THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING:	Benchers	
DATE:	Friday October 13, 2006	
PRESENT:	Robert McDiarmid, QC, President	Terry La Liberté, QC
	Anna Fung, QC, 1st Vice-president	Bruce LeRose
	John Hunter, QC, 2nd Vice-president	Jan Lindsay
	Rita Andreone	Thelma O'Grady
	Kathryn Berge, QC	Robert Punnett
	Joost Blom, QC	Glen Ridgway, QC
	Ken Dobell	Dirk Sigalet, QC
	Ian Donaldson, QC	Richard Stewart
	William Everett, QC, Life Bencher	Ronald Tindale
	Michael Falkins	Gordon Turriff, QC
	Leon Getz, QC	Dr. Maelor Vallance
	Carol Hickman	Art Vertlieb, QC
	Gavin Hume, QC	James Vilvang, QC
	William Jackson	David Zacks, QC
	Patrick Kelly	
NOT PRESENT:	June Preston	Alan Seckel, QC, Deputy AG
	David Renwick	
STAFF PRESENT:	Timothy McGee, CEO	Michael Lucas
	Dana Bales	Bill McIntosh
	Stuart Cameron	Jeanette McPhee
	Mary Ann Cummings	Doug Munro
	Brad Daisley	David Newell
	Su Forbes, QC	Alan Treleaven
	Jeffrey Hoskins	Adam Whitcombe
	Howard Kushner	
GUESTS:	Alma Wiebe, QC, President, Law Society of Saskatchewan	
	Associate Dean, University of British Columbia	
	Associate Dean Cheryl Crane, University of Victoria	
	Frits Verhoeven, President, CBABC	
	Caroline Nevin, Associate Executive Director, CBABC	
	Wayne Robertson, Executive Director, Law Foundation	
	Anne Chopra, LSBC Equity Ombudsperson	

1. MINUTES

The minutes of the meeting held on September 8, 2006 were approved as corrected.

2. PRESIDENT'S REPORT

Mr. McDiarmid provided a brief report on his activities on behalf of the Law Society during the previous month, which included attendance at a number of Local and County Bar Association meetings. He noted that the meetings tend to be well attended and the lawyers are very engaged. Topics of discussion often include matters such as professionalism, how to serve clients better, and dealing with the public, rather than the mundane details of practice. Mr. McDiarmid reported that the Unbundling of Legal Services Task Force hosted a forum as part of the program of the Cariboo Bar Association meeting. The forum was well received and very successful.

Mr. McDiarmid reported that he attended the Women in Transportation Seminar at the invitation of Carol Kerfoot, the Law Society's nominee to the Board of the Vancouver International Airport Authority. The seminar is a significant event that attracts high profile people from government and industry. Having a Law Society appointee in attendance is a plus for Law Society programs.

3. CEO'S REPORT

Mr. McGee circulated a written report. He said staff was focused on planning and budget development during the fall. With the practice fee set, it is possible to set operating budgets for the coming year. The overall goal is to ensure that the Law Society is following best practices. The focus will be on core regulatory functions, but staff will be examining other activities and programs to consider whether they are meeting the Law Society's needs. Mr. McGee said senior staff was also preparing a detailed five-year capital plan to identify the top priorities.

Mr. McGee reported that the Federation of Law Societies had struck a committee on competition issues arising out of the questionnaire received by all Law Societies. The consensus was that the underlying reason for the questionnaire needed to be investigated further. The Independence and Governance Committee recommended taking a cooperative position while making sure that nothing is done that would compromise independence, and obtaining expert advice on competition law.

Mr. McGee reported that the Audit Committee had met and reviewed the existing monitoring indicators, and concluded that they are not achieving the desired result. Mr. McGee said he had agreed to return to the committee with a proposal for an alternative approach to make sure there is an effective way to monitor organizational performance. That will require clear statements of what each department is trying to achieve.

Mr. Sigalet noted that Life Bencher, Jane Shackell, QC was the chair of the Audit Committee when it first started formulating the monitoring indicators, and the cumbersome nature of the indicators that were developed over an extended period did not detract from the importance of Ms. Shackell's contribution in getting the process started.

