

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING:	Benchers	
DATE:	Friday October 1, 2004	
PRESENT:	William Everett, QC, President	Darrell O'Byrne
	Ralston Alexander, QC, 1 st Vice-president	Margaret Ostrowski, QC
	Robert McDiarmid 2 nd Vice-president	Greg Rideout
	Joost Blom, QC	Glen Ridgway, QC
	Ian Donaldson, QC	Patricia Schmit, QC
	Michael Falkins	Dirk Sigalet, QC
	Anna Fung, QC	Grant Taylor
	Carol Hickman	Lilian To
	Gavin Hume, QC	Ross Tunnicliffe
	John Hunter, QC	Gordon Turriff, QC
	William Jackson	Art Vertlieb, QC
	Patrick Kelly	James Vilvang, QC
	Terry La Liberté, QC	Anne Wallace, QC
	Bruce LeRose	David Zacks, QC
	Patrick Nagle	
NOT PRESENT:	June Preston	Dr. Maelor Vallance
	Alan Seckel, QC, Deputy A.G.	
STAFF PRESENT:	James Matkin, QC, Executive Director	David Newell
	Stuart Cameron	Jack Olsen
	Mary Ann Cummings	Neil Stajkowski
	Brad Daisley	Alan Treleaven
	Jeffrey Hoskins	Ron Usher
	Michael Lucas	
GUESTS:	Associate Dean Robin Elliot, University of British Columbia Faculty of Law	
	Dean Andrew Petter, University of Victoria Faculty of Law	
	Ann Pappas, Director of External Relations, University of Victoria	
	Sylvia Teasdale, Chief Librarian, BC Courthouse Library Society	
	Johanne Blenkin, incoming Chief Librarian, BC Courthouse Library Society	
	Michael Woodward, President, CBA (BC Branch)	
	Frank Kraemer, Executive Director, CBA (BC Branch)	
	Janice Mucalov	

1. MINUTES

The minutes of the meeting held on September 3, 2004 were approved as circulated.

Mr. Turriff raised a matter arising from the minutes of the Benchers meeting held on July 9, 2004. He noted that during the discussion of the Law Society's representation on the Justice Review

Task Force, he suggested that the task force was constrained by a confidentiality requirement imposed by the Attorney General. Mr. Turriff said he had learned subsequently that the inference he drew that the task force was so constrained was incorrect.

2. PRESIDENT'S REPORT

Mr. Everett reported that Anna Fung had received the 2004 Robert V. A. Jones Canadian Corporate Counsel Award for her contributions to the corporate counsel bar. The Benchers, guests and staff joined Mr. Everett in congratulating Ms. Fung.

Mr. Everett reviewed the events he had attended in the last month, including the opening of the 2004 law school class at UBC, the Federation of Law Societies council meeting, a call ceremony, the Law Society Annual General Meeting, and the Kootenay Bar Association meeting. Mr. Everett noted that the celebration of the life of David Gibbons, QC was hosted by the Law Society on the previous day and was attended by more than 500 people.

3. EXECUTIVE DIRECTOR'S REPORT

Mr. Matkin circulated a written report on Law Society operations over the previous month. Mr. Matkin called on Mr. Cameron to report on a high profile case that had received media attention.

Mr. Cameron reported on a case involving a member arrested and incarcerated in Seattle Washington. He said the Law Society had made sure the member's practice and clients would not suffer in his absence, and had opened an investigation. He said the Law Society would take appropriate action depending on what happened in the United States.

Mr. Vilvang noted that Mr. Matkin's report referred to another case, as well and asked if Mr. Cameron could provide any information.

Mr. Cameron said the other case involved a member incarcerated in Texas. He said an investigation was ongoing but the case was more complex and involved the possibility of interjurisdictional transfer of funds. He said the Law Society was dealing with U.S. authorities on the case.

Mr. Matkin noted that the Law Society of Upper Canada had set up a tribunals task force to look at issues raised by the report of the Fairness Committee of the Ontario Securities Commission.

4. REPORT ON OUTSTANDING HEARING DECISIONS

The Benchers received a report on outstanding hearing decisions.

5. REPORT FROM THE BC COURTHOUSE LIBRARY SOCIETY

Mr. Tunnicliffe, in his capacity as Chair of the BC Courthouse Library Society, reported that the Library Society had selected a successor to Sylvia Teasdale. Mr. Tunnicliffe introduced and welcomed Johanne Blenkin,

6. REPORT FROM THE DEAN OF THE UNIVERSITY OF VICTORIA FACULTY OF LAW

Dean Petter gave a report on activities and developments at the University of BC Faculty of Law. A copy of the presentation is attached as Appendix 1.

Mr. Zacks asked if professional ethics was taught in the law school setting.

Dean Petter said professional ethics was included as a component of several courses including legal process and criminal law.

Mr. Nagle noted the reference to programs involving temporary articles, and asked if these fell under the rubric of pro bono practice.

