



AGENDA

Benchers

Date: Thursday, May 20, 2021

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 returning bencher, Kyle Dear to the meeting.				
2.0 IN MEMORIAM					
	Holman Kristinn Olson , who passed away on February 15, 2021 at the age of 92. Mr. Olson received his call to the Bar on October 5, 1954. He began his career with the Winnipeg Land Titles Office. In 1961 he joined the Federal Business Development Bank where he served as in house counsel for 25 years. In 1986, Mr. Olson joined the Legal Department of Manitoba Hydro, where he served as in house counsel for 11 years. He retired from practice in 1997.				

Graham Edward Robson who passed away on April 12, 2021 at the age of 56. Mr. Robson received his call to the Bar on April 19, 1995. After practising as an associate with Buchwald Asper Gallagher Heneteleff and Aikins MacAulay & Thorvaldsen for a combined total of seven years, Mr. Robson served as in-house counsel to Bison Transport, Great-West Life Assurance Company and Cardinal Capital Management Inc. In 2017 he joined Wellington-Altus Private Wealth Management Inc. where he served as Executive Vice-President, Chief Compliance Officer and General Counsel.

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	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 April 15, 2021 Meeting	5		Attached	Approval
3.2	Report of the Complaints Investigation Committee	5		Attached	Approval
<p>4.0 EXECUTIVE REPORTS</p>					
4.1	President's Report	5	Lynda Troup	Attached	Briefing
4.2	CEO Report	10	Leah Kosokowsky	Attached	Briefing
4.3	Strategic Planning	5	Leah Kosokowsky		Briefing
<p>5.0 NOMINATING COMMITTEE</p>					
5.1	Approval of Nominating Committee Report	10	Anita Southall	Attached	Discussion/ Decision
5.2	Awarding of Life Bencher Status to President Lynda Troup	10	Grant Driedger		Discussion/ Decision

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
5.3	Thank You to Past President Anita Southall	10	Grant Driedger		
6.0 MISCELLANEOUS BUSINESS					
6.1	2021 Bencher Survey Evaluation	10	Leah Kosokowsky	Attached	Discussion/ Decision
6.2	Insurance Levy	5	Leah Kosokowsky		Briefing
6.3	Update on Reimbursement Fund Payments	10	Tana Christianson	Attached	Briefing
7.0 MONITORING REPORTS					
7.1	Complaints Resolution Department and Discipline Department	20	Leah Kosokowsky	Attached	Discussion/ Decision
8.0 FOR INFORMATION					
8.1	Media Reports			Attached	Information



REPORT

To: Benchers

From: Nominating Committee

Date: May 12, 2021

**Re: Appointment of Committee Members
and Board Representatives**

The Nominating Committee was appointed in February 2021 and consists of Anita Southall (Chair), Lynda Troup, Grant Driedger, Miriam Browne, Ashley Joyce, Gerri Wiebe and Susan Boulter. The committee first met on March 16, 2021 to discuss and nominate a candidate for the position of president and candidates for the position of vice-president.

The committee nominated Kyle Dear to replaced Lynda Troup at the bencher table when Lynda becomes a Life Bencher at the May 20, 2021 bencher meeting. The Benchers unanimously accepted the recommendation and Kyle will be joining us at the May meeting.

The committee also decided to make a concerted effort to further diversify our committee membership through our volunteers. After receiving input from the benchers, we approached five lawyers who practise outside of Winnipeg to ask if they would consider joining a Law Society committee. If interested, we had them indicate their interest in or preference for particular committees. All five lawyers agreed to volunteer their time.

The committee met for the second time on April 29, 2021. At that meeting, the committee populated the membership of all Law Society committees and identified persons to serve as Law Society representatives to the boards and committees of external organizations.

In response to the stated preferences of the five new volunteers, the Nominating Committee proposes they sit on the following committees:

- Matthieu Lafreniere President's Special Committee on Health and Wellness
- Yaso Mathu Practice and Ethics Committee
- Desiree Dorion Indigenous Advisory Committee (pending - see note below)

- Gemma Brown Discipline Committee
- Kobra Rahimi Equity Committee

The Chair and Vice-Chair of the Indigenous Advisory Committee are making progress with identifying and approaching individuals to volunteer for the committee. We are optimistic that the recommendation for this committee's appointments will be presented to the benchers at the June 2021 bencher meeting.

The report of the committee which sets out the committee's recommendations is attached for your approval.

Atc.



April 29, 2021

REPORT OF THE NOMINATING COMMITTEE 2021-2022 COMMITTEES

It is recommended that the committees of the Law Society of Manitoba be comprised of the following members:

Note: The president and vice-president are ex-officio members of all committees except the Discipline Committee and the Admissions and Education Appeals and Trust Safety Appeals Sub-Committee.

