THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING:	Benchers	
DATE:	Thursday, November 10, 2005	
PRESENT:	Ralston Alexander, QC, President	Hon. Wallace Oppal, QC, Attorney General of BC (for item 1)
	Robert McDiarmid, QC, 1st Vice-president	Patrick Nagle
	Anna Fung, QC, 2nd Vice-president	June Preston
	Robert Brun, QC	Greg Rideout
	Ian Donaldson, QC	Glen Ridgway, QC
	Carol Hickman	Patricia Schmit, QC
	Michael Falkins	Dirk Sigalet, QC
	Gavin Hume, QC	Allan Seckel, QC, Deputy AG
	John Hunter, QC	Gordon Turriff, QC
	William Jackson	Art Vertlieb, QC
	Patrick Kelly	James Vilvang, QC
	Terry La Liberté, QC	Karl Warner, QC, Life Bencher
	Bruce LeRose	David Zacks, QC
	Margaret Ostrowski, QC	
NOT PRESENT:	Joost Blom, QC	Dr. Maelor Vallance
	Ross Tunnicliffe	
STAFF PRESENT:	Tim McGee, CEO and Executive Director	David Newell
	Stuart Cameron	Jack Olsen
	Mary Ann Cummings	Denise Palmer
	Brad Daisley	Neil Stajkowski
	Charlotte Ensminger	Alan Treleaven
	Su Forbes, QC	Adam Whitcombe
	Jeffrey Hoskins	Carmel Wiseman
	Michael Lucas	

GUESTS: Dean Mary Ann Bobinski, UBC Faculty of Law
Dean Andrew Petter, QC, University of Victoria Faculty of Law
Frank Kraemer, Executive Director, CBABC
Jack Huberman, QC, Executive Director, CLE Society
Danielle Byres, Chair, CLE Society
Johanne Blenkin, Chief Librarian, BCCLS
Wayne Robertson, Executive Director, Law Foundation
Kelly Doyle, Chair, Pro Bono Law of BC (for item 6 only)
Jamie Maclaren, Executive Director, Pro Bono Law of BC (for item 6 only)
Dugald Christie, President, Western Canada Society to Access Justice (for item 14)
Gordon Alteman

1. ADDRESS BY THE HONOURABLE WALLACE OPPAL, QC, ATTORNEY GENERAL OF BRITISH COLUMBIA

Mr. Alexander welcomed the Honourable Wally Oppal, QC, Attorney General of British Columbia.

Mr. Oppal said he had recently returned from a meeting of the federal Minister of Justice, deputy Prime Minister, and Attorneys General from across the country from which came a number of initiatives. Mr. Oppal said he was shocked by the lack of public confidence in the justice system. He suggested two broad reasons for that lack. On the civil side the public feels that the system is lengthy, cumbersome, inaccessible and expensive. The criminal justice system is perceived as soft, non-responsive, expensive and lengthy.

He said the end result of public dissatisfaction is that it makes legislators do things. The first issue considered at the ministers meeting was conditional sentences. When the conditional sentencing regime was passed in 1995, two pre-conditions were specified for conditional sentencing, but said nothing about conditional sentencing not being available in cases of violent crime; however, the public saw it that way, as did many politicians. Consequently, when judges began imposing conditional sentences, with reference to the required pre-conditions, in cases involving violence, the media and politicians were quite willing to comment adversely. We can now expect to see a law that will exclude certain offences from the conditional sentencing regime. That is a shame because the reason for conditional sentencing was valid at the time – we are sending too many people to jail. At that time, only the Americans sent more people to jail than we did. Our jails are full, but people still want judges to send more people to jail. The fact is the politicians will not wait for judges to be more flexible. When the system does not take care of itself, the legislators will step in.

Mr. Oppal said another area where legislation was imminent is mandatory minimum sentences for some offences. He said there is strong support among many Attorneys General for mandatory minimums, notwithstanding the evidence from other jurisdictions that they do not work. Again, the underlying point is that the justice system must be able to reform itself and be aware of the public interest.

