

# THE LAW SOCIETY OF BRITISH COLUMBIA

## MINUTES

**MEETING:** Benchers

**DATE:** Friday December 3, 2004

**PRESENT:**

William Everett, QC, President	Margaret Ostrowski, QC
Ralston Alexander, QC, 1 <sup>st</sup> Vice-president	June Preston
Robert McDiarmid, QC, 2 <sup>nd</sup> Vice-president	Greg Rideout
Joost Blom, QC	Glen Ridgway, QC
Ian Donaldson, QC	Patricia Schmit, QC
Michael Falkins	Alan Seckel, QC, Deputy AG
Anna Fung, QC	Dirk Sigalet, QC
Carol Hickman	Grant Taylor
Gavin Hume, QC	Gordon Turriff, QC
John Hunter, QC	Dr. Maelor Vallance
William Jackson (by telephone)	Art Vertlieb, QC
Patrick Kelly	James Vilvang, QC
Terry La Liberté, QC	Anne Wallace, QC
Bruce LeRose	Lilian To
Patrick Nagle	David Zacks, QC
Darrell O'Byrne	

**NOT PRESENT:** Ross Tunnicliffe

**STAFF PRESENT:**

Su Forbes, QC	Michael Lucas
Stu Cameron	David Newell
Mary Ann Cummings	Neil Stajkowski
Brad Daisley	Alan Treleven
Charlotte Ensminger	Ron Usher
Felicia Folk	Adam Whitcombe
Jeffrey Hoskins	

**GUESTS:**

Dean Mary Ann Bobinski, University of British Columbia  
Caroline Nevin, Associate Executive Director, CBABC  
Wayne Robertson, Executive Director, Law Foundation  
Bill McNaughton, CLE Society  
Kelly Doyle, President and Chair, Pro Bono Law of BC  
Marina Pratchett, QC, Vice-president, Pro Bono Law of BC  
Dugald Christie, Executive Director, Western Canada Society to Access Justice (for item 7)  
Janice Mucalov, Lawyers Weekly

**1. MINUTES**

The minutes of the meeting held on October 29, 2004 were approved as circulated.

**2. PRESIDENT'S REPORT**

Mr. Everett welcomed Robert Brun, Bencher-elect for Vancouver.

Mr. Everett gave a brief account of his activities on behalf of the Law Society over the previous month. He noted that a call ceremony was scheduled for December 10, 2004 and encouraged Benchers to attend.

**3. EXECUTIVE DIRECTOR'S REPORT**

Ms. Forbes circulated a written report on Mr. Heberton's behalf and extended his regret that he was unable to attend.

**4. REPORT ON OUTSTANDING HEARING DECISIONS**

The Benchers received a report on outstanding hearing decisions.

**5. EXECUTIVE DIRECTOR**

There was an *in camera* discussion concerning the Executive Director and, on the advice of counsel, it was decided to accept Mr. Matkin's offer to resign as Executive Director effective December 6 in exchange for 16 months' severance pay and medical and dental benefits.

**6. FEE SCHEDULES**

It was moved (Hume/Nagle) to adopt as schedules to the Law Society Rules Schedules 1, 2 and 3 as set out in Appendix 1, effective January 1, 2005.

The motion was carried by a majority of more than two-thirds of the Benchers present.

**7. LAW SOCIETY BUDGET 2005**

Mr. Stajkowski gave a presentation highlighting key aspects of the 2005 Law Society budget. A copy of the presentation is attached as Appendix 2.

**8. Funding Requests**

These matters were heard *in camera*.

**(a) Western Canada Society to Access Justice**

Mr. Everett recalled that at the Annual General Meeting Dugald Christie put forward a motion to give relief from the Special Compensation Fund assessment to low income lawyers. He noted that although it did not pass, there was considerable support for the motion, and he had promised an opportunity to address the Benchers on the subject.

Mr. Christie thanked the Benchers for the opportunity to speak. He said that since the AGM he had reconsidered the form of the relief proposed and concluded that it was not very fair. A better form would be a progressive levy of, say, 2% of a lawyer's income up to a maximum of \$600. Mr. Christie said there was an overriding principle that should be considered. Thirty percent of the British Columbia bar is serving about ninety percent of the public. This results from specialization and represents a trend in which fewer lawyers are representing individual members of the public. He said those lawyers should be supported.