Mr. Kelly noted that Bill McIntosh had joined the Law Society's communications department. He said he had seen some of Mr. McIntosh's work elsewhere and could say the Law Society was fortunate to have someone of his calibre on staff. Mr. Kelly asked about the status of changes in the professional conduct and discipline departments. Mr. Kushner said the operational changes that had previously been discussed concerned restructuring of those departments to create a separate public response group and professional conduct group. He said he was still in the process of determining how that would work.

4. REPORT ON OUTSTANDING HEARING DECISIONS

The Benchers received a report on outstanding hearing decisions.

5. REMARKS FROM ALMA WIEBE, PRESIDENT, LAW SOCIETY OF SASKATCHEWAN

Mr. McDiarmid introduced Alma Wiebe, QC, President of the Law Society of Saskatchewan.

Ms. Wiebe thanked the Benchers for inviting her to attend the meeting and speak about the Law Society of Saskatchewan where, she said, there were many parallels with the work being done at the Law Society of BC. Ms. Wiebe said the Law Society of Saskatchewan Benchers meet four to six times a year for two or three days at a time. All committee work is done at that time and the Benchers are very "hands-on", which works well in a small jurisdiction but perhaps less so in a larger organization like the LSBC.

Ms. Wiebe said she was most concerned about governance issues. She said when she began as a Bencher, the Law Society of Saskatchewan was run like a club; there were no Benchers from visible minorities, and only a few women Benchers in the ninety-nine years of Law Society history. The Law Society needed to be more transparent and inclusive. Some steps have been taken but there has been resistance. There were positive gains from the first Bencher governance policy retreat, including a new appointments policy that opens Law Society appointments to all lawyers. That has been well received. Opening meetings to the public was also discussed. The Benchers decided to begin publishing the results of discipline hearings. With respect to staff the first salary review and market evaluation was completed, and the Benchers discussed how to formally evaluate the CEO. Ms. Wiebe said she hoped to observe the Law Society of BC Benchers at work and learn from her visit.

In response to a question from Mr. LeRose, Ms. Wiebe confirmed that discipline hearings in Saskatchewan are open to the public. In response to a queston from Mr. Vertlieb, Ms. Wiebe said that only Benchers were appointed to Law Society committees.

Mr. Turriff asked if any one person or committee was responsible for monitoring questions of independence. Ms. Wiebe said that independence issues were not in the forefront in Saskatchewan.

6. RULES TO IMPLEMENT SMALL FIRM PRACTICE COURSE

Mr. Turriff reviewed the key points of the propose rules.

It was moved (Turriff/LeRose) to amend the Law Society Rules, effective January 1, 2007 as follows:

1. ***In the definition of "firm" in Rule 1, by rescinding paragraph (f) and substituting the following:***

(f) a corporation that is not a law corporation, or other private body;

2. ***In Part 3, by adding the following Division:***

Division 2.1 – Education

Definition and application

3-18.1 (1) In this Division

"small firm" includes

(a) a firm in which not more than 4 lawyers practise law together, and

(b) a lawyer in an arrangement to share expenses with other lawyers who otherwise practises as an independent practitioner, except when the lawyer relies on a firm that is not a small firm to maintain trust accounting and other financial records on the lawyer's behalf,

but does not include

(c) a public body such as government or a Crown corporation, or

(d) a corporation that is not a law corporation, or other private body.

"small firm course" means a course of study designated as such and administered by the Society or its agents and includes any assignment, examinations and remedial work taken during or after the course of study.

(2) This Division applies to lawyers in any of the following circumstances:

(a) when a lawyer begins practising in a small firm after not having done so in British Columbia for the previous 3 years or more;

(b) when a lawyer practising in a small firm becomes a signatory on a trust account after not having been a signatory on a trust account in British Columbia for the previous 3 years or more;

(c) when the Practice Standards Committee resolves that this Division applies to a lawyer.

