THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING: Benchers

DATE: Friday February 4, 2005

PRESENT:

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

NOT PRESENT: Ross Tunnicliffe

STAFF PRESENT:

Sholto Hebenton, QC, Acting Executive Director
Stuart Cameron
Mary Ann Cummings
Charlotte Ensminger
Su Forbes, QC
Jeffrey Hoskins
Michael Lucas
David Newell
Jack Olsen
Michelle Robertson (for item 12 only)
Neil Stajkowski
Alan Treleaven
Ron Usher
Adam Whitcombe

GUESTS:

Associate Dean Robin Elliot, QC, University of British Columbia
Michael Woodward, President, CBABC
Frank Kraemer, Executive Director, CBABC
Johanne Blenkin, Chief Librarian, BCCLS
James Baird, Chair, CLE Society
Kelly Doyle, President, Pro Bono Law of BC
Marina Pratchett, QC, Vice-President, Pro Bono Law of BC
Sherman Chan, Director, Pro Bono Law of BC
Warren Milman, Director, Pro Bono Law of BC
Janice Mucalov, Lawyers Weekly

1. MINUTES

The minutes of the meeting held on December 3, 2004 were approved as corrected.

2. PRESIDENT'S REPORT

Mr. Alexander welcomed Benchers and guests to the first meeting of 2005. He acknowledged the appointment of Grant Taylor, Darrell O'Byrne, and Robert Brun as Queen's Counsel, Learned in the Law. Mr. Alexander also noted that Mr. LaLiberté had been appointed to the Vancouver Police Board, which was a testament to the respect in which he is held as a leading member of the criminal defense bar.

Mr. Alexander provided a written report on his activities on behalf of the Law Society over the previous month. He reported that he hoped to see three things accomplished during his term as President: investigate the possibility of separating the adjudicative and prosecutorial branches of the Law Society; revitalize the previously considered initiative to bring the trust account audit function in-house; and eliminate the anomalies created by single-Bencher hearing panels.

3. EXECUTIVE DIRECTOR'S REPORT

Mr. Hebenton provided a written report to the Benchers on Law Society activities since the last meeting. He noted that he would be providing the annual performance report at the next meeting.

4. REPORT ON OUTSTANDING HEARING DECISIONS

The Benchers received a report on outstanding hearing decisions. Mr. Alexander was pleased to note that no hearing reports were late.

5. REPORT ON THE LAWYERS INSURANCE FUND IN 2004

Ms. Forbes gave a presentation on the Lawyers Insurance Fund in 2004, a copy of which is attached. Following the presentation, Ms. Forbes took questions.

Mr. Hume was interested in the composition of the growing group of part-time lawyers. Ms. Forbes said the composition of the group had not been analyzed, but it might be possible to obtain some statistics about it.

Mr. Nagle noted that a large number of reported matters did not result in any payment being made. Ms. Forbes explained that lawyers are required to report any incident that might become a claim; however, many reported incidents never develop into a claim, and some that do can be repaired making payment unnecessary.

Mr. Sigalet asked if there was a particular aspect of the insurance program that caused BC lawyers to report incidents more frequently than others. Ms. Forbes said an examination of the history of the program showed that a rapid increase in the frequency of incident reports coincided with the first loss prevention seminars the program produced. She said the message in those seminars, repeated at every opportunity since then is that lawyers should report early and often because there is significant advantage and no disadvantage in doing so.

Mr. McDiarmid added that the policy preventing information flowing from the insurance department to the regulatory departments of the Law Society contributed to members' willingness to report incidents as well. Ms. Forbes agreed, and commented that most Canadian jurisdictions that have allowed information to be shared were moving towards greater confidentiality.

Mr. Falkins observed that unlike private insurance, reporting incidents that do not result in paid claims do not increase the premium for compulsory insurance from the Lawyers Insurance Fund.

Mr. Alexander said it was important to remember that the Lawyers Insurance Fund was the "flagship" insurance program in the country, and on behalf of the Benchers, he thanked Ms. Forbes for her work.

6. DISCLOSURE AND PRIVACY TASK FORCE

(a) Disclosure of expired restrictions and conditions.

It was moved (Hunter/Fung) that the Law Society not disclose expired restrictions and conditions unless they can be disclosed under the *Freedom of Information and Protection of Privacy Act*.

The motion was carried.

