

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

- MEETING:** Benchers
- DATE:** Friday July 14, 2006
- PRESENT:**
- | | |
|---|----------------------------|
| Robert McDiarmid, QC, President | June Preston |
| Anna Fung, QC, 1 st Vice-president | Robert Punnett |
| John Hunter, QC, 2 nd Vice-president | David Renwick |
| Kathryn Berge, QC | Glen Ridgway, QC |
| Joost Blom, QC | Alan Seckel, QC, Deputy AG |
| Ian Donaldson, QC | Dirk Sigalet, QC |
| Michael Falkins | Richard Stewart |
| Leon Getz, QC | Ronald Tindale |
| Gavin Hume, QC | Gordon Turriff, QC |
| William Jackson | Dr. Maelor Vallance |
| Patrick Kelly | Art Vertlieb, QC |
| Bruce LeRose | James Vilvang, QC |
| Jan Lindsay | David Zacks, QC |
| Thelma O'Grady | |
- NOT PRESENT:**
- | | |
|---------------|----------------------|
| Rita Andreone | Carol Hickman |
| Ken Dobell | Terry La Liberté, QC |
- STAFF PRESENT:**
- | | |
|---------------------|-----------------|
| Timothy McGee, CEO | Michael Lucas |
| Dana Bales | Jeanette McPhee |
| Stuart Cameron | David Newell |
| Mary Ann Cummings | Don Terrillon |
| Brad Daisley | Alan Treleaven |
| Charlotte Ensminger | Adam Whitcombe |
| Su Forbes, QC | Carmel Wiseman |
| Jeffrey Hoskins | |
- GUESTS:**
- Dean Mary Ann Bobinski, University of British Columbia
 - Frits Verhoeven, Vice-President, CBABC
 - Frank Kraemer, QC, Executive Director, CBABC
 - Caroline Nevin, Associate Executive Director, CBABC
 - Johanne Blenkin, Chief Librarian, BCCLS
 - Wayne Robertson, Executive Director, Law Foundation of British Columbia
 - Dr. Sylvana Carr
 - Baldwin Wong

1. MINUTES

The minutes of the meeting held on June 17, 2006 were approved as corrected.

2. PRESIDENT'S REPORT

Mr. McDiarmid circulated a written report detailing his activities on behalf of the Law Society in June.

3. CEO'S REPORT

Mr. McGee circulated a written report. He referred to the financial summary, which showed Law Society finances were tracking according to plan. He said Jeanette McPhee, Chief Financial Officer, would henceforth report quarterly on Law Society finances. Mr. McGee updated the Benchers on key staff changes. He reported that:

- Howard Kushner would join the Law Society as Chief Legal Officer on August 15;
- Dana Bales had joined the Communications Department as a communications officer;
- Denise Palmer left the Communications Department to join the Fraser River Basin Council; and
- Mary Ann Cummings would be retiring from the Law Society in October.

Mr. McGee reported that fourth floor renovations were proceeding on schedule.

Mr. McGee invited Mary Ann Cummings to update the Benchers on the development of the new custodianship program. Ms. Cummings gave a presentation, a copy of which is attached as Appendix 1.

4. REPORT ON OUTSTANDING HEARING DECISIONS

The Benchers received a report on outstanding hearing decisions.

5. SMALL FIRM TASK FORCE INTERIM REPORT AND RECOMMENDATIONS.

Mr. LeRose introduced the interim report of the Small Firm Task Force, which arose from discussions at the 2005 Benchers retreat to consider initiatives designed to assist sole and small firm practitioners. He thanked the members of the task force: Christine Elliot, Robert Ellis, Pat Schmit, Art Vertlieb, Robert McDiarmid, Johanne Blenkin, and Alan Treleaven. Mr. LeRose noted that two projects currently under development, the new firm practice course and the new trust assurance program, would both be of immense assistance for practitioners setting up new firms and to existing small firms. In addition to those projects, the task force recommended six initiatives:

1. Technology support initiative to assist members to obtain and use appropriate technology.
2. Bookkeeper support initiative to assist members to find competent bookkeepers and develop proper bookkeeping systems. This will include an online guide.
3. Articling initiative to work with the Credentials Committee to promote articling throughout the province with a focus on sole and small firms, and to liberalize articling rules to permit shared articles to enable and encourage students to take articles in smaller centres and small firms.
4. Practice locums initiative to promote the use of locums and identify both lawyers in need of locums and lawyers who are available to provide that service.
5. Succession and emergency planning initiative to develop and publish a comprehensive guide to succession and emergency planning for sole and small firms.

