



MINUTES

Benchers

Date: Thursday, February 11, 2021

Time: 12:30 pm

Location: Law Society Offices, 200 - 260 St. Mary Avenue
and Via Videoconferencing and Teleconferencing

Present:

Lynda Troup, President	Anna Maria Magnifico
Grant Driedger, Vice President	Kenneth Mandzuik
Anita Southall, Past President	Brian McLeod
Susan Boulter, Officer-at-Large	Christian Monnin
Acting Dean David Asper, Q.C.	Wayne Onchulenko
Mason Broadfoot	Anu Osborne
Miriam Browne	Joëlle Pastora Sala
Paul Grower	Sacha Paul
Tehani Jainarine	Kelli Potter
Ashley Joyce	Jessica Saunders
Anthony Kavanagh	Vincent Sinclair
Patricia Kloepper	Christine Williams

Regrets: Gerri Wiebe

Guests: Erin Wilcott

Staff Present:

Leah Kosokowsky	Clayton McKnight
Noelia Bernardo	Deirdre O'Reilly
Pat Bourbonnais	Richard Porcher
Tana Christianson	Sean Rivera
Eileen Derksen	Karen Sawatzky
Joan Holmstrom	Alissa Schacter
Ayli Klein	Darcia Senft

1.0 President's Welcome and Treaty Acknowledgement

Ms Troup, President, called the meeting to order at 12:35 pm 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 Trang Thi Ly and William Parker Fillmore.

3.0 Consent Agenda

3.1 Minutes of December 17, 2020 Meeting

The minutes of the meeting held on December 17, 2020 were approved as presented.

3.2 *In Camera* Minutes

The minutes of the meeting held *in camera* on December 17, 2020 were approved as presented.

3.3 Appointment of Nominating Committee

Benchers approved the appointment of the following members to the Nominating Committee: Anita Southall (Chairperson), Lynda Troup, Grant Driedger, Ashley Joyce, Gerri Wiebe, Susan Boulter and Miriam Browne.

3.4 Report of the Complaints Investigation Committee

Benchers received the report of the Complaints Investigation Committee.

3.5 Reports of the Discipline Committee

Benchers received the reports of the Discipline Committee.

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

MOVED: Ms Boulter
Seconded: Acting Dean Asper, Q.C.
Carried.

4.0 Executive Reports

4.1 President's Report

Benchers received for information Ms Troup's report dated February 3, 2021.

4.2 Chief Executive Officer's Report

Benchers received for information Ms Kosokowsky's report dated February 4, 2021. Ms Kosokowsky advised that Natasha Brown had been hired for a two year term, commencing in May of 2021, to fill the new role of Access to Justice Coordinator. Benchers were advised that Ms Dangerfield would continue to participate on the CPLED Board and committees for the short term while Ms Kosokowsky becomes more familiar with her new role.

4.3 Strategic Planning

Benchers were advised that, provided it is safe to do so, the strategic planning session will be held on September 9 and 10, 2021 in Clear Lake along with the regular meeting of the benchers. If it appears that it will not be possible to meet in person at that time, consideration will be given to conducting the session using an online platform in September or again deferring the session to a later date.

5.0 Discussion/Decision

5.1 Admissions and Education Committee: PREP & Articling, Training for Principals

Benchers considered the memorandum of the Admissions and Education Committee, dated January 12, 2021, which invited benchers to consider and approve the following recommendations made by the committee:

1. That for the 2021 calendar year, the benchers support CPLED's decision to allow students who do not have articles to take the full PREP course.

2. That for the 2021 calendar year, the benchers approve of the CEO continuing to allow an abridgement of a student's required articling period of 52 weeks by as many as 16 weeks upon request. This recommendation is not to further reduce the requirement that foreign trained lawyers must article for a minimum period of six months having been exempt for some period of articles based upon foreign practising experience.
3. That the Law Society of Manitoba pursue the development of a course to train lawyers acting as principals to articling students.

Benchers expressed general support for each of the recommendations. With respect to recommendations 1 and 2, it was suggested that the Law Society might survey the students and firms who have or will be participating in the abridged articling process to obtain their feedback on the condensed articling experience.

