**THE LAW SOCIETY OF BRITISH COLUMBIA**

MINUTES

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| **MEETING:** | Benchers | |
| **DATE:** | Friday, October 14, 2005 | |
| **PRESENT:** | Ralston Alexander, QC, President | Patrick Nagle |
| | Robert McDiarmid, QC, 1st Vice-president | Margaret Ostrowski, QC |
| | Anna Fung, QC, 2nd Vice-president | June Preston |
| | Robert Brun, QC | Greg Rideout |
| | Ian Donaldson, QC | Glen Ridgway, QC |
| | William Everett, QC, Life Bencher (for item 9 only) | Patricia Schmit, QC |
| | Michael Falkins | Allan Seckel, QC, Deputy AG |
| | Carol Hickman | Dirk Sigalet, QC |
| | 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 | Karl Warner, QC, Life Bencher |
| | Bruce LeRose | David Zacks, QC |
| **NOT PRESENT:** | Joost Blom, QC | Ross Tunnicliffe |
| **STAFF PRESENT:** | Timothy McGee, CEO | Michael Lucas |
| | Mary Ann Cummings | David Newell |
| | Brad Daisley | Neil Stajkowski |
| | Charlotte Ensminger | Don Terrillon |
| | Su Forbes, QC | |
| | Tim Holmes | Alan Treleaven |
| | Jeffrey Hoskins | Adam Whitcombe |

**GUESTS:**
Dean Mary Ann Bobinski, University of British Columbia
Dean Andrew Petter, University of Victoria
Frank Kraemer, Executive Director, CBABC
Johanne Blenkin, Chief Librarian, BCCLS
Wayne Robertson, Executive Director, Law Foundation
Deborah Zutter (for item 8)
Jerry McHale, QC (for item 8)
Charles McKee
Shannon Rupp, Lawyers Weekly

## 1. MINUTES

The minutes of the meeting held on September 9, 2005 were approved as circulated

## 2. PRESIDENT'S REPORT

Mr. Alexander circulated a written report outlining his activities on behalf of the Law Society in the previous month.

## 3. CEO'S REPORT

Mr. McGee circulated a written report, and highlighted some operational activities. In particular, Mr. McGee noted:

- The first "Town Hall" meeting with Law Society staff was held as planned. Mr. Alexander attended and gave strong support.
- Phase one of the facilities review is nearing completion.
- Performance management reviews are well underway, as is the process of benchmarking every pay level in the Law Society.
- Staff and advisers on government relations are preparing for the Attorney General's visit at the next Benchers meeting.

Mr. McGee also reported on his attendance at the Commonwealth Law Conference. He reported that it was universally accepted by delegates that post-call training for lawyers is necessary. However, others are struggling with deciding on the best model to use. Another discussion concerned measuring success, which was acknowledged to be very difficult. Mr. McGee said he had volunteered to work with his counterpart from Hong Kong to look at the possibility of conducting a Commonwealth-wide study. Funding access to justice was also a topic for discussion. The main theme was that government funding was unlikely to increase. Most of the tools available are already known to the Law Society of BC. The Law Society of England and Wales has made a strong argument for salaried lawyers on the civil side, but the most startling development comes from Australia where large, well-capitalized, public companies are emerging as litigation funders. Mr. McGee offered Mr. Turriff the opportunity to comment on the conference.

Mr. Turriff was unimpressed by the conference. He noted that the funding arrangements arising in Australia are not so far from our own contingency fees as one might think, and similarly, they need to be regulated. Unfortunately, there was not discussion of the independence of lawyers. No-one took up an invitation to comment on Sir David Clementi's endorsement of non-lawyer ownership of law-firms and there seemed to be very little interest among Britain's solicitors in the implications of the Clementi Report.

Mr. McDiarmid commented on the CBA meeting and the question of the availability of Articles, noting that outside the Lower Mainland and Victoria, it is very difficult to attract students.