6. Certified cheque initiative to work with the Ethics Committee to consider amending the Professional Conduct Handbook to include a provision clarifying when it is not appropriate to demand a certified cheque from another lawyer.

Mr. Zacks complimented the task force on their report and agreed that anything the Law Society can do to assist sole and small firm practitioners would be valuable. He agreed that the certified cheque initiative should go to the Ethics Committee, but suggested that any Handbook provision should also make it clear that lawyers may pay out on a trust cheque notwithstanding that it may not have cleared.

It was moved (LeRose/Jackson) to approve continued development of the six recommended initiatives.

Mr. LeRose clarified that a cost analysis of implementing the recommendations would be included in the task force's final report.

Mr. Hume commented that the articling initiative was attractive but would give rise to some complex issues. Mr. LeRose agreed and said the task force was alive to the potential issues and would be discussing them with the Credentials Committee.

Ms. Preston asked if the task force had discussed the number of women who are sole practitioners.

Mr. LeRose said the task force had not specifically discussed the number of women in sole or small firm practice and none of the initiatives were gender-specific. He said the task force could look at possibly initiatives aimed at women practitioners, but would want to avoid duplicating the work of other task forces.

Mr. Kelly commented on the magnitude of the overall investment made in law practices, assuming that from the beginning of legal education to completion of training a lawyer would invest about \$150,000, the basic investment in law practice in British Columbia is in the region of \$1.5 billion, a large proportion of which is in sole and small firm practitioners. In terms of the public interest, investment of resources in improving that sector is a good investment for the Law Society. Mr. Kelly was in favour of initiatives that will assist sole and small firm lawyers to practice at a high level.

Mr. Kraemer noted that the shared articles registry is a reality and is on the CBA(BC) website. He was interested in exploring with the Executive of the CBA(BC) working with the Law Society on initiatives one, two, and particularly four.

Mr. LeRose said the task force would welcome support from the CBA.

Mr. Falkins said that from the perspective of the Practice Standards Committee these developments were one of the best things to occur in his time at the Law Society. He felt the initiatives would go a long way to solving some problems.

The motion was carried.

6. CHANGES TO EXECUTIVE LIMITATION AND SCHEDULE OF AUTHORIZATIONS.

Mr. Zacks reported that the Audit Committee had been considering the executive limitations and monitoring indicators and had three recommendations. The executive limitations were introduced as part of the Carver governance model, but various forces have moved the Law Society away from a pure Carver model; consequently, the Committee reviewed the limitations with a view to updating them to reflect current practices. The Schedule of Authorizations is intended to clarify

who has authority to bind the Law Society. The third recommendation is to conduct a review of the whole governance process.

Mr. LeRose said the proposed changes to the executive limitations were a great improvement.

Mr. Vilvang was concerned that it was not clear from the material circulated what had been changed.

Mr. Zacks said most of the changes were simply an attempt to clarify the language of the limitations, and a number of changes would update how the Law Society functions at a management level. The financial and budgeting limitations would be largely the same but more comprehensible. Mr. Zacks proposed postponing the discussion to the next meeting so that the specific changes could be identified.

It was agreed to postpone discussion of this matter to the meeting scheduled for September 7, 2006.

7. REPORT FROM THE INTERPRETERS WORKING GROUP

Mr. Vertlieb introduced Baldwin Wong, Chair of the working group, and Dr. Silvana Carr, who gave a presentation. A copy of the presentation is attached as Appendix 2.

It was moved (Vertlieb/Lindsay):

1. to receive the report of the working group and authorize publication of the report on the Law Society website and a summary of its findings in the Benchers Bulletin;
2. to authorize creating web-based resources to educate lawyers about the proper use of interpreters and the issues around accreditation of interpreters; and
3. to consult with the relevant legal interpreter accreditation bodies about the possibility of collaborating to develop a training session in the use of interpreters in a legal context as part of the Professional Legal Training Course, and report back.

Mr. Turriff asked what the expected cost of the web-based resource for lawyers would be. Mr. Foo said the working group anticipated republishing a number of existing articles, linked from the practice support material on the Law Society website, providing information on accreditation of interpreters and how to properly use interpreters in a legal setting. He said the cost would be minimal.

