

MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS

Tuesday, November 13th and Wednesday, November 14th, 2018 Sheraton Centre, Montreal Kafka-Lamartine Room

PRESENT

Sanjeev S. Anand, SK (Guest) Jean-Pierre Archambault, Access to Justice, PQ (Tuesdav) Raymond Bodnerak, AB Inez Cardinal, SK Sandy Chapman, MB Béatrice Clément, PQ Michael Cozens, YT Danielle Dalton, 2nd V.P. AB (Tuesday) Joe De Filippis, Treasurer, ON Robin Finlayson, National Education, MB Bruce Garriock, AB Robert Gorin, President, NWT Wayne Gorman, Judicial Counselling, NL Ross Green, Journal, SK Laurel Halfpenny McQuarry, NS Christine Harapiak, Judicial Ethics, MB (for Lisa Mrozinski) Marv Kate Harvie, Website, MB Josh Hawkes, Committee on the Law, AB Kymil Howe, NL Timothy J. Killeen, Access to Justice, MB Romuald Kwolek. Access to Justice. ON Marco LaBrie, 2nd Vice-President, PQ Jeffrey E. Lantz, PE Karen Lische, Secretary, ON John Maher, Compensation, AB Garth Malakoe, NWT Lee Ann Martin, NJI, MB Michelle Marquette, SK Jean McBride, MB Kael McKenzie, Equality & Diversity, MB Mayland McKimm, Past President, BC Katherine McLeod, National Education, ON Martine Nolin, Journal, PQ (Tuesday) Kenneth Oliver, NB

Mélanie Roy, Indigenous Justice, PQ (Tuesday) David St. Pierre, BC Theodore Tax, 3rd Vice-President, NS Wynne Anne Trahey, NL David Walker, Compensation, NB Martha Zivolak, ON

Tuesday, November 13th, 2018

1. WELCOME, VERIFICATION OF QUORUM AND AGENDA

The meeting is called to order at 8:30 A.M. by the President, Judge Robert Gorin, who assumed the Chair. He welcomes everyone to the meeting. No proxies have been filed and a quorum is met. Justice Karen L. Lische has forwarded the proposed agenda electronically to the participants prior to the meeting. The President asks everyone at the meeting to introduce themselves, as there are many new faces around the table.

<u>MOTION</u>: MOVED by Justice Karen L. Lische and SECONDED by Justice Joe De Filippis that the proposed agenda for the meeting be adopted. MOTION CARRIED.

2. MINUTES OF THE BOARD OF DIRECTORS' MEETINGS

Minutes of the Board of Directors' Meeting – September 25th and 26th, 2017 – Charlottetown, Prince Edward Island (French version)

Justice Karen L. Lische has distributed the minutes of this meeting electronically prior to the meeting.

<u>MOTION</u>: MOVED by Justice Karen L. Lische and SECONDED by Judge Marco LaBrie that the French version of these minutes be adopted. MOTION CARRIED.

Minutes of the Board of Directors' Meeting – April 21st and 22nd, 2018 – Montréal, Québec (English Version)

Justice Karen L. Lische has also distributed the minutes of this meeting electronically prior to the meeting.

<u>MOTION</u>: MOVED by Justice Karen L. Lische and SECONDED by Judge Jeff Lantz that the English version of these minutes with amendment be adopted. MOTION CARRIED.

3. PRESIDENT'S REPORT

Judge Robert Gorin has filed his report electronically in advance of the meeting.

He adds that recent appointments have been made to various committees. Judge Lisa Mrozinski is now the Chair of the Judicial Ethics Committee. Judge Martine Nolin is now the Co-editor of the Journal and Judge Sanjeev Anand is our representative on the NJI Board of Governors.

4. SECRETARY'S REPORT

Justice Karen L. Lische has distributed her report electronically prior to the meeting.

There were no questions.

5. TREASURER'S REPORT

Justice Joe De Filippis has filed his report electronically in advance of the meeting.

In addition to his report, he suggested that half of the fees collected by dues go toward our judicial independence.

Justice De Filippis indicated that there should be an amendment to the Revenue vs. Budget document. The reference to the \$15,957 figure beside Compensation – Data Collection Project should be deleted and not \$27,551 beside Quebec Litigation (HST on the bill is recorded elsewhere).

