The Law Society of British Columbia

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BENCHERS' BULLETIN

Keeping BC lawyers and the public informed

And Now for Something Not Completely Different

by Gordon Turriff, QC

AFTER NEARLY EIGHT years as a Bencher, I know one thing for sure: regulating lawyers is not easy. It should be easy because almost all BC lawyers are well-qualified; are more than reasonably competent in the advice they provide and the technical skills they display; and are people of high integrity. But the simple fact is that it's not easy to regulate lawyers because the very few who are not good lawyers or good people are often very publicly rotten. So the hard part about regulating lawyers is ensuring that the way we deal with the very few bad ones doesn't undermine public confidence in a regulatory regime that, overall, works very well in the public interest.

I know that our current regulatory regime works very well overall because for eight years I've been helping to discharge the Law Society's regulatory responsibilities. We aren't people looking in from the outside, spotting a few instances where, as regulators, we could have done better. We actually make the hard decisions about whether to admit as lawyers people whose lives have been a lot more complicated than ours, but who are capable nonetheless of contributing to the public welfare by applying their knowledge and skill in the service of clients day by day. We actually weed out lawyers who can't meet our competency standards; and we actually disbar or otherwise punish lawyers who don't follow the rules that we, as Benchers, make to protect clients and other people.

Why might public confidence in regulation of lawyers by lawyers be undermined? Because sometimes we admit people whose pasts should have revealed to us that they would not be temperamentally or otherwise suited for the legal profession; because our practice standards might be more rigorously enforced, even though it is indubitably right to say that most clients are well-served by their lawyers; and because sometimes we are too slow in moving against alleged rule-breakers, when behaviour ultimately found to be worthy of sanction might be repeated before the sanction for the initial conduct is applied.

As I have been saying in my public speeches throughout BC and in Australia, we want to be better regulators. We want to hear how we might improve. We will listen and, where the public interest calls for improvement, we will get better or we will say why a higher value requires us to continue doing what we do the way we do it, as when we must follow the rules of natural justice in our discipline proceedings.

There is no incentive for Benchers not to do their jobs as regulators as well as they can. They're volunteers. They always act in good faith. Why would they offer their services with the intention of doing poor work? Why would they do poor work when they know they run the risk of public censure? Since January 1, 2002, I have had the privilege of serving as a Bencher with a fine group of fellow Benchers and I have had the advantage of support from a fine staff of Law Society employees. Everyone has consistently made service in the public interest their priority. You won't find better people in the community.

We will listen and, where the public interest calls for improvement, we will get better or we will say why a higher value requires us to continue doing what we do the way we do it ...

If I had another eight years? (You can imagine the stare I'll get when my wife, Ellen Gerber, reads that sentence!) If I had even just one more year, I would create a Law Society public education department

BENCHERS' BULLETIN

The *Benchers' Bulletin* and related newsletters are published by the Law Society of British Columbia to update BC lawyers and articled students on policy and regulatory decisions of the Benchers, on committee and task force work and on Law Society programs and activities. BC lawyers are responsible for reading these publications to ensure they are aware of current standards, policies and guidelines.

Suggestions on improvements to the *Bulletin* are always welcome — please contact the editor. Additional subscriptions to Law Society newsletters may be ordered at a cost of $50 (plus GST) per year by contacting the subscriptions assistant at communications@lsbc.org. To review current and archived issues of the *Bulletin* online, see "Publications & Forms/Newsletters" at lawsociety.bc.ca.

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and a more refined communications policy; I'd subject the articling program and PLTC to a new critical review; I'd create separate classes of "prosecutorial" and adjudicative Benchers; I'd explore the particular ethical problems in-house counsel face and I'd create a subset of rules of professional conduct that address their particular employment circumstances; I'd ensure that the Benchers, not Law Society members, determine what annual fee is needed for the protection of the public interest; I'd delve into interesting independence questions that I think arise from the Law Society providing liability insurance coverage for lawyers; I'd promote the enhancement of the role played by the Ombudsperson as a recommendatory — and *only* a recommendatory — overseer of the Law Society's regulatory work; I'd arrange to send the Federation of Law Societies of Canada four or five times the money we send now, as a way of ensuring that regulators of lawyers in every Canadian province and territory have the strongest possible voice in dealing with governments who just don't seem to understand that the rule of law, in *all* its aspects, must not be compromised; and I'd send to the pillory any lawyer who described independence of lawyers as a gift of the Legislature, or who said that regulation of lawyers by lawyers is a privilege!

So what I might do, given another year, would be to make changes that I think are important, but that doesn't mean that the Benchers' regulatory work is wanting in any fundamental way.

So what I might do, given another year, would be to make changes that I think are important, but that doesn't mean that the Benchers' regulatory work is wanting in any fundamental way. Improvement is good. But change for change's sake will not serve the public interest, particularly when the change is promoted by ill-informed critics on a consumerism bandwagon, like the bandwagons governments have promoted in England and Australia. As far as regulation is concerned, British Columbians don't need something completely different.

It will be for you to judge how well I have done my work as Law Society President. It will be for Ellen to welcome me back to ordinary life. She has tolerated me magnificently in a topsy turvy year.❖

Legal Independence: It's Your Right program launches

THE LAW SOCIETY and the Justice Education Society released the new "docu-fiction" video, *Legal Independence: It's Your Right*, to high schools in BC.

More than 450 high school law, social studies, and civics teachers have received this DVD and the accompanying teacher's guide to educate students about lawyer and judicial independence. The video features three high school students challenging a fictitious law, the "Youth Gathering Act," which makes it illegal for a group of three or more youth to gather in public after 6 pm.

Windsor Secondary School in North Vancouver was one of the first high schools to put this educational material into practice. Law 12 teacher and vice-principal, Greg Hockley, taught a one-hour lesson using the DVD and adapting learning activities from the teacher's guide. The students were actively engaged in watching the video, discussing the concepts, and participating in the learning activities.

Global TV News reporter, John Daly, was on hand to videotape and interview this Law 12 class. Students commented that they could relate to the video's Youth Gathering Act case, which helped them to understand the importance of the rule of law in Canada's justice system and the independence of its judges and lawyers.

To view the 10-minute docu-fiction video online, visit justiceeducation.ca.❖

With a little help from your friends

by Timothy E. McGee

I RECENTLY ATTENDED two award ceremonies where BC lawyers were recognized for their outstanding achievement and service to others. Art Vertlieb, QC and Gerry McHale, QC were honoured as the 2009 recipients of the CBA's Georges A. Goyer, QC Memorial Award and Kathryn Berge, QC and Brenda Edwards received this year's Women Lawyers Forum awards.

In accepting their awards, each of the recipients paid tribute to individuals and organizations that had helped them along the way; a mentor who helped set priorities, a boss who made room for mistakes, an organization that provided a forum to explore ideas, an opposing counsel who refused to take advantage of a situation, and family and friends who were there through thick and thin. While each honoree had a distinct story to tell, one message was common to all: whatever mistakes I have made are mine, and whatever success I have I share with others.

From my perspective, these stories highlight not only the impressive modesty of the award winners, but also the value of teamwork in everything we do. I believe we are part of a team the moment we connect with someone else with a common purpose. Examples of teamwork abound in our profession, including the relationship between lawyer and client, articling student and principal, and partner and associate. Others may be less obvious, such as the CLE volunteer and the course participants, the legal assistant and the IT help desk, the Law Society practice advisor and an enquiring member, the LAP volunteer and a troubled lawyer, or the babysitter who comes on short notice so you can stay late to close an important transaction or prepare for court in the morning.

I believe greater awareness and first-hand experience among lawyers of the benefits of mentoring will spawn a generation of new lawyers who view this form of teamwork as an indispensable tool in pursuing a successful career.

The legal profession is known as a helping profession. Most often this is meant in the context of lawyers helping their clients. But as these recent award winners demonstrate, professional achievement and personal success often means drawing on support and guidance from a wide range of sources. Or, to put it another way, to know and appreciate the value of teamwork.

Mentoring is a form of teamwork, and it is emerging as one of the most effective and yet most underutilized tools for the personal and professional development of lawyers around the world. Mentoring and its close relative, coaching, are well ingrained and widely utilized in the business world with considerable success. I believe greater awareness and first-hand experience among lawyers of the benefits of mentoring will spawn a generation of new lawyers who view this form of teamwork as an indispensable tool in pursuing a successful career.

The Law Society is actively involved in raising the profile of mentoring in our profession and encouraging its use. Effective January 1, 2010 the Society will recognize mentoring for Continuing Professional Development credit, and we will soon be publishing guidelines and suggestions for effective mentoring. In conjunction with the CBA, BC Branch we are also launching an online mentoring registry that will help potential mentors and mentees connect to each other.

For more information on this topic, see new Rule 3-18.31 in the enclosed *Member's Manual* amendment package, or download the "Report of the Lawyer Education Advisory Committee – Proposed Program for Accredited Mentoring" in the Publications & Forms / Reports section of the Law Society's website at lawsociety.bc.ca. And we're always interested in your feedback; feel free to contact Alan Treleaven, Director, Education & Practice, at 604-605-5354 or atreleaven@lsbc.org. ❖

Bencher election, referenda results

THE 2010-2011 BENCHER election results are in: five Benchers were elected for the first time (one by acclamation) and 17 were re-elected (four by acclamation).

Members had previously elected the following Benchers as President, First Vice-President and Second Vice-President, respectively, for 2010:

- **G. Glen Ridgway**, QC (President and Bencher for Nanaimo)
- **Gavin H.G. Hume**, QC (First Vice-President and Bencher for Vancouver)
- **Bruce A. LeRose**, QC (Second Vice-President and Bencher for Kootenay)

Ridgway, Hume and LeRose continue as Benchers for their respective districts by virtue of their executive office.

