



**The Law Society
of Manitoba**

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MINUTES

Benchers

Date: Thursday, October 29, 2020

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	Gerri Wiebe
Patricia Kloepper	Christine Williams

Regrets: Vincent Sinclair

Guests: David Swayze Erin Wilcott

Staff Present:

Kris Dangerfield	Colleen Malone
Leah Kosokowsky	Deirdre O'Reilly
Noelia Bernardo	Richard Porcher
Pat Bourbonnais	Sean Rivera
Tana Christianson	Alissa Schacter
Eileen Derksen	Darcia Senft
Vivian Hilder	

1.0 President's Welcome and Treaty Acknowledgement

Ms Troup, President, called the meeting to order at 12:35 pm and welcomed newly elected Student Bencher, Ms Williams to the meeting. Treaty territories 1, 2 and 5 were acknowledged.

2.0 In Memoriam

Bencher observed a moment of silence for the Honourable William Robert Martin, George Walter Hatley, Q.C., Bernard Wilfred Hoeschen, Campbell Millar, Edward Demaray Brown, Ursula Bingham Goeres, Frederick Alexander Jackson, Jerrold Lawrence Gunn and the Honourable John Johann Enns.

3.0 Consent Agenda

3.1 Minutes of September 10, 2020 Meeting

The minutes of the meeting held on September 10, 2020 were approved as presented.

3.2 *In Camera* Minutes of September 10, 2020 Meeting

The *In Camera* minutes of the meeting held on September 10, 2020 were approved as presented.

3.3 Approval of Rule Amendments - Part 5 - Division 1 - Admissions

Rule amendments to Part 5 - Division 1 - Admissions were approved in final form in both English and French as presented.

3.4 Honoraria Policy for Executive Members and Lay Benchers

Bencher Policy #5/Operations Policy #3 - Honoraria/Prizes was approved as presented.

3.5 Committee Appointments

Bencher approved the removal of Sacha Paul and Bradley Zander from the Reimbursement Claims Fund Committee. They also approved the appointment of: (a) Bernice Bowley and Michael Clarke to the Complaints Investigation Committee; (b) the appointment of Bradley Zander to the Discipline Committee; (c) the appointment of Acting Dean David Asper, Q.C., to the Equity Committee; and (d) the appointment of Ashley Joyce as chair of the

Reimbursement Claims Fund Committee as well as the addition of Gerrit Theule, Kelli Potter and Blair Filyk to this committee.

3.6 Report of the Complaints Investigation Committee

Benchers received the report of the Complaints Investigation Committee.

3.7 Report of the Discipline Committee

Benchers received the report of the Discipline Committee.

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

MOVED: Mr. Paul
Seconded: Ms Magnifico
Carried.

4.0 Executive Reports

4.1 President's Report

Benchers received for information Ms Troup's report dated October 20, 2020.

4.2 Chief Executive Officer's Report

Benchers received for information Ms Dangerfield's report dated October 21, 2020. Ms Dangerfield advised that the Manitoba Law Foundation approved the Law Society's application for a special grant to fund a dedicated Access to Justice Coordinator. Funding will be provided for two years rather than the three year term originally requested. It is intended that the Coordinator will lead the work of both Law Society Access to Justice committees, will engage with stakeholders, both locally and nationally, to coordinate efforts to improve access, and will also collaborate with the University of Manitoba, Faculty of Law in the engagement of law students in access initiatives.

4.3 Strategic Planning

Having received the full report of the Strategic Planning facilitator, benchers were invited to again consider Ms Dangerfield's memorandum regarding the postponement of the strategic planning session, dated September 3, 2020, and provide direction on (a) whether there were any steps which they believed ought to be addressed in the interim; (b) whether there were

any initiatives currently underway which ought to be improved, scaled back or halted; and (c) if there were any issues which ought to be on the agenda for discussion when the strategic planning session takes place.

It was recommended that the Law Society reach out to the profession to encourage members to seek assistance from the Law Society or the Lawyers Health and Wellness Program if they are experiencing difficulties, whether they be practice-related or health-related, as a result of the COVID-19 pandemic.

Benchers were invited to continue to raise concerns or issues which they believed ought to be considered in the short term or at the time the strategic planning session takes place.