Mr. McGee said the focus of discussion was on the difficulty students have in knowing who has positions available, and how to remedy that. Another issue is whether Articles could be efficiently shared between lawyers in small towns.

Mr. Alexander said that during his visits to the interior earlier in the month, two County Bar Associations had raised the subject. He said he had also received representations about the need to be less rigid about the structure of Articles so that students can take multiple placements for shorter periods.

## 4. REPORT ON OUTSTANDING HEARING DECISIONS

The Benchers received a report on outstanding hearing decisions.

**5. DISCLOSURE AND PRIVACY TASK FORCE REPORT: ISSUES RESPECTING MEMBERS' INFORMATION AND EMAIL ADDRESSES.**

Mr. Hunter reviewed two reports from the Privacy and Disclosure Task Force. He explained that the task force looked at members' business contact information because changes to the *Freedom of Information and Protection of Privacy Act* (*FOIPPA*) have removed that information from the definition of personal information, making it disclosable under the *Act*. He said there is a concern about giving out contact information in the form of a list because of the potential for misuse for commercial purposes. Email addresses deserve special consideration because it appears that many members view their email address somewhat differently than their mailing address, and there is a real concern about "spam". The Law Society does not want to worsen the situation but the FOIPPA requires disclosure of the information. The task force proposes to ask members to provide an email address if they are prepared to have the address made available on the "Lawyer Lookup" feature of the Law Society website. This can be set up in such a way as to prevent "mining" the information to obtain an email list. Members would have the option of not providing an email address.

It was moved (Hunter/McDiarmid) to permit disclosure of the membership mailing list only for programs or projects that are consistent with the Law Society's purposes, and not to provide members with the option of not having their address included in the list.

Ms. Ostrowski asked how many members were likely to want to opt out of the list. Mr. Hunter said it was difficult to predict with any accuracy, but it seemed unlikely to be very high.

The motion was carried.

It was moved (Hunter/McDiarmid) to permit disclosure of members' email addresses through the "Lawyer Lookup" facility on the Law Society website, and in the membership list and that members have the option of not having their email addresses disclosed.

Mr. Hume noted that if members are permitted to withhold their email addresses, the Law Society will not be able to communicate with them via email.

Mr. Hunter acknowledged the point but noted that the Law Society does not currently require members to provide an email address, and allowing members to provide addresses with the option of requesting that the Law Society to withhold them might not survive a request under *FOIPPA*.

The motion was carried.

**6. THE ROLE OF THE SPECIAL COMPENSATION FUND POST-IMPLEMENTATION OF TRUST PROTECTION COVERAGE**

Ms. Schmit reviewed a report from the Special Compensation Fund Committee concerning the interplay between the Special Compensation Fund and Part B insurance coverage. She said the Special Compensation Fund must be maintained under the *Legal Profession Act*, but the Committee recommends that claimants be required to first seek compensation through Part B insurance, and only be permitted to claim against the Special Compensation Fund if their claim is denied in whole because the aggregate limit on insurance has been reached. Ms. Schmit said this would allow greater certainty, and greater ability to assess risks, and would encourage claimants to settle within the policy limits. The Benchers would retain the discretion to make *ex gratia* payments through the Special Compensation Fund Committee or directly, and would always have the discretion to lift limits as was done in the Wirick case. Ms. Schmit said the balance of the report concerned housekeeping rule changes dealing with the lag time between discovery and reporting of claims, and claims made prior to May 1, 2004.

Mr. McDiarmid spoke in support of the recommendation. He said the ceiling on payments under Part B is very high and claimants would understand the notion of settling within policy limits by analogy to car insurance.

Mr. LeRose also spoke in favour of the recommendation. He said it was never intended that the Special Compensation Fund should act as a court of appeal for Part B insurance claims.

Mr. Jackson agreed. He noted that with respect to the option of seeking legislative amendment to eliminate the requirement for the Special Compensation Fund, it was not stressed enough that there would be political risks to such a request.

