

## **B.C. plans to expand jurisdiction of notaries** **Lawyers Weekly online and print (p.1 and 28) Nov. 26, 2010 issue**

Jurisdictional concerns are brewing between B.C.'s notaries and members of the legal profession as the province proposes changes to the Legal Profession Act and the Notaries Act.

Attorney General Mike de Jong told B.C. Law Society (LSBC) benchers Nov. 5 that his government's proposals on notaries can be divided into general governance issues and public interest issues regarding scope and practice.

Bencher Rita Andreone told The Lawyers Weekly that areas of scope are: the preparation of wills where assets don't immediately vest in the beneficiary, probate of estates, incorporation of companies and preparation of routine corporate resolution and the creation of cohabitation agreements or end of marriage agreements.

De Jong said the government will continue to meet with the society and notaries on the issue. Notaries are governed by The Society of Notaries Public of B.C. Notaries in B.C. The notaries website says that notaries in B.C. provide non-contentious legal services.

Executive director Wayne Braid told The Lawyers Weekly notaries are not out to take lawyers' work. "We understand and realize there is a gap out there," he said. "People fall into an area where they can't afford a lawyer or they won't go to a lawyer. We certainly aren't out there to be lawyers. Our interest is in helping people who fall outside of the system."

Currently, B.C. notaries handle issues including business purchase and sales, estate planning, execution and authentication of international documents, real estate transfers, powers of attorney, mediation wills and many other transactions.

In Ontario, the Law Society of Upper Canada (LSUC) has begun a review of the ethical and procedural issues relating to the "unbundling" of legal services, otherwise known as limited legal services or limited legal representation. An LSUC backgrounder says the review will touch on the clarity of the agreement between the lawyer or paralegal and client for limited legal representation, communications between counsel for another party and the client receiving unbundled services and disclosure of the assistance of counsel.

The issues in B.C. are not about unbundling, said Andreone, but about cost effective access to legal services. Changes to scope of work under governing legislation are not new in B.C. The LSBC in October approved recommendations allowing expanded duties for articulated students and a defining of the scope of work to be performed by paralegals.

Bencher Art Vertlieb, chair of the Delivery of Legal Services Task Force, said at the time the move is to provide greater flexibility for the public, not the profession. A request for an amendment to B.C.'s Legal Profession Act has been made to that effect.

Lay bencher Ben Meisner asked de Jong if any consideration had been given to putting both lawyers and notaries under one act of governance. "We've thought about that and when you consider it conceptually, it makes sense," de Jong said. "In terms of protecting the public interest and access to justice, you won't get a philosophical argument from me. Both agencies are charged with protecting the public interest."

However, said Andreone, the ability of notaries to do the work often done by small-town lawyers could create practice problems as well as access to justice problems. "If we take away the bread and butter of lawyers in smaller centres, are we going to make it uneconomic to be there?" Andreone asked de Jong. "Will communities lose lawyers?"

Braid disputes that, noting the LSBC is currently trying to recruit lawyers to go to smaller centres to meet needs. "Lawyers in small towns are already busy," he said.

Chris Axworthy, dean of law at Thompson Rivers University, said notaries often do conveyancing and title work frequently handled by lawyers. But, Axworthy queried de Jong, “how is that different when it comes to incorporating a company? The act of filling out a form does nothing to inform the person if they should be incorporating.”

Indeed, Andreone told *The Lawyers Weekly*, the desire through the proposed changes is to expand public access to legal services, an issue that falls squarely in the LSBC mandate.

Andreone said she doesn't mean to demean notaries in saying there are issues they do not have the training to deal with. She says they may not have the knowledge to point out concerns or problems a client may not have thought of. So, she said, the desire to create greater access may indeed have the opposite effect. She also stressed that the concerns are not about protecting turf but about protecting access to proper service.

de Jong acknowledged there are going to be hiccups in any legislative process around the two Acts as the provincial Liberal Party transitions to a new leader after Premier Gordon Campbell's Nov. 3 announcement that he was stepping down. “I don't know how the transition will change or impair introduction of legislation,” he said.