THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING:	Benchers	
DATE:	Friday April 2, 2004	
PRESENT:	William Everett, QC, President	Darrell O'Byrne
	Ralston Alexander, QC, 1st Vice-president	June Preston
	Robert McDiarmid, QC, Interim 2nd Vice-president	Glen Ridgway, QC
	Joost Blom, QC	Patricia Schmit, QC
	Ian Donaldson, QC	Alan Seckel, QC, Deputy AG
	Michael Falkins	Dirk Sigalet, QC
	Anna Fung, QC	Grant Taylor
	Gavin Hume, QC	Gordon Turriff, QC
	John Hunter, QC	Dr. Maelor Vallance
	William Jackson	Art Vertlieb, QC
	Patrick Kelly	James Vilvang, QC
	Terry La Liberté, QC	Anne Wallace, QC
	Peter Leask, QC, Life Bencher (for item 8)	Lilian To
	Bruce LeRose	David Zacks, QC
	Patrick Nagle	
NOT PRESENT:	Carol Hickman	Ross Tunnicliffe
	Margaret Ostrowski, QC	
STAFF PRESENT:	James Matkin, QC, Executive Director	Michael Lucas
	Mary Ann Cummings	David Newell
	Brad Daisley	Denise Palmer
	Donnell Elwood	Neil Stajkowski
	Charlotte Ensminger	Alan Treleaven
	Su Forbes, QC	Ron Usher
	Tim Holmes	Adam Whitcombe
	Jeffrey Hoskins	

GUESTS:

Dean Mary Ann Bobinski, University of British Columbia
Robert Brun, President, CBABC
Frank Kraemer, Executive Director, CBABC
Caroline Nevin, Associate Executive Director, CBABC
Sylvia Teasdale, Chief Librarian, BCCLS
Wayne Robertson, Executive Director, Law Foundation of BC
Bill McNaughton, Chair, CLE Society
Rick Gambrel, President, Trial Lawyers Association
Marina Pratchett, QC, Chair, Pro Bono Law of BC
Mike Wilhelmson, Lawyers Weekly

1. MINUTES

The minutes of the meeting held on March 5, 2004 were approved as circulated.

2. PRESIDENT'S REPORT

Mr. Everett thanked Mr. McDiarmid and Ms. Fung for running as candidates for interim Second Vice-president. He congratulated Mr. McDiarmid on being elected and thanked Ms. Fung for being gracious after the election.

Mr. Everett reported that he had attended the North Vancouver Bar Association meeting where members asked interesting questions about the trust administration fee, and the fee referendum. He said he would be meeting with the New Westminster Bar Association in the next few weeks.

Mr. Everett congratulated the Continuing Legal Education Society on the success of its online course offerings. He invited Mr. McNaughton to comment on the initiative.

Mr. McNaughton said online courses had attracted between 100 and 180 people. On the first course on LTO electronic filing nearly 94% of online participants said they would recommend the form of delivery, and on the second course 100% said they would recommend online delivery. Overall, the comments were very positive.

3. EXECUTIVE DIRECTOR'S REPORT

Mr. Matkin reported on two recent staff changes. He reported that Jessica Gossen, discipline counsel, had taken a position as counsel with the Real Estate Council of BC. He introduced Donnell Elwood, who would be taking over from Helen Barclay as Executive Assistant to the Executive Director.

Mr. Matkin reported that the Land Title Office electronic filing system became fully operational on the previous day, and at 11:06 the first document (from a notary public) was filed. He noted that the Vancouver Sun had published a story on electronic filing, including a description of how the system works to protect the security of documents. Mr. Matkin gave special recognition to Ralston Alexander, Ron Usher, Adam Whitcombe and Neil Stajkowski for their work on the project.

Mr. Matkin reported that staff continued to work on the Law Society strategic plan and would be putting a draft document to the Futures Committee. He said the plan focused more on the idea of strategic thinking, and he said every time the Benchers meet they should think about strategic approaches to decision-making.

4. REPORT ON THE WESTERN STATES BAR CONFERENCE

Mr. McDiarmid reported on his attendance at the Western States Bar conference. He said the Law Society of BC was seen as a leader in the field of trust assurance programs. He also noted that water was one of the greatest concerns in the western States and was likely to give rise to significant issues in the future.

5. REPORT ON OUTSTANDING HEARING DECISIONS

The Benchers received a report on outstanding hearing decisions.

