- *bail applications.* In matters relating to charges of sexual assault or other serious personal violence, to be advised of the outcome of all bail applications.
- *effects of crime.* In matters relating to charges of sexual assault or other serious personal violence, to have the prosecutor make known to the court the full effect of the crime upon them.
- *outcome of trial.* To be advised, on request, of the final outcome of criminal proceedings and of the sentence imposed.
- *notification of release or escape.* To be given the opportunity to request notification of the offender's impending release, or escape, from custody. □

contingency fees

> Law's costly: tak' a pint and 'gree.
>
> Scottish proverb

contingency fees recommended in victoria and new south wales. The legal fees committee ('the committee') of the Law Institute of Victoria has recommended the introduction of a system of contingency fees for Victoria to provide greater accessibility to legal service for members of the public. A Working Party in New South Wales comprising representatives of the Legal Aid Commission, the Law Society, the Attorney-General's Department and the Combined Community Legal Centres Group, has proposed that a Contingent Legal Aid Fund (CLAF) be established in New South Wales. The essence of a contingent fee is that it allows a lawyer to agree with his or her client, or, in the case of the New South Wales' proposals, with a Contingent Legal Aid Fund, that no fees will be charged if the case is lost but that a higher than normal fee based on a percentage of the verdict is payable if the case is successful. This method of charging for legal work is currently illegal in all Australian jurisdictions.

arguments for and against contingency fees. In its Report entitled, 'Funding Litigation The Contingency Fee Option', the Victorian committee deals with the most common arguments made out for and against contingency fees. The arguments in favour are summarised as

- increased access to justice
- simplicity
- more effective recognition and allocation of risk
- greater public satisfaction
- freedom of contract
- encouragement of legal innovation and solicitor effort
- deregulation of the legal profession.

The arguments against are summarised as

- conflict of interests
- increased court awards
- increased and vexatious litigation
- excessive fees
- additional burden for the court system
- negative effect on the image of the legal profession
- problems with implementation, including the treatment of disbursements.

While recognising that there was potential for abuse of a contingency fee system by both the legal profession and litigants, the committee concluded that the potential benefits of such a system outweighed the disadvantages.

contracts to be in writing. The committee recommended that all contingency

fee agreements be in writing and provide for matters set out in a standard form, plain English contract prepared and made available by the Law Institute. The exact way in which those matters should be dealt with should be at the discretion of the parties. The contract should also acknowledge that clients have been informed of their right to obtain independent legal advice on the contract and of their right to have the contract reviewed. A cooling-off period should be provided of five clear business days from the signing of the contract, except in urgent cases where it is not possible.

no maximum percentage fee should be set. After considering arguments in favour of imposing a maximum percentage fee to ensure that solicitors do not make 'windfall' profits, the committee concluded that an arbitrary percentage of any amount recovered would not always produce a fair result. Instead, it was recommended that the Solicitors' Board should be given jurisdiction to supervise contingency fee agreements and have power to vary or set aside the agreement if it is unreasonable or, if at the completion of the case the amount is considered to be unconscionable.

party-party costs should remain the property of the client. Unless the parties specifically agree otherwise, party-party costs should remain the property of the client. As no recommendations were made to change the normal costs rule, which is that the loser pays the winner's party-party costs, consideration was given to how these costs would fit into the contingency fee agreement. The committee preferred not to make any rigid recommendations on this point. Instead, they left it up to the parties to make provision for party-party costs. Examples of ways in which the solicitor and the client could contract on this point were suggested. The solicitor could retain the party-party costs in addition to the contingency fee; the fee could be calculated as a percentage of the sum of the award and the party-party costs or the client could retain the party-party costs and the contingency fee could be calculated solely on the verdict.

disbursements should be a matter of contract between the parties. The committee recommended that payment of disbursements, that is amounts spent on such things as written reports to be used in evidence, court filing fees and barrister's fees, be a matter of contract between the parties. Examples of ways in which disbursements could be treated were given. The solicitor could advance the cost of all disbursements as part of the contincency, and deduct the disbursements from the gross recovery; the client could advance the cost of all disbursements, to be refunded from the recovery or the solicitor could advance the costs of disbursements to be repaid by the client regardless of the result.

no contingency fees in criminal or matrimonial proceedings. The committee's view was that these kinds of cases were not appropriate for contingency fees because of public policy considerations.

new south wales working party. Proposals by a NSW Working Party focused on a Contingent Legal Aid Fund (CLAF). Such a Fund would give those who did not qualify for legal aid an opportunity to commence litigation without incurring the risk of having to pay his or her own costs as well as the costs of the other party if the case was unsuccessful. In return for the removal of this risk, a potential litigant would pay a percentage of any damages recovered as well as any costs recovered from the losing party to the Fund. The Working Party recommended that CLAF should have the following characteristics:

- CLAF should recover a contingency fee being a proportion of awards/settlements in successful

cases established according to a sliding scale.

- It should be administered by a public company representing relevant interests including the Attorney-General of NSW, the Law Society, the Legal Aid Commission, the Law Foundation and Law Consumer Interests.
- It should provide assistance to plaintiff's (including companies and partnerships) and to defendants in limited circumstances.
- It should provide assistance for cases which satisfy a merit test and to applicants who qualify under a means test (annual gross income and liquid assets not to exceed a ceiling in the vicinity of $60,000.
- Initially, CLAF should provide assistance for personal injury cases and proceedings to recover money or property, claims in regard to torts, breaches of contract and commercial disputes.

rationale for CLAF. The Working Party rationalised the establishment of a CLAF by arguing that, despite legal aid, there were many people who did not qualify and who could not afford the costs and the financial risks involved in litigation. They considered that CLAF should be established on a commercial basis and should aim to become self-funding within 5 years. An initial allocation of funds would be required.

other proposals for CLAF. Proposals involving contingent legal aid funds have been considered by the Law Council of Australia and the Queensland Legal Aid Office. The Law Society of Western Australia is also considering similar proposals. None of the Australian States or Territories has legislated to allow contingent fees but indications are that the time may not be too far away when this method of financing litigation will be permitted.

Submissions to the Legal Aid Commission on its CLAF proposals may be sent to

The Chairman
Legal Aid Commission of NSW
PO Box 47
Railway Square
SYDNEY NSW 2000 □

british lawyers face changes

> I could in no way approve of those turbulent and restless characters who, although not summoned by birth or fortune to the control of public affairs, are yet constantly effecting some new reform — in their own heads.
>
> R Descartes, *Discourse*

moves towards reform. At the end of January this year the Lord Chancellor, Lord Mackay, issued three discussion papers, known as Green Papers, which suggested reforms in many areas of legal practice including

- the rights of barristers and solicitors to appear in court
- the legal profession's monopoly on conveyancing and
- the rule against charging contingent fees.

Lawyers and judges were outraged by some of the proposals which they argued were unconstitutional, damaging to small firms and against their clients' interests. After further consultations and some significant modifications to the proposals, final recommendations were made in what is known as a White Paper. The Prime