(3) Subject to subrule (2)(c), this Division does not apply to a lawyer who, as a member of a governing body in another Canadian jurisdiction, has practised in a small firm and been a signatory on a trust account during the previous 3 years.

Small firm course

3-18.2(1) Within 6 months of the date on which this Division applies to a lawyer, the lawyer must

(a) successfully complete the small firm course, and

(b) certify to the Executive Director in a form approved by the Executive Director that the lawyer has successfully completed the small firm course.

(2) A lawyer who is in breach of subrule (1) has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee.

Ms. Fung asked how a lawyer's successful completion of the course would be determined.

Mr. Turriff said the course was structured so that it will not be possible to get through the course online unless all the questions are answered correctly.

Mr. Zacks was concerned that subrule 3-18.1(2) was inflexible and would not permit the Practice Standards Committee to grant an exception in some cases. For example, the committee might want to grant an exception for an experienced practitioner who retires from a large firm but continues to practice as a sole practitioner.

Mr. Turriff said the task force had considered this concern. Mr. Lucas said Associate Counsel would not be required to take the course if they fit within the provisions of subrule 1(b) in the definition of "small firm". However, the task force concluded that a senior lawyer leaving a large firm to set up a small firm practice should not be exempt because there have been problems in the

past when such lawyers enter solo practice without any training in managing trust accounts or other office systems. He suggested that if the committee received a large number of requests for exemptions, it would consider amending the rule.

Mr. Zacks favoured adding discretion to grant an exemption to increase the flexibility of the rule.

Mr. Vilvang opposed an exemption. He said that as the sort of practitioner Mr. Zacks described, he would be ill equipped to start a practice on his own, and it would be even harder for a person who was in the middle of a busy practice.

Mr. LeRose also opposed an exemption. He said it was clear that the genesis of the course was the fact that the Discipline Committee and Practice Standards Committee deal with a lot of small firm lawyers. The course is a proactive step to provide some tools to people who want to practice in that model. The course will also be a useful tool for the Practice Standards Committee.

Mr. Jackson asked if there was a statistical basis for defining a small firm as four or fewer lawyers.

Mr. Turriff said there was no empirical way of saying four is better than three or not as good as five, but there has to be a cutoff. After a great deal of discussion, the task force decided on four.

Mr. Stewart noted that existing small firms would not be required to take the course. He said if part of the purpose of the course is to protect the public, should it not be required or at least recommended that existing firms complete the course?

Mr. Turriff said the task force had discussed that issue but concluded that existing firms likely have systems to deal with the issues of concern.

Mr. McDiarmid said the feedback he had received indicated that most small firm practitioners were interested in taking the course whether or not they are required to.

Mr. LaLiberté supported the initiative, noting that most criminal law practitioners would fall into the small firm definition, and could benefit from the course. However, he said nothing indicated how long or onerous the course would be.

Mr. Treleaven said the course was self-paced and could be completed in a series of short modules. On average a total of about eight hours will be sufficient to complete the course.

Ms. Andreone said that from a Discipline Committee perspective it would be useful in some cases to know whether a lawyer had taken the course.

Mr. Turriff said that such information would be available. He said the initiative was one of the best things the Benchers had done because it would have a direct impact on the standards of practice in BC.

Mr. McGee said the course was an in-house solution and a great credit to the people involved. It verifies that the Law Society can create a fully accessible, high quality product available at all times. It is scaleable and can be used as a model for other important and valuable tools.

Mr. LaLiberté said it would be helpful if Benchers were provided with a communications package to help explain the course to members and make it a positive action by the Law Society.

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

7. RULE AMENDMENTS RE PROCEEEDINGS UNDER S. 39 OF THE *LEGAL PROFESSION ACT.*

Ms. Fung reviewed recommendations from the Discipline Committee to address deficiencies in the Law Society Rules, which, pursuant to Section 39 of the Legal Profession Act, creates a process for three Benchers to suspend a lawyer or imposed conditions on a lawyer's practice on an interim basis when there is a danger to the public.

