



Annual General Meeting: September 19, 2003

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Transcript of the discussion of Resolutions 1 and 2(a)

HOWARD BERGE, QC: We have the Benchers' recommended resolution which is in the notice of the meeting, Resolution #1. We will have that on the floor, it will be moved and seconded, then the alternative fee resolution, which is treated as an amendment, will be moved and seconded, and then the mover and seconder of each of the two motions will have the right to speak to it. And when I say to "it" I mean the fee resolution in general because both resolutions are intertwined, and so the most efficient way and the appropriate way of dealing with this is anyone who speaks with respect in favour or against either motion. After that the vote will be called on the amendment, which is the motion. There's alternative motions put forward by Mr. Brun and Mr. Camp and they will tell us which one they are putting forward and that will be voted on as an amendment to the main motion. When that vote is carried out, if the amendment passes, we will vote on the amended motion and if it doesn't pass we will vote on the original Benchers recommended motion. I think that's clear enough. So I will ask the mover of the Law Society fee resolution to step forward and make the motion.

BILL EVERETT, QC: Thank you Mr. President. My name is Bill Everett, First Vice-President of the Law Society. I move Resolution 1, the 2004 practice fee submitted by the Benchers as set out in the notice of motion. And Mr. President, in order to move this debate along, because there has been a lot of delay, I don't intend to speak to this motion but rather rely on the materials that have been sent out by the Law Society in connection with this motion, and reserve my right perhaps to speak later but to hear from the members here today.

[**IAN DONALDSON, QC** seconded the motion. The Chair recognized **ROBERT BRUN** and asked which of his alternative motions he would put forward.]

ROBERT BRUN: It will be motion, the amending resolution, 2(a).

[**JJ CAMP, QC** seconded the motion. **IAN DONALDSON, QC** waived speaking to the motion.]

ROBERT BRUN: My name is Robert Brun and I have the honour this year of representing you as the President of the British Columbia Branch of the Canadian Bar Association. I am moving this resolution to substitute resolution 2(a) for the Benchers' resolution and this amendment that we are proposing reinstates the collection of the universal CBA fee and ensures that BC lawyers have the continued operation of a vital organization that represents the interests of each and every one of us.

I won't speak long. I actually have that in my speech and I have cut some out of it since we spent the first hour just getting to this point, but what I do want to urge upon you is the fact that in British Columbia this annual meeting for the past fifty-five years has confirmed universal membership of the members of the Law Society in the Canadian Bar Association, and this has served well over those fifty-five years. Last year this issue was debated at length at this meeting and was reconfirmed by a substantial majority, and as directed at that meeting the CBA implemented a protocol that over the past year that allowed members that wished to resign to do so and yet still receive the benefits such as sections etc. and this was a Rand formula approach. That protocol was sent forward to the Law Society to the Benchers and the CBA has acted upon it.

I call upon you at this time to say that now is the time for our profession as a whole to democratically decide if there should be a strong national and provincial voice for the profession universally funded by the members of this society. Many of the laws that we seek to address in our practice on a day-to-day basis are those of the federal Parliament. It is inconceivable to me as a lawyer in British Columbia that we do not want a strong national voice and indeed we need that. In the last year the national organization of the CBA made over sixty submissions to parliament that is on behalf of lawyers throughout Canada. We only have that sort of clout and approach through a strong national organization. I call on you to support that strong national voice as well as the strong provincial voice.

I would point out that the mandate of the Benchers is to represent the public interest. And should they fail in that regard we will cease to be a self-governing organization and profession. The mandate of the Canadian Bar Association is to act on behalf of all lawyers and it's the separation of these two organizations that has worked so effectively over the last fifty-five years. I'm able to say that spans my entire lifetime. Each and every year members of this organization have chosen to maintain a strong voice in the Canadian Bar Association. If the Canadian Bar Association in British Columbia ceases to have that universal support then we are left with the question of what happens with that division that has developed over the years between the CBABC and the Law Society of British Columbia. What happens with that division if we no longer have our universal membership?

The inclusion of the CBA fee on the agenda today in this format is the result of a vote taken on July 11 by the Benchers that resulted in a nine - nine tie. Nine people voted in favour of the *status quo*, nine against. That was out of thirty-one Benchers. Eighteen were present to decide the issue. Of the nine Benchers that voted against continued universality, only 5 of them were elected Benchers. So what I say to you is that vote does not represent a clear change in direction, and indeed over the last year those of you that were here heard a clear voice, which was over a two-thirds majority, saying we want to remain universal members of the CBA. So I ask you whether there is a will for change and I say there is not. I ask what has changed in the last year and I say nothing. The need for a strong CBA is greater than ever.

Now I do want to comment on a couple of points that have been thrown around in the last day. One is the issue that the CBA may not be accountable for funding, and I would point out in terms of the CBABC we must prepare, indeed at tomorrow's AGM the financial, audited financial statements for the organization are available. They are available on our website. Anybody that is

a member can go and look at them. At all four meetings of provincial council it is circulated to all of the members of council — the monthly and quarterly financial statements with the breakdown of all expenses. That is all publicly available. There is accountability. In terms of the national organization the audited financial statements are available on their website. The statements are reviewed at the midwinter meeting, at the annual general meetings and at the meetings of the directors, the board of directors.

