



MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS

Monday, September 25th and Tuesday, September 26th, 2017
Prince Edward Island Convention Centre, Charlottetown
Campbell Room

PRESENT

Larry Anderson, Committee on the Law (Tuesday)
Jean-Pierre Archambault, Access to Justice
Ines Cardinal, Saskatchewan
Sandy Chapman, Manitoba
Peter Chisholm, Yukon
Béatrice Clément, Québec
Danielle Dalton, 3rd Vice-President
Joe De Filippis, Treasurer
Gordon Deck, Alberta
Robin Finlayson, National Education
Robert Gorin, 1st Vice-President
Wayne Gorman, Judicial Counselling
Ross Green, Journal
Christine Harapiak, Judicial Ethics
Mary Kate Harvie, Electronic Newsletter
Timothy J. Killeen, Access to Justice
Pat Koskie, Saskatchewan

Marco LaBrie, 2nd Vice-President
Jeffrey E. Lantz, Prince Edward Island
Martine Leclerc, Mun. Court of Montréal (Tuesday)
Karen Lische, Ontario
Malcolm McDonald, Manitoba
Richard MacKinnon, Nova Scotia
John Maher, Compensation
Gerri Mahoney, New Brunswick
Garth Malakoe, Northwest Territories
Lee Ann Martin, Past President
Mayland McKimm, President
Jacques A. Nadeau, Secretary
Mélanie Roy, Equality and Diversity
Wynne Anne Trahey, Newfoundland and Labrador
David Walker, Past President
Martha Zivolak, Ontario

Monday, September 25th, 2017

1. WELCOME, VERIFICATION OF QUORUM AND AGENDA

The meeting is called to order at 8:34 A.M. by the President, Judge Mayland McKimm, who assumed the Chair. He welcomes everyone to the meeting. No proxies have been filed and a quorum is met. Juge Jacques A. Nadeau has forwarded the proposed agenda electronically to the participants prior to the meeting.

MOTION: MOVED by Judge Jeffrey E. Lantz and **SECONDED** by Judge Gordon Deck 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 27th and 28th, 2016 – Vancouver, British Columbia (French version)

Juge Jacques A. Nadeau has distributed the minutes of this meeting electronically prior to the meeting.

MOTION: MOVED by Juge Jacques A. Nadeau and SECONDED by Judge Béatrice Clément that the French version of these minutes be adopted. MOTION CARRIED.

Minutes of the Board of Directors' Meeting – April 22nd and 23rd, 2017 – Montréal, Québec (English Version)

Juge Nadeau has also distributed the minutes of this meeting electronically prior to the meeting.

MOTION: MOVED by Juge Jacques A. Nadeau and SECONDED by Judge Malcolm McDonald that the English version of these minutes be adopted. MOTION CARRIED.

3. PRESIDENT'S REPORT

Judge Mayland McKimm has filed his report electronically in advance of the meeting.

He adds that he has had a busy year and has been impressed by the quality of the people involved with CAPCJ.

4. SECRETARY'S REPORT

Juge Jacques A. Nadeau has distributed his report electronically prior to the meeting.

This is his last report to the Board as his term as Secretary will come to an end at the Annual General Assembly on September 29th.

Juge Nadeau emphasizes the importance of speaking French during these meetings as CAPCJ is a bilingual organization.

He reports that the French version of the CAPCJ Handbook is now uploaded and available on the CAPCJ website.

Juge Nadeau also confirms the dates for the Executive teleconferences, as well as for the Executive and Directors' teleconferences for 2017-2018. The 2018 Spring Board Meeting will take place at the Delta Hotel in Montreal from April 20th to the 22nd.

The constitutional amendments which were ratified in Vancouver in 2016 have now been incorporated into the text of the CAPCJ Constitution and its updated electronic version can now be consulted on the CAPCJ website.

Juge Nadeau concludes his report by thanking everyone for making his experience as Secretary an enriching and rewarding one, and he extends his wishes of best success to his successor, Justice Karen Lische of Ontario.

5. TREASURER'S REPORT

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

In April 2017, the Board of Directors approved the budget for the current fiscal period ending March 31st, 2018.

Although CAPCJ's financial situation remains solid, the organization operates in an environment in which its income barely covers its expenses. For more than a decade, revenues have been fixed while the cost of most expenses has increased. As a result, the Board has resolved to seek an increase in membership dues.

MOTION: MOVED by Judge Peter Chisholm and SECONDED by Judge Martha Zivolak 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**

Judge Robin Finlayson has distributed his report electronically prior to the meeting on behalf of the National Education Committee.

He reports that a major issue arose after the Spring Board Meeting. Indeed, because of the new appointments resulting from the *Jordan* ruling, the need has arisen to double up the New Judges' Education and New Judges' Skills Programs in 2018.

As a result, with the cooperation of the CAPCJ Executive, back to back NJE programs will be given in April 2018 in Bromont whereas the New Judges Skills' Program will take place at Niagara on the Lake in June and November 2018.

- **National Judicial Institute (NJI)**

Judge Lee Ann Martin has filed her report electronically in advance of the meeting.

She does not have much to add to the report she gave at the 2017 Spring Board Meeting.

Changes will be coming at NJI due to the upcoming retirement of Chief Justice Beverley McLachlin.

b. Compensation Committee

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

He mentions that the Compensation Committee met on September 24th and first submits two items for consideration by the Board further to two motions adopted by the Committee.

The first one relates to seeking meetings with the federal and provincial Attorney Generals to discuss the judicial compensation process whereas the second one is to have a member of the Compensation Committee attend the New Judges' Education Program to explain the importance of judicial independence as it relates to judicial compensation.

With respect to the request for financial assistance made by Nova Scotia (see Action item 7 k.), Judge Maher notes that the litigation not only deals with the government rejection of the Compensation Commission ruling but also challenges the statutory amendment striking out the binding nature of the Commission's findings.

