THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING:	Benchers	
DATE:	Saturday June 17, 2006	
PRESENT:	Robert McDiarmid, QC, President	Barbara Levesque
	Anna Fung, QC, 1st Vice-president	Jan Lindsay
	John Hunter, QC, 2nd Vice-president	Thelma O'Grady
	Ralston Alexander, QC, Life Bencher	June Preston
	Rita Andreone	David Renwick
	Kathryn Berge, QC	Glen Ridgway, QC
	Joost Blom, QC	Alan Seckel, QC, Deputy AG
	Ian Donaldson, QC	Dirk Sigalet, QC
	Michael Falkins	Richard Stewart
	Leon Getz, QC	Ronald Tindale
	Carol Hickman	Gordon Turriff, QC
	Gavin Hume, QC	Dr. Maelor Vallance
	William Jackson	Art Vertlieb, QC
	Bruce LeRose	James Vilvang, QC
NOT PRESENT:	Ken Dobell	Robert Punnett
	Patrick Kelly	David Zacks, QC
	Terry La Liberté, QC	
STAFF PRESENT:	Timothy McGee, CEO	Michael Lucas
	Stuart Cameron	Jeanette McPhee
	Brad Daisley	David Newell
	Su Forbes, QC	Alan Treleaven
	Jeffrey Hoskins	Adam Whitcombe
GUESTS:	Mona Duckett, QC President, Law Society of Alberta	
	Don Thompson, QC Executive Director, Law Society of Alberta	

1. MINUTES

The minutes of the meeting held on May 12, 2006 were approved as corrected.

2. PRESIDENT'S REPORT

Mr. McDiarmid welcomed Mona Ducket, QC and Don Thompson, QC, President and Executive Director of the Law Society of Alberta, respectively, Life Bencher and immediate past-president Ralston Alexander, QC, and Barbara Levesque, Lay Bencher, to the Bencher table.

Mr. McDiarmid reported on his attendance at the International Bar Association Bar Leaders conference. He reported that the IBA is trying to develop an international code of conduct, which is giving rise to some issues. For example, large firms in Europe are trying to change the rules to allow different branches of the same firm to represent opposing clients. Mr. McDiarmid also reported that education of lawyers and maintenance of professional standards are a concern,

especially in Easter Europe and Africa, where nascent law societies need help. He noted a speech given by a lawyer from Zimbabwe who had risked his life to attend the conference, and another speech from a Japanese lawyer who recalled the takeover of the courts by the Japanese government before the Second World War.

Mr. McDiarmid reported on a meeting with Deputy Attorney General Alan Seckel in early June to preview the presentation the Law Society will make to the Attorney General. Mr. Seckel indicated that the Attorney General's main areas of interest are in shortening criminal trials and making family litigation more efficient and less adversarial. Mr. McDiarmid noted the importance of emphasizing that the Law Society is not looking for money but seeking to find areas of common ground with the government. For example, the government is very interested in national mobility because of the potential shortage of lawyers, so the national mobility agreement was discussed. Other observations were that most MLAs link Dugald Christie's litigation respecting sales tax with the motion of censure of the Attorney General passed by members at a special general meeting several years ago. A positive aspect of the meeting was Mr. Seckel's offer to address the Benchers on behalf of the AG's ministry at the September Benchers meeting.

Mr. McDiarmid invited Mona Duckett to comment on the Law Society of Alberta's strategic planning efforts. Ms. Duckett said the Law Society of Alberta had engaged in strategic planning for the first time in 2005. The Alberta Benchers examined all Law Society regulatory and governance programs and concluded that the Law Society should focus on its core programs. They produced a list of seven things to accomplish. Trust account safety is at the top of the list, and the Law Society will put more resources into its spot audit program, and re-examine trust accounting procedures to try to create a culture of compliance. Another goal is to speed up the complaint process by creating targets and measurements. The remaining topics are: unauthorized practice, communications strategy, pro bono, continuing development for lawyers, and Alberta's equivalent to the LAP program. More recently, loss prevention and risk management were added to the list of priorities, as a result of identifying common factors amongst practitioners who deal improperly with client funds. Mr. McDiarmid said the Law Society of BC has asked for the list of criteria the Law Society of Alberta has developed.

