c) whether intercultural awareness and competency training should be mandatory for all members and if so, what that might look like. The committee also considered revisions to its Terms of Reference.

7.3 President's Special Committee on Health and Wellness

Mr. Mandzuik reported to benchers on the meeting of the President's Special Committee on Health and Wellness which was held on October 8, 2021. At this meeting the committee received status updates on: (a) the development of a framework for the diversion program; (b) the peer support initiative; and, (c) the national well-being study being conducted by the Federation of Law Societies. The committee also discussed and provided direction on issues relating to: (a) developing communication strategies; (b) the role of the committee in the long term; and, (c) what role the Law Society ought to play in assisting members who have been impacted by COVID.

Ms Jainarine left the meeting at 2:30 pm.

8.0 Miscellaneous Business

8.1 Federation Council Report

Benchers received for information Ms Troup's report, dated October 18, 2021, which reported on the October 15, 2021 meeting of the Council of the Federation of Law Societies of Canada Council.

8.2 Fair Registration in Regulated Professions Act - Office of the Fairness Commissioner

Benchers considered Ms Kosokowsky's memorandum, dated October 19, 2021, which provided a status report on amendments to the *Fair Registration in Regulated Professions Act* and, in particular, new draft policies flowing from the amended legislation prepared by the Office of the Fairness Commissioner which raise concerns for the Law Society. Ms Kosokowsky provided a status update on this matter, advising that she and Mr. Porcher had met with the Chief Executive Officer and Senior Policy Counsel of the Federation of Law Societies of Canada as well as the Executive Director of the National Committee on Accreditation to discuss the potential impact these new policies would have on both the Law Society and the NCA's admission processes as drafted. Law Society staff were asked to provide a report which outlines the specific concerns these policies raise for both the Law Society and the NCA so that FLSC staff can further consider whether the Federation ought to intervene in this matter.

Benchers were asked to consider whether, in the interim, they supported the recommendation of the Executive Committee that a working group be struck to consider the issue more closely and ultimately, provide a recommendation to benchers on how the Law Society might respond to the measures being taken by the Office of the Fairness Commissioner. Benchers agreed that this issue warranted that a proactive approach be taken in this matter.

Motion: That a working group be struck to consider the approach which the Law Society ought to take in responding to the new policies which have been drafted by the Office of the Fairness Commissioner.

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

Benchers were advised that the Executive Committee will populate the membership of the working group and report back in due course.

9.0 For Information

Benchers considered the materials provided for information.

There being no further business, Mr. Driedger adjourned the meeting at 2:55 p.m.