Given the importance of these issues, there is potential for this case to make its way up to the Supreme Court and have the *Bodner* ruling revisited.

Judge Maher adds that the Nova Scotia judges have paid \$2,800 in membership dues this year and that when Nova Scotia last hosted the CAPCJ Annual Conference in 2010, a \$ 25,000 surplus was subsequently remitted to CAPCJ.

The Compensation Committee thus recommends that a \$25,000 loan without terms be made to the Nova Scotia Provincial Judges' Association.

The Committee has also prepared an outline of guidelines to be followed in examining grant or loan requests which it wishes to submit to the Board.

Finally, as part of the Committee's succession plan, Judge Maher requests the appointment of a Co-Chair or Vice-Chair for the Compensation Committee, as was the case a number of years ago.

He specifies that the candidate for this position should have a working knowledge of both official languages and be a current or past member of the Compensation Committee with at least three (3) years of experience.

Judge Mayland McKimm points out that challenges are coming quick and fast from various jurisdictions such as Newfoundland and Québec which raises the question as to how to marshal our resources and when should we intervene.

Judge Lee Ann Martin provides the example of the tight schedule CAPCJ was under to accept the funding of additional New Judges' Education and New Judges Skills' Programs in 2018.

Judge Robin Finlayson points out that reaching out to meet the Attorney Generals could be a launching pad for them which would not further CAPCJ's interests.

The following issues are deferred for consideration by the Directors' Forum:

- Attendance of a member of the Compensation Committee at the New Judges' Education Program in Bromont, Québec
- Opportunity for CAPCJ representatives to meet with the federal, provincial and territorial Attorney Generals
- \$25,000 loan to the Nova Scotia Judges' Association
- Guidelines for funding applications submitted by the Compensation Committee.

c. Judicial Ethics Committee

Judge Christine Harapiak has filed her report electronically prior to the meeting. She refers to a half day Ethics Workshop kit which has been developed by the Committee for testing over the next year.

She also mentions the report filed by the Ethics Advisory Council, chaired by Judge Barbara Tomkins. She mentions the essential work done by the Council members with a turnaround time of a week to ten (10) days.

d. Judicial Independence Committee

Judge Derek Redman has announced his resignation as Chair of this Committee and an Expression of Interest should go out to fill his position.

e. Committee on the Law (the *Report* of this Committee was given by Judge Larry Anderson on Tuesday, September 26th, 2017)

f. Equality and Diversity Committee

Juge Mélanie Roy has filed her report electronically in advance of the meeting. She thanks the Co-Editors of the *Provincial Judges' Journal* for the quality of the last edition of the *Journal* which dealt with equality and diversity.

She has received a letter from Judge Jean Whalen who had an issue with respect to the lack of native contributors to this edition and will meet with her to discuss this issue.

Justice Anne Derrick was appointed to the Court of Appeal which is a great loss for the Committee.

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 confidentiality of the program and the satisfaction level is excellent.

h. Communications Committee

➤ ***Provincial Judges' Journal***

Judge Ross Green has filed his report electronically prior to the meeting.

Over the past year, two editions of the *Journal* have been produced. The winter 2016/2017 edition focused on the educational program of the 2016 CAPCJ Conference in Vancouver, the theme being *Judging in the Extreme*. The summer 2017 edition dealt with the topic of equality and diversity in our courts.

Part of the annual federal grant of \$100,000 is applied to translation services for the *Journal*.

The upcoming edition of the *Journal* will focus on the education session of the Charlottetown Conference, *150 Years and Counting: The Changes Facing our Courts*.

Judge Green thank the members of the CAPCJ Executive Council for their ongoing support, with particular mention of Judge Bob Gorin who supervises the *Journal*, as well as all judges who contribute by writing articles for the *Journal* and his Co-Editor, Juge Brigitte Volpé whose mandate has just concluded.

In closing, Judge Green emphasizes the importance of keeping track of the number of members and thus asks the Directors to notify him of any significant changes to their respective Court complements.

➤ **Electronic Newsletter**

Judge Mary Kate Harvie has just returned from a personal leave and has established her goal to have the Newsletter come out a little more frequently. It should also be staggered so as not to come out at the same time as the *Provincial Judges' Journal*.

Contrary to the *Journal*, its focus is on short articles, human interest stories, changes in court complements and updates on developments in the various jurisdictions.

➤ **Website Manager**

Judge Robert Gorin reports that although Judge Gary Cohen who cannot attend the meeting has no immediate plans to retire, he would like a succession plan to be put in place.

An Expression of Interest has already been sent out but did not result in any candidates coming forward. The Directors are invited to identify and solicit suitable candidacies in their respective jurisdictions.

i. Access to Justice Committee

Judge Tim Killeen reminds everyone that the Committee's report was filed electronically in advance of the meeting.

Two reports were distributed to everyone last night, an *Inventory of Access to Justice Programs for First Nations* in each province and territory (83 pages) and a *Report on Self-Represented litigants and the Use of Gladue Reports* (72 pages).

He thanks all of the members of the Committee and adds that Juge Jean-Pierre Archambault should be commended for his work on these projects.

The Committee currently has members from each province and territory.

j. History Project

In the absence of Juge Céline Gervais, Juge Béatrice Clément confirms that Juge Gervais is working on producing a proper French version of the History Project, while also developing a comprehensive index in both official languages.

MOTION: MOVED by Judge Garth Malakoe and **SECONDED** by Judge Malcolm McDonald that the Committee reports be adopted. **MOTION CARRIED.**

7. ACTION ITEMS

a. 2017 CAPCJ Justice Award

Judge Robert Gorin informs everyone that the recipient of this Award will be Judge Karen Ruddy of the Yukon for her involvement in developing therapeutic courts in this jurisdiction, namely the Domestic Violence Treatment Options Court and the Wellness Court.