Ms Saunders joined the meeting at 1:10 pm.

5.0 Discussion/Decision

5.1 Equity Committee

Benchers were advised that this matter was being brought forward on the agenda as Ms Saunders had a scheduling conflict which prevented her from attending the full meeting.

Ms Saunders provided an oral report on the meeting of the Equity Committee which had been held on October 27, 2020. At the meeting, the Committee had considered a report issued by the Federation of Law Societies' TRC Calls to Action Advisory Committee in June of 2020, as well as the results of a survey of Articling Students which had been conducted in May and June of 2019. Flowing from discussions on these two issues by the Committee, benchers were asked to consider a series of recommendations made by the Committee as set out in the memorandum to benchers dated October 29, 2020. The recommendations contained within the memorandum were as follows:

A. The review of the Federation of Law Societies Report of the TRC Calls to Action Advisory Committee:

1. The Equity Committee recommends that the benchers create an Indigenous Advisory Committee to guide the Law Society in its ongoing response to the TRC's Calls to Action. If the benchers endorse this recommendation, the committee will come back to benchers in December with Terms of Reference for the Committee that will take into account issues such as:
 - the importance of establishing a clear purpose and mandate for the Committee;
 - timelines for the work of the Committee;
 - representation from both the legal and broader Indigenous communities;

- representation from urban, rural and northern Manitoba; and
 - compensation, specifically for non-lawyer members.
2. The Equity Committee recommends that the benchers consider instituting one-time mandatory Indigenous cultural competency training for members.
 3. The Equity Committee recommends that before making that decision, the benchers engage with the Advisory Committee on the question of whether such training should be encouraged or mandated.
 4. The Equity Committee recommends that the benchers engage with the Advisory Committee on the nature and content of Indigenous cultural competency training.

B. The review of the Articling Student Survey

1. That Law Society staff continue to take active steps to provide information to law and articling students on the free and confidential resources available to assist them through various avenues throughout the year. Opportunities include having the Equity Officer speak to law and articling students, sending out a mid-year reminder email to articling students on the availability of support services and identifying opportunities to meet with students to discuss the issues and hear their concerns.
2. That all lawyers who are approved as articling principals be required by the Law Society to complete some form of education on the issues of fairness, equity, diversity and inclusion to address concerns raised in the report. Consideration should be given to alternative forms of training, such as interactive training involving role playing. Law Society staff should be directed to provide suggestions regarding the form of education to be required.
3. That the Law Society develop a model Respectful Workplace Policy for firms, including provisions that speak to small firms and solo practitioners.
4. That the Law Society consider repeating the articling survey in three to five years to see if the measures adopted result in improved outcomes.

Benchers were advised that the only recommendation requiring approval at this time was the establishment of an Indigenous Advisory Committee.

Motion: That the Law Society establish an Indigenous Advisory Committee and that Terms of Reference for the committee be developed by the Equity Committee for subsequent approval by benchers.

MOVED: Ms Magnifico
Seconded: Mr. Mandzuik
Carried.

It was suggested that with respect to recommendation B(2), consideration be given to requiring that in addition to receiving training on issues of fairness, equity, diversity and inclusion, principals should also receive instruction on mental health and wellness and cultural competency. Benchers were advised that it was intended that either the Equity Committee or the Admissions and Education Committee would be asked to consider and make recommendations to benchers with respect to the types of training which principals ought to receive.

Benchers wondered whether mandatory training might deter members from volunteering to serve as a principal. Benchers were advised that this is a factor that will need to be considered by the committee tasked with the review. It was noted, however, that the paramount concern is to ensure that all students receive meaningful articles and in order for this to happen, the Law Society must ensure that all principals possess the necessary skills to serve in the role.

Ms Pastora Sala joined the meeting at 1:45 pm. Ms Saunders was excused from the meeting at 2:00 pm.