Mr. Hunter asked if one could identify a class of lawyers who spend more than half their time doing pro bono work, would it be a large or small group. Mr. Christie said he would guess the group to be quite small, but noted that approximately 7% of the profession earns less than \$30,000 per year.

Mr. Nagle asked whom Mr. Christie's organization served. Mr. Christie said the Western Canada Society to Access Justice served British Columbians whose net income is less than \$2,500 per month. He said that amount is slightly less than the average income of British Columbians, so the society potentially serves nearly half of the population of the Province. He said the society serves approximately 600 clients each month.

Ms. Fung recalled that Ms. Wallace had proposed that the Equity and Diversity Committee examine incentives for lawyers doing pro bono work. She asked if that would assist Mr. Christie's organization. Mr. Christie said that pro bono work was important, but it was even more important to support practitioners who serve paying low-income clients. He said doing away with the Western Canada Society to Access Justice would not do as much harm as losing twenty practitioners serving low-income clients. The mandate of the Western Canada Society to Access Justice is not just to set up a network of pro bono services but to ensure that people have access to lawyers. The backbone of that service is the general practitioner trying to make a living doing low paying work for low-income people.

Ms. To agreed with Mr. Christie that it was important to support the lawyers who make sacrifices to serve the public. She said there was also a fairness issue, and the Law Society should make it possible for low-income lawyers to continue to practice.

Mr. McDiarmid said he supported the Western Canada Society to Access Justice's work, but the proposal was not appropriate for the Law Society. He said a significant number of people who come to the Law Society with problems are in low economic brackets, and they cause huge problems in Professional Conduct, Special Compensation Fund, and Practice Standards. With the exception of altruistic people such as Mr. Christie, they are not serving the public because they are not practicing law well. Consequently, he said, he could not support the proposal, and urged Mr. Christie to take up Ms. Wallace's suggestion to refer the matter to the Equity and Diversity Committee.

Mr. LeRose noted that the Special Compensation Fund assessment is universal, and he would need to know what impact the proposal would have on the lawyers who would have to carry the load before considering the proposal further.

Ms. Wallace disagreed that lawyers who are struggling financially are generally poor lawyers. Many lawyers are struggling to make ends meet and pay their fees. She agreed that there were some problems with marginal lawyers, but suggested that the Law Society did not know anything about many lawyers who simply drop out of the profession. Ms. Wallace's concern was that the problem was greater than pro bono or people who want to take time out for family or health reasons. She agreed with Mr. LeRose that it was necessary to consider the financial implications

of the assessment proposal but also necessary to examine it from a broader perspective. She said the Equity and Diversity Committee had agreed that this was a priority for the coming year.

Mr. Christie said he understood that there were broad issues, and there were a number of “Pandora’s Boxes” that people were afraid to open, such as licensing paralegals. He said he would be satisfied if it was clear that the Law Society would address the question of supporting lawyers on marginal incomes.

It was moved (Fung/Nagle) to refer to the Equity and Diversity Committee the question of how the Law Society might support low-income lawyers.

The motion was carried.

It was moved (Nagle/Vertlieb) to provide \$15,000 in funding to the Western Canada Society to Access Justice.

The motion was carried.

**(b) Pro Bono Law of BC**

Mr. Everett introduced Kelly Doyle and Marina Pratchett, QC, President and Vice-president respectively of Pro Bono Law of BC (PBLBC). Mr. Doyle gave a presentation outlining Pro Bono Law of BC’s request for funding \$85,000 in 2005.

Mr. Vilvang asked what pro bono services had actually been provided by PBLBC. Mr. Doyle said that PBLBC did not deliver pro bono services directly but supported other service organizations that do. Consequently, he said, it was not possible to provide statistics on precisely how many people have been assisted indirectly through PBLBC.

Mr. Vilvang said the Benchers needed to know if people were actually being assisted in order to decide whether it is worthwhile funding PBLBC.

Ms. Pratchett said it would be possible to track success, but that information was not immediately available. She said it was not mere coincidence that pro bono legal services are much more prominent in the community than they were five years ago, which is in part the result of PBLBC.

Ms. Schmit recalled that when PBLBC was first suggested, the CBA promised support, and she asked if that support was ever received.

Mr. Doyle said there was some funding support but most of the CBA’s support has come in the form of volunteers. He said PBLBC did not expect to receive financial support from the CBA given their present circumstances.

