

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

- MEETING:** Benchers
- DATE:** Friday April 5, 2007
- PRESENT:**
- | | |
|--|-----------------------------|
| Anna Fung, QC, President | Thelma O'Grady |
| John Hunter, QC, 1 st Vice-president | June Preston |
| Gordon Turriff, QC, 2 nd Vice-president | Robert Punnett |
| Rita Andreone | David Renwick |
| Kathryn Berge, QC | Glen Ridgway, QC |
| Joost Blom, QC | Allan Seckel, QC, Deputy AG |
| Ian Donaldson, QC | Dirk Sigalet, QC |
| Leon Getz, QC | Richard Stewart |
| Carol Hickman | Ronald Tindale |
| Gavin Hume, QC | Dr. Maelor Vallance |
| William Jackson | Art Vertlieb, QC |
| Patrick Kelly | James Vilvang, QC |
| Terry La Liberté, QC | Ken Walker |
| Jan Lindsay | David Zacks, QC |
- NOT PRESENT:** Michael Falkins Bruce LeRose, QC
- STAFF PRESENT:**
- | | |
|--------------------|-------------------|
| Timothy McGee, CEO | Bill McIntosh |
| Stuart Cameron | Melissa McConchie |
| Brad Daisley | Jeanette McPhee |
| Su Forbes, QC | David Newell |
| Jeffrey Hoskins | Alan Treleaven |
| Howard Kushner | Adam Whitcombe |
| Michael Lucas | |
- GUESTS:**
- Dean Mary Ann Bobinski, University of British Columbia
 - Dean Andrew Petter, University of Victoria
 - Ken Walton, Vice-President, CBABC
 - Caroline Nevin, Executive Director, CBABC
 - Wayne Robertson, Executive Director, Law Foundation
 - Geoffrey Cowper, QC, Chair, Legal Services Society
 - Mark Benton, Executive Director, Legal Services Society
 - Johanne Blenkin, Executive Director and Chief Librarian, BCCLS
 - Jamie McLaren, Executive Director, Pro Bono Law of BC

1. MINUTES

The minutes of the meeting held on March 2, 2007 were approved as corrected.

2. **PRESIDENT'S REPORT**

Ms. Fung welcomed guests and congratulated Caroline Nevin on her appointment as Executive Director of the Canadian Bar Association BC Branch.

Ms. Fung reported on her activities on behalf of the Law Society over the previous month, including:

- Meetings with both government and opposition MLAs together with other Benchers. Ms. Fung thanked Law Society communications department staff for arranging the meetings, and Pat Kelly for speaking in his capacity as a Lay Bencher.
- Together with Bill Jackson and Law Society staff counsel Carmel Wiseman, meeting with the President, Executive Director and Counsel of the Society of Notaries Public.
- With Law Society Chief Legal Officer, Howard Kushner, attending a meeting of the Westminster County Bar Association, who provided comments with respect to mandatory professional development.
- Attending Call ceremony, swearing in ceremony for Provincial Court Judge Stella Frame, and retirement event for Provincial Court Judge Ted Brecknell.
- Attending a reception hosted by the Deputy Attorney General in celebration of publication of "Government Liability and Procedure" authored by two lawyers working for the Ministry of the Attorney General.

3. **CEO'S REPORT**

Mr. McGee circulated a written report and touched on highlights of a busy month at the Law Society, noting a wide variety of matters underway, including:

- PLTC in session.
- A large call ceremony.
- Annual audit of the Law Society books.
- Launch of a pilot project on early resolution of complaints.
- The first large custodianship to be handled in-house.
- The first round of self-reports under the new trust reporting system.
- Development of new performance measures for key programs.
- Town hall meeting with Law Society staff.