Mr. Oppal said another of his concerns was the time it takes to get to a trial, and the length of trials. He noted that despite their complexity, the American courts had dealt with the trials of Enron executives and Tyco executives and the offenders are serving their sentences, but here we have the Picton case in which Picton was charged in 2002, remains in custody, and will not come to trial until 2006.

Mr. Oppal said one of the greatest concerns is the chronic property crime offender. He said 80% of the crime in Vancouver is committed by less than 20% of the offenders, so it is clear that the same people are being "recycled" through the system. He said most of those people suffer from some kind of substance abuse, mental illness or other affliction, but as a society we have done little about it. We look at the symptoms not the causes of the problem. One of the concerns and one of our objectives results from the recommendations of the Task Force on Street Crime for a community court. The average person who is charged with a property crime in Vancouver appears in court eight times before going to trial. We must do something to get matters on far more expeditiously, because if we don't, the legislators will do it for us. We must put our collective resources together and address the public concerns because the public is losing confidence in what we are doing.

Mr. Oppal said the government took a lot of criticism from the public and the legal profession for some of the legal aid policies that it implemented. A lot of that was unfair. Some of the historical

and traditional legal aid programs that we have grown accustomed to must be revisited. When we talk about legal aid we are really talking about access, and there is thinking across the country and in the United States that legal aid and access mean more than throwing money at lawyers. It means apprising the public of how to access the system and take advantage of the system so that justice is achieved. Considering that only two to five percent of civil cases ever go to trial, the immediate solution is to examine to settle cases. Alternative Dispute Resolution is catching on like wildfire and more and more people are choosing alternative forms of resolution and bypassing the courts. Recognising that, the courts have opened the self-help centre with the assistance of the Law Courts Education Society, the Vancouver Foundation, the People's Law School and others. All the indications are that the program will be expanded, providing the public with resources to help them settle their disputes. The Law Courts Education Society established another very successful program called Parenting After Separation. This is not to say government should not put more money into legal aid; indeed, that was one of the priorities discussed at the ministers conference. The federal Minister of Justice agreed that there ought to be more funding for legal aid, and that greater efforts would be made to secure more funding in the near future. Not all disputes can be resolved without recourse to the courts, and unrepresented people are of concern to the courts and judiciary. One area that must be emphasized with respect to legal aid is family law. In that regard, for the first time in BC's history we have family law duty counsel to assist unrepresented women to obtain orders where there has been violence in the home. The duty counsel program has been very successful with forty-four courts having duty counsel.

Mr. Oppal said public education is another very important priority. He noted that more than half of Vancouver's population is composed of visible minorities, more than sixty percent of Richmond is Asian, and Spanish the third largest language in use in the Provincial Court. That tells us that there are whole groups of people who are unfamiliar with our justice system, and we must increase our public legal education. People must be told that we have an independent judiciary, and independent lawyers that provide access to justice and remedies against government.

Mr. McDiarmid asked the Attorney General to comment on the other parts of his ministerial portfolio and how it related to his role as Attorney General.

Mr. Oppal said the multiculturalism and immigration aspects of his portfolio were things he wanted to do in addition to being Attorney General, although he did not think they overlapped a great deal. As noted, there are many people who do not understand our institutions, who must be told about our health care system, or education system or environmental laws, and part of the job as Minister of Multiculturalism is to assist with that education. An aging Canadian population and low birthrate result in a shortage of skilled people. For example, in the North East part of the province oil and gas companies are paying bonuses to people who will go there. We need immigration so that is another area of work.

Mr. Donaldson agreed that the lack of public confidence in the justice system is a serious problem that must be addressed. He recalled that, when Mr. Oppal was Chair of the Law Courts Education Society, the Law Society had refused financial support for work that was important to the Law Society and to the public. He noted that the Street Crime Working Group was well supported by the Supreme Court and Provincial Court. He said both the Law Society and the Attorney General's ministry had to work together to educate the public, but he did not think adopting the American model of mandatory sentencing should be adopted. Mr. Donaldson noted that lawyers working for the Attorney General were involved in most of the cases in the criminal justice system; consequently, efforts to streamline the process required collective effort on both sides. Mr. Donaldson noted that statistics tended to demonstrate an increase in public confidence in jurisdictions that implemented community courts, where the community is involved in the investigation, prosecution and punishment of chronic offenders. He said there is no doubt that such a model cannot be implemented without assistance from the Attorney General's Ministry, Treasury Board and others. Mr. Donaldson said the system was not broken and he emphasized the

need to help the public understand the justice system and correct some misperceptions, and that was a task for the Attorney General's ministry, the Law Society, the defence bar, and others.