(b) Disclosure of insurance claims history

Mr. Hunter explained that since the Lawyers Insurance Fund (LIF) is a Law Society program, information in the custody or control of the LIF is subject to the *Freedom of Information and Protection of Privacy Act (FOIPPA)*. The Law Society has disclosure and privacy obligations with respect to that information. The policy question for the Benchers' consideration is what, if any, information should be disclosed. Mr. Hunter reviewed the Task Force's recommendations with respect to member errors and omissions insurance, Law Society directors and officers insurance, and directors and officers insurance for non-Law Society legal organizations such as the Law Foundation.

It was moved (Hunter/Falkins) that the Law Society:

1. not disclose to the public Part A insurance claims information except as required by *FOIPPA*, or in cases where the fact that a claim has been made to the insurance program is known to the public;

2. adopt rules requiring it to keep confidential a lawyer's Part A insurance claims information but permitting it to disclose, when the fact that a claim has been made to the insurance program is known to the public, the existence of an insurance claim, its subject matter, its status, and any additional information necessary to correct inaccurate information;

3. not disclose to the public the Law Society's claims information arising under the Directors and Officers Errors and Omissions Insurance program except as required by *FOIPPA* or in cases where the fact that a claim has been made to the insurance program is known to the public; and

4. not disclose to the public any claims information relating to the non-Law Society bodies insured under the Directors and Officers Errors and Omissions Insurance program except as required by FOIPPA.

Mr. Vilvang asked if excess insurers had been consulted with respect to the question, noting that they could make claims information public.

Mr. Hunter said excess insurers were not consulted because they were not subject to Law Society policy.

Mr. Vilvang suggested that excess insurers should be informed about the disclosure policies in order to develop a common approach to disclosure, if possible.

The motion was carried.

7. INDEPENDENCE AND GOVERNANCE SUBCOMMITTEE

Mr. Turriff outlined the recommendation from the Futures Committee and Executive Committee that the Benchers create an Independence and Governance Committee to carry on the work being done by the Independence and Governance Subcommittee (a subcommittee of Futures). He said the need to examine issues concerning the independence and governance of the legal profession would continue for the foreseeable future, and it was particularly important the Law Society be seen to be giving high priority to those issues.

It was moved (Turriff/McDiarmid) to change the Independence and Governance subcommittee to a standing committee of the Benchers.

The motion was carried.

8. FUTURES COMMITTEE MANDATE

Ms. Fung outlined the recommendation of the Futures Committee that the task of monitoring the work of task forces be removed from its mandate and placed with the Executive Committee, so that the Futures Committee could focus on strategic issues.

It was moved (Fung/McDiarmid) to amend the mandate of the Futures Committee by deleting paragraph (a)(ii) "*coordinate and monitor the work of task forces and report to the Benchers as required*" and to authorize and direct the Executive Committee to coordinate and monitor the work of task forces and report to the Benchers as required.

Mr. LeRose asked how frequently the Futures Committee met. Ms. Fung said it had met monthly in the past, but planned to meet every second month in 2005.

Mr. McDiarmid noted that although most of the task forces originated with the Futures Committee, the Executive Committee was in a better position to coordinate and monitor their progress.

Ms. Ostrowski was in favour of the change because it would free up the Futures Committee to examine real futures issues.

The motion was carried.

9. PROCESS FOR APPOINTMENTS TO THE SUPREME COURT OF CANADA

Mr. Turriff noted that the subject of the process for appointing Supreme Court Justices was less urgent since the two vacancies on the court had been filled. However, it remained a matter of concern, and the Independence and Governance Subcommittee had developed a recommendation for a limited post-nomination review of candidates. He said this was a concession of sorts to the fact that the Prime Minister had indicated that there would be some form of public review of the appointments. The questions for the Benchers were:

1. Should a system for reviewing and/or advising on appointments to the Supreme Court of Canada involve a pre- or post-nomination review process?

2. Should parliamentarians be included in any committee tasked with advising on or reviewing appointments to the Supreme Court of Canada?

Mr. Turriff said the argument against a pre-nomination review concerned the possibility that qualified lawyers might not put their names forward if they had to undergo a pre-nomination review. The issue about including or not including parliamentarians involves concerns about possibly partisan political input. Mr. Turriff suggested that if the Benchers could reach a consensus position, or at least agree that these were the appropriate questions, then the Law Society could urge the Federation of Law Societies to put the matter back on its agenda.