The motion was carried.

Mr. McDiarmid thanked Dr. Carr and Mr. Wong for their work, and Mr. Vertlieb for his leadership in focusing on matters within the Law Society mandate to produce practical solutions.

8. LAW SOCIETY SCHOLARSHIP

Mr. McDiarmid introduced Michael Begg, recipient of the Law Society Scholarship in 2006, and congratulated him on behalf of the Benchers and the Law Society.

Mr. Begg thanked the Benchers.

9. 2007 ANNUAL PRACTICE FEE

Mr. McGee and Ms. McPhee gave a presentation outlining the basis for the 2007 annual practice fee recommended by the Financial Planning Subcommittee, and the recommendation that the Insurance Assessment and Special Compensation Fund Assessment for 2007 each be reduced by \$100.

It was moved (Fung/Turriff) to recommend to the members at the 2006 Annual General Meeting a practice fee of \$1,297 for the practice year commencing January 1, 2007, consisting of the following amounts:

General Fund	\$1,056
BCCLS	\$160
LAP	\$53
Advocate	<u>\$28</u>
Practice Fee	\$1,297

Ms. Fung said the recommendation balances the desire to avoid overburdening members, recognizing that continuing to use reserves to cover operating costs is unsustainable, and the regulatory mandate of the Law Society.

Ms. Forbes said that based on the strength of the Lawyers Insurance Fund she was very comfortable bringing forward an insurance assessment representing a \$100 reduction this year. Holding at that level in 2008 will depend on a buoyant economy and implementation of some limitations on potential exposure to catastrophic loss under Part B, which will be proposed later in the year.

Ms. Fung said that the Financial Planning Subcommittee had discussed the reduction in the Special Compensation Fund assessment with Mr. LeRose and Mr. Cameron, who were both of the view that it would be sustainable.

Mr. Zacks said it was important to note that the reduction in the Special Compensation Fund is in the part of the fund that does not relate to the Wirick matter.

Mr. LeRose said the \$100 reduction in the Special Compensation Fund Assessment represented a fair reduction to cover the cost of the matters that had been taken over by the General Fund.

Mr. Stewart was concerned that the proposed reduction in the Insurance Assessment resulted from “working backwards” to limit the impact of a practice fee increase. He asked Ms. Forbes if she would have recommended the reduction in any event. Ms. Forbes said that she would make the same recommendation regardless of the annual practice fee.

Mr. Zacks said the Benchers made a deliberate decision to use the General Fund reserve and told the members what was being done. The Benchers always knew that they would have to deal with the actual operating costs eventually. He said the Financial Planning Subcommittee did not include a contingency amount because it believes that Law Society should operate within its budget and deal with new matters as they arise.

It was moved (Zacks/Punnet) to amend the resolution to break out and show the amounts paid to CanLII, Pro Bono Law of BC, and the Federation of Law Societies in the same was as the amounts for the BCCLS, LAP and The Advocate. Mr. Zacks said this would show more clearly how much it costs to operate the Law Society itself but is not intended to suggest that the Law Society limit its support for the other organizations.

Mr. Ridgway agreed that the need to increase the fee was no surprise because the Benchers had deliberately decided to reduce the surplus to the benefit of the members. However, he said, when

the time comes for a significant increase, it is important to examine the services the Law Society provides and determine whether they should continue. He said he would like to see that kind of analysis in the next year.

Mr. Verhoeven supported the amendment, which increased the transparency of the fee resolution. He noted the large amount for maintaining the staff component of Law Society programs and thought it should be made clear what part of the fee increase represented an increase in staff. He also noted the increase in TAF revenue.

Mr. McGee said the TAF revenue is segregated and expensed separately. TAF-funded programs are new and are significant initiatives in the public interest. Maintaining the staff complement relates to ten new positions created in 2006 in demand-driven services. These were only budgeted on a partial-year basis in 2006 because filling the positions took place over the course of the year. In 2007 the whole salary cost of those positions has to be accounted for. Salary adjustments concern keeping pace with market rates (targeted at the midpoint of market rates for comparable positions in comparable organizations). With respect to the total headcount, there are modestly more employees per member than in some other Law Societies such as Ontario, but the Law Society of BC is the most cost-efficient. The Law Society of BC runs core programs with in-house resources, which increases the number of staff positions but reduces overall costs.