It was moved (Ridgway/Falkins) to rescind Rule 3-33 of the Law Society Rules and substitute the following:

**Limit on payments from the Fund**

**3-33** Despite Rules 3-31 and 3-32, the Special Compensation Fund Committee, or the subcommittee with the consent of the Committee, must not authorize a payment from the Special Compensation Fund in respect of a claim made on or after May 1, 2004 unless

(a) the claimant has made a claim under Part B of the policy of professional liability insurance and the claim has been denied in whole

(i) because the limit of liability described in the policy as the Profession-Wide Aggregate Limit has been exhausted, or

(ii) by operation of Exclusion 10 of the policy, or

(b) prior to May 1, 2004, the Society had notice of the possibility of claims to the Special Compensation Fund involving the lawyer against whom the claimant has made the claim.

Mr. Nagle wanted to be sure that the Benchers would have ultimate control over payment of claims from the Special Compensation Fund. He said from the public point of view the handling of the Wirick matter was a shining moment because of the Benchers' decision to make everyone whole, and that should not be lost.

Ms. Schmit said the Special Compensation Fund must continue to exist and the Benchers' discretion continues with it. Payments under the fund are discretionary and British Columbia has been one of the most generous jurisdictions in the world, but there needs to be some control.

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

## 7. INSURANCE FUND ASSESSMENT FOR 2006

Ms. Forbes gave a presentation, a copy of which is attached as Appendix 1.

It was moved (Hume/Donaldson):

(a) the insurance fee for 2006 pursuant to section 30(3) of the Legal Profession Act be fixed at $1,500;

(b) the part-time insurance fee for 2006 pursuant to Rule 3-22(2) be fixed at $750; and

(c) the insurance surcharge for 2006 pursuant to Rule 2-26(2) be fixed at $1,000.

The motion was carried.

**8. ALTERNATIVE DISPUTE RESOLUTION TASK FORCE REPORT**

Mr. Alexander introduced the report of the Alternative Dispute Resolution (ADR) Task Force, and said the purpose of presenting the report to the Benchers was to seek approval to publish the report to the members as a consultation paper and obtain their input. He also introduced Deb Zutter, Chair of the Task Force and Jerry McHale, QC, a member of the Task Force.

Mr. Vilvang asked whether there would be a program for mediators seeking to move into relationship mediation, and whether mediators would be able to move into other areas.

Ms. Zutter's view was that family mediators would not be the only mediators involved in relationship mediation. Others such as estate mediators could acquire the skills training needed to move into the relationship mediation field. She said two things were emerging in the context of relationship mediation: grieving over a lost relationship and the potential for abusive relationships among disputants. Special knowledge and skill is required to deal with those aspects of relationship disputes.

Mr. McHale recalled that the rationale for regulating family law mediation was the need to protect vulnerable people. Since that time mediation has moved into other areas and the requirements for moving into other areas are not cast in stone. A family law mediator would be able to move into relationship mediation.

Mr. Turriff said he had an opportunity to review an earlier draft of the report and came to the conclusion that it was not something that should be published to the members. He said he was still of that view. Mr. Turriff's concern was that there is too much in the way of uncritical endorsement of alternate dispute resolution, and it is unnecessary to a discussion of the issues. ADR may well be a good thing in some cases but not in all cases and there are many cases where it can play no role whatsoever because of the nature of the dispute. The authors state that the report is intended to support lawyers using ADR. Mr. Turriff said in his view the proper question for the Benchers was not about support but about regulation. It is important that there are some rules governing what lawyers do in mediation. Mr. Turriff noted a quote from an English court stating that the function of the court is settlement. In his view courts should not become settlement bodies, but adjudicative bodies involved in declaring right from wrong. He said the Law Society should develop a set of rules to govern lawyers when they are engaged in the wholly distinct process of pragmatic resolution.