Mr. McDiarmid noted that the subcommittee made no mention of lay persons in the review process, and asked if that was an intentional omission.

Mr. Turriff said the subcommittee had focused on parliamentarians because that was where concerns arose, and the failure to specifically mention lay persons was not intended as a recommendation that they be excluded from the process.

Dr. Vallance asked how the search process for Supreme Court Justices was undertaken under the existing system.

Mr. Turriff said he was not completely certain, but the process was somewhat informal and involved consultation with a variety of people. The key point, he said, was that the search and appointment process was conducted behind closed doors.

Mr. Rideout preferred a post-nomination review process. However, he questioned whether the Law Society should deal with the question of involving parliamentarians at this time.

Mr. Turriff offered the view that it would be better to be prepared with a considered position, noting that the two vacancies in 2004 came as something of a surprise and there was little time to put positions forward. He suggested it would be useful to get the matter back on the Federation's agenda so that there was some hope for developing a Canada-wide position.

Mr. Nagle commented that the appointment process was already politicized. The question for the Benchers to consider was whether they want to confront the political system with a reasoned approach to the issue. He said a reasoned approach required some public input, recognizing that the Prime Minister is most unlikely to give up the power of appointment. Mr. Nagle supported further development of the first question, but would not take the second question any further.

Mr. Hunter thought the whole issue was more appropriate for the Federation of Law Societies, and suggested that the Law Society of BC should limit itself to getting the matter back on the Federation agenda.

Mr. Alexander noted that the Federation acts only by consensus on matters such as this one, based on information coming forward from its members. The process suggested by Mr. Turriff was the proper way to get matters on the agenda. He said that the Federation's response to the issue in relation to the two appointments made in 2004 was somewhat hastily put together, and although enthusiasm for the subject might have waned, there was some merit in creating a more carefully considered position.

Mr. McDiarmid agreed that the issue was important and the time was appropriate to consider developing a position on it.

It was moved (Turriff/McDiarmid) to encourage the Federation of Law Societies to take the earliest opportunity to re-examine the question of how appointments to the Supreme Court of Canada are made, and in particular the two questions framed by the Independence and

Governance Subcommittee, to give the Federation of Law Societies the Independence and Governance Subcommittee's proposal for consideration, and to ask for a report from the Federation by the end of 2005.

Mr. Kelly commented that one of the difficulties in dealing with the issue was that there was no "fixed target"; each Prime Minister will make decisions about the process to be used. The critical step is to get a clear sense of the target.

Mr. Turriff suggested the Federation would be trying to contribute to the establishment of a convention that would be followed in the future, even though it would not be binding.

The motion was carried.

10. AMENDMENT OF RULE 9-17

It was moved (LeRose/McDiarmid) to amend the Law Society Rules by rescinding Rule 9-17(3) and substituting the following:

> (3) The notice required under subrule (2) must include a statement to the following effect, prominently placed:
>
> > The partners in a limited liability partnership are not personally liable for the negligent acts and omissions of another partner or an employee unless the partner knew of the negligent act or omission and did not take reasonable steps to prevent it. Each partner is personally liable for his or her own actions, and the partnership continues to be liable for the negligence of its partners, associates and employees. Accordingly, there is no reduction or limitation on the liability of the partnership.

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

11. APPOINTMENT TO THE HAMBER FOUNDATION BOARD OF DIRECTORS

It was moved (LaLiberté/Jackson) to re-appoint John Leathley, QC to the Board of Governors of the Hamber Foundation for a term of three years commencing on March 1, 2005 and ending on February 28, 2008.

The motion was carried.

12. PROCESS FOR APPOINTMENT OF LAW SOCIETY HEARING PANELS

Mr. Hoskins introduced a discussion paper on the process for appointing Law Society hearing panels. The basic question was whether hearing panels could be more effective if they were appointed on the application of more or different criteria than at present. Mr. Hoskins reviewed the Law Society Rules respecting the appointment of hearing panels and noted that there had been a policy for some time that although any Bencher in the province may be appointed to a hearing panel, only Life Benchers are appointed. Mr. Hoskins reviewed the roster system previously used to set hearing panels.

Mr. Nagle asked about the source of concerns regarding single Bencher hearing panels.