President Gordon Turriff, QC congratulates the elected and re-elected Benchers, and thanks all those who stood for election. Turriff also acknowledges the dedication of the Benchers who will be stepping down at the end of this year, in particular Bill Jackson, Terry La Liberté, QC, Jim Vilvang, QC, David Zacks, QC, and Appointed Benchers Patrick Kelly and Dr. Maelor Vallance — who become Life Benchers on January 1, 2010 — for their many years of dedicated and effective Bencher service.

For full election results, go to About the Law Society / Benchers on the Law Society website.

REFERENDA

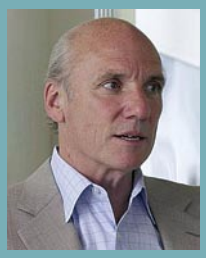
November 16 was also a referenda day. Members were asked to vote on two questions that would authorize the Benchers to amend the Law Society Rules:

1. to clarify the term of office of appointed Benchers – the members voted 96% in favour; and
2. to apply Bencher term limits more fairly – the members voted 92% in favour.

For the full referenda questions, see the October 8, 2009 Notice to the Profession in the Publications & Forms section of the Society's website.❖

Your new Benchers


Patricia Bond


E. David Crossin, QC


Lee Ongman


Alan M. Ross


Catherine A. Sas, QC

Benchers elected on November 16 for the 2010-2011 term:

District No. 1 Vancouver

Rita C. Andreone
Joost Blom, QC
Patricia Bond
Robert C. Brun, QC
E. David Crossin, QC
Leon Getz, QC
David Mossop, QC
Thelma O'Grady
Alan M. Ross
Catherine A. Sas, QC
Herman Van Ommen
Art Vertlieb, QC

District No. 2 Victoria

Kathryn A. Berge, QC
Richard N. Stewart, QC

District No. 4 Westminster

Carol W. Hickman
Jan Lindsay
David M. Renwick, QC

District No. 6 Okanagan

Marguerite (Meg) Shaw, QC

District No. 7 Cariboo

Lee Ongman
Ronald S. Tindale.

District No. 8 Prince Rupert

Suzette J. Narbonne.

District No. 9 Kamloops

Kenneth M. Walker

Glen Ridgway, QC

"A MAN FOR ALL SEASONS"

by Bruce LeRose, QC

ANYONE WHO HAS ever been to a call ceremony in the Supreme Court of British Columbia will have heard words of wisdom imparted from either the presiding Judge or the representative of the Law Society about the importance of "giving back" by way of service to your profession and your community. For the year 2010, at least, our new President, Glen Ridgway, will simply have to hand out his resumé. It is perhaps the best example of selfless contribution to community and profession that you will ever come across.

Our new President's penchant for service is a reflection of his outgoing and gregarious personality. He has absolutely no hesitation introducing himself to any stranger, regardless of status, and within minutes he will make that stranger feel like they have been friends for life. His infectious laughter and boundless knowledge of trivia disarms anyone he comes in contact with, not to mention that once you have met him, he will never forget who you are, where you come from, or what your name is. This big personality will make Glen Ridgway the perfect individual to carry the message of the Law Society forward as we start the second decade of the 21st century.

He is well known throughout the province, but particularly on the Island, for his common touch. He is always fair, frank and forthright in his dealings but never shy to get into Court and advocate strongly for his clients' interests.

Glen's beginnings started in the Province of Saskatchewan. He was born in Langenburg, Saskatchewan, on September 14,

1947 and spent all of his formative years in Foam Lake, Saskatchewan. He graduated from Yorkton Collegiate Institute in 1965 and received his BA (History) from the University of Saskatchewan in 1968. It was in 1968 that Glen felt the lure of the West Coast and moved to Vancouver to obtain his LLB from the University of British Columbia in 1971.

No matter what the topics of conversation are, undoubtedly Glen will somehow raise the names of two of his favourite Canadians, Brian Mulroney and Don Cherry. He's prepared to advocate that George W. Bush did some good things. Pierre Trudeau used to be regularly mentioned (for different reasons), but Glen has finally recognized it is time to move on. Not to be too one-sided, Glen confirms he likes Bill Clinton and "Barry" Obama.

During his law school days, Glen picked up the nickname "Tex." You might think that his law school buddies gave him this "handle" because of his prairie farming roots, but the fact is that Glen hardly ever set foot on a farm. His father was a school principal, so he grew up in as urban a setting as one could in Foam Lake. One of his law school classmates, a former President of the Law Society, Bill Everett, QC, explained that the reason they called him Tex was because he always wore cowboy boots to class. In the late 60s, it was unusual to see such foot apparel walking around Point Grey. The name stuck and he is still commonly referred to as Tex, although he has warned the Benchers for 2010 that he only wants to be addressed as "Mr. President, Sir."

Like so many others, Glen chose to leave Saskatchewan and practise law in BC, but there always remains an extraordinary connection to the province of their birth. More so than any other province, perhaps on a par with Newfoundland, you will hear these colleagues talk cheerfully and longingly about their Saskatchewan. Glen is no exception and wears his "Rider Pride" on his sleeve. Just last year he made a pilgrimage back to Foam Lake (what's left of it) and toured the Province of Saskatchewan, all the while following the Saskatchewan Roughriders to places like Winnipeg and Edmonton.

Glen articled with the law firm of Lauder and Matthews in Victoria in 1971-72 and quickly realized that he was really a small town boy at heart, so he settled in Duncan in 1972 where he continues to practise to this day with the firm of Ridgway & Company. On January 11, 1974 Glen married the love of his life, Carole, and they had three children, two boys and a girl.

To say that raising a young family, building a law practice and being actively involved in his community over the next 30 years was a busy time for our new President, would be the understatement of the century. He was a minor hockey volunteer; for two decades a member of North Cowichan municipal council (during which time, for much of his tenure, he represented North Cowichan at the Cowichan Valley Regional District board table); he has been a member of the Duncan Rotary Club for over 20 years. He golfs regularly (and sometimes reasonably well) as a member of the Cowichan Valley Golf Club. He is active in his church. He is always somehow involved and out in the community.

On top of all this, Glen manages to run a very successful law practice and has become a highly regarded litigator. He is well known throughout the province, but particularly on the Island, for his common touch. He is always fair, frank and forthright in his dealings but never shy to get into Court and advocate strongly for his clients' interests.

Many of our colleagues will remember Glen as a frequent contributor to the "Grumbles" section of the *Advocate*. He is always entertaining, and not afraid to be sometimes provocative. No matter what the topics of conversation are, undoubtedly Glen will somehow raise the names of two of his favourite Canadians, Brian Mulroney and Don Cherry. He's prepared to advocate that George W. Bush did some good things. Pierre Trudeau used to be regularly mentioned (for different reasons), but Glen has finally recognized it is time to move on. Not to be too one-sided, Glen confirms he likes Bill Clinton and "Barry" Obama.

Glen's partners recount how, after any winter snow storm, Glen wonders out loud if Mr. Bull or Mr. Housser, like he, are at the office on a Sunday morning, shovelling the snow off the sidewalks and the parking lot after a Saturday evening storm. When a person calls the office seeking legal assistance and needs to speak to a lawyer, when all others are too busy Glen seems to always find the time, and energy, to give advice. As a lawyer, he is bright and an extremely quick study. He has the ability to take the most complex set of facts and determine the few essential points or issues in any case.

In the Fall of 2004, finally achieving the empty nest category, Glen and Carole fulfilled a long-standing dream and took a lengthy tour of Europe, for which Glen is eternally grateful. Upon their return, Carole became ill and passed away in the Spring of 2005. Glen is an intensely private person, and the loss of Carole required him to regroup and start over again, and although Carole is never far from his heart, it is clear that he has picked up the pieces and is moving on with the next phase of his life. In 2008 he became a grandfather, and in early 2009 he met Kathryn Oliphant, who is a loving and caring partner with the same outgoing personality as Glen. The only problem with this relationship is that she is a better golfer than he is.

His inherent charm, hard work ethic and genuine concern for everyone he meets make Glen Ridgway the ideal leader of the Law Society in 2010.

Glen has been the Bencher for the North Island since 2002. He has chaired virtually every committee at the Law Society and has sat on the Executive Committee for five years. He is very well liked by all of his colleagues at the Bencher table and by Law Society staff. His inherent charm, hard work ethic and genuine concern for everyone he meets make Glen Ridgway the ideal leader of the Law Society in 2010. Buckle your seat belts; it should be a terrific ride.❖




Media and Law Workshop

The 13th annual Media and Law Workshop was held on November 16 at the Law Courts Inn in Vancouver. Co-hosted by the Law Society and the Jack Webster Foundation, and moderated by former Law Society President Anna Fung, QC, this year's event was designed to be especially relevant to Chinese-language media outlets. Media lawyers David F. Sutherland and Harvey Delaney covered topics such as publication bans, contempt of court and defamation. Bonnie Teng, who is both a lawyer and a radio and television broadcaster, acted as a resource and language specialist for the event.

Chinese-language reporters and assignment editors from AM 1320, Fairchild Radio and Fairchild TV, Global Chinese Press, Ming Pao, Omni TV, Sing Tao and World Journal participated in the workshop. Here is a sample of their comments:

"The workshop was very helpful. We briefed the summary to our whole newsroom and had a very good discussion on the topics. Thank you very much for providing us the educational opportunity."

"It was so nice to have the opportunity to listen to the professionals' views. I host a Mandarin radio phone-in show and my show will share some knowledge and information of law with our listeners."

"The speakers provided me with a lot of information regarding libel and slander. I'd like to thank the Law Society of BC (and the Jack Webster Foundation) for organizing such a meaningful workshop for Chinese media. I hope a similar workshop can take place in the near future."

