

Friday, June 16, 2000

The Honourable Andrew Petter
Attorney General and Minister Responsible for Human Rights
PO Box 9044
Victoria BC V8V 1X4

Dear Minister:

Please handle in extreme confidence.
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Re: Affordable Justice™

I have been in contact with the Law Society of British Columbia with a project which now appears to require your intervention.

In essence, I have developed a non-profit law firm concept and am unable to implement it fully without changes to the Legal Profession Act.

I wrote as follows to the Law Society in October of last year:

The Interpretation Act defines as follows:

" "corporation" means an incorporated association, company, society, municipality or other incorporated body, where and however incorporated, and includes a corporation sole other than Her Majesty or the Lieutenant Governor" .

Part 9 of the Legal Profession Act does not define "law corporation" but s. 82 refers to the recognition by the Executive Director of the Law Society of British Columbia of Company Act corporations.

Part 9 of the Law Society Rules, Rule 9-5 and 9-6 also refer to the Company Act. Then, Rule 9-10 refers to a "company" instead of a "law corporation." The Company Act defines as follows:

" "company" means a company incorporated or

continued under this Act, and includes an existing company and an amalgamated company."

The Society Act speaks of "incorporation" when referring to registration of societies but also defines as follows:

"society" means a society incorporated under this Act, and includes an existing society".

Several significant parts of the Company Act apply to societies incorporated under the Society Act. By way of example, section 35 of the Society Act says that:

"Sections 75 to 99 of the Company Act apply to a society."

Or section 71 of the Society Act:

"Subject to subsection (2) and except as otherwise provided in this Act, Part 9 of the Company Act applies to societies and extra-provincial societies."

It would seem, from a reading of the Legal Profession Act and the Rules, that the intent was not to exclude non profits *per se* (i.e. societies under the Society Act). To wit, if the Legal Profession Act was completely silent on the definition of a "law corporation", one could fully rely on the Interpretation Act to conclude that non-profits can be certified under Part 9 of the Rules.

However, given the specific references to the Company Act in s. 82, it would appear that by interpretation, the legislator meant to restrict the certification of non-Company Act law corporations. In addition, section 82 of the Act refers to "voting shares."

Perhaps your reading is different in which case please confirm and I will promptly incorporate under the

Society Act and seek certification under Part 9 of the Rules. There is an (weak) argument to be made that the intent was not to restrict the certification of Society Act law corporations given the Interpretation Act definition.

Any suggestions where to go from here? Can I get some kind of dispensation? At the very least, how do I get the ball rolling for a change in the Act? I suspect my chances in that regards are better if I address my request directly to the AG, who one would anticipate would foster the availability of legal services on a non-profit structure basis.

An officer of the Law Society's officer wrote back that "if you want to get the (Legal Profession) Act changed, the AG is the person who would have the power to do that." I responded: "I know that but do you think the benchers would support the amendment?" The officer wrote back: "I don't know. I think you'd have to make the case that what you want to do cannot be done using the current rules regarding "law corporation.""

I do not believe that to be preferred. A for-profit law corporation with a cost-recovery foundation is a contradiction in terms and would confuse the clients who would be greatly attracted to a non-profit corporate structure. Nor am I amenable to a firm which is dependent on my control in providing cost-recovery legal services.

I am seeking the establishment of a permanent institution, independent of the personal financial aspirations of the lawyers who work there. This can only be established through a non-profit wherein the cost-recovery characteristic is institutionalized.

For the record, and confidentially, you should know that while I wait for legislative changes, I have been "experimenting" with a cost-recovery concept. For example, my rates are now \$75 an hour (soon to be \$80 or \$85 - I had not properly factored in bad debts). The response has been absolutely extraordinary. Provided only that the quality of legal services is not an issue, my experience is that this concept is unavoidably attractive. I have been obliged to decline approximately two retainers a week for over a year now because I simply cannot handle the workload. I have further been obliged to take the extraordinary step of

reducing all marketing to a bare minimum.

I seek your support and guidance in amending the Legal Professions Act. I anticipate that the Law Society will have some legitimate concerns, all of which I am confident can be addressed on a timely basis.

In closing, I am amenable to suggesting certain changes to the Act to achieve my purpose but legislative drafting is not my *forte*. I believe it may be more fruitful for me to set out the situation, as I have done above and on the attached, and defer to your experts and those of the Law Society to achieve the desired results.

Sincerely,