Mr. McGee said audited financial statements for 2006 were not yet complete but he expected the General Fund expenses to be negative to budget by about 1%, primarily as a result of external counsel expenses. He noted that 2006 was a transitional year as new but with a full complement of staff in key programs in 2007 the Law Society would be well placed to control external counsel expenses. Overall the budget for external counsel expenses did not change for three years, but in 2007 has been reduced by about 40%, reflecting the new model of in-house work. Revenue in 2006 was negative to budget by about 3%, largely as a result of fewer members than forecast. The net result is that the General Fund reserve is somewhat lower than was anticipated, but it remains above the minimum required by executive limitations.

Mr. McGee reported that use of the small firm practice course grew by 18% in March. Most users are still from the Vancouver area. Thirty-one members have completed the course so far.

4. REPORT ON OUTSTANDING HEARING DECISIONS

The Benchers received a report on outstanding hearing decisions.

5. MINISTRY OF THE ATTORNEY GENERAL SERVICE PLAN 2007

Ms. Fung invited Mr. Seckel to report on the Ministry of the Attorney General's Service Plan.

Mr. Seckel gave a brief review of the Ministry of the Attorney General Service Plan for 2007, full details of which are available on the Ministry's website. In response to a question, Mr. Seckel said that the people providing advice to the public at the Nanaimo Hub pilot project would be lawyers, primarily duty counsel from the LSS, and others such as family counselors who have been providing advice for some time but not as part of an integrated service. The ministry is consulting with pro bono service providers to see how they can contribute to a centralized access point for services. Mr. Seckel emphasized that the hub is intended to provide people with information about how to access the justice system, not to provide substantive viewpoints or political positions.

6. REPORT FROM THE LEGAL SERVICES SOCIETY

Geoff Cowper, QC and Mark Benton, Chair and Executive Director respectively of the Legal Services Society gave a report on the LSS. Mr. Cowper emphasized three things: addressing LSS clients' real needs, the society's relationship with its clients and respecting their choices, and the society's relationship with the lawyers who serve its clients. By focusing on these key aspects of service, the LSS is, after three years of renewal, better able to meet the needs of its clients, and to offer opportunities for lawyers to have fulfilling professional experiences working for those clients.

Mr. Benton said the LSS has stable commitments from government for its core funding, and the Law Foundation has been generous, particularly in project-based funding. The amount received from the Notaries Foundation has increased from around \$0.5 million to \$2 million. As a result, the LSS has built up a small reserve that will be used to fund special projects. He commented that the duty counsel program, although intended as a short-term solution, has demonstrated that well-equipped lawyers are very good at obtaining lasting results early on in matters that pre-empt the need for ongoing representation and generate real social savings and high client satisfaction.

7. PUBLICATION RULES FOR FINANCIAL SUSPENSIONS

Mr. Hume reviewed draft rule amendments made pursuant to the Benchers previous decision to give the Executive Director discretion to not publish financial rules suspensions or suspensions resulting from failure to pay a fine or penalty.

It was moved (Hume/Jackson) to amend the Law Society Rules by rescinding Rule 4-37 and substituting the following:

4-37(1) When a person is suspended under this Part of Part 5 or becomes a disbarred lawyer, the Executive Director must immediately give effective public notice of the suspension, disbarment or resignation by means including but not limited to the following:

- (a) publication of a notice in
 - (i) the British Columbia Gazette,
 - (ii) a newspaper of general circulation in each municipality and each district referred to in Rule 1-20, in which the person maintained a law office, and
 - (iii) the Society website, and
- (b) notifying the following

- (i) the Registrar of the Supreme Court
- (ii) the Public Guardian and Trustee.

(2) When a person is suspended under Part 2 or 3, the Executive Director may taken any of the steps referred to in subrule (1).

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

8. LAWYER EDUCATION TASK FORCE PROPOSAL FOR COMMITTEE STATUS

Mr. Turriff briefly reviewed a memorandum from the Lawyer Education Task Force setting out a proposal to change the task force to a standing committee of the Benchers. Mr. Turriff noted that the task force had been working on issues concerning post-call education of lawyers since 2002, had been meeting monthly for many years, and still had a wide array of topics to consider. In fact, the task force is dealing with an ongoing mandate and conversion to a committee would ensure that there is a body of Benchers and others who can develop a comprehensive approach to ensuring that lawyers are qualified on call and afterwards.