6. PRO BONO LAW OF BC

Marina Pratchett, QC gave a brief introduction to Pro Bono Law of BC (PBLBC). She recalled that it started with capital from the Law Society and its purpose was to facilitate the provision of pro bono legal services and raise the profile of lawyers providing pro bono services in BC. Some activities included arranging insurance for retired lawyers, and setting up family law duty counsel programs in New Westminster and North Vancouver. Ms. Pratchett said PBLBC was not looking for the kind of funding that was initially provided but did need ongoing support. PBLBC sought $15,000 from the Law Society in each of 2004 and 2005.

Mr. Jackson spoke on behalf of the Access to Justice Committee saying that this was the greatest opportunity for the Law Society to meet both the goals under the *Legal Profession Act* of protecting the public interest and serving the members.

Mr. Turriff asked if thought had been given to renaming the society to make it more clear to the public what it was about – that lawyers are providing services to the public free of charge.

Ms. Pratchett said she would take that idea back to the Board.

Mr. McDiarmid recalled that the CBABC and the Law Society had formed PBLBC jointly and had a joint funding arrangement. He asked if the CBA had committed to funding.

Ms. Pratchett said the CBA had not committed to funding but the subject was on the agenda for the next council meeting; however, she was not certain funding would be forthcoming. She urged the Law Society not to tie its funding to CBA funding.

It was moved (McDiarmid/Jackson) to approved funding of $15,000 for PBLBC in 2004.

The motion was carried.

7. PROPOSED RULES WITH RESPECT TO CASH TRANSACTIONS

Mr. Matkin provided a brief background. He recalled that the federal government had introduced new legislation dealing with money laundering and terrorist financing. Regulations under that legislation purported to impose on lawyers an obligation to report secretly on their clients regarding suspicious transactions. The Law Society of BC initiated a legal challenge to the legislation in the Supreme Court of BC on the grounds that it was an unconstitutional intrusion into solicitor and client privilege. The Law Society succeeded in obtaining an interim injunction preventing the legislation from applying to lawyers. The Federation of Law Societies then organized the other Law Societies to obtain similar injunctions in their own jurisdictions. The government appealed the injunction in British Columbia to the Court of Appeal and then to the Supreme Court of Canada. Those proceedings were stayed, the government paid the Law Society's costs, and then said it would not go ahead with revised legislation if an agreement could be reached on a new scheme that would make it unnecessary to include lawyers in the reporting requirements. Mr. Matkin said the context for discussion arose from work done in December 2003 when the Law Society of BC introduced the idea that it would be in the public interest to remove lawyers from the reporting scheme by prohibiting them from dealing with cash amounts over $10,000.

Mr. Turriff explained that the proposed rule would exclude from the prohibition cash received by a lawyer in payment of fees or disbursements. That exception is also in the legislation. Mr. Turriff said the Independence and Governance Subcommittee considered the proposed rule, and although there were some concerns expressed by David Gibbons, Jack Giles was strongly in favour of the rule. Mr. Gibbons was concern was that the rule might limit public access to legal counsel. However, after Mr. Giles spoke, he was somewhat less concerned. Mr. Giles is at the extreme end of the independence spectrum, but is strongly in favour of the rule. Mr. Giles takes the view that lawyers are not in the banking business and there is no need for lawyers to deal with

cash sums over $10,000, and no reason for lawyers to assist clients to do that which they could not do themselves, i.e. hide their identity in cash transactions over $10,000. Mr. Turriff said the object of the rule is to ensure that lawyers are not drawn unwittingly into improper activities. He said the rule would not compromise the independence of the bar and would prevent improper incursion into solicitor and client privilege.

It was moved (Turriff/Zacks) to amend the Law Society Rules as set out in Appendix 1.

Mr. Donaldson shared some of Mr. Gibbons' concerns. He noted that the police may seize cash from individuals but in many such cases the ultimate result is that the Crown abandons its claim to the money and returns it. However, sometimes the client does not or cannot attend on the police to receive the money and instructs counsel to do so. The lawyer generally deposits the money in trust. The proposed rule as written would prohibit a lawyer from doing that even though it is a completely transparent transaction. He urged the Benchers to consider a further exception to the proposed rule to permit lawyers to retrieve money on behalf of clients. He said there was no way such a transaction could be considered to be money laundering because it is done following a conclusion that the money is not subject to seizure as the proceeds of crime.