Mr. Oppal agreed with Mr. Donaldson except with respect to the system not being broken. He said it is broken with respect to the length of trials, and that is where effort should be focussed. Mr. Oppal agreed that people misperceived the system because of the lack of public education.

Mr. Turriff said he was pleased with the emphasis Mr. Oppal placed on the essential role played by independent lawyers in BC. He said he looked forward to working the Attorney General to help deliver that message.

Mr. McDiarmid noted that the Law Society of Alberta held an annual retreat in Jasper that was attended by the Alberta Minister of Justice, who was quite engaged with the Law Society there. Mr. McDiarmid said the Law Society was interested in exploring how it could assist the provincial government on administration of justice issues. He said the Law Society was working with the Attorney General's staff to invite him to the Benchers retreat in Kamloops in 2006, and he expressed the hope that Mr. Oppal would be able to attend.

Mr. Alexander thanked Mr. Oppal for attending and for his thoughtful remarks. He expressed the hope that Mr. Oppal would feel comfortable attending any time he wished, and reminded him of his status as a Bencher, ex officio.

2. MINUTES

Minutes of the meeting held on October 14, 2005 were approved as circulated.

3. PRESIDENT'S REPORT

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

Mr. Alexander read a letter from Kathleen Keating, thanking the Law Society for assisting with the memorial service for the late Robert Gourlay, QC.

Mr. Alexander reported that the Provincial Court, through Chief Judge Stansfield, had agreed to adopt a similar protocol for dealing with production orders as used for search warrants when they involve a lawyer's office. Consequently, by agreement, applications for production orders will be made to the Associate Chief Justice of the Supreme Court of BC.

4. CEO'S REPORT

Mr. McGee distributed a draft document entitled "Building for the Future" in which he outlined the top five operational priorities for 2006. He said the document was not intended to be an exhaustive list of the Law Society's activities in the coming year, but was intended to focus effort in key areas. The top five priorities are:

- Trust assurance program
- Post call education
- Custodianships
- Government Relations
- Bencher support.

Mr. LeRose suggested that the proposed course for sole and small firm practitioners would be a useful tool for the Practice Standards committee.

Mr. Vilvang thought the plan was excellent and his only concern was that it appeared to require significant additional staff and expense. He asked if it would be necessary to seek an increased fee from members.

Mr. McGee said the plan could be implemented using existing resources.

Ms. Ostrowski was somewhat concerned about adding seventeen staff members. She commented that there was a great deal to consider in the report.

Ms. Preston noted the Attorney General's comments earlier and anticipated greater interaction with government, particularly with respect to pubic education and independence of the bar, as part of the expected outcomes of the plan.

Mr. Kelly was concerned that plans of this kind tended to have an exclusively internal focus. He asked if there was a clear and focused communications plan to support the internal activities so that the public and members will know that good work is being done and what benefits will follow.

Mr. McGee said the management team's philosophy is that the best way to discharge the Law Society mandate is to do the Law Society's work as well as possible, and an agreed set of priorities allows management to create consistent messages.

Mr. Brun had similar concerns as Ms. Ostrowski. He said there were things in the draft plan such as the addition of staff, and the mandatory nature of some post-call education that he had not been able to turn his mind to.

Mr. Jackson had concerns with respect to the Bencher support component of the plan. His concern was that channeling more of the decision-making process into bureaucracy limits the freedom and independence of the decision-makers.

Mr. Alexander said the idea was to provide decision-making support rather than leadership from the staff.