She is currently serving her second term as Chief Judge of the Yukon and has also been involved with CAPCJ on several committees. She was also the editor of the Electronic Newsletter for several years.

b. 2017 CAPCJ Medal

Judge Mayland McKimm confirms that Judge John Maher will be the recipient of this Medal for his stalwart contribution to the Compensation Committee where he has been a driving force to keep compensation at the forefront of judicial independence.

c. Updates to and translation of Handbook

Judge Jacques A. Nadeau is happy to report that he has completed the translation of the Handbook and that the French version has now been uploaded on the website.

He has also integrated a number of updates to make both the English and the French versions current.

d. Banking resolution

With Judge Jacques A. Nadeau's term as Secretary coming to an end, Justice Joe De Filippis proposes that Judge Nadeau's successor, Justice Karen Lische, be given signing authority for all banking documents as the second officer authorized apart from himself.

MOTION: MOVED by Justice Joe De Filippis and SECONDED by Judge Jeffrey Lantz that Justice Karen Lische as acting Secretary be given signing authority for all banking documents. MOTION CARRIED.

e. Expressions of Interest

- **Chair of the Committee on the Law**
- **Electronic Communications Committee**

Judge Jacques A. Nadeau reports that there were no applications received after these two Expressions of Interest went out in May. Judge Larry Anderson of the Committee on the Law has accepted to stay on until his successor is found but another Expression of Interest for the Electronic Communications Committee will go out after the Conference. Expressions of Interest for the Co-Editor of the Journal and Chair of the Judicial Independence Committee will also be sent out.

Juge Nadeau reiterate the importance for the Directors of identifying candidates to fill such positions.

Justice Martha Zivolak states that having the list of the members on each committee posted on the website would greatly facilitate the work of the Directors in this regard.

Judge Lee Ann Martin points out that the National Education Committee (NEC) used to have Judge Rita Bowry as Vice-Chair Family Law and Judge Jeffrey Edwards as Vice-Chair Civil Law but that the new Chair of the NEC, Judge Bowry, and the new Vice-Chair, Justice Katherine McLeod, have been tasked to revise the current committee structure with the help of Judge Robin Finlayson. This will be discussed at the meeting of the NEC on September 26th.

Judge Christine Harapiak asks whether it has been considered to hire someone for the Electronic Communications Committee. Judge Robert Gorin confirms that CAPCJ already retains the services of an outside consultant, Olivier Jaar, but tries to minimize outsourcing.

Justice Martha Zivolak suggests that something more substantial should be done on the home page of CAPCJ's website.

f. Term limits for committee members

Judge Mayland McKimm has circulated memorandum proposing fixed renewable terms of three (3) years for committee members, with committee chairs assuming the responsibility for maintaining a running record of their committees' membership and communicating with the directors regarding the need for new appointments when required.

Justice Martha Zivolak reminds everyone that provincial or territorial input is required for membership on committees that affect provincial interests.

Judge Robert Gorin confirms that he will arrange for a link to be put on the website to access the lists of the names of the members of the various committees, the committee chairs being responsible to keep these lists current.

Judge McKimm's proposal is deferred for consideration by the Directors' Forum.

g. Indigenous Peoples and the Courts Committee

Judge Robert Gorin has circulated a proposal for such a committee in advance of the meeting.

He reminds everyone that indigenous people are grossly overrepresented in our courts and that this crisis has truly become a national issue. He thus thinks that steps should be made to get such a committee up and running as quickly as possible.

The CAPCJ Constitution provides for permanent and constitutional committees, standing committees as well as special committees. In the matter at hand, he proposes the latter type of committee which could ultimately become a standing committee.

Judge Gorin believes that the best fit is for the Chair of the Equality and Diversity Committee, Juge Mélanie Roy, to chair this special committee whose members would not necessarily have to come from the Equality and Diversity Committee. As a matter of fact, this special committee would benefit from being populated with as many indigenous judges as possible.

Judge Mayland McKimm commends Judge Malcolm McDonald for bringing this issue to the Board's attention at the 2017 Spring Board Meeting.

Judge Patrick Koskie expresses the view that this should be a permanent committee.

This matter is deferred for consideration by the Directors' Forum.

h. Membership fee increase

Justice Joe De Filippis reminds everyone that the goal is to adopt a motion for a fee increase which would become effective on April 1st, 2019, with the fee increasing from \$200 to \$300 for full-time sitting judges and from \$50 to \$75 for retired judges.

Alberta, British Columbia, the Yukon, the Northwest Territories, Nova Scotia, Prince Edward Island and Saskatchewan have already approved the increase whereas Manitoba, New Brunswick, Newfoundland and Labrador, Ontario and Québec are in the process of making the required consultations.

i. Membership dues for part-time and retired judges

Justice Joe De Filippis explains the background to this issue which has arisen further to the Manitoba Judges' Association \$4,500 claim for overpayment of membership fees. Essentially, some jurisdictions have created additional categories of judges (such as part-time, per diem and supernumerary) which has created some confusion as to whether such judges should be considered as retired or active judges.

Justice De Filippis suggests that the following options have to be considered:

- Charge everyone the full fee.
- Charge full-time judges the full fee and everyone else \$50.
- The CAPCJ fee would be set in accordance with each respective association's decision with respect to the fees paid by its categories of judges.

He submits two issues for consideration by the Directors' Forum:

1. What orientation do the Directors want to favour for categories other than full-time or retired judges?
2. How do the Directors suggest Manitoba's request for a refund of dues be handled?

A discussion ensues as to the practices in the different jurisdictions and the two issues are deferred for consideration by the Directors' Forum.

j. Québec Superior Court judges' constitutional challenge

Juge Béatrice Clément confirms that an application for declaratory relief was filed on July 19th before Québec Superior Court. At the end of August, Québec's Justice Minister referred two questions to the Court of Appeal which Juge Clément has forwarded to the participants. They concern the Civil Division of the Cour du Québec's jurisdiction over claims up to \$85,000 as well as its judicial review powers provided for under a number of provincial statutes.