3. CEO'S REPORT

Mr. McGee introduced and welcomed Jeanette McPhee, the Law Society's new Chief Financial Officer. He circulated and reviewed the summary financial report noting the Law Society was ahead of plan in most areas, but noted a shortfall in TAF revenue. He said it was not clear why TAF revenue was lower than expected, and the change might correct itself later in the year, but he would investigate and report again in September. Mr. McGee said the senior staff had been doing a lot of work preparing a draft forecast for 2007 and would present several options to the Financial Planning Subcommittee. He noted that part of the general fund surplus was used to reduce the practice fee in 2005, but the assumption is that no surplus will be available in 2007.

Mr. McGee reported that development of the fourth floor of the Law Society building was proceeding as planned. The space has been designed to accommodate the audit program requirements. The target for completion is immediately after Labour Day, in September.

Mr. McGee reported on information sessions held with all staff to explain the Law Society's compensation scheme. He thanked Sue James and the management team for their work on the project. The sessions were intended to provide and explain information about the compensation scheme, and set up continuing work on performance management systems.

Mr. McGee reported on recruiting for the Chief Legal Officer position. He said two finalists were under consideration and he hoped to make an announcement before the July Benchers meeting.

Mr. Falkins asked if the Law Society's employee benefit program is at least as good as the industry standard. Mr. McGee said he thought it was, noting that the Law Society had moved to a program that is more flexible with respect to some supplementary coverage.

Mr. McGee reported on a discussion session convened by Pro Bono Law of BC involving senior partners of downtown law firms, Chief Justice Finch, and others. He said overall the sense was that Vancouver firms are aware of the need for pro bono services. He noted that a Seattle firm has a program that is used in part as a tool to recruit and retain top quality associates. He said American firms appear to take a more sophisticated approach to pro bono services.

Ms. Hickman said the Unbundling Task Force was looking at pro bono issues, noting that in some American jurisdictions pro bono services are mandatory.

4. INTERIM REPORT FROM THE WOMEN IN THE LEGAL PROFESSION TASK FORCE

Mr. Hume said the Task Force sought the Benchers' approval of two proposed model policies, authorization to provide a letter of support for the CBABC Women Lawyers Forum application to the Law Foundation for funding, and an extension of the Task Force's mandate to the end of the year. The model policies deal with flexible work arrangements and workplace harassment policies. They are intended to provide models that law firms can use to create their own policies.

Mr. Hunter was concerned that the degree of detail in the model policies might discourage firms from adopting them; in particular, the policy that a person working on a flex-time arrangement would continue to receive full compensation and the same quality of work as others. With respect to the harassment policy there is a section that deals with the need for flexibility in the policy for small firms that is absent from the policy on flexible work arrangements. Mr. Hunter suggested that the Task Force consider a more general and less micro-management oriented proposal.

Mr. Hume noted that the policy is no more than a recommendation that does not need to be adopted as a whole. He agreed with Mr. Hunter's comment with respect to acknowledging the need of small firms to adapt the policies, and he said he would take Mr. Hunter's comments back to the Task Force.

Mr. Turriff noted the definition of workplace harassment in the proposed policy included unwelcome comments or actions concerning a criminal conviction unrelated to employment, but the Law Society may discipline a lawyer for conduct resulting in such a conviction if it is conduct unbecoming a lawyer. He asked if the task force had considered this apparent incongruence between the policy and the Law Society's standards.

Mr. Hume said the model policy was not intended to establish a standard for behaviour except in relation to harassment.

It was moved (Hume/Donaldson) to authorize publication of the model policy on workplace harassment as a practice resource

The motion was carried.