Mr. Hunter said the proposed changes to the Rules also implemented decisions made in principle by the Benchers with respect to disclosure and privacy in Rule 4-17 proceedings.

It was moved (Fung/Donaldson) to amend the Law Society Rules as follows:

1. In Rule 1, by rescinding paragraph (f) of the definition of* "professional conduct record" *and substituting the following:

(f) action taken under Rule 4-17, until final disposition of a citation, unless rescinded under Rule 4-19;

2. By rescinding Rule 2-2 and substituting the following:

2-2 A member of the Society is a member in good standing unless suspended under section 38(5)(d) of the Act or under Rules 2-77(2), 3-46(4), 3-74.1, 3-79.1, 4-17 or 4-40.

3. In Rule 4-17, by

(a) adding the following subrule:

(0.1) In Rules 4-17 to 4-18.1, **"proceeding"** means the proceeding required under subrule (1.11)***,***

(b) rescinding subparagraph (i) of paragraph (d) of subrule (1) and substituting the following:

(i) submit to an examination by a qualified medical practitioner named by the 3 Benchers or to be named by the Chair or Vice-Chair of the Discipline Committee, and***, and***

(c) rescinding subrule (2) and substituting the following:

(1.11) Before Benchers take action under this Rule, there must be a proceeding at which 3 or more Benchers and discipline counsel must be present.

(1.12) The respondent and respondent's counsel may be present at a proceeding.

(1.13) All proceedings under this Rule must be recorded by a court reporter.

(1.14) Subject to the Act and these Rules, the Benchers present may determine the practice and procedure to be followed at a proceeding.

(1.15) Unless the Benchers present order otherwise, the proceeding is not open to the public.

(1.16) The respondent or discipline counsel may request an adjournment of a proceeding.

(1.17) Rule 4-29 applies to an application for an adjournment made before the commencement of the proceeding as if it were a hearing.

(1.18) Despite subrule (1.17), the Executive Director is not required to notify a complainant of a request made under subrule (1.16).

(1.19) After a proceeding has commenced, the Benchers present may adjourn the proceeding, with or without conditions, to a specified date, time and place.

(2) An order made under subrule (1) or varied under subrule (3) is effective until the first of

(a) final disposition of the citation,

(a.1) variation or further variation under subrule (3), or

(b) a contrary order under Rule 4-19.

(3) An order made under subrule (1)(b) or (d) may be varied by the 3 Benchers, or a majority of them, on the application of the respondent or discipline counsel.

(4) On an application to vary an order under subrule (3),

(a) both the respondent and discipline counsel must be given a reasonable opportunity to make submissions in writing, and

(b) the 3 Benchers may allow oral submissions if, in their discretion, it is appropriate to do so.

4. By adding the following Rule:

Disclosure

4-18.1(1) Unless an order has been made under Rule 4-17(1), no one is permitted to disclose any of the following information except for the purpose of complying with the objects of the Act or with these Rules:

(a) the fact that a Committee or an individual has referred a matter for consideration by 3 or more Benchers under Rule 4-17;

(b) the scheduling of a proceeding under Rule 4-17;

(c) the fact that a proceeding has taken place.

(2) When an order has been made or refused under Rule 4-17(1), the Executive Director may, on request, disclose the fact of the order or refusal and the reasons for it.

5. In Rule 4-19 by

(a) rescinding subrule (1) and substituting the following:

(1) If an order has been made under Rule 4-17(1), the respondent may apply in writing to the President at any time for rescission or variation of the order**.,**

(b) rescinding subrules (3) and (4) and substituting the following:

(4) When application is made under subrule (1), the President must appoint a new panel under Rule 4-28.**,**

(c) rescinding subrule (12)(a) and substituting the following:

(a) invite the respondent and discipline counsel to make submissions on the issues to be decided by the panel,***, and***

(d) rescinding subrule (14) and substituting the following:

(14) If an order has been made under Rule 4-17(1) without notice to the respondent, the panel must rescind or vary the order, unless discipline counsel shows cause, on the balance of probabilities, why the order should not be rescinded or varied.