Dean Petter said other law schools do have pro bono law programs but a major difficulty in providing such a program is that law students cannot give legal advice and must work under the supervision of a lawyer. He said the clinical program at the University of Victoria law school involved students for a full term during which they provided real legal services under supervision, particularly in the family law and human rights areas.

Mr. Nagle asked Dean Petter if he would provide a written summary of what the clinical program offers so that it could be taken into consideration by the Access to Justice Committee.

Mr. McDiarmid commented that firms outside Victoria and the Lower Mainland have difficulty attracting articulated students. He recalled that the University of Victoria law school had previously hosted an event that gave law firms an opportunity to meet students, and he asked if there might be other ways of connecting law firms and students.

Dean Petter agreed that there was a problem that was likely to get worse because the high debt load of students leaving law school would tend to drive them to the higher income positions on the Lower Mainland and in Victoria. He said various options were being examined to reduce student's debt loads including increasing bursaries, and possibly a debt forgiveness program. He said the co-op program did a good job of reaching into smaller communities, including northern communities. Another possible answer might be to provide video-conference connections to allow upcountry law firms to reach students.

7. PROPOSED AMENDMENTS TO THE PROFESSIONAL CONDUCT HANDBOOK, CHAPTERS 12 AND 14.

Mr. Zacks recalled that following expressions of concern from the real estate industry the Benchers had adopted in principle rules governing how lawyers would be permitted to use their employees when engaged in selling real estate. The proposed amendments to the Professional Conduct Handbook were intended to implement those decisions in principle.

It was moved (Zacks/Wallace) to amend the Professional Conduct Handbook as set out in Appendix 2.

The motion was carried.

8. SPECIAL COMPENSATION FUND ASSESSMENT FOR 2005

Mr. Stajkowski gave a presentation, a copy of which is attached as Appendix 3.

It was moved (Alexander/McDiarmid) that the Special Compensation Fund Assessment for 2005 be set at \$600.

Mr. Rideout asked Mr. Stajkowski to estimate how many years the assessment was likely to stay at \$600. Mr. Stajkowski estimated that if the Wirick claims were not considered, the assessment would likely be at \$200 by 2006.

Mr. Vilvang said the Benchers must consider the issue raised by Dugald Christie regarding relief from the assessment for low income lawyers before deciding on the amount of the assessment.

Mr. Vilvang also noted that reducing the Special Compensation Fund assessment too soon could make it necessary to increase the Annual Practice Fee.

Mr. Stajkowski said there could be some permanent increase in the Special Compensation Fund assessment because of funding requirements for ongoing programs such as audit and trust review, although he said some of those costs would be funded by the trust administration fee.

Mr. Vilvang said it was important that the Benchers not lose sight of the true cost of the Wirick matter by transferring costs to the General Fund. He also said it was important that members were informed that there would be an ongoing cost association with increased oversight.

Mr. Matkins thought the Special Compensation Fund Assessment would come down and there would not be a large increase in the Annual Practice Fee, if the Benchers agreed to use revenue from the trust administration fee to pay for increased oversight. He suggested that this could deal effectively with the concern raised by Mr. Christie.

Ms. Wallace said it was important for the Benchers to start planning for how to deal with concerns Mr. Christie raised.

Ms. Ostrowski asked if there was any discretion to relieve individual lawyers of the obligation to pay the Special Compensation Fund Assessment in cases of hardship. Mr. Stajkowski said there was no discretion; all lawyers must pay the assessment or cease membership.

The motion was carried.

9. RESOURCING THE FEDERATION OF LAW SOCIETIES

It was moved (McDiarmid/Jackson) to support an increase in the levy to be paid to the Federation of Law Societies by all member Law Societies by \$2.50

Mr. Zacks recalled that the Benchers had earlier received a report on Federation expenses going into the future, and he asked if this increase was planned for in that report. Mr. Zacks said the Federation WTO Committee had not met to his knowledge in the two years he had been on the committee, yet the issues it was concerned with were important to the future of self regulation of the profession. He also recalled a suggestion in the report that the Executive Directors of each Law Society would take on a significant role in the administration of the Federation, and while that might be a good idea for the future, he would not want to see the Law Society of British Columbia's executive director seconded to the Federation until there was an appropriate management structure in place to deal with his absence. Mr. Zacks was concerned that the Federation lacked the will to deal with some issues, and he questioned whether the Law Society should support any increases in the absence of more results.

Mr. Everett did not believe the increase in funding was included in the earlier report but it was reported at the last council meeting as being necessary to continue. He said the Federation was moving forward on a number of important issues, such as conflicts. With respect to participation of the Executive Director, he said a full secondment was not contemplated. The commitment would be part time only. He noted that when the member Law Societies were unanimous, the Federation showed great strength, but it got nowhere in the absence of unanimity.