Mr. Hume reviewed the Task Force's conclusion that mentoring is very important for keeping women in the legal profession. The CBABC Women Lawyers Forum is doing good work in this area and they are seeking funding from the Law Foundation to support their mentoring program. They would like a letter of support from the Law Society.

It was moved (Hume/Jackson) that after reviewing the BCCBA Women Lawyers Forum application to the Law Foundation to obtain financial support for their mentorship program, the Law Society support the application by way of a letter of support.

Ms. Berge noted that there had been an attempt to initiate and coordinate a mentoring program in Victoria but it could not be continued simply because of the effort and expense involved in providing administrative support.

Ms. Andreone was in favour of what the Women Lawyers Forum is doing but took issue with the statement in their application that "it is well known that there is a 'glass ceiling' when it comes to women being made a partner at most law firms". Ms. Andreone said that was a very strong statement that she could not align herself with.

Mr. Hume did not disagree with Ms. Andreone's and suggested it could be raised with the Women Lawyers Forum, although it might be too late to change the application if it had already been submitted. He suggested that if the application had not been submitted, the Task Force would raise the issue with the Women Lawyers Forum, and if it has been submitted, would qualify the letter of support if necessary.

Ms. Andreone said it would suffice from her perspective if the letter made it clear that the Law Society supports the programs without specifically endorsing the reasoning in the application.

The motion was carried.

Mr. Hume drew the Benchers' attention to items seven and eight in the report, which concerned a maternity benefit policy and a no glass ceiling commitment. He said the Task Force did not seek any decision from the Benchers at this time but was considering proposing a two-year pilot project.

Ms. Hickman thought the ideas were an excellent initiative but was concerned that the restrictions and inclusions with respect to qualification for the benefits might cause more harm than good. She was also concerned about whether the Law Society was the appropriate body to implement such programs.

Mr. Hume said the Task Force had considered those matters, and in particular the restriction of the maternity benefit to birth mothers was debated at length. He reiterated that the program would be conducted as a pilot project to examine what impacts it would have. The restriction is based on jurisprudence that indicates that such a restriction could be upheld. The predominant thought on the Task Force was that the initiative should come from the Law Society because it is a good project and the Law Society should have the benefit of the goodwill associated with it.

Ms. Preston confirmed that Ms. Hickman's points were discussed vigorously by the Task Force.

Ms. O'Grady had similar concerns to Ms. Hickman. She understood the desire to limit exposure to liability, but thought adoptive parents should qualify for the benefit.

Mr. Vilvang opposed the idea, saying it would be irresponsible taxation and should be left to the lawyers' benevolent fund. He said women make career choices, sometimes to obtain benefits not available to sole practitioners, and all parents make financial sacrifices to have children. He said the Benchers must bear in mind that some members make marginal incomes and this would be essentially taxing them to support others.

Mr. Vertlieb said the initiative was still a work in progress, but it was an interesting idea that deserved full discussion.

Mr. Hume said the Task Force sought an extension of its mandate to the end of the year to complete its work on proposed policies. It was moved (Hume/Donaldson) to extend the mandate of the Women In the Legal Profession Task Force to December 2006 in order that the Task Force may finish reviewing outstanding model policies, further pursue the "no glass ceiling commitments program" and work with the Small Firms Task Force to develop the Maternity Benefit proposal.

The motion was carried.

5. RULES RE: RETURNING TO PRACTICE

Mr. Hunter explained that the proposed rule changes represented an effort by the Credentials Committee to close a loophole in the rules. The concern is that the rules are intended to ensure that a member returning to practice after spending several years out of practice is competent. The loophole is that a member who has paid the full practice fee and insurance assessment throughout their absence from practice could return to practice without notifying the Law Society or triggering any requirement to demonstrate their competence. The initial proposal to close the loophole caused some concern that it would prove to be a disincentive for lawyers, particularly women, who had taken time off for family to return to practice. The Committee concluded that the Law Society should make some effort to help people come up to an acceptable level to permit them to return to practice rather than just setting examinations. The new proposal includes providing a refresher course available to anyone re-entering practice after an extended absence. The Lawyer Education Task Force endorses the idea. Essentially the proposed changes would require a lawyer returning to practice to convince the Credentials Committee they have kept up with practice, and providing the refresher course to assist people to do so. The proposal would require the Lawyer Education Task Force to develop the refresher course no later than July 2008.