With respect to recommendation 3, benchers indicated that while they agreed that all lawyers should have access to a course and/or materials which will improve and expand their skills while acting as a principal, they did not support mandatory participation. Accordingly, benchers directed that staff proceed with the development of the course and that, at least in the preliminary stage of delivery, course participation should be voluntary.

Motion: That the recommendations of the Admissions and Education Committee be approved as presented.

MOVED: Mr. Kavanagh
Seconded: Ms Browne
Carried.

Mr. Driedger excused himself from the meeting at 1:35 pm.

5.2 Rule and Code Amendments: Civil Society Organizations

Benchers considered a memorandum prepared by Ms Kosokowsky and Ms Senft, dated February 4, 2021, which proposed a series of amendments to the Rules and the *Code of Professional Conduct* to permit the delivery of legal services by lawyers through civil society organizations, subject to each party fulfilling and adhering to a series of conditions set by the Law Society.

Benchers discussed the proposed amendment to Rule 3.1-2 of the Code which requires at Commentary 11.1 that lawyers providing legal services through a CSO must "take care to...avoid conflicts of interest between the client and the civil society organization." It was recommended that the Law Society consider how it could provide guidance to lawyers on creating a proper conflicts checking system as this is an important and complex process which many practitioners may not have had experience setting up on their own.

Motion: That the proposed draft amendments to the Rules and the Code of Professional be approved as presented.

MOVED: Mr. Paul
Seconded: Ms Southall
Carried.

Benchers were advised that the proposed amendments would be presented in final form in both English and French for their approval.

5.3 President's Special Committee on Health and Wellness: Partnership Opportunity

Benchers considered a memorandum from the President's Special Committee on Health and Wellness, dated January 18, 2021, which reported on the meeting of the committee held on December 21, 2020. At that meeting, the committee had discussed matters relating to the development of a Peer Support Program for lawyers seeking assistance with health and wellbeing issues. Arising from that discussion, the committee directed that benchers be asked to consider and approve the establishment of a small working group, consisting of representatives from the Law Society and the Manitoba Bar Association, to develop a proposal for the development and delivery of the Peer Support Program.

Motion: That the Law Society establish a small working group which would include members of the Manitoba Bar Association, to develop a proposal for a peer support program.

MOVED: Ms Pastora Sala
Seconded: Acting Dean Asper, Q.C.
Carried.

5.4 Health and Wellness Contract

Benchers considered a memorandum prepared by Ms Kosokowsky, dated January 21, 2021, which reported on discussions which had taken place with Ms Browne to retain her services to develop and operationalize a Diversion Program for the Law Society. Benchers were asked to consider whether it would be appropriate for Ms Browne to continue to serve as a lay bencher while she developed the program, provided she recuse herself from any bencher decisions relating to the program. Benchers were advised that Ms Browne would be prepared to resign her position as a bencher in the event they were opposed to her serving in both roles simultaneously.

Some benchers were of the view that it would be inappropriate for a board member (bencher) to also serve in a management/staff role and that a lay bencher should not receive compensation for services provided other than the compensation (honoraria) which is common to all other lay benchers. Additionally, given the sensitive nature of the program, it would be important to avoid any actions which might bring into question the legitimacy of the program.

Concerns were also expressed that conflict issues will arise as the program becomes active which may significantly impact Ms Browne's ability to participate in bencher meetings and serve on a several Law Society committees. There was also concern expressed that lay benchers may not be as nimble as practising benchers at identifying situations in which they may be in a conflict. For these reasons it was suggested that Ms Browne should temporarily step away from her duties as a bencher, at least until her role in the delivery of the Diversion Program is more clearly defined.

Other benchers were of the view that there would be no harm in Ms Browne serving in both roles during the formative stages of the program and that lay benchers should be afforded the same privileges as practising benchers when conflicts arise during bencher and committee meetings.

It was clarified for benchers that under the proposed terms of the contract, Ms Browne's duties would be limited to operationalizing the program and would include establishing contracts, policies and documents, and arranging training opportunities for committee members, volunteers, benchers and staff. There would be no contact with clients during the developmental phase of the program.

