



# BENCHERS' BULLETIN

Keeping BC lawyers informed

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# Letting go of our history to meet the demands of the future

by Gavin Hume, QC

IN MY ROLE as president of the Law Society, I am struck by the constant juxtaposition of the past and the future that challenges the Benchers continuously, particularly given the rapid change that characterizes the world today. The legal profession is steeped in tradition and the regulation of lawyers is based on over 125 years of precedent. Yet the demands for reform to one degree or another are pushing us to re-think almost every aspect of our role as regulators.

At the annual Benchers retreat, held last June in Whistler, the Benchers and several guests envisioned the possibilities for legal regulation in the future. We heard about the regulatory perspective from the President of the Federation of Law Societies, Ronald MacDonald, QC, as well as Malcolm Heins, CEO of the Law Society of Upper Canada. We also learned more about the government perspective from former Deputy Attorney General and Deputy Minister to the Premier, Allan Seckel, QC. And we benefitted from the academic wisdom of Dr. Paul Paton, Professor of Law at the University of the Pacific's McGeorge School of Law.

Consider the current landscape. The difficulty in accessing affordable legal services is a growing problem and we are

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*Where there is a void in the marketplace, others will seek to fill it. However, it begs the question who, if anyone, will regulate these other providers of legal services?*

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seeing an increase in non-lawyers providing legal advice. In addition to notaries, who are currently seeking to expand their scope of practice, there are immigration consultants, workers compensation consultants, community advocates and accountants who provide tax-related legal

advice. Soon, paralegals will be able to provide additional legal services, albeit under lawyer supervision. And we are witnessing a boom in online legal services for such things as incorporations and wills.

Where there is a void in the marketplace, others will seek to fill it. However,

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*It was a provocative, philosophical discussion with no clear conclusion in these early stages. However, the value of the retreat was in bringing these ideas to the fore and allowing all the Benchers the chance to consider what we may someday need to address.*

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it begs the question who, if anyone, will regulate these other providers of legal services?

Though there is no pressing need to address the way we regulate now, the Benchers are anxious to stay on top of the latest thinking and be prepared for what may face us in years to come. To that end, we debated three possible futures for the regulation of the profession:

- the status quo, which includes the regulation of lawyer admissions and the discipline of lawyers and unauthorized service providers;
- a more narrow scope covering only the regulation of the professional conduct of lawyers; and,
- the much broader approach of regulation of the entire legal services marketplace.

It was a provocative, philosophical discussion with no clear conclusion in these early stages. However, the value of the retreat was in bringing these ideas to the fore and

## BENCHERS' BULLETIN

The *Benchers' Bulletin* and related newsletters are published by the Law Society of British Columbia to update BC lawyers, articulated students and the public 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 at [communications@lsbc.org](mailto:communications@lsbc.org). Additional subscriptions to Law Society newsletters may be ordered at a cost of \$50 (plus HST) per year by contacting the subscriptions assistant at [communications@lsbc.org](mailto:communications@lsbc.org). To review current and archived issues of the *Bulletin* online, see "Publications and Resources" at [lawsociety.bc.ca](http://lawsociety.bc.ca).

### PHOTOGRAPHY

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allowing all the Benchers the chance to consider what we may someday need to address.

Change cannot come fast enough when it comes to another aspect of the profession. In a recent meeting with employment lawyer Nicole Byres and crown counsel Carol Anne Finch-Noyes, both executive members of the CBA's Women Lawyers Forum, we revisited the work that has been done in recent years to address the needs of women in the profession.

I am greatly encouraged by the efforts of many who wish to see change in the profession that will ultimately help retain women lawyers who leave in numbers far higher than their male counterparts. Two years ago, the Law Society published the "Business Case for Retaining and Advancing Women Lawyers in Private Practice," encouraging law firms to consider the benefits of employing a diverse workforce. Some firms have taken that advice to heart.

McCarthy Tétrault LLP has been widely praised for its commitment to diversity and is a partner with the Law Society of Upper Canada in the Justicia Project, a three-year pilot project focused on developing best practices in the attraction, development and retention of women in private practice. Other firms are also stepping up to the plate.

However, we continue to be disheartened by the fact that harassment in the workplace, including sexual harassment, remains a problem in our profession. In her recent report to the Benchers, Equity Ombudsperson Anne Bhanu Chopra described how calls to her remain steady and the majority of complaints are related to sexual harassment. The report notes that there has been a 9% increase in calls from small firms and a 12% decrease in calls from medium-sized firms.