Mr. Jackson supported the idea behind the proposal but suggested that developing the refresher course was an enormous task. He asked if there would be any limitation on the areas of practice a lawyer might return to.

Mr. Hunter said the idea is to bridge the gap to make sure people are up to date in their field, but the Committee had not yet examined all the details. The Credentials Committee might impose further requirements on a person seeking to return to an area of practice completely different from what they did before their absence.

Ms. Andreone asked if the refresher course would replace the "equivalent to practice" requirement.

Mr. Hunter said it would not necessarily replace the equivalent to practice requirement but would help people convince the Credentials Committee that they are up to date whether or not they have been engaged in activities that are the equivalent to practice. Mr. Lucas noted that the "equivalent to practice" rule is not part of the proposed revised rules but would still be available as a basis for convincing the Credentials Committee that an applicant is sufficiently up to date.

Ms. Andreone said her concern was that the proposed change might run contrary to other initiatives intended to remove barriers to people remaining in the profession, and she would like to see greater certainty so that member who has kept up to date or taken the refresher course would know that he or she will be permitted to return to practice. Ms. Andreone asked how many members filed annual practice declarations indicating that they did not practice.

Mr. Lucas said it is not possible to file an annual report without including the percentages of practice in different areas, but the Law Society does not know how many, if any, people file reports that do not reflect the fact that the person is not actually practicing. On of the proposals is to change the annual practice declaration form to start capturing that information.

Ms. Andreone did not think historical information would reflect the future reality as more women and men seek to return to practice.

Mr. Sigalet asked if the refresher course would be free to members. Mr. Hunter said that had not been determined, but he liked the idea of a free course.

Mr. McGee said the course would be based on the model of the small firm course so it would be flexible and allow members to complete it in at their own speed.

Ms. Berge agreed that the proposed course would encourage members to return to practice who might be apprehensive about their ability to deal with the Credentials Committee's requirements. She had some concern that the proposed two and one half years notice period would be further eroded as time passes in the development and implementation of the course, and she suggested that the notice period be extended to three years.

Mr. Donaldson was concerned that the rule changes would take effect long before the course is ready.

Mr. Getz agreed that it is very easy to underestimate the difficulty of constructing a relevant course, particularly if a person wants to change fields of practice, and it could take much longer than anticipated.

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

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

It was moved (Hunter/LeRose) in accordance with the recommendation of the Credentials Committeee to refer to the Lawyer Education Task Force the task of developing a refresher course to be made available as soon as possible and in any event no later than July 1 2008, in order to assist members of the Law Society who have not engaged in the practice of law as set out in Rule 2-57 in meeting the requirements for their return to the practice of law.

The motion was carried.

Ms. Andreone reiterated the importance of communicating this to the membership as a positive change.

6. LAW SOCIETY AWARD

It was moved (Donaldson/Fung) that the Law Society Award be presented to Charles C. Locke, QC.

The motion was carried.

7. FEDERATION OF LAW SOCIETIES MODEL CODE OF CONDUCT

Mr. Hume reviewed a discussion paper from the Ethics Committee setting out the work done to date by the Federation of Law Societies model code of conduct. With respect to acting against current clients, the Ethics Committee suggests that the Model Code Committee examine what the CBA has done to align their model code with the decision in R. v. Neill. With respect to partners acting against former clients, the Ethics Committee has several points of concern. Under the Law Society of BC's rules firms can obtain a ruling on whether steps they have taken are adequate. The Committee suggests that a similar facility be included in the model code. Additionally, the Committee suggests that the model code elaborate further on the steps that may be taken to deal with conflicts.