Mr. Zacks said the Law Society of BC's Ethics Committee agreed to postpone consideration of conflicts issues pending consideration at the Federation level, and Law Society staff had sent information, but he saw no sign of action by the Federation. Regarding the WTO, he said the American Bar Association had recognized the importance of the issues and was taking steps to address them, and the CBA had made proposals to Industry Canada and to the American Bar

Association. However, he said, it was a regulatory issue not a CBA issue and should be addressed by the Law Societies. He asked if the proposed increase in funding was intended to deal with this.

Mr. Everett said he understood Mr. Zacks' frustration over the conflicts issue, but it was thought to be the best way to deal with it. He said if the Federation did not deal with the issue at the national level, then it would have to be dealt with locally. Regardless, he said, the Federation was doing good work in other areas.

Mr. Turriff said all of Mr. Zacks' concerns spoke in favour of the increase. He said it was important to give the Federation a further opportunity to deal with the issues.

Mr. McDiarmid agreed with Mr. Turriff's comments. He said some things that were being dealt with at the Federation level included dealing with the federal government on money laundering issues, national mobility, the process for appointing Supreme Court of Canada judges. He said the Federation was responsible for CanLII, and ran superb criminal law and family law programs every year. He said the Law Society of BC had found the right model for participation in the Federation.

The motion was carried.

Mr. Turriff asked whether the Law Society would consider belonging to a smaller federation that could function effectively if the national federation does not.

Mr. Everett noted that the Law Society of BC already participated in the smaller Western Law Societies group.

Mr. Zacks asked if there was any way to monitor how many BC lawyers take advantage of the mobility rules by going outside the province, and how many visiting lawyers come to BC.

Mr. Treleaven said it was possible to track actual transfers under the mobility protocol, but not temporary visits.

Mr. Laliberté asked if any further consideration would be given to a check-in requirement for visiting lawyers.

Mr. Matkin said that so far there had not been an example of a complaint about a visiting lawyer. He noted there are some key restrictions on visiting lawyers, such as the inability to open a trust account. He said the Law Societies run a national database so that Law Society staff can confirm that someone is a lawyer in another jurisdiction. Mr. Matkin said that on the basis of anecdotal evidence lawyers in Ontario and British Columbia are getting the most benefit from the mobility protocol.

10. PRESIDENT'S AND VICE-PRESIDENT'S HONORARIA

It was moved (Nagle/Vertlieb) that:

- (a) The honoraria be as follows for the calendar year 2005:
 - i. For the President, \$80,000; and
 - ii. For the Vice-presidents, \$30,000; and
- (b) In each year after 2005, the honoraria be adjusted by an amount proportionate to the change in the Consumer Price Index for British Columbia for the preceding year.

The motion was carried. Mr. Alexander, Mr. McDiarmid, and Ms. Fung did not vote.

11. COMPLAINTS PROTOCOL WITH THE PROVINCIAL COURT

Mr. Donaldson reviewed the history of this matter at the Bencher table. He noted that there was some concern that the proposed protocol with the Provincial Court might conflict with the protocol already in place with the Superior Courts. He said the matter was discussed with the Chief Judge of the Provincial Court and the Chief Justice of the Supreme Court, and it was concluded that the protocols addressed different situations and in fact complemented each other. Accordingly, Mr. Donaldson recommended that the Benchers adopt the proposed protocol.

Mr. Nagle was concerned that the protocol might prevent a complaint about a lawyer or a judge from being disclosed to the public. In view of a judge's authority to cite a lawyer for contempt in open court, he questioned the necessity for a "back door" method of making a complaint.

Mr. Donaldson noted that there are be matters that occur in courtrooms that may concern the Law Society which fall short of contempt in the face of the Court. The judiciary thinks there may be some advantage in having some filtering process so that potentially harmful complaints are not made on the spur of the moment but only after reflection and discussion with colleagues.

It was moved (Vertlieb/Hickman) to adopt the protocol between the Provincial Court and the Law Society.

The motion was carried.

Mr. Donaldson raised a second matter, which concerned members' awareness of the Committee on Relations with the Judiciary, created to help resolve problems arising between counsel and judiciary during an ongoing proceeding. He suggested that it would be helpful if a reference to information about the committee was included in the Professional Conduct Handbook.

It was moved (Donaldson/McDiarmid) to refer the matter to the Ethics Committee to consider adding a footnote to the Professional Conduct Handbook making reference to information about the Committee on Relations with the Judiciary.

The motion was carried.

12. UBC FACULTY OF LAW CURRICULUM COMMITTEE UPDATE

The Benchers received for information a report updating the activities of the UBC Faculty of Law Curriculum Committee.

Mr. McDiarmid asked if anyone on the committee was a practicing lawyer.

Mr. Blom said some committee members have practiced in the past.

13. SPONSORSHIP OF THE CBA NATIONAL LEGAL CONFERENCE 2005

Mr. Everett recalled that the Benchers had agreed to provide funding for the CBA legal conference to be held in Vancouver in 2005. He said the CBA had offered the Law Society choices with respect to recognition for the sponsorship.