Mr. Jackson said he was more concerned with comments about how committees and task forces would be focused, which was more the concern of the committees and task forces than the support staff.

Mr. Donaldson felt uncomfortable endorsing in principle substantial and long-range projects that would add roughly 10 percent to the Law Society staff. Some of the matters had been discussed at least partly in the past, and some needed more detailed discussion. He did not think everything could be dealt with in a single meeting in December.

Mr. McDiarmid said he was not generally in favour of increasing budgets or adding staff for no good reason. He said the biggest one-time increase in Law Society staff was when the insurance claims management was brought in-house. At that time members were facing the prospect of insurance premiums of more than $4000 and now the insurance assessment is $1500. The proposal to add staff where they are needed is because in some areas staff can do a better job for less than by outsourcing. The trust assurance program will be funded by TAF revenue and the members will benefit by not having to retain accountants. Mr. McDiarmid said it was important to focus on the whole not just on the individual parts. He said he had thought about matters a great deal since the last Executive Committee meeting and concluded that it is a tremendous and well thought out plan.

Mr. Warner thought the plan was laudable but suggested that the ability to measure outcomes would be critical to informing members.

Mr. McGee said he had given much thought to outcome measurement. Particularly with respect to trust assurance, he said outcome measurement was a key component of the business case for the TAF. He said the in-house model was the most cost-effective and has the most benefits in terms of control and outcome measurement. One concrete measurable is eliminating the accountant's report by the end of 2006. That will be a benefit to members and to the Law Society because it will produce better information. Other measurables are softer, but the intention is to set targets such as reduction in the number of financial complaints. This will reflect a reduction in exposure of Part B insurance.

It was moved (Rideout/Zacks) to authorize Mr. McGee to incorporate the Benchers' comments and feedback into the draft plan, review the revised plan with the Financial Planning Subcommittee and Executive Committee, and present the final plan and budget at the Benchers meeting scheduled for December 9, 2006.

Mr. Vilvang said he was satisfied by Mr. McGee's explanation with respect to addition staff and expense.

Mr. Turriff commented that four of the five priorities were designed to implement policies already adopted by the Benchers, and the fifth was designed to increase efficiency.

The motion was carried.

5. REPORT ON OUTSTANDING HEARING DECISIONS

The Benchers received a report on outstanding hearing decisions.

6. REPORT FROM PRO BONO LAW OF BC

Mr. Maclaren reviewed key points in the business plan previously circulated. He expressed the strong belief that the coming year would see an unprecedented level of cooperation between suppliers of pro bono legal services. He noted the new roster programs, which he described as Pro Bono Law of BC's first foray into directly providing pro bono programs to the public.

Mr. McDiarmid recalled that when PBLBC was first formed, the plan was for the Law Society to provide seed money that would allow PBLBC to become self-sustaining. He asked Mr. Maclaren how he expected PBLBC to be able to secure alternative funding sources in the future.

Mr. Maclaren said PBLBC was taking steps to enable it to secure funding. In particular, PBLBC had modified its objectives in order to obtain charity status for income tax purposes. He said a committee was examining fund raising options.

Mr. Doyle noted that funding dollars obtained by PBLBC are the same dollars that would otherwise go to organizations like Western Canada Society to Access Justice. He said PBLBC had temporarily vacated the field while developing a more comprehensive program in the hope of increasing the total amount of funding coming into pro bono programs.

Mr. Nagle noted the move towards providing services directly, which had funding implications.

Mr. Maclaren said the roster programs represented modest, early targets, but he hoped direct service programs would expand. He said the roster programs were designed to operate within the existing structure and funding of PBLBC.

Mr. Nagle said he would like to know how many people are directly assisted.

Mr. Maclaren said that would be tracked, and he would be able to report in the future.

Mr. Christie thanked the President for the opportunity to address the Benchers on this matter. He said the Western Canada Society To Access Justice (WCSTAJ) was concerned that PBLBC would become a competitor as a direct pro bono service provider. He said there had been an interchange between the two organizations in which he had offered critiques of proposals from PBLBC but it was not correct to characterize the relationship as a partnership. He said PBLBC would compete for pro bono lawyers and the whole spirit of cooperation fostered in the past year was imperilled by the PBLBC business plan. Mr. Christie said WCSTAJ had planned to seek funding from the Law Society in January 2006, not wanting to ask twice in one year, and he suggested postponing consideration of the PBLBC plan until that time.

