



AGENDA

Benchers

Date: Thursday, December 17, 2020

Time: 12:30 pm

Location: Via Videoconference and Teleconference

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1.0 PRESIDENT'S WELCOME AND TREATY ACKNOWLEDGEMENT					
	The President will welcome Bradley Regehr, President of the Canadian Bar Association, benchers and staff to the meeting.				
2.0 IN MEMORIAM					
	Robert Hucal , who passed away on October 30, 2020 at the age of 82. Mr. Hucal received his call to the Bar on September 23, 1963. He practised with the firm Monk Goodwin LLP for his entire career, a total of 57 years. In 2013 he was recognized by the Law Society for having practised law for 50 years.				

Laureen Ann Yee-Wen Lu, who passed away on October 31, 2020 at the age of 54. Ms Lu received her call to the Bar on June 25, 1992. She practised with Fillmore Riley for one year before joining Levene Tadman Gutkin Golub. In 2002 Ms Lu joined LF Legal Services where she practised up to the date of her death.

Michael Skwark, Q.C., who passed away on November 9, 2020 at the age of 89. Mr. Skwark received his call to the Bar in Manitoba on September 22, 1958 and in Ontario on June 25, 1959. He practised with several Winnipeg firms throughout his career, including Skwark Myers Weinberg Kussin Weinstein Bryk, Pitblado & Hoskin, Krawchuk & Co. and Fillmore Riley. Mr. Skwark practised as a sole practitioner from 2001 up to the date of his retirement in 2009. He was appointed Queen's Counsel in 1976 and in 2009 he was recognized by the Law Society for having practised law for 50 years.

ITEM	TOPIC	TIME (min)	SPEAKER		ACTION
<p>3.0 CONSENT AGENDA</p> <p>The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or Chief Executive Officer prior to the meeting.</p>					
3.1	Minutes of October 29, 2020 Meeting	5		Attached	Approval
3.2	Report of the Complaints Investigation Committee			Attached	Approval
3.3	Report of the Discipline Committee			Attached	Approval
<p>4.0 GUEST PRESENTATION</p>					
4.1	Remarks by the President of the Canadian Bar Association		Bradley Regehr		Briefing
<p>5.0 EXECUTIVE REPORTS</p>					
5.1	President's Report	5	Lynda Troup	Attached	Briefing

ITEM	TOPIC	TIME (min)	SPEAKER		ACTION
5.2	CEO Report	10	Kris Dangerfield	Attached	Briefing
5.3	Strategic Planning	5	Kris Dangerfield		Briefing
6.0 DISCUSSION/DECISION					
6.1	Reimbursement Claims Fund Committee - Amendment to Guidelines	10	Tana Christianson	Attached	Discussion/ Decision
7.0 COMMITTEE REPORTS					
7.1	Reimbursement Claims Fund Committee	10	Ashley Joyce		Briefing
7.2	Access to Justice Stakeholders Committee	10	Gerri Wiebe and/or Brian McLeod		Briefing
7.3	President's Special Committee on Health and Wellness	10	Vincent Sinclair		Briefing
7.4	President's Special Committee on Regulating Legal Entities	10	Wayne Onchulenko		Briefing
8.0 MISCELLANEOUS BUSINESS					
8.1	Farewell to Kris Dangerfield	10	Lynda Troup		
8.2	<i>In Camera</i> Discussion	20	Lynda Troup		Briefing/ Decision

ITEM	TOPIC	TIME (min)	SPEAKER		ACTION
9.0 FOR INFORMATION					
9.1	Agenda for the Joint Meeting of the Benchers and the MBA Council			Attached	Information
9.2	Payment of Reimbursement Claims			Attached	Information
9.3	Media Reports			Attached	Information



MEMORANDUM

TO: Benchers

FROM: Tana Christianson

DATE: December 7, 2020

RE: **Request from the Reimbursement Claims Fund Committee
Arising Out of a Meeting Held on Monday, November 24, 2020**

The Reimbursement Claims Fund Committee (the Committee) operates under reimbursement guidelines drafted and approved by the benchers in 2005 (attached).

Section 22 of the guidelines reads as follows:

Once the Committee has determined to pay a claim in whole or in part, the Committee must limit initial payments on approved claims to the sum of \$100,000.00. At the end of the fiscal year, if the total amount of approved claims does not exceed the annual retention plus the insurance coverage on the fund, then the balance unpaid on any approved claim will be paid out together with interest from the date of the initial payment. The interest payment is to be calculated in accordance with the prejudgment interest rate set out under The Court of Queen's Bench Act. If the aggregate claims awards exceed the annual retention plus the insurance coverage on the fund, payments in excess of \$100,000.00 will be pro-rated.