Mr. Hoskins said several Benchers had raised the subject informally, and Law Society counsel more formally. He said the concern was not that a single Bencher might be biased, but that

defense counsel who are aware of how single Bencher panels are usually appointed can use that understanding to effectively choose the adjudicator by agreeing to a single Bencher panel. The concern is with the selection process, not with the person selected.

Ms. Preston asked how often single Bencher panels were used.

Ms. Robertson said statistics were not kept on that point, but single Bencher panels were a common occurrence.

Ms. Preston said she had concerns that single Bencher panels precluded the participation of a lay person.

Mr. Ridgway suggested single Bencher panels should be restricted to cases that are likely to be quite short; otherwise Benchers could be faced with sitting on lengthy hearings alone.

Mr. Donaldson thought it might be a good practice to have a Lay Bencher on every hearing panel, and if that was so, it could determine the answers to other questions. He favoured continuing to let counsel know who was appointed to hearing panels because it would be assumed that Law Society counsel would have that information in any event.

Ms. Robertson, in response to a question from Ms. Hickman, clarified that when a respondent consents in writing to a single Bencher hearing panel, the customary practice has been to agree, and appoint a single Bencher.

Ms. Hickman did not think a single Bencher panel should be used in all cases, and the President should exercise the discretion to maintain a three-member panel when appropriate, such as in high profile cases.

Ms. Ostrowski thought is was valuable to have single Bencher panels available, but wanted to consider how to correct the potential mischief of "judge shopping" by consenting to a single Bencher panel. Ms. Ostrowski preferred a system where the composition of the panel remains secret from both counsel until the hearing.

Ms. Wallace said it was not practical to have a Lay Bencher on every panel because it would cast an unreasonable burden on the Lay Benchers. She preferred a system where the identity of the panel is unknown to either counsel.

Mr. Hunter suggested that there were three questions to address in order:

1. Should there be a lay bencher on every panel? On this point, Mr. Hunter thought the answer was no because of the burden on lay benchers.

2. Should the use of single bencher panels continue and under what circumstances? On this point, Mr. Hunter would limit single Bencher panels to situations where the facts are not in dispute, and possibly where there is agreement on penalty.

3. If single bencher panels are used, should advance information about panel composition be released. Mr. Hunter felt quite strongly that the information should not be released.

Mr. Turriff agreed with Mr. Hunter and noted that if the third question was answered first, the others would follow. Mr. Turriff favoured having as many three Bencher panels as possible because it underscored the seriousness of the discipline process and allowed for a greater diversity of viewpoints, which improves decision-making. Maximizing the number of three Bencher panels would also minimize the opportunities for "judge shopping".

Mr. Rideout took the opposite view. He said from a defense counsel point of view it was important to know the "lay of the land", and counsel would be remiss if they did not ask who might be on the panel. He agreed with Mr. Donaldson that openness was beneficial.

Mr. Hume agreed with Mr. Rideout, noting that in labour practice, he could select an arbitrator. He said the selection of a judge was not mischief but was a reflection of confidence in the senior member who would hear the case alone.

Mr. O'Byrne agreed with those who favoured continuing to use single Bencher panels and to disclose their composition. He noted that it can be very difficult to get three Benchers together, particularly when a hearing has been adjourned.

Mr. LaLiberté said he preferred three Bencher panels because of they provided the opportunity to exchange views; however, he did not think that if both parties agree to a single Bencher it could be considered "judge shopping". Mr. LaLiberté said that if both counsel consent and the issues in the case are limited, then single a single Bencher panel was appropriate.

Mr. Cameron noted that the decisions of three Bencher panels were less likely to be challenged. He also noted that disclosing the composition of panels provided an opportunity to spot conflicts, and if the composition is not disclosed, panel members should be particularly sensitive to potential conflicts.

Mr. McDiarmid endorsed Mr. Turriff's comments about signaling the seriousness of discipline matters, and favoured three Bencher panels as a default position. He said the President should exercise the discretion to decline to appoint a single Bencher panel when it would not be appropriate. Regarding Lay Bencher participation, he noted that hearings are open to the public, which provides some measure of public oversight. He did not think there were enough Lay Benchers to require them to sit on all hearing panels. Mr. McDiarmid agreed with the idea of selecting panels for their special expertise when that is appropriate to the case.

