



# MINUTES

## Benchers

Date: Thursday, April 15, 2021

Time: 12:30 pm

Location: Via Videoconferencing and Teleconferencing

Present:

Lynda Troup, President	Kenneth Mandzuik
Grant Driedger, Vice President	Christian Monnin
Anita Southall, Past President	Wayne Onchulenko
Susan Boulter, Officer-at-Large	Anu Osborne
Acting Dean David Asper, Q.C.	Joëlle Pastora Sala
Mason Broadfoot	Sacha Paul
Miriam Browne	Kelli Potter
Tehani Jainarine	Jessica Saunders
Ashley Joyce	Vincent Sinclair
Patricia Kloepfer	Gerri Wiebe
Anna Maria Magnifico	Christine Williams

Regrets:

Paul Grower	Brian McLeod
Anthony Kavanagh	

Guests: Erin Wilcott

Staff Present:

Leah Kosokowsky	Colleen Malone
Noelia Bernardo	Deirdre O'Reilly
Pat Bourbonnais	Richard Porcher
Tana Christianson	Sean Rivera
Eileen Derksen	Karen Sawatzky
Joan Holmstrom	Darcia Senft
Ayli Klein	Betta Wishart
Kathy Levacque	

## **1.0 President's Welcome and Treaty Acknowledgement**

Ms Troup, President, called the meeting to order at 12:35 pm and welcomed everyone to the meeting. Treaty territories 1, 2 and 5 were acknowledged with gratitude.

## **2.0 In Memoriam**

Benchers observed a moment of silence for Walter James Kehler.

## **3.0 Consent Agenda**

### **3.1 Minutes of February 11, 2021 Meeting**

The minutes of the meeting held on February 11, 2021 were approved as presented.

### **3.2 Bencher Policy #5/Operations Policy #3 - Honoraria/Prizes**

Benchers approved the amendments to Bencher Policy #5/Operations Policy #3 - Honoraria/Prizes which reflected the decisions made by benchers at the February 11, 2021 meeting to increase the honoraria to be paid to the president, vice president and lay benchers.

### **3.3 Report of the Complaints Investigation Committee**

Benchers received the report of the Complaints Investigation Committee.

### **3.4 Reports of the Discipline Committee**

Benchers received the reports of the Discipline Committee.

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

MOVED: Ms Magnifico  
Seconded: Ms Southall  
Carried.

## **4.0 Executive Reports**

### **4.1 President's Report**

Benchers received for information Ms Troup's report dated April 5, 2021.

### **4.2 Chief Executive Officer's Report**

Benchers received for information Ms Kosokowsky's report dated April 7, 2021. Ms Kosokowsky reported to benchers on the status of Bill 41- *The Fair Registration Practices in Regulated Professions Amendment Act* and explained the impact the proposed amendments would have on the Law Society as regulator of the legal profession if enacted. Benchers were advised that with very short notice, Ms Senft had presented on behalf of the Law Society at the second reading of the Bill to request that the Law Society be made exempt from the provisions contained in the Bill. As that argument was unsuccessful, Ms Senft had spoken with the Acting Fairness Commissioner and encouraged her to recommend to government that consideration be given to providing the Commissioner with the authority to exempt a regulated profession from any section of the Act or regulations.

Benchers were advised that staff will continue to closely monitor the movement of this Bill and that the Executive Committee will consider the steps to be taken by the Law Society moving forward.

### **4.3 Strategic Planning**

Benchers were advised that the Bencher Survey which is being circulated in the next week will provide them with an opportunity to provide input on the timing of the strategic planning session if it cannot be held in Clear Lake in September as planned. Ms Kosokowsky reviewed with benchers the initiatives which are currently underway by each department. She confirmed that staff have been working hard to achieve the goals articulated within the Strategic Plan, noting that there continues to be an abundance of work flowing from the recent decisions made by benchers in the areas of entity regulation, health and wellness, access and equity.

In light of the concerns arising from Bill 41, it was suggested that independence of the legal profession be considered at the strategic planning session.