In this issue of the *Benchers' Bulletin*, we explore what has been done and what still needs to be addressed to change the culture of our profession and bring us up-to-date with other professions and careers to the benefit of lawyers, firms and our clients.

I encourage you to speak up if you are the victim of any form of workplace discrimination or you witness such discrimination. Let's not continue to let our history define our future. ❖



*Gavin Hume, QC was one of about 2,000 cyclists who took part in the inaugural Valley First Granfondo Axel Merckx on July 10, 2011. The president completed the entire 160-km race in the South Okanagan.*



## Call for hearing panel participants results in strong response

by Timothy E. McGee

THE LAW SOCIETY recently invited lawyers and the public to participate as members of our hearing panels for discipline and credentials matters. Notices ran in newspapers across the province for several weeks and were posted on our website. The initiative was part of the Benchers' strategic decision to make the Law Society's regulatory processes more transparent and reflective of the public interest.

We were surprised and delighted by the extent of the response from both lawyers and the public alike. As other regulatory bodies can attest, one of the greatest challenges is how to meaningfully involve the public in work that by our mandates is dedicated to serving the "public interest." What we have learned through this initiative is that the public is indeed interested in the "public interest," and through this opportunity we plan to take advantage of that.

By the deadline for applications, we had received submissions from over 130 lawyers and almost 600 members of the public wishing to be considered as panellists for our regulatory hearings. This strong response will allow us to choose potential hearing panel pool members who

have varied skills and experience, and who represent the geographic and demographic diversity of the province. These new panellists will work side by side with our existing pool of eligible Benchers to assist us in our goal of conducting regulatory hearings that are thorough, fair and in the public interest.

The hearing panel applications are now being reviewed. Even on a preliminary assessment we realize we are in the enviable position of having far more qualified applicants than we can realistically involve as panellists over the next two to three-year period. However, we will carefully review all applications and will be notifying all applicants in the fall regarding next steps.

If you have applied to participate as a member of our hearing panels, let me take this opportunity to sincerely thank you for your interest. You have stepped up to offer your assistance to us so we can do our work more effectively, and for that we are very grateful.

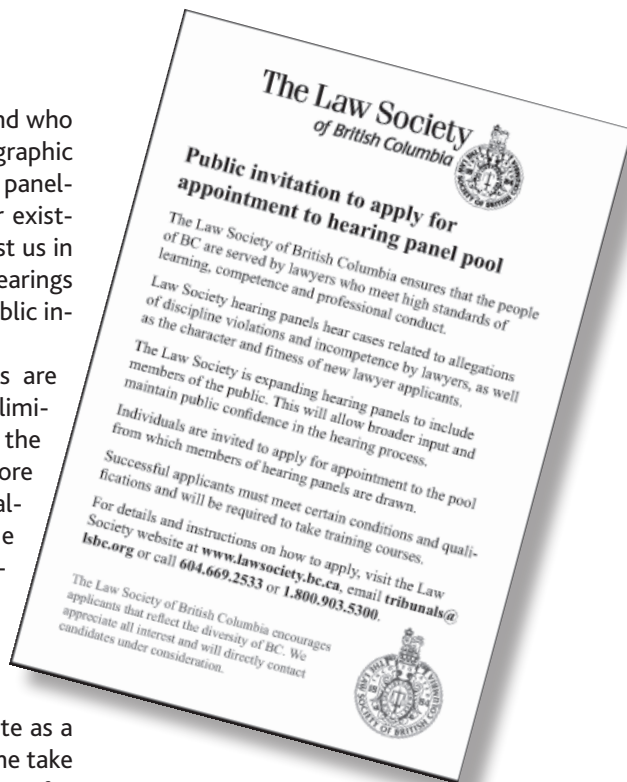
I would also like to draw your attention to the fact that, as of September 1, 2011, articulated students will be permitted

to provide a greater range of legal services with the supervision of a lawyer. New rules outline the specifics and the limitations, and are discussed in this issue of *Benchers' Bulletin*.

We are in discussions with representatives of the Provincial Court and the Supreme Court to ensure that the expanded role envisioned for articling students aligns with judicial requirements.

Now, it is up to the profession to take us up on this opportunity. While this obviously represents a great chance for students to do and learn more prior to being called to the Bar, the primary reason for these changes is for firms to be able to offer the public further options to obtain lower-cost alternatives to much needed legal services.