Mr. Doyle said the committee that developed PBLBC was aware of the single provider option but the recommendation was to create a model that provided people with a choice. He said there is an unlimited market for pro bono services and PBLBC was trying to find creative ways to meet that need.

Mr. Alexander clarified that the direction indicated in the PBLBC plan was very clearly in response to a concern from the Benchers that significant resources were being devoted without any direct services being provided.

Dean Petter expressed his appreciation that the University of Victoria Law Centre had been brought into the partnership. He suggested that Law Centre students are only able to appear on behalf of clients in a limited range of matters but are capable researchers who could assist pro bono lawyers in the work that they do. He said the law school also had a business law clinic with students who could provide support to lawyers providing services in that field.

Mr. Robertson said the Law Foundation had supported both organizations. He supported Mr. Alexander's comments regarding the responsiveness of the PBLBC initiatives, and said the impetus came from the Law Foundation as well as the Benchers. He agreed that there is a vast unmet need for pro bono services, especially for people with disabilities.

Mr. McDiarmid said the plan was responsive to the concerns the Benchers had, and he anticipated that the organizations would work together. He noted that it was reported at the Federation of Law Societies meeting that the Department of Justice was initiating a program to encourage its lawyers to provide pro bono services. He said the Department of Justice was somewhat concerned about insurance, but that was not a problem in BC because of the coverage for lawyers providing pro bono services.

Mr. Maclaren said the roster programs were designed specifically to take up matters where other programs such as WCSTAJ leave off. PBLBC's hope is to cover a different aspect of the need as a supplement to the work of frontline providers.

7. CLE BURSARY

Ms. Schmit reported that in the first 10 months of 2005, approximately $29,000 in CLE bursaries had been used from a budget of $120,000. She said the Law Society and the CLE Society had tried to work out a model that deals with the differential ability of lawyers to attend CLE resulting from differing incomes or travel costs. Ms. Schmit said the Lawyer Education Task Force had struggled with the question but concluded that the bursary program was simply not meeting the Law Society's policy goals and should, therefore, be cancelled. She said the task force acknowledged that affordability of continuing education is still a problem, but took the view that other initiatives might better accomplish the policy goals. The task force believes the Law Society should strongly support online learning initiatives when they are brought forward.

Ms. Byres said the bursary program was not a subsidy for the CLE Society but was intended to assist low-income lawyers. She said the CLE Society believed the program should be continued

and bursaries should be available for lawyers wishing to attend other providers' programs. Ms. Byres said the CLE Society was alive to the concern about the cost of courses, and she noted that a recent project launched by CLE provides online courses on demand, which allows access to archived courses at any time for a cost of $250 for full access or $30 per module.

Mr. Huberman added that the CLE Society had taken the courses that were videotaped for archival purposes and proposed to offer about 25 courses as live webcasts. The courses would be turned into modules and made available throughout the year. He said the initiative had been developed by CLE at its own cost, but the CLE Society would welcome the opportunity to work with the Law Society to develop further online initiatives.

Mr. Turriff said it was fair to say that the members of the Lawyer Education Task Force thought the surest way to move online programs ahead would be to cancel the bursary program and focus attention on online initiatives.

Mr. Hunter said the task force saw this as a transitional phase, and this was not necessarily the end of assistance programs. However, if the Law Society is going to contribute to post-call learning, it must be somewhat more targeted.

Mr. Nagle asked if the task force had determined why the bursary program did not work.

Ms. Schmit said she did not know a great deal about the people who are taking courses, but a fairly high number of people who used the bursary program used it more than once. She said also that it was not possible to determine the reason why people using the program make less than $35,000 per year.

Mr. Brun said that, in his brief time as a Bencher sitting on hearing panels, he was dismayed at how poorly some members are doing in practice. He said the bursary program was worthwhile and should be continued.