The Court of Appeal will publish a notice inviting potential intervenors to express their intentions in this regard.

The Cour du Québec has indicated that it will not seek intervenor status but the Québec Judicial Council has the intention of doing so as one of its roles is to make recommendations to the Minister of Justice regarding requests dealing with the administration of justice.

The Conférence des juges de la Cour du Québec is requesting that CAPCJ consider intervening given the potential impact of this reference on the judges of the Civil Division of the Cour du Québec as well as on judges in other provinces and territories.

In this regard, Judge Robert Gorin points out that six other jurisdictions hear civil claims over the \$10,000 limit invoked by Québec's Superior Court judges, the Yukon (\$25,000), British Columbia (\$35,000), Alberta (\$50,000) the Northwest Territories (\$35,000), Newfoundland (\$25,000) and Saskatchewan (\$30,000 soon to be increased to \$50,000).

Judge Gorin also points out that the Ontario judges also exercise an appeal jurisdiction over justice of the peace rulings.

Judge Lee Ann Martin refers to the importance of having Professor Sébastien Grammond involved on behalf of CAPCJ given that he represented the Association in the Nadon and Mainville References before the Supreme Court of Canada and offers a national perspective on this challenge. Juge Jacques A. Nadeau reminds all participants that the discussion prepared by Professor Grammond with respect to the questions raised which has been forwarded to the Directors must remain confidential for the time being.

Justice Martha Zivolak raises the issue of the potential cost of intervening.

Justice Joe De Filippis adds that the questions raised by this Reference will likely have to be dealt with by the Supreme Court.

Judge Malcolm McDonald asks whether the Québec judges are seeking financial support or asking CAPCJ to intervene, to which Juge Clément replies the latter.

Judge Gorin also emphasizes that the questions raised also make this an access to justice issue.

Judge Gorgon Deck asks what compelled the Québec Superior Court judges to bring these issues to the fore. Juge Nadeau replies that in the smaller and more remote judicial districts, the Superior Court judges feel that their workload has been impacted. Justice De Filippis mentions that the Superior Court judges view the Cour du Québec as a real threat.

Judge David Walker asks whether the Québec government has stated its position and Juge Clément confirms that it will defend the Cour du Québec's existing jurisdiction.

Judge Walker also wonders whether the attorney of the Conférence des juges could also represent CAPCJ.

k. Request for grant from Nova Scotia

In a letter dated June 27th, 2017, on behalf of the Nova Scotia Provincial Judges' Association, Judge Jean Dewolfe has asked if CAPCJ could consider a grant to the NSPJA of \$50,000 to assist them with their legal fees in their current litigation with the Province of Nova Scotia over the government's rejection of the Compensation Tribunal's salary recommendations for 2017-2020 as well as regarding the constitutionality of the amendments to the Provincial Court Act removing the binding nature of the Compensation Tribunal's recommendations.

As mentioned in the Compensation Committee report, a recommendation that a \$25,000 loan without terms be made to the Nova Scotia Provincial Judges' Association has been deferred for consideration by the Directors' Forum.

l. Model Code of Professional Conduct

Judge Mayland McKimm confirms that CAPCJ did not respond in timely fashion to the Federation of Law Societies' proposal that retired judges not appear before any court of justice.

He has referred this matter to the Judicial Ethics Committee with a view to providing feedback prior to the Board Meeting of the Federation of Law Societies in December.

If such a proposal is eventually adopted by the Federation, it would be persuasive but not binding.

Justice Joe de Filippis informs the participants that the Ontario Law Society has already acted and has amended its rules to bar any former judge from appearing before the superior courts without the approval of the Law Society and with a minimum cooling off period of one year.

In answer to a question from Judge Malcolm McDonald, Judge McKimm confirms that the Canadian Council of Chief Judges does not agree with the proposed ban and is in favor of a cooling off period.

m. Federal appointments update

Judge Mayland McKimm refers to the April meeting with federal Justice Minister Jody Wilson-Raybould who confirmed that she is receiving a lot of applications from provincial court judges despite the new requirements of the application process.

The Minister's Judicial Affairs Officer, Katie Black, has indicated that the process may soon be reviewed.

Justice Martha Zivolak suggests that a reply should be sent to the Justice Minister.

Judge David Walker recently had lunch with Judge Peter Chisholm and Chief Justice Beverley McLachlin who was as surprised by the changes to the application process as CAPCJ was. Judge Walker believes that this matter is worth pursuing.

Judge McKimm concludes by stating the he will follow up with a letter to the federal Justice Minister.

n. Pension Splitting

Judge David Walker provides the history on this issue which has been ongoing for several years.

Essentially, CAPCJ has requested that payments form the supplemental component of provincial judges' pension arrangements be eligible for pension income splitting under the *Income Tax Act* as is the case for federally appointed judges.

On July 4th, 2017 federal Justice Minister Jody Wilson-Raybould sent a letter to Judge Mayland McKimm to inform him that after discussing this request with the Minister of Finance, the federal government is not prepared to accommodate CAPCJ.

Judge Walker concludes that this reply brings the matter to a close but expresses the hope that the Finance Minister's recently announced tax fairness incentive will bring about changes in this regard.

o. Situation in Poland

Judge Robert Gorin provides an update on the evolution of the situation pitting the right wing populist government against the judiciary in this country.

The removal of all Supreme Court Justices was vetoed by the President but certain measures have been passed, such as removing presiding judges at leisure and different retirement ages for male and female judges.

The European Union has moved to impose sanctions as such measures are in contradiction with its policies and values.

Judge Garth Malakoe mentions the need to adopt judicial independence guidelines to determine when CAPCJ should react in such situations.