Ms. Andreone asked if the intention was to include guidelines that would include previous opinions. Mr. Hume said that a body of opinions would be developed over time.

Mr. Hume said the Ethics Committee recommended Rule 3.2 be redrafted to read as follows:

> 3.2 A lawyer who has acted for a client in a matter shall not thereafter act against the client or against persons who were involved in or associated with the client in that matter unless:
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> (a) the client or other person the lawyer proposes to act against consents, or
>
> (b) the new retainer is substantially unrelated to the previous retainer and the lawyer has obtained no confidential information from the previous retainer that is relevant to the new retainer.
>
> Commentary
>
> It is not improper for the lawyer to act against a former client in a fresh and independent matter substantially unrelated to any work the lawyer has previously done for that person and were previously obtained confidential information is irrelevant to that matter.

Mr. Hume said the Ethics Committee recommended that the prohibition against acting for both borrower and lender should be removed from the model code and left to be dealt with at a local level.

It was moved (Hume/Jackson) to authorize taking the Ethics Committee's recommendations to the Federation Committee on a model code of conduct.

The motion was carried.

8. ADMINISTRATIVE TRIBUNALS ACT AND INQUIRY ACT POWERS.

Mr. Lucas circulated a draft letter to the Administrative Justice Office of the Ministry of the Attorney General setting out the Law Society's comments with respect to three discussion papers prepared by that office on immunity protection, the power to compel evidence, and the power to deal with contempt, a copy of which is attached as Appendix 2. He said there had been some concern that taking a position on the application of the Administrative Tribunals Act would be taken as acquiescence in an incursion into independence of the bar. The Independence and Self-Governance Committee revised the draft to deal with that concern.

Mr. Turriff confirmed that the Independence and Self-governance Committee had approved the draft letter.

It was agreed to authorize the President to send the letter.

9. UPDATE ON CLAIMS AND INVESTIGATIONS IN THE WIRICK MATTER

This matter was discussed *in camera* .

10. DISCUSSION OF BENCHER CONCERNS

This matter was discussed *in camera* .

Appendix 1

1. In Rule 1,

(a) in the definition of* "qualification examination", *by striking* "**for the purposes of Rule 2-58" and substituting* "**for the purposes of Rule 2-57***".***

***(b) by rescinding the definition of* "requalification"**

2. By adding the following Rule:

Release from undertaking

2-4.1(1)A retired or non-practising member may apply for release from an undertaking given under Rule 2-3 or 2-4 by delivering to the Executive Director an application in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society.

(2) The Executive Director must not grant a release from undertaking under this Rule unless satisfied that the lawyer is not prohibited from practising law under Rule 2-57.

3. In Rule 2-49

(a) by rescinding subrules (2) and (3) and substituting the following:

(2) An applicant under this Rule must not be called and admitted unless the Executive Director is satisfied that the lawyer is not prohibited from practising law under Rule 2-57.

(3)Unless Rule 2-49.2 applies, an applicant under this Rule must pass an examination on jurisdiction-specific substantive law, practice and procedure set by the Executive Director.

(b) by rescinding subrule (5) and substituting the following:

(5)An applicant required to write an examination under this Rule or Rule 2-57 must pass the required examination within 12 months after the Executive Director's decision to permit the applicant to write the examination.

(c) by striking* "**under this Rule" in subrule (6) and substituting* "**under this Rule or Rule 2-57***".***

4. By rescinding Rule 2-52(2) and substituting the following:

(2)An applicant for reinstatement may apply for the following status on reinstatement:

(a) practising lawyer, only if the applicant has met the conditions for practising law under Rule 2-57;

(b) non-practising member on compliance with Rule 2-3;

(c) retired member if the lawyer is qualified under Rule 2-4(1) and on compliance with Rule 2-4(2) and (3).