Ms. Ostrowski agreed with Mr. Brun's comments, and suggested continuing the program for a further year, perhaps with a smaller budget.

Mr. McDiarmid said the Benchers appointed a task force to advise on these issues, and it appeared that the task force had given the matter a lot of thought and concluded that the program was not worthwhile.

It was moved (Rideout/McDiarmid) to discontinue the bursary program effective December 31, 2005.

The motion was carried.

8. PROPOSED COURSE FOR SMALL FIRM AND SOLE PRACTITIONERS

Ms. Schmit recalled that the Lawyer Education Task Force had previously come to the Benchers with a number of proposed initiatives, of which this was the second. She said the Task Force was firmly of the view that the changing demands of complex practice fall particularly hard on small firms and sole practitioners, who make up more than half of Canadian lawyers. These are the lawyers who act for ordinary individuals. A disproportionate amount of Law Society resources are spent on a small proportion of members, many of who are sole or small firm practitioners. That said, most small firm practices are successful. The Task Force believes that the Law Society must do more to support small firm practitioners and, to that end, proposes a mandatory course for sole and small firm practitioners focusing on practice management and trust accounting. The course would be available to all lawyers who should be able to take the course online as many times as

they want. The course would also be a resource for the Practice Standards Committee. The Task Force sought the Benchers' approval to move forward with the proposal

It was moved (Schmit/Jackson) to approve the following steps:

1. that the work on developing the course, including consultation and obtaining further Bencher approvals, be completed in time for a January 1, 2007 course implementation date;

2. that the Task Force develop for Bencher approval rule changes and procedures to govern the requirement for lawyers to complete the course and the consequences of not doing so;

3. that the Task Force in carrying out its work continue to consult with the profession; and

4. that the Benchers approve a 2006 budget allocation of up to $350,000 for completion of the work necessary for implementation of the course.

Mr. Jackson said that having been a sole practitioner he could attest to the need for the proposed course and he urged unanimous support for it.

Mr. Falkins said that the proposed course would be very useful to the Practice Standards Committee, and he said the proposal was one of the best initiatives to come forward in some time.

Mr. Vertlieb agreed that the course was a good idea, but he questioned why it would be restricted to small firm lawyers.

Ms. Schmit said that statistics showed that the Law Society did not tend to see lawyers from large firms, which have the resources to deal with problems themselves, and can afford to hire or retain specialists such as bookkeepers and managers. She said the course was focused where the need seems most apparent.

Mr. Brun reported that he had been asked by Fritz Verhoeven on behalf of the CBABC to pass on the view that consultation with the profession should be extensive and should include the CBA.

The motion was carried.

9. NOTIFICATION OF THE COMPOSITION OF HEARING PANELS

Mr. Hoskins reviewed proposed rule amendments that would require the Executive Director to disclose the composition of a hearing panel only on request of one of the parties concerned.

Mr. LaLiberté was concerned that if the panel is disclosed, some mischief might result from a subsequent change.

Mr. Turriff's view was that there would be a continuing obligation to disclose. He did not think the panel should be disclosed until just before the hearing.

Mr. Hunter agreed with Mr. Turriff but recalled that Mr. Donaldson had previously expressed the view that prior knowledge of the panel members was conducive to resolution in some cases. Mr. Hunter preferred flexibility rather than a rule.

Mr. McDiarmid agreed with Mr. Hunter. He did not think a rule was needed.

It was moved (Ridgway/Jackson) to not make a rule requiring disclosure of the composition of hearing panels.

Mr. Hume said that in labour practice, he always knew who he would be appearing before and it was useful because if the panel is knowledgeable in a particular area, submissions can be focussed where they will be most useful.

Mr. Brun recalled that when this issue first came forward, the proposal was to require disclosure, and he was concerned that mandatory disclosure would cause problems. It appeared that the thinking had turned 180 degrees.

Mr. Nagle asked where the public interest lay on this issue.

Mr. Alexander said the issue did not affect the public interest.

Ms. Preston suggested the public interest might be in knowing whether the panel included a Lay Bencher.

