



MINUTES

Benchers

Date: Thursday, September 9, 2021

Time: 9:00 a.m.

Location: Via Videoconference

Present:

Grant Driedger, President	Anna Maria Magnifico
Sacha Paul, Vice 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
Anthony Kavanagh	Gerri Wiebe
Patricia Kloepfer	Christine Williams

Regrets: Lynda Troup, Past President

Guests: Erin Wilcott

Staff Present:

Leah Kosokowsky	Colleen Malone
Rennie Stonyk	Clayton McKnight
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

1.0 President's Welcome and Treaty Acknowledgement

Mr. Driedger, President, called the meeting to order at 9:00 a.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 Paul Gregory Saranchuk, John Douglas Fraser Strange, Darius Bramha Hunter, Alan William Scarth, C.M., Q.C., and Colleen Ann McDuff.

3.0 Consent Agenda

3.1 Minutes of June 17, 2021 Meeting

The minutes of the meeting held on June 17, 2021 were approved as presented.

3.2 CPLED Appeals Sub-Committee Member

Benchers endorsed the appointment of Jay Funke to replace Vivian Rachlis on the CPLED Appeals Sub-Committee.

3.3 Complaints Investigation Committee Report

Benchers received for information the report of the Complaints Investigation Committee

3.4 Discipline Committee Reports

Benchers received for information the reports of the Discipline Committee.

3.5 Indigenous Advisory Committee

Benchers received for information the report of the Indigenous Advisory Committee.

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

MOVED: Mr. Kavanagh
Seconded: Ms Boulter
Carried.

4.0 Executive Reports

4.1 President's Report

Benchers received for information Mr. Driedger's report dated September 1, 2021.

4.2 Chief Executive Officer's Report

Benchers received for information Ms Kosokowsky's report dated September 1, 2021. Ms Kosokowsky advised that a complaint filed by a member with the Manitoba Human Rights Commission in 2019 will be presented to the Board of Commissioners with a recommendation that it be dismissed on the basis that it is an abuse of process. It is anticipated that the Law Society will receive a final report on the Board's findings before the next meeting of the benchers.

Ms Kosokowsky advised that the Law Society will be asking the Minister of Justice to seek proclamation of Bill 24 - *The Legal Profession Amendment Act*. Once proclaimed, this Bill will allow the Law Society to pursue the creation of a regulatory sandbox model through which persons who are not lawyers will be permitted to provide certain legal services to the public.

4.3 Strategic Planning

Benchers received for information Ms Kosokowsky's memorandum, September 1, 2021, which, in preparation for the strategic planning retreat, provided a summary of the work which is ongoing in each of the four strategic objectives.

5.0 Discussion/Decision

5.1 Rule Amendments - Complaints Investigation and Discipline

Benchers considered a memorandum prepared by Ms Stonyk, dated September 1, 2021, which set out proposed amendments to Parts 2 and 5 of the Rules and Part 3, Section G of

the Benchers' and Committee Members' Code of Conduct. Benchers were reminded that these amendments flowed from direction provided by them at their May 2021 meeting arising from a monitoring report of the Complaints Resolution Department and the Discipline Department. This report identified the need for amendments to the Rules regarding: (a) bankruptcy undertakings; (b) continuation of discipline hearings with two panel members; and (c) better articulation of the rules and responsibilities of the Independent Chair and Discipline Committee. The report also recommended amendments to the Benchers' and Committee Members' Code of Conduct to more clearly articulate who has authority to address complaints which involve benchers, members of the Complaints Investigation Committee and Law Society staff lawyers.

Motion: That the draft amendments to Part 2 - Division 8 and Part 5 - Division 8 be approved as presented and that the proposed amendments to the Benchers' and Committee Members' Code of Conduct be approved as presented and incorporated within the Governance Policies.

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

Benchers were advised that the Rule amendments would return to them for final approval once the French translation has been received.

5.2 Rule Amendments - Admissions and Membership

Benchers considered a memorandum prepared by Ms Stonyk, dated September 1, 2021, which set out proposed amendments to Parts 2 and 5 of the Rules. Benchers were reminded that these amendments flowed from direction provided by them at their April 2021 meeting arising from recommendations received from the Admissions and Education Committee concerning: (a) the extension of time to complete articles; (b) administrative suspensions; and (c) the repeal of a rule requiring members to complete training on, what was at the time of its adoption, the Law Society's new Code of Professional Conduct. Benchers were advised that the amendments also included a new housekeeping amendment to Rule 2-86 which would eliminate the requirement to mail fee notices.