Mr. Matkin said consideration had been given to that problem and it was understood that there were some situations in which a lawyer might legitimately come into possession of large cash sums. Another situation might be where a lawyer finds a large sum of cash stored in a safety deposit box belonging to the estate of a deceased person. He said it was not intended that the rule would be enforced in such a way as to prevent lawyers from properly serving their clients in these circumstances.

Mr. Zacks disagreed with Mr. Donaldson. He said the fact that cash is received from the police rather than directly from the client does not change the fundamental nature of the money.

Mr. LaLiberté pointed out that in these cases the police or the courts have determined that the money is clean and there is a record of the transaction, so there should be no concern about money laundering.

Mr. O'Byrne agreed with Mr. Donaldson and Mr. LaLiberté. He said the situation sometimes arose in the context of the fishing industry, which is often conducted on a cash basis. He said he had seen a situation where the police have seized cash from a fisher, which has subsequently been returned pursuant to a court order. He questioned why a lawyer should not be able to deal with money in that situation.

Mr. Alexander agreed that it would be a very sophisticated person who would seek to launder money through the police. Once the police have released the money it could be considered to be clean. He said there must be some way of allowing lawyers to deal with money under those circumstances.

Mr. Turriff did not think lawyers were practicing law when they collect money from the police on behalf of clients, and they should simply tell the client to do it. The only case that might be a concern would be when the lawyer is acting as executor of an estate.

Mr. Matkin said that a lawyer acting as executor would not be caught be the rule.

Mr. Turriff said that lawyers asked by their clients to do something that is not the practice of law, they should say they are not permitted to do it. He suggested that postponing the effective date of the rule to May 7, 2004 would ensure that lawyers are not unintentionally place offside the rule.

It was agreed to amend the motion by adding that the rule would not come into effect until May 7, 2004.

Mr. Vilvang commented that a decision by the police to return seized money does not necessarily mean the money is clean, only that they cannot prove that it is the proceeds of crime. He suggested there was no difference between a client bringing in cash having just picked it up from the police, and a client bringing in cash under other circumstances. The point is that moving the money through a lawyer's trust account cleans the money.

Mr. Donaldson agreed with Mr. Alexander's comments. He said once money is released by the police, it falls outside what anyone reasonably thinks of as money laundering. He suggested there was a public interest in allowing a lawyer to deposit money received from the police on behalf of a client. If the money is returned to the client, it is untraceable, but if it is deposited in the lawyer's trust account, there is a record and the police can execute a search warrant on the bank and find out where the money went.

Mr. Nagle asked if delaying implementation of the rule would allow members an opportunity to comment on it.

Mr. Everett said the delay would allow lawyers to know about the rule in advance to ensure that they did not accept instructions that would unintentionally place them in breach of the rule.

Mr. Ridgway suggested there were other, non-lawyer service providers that could pick up money from the police and take it to the client, while keeping appropriate records, and there was no need to involve a lawyer.

Mr. Vertlieb said the concerns that had been raised were potentially real problems. He suggested that the matter be referred back to staff to allow the concerns to be taken into consideration so that the rule could be redrafted, if necessary, to ensure that lawyers do not become involved in illegal activities but can continue to be involved in legal activities.

Mr. Hunter noted a division between civil practitioners and criminal practitioners, which caused him some concern. He was inclined to agree that money laundering occurs when money goes into a trust account as cash and comes out as a trust cheque. He said the Law Society was taking a leadership role with the bar in Canada and should move ahead. He said there may matters to consider in the future but that should not hold up passing the rule.

The motion failed.

It was moved (Donaldson/LaLiberté) to amend the Law Society Rules as set out in Appendix 2.

Mr. Turriff supported the motion.

Mr. Zacks wondered whether the rule should specify what the lawyer can do with money received from the police or under a court order, such as place it in trust and write a cheque to the person to whom the money belongs.

Mr. Vilvang remained opposed to the motion because it did not address the core issue that the fact the money comes from the police does not prove that it is not proceeds of crime, only that it cannot be proven to be so. Allowing lawyers to participate in the transaction would directly facilitate laundering the money.

Mr. Donaldson did not think the government would be concerned about money returned by law enforcement agencies to the person from whom it was seized.