Mr. Sigalet favoured having a rule because it made the process more transparent.

The motion was carried.

10. APPOINTMENT OF BENCHERS TO BOARDS OR COMMITTEES OF OTHER ORGANIZATIONS.

Mr. Turriff said the issue of whether, or under what circumstances Benchers should be able to accept appointments to boards or committees of other bodies arose because of the possible impact on independence of the bar. He said the Independence and Self-Governance Committee thought it was necessary to articulate a policy on this issue to help preserve independence. He said the Committee had given the matter very serious consideration and despite the wide range of viewpoints among the committee members generally, was unanimous in its recommendation on this issue.

It was moved (Turriff/Zacks) to adopt as Bencher Policy Part 3, paragraph H5 the following:

5. Accepting appointment to boards or committees of other organizations

The object and duty of the Society is to uphold and protect the public interest in the administration of justice and, subject to the foregoing, to regulate the practice of law and uphold and protect the interests of the Society's members. From time to time, a Bencher is asked to join, or run for election to, the board of directors or a committee of an organization the objects of which may not be the same as those of the Society, or a purpose of which may be to promote the interests of lawyers. In either case, the organization might, or might be perceived to, take a position that is contrary to or conflicts with the object and duty of the Society or decisions of the Benchers. The Benchers govern and administer the affairs of the Society and it is important for the promotion, protection, interest and welfare of the Society that the Benchers be, and be seen to be, independent of any organization described above.

Accordingly, Benchers must not accept appointment or election to a board of directors or a committee of an organization described above unless the Benchers, the Executive Committee or the President approves the appointment.

Mr. McDiarmid asked if the policy would include appointments to private for profit corporations.

Mr. Zacks said the proposed policy concerned only organizations that have objects that may conflict with the Law Society's objects, and in particular may be to promote the interests of lawyers ahead of the public interest. That would not seem to capture most for profit business corporations.

Mr. McDiarmid said he could easily imagine corporate boards with objects that are not consistent with the Law Society's mandate.

Mr. Brun commented that the reference in the memorandum before the Benchers to a Bencher who was also an officer of the CBA appeared to be a reference to him. He assumed that the Trial Lawyers Association would be covered in the same context, although they were not mentioned. Mr. Brun was concerned that notwithstanding the "blue ribbon" quality of the Committee, the purpose of the policy was to avoid conflicts, and he said that as an officer of the CBA he did not take part in any discussion involving the Law Society, and presumed that is what others had done in similar circumstances. Mr. Brun opposed the motion.

Mr. Jackson questioned the need to have the option of approval of appointments by the Executive Committee or the President.

Mr. Vilvang noted that he was appointed to the Task Force on Justice Reform by the CBA. He questioned whether appointments to the Lawyers Benevolent Fund Society, the Trial Lawyers Association, neighbourhood ratepayers associations, charitable societies and the like might be unnecessarily restricted by the proposed policy.

Mr. LaLiberté said he was on the board of the Lawyers Benevolent Fund Society, the executive of the Trial Lawyers Association, and the Vancouver Police Board, and he had not seen any difficult issues, although he supposed such issues could arise.

Ms. Ostrowski noted that part of the Law Society's mandate is to uphold the interests of its members when that does not conflict with the public interest. She said it was somewhat conflicting if the Benchers cannot sit on boards of organizations that promote lawyers' interests.

Mr. Warner said he did not apprehend the evil that was being described. He questioned how lawyers' independence would be enhanced by circumscribing what a lawyer can or cannot do.

Mr. Zacks said that if one looked to countries such as the United Kingdom and Australia, where independence of the bar was being eroded, one basis for the attack is that there is no clear distinction between the governing body that regulates the profession in the public interest, and the advocacy body that promotes lawyers' interests. The proposed policy is intended to ensure that the Benchers consider carefully whether a particular appointment might conflict with a Bencher's obligations.

Mr. Turriff emphasized Mr. Zacks' point saying the Law Society needed to be able to tell members of the public that it acts in their interests, and the more often that is said, the easier it is to preserve the necessary conditions for independence. The policy is intended to articulate a principle, not to lay down an absolute rule.