6. In Rule 4-29 by rescinding subrule (1) and substituting the following:

(1) Before the hearing commences, the respondent or discipline counsel may request that the hearing be adjourned by delivering to the Executive Director a notice in writing that sets out the reasons for the request.

7. By rescinding Rule 4-37 and substituting the following:

Public notice of suspension or disbarment

4-37 When a person is suspended or becomes a disbarred lawyer, the Executive Director must immediately give effective public notice of the suspension, disbarment or resignation by means including but not limited to the following:

(a) publication of a notice in

(i) the British Columbia Gazette,

(ii) a newspaper of general circulation in each municipality and each district referred to in Rule 1-20, in which the person maintained a law office, and

(iii) the Society website, and

(b) notifying the following:

(i) the Registrar of the Supreme Court;

(ii) the Public Guardian and Trustee.

8. In Rule 4-38, by

(a) rescinding paragraph (d) of subrule (1) and substituting the following:

(d) when an order is made or refused under Rule 4-19(13) or (14),

and

(b) rescinding subrule (2) and substituting the following:

(2) Subject to Rule 4-38.1, the Executive Director may publish and circulate to the profession a summary of any decision, reasons and action taken not enumerated in subrule (1), other than

(a) a decision not to accept a conditional admission under Rule 4-21 or 4-22, or

(b) any decision under Rule 4-17(1).

9. In Rule 4-38.1, by adding the following subrule:

(8) When an order is made or refused under Rule 4-19(13) or (14), the respondent may apply to the panel under subrule (4) as if the reasons for the order or refusal were a report on findings of fact and verdict, and subrules (3) to (6) apply.

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

8. RESTRICTIONS ON FUTURE REPRESENTATION

Mr. Hume reviewed the Benchers previous decision in principle that Chapter 4 of the Professional Conduct Handbook should be amended to include a rule prohibiting a lawyer from agreeing to restrictions on future representation as part of a civil settlement.

It was moved (Hume/Jackson) to amend Chapter 4 of the Professional Conduct Handbook by adding the following paragraph:

7. A lawyer must not participate in offering or making an agreement in which a restriction on any lawyer's right to practise is part of the settlement of a client lawsuit or other controversy.

Ms. Lindsay noted that she had expressed her concerns during the previous discussion of this matter. She said her concerns remained and she would not support the motion.

Mr. Turriff thought the matter required further investigation. He asked why the word "part" was used rather than "term".

Mr. Zacks said a part of the settlement in total may not be a term of the settlement agreement itself.

Ms. Andreone asked about restrictions as part of a retainer.

Mr. Hume said the Ethics Committee did not consider retainers.

Mr. Ridgway said the rule would not stop the other party from contacting the opposing lawyer and making an agreement after settlement had been reached.

Mr. Hume agreed with Mr. Ridgway but said the decision under such circumstances would be independent of the client's interests at that time, and so would not be improper.

The motion was carried.

9. APPOINTMENT TO THE LAW COURTS EDUCATION SOCIETY BOARD OF DIRECTORS.

It was moved (LeRose/Ridgway) to appoint Margaret Ostrowski, QC to the Board of Directors of the Law Courts Education Society for a further term of two years commencing on September 1, 2006 and ending on August 31, 2008.

The motion was carried.

10. APPOINTMENT TO THE LEGAL SERVICES SOCIETY BOARD OF DIRECTORS.

It was moved (Berge/Stewart) to appoint Mayland McKimm, QC to the Board of Directors of the Legal Services Society for a further term of two years commencing on September 3, 2006 and ending on September 2, 2008.

The motion was carried.