Mr. Matkin said that historically the Law Society in the host jurisdiction has been described as a sponsor of a particular part of the conference. At the 2004 conference the Law Society of Manitoba sponsored the opening plenary session. Mr. Matkin said the opening plenary session in

2005 was open for the Law Society to sponsor, but other possibilities were the opening festivities or closing night, or nothing if the Law Society did not want recognition.

Mr. Hume suggested leaving sponsorship opportunities available to allow the CBA to raise money elsewhere.

Mr. Rideout agreed with Mr. Hume but suggested some recognition would be appropriate.

Mr. Turriff said the Law Society should maintain a low profile because it was important to maintain a clear distinction between the Law Society and the CBA.

Mr. Sigalet suggested that sponsoring a seminar on self-regulation of the profession would be appropriate.

Mr. Turriff agreed with Mr. Sigalet's suggestion, as long as the seminar was clearly identified as a public interest component of the program.

Mr. Woodward said the question was whether the Law Society wanted an opportunity to showcase its public protection function.

It was agreed that the Executive Committee would make the decision on what, if any, part of the conference program the Law Society would sponsor, taking the Benchers' comments into consideration.

14. LAW SOCIETY FINANCES 2004

Mr. Stajkowski gave a presentation on 2004 Law Society finances to date. A copy of the presentation is attached as Appendix 4

15. TRUST ADMINISTRATION FEE

Mr. Stajkowski gave a presentation on the progress towards implementation of the Trust Administration Fee. A copy of the presentation is attached as Appendix 5.

Mr. Jackson noted that there had been discussion of whether certain payments, such as GST, are imbued with a trust. He asked if any consideration was given to whether nonpayment of the TAF would be a failure that would attract disciplinary consequences.

Mr. Alexander thought it was self-evident that nonpayment of the TAF would attract some disciplinary consequence.

Ms. Fung noted that the Law Society was obtaining an opinion on the trust issue in relation to tax collected but unremitted.

Mr. Stajkowski said some consideration had been given to consequences of nonpayment. He noted that the TAF is intended to be paid by firms rather than individual lawyers.

Mr. Hume emphasized the desirability of early communication about the program.

16. REPORT ON ELECTORAL REFORM IN BRITISH COLUMBIA

Mr. Jackson, who was a member of the citizens' assembly on electoral reform, gave a brief presentation on the work of the assembly

17. SPECIAL COMPENSATION FUND FINANCING

This matter was considered *in camera*.

18. UPDATE ON WIRICK INVESTIGATION AND SPECIAL COMPENSATION FUND CLAIMS.

This matter was considered *in camera*.

19. OPEN DISCUSSION OF BENCHER CONCERNS

Ms. Wallace addressed the concern raised by Dugald Christie in his resolution submitted to the Annual General Meeting. She said the Equity and Diversity Committee had discussed the idea of relief from the Special Compensation Fund assessment for low-income lawyers long before the assessment was increased as a result of Wirick. She noted that a lawyer making less than \$30,000 must pay 10% of their income to receive a practice certificate. Ms. Wallace said the Law Society should not prevent competent lawyers from practicing because for reasons beyond their control they cannot earn enough money. She said the Law Society should also recognize that there are areas of practice where there are not enough lawyers and should question whether practicing fees prevent people from working in those areas. Ms. Wallace said the committee realized that the idea carried many implications and the Benchers were not in a position to make any decision, but it would be timely to identify the issues and have a properly supported discussion. Ms. Wallace urged the Benchers to go beyond risk-rating and address the broader question of how the Law Society might encourage lawyers to practice in less lucrative areas and encourage a diversity of lawyers to practice.

Mr. Ridgway asked what areas of law Ms. Wallace thought should be considered.

Ms. Wallace said poverty law and immigration law were two areas that should be considered.

Mr. Zacks agreed that this was an important issue but questioned whether the Law Society should be addressed the issue or someone else. He said it was as much a sociological issue as a legal one. He suggested that members should be invited to provide their views.

Mr. Laliberté said the issues should be addressed by the Equity and Diversity Committee and the Access to Justice Committee, jointly.

Mr. Turriff noted that the Futures Committee was considering what incentives the Law Society might offer on this and other matters.

Ms. Ostrowski reported on some matters being discussed by the Access to Justice Committee. She said Pro Bono Law of BC was facing some funding challenges when the Law Foundation Grant ends in March 2005. She said PBLBC would be seeking funding from the Law Society. The committee was also discussing the “unbundling” of legal services as a way to reduce cost. She said the Law Society rules did not address limited retainers.

Mr. Nagle asked if there was any further information available in the Oldroyd matter.

Mr. Cameron said the investigation was ongoing and would likely reach the point of committee involvement within three or four months.