Mr. Vertlieb said it was appropriate to use a single Bencher panel when there is agreement on the facts and penalty because it amounted to a joint submission and it would be unusual for a panel to reject it.

In answer to a question from Mr. LeRose, Mr. Alexander said that the practice in other jurisdictions had not been considered.

Mr. Donaldson noted that, as with an agreement to proceed with a criminal charge before a judge alone, an agreement to proceed before a single hearing panel effectively left the decision in the hands of the prosecution, so there could be no objection about "judge shopping".

Ms. Preston said it was important to have Lay Benchers on hearing panels as often as possible, as well as keeping hearings open to the public, in order to create a very clear impression of the importance of disciplinary matters in the public mind.

Mr. Vilvang commented that using single Bencher panels only in largely uncontested matters would limit any savings in resources. He also commented that although single Bencher panels had been criticized for generating anomalous decisions, the common law developed through anomalous decisions, and it ought not be considered a completely bad thing.

Mr. Jackson said the problem was not with an agreement between counsel but the situation that currently existed in which defense counsel had control over whether a matter is heard by a single Bencher. If counsel agree, it is fair to change from a three Bencher panel to a single Bencher panel.

Mr. Brun agreed with Mr. Vilvang that for longer hearings a single Bencher panel would be more efficient, particularly because it makes adjourned hearings easier to reschedule. He was not convinced that a single Bencher panel hearing a long or contentious case was necessarily problematic.

Mr. Alexander concluded the discussion by asking Mr. Hoskins to use the Benchers' comments to focus the issues and return the matter to the Benchers with policy options for consideration.

13. REPORT ON STATUS OF 750 CAMBIE STREET PROPERTY

Mr. Stajkowski gave an update on the status of the building at 750 Cambie Street. He described the work being done, noting that it was contemplated at the time of acquisition, and was much easier to complete when the building is not occupied. He said there was considerable interest in the building and one prospective tenant in particular had included the building as one of two under consideration out of twenty identified as possibilities. Mr. Stajkowski expected to receive an offer to lease 35,000 square feet of space within a week. Other prospective tenants were interested in space from 10,000 to 20,000 square feet.

14. PRO BONO LAW OF BC FUNDING REQUEST

Mr. Alexander introduced Kelly Doyle, Marina Pratchett, QC, Sherman Chan, and Warren Milman from the Board of Directors of Pro Bono Law of BC.

Mr. Doyle recalled that the funding application to the Law Foundation in 2002 resulted in a grant of $75,000 per year. That was less than was sought and dictated the PBLBC budget. Maintaining the funding status quo in 2005 would require $50,000 from the Law Society and a matching amount from the Law Foundation. However, matching funds would not be available after March 29, 2005, so if Law Society funding was not approved by that date, the status quo would require $100,000 from the Law Society or other sources. Mr. Doyle said PBLBC sought $85,000 from the Law Society in each of the next two years, to be matched with the same amount, the maximum available, from the Law Foundation. The increased amount would permit PBLBC to employ a full-time executive director. Mr. Doyle acknowledged that the Law Society made no commitment to ongoing funding. He said PBLBC had examined alternate funding sources, and had looked at what other pro bono organizations had done to raise funds. Pro Bono Law Ontario had enjoyed a great deal of support from the Law Foundation of Ontario, the Legal Services Society of Ontario and the Law Society of Upper Canada, but operated in a different political environment. He said PBLBC was sensitive to legal aid cutbacks, and had not approached the BC Legal Services Society. The message from law firms was that PBLBC was competing for limited funds with service providers such as the Salvation Army and Access Justice, which was counterproductive in that PBLBC was conceived to facilitate the work of those service providers, not compete with them. The third element of fundraising efforts was to seek charitable status for tax purposes. Mr. Doyle said the application for charity status had been reviewed by the CCRA and some changes to the society's objects were needed to comply with CCRA policy before the application could be completely processed. Regarding "deliverables", Mr. Doyle referred to a memorandum setting out what PBLBC had accomplished over the previous two years, which, he said, was most of what it had set out to do, with the exception of becoming self-sufficient.

In response to a question from Mr. Jackson, Ms. Pratchett explained how PBLBC acted as a "gatekeeper" by ensuring that service providers met the minimum requirements to qualify for retired and insurance exempt lawyers to obtain free insurance from the Lawyers Insurance Fund. She said six organizations had sought approval. If PBLBC did not perform that function, someone else would have to fulfill that function, possible involving Law Society staff.

