



MINUTES

Benchers

Date: Thursday, December 19, 2019

Time: 12:30 pm

Location: Law Society Offices, 200 - 260 St. Mary Avenue, Winnipeg, Manitoba

Present:

Anita Southall, President	Paul Grower
Lynda Troup, Vice President	Patricia Kloepfer
Kathy Bueti, Past President	Wayne Onchulenko
Dr. Jonathan Black-Branch	Sacha Paul
Susan Boulter	Jason Poettcker
Kyle Dear	Gerri Wiebe
Grant Driedger	

Teleconference:

Dr. Amarjit Arneja	Karen Webb
Miriam Browne	

Guests:

David Swayze - Teleconference	Erin Wilcott
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Regrets:

Neil Cohen, Officer-at-Large	Christian Monnin
Richard Buchwald	Jessica Saunders
Jay Funke	Vincent Sinclair
Ashley Joyce	Gerrit Theule
Brian McLeod	

Staff Present:

Kris Dangerfield	Colleen Malone
Leah Kosokowsky	Sean Rivera
Pat Bourbonnais	Karen Sawatzky
Tana Christianson	Darcia Senft
Eileen Derksen	

1.0 President's Welcome and Treaty Acknowledgement

Ms Southall, President, called the meeting to order at 12:40 pm. Treaty 1 Territory, the ancestral and traditional lands of the Anishinaabeg, Cree and Dakota First Nations and the homeland of the Metis, was acknowledged.

2.0 In Memoriam

Benchers observed a moment of silence for the Honourable Nathan Nurgitz and Grant William Davis.

Ms Dear joined the meeting at 12:45 pm.

3.0 Consent Agenda

3.1 Minutes of October 31, 2019 Meeting

The minutes of the meeting held on October 31, 2019 were approved as presented.

3.2 Rule Amendments - Financial Accountability and Client Identification and Verification

The Rule amendments pertaining to Financial Accountability (Part 5 - Division 4) and Client Identification and Verification (Part 5 - Division 12) were approved in both the English and French versions.

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

MOVED: Ms Bueti
Seconded: Dr. Black-Branch
Carried.

4.0 Executive Reports

4.1 President's Report

Benchers received for information Ms Southall's report dated December 12, 2019.

4.2 Chief Executive Officer's Report

Benchers received for information Ms Dangerfield's report dated December 12, 2019. Ms Dangerfield advised that Mr. Olynyk would be joining the Law Society on January 2, 2020 as Program Counsel. This position had been vacant since the fall of 2019 when Ms Hilder became the Practice Resource Coordinator within the Continuing Professional Development Department.

4.3 Strategic Plan Update

Benchers received for information the December 2019 update on the Strategic Plan.

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

5.0 Discussion/Decision

5.1 Code Amendments - Technological Competence

Benchers considered Ms Senft's memorandum, dated December 11, 2019, which invited benchers to consider the draft amendments to the *Code of Professional Conduct* with respect to Rule 3.1-2 (Competence) which pertain specifically to technological competence. Benchers were advised that these proposed amendments, which are consistent with the amendments to the *Model Code of Conduct* approved by the Federation of Law Societies Council on October 19, 2019, remind lawyers of their obligation to be technologically competent in a manner that is appropriate to their area(s) of practice and to the geographic location of their practice. Benchers were also asked to approve one housekeeping amendment pertaining to the Commentary to Rule 3.4-31 wherein a rule had been incorrectly cited.

One bencher requested that consideration be given to further amending the Commentary to Rule 3.1-2 at 4[B] to include an acknowledgement regarding the cost of technology. Benchers were advised that the intent of this amendment is merely to make members aware that they (or their employees) should have sufficient access, knowledge and ability to use technology that is relevant to their practices, and that they have an understanding of the benefits and risks of the technology which they choose to use. A reference to cost had not been included in the amendment because the Law Society does not require members to use specific types of technology.

Another bencher suggested that the amendment to this Rule, as presented, may be interpreted by members as a requirement that they develop an understanding of technology beyond what is expected and that non-compliance may result in disciplinary measures being

taken by the Law Society. Benchers were advised that the expectation is that members (or their staff) will have the ability to safely use the technology they need to properly serve their clients.

Benchers acknowledged the importance of all Canadian law societies taking a unified approach in the adoption of *Model Code* amendments and to refrain from altering the recommended amendments unless it is absolutely necessary to do so. Accordingly, a majority of benchers were of the view that the concerns expressed did not warrant a departure from the *Model Code* amendments.

Motion: That the draft amendments to Rule 3.1-2 be approved as presented.

MOVED: Ms Troup
Seconded: Ms Bueti
Carried.
Ms Wiebe abstained from voting.

Motion: That the housekeeping amendment to Rule 3.4-31 be approved as presented.

MOVED: Ms Troup
Seconded: Ms Bueti
Carried.

Benchers were advised that the *Code* amendments would be presented for final approval in both the English and French versions in due course.

6.0 Committee Reports

6.1 Complaints Investigation Committee

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

6.2 Discipline Committee

Benchers received for information the report of the Discipline Committee.

6.3 Nominating Committee

Ms Bueti reported to benchers on the first meeting of the Nominating Committee held on December 13, 2019. Benchers were reminded that at their meeting held on May 23, 2019

they had directed that the Nominating Committee develop a series of strategies with respect to the filling of future bencher positions which would result in greater diversity at the bencher table and would enhance the work of the committee.

Benchers were advised that at the December 13, 2019 meeting the Nominating Committee had:

- (i) identified strategies to recruit potential candidates to run for election as a bencher;
- (ii) developed a series of strategies which will provide opportunities to identify potential candidates who would bring greater diversity to the bencher table through the appointed bencher positions;
- (iii) identified enhancements to the process for populating all standing and special committees;
- (iv) determined that the Committee should be struck earlier than the February meeting of benchers in an election year to allow more time for the Committee to complete its work; and
- (v) agreed that there was no need to alter the composition of the Nominating Committee.