11. TRUST PROTECTION COVERAGE UNDER PART B OF THE LAWYERS PROFESSIONAL LIABILITY POLICY.

Ms. Forbes reviewed proposed changes to Part B of the Lawyers Professional Liability Insurance Policy to exclude fraudulent investment schemes from coverage, and to set a set a maximum amount payable on a single claim covered by the policy. Ms. Forbes said an examination of compensation programs around the world showed the overwhelming majority included some limitation, generally much lower than the amount proposed. One of the key aspects of moving compensation for lawyer defalcation into the insurance program was to send an unapologetic message to the public that there are limits to the ability of BC lawyers to stand behind individual lawyers through compensation. Ms. Forbes said a contractual right to payment with a limit of $300,000 per claim would be demonstrably generous in relation to other jurisdictions. On average, 98% of all past claims to the Special Compensation Fund (excluding *Wirick*) were paid amounts less than $300,000. If the Law Society faced another catastrophic loss, a per claim limit would ensure that the people most in need of protection would receive it.

It was moved (Ridgway/Zacks) to amend Part B coverage:

1. to exclude claims arising from fraudulent investment schemes where the lawyer does not take the funds directly; and

2. to impose a limit of $300,000 per claim in any given year.

Mr. Donaldson noted that even under the existing coverage the Benchers could approve additional funding over and above the aggregate claim limit of $17.5 million dollars, and if that was so, some Benchers at some time in the future might have to face the decision to do so or not. If the claims in the Wirick matter were dealt with under the proposed scheme, financial institutions with claims in excess of $1 million would receive about 13% of their claims, and individuals with claims up to $300,000 would receive about 98% of their claims. There would be a few individuals with claims over $300,000. Mr. Donaldson asked if under those circumstances the Benchers could agree to make *ex gratia* payments to make those individuals whole.

Ms. Forbes said the Benchers could agree to make *ex gratia* payments. The insurer could also make *ex gratia* payments, as they do from time to time. However, if the Wirick situation developed again, she expects she would seek guidance from the Benchers as to how they wished to deal with it.

Mr. Whitcombe cautioned that the percentages used in the discussion were based on a model using the Wirick experience, but a future occurrence could be somewhat different depending on the actual claims.

Mr. Jackson supported the motion but was concerned that the first part suggested that the onus would be on the Law Society to prove that an investment scheme was fraudulent. He asked if it would harm claimants to exclude all claims arising from investment schemes where the lawyer did not take the funds directly?

Ms. Forbes said the intention was to make the indicia of fraud sufficiently broad to make the exclusion meaningful, but it would be possible to exclude claims arising from any investment scheme.

Mr. Ridgway and Mr. Zacks agreed to amend their motion to remove the word "fraudulent" from paragraph number 1.

Mr. Falkins said that as a Special Compensation Fund Committee member he was very proud of what the Law Society had done in the last four years to compensate people for losses caused by Mr. Wirick. From the insurance business perspective, a limit on claims makes sense. However, as a Lay Bencher Mr. Falkins had some concern about limiting claims. It is completely sensible to exclude claims arising from fraudulent investment schemes. However, there is a public interest concern with respect to the possibility that a person with a legitimate claim would not receive full compensation. However, if there is a residual discretion in the Benchers to make up the difference, then the limits are acceptable.

Mr. LeRose favoured the proposed amendments but suggested that to be consistent with Part A the per claim limit should be $1 million.

Ms. Andreone agreed with the concept of a limit but was concerned that $300,000 might be too low in view of the value of Vancouver real estate.

Mr. Zacks said the Special Compensation Fund would continue to exist and there would always be a discretion to make payments beyond the per claim limit in appropriate circumstances. With respect to the amount of the limit, the statistics were clear that at $300,000 almost all individual claims would be paid, even in the event of a catastrophic loss. Mr. Zacks did not think the value of real estate was particularly relevant in that most of the Wirick claims did not arise from buying and selling real estate.

Mr. Hunter said it would be better to set the limit at $300,000 and deal with the few exceptional cases using the Benchers' discretion.

Ms. Forbes agreed that there was some attraction to consistency between Part A and Part B but it was important to remember that the limit under Part A is $1 million per claim but also $2 million per lawyer each year. Consistency with those limits would place much greater limits on claims similar to the Wirick matter. Also, the size of claims under part A is much larger warranting a higher per claim limit.

