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**Approved Public Minutes
of the Four Hundred and Seventy-Seventh Meeting
of the Benchers Board of the Law Society of Alberta (Law Society)
held at the Jasper Park Lodge
June 11, 2016**

Benchers Present:

Anne Kirker, QC, President
Gillian Marriott, QC, President-Elect
Robert Armstrong, QC
Glen Buick
Arman Chak
Donald Cranston, QC
Robert Dunster
Dennis Edney, QC
Fred Fenwick, QC
Josh Hawkes, QC
Cal Johnson, QC
Julie Lloyd, QC
Kathleen Ryan, QC
Darlene Scott, QC
Hugh Sommerville, QC
Kent Teskey, QC
Amal Umar
Louise Wasylenko
Anthony Young, QC

Regrets:

Brett Code, QC
Sandra Corbett, QC
Nancy Dilts, QC
Sarah King-D'Souza, QC
Adam Letourneau, QC

Executive Leadership Team:

Don Thompson, QC, Executive Director and CEO
Elizabeth Osler, Deputy Executive Director and
Director, Regulation
Cori Ghitter, Director, Professionalism and Policy
Andrew Norton, Director, Business Technology
Drew Thomson, Director, Corporate Services

Senior Staff:

Paule Armeneau, General Counsel
Ally Taylor, Manager, Communications
Ruth Corbett, Governance Administrator

Guests and Observers:

Shabnam Datta, Policy Counsel
Jennifer Freund, Policy Counsel
Sandra Petersson, Executive Director, Alberta Law
Reform Institute (ALRI)
Steve Raby, QC, Representative, Federation of
Law Societies of Canada (FLSC)
Christine Schreuder, Governance Assistant, Law
Society
Ryan Stephanson, Business Technology, Law
Society

Secretary's Note: Mr. Jeff Hirsch, President of the FLSC, provided an oral report to the Board on June 10 during the retreat program. Mr. Hirsch was unable to attend this meeting; however, his remarks are summarized here for convenience.

Federation Update from June 10, 2016

Mr. Hirsch addressed the Board on the topics of vision and leadership. The essence of the relationship between law societies and the Federation is premised on cooperation toward consensus on issues that are germane to the protection of the public interest through a coordinated, national approach to legal regulation where it is appropriate to do so. Change is required and discussions about change can open our minds to the possibilities for change. Many of the same drivers exist across provinces, supporting the basis for a national approach. Mr. Hirsch commended the Law Society for demonstrating consistent leadership and support for national collaboration and cooperation.

The public meeting was called to order at 11:00 a.m. on June 11, 2016.

1 Remarks from the Chair

Anne Kirker

The Chair welcomed Benchers and guests to the public meeting. The Chair provided an oral report on the activities of the Policy Committee, and encouraged Benchers to review the Policy Inventory and Policy Committee minutes in the Boardbooks Resource Centre.

2 Policy Statement: Implementation of Amendments

Jennifer Freund

Documentation for this item was circulated with the meeting materials. The purpose of the Policy Statement is to provide clarity regarding the timing of the implementation of amendments to the *Rules of the Law Society of Alberta* (Rules) and policy documents such as Guidelines and protocols, including the process for retroactivity. The Policy Statement applies to documents requiring Board approval as well as those under the authority of the Executive Director or Deputy Executive Director.

It was suggested that it would be helpful for Benchers to know what the operational impact of the Rule change would be and this will be added to the Policy Committee checklist of considerations to be addressed.

Motion: Buick/Hawkes

That the Policy Statement – Implementation of Amendments be adopted, as set out in the document provided to the Board.

**Carried
One opposed**

3 Trust Safety Rule Amendments

Jennifer Freund

Documentation for this item was circulated with the meeting materials. The amendments are intended to clarify and streamline the current application and approval

process for lawyers to receive Responsible Lawyer (RL) status and for law firms to receive approval to open, operate and maintain a Trust Account. A companion protocol will assist Law Society staff and applicants to navigate the approvals process.

The Board discussed the recommendations, particularly the proposed amendment to Rule 119.7, which is intended to broaden the RL decision-making process to include the Manager, Trust Safety, and to provide consistent language and clear outcomes. In response to a concern about the introduction of immediate revocation of RL status and the removal of referral to the Trust Safety Committee for determination in Rule 119.7(5), management advised that the proposed amendment is intended to add procedural fairness by introducing an appeal process. Referrals to the Trust Safety Committee are increasingly rare as the Law Society takes proactive steps to work with the RL to address issues; however, the ability to revoke an RL status immediately to protect the public interest will be important in urgent situations.

The absence of criteria for the revocation of RL status was also questioned and management advised that the internal process is intended to ensure no decision is taken without proper consideration.