It was moved (Turriff/Getz) to change the existing Lawyer Education Task Force to the Education Committee to address education policy and initiatives in order to:

- (a) be a “home” for policy discussion, analysis and development of
 - pre-call education issues, including law school education, articles, and PLTC;
 - post-call education issues beyond those proposed to date arising from the original establishment of the Task Force, and make recommendations to the Benchers on the same;
- (b) ensure that the development of pre- and post-call education policies provide for a “continuum” of legal education from law school through to the end of one’s practice;
- (c) monitor the progress of new programs already approved by the Benchers (including the mandatory reporting of CLE activity and the Small Firm Practice Course, and, possibly, the recently approved refresher course) and the progress of any programs yet to be approved, including any related to mandatory professional development requirements.

Mr. Jackson asked whether the change to a committee would increase costs. Mr. McGee said that the costs of the committee are essentially the same as those of the existing task force, such as travel and accommodation of committee members, so the change should be financially neutral.

The motion was carried.

9. EDUCATION PROPOSAL FROM THE INDEPENDENCE AND SELF-GOVERNANCE COMMITTEE.

Mr. Turriff reviewed a memorandum from the Independence and Self-governance Committee outlining a proposal to develop and test as a pilot project materials for a program to fit into the high school curriculum aimed at demonstrating the importance of independence of the bar and the role of lawyers in the community. The estimated cost of developing the materials with assistance from the Law Courts Education Society is \$15,000, which has already been budgeted in 2007. Mr. Turriff said preliminary discussions indicated that the Law Foundation might be willing to assist, either reducing or eliminating costs beyond the preliminary phase.

It was moved (Turriff/Andreone) to authorize expenditure of up to \$15,000 to develop materials for a program of education designed to introduce senior high school students to the principle of the

independence of lawyers and to teach about the important role this principle plays in Canadian society.

Mr. Jackson asked how the committee would know if the program is successful.

Mr. Turriff said the degree of take-up by teachers would be one measure. The committee would also rely on the expertise of the Law Courts Education Society to help assess the program.

Ms. Preston spoke in favour of the motion. She suggested that in describing the program the committee should consider starting with the idea of civil liberties and ending with independence rather than the other way around because most non-lawyers would understand that better.

Mr. Seckel commented that the government is creating a new social justice course for the high school curriculum and this might offer an opportunity to get in on the ground floor.

The motion was carried.

10. BUSINESS CASE FOR NO GLASS CEILING COMMITMENTS PROGRAM

Mr. Hume briefly reviewed a report from the Women in the Legal Profession task force regarding the concept of a “no glass ceiling commitment” program. The concept was developed in the United States, particularly by the San Francisco State Bar, and involves large employers of lawyers committing to the achievement of certain goals respecting hiring, retention and promotion of women and visible minorities. The task force concluded that the Law Society should not drive such a program in BC, preferring a consensual approach. The task force also concluded that recruitment and retention of women in the profession is an important issue, and work-life balance is becoming significantly important to young lawyers, both men and women. The task force proposes to allocate Law Society staff resources to develop a business case for BC law firms to take steps similar to the no glass ceiling commitment.

It was moved (Hume/Vertlieb) to approve the allocation of Law Society staff resource to develop a business case for voluntary implementation of no glass ceiling commitments.

Mr. Zacks did not think this was an issue the Law Society should be involved in because it does not form part of the core mandate even though it is an important issue. He objected to the proposal because it was, in his view, targeted at large law firms, most of which have tried to come to grips with the issues, while small firms have greater difficulty making the kinds of accommodations required. He did not think the issue should be portrayed as something that only large law firms should address. Mr. Zacks said he was not convinced on the basis of the literature that he had read that there is in fact a gender gap in the profession. He said despite the difficulties that lawyers face with lifestyle choices, this is an issue best left to the marketplace to deal with.