<u>MOTION:</u> MOVED by Juge Marco LaBrie and SECONDED by Judge Theodore K. Tax that the Reports of the President, the Secretary and the Treasurer be adopted. MOTION CARRIED.

6. COMMITTEE REPORTS

a. Education

- National Education Committee (NEC)
- > New Judges' Education Program
- > New Judges Skills' Program

Justice Katherine McLeod has distributed her report electronically prior to the meeting on behalf of the National Education Committee. She advised that the Provincial Education Chairs are attending an Expert Evidence Program. She indicated that the Education Chairs should stay on for 4 years.

Justice Katherine McLeod led a discussion on the issue that the New Judges' Education Program in Bromont had 85 participants and that the New Judges Skills' Program had 54 participants. The discussion surrounded the high numbers and the idea that the program becomes less effective when the numbers are too high.

CAPCJ provides the translation for the program at Bromont.

Judge Robin Finlayson indicated that he would like to have notice of the number of participants in advance. He suggests that discussions take place approximately 6 months in advance of the program.

The consensus was that this past year was unusually high, given the very high number of new judges appointed across the country. Judge Marco LaBrie will discuss the possibility of having better communication with the CCCJ Chair.

The skills based program in Niagara-On-The-Lake is building for succession. This is truly a national program.

> National Judicial Institute (NJI)

Judge Lee Ann Martin has filed her report electronically in advance of the meeting. Judge Martin presented the report for Judge Sanjeev S. Anand who was only very recently appointed as Judge Martin's replacement.

She adds that there is a meeting on November 29, 2018 and Judge Anand will be in attendance. Judge Robert Gorin thanks Judge Lee Ann Martin for all of her years of service.

Judge Martin indicates that there have been many changes at the NJI. They are now unionized. They have changed their governance structure. The CEO of NJI is now not a Judge. There remains a judge involved with education.

A discussion took place about what this change within the NJI organization means to CAPCJ.

b. Compensation Committee

Judge John Maher has also distributed his report electronically prior to the meeting.

The Compensation Committee met on November 12, 2018. Judge Maher mentions that there have been developments since he provided his report. He provided an update on the Newfoundland litigation and the increase in costs as a result. He stressed that the litigation in Nova Scotia is extensive and important to all of us.

He refers to the paper written by Dr. Paul Thomas. He reviewed the paper recently and is looking for the Directors to consider two resolutions.

The first involves publishing the paper written by Dr. Paul G. Thomas immediately, having it translated, that specific direction be given to Dr. Thomas about writing a shorter and longer article, that Dr. Thomas investigate having the work peer reviewed and that the Compensation be encouraged to pursue the study of the feasibility of a public symposium or forum on the topic of Judicial Independence with a particular focus on Financial Security.

The second resolution involves appointing Judge David Walker as a 3rd data collector if necessary for the Data Collection Project.

A discussion occurred with regard to the cost of having the paper translated.

The Compensation Committee felt that the timing of these issues is important and that it should not wait as the litigation in British Columbia and in Nova Scotia continues. These matters were referred to the Director's Forum for further discussion.

c. Judicial Ethics Committee

Judge Lisa Mrozinski has filed her report electronically prior to the meeting. Judge Lisa Mrozinski was unable to be present at this meeting. Judge Christine Harapiak was available for questions on behalf of Judge Mrozinski.

Shelagh Creagh filed a report on behalf of the Ethics Advisory Council electronically and prior to the meeting. Judge Shelagh Creagh was unable to

attend this meeting. Judge Christine Harapiak was available for questions on behalf of Judge Creagh.

d. Judicial Independence Committee

No report was filed by this committee. Judge Carena Roller was not in attendance at the meeting. Judge Roller continues to be on a medical leave.

e. Committee on the Law

Judge Josh Hawkes has filed his report electronically prior to the meeting. Judge Hawkes added that since his report was filed, there have been updates. Bill C-75 passed the committee report in the House of Commons. Bill C-51 passed 3rd reading at the Senate. There was a substantial amendment during the third reading. The amendment deals with codifying the law on the capacity to consent.

f. Equality and Diversity Committee

Judge Kael McKenzie has filed his report electronically in advance of the meeting. He is available for questions. He indicates that this committee had 100% attendance at their first meeting. He notes that his committee does not have representation from New Brunswick nor from the Territories.

g. Judicial Counselling Program (JCP)

Judge Wayne Gorman has also distributed his report electronically in advance of the meeting.