APPENDIX I

University of Victoria Faculty of Law, Presentation by Dean Andrew Petter

- 330 Students (316 LL.B and 14 Graduate)
- 30 full-time faculty members
- 24 members of the Bar teaching as Sessional instructors
- Total Annual Operating Budget [\$3.34 million]

First Year Class

- 105 students admitted - 56% female and 44% male
- average age is 27
- 64% from BC, 33% from Canada and 3% international
- Average GPA = 3.87 on a 4.33 scale and Average LSAT =163 (for 2003/4 class)

Undergraduate Curriculum

FIRST YEAR:

Core courses
Legal Process
Legal Research & Writing

UPPER YEARS:

Core courses
Theoretical Perspectives
Mandatory Major Research Paper
Experiential Learning

Experiential Programs

CLINICAL PROGRAMS:

- Law Centre
- Environmental Law Clinic
- Business Law Clinic

CO-OP PROGRAM

MOOTING AND SKILLS-BASED LEARNING

Special Programs

AKITSIRAQ LAW SCHOOL

INTERNATIONAL INTELLECTUAL PROPERTY LAW

INTENSIVE SUMMER PROGRAMS:

- Indigenous Law Summer Program (2005)

Graduate Program

- Launched Fall 2004
- Director: Professor John McLaren
- 12 LL.M and 2 Ph.D. Students
- Law and Society Focus

National Recognition and Success

- Macleans and Canadian Lawyer Ratings:
Ranked in the top 3 in 8 of last 10 years
- National Mooting champions in the last 2 years in the:
 - Gale
 - International Negotiation Competition
 - McIntyre Cup
 - Sopinka Cup

- ABA Client Counseling Competition
- SCC Clerkships [7 in past 5 years]

Tuition

- Full year tuition including all fees:
This year: \$8,203-
Last Year: \$6,414-
- New Bursaries
- UVic/UBC Study

Fundraising Priorities

- Alumni Bursary Campaign
- Broaden Fundraising Base
- Increase Law Firm Support

Funding Goals

- Program Continuity and Development
- Library, Computers and Capital
- Bursaries and Scholarships

APPENDIX 2

CHAPTER 12

SUPERVISION OF EMPLOYEES

Real estate assistants

10. In rules 10 to 12.

“purchaser” includes a lessee or person otherwise acquiring an interest in a property;

“sale” includes lease and any other form of acquisition or disposition;

“show”, in relation to marketing real property for sale, includes:

- (a) attending at the property for the purpose of exhibiting it for the benefit of prospective purchasers or members of the public;
- (b) providing information about the property, other than pre-printed information prepared or approved by the lawyer, including answering questions and making any representations in relation to the property; and
- (c) conducting an open house at the property.

11. A lawyer may employ an assistant in the marketing of real property for sale in accordance with this chapter, provided:

- (a) the assistant is employed in the office of the lawyer, but not a separate or “stand alone” office, including a home office, unless it is incidental to the office of the lawyer; and
- (b) the lawyer personally shows the property.

12. A real estate marketing assistant may:

- (a) arrange for maintenance and repairs of any property in the lawyer’s care and control;
- (b) place or remove signs relating to the sale of a property;
- (c) attend at a property without showing it, in order to unlock it and let prospective purchasers, real estate licensees or other lawyers enter; and
- (d) provide prospective purchasers and others with pre-printed information about the property prepared or approved by the lawyer.

CHAPTER 14

MARKETING OF LEGAL SERVICES

Application of Chapter

1. This Chapter applies to any marketing activity undertaken or authorized by a lawyer in which he or she is identified as a lawyer, mediator or arbitrator.

Definitions

2. In this Chapter:

“advertisement” means the use of paid space or time in a public medium, or the use of a commercial publication such as a brochure or handbill, to communicate with the general public or a segment thereof, for the purpose of promoting professional services or enhancing the image of the advertiser;

“inter-jurisdictional law firm” means a sole proprietorship, partnership, law corporation or any other arrangement to carry on the business of the practice of law together, in which:

- (a) the firm carries on the practice of law in British Columbia and in one or more other Canadian or foreign jurisdictions, and
- (b) not all the lawyers in an office of the firm outside British Columbia are members of the Society;

“marketing activity” includes:

- (a) an advertisement,
- (b) any publication or communication in any medium with any client, prospective client or the public generally in the nature of an advertisement, promotional activity or material, a listing in a legal directory, a public appearance or any other means by which professional legal services are promoted, or
- (c) contact with a prospective client initiated by a lawyer;

“lawyer” includes a member of the Law Society, and a person enrolled in the Law Society Admission Program; and

“testimonial” means a statement used in a lawyer’s marketing activity and attributed to a person other than the lawyer.

Purpose of Chapter

3. The purpose of this Chapter is to allow a lawyer to use any medium of communication to undertake or authorize any marketing activity that is factual, accurate and verifiable, and that maintains a high standard of professionalism.

Notary Public

8. A lawyer who, on any letterhead, business card or sign, or in any other marketing activity:

- (a) uses the term “Notary,” “Notary Public” or any similar designation, or
 - (b) in any other way represents to the public that the lawyer is a notary public,
- ~~shall~~must also indicate in the same publication or marketing activity the lawyer’s status as a ~~barrister and solicitor~~lawyer.