Mr. McHale said the report reflected the task force's terms of reference, which carried implicit assumptions about the place of ADR in the practice of law. Those assumptions have become more explicit since the task force began work, and in some respects are at odds with Mr. Turriff's assertions. The fact is that ADR has become a substantial part of the practice of law. What Mr. Turriff characterizes as uncritical endorsement is more a reflection of the current state of facts. Mr. McHale said the task force was not seeking endorsement of the report, but authorization to distribute it to the members and obtain their views.

Mr. Kelly said his understanding was that for the past fifteen to twenty years, practitioners had been working to develop a good base of competencies for the practice of mediation. The primary purpose of the Law Society is to regulate the practice of law through competency, but the current state of development of mediation may not permit effective regulation in that way. He asked whether it was anticipated that mediation would eventually become an integral part of the practice of law, regulated at the same level of rigor, or would it remain a somewhat "softer" field.

Mr. McHale thought the Law Society had decided that when lawyers elected to practice family law mediation, they would be regulated to a certain extent, and the Law Society would take

responsibility for some level of competency in that field. In relation to mediation generally, the goal would be for any lawyer who chooses to develop a mediation-based practice to be able to look to the Law Society Rules and Handbook and find parallel guidelines to those already in place for the practice of law.

Ms. Zutter agreed that mediation is an evolving field but said competence could be regulated without inhibiting growth. She said mediation is already happening in the courts, and in some situations is mandatory. Lawyers, acting as counsel are taking parties to mediation and at this time there is no guidance for them in those situations.

Mr. Zacks said he was struck by the extent of regulation represented by "best practices" in mediation. If the Law Society develops best practices in mediation, why would it not do so for other areas of practice? The Law Society does not currently require lawyers practising in any other area to meet an additional standard beyond that which is required to become a lawyer.

Mr. McHale said the task force's approach was not to define best practices but to establish a minimum standard and focus on a few potential danger spots.

Mr. Zacks asked why mediation required further structure than other areas of practice.

Mr. McHale said it was necessary because mediation is predicated on a wholly different role for the lawyer that is not addressed in the current sources of guidance such as the *Professional Conduct Handbook*.

Mr. Hunter identified three threads running through the report. The first was the utility of mediation for relationship disputes. He said that sounded right intuitively but he shared some of Mr. Zacks' concerns about singling it out for special treatment. Another thread was the utility of mediation generally as a technique for resolving disputes. The third thread was the suggestion that mediation is a superior technique for resolving disputes. Mr. Hunter said he was troubled in the same way as Mr. Turriff, noting the statement in the report that litigation lawyers must move away from a focus on rights based thinking. He said he appreciated the value of that in the context of family law but was concerned that the process was being pulled into other areas and changing the lawyer's role from protecting rights to promoting pragmatic solutions. In his view, lawyers protect their clients' rights. To suggest that there should be an ethical rule that requires lawyers to advise clients to take a pragmatic settlement is wrong, and the Law Society should not publish something that purports to endorse that idea.

Mr. McHale said Mr. Hunter's point went to the heart of an issue faced by the profession. There is a huge problem with the civil justice system with cost, complexity and delay in the courts. The system is becoming less accessible to the public and the profession has started to respond to the problem in part by shifting to a different form of practice that defines disputes in terms other than the rights of parties, and takes it out of the court system. That is not intended to be critical of the rights based approach or to suggest that an interest based should replace it. The two approaches can exist side-by-side. Mr. McHale said if the tone of the report went too far, he accepted the criticism but would resist the suggestion that the whole approach should be pushed out rather than drawn in to the profession. He noted that there has always been an ethical obligation on lawyers to encourage settlement of litigation.

Mr. Ridgway noted that the roster of mediators already exists, and he asked what role it played in determining competence or methods of practice.

Mr. McHale said the roster society was created to try to make competent mediators available to people around the province. He said there are criteria to get on the roster and guides for conduct, although professional standards prevail over roster society standards.

Mr. Nagle suggested that the acceptance of mediation is driven by the public interest. He was unsure that providing the public with what they want, which is settlement of their disputes, can be accomplished by a set of regulations for lawyers. He asked if the focus groups were composed of lawyers.