## 5.0 Discussion/Decision

### 5.1 Admissions and Education Committee: CPLED Articling and Subsidy, Administrative Suspensions and Housekeeping Rule Amendment

Benchers considered the memorandum of the Admissions and Education Committee, dated April 6, 2021, which invited benchers to consider and approve four recommendations proposed by the committee. The following is a summary of the decisions made by benchers in response to each recommendation:

1. That a new rule be drafted to replace Rule 5-5(1) which will extend the current two year limitation period to successfully complete the bar admission program and a term of articles to three years, while also granting the CEO with the discretion to extend the three year limitation in exception circumstances

Motion: That the proposed amendment to Rule 5-5(1) be approved in principle as recommended.

MOVED: Ms Wiebe  
Seconded: Mr. Onchulenko  
Carried.

2. That a Manitoba articling student enrolled in PREP be eligible for one tuition subsidy only no matter the number of attempts at PREP or the Capstones which may be required. The subsidy amount can be applied across one or more offerings of PREP.

Ms Potter arrived at 1:00 pm.

Motion: That the Law Society's obligation to provide financial assistance to Manitoba articling students enrolled in the PREP program will be limited to one tuition subsidy per student, however, this subsidy may be applied across more than one offering of PREP.

MOVED: Ms Southall  
Seconded: Mr. Driedger  
Carried.

3. That a member who is administratively suspended for a period exceeding 30 days must apply to resume active practice

Motion: That members who have been administratively suspended for a period exceeding 30 days shall be required to apply to resume active practice.

MOVED: Ms Osborne  
Seconded: Ms Jainarine  
Carried.

4. That the rules which were adopted by benchers in 2010 relating to mandatory training on the new Code of Professional Conduct be repealed as they are no longer necessary.

Motion: That the rules which require members to participate in a training program on the Code of Professional Conduct be repealed.

MOVED: Mr. Mandzuik  
Seconded: Mr. Onchulenko  
Carried.

## **5.2 President's Special Committee on Health and Wellness**

Benchers considered the report of the President's Special Committee on Health and Wellness, dated April 6, 2021, which outlined the work which had been completed by the committee over the past year flowing from the directives provided by benchers at their meeting held on May 28, 2020. The report also included two recommendations proposed by the committee which benchers were invited to consider:

1. The Law Society give priority to:
  - (a) Developing a communications strategy for the profession at large regarding health and wellness; and
  - (b) Identifying, consulting with and responding to segments of the profession that have been disproportionately affected by COVID-19.
2. The benchers include health and wellness as a priority during the strategic planning process, with specific consideration given to establishing a Health and Wellness Standing Committee.

Benchers expressed support for both of the recommendations, noting the importance of this work and the need to establish a committee which is able to continue to address health and wellness issues within the profession over the long term.

Motion: That the recommendations of the President's Special Committee on Health and Wellness be approved as presented.

MOVED: Ms Southall  
Seconded: Ms Browne  
Carried.

### **5.3 President's Special Committee on Regulating Legal Entities**

Benchers considered the report of the President's Special Committee on Regulating Legal Entities, dated April 5, 2021, which provided a progress report on the matters which had been considered by the committee over the past year in the area of entity regulation. The memorandum also included a series of new recommendations relating to civil society organizations, consultation, exemptions to unauthorized practice, and regulatory sandbox models. The following is summary of the decision made by benchers in response to each recommendation:

1. That, subject to meeting other previously approved civil society organization regulatory requirements, the Law Society should grant a waiver or an exemption for the need to fall squarely within the definition of a CSO to the First Nations Family Advocate Office - Assembly of Manitoba Chiefs and the Public Interest Law Centre in relation to the pilot project proposal presented by these organizations.

Benchers expressed strong support for the pilot project proposal presented by the FNFAO and PILC.

Motion: That the First Nations Family Advocate Office - Assembly of Manitoba Chiefs and the Public Interest Law Centre be granted an exemption from the requirement that a CSO applicant must be a registered charity or not-for-profit organization. The FNFAO/PILC would, however, remain subject to and must comply with all other CSO regulatory requirements.