The workshop is an important opportunity for the Law Society to pursue its strategic goal of educating the public about the law and the legal profession by encouraging fair and accurate reporting on these topics. The next workshop is being organized for the late spring of 2010. Visit the Law Society website for updates.

Thanks to Vancouver law firm Fasken Martineau LLP for donating 25 Chinese-English legal dictionaries to the Media and Law Workshop. The author of the dictionary, H.C. Miu, has been a practising barrister in Hong Kong since 1963. At the age of 89, he undertook the task of producing a concise English-Chinese law dictionary for all to use. His son, K.C. Miu, is an associate at Fasken Martineau, and attended the workshop as an honoured guest.

Significant interest in business case for retaining women in private practice

THE LAW SOCIETY'S *Business Case for Retaining and Advancing Women Lawyers in Private Practice,* prepared by the Retention of Women in Law Task Force, has garnered significant interest from both the public and the profession. Since its release in July 2009, staff and task force members have been speaking to both mainstream and legal media outlets about the importance of retaining women in the profession.

The Law Society has also been promoting the business case to various legal organizations, with task force members speaking to a legal professional development network, managing partners, groups of lawyers in firms and CBA sections.

The business case explains the competitive advantages that law firms can realize by retaining women lawyers. It also includes resources and best practices for firms to use to create solutions that work for them. While some women leave private practice because of family and parenting responsibilities, research shows that women also leave when they face unintentional obstacles to advancement, such as lack of access to networks and business development opportunities, and lack of mentors. Firms have the opportunity to develop strategies to overcome these obstacles and retain and advance women lawyers, which is good for the public, good for the profession and good for business.

If you are interested in hosting a business case presentation at your firm or event, email communications@lsbc.org. To download the business case, go to "Publications & Forms / Committee & Task Force Reports" at lawsociety.bc.ca.

BERGE RECEIVES CBA WOMEN LAWYERS FORUM AWARD

Kathryn Berge, QC, Chair of the Retention of Women in Law Task Force, received the CBABC Women Lawyers Forum Award of Excellence, in recognition of her distinguished career and outstanding contributions to women in the legal profession as a change agent, leader and mentor. The award was presented at the WLF awards luncheon on November 17, 2009.

In accepting the award, Berge acknowledged the contributions of CBA staff, Law Society staff and Benchers, lawyers and staff at her firm, other colleagues and her family.

"Beyond this, this award has caused me to reflect upon the fundamental reason that this concept of working towards equality is so powerful for me — for us. I believe that it is because equal treatment and opportunity is the necessary precondition to effective service to others; service both to our clients and to society at large. With few exceptions, this desire for service to others is the reason that we go into law and it is the engine that keeps us working at the many challenging tasks that preoccupy us in such an engrossing way," she said.

The Award, first presented in 2008, celebrates the accomplishments of a woman who has succeeded in breaking new ground for women in the legal profession in BC. It recognizes "an exceptional woman who has taken risks, fostered change and ultimately opened doors for women lawyers."❖

The CBABC Women Lawyers Forum Award of Excellence was presented at the WLF awards luncheon on November 17, 2009. Pictured left to right: Kathryn Berge, QC, Carole Taylor, OC and fellow award recipient Brenda Edwards.

In the balance: protecting personal records in an investigation

by Doug Munro, Staff Lawyer

THE LAW SOCIETY has a range of powers to investigate potential wrongdoing by lawyers. This includes the authority to copy records. Before computers, most of the records would have been on paper. When the Society's investigators attended at an office, they would sift through the paper files and separate potentially relevant records from irrelevant records. Copies of the potentially relevant records would then be made to preserve the evidence and allow the investigation to proceed.

Computers have changed how lawyers practise law, how records are generated and stored, and how investigations proceed. It is becoming increasingly common to find that information exists only in digital form.

The Mirror Imaging Working Group was created in June 2008 to determine whether the Law Society needed new rules and policies to keep pace with the practice of law in the computer age. In particular, the Working Group was asked to identify how the Society can respect the reasonable expectation of privacy a lawyer during an investigation might have in personal information stored on a computer. On October 14, 2009, the Benchers adopted the Working Group's report, *Forensic Copying of Computer Records by the Law Society*. The report is available on the Society's website; see "Publications & Forms" at lawsociety.bc.ca.

Both statute and case law make it clear that a "record" includes information contained on a digital storage device, and the storage device itself (such as a hard drive). What has also become clear is that there are unintended consequences that can result from the modern definition of a "record"...

Both statute and case law make it clear that a "record" includes information contained on a digital storage device, and the storage device itself (such as a hard drive). What has also become clear is that there are unintended consequences that can result from the modern definition of a "record," and while courts have analogized hard drives to filing cabinets, the two devices store information in fundamentally different ways.

Digital records are stored in bits of data on the storage device and information of all sorts is commingled. In practical terms, copying a digital storage device requires copying both relevant and irrelevant information, including irrelevant personal information. The issue came onto the Society's radar when some lawyers subject to a Rule 4-43 order expressed concern that copying a computer hard drive would also involve copying personal information stored on the hard drive.

In *British Columbia Securities Commission* v. *Branch,* [1995] 2 S.C.R. 3, 1995, the Supreme Court of Canada recognized the unique relationship between regulatory bodies and the individuals they regulate. While the case focused on whether the investigatory functions of the Securities Commission violated sections 7 and 8 of the *Charter,* it established important principles regarding the reasonable expectation of privacy a member of a regulated profession has in records that are subject to inspection by the regulator. The court recognized that "the effective implementation of securities legislation depends on the willingness of those who choose to engage in the securities trade to comply with the defined standards of conduct" (para. 59). The court also expressed the opinion that "persons involved in the business of trading securities do not have a high expectation of privacy with respect to regulatory needs that have been generally expressed in securities legislation. It is widely known and accepted that the industry is well regulated" (para. 58).

While *Branch* was important to the Working Group's analysis, it felt there was an opportunity to modernize the investigative approach to better address the concerns that arise when technology commingles personal information with business records. The *Freedom of Information and Protection of Privacy Act* and the *Legal Profession Act* authorize the Law Society to copy digital records and collect personal information as part of an investigation, but the Benchers believe the public interest is best served by providing clarity through revised rules and policies. It is possible to establish procedures that respect the reasonable expectation of privacy lawyers have in personal information that has been commingled on a computer record. These interests needn't be incompatible, and proper rules and policies can ensure both interests are protected.

The Report contains a series of recommendations designed to achieve this balance. At present the Society is working on the rules and policies recommended in the Report. Some key highlights are sketched out below, but readers are encouraged to read the report for proper context.

The core of the report deals with suggested modifications to the Rule 4-43 investigation process. A Rule 4-43 order can issue when there is a belief a lawyer may have committed a discipline violation. When presented with the order, the lawyer must immediately permit the copying of all records. In many instances a forensic copy of a digital storage device will be required, and the report outlines a process for how to deal with this.

Rule 4-43 orders occur infrequently (approximately 10 times a year), but they are an important part of the regulatory process. The report establishes a process similar to that used in an *Anton Piller* order, but modified to reflect the nature of the relationship between a lawyer and the Law Society. Forensic copies will be made to preserve the best evidence. The investigators will work with the lawyer and his or her counsel to identify acceptable search parameters of the digital record. The forensic copies will be in the possession of the forensic expert, creating a firewall between the Society and the entire contents of the record. If the lawyer and the Society cannot agree on the search parameters, he or she will be able to choose an independent supervising solicitor from a list provided by the Society. The independent supervising solicitor will make decisions regarding the search parameters. The Society will be provided a copy of records culled from the forensic copy, with the irrelevant personal information removed. Should a circumstance arise where the lawyer or the Society believe the independent supervising solicitor has made an incorrect decision regarding the scope of access, an appeal process will exist where a retired judge will adjudicate the dispute on the merits.

[The Working Group] felt there was an opportunity to modernize the investigative approach to better address the concerns that arise when technology commingles personal information with business records.

This process accomplishes several important safeguards. First, it creates a mechanism whereby the computer record is preserved at the point of request. The ease with which digital records can be destroyed makes this essential. Second, placing the forensic copy in the hands of the forensic expert or an independent supervising solicitor reduces the risk that the Society will access irrelevant personal information. Finally, the process allows for a mechanism to review decisions about access on their merit.

The Benchers also adopted recommendations regarding retention of the forensic copy, dealing with encrypted records, and an obligation to preserve records under a Rule 4-43 order. The Benchers recognize that there is merit in the Society evaluating the Act and Rules to determine whether other matters require clarification in light of developments in computer technology.

The final form of the rules and policies will be the subject of future Law Society communications.❖

In Brief

AWARD FOR LEGAL JOURNALISM

Peter McKnight is the winner of this year's Jack Webster Award for Excellence in Legal Journalism.

McKnight is a former lawyer and parole officer. He is currently a columnist with the *Vancouver Sun*, a member of that newspaper's editorial team, and an adjunct professor of criminology at Simon Fraser University.

His winning article, "Governing through crime," explored how new federal crime legislation could limit Canadians' freedom from government intervention. McKnight also received the award in 2007.

The Law Society sponsors the award, which honours journalists for stories about legal issues, the administration of justice or the legal profession in BC. It does not play a role in the adjudication.

JUDICIAL APPOINTMENTS

The Honourable **Brian D. MacKenzie**, a Judge of the Provincial Court of BC in Victoria, has been appointed a Judge of the Supreme Court of BC in Nanaimo. He replaces Mr. Justice A.F. Wilson who resigned in January 2009.