◆Denotes Life Bencher

*Denotes Volunteer

**Denotes Public Representative

STANDING COMMITTEES

Admissions and Education Committee

Grower, Paul (Chairperson)
Saunders, Jessica (Vice Chair)
Avey, Jonathan*
Browne, Miriam
Chornopynski, Daniel*
Dean of the Faculty of Law
Kavanagh, Anthony

Leibl, Leah*
Poettcker, Jason*
Rachlis, Vivian*
Scaletta, Dean◆
Student Bencher
Zander, Bradley*

**Admissions and Education Appeals and
Trust Safety Appeals Sub-Committee**

Grower, Paul (Chairperson)
Saunders, Jessica (Vice Chair)
Avey, Jonathan*
Browne, Miriam
Chornopynski, Daniel*
Cohen, Neil**
Dean of the Faculty of Law
Grindey, Marston**
Kavanagh, Anthony
Leibl, Leah*
McCarthy, Lynne**

Molloy, Kenneth**
Morrison, Maureen**
Nedohin, Carmen**
Oakley, Sandra**
Poettcker, Jason*
Rachlis, Vivian*
Richmond, Keely**
Scaletta, Dean♦
Student Bencher
Zander, Bradley*

CPLED Appeals Sub-Committee

Broadfoot, Mason
Hirsch, Jeff♦
Monnin, Christian

Rachlis, Vivian*
Scaletta, Dean♦
Wiebe, Gerri

Complaints Investigation Committee

Potter, Kelli (Chairperson)
Monnin, Christian (Vice Chair)
Bowley, Bernice*
Broadfoot, Mason
Clarke, Michael*
Evans, Gregory*
Jainarine, Tehani

Kavanagh, Anthony
McLeod, Brian
Shore, Sean*
Sinclair, Vincent
Stewart, Derrick*
Troup, Lynda♦
Tyler, Robert*

Discipline Committee

Scott, Hon. Richard♦ (Independent Chairperson)
Onchulenko, Wayne (Vice Chair)
Campbell, Q.C., Roberta♦ (Conflicts Chair)
Bedford, Douglas♦
Bellay, Victor*♦
Blatz, Karlee*
Boulter, Susan
Brown, Gemma*
Browne, Miriam
Buchwald, Richard♦
Bueti, Katherine♦
Cohen, Neil**♦
Cole, Q.C., Peter♦
Dean of the Faculty of Law
Dear, Kyle
Douglas, Donald*
Effler, Barry*
Ferguson Sain, Lori*
Finnbogason, Catherine*
Fraser, Patricia♦
Gange, William♦
Gilmour, Gary♦
Good, Richard*
Gray, David♦
Grindey, Marston**
Grower, Paul
Hamilton, Q.C., Irene♦
Hedley, James*
Hirsch, Jeff♦
Innes, Sarah*
Janzen, Jake*
Joyce, Ashley
Kloepfer, Patricia
Knight, Q.C., Donald♦
Lee, Q.C., Brock♦

Leibl, Q.C., Ellen*
Leonoff, Q.C., Heather♦
Magnifico, Anna Maria
Mandzuik, Kenneth
Martin-White, Wendy*
Masi, Nunziata*
McCarthy, Lynne**
McLandress, Q.C., James♦
Mitchell, Q.C., Grant♦
Molloy, Kenneth**
Morrison, Maureen**
Nedohin, Carmen**
Oakley, Sandra**
Osborne, Anu
Pastora Sala, Joëlle
Piper, Penny*
Richmond, Keely**
Rumore, Nadia*
Saunders, Jessica
Scaletta, Dean♦
Semchuk, Alan♦
Shaw, James*
Smorang, Q.C., Garth♦
Southall, Anita♦
Stefanson, Grant*
Stewart, Wendy*
Swayze, David♦
Terra, Maureen*
Theule, Gerrit*
Toews, Mark*
Turnbull, Dr. Lorna*
Van Iderstine, Helga♦
Wiebe, Gerri
Zander, Bradley*

Equity Committee

Sinclair, Vincent (Chairperson)
Wiebe, Gerri (Vice Chair)
Broadfoot, Mason
Carson, Shannon*
Dean of the Faculty of Law
Dyck, Karen*
Jainarine, Tehani

Khan, Isha*
Neville, Elissa*
Osborne, Anu
Phillips, Sandra*
Rahimi, Kobra*
Saunders, Jessica

Practice and Ethics Committee

Dear, Kyle (Chairperson)
Pastora Sala, Joëlle (Vice Chair)
Avey, Jonathan*
Evans, Gregory*
Innes, Sarah*
Laviolette, Sidney*
Magnifico, Anna Maria
Malabar, Jennifer*