The Board Chair offered the Board the option of sending the proposal back to the Policy Committee to have it return at a later date with the protocol attached, or to consider whether the policy decision underlying the current proposal is consistent with the Law Society's strategic direction to be proactive and act quickly in the public interest where there are issues, while ensuring a proper appeal process is in place. The Board declined the Chair's offer to send the matter back to the Policy Committee. The Board was satisfied with the materials and the motion was put forward.

Motion: Teskey/Cranston

To amend Rules 119.2, 119.5, 119.7, 119.8, 119.9, 119.10, 119.12, 119.13, 119.15 and 119.34, as proposed in Appendix A of the meeting materials, and to revoke Rules 119.6 and 119.14.

**Carried
One opposed**

3 Standard of Review: Rule and Guideline Amendments

Shabnam Datta

Documentation circulated with the meeting materials for this item included a cover memo and proposed changes to the Rules, the Adjudicator Guideline, Member Conduct Appeals Guideline, and Pre-Appeal Guideline. It was confirmed that the Policy Committee reviewed and discussed the proposed changes on April 26 and May 24, 2016 and is in support of the recommendations. One additional proposed change to paragraph 5 of the Member Conduct Appeal Guideline (Appendix 3 of the meeting

materials), that had not been reviewed by the Policy Committee, was provided to the Board immediately prior to the meeting.

Policy Counsel presented the proposal and explained the rationale for the recommendation to change the standard of review from correctness to reasonableness for appeals from a dismissal of a complaint and lawyer appeals from a finding of guilty of conduct deserving of sanction. In the complaint process, the Executive Director is the original decision-maker or the administrative tribunal of first instance. In the hearing process, the Hearing Committee is the tribunal of first instance. The standard of review of reasonableness, rather than correctness, should apply to an appeal of the Executive Director's direction to dismiss a complaint and to an appeal of the Hearing Committee's finding that a lawyer is guilty of conduct deserving of sanction. The proposed amendments reflect the current state of the law and the process that is currently being followed by the Hearing Committee.

The Board discussed the suggestion to further amend the Guidelines to require that appeal panels state the standard of review used and to encourage the parties on appeal to address the standard of review to the best of their abilities. The Board agreed to amend the motion to allow management to undertake this task and to report back to the Policy Committee for a final review of the language. *[Editorial Note: the amendment to the motion is in italics.]*

Motion: Armstrong/Sommerville

- **To amend Rule 86, as proposed in Appendix 1;**
- **To amend the Adjudicator Guideline: Appeal From Complaint Dismissals as proposed in Appendix 2;**
- **To amend the Member Conduct Appeals Guideline as proposed in Appendix 3;**
- **To rescind the Pre-Appeal Guideline in Appendix 4; and**
- ***to have management amend, where necessary, the aforementioned guidelines to have the appeal panels state the standard of review that was used and to include language encouraging the parties on appeal to address the standard of review to the best of their abilities.***

Carried

The Benchers commended Policy Counsel on the quality of the work done in what is a difficult and complex area of law.

Secretary's Note: On June 21, 2016 the Policy Committee reviewed and endorsed further language revisions in the Guidelines in accordance with the above approval.

5 President's Report

Anne Kirker

The President's Report was circulated with the agenda for information.

6 Access to Justice Report

Anthony Young

This report was circulated with the agenda for information.

7 Alberta Law Foundation

Anthony Young

This report was circulated with the agenda for information.

8 Alberta Law Reform Institute (ALRI) Report

Sandra Petersson

The ALRI report and 2016/2017 Business Plan were circulated with the agenda. ALRI will be reviewing its processes with a view to becoming more proactive in setting performance measures and improving overall; however, funding reductions have resulted in necessary budget cuts for the coming year. The Alberta Law Foundation has offered its support for making the case to government for funding for ALRI.

Discussions are underway with founding and funding parties to set up another continuation agreement upon the expiry of the current 5-year agreement. Although it has no legal entity status ALRI is widely regarded as a leader in independent law reform and it is hoped that current challenges will be addressed to ensure Alberta's strong structure of independent law reform continues.

9 Alberta Lawyers Assistance Society Report

Julie Lloyd

This report was circulated with the agenda for information. Ms. Lloyd highlighted the 50% increase in counselling hours over the same period last year.

10 Canadian Bar Association Report

Jeremiah Kowalchuk

This report was circulated with the agenda for information.

11 Legal Education Society of Alberta Report

Jennifer Flynn

This report was circulated with the agenda for information.

12 Pro Bono Law Alberta Report

Robert Dunster

This report was circulated with the agenda for information.

13 Policy Inventory

Cori Ghitler

This document was added to the meeting materials for information.

14 Other Business

Anne Kirker

There being no other business the Chair adjourned the public meeting at 11:50 a.m.