The Honourable **Anthony J. Saunders**, formerly a partner with Guild Yule LLP in Vancouver, has been appointed a Judge of the Supreme Court of BC. He replaces Mr. Justice I.C. Meiklem, who elected to become supernumerary judge as of December 2008.

LAW FOUNDATION GRADUATE FELLOWSHIPS

Value: Up to five (awards of $13,750 each (subject to change).

Closing date: January 8, 2010.

Field of study / eligibility: Full-time graduate studies in law or a law-related area. Applicants must either be residents of BC; graduates of a BC law school; or members of the provincial Bar.

Where tenable: Recognized universities in Canada, the U.S. or abroad. Note: The Fellowship is not available for the graduate programs of the Faculties of Law at the University of British Columbia and the University of Victoria; the Law Foundation makes separate grants to the Graduate Fellowship programs at these universities.

Applications: Visit www.lawfoundationbc.org or contact the Law Foundation at 1340 – 605 Robson Street, Vancouver, BC V6B 5J3 / Tel. 604-688-2337 / Email lfbc@tlfbc.org for an application form or further information.❖

The *Personal Information Protection Act* and you

by Barbara Buchanan, Practice Advisor

YOU ARE NO doubt abundantly familiar with the duty of confidentiality owed to your clients as set out in Chapter 5 of the *Professional Conduct Handbook*, but do you know how the *Personal Information Protection Act* (PIPA) applies to your firm? Has your firm designated a privacy officer? Have you developed a privacy policy? PIPA requires you to do both.

PIPA sets out requirements regarding how organizations, including law firms, collect, use, and disclose "personal information" (a defined term) about individuals. The individuals may be your clients, employees and even your partners. You are required to get consent for collecting, using and disclosing an individual's personal information, except where PIPA excuses consent or if there is deemed consent, as provided in the legislation. Your firm is also responsible for protecting all personal information in your custody or under your control.

Two Model Privacy Policies are available on the Law Society's website to help law firms comply with PIPA: see "Privacy Policy for Employees of a Law Firm" for employee personal information and "Privacy Policy" for client information (in the Practice Support / Practice Resources section at lawsociety.bc.ca). The Office of the Information and Privacy Commissioner (OIPC) has also developed materials, including a guide to assist organizations to comply with the legislation (www.oipcbc.org/sector_private/resources/index.htm).

I recently had the opportunity to speak with BC's Information and Privacy Commissioner, David Loukidelis, about PIPA, and he has provided his views about how the legislation applies to law firms.

Barbara Buchanan: Lawyers usually obtain personal information about their clients in the course of their work. Now, with few exceptions, the Law Society's client identification and verification rules require lawyers to identify their clients and, in many cases, to verify identity using independent source documents. Do you have any particular cautions for lawyers about complying with PIPA while staying onside with the Law Society rules?

David Loukidelis: PIPA allows law firms to collect their clients' personal information in the form of copies of identification documents because the Law Society's rules, which have the force of law, require them to do so. At the same time, PIPA's requirement that lawyers take reasonable measures to protect client information from unauthorized access, disclosure or use continue to operate. This means lawyers must take reasonable steps to ensure that identity documents, which can be very valuable to thieves and fraudsters, don't fall into the wrong hands. What is "reasonable" may require a high degree of rigour, depending on the circumstances.

BB: What security measures do you recommend for lawyers who use laptops?

DL: The *Professional Conduct Handbook*, and lawyers' responsibilities to clients more generally, speak to the need for lawyers to protect client information, including personal information, quite apart from PIPA's security measures requirements. If a lawyer must store client personal information on a laptop, or another portable computing or storage device, that information should be encrypted. Modern encryption programs are readily available, even as freeware, and should be the default approach to protecting client personal information on laptops, USB keys and other storage devices. And by encryption, I don't mean four-character passwords. I mean robust encryption, ideally to the level of 256-bit AES standard. There have been too many horror stories in the media in recent years about sensitive personal information being stored on devices without encryption, and then going walkabout because a device is lost or stolen.

BB: What should a law firm do if a lawyer's laptop is stolen?

DL: Once the police are notified, the law firm should immediately take steps to contain the breach. To decide what other immediate steps should be taken, the firm needs to assess risks associated with the breach, including the sensitivity of the information and the foreseeable harm from the breach. A decision as to whether and how individuals affected by the breach are to be notified should be made as soon as possible. "Key Steps in Responding to Privacy Breaches" is our resource publication to help in assessing the appropriate response to a breach and can be downloaded at www.oipc.bc.ca/pdfs/Policy/Key_Steps_Privacy_Breaches(June2008).pdf.

BB: Do you have any suggestions for lawyers who take laptops containing confidential client information across the border into the US or other countries?

DL: US, Canada and other border authorities these days are asserting the right to undertake suspicionless searches of storage devices, including laptops and USB keys. In these cases, encryption won't help, since authorities will force you to give up the keys or have your device seized, with other possible consequences for non-cooperation. I would certainly recommend that lawyers consider whether they need to transport client information, whether privileged, confidential or otherwise, across borders on a portable device. A safer option, from the perspective of lawyers' legislative and other responsibilities, would be to access the necessary information remotely through a VPN or secure Internet connection, once you have arrived at your destination. That way, you avoid carrying sensitive information with you in the first place, yet have easy access to it when you need it.

BB: If a BC law firm is hired by a client residing in Alberta as a result of the firm's website, which privacy legislation applies, PIPA, the Alberta legislation, or both?

DL: We would certainly see this as involving BC legislation, not Alberta, on the basis that the local law firm has collected and used the client personal information here in BC. Having said that, we do run into situations where jurisdiction is not abundantly clear, and for this reason have developed good working relationships with our colleagues in Alberta and

David Loukidelis

David Loukidelis received a Master of Arts degree in medieval English Language and Literature from the University of Edinburgh in 1980. He then earned his law degree from Osgoode Hall in 1984. After he qualified as a BC lawyer in 1985, Loukidelis spent the next year serving as clerk to the late Bertha Wilson, the first woman justice of the Supreme Court of Canada. His job researching and distilling the law for the judge involved, he recalls, a "steep learning curve" under the direction of an intelligent and disciplined mentor. He received his Bachelor of Civil Law from Oxford University in 1987, something he says would not have been possible without a scholarship from the Law Foundation of BC.

Loukidelis returned to Vancouver and became a partner at Young Anderson, a firm specializing in local government law. In 1990, he responded to a newsletter advertisement seeking volunteers to help create an organization dedicated to information rights. Loukidelis became one of the founding members of the BC Freedom of Information and Privacy Association and, in the early 1990s, he co-wrote a position paper called "Information Rights for British Columbia," which contributed to enactment in 1993 of the *Freedom of Information and Protection of Privacy Act*. In 1999, the Legislature appointed Loukidelis as BC's Information and Privacy Commissioner and he is currently serving his second six-year term of office. In his 10 years in the position, he has written hundreds of access-to-information and privacy decisions and reports, covering both the public and private sectors.

federally to cooperate on investigations where necessary.

BB: What should a firm do with resumés, both solicited and unsolicited?

DL: PIPA says that if an organization has used personal information to make a decision directly affecting an individual, it has to retain that information for at least a year after the decision is made. This is so the individual can request access to that information to ensure that it is accurate and complete — PIPA requires organizations to take reasonable measures to ensure that information used to affect someone's interests in this way is accurate and complete. If you have solicited resumés and use them to evaluate potential employees, our view is that you have to keep them for a year. If, however, unsolicited resumés come your way, we have taken the position that, if you do not actually consider these resumés, and have a policy to that effect, you do not have to keep them for a year. This is because you have not used the information they contain to actually make a decision about someone.

BB: Facebook and other social networking websites are much in the news these days. Any thoughts on lawyers using these sites, perhaps with respect to potential employees or in litigation research?

DL: If you don't have consent to indirect collection of personal information, including through social networking sites, you could only use the sites as a source for personal information if you can show that it is reasonable to do so *and* you're only collecting that personal information for the purposes of hiring someone. PIPA does have special rules around employee privacy, including in relation to recruitment, but you would still have to give notice to

prospective employees that you will be using the social networking sites to assess their applications. And I think law firms should ask themselves whether this is the way they want to be perceived by future colleagues or partners.

At the same time, I urge law students and lawyers alike to use common sense when they are posting personal information — including potentially embarrassing photos — to social networking sites. The reality is, once personal information is posted on the Internet, including on a site like Facebook, it is there forever and you lose control over it for all time. It can come back to haunt you, and there have been many recent cases where people have lived to regret what they have posted on a social networking site.

As for litigation research, PIPA permits the collection of personal information about an individual without consent or from a source other than the individual, including from Facebook, if the collection is necessary for purposes of providing legal services to a third party. A law firm should ensure that collection is necessary.

BB: Does anything in PIPA affect solicitor-client privilege?

DL: Solicitor-client privilege is possibly engaged under PIPA when someone makes a request for access to their own personal information in the hands of a law firm or a request as to how their personal information has been used by an organization. However, PIPA fully protects privilege in these cases. It provides that the law firm or other organization to which the request is made is not required to disclose information if it is protected by solicitor-client privilege.

BB: Any comments on managing outsourcing risks?

DL: If a law firm wants to outsource services involving personal information, whether personal information of clients or employees, it is free to do so. The firm remains responsible, however, for the appropriate use, disclosure and protection of that personal information. So law firms should use diligence in selecting service providers and contractually obligate them to use personal information only for providing the services and to take reasonable security measures. In major cases of outsourcing, law firms might consider following up with the service provider to ensure that these contractual obligations are being respected, including the undertaking of inspections or audits in particularly important cases.

BB: What are some common pitfalls that you see for law firms?