Mr. LaLiberté asked what effect on the cost to members raising the limit to $1 million per claim would have.

Ms. Forbes said she had not done that calculation but it would not make a great deal of difference because, as noted, almost all claims would be paid in full under a $300,000 limit.

Mr. Stewart agreed that there should be some limit, but it should not erode the protection provided by the policy. If the Benchers are to rely on the existence of a discretion, they must be comfortable with how the discretion will be exercised. If the discretion belongs to the Benchers it must be clear that the Benchers will be given the opportunity to exercise it and not have it effectively exercised by the Lawyers Insurance Fund.

Ms. Forbes said the Special Compensation Fund would not have any jurisdiction to make additional payments if the overall annual aggregate limit of $17.5 million is not reached. If that aggregate limit is not reached, then the $300,000 limit becomes an effective cap on payment on any single claim.

Mr. Falkins said there were clear differences between Part A and Part B. Part A is strictly an errors and omissions policy, but Part B is totally different. Part B deals with the situation where a lawyer has taken money as a deliberate act. He said there is a huge difference from a public interest point of view.

Mr. Dobell said that no compensation scheme can guarantee full payment of every claim, and the analysis reveals that the proposed program provides generous compensation. The last thing the Benchers would want is to have individual cases coming to the Bencher table with any regularity. He said the program should be allowed to operate as an insurance program, leaving it open to deal with a catastrophic situation differently.

The motion was carried. Ms. Andreone voted against the motion with respect to the amount of the limit.

12. REPORT FROM THE UNBUNDLING OF LEGAL SERVICES TASK FORCE

Ms. Hickman reported on the "World Café" forum held in conjunction with the Cariboo Bar Association meeting. The forum consisted essentially of round table discussions with opportunities for dialogue and feedback. It was the same format as the forum that took place in Vancouver earlier in the year. Ms. Hickman recalled the debate at the Benchers table regarding the value of holding further World Cafés after the first one. In order to maximize participation and minimize cost, the second forum was included as part of the agenda for the Cariboo Bar Association annual meeting. Ms. Hickman said the forum was well attended by local lawyers in addition to herself, Doug Munro, staff policy lawyer, Mark Benton, Executive Director of the Legal Services Society, Bencher Ron Tindale, and Life Bencher Pat Schmit. In discussing the forms unbundling of legal services already takes in the Cariboo, some fundamental issues arising from geography were apparent. In particular, the lengthy travel times resulting from court closures. Limited economic means of some clients has also resulted in some unbundling. Conflicts are more prevalent in smaller centres and reduce lawyers' willingness to participate in pro bono work. Discussions covered conflicts, limited appearances in court, communications, and ghost writing of pleadings. Criminal defense lawyers in the area use a specific form filed in court to indicate limited appearances. Concerns expressed included liability issues and Law Society complaints. People don't want to do limited work for limited fees and then spend a lot of time dealing with a complaint. Ms. Hickman reported that the task force had concluded that a third World Café in Kelowna would not be necessary. On the whole the event was very positive, particularly from the outreach perspective. Local lawyers were very happy to have the Law Society come to them and listen to what they had to say.

Mr. Vilvang said he was involved in discussions about walk-in clinics, which raised for him the concern that lawyers not sacrifice their overall responsibility to clients.

Mr. LaLiberté said an additional form for criminal defense lawyers was not needed and would not be well received. He said the criminal defense bar had been providing unbundled legal services for years without particular difficulty.

Mr. Zacks said solicitors have always provided unbundled services. He commended the task force for going outside Vancouver because it was obviously well received. He hoped that any paper the task force produces is addressed to all lawyers including solicitors, and would not negatively affect established unbundling practices.

Mr. Turriff thought it was unnecessary to seek public input on this issue. He said lawyers' obligations to clients and the courts are crystal clear, which are the limits of the retainer. Mr. Turriff said this was not new and he questioned whether anything new would be learned. He said there were no problems.