5.2 Practice Audits

Benchers considered the memorandum prepared by Ms Dangerfield and Ms Senft, dated October 22, 2020, which provided an outline of a proposed model for conducting practice audits. Benchers were reminded that this program was being developed based upon recommendations made by the Practice and Ethics Committee and subsequently endorsed by benchers in May of 2019. Benchers were invited to provide direction on a model which proposed that practice audits be:

1. targeted
2. risk-based with particular regard to a random selection of:
 - i) lawyers between 1 to 5 years of practice
 - ii) lawyers with 30 or more years of practice in firms of 3 or fewer lawyers
3. utilize the services of private practitioner auditors under the direction of a dedicated Law Society staff lawyer (30 to 50%)
4. conducted on a one year pilot basis with a report back to the benchers as to the effectiveness of the approved model and with any recommendations for expanding the scope of the program, changing the model or the risk factors.

Benchers participated in a full discussion on which groups of practitioners ought to be the focus of practice audits. Some benchers were of the view that the practice audits should be

focused solely on new lawyers (1 to 5 years experience) as this program would provide particularly valuable guidance to this demographic as they develop their practices, would encourage good practice habits, and would be more readily received by this demographic.

Some benchers were of the view that both new and senior lawyers (30+ years of experience) should be the focus demographic and that the senior lawyers' practice arrangements should not have bearing on participation. Other benchers were of the view that in order to make accurate determinations on how the program ought to proceed at the conclusion of the pilot, a much broader sampling of practitioners was needed.

Benchers were polled on which demographic ought to be the target of the one year practice audit pilot program based upon the varying views expressed by benchers. The majority view was that the pilot program should focus on both young lawyers (one to five years of practice) and senior lawyers (30+ years of practice) in any practice situation and that the audits be conducted on a random basis rather than risk-based.

Benchers expressed concern about how the program would be received by the profession and, in particular, those members who would be asked to participate in the program. It was agreed that communications to the profession would emphasize that the goal of the program is to assist practitioners in developing best practices by providing helpful and constructive direction as needed. Emphasis would also be placed on differentiating these audits from practice audit reviews which primarily flow from the complaints/discipline stream. It was recommended that the word "audit" not be used or associated with the program.

It was suggested that when the practice audits are conducted, the auditors should take into consideration the areas of practice and the resources available to the practitioners as these factors may have significant bearing on what the audits reveal. This information will also be valuable when considering how to proceed at the conclusion of the pilot.

Benchers expressed support for the utilization of private practitioner auditors to conduct the practice audits under the direction of a staff lawyer. It was suggested that the proposed fees to be paid to the practitioner auditors may need to be increased to attract members of the Bar with appropriate expertise.

Ms Pastora Sala was excused from the meeting at 2:30 pm. Ms Kloepfer was excused from the meeting at 2:45 pm.

5.3 Law Firm Practice Management Resources

Benchers considered Ms Dangerfield's memorandum, dated October 22, 2020, which provided a detailed report on the law firm practice management resources which have been developed by the Law Society to support the competence of members working in a variety

of practice arrangements. Benchers received a visual presentation of the practice management resources which had recently been made available to all members of the profession via the Law Society website.

Benchers were asked to consider whether an assessment ought to be added at the conclusion of some or all of the resource modules, or if they wished to defer that decision until the Law Society is able to assess uptake and receive feedback from the profession on these resources. Benchers were advised that if an assessment were to be included at the conclusion of the modules, it would allow the Law Society to utilize the resource modules as a remedial tool as the assessment would provide verification that the module had been completed.

Benchers were also asked to consider whether the use of resources such as these ought to be eligible for credit as a self study activity under the continuing professional development program. If benchers agreed that these resources should be eligible for CPD credit, staff would then provide a comprehensive analysis of the Law Society's existing CPD program, including recommendations with respect to activity eligibility.

Benchers were of the view that the practice management resources should be available for review by members at all times. They agreed that optional assessments should be added to the modules so that the resources could be utilized by the Law Society for remedial purposes and by the profession generally to fulfil mandatory continuing professional development requirements.

One bencher wondered whether completion of an assessment should continue to be a factor in determining whether an activity qualifies for CPD credit. It was noted that the purpose of continuing professional development is to support competence within the profession as part of the mandate of the Law Society. Completion of the assessment portion of a self study activity provides verification that participation in an activity is complete and in doing so, satisfies the Law Society's obligation to ensure that the mandate is being fulfilled.