Mr. McHale said the focus groups were all lawyers. Consequently, the notion that lawyers should broaden their view of dispute resolution is the view of lawyers. He noted also that the universities have integrated mediation into their curricula.

Ms. Zutter said the University of Ottawa had integrated ADR into first year courses at appropriate points, so all students received that curriculum. At UBC there is now an introduction to mediation at the beginning of first year, and an optional mediation moot. There are also optional courses in mediation and collaborative law.

Mr. Nagle suggested that there was more to the public interest in mediation than what is good for lawyers, and the Law Society should track the issue more closely from that perspective.

Mr. McHale said the public is using mediation in family law and motor vehicle accident matters, as well as leaky condo and commercial disputes. In that sense, different sectors of society are endorsing ADR as a useful process. Because the public is using it the task force recommends that identifying the basic elements of competent practice.

Ms. Fung said her comments were not intended as criticism of the report, and she recognized the time and effort of the task force, but as Chair of the Credentials Committee was obliged to defend the PLTC. She noted that recommendation 33 in the Report suggests that PLTC does not have any instruction in ADR, but she was advised that in fact PLTC already incorporates ADR in the program. Returning to Mr. Hunter's point, by putting comments out in public view in a report of this kind, the Benchers are seen to be saying there is a problem that must be addressed. The report includes a critical comment from one focus group member, suggesting that there is insufficient ADR training at PLTC. In fact there is a whole day of teaching by PLTC staff and then a half day with a guest instructor who is an ADR practitioner. Moreover PLTC tries to weave concepts like ADR into the whole curriculum.

Mr. McHale agreed that the criticisms should be removed from the report, and thanked Ms. Fung for pointing them out.

Ms. Zutter noted that mediation is not included in the PLTC exams, and perhaps some additional teaching followed by examination could be considered.

Ms. Fung said that one PLTC assessment required students to submit a letter of advice to a client, and students were expected to discuss mediation as an option.

Mr. Rideout endorsed Mr. Hunter's comments with respect to the "third thread" he commented on. He said it was clear from the discussion that there might be serious flaws in the report but the only way to get the needed feedback was to publish the report to the members. He said the report should be published with a clear disclaimer that the Benchers do not endorse the report but it is the report the task force was asked to produce.

Mr. McDiarmid thought the summary of recommendations at page three of the report were useful and thoughtful and ready to go to the members. He had some concern that the focus groups were composed mostly of mediators, which seemed to be the wrong approach, and that should be pointed out. Mr. McDiarmid asked if the task force had considered the abuses that had occurred as a result of notice-to-mediate regulations. He said the notices were being abused by getting in the way of rights based dispute resolution.

Mr. McHale accepted that there were instances of abuse, but there is also much that can positively be said. He did not see it as within the scope of the report to comment on the process more than that it is being used.

Ms. Zutter said the task force was trying to understand where the perceived lack of balance lies in the report. She agreed that there are times when mediation is not appropriate and perhaps the report should state more strongly that counsel must be aware of the processes that are available to prevent a client having to participate in a mediation process when it would be inappropriate for them to do so.

Ms. Ostrowski agreed that the report should be published, possible incorporating changes based on the discussion, with a clear statement that the Benchers have not endorsed the recommendations.

Mr. Vertlieb favoured going to the profession if mediation is an area within the practice of law. He said he often goes to mediations where the mediator is not a lawyer. Similarly a lawyer mediator will make it clear that they cannot give legal advice in that capacity. If mediators are not acting as lawyers, what is the philosophical underpinning for the Law Society becoming involved regulating in this area?

Mr. McHale did not think that question had ever been completely resolved philosophically, but it had been largely resolved pragmatically. That lawyers are doing it has the capacity to reflect poorly on the profession if they do not do it well. The Law Society has the statutory authority to regulate lawyers practicing mediation. He pointed out that the Law Society regulates lawyers in many ways that are not the practice of law but that reflect on the profession.