Ms. Hickman said the task force knew that solicitors have been unbundling services, and was learning from them. The task force knows there are problems and is being told there are problems, such as judges forcing lawyers to attend subsequent court appearances despite having a limited retainer. She agreed that lawyers have been unbundling legal services for a long time, but the task force was learning from members about how to do more, and do it better, and members would benefit from guidelines.

13. MONEY LAUNDERING AND PROCEEDS OF CRIME

Life Bencher William Everett, QC, and Law Society counsel Jack Giles, QC and Dylana Bloor attended for this portion of the meeting.

Before the discussion of this item, Mr. McDiarmid reported to the Benchers that Mr. Everett had, at his request, attended on behalf of the Law Society the special sitting of the Court of Appeal in honour of Madam Justice Southin, on the occasion of her retirement from the bench.

Mr. Everett reported that the special sitting was well attended, and he thanked Mr. McDiarmid for being asked to represent the Benchers and the Law Society.

Mr. Everett reviewed the history of the Independence of the Bar Committee, which was the only group of lawyers in Canada to recognize the problems with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* when it was first introduced. Acting on behalf of the Law Society Mr. Giles applied for an obtained an injunction that remains in place until there is a trial of the constitutionality of the *Act* (meaning the *Act* that replaced the first version after it was withdrawn) as it applies to lawyers. The injunction obtained in BC formed the template for similar injunctions across the country. Once the injunction was in place the Law Societies tried to be proactive to deal with the public interest issues. First the Law Society of BC passed a no-cash rule, which again pioneered similar rules across the country. The Federation of Law Societies is currently drafting a model rule regarding client identification and record keeping. The result of the proactive work will be that the Law Society of BC will be in the strongest position to fight the constitutionality of the legislation as it relates to lawyers. There are two actions: one in which the Law Society of BC is the petitioner, and another, parallel action, in which the Federation is the petitioner. The litigation is managed by the Federation money laundering litigation committee. That committee reports to and gets its instructions for the Federation lawsuit from the Federation Executive. Instructions for the BC action come from the Benchers. Jack Giles, QC is counsel for the Law Society of BC, Joe Wood, QC is counsel for the Federation. Mr. Giles is retiring and proposes to step down as counsel and from the Federation committee. He proposes that Dylana Bloor take his place because she has been involved on the file from the outset. If more senior advice or litigation advice is required, George McIntosh, QC is available.

Mr. Giles confirmed that Ms. Bloor had worked with him on the case from the beginning in 2001, and he commended her to the Benchers. He said it was essential that Mr. Everett remain on the Federation committee and remain the conduit for information between counsel and the Benchers because he has been on the committee from the outset and has a full and complete understanding of the issues. Mr. Giles said the case was by far the most important he had been involved in during his career because it goes to the maintenance of individual freedom, which is impossible without lawyers who are independent from the state. He emphasized that this is not a lawyers' issue, as had been suggested by a past Minister of Justice, but a public issue. Mr. Giles provided a brief, confidential account of the status of the matter.

Mr. McDiarmid asked if Mr. Giles had heard of any Canadian government making a complaint to a Law Society about money laundering.

Mr. Giles said he had not, and the government's own evidence does not point to a single case of a lawyer unwittingly participating in money laundering, which is the purported problem they seek to

address with the legislation. The only examples offered are of lawyers who knowingly participated and were therefore engaged in criminal activity themselves, which is unfortunate but inevitable, and, most importantly, capable of being addressed using existing laws without harm to the principles of confidentiality and privilege.

Mr. McDiarmid thanked Mr. Giles for his work on behalf of the Law Society and the people of British Columbia, and presented him with a small token of appreciation.

14. UPDATE ON CLAIMS AND RECOVERIES IN THE WIRICK MATTER

This matter was discussed *in camera* .

Mr. Zacks noted that this would be Ms. Cummings' last report to the Benchers before leaving the Law Society. He noted that the Benchers had been thanking her every month for her work on the Wirick matter, but in fact the lawyers of BC owed her a debt of gratitude.

15. DISCUSSION OF BENCHER CONCERNS

This matter was discussed *in camera* .

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