Benchers were advised that a detailed report on the findings and recommendations of the Nominating Committee would be presented at the February 13, 2020 meeting of benchers.

Benchers requested that with regard to the recommendations for the lay bencher positions, the Committee do its best to ensure that at least one lay bencher resides outside of Winnipeg, and that it also do its best to ensure that there is gender and ethnic diversity on all committees and, in particular, on the Complaints Investigation Committee.

Benchers wondered whether it would be possible to provide videoconference attendance at meetings to encourage greater interest and participation in the work of the Law Society by benchers and volunteers who reside outside of Winnipeg. Benchers were advised that staff would explore this issue and report back to benchers in due course.

6.4 Access to Justice Steering Committee and Stakeholders Committee

Ms Senft reported to benchers on the meeting of the Access to Justice Steering Committee held on November 19, 2019. At this meeting the Committee: (i) discussed whether there was a need to amend the Committee's Terms of Reference, but ultimately concluded that instead it would ensure that any matters considered by the Committee should include consideration from an Indigenous perspective; (ii) agreed that the eligibility criteria in the forgivable loans program should be expanded to include young lawyers in an effort to improve access to legal services in communities outside of Winnipeg; (iii) discussed the addition of new members to the Steering Committee of the National Action Committee on Access to Justice in Civil and Family Matters; and (iv) discussed the need to engage a coordinator to lead access to justice initiatives in Manitoba.

Ms Senft also reported to benchers on the meeting of the Access Stakeholders Committee held on December 9, 2019. At this meeting Committee members provided updates on the work which their respective organizations have undertaken to improve access to legal services since the Committee had last met.

6.5 President's Special Committee on Health and Wellness

Mr. Onchulenko reported to benchers on the first meeting of the President's Special Committee on Health and Wellness held on November 20, 2019. Benchers were advised that the mandate of this committee is to develop a diversion program outside of the complaints/discipline stream for members who are dealing with mental health and addiction issues which are affecting their legal practices, and to consider other proactive measures which could be incorporated into a comprehensive health and wellness strategy for the profession. At this meeting the Committee (i) agreed that law students should be included in the development of a health and wellness strategy as entry and exit data indicates that students are less healthy at the conclusion of their studies; (ii) requested additional information about the diversion programs implemented by the Nova Scotia Barristers' Society and the College of Physicians and Surgeons of Manitoba; and (iii) discussed a variety of initiatives which might form part of a health and wellness strategy.

6.6 President's Special Committee on Regulating Legal Entities

Mr. Driedger reported to benchers on the meetings of the President's Special Committee on Regulating Legal Entities held on November 6, 2019 and December 12, 2019. Benchers were advised that this committee has been mandated to consider the framework and policies which would support the provision of legal services by: (i) permitted legal service providers; (ii) civil society organizations; and (iii) other alternative business structures. To date the committee has focused its discussions on identifying the different categories of service providers who would fall within the classification of "permitted legal service providers" and the factors which should be considered when determining whether these providers would be eligible to deliver legal services within this classification. The Committee also discussed policy and operational issues in relation to the delivery of legal services to clients of civil society organizations.

7.0 Monitoring Reports

7.1 Operations and Administration

Benchers considered the monitoring report on operations and administration, dated October 23, 2019, which provided a detailed narrative on the operations of the Law Society at the administrative level.

7.2 Financial Statements - October 31, 2019

Benchers considered Ms Dangerfield's report, dated December 10, 2019, which provided a detailed overview of the Financial Statements of the Law Society for the four month period ending October 31, 2019.

7.2 Investment Compliance - September 30, 2019

Benchers considered Ms Dangerfield's report, dated December 10, 2019, which confirmed that investments in both the Reserve Fund and the Office Staff Pension Fund were in compliance with investment guidelines as at September 30, 2019.

8.0 Miscellaneous Business

8.1 Law Library Hub Pilot Project

Benchers received for information Ms Dangerfield's memorandum, dated December 12, 2019, which provided a detailed report on the status of the Law Library Hub Pilot Project.

8.2 Report of Federation Council Member

Mr. Swayze reported to benchers on the meeting of Council which had been held in Ottawa on December 9, 2019. Benchers were advised that at this meeting Council had continued its work on the development of a new Strategic Plan, approved committee appointments to the various Federation committees for 2020, and approved the annual FTE levy law societies will be required to pay for CanLII services and operations for the coming year. Benchers also received an update on the work of the Anti-Money Laundering Working Group, the NCA Assessment Modernization Committee, the TRC Calls to Action Advisory Committee, and the National CLE Program Advisory Group.

Benchers discussed the need to encourage the Federation and law societies to take a uniform approach on the collection and dissemination of statistical data on gender diversity and ethnicity which accurately reflects the membership of the profession and law students.

8.3 *In Camera* Discussion

Ms Southall advised that she wished to meet with benchers *in camera* to provide an update on matters discussed at the October 31, 2019 meeting. All staff and guests were excused from this portion of the meeting, with the exception of Ms Bourbonnais.

Motion: That the meeting proceed *in camera*.

MOVED: Ms Bueti
Seconded: Ms Troup
Carried.

Ms Southall provided benchers with a status report on the steps which had been taken on matters discussed since the October, 2019 meeting.

Motion: That the meeting proceed *out of camera*.

MOVED: Ms Bueti
Seconded: Ms Troup
Carried.

9.0 For Information

Benchers considered the materials provided for information.

There being no further business, Ms Southall adjourned the meeting at 3:00 pm.