He is the CAPCJ representative on the Board of Directors of the JCP. There is also a Provincial Advisory Board with at least one representative from each province.

There have been no issues regarding the satisfaction level of the program. The program was explained briefly by Judge Gorman.

Judge Wayne Gorman answered questions.

h. Communications Committee

> Provincial Judges' Journal

Judge Ross Green has filed his report electronically prior to the meeting and read it to the Board in French.

Judge Martine Nolin replaced Judge Denise LeBlanc as co-editor of the Journal.

Judge Robert Gorin thanked Judge Ross Green for his hard work and dedication to CAPCJ.

> Website

Judge Mary Kate Harvie advises that Judge Gary Cohen was unable to attend the meeting. Judge Harvie was available for questions. She reminded everyone not to use the CAPCJ website password for anything else as the site is not secure.

At this time, the committee is looking at the possibility of adding links to educational materials.

i. Access to Justice Committee

Judge Jean-Pierre Archambault adds to the written report that was distributed in advance of the meeting. He indicates that they are missing members from the Northwest Territories and from Alberta on their committee.

Judge Tim Killeen refers to the document prepared on self-represented litigants.

Judge Romuald Kwolek reminds everyone that they should let the committee know if there is something interesting happening at their court house on the issue. For example, there is an Access to Justice Week in Ontario and an event took place at the Sault Ste. Marie Courthouse at the end of October.

A discussion took place on the issue of ensuring that there is no overlap between the Indigenous Justice Committee and the Access to Justice Committee. The Access to Justice Committee is the broader committee and the Indigenous Justice Committee is more focussed on Indigenous issues. The two committees will communicate and work cooperatively to ensure there is no duplication of work.

Judge Kael McKenzie reminded everyone to look at everything through the equality and diversity lens to ensure inclusive language.

j. History Project

Judge Céline Gervais was not present for the meeting; however, her report was distributed electronically in advance of the meeting.

k. Indigenous Justice Committee

Judge Mélanie Roy adds to her written report. She indicates that her committee will be providing information to be included as a special addition to the Journal. Potentially every province or territory will write an article setting out the resources it has within its jurisdiction. They will look to time this information with Indigenous Day in Canada which is June 21st.

<u>MOTION</u>: MOVED by Judge Marco LaBrie and SECONDED by Justice Martha Zivolak that the Committee reports be adopted. MOTION CARRIED.

7. Presentation on Ethical Guidelines on Using Social Media

Judge Christine Harapiak makes a presentation to the Board. She indicates that 10 of our 12 jurisdictions have adopted the Federal Ethical Principles. The CJC has been reviewing these principles since 2011. Their review seems cursory and mostly satisfied with the status quo. Judge Harapiak believes there to be a guidance gap for judges which CAPCJ may want to task the Judicial Ethics Committee with addressing. She wants CAPCJ to consider having the committee draft a memo to send to the CJC or to consider developing guidelines of our own. This will be discussed further during the Director's Forum.

8. ACTION ITEMS

a. 2018 CAPCJ Justice Award

Judge Marco LaBrie reminds everyone that Judge Elizabeth Corte will be receiving the 2018 CAPCJ Justice Award at the banquet for having improved the Justice System in Canada.

b. 2018 CAPCJ Medal

Judge Robert Gorin confirms that Judge Odette Perron will be the recipient of the 2018 CAPCJ Medal for her outstanding contribution to CAPCJ as co-editor of the Journal, as Chair of the Judicial Independence and Professional Responsibility Committee (as it was once called), for her involvement with the Niagara-On-The-Lake education program and for her contribution to language education at the program in Caraquet, New Brunswick. She was also instrumental in the Ethics Advisory Council and its beginnings.

c. Committee Membership on the Website

Judge Robert Gorin reminded the Chairs of the various committees that they are to post the names of the members of their committees onto the website along with the date of their commencement on the committee, to ensure conformity with the 3 year rule. Judge Gorin urges everyone to provide this information to Judge Mary Kate Harvie for the website.

d. Term Length for Directors

Judge Joe De Filippis and Judge Robert Gorin suggested that the Directors look at whether there should be a change to the length of the terms of the Directors. It was suggested that it takes time to become familiar with the workings of CAPCJ and that by the time a Director becomes acquainted with the organization, their term is at an end.