Mr. Vilvang proposed to amend the policy so that the final paragraph reads as follows:

> Accordingly, Benchers must not accept appointment or election to a board of directors or a committee of an organization the objectives of which are, or may reasonably be perceived to be, in conflict with the objectives of the Law Society unless the Benchers, the Executive Committee or the President approves the appointment.

It was agreed to amend the motion as Mr. Vilvang proposed.

Mr. Warner asked if the policy effectively set up an additional qualification for members seeking election as a Bencher.

Ms. Schmit suggested that the motion should be clarified to make it clear that sitting Benchers would be grandfathered, but people coming on as Benchers would become subject to the policy.

Mr. Zacks was concerned that trying to deal with members before they are Benchers would create a new qualification.

Mr. Turriff said the policy was not intended to apply to someone who has already accepted an appointment prior to becoming a Bencher.

The motion as amended was carried.

11. REPORT FROM THE UBC FACULTY OF LAW CURRICULUM COMMITTEE.

Mr. Ramsay gave a report on the work being done by the UBC Faculty of Law Curriculum Committee on curriculum reform. He said the committee was tasked with reviewing the existing curriculum and making recommendations to the Faculty Council, which would put proposed changes to the University Senate for approval. Mr. Ramsay reported that the present curriculum requires 92 credits to graduate. Mandatory courses comprise 46 credits, and many students choose optional courses relevant to practicing law, such as tax, creditor's remedies, trusts, succession, business transactions, secured transactions, etc. One of the objectives of reform was to enhance the experience of the very capable students who attend law school. Faculty Council also adopted as principles that class sizes in first year would be reduced, the course on legal institutions would be replaced with constitutional law, the first year course in perspectives would be replaced, and significant changes would be made to the legal research and writing course, in response to concerns from students and the bar.

Recommendations that received substantial support from the Faculty Council included:

- First year courses will be: constitutional law, criminal law, contracts, property and torts, as well as one-semester courses in transnational law (public and private international law) and the regulatory state (statutes and other legislation). The last two courses will also be the vehicle for teaching legal research and writing.
- First year will include two "bridge weeks" of eighteen hours instructional time each. The first bridge week will be used to introduce students to the legal profession, including the history of the profession, and ethics. The second bridge week will provide an introduction to theoretical and critical perspectives on the law and increase students' exposure to professional responsibility.
- The legal writing program will be changed so that each course will include two pieces of writing. Thus, in first year students will complete twelve written assignments plus the moot. In second year there will be a compulsory course on research, problem solving and writing.
- Other compulsory courses will include one course in each of four categories: public law, private law, procedure, and "law and society".
- For students clearly intending to enter practice, there will be a template of appropriate courses.

Mr. Ramsay said the Faculty Council hoped to teach most first year courses in classes of 40. That would require an increase of 30-40% in teaching resources in first year, which would be achieved by reducing the number of seminars and possibly increasing the size of some second year classes.

Mr. Turriff asked if the Benchers would be asked to play any special role in the second bridge week to deal with professional responsibility issues. He said the Benchers should take every opportunity to be involved in that aspect of the law school program.

Mr. Ramsay said he taught a course in professional responsibility that was greatly enriched by participation of many individuals from the Law Society and private practice.

12. APPENDIX 3 OF THE PROFESSIONAL CONDUCT HANDBOOK: PROPOSALS FOR CHANGE

This matter was put over to the next Benchers meeting.

13. REPORT ON THE NEW INSURANCE COVERAGE: PART B – TRUST PROTECTION COVERAGE, DISCLOSURE AND PRIVACY ISSUES

This matter was put over to the next Benchers meeting.

14. UPDATE ON SPECIAL COMPENSATION FUND CLAIMS AND INVESTIGATIONS IN THE WIRICK MATTER

The Benchers received a privileged written report updating the status of claims and investigations in the Wirick matter.

15. *IN CAMERA* DISCUSSION OF BENCHER CONCERNS

This item was discussed *in camera*.

DMGN
05-11-27