Ms Browne was excused from the meeting while benchers discussed the matter further.

Motion: That Ms Browne be permitted to continue to serve as a bencher should her services be retained to operationalize the diversion program.

MOVED: Mr. Joyce
Seconded: Mr. Paul
Abstention: Acting Dean Asper, Q.C.
Carried.

Ms Browne rejoined the meeting at 2:10 p.m.

5.5 Allowances and Honoraria

Benchers considered Ms Kosokowsky's memorandum, dated February 4, 2021. Benchers were reminded that at their meeting held on September 10, 2020, they had directed that the

allowance or honoraria paid to the president, vice-president and lay benchers should be increased for the remainder of the 2020-2021 fiscal year as follows: president - \$40,000; vice-president - \$20,000; and lay benchers - \$150 per meeting attendance. Additionally, the allowance paid to the president and vice-president would be increased by an additional \$5,000 and \$2,500, respectively, if the presiding officer resides outside of Winnipeg. Benchers also directed at that time that consideration be given to further increasing the allowance or honoraria paid for each of these positions at the time the budget for the 2021-2022 fiscal period is prepared.

Benchers were asked to first consider increasing the honoraria paid to the president and vice-president by an additional \$10,000 and \$5,000, respectively, plus an additional \$5,000 and \$2,500, respectively, if the incumbent resides outside of Winnipeg. Some benchers expressed support for the additional increase as they believed it provided an appropriate level of compensation for the significant amount of time and effort expended by the incumbent in each role and would attract a broader pool of qualified candidates to serve in these two positions.

Other benchers expressed reservations, indicating this was not the appropriate time to provide a further increase in the allowances paid for these two positions when members and the public continue to be impacted by the pandemic. Additionally, given that increases in staff salaries had been postponed from April 1, 2020 to October 1, 2020 and will be frozen during the 2021-2022 fiscal period, the allowances for these positions should also remain static.

Benchers were reminded that it is solely the chief executive officer who is responsible for setting staff salaries. Benchers only have authority to set the honoraria and allowances paid to board members. Since benchers have not considered or approved an increase in compensation for these two positions in more than ten years (other than the increases approved in September of 2020), the additional increases would now bring the honoraria to a level which is comparable to those paid by jurisdictions similar in size and proximity.

Motion: That the honoraria paid to the president and vice-president be increased to \$50,000 and \$25,000, respectively, effective April 1, 2021. If the incumbent resides outside of Winnipeg, the honoraria shall be increased by an additional \$5,000 for the position of president and \$2,500 for the position of vice-president.

MOVED: Ms Browne
Seconded: Ms Magnifico
Carried.

Benchers considered the proposed increase in the honoraria paid to lay benchers. Some benchers (including lay benchers) were of the view that, like the honoraria paid to the president and vice-president, the proposed increase would now provide an appropriate level

of compensation to lay benchers which acknowledges the expertise of the incumbents and the substantial amount of time that is required to prepare for meeting attendance.

Concerns were reiterated by other benchers (including lay benchers) that, like the proposed increase in the allowances paid to the president and vice-president, this was not the right time to increase the honoraria given the impact the pandemic has had on members, the public and staff salaries. Additionally, given that significant cuts are contemplated in the operating budget for the 2021-2022 fiscal period, the increase approved at the September 2020 bencher meeting was sufficient.

Motion: That the honoraria paid to lay benchers be increased to \$200 per meeting attendance, effective April 1, 2021.

MOVED: Mr. Kavanagh
Seconded: Ms Magnifico
Abstentions: Ms Saunders, Mr. McLeod and Ms Kloepfer
Carried.

Benchers were advised that, as provided in Bencher Policy #5, the next allowance and honoraria review will be conducted in two years.

5.6 2021-2022 Bencher Expense Budget

Benchers considered Ms Kosokowsky's memorandum, dated February 4, 2021, which confirmed that the bencher budget contemplated a reduction in meeting, catering and travel expenses for the 2021-2022 fiscal period but included an increase in expenses attributable to the strategic planning retreat and for the increases in the allowances and honoraria approved by benchers earlier in the meeting.

