



Minutes of CSCJA Board Meeting

Saturday, April 29, 2023, Chateau Laurier Ottawa, ON

In attendance:

Monast, M.

Groves, J.

Lynch, M.

Conlan, C.

McMurtry, J. (by video)

Edmond, J. (by video)

Granosik, L.

Quigg, K.

Duncan, J.

Gagné, S.

Chappel, D. (by video)

O'Brien, K. (by video)

Key, N. (by video)

Brand, W. (by video for compensation agenda item)

Tholl, J.

Davidson, K.

Lockhart, S. (Executive Director)

Amoretti, M. (Interpreter)

Caltabanis, C. (Interpreter)

Regrets:

Farrar, D.

McKelvey, M.

9:05 am Call to Order – Michèle Monast

Remarks from the Commissioner for Federal Judicial Affairs - Marc Giroux:

The salary of puisne judges will be \$383,700 as of April 1, 2023. The Commissioner's Office is aware that the reimbursement of claims has been slower over the past few months. He appreciated being advised of the delays. The usual wait time is 10 days from receiving the claim, but the strike by PSAC members and a shortage of staff has slowed the claims process. The Office is adding resources to the claims' office.

The office has published new guidelines for Incidental Allowance, Travel, and Conference Allowances.

The publication of judges' expenses has not attracted much media attention. We worked hard at the outset at briefing the media on judges' expenses.

At this time, there are 85 judicial vacancies. 81 appointments were made in 2022 and 43 appointments were made over the last six months. In the past year, the judicial advisory councils considered 417 applications and assessed 320 candidates. The number of applications continues to trail previous years, which usually saw @ 500 applications, although better than in recent years.

The Commissioner's Office - International Cooperation Section - provides advice on international judicial projects, with Global Affairs Canada, with recent projects in Columbia and Mongolia. If individual judges receive requests for participation in international projects, please request the Office to vet the project.

The office has created security modules for judges when traveling internationally.



The strike was called during a language training session and some instructors exercised the right to strike. The Director managed the training seamlessly.

Question by Lynch J on the impact of strike on claims and judicial appointments. Some impact.

Judicom/Judicloud will be tested in the next few months and rolled out thereafter. Judicloud is the likely new name because it is a cloud-based initiative.

There are 540 judges in language training programs.

Granosik J advised that two judges in Quebec were being sued for damages and required counsel. However, the rates paid to counsel are very low and the judge is required to engage the lawyer directly. Both issues raise judicial independence concerns. The Commissioner agrees it raises judicial independence concerns. He will be recommending an increase in the rates, with the top rate to be \$500/hour. The Office will advise judges who are currently engaging lawyers of the change. The schedule is based upon Department of Justice tariffs. Based on experience, it would be time consuming to wait for the Department to increase the tariffs, so the Commissioner will subsidize the payment of lawyers from other budgets.

Granosik J wondered whether the Commissioner could act as a middleperson between the lawyer and the judge seeking assistance. The Commissioner replied that judges like to choose their lawyers and the Office does not have the capacity to recommend lawyers. However, the Office could communicate with the lawyer about the available rates once s/he is chosen by the judge. The judge should ask the firm to contact the Office. Legal bills go to the Deputy Commissioner, Errolyn Humphries.

In response to a question by Monast J, 20% of legal fees are paid for non-conduct matters. The Office has no ability to decide whether a bill is reasonable.

O'Brien JA asked if the Incidental Allowance could cover "Chambers' Attire" in Newfoundland and Labrador because the attire is not worn anywhere but in court. The Commissioner responded that he had recently become aware of this issue, is looking at it, and it makes sense. Formal wear that can't be used elsewhere should be covered by the allowance.

Groves J asked when the role of CJC Executive Director will be filled by someone else. The Commissioner responded that he is temporarily filling that role and a competition has been held. One candidate from the competition is still being considered. Sometimes it saves time to have the Commissioner fulfill both roles, but he understands why the Association might be uncomfortable with him exercising both functions.

Duncan J. noted there are 13 vacancies in BC, but the JAC is expiring tomorrow. The Commissioner responded that there are fewer candidacies from Vancouver. [Not clear if he is talking about candidacies for JAC or to be judges.] In any event, the Minister's office appoints JAC members. the Minister may be extending the terms held by JAC members.

Approval of the Agenda

Motion to approve the Agenda by Quigg, K

Granosik J seconded.

Carried.