Mandzuik, Kenneth
Marr, David*
Martin-White, Wendy*
Masi, Nunziata*
Mathu, Yaso*
Piper, Penny*
Rumore, Nadia*
Terra, Maureen*

Professional Liability Claims Fund Committee

Joyce, Ashley (Chairperson)
Dear, Kyle (Vice Chair)
Bowley, Bernice*
Dixon, Kelly*
Funke, Jay*
Goldenberg, Eli*

Kloepfer, Patrica
Magnifico, Anna Maria
Pastora Sala, Joëlle
Potter, Kelli
Van Iderstine, Helga♦

Reimbursement Claims Fund Committee

Joyce, Ashley (Chairperson)
Kavanagh, Anthony (Vice Chair)
Bowley, Bernice*
Dixon, Kelly*
Filyk, Blair*
Goldenberg, Eli*

Kloepfer, Patricia
Pastora Sala, Joëlle
Potter, Kelli
Theule, Gerrit*
Van Iderstine, Helga♦

SPECIAL COMMITTEES/WORKING GROUPS

Access to Justice Steering Committee

Wiebe, Gerri (Co-Chairperson)	Soldier, Stacey*
McLeod, Brian (Co-Chairperson)	Stewart, Wendy*
Cohen, Neil**	Stakeholder Reps as Appointed
Sacouman, Sr. Lesley**	

Access to Justice Stakeholders Sub-Committee

Wiebe, Gerri (Chairperson)	Stakeholder Reps as Appointed
McLeod, Brian (Vice-Chair)	

Investment Committee

Onchulenko, Wayne (Chairperson)	Moen, Bryton*
Kloepfer, Patrica (Vice Chair)	Shore, Sean*
Lerner, Brian*	Swayze, David♦
Marr, David*	

President's Special Committee on Health and Wellness

Wiebe, Gerri (Chairperson)	McLeod, Brian
Mandzuik, Kenneth (Vice Chair)	Mitousis, Maria*
Arnason, Lynne*	Osborne, Anu
Browne, Miriam	Pinkowski, K.K.*
Dear, Kyle	Rachlis, Vivian*
Hiebert-Simkin, Cynthia*	Southall, Anita♦
Lafreniere, Mathieu*	Troup, Lynda♦

President's Special Committee on Regulating Legal Entities

Monnin, Christian (Chairperson)	Hamm, Sharyne*
Onchulenko, Wayne (Vice Chair)	Jainarine, Tehani
Bock, Hon. Mr. Justice Theodor♦	Kravetsky, Q.C., Sharon*
Boulter, Susan	Sinclair, Vincent
Bueti, Katherine♦	Theule, Gerrit*
Grower, Paul	Yusim, Norman*

Richard J. Scott Award Selection Committee

Scott, Hon. Richard♦ (Chairperson)
Boulter, Susan
Driedger, Grant

Steel, Hon. Madam Justice Freda*
Van Iderstine, Helga♦

**LAW SOCIETY REPRESENTATIVES TO OTHER
COMMITTEES, BOARDS AND ORGANIZATIONS**

Canadian Centre for Professional Legal Education (CPLED)

Dangerfield, Kris*
Kosokowsky, Leah

Community Legal Education Association (CLEA)

Dear, Kyle

E.J. McMurray Scholarship Fund Committee

Cole, Q.C., Peter♦

Federation of Law Societies of Canada Council

Troup, Lynda

Law Faculty Council

McLandress, Q.C., James♦

Legal Data Resources (Manitoba) Corporation (LDRC)

Bedford, Douglas♦
Scaletta, Dean♦

Legal Help Centre

Bueti, Katherine♦

Legal Research Institute of Manitoba

Scaletta, Dean♦

Manitoba Law Foundation

Cram, John♦ (expires August 2021)
Kloepfer, Patricia (expires August 2022)
Sinclair, Vincent (expires August 2023)
Southall, Anita♦ (effective August 2021)

Manitoba Law School Endowment Fund

McLandress, Q.C., James♦

Queen's Bench Statutory Rules Committee

Finlayson, Michael*
Schofield, Jessica*

The Property Registry Stakeholders Council

Stewart, Derrick*
Craton, Kate



MEMORANDUM

To: Benchers

From: Tana Christianson

Date: May 12, 2021

Re: Update on the Reimbursement Fund

We have been providing you with reports on payments the committee has approved out of the Reimbursement Fund on account of claims against Paul Hesse. I understand you have found the numbers somewhat alarming and may be concerned about the financial implications for the Society. The purpose of this memo is to provide you with some comfort on the financial position of the Reimbursement Fund.

The Reimbursement Claims Fund Committee has been working hard this year. They have held eight meetings and dealt with the claims of 15 claimants. They have authorized payments totalling \$2,628,860.