A discussion took place to see how long the member of each province or territory sits as a Director of CAPCJ. The Director's Forum was encouraged to discuss

this issue and if appropriate, to obtain the views of the membership for further discussion at the next board meeting.

e. Timing of the 2022 CAPCJ Conference Ontario

Justice Martha Zivolak asked that this item be deferred until after the Director's Forum. It is an issue for discussion at the Director's Forum.

f. Québec Reference

Judge Robert Gorin indicates that the case will be heard by the Québec Court of Appeal on November 27th to 30th, 2018. Mark Power of Power Law will be arguing our position before a full seven person panel. This is potentially a first in Québec and if not, a rare event. This underscores the importance of the case and the constitutional issues at play. The Superior Court of Justice Judges in Québec have changed their position after CAPCJ filed its materials. The section 96 judges are now indicating that they wish to limit the civil monetary jurisdiction of the provincial court to \$50,000.00. They were initially arguing that the provincial jurisdiction should be limited to \$10,000.00. Québec's provincial court judges currently have jurisdiction up to \$85,000.00. The claim is that the province has exceeded its jurisdiction with regard to the monetary amount and with regard to their power to review certain tribunal decisions.

Everyone who is taking part in the reference is an intervener, with the exception of the Attorney General of Québec, who brought the reference. Our position dovetails well with the majority of the others. It is our position that it is rather artificial to argue that the monetary jurisdictions should be frozen in time even if allowances are made for inflation and that the Court of Appeal should take a principled approach emphasizing the importance of Access to Justice.

Questions were asked and answered. Our lawyers are honouring our \$50,000.00 cap on legal fees to deal with this matter at the Court of Appeal level. Of course, this does not include the fees should the matter be heard at the level of the Supreme Court of Canada.

g. 2019 Educational Trip

Judge Joe De Filippis indicates that as everyone is aware, the 2019 Educational Trip to Southern Italy and Malta is cancelled due to lack of interest. In recent years, there has been a decline in the number of judges attending these educational trips. Going forward, the organization will have to decide if this is a worthwhile exercise. The issue is to be discussed further at the Director's Forum.

Meeting adjourns at 11:50 A.M. to allow for the Director's Forum and will resume at 3:15 P.M. for a presentation by the CBA.

9. MEETING OF DIRECTORS' FORUM takes place

10. PRESENTATION OF RAYMOND ADLINGTON, PRESIDENT OF THE CANADIAN BAR ASSOCIATION (CBA)

At 3:18 P.M. Mr. Raymond Adlington makes a presentation to the CAPCJ Board of Directors and the Executive. He is the recently appointed President of the Canadian Bar Association. He was appointed approximately 8 weeks ago. He is a Tax Lawyer in Halifax.

President Adlington outlined the longstanding history of the CBA and CAPCJ. The CBA has approximately 1000 members, of which 300 are Provincial Court Judges. The CBA has been reducing its fees. Last year, their fees were \$590.00, this year they are \$530.00 and next year they will be \$500.00 plus GST. The CBA is looking at their budget and ensuring that they can deliver service in identified core areas within their means. President Adlington stressed that the CBA is a strong advocate for judicial independence through appropriate compensation and benefits.

Access to Justice remains an important issue to the CBA. They would like to see the removal of mandatory minimum sentences and for judges to have greater discretion.

Diversity and inclusivity are priorities for the current CBA President.

President Adlington answered questions and indicated that it is likely that they will hold a Judge's Forum or Judge's Day in 2019/2020.

The meeting is adjourned at 3:45 P.M.

Wednesday, November 14th, 2018

This meeting was called to order at 9 A.M.

11. REPORT OF THE MEETING OF THE DIRECTOR'S FORUM

Judge Béatrice Clément reported on the Director's Forum to the Board. The discussions and motions adopted by the Director's Form were summarized.

The Minutes of this meeting are appended hereto as "Appendix A".