5. By rescinding Rules 2-55 to 2-60 and substituting the following:

Returning to Practice

Definitions

2-55(1) In Rules 2-55 to 2-59, unless the context indicates otherwise,

"lawyer" includes a former lawyer or applicant;

"relevant period" is the shortest of the following periods of time in the immediate past:

(a) 5 years;

(b) the time since the lawyer's first call and admission in any jurisdiction;

(c) the time since the lawyer last passed the qualification examination;

(d) in the case of a practising lawyer who has paid the full-time insurance fee since January 1, 2006, the time since that date.

(2) For the purpose of paragraph (b) of the definition of **"relevant period"** in subrule (1), a lawyer is deemed to have been called and admitted as of the date that a practising certificate was issued under Rule 2-51(4).

Returning to the practice of law after an absence

2-57(1) If, for a total of 3 years or more in the relevant period, a lawyer has not engaged in the practice of law, the lawyer must not practise law without first doing one of the following:

(a) passing the qualification examination;

(b) obtaining the permission of the Committee under subrule (3).

(2) Subrule (1) applies

(a) despite any other Rule, and

(b) whether or not the lawyer holds or is entitled to hold a practising certificate.

(3) A lawyer may apply in writing to the Committee for permission to practise law without passing the qualification examination.

(4) On an application under subrule (3), the Committee may approve the application if, in its judgement

(a) the lawyer has engaged in activities that have kept the lawyer current with substantive law and practice skills, or

(b) the public interest does not require the lawyer to pass the qualification examination.

(5) Before approving an application under subrule (4), the Committee may require the lawyer to enter into a written undertaking to do any of the things set out in Rule 2-59(2)(b).

Qualification examination fee

2-58 **A lawyer who is required to write the qualification examination under Rule 2-57(1) must pay, at least 30 days before writing the first examination, the fee specified in Schedule 1.**

Conditions on returning to the practice of law

2-59 (1) A lawyer or applicant who has spent a period of 7 years or more not engaged in the practice of law must not practise law without the permission of the Credentials Committee.

(2) As a condition of permission to practise law under subrule (1), the Credentials Committee may require one or more of the following in addition to passing the qualification examination:

(a) successful completion of

(i) the admission program,

(ii) the training course, or

(iii) a part of the training course;

(b) a written undertaking to do any or all of the following:

(i) practise law in British Columbia immediately on being granted permission;

(ii) not practise law as a sole practitioner;

(iii) practise law only in a situation approved by the Committee for a period set by the Committee, not exceeding 2 years;

(iv) successfully complete the training course or a part of the training course within a period set by the Committee, not exceeding one year from the date permission is granted;

(v) practise only in specified areas of law;

(vi) not practise in specified areas of law.

(3) Despite Rule 2-26(3), the Credentials Committee may vary a condition under subrule (2)(a) without the consent of the lawyer concerned.

(4) On the written application of the lawyer, the Credentials Committee may allow a variation of an undertaking given under subrule (2)(b).

6. By rescinding Rule 3-27(3) and substituting the following:

3-27(3) The Executive Director must not grant the insurance coverage applied for under subrule (1) or (2) unless satisfied that the lawyer is not prohibited from practising law under Rule 2-57.

Appendix 2

Re: *Administrative Tribunals Act* ("ATA") and *Inquiry Act* Powers

Thank you for your email of March 30, 2006 seeking the comments of the Law Society of British Columbia on the three discussion papers which your office has prepared on immunity protection, the power to compel evidence, and the power to deal with contempt.

Our comments with respect to the individual papers are set out below. However, the Law Society notes as a preliminary matter that, until now, the Administrative Justice Office has only considered the application of the *ATA* to government tribunals. This is the first time that the Administrative Justice Office is considering the application of the *ATA* to self-regulating professions. The Law Society is in a considerably different position with respect to its relationship to the government than are the government tribunals to whom the *ATA* applies. The Law Society is the self-regulating body of the legal profession and is and must remain independent of the government in order to ensure its ability to discharge its mandate of protecting the public interest in the administration of justice. The statutes that apply in a general fashion to government tribunals should not be extended as a whole to the Law Society because this would, in our opinion, impair the effective self-regulation of the legal profession and would therefore be contrary to the principle of independence of lawyers from government.