Approval of Minutes – Nov. 2022

Duncan J was on Zoom for meeting, not present, as stated in the Minutes.

Motion to approve the Minutes by Granosik J

Seconded by Groves J

Carried.

The Minutes of Board meetings are posted on the website, for members only.

Committee and Council composition updates – Michele Monast

In November 2022, the President wrote to members asking them to consider joining a committee. She received several replies. However, there are still vacancies on Council and committees.

Diner J to the Technology Committee and Key J to the Public Education Committee.

Motion to approve the composition of Council and the committees by Lynch J

Seconded by Duncan J

Carried.

President's Report – Michele Monast

The President is happy to be back meeting in person.

Kudos to O'Brien JA, chair of the Governance Committee, for making us a more efficient and modern organization.

The Judging Better Judging Smarter conference will be held again in July 2023 in Quebec and in June 2024 in Calgary, with the support of the NJI. The Technology Committee is active in organizing the 2023 conference. It is hoped that the new Judicom will be unveiled during the conference.

The President wrote to members about the year over year benefits of the IAI salary adjustment. It was well received.

In December, Monast, Groves and Lynch JJ met with three members of the CJC and the Commissioner to discuss changes to the Incidental Allowance to ensure that members benefit from the increased allowance. The Commissioner did not agree with the efforts of the Association to argue for inclusion of business clothing, or health services, including preventative health programs. Judges did receive small increases for travel and home



offices. The President asked him to reconsider, but he declined. The CJC also decided not to “weigh in on this question”. The Association should consider further steps.

The President requested the Compensation Committee to review the compensation for retired judges and the indexation of their annuity.

Many members took advantage of the open period for enrollment in the Supplementary Insurance Plan. There was no increase to the premium.

Bill C-9, an act to amend the Judges Act on the conduct procedures was tabled in February 2022 and referred to the Parliamentary Committee on Justice. The Association supports the new Bill. It is now before the Senate Committee on Justice. It has not yet been adopted.

The Association referred the CJC’s response on the Association’s proposal for term limits back to the Reflections Committee. We received consent from the CJC to share the CJC resolution and questions to the members. The Reflections Committee received a lot of feedback from members.

The financial statements show the Association is financially sound, although we need to increase our membership. We will have greater expenses in the next two years because we are approaching another Quad Comm.

The Independence Committee is reviewing the issue of the perceived reduction of resources available to judges.

The Association is planning a conference on judicial independence with the NJI and CBA. Funding has been requested from the CJC.

Delegates to the IAJ and CMJA have been selected. The number of requests matched the number of delegate spots made available by the CJC. The delegates to the CMJA are Leitch J, president of the CMJA, Groves and Mew JJ. The delegates to the IAJ are Monast and Lynch JJ, as Past-President and President of the Association, respectively; Jacques, Granosik and Conlan JJ and Goodridge JA.

The Treasury Board of Quebec is considering the reclassification of courts’ staff. The President wrote a letter to the chief justices of the courts, expressing concern about the Department’s misunderstanding on how the courts function, which was leaked to the media.

Gagné J advised of litigation between the Cour de Québec and the Department after the Chief Justice changed the number of sitting days of the judges of the Cour de Québec. An agreement was reached between the Department of Justice and the Courts after mediation conducted by retired justice Chamberland. General discussion about the implementation of performance indicators in the agreement and its impact on judicial independence.

Governance Committee – Kate O’Brien

A written report was circulated. The Committee has been busy drafting policies for the Association, including a new Implementation and Review of Policies Policy and an amended Investment Policy. To implement a recommendation from the last Board meeting, a subcommittee was formed to review the Investment Policy. The subcommittee of Conlan, Groves and Granosik JJ recommended no change to the 2019 policy. Language to make it consistent with the new Terms of Reference template will be added by the Committee.



Gagné J questioned the 40% limit on equity, which is inconsistent with the requirement that investments be conservative. Conlan J responded that the BMO advisors to the subcommittee said the limit was normal and we could afford to be less conservative. Currently, we are at 10 to 20% equities. Our shares will grow faster so, without further investment, equities will increase naturally.

Edmond J asked how the unrealized gain on investments related to the policy. Conlan J responded that the loss recorded is not a real loss, because the investments were not sold.

Motion by O'Brien JA to approve the Policy Implementation and Review Policy

Seconded by Groves J

Carried.