DL: One of the challenges we're seeing is in the secure disposal of client records. We've had a number of cases where law firms have simply dumped client files in the garbage, without securely shredding them or otherwise disposing of them. Quite apart from what the Law Society would have to say about such unacceptable practices, insecure disposal of client personal information violates lawyers' privacy obligations under PIPA. A law firm should ensure that all of its employees are aware of the need to consistently follow the law on protecting client information.❖

Milestones in the profession

THE BENCHERS HOSTED a luncheon in Vancouver on November 26 to honour lawyers who are celebrating milestone anniversaries in the profession.

Receiving 50-year certificates unless otherwise noted, were, *front row, left to right:* Anthony K. Wooster, Garde B. Gardom, QC (60 years), Leslie R. Peterson, QC (60 years); *second row:* Harvey J. Grey, QC (60 years), Carl R. Jonsson, Ronald F.T. MacIsaac (60 years), Rudolph Morelli, QC, Brian B. Corbould, QC, Gordon B. Shrum; *back row:* John Douglas Lambert, Alexander C. Robertson, QC, Robert B.M. Hutchison, David A. Shrimpton, Bryan Williams, QC, Robert J. Harvey, QC (60 years).

Also honoured this year, but not pictured: D. Harry Bell-Irving, QC, A. Brian B. Carrothers, QC, William N. King and James H. Noble (60-year certificates); George F. Jones, QC, Herbert M. Loomer, Roy W. Pouss, Alan Douglas Thackray, QC and Robert P. Tinker, QC (50-year certificates).❖

Bencher Art Vertlieb receives Goyer award

Above: Art Vertlieb, QC (right) and Jerry McHale, QC received the Goyer Award at the November 4 Bench & Bar Dinner in Vancouver.

Left: His family was there to see Vertlieb accept the award. Pictured left to right, Dan Vertlieb, Bev Briscoe FCA, Art and Mike Vertlieb.

Bencher **Art Vertlieb**, QC and **Jerry McHale**, QC, Assistant Deputy Minister, Ministry of Attorney General, were the recipients of the CBA's Georges A. Goyer, QC Memorial Award.

A Bencher since 2004, Vertlieb was recognized for his contributions to the legal profession, particularly his founding role with the Lawyers Assistance Program and the Trial Lawyers Association of BC. In addition to sitting on the Law Society's Executive Committee, Vertlieb is chair of the Discipline Committee and Delivery of Legal Services Task Force, and a member of the Independence and Self-Governance Advisory Committee and Civil Justice Reform Task Force.

McHale was recognized for his commitment to alternative dispute resolution, his contributions to jurisprudence, and for his dedication as a public servant. He practised as a lawyer and mediator in family and commercial law before joining the Ministry of Attorney General. He served six years as Director of the Dispute Resolution Office and was a founding board member of the Mediation Development Association of BC, the University of Victoria Institute for Dispute Resolution and the CBA's Alternate Dispute Resolution (Victoria) Section.

In accepting the award, Vertlieb reflected on the values of the legal profession. "Our profession is marked by central values such as honesty, integrity, learning, and commitment. These values must never be compromised in the pursuit of justice. But there is one core value that we do not perhaps articulate enough — that is the core value of respect. Early in my career, I was told that you cannot be a successful lawyer unless you have the respect of your clients, the respect of the Bench, and the respect of your colleagues. In other words — respect for the law and all that it embraces."

Created in 1992, the Goyer Award is an honour awarded by the CBA, BC Branch to recognize exceptional contributions to the legal profession, to jurisprudence, or to the law in British Columbia.

The award was presented at the November 4 Bench & Bar Dinner in Vancouver.❖

PRACTICE TIPS, by Dave Bilinsky, Practice Management Advisor

Paperless concerns ...

♫ We're just leaving from this old world
We're leaving from a land of Fear
Admire this new dawn
We're heading for a new horizon… ♫

Music: Magnani/Smirnoff/Luppi;
Lyrics: Magnani. Recorded by VisionDevine

I HAVE SPOKEN to a number of lawyers lately who have called about taking a law firm paperless. Certainly there is much anxiety exhibited on giving up on paper and practising in a paper-*less* world (there will probably never be a situation where we fully abandon paper). Yet lawyers (and staff) express many misapprehensions in going paperless, part of which is rooted in a concern that *somewhere* the Law Society requires firms to keep paper files. There is, of course, no such requirement in the *Legal Profession Act*, Law Society Rules or the *Professional Conduct Handbook*. Indeed, there is a specific provision in the Rules that all accounting records can be kept in electronic form, so long as a paper copy can be produced on demand. The typical concerns that we hear can be summed up as follows:

- There is no paper trail.
- Computers can go down.
- No backup exists.
- You can be hacked.
- Data obsolescence is a factor.
- Media degradation is a factor.
- You can lose an e-document.
- There is no structure to the documents on the system.
- Documents can be sent outside the office easily.
- Changes are required to policies, procedures and work routines.
- There will be increased time costs, including costs of running dual systems.
- There is the possibility of job elimination or reassignment.
- A lack of training could lead to a loss of face in not knowing how to work the new system.
- The firm would face increased costs of transferring a file.
- What about all the transition issues?

- How do we go from here to there?
- What about increased hardware and software costs?
- What do we do with the original documents?

The requirement in any paperless office would be that the office could produce a full and complete record of the client's file (and render this to paper, CD-ROM, DVD or flash drive, if required). So long as you have a complete record of the file (which is organized in a manner that the whole file could be reviewed and produced if necessary), which would necessarily include documenting all transactions and the client instructions in relation thereto, it should not matter on what type of *media* that file is stored. The important consideration is that the file is well-organized, it is in a common format that the Law Society could review and reflects the level of documentation expected in a well-run law office, it should not matter on what media — paper or electronic — the file is stored.

Of course, there are also many benefits of going paperless:

- You can search the entire network — and file — easily and fast, particularly compared to paper files.
- You can reuse documents easily – and thereby craft a precedent library.
- Document management software imposes greater organization than in a paper-based office where documents can be left in piles on desks, cabinets and floors.
- The cost of electronic storage is *much* less as compared to paper.
- Paperless offices enable remote access/telecommuting for full and part-time lawyers and staff.
- Paperless offices are greener.
- Paperless systems can integrate and share data — thereby saving time and money.
- The cost of handling files can be faster, cheaper and easier.
- Offices are neater.
- There is an increased ability to meet new client needs (Sharepoint extranet portals for example). Indeed at a recent Corporate Counsel meeting, counsel stated that they *preferred* electronic war and closing rooms than to emailing documents around. You can control access and distribution.

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FROM THE ETHICS COMMITTEE

Lawyers as beneficiaries

A COLUMN IN the *Vancouver Sun* (October 13, 2009 by Ian Mulgrew) raises a question about the propriety of a lawyer receiving a bequest from a client in a will prepared by the lawyer for the client.

Chapter 7, Rule 1 of the *Professional Conduct Handbook* prevents a lawyer in British Columbia from acting where the lawyer has an interest in a matter. In the Committee's view, Rule 1 prohibits a lawyer from drafting a will with such a bequest. Rule 1 states:

1. Except as otherwise permitted by the Handbook, a lawyer must not perform any legal services for a client if:

(a) the lawyer has a direct or indirect financial interest in the subject matter of the legal services, or

(b) anyone, including a relative, partner, employer, employee, business associate or friend of the lawyer, has a direct or indirect financial interest that would reasonably be expected to affect the lawyer's professional judgement.

"EXPERT," "EXPERTISE" AND "SPECIALIZING"

The Ethics Committee reminds lawyers that Chapter 14, Rule 18 of the *Professional Conduct Handbook* prohibits the use by lawyers of the term "specialist." Rule 18 states:

18. Unless otherwise authorized by the *Legal Profession Act*, the Rules, or this *Handbook* or by the Benchers, a lawyer must:

(a) not use the title "specialist" or any similar designation suggesting a recognized special status or accreditation in any marketing activity, and

(b) take all reasonable steps to discourage use, in relation to the lawyer by another person, of the title "specialist" or any similar designation suggesting a recognized special status or accreditation in any marketing activity.

The Ethics Committee recently considered whether there is anything inherently improper in the use by lawyers of the terms "expert," "expertise" and "specializing" in marketing materials. In January 1995 the Ethics Committee gave an opinion that use of the word "expert" is equivalent to using "specialist" and was improper. That opinion is now withdrawn.

It was the Committee's view that the use of any of the terms "expert," "expertise" or "specializing" by a lawyer in marketing materials is not inherently objectionable unless the use of such terms is false or misleading or takes place in a context that suggests the lawyer is claiming a special status or accreditation.

In January 1995 the Ethics Committee gave an opinion that use of the word "expert" is equivalent to using "specialist" and was improper. That opinion is now withdrawn.

TESTIMONIALS

Although any express reference to testimonials has now been removed from Chapter 14 of the *Professional Conduct Handbook*, lawyers are still bound by the obligations of Chapter 14, Rule 4 to ensure that marketing materials meet the criteria set out in that rule: Marketing activity undertaken by a lawyer must not be false, inaccurate, unverifiable, misleading or contrary to the best interests of the public.

Where a lawyer uses testimonials in marketing materials, all factual elements referred to in the materials must meet the standards set out in Rule 4, including any facts contained in the testimonial itself. However, it was the Committee's view that it is unnecessary for statements of opinion to meet the criteria of Rule 4, provided the opinion is honestly stated. ❖

Services for members

Practice and ethics advisors

Practice management advice – Contact **David J. (Dave) Bilinsky**, Practice Management Advisor, to discuss practice management issues, with an emphasis on technology, strategic planning, finance, productivity and career satisfaction. Email: daveb@lsbc.org Tel: 604-605-5331 or 1-800-903-5300.