The Law Society also has some general observations regarding the *Inquiry Act* powers and protection under discussion. The Law Society's hearing panels are given *Inquiry Act* powers pursuant to s. 44 of the *Legal Profession Act*. These hearing panels are formal panels at the judicial end of the administrative justice spectrum. They hear and receive evidence and submissions in formal settings. Typically, parties who appear or make submissions to a Law Society hearing panel are represented by counsel. The hearing panels decide serious matters such as the admission of persons as lawyers, the punishment of lawyer misconduct (including disbarment), and the adjudication of claimants' rights on a defalcation. There are provisions for review or appeal of most decisions either to the Benchers, the Supreme Court, or the Court of Appeal. Because of the nature and functions of the Law Society's hearing panels, the Law Society is of the view that its panels require the powers, privileges, and protection it currently has pursuant to ss. 12, 15, and 16 of the *Inquiry Act* and s. 44 of the *Legal Profession Act* or similar powers, privileges, and protection under alternative legislation.

Immunity

The Law Society submits that legal immunity should apply to Law Society hearing panels, whether under the *Inquiry Act* or under the *ATA*. Hearings panels perform an important public function by regulating the conduct of Law Society's members, ruling on the suitability of applicants for admission to the profession, and adjudicating defalcation claims. As set out above, these are functions that are more judicial than administrative. As also noted, the *Legal Profession Act* contains extensive review and appeal provisions for members or applicants whose rights are affected by the decisions of the hearing

panels. The Law Society submits that appeals or reviews to other hearing panels or the courts are more appropriate than law suits against the decision makers. Hearing panel members should be given the powers and protection generally given to bodies performing adjudicative functions in order to enable them to make decisions without fear of being sued. Any civil proceedings can be dealt with by recourse to the materials from the proceedings, which will generally include transcripts from the hearing. The Law Society does not object to the immunity not extending to hearing panel members having to give evidence in criminal proceedings. That appears to be a reasonable limitation on the immunity.

The Power to Compel Evidence

As set out above, the Law Society's hearing panels perform an important adjudicative role. It is important that hearing panels be given the power to require evidence in order that they can make the best possible decisions in matters which affect individual rights. The Law Society does not take a position as to whether those powers should be granted pursuant to the *Inquiry Act* or the *ATA*. However, the Law Society notes that the *ATA* allows for hearing panels to order pre-hearing evidence from third party witnesses; this is a useful and important tool for a hearing panel which is not currently available by statute to the Law Society. Early access to third party evidence could assist with the management of hearings and possibly with the resolution of matters before hearing.

The Law Society also notes the discussion in the paper with respect to obtaining evidence outside British Columbia. The Law Society has, on several occasions, found it necessary to go outside British Columbia in order to obtain evidence necessary for a hearing. While this is not a problem when the witnesses cooperate, occasionally, they do not. The Law Society considers that it would be desirable that the Law Society be given the means, by statute, to obtain evidence outside British Columbia.

The Power to Take Action for Contempt

The Law Society considers that it is important that its power to compel evidence be accompanied by the power to deal with contempt. For the Law Society, the value of the contempt power is as a tool to enhance compliance with an order made by a hearing panel. The alternatives considered in the paper for dealing with a person who fails to produce or provide evidence are not sufficient for Law Society proceedings. Typically, the witness who is subject to a summons in Law Society proceedings will be a third party witness rather than a party to the proceedings.

The Law Society does not take any position on whether the power to deal with contempt should derive from the *Inquiry Act* or the *ATA*. Either legislative source would be adequate for the Law Society's purposes.

Thank you for inviting us to consider these papers. We look forward to discussing them with you further.