Monast J suggested certain amendments: removal of comments in red from the Compensation, Independence, and Technology Committees' Terms of Reference; in the Conduct Committee's Terms of Reference, change the name of the committee from Governance to Conduct and change magistrature to juges; in 7(d), change "public complaints against judges" and "des plaintes du public déposées contre des juges" to complaints that are publicized.

Motion to approve the Terms of Reference of the Compensation, Conduct, Independence, and Technology Committees, by O'Brien JA

Seconded by Groves J

Carried.

O'Brien JA advised that the Committee is working on Terms of Reference for the remaining committees and selection procedures for Council and Board representatives to better define their roles.

Technology Committee

A written report was circulated.

Lynch J explained the new Judicom, which will be cloud-based. It will be on the Outlook platform, support by the Outlook 365 package. Members will no longer experience running out of data because it is cloud based. Will be secured through Shared Services.

[Confidential: Currently, Judicom has one licence covering all judges at a cost of \$40,000. The new system will require a \$500 licence for each user. This will likely exclude payment by the Commissioner for users who are not regular or supernumerary judges, such as provincial court judges, admin assistants, and retired judges and they may lose access.

Groves J noted that we can use our portal for communication with retired judges.]

Member Services & Wellness

A written report was circulated.

Davidson J noted that the majority of questions he receives from members relates to insurance coverage for eyeglasses and hearing aids. Members don't realize they can use their Incidental Allowance.

Monast J noted we need to better communicate with our members what is available through basic and supplementary insurance and the allowance. We could ask Brenda Brown to explain. Some judges believe their supplementary insurance premium is paid through their CSCJA fees.

Duncan J noted that Branch J has circulated to BC judges what he has claimed on Incidental Allowance. She will ask him to circulate it to Directors.

Conduct Committee – Mona Lynch

A written report was circulated.

Bill C-9 is before the Senate Standing Committee on Legal and Constitutional Affairs, and it has heard from many witnesses. One senator appears to be stuck on a provision for suspension without pay upon a complaint being made. Academic witnesses have asked for the appointment of lay representatives at every stage of the discipline process. Concerns were expressed about the communication of a complaint's dismissal to the complainant. The Committee has put off its clause by clause review. Instead, they invited the Registrar of Complaints to discuss the Ontario Judicial Council procedure for suspending judges without pay. They have invited the Minister back to discuss these issues.

On the Dugré complaint, the CJC recommendation for removal is before the Federal Court of Appeal.

The Brown complaint is at the review committee stage. This stage includes a puisne judge.

Term Limits Reflections Committee – Clay Conlan

A written report was circulated.

Conlan J explained that this issue has been before the CSCJA for four years. The members provided the Board with the mandate to pursue term limits, at the AGM in August 2019, after receiving a report from the Reflections Committee recommending term limits of seven and five years for CJs and ACJs respectively. The CJC passed its own resolution in April 2022, i.e., three years later, recommending 24 months of reflection after a CJ or ACJ has been in the position for 10 years. The resolution recommends action, but it is not mandatory. The CJC resolution included the CJ of the SCC and made no distinction between CJs and ACJs.

The Board asked the Reflections Committee to review the CJC resolution. They did and found they were not persuaded to change their recommendation. The Committee was struck by the feedback received from members strongly supporting the pursuit of term limits. The Committee recommends that the CSCJA remain vigilant on term limits, but the Committee decided not to recommend next steps.

Edmond J said he was very impressed by the work of the Committee. He noted an error in the report about Manitoba Provincial Court. The chief does have a term limit. He asked whether a 10-year term limit could be

considered because his experience in Manitoba shows that 5 or 7 years is insufficient to complete major projects, such as a revamping of the Rules of Court.

Groves J also thanked the Committee for the amazing service it has provided to judges in Canada. The CJC resolution is likely a compromise with the hard liners on the CJC. He suggested the Association monitor the situation for a year to see if the composition of the CJC changes and whether chief justices follow their resolution. Chiefs in BC, Manitoba, Saskatchewan have left before they had to, presumably in conformity with the resolution.

Conlan J recommended we circulate the Committee report to the members, for transparency purposes and to show the Association is acting on the issue.

Lynch J agreed we would not receive a different answer if we went back to the CJC immediately and we would not be successful approaching the Minister unilaterally. As a note, it is more costly to government to replace CJs more often.