Mr. Blom asked what assumption was made about TAF revenue. Ms. McPhee said it was budgeted this year at \$3.6 million, covering trust assurance, custodianships and Part B insurance.

Mr. Donaldson supported the recommendations. With respect to Mr. Ridgway's comments, he said if the proposed fee represented "right-sizing" then the Benchers have been "wrong-sizing". He agreed it was important to set out the different items of funding, but what that analysis says is that the proportionate increase in the General Fund fee is even greater. Over a several year period, the Law Society's expenses have increased dramatically. He said the Law Society should tax its members as little as possible and the Benchers should examine the things the Law Society has been doing and determine whether to continue doing them, and avoid creeping expansion of bureaucracy.

Mr. Vertlieb said the Benchers have an obligation to ensure that the organization is run in a fiscally sound way. He said the Benchers owe a debt of gratitude to the Financial Planning Subcommittee for helping get the Law Society back into sound shape. Any explanation of the fee can be dealt with in an open and honest way.

Mr. LeRose said Mr. Verhoeven's concerns were legitimate, and he thanked him for pointing them out. He said one thing the members should know is that trust assurance is currently costing members as much as \$6 million per year, and it is hoped that they will realize significant savings as a result of TAF-funded trust assurance programs.

Mr. McGee said essential questions are whether the Law Society's core regulatory programs are adequately funded, and does the Law Society have appropriate staff to deliver on its public interest mandate? He said both those questions could be answered affirmatively. With respect to the increase in the practice fee year over year, there is at least a communication issue, but a large fee increase is not directly correlated to increased spending because it includes the amount needed to catch up from the artificially low fee that results from using the surplus in previous years.

Ms. McPhee said that although the annual fee would increase by 28%, the operating costs are going up by about 12%, with the balance resulting from catching up from the use of reserves and market increases. The actual expenses in the general fund have been fairly stable.

Mr. Zacks said that going forward the Benchers not only need to address what is currently being done, but must be at least as rigorous in justifying anything new.

Ms. Fung said she was persuaded that what the Law Society does in terms of core programs are things that must be done, and there are people doing that work. Consequently, unless programs are cut, there is not much that can be done to reduce costs. Arguably, the Benchers should look at reducing discretionary costs as well if they want to cut the cost of core programs.

Ms. Berge appreciated the clarity of the information presented and echoed the comments of Mr. Ridgway and others that the Law Society is providing many extra and improved services to members. Ms. Berge was concerned that reducing the Special Compensation fee to \$500 but maintaining it at that level until 2009 would mean that members will end up paying more because they will pay for an extra year over what was previously anticipated.

Mr. Zacks said it was important to recognize the “non-Wirick” component of the Special Compensation Fund assessment. It will take another three years to pay off the Wirick claims, but after that it may be significantly reduced.

Ms. Berge suggested that some members might prefer to pay the additional \$100 per year immediately and get rid of the additional cost associated with Wirick. Ms. Berge asked what the additional fee would be if TAF was not collected.

Ms. McPhee said that without the TAF an additional fee of about \$300 would be required.

The motion to amend was carried.

The motion, as amended, was carried.

10. PROFESSIONAL CONDUCT HANDBOOK, CHAPTER 4, RESTRICTIONS ON FUTURE REPRESENTATION

Mr. Hume reviewed the Executive Committee’s recommendation that the Benchers revise Chapter 4 of the Professional Conduct Handbook to prohibit a lawyer from agreeing to restrictions on future representation as part of a civil settlement for a client.

Mr. Turriff said that when he first heard of this practice he thought it should not be allowed, and he remained inclined to that view; however, he noted that it is permissible to retain a lawyer in order to preclude that lawyer from acting for someone else. He said if agreeing to restrictions on future representation is to be prohibited, then the Benchers would also have to deal with the equivalent situation.

Ms. Lindsay said she was initially swayed by the number of comments from members supporting a prohibition but was persuaded by the argument that that a blanket prohibition is unnecessary simply because some lawyers may wish to decline such agreements. The conflict is no different from the permitted conflicts that arise from contingency fee agreements and other situations. Ms. Lindsay said a prohibition would be contrary to the public interest.

Mr. Zacks said there were good arguments on both sides of the question. However, he said, there is a big distinction between the conflict created by an agreement restricting future representation and a contingency fee in that in the former the lawyer is asked to be a party to the settlement, not just advise the client with respect to the settlement. The lawyer cannot give proper legal advice when he or she is being asked to do something as part of the settlement agreement. It does not make sense to require the client to obtain advice on the settlement from another lawyer.