Mr. Vertlieb said the Equity and Diversity Committee, composed mostly of small firm lawyers, did not have the same perception as Mr. Zacks. The Committee thought that large firms tended to do better in this area than small firms and for that reason focused its attention more on small firms. Mr. Vertlieb did not see this as a big firm or small firm issue.

Ms. Preston recalled that the Equity and Diversity Committee did hear from a large firm representative who was supportive of the initiative and said the large firms don't want to lose women. Ms. Preston also recalled that work had been done in Washington State regarding the cost of business lost because of a lack of diversity among firm lawyers.

Mr. Vilvang said the proposal was not about costing firms money, but about demonstrating why making a commitment to diversity makes sense from a business perspective. He thought it was

part of the Law Society's mandate to provide members with information they can use to improve the economics of their practices.

Mr. Kelly recalled his previous comments about the investment that people make in becoming a lawyer even before law firms start investing in them as associates. The business case takes into account the investment that people put in, not just the cost of replacing them when they leave. He thought it was appropriate for the Law Society to examine the magnitude of investment being dealt with and give thought to ideas about how to preserve the value of that investment.

Mr. Zacks said big firms did not generally need help in this area because they already know about the problems and most have taken significant steps to address them. He said his own firm was hungry for lawyers and predominantly hired women not because of a commitment but because the best candidates coming out of law school are women.

Mr. Hunter agreed that law firms already know that it is better to retain a good lawyer than to lose one. Firms are businesses and they have to decide how they will be run. Some firms have taken on high overheads and make high demands on their lawyers, and some lawyers won't accept those demands. Mr. Hunter said this was not an issue about women or discrimination but was a business issue, and therefore not something the Law Society should deal with. He noted that the focus of the proposal was on private law firms and expressed the hope that the task force would look at other employers such as government.

Ms. Andreone agreed with Mr. Zacks and Mr. Hunter that big firms already understand the business case. She also said that she did not like the phrase "no glass ceiling" because it suggested that women cannot rise in an organization because of an obstacle, but in reality the issue is about retention and work-life balance questions. She said firms were losing male lawyers for potentially similar reasons.

Ms. Lindsay did not think this was exclusively a women's issue, rather it is a diversity issue and diversity in the profession is a public interest issue. She said the Benchers should be very careful before assuming that the Law Society has fully addressed diversity through policies on discrimination and bias. There is a need to go further and consider proactive measures to promote diversity.

Mr. Donaldson said he is a strong supporter of market forces but this was an area where he would give the views of the task force and the Equity and Diversity Committee considerable weight. He said he had read similar literature to that Mr. Zacks referred to and was struck by the fact that the profession is losing women at the same rate as it has in the past, which he saw as a negative comment because it suggested that the efforts to date have had little effect. He said articulating a business case could be of significant potential benefit to individuals and small firms.

Mr. Turriff said there might be further work that could usefully be done in this area, but he was not convinced that a business case developed by Law Society staff would carry much weight with firms who already deal with the business case on a day-to-day basis. He suggested referring the matter back to the task force to consider other ways of addressing the issue.

Mr. Hume said the people who participated in the task force's discussions included representatives of large firms who indicated that the business case would be useful to them.

The motion was carried.

11. MATERNITY LEAVE BENEFIT FOR WOMEN WHO ARE SOLE PRACTITIONERS

Mr. Hume reviewed a proposal from the Women in the Legal Profession task force to implement a two-year pilot project to provide compensation to self-employed birth mothers who have no access

to other benefits. He said the concept is to provide \$2000 per month for four months to help cover overhead costs while a mother is recovering from giving birth. The amount is not intended as income replacement. He said the task force had considered whether this was something that would be appropriate for the CBA Benevolent Society to fund, and concluded that it fell outside their mandate. He said the task force also considered what should happen if the recipient of the benefit did not return to practice, and concluded that the money should be repaid under those circumstances. The task force adopted the following statement of purpose for the proposed project:

The Law Society's primary function is to safeguard the public interest. Its secondary function is the protection of its members' interests.