I want to close with a further comment with respect to the president's column in the recent *Benchers' Bulletin*. There was a suggestion in that article that as a consequence of the success of this amendment that I'm proposing, members might be forced to pay twice because of the fact that the Benchers had said that they would collect from members. I can assure you first of all the CBA would not countenance that. It would not be permitted, although some of you might think we would like to collect the fee twice, but it simply is a non-starter and not only that, in my understanding, that is not the view held by the Benchers. First of all Mr. Hoskins, counsel for the Benchers, had proposed a fix at the earlier meeting of the Benchers in September. I attended at that to deal with the issue and it was determined at that time by the Benchers that to incorporate the fix before this vote would simply confuse the membership, and I am concerned that to raise the issue of double collection in these circumstances when there is a simple fix is not worthy, it is not credible, and it is not a serious problem. We will not collect our fee twice and indeed David Zacks, an executive member of the Benchers, has told me that I may say that in his view it is inconceivable that the Benchers would let the CBA members pay twice. So you are safe on that. I ask you to vote to pay once not twice.

What I ask you finally just to remember today is the fifty-five year history that brings us here. As lawyers we are creatures of history. We rely on precedent. We rely on the traditions that are handed down to us. It seems to me as somebody that has only laboured in this field for some twenty-five years that I've been served very well by the CBA and I look around here and I see others who I think would say the same thing. So I call on you to support this resolution and to support a strong national and provincial organization. Thank you.

JJ CAMP, QC: Thank you Mr. Berge. I will be mercifully brief. I have only two points. I believe virtually all of you in this room and at the outlying sites know where you stand on this issue. We went through it less than a year ago with fairly lengthy positions being put forward by a number of speakers on both sides. I don't think we need to go through this again. I think we know where we stand and consequently I think we should call the question, if we can now. Thank you.

RICHARD GIBBS, QC: Well, I couldn't speak last year. I was in the chair. My name is Richard Gibbs. I've been practicing for 27 years. I'm from Prince George. Last year I had the honour of being president of the Law Society of British Columbia. I am opposed to the Brun/Camp amendment and I am supportive of the Benchers' fee resolution.

Mr. Brun in his remarks referred to a fifty-five year tradition of this meeting supporting universal membership in the CBA. That rather glosses over a fair bit of the history of this organization. I am not a member of the CBA. I haven't been a member of the CBA since May 16th 2002. Universal membership in British Columbia is deader than a doornail. The CBA has accepted that, acquiesced in it, and moved on. What it has moved on to is compulsory CBA financial

support. Forget the idea that the CBA is the voice of every lawyer in British Columbia. It has no right to claim that in respect of me.

If we go back to 1948, the fifty-five years that have been mentioned, what happened in that year according to the records, printed in *The Advocate* for instance, is that the membership in a meeting similar to this wished the Benchers to purchase from practice fees memberships in the CBA for everybody, and a legislative amendment took place so that that could happen, and the Benchers acted on the will of the meeting and they bought memberships for everybody in the CBA — I think at the time ten dollars, it had just gone up from five dollars.

What has happened in the meantime is that if you go forward to about 1998 — Cam Ward could insert the date for me properly — what happened that year was that relying on the Charter principally — and I am oversimplifying his suit — he sued the Law Society and the CBA claiming that he had a freedom to not associate with the CBA. He raised a Charter argument, and that argument pursued a desultory path through the courts and was coming up for hearing in late 2002. A delegation of CBA representatives, Mr. Brun, Mr. David Paul, and Mr. Eric Rice, as he then was, attended on the Benchers and proposed that there no longer be universal membership but that in place of that there be what they call the “Rand formula”, the universal fee pay. The Benchers in late June of 2002 agreed and proposed a practice fee resolution that came forward here. The consequence of adopting a universal pay rather than universal membership was that it destroyed the foundation of Mr. Ward’s suit. I happened from my legal scholarship to believe that his suit was doomed to fail anyhow, but that doesn’t matter. What did happen was by moving away from universal membership at a time when litigation was on the verge of trial, the CBA paid \$18,000 or thereabouts in costs to Mr. Ward and his suit was moot. What then happened is because for 2003 for the first time in the history of this organization, forget fifty-five year tradition, for the first time this year the CBA moved this meeting to impose on those of us who are not CBA members the burden of supporting the CBA. This is revolutionary. It is not a continuation of our traditions.