Practice and ethics advice – Contact **Barbara Buchanan**, Practice Advisor, Conduct & Ethics, to discuss professional conduct issues in practice, including questions about client identification and verification, scams, client relationships and lawyer/lawyer relationships. Tel: 604-697-5816 or 1-800-903-5300 Email: advisor@lsbc.org.

Ethics advice – Contact **Jack Olsen**, staff lawyer for the Ethics Committee to discuss ethical issues, interpretation of the *Professional Conduct Handbook* or matters for referral to the committee. Tel: 604-443-5711 or 1-800-903-5300 Email: jolsen@lsbc.org.

All communications with Law Society practice and ethics advisors are strictly confidential, except in cases of trust fund shortages.

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Interlock Member Assistance Program – Confidential counselling and referral services by professional counsellors on a wide range of personal, family and work-related concerns. Services are funded by, but completely independent of, the Law Society and provided at no cost to individual BC lawyers and articled students and their immediate families. Tel: 604-431-8200 or 1-800-663-9099.

◆

Lawyers Assistance Program (LAP) – Confidential peer support, counselling, referrals and interventions for lawyers, their families, support staff and articled students suffering from alcohol or chemical dependencies, stress, depression or other personal problems. Based on the concept of "lawyers helping lawyers," LAP's services are funded by, but completely independent of, the Law Society and provided at no cost to individual lawyers. Tel: 604-685-2171 or 1-888-685-2171.

◆

Equity Ombudsperson – Confidential assistance with the resolution of harassment and discrimination concerns of lawyers, articled students, articling applicants and staff in law firms or other legal workplaces. Contact Equity Ombudsperson, **Anne Bhanu Chopra**: Tel: 604-687-2344 Email: achopra1@novuscom.net.

PRACTICE WATCH, by Barbara Buchanan, Practice Advisor

Changes to cash transaction rule

ON NOVEMBER 13, 2009 the Benchers amended Rule 3-51.1, the cash transaction rule, to accomplish two things. First, to clarify that the refund-in-cash provision applies even if a cash retainer has been received incrementally. Second, to provide a procedure to follow if cash has been received by a lawyer in a situation beyond the lawyer's control that is not permitted by Rule 3-51.1.

If a lawyer has accepted an aggregate amount in cash of $7,500 or more in circumstances permitted under subrule (3.1), the lawyer must make any refund greater than $1,000 out of such money in cash. For more information on handling cash refunds and handling aggregate amounts on cash, see the May and July 2008 Practice Watch columns in the *Benchers' Bulletin*.

Lawyers are accountable for *accepting* cash beyond the permitted limit; however, the Benchers recognized that there are cases where a lawyer may *receive* cash in a circumstance beyond their control. For example, a client or other person could deliver a "personal and confidential" envelope containing cash to a lawyer's office without the lawyer's knowledge, or someone could make a cash deposit directly to a lawyer's bank account simply by having the account information. New subrule (3.3) sets out the procedure for a lawyer to follow in such circumstances.

For the full text of amended Rule 3-51.1, see the December 2009 *Member's Manual* amendment package, enclosed with this mailing.

SCHEMES AND SCAMS

On-line mortgage referral program

A BC lawyer received a telephone call from a person offering him the opportunity to participate in a new system to receive on-line mortgage referrals through a well known Canadian bank. The caller aggressively sought information from the lawyer about his practice. The lawyer was not a customer at that bank so thought it odd that he would receive this call. He contacted the Law Society about his suspicions. The bank informed the Law Society that it does not operate such an on-line referral service.

If you are contacted by a person purporting to represent a financial institution, check with the financial institution independently to find out if the person does represent the lender and that such an on-line mortgage referral system exists. We're not certain a scam was contemplated, but if so, it's probably safe to assume that the lawyer's trust account was the target.

Matrimonial debt collection

The Law Society has learned about a new twist to the phony debt collection scam. Although the specifics may change, a lawyer is contacted (usually by email) by a potential new client from a foreign jurisdiction to collect the balance of money owed by a former spouse in relation to settlement of a family law matter. The lawyer asks for information including court documents and says she will do a conflicts check. The lawyer then quickly receives a large cheque or bank draft in the name of the ex-spouse (either before or after issuing a demand for payment). The client contacts the lawyer again by email and says she understands that the lawyer received the money that she is owed and asks for her money. The financial instruments look real but are either well-made fakes or a cheque has been stolen and the signature forged. If someone is pressuring you to pay out funds quickly, be cautious.

Fraudulent investments

Be on the look-out for a new client (sometimes associated with an existing client), who asks you to provide little in the way of legal services but who wants to pay you to receive money from investors. Some people want to be associated with a lawyer to provide an appearance of legitimacy to their fraudulent schemes, often promising unrealistic returns on investment to people who are invited to place money in trust with a lawyer. Lawyers have a duty to be on guard against becoming a tool to assist these people (*Professional Conduct Handbook*, Chapter 4, Rule 6, footnote 3). While there are many legitimate investment opportunities that do not require a prospectus to be issued or regulatory registration or filings, be mindful that these tools are intended to safeguard investors.

If you are approached by a client to receive money from investors, ask yourself the following:

- Are you being asked to perform any actual legal services?
- How well do you know your client, and how did the client happen to come to you?
- Do you have the expertise to recognize an investment scam?
- Is the client registered as a dealer in the appropriate category under securities legislation? Are there plans to do so?
- Is there a prospectus, an offering memorandum or other disclosure document that explain the investment, its suitability for investors, its management and its risks? Are those documents available to potential investors?
- Are financial statements available? Have they been audited?
- If there is no prospectus, is it clear what exemptions are being relied upon?
- Will investors be separately represented by counsel?
- What will your involvement suggest to possible investors? Do you understand your professional obligations to them in this situation? Will you be able to properly discharge those obligations?
- What kind of security will be issued to the investors?
- What are the conditions on the investors getting their money back or re-selling?
- Do the investors pay a fee now or later?

For more tips to help you recognize and manage the risk of becoming the tool or dupe of an unscrupulous client, see Practice Watch (May, July, October and December 2008, and April, Summer and Fall 2009) in the *Benchers' Bulletin*; Notices to the Profession; and the Insurance/Risk Management section of the Society's

website. Useful information about investment scams, including affinity scams, is also available in Investment Scams: How to Protect Your Money, a new resource developed jointly by the BC and Alberta Securities Commissions (www.investright.org/protect_yourself.aspx).

Insurance risks with uncertified cheques

It has come to the Law Society's attention that some conveyancing lawyers are accepting purchase funds by way of uncertified cheques payable to the lawyer in trust, and then routinely and deliberately paying out from trust before the cheque clears. This is not prudent practice.

Law Society Rule 3-55 requires that a lawyer must at all times maintain sufficient funds on deposit in each pooled or separate trust account to meet the lawyer's obligations with respect to funds held in trust for clients.

Rule 3-56(1.2)(b) provides that no payment from trust funds may be made unless there are sufficient funds held to the credit of the client on whose behalf the funds are to be paid.

It is important to note that insurance will not assist a lawyer facing a trust fund shortfall in these circumstances.

BIG CHANGES TO MARKETING RULES

Chapter 14 (Marketing of Legal Services) of the *Professional Conduct Handbook* has been revised and reorganized to make the marketing rules more focused, easier to understand and less intrusive. Large parts of Chapter 14 were deleted altogether (e.g. the Short Form Services Description set out in Appendix 7), but some parts have been relocated elsewhere in the *Handbook* or, in two cases, in the Law Society Rules.

Overall, any "marketing activity" (a defined term now updated) undertaken or authorized by a lawyer must not be false, inaccurate, unverifiable, reasonably capable of misleading the recipient or intended recipient, or contrary to the best interests of the public (Rule 4). For example, a marketing activity violates Rule 4 if it is calculated or likely to take advantage of the vulnerability, either physical or emotional, of the recipient; is likely to create in the mind of the recipient or intended recipient an unjustified expectation about the results that the lawyer can achieve; or otherwise brings the administration of justice into disrepute (Rule 5).

A lawyer may state in any marketing activity a preference for practice in any one or more fields of law, if the lawyer regularly practises in each of those stated fields of law (Rule 16). The three-year, 20 per cent rule is gone.

Although Rule 18(a) still contains a prohibition against a lawyer's use of the term "specialist" or any similar designation suggesting a special status or accreditation in any marketing activity, note the Ethics Committee's opinion published on page 17 about permitted use of the terms "expert," "expertise" or "specializing." The article also addresses the use of testimonials in relation to the standards set out in Rule 4.

Lawyers are encouraged to read Chapter 14 in entirety regarding other changes.

DUTY TO MEET PROFESSIONAL FINANCIAL OBLIGATIONS

Some lawyers are signing contracts in which the lawyer and the lawyer's client are jointly and severally liable to a mediator for the mediator's account for mediation services. If the client does not pay the mediator's account, unless there is a *bona fide* legal dispute regarding payment, the lawyer may be personally liable to the mediator for the account. Also, apart from any legal liability, the lawyer has a professional duty to meet professional financial obligations incurred or assumed in the course of practice when called upon to do so (Chapter 2, Rule 2 of the *Professional Conduct Handbook*).

It is recommended that lawyers obtain retainers from their clients in advance of any mediation, and consider whether it is appropriate to enter into contracts in which they are jointly and severally liable with their clients.

FURTHER INFORMATION

Contact Practice Advisor Barbara Buchanan at 604-697-5816 or bbuchanan@lsbc.org for confidential advice or more information regarding any items in Practice Watch.❖

Unauthorized practice of law

THE LAW SOCIETY routinely investigates allegations of unauthorized legal practice. The *Legal Profession Act* restricts the practice of law to qualified lawyers in order to protect consumers from unqualified and unregulated legal services providers.