Mr. Vilvang agreed with Mr. Turriff about the role of the courts being focused on rights based adjudication, and he agreed with Mr. Hunter that the primary role of lawyers is as protector or champion of their clients' rights. Having said that, however, the Benchers must recognize that lawyers have a broader role to fulfill and what the public wants is problem solving. To the extent that ADR addresses that interest, the Law Society should examine it. He said the report should be published with a statement that it is not intended to diminish the lawyer as protector of rights or diminish the courts' role as a dispute resolution mechanism.

It was moved (Vilvang/Rideout) to circulate the report with a disclaimer that it is intended for consultation purposes and the Law Society does not endorse the recommendations.

Mr. Turriff agreed that some individuals may be interested in problem solving, but the public's interest was in knowing what people's rights are and where the boundaries are. In his view, the report was not ready to be distributed because it should say no more than that lawyers do ADR, state the problems that have been identified, and the rules that are proposed. It should not say anything about whether ADR is good or bad, only that it is.

Mr. Zacks agreed with Mr. Turriff's comments. He agreed that the report should be circulated but only after further careful editing to remove editorial comments about the value of mediation.

The motion was defeated.

Mr. Alexander thanked Ms. Zutter and Mr. McHale for their work on the task force and for attending the meeting to assist the Benchers.

## 9. FEDERATION OF LAW SOCIETIES CLIENT IDENTIFICATION RULE

This matter was considered *in camera.*

It was moved (McDiarmid/Jackson) to approve the model rule on client identification in principle for consideration at the Federation of Law Societies meeting in November 2005.

The motion was carried.

**10. SPECIAL COMPENSATION FUND ASSESSMENT FOR 2006**

Mr. Stajkowski gave a presentation respecting the proposed Special Compensation Fund Assessment for 2006. A copy of the presentation is attached as Appendix 2.

Mr. LeRose said his understanding was that the bulk of Trust Account Fees (TAF) were being paid by clients. He thought the Benchers had promised members and the public that TAF revenue would be used only for specific purposes.

Mr. Stajkowski said the proposal would result in TAF revenue being used for enhanced audit programs and custodianship costs, which fall within the intended purpose.

Mr. McDiarmid said he understood that TAF revenue would be used for two things: to pay for Part B insurance, and to pay for an audit program that would eventually relieve members of the need to retain an outside accountant. He said the proposal presented looked as if TAF revenue would in effect be used to pay past Special Compensation Fund claims. He said the TAF revenue should be accounted for separately, much like trust money.

Mr. Hunter agreed with Mr. McDiarmid. He said there would be great price to pay if it appeared that the Law Society was using TAF revenue to pay regular expenses. He said the Law Society should start from the premise the money will be used to reduce the likelihood of another situation like the Wirick case, and should be accounted for openly.

Mr. Falkins echoed Mr. Hunter's remarks. He noted that for some time $1500 was needed to pay for Part A insurance, and the same amount was now expected to cover both Part A and Part B insurance. He said he had always thought that some part of TAF revenue would be used to defray the premium for Part B insurance.

Mr. McGee said the proposal did not contemplate using any TAF revenue to pay Wirick claims. One way to look at the proposal is as a transition to 2006. A portion of the revenue will be used to fund an enhanced trust assurance program. Using TAF revenue collect in 2005 to pay for 2005 costs should not be a problem unless they are specifically attributable to Wirick, which they are not. The proposed $600 Special Compensation Fund assessment will be used to pay Wirick claims and other Special Compensation Fund claims and administration, and the TAF revenue will be used to pay for other, non-Wirick matters and in particular trust assurance activities in 2005. Going forward, TAF revenue would be used to improve trust assurance.

Mr. Warner said there was a concern about transparency. He asked how the expenses that were proposed to be transferred from the Special Compensation Fund to the General Fund were paid for without TAF revenue.