Mr. Jackson said it seemed fairly clear that PBLBC was a sponsored program of the Law Society that fell within the funding policy, and was aligned with two of the Law Society’s “section three” objectives. PBLBC protects the public interest and also helps preserve the independence, honour and integrity of lawyers. Self-governance has been under threat everywhere in the commonwealth, and it was important that the Law Society be seen to be doing things in the public interest.

Mr. Turriff agreed that there is a large public interest in pro bono work, but that was not the immediate question, which was whether the Law Society was getting value for money from

PBLBC. Mr. Doyle said we cannot know the answer to that question, and Ms. Pratchett said we might be able to know the answer, but Mr. Turriff said that in the meantime the Benchers were being asked to provide funding without knowing the answer. He said it was important to find out what value was being delivered by PBLBC.

Mr. Zacks agreed with comments about the value of pro bono services. His concern was about the level of bureaucracy that had developed around PBLBC. The question was if through the Law Foundation and the Law Society there was \$175,000 to spend, should it be spent on PBLBC or on the people who provide pro bono services?

Mr. Doyle suggested that the Law Society could have decided to dedicate a staff lawyer to provide the sort of coordination and promotion of pro bono services that is needed. However, PBLBC was the model that was chosen and it was trying to create new and diverse sources of pro bono services. He said one thing that came out of the pro bono forum was the concern that PBLBC not adopt a top down model in which the lawyers dictate how pro bono services would be delivered and to whom. He said that was why PBLBC had community representatives on its Board.

Ms. Pratchett suggested that the better question was whether putting the money into PBLBC would be a good investment, and in her view that question should be answered in the affirmative. She noted that initiatives that increased the availability of pro bono services, such as special insurance, would not have occurred if PBLBC did not exist. Ms. Pratchett denied that PBLBC had developed a bureaucracy, noting that it operated with a part-time staff.

Mr. Nagle said he was heartsick over the destruction of the legal aid system in BC. He was concerned that nothing in the information presented suggested a “sunset” approach to the need for funding, and asked what would happen in two years.

Mr. Doyle said PBLBC expected to be on a short leash, and if there were a need for funding in two years, it would have to come back to the Benchers and explain it.

Mr. McDiarmid recalled that it was always the intention of PBLBC that it would be self-funding. The Law Society agreed to provide seed money but was not expected to provide ongoing funding in support of bureaucracy. He said the request for funding was not within the spirit of that intention.

Mr. Brun said the CBA did provide financial support to PBLBC at a time when the council was debating an alternate budget that included a substantial deficit. He said the problem that would need to be considered was that every member of the CBA is also a member of the Law Society, and if the CBA provides funding, its members would in effect be paying twice.

It was moved (Jackson/Zacks) that the Law Society give PBLBC \$85,000 in each year for two years commencing on March 31, 2005.

Mr. Alexander noted that the Benchers had intended to discuss their policy on funding external programs generally, and it would be appropriate that they do so prior to making this decision.

It was moved (McDiarmid/Rideout) to postpone debate on the motion until the next scheduled meeting of the Benchers after the Benchers receive copies of the report of the Canadian Bar Association Task Force on Systems of Civil Justice (1996) and the Law Society/Canadian Bar Association report entitled A Framework for the Delivery of Pro Bono Legal Services in the Province of British Columbia (1999).

The motion to postpone was carried.

**(c) J. Donald Mawhinney Endowed Lectureship fund in Professional Ethics at the UBC Faculty of Law.**

The Benchers considered an invitation to the Law Society to provide funding for an endowed lectureship in Professional Ethics at the UBC Faculty of law.

Mr. Zacks said his understanding was that the purpose of the endowment was not just to honour Mr. Mawhinney but also to establish an endowed chair in ethics at the law school. He commented that the Benchers frequently discuss the need to teach ethics at the law schools.

Mr. Vilvang opposed providing funding for an academic chair. He agreed that teaching professional responsibility was important but did not think this would be the best delivery model.

Mr. Blom noted that for many years the UBC Faculty of Law had provided an elective course in professional responsibility.

Mr. Everett opened the discussion to consider the Law Society's policy on funding external programs generally.

Mr. Alexander said if the Benchers decided to fund programs beyond those specifically sponsored by the Law Society, there is no "bright line" that can be drawn to limit funding for anything that is a good cause. He said the Law Society should encourage organizations to seek their funding directly from funding agencies and the profession.

It was moved (Alexander/McDiarmid) that the Law Society not consider requests for funding outside its own programs, unless they fulfill one or more of the Law Society's ends.