Section 1 of the *Legal Profession Act* defines the practice of law while s. 15 states that only a practising lawyer is entitled to practise law. Section 85 makes it an offence to practise law if you are not a lawyer. It is important to note that the practice of law is defined as providing a variety of legal services "for a fee, gain or reward, direct or indirect." Non-lawyers who provide or offer to provide legal advice but are not seeking a fee are not violating the statute, unless they are suspended or disbarred lawyers.

Other exceptions are notaries public in BC who are entitled to provide a limited range of legal services — primarily real estate conveyancing, and certain types of wills and affidavits. As well, registered immigration consultants are regulated by the Canadian Society of Immigration Consultants. Consultants appearing before Workers' Compensation Board tribunals are not regulated.

Anyone with questions regarding the right of a person who is not a member of the Law Society to provide legal services should contact the Society at 604-669-2533 or 1-800-903-5300.

So far in 2009, the Law Society obtained court orders and consent orders from the Supreme Court of BC, prohibiting the following individuals and businesses from engaging in the unauthorized practice of law or punishing them for contempt of orders that the Law Society had previously obtained to prevent them from engaging in unauthorized practice:

Susan Eshelman of Pacific IP Inc. has been prohibited by the Supreme Court from giving legal advice, appearing as counsel or advocate, preparing documents for use in a proceeding and identifying herself in any way that suggests she is a lawyer.

She was also ordered to pay costs.

Ronald Kostyk has been found in contempt of court for breaching a 1995 injunction prohibiting him from practising law. Kostyk has been ordered to inform potential clients that he is not a lawyer, that he has never attended an accredited law school, has no legal education or training and is not permitted to receive a fee. He has also been ordered to pay $12,000 in restitution.

Patrick Julien of Caelis International Corporation has been prohibited from giving legal advice and suggesting in any way that he's a lawyer. Julien is also prohibited from preparing incorporation documents. He was ordered to pay costs.

Christopher Lloyd of Victoria has been ordered by the Supreme Court to stop giving legal advice. Lloyd, doing business variously as Jurist Inc., The Justice Centre and The Justice Society, is prohibited from acting as counsel or preparing documents. He has also been ordered to pay costs.

Anthony Lau (aka Tony Lau, aka Chaowin Lau) of Sage Management Ltd. of Richmond was offering to incorporate companies and prepare appeals to the Federal Court. He has been ordered not to give legal advice or to prepare documents for use in a proceeding. Lau was ordered to pay costs.

Vincent Macalipay (aka Vicente Macalipay) has been ordered to stop giving legal advice and preparing legal documents. Macalipay was offering to prepare divorce documents. He was ordered to pay costs.

◆

As of December 2009, the Law Society obtained undertakings from 41 individuals and businesses not to engage in the practice of law. The most common breach of the *Legal Profession Act* is non-lawyers preparing incorporation documents for a fee. There were also cases of non-lawyers preparing divorce documents and separation agreements, as well as preparing documents for use in proceedings in court or administrative tribunals.❖

Paperless ... from page 16

- There is usually a decrease in photocopy/printing costs.
- Courts, land title offices and other organizations are increasingly accepting paperless filings.
- It is harder to forge or alter a properly secured electronic document. Moreover, metadata associated with an e-document records a great deal of information about who created it, when it was modified and by whom, etc., that is not typically accessible in a paper file.
- Your clients' systems are electronic and they expect us to be able to accept e-discovery electronically.
- Having a paperless office requires the firm to at least consider a file retention and destruction policy that is consistently applied in accordance with The Sedona (Canada) Principles to avoid any suggestion that files were destroyed in order to destroy evidence.
- The Courts are calling on lawyers to be paperless in court (see Justices Turnball's and Granger's posts to this effect at www.slaw.ca).

Of course there are many other reasons to go paperless (as well as arguments against it). However, there is no denying that the world is moving in a paperless direction: Barker, Cobb and Karcher in a 2008 publication entitled "The legal implications of electronic document retention: Changing the rules" stated that 99 per cent of business documents are currently being produced electronically. It is pointless going against the tide; lawyers need to adjust to the new reality and embrace the possibilities, examine the risks and benefits in moving to a paperless world. We are headed for a new horizon.❖

Discipline digest

Please find summaries with respect to:

- Kenneth Joseph Spears
- Lu Chan
- Shawn Dickson Swail

For the full text of discipline decisions, visit the Regulation & Insurance / Regulatory Hearings section of the Law Society website.

KENNETH JOSEPH SPEARS

West Vancouver

Called to the bar: September 25, 1987

Discipline hearing: September 17, 2009

Panel: James Vilvang, QC, Chair, Haydn Acheson and Robert Brun, QC

Oral decision issued: September 17, 2009

Report issued: September 24, 2009 (2009 LSBC 28)

Counsel: Maureen Boyd for the Law Society and James L. Straith for Kenneth Joseph Spears

FACTS

In September 2001, Kenneth Joseph Spears was referred to the Practice Standards Committee for a practice review. The review recommended Spears enter into a practice supervision agreement and that he undertake not to practise in the areas of wills and estates, personal injury law and WCB matters. Subsequent practice reviews occurred in April 2003 and June 2004.

Breaches of undertaking to the Law Society

On October 18, 2004 Spears signed an undertaking with the Law Society to conclude and/or transfer all outstanding non-Department of Justice files by December 5, 2004 (extended to January 15, 2005) and not to take on any new files, other than Department of Justice files or Government of Canada files, after that date. Spears breached this undertaking by acting on behalf of three non-government clients between January 2005 and June 2008.

Failure to include file in summary list

When Spears sought an extension of the effective date of the undertaking, the request was granted on the condition that he provide a status report on any remaining files by December 15, 2004. In that report, Spears excluded one client file.

Failure to include files in lists to practice supervisor

In entering into a practice supervision agreement, Spears was required to provide a written summary of all open files, updated monthly, to his practice supervisor. Spears failed to include information about the three above-mentioned clients in these summaries.

Untrue statements to the Law Society

In correspondence with the Law Society regarding his request to have his practice restrictions removed, Spears made a number of untrue statements to the Law Society. He stated that he was following the practice restrictions and that he had limited his practice to work for the Government of Canada when he knew both statements to be untrue.

The Panel expressed concern that, in the past, Spears demonstrated an unwillingness to comply with conditions imposed upon him by the Law Society. It is a fundamental requirement of anyone who wishes to have the privilege of practising law to accept that their conduct will be governed by the Law Society and that they must respect and abide by the rules that govern their conduct. If a lawyer consistently demonstrates an unwillingness or inability to fulfill these basic requirements of the privilege to practise, that lawyer can be characterized as "ungovernable" and cannot be permitted to continue to practise. All lawyers are expected to deal with the Law Society in an honest, open and forthright manner at all times.

ADMISSION AND PENALTY

The hearing panel accepted Spears' admissions of professional misconduct and proposed penalty under Rule 4-22. Accordingly, the panel ordered that Spears:

1. be suspended for eight months commencing October 1, 2009;
2. practise only as an employee or associate of one or more other lawyers who are subject to the approval of the Practice Standards Committee, such condition to remain in effect unless released from it by that Committee; and
3. pay costs of $3,500 by March 30, 2011.

LU CHAN

Burnaby, BC

Called to the bar: November 19, 1993 (BC) and February 9, 1993 (Ontario)

Discipline hearings: August 27, 2008 (facts and verdict) and October 15, 2009 (penalty)

Panel: William Jackson, Chair, Leon Getz, QC and Meg Shaw, QC

Bencher review: April 3, 2009 (facts and verdict)

Benchers: Gordon Turriff, QC, Chair, Haydn Acheson, Joost Blom, QC, Carol Hickman, Barbara Levesque, David Mossop, QC, Thelma O'Grady, David Renwick, QC, Glen Ridgway, QC, Dr. Maelor Vallance and James Vilvang, QC

Reports issued: September 19, 2008 (2008 LSBC 30), June 25 (2009 LSBC 20) and October 21, 2009 (2009 LSBC 31)

Counsel: Eric Wredenhagen for the Law Society and William G. MacLeod for Lu Chan (facts and verdict); Henry Wood, QC for the Law Society and William G. MacLeod for Lu Chan (Bencher review); Eric Wredenhagen for the Law Society and Lu Chan on his own behalf (penalty)

FACTS

Lu Chan is a sole practitioner whose preferred area of practice is immigration law. His clientele consists primarily of residents from the People's Republic of China and Taiwan.

On May 31, 2006 Chan was retained by a client in China that he had known for a number of years. The client wanted to immigrate to Canada under Prince Edward Island's "Business Partners" Program. The PEI government requires an applicant to deposit $100,000 in a designated escrow account, plus a $25,000 good faith residency deposit and a $25,000 language deposit. The retainer agreement specified that Chan would pay these funds to the PEI government directly, on behalf of the client.

As Canadian dollars are not a major currency in China, and cheques and wire transfers are also uncommon, the client remitted the funds in US dollars to Chan in trust, with the intention that Chan would then convert and submit payment.

On June 16, 2006 Chan received a payment of USD $60,000 in traveller's cheques. On June 22, 2006, he received a further USD $40,000 in cash from the client.

On the day he received $40,000 in cash, Chan reviewed Chapter 4, Rule 6 of the *Professional Conduct Handbook*. After reviewing the client's situation carefully, he was satisfied that the client was a legitimate business person and the source of the funds was legitimate.

A couple of weeks later, the client decided not to proceed with the application for immigration to PEI. Chan had not done any work on the file and decided to close it without charging a fee. The client provided Chan with the name of a relative/friend and instructed him to make a trust cheque, in the full amount, payable to this person.

Chan reported the cash on his trust report submitted in March 2007.

