



**The Law Society
of Manitoba**

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MINUTES

Benchers

Date: Thursday, February 13, 2020

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	Brian McLeod
Kathy Bueti, Past President	Christian Monnin
Neil Cohen, Officer-at-Large	Wayne Onchulenko
Dr. Jonathan Black-Branch	Sacha Paul
Susan Boulter	Jessica Saunders
Kyle Dear	Vincent Sinclair
Grant Driedger	Gerrit Theule
Jay Funke	Karen Webb

Teleconference: Miriam Browne

Guests: Erin Wilcott

Regrets:

Dr. Amarjit Arneja	Patricia Kloepfer
Richard Buchwald	Jason Poettcker
Ashley Joyce	Gerri Wiebe

Staff Present:

Kris Dangerfield	Trevor Oleniuk
Leah Kosokowsky	Deirdre O'Reilly
Noelia Bernardo	Sean Rivera
Pat Bourbonnais	Karen Sawatzky
Tana Christianson	Alissa Schacter
Eileen Derksen	Darcia Senft
Colleen Malone	Simon Young

1.0 President's Welcome and Treaty Acknowledgement

Ms Southall, President, called the meeting to order at 12:30 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. Ms Saunders was welcomed to the meeting.

2.0 In Memoriam

Benchers observed a moment of silence for the Honourable Justice Ronald Dean Bell, William David Hamilton, Marlo Jayne Jurkowski and Raymond Phillip Oakes.

3.0 Consent Agenda

3.1 Minutes of December 13, 2019 Meeting

The minutes of the meeting held on December 13, 2019 were approved as presented.

3.2 2020/2021 Bencher Budget

The 2020/2021 Bencher Budget was approved as presented.

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

MOVED: Ms Bueti
Seconded: Mr. Sinclair
Carried.

4.0 Executive Reports

4.1 President's Report

Benchers received for information Ms Southall's report dated February 5, 2020.

4.2 Chief Executive Officer's Report

Benchers received for information Ms Dangerfield's report dated February 5, 2020.

4.3 Strategic Planning

Benchers received for information the February 2020 update on the Strategic Plan. Ms Dangerfield provided a detailed status report on each of the four strategic objectives identified within the Plan. Benchers were encouraged to begin thinking about new strategic objectives for the Law Society and how outcomes might be measured. Benchers were advised that they should expect to receive a briefing book to assist them with this work well in advance of the April strategic planning session.

5.0 Discussion/Decision

5.1 Nominating Committee Report

Benchers considered the report of the Nominating Committee, dated February 5, 2020. Benchers were reminded that, in addition to making recommendations with respect to candidates for President and Vice-President and committee membership following the May 2020 bencher election, the Nominating Committee had been asked to consider and make recommendations with respect to issues relating to the recruitment of bencher candidates, the policies and skills matrices for bencher appointments, and the composition of the Nominating Committee.

Ms Bueti reviewed with benchers the extensive list of recommendations contained within the report. Benchers accepted the recommendations of the committee, with the exception of the specific recommendation made regarding the preservation of a spot for an Indigenous bencher at the bencher table and the proposed amendments to the Bencher Policies flowing from that recommendation. Some benchers were of the view that, while not currently the case, preserving a seat for an Indigenous bencher could be interpreted by future benchers as a cap rather than a minimum. It may also inadvertently inhibit natural growth and may be perceived by both the profession and the public as tokenism, particularly if higher priority is to be placed on perspective/background criteria rather than skills and knowledge criteria as recommended by the Committee. Instead, the Law Society should encourage and continue to provide ethnic minorities with opportunities to participate as volunteers at the committee level. This would provide exposure to the role of benchers and may ultimately inspire those volunteers to serve as benchers. At the same time, it would provide existing benchers and staff with opportunities to identify the volunteers who would be good candidates to either run for election or apply for appointment. Benchers were of the view

that this would be a more effective way to cultivate the cultural diversity that benchers are trying to ensure exists at the table.

With this in mind, it was suggested that the proposed amendment to rule 13 (c) of Bencher Policy #1 (Appointment of Benchers - Practising) might be amended as follows: "in recognition of the cultural and historic context in Manitoba, particular regard will be given to Indigenous candidates, whether as an elected or appointed lawyer bencher or lay bencher."

Benchers discussed the proposed amendments to the bencher policy for lay benchers. Some benchers were of the view that the policy should secure a seat for one lay bencher who comes from a community outside of Winnipeg. Others expressed the need to ensure that there is a seat held for a lay bencher who represents the Indigenous community.

Benchers were reminded that when making recommendations for bencher appointments, the Nominating Committee first assesses the existing slate of benchers to identify existing gaps at the table. The skills matrices are then used to identify the candidates who would best fill those voids based on both the skills they would bring to the table and the appointment criteria set out within the bencher policies. Benchers were advised that the intent of the policy amendments was to ensure that at a minimum there would be one bencher appointed who represented the Indigenous community. A determination on whether that appointment should be filled by a practising member or a public representative would be based upon the diversity which exists among the slate of elected benchers and the skillset of each applicant.

Benchers discussed the recruitment of candidates to run for election and appointment. Benchers were encouraged to participate in the recruitment process by contacting at least one or two people who they believed would be good bencher candidates, with particular focus on those who are ethnically diverse.