Benchers were advised that the issue of self study would form part of a comprehensive report on continuing professional development. At the time the report is presented, benchers will then have an opportunity to further consider whether changes should be made to the list of activities which are eligible for CPD credit and, in particular, whether the eligibility criteria for self study activities should be amended.

6.0 Committee Reports

6.1 President's Special Committee on Regulating Legal Entities

Mr. Onchulenko reported to benchers on the meeting of the President's Special Committee on Regulating Legal Entities which had been held on October 19, 2020. At the meeting the

committee was asked to (a) consider whether the Law Society ought to begin a consultation process relating to limited practitioners providing services to the public in specific areas of law; and (b) review a draft Consultation Document which would be used to seek input from stakeholders on the services which limited practitioners ought to be permitted to provide to the public. Committee members directed that the Law Society should proceed with a consultation which is targeted towards key stakeholders in the area of family law and that consultation focus on the services limited practitioners might provide to the public under the supervision of a lawyer. The committee also directed that consultation take place with stakeholders to determine other areas of law where limited practitioners could be used to improve access to legal services, either independently or under the supervision of a lawyer.

7.0 Monitoring Reports

7.2 Financial Statements - September 30, 2020

Benchers considered Ms Dangerfield's report, dated October 22, 2020, which provided a detailed overview of the Financial Statements of the Law Society for the four month period ending September 30, 2020. Benchers were advised that the Law Society has not experienced a significant decrease in the number of practising members as had been anticipated at the outset of the pandemic. As a result, any reductions in revenue has been offset by reductions in expenditures.

Mr. Joyce was excused from the meeting at 3:45 pm.

7.2 Investment Compliance - September 30, 2020

Benchers considered Ms Dangerfield's report, dated October 22, 2020, 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, 2020, with the exception of the holding of bonds with a BBB rating. Benchers were advised that this issue will be addressed when the Investment Committee meets to consider a series of amendments to the Society's investment guidelines as recommended by investment counsel.

8.0 Miscellaneous Business

8.1 Reimbursement Issues in October 2020

Benchers considered the memorandum prepared by Ms Dangerfield and Ms Christianson, dated October 22, 2020, which outlined the purpose of the Reimbursement Fund and the process for submission, adjudication and payment out of claims made against the Fund arising from the misappropriation of funds by members of the profession.

8.2 Report of Federation Council Member

Mr. Swayze reported to benchers on the meeting of the Federation of Law Societies Council which had been held on October 16, 2020 via Zoom conferencing in conjunction with the FLSC Annual Conference. Mr. Swayze reported on the results of the annual election of officers which had taken place at the meeting. Benchers 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, the Standing Committee on the Model Code of Conduct and on CanLII operations.

Mr. Swayze advised that the members of the Model Code Committee had participated in an education process on Indigenous cultural competency. It was felt that this training would provide valuable insight to the committee as it contemplates how it will incorporate Indigenous cultural competency provisions within the Model Code. He encouraged members of the Law Society's Indigenous Advisory Committee to speak with Karen Wilford or Dianne Corbiere to gain their perspective on mandatory versus non-mandatory cultural competency training and to also speak with Dr. Pooja Parmar when the committee begins its work on cultural competency training. He also encouraged benchers to inform their thinking on the issue of cultural competency by listening to *The Trauma-Informed Lawyer* podcast (episode #5 in particular) delivered by Myrna McCallum.

As this was Mr. Swayze's final report to benchers in his role as FLSC Council member, he was recognized by Mr. Driedger for the many contributions and services he had provided to the Law Society and the profession throughout his tenure in this position as well as in his role as bencher and president of the Law Society.

8.3 *In Camera* Discussion

All guests and staff, with the exception of Ms Bourbonnais, were excused from the meeting at this time.

Motion: That the meeting proceed *in camera*.

MOVED: Mr. Mandzuik
Seconded: Ms Southall
Carried.

Ms Troup provided benchers with an update on the progress which had been made by the CEO Selection Committee to identify a candidate to serve as the new chief executive officer of the Law Society.

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

MOVED: Mr. McLeod
Seconded: Mr. Onchulenko
Carried.

9.0 For Information

Benchers considered the materials provided for information.

There being no further business, Ms Troup adjourned the meeting at 4:30 pm.