Mr. Stajkowski said the costs were covered by the Benchers' decision to pull back the transfer to the Lawyers Insurance Fund and to run the General Fund at a deficit in order to reduce the surplus.

Mr. Zacks said the concern seemed to be that custodianship costs would move from the Special Compensation Fund to the General Fund, and it appeared that those are non Wirick custodianship costs and going forward custodianship costs. Custodianships are a serious issue that is not going to go away, if only because of demographics and it is reasonable to say that custodianship is protection of the public. Mr. Zacks questioned the assertion that the Law Society should not fund custodianships together with other costs of protecting the public using TAF revenue. If the

concern is that members have only bee told about other costs but not about custodianships that might be no more than an oversight.

Mr. LeRose did not object to the list of expenses proposed to be paid for using TAF revenue, so long as money from TAF is used only to fund those things. TAF revenue should not be used to allow reallocation of past expenses to same members money.

Ms. Hickman said the Benchers must not lose sight of the fact that TAF revenue is client money. She disagreed that custodianships were a client cost.

Mr. Turriff agreed with Ms. Hickman and Mr. McDiarmid. He said the Benchers must have a debate to ensure that the allocation of TAF revenue is completely transparent.

Mr. Stajkowski said that 2005 trust related expenses could be separated out and paid for from TAF revenue, which would leave about $1.5 million in TAF revenue. However, the net result in the General Fund as a whole would be different. He said the TAF revenue could be accounted for separately and the net TAF revenue allocated by restricting future use of the surplus to trust assurance programs. TAF revenue can be accounted for transparently by allocating the surplus after payment of trust-related expenses.

Mr. Alexander noted that the proposed resolutions could be passed without debating what to do with the surplus TAF revenue, which could be done in November.

Mr. Zacks noted that if the cost of custodianships is disassociated from the TAF revenue, the result would be to increase the amount of the Practice Fee and reduce the Special Compensation Fund assessment.

Mr. Stajkowski noted that the lawyers who pay the Practice Fee and the Special Compensation Fund Assessment are exactly the same so the net effect is zero.

It was moved (McDiarmid/Hickman) to:

(a) set the Special Compensation Fund Assessment for 2006 at $600;

(b) approve the transfer of the custodianship costs to the General Fund retroactive to January 1, 2005;

(c) approve the use of the Lawyers Insurance Fund as the fund source for Special Compensation Fund claims, to be paid back by 2009 from future Special Compensation Fund assessments; and

(d) funds received from TAF from inception of the fee be fully segregated and not spent or allocated without further resolution of the Benchers.

The motion was carried.

## 11. MEMBER RESOLUTIONS AT THE LAW SOCIETY AGM

Mr. Alexander said there seemed to some significant uncertainty among the members and the Benchers about the facts that underlie the resolutions that were passed at the AGM. Mr. Alexander said the Benchers should first gain an understanding of the facts and to that end proposed to create a task force to do so.

It was moved (Vertlieb/Nagle) to create a task force to obtain the factual background to the member resolutions passed at the Law Society's 2005 AGM and report back to the Benchers by July 2006

The motion was carried.

**12. UPDATE ON CLAIMS AND INVESTIGATIONS IN THE WIRICK MATTER**

This matter was discussed *in camera*

**13. DISCUSSION OF BENCHER CONCERNS**

Mr. Ridgway noted that the Lawyer Education Task Force had identified a need for workup on the question of continuity of practices when members must leave their practices quickly, and suggested that the Practice Standards Committee might take responsibility for the issue.

Mr. Nagle suggested that the Benchers discuss at a future date the report from the Canadian Judicial Counsel in which was stated a general consensus that remote (electronic) access to court files by the general public is not desirable. Mr. Nagle regarding that as a gross intrusion on the public right to access to the courts.

Mr. Treleaven said the issue was on the agenda of the Legal Information Committee.

The question was raised whether Bencher election ballots should indicate which candidates are incumbents. It was agreed to not include that information on the ballots because it is included in the biographical information sent with the voting materials.

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