<u>MOTION</u>: MOVED by Judge Kenneth L. Oliver and SECONDED by Judge Béatrice Clément that the minutes and resolutions of the Directors' Forum Meeting be adopted. MOTION CARRIED.

12. PROVINCIAL AND TERRITORIAL DIRECTORS' AS WELL AS QUÉBEC'S PERMANENTLY APPOINTED MUNICIPAL JUDGES' REPORTS

Newfoundland and Labrador

Judge Wynne Anne Trahey filed her report electronically and added that they have dates for their tribunal, namely January 30th to February 1st 2019.

Nova Scotia

Judge Laurel Halfpenny MacQuarrie added to her report indicating that they have a lawsuit with their government. There is a judicial review of the government rejecting the tribunal recommendations. The government appeal was dismissed in October and the cross appeal had mixed results. Costs were awarded against the government of Nova Scotia.

Judge Halfpenny MacQuarrie thanks the other provinces for their support.

Prince Edward Island

Judge Jeffrey E. Lantz has filed a report. In addition, he indicates that a private members bill was introduced that would apply to judges, forcing them to have mandatory training in the areas involving sexual assaults. Sitting judges would be grandfathered. The Attorney General may introduce a similar bill. Judge Nancy Orr returned to PEI in order to attend a meeting on this issue.

New Brunswick

Judge Kenneth L. Oliver has also distributed his report to the participants prior to the meeting. He adds that there has been a subcommittee appointed to look at the security of judges. They will look at whether there are measures in place if the security of a judge is breached.

Québec

Judge Béatrice Clément has filed her report electronically prior to the meeting and adds the JRC has been suspended as there was a dissatisfaction with the whole process. The same person who was appointed at the last commission was re-appointed.

She added that the Reference will be heard at the end of November 2018 and that Québec is very thankful for the support of CAPCJ. A discussion took place with regard to whether or not there should be observers at the Reference.

<u>MOTION</u>: MOVED by Justice Joe De Filippis and SECONDED by Justice Martha Zivolak that Judge Béatrice Clément, while on vacation, attend at the Québec Court of Appeal as an observer for the relevant part of the Reference and report back to CAPCJ on her observations. MOTION CARRIED.

Ontario

Justice Martha Zivolak has also distributed her report in advance of the meeting.

The Ontario Court of Justice has received 95.27% of the salary of the Superior Court of Justices in Ontario. They also received a 50% increase in their judicial allowance.

The Unified Family Court (UFC) is expected to take three phases. Phase 1 is anticipated to take effect on April 1, 2019 and affect certain geographic locations within Ontario. It is causing a lot of stress for some judges. There is no pension portability with the Superior Court. Actuarial advice was provided to some of the judges.

Justice Zivolak indicates that there were 11 new appointments this year as opposed to 47 new appointments last year. She highlights that one third of the Bench is new.

Manitoba

Judge Sandy Chapman has distributed her report to all of the participants in advance of the meeting. She adds that the date set for the standing committee is January 17, 2019 with a decision to follow. She comments that things are moving slowly.

Judge Chapman advised that the workload suggestions were discussed with the Manitoba judges and some were implemented. It is hoped that things will improve. A Strategic Planning Session took place and further suggestions on how to lessen their work load were made.

Judge Chapman advised that as on December 7, 2018, Judge Jean McBride will be Manitoba's Director, replacing Judge Sandy Chapman.

Saskatchewan

Judge Inez J. Cardinal added to her report by indicating that they have had one new appointment since her report was filed.

Northwest Territories

Judge Garth Malakoe added to his report by indicating that they are down three judges and looking forward to having Judge Robert Gorin back.

Alberta

Judge Raymond K. Bodnarek highlights certain aspects of his report. He indicates that the UFC concerns expressed in Ontario are similar to those in Alberta. Their UFC is very much dependent on their government.

Alberta also looked at the cost effectiveness of a media response protocol and found that the cost was not justified.

British Columbia

Judge David St. Pierre added to his report by indicating that they have no plans for a UFC. They have a new Chief in British Columbia. Their new Chief was the Associate Chief previously and their expected term is 7 years.

Yukon

Judge Michael Cozens has distributed his report to the participants in advance of the meeting.