Dean Black-Branch advised that research indicates that there are many barriers which prevent participation by racial and ethnic minorities. He advised that over the course of the summer he would be willing to have a student do research on this issue so that the Law Society and benchers could develop more effective strategies to recruit bencher candidates with diverse backgrounds and from under-represented communities. Another bencher suggested that the Law Society might consider consulting a marketing firm about outreach strategies for both the profession and for the public.

The Nominating Committee was asked to consider further amending the bencher policies based on the comments provided and report back with their recommendations at the April 23, 2020 bencher meeting.

5.2 CPLED 2.0

Benchers considered Ms Kosokowsky's memorandum, dated February 5, 2020, which invited direction to a series of recommendations regarding proposed amendments to the Law Society rules and policies pertaining specifically to admissions and registration processes under the new PREP program. Benchers were advised that with the pilot of PREP already underway, it was imperative that each of the four participating CPLED jurisdictions have put in place consistent rules and policies which support the PREP program. If approved by benchers, these amendments would bring Manitoba practices in line with the other three jurisdictions.

The following are the recommendations contained within the memorandum and a summary of the direction provided by benchers in response:

1. That the rule be eliminated which permits the admission of applicants who are awaiting the results of exams or courses prescribed by the NCA.
2. That in addition to deleting the reference to commencing articling by the sixth module of CPLED, you direct that we amend the rules to clearly articulate that an applicant will not be admitted without proof that he/she has secured an articling position with an approved principal in Manitoba.
3. That for the purpose of PREP appeals only, Law Society practices be modified to only appoint lawyer members to the PREP appeal committee.
4. That the rules be amended to remove CPLED appeals from the jurisdiction of the Law Society's Admissions and Education Appeals Subcommittee and that the proposed principals which establish the processes and parameters for the hearing of PREP appeals be endorsed.

With respect to the recommendation number 1, it was noted that the elimination of this rule may disproportionately impede the ability of NCA students, many of who will be racialized minorities who have already practised law elsewhere, from obtaining their license to practice in Canada. Given that the three other participating jurisdictions do not permit students to be admitted into the CPLED program without having first obtained a Certificate of Qualification or Canadian common law degree, staff were of the view that this was a reasonable concession to make to maintain consistent rules and practices. Benchers were also reminded that until a Certificate of Qualification is issued by the NCA, these applicants will not have met the threshold level of knowledge required for enrollment. It was also noted that NCA students are afforded opportunities, such as rewriting exams, which students enrolled in a Canadian law school do not enjoy.

Benchers wondered if NCA students would be permitted to work in a law firm while fulfilling the requirements to obtain a Certificate of Qualification. Staff advised that this would be possible, however, a minor rule amendment may be needed.

Benchers wondered how this rule change would affect students who have already applied. Benchers were advised that this rule change will only affect new applicants. Students who have already submitted their applications will be grandfathered.

Benchers were advised that draft rule amendments would be presented for their consideration at the April 23, 2020 bencher meeting based on the direction provided.

6.0 Committee Reports

6.1 Complaints Investigation Committee

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

6.2 President's Special Committee on Health and Wellness

Mr. Onchulenko reported on the meeting of the President's Special Committee on Health and Wellness held on January 28, 2020. At this meeting the committee was provided with information on the diversion programs developed by the College of Physicians and Surgeons of Manitoba and the Nova Scotia Barristers' Society. With the use of this information, the committee was able to identify some of the key components which might form part of a diversion program for the legal profession in Manitoba. The next meeting of the committee will be held on February 27, 2020.

6.3 President's Special Committee on Regulating Legal Entities

Mr. Driedger reported on the meeting of the President's Special Committee on Regulating Legal Entities held on February 11, 2020. Benchers were advised that at this meeting the committee had considered whether, in addition to civil society organizations, the Law Society should explore the delivery of legal services through other forms of alternative business structures. The next meeting of the committee will be held on March 26, 2020.

7.0 Miscellaneous Business

7.1 2020/2021 Budget Report

Benchers received for information Ms Dangerfield's memorandum, dated February 6, 2020, which provided a detailed report on the 2020/2021 operating budget. Ms Dangerfield advised that the budget contemplates a \$200 increase in the annual practising fee and levies from the previous year, arising from an increase in the practising fee of \$25, an increase in the Reimbursement Fund levy of \$300, and a reduction in the Education and Competence Fund levy of \$300. Accordingly, the practising fee and levies for the coming year have been set at \$2,675 per member. Benchers were advised that the increase was primarily as a result of a number of large insurance and reimbursement claims which are expected to be paid in the coming year arising from multiple thefts by a member which were discovered in 2019.

7.2 Reimbursement Fund Report

Benchers considered a memorandum prepared by Ms Dangerfield and Ms Christianson, dated February 5, 2020 on the Reimbursement Fund. Benchers were advised that the report was intended to provide context in considering the budget for 2020/2021 as it relates to the Fund.

7.3 *In Camera* Discussion

Ms Southall advised that she wished to meet with benchers *in camera* to provide an update on matters discussed at the December 19, 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: Mr. Cohen
Carried.

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

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

MOVED: Ms Bueti
Seconded: Ms Troup
Carried.

8.0 For Information

Benchers considered the materials provided for information.

There being no further business, Ms Southall adjourned the meeting at 3:30 pm.