Mr. Zacks did not think the policy as expressed in the motion would assist people outside the Law Society to understand what programs would or would not be considered for funding.

Mr. Alexander said it was not intended to preclude consideration of the matters presently before the Benchers or other matters in the future, but to require them to be considered within a narrow framework.

Ms. Ostrowski asked if the policy would extend to indirect funding, such as through contribution of staff time.

Mr. Everett thought the policy would include such indirect funding.

Ms. Schmit was concerned that the Benchers did not have enough information to consider changing the policy.

Mr. Donaldson recalled that the Law Courts Education Society made a persuasive argument that they were in effect doing some of the Law Society's work. The debate was vigorous and funding was denied in part because of the policy. If the Benchers are to re-examine the policy, they should have the same information before them as on that occasion.

Mr. Vilvang favoured the motion because the broad definition of programs would allow matters to be considered on a case-by-case basis, rather than trying to come up with a formula that ties the Benchers' hands in the future. The policy is simple and flexible.

Mr. Ridgway was concerned that funding decisions not come down to the mood of the meeting when they are considered.

Mr. Alexander said the existing policy, which would be continued by the motion, was not as *laissez-faire* as suggested. He said it created some structure and allowed Law Society staff to filter out at least some requests that clearly do not meet Law Society ends. If there is a question beyond that, it can be put to the Benchers.

The motion was carried.

It was moved (Turriff/Rideout) that the Law Society support the J. Donald Mawhinney lectureship in principle and engage in further discussion regarding the amount of funding sought after obtaining information about the experience in other jurisdictions. He said it would send a bad message if the Law Society voted against supporting the teaching of ethics.

Ms. Wallace said this request seemed somewhat different than others, and she was more concerned about “opening the floodgates” with a decision to support a specific endowment request.

Mr. Vilvang said this was something that individual lawyers or law firms could support, and he did not think it fell within the Law Society’s mandate. This was a request to fund what would be a prestigious chair for elite academics.

Mr. Hunter shared Ms. Wallace and Mr. Vilvang’s concerns. For example, he said if the Law Society funded this chair, would it also fund a chair at the University of Victoria Faculty of Law?

Mr. Rideout said there was no need to make a commitment immediately, and the matter would be left open for further discussion after additional information was obtained.

Mr. Nagle said the real question was why ethics was not a mandatory part of the formal education of lawyers.

Ms. Schmit said there were far better ways for the Law Society to deliver ethical training.

The motion was defeated.

**9. APPOINTMENT TO THE LEGAL SERVICES SOCIETY BOARD OF DIRECTORS.**

It was agreed to appoint R. Greg Stacey to the Board of Directors of the Legal Services Society for a term commencing on December 3, 2004 and ending on December 2, 2006.

**10. LAWYER EDUCATION TASK FORCE.**

Ms. Schmit introduced the report from the Lawyer Education Task Force and reviewed the proposed policy objectives of the task force, which were:

1. Improving Access to Education Resources;
2. Recommending or requiring that certain lawyers and/or classes of lawyers take practice management related courses;
3. Limited Licensing Programs;
4. Specialization;
5. Mandatory Continuing Legal Education.

Mr. Alexander said this was an area of such specific expertise that the Benchers were virtually bound to accept the task force's recommendations.

It was moved (Alexander/Fung) to direct the Lawyer Education Task Force to examine the proposed policy objectives and return their recommendations to the Benchers.

Ms. Wallace was somewhat concerned about pursuing limited licensing, specialization and mandatory continuing legal education.

Mr. Zacks disagreed saying it would not be possible for the Task Force to do a proper job without addressing all the issues and presenting options.

Ms. Schmit said the task force was seeking direction from the Benchers. She said members of the task force have a variety of positions on the proposals but all members thought the task force should consider all five of the options because they are so interrelated.

Mr. Turriff agreed that the topics were interrelated and it would be a mistake to confine the task force to examining only the first two.

Mr. McDiarmid recalled that an earlier task force on specialization had concluded that there was little appetite in the profession for specialization.

Mr. McNaughton said the CLE Society supported examination of all the proposed matters, although access to continuing education was a key matter for the CLE Society.

Ms. Fung commended the task force members for their willingness to tackle potentially complex and controversial areas. She endorsed an examination of all the areas without prejudging the outcome.

Mr. O'Byrne hoped the Law Society could let the profession know that the Benchers are examining these matters and are interested in their input.

The motion was carried.