Firm name

9. A lawyer ~~shall~~must not use a firm name ~~which~~that violates Rule 4(e) of this Chapter.

Jurisdictions in which a lawyer is qualified to practise

11. A lawyer who is a member of an inter-jurisdictional law firm ~~shall~~must ensure that, whenever the firm on its letterhead or in any other marketing activity enumerates the members of the firm, the lawyer is identified as being qualified to practise law in British Columbia.

Fees

12. A lawyer who, ~~in any advertisement,~~ includes a statement of fees for a specific legal service in any advertisement must:
- (a) ~~shall~~ ensure that the statement sufficiently describes the fees and services so as to enable the recipient or intended recipient to understand the nature and extent of the work to be performed and the cost to the client, and that the statement clearly specifies whether or not disbursements are included in that cost,
 - (b) during the currency of the advertisement, ~~shall~~ agree to perform the services at the stated fee for any person unless excused by circumstances such as conflict with the interests of another client or other reasonable and proper ground, and
 - (c) ~~shall~~ not ~~in the advertisement~~ compare the fees charged by the lawyer with those charged by another lawyer.

Short form services description

13. ~~Provided that:~~
- ~~(a) — a statement of fees for specific legal services indicates the nature of the disbursements involved which are not included in the fee, and~~
 - ~~(b) — the lawyer, during the currency of the advertisement, agrees to perform the specified legal services required in the circumstances of the case for the stated fee,~~
- ~~then the A~~ lawyer may use in any advertisement the terms set out in the bold headings ~~below~~in Appendix 7, or any reasonable equivalent, provided that:
- (a) a statement of fees for specific legal services indicates the nature of the disbursements involved that are not included in the fee, and

(b) during the currency of the advertisement, the lawyer agrees to perform the specified legal services required in the circumstances of each case for the stated fee.

13.1 ~~A in which case the~~ lawyer who advertises as permitted under rule 13 must ~~is required to~~ provide all the services set out in the text following each bold heading below in Appendix 7 ~~which that~~ are necessary in the circumstances of ~~the each~~ case, except for any item that which the lawyer specifically excludes in the advertisement ~~specifically excludes:~~

~~Uncontested divorces: a divorce in which there is no dispute throughout, including the following elements:~~

- ~~(a) taking instructions from a client and advising on grounds of divorce and on corollary relief under the *Divorce Act* and other relevant legislation;~~
- ~~(b) preparation of the petition and all other procedural steps necessary to obtain an order for divorce, including maintenance, custody and access if appropriate.~~

~~A lawyer may exclude any of the following elements if the statement expressly refers to the element to be excluded and states that there will be an additional charge for it:~~

- ~~(a) obtaining a foreign marriage certificate;~~
- ~~(b) special proof of service;~~
- ~~(c) proof of foreign marriage;~~
- ~~(d) proof of grounds of divorce:
 - ~~(i) investigative service;~~
 - ~~(ii) medical report, professional opinion;~~
 - ~~(iii) leave to prove evidence by affidavit;~~
 - ~~(iv) examination for discovery;~~~~
- ~~(e) order for substituted service;~~
- ~~(f) adjournments at the instance of the client;~~
- ~~(g) immediate order for divorce;~~
- ~~(h) change of name.~~

~~Simple wills: advising, taking instructions, preparation, review with the client and execution of a will appointing an executor and providing for payment of debts and specific and residual bequests, filing a wills notice.~~

~~Estates: all necessary services to obtain a grant of letters probate or of administration of any kind, including arranging for valuation of assets and for preparation and filing of income tax returns for the deceased and in attending to the transmission of the assets of the estate into the names of the personal representatives and, where applicable, into the names of the beneficiaries, advising upon Canada Pension Plan benefits as well as any services, process or proceedings relating to the passing or settling of the first accounts of the executor or administrator.~~

~~Conveyances: advising on contract of purchase and sale, if required, determining and advising upon status of property taxes, attending to review title, preparation, completion and filing of all~~

~~necessary documents to carry out the transfer in accordance with the contract of purchase and sale and registration thereof, including assumption of mortgage when applicable, settlement of statement of adjustments, post-registration search and advising in writing on registration of title and of any charges assumed by the purchaser but not including cost of clearing title.~~

~~**Mortgages:** attending to take instructions and to review title, obtain and review survey if required, and confirm conformity with zoning requirements if any and payment of current taxes, preparation, completion and registration of mortgage, preparation and completion of direction to pay, preparation of postponement agreement and certificate of independent legal advice where applicable, and advising in writing on registration, validity and priority of mortgage.~~

~~**Simple incorporations:** advising and taking instructions, obtaining approval of corporate name, preparation, completion and filing of incorporation documents for the incorporation of a British Columbia or federal company having one class of shares, preparation and completion of filing of notices of records and registered offices and directors, setting up corporate records, reporting in writing on incorporation and organization of the company and advising in writing of the annual report and the annual meeting requirements, and British Columbia extra-provincial registration of federally incorporated companies.~~

Hourly rates of charge

14. A lawyer may state in any advertisement hourly rates of charge for specific legal services, provided that the lawyer ~~shall~~must:
- (a) as soon as reasonably practicable, give to the client a written estimate of the total cost to the client of the work to be performed, including disbursements,
 - (b) when the specific service will extend over a substantial period of time, provide to the client in writing a budget showing the cumulative costs of the work involved to the appropriate stages, and
 - (c) if at any time the lawyer anticipates that the budget or estimate may be exceeded, so advise the client in writing, giving reasons.