Mr. Zacks said Mr. Vilvang's comments were fair, and restricting what the lawyer can do with the money would be one way of trying to deal with that problem. He said passing the rule change

was important to the public and lawyers in BC, and the Law Society should be seen to be participating in the endeavor to fight money laundering.

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

8. ANNUAL PRACTICE FEE REFERENDUM

Mr. Hoskins presented four options for wording the referendum to set the annual practice fee for 2005. He noted that the question was intended to be clear and understandable but also binding and enforceable. The result was that none of the options were very good as opinion survey questions, as had been pointed out by the CBA, but were more along the lines of a corporate resolution.

Mr. Brun thanked Mr. Everett again for the Law Society's cooperative and courteous approach to this matter. He agreed that the stated purpose of the referendum was to take the controversy out of the question at the Law Society AGM, and to achieve a clear and enforceable outcome. To that end, the CBA consulted someone considered expert in the area of questions, and was advised that the proposed referendum questions were "brutal". The CBA found it difficult to align itself with questions thus described and which failed to focus on any matter of principle. Mr. Brun said the questions made money the focus, but at the AGM the focus was not on money but on principles. He said that a question that focused immediately on money was problematic. The form of question proposed by the CBA focused on the issue of whether members favour continuing the practice of funding the CBA. Mr. Brun said that the CBABC Provincial Council continued to be concerned about moving away from deciding the matter at the AGM, as well as with the complexity of the proposed question. He noted that the council concluded overwhelmingly that Bar Talk should take a principled approach and present both sides of the issue.

Mr. Ridgway said there was merit in Mr. Brun's point about the complexity of the questions. He appreciated the difficulty in producing a question that was both clear and enforceable. Mr. Ridgway was concerned that the present structure did not allow the problem to be solved once and for all.

It was moved (Alexander/Fung) to adopt the resolutions set out in Appendix 3 for the annual practice fee referendum.

Mr. Zacks said the best way to resolve the question at least for the time being was by referendum. Under the Law Society Rules the referendum is to set the fees and included in that is the question is whether to continue to fund the CBA. He acknowledged that there were monetary issues for the CBA, but he said there were monetary issues for many members as well. He said it was not possible to separate the principle from the monetary question. The question must be as simple as possible but it must set the fee.

Mr. Vilvang agreed with Mr. Ridgway that the simplest question is the best way to go. The opponents of a mandatory CBA fee will be equally unhappy with the option moved, and would prefer a simple question as well. Since the question of setting the fee will come up at the AGM in any event, it would help to have a clear referendum question to guide the debate. Mr. Vilvang suggested voting against the motion and then looking toward a simpler question.

Mr. LaLiberté thought the question proposed was too complex, and he disagreed emphatically with Mr. Zacks that the matter had to be dealt with in the same was as at an AGM. He said the issue was one of principle and the referendum should focus on that.

Mr. McDiarmid understood that the question was required to include the monetary aspects, which would not then be considered at the AGM. He suggested that all the members, being lawyers, could understand the question despite its complexity, and the option moved very clearly joined the

issue. He said the referendum would be the best way to give the largest number of members a say in the issue.

Mr. Hunter also supported the motion. He said it was attractive to ask a simple questions but it wouldn't accomplish anything because it would not be binding.

Ms. Wallace saw the matter in similar terms to Mr. Hunter but reached the opposite result. She said the referendum might solve the problem for one year, but not for the future, and that was why a simple question was needed. Otherwise, she said, the process would have to be repeated every year.

Mr. Zacks said the principle was the issue for him, in part because he could afford the fee, but of the thirty or so articled students he had interviewed in the past year, about half didn't have jobs and many had to take out non-practicing memberships because they could not afford the Law Society fees. In his view, the issue was not just about the principle but was at least partly a monetary issue for some members.

Mr. Turriff agreed that it was a question of principle but the principle was a matter for debate. The question should be neutral and not contain anything that suggested an answer one way or the other. Mr. Turriff said he wanted to include a statement of what the Law Society was trying to achieve through the referendum, which is to know whether the CBA fee should be included in the practice fee for 2005.

Mr. LaLiberté agreed that a statement to that effect would join the issue. He was concerned that many members would not understand the question in terms of mandatory payment of CBA fees.

Mr. Hunter agreed that some explanation as to why the question arises would help.

Mr. O'Byrne suggested that section 23(1)(a) of the *Legal Profession Act* could be read disjunctively with the result that a referendum could set the fee permanently.