Mr. McDiarmid recalled that the intention in 1999 was that PBLBC would raise money elsewhere and the Law Society would provide relatively modest start-up funding. Last year, the Law

Society agreed to provide $15,000 in each of 2004 and 2005 and he would be willing to have the Law Society continue to cover shortfalls to allow PBLBC to carry on, but he was concerned that the Law Society was being asked to contribute significantly more.

Ms. Pratchett explained that the main reason for the request was that the Law Foundation had advised PBLBC much earlier than expected that they would not provide a grant unless matching funds were available. Thus it was necessary to obtain matching funds before the end of March, and the Law Society was the only realistic source of that money.

Mr. Zacks said he supported PBLBC and had supported pro bono work for thirty years. He said pro bono was not new although it might be more in vogue than at other times. The question was how much the Law Society was going to ask members to pay to support pro bono and for how long. He did not think the Law Society should commit to two years of funding, although it might be necessary for lawyers to take on the burden on a long-term basis. He said there was a political reality that if the government sees the Law Society increasingly supporting PBLBC, they would have a greater argument for reducing legal aid funding. However, if the Law Society was going to commit to funding, it should commit for the long term.

Mr. Hunter agreed that the Law Society should support pro bono work but he was concerned about putting a substantial sum of money into a resource system leaving delivery systems to scrounge for resources. He asked if it was possible for PBLBC to become an integrated resource and service provider.

Mr. Doyle said PBLBC did not intend to become either a "think tank" or to administer a large number of programs, but it had looked into setting up a web-based conference system to extend delivery of PBLBC resources to other regions. He suggested greater integration could be discussed with the Society to Access Justice and the Salvation Army, who are two of the major providers of pro bono services. He could not say what an integrated system would look like.

Ms. Schmit said PBLBC was a response to legal aid cutbacks. The idea of PBLBC was and is to link up lawyers and clients, but she was not sure how useful PBLCBC really was. When legal services funding was cut back there was a sense of crisis. Since then the Law Society has created a special insurance product to allow retired and exempt lawyers to provide pro bono services, and has raised the profile of pro bono work. The Legal Services Society has also done some good things to provide services to people on the ground, such as the family law duty counsel program. The CBA continues to provide the lawyer referral program, which helps real people solve real problems. Ms. Schmit said the Law Society should either commit to the long-term support of PBLBC or stick to the original plan of providing seed money in the expectation that PBLBC would become self-sufficient.

Mr. Vertlieb asked if any more information was available concerning the value for money delivered by PBLBC.

Mr. Doyle noted that the Court of Appeal program had assisted about twenty-four people obtain counsel. Additionally, PBLBC set out to create a matching system on its website that would enable clients and lawyers to match up, but that proved to be less successful than was hoped, in part because of a lack of resources to promote the system.

Ms. Pratchett noted that PBLBC had reported over 100,000 website hits and telephone calls, which demonstrated that it had become something of a "go to" organization.

It was moved (Sigalet/Hume) to authorize payment to PBLBC of $85,000 in each of 2005 and 2006.

Mr. Sigalet said the difficulty experienced at the last Benchers meeting when this was discussed was that Dugald Christie presented a smaller request for a sympathetic cause, and PBLBC is a multiplier not a frontline service provider so its impact is more difficult to assess. He thought the funding was a worthwhile expenditure that would result in a more solid program.

Ms. Wallace noted that Mr. Christie wanted only $15,000 to keep forty clinics running and expand to sixty clinics, but the Law Society was being asked to give $85,000 to support a connection and resource service, and that did not seem proportionate. Ms. Wallace asked why the Law Society should give more money to the support service than to the service delivery. Ms. Wallace was also concerned that funding PBLBC gave the appearance of asking lawyers to pay twice: once by working for free, and again through their fees.

Mr. Doyle commented that Access Justice clinics tended to provide short-term advice or assistance to people in making decisions or moving their matters forward, but did not provide full representation services. Ideally, full representation would be available pro bono for some cases. He said PBLBC was trying to promote a whole range of opportunities for lawyers to provide needed services.

Mr. LeRose recalled that part of the budget for 2005 presented by PBLBC was for an executive director, who was needed because the PBLBC board is composed of volunteers with limited amounts of time to contribute.