MOVED: Ms Magnifico  
Seconded: Ms Boulter  
Abstentions: Ms Pastora Sala and Mr. Paul  
Carried.

Mr. Monnin joined the meeting at 1:15 pm.

2. With respect to consultation with the public on unmet legal needs, the Society should:
  - (a) Take advantage of the Province's resources and connections without posting on the Engage Manitoba website. That is, the Society should pursue an

informal collaboration with the Province to widely distribute a survey/consultation; and

- (b) Pursue other avenues of engagement on its own, utilizing the resources at its disposal to circulate a public consultation document and/or survey.

Motion: That the Law Society use the resources which are available through the Province to informally consult with a variety of stakeholders outside the legal community, and also explore other opportunities and means to consult with the public on unmet legal needs.

MOVED: Ms Boulter  
Seconded: Ms Southall  
Abstention: Ms Jainarine  
Carried.

- 3. The Law Society should consider national and international unauthorized practice exemptions, work with other stakeholders and leverage the resources of the new Access to Justice Coordinator to inform the work of the committee going forward.

Motion: That with the assistance of the new Access to Justice Coordinator and other stakeholders, the Law Society should further explore how it might identify and categorize the legal service providers who could be made exempt from the unauthorized practice of law in Manitoba. In doing so, consideration should also be given to the exemptions which have been adopted by other jurisdictions, both nationally and internationally.

MOVED: Ms Magnifico  
Seconded: Mr. Paul  
Carried.

- 4. The work of this committee should continue and as part of its work, it should give further consideration to regulatory sandbox models and assess the advisability of the Law Society creating a comparable regulatory model.

Motion: That the President's Special Committee on Regulating Legal Entities continue to explore the regulatory sandbox models which have been adopted in other jurisdictions with a view to determining whether there is a model which could be implemented in Manitoba.

MOVED: Ms Boulter  
Seconded: Mr. Mandzuik  
Carried.

#### **5.4 Law Society of Saskatchewan v Peter Abrametz - Possible Intervention to SCC Appeal**

Benchers considered a memorandum from the Executive Officers, dated April 5, 2021. The memorandum sought direction from benchers in response to the following two recommendations made by the Executive Committee regarding possible intervention in the appeal to the Supreme Court of Canada in *Law Society of Saskatchewan v Peter Abrametz*:

1. The Executive Committee recommends that benchers support the Federation of Law Societies seeking leave to intervene in the appeal.
2. The Executive Committee recommends that you provide them with the authority to determine if the Law Society of Manitoba should seek leave to intervene following receipt and review of the factum filed by the Law Society of Saskatchewan.

Benchers were advised that to date, all of the jurisdictions that have had an opportunity to consider the matter have supported the Federation seeking intervenor status in the appeal as the matter raises important regulatory concerns for all law societies regarding the threshold for finding abuse of process as a result of delay in disciplinary proceedings. Manitoba was one of a small number of jurisdictions which had yet to make a determination on the matter.

It was suggested by one bencher that a decision on both recommendations be deferred until the Executive is able to confirm the position which will be argued by counsel for the Federation.

Motion: That the Law Society of Manitoba authorize the Federation of Law Societies of Canada to seek leave to intervene in the appeal to the Supreme Court of Canada in *The Law Society of Saskatchewan v Abrametz*.

MOVED: Mr. Paul  
Seconded: Ms Magnifico  
Carried.

Benchers discussed whether there was value in the Law Society applying for intervenor status. Benchers were advised that because restrictions are placed on intervenors regarding the length of their written and oral submissions, it would be beneficial for law societies to also seek leave to intervene in a coordinated manner. This would ensure that collectively the arguments presented fully convey to the Court the concerns which law societies have with the decision.