Dr. Vallance agreed with Mr. Zacks. He said the public perception would be that the lawyer is being “bought off”.

Mr. Vilvang agreed with Mr. Zacks. He said the conflict involved is not the same as in a contingency fee agreement because agreeing to restrict future representation in exchange for payment as part of a settlement agreement on behalf of a client creates an immediate conflict in every case.

Ms. Levesque asked if entering agreements of this kind was common practice.

Mr. McDiarmid said it was not common but occurs particularly in complex cases.

Mr. LeRose said it also occurred in some less complex cases where a defendant is willing to settle a single case but faces the possibility of a large number of future claims arising out of the same circumstances. For example, a manufacturer of windows installed in a leaky condominium project is willing to settle the first claim but does not want to pay on a large number of future claims.

Mr. Donaldson agreed with Mr. Zacks and Mr. Vilvang but pointed out that the client might obtain a better outcome if the lawyer agrees to restrict future representation. The lawyer's duty is to obtain the best outcome for the existing client, not for future clients. He said it was important not to lose sight of the potential benefit to the lawyer's client. Mr. Donaldson also noted Mr. Turriff's comment and said the two situations are directly related except where a retainer is paid simply to prevent a lawyer from acting in a matter.

Mr. Turriff said he did not think the Law Society should be reconsidering its policy on contingency fees. Contingency fees are seen as a way of ensuring access to legal services, although it could be argued that a permitting some forms of third party funding is a better solution. He did not think it possible to wholly distinguish contingency fees from the situation under discussion, and a rational policy that deals with both situations would require further analysis and discussion.

Mr. Kelly noted that the Ethics Committee was seeking direction from the Benchers and there was no proposed rule on the table. The question is whether the committee should develop a rule for consideration by the Benchers, and the Benchers have a responsibility to address the issue.

Mr. Vilvang said it was not fair to compare the situation under discussion to a "preemptive retainer" because such a retainer does not create a conflict. He said Mr. Donaldson's point that the first plaintiff might get a better settlement because of the lawyer's agreement was the strongest argument against allowing it because it creates an instant conflict between achieving the best settlement for the client and the lawyer's future ability to earn income. If the client had independent legal advice and wanted to accept the settlement, the lawyer could refuse the agreement resulting in the offer being pulled off the table.

Mr. Jackson suggested the Benchers were complicating the analysis unnecessarily. The benefit of not allowing agreements of this kind is that it would protect the public, increase access to legal services, and protect the lawyer.

It was moved (Hume/Blom) to direct the Ethics Committee to draft an amendment to the Professional Conduct Handbook prohibiting a lawyer from agreeing to restrictions on future representation as part of a civil settlement.

The motion was carried. Ms. Lindsay voted against the motion.

11. SELECTION OF BENCHERS' NOMINEE FOR SECOND VICE-PRESIDENT IN 2007

Mr. McDiarmid announced that the Benchers had selected Gordon Turriff, QC as the Benchers' nominee for Second Vice-president in 2007. Congratulated Mr. Turriff and thanked Mr. Donaldson for putting his name forward.

12. REVISED MODEL POLICIES

Mr. Hume reported that the Law Foundation had agreed to fund the Women's Forum initiative on mentoring to expand the program outside the Lower Mainland. With respect to model policies, Mr. Hume presented two model policies for consideration, one on flexible work arrangements, and one on pregnancy and parental leave. Mr. Hume said the model policies on flexible work arrangements were revised from earlier drafts to address the concerns expressed by some Benchers. In particular, the model policies would permit adoption of the statement of purpose without getting into the details, which would make it easier for small firms to use the model policies. Additionally, a reasonability element was added to ensuring the same quality of work for a person on a flexible work arrangement. Mr. Hume noted that concern was expressed with respect to compensation in flex-time arrangements, and he said the policy of equal remuneration for people on flex-time or flex-place arrangements is intended to reflect equal remuneration for equal work, not equal remuneration for a reduced workload.

It was moved (Hume/Lindsay) to replace the existing model policy on flexible work arrangements with the revised model policy.

Mr. Zacks was concerned about the Law Society drafting model policies dealing with productivity and remuneration of lawyers, which he thought was a matter for the CBA. He agreed that there are many important benefits to flexible work arrangements and was in favour of them, but did not think it was a matter for the Law Society to be engaged in.