## **11. CLE BURSARY**

Ms. Schmit reviewed the Lawyer Education Task Force recommendation that funding for the continuing legal education bursary be renewed on a month-to-month interim basis effective January 1, 2005, on the same terms as were approved for funding the bursary in 2004. Ms. Schmit said this was a stopgap measure, and she hoped to return to the Benchers in March 2005 with a more long-term solution

Ms. Wallace suggested that the low take-up rate for the bursary resulted from the Benchers limiting the amount of the bursary to \$200 per course, which was not enough to help the people it is aimed at. She thought the amount was too great a restriction.

It was moved (McDiarmid/Fung) to continue funding for the continuing legal education bursary on a month-to-month interim basis effective January 1, 2005 until the Benchers decide otherwise, on the same terms as were approved for funding the bursary in 2004.

The motion was carried.

**12. PRESIDENT'S NOMINEE TO THE PROVINCIAL JUDICIAL COUNCIL**

The Benchers considered a short-list of candidates prepared by the Executive Committee and cast votes for their preferences. After considering the Benchers preferences, the President appointed Diane Turner as his nominee on the Provincial Judicial Council commencing on January 1, 2005.

**13. RULES RESPECTING LIMITED LIABILITY PARTNERSHIPS.**

It was moved (Zacks/Rideout) to amend the Law Society Rules as follows:

1. ***In Rule 9-5(2) by striking out the words*** “until December 31 of the year in which it is issued”.

2. ***By rescinding Rule 9-8 and substituting the following:***

Corporate Information

9-8 A law corporation must deliver to the Executive Director copies of the Articles, Notice of Articles and amendments to its Articles or Notice of Articles

(a) when applying for a permit, and

(b) immediately on adoption of new or amended Articles or Notice of Articles.

The motion was carried by a majority of more than two thirds of the Benchers present.

**14. PROFESSIONAL CONDUCT HANDBOOK, WHETHER A NEW RULE SHOULD BE ADDED CONCERNING CRIMINAL CONDUCT AND FRAUD**

Mr. Zacks referred to a memorandum from the Ethics Committee outlining concern about whether the Professional Conduct Handbook provides sufficiently clear and rigorous standards of professional conduct regarding the handling of investment money by lawyers.

It was moved (Zacks/Rideout) to amend Chapter 4 of the Professional Conduct Handbook as set out in Appendix 1.

Mr. Ridgway noted that the example used in the amended Footnote 3 concerned a lawyer allowing his or her trust account to be used to perpetuate what may be an investment scam, and he asked why that particular example was chosen rather than involvement in money laundering or something else.

Mr. Zacks said the Ethics Committee was concerned about having either too many or too few examples. He said the Committee thought avoiding involvement in money laundering was fairly self-evident, but some lawyers were helping clients with potentially fraudulent investment schemes without critical thought, and the Committee concluded that the example would serve to alert lawyers.

Mr. Donaldson was concerned about the words “ought to know” in paragraph 6 of the proposed amended Chapter 4. He said that was an important phrase with specific meaning, and amounts to a negligence test. He said the rule should require subjective knowledge, in keeping with the general theory in criminal law. If a lawyer has an honest but mistaken belief that the activity is proper, he or she should not be guilty of professional misconduct. Mr. Donaldson noted that a

subjective test was used in Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, and in the American Bar Association model rules.

Mr. Nagle noted that the Discipline Committee had encountered situations where the only argument available to the lawyer was that he or she was stupid but not dishonest.

Mr. Rideout acknowledged Mr. Donaldson's point but favoured retaining the "ought to know" test because the Law Society should set a very high standard in this area. He thought the Law Society should be able to say that a lawyer ought to have known better.

Mr. McDiarmid recalled a discipline case in which the lawyer essentially said he had never really thought about what his client was doing. He agreed that the Law Society should set the bar high; noting that it is easier to say a lawyer ought to have known his client was engaged in unlawful conduct than to prove actual knowledge. Mr. McDiarmid was also concerned that the Law Society of BC not appear out of step with other Law Societies.

Mr. Zacks agreed that it ought to be offensive for a lawyer to be able to use the "stupid not dishonest" defense.

Mr. Vertlieb agreed with Mr. Rideout but noted the paragraph heading, which was "Dishonesty, crime or fraud", which suggested that a criminal law standard should apply. He suggested using the criminal law concept of "willful blindness" which would still set a high standard.

Mr. Rideout acknowledged that the Ethics Committee was concerned about the wording but decided the test should be stated in plain English.