Gagné J noted that in Quebec there is both a juge en chef adjoint (Sr. Associate Chief) and a juge en chef associé (Associate Chief). The juge en chef adjoint (Sr. Associate Chief) is senior. It is important to specify that the recommendation for ACJs includes both the juge en chef adjoint and the juge en chef associé.

Conlan J responded that the Committee made no distinction in its second report but acknowledged the two positions in its first report. In any event, the Committee did not recommend treating the two positions differently.

Monast J commented that there may be a change in the CJC culture to include a form of term limit. For instance, the Quebec Chief Justice announced that she would only stay seven years.

Davidson J supported not going back to the CJC immediately and circulating the report to continue the dialogue amongst members.

Chappell J agreed we should share the report and asked whether the report could be put on our website.

McMurtry J noted that it has been the CSCJA, not the CJC, that has communicated with judges at each step of the process.

Granosik J asked, "what are our options?"

Groves J answered that our options are to go back to the CJC or to go on our own to the Minister. Sending out the report is also an option. He recommended that the President circulate the report. This will show the Association does not consider the issue closed.

Monast J agrees that we send the report to our members. She noted that Bell CJ of the Court Martial Court of Appeal specifically addressed term limits in his resignation letter, saying he strongly supports them. He provided a list of accomplishments during his term in line with the CJC resolution.

Monast J said we should inform the CJC of the Committee report before circulating it to members. She advised that the media is interested in looking at the report, but we should not send it to them at this point.

Lynch J said she was concerned about sending out the report without saying anything more about what we are doing about it.

Moved by Conlan J and seconded by Quigg JA:

Subject to clarification by the Reflections Committee on the issue of the position of senior associate Chief Justice in Quebec, and if necessary, Manitoba, that the most recent report of the Reflections Committee shall be shared first with the Canadian Judicial Council and very shortly thereafter with all the members of the CSCJA.

Carried.

Quadcomm / Compensation Committee – Ward Branch

Branch J agreed to share his Incidental Allowance claim forms to start the discussion on what can be claimed.

The IAI was 3.1, much lower than last year. It is lower this year because lower-level employees were laid off during COVID causing the average wage to increase. These employees have been re-employed and the effect has been to lower the average wage. Over the long term, we do better with the IAI over the CPI.

The Compensation Committee is endeavouring to find the data requested by the last Quad Comm. The CRA has not been cooperative to date, although their counsel has become involved, and it should improve their willingness to share income data.

We are seeking data from large firms in Newfoundland & Labrador and Manitoba. The Committee is trying to locate an accounting report purportedly shared by certain large firms on big partner-firm incomes.

The last Quad Comm had asked for pre-appointment income information, which the CSCJA opposes. We are asking them to retract the request because the issue was not raised before them, and it is the income of those who did not apply that is significant. We have filed a formal submission to the Quad Comm. After the government responds, the Quad Comm will decide whether it will withdraw the request.

Our legal expenses incurred to find this data should be compensated for because the issue over pre-appointment income has made it clear we are doing this work in response to the last Quad Comm.

The Compensation Committee is looking at the equities of a retired judge's annuity being influenced by the date of retirement, an issue raised by retired justice Chamberland.

The Committee hopes to provide the data package to our experts by September 2023.



The expected timeline for the next Quad Comm is as follows:

February 2024: kick-off meeting with the Federal Government officials

June 1, 2024: Appointment of the commissioners and the beginning of the inquiry

Fall 2024: hearing

March 2025: release of Quad Comm report

July 2025: response to the report

Treasurer's Report – Clay Conlan

Financial statements were circulated.

We are happy with our new auditor, Vaive and Associates.

Net assets up over 2021 because our expenses are down, mainly because we did not have Quad Comm or meeting expenses in 2022. However, our meeting expenses are up over 2021 because we returned to in-person meetings.

Prosure provides a sponsorship for our Directory.

We reimbursed retired justice Eidsvik for her attendance at the IAJ meeting in Tel Aviv because she had just retired, and she was a long-time delegate and vice chair of a study group. We also paid dues to the IAJ on behalf of our members because it is an association of judges' associations.

Expenses for the former Planning Committee were high in 2022 because of a special meeting called on governance and for expert services.

In November 2022, we received a \$655,000 reimbursement for our expenses during the last Quad Comm.

S Lockhart explained that the restricted funds are a reimbursement of premiums that we have invested to use for subsidizing premiums in the future.

Davidson J asked whether we should have a policy that explains the restrictions on these funds.

Monast J suggested that this matter be referred to the Members Committee.