On November 23, 2020, the Reimbursement Claims Fund Committee met and approved 2 claims against Paul Hesse. A claim of \$30,000 was approved and has now been paid in full. A claim of \$175,000 was also approved. Because of Section 22, claimant #2 has been paid \$100,000 now, but we have withheld the balance of \$75,000 which we will pay, plus 0.50% interest (Queen's Bench Pre-judgment and Post-judgment Interest Rate) after March 31, 2021. Claims that are heard and approved by the Committee after March 31, 2021 will need a holdback until March 31, 2022.

Section 22 was included in the Guidelines to deal with a catastrophic scenario where the Law Society might not have enough insurance or reserves to pay out all the claims made against the Reimbursement Funds. That is not the case in 2020.

Here is where we stand today.

The Law Society has a \$10 million policy of insurance, through CLIA, on the Reimbursement Fund. The Hesse claims were reported in two separate \$10 million policy years, with the majority of the larger claims in the 2018 policy year and a handful of large claims in the 2019 year. (If any claims were to 'come out of the woodwork' now, those claims would be opened in the new 2020 policy year).

We believe we are aware of all the potential claimants. We are confident that the claims to be paid in either the 2018 or 2019 policy year will be well within the 2 policy limits and also that CLIA has arranged coverage with insurers that will be able to meet their obligations.

The Law Society also has an obligation to pay a deductible to CLIA on Reimbursement claims. Our deductible per claim is \$100,000. However, once an aggregate of \$500,000 has been paid in any one policy year, the Law Society has no further payment obligations. CLIA will make all the payments once that \$500,000 ceiling has been hit. Because those claims straddle two policy years, our deductible obligations will be capped at \$1 million. However, we anticipated these deductibles and have budgeted for them in the Reimbursement Fund.

When the Committee met on November 23, 2020 and considered its first claim over \$100,000, it decided to ask the benchers to amend or delete section 22.

The Committee's preferred option would be that Section 22 be amended to read:

*Once the Committee has determined to pay a claim in whole or in part, the Committee must **may** limit initial payments on approved claims to the sum of \$100,000.00.*

This proposed amendment would give this and future committees the option of paying a claim in the range of \$100,000-\$300,000 in full, immediately, or directing a holdback until the end of the fiscal year in the committee's discretion.

Although you could delete section 22 in its entirety, some future scenario involving a lawyer or a number of lawyers charged with misappropriation in a policy year might result in claims that do exceed policy limits or funds on hand. In that unhappy event, Section 22 would be of assistance in managing payments, so deleting it is not recommended.

Recommendations/Motions:

That the wording of Section 22 of the Reimbursement Guidelines be amended to substitute *may* for *must*.

That claims approved by the Committee in excess between \$100,000 and \$300,000 prior to this amendment be paid in full now, without requiring a holdback until the end of the fiscal year.

TC/hdv

Atc.

Reimbursement Fund Claims Payment Guidelines
[Effective January 1, 2005]

*References: Sections 46 to 48, The Legal Profession Act, S.M. 2002, c.44
Rules 5-37 to 5-40, Rules of the Law Society of Manitoba*

1. **“Chief Executive Officer or CEO”** means the Chief Executive Officer of the Society or an employee to whom the Chief Executive Officer has delegated any of his or her powers, duties or functions;

“Committee” means the Reimbursement Fund Claims Committee;

“Fund” means the Reimbursement Fund.

2. All claims made against the Fund must meet the following conditions set out in subsection 47(1) of *The Legal Profession Act*:

- (a) money or other property was entrusted to or received by

- (i) a law corporation, or

- (ii) a member in his or her capacity as a lawyer;

- (b) the corporation or member misappropriated or wrongfully converted the money or other property; and

- (c) the claimant sustained a pecuniary loss as a result of that misappropriation or wrongful conversion.

3. The CEO is responsible for investigating all claims made against the Fund and has authority to pay claims up to a value of \$25,000. Only the Committee has authority to pay claims in excess of \$25,000.

4. Subject to guideline 3, the CEO or Committee may authorize payment of the “principal amount” of a claim, namely, the amount of money or value of the property received by the lawyer, less the actual amount returned or otherwise accounted for to the claimant.

5. A claim for compensation from the Fund must be initiated by submitting a statutory declaration or an application in the required form to the Society. No payment shall be made out of the Fund unless the statutory declaration or application is received by the Society within two years after the loss came to the knowledge of the claimant or should reasonably have come to the claimant’s knowledge, or such further time, not exceeding ten years from the date the loss came to the knowledge of or should reasonably have come to the knowledge of the complainant, as in any case may be allowed by the Committee.