Currency of fee advertisement

15. Unless otherwise stated in the advertisement, the currency of a fee advertisement ~~shall be deemed to be~~is 90 days after the date of publication.

Lawyer's duties

20. A lawyer ~~shall~~must retain for one year after the date of publication or broadcast of any advertisement or brochure, and ~~shall~~must provide to the Law Society upon request:
- (a) a copy of any such publication,
 - (b) a recording of any such broadcast made by use of any electronic media, including radio, television and microwave transmission, and
 - (c) a written record of when and where the publication or broadcast was made.

21. ~~No lawyer shall fail, w~~hen called upon by the Executive Director to do so, ~~to~~ a lawyer must verify the statements made in the lawyer's marketing activities.

APPENDIX 3

2005 Special Compensation Fund Assessment

SCF Assessment Issues

- Finance Administration Costs for remaining program files.
- Finance Non-Wirick Claims.
- Finance the Part B coverage.

2005 Administrative Costs Issues

- Transfer of over \$1 million of Trust and Audit and Investigation program costs to the General Fund.
- Reduce SCF portion of Overhead Allocation.
- Pay claim and custodian costs of existing files.
- Manage on-going program cost reduction.

Transfer of Costs to General Fund

2005 is the beginning of the transition to reduce the administrative costs covered by the Special Compensation Fund. This include:

- Reducing SCF portion of Overhead Allocation as there are less SCF staff.
- Make all Trust review costs part of GF.
- Make all Audit and Investigation costs part of General Fund.

General Fund Budget Impact

This re-allocation will impact the General Fund Budget.

Impact:

- Reducing General Fund surplus reserve as preliminary source of funding these programs.
- Strong GF financial position makes timing of this change good.
- Partial use of Trust Administration Fee to fund Trust and Audit programs

2005 Non-Wirick Claims Payments

- Manage remaining portion of claim files that are covered under pre-May 1,2004 program.
- An estimate of \$1.8 million to be paid in 2005.
- It is expected that this will bring all the non-Wirick claim files to a close.

Part B Coverage Funding

- The Benchers decided that all practising lawyers should pay a portion of the Part B coverage that became effective May 1, 2004.
- A \$100 per lawyer is the portion of this Fund's Assessment that will be used for this funding.

- The level of future funding required for this coverage will be dependant on the annual LIF actuarial analysis.

Assessment Allocation

- \$300 for administration of the program including custodianship costs for all files, including Wirick.
- \$200 for payment of non-Wirick claims.
- \$100 as coverage payment for the Part B insurance.

APPENDIX 4

Law Society August 31, 2004 Financial Results

Presentation Overview

- 1. Insurance Fund Overview Results
- 2. Special Fund Overview Results
- 3. General Fund Financial Overview
- 4. General Fund Reserve and Operating Results History.
- 5. General Fund 2004 Budget year to date results in specific program areas.

Insurance Fund Financial Results

- \$94.3 million in investments –at book value (Market Value is \$100.6 million)
- \$81.8 million in claim reserves –(net of payments made to date in 2004, pending 2004 actuary adjustment)
- \$8.2m in surplus reserve –down \$8.7 m. Total fee revenues are slightly over budget
- Investment gains are unrealized, as a result realized returns are under budget.
- Total program and administration expenses were under budget excluding \$200,000 for Part B insurance.

Special Fund Financial Results

- \$1.3m in investments –Wirick claim management.
- \$2.2m due from American Home, LSBC finances claims and then we recover, resulted in use of our invested assets.
- \$5.7 m in current Fund reserve.
- Fee revenues slightly under budget.
- Non-Wirick claims under \$480,000 -under budget.
- Professional services (Custodian and Investigation Costs) over budget -a key watch area and area of concern.
- Staffing under budget –reducing Wirick staff.
- Audit Costs over budget.

General Fund Balance Sheet

- \$1.1 million current year-to-date budget surplus.
- Reserve (surplus) up to \$4.0 million, forecasted to December 31, 2004, this compares to the 2000 when the reserve was \$547,000, its lowest amount since 1993.
- Book value of building assets –\$13.0 m.
- All other LSBC assets, Book value \$1.37 m.
- INFD building loan reduced by \$500,000 to \$9.1million.

General Fund –2004 Actual compared to Budget Results

- Revenue Variances:
- Net Practice fees better than budget.
- PLTC revenues slightly under budget –less students.