Edmond J noted that it is in the Investment Policy. We could explain the funds in that document.

Groves J said that the Investment Policy explains our strategy in relation to all funds, including the restricted funds. It would not explain why those funds were created and their appropriate use.

Conlan J noted that Brenda Brown told an earlier Board meeting that there is a letter penned by Feldman JA on the use of the restricted funds.

S Lockhart said the use of restricted funds could be elaborated on in the Financial Policy, policy number 6. The Governance Committee should steer it.

[Agreed to by Groves and Conlan JJ and the discussion moved to another topic.]

Davidson J asked why we continue to produce a written Directory.

Conlan J responded that the matter was discussed by the Membership Committee and because it is the only tangible thing the members receive, the Committee decided to continue producing the Directory and to improve it by adding email addresses.

Monast J said that there are members who do not use the website.

Lynch J noted that the Directory used to contain names of spouses.

Chappell J suggested we hire a summer student to maintain the online version of the Directory to keep it up to date.

Conlan J moved the approval of the draft audited statements. Seconded by Lynch J.

Carried.

Independence Committee - Kent Davidson

A written report was circulated.

The Committee is concerned about when judicial independence is affected by the diminution of resources from provincial governments. We are planning a survey of members on the services they are receiving, whether the available resources have declined, and how it is affecting judges' work. The survey would take 15 minutes to complete. Some members will be asked to engage in longer interviews to assist in creating the survey questions. We estimate a cost of \$15-20,000, based on a quote from a company called Portage.

We wish to do a financial analysis of various government budgets to see if resources have decreased. Once we have the survey results and the financial analysis, we will seek a legal opinion on the constitutional obligation of governments to fund an independent judiciary.

Groves J asked if there is a budget item to cover the Committee's work.

Monast J indicated that we do not have the cost of a French survey.

S Lockhart mentioned that we will do the translation in-house. We have money available in the budget in other areas to cover the costs.

Moved by Groves J to allocate \$15,000 to the Independence Committee to facilitate their planned survey. Seconded by Monast J. Carried.

Lynch J asked the Committee to consider providing a recommendation on the proliferation of legislation with requirements for judicial training, as in the case of Keira's Law, Bill C 233, which requires judicial training in domestic violence.

Monast J asked the Committee to follow up on the work of the Commission on Wrongful Convictions. Bill C-40 has been drafted and we should review it.

Public Education & Access to Justice - Kathleen Quigg

The Committee organized a Law Day program with the CBA, matching judges with high schools to talk about judicial independence. We handled 39 requests from teachers and 36 judges participated. We will start the program earlier next year.

We will follow up with the National Roundtable on Access to Justice to see what work they are doing. We will prepare another newsletter on access to justice.

A Judicial Independence Forum project is planned as discussed by Monast J in her report. The CIAJ is requesting funding from the CJC.

Judges Counselling Program

No report. There will be a report at the AGM.

International Relations - Denis Jacques

A written report was circulated and summarized in the President's report.

Other Business

- a) Rates payable to lawyers representing judges in civil liability cases:

This issue was addressed with the Commissioner earlier.

- b) Incidental allowance: eligible expenses

Groves J reported on the history of negotiations with the Commissioner's office on the Incidental Allowance. In @ 2010, then Commissioner Brooks unilaterally amended the allowance significantly, i.e., he removed business suits, hearing aids, glasses, health plans and home offices from the allowance. The Board decided not to act.

In late 2022, Groves, Monast, and Lynch JJ surveyed members about the allowance and met with the Commissioner along with three members of the CJC. The CJC and CSCJA representatives were in agreement on most issues, but the Commissioner only made minor adjustments to the allowance.

Groves J referred to the decision in *Ferguson v Canada* (1982) 140 DLR 3d 542, wherein the court says about the Incidental Allowance: "the decision as to what to claim must be the subjective decision of each individual judge".

Motion by Groves J directing the Executive to explore the option of retaining legal counsel to receive advice on the use of the Incidental Allowance and parameters of the authority of the Commissioner's office in approving expenses. Seconded by Monast J.

Carried.

Lynch J commented that we have to have the right case to move on.

General discussion on the uneven application of the allowance by the Commissioner's office.

Monast J expects that the Commissioner has a legal opinion on his authority.

***Adjournment* Motion to adjourn by Lynch J, seconded by Tholl J. Carried.**

Minutes approved – Nov. 18, 2023