This matter is deferred for consideration by the Directors' Forum.

p. 2019 Educational Trip

Justice Joe De Filippis refers to the successful 2017 trip to Edinburgh, The Hague and Paris while also mentioning prior trips to Japan, Vietnam, China and India.

He invites anyone who has thoughts as to a destination for 2019 to contact him.

8. PRESENTATION OF KERRY SIMMONS, PRESIDENT OF THE CANADIAN BAR ASSOCIATION (CBA)

Mrs. Simmons is the past president of the British Columbia branch of the CBA.

The CBA Executive met with Judges Mayland McKimm and Robert Gorin in Montreal in August to discuss areas in which CAPCJ and the CBA can partner, such as diversity on the bench.

The CBA has undergone a thorough governance review over the past year, reducing its Board of Directors from 24 to 14 members. There is an open call for nominations with representation from each province and territory with different practices, skill sets and ethnic backgrounds which are more reflective of the profession.

The CBA has advocated on several issues such as the impact of the recent tax fairness incentives on private corporations and changes to impaired driving legislation. It has also intervened on three occasions before the Supreme Court.

Mrs. Simmons is aware of the judicial independence issues raised by the mandatory sexual assault training legislation introduced in Parliament.

The CBA is planning a number of upcoming conferences dealing with access to information and privacy issues, criminal law as well as administrative and employment law.

A new and lower membership fee will be determined in the coming months.

Judge Mayland McKimm asks what is going to happen with Judges' Day. Mrs. Simmons replies that the CBA does not yet have a firm plan in this regard but wants to do what is best for judges who are part of the Judges' Forum.

The CBA has agreed to fund an update of the Judicial Independence working materials which were produced around the year 2000 and Judge Theodore Tax, the incoming 3rd Vice-President of CAPCJ, will lead this initiative.

The meeting is adjourned at 12:20 P.M.

9. MEETING OF DIRECTORS' FORUM – 1 P.M. to 3:35 P.M.

Tuesday, September 26th, 2017

6. COMMITTEE REPORTS (continuation)

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

e. Committee on the Law

Judge Larry Anderson filed his report electronically prior to the meeting.

There were two (2) vacant positions on the Committee, one of which has just been filled by Juge Julie Beauchesne from Québec.

Judge Anderson adds that if term limits for committee members are approved, this will have an impact on turnover.

Three Bills have been proclaimed since the 2016 Fall Annual Report:

- 1) Bill C-16 was proclaimed on June 19th, 2017. It amends the *Human Rights Act* to add sexual identity and gender expression as prohibited grounds of discrimination and it amends the *Criminal Code* to provide for an aggravated sentence when such discrimination motivates a crime.
- 2) Bill C-37 is not strictly a crime bill but is primarily a response to the growing crisis surrounding synthetic drugs.
- 3) Bill S-201 was proclaimed on May 4th, 2017 and again is not strictly a crime bill but amends the *Human Rights Act* to prohibit discrimination on the ground of genetic characteristics.

The year to come will be busy with certain bills which will be fast-tracked such as Bill C-337 which proposes a legislative requirement that judges receive special training regarding sexual assault. Judge Anderson also mentions Bill C-45, the *Cannabis Bill* and Bill C-51, an omnibus Bill containing an eclectic selection of amendments.

Judge Anderson also attended the Uniform Law Conference which was held in Regina from August 13th to 17th, during which the government identified five areas in which significant legislative amendments will be proposed, namely mandatory minimum penalties, bail, preliminary inquiries, offences against the administration of justice and the re-classification of offences.

He concludes by noting that all four resolutions put forward by CAPCJ were passed although one was amended after debate.

MOTION: MOVED by Justice Martha Zivolak and SECONDED by Judge Malcolm McDonald that the Report of the Committee on the Law be adopted.
MOTION CARRIED.

10. REPORT OF MEETING OF DIRECTORS' FORUM

Judge Jeffery Lantz summarizes the discussions and motions adopted by the Directors' Forum.

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

MOTION: MOVED by Judge Jeffrey Lantz and SECONDED by Judge Pat Koskie that the minutes and resolutions of the Directors' Forum Meeting be adopted. MOTION CARRIED.

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

Prince Edward Island

Judge Jeffrey Lantz has nothing to add to the report which he has filed electronically in advance of the meeting.

New Brunswick

Judge Geri Maloney has also distributed her report to the participants prior to the meeting.

With the recent appointments of five female judges to the bench, New Brunswick now has equal representation of both genders on its 24 member bench.

Nova Scotia

Judge Richard MacKinnon confirms that Judge Jean Dewolfe's report has been filed electronically.

On behalf of the Nova Scotia Provincial Judges' Association, he expresses thanks to Judge John Maher, the other provincial and territorial directors as well as to CAPCJ for their support of the Nova Scotia judges in their ongoing litigation with the government of the province.

Newfoundland and Labrador

Judge Wynne Anne Trahey indicates that Judge Jackie Brazil has distributed her report to all of the participants prior to the meeting.

There have been 2 recent appointments, Judges Keri Ann Pike and Robin Fowler. Judge Pike is of Mi'kmaq First Nation heritage.

Québec

Judge Béatrice Clément has filed her report electronically prior to the meeting and has nothing to add.

Ontario

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

The Ontario Court of Justice has a complement of 299 full time judges which reflects a recent increase in complement of 15 judges.

There have been 36 recent appointments and one third of the members of the Court has changed in recent years which will bring a number of new skill sets. The pace of new appointments should slow down over the next few years.

No hearing dates have yet been set for the quadrennial Compensation Commission covering the period from April 1st, 2014 to March 31st, 2018 and the outstanding pension litigation has not yet been resolved. In the interim, the judges of the Court are receiving a yearly increase based on the industrial aggregate.