As always, if you have any questions about the work of the Law Society, please do not hesitate to contact me by phone at 604.669.2533 or ceo@lsbc.org. ❖



### Law Society Fall calendar

September 20 – Annual General Meeting (see the Law Society website for the outcome of the resolutions)

October 7 – Pacific Legal Technology Conference (pacificlegaltech.com)

November 8 – Bench & Bar Dinner

November 15 – Bencher election

December 2 – Life Benchers Dinner (by invitation)

## 2011 Benchers retreat

The Benchers held their 2011 policy retreat last June in Whistler. The theme of this year's event was "The Future of Legal Regulation in British Columbia."

The face of legal regulation in the common law world has changed considerably in the last 20 years. The Benchers and guests heard different perspectives from other jurisdictions and professions and debated several options for the future regulation of the legal profession in BC.

As part of good governance, there is value in the Law Society engaging in philosophical discussion as to how the public might be best served.



## New guidelines for Discipline Committee

THE BENCHERS HAVE adopted new guidelines to assist the Discipline Committee in making appropriate and consistent decisions on professional conduct matters that come before it. The guidelines are the culmination of approximately 18 months of research and analysis by the Discipline Guidelines Task Force.

In the course of its work, the task force considered a rigid classification system that would link types of misconduct to specific disciplinary responses. The task

force concluded, however, that the guidelines offer a principle-based approach, taking account relevant circumstances while evaluating each case on its own merits.

When speaking at the Benchers meeting, Herman Van Ommen, chair of the task force, noted in particular the following principles:

- the application of progressive discipline, where appropriate;
- the concept of public interest is paramount;

- the adoption of a citation threshold, taking into account evidence and proof.

It is expected that the guidelines will be refined and improved, after experience and feedback. The new guidelines are contained in the task force report, which is available on the Law Society website (go to Publications and Resources > Committee and Task Force Reports > Regulation and Discipline).❖

## Law Society to charge for print versions of *Benchers' Bulletin* and *Member's Manual*

### *Electronic subscriptions continue to be free for members*

BEGINNING IN 2012, all lawyers who elect to receive the Law Society's publications in print form will be required to pay a nominal fee to cover printing and mailing costs.

About half of all BC lawyers choose to receive Law Society publications, including the *Benchers' Bulletin*, *Member's Manual* amendment packages and *Insurance Issues*, in electronic format.

"The costs to print and mail these materials have increased steadily in recent years," explained Robyn Crisanti, Manager,

Communications and Public Relations. "Now that over 5,000 lawyers are receiving these publications electronically, the Benchers concluded that the costs associated with the print subscriptions should be paid by those who receive them."

The Law Society will charge only enough to recover its costs – about \$50 per year for a full subscription to all publications. Lawyers will have the option to receive either just the *Bulletin* or the *Manual* at a reduced rate.

"Details will be communicated to lawyers in the next several weeks," said Crisanti, "and they will have plenty of time to decide if they wish to continue to receive printed publications before the first mailing in 2012."

"We are also hoping that more lawyers will choose the electronic option for publications as a part of our ongoing efforts to reduce our environmental impact."

If you have any questions, please contact [communications@lsbc.org](mailto:communications@lsbc.org).❖



## In Brief

### QC NOMINATIONS

The Attorney General's office is now accepting nominations for Queen's Counsel. Nominations will only be accepted using an online nomination form, and the Queen's Counsel Appointments Advisory Committee no longer requires or considers letters of support. Deadline for nominations is October 14.

For more information, visit the Ministry's website at [www.ag.gov.bc.ca/queens-counsel/index.htm](http://www.ag.gov.bc.ca/queens-counsel/index.htm).

### JUDICIAL APPOINTMENTS

The Honourable **Douglas Betton**, a judge

of the Provincial Court of BC in Vernon, was appointed Judge of the Supreme Court of BC in Kelowna. He replaced Mr. Justice T.R. Brooke who elected to become a supernumerary judge.

**Kenneth Affleck**, a lawyer with Affleck Hira Burgoyne in Vancouver, was appointed a Judge of the Supreme Court of BC in Vancouver. He replaced Mr. Justice F.W. Cole who elected to become a supernumerary judge.

**Robert Hamilton**, an associate with Lindsay Kenney LLP in Vancouver, was appointed to the Provincial Court of BC in the South Fraser/Surrey district.

**Robin Baird**, administrative Crown counsel for the criminal justice branch of the Ministry of Attorney General, was appointed to the Provincial Court of BC in the South Fraser/Surrey district.