The purpose of this Maternity Leave Benefit Policy is to reduce the financial hardship of female lawyers in sole practice who give birth. The policy is not intended as income replacement but to help defray some of the cost of overhead during the time spent away from practice.

*In implementing this policy, the Law Society intends to encourage diversity in the legal profession not only with regard to removing barriers to women in the profession but also by supporting sole practitioners. In this way, **the Law Society is fulfilling its primary mandate of protecting the public interest** by encouraging women in sole practice to stay in the profession and thereby increase the diversity of legal representation available to the public. In addition, by encouraging more women to stay in practice, the Law Society wishes to increase the availability of legal services in general, particularly in areas away from the major urban centres that traditionally suffer from a dearth of practitioners.*

The Law Society is also fulfilling its secondary mandate of protecting lawyers' interests by assisting sole practitioners on maternity leave. This policy provides some support to those who may otherwise be discouraged financially from practising and persuaded to seek other employment by allowing them to continue to provide some services and information to their clients.

It was moved (Hume/Vertlieb) to implement a Maternity Leave Benefit Program as a two-year pilot project adopting the statement of purpose as set out above.

The proposed program would:

1. be available to practising self-employed lawyers who are
 - o birth mothers; and
 - o who have no access to other parental or maternity financial benefits.
2. provide a fixed sum of \$2000 a month for four months (maximum \$8,000) to cover the overhead associated with operating a sole practice during the maternity leave period.
3. be funded by the Law Society.

and would form part of the Law Society initiative to support sole practitioners and women in the legal profession.

Mr. Zacks did not think this was something the Law Society should be engaged in. He noted that the Law Society did not provide support for other segments of the profession; moreover, the proposed program would discriminate against adoptive parents. He said the program could easily lead to the break up of two-lawyer firms where one lawyer wants to obtain the benefit. He did not think the Law Society should tax its members for an employment insurance type of program without first putting the proposal to a referendum.

Ms. Lindsay said the proposal was not a form of employment insurance but an attempt by the Law Society to encourage diversity and to provide support for women who might otherwise be unable to maintain an office while recovering from giving birth.

Ms. Andreone was interested to know whether the proposal arose from specific requests from a member or members, and whether there was any sense that the program would actually have the desired outcome.

Mr. Hume said the task force had looked at different programs across Canada and the United States to see what was being done to assist women to stay in the profession, and that was the source of the proposal. The potential effectiveness of the program is not known and that is why the proposal is to run a pilot project.

Mr. Dobell doubted that the amount of money involved would be a determinative factor in whether a woman returns to practice. The proposal does not include a consideration of financial need, and it is likely that people will apply for the benefit whether they need it or not.

Mr. Stewart said that one could accept that the objective of the program is appropriate but still question whether the program as designed is likely to achieve it. His first concern was the definition of self-employed, and his second was that \$2000 per month would not make a big enough difference to a person's decision to stay in the profession or not.

Mr. Ridgway agreed that if the project is to proceed, it should be put to a referendum.

Mr. Walker said he had spoken with lawyers in his community and they were surprised to think that this project was part of the Law Society's mandate. The consensus, including women, was that the project should not go ahead, and that it would be better to lobby the government to provide general assistance to women.

Mr. McGee said that in the narrow context of the role of the Law Society it is appropriate for the Law Society to become informed so that it can inform the profession and the public whether certain kinds of activities make a difference. That is the function of pilot projects. The proposal was not to launch a program but an effort to determine whether such a program would make a difference. He agreed that the absence of a financial need test was a legitimate concern that would have to be addressed in any long-term initiative, but it was not fatal to a pilot project.

Mr. Vilvang associated himself with Mr. Zacks' and Mr. Dobell's remarks. He thought most members would be outraged by the proposal, although a referendum might reveal a different view. He asked whether consideration had been given to making the support available as a loan rather than an outright grant.