It was also clarified for benchers that the Federation (and other law societies) will only be in a position to confirm the issues it will argue once it has had an opportunity to review the



factum filed on behalf of the Law Society of Saskatchewan. When that information is available, the Law Society will then be in a position to consider whether there is a separate issue which it would want to address. However, because there are time limits for filing pleadings as an intervenor, it may be necessary for the Executive Committee to make a decision on the Law Society's participation in the appeal before benchers are able to meet. For these reasons, it was recommended that the Executive be given the authority to determine if the Law Society would also seek leave to intervene.

Motion: That the Executive Committee be granted the authority to determine if the Law Society of Manitoba should seek leave to intervene following a review of the factum filed by the Law Society of Saskatchewan.

MOVED: Ms Jainarine  
Seconded: Ms Osborne  
Carried.

It was requested that the factum filed by the Federation be provided to benchers once it is available and that benchers be invited to provide their comments at that time.

## **6.0 Report of the Nominating Committee**

### **6.1 Report to Benchers**

Ms Southall referred benchers to the Report of the Nominating Committee, dated April 5, 2021, which outlined the recommendations of the committee with respect to the nomination of candidates for the position of president and vice-president. The report also provided a recommendation with respect to the filling of the vacancy in the Winnipeg Electoral District which will arise following the appointment of Ms Troup as a Life Bencher when her term as president concludes in May of 2021.

### **6.2 Election of Incoming President**

Ms Southall confirmed that the Nominating Committee had agreed to put forward Mr. Driedger's name as the candidate for the position of incoming president. She then invited nominations from the floor. As none were received, Ms Southall declared nominations to be closed and announced the acclamation of Mr. Driedger as incoming president of the Law Society of Manitoba.

Ms Osborne was excused from the meeting at 1:40 pm.

### **6.3 Bencher Vacancy**

Ms Southall confirmed the recommendation of the Nominating Committee to appoint Ms Dear to fill the vacancy in the Winnipeg Electoral District following Ms Troup's appointment as a Life Bencher.

Motion: That Ms Dear be appointed to fill the vacancy in the Winnipeg Electoral District following Ms Troup's appointment as a Life Bencher at the May 20, 2021 bencher meeting.

MOVED: Ms Wiebe  
Seconded: Ms Browne  
Carried.

Ms Saunders joined the meeting at 1:50 pm.

Ms Southall advised that a motion was required to temporarily suspend Rule 2-55 to allow for the counting of the ballots which had been cast in advance by those benchers who were not able to be present to participate in the election of the vice-president.

Motion: That Rule 2-55, which provides that only benchers in attendance at the meeting may participate in the election, be temporarily suspended.

MOVED: Ms Magnifico  
SECONDED: Ms Pastora Sala  
CARRIED

### **6.3 Appointment of Election Scrutineers**

As the election was being conducted via electronic ballot, benchers were advised that Mr. Rivera and Ms Kosokowsky would oversee the election and then review the results of the election with Ms Southall.

Motion: That Ms Kosokowsky and Mr. Rivera be appointed scrutineers and ballot counters for the election of the incoming vice-president.

MOVED: Ms Wiebe  
Seconded: Ms Boulter  
Carried.

#### **6.4 Election of Incoming Vice-President**

Ms Southall confirmed that the Nominating Committee had agreed to put forward the names of Mr. Onchulenko, Mr. Paul and Mr. Sinclair as candidates for the position of incoming vice-president. She then invited nominations from the floor. As none were received, Ms Southall declared nominations to be closed.

With the exception of Ms Kosokowsky and Mr. Rivera, all staff were excused from the meeting while benchers cast their votes.

Ms Southall announced the election of Mr. Paul as incoming vice-president. Mr. Onchulenko and Mr. Sinclair were thanked for having agreed to have their names stand for election.

#### **6.5 Motion to Destroy Ballots**

Motion: That the electronic data for the election of the incoming vice-president be destroyed.

MOVED: Ms Magnifico  
Seconded: Mr. Broadfoot  
Carried.

Ms Osborne rejoined the meeting at 2:10 pm.

#### **7.0 For Information**

Benchers considered the materials provided for information.

There being no further business, Ms Troup adjourned the meeting at 2:20 pm.