- All other revenue sources over budget, including:
- Law Corporation Fees.
- Other Licensing Fees, mostly from transfers.
- Fines, Penalties and Cost Recoveries.
- Provincial Government money for efilng project.
- Overall Revenues over budget by \$340,000 +

General Fund –2004 Actual compared to Budget Results

Positive Expense Variances:

- Still over \$130,000 in Benchers contingency.
- Bencher Expenses overall on budget for the year.
- Areas significantly under their YTD budget include:
 - Extraordinary legal files by \$70,000
 - Licensing and Admissions by \$50,000
 - Trust Review and Audit by \$73,000
 - Policy and Planning by \$45,000
 - Practice Advice and Loss Prevention by \$90,000
 - Unauthorized Practice by \$30,000
 - General Administrative and operations by \$165,000
 - Cambie Building operations by \$230,000
 - Overall Expenses under budget by \$750,000 +.

General Fund –2004 Actual compared to Budget Results

Negative Expense Variances:

- Areas over their YTD budget include:
 - Bencher Elections –due to referendum by \$20,000
 - Complainants review –due to increased level of staffing committed to program by \$30,000
 - Discipline Hearings –due to more external counsel hired with staff on leave and increased file loads by \$200,000.

However, even with these negative budget variances, overall expenses are under budget by \$750,000 +

2004 Operational Financial Objectives-All Funds

- Maintain the General Fund focus on operational efficiency while reviewing overall program priorities and effectiveness. The financial results show this happening.
- Special Fund Claim payments–Wirick claim settlements have been timely and claim file processing expenses are being reduced.
- Custodianships –a review of the goals of this area including operational management still required.
- Website/Technology –use of technology to reduce costs and improve effectiveness (eg. Filing of Trust Report online and electronic distribution of Publications). This has started.

- Implementation of new defalcation insurance and the Trust Administration Fee are both moving forward.

APPENDIX 5

Trust Administration Fee

2002 LSBC Trust Work:

- Benchers create the Conveyancing Practices Task Force (CPTF) in response to issues raised in Martin Wirick Audit.
- Preliminary results of the Trust Assurance Task Force (TATF) were presented and endorsed by the Benchers.
- Liability Insurance risk-rating is discussed by the Benchers as presented in preliminary report of CPTF
- TATF continues work on report and rules.

2003/2004 LSBC Trust Work

- Benchers approve LVTS and PPT specific rules to allow non-cheque trust transfers.
- The new Trust Report is approved by Discipline.
- Benchers approve new Trust rules concerning late filing penalties including suspension.
- Benchers approve the notion of enhanced Liability Insurance (from CPTF) for defalcation. Part B coverage is added to the LSBC Captive's E&O policy.
- Benchers approve funding for Part B via a \$100 annual assessment and, in part, from the Trust Administration Fee.

Trust Report Steps

- One Trust Report (eliminate both Form 47 and Form 48)
- Increased information that the practice completes to allow for risk-rating.
- Define public accountant's work, a specific review and less of an opinion.
- On-line filing of this report by both lawyers and the accountant.

Trust Compliance – Next Steps

- Detailed risk analysis from new Trust Report. 2005 project.
- Practice standards reviews focusing on messy record keeping – pilot project in the next few months. (Practice Standards Committee)
- Increased level of Trust Education (Education Task Force)
- Expanded compliance auditing.
- All firms filing new Report in 2005.
- Eliminate 3rd party accountant from filing process (2006/2007)

On-going Trust Concerns

- Electronic Funds Transfer – balancing the cost reduction wants of the banks with the audit and control requirements of the Law Society (working with other Law Societies).
- Money laundering oversight and compliance management (Federation issue).
- Review overall effectiveness of the program (financially - for Law Society and firms – and for compliance).

Trust Administration Fee

- Effective March 1, 2005
- At October 29th Benchers meeting, discussion and decisions on:
 - Draft rules
 - “interpretation bulletin information”
 - communications plan to lawyers.
- Provide all firms with specific implementation and filing instructions – by the end of November 2004.
- Revenue estimated between \$600,000 and \$1.5 million to be earned in General Fund.
- Benchers to decide ultimate use of the funds.
- Preliminary expected use of money at \$600,000 level:
 - If needed, money for Part B coverage (this will depend on actuarial analysis)
 - Cover the cost of the Trust Review process (\$200,000)
 - Cover the cost of the Audit Program (\$300,000)
 - Develop and pay for an education/training program (\$100,000).
- Preliminary expected use of money at \$1.5 million level.
 - If needed, money for Part B coverage (this will depend on actuarial analysis)
 - Cover the cost of the Trust Review process (\$200,000)
 - Cover the cost of the Audit Program (\$300,000) and review need for expanded forensic auditing.
 - Develop and pay for an education and training program (\$100,000) – should this be mandatory?
 - Expand the compliance audit process with a plan to eliminate the need for 3rd party accountants.