What has happened now is that I have taken a proceeding, a judicial review proceeding, which was argued in Supreme Court July 9th and 10th. I said, and nobody knows for sure yet that I am wrong, but, I said that there is not authority in this body to do what it had done. That came from section 24(1)(c) of the *Legal Profession Act*, which says the Benchers can authorize the Law Society to act as agent of the CBA for the purpose of collecting CBA fees from those members of the Law Society who are members of the CBA. With that, what I characterized as limited agency, I said that it is a colourable sham to go around that section and collect what they are now calling a CBA equivalent fee from, amongst others, me, a non-CBA member. The Law Society’s reply and the CBA’s reply is that “we are not using that section, it has no operation this year, we’re using section 4” — that is the general power of the Benchers to govern and administer the affairs of the Law Society. Obviously, that contention and my contention are a vexed problem because Justice Taylor has been on reserve since July the 10th on that issue. Accordingly, what has happened this year is different yet again. The Benchers’ fee resolution looks remarkably similar to last year but it is different. It is different in this respect: if you look at it you will see that the Benchers have exercised their authority under section 24(1)(c). They did not do that last year.

In my litigation, my little *Judicial Review Procedure Act* thing, John Hoyles, who is the Executive Director of the CBA nationally, filed an affidavit and he said explicitly in his affidavit that CBA membership, that the benefits rather of CBA, primarily fall to CBA members, and that's obviously true. The consequence is that I, as somebody who does not enjoy CBA benefits, who is not a CBA member, who has no right to debate the fees that they are going to impose, who has no right to vote at their meetings, I am subsidizing their activities. I am paying for something I don't get a benefit for.

Outside of British Columbia the only province that has compulsory CBA membership is New Brunswick. If you take British Columbia and New Brunswick, kind of inflate the picture, so what you get is a CBA claim on its national website it says "we are a voluntary professional organization." Well, they are if they don't collect from me. They say they have two-thirds membership across Canada of the practicing lawyers. If you knock out the hundred percent in BC and New Brunswick, what you come to is they've got sixty percent sign-up across Canada. Forty percent of Canadian lawyers who have a choice have looked the CBA in the eye and said "we don't think it's value for money, we're not joining" and they have the right to do that.

Here in British Columbia I can't practice if I don't pay the fee. What's going on here is at this meeting the CBA is attempting to recruit the delegated statutory authority of the Law Society to regulate the profession and impose a tax on its members. They are trying to recruit that to impose a fee for the benefit of a membership organization, a member interest organization. That is something we have to be free to sign up for or not. It is true that taking my money when I don't want to give it will make the CBA financially stronger, but it's not entitled to that strength. It's got to earn it by appealing to me and to others who are like-minded that they have merit and that they have value for money, and if we say no to that, our money stays in our pocket.

What's being proposed here is unlawyerly. It is virtually immoral. This is no longer CBA universal membership. Hasn't been. This is the taxation of non-CBA members on the basis that we are freeloaders, but we are not freeloaders. We support other organizations with our money. We value them. We think they have value for money. We don't say the same about the CBA. We want to join the rest of the lawyers in Canada who have a choice. I urge you to vote down this amendment and support the Benchers who have now taken a principled stand.

Thank you.

GAIL DAVIDSON: My name is Gail Davidson. I am speaking in favour of the Benchers' resolution. I just wanted to add to the history that Richard gave. One of my primary concerns in opposing compulsory fee payment — the Law Society collecting CBA fees from members and non-members — is the fact that it blurs the Law Society's responsibility to govern the profession in accordance with taking care of the public interest. For the Law Society to purport to collect fees from members and non-members in British Columbia and make payment of CBA fees a condition of being a member of the Law Society in British Columbia when the Canadian Bar Association is a lobby group for lawyers creates in my mind a perception that the Law Society is no longer able to turn its focus to protecting the public interest, and I think that in continuing this practice we jeopardize our right to remain a self-governing profession.

Just a comment on Mr. Brun's and Mr. Camp's very curious presentations: they didn't mention any of the legal issues. They didn't mention the legal issue of the restrictions of section 24 of the *Legal Profession Act*, which, as Mr. Gibbs pointed out, only authorizes the collection of fees from members. In addition, nobody mentioned the fact that the CBA is mandated to — the CBA in British Columbia by its own mandate is mandated to — look after the interests of lawyers. That's its sole mandate, and some of its mandate in British Columbia to promote the interests of lawyers and to promote and enhance the image of lawyers. It has nothing to do — none of its mandate has anything to do — with the protection of the public interest. I ask you in the interest of maintaining our right to be a self—governing profession to vote for the Benchers' resolution and against the amendment proposed by Mr. Brun and Mr. Camp.

J PARKER MacCARTHY, QC: Mr. Chairman my name is Parker MacCarthy. I am a member of the Canadian Bar Association and the Law Society of British Columbia. I am a past president of the BC Branch. I just want to say one very simple thing. The relationship that the Canadian Bar Association and the Law Society has traditionally been one of mutual benefit to each other. We have an arrangement and a vitality amongst the legal profession in this province that is unrivalled by any other region in Canada. We have what many other provinces seek to have. We are faced with a divisive issue and one which is really not going to be in the public interest or in the interest of the bar. I strongly support the amendment to the resolution and I want all of my colleagues to remember that the eyes of all the lawyers in Canada are on the Canadian Bar Association in British Columbia for the tremendous programs that they've introduced. The eyes of lawyers throughout Canada are on the Law Society of British Columbia and its members in dealing with this difficult issue. Again I urge you to support the Brun/Camp amendment to the resolution.