Motion: That the bencher budget for the 2021-2022 fiscal period be approved as presented.

MOVED: Mr. Paul
Seconded: Ms Boulter
Carried.

6.0 Committee Reports

6.1 Equity Committee

Benchers considered the report of the Equity Committee dated February 9, 2021 which recommended that benchers: (a) approve the Terms of Reference of the Indigeneous

Advisory Committee prepared by the Equity Committee; and (b) appoint the Honourable Murray Sinclair to serve as Chair of the Advisory Committee.

Motion: That the Terms of Reference for the Indigenous Advisory Committee be approved as presented and that Mr. Sinclair be appointed as chairperson of the committee.

MOVED: Ms Southall
Seconded: Mr. Sinclair
Carried.

It was noted that as part of the strategic planning retreat, benchers will need to develop a plan to incorporate education, training and discussion on cultural competency, diversity and inclusion into their work so that collectively they are well-positioned to consider and respond to the recommendations which will flow from the work of the Indigenous Advisory Committee.

6.2 Access to Justice Steering Committee

Benchers received an oral report on the meeting of the Access to Justice Steering Committee which had been held on January 8, 2021. At that meeting the committee considered changes in process which would make it more effective in addressing access issues. It was agreed that the committee would meet more frequently (three or four times annually) and that working groups would be struck from time to time to address specific issues. Benchers were advised that a working group will be struck to consider amendments to the Terms of Reference of the committee and, once the new Access to Justice Coordinator has taken office, the committee will develop a set of priorities and a strategic plan to achieve its objectives. The committee has identified improving access to justice in remote and Indigenous communities as a priority, including the need for improved communication technologies in these areas.

6.3 President's Special Committee on Regulating Legal Entities

Benchers were advised that the President's Special Committee on Regulating Legal Entities had met on January 25, 2021. At that meeting the committee considered the regulatory framework to permit the delivery of legal services to clients of Civil Society Organizations. The committee also considered a pilot project proposal for the delivery of legal services through a CSO which did not fall within the regulatory framework established by benchers. In this instance the applicant was not a registered charity or not-for-profit organization. The committee determined that, given the nature of the work to be delivered through the CSO under the proposal, it would be appropriate to grant a waiver of that particular condition. A

formal recommendation on the proposal was deferred by the committee until the applicant was able to confirm that certain details regarding the initiative had been finalized.

Mr. Driedger rejoined the meeting at 3:25 pm.

7.0 Miscellaneous Business

7.1 2021-2022 Budget

Benchers received for information Ms Kosokowsky's memorandum, dated February 4, 2021, which provided a detailed report on the 2021-2022 operating budget. Ms Kosokowsky advised that the total levy for the general fund, reimbursement fund and education and competence fund will remain the same as last year at \$2,375, however, the budget contemplates a \$200 increase in the insurance levy which will be set in May. Benchers were advised that because of significant reductions in income arising from the effects of the pandemic, they will need to give careful consideration to the cost and funding of current and future initiatives when developing the next strategic plan.

7.2 Hesse Reimbursement Payments

Ms Troup and Mr. Paul were excused from the remainder of the meeting due to a conflict on this agenda item. Mr. Driedger chaired the balance of the meeting in Ms Troup's absence.

Benchers considered Ms Kosokowsky's memorandum, dated February 4, 2021, which reported on two claim payments which had been approved by the Reimbursement Claims Fund Committee at a meeting held on January 27, 2021 arising from defalcations attributable to Mr. Hesse. As chairperson of the committee, Mr. Joyce reported on the payment of seven additional claims out of the Fund at a meeting held on February 4, 2021 which also pertained to Mr. Hesse. Benchers were advised that there were still several claims under review which the committee may be asked to consider.

Benchers discussed the impact that Mr. Hesse's defalcations are expected to have on the Reimbursement Fund and the profession as a whole.

8.0 For Information

Benchers considered the materials provided for information.

There being no further business, Mr. Driedger adjourned the meeting at 3:50 pm.