Mr. Hume noted that the model policies were first developed in 1992, and were simply being updated.

Mr. Hunter expressed his appreciation to the task force listening to his concerns and making changes to address them. He said his concerns were considerably reduced as a result. However, he said if the Law Society is going to engage in this area, it should not deal with how associate lawyers are paid by their employers. Compensation is not the Law Society's business.

Ms. Berge said she was involved in drafting the 1992 policies, which arose from the Hughes Report. The issues were broadly debated and the work was done at a very high level. She urged against the idea that the Law Society should now consider backing away from policies that have been promoted for fifteen years, and which established the Law Society of BC as a leader in the field. Ms. Berge said the Law Society should continue on the same path. The model policies should not be read as mandating what associates in a particular firm should be paid – clearly the circumstances of each firm must be taken into consideration.

Mr. Zacks said everyone he knows would like to have work arrangements that accommodate their interests. Some people have nothing but work, and like it that way, others look askance at that and want time for other things. The person who works 3000 hours a year is making the same kind of choice as the person who chooses to work 1000 hours. What the firm wants to do to enhance productivity and retain quality lawyers is their business. The big firms are probably better at it than small firms, and when the Law Society promotes a policy like this, it places smaller firms in a difficult position.

Mr. Turriff said he would prefer to support something between the two poles being debated. He said the Law Society has an obligation to ensure that capable lawyers are in practice serving the public, but it must be careful not to take that too far and set unworkable requirements for firms.

Mr. Hume noted, as Ms. Berge said, that the first version of the policy was created in 1992, emerging from two studies conducted at that time. The studies recognized that women have difficulty staying in practice, and among the recommendations were that the Law Society examine how flexible work arrangements could be developed. That was done. Last year the situation of

women in the profession was re-examined and it was concluded that the problem has been ameliorated to a degree but it still exists. The Task Force would be very concerned about taking a step backwards from a very helpful policy.

The motion was carried.

It was agreed to postpone discussion of the draft policy on pregnancy and parental leave to the September or October 2006 meeting.

13. FORMATION OF A FEDERATION TASK FORCE ON NATIONAL DISSEMINATION OF LEGAL INFORMATION

Ms. Blenkin reported that the Federation of Law Societies had decided to create a national task force to examine legal information issues, and this proposal was intended to continue that work. The proposal has two components. The first component is to form a consortium to negotiate a cost agreement with legal publishers. The second component is to develop a strategy on preservation of information and reduction of duplicated effort with respect to digitization of information.

It was moved (Vertlieb/O'Grady) to support the formation of a Federation task force to take the steps outlined by Ms. Blenkin.

The motion was carried.

14. RULE CHANGES RE: REPAYMENT OF PART B INSURANCE CLAIMS.

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

1. In Rule 2-77, by rescinding paragraph (e) and substituting the following:
 - (e) reimbursement for payment made on behalf of the lawyer or former lawyer under Part B of the policy of professional liability insurance.
2. In Rule 3-26(2), by rescinding paragraph (b) and substituting the following:
 - (b) if the payment was made under Part B of the policy of professional liability insurance, reimburse the Society in full on demand, for all amounts paid under Part B.

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

15. RULE CHANGES RE: DISCLOSURE AND PRIVACY WITH RESPECT TO INSURANCE CLAIMS.

It was moved (Hunter/Falkins) to amend the Law Society Rules by adding the following Rule:

Confidentiality of insurance claims

3-27.1(1) *In this Rule, "claim" means a claim or potential claim reported under the policy of professional liability insurance.*

- (2) *No one is permitted to disclose any information or records associated with a claim.*
- (3) *Despite subrule (2), the Executive Director may do any of the following:*
 - (a) *disclose information about a claim with the consent of the lawyer;*
 - (b) *if a claim has become known to the public, disclose*
 - (i) *the existence of the claim,*