This is a major defalcation by Manitoba standards, but sadly, we plan for defalcations. We have guidelines and infrastructure in place to deal with theft and misappropriation, we maintain a reserve in the Reimbursement Fund and we purchase insurance for the Fund, so we are always ready to address a defalcation. The Hesse situation was first identified in June 2019 and the full extent of the problem was apparent by August of 2019, so we have had almost two years to plan for this specific defalcation.

THE REIMBURSEMENT FUND RESERVE

We maintain a reserve in the Reimbursement Fund. The Governance Policies require that the CEO shall prepare a budget that "in the Reimbursement Fund results in a reserve being more than the amount of the aggregate group deductible provided for under the Society's Trust Protection Indemnification Policy and that it is not less than what is necessary to ensure the long-term viability of the fund."

We budgeted for a reserve in the Reimbursement Fund of \$2,227,030 for the 2020-2021 fiscal year and for \$1,836,119 in the current 2021-2022 fiscal year. In the 2020 and 2021 budgets, we increased the Reimbursement Fund assessment from \$275 in March 2019 to \$575 in March 2020 and \$575 in 2021, respectively, to maintain the reserve in the Reimbursement Fund at the appropriate levels.

CLIA INSURANCE ON THE FUND

The LSM also purchases insurance for the Reimbursement Fund and has done so for many years. CLIA provides Compensation Fund coverage to all its law society subscribers. We pay a premium to CLIA annually for this coverage. Last year, in anticipation of the Hesse payments, CLIA assessed a premium of \$95 per member, an increase from the \$70 per member for the previous policy year. We do not yet know the 2021-2022 premium.

OUR CLIA COMPENSATION FUND SUBSCRIBER ACCOUNT

As a subscriber to CLIA's Compensation Fund program, we are also required to maintain a subscriber account within CLIA, which is another level of reserve fund. Once it was recognized the Hesse claims were going to be presented and would reach into the CLIA layer, CLIA's actuaries' calculations required us to contribute additional funds to our Compensation Fund subscriber account. We have been issued a retro assessment of \$1,217,001 payable in installments of \$260,438.21 over five years to replenish that account. This July we will pay our second such installment.

CLIA COMPENSATION FUND COVERAGE TERMS

Here is an explanation of how the CLIA Compensation Fund coverage purchased for the Reimbursement Fund works:

1. The Law Society is the insured.
2. The policy year starts in July each year and claims are opened in the year in which they are reported (which is relevant to Hesse because the claims were reported between June and August 2019, spanning two policy years).
3. The aggregate limit of coverage is \$10,000,000 per year.
4. The Law Society's deductible per claim is \$100,000 however, once an aggregate of \$500,000 has been paid in deductibles, the Law Society pays no other deductibles.
5. There is no recourse against innocent partners.

6. There is recourse against the misappropriating lawyer.
7. The policy coverage is limited to “misappropriation or wrongful conversion by a member of the Law Society of Money, Securities or Property entrusted to or received by a Member in the Member’s capacity as a lawyer”.
8. The policy is the same in every CLIA province.
9. If the Law Society wants to claim coverage under the CLIA policy and recover amounts paid out from CLIA, the Law Society must comply with the terms of the CLIA reimbursement policy.

LAW SOCIETY CAP ON CLAIMS

We also have a cap per claim in our Reimbursement Guidelines. 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.

REIMBURSEMENT BY CLIA

We have now paid out claims that exceed the \$100,000 deductible in both policy years and CLIA will begin reimbursing us for those claims over our \$100,000 deductible. As we have exceeded the \$500,000 aggregate group deductible in the 2019 policy year, CLIA has begun reimbursing us for all claims in that policy year. We have received \$1,006,117 in reimbursement from CLIA, to date.

We claim reimbursement from CLIA once we have paid the claim to the victim. Claimants must execute and return an assignment and release before we can requisition the funds. In some cases, this is taking claimants quite a long time, so some claims that have been authorized by the committee have not been paid yet.

STAFF COSTS

This defalcation has also taken considerable staff time. Chris Donaldson and others in the Complaints Resolution Department spent months in late 2019 and early 2020 investigating the complaints against Hesse and bringing them to CIC, where charges were laid to be prosecuted by Rocky Kravetsky. Investigation, charges and citation were a massive undertaking. Hesse was convicted and disbarred in September 2020. Insurance Department staff has now sent declaration packages to the majority of potential claimants, starting in October 2020, but we are still waiting for executed declarations to be returned. Large and complex defalcations take a lot of staff and committee time.

COLLECTION

We take a release and assignment from every claimant we pay and we have retained counsel to sue Hesse on the assignments and get judgment. As you will recall, we looked for assets when this first came to our attention but were not able to find anything that was not heavily encumbered. We are not expecting we will recover much, if anything, at this time but will make efforts to uncover some income or assets and in any event, to get judgment in case something is uncovered at a later date.