Mr. Hoskins disagreed on the basis that the section refers to an annual fee.

Mr. Vertlieb suggested that the Executive Committee be empowered to revise the question and return it to the Benchers to determine if it must be revisited in May.

It was agreed to amend the motion to adopt the question as set out in Appendix 3 subject to revision by the Executive Committee for clarity, and return to the Benchers for final approval.

The motion as amended was carried.

It was moved (McDiarmid/Fung) to set June 22, 2004 as the return date for referendum ballots.

The motion was carried.

It was moved (McDiarmid/Jackson) to recommend that members vote for Resolution A or Resolution B, but to take no position with respect to the CBA fee issue.

Mr. Turriff was not sure the Benchers should take no position. He said there was an argument that it is in the public interest to mark a clear distinction between the Law Society and the CBA in terms of independence and governance. If there is a public interest, the Benchers should say so.

The motion was carried.

It was moved (Fung/Ridgway) to remit all money received by the Law Society as an amount equivalent to CBA fees to the CBA.

The motion was carried.

9. *PROFESSIONAL CONDUCT HANDBOOK*, CHAPTER 10, FOOTNOTE 2.

Mr. Zacks reviewed the Ethics Committee's recommendation to remove footnote 2 from Chapter 10 of the *Professional Conduct Handbook.*

It was moved (Zacks/Ridgway) to remove footnote 2 from Chapter 10 of the *Professional Conduct Handbook.*

Mr. Turriff said there was no justification for the footnote and it should be taken out. He said he had never seen a client materially prejudiced by a solicitor's lien, and there was a transparent process by which a client could get a court order to obtain their file.

The motion was carried.

10. TRUST ADMINISTRATION FEE

Mr. Alexander explained that the trust administration fee was to be implemented on July 1, 2004 but a delay was needed in order to more fully inform the members about the fee.

It was moved (Alexander/LaLiberté) to postpone implementation of the trust administration fee until October 1, 2004.

Mr. O'Byrne said he had received comments from some members that many computerized accounting programs cannot accommodate the trust administration fee, and that it will make lawyers less competitive in relation to notaries.

Mr. Alexander said a great deal of very useful work would be done as a result of implementing the trust administration fee. He said he too had received negative comment from some members but some of them were not clear about the purpose of the fee. He said a lot of information had been sent out to the members but it necessary to do a better job of communicating with members before implementing the fee.

Mr. Vilvang asked whether there should be a rule dealing with whether the fee can be passed on to clients as a disbursement.

Mr. Alexander said that issue had been considered at length and it was concluded that the Law Society could not require or prohibit lawyers from passing on the fee.

Mr. Zacks said the trust administration fee was an important initiative and a lot of work had gone into developing it. He said if members were caught by surprise, it was the result of not reading earlier reports. Mr. Zacks said there were important reforms to trust assurance and accounting programs that would be funded by the fee, and people needed to understand how it will work and what it will be used for.

The motion was carried.

11. COMPLAINT PROTOCOL WITH THE PROVINCIAL COURT

It was moved (Fung/Nagle) to adopt the protocol proposed for dealing with complaints between lawyers and judges of the Provincial Court.

Mr. LaLiberté noted that there was already a protocol for dealing with complaints involving Superior Court justices.

It was agreed to refer this matter back to the Executive Committee to consider how the proposed protocol would relate to the existing protocol with the Superior Courts, and to determine whether the protocol would encompass Judicial Justices of the Peace.

12. LAW SOCIETY ELECTRONIC PUBLICATION PLAN

Mr. Alexander reviewed the recommendations of the Technology Committee with respect to electronic distribution of Law Society publications.

It was moved (Alexander/LeRose) that:

Law Society publications may be distributed electronically to members, subject to any necessary Rule changes to permit the substitution of electronic for paper distribution;

Members may choose to receive Law Society publications on paper provided the cost of continuing to produce paper publications is reasonably allocated to those members; and

The Law Society create, provide and maintain for each member an email address to which Law Society publications may be delivered.

Mr. Nagle noted that there was no mention of public access to Law Society publications.

Mr. Matkin said that all publications currently available to the public would remain available. Mr. Alexander agreed that the proposal would only affect the way publications would be distributed to members.

Ms. Schmit noted that members in the Cariboo district already complained that the Law Society sent them too much, and she asked whether this change would reduce the amount of material being sent to members.