Ms. Berge said her initial reaction was against providing a cash benefit to a small number of members in preference to others, so she considered whether the Law Society did this in any other area, and was surprised by her conclusion that it does. The list includes investment in individual members through the practice standards program, support of various cultural groups, support for technology in small firms, other support for small firms, and support to members with addictions and mental health problems through contributions to LAP. The argument that the proposed program prefers some members over others does not carry any weight. Ms. Berge said it was important to bear in mind that the proposal is for a pilot project. She noted, from the statistics set out in the material, that the number of female sole practitioners has grown by 28.5% in the past five years while the overall increase the profession has been only 5% in the same period. Therefore, this makes the consideration of this proposal all the more timely and relevant to female practitioners. The Law Society will not make any progress on these issues by doing the same thing it has always done, which is nothing. Women in sole practice are a growing segment of the

profession. Ms. Berge urged the Benchers to either approve the proposal or send it back for revision, but not abandon it altogether.

Mr. Donaldson agreed with Mr. Walker that there are other things the Law Society could do, but that did not speak against the proposal. He said sole practitioners are a special category in terms of access to benefits available to employees. The proposed benefit may not be available anywhere else and certainly not in sole practice. That may be why government is successful in retaining capable lawyers in general and women in particular.

The motion was carried.

Following the lunch break Mr. Vertlieb said he and other Benchers had discussed the vote on this matter and were concerned that the very narrow majority demonstrated a real division among the Benchers. He said if the proposal had been to provide the benefit as a loan rather than an outright grant, it appears that it would have been palatable to most of the Benchers. Accordingly, as the seconder of the original motion, he would be in favour of reopening the vote and amending the resolution to change the proposed benefit to a loan.

It was moved (Vertlieb/Punnett) to reconsider the matter of maternity benefits for self-employed birth mothers.

The motion was carried.

It was agreed to amend the original motion to make the proposed benefit a loan, with the terms of the loan to be determined by the Executive Director.

Mr. Zacks said the Benchers should provide the Executive Director with some guidance with respect to the terms of the loan, although that need not be decided immediately. He suggested that the Law Society should work with the CBA to establish a more general benefits program for lawyers in BC.

Mr. LaLiberté supported Mr. Zacks' comments, and encouraged building in as much flexibility as possible.

Mr. Vilvang said he voted against the original proposal and valued Bencher unity, but was quite prepared to accept the will of the majority on the first vote. He said loaning money to members was a whole new activity for the Law Society.

The amended motion was carried unanimously.

12. LAW SOCIETY SCHOLARSHIP

It was moved (Ridgway/Donaldson) to award the Law Society Scholarship for 2007 to Lorne Bradley Neudorf.

The motion was carried.

13. PUBLIC FORUM PROPOSAL

Mr. Vertlieb introduced a proposal for the Law Society to partner with the Friends of the Simon Weisenthal Center for Holocaust Studies, the Vancouver Holocaust Education Centre and the Victoria Holocaust Remembrance and Education Society in presentation of the "Lawyers Without Rights" exhibition in Vancouver and to host a third public forum in conjunction with the exhibition.

Mr. Kelly referred to laws passed by the Nazi government of Germany that effectively prohibited Jews from practicing law. He said there is a compelling story there for the Law Society to join in telling in the form of the Lawyers without Rights exhibition that will be in Vancouver later in the year. The exhibition was created about ten years ago by the Israeli and German bars. The Equity and Diversity Committee determined that this would be an opportunity for the Law Society to have a significant profile. The Deans of both law schools have indicated that there will be significant support from the law schools. Mr. Kelly encouraged the Benchers to approve a full partnership and hosting of an additional public forum. He said it was an opportunity for the 11,000 lawyers of the province to be heard in support of the promotion and maintenance of the rule of law.

It was moved (Vertlieb/Kelly) to enter into a partnership with the "Lawyers Without Rights" by:

- i. hosting a larger scale public forum and reception;
- ii. lending the Law Society name, logo and support to all promotional materials and public relations efforts for the exhibition;
- iii. having a presence at all other activities associated with the exhibition.