Mr. Brun was in favour of the motion. He accepted that PBLBC had experienced some success and some failure but he was convinced of the necessity of maintaining it. An imperfect ability to deliver assistance is better than no assistance at all. He commented that one of the limitations of delivering pro bono services through an Access Justice clinic is the lack of immediately available resources to deal with the questions and crises that are presented there. PBLBC can assist by making resources available.

Mr. Turriff questioned why the Law Foundation tied its funding to matching funds from other sources, rather than making PBLBC one of its core-funded programs. He asked what aspect of PBLBC gave the Law Foundation pause.

Ms. Pratchett said the Law Foundation had made a policy decision to take on any new core-funded programs for some years because of the difficulties caused by those commitments. She said the PBLBC board had not considered why PBLBC was not in the core-funded group because it did not expect to be there. She noted that the Law Foundation did not hesitate to withdraw funding from programs that did not meet its requirements.

Mr. Vilvang said that after reading the material provided by PBLBC he had concluded, contrary to his earlier view, that it was incorrect to view PBLBC as competing with Access Justice or other pro bono service providers, and that view should be discarded. The organizations are different but are working towards common goals in different ways. Access Justice's services are concrete but limited. PBLBC is trying to do something more abstract – to bring about a cultural change in the legal community. He said that is the kind of thing that can provide real and lasting value if it means that a lawyer is willing to take on a whole case without fee. He said the Law Society owed it to the concept and the stated goal of promoting lawyers to provide pro bono services, to agree to the funding requested.

In response to a question from Mr. McDiarmid, Mr. Doyle said PBLBC raised $7,500 from the CBA and $2,500 from Harper Grey Easton in the previous year.

Mr. McDiarmid asked about the cost of the Court of Appeal program, the insurance gatekeeper role, the PBLBC website, and office space.

Mr. Doyle said Law Society provided office space at a cost of one dollar. Maintaining the website costs several thousand dollars, and working through the insurance requirements as the gatekeeper requires a lot of personnel time.

Ms. Hickman agreed with the concerns voiced by Ms. Wallace and Ms. Schmit. She agreed with Mr. McDiarmid that if the Law Society was going to change its approach to funding PBLBC, the Benchers should look at other options for supporting pro bono in the long term. Ms. Hickman did not want to cut off funding to PBLBC immediately, but favoured giving $50,000 for one year.

Mr. Ridgway said that the pro bono culture had been alive and well in communities for a long time, and he was not in favour of funding super structures to do that again.

Mr. Sigalet said that not being in the Law Foundation's core-funded group was not an indicator of a lack of approval.

Ms. Fung said that realistically funding at $50,000 or $85,000 would be a commitment to pro bono in the long term. Two years from now the Benchers could be faced with funding the whole program.

Mr. Blom supported the motion. He thought PBLBC made sense as a concept. He questioned how the Benchers would know in two years whether PBLBC was successful or not. He thought PBLBC was well placed to gather information about what is being done and whether pro bono work is increasing or decreasing or changing in some way.

Mr. Doyle hoped that in the next two years PBLBC would be able to say that there are a number of big name law firms with structured pro bono programs, and that the manual for community/law firm partnerships has resulted in such partnerships being formed. Much of the groundwork for that success had been laid in the last two years.

Mr. Jackson said it was worth spending the money because it was the best public relations the profession could get.

Mr. LaLiberté commented that the law firms that are contributing should receive some recognition.

The motion was carried.

15. REPORT ON SPECIAL COMPENSATION FUND INVESTIGATIONS AND CLAIMS IN THE WIRICK MATTER

This matter was considered *in camera*.

Mr. Alexander said the Benchers were very pleased with the way in which Ms. Cummings had discharged her duties in this matter.

16. OPEN DISCUSSION OF BENCHER CONCERNS

Mr. Vertlieb noted that the Benchers had received for information a newspaper article about a lawyer in Newfoundland being cited for criticizing a judge. He said the Law Society should monitor the case and report on the outcome to the Benchers.

Mr. Donaldson said he still did not have all the information he wanted about PBLBC. He urged the Benchers to address the policy on funding external programs, and suggested that it be added to Mr. Alexander's list of key issues to be resolved.

Mr. Turriff agreed that the Benchers had to be able to say why some things were funded and some were not.

DMGN
05-02-23