Ms. Hickman suggested that as it was worded the amendment could encompass lawyers in family cases where they could unknowingly become involved in the dishonest conduct of their clients, and in her view, that extended the reach of the rule too far.

Mr. Taylor preferred Mr. Donaldson's position. He said that if a lawyer asserted before a hearing panel that he or she was stupid rather than dishonest, it would come down to credibility.

Mr. LeRose supported the higher standard because it is directed specifically to the legal profession, and any distinction could be addressed in the penalty phase of a hearing.

It was moved (Donaldson/Taylor) to amend the motion to delete the words "ought to know" from paragraph 6 in Appendix 1.

Mr. Zacks said the Ethics Committee had recommended the amendment on the premise that it was asked by the Discipline Committee to raise the standard for professional conduct. Mr. Zacks proposed that the motion be withdrawn and the matter referred back to the Ethics Committee to consider removing the words "ought to know" and adding a footnote dealing with willful blindness.

It was agreed to refer the matter back to the Ethics Committee as Mr. Zacks proposed.

## **15. WOMEN IN THE LEGAL PROFESSION WORKING GROUP**

Ms. Wallace explained that the Women in the Legal Profession working group, working under the auspices of the Equity and Diversity Committee, had been considering the possibility of doing follow-up work on the gender issues examined in the 1989 Women in the Legal Profession Report and the 1992 report on Gender Equality and the Justice System. She noted that the Law Societies

of Alberta and Upper Canada had conducted large-scale projects that essentially duplicated and updated the work done in BC. Ms. Wallace said the Equity and Diversity Committee sought the endorsement of the Benchers to suspend the activities of the working group and form a task force to examine the results of the work done in Alberta and Ontario and determine whether they can be applied in BC, obviating the need for further extensive additional work.

It was moved (Wallace/Ostrowski) that the Benchers strike a task force to review the Ontario and Alberta reports and any other relevant information including the CBA's "report card" and Law Society statistics, and report back to the Benchers by May, 2005 as to whether:

1. to proceed with a formal update of the Women in the Legal Profession (1989) and Gender Equality in the Justice System (1992) studies; or
2. to accept, on the balance of evidence, that there are some outstanding issues that need to be addressed regarding equity and diversity in the legal profession in British Columbia, and to develop policy recommendations to address those issues.

Ms. Ostrowski commented that the Equity and Diversity Committee and Women supported the proposal unanimously in the Legal Profession working group.

Mr. Turriff agreed that a review was appropriate. He expressed the hope that the task force would bring together people with a lot of different perspectives.

Ms. Ostrowski said that one of the reasons for recommending a task force was to ensure broad representation from Benchers and non-Benchers.

Mr. Zacks agree that the work done by others should be examined. He questioned whether there was any real doubt that there are outstanding issues regarding equity and diversity in the legal profession in BC that need to be addressed.

Ms. Ostrowski commented that some people do in fact doubt that there are such outstanding issues.

Mr. Zacks noted that the range of outstanding issues encompassed more than women in the legal profession. He asked if it was intended that the task force would examine a broader range of issues.

Ms. Ostrowski said the task force would examine a broad range of issues and not confine itself solely to gender-related matters.

Mr. Zacks commented that the task force might overlap with work being done by the Equity and Diversity Committee with respect to lawyers with disabilities.

Mr. Kelly recalled that more than half of the people graduating from law schools are now women, and the challenges from business and regulatory perspectives are very real. He hoped that some practical recommendations would result that would assist members and law firms to deal with issues that will become more prevalent. He said forward thinking would stand the Law Society in good stead.

Mr. LaLiberté said it was imperative to address the issues.

Mr. Hunter agreed that the review was overdue. He said the case for reviewing and updating information on gender issues was overwhelming, but referring to Mr. Zacks' comments regarding

the broad scope of the proposed review, expressed concern that an overbroad approach could result in a loss of focus.

Ms. Ostrowski suggested that the task force chairperson would determine the focus of the task force.

Mr. Nagle supported the recommendation and quick completion of the work.

Ms. Ostrowski reiterated that women's issues encompassed more than just women in the legal profession. For example, flexible work arrangements are of interest to many people. The potential ramifications of policies in this area are quite wide.

Ms. To noted that demographics suggest that there could be a shortage of lawyers in the future. She commented that with more than half of law school graduates being women, policies that address gender issues could also help alleviate potential shortages.