**Mayland McKimm**, QC, past chair of the Legal Services Society, was appointed to the Provincial Court of BC in Vernon.

**Marguerite Church**, an associate with Cundari Seibel LLP in Kamloops, was appointed to the Provincial Court of BC in Williams Lake.

**Roderick Sutton**, a partner with Sutton Law Corporation, was appointed to the Provincial Court of BC in Prince George. ❖

## Unauthorized practice of law

UNDER THE *LEGAL Profession Act*, only trained, qualified lawyers (or articulated students under a lawyer's supervision) may provide legal services and advice to the public. Further, non-lawyers are not regulated, nor are they required to carry insurance to compensate clients for errors and omission in the legal work or claims of theft by unscrupulous individuals marketing legal services.

When the Law Society receives com-

plaints about an unqualified or untrained person providing legal assistance, the Society will investigate and take appropriate action if there is a potential for harm to the public.

From June 4 to August 9, 2011, the Law Society obtained undertakings from 12 individuals and businesses not to engage in the practice of law.

The Law Society has obtained court orders prohibiting the following individual

and business from engaging in the unauthorized practice of law:

**Advance Recovery Systems Ltd.** and **Peter Sandher**, both of Vancouver, BC, provided legal advice and offered to draft court documents for a fee. The Law Society obtained an order permanently prohibiting both from engaging in the practice of law as defined in section 1 of the *Legal Profession Act*. The Law Society was awarded its costs. ❖



### UVic gold medal

The Law Society awards gold medals to each of the graduating law students from the University of British Columbia and the University of Victoria Faculties of Law who have achieved the highest cumulative grade point average over their respective three-year programs.

Lauren Witten received top honours at the University of Victoria. She is pictured here with Dean Donna Greschner.

## STUDENT RULE CHANGES

## Firms encouraged to take advantage of new rules

### *Supervised students permitted to provide legal services and provide a lower-cost option to clients*

ON SEPTEMBER 1, 2011, new rules take effect that allow articulated students to provide certain legal services to the public, provided they are well supervised by a principal or another lawyer.

The changes were approved by the Benchers in May 2011 and stem from ongoing efforts by the Benchers to help make legal services more accessible and affordable for the public.

President, Gavin Hume, QC and others have brought this initiative to the attention of the Provincial and Supreme Courts and have received encouragement to proceed. Discussions are continuing to ensure the expanded role for articulated students aligns with judicial requirements

It is well known that it is becoming increasingly difficult for many to obtain legal services for a number of reasons, including the limitations on eligibility and availability of legal aid and the inability of some people to find legal services they can afford. Others believe that they can get a

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better result by self-representing. The result has been an increase in the number of self-represented litigants and a reluctance of others to seek the justice to which they are entitled.

According to new Law Society Rule 2-32.01, an articulated student may provide all legal services that a lawyer is permitted to provide, with some exceptions, but the supervising lawyer is responsible for ensuring the student is competent and properly prepared.

One exception is appearing as counsel in complex litigation, but subject to approval of the courts, which the Law Society hopes to secure in due course, students will be allowed to appear as counsel if they are directly supervised by a practising lawyer in the following proceedings:

- an appeal in the Court of Appeal, the Federal Court of Appeal or the Supreme Court of Canada;
- a civil or criminal jury trial;
- a proceeding on an indictable offence, unless the offence is within the absolute jurisdiction of a Provincial Court judge.

Students are also allowed to give or accept an undertaking if the supervising lawyer has also signed or accepted the undertaking.

Since the authority granted to practising lawyers under s. 60 of the *Evidence Act* does not extend to articulated students, they are not permitted to act as commissioners for oaths. (The Law Society has requested that the Act be changed to allow it.) Also, the rule changes do not expand the roles for students enrolled in temporary articles who will continue to be governed by Law Society Rule 2-43.

#### PRINCIPALS AND SUPERVISING LAWYERS RESPONSIBLE FOR STUDENT WORK

Lawyers have always been responsible for supervising staff, including articulated students. However, now that students can perform enhanced functions, the issue of proper supervision by a lawyer becomes even more critical.

It is essential that supervising lawyers understand that they are responsible and accountable for the actions of articulated students performing legal services and that failure to properly supervise a student can lead to the full range of disciplinary processes and potential sanctions.

The supervising lawyer is also liable for any mistakes made by the student

while under supervision, and the financial