DECISION OF THE HEARING PANEL

Chan stated he was unaware of the "no cash" rule, but was aware of his obligations to guard against money laundering. Chan admitted he breached Rule 3-51.1 by accepting cash in an aggregate amount of $7,500 or more.

A breach of the "no cash" rule may, depending on the circumstances, rise to the level of professional misconduct. The panel accepted Chan's account that he did make an effort to consider his professional obligations in the circumstances and to comply with them. The panel found Chan had breached the Law Society rules; however, he had not committed professional misconduct.

DECISION OF THE BENCHERS ON REVIEW

The Discipline Committee referred the decision on Facts and Verdict to the Benchers for review under section 47 of the *Legal Profession Act*.

Majority (Acheson, Hickman, Mossop, O'Grady, Ridgway, Vallance)

The Law Society argued that, due to the importance of the "no cash" rule and Chan's ignorance of it, there is a presumption of *prima facie* professional misconduct.

Upon review, the majority concluded that the facts did not warrant a finding of professional misconduct. The panel found that, while in no way lessoning the importance of this Rule for public safety and independence of the profession, the facts in this case did not warrant a finding of professional misconduct. While it is important to the Law Society to ensure that lawyers do not inadvertently assist in money laundering transactions, the facts of each case must be examined.

Minority (Turriff, Blom, Levesque, Renwick, Vilvang)

In June of 2006, the "no cash" rule had been in place for about two years. When it was enacted it had received extensive and repeated publicity in the Law Society's communications with the profession.

Chan was ignorant of the no cash rule and failed to acquire adequate knowledge of some of the fundamental information he needed. He also failed to seek guidance or even consider that he might be proceeding in error.

The minority concluded that Chan's failure to ascertain and observe the "no cash" rule was a marked departure from the standard of conduct that the society expects of its members and is therefore professional misconduct.

PENALTY

The panel ordered that Chan pay a fine in the amount of $1,000.

SHAWN DICKSON SWAIL

Kelowna, BC
Called to Bar: May 15, 1992
Ceased membership: November 21, 2009
Admission accepted: October 29, 2009

Counsel: Eric Wredenhagen for the Law Society and Henry Wood, QC for Shawn Dickson Swail

FACTS

From May 1992 to June 1994 Shawn Dickson Swail practised law with the firm Salloum Doak, and thereafter practised as a sole practitioner in Kelowna under the name Swail & Company. He practised primarily in the areas of real estate and civil litigation.

On April 24, 2003, the Law Society ordered an investigation of Swail's books, records and accounts as a result of a complaint to the Law Society made by one of his former clients.

Breach of Court Order

In 1999 a Supreme Court Order required that Swail not release funds held in trust in a client's matrimonial matter without a further court order or written agreement. Swail breached the Order by paying himself $4,809 in fees from trust.

Breach of undertaking

In February 2000 Swail filed for bankruptcy and provided an undertaking to the Law Society that he would appoint a co-signatory on all of his trust accounts. Swail breached the undertaking by transferring funds electronically from his trust account to his general account. Swail stated that he didn't realize the undertaking included Internet transfers.

Breach of trust accounting rules

At various times between 2000 and 2005, Swail breached accounting rules and failed to maintain accounting books and records as required by the *Law Society Rules*.

Misappropriation

In 2001 and 2002, Swail withdrew funds from his pooled trust account where his clients did not have any funds in trust, or did not have sufficient funds in trust to cover the withdrawal. He later deposited funds into client trust accounts to either reduce the trust deficit or bring the trust balance for the client back up to its original amount. The withdrawal transactions were not recorded until after those deposits were made.

Swail also withdrew client funds from trust and paid those funds to his general account before performance or completion of work. In some instances, he retained a "back-dated" office copy of the account rendered to a client, dated the same date as the withdrawal of funds from trust.

Tax evasion and false tax returns

A client retained Swail in a sexual abuse claim. When the matter settled in August 2001, Swail was forwarded the sum of $61,000 in trust for his client. Swail directed his client to pay a portion of the fees owed to him to a third party, with the intent of evading tax. The client paid the sum of $12,800 to a company controlled by Swail and ultimately complained to the Law Society about this billing.

As a result of directing his client to pay $12,800 in fees to a third party, Swail filed false and misleading GST, PST and income tax returns for 2001.

False and misleading information

In May 2001, Swail transferred $920 from his trust account to his general account on a "miscellaneous" matter. At that time, there were no funds in trust for this matter. Swail generated a false invoice in the amount of $920 to mislead the Law Society during its investigation.

Swail also prepared falsely back-dated and dual-dated client invoices in an attempt to conceal from clients and from the Law Society his improper withdrawals from trust accounts.

ADMISSION AND PENALTY

Swail admitted to all 11 allegations and agreed that his conduct constitutes professional misconduct. Under Rule 4-21, the Discipline

Committee accepted Swail's admission and undertakings:

1. to terminate his membership in the Law Society effective November 21, 2009, and not apply for reinstatement to the Law Society for a period of eight years from that date;
2. not to apply for admission to the law society of any other province or territory in Canada without first providing written notification to the Law Society of BC; and
3. not to permit his name to appear on any letterhead of any lawyer or law firm or otherwise work for any other lawyer or law firm in BC without the written consent of the Law Society.❖

Credentials hearing

LAW SOCIETY RULE 2-69.1 provides for the publication of summaries of credentials hearing panel decisions on applications for enrolment in articles, call and admission and reinstatement. For the full text of hearing panel decisions, visit the Regulation & Insurance / Regulatory Hearings section of the Law Society website.

GORDON DOUGLAS HOFFMAN

Kamloops, BC

Hearing (application for reinstatement): June 22, August 28 and September 15, 2009

Panel: David Zacks, QC, Chair, Leon Getz, QC and Jan Lindsay

Report issued: October 13, 2009 (2009 LSBC 30)

Counsel: Henry Wood, QC for the Law Society and Ravi Hira, QC for Gordon Douglas Hoffman

Gordon Douglas Hoffman was a member of the Law Society from 1984 to 2000 and again from 2006 to 2007. His practice was largely in litigation, including ad hoc prosecutions for the Federal Crown.

In the mid 1990s, Hoffman experienced symptoms of depression. He was placed on medication, which caused unpleasant side effects. Hoffman developed a pattern of taking his medications in the winter and not in the summer, and in the winter of 1999, he decided to try to cope without medication.

At that time, Hoffman worked with a young woman, to whom he was attracted. He felt the attraction was mutual and that they had developed a close relationship.

The young woman did her best to rebuff the attraction and maintain a professional working relationship with Hoffman. She described many instances of inappropriate comments and emails. Ultimately, the woman lodged a complaint with the Law Society and commenced a civil action against Hoffman and the firm. The action was settled and the Law Society complaint resulted in a letter from the Chair of the Discipline Committee.

Following the complaint and commencement of civil proceedings, Hoffman suffered worsening symptoms of depression and ultimately left the practice, surrendering his practising certificate.

In 2003, Hoffman had recovered his health and applied for reinstatement of practising status. At the request of the Law Society, he wrote qualification exams and was reinstated in 2006 without a hearing.

After some difficulty in locating a job near his home, Hoffman secured employment with the Provincial Crown in St. Paul, Alberta commencing January 2006. Hoffman found the practice and procedures in that office to be different from his own experience. In addition, there were some personality conflicts. Hoffman was dismissed in April of that same year.

Upon losing his job, Hoffman returned his status to non-practising and remained non-practising through 2007. In November 2007 he attended a potential legal employment opportunity in Nunavut, which he did not find satisfactory. He allowed his membership to lapse.

Also in 2007 Hoffman commenced employment (not as a lawyer) with Company C. During a training session he had a confrontation with another trainee and his employment was terminated.

In the fall of 2008, Hoffman met a practitioner in Kelowna, who offered him the opportunity for employment as a lawyer. Once again, Hoffman applied for reinstatement; however, his application now disclosed his termination from the Alberta Crown and from the position with Company C. There were also some discrepancies in the reports concerning these events and Hoffman's correspondence with the Law Society, all of which resulted in an order for this hearing.

In support of the most recent application for reinstatement, Hoffman spoke with Law Society staff and provided a medical report prepared by his then-treating psychiatrist that addressed his illness, treatment and recovery. The report contained information about his employment history that Law Society staff believed was inaccurate and attributed the inaccuracy to the applicant.

This panel found that Hoffman showed exceedingly poor judgment in his relationship with the young woman and, in some instances, in his personal relations with other co-workers. However, these errors of judgment and personality issues do not indicate an inherent lack of honesty or integrity.

The panel found Hoffman has discharged his burden, is of good character and repute and fit to be a barrister and solicitor of the Supreme Court.

Before the hearing, Hoffman had offered to agree to conditions on his return to practice, which the panel found appropriate and so ordered that Hoffman be reinstated on the following conditions:

1. he will continue taking all depression-related medication as may be recommended by his family physician or by a treating psychiatrist;
2. for a period of three years following reinstatement, Hoffman's family physician will advise the Law Society immediately if he is not following medication recommendations, and will deliver annual reports to the Law Society otherwise, confirming compliance;
3. for a period of one year following reinstatement, Hoffman will practise in association with and under the supervision of Lawyer L, or another lawyer approved by the Credentials Committee;
4. for a period of one year following reinstatement, Lawyer L, or another lawyer approved by the Credentials Committee, will file quarterly reports commenting upon Hoffman's performance and condition;
5. one year following reinstatement, if the reports described in condition 4 have all been satisfactory to the Credentials Committee, condition 3 will be removed; and
6. condition 1 may only be removed if recommended by Hoffman's family physician or treating psychiatrist at some point after the first three years of his reinstatement and after subsequent approval by a medical examiner appointed by the Credentials Committee.❖

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