The motion was carried.

**16. UNBUNDLED LEGAL SERVICES**

Ms. Ostrowski reviewed a memorandum from the Access to Justice Committee concerning issues arising from the use of limited retainers (unbundled legal services), and seeking direction from the Benchers as to whether the issues should be referred to a working group of the Committee or to a task force.

Mr. Zacks noted that the Ethics Committee briefly examined the subject. Additionally, the Supreme Court of Canada had recently rendered a decision regarding the duty of counsel appearing on limited retainers. He said there were conflicts issues that should be considered.

Mr. Nagle supported examination of the issues as a matter of intense public interest. The request from the Legal Services Society for guidelines was, in his view, particularly compelling.

It was moved (Ostrowski/Nagle) to strike a task force to examine the issues arising from delivery of unbundled legal services.

The motion was carried.

**17. APPOINTMENT OF HEARING PANELS**

Discussion of this matter was postponed to the February, 2005 Benchers meeting.

**18. OPEN DISCUSSION OF BENCHER CONCERNS**

Ms. Schmit was concerned that the Benchers spent a great deal of time on funding issues that could be better spent on other matters. She said funding requests came before the Benchers with inconsistent workup, in part because they do not have a home on the Law Society staff. There is generally no precedent or past decisions for guidance, no information relating to budget, and no consideration given to accountability for the money. She suggested that consideration be given to those issues and specific proposals brought to the Benchers.

Mr. Alexander noted that the Benchers had received as a broadcast email a letter from Charles McKee concerning First Canadian Title Insurance, to which was appended a CMHC study paper.

Mr. Alexander said the letter was of some concern to the Conveyancing Practices Task Force because it contains significant errors. He said the Lawyers Insurance Fund staff had prepared a response addressing the errors.

Mr. Alexander turned to the subject of the outgoing President. He noted that Mr. Everett's term began amidst a storm of controversy not of his own making and it appeared that it would conclude in the same way, and that had significance beyond the particular circumstances because it allowed the Benchers to see and benefit from a steadfast and wise hand on the helm of the Law Society for the previous fifteen months. On his own behalf and on behalf of all the Benchers, Mr. Alexander thanked Bill Everett for his incredible effort and the profile he brought and preserved for the Law Society.

Mr. Everett thanked Mr. Alexander. He said that with the wisdom of the Benchers, the Law Society gets to the right result in the end. Mr. Everett said he was not sorry to be going off watch, but he would miss everyone. Mr. Everett thanked the Law Society staff for their hard work and dedication, and thanked the Benchers for their wisdom and support.

**19. UPDATE ON WIRICK INVESTIGATION AND SPECIAL COMPENSATION FUND CLAIMS.**

This matter was discussed *in camera*

There being no further business, the meeting was terminated.

DMGN  
05-01-23

**APPENDIX 1: SCHEDULE 1 – 2005 LAW SOCIETY FEES AND ASSESSMENTS**

<b>A. Annual fee</b>	<b>\$</b>
1. Practice fee set by members (Rule 2-70) .....	980.50
2. Special Compensation Fund assessment (Rule 2-70) .....	600.00
3. Liability insurance base assessment (which may be increased or decreased in individual cases in accordance with Rule 3-22(1)):	
(a) member in full-time practice .....	1,500.00
(b) member in part-time practice .....	750.00
4. Liability insurance surcharge (Rule 3-26(2)) .....	1,000.00
5. Late payment fee for practising members (Rule 2-72(3)) .....	100.00
6. Retired member fee (Rule 2-4(3)) .....	75.00
7. Late payment fee for retired members (Rule 2-72(4)).....	0.00
8. Non-practising member fee (Rule 2-3(2)) .....	300.00
9. Late payment fee for non-practising members (Rule 2-72(5)) .....	50.00
10. Administration fee (Rule 2-75(3)) .....	50.00
 <b>A.1 Trust administration fee</b>	
1. Each client matter subject to fee (Rule 2-72.2(1)) .....	10.00
 <b>B. Special assessments</b>	
 <b>C. Articled student fees</b>	
1. Enrolment in admission program (Rules 2-27(3)(e) and 2-33(1)(b)) .....	250.00
2. Temporary articles fee (Rule 2-42(1)(c)) .....	100.00
3. Temporary articles (legal clinic) fee (Rule 2-42(1)(c)) .....	15.00
4. Training course registration (Rule 2-44(4)(a)) .....	2,250.00
5. Remedial work (Rule 2-45(7)):	
(a) for each piece of work .....	50.00
(b) for repeating the training course .....	3,500.00
 <b>D. Investigation and examination fees</b>	
1. Transfer from another Canadian province or territory – investigation fee (Rule 2-49(1)(f)) .....	1,125.00
2. Transfer or qualification examination (Rules 2-49(6) and 2-58(2)) .....	280.00
 <b>E. Call and admission fees</b>	
1. After enrolment in admission program (Rule 2-48(1)(d)) .....	140.00
2. After transfer from another Canadian province or territory (Rule 2-49(1)(f))....	140.00
 <b>F. Reinstatement fees</b>	
1. Following disbarment, resignation or other cessation of membership as a result of disciplinary proceedings (Rule 2-52(1)(b)) .....	500.00
2. All other cases (Rule 2-52(1)(b)) .....	415.00