Dr. Vallance agreed with Mr. Kelly. He said that as a member of the public he could not think of anything more important in our society than maintaining the autonomy of the legal profession and the courts. The Law Society should be front and centre as full participants in presenting the exhibition, and not merely a passive participant.

Mr. Sigalet asked what could be done to expand the audience for the forum and exhibition beyond the listening audience of the CBC.

Mr. Vertlieb said the exhibition would be in Vancouver and in Victoria. Mr. Daisley said there was discussion of a project to bring the exhibit to schools.

Mr. Hunter said the Law Society should support the project fully.

Mr. Dobell noted that it was germane that Chinese people were not permitted to practice law in British Columbia long after Nazi Germany. That is an important story and should be worked into the forum.

Mr. Turriff expressed the hope that the Independence and Self-governance Committee would be able to assist.

Mr. Getz suggested including the exhibition and forum as a highlight in the Benchers Bulletin and encouraging lawyers from outside the Lower Mainland to attend. Mr. Daisley said that was already in the works.

Ms. Andreone asked if it would be possible to make reference in the Benchers Bulletin to Mr. Dobell's comments. Mr. Daisley said that had been discussed with the exhibit organizers. They want to make the exhibit a springboard to discussion of broader, current issues.

Ms. McPhee noted that it would be necessary to consider the budgetary implications of the proposal. Mr. Daisley said he understood from Mr. Foo, the staff lawyer for the Equity and Diversity Committee, that there is sufficient money in the existing budget.

The motion was carried unanimously.

14. LAW SOCIETY RULE 8-2 RE MAXIMUM FEES

Mr. Hunter recalled for the Benchers that this matter had been considered previously. The proposal was to clarify that the maximum fee applied only to the trial of a matter and did not include any appeals, and only applied to the first lawyer in a series on a matter, not to subsequent lawyers. The first part of the proposal was not controversial, but the second part was. He said the second part of the proposal had been dropped after investigation indicated that in general the division of fees worked out between successive lawyers on a file. Accordingly, the first part of the proposal was being returned to the Benchers.

It was moved (Hunter/Ridgway) to amend the Law Society Rules as follows:

1. In Rule 8-2,

(a) in subrule (1), by striking “contingent fee agreement,” and substituting “contingent fee agreement for representing a client up to and including all matters pertaining to the trial of an action,”, and

(b) by adding the following subrule:

- (3) This Rule does not prevent a lawyer and client from making a separate agreement for payment beyond the amount specified in subrule (1) to compensate the lawyer for representing the client in an appeal from a trial judgment pronounced in the proceeding for which the lawyer was retained.

2. By rescinding Rule 8-4(1) and (2) and substituting the following:

8-4(1) A contingent fee agreement between a lawyer and a plaintiff in a claim for personal injury or wrongful death arising out of the use or operation of a motor vehicle must include the following statement, prominently placed:

Under the Rules of the Law Society of British Columbia, without court approval, a lawyer may charge a maximum of 33 1/3% of the total amount recovered in a claim for personal injury or wrongful death arising out of the use of a motor vehicle.

The percentage limit applies to all matters related to the trial of a lawsuit, but does not include any appeal. A lawyer and a client may make a separate agreement for legal fees for an appeal.

Fees charged by different lawyers vary.

- (2) A contingent fee agreement between a lawyer and a plaintiff in a claim for personal injury or wrongful death not affected by subrule (1) must include the following statement, prominently placed:

Under the Rules of the Law Society of British Columbia, without court approval, a lawyer may charge a maximum of 40% of the total amount recovered in a claim for personal injury or wrongful death.

The percentage limit applies to all matters related to the trial of a lawsuit, but does not include any appeal. A lawyer and a client may make a separate agreement for legal fees for an appeal.

Fees charged by different lawyers vary.

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

15. UPDATE ON CLAIMS AND RECOVERIES IN THE WIRICK MATTER

This matter was discussed *in camera*.

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