Mr. Alexander said the proposal would not change the amount of material sent to members, only the method of sending it.

Mr. McDiarmid was concerned about distributing some kinds of information electronically, such as rule changes, and he was also concerned about charging members to receive paper publications. He noted that retired members have paid Law Society fees for a long time and many of them would not have computers. Mr. McDiarmid was in favour of part (a) of the resolution but not part (b).

Mr. Alexander said the Technology Committee recommended charging for paper publications in order to discourage people from continuing to receive paper communications. He said if a substantial number of members continue to receive paper publications, any increased efficiency associated with electronic publication would be lost.

Mr. Jackson agreed with Mr. McDiarmid. He said charging members for paper publications was just downloading a cost on members who may not be able to afford it.

Mr. Vilvang complimented the committee and staff on the analysis of the issue and noted that the Law Society was "behind the curve" on implementing electronic distribution. However, he raised the concern that members might not pay as close attention to electronic publications.

Mr. Zacks opposed charging for paper distribution.

Mr. Turriff agreed with Mr. Vilvang that people might not read what was sent out but he noted that new lawyers coming up in the profession integrated computers completely into their lives, and he thought it was important to encourage people to allow the Law Society to provide information electronically. He was not concerned about requiring members to pay a modest cost as a penalty for not allowing electronic distribution.

It was moved (McDiarmid/Zacks) to delete the words "provided the cost of continuing to produce paper publications is reasonably allocated to those members" from paragraph (b) of the motion.

Mr. Alexander noted that there would be a significant cost implication to the amendment.

The motion to amend was carried.

The motion as amended was carried.

13. LAWYERS INSURANCE FUND INVESTMENT PORTFOLIO

This matter was considered *in camera*.

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

This matter was considered *in camera*.

15. OPEN DISCUSSION OF BENCHER CONCERNS

Mr. LaLiberté noted reductions in the native court workers program. He said the reductions would cause devastation for First Nations people involved in the courts, and urged the Law Society to issue a statement deploring the cuts.

Mr. Everett noted that a matter of this kind would normally be considered by the Access to Justice Committee, which could bring the matter to the Benchers, if appropriate.

It was moved (LaLiberté/O'Byrne) that the Law Society deplored the drastic cuts to the native court workers program, which is necessary to provide access to the courts for native people.

Ms. Schmit said that as past chair of the Access to Justice Committee, she must with regret speak against the motion because the proper way to deal with the issue was to refer it to the Access to Justice Committee for proper consideration and work-up.

Mr. Vilvang urged caution in using words like "deplore" in Benchers resolutions. He said he was not opposed to saying the Law Society supported the work of native court workers, and supported adequate funding for the program, but he was concerned that the Benchers had no information about why the cutbacks were being made, or what effect they would have on the delivery of services.

It was moved (Schmit/O'Byrne) to refer the matter to the Access to Justice Committee.

Mr. LaLiberté withdrew his motion to permit the matter to be referred to the Access to Justice Committee.

The motion was carried.

DMGN
04-04-25

Appendix 1

Definitions

1 In these Rules, unless the context indicates otherwise: **[current LSBC Rule]**

"funds" includes current coin, government or bank notes, bills of exchange, cheques, drafts, money orders, charge card sales slips, credit slips and electronic transfers;

PART 3 – PROTECTION OF THE PUBLIC

Division 7 – Trust Accounts and Other Client Property

Definition

3-47 In this Division,

"client" includes any beneficial owner of funds received by a lawyer in connection with the lawyer's practice; **[current LSBC Rule]**

"currency" includes current coins, government or bank notes of Canada or any other country; **[proposed Rule]**

Deposit of trust funds [current LSBC Rule, for information and context]

3-51 (1) Subject to subrule (3) and Rule 3-54, a lawyer who receives trust funds must deposit the funds in a trust account as soon as practicable.

(2) Except as permitted under section 62(5) of the Act, a lawyer must deposit all trust funds to a pooled trust account.

(3) A lawyer who receives trust funds with written instructions to place the funds otherwise than in a trust account may place the funds in accordance with appropriate instructions.

(4) Unless the client instructs otherwise in writing, a lawyer must deposit all trust funds in an account in a designated savings institution.

(5) As soon as it is practicable, a lawyer who deposits into a trust account funds that belong partly to a client and partly to the lawyer or the lawyer's firm must withdraw the lawyer's or firm's funds from the trust account.