- (ii) *its subject matter,*
 - (iii) *its status, including, if the claim is closed, the general basis on which it was closed, and*
 - (iv) *any additional information necessary to correct inaccurate information.*
- (4) *For the purpose of subrule (3)(b)(iii), the status of a claim is its stage of progress through the claims handling process, including, but not limited to the following:*
- (a) *opened;*
 - (b) *under investigation;*
 - (c) *the stage of any litigation commenced;*
 - (d) *closed.*
- (5) *In the case of a claim under Part B of the policy of professional liability insurance, the Executive Director may do any of the following:*
- (a) *publish the name of a lawyer or former lawyer and the circumstances of a claim when a panel or the Benchers acting under Part 4 or 5 or a court has found that the lawyer or former lawyer has misappropriated property of a claimant;*
 - (b) *disclose the name of a lawyer or former lawyer and the circumstances of a claim when*
 - (i) *the lawyer's misappropriation is known to the public,*
 - (ii) *the claim arises from part of a scheme considered by a panel or the Benchers or a court in the written reasons for a decision, or*
 - (iii) *the facts are not disputed or are admitted by the lawyer or former lawyer;*
 - (c) *with the consent of the Discipline Committee, deliver to a law enforcement agency any information or documents that the Committee reasonably believes may be evidence of an offence.*
- (6) *This Rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.*

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

16. **RULE CHANGES RE: LLPs**

It was moved (Zacks/Fung) to amend the Law Society Rules by

1. In Rule 9-5(2.1) by rescinding paragraph (c) and substituting the following
 - (c) *a law corporation holding a valid permit under this Part or the equivalent in the jurisdiction in which it provides legal services, or*
2. In Rule 9-16(2)(a), by rescinding subparagraph (ii) and substituting the following:

Rule 9-15(2.1) has been satisfied, or

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

17. LAW SOCIETY EQUITY OMBUDSPERSON BUDGET AND PROGRAM PROPOSAL

Mr. Vertlieb said the proposal and budget for the Law Society Equity Ombudsperson program was intended to bring more stability to the program with respect to budgeting. The end result was a recommendation for a budget of \$45,000 for the program. This would reduce some of the mediation work, and any mediation work done would be at the parties' expense. Mr. Vertlieb said the Law Society would continue to be at the low end of the range of expenditures in this field as compared to other Law Societies, but the Equity and Diversity Committee was confident that the job is being done.

It was moved (Verlieb/Zacks) to increase the Equity Ombudsperson program budget to \$45,000, and to address issues in the delivery and evaluation of the program as outlined in Appendix 3.

Ms. Berge said it was important to ensure fair payment. She also noted that there is a greater call for the Ombudsperson's services on Vancouver Island than she can provide because of the restricted travel budget; consequently, the Benchers should review the travel budget.

Mr. Vertlieb thanked Ms. Berge for her input. He suggested leaving the budget as proposed on the understanding that the Committee would review it if problems arise.

Mr. McGee said he met with the Ombudsperson, Ms. Chopra, monthly and she recognizes that greater communication with the Law Society is needed. He said she was comfortable with the proposed budget. Mr. McGee noted that the Law Society of Alberta had recently brought its equivalent of this program in-house, and the Committee had asked staff to examine that possibility.

The motion was carried.

18. MODEL RULES ON CLIENT IDENTIFICATION AND VERIFICATION

Mr. McDiarmid said the model rules were intended to emplace rules on a national level that address concerns expressed by the Federal Government. He said the rules would require lawyers to do things that competent lawyers would do anyway, so they should not affect practices.

Mr. Zacks asked why the rules were limited to financial institutions in Canada, in that there are significant financial institutions outside Canada that would not be covered by the definition. He said the definition of "savings institution" probably suffered from a similar drafting problem. He said it was inconceivable that he would ask his institutional clients for the sort of information required by the rules, but they would not be covered by the definitions that would exclude them from the requirement.

Mr. Hoskins said the proposed rules were as provided in the model rules prepared by the Federation of Law Societies adapted for British Columbia.

It was agreed to postpone discussion of this matter so that Mr. McDiarmid could seek further information at the Federation of Law Societies meeting in September.

19. FORMATION OF A FEDERATION OF LAW SOCIETIES COMMITTEE ON INDEPENDENCE OF THE LEGAL PROFESSION

It was moved by Mr. Turriff and duly seconded that the Law Society encourage the Federation of Law Societies to create a committee on independence and self-governance with a similar mandate to the Law Society of BC committee. He said it was important to ensure that there is an ability to communicate with the federal government on independence issues with a single voice.

The motion was carried.

20. UPDATE ON CLAIMS, INVESTIGATIONS AND RECOVERIES IN THE WIRICK MATTER.

This matter was discussed *in camera*.

21. DISCUSSION OF BENCHER CONCERNS

This matter was discussed *in camera*.

DMGN

06-08-25