6. The statutory declaration or application must be submitted by the person who sustained the pecuniary loss, or alternatively, by a person who holds Power of Attorney or who is the trustee or personal representative (i.e. executor/executrix/administrator) of the estate of the person who suffered the loss.
7. A copy of the statutory declaration or application received must be forwarded by the CEO to the lawyer involved for his or her written response.
8. The CEO must consider the statutory declaration or application submitted by a claimant and the written response received from the lawyer. The CEO may request that further information be provided by either the claimant or the lawyer.
9. Formal hearings are not held and neither claimants nor lawyers shall meet with the CEO or appear before the Committee when it considers a claim or an appeal under guideline ~~18~~ 17. Oral presentations or submissions will not be accepted from a claimant or lawyer involved in a claim.
10. A person may submit a claim to the Society for compensation from the Fund for:
 - (a) the money misappropriated or converted; and
 - (b) in the case of property, the value of the property misappropriated or converted.
11. No claim will be approved without satisfactory proof that money or property was received by a lawyer from or on behalf of the claimant and that the money or property or an equivalent value has not been returned or accounted for to the claimant.
12. The lawyer must have received the money or other property in his or her professional capacity as a lawyer.
13. The transaction giving rise to the loss must have been in all respects a legitimate and honest one.
14. A lawyer who also carries on an outside business activity such as that of investment adviser, mortgage broker or mortgage dealer is not covered by the Fund for losses caused by misappropriation or conversion as a result of that outside business activity.
15. There are no limits on the number of claims that may be made by a person against the Fund. However, the amount of recovery on an individual claim is limited to \$300,000.00.

16. Subject to guidelines 3, 4 and 17, the CEO or Committee may in their discretion pay a claim in whole or in part or may pay some claims and refuse to pay others in accordance with these payment guidelines.
17. Where the CEO authorizes payment of a claim in part or refuses to pay a claim, the claimant may appeal the CEO's decision to the Committee.
18. In considering an appeal under guideline 17 the Committee must either confirm or vary the CEO's decision.
19. Payment of interest to the claimant, or payment of costs, legal fees, expenses, or damages incurred or suffered by the claimant, will not ordinarily be made out of the Fund, except in accordance with payment guideline 22.
20. Where the lawyer appears to have a valid demand against the claimant for fees and disbursements in respect of legal services provided by the lawyer, the amount of the award will be reduced by the approximate amount of the lawyer's fees and disbursements.
21. The CEO or Committee may, in exceptional circumstances, recommend to the Benchers of the Society that an amount in excess of the principal amount of the claim be paid to the claimant. The Benchers will then determine the disposition of the claim and may in their discretion pay the claim in whole or in part, refuse to pay the claim, or dispose of the claim in any manner they consider proper.
22. Once the Committee has determined to pay a claim in whole or in part, the Committee must limit initial payments on approved claims to the sum of \$100,000.00. At the end of the fiscal year, if the total amount of approved claims does not exceed the annual retention plus the insurance coverage on the fund, then the balance unpaid on any approved claim will be paid out together with interest from the date of the initial payment. The interest payment is to be calculated in accordance with the prejudgment interest rate set out under *The Court of Queen's Bench Act*. If the aggregate claims awards exceed the annual retention plus the insurance coverage on the fund, payments in excess of \$100,000.00 will be pro-rated.
23. Where, with respect to a matter giving rise to a reimbursement claim:
 - (a) criminal charges have been preferred against the lawyer involved;
 - (b) the matter is under investigation or an inquiry is pending before a Committee of the Society; or
 - (c) there are civil proceedings pending;

a decision on a claim may be delayed until there has been a final decision by the court or the Discipline Committee that the lawyer had misappropriated or converted to his or her own use the money or property of the claimant. The CEO or Committee may dismiss a claim where a claimant did not pursue his/her civil claim or other remedies against the lawyer involved.

24. Where there has not been a finding by any court or by the Society's Discipline Committee that the lawyer misappropriated or converted money or property of a claimant to his or her own use, the CEO or Committee may authorize payment of the claim, if the claimant provides sufficient evidence to prove the claim.
25. The Fund will not cover losses suffered by a person as a result of the negligence of a lawyer. A civil claim for any loss arising from a lawyer's negligence may be brought against the lawyer and may be covered by the lawyer's professional liability insurance and the Society's Professional Liability Claims Fund.



MEMORANDUM

TO: Benchers

FROM: Kris Dangerfield

DATE: December 4, 2020

RE: Payment of Reimbursement Claims

Rule 5-39 requires that the chief executive officer must report the disposition of any claim for reimbursement to the benchers.

The Reimbursement Claims Fund Committee met on November 23, 2020 and considered two claims from two former clients of Paul Hesse.

The committee considered and approved payment of claim 18-0003 in the amount of \$30,000.

The committee considered and approved payment of claim 19-0003 in the amount of \$175,000.