<b>G. Application and requalification fees</b>	<b>\$</b>
1. Application to become retired member (Rule 2-4(2)(b)) .....	25.00
2. Application to become non-practising member (Rule 2-3(1)(b)) .....	50.00
3. Non-practising or retired member applying for practising certificate (Rule 2-56(b)) .....	50.00
<b>H. Inter-jurisdictional practice fees</b>	
1. Original application for permit (Rule 2-11(2)(b)) .....	500.00
2. Renewal of permit (Rule 2-11(2)(b)) .....	100.00
<b>I. Corporation and limited liability partnership fees</b>	
1. Permit fee for law corporation (Rule 9-4(c)) .....	250.00
2. New permit on change of name fee (Rule 9-6(4)(c)) .....	75.00
3. LLP registration fee (Rule 9-15(1)) .....	250.00
<b>J. Practitioners of foreign law</b>	
1. Permit fee for practitioners of foreign law (Rule 2-18(1)(b)) .....	500.00
2. Permit renewal fee for practitioners of foreign law (Rule 2-22(2)(c)) .....	100.00
3. Late payment fee (Rule 2-22(6)) .....	100.00
<b>K. Trust Report</b>	
1. Late filing fee (Rule 3-74(2)) .....	200.00

**Note:** The federal goods and services tax applies to Law Society fees and assessments.

**SCHEDULE 2 – 2005 PRORATED FEES AND ASSESSMENTS  
FOR PRACTISING MEMBERS**

	Law Society fee	Special Compensation Fund	Liability insurance fee	
			Payable prior to call	Payable by June 30
<b>Full-time insurance</b>				
January	980.50	600.00	750.00	750.00
February	896.51	550.00	625.00	750.00
March	817.08	500.00	500.00	750.00
April	733.08	450.00	375.00	750.00
May	653.67	400.00	250.00	750.00
June	569.66	350.00	125.00	750.00
July	490.25	300.00	750.00	0.00
August	406.26	250.00	625.00	0.00
September	326.83	200.00	500.00	0.00
October	242.83	150.00	375.00	0.00
November	163.42	100.00	250.00	0.00
December	79.41	50.00	125.00	0.00
<b>Part-time insurance</b>				
January	980.50	600.00	375.00	375.00
February	896.51	550.00	312.50	375.00
March	817.08	500.00	250.00	375.00
April	733.08	450.00	187.50	375.00
May	653.67	400.00	125.00	375.00
June	569.66	350.00	100.00	375.00
July	490.25	300.00	375.00	0.00
August	406.26	250.00	312.50	0.00
September	326.83	200.00	250.00	0.00
October	242.83	150.00	187.50	0.00
November	163.42	100.00	125.00	0.00
December	79.41	50.00	100.00	0.00

**SCHEDULE 3 – 2005 PRORATED FEES  
FOR NON-PRACTISING AND RETIRED MEMBERS**

	<b>Non-practising members</b>		<b>Retired members</b>	
	Fee	Inc. GST	Fee	Inc. GST
January	300.00	321.00	75.00	80.25
February	275.00	294.25	68.75	73.56
March	250.00	267.50	62.50	66.88
April	225.00	240.75	56.25	60.19
May	200.00	214.00	50.00	53.50
June	175.00	187.25	43.75	46.81
July	150.00	160.50	37.50	40.13
August	125.00	133.75	31.25	33.44
September	100.00	107.00	25.00	26.75
October	75.00	80.25	18.75	20.06
November	50.00	53.50	12.50	13.38
December	25.00	26.75	6.25	6.69