Motion: That the draft amendments to Part 5- Division 1 and Part 2 - Divisions 8.1, 9 and 10 be approved in principle as presented.

MOVED: Mr. Grower
Seconded: Mr. Monnin
Carried.

Benchers were advised that the Rule amendments would return to them for final approval once the French translation has been received.

5.3 Model Code Consultation on Discrimination, Harassment and *Ex Parte* Proceedings

Benchers considered a memorandum prepared by Ms Kosokowsky and Ms Senft, dated September 1, 202, which provided a detailed analysis of proposed amendments to the Model Code of Professional Conduct drafted by the Federation of Law Societies' Model Code Committee pertaining to discrimination, harassment and *ex parte* proceedings. If endorsed by all member law societies, these amendments would then be presented to Council for approval and subsequently incorporated within each law society's own code of conduct. The memorandum also proposed three additional amendments which, at the direction of the benchers, would be sent back to the Committee with a request that consideration be given to their adoption within the Model Code. Those three recommendations were as follows:

1. That the example of behavior which constitutes harassment in Commentary 2(g) of Rule 6.3-2 ("assigning work inequitably") ought to be expanded to include "assigning work that is demeaning to someone's expertise or abilities";
2. That Rule 6.3-4 not be amended; and
3. That the word "consider" be removed from Commentary 3 of Rule 5.2-1B.

Benchers were invited to share any concerns which they might have with the Code amendments as proposed by the Model Code Committee and provide direction on whether to request that the Committee also consider further amending the Model Code to incorporate the recommendations noted above.

Benchers confirmed their support for the amendments proposed by the Model Code Committee, subject to the request that the Committee further consider the amendments to Rules 6.3-4 and Rule 5.2-1B - Commentary 3 as proposed above.

With respect to Rule 6.3-2, benchers indicated that they would prefer that the amended wording to be proposed to the Committee for Commentary 2(g) be "assigning work inequitably or that is demeaning to someone's expertise or abilities".

Benchers wondered what options would be available to the Law Society in the event the Committee chose not to accept the suggested amendments. Benchers were advised that ultimately, the decision on whether to adopt all Model Code amendments within the Law Society's own Code of Professional Conduct rests with them. They were reminded, however, that departing from the Model Code should only happen in instances of paramount significance. It was noted that with respect to Commentary 2(g) of Rule 6.3-2, even if the Committee chose not to accept the Society's recommended amendment of this rule, benchers will have the opportunity to again consider which version of the rule they wish to incorporate within the Law Society's Code of Professional Conduct.

Motion: That the Law Society confirm its support to the amendments proposed by the Model Code Committee, subject to the request that the Committee consider the proposed revisions to the amendments as agreed upon above.

MOVED: Mr. Joyce
Seconded: Mr. Paul
Carried.

6.0 Miscellaneous Business

6.1 Financial Statements - July 31, 2021

Benchers considered Ms Kosokowsky's report, dated September 7, 2021, which provided a detailed overview of the Financial Statements of the Law Society for the four month period ending July 31, 2021.

6.2 Investment Compliance - June 30, 2021

Benchers considered Ms Kosokowsky's report, dated September 1, 2021, which confirmed that investments in both the Reserve Fund and the Office Staff Pension Fund were in compliance with investment guidelines as at June 30, 2021, with the exception of the holding of bonds with a BBB rating. Benchers were advised that the Investment Committee will meet in the fall to consider amendments to the Investment Policies which will address the acceptable weighting of BBB bonds in the Society's investment portfolio.

6.3 The College of Patent Agents and Trademark Agents

Benchers received for information Ms Kosokowsky's memorandum, dated September 1, 2021, which reported on a submission made by the Federation of Law Societies to Innovation, Science and Economic Development Canada concerning legislation intended to regulate the conduct of patent agents and trademark agents. The submission identified the conflict issue which would arise in the proposed regulation of lawyers and also highlighted inadequate protections for solicitor-client privilege.

6.4 Interim Report and Update on Library Hub and On-Line Portal Pilot Project

Benchers received for information Ms Senft's memorandum, dated September 1, 2021, which provided a detailed status report on the Library Hub and On-Line Portal Pilot Project.

6.5 Farewell to Student Bencher Christine Williams

Benchers were advised that this was the last meeting Ms Williams would be attending in her capacity as student bencher. Mr. Driedger thanked Ms Williams for her service to the Law Society during her tenure as a bencher.

7.0 For Information

Benchers considered the materials provided for information. They were reminded that the two day Strategic Planning Retreat was scheduled to begin at 10:45 a.m.

There being no further business, Mr. Driedger adjourned the meeting at 10:20 a.m.