Cash transactions [proposed Rule]

3-51.1 (1) This Rule applies to a lawyer when engaged in any of the following activities on behalf of a client, including giving instructions on behalf of a client in respect of those activities:

(a) receiving or paying funds, other than those received or paid in respect of professional fees, disbursements, expenses or bail;

(b) purchasing or selling securities, real property or business assets or entities;

(c) transferring funds or securities by any means.

(2) This Rule does not apply to a lawyer when engaged in activities referred to in subrule (1) on behalf of his or her employer.

(3) While engaged in an activity referred to in subrule (1), a lawyer must not receive or accept an amount in currency of $10,000 or more in the course of a single transaction.

(4) For the purposes of this Rule,

(a) foreign currency is to be converted into Canadian dollars based on

(i) the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada's Daily Memorandum of Exchange Rates in effect at the relevant time, or

(ii) if no official conversion rate is published as set out in paragraph (a), the conversion rate that the client would use for that currency in the normal course of business at the relevant time, and

(b) two or more transactions made within 24 consecutive hours constitute a single transaction if the lawyer knows or ought to know that the transactions are conducted by, or on behalf of, the same client.

Appendix 2

BE IT RESOLVED to amend the Law Society Rules as follows:

1. In Rule 3-47 by adding the following definition:

"currency" includes current coins, government or bank notes of Canada or any other country;

2. By adding the following Rule:

Cash transactions

3-51.1 (1) This Rule applies to a lawyer when engaged in any of the following activities on behalf of a client, including giving instructions on behalf of a client in respect of those activities:

(a) receiving or paying funds, other than those received or paid in respect of professional fees, disbursements, expenses or bail;

(b) purchasing or selling securities, real property or business assets or entities;

(c) transferring funds or securities by any means.

(2) This Rule does not apply to a lawyer when

(a) engaged in activities referred to in subrule (1) on behalf of his or her employer, or

(b) receiving or accepting currency

(i) from a peace officer, law enforcement agency or other agent of the Crown,

(ii) pursuant to a court order, or

(iii) in his or her capacity as executor of a will or administrator of an estate.

(3) While engaged in an activity referred to in subrule (1), a lawyer must not receive or accept an amount in currency of $10,000 or more in the course of a single transaction.

(4) For the purposes of this Rule,

(a) foreign currency is to be converted into Canadian dollars based on

(i) the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada's Daily Memorandum of Exchange Rates in effect at the relevant time, or

(ii) if no official conversion rate is published as set out in paragraph (a), the conversion rate that the client would use for that currency in the normal course of business at the relevant time, and

(b) two or more transactions made within 24 consecutive hours constitute a single transaction if the lawyer knows or ought to know that the transactions are conducted by, or on behalf of, the same client.

Appendix 3

OPTION 3—ALTERNATIVE RESOLUTIONS WITH "NOT AT THIS TIME" OPTION

Indicate which resolution, if either, that you favour:

RESOLUTION A (mandatory CBA fee)

WHEREAS the Benchers have determined that the amount of $[X] per practising lawyer is required to maintain and operate the programs of the Law Society for the year 2005;

AND WHEREAS the Canadian Bar Association ("CBA") membership fee is as follows:

(a) $[Y] for lawyers who have been in practice five full years or more;

(b) $[Z] for lawyers who have been in practice less that five full years.;

AND WHEREAS the Benchers have resolved that all money collected as "an amount equivalent to the CBA fee" will be remitted to the CBA;

BE IT RESOLVED THAT, for the practice year commencing January 1, 2005, the practice fee be set, pursuant to section 23(1)(a) of the *Legal Profession Act*, at

(a) $[X+Y] for lawyers who have been in practice five full years or more;

(b) $[X+Z] for lawyers who have been in practice less that five full years.

RESOLUTION B (voluntary CBA fee)

WHEREAS the Benchers have determined that the amount of $[X] per practising lawyer is required to maintain and operate the programs of the Law Society for the year 2005;

BE IT RESOLVED THAT, for the practice year commencing January 1, 2005, the practice fee be set, pursuant to section 23(1)(a) of the *Legal Profession Act*, at $[X]

I vote in favour of:

RESOLUTION A ( )

RESOLUTION B ( )

NOT SETTING A PRACTICE FEE AT THIS TIME ( )