Québec permanently appointed municipal judges

Judge Martine Leclerc has filed her report but was unable to attend the meeting.

<u>**MOTION:**</u> MOVED by Judge Garth Malakoe and SECONDED by Judge Theodore K. Tax that the provincial and territorial reports be adopted. MOTION CARRIED.

10. ANNUAL CONFERENCES

a. Conference 2018 – Montréal, Québec (November 14th to 17th)

Judge Marco LaBrie indicates that approximately 625 people are attending the conference. There were approximately 487 judges and 138 spouses. Judge Béatrice Clément advises that Judge LaBrie has been working incessantly and that it has been an honour to work with him.

b. Conference 2019 – Banff, Alberta (October 2nd to 5th)

Judge Raymond K. Bodnarek presented the report for Judge Danielle Dalton who was unable to attend today's portion of the meeting. He confirmed that the Conference will take place in Banff, Alberta from October 2nd to October 5th, 2019 at the Banff Park Lodge, with the education portion of the conference being on October 3rd and 4th. They are partnering with other hotels as the Banff Park Lodge is not large enough to accommodate everyone. The theme is Effective Judging in an Evolving Landscape. The keynote speaker will be The Right Honourable Madam Justice Sheilah Martin of the Supreme Court of Canada. The committee is working on the social and the companion programs.

There will be a link to the Alberta Conference on the CAPCJ website. Members will be able to register from that link. The anticipated date of the availability of the link is November 15, 2018. It is anticipated that direct payment will be able to be made through the link from the CAPCJ website.

They have negotiated reduced flights through West Jet and discounted transportation from Calgary to Banff through a shuttle bus service. They expect to have information in the upcoming edition of the Journal.

The Saskatchewan Bench is going to the Alberta Conference 'en banc'.

c. Conference 2020 – Halifax, Nova Scotia (September 15th to the 18th)

Judge Theodore K. Tax advises that the dates for the Nova Scotia Conference have changed again to September 15th through 18th, 2020. It is anticipated that the educational program will be the Wednesday and Thursday with the Annual General Assembly on the Friday. The entire Conference is expected to be completed by noon on the Friday. It is anticipated that the board meetings will be held on the Monday and Tuesday, with the Conference opening on the Tuesday evening.

The theme for this conference is "Chart Your Course" similar to the 2010 conference which was successful. There will be a lobster dinner at the Shore Club, approximately a 30 minute drive from Halifax. Bus transportation will be provided.

The Conference will be held at the Halifax Marriott Waterfront which will be newly renovated at the time of the Conference.

d. Conference 2021 – Saskatoon, Saskatchewan (tentatively September 26th to October 2nd)

Judge Inez Cardinal advised that the tentative dates for the Saskatchewan Conference, in Saskatoon are September 26th to October 2, 2021. These dates are not yet confirmed. They have secured some funding from their government. They are looking at the Sheraton Hotel for the venue as it is walking distance from many places. There is no theme selected at this time. They are working on the education portion of the program and they are open to suggestions. The Alberta Judges have committed to attend this conference 'en banc'.

<u>MOTION:</u> MOVED by Judge Kenneth Oliver and SECONDED by Judge Béatrice Clément that the Conference reports be adopted. MOTION CARRIED.

11. QUESTIONS TO TABLE OFFICERS

There are no questions to the table officers.

12. NEW BUSINESS

Judge Mayland McKimm discussed that maybe it is time to meet with the CCCJ about the possibility of a Judicial Exchange Program. This would be something over and above the instances where there is a conflict or a language issue. Judge McKimm indicated that it could be, for example, a one month straight exchange. He suggests that it is the best way to learn the nuances and improve the way things are done. We are all here to serve the public and this may be a way for us to improve how we serve the public. CAPCJ may be able to advance this issue.

Judge Mayland McKimm is asking the incoming President of CAPCJ, Judge Marco LaBrie, to continue a dialogue with the Chief Judges of the various provinces and territories in this regard.

13. ADJOURNMENT

<u>MOTION:</u> MOVED by Judge Béatrice Clément and SECONDED by Judge Theodore K. Tax that the Meeting of the Board of Directors be adjourned. MOTION CARRIED.

The meeting is adjourned at 10:48 A.M.