There have been interesting initiatives put forward by the Chief Justice's Office to alleviate Jordan pressures, such as two bail projects and limiting time for unreasonable delay motions.

The status of the proposed Unified Family Court still remains uncertain.

Northwest Territories

Judge Garth Malakoe has filed his report electronically prior to the meeting and has nothing to add.

Manitoba

Judge Malcom McDonald has distributed his report to all of the participants in advance of the meeting.

The Manitoba judges are in the middle of their current judicial compensation process.

The provincial government is intent on freezing the salaries of civil servants as well as of members of the judiciary. There is no mandatory retirement age in Manitoba and the government is considering adopting such a measure which should be referred to the Judicial Compensation Committee.

The Provincial Judges Association is also working on a *Memorandum of Understanding* with the Chief Judge.

Saskatchewan

Judge Pat Koskie has filed his report electronically prior to the meeting.

The next judicial compensation process will begin in November.

There is considerable turnover anticipated due to an aging bench, with a third of the 50 member bench of the provincial court to be replaced over the next 3 years.

Yukon

Judge Peter Chisholm has distributed his report to the participants in advance of the meeting.

The 2016 Judicial Compensation Commission hearings are still outstanding. A new Commissioner was appointed in May as the former was unable to fulfill his duties. A proposal was received from the government during the week of September 18th.

Alberta

Judge Gordon Deck has filed his report electronically prior to the meeting.

There are 4.5 vacancies. The Alberta Judges' Association is anxious to begin the next Judicial Compensation process but the government has not yet appointed a member to the Commission.

The Judges' Association is in the process of completing a first draft of a *Memorandum of Understanding* with the Chief Judge to be presented to the latter in the near future for discussion.

British Columbia

In the absence of Judge Ken Skilnick who has distributed his report in advance of the meeting, Judge Mayland McKimm confirms that both the 2013 and 2016 Judicial Compensation Commissions are before the British Columbia Legislature and news is expected by mid-October. With a coalition government having been formed, the B.C. Judges' Association remains guardedly optimistic.

Québec permanently appointed municipal judges

Juge Martine Leclerc is replacing Juge Stéphane Brière and reports that there are currently 31 full-time judges in Montréal with 4 appointments expected by January.

There are also five 5 full-time judges in Québec City and 4 in Laval.

MOTION: MOVED by Juge Béatrice Clément and SECONDED by Judge Peter Chisholm that the provincial and territorial reports be adopted. MOTION CARRIED.

12. ANNUAL CONFERENCES

a. Conference 2017 – Charlottetown, Prince Edward Island

Judge Gorin anticipates that there will be between 170 and 200 participants.

There will likely be a surplus once everything has been accounted for.

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

Juge Marco LaBrie indicates that this will be a joint Cour du Québec – CAPCJ Conference that will take place the week of November 12th. The meeting of the Board of Directors will take place on Monday, November 12th and Tuesday, November 13th. The Banquet will be on Thursday, November 15th and the Annual General Assembly on Friday November 16th.

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

Judge Gordon Deck confirms that the Conference will be held at the Banff Park Lodge and that the organizers are currently working on a budget.

The question of the theme of the Conference will be addressed in the next few months.

d. Conference 2020 – Halifax, Nova Scotia (September 23rd to the 26th)

Judge Richard MacKinnon reports that Judge Rhonda van der Hock has been appointed as Conference Chair. Judge Barbara Beach has been laying the groundwork over the past few months.

Business meetings are expected to take place September 21st and 22nd with the Banquet scheduled for September 25th. These dates remain to be confirmed.

MOTION: MOVED by Justice Martha Zivolak and SECONDED by Judge Richard MacKinnon that the Conference reports be adopted. MOTION CARRIED.

13. QUESTIONS TO TABLE OFFICERS

There are no questions to the table officers.

14. NEW BUSINESS

Justice Martha Zivolak confirms that Ontario is prepared to make the commitment to organize the 2022 Conference.

The point is raised that this would have to be subject to confirmation from the Saskatchewan Provincial Judges' Association that the 2021 Conference will take place in Saskatchewan. Judge Pat Koskie indicates that this will indeed be the case.

MOTION: MOVED by Judge Mayland McKimm and SECONDED by Judge Malcolm McDonald that the 2021 Conference be held in Saskatchewan and that the 2022 Conference be held in Ontario. MOTION CARRIED.

15. ADJOURNMENT

MOTION: MOVED by Judge Gordon Deck and SECONDED by Judge Pat Koskie that the Meeting of the Board of Directors be adjourned. MOTION CARRIED.

The meeting is adjourned at 10:15 A.M.

APPENDIX A

MINUTES OF THE CAPCJ DIRECTORS' FORUM MEETING

Monday, September 25th, 2017

Prince Edward Island Convention Centre, Charlottetown
Campbell Room

PRESENCE:

- Inez Cardinal, Saskatchewan (observer)
- Sandra Chapman, Manitoba (observer)
- Peter Chisholm, Yukon
- Béatrice Clément, Québec
- Gordon Deck, Alberta
- Patrick Koskie, Saskatchewan
- Jeffrey Lantz, Prince Edward Island
- Richard MacKinnon, Nova Scotia (acting on behalf of Jean de Wolfe)
- Geri Mahoney, New Brunswick
- Garth Malakoe, North West Territories
- Malcolm McDonald, Manitoba
- Wynne Anne Trahey, Newfoundland and Labrador
- Martha Zivolak, Ontario

1. WELCOME, VERIFICATION OF QUORUM AND AGENDA

The meeting is called to order at 1 P.M. by Judge Jeffrey Lantz, who assumes the Chair. He welcomes all to the meeting. Quorum is declared. Juge Béatrice Clément acts as secretary for the meeting.

The points on the agenda are as follows:

1. Motion by the Compensation Committee to have one of their members attend the New Judges' Education Program in Bromont (Québec) to discuss the importance of judicial independence and its link to the judicial compensation process for judges.
2. Motion by the Compensation Committee that the CAPCJ Executive engage in a strategy to raise awareness of the judicial compensation process by providing an opportunity for CAPCJ representatives to address the federal/provincial/territorial Attorneys General on the judicial compensation process.
3. Motion by the Compensation Committee that CAPCJ grant the Nova Scotia Judges' Association a forgivable loan of \$25,000.
4. Guidelines for funding applications submitted by the Compensation Committee.
5. Approval of terms of committee member mandates (memorandum of Judge Mayland McKimm).

6. Creation of a special committee on Indigenous Peoples and the Courts, under the auspices of the Equality and Diversity Committee.
 7. Determine whether to create other categories of judges other than full-time or retired with respect to CAPCJ dues.
 8. Manitoba's request for reimbursement of CAPCJ dues (\$4,500).
 9. CAPCJ intervention in the Québec constitutional challenge.
 10. Proposed changes to the Federation of Law Societies Professional Responsibility Code of Conduct.
 11. CAPCJ intervention in regards to the situation in Poland with respect to the judiciary.
 12. Website enhancement.
2. **Motion by the Compensation Committee to have one of their members attend the New Judges' Education Program in Bromont (Québec) to discuss the importance of judicial independence and its link to the judicial compensation process for judges.**

Justice Martha Zivolak questions if there is sufficient time remaining in the program for such an intervention, considering the dense nature of the new judges' training. CAPCJ's President also addresses the issue of judicial independence in his opening presentation.

After discussion, there is a consensus that new judges should be more fully informed of this fundamental issue and that it is necessary to incorporate such a discussion and/or enhance CAPCJ's opening presentation in this regard.

MOTION: MOVED by Judge Garth Malakoe and **SECONDED** by Judge Patrick Koskie to direct the Executive to ensure that the issue of judicial independence as it relates to compensation is presented to the new judges within the education program offered in Bromont. **MOTION CARRIED.**

3. **Motion by the Compensation Committee that the CAPCJ Executive engage in a strategy to raise awareness of the judicial compensation process by providing an opportunity for CAPCJ representative(s) to address the federal/provincial/territorial Attorneys General on the judicial compensation process.**

Remarks from those judges who have had the opportunity to participate in AG meetings and their concerns about the delicate nature of such an intervention as well as the possible takeaway and even negative repercussions.

It is reflected that there is also a lack of political will to engage in such discussions.

Judge Peter Chisholm questions whether the power lies with the Attorney Generals or the Treasury Boards.

CONSENSUS that although the Directors unanimously recognize the benefit of such proactive behaviour, the suggested consultations are not appropriate.

4. Motion by the Compensation Committee that CAPCJ grant the Nova Scotia Judges' Association a forgivable loan of \$25,000.

The members unanimously agree that the nature of the ongoing legal challenges are significant in regards to the remuneration process and that it is necessary to support the Nova Scotia Judges' Association.

Discussions ensue as to the need to ensure a legal framework. It is reflected that such was not required in the past.

MOTION: MOVED by Judge Jeffrey Lantz and **SECONDED** by Judge Malcolm McDonald that CAPCJ consent a non-interest loan to the Nova Scotia Judges' Association in the amount of \$25,000. **MOTION CARRIED.**

5. Guidelines for funding applications submitted by the Compensation Committee

Judge Jeffrey Lantz summarizes the guidelines for funding applications prepared by the Compensation Committee. Discussions ensue as to what prompted the need for such guidelines with a review of the history of previous requests for funding.

Most Directors don't have access to the guidelines and therefore haven't been able to fully review them.

CONSENSUS: to defer this issue to the next Executive and Directors teleconference in October, asking that this subject be added to the agenda and that the Directors be sent a copy of the guidelines for further review.

6. Approval of the terms of committee member mandates (memorandum of Judge Mayland McKimm)

The Directors unanimously recognize that any vibrant and viable organization requires change.

Discussion of the issue of membership on the committees other than education and compensation. There is a recognition of the challenges to ensure representation of all provinces and territories while also maintaining an engaged and active membership for all committees.

Justice Martha Zivolak recommends that the CAPCJ website permit access to the names of the members of the various committees and their originating provinces and territories. Currently, only the names of the chairs and co-chairs are available through the website. Judge Béatrice Clement suggests that this would also provide useful information for recruitment purposes.

Judge Garth Malakoe refers to the Constitution and the Handbook, which details the constitution of each committee.

MOTION: MOVED by Justice Martha Zivolak and SECONDED by Judge Gordon Deck to approve the terms of the memorandum submitted by President Mayland McKimm, with the additional request that each chair must keep a current membership list which will be made available through the CAPCJ website. MOTION CARRIED.

7. Creation of an Indigenous Peoples and the Courts Committee

Judge Robert Gorin submits the need for an Indigenous Peoples and the Courts Committee within CAPCJ, as outlined in his written proposal. This would be a special committee under the auspices of the Equality and Diversity Committee. The objective would be that it eventually become a standing committee.

There is a consensus as to the soundness of this proposal, which also reflects the objectives of the Association.

Juge Béatrice Clément informs the Directors that the president of the Equality and Diversity Committee, Juge Mélanie Roy, considers that a Co-Chair would be necessary with representation from each province and territory. She asks that the Directors suggest representatives from their respective jurisdictions.

MOTION: MOVED by Judge Patrick Koskie and SECONDED by Judge Malcolm McDonald to approve the creation of a special Indigenous Peoples and the Courts Committee, under the auspices of the Equality and Diversity Committee, as detailed under Judge Robert Gorin's proposal, and that the CAPCJ Handbook be modified to reflect the new committee structure. MOTION CARRIED.

8. Determine whether to create other categories of judges other than full-time or retired with respect to CAPCJ dues

Justice Joseph De Fillipis asks that the Directors review the current categories for payment of CAPCJ dues. Presently, only two categories exist, namely full-time judges (\$200) and retired judges (\$50). This has led to incongruities as different categories are used by each association in relation to its own fee structure, more particularly as applies to *per diem*/retired judges.

Justice De Fillipis suggests that the Directors consider three options, namely:

- Charge everyone the full fee.
- Charge only full-time judges the full fee and everyone else \$50.
- The CAPCJ fee would be set in accordance with each respective association's decision with respect to the fees paid by its categories of judges.

Each Director indicates the situation in their jurisdiction as applies to *per diem* and retired judges. Some provinces consider that once a judge is retired, he pays the reduced CAPCJ fee whether or not he/she decides to offer his/her continued services on a *per diem* basis. Others have a proportional fee structure.

Discussions ensue as to various options put forth, namely the advantages and disadvantages foreseen. There is a consensus that retired judges shouldn't pay the full fee. The third option would create inequities between the various jurisdictions.

Justice Martha Zivolak suggests that any reduced fee consented by the associations to their members should result in the application of the CAPCJ *retired judge* status.

Provinces or territories without an association will deal with any incongruities.

MOTION: MOVED by Justice Martha Zivolak and SECONDED by Judge Garth Malakoe that prospectively, should a judge pay a full rate to his/her respective association, such will be the same for CAPCJ dues and concurrently, if a judge pays a reduced rate to his/her association, he/she will fall under CAPCJ's category of a *retired judge* with payment of the corresponding dues. MOTION CARRIED.

9. Manitoba's request for reimbursement of CAPCJ dues (\$4,500)

Judge Malcolm McDonald explains the situation having arisen as to the overpayment of fees in relation to *per diem* judges. Manitoba's *per diem* judges pay half their association dues, including \$200 to CAPCJ, under the erroneous assumption that the full CAPCJ fee was payable for all judges, notwithstanding their situation.

Only at the Spring Board meeting in April 2017 did they understand that *per diem* judges were considered by some associations to be under the category of retired judges, therefore paying the reduced rate of 50\$. As their *per diem* program was commenced in 2013, the revised calculations were made retroactively to this time, resulting in a \$4,500 potential overpayment.

No other claims or possible claims are noted by other provinces or territories.

MOTION: MOVED by Judge Gordon Deck and SECONDED by Judge Geri Mahoney that CAPCJ reimburse to Manitoba's Judges Association the amount of 4 500\$. MOTION CARRIED (Judge Malcolm McDonald abstains). MOTION CARRIED.

10. CAPCJ intervention in the Québec constitutional challenge

Discussion and questions as to the prospective timeline in relation to the referral to the Court of Appeal by Québec's provincial justice minister and the expectations from the Conférence des juges de la Cour du Québec with respect to an intervention by CAPCJ.

Juge Béatrice Clément states that the Québec judges are looking to CAPCJ to offer a national perspective on the questions raised, as they can have repercussions on several, if not all, jurisdictions. The Québec Judges' Association is not in need of financial support but considers that CAPCJ should intervene in an active and direct manner to protect the jurisdictions afforded to its members.

The Directors are sensitive to the issue, but cautious in regards to the associated costs.

MOTION: MOVED by Judge Garth Malakoe and SECONDED by Judge Gordon Deck that the Directors agree in principle that CAPCJ intervene in the Québec constitutional challenge. They direct the Executive to develop a plan to intervene, including an assessment of related costs, to be submitted to the Board of Directors as soon as possible, while being sensitive to the time line in place. MOTION CARRIED.

11. Proposed changes to the Federation of Law Societies Professional Responsibility Code of Conduct

Discussions in regards to recent announced amendments to the Professional Responsibility Code of Conduct, which restrict a former judge from appearing in Court. The Directors share concerns about the blanket prohibition, while noting that this issue has been referred to the CAPCJ Ethics Committee. Their opinion is considered valuable before the Directors come to a final decision as to how to proceed going forward.

Judge Malcolm McDonald suggests that we should consult our membership to receive feedback.

CONSENSUS: This issue is deferred pending consultation with the respective associations' board of directors and/or membership.

12. CAPCJ Intervention in regard to the situation in Poland with respect to the judiciary

Discussions as to the exact situation regarding the application of sanctions by the European Union and how this will impact the situation. Questioning of the appropriateness of intervening without being aware of Canada's diplomatic response.

There is a consensus to defer and monitor in order to see if the European Union sanctions result in any change in the situation.

There had been discussion of CAPCJ guidelines for intervention in such situations. Jeffrey Lantz indicates that he is unsure if this process was undertaken or completed.

MOTION: MOVED by Juge Béatrice Clément and SECONDED by Judge Patrick Koskie to defer to the Judicial Independence Committee the issue of whether CAPCJ can and/or should intervene in the situation of the Polish judiciary and to further ascertain the status of guidelines for such situations. MOTION CARRIED.

13. Enhancing the website

Justice Martha Zivolak suggests that we put a link (or other) on our website homepage addressing issues relevant to the media.

Juge Béatrice Clément indicates that there were similar discussions at the last Spring Board Meeting, resulting in requests to the Executive as to the establishment of a media protocol, including the issue of a web link, as follows:

MOTION: that the Executive investigate media protocol options as to how and when to respond to various issues of common interest. Namely, by accessing a public relations firm in this regard and referring to the Ontario protocol in place. MOTION CARRIED.

CONSENSUS: The Directors ask for a follow up from the executive on CAPCJ's media protocol and website enhancement, as moved at the Spring Conference (April 22, 2017).

14. ADJOURNMENT

The meeting is adjourned at 3:35 P.M.

MOTION: MOVED by Judge Patrick Koskie and SECONDED by Juge Béatrice Clément that the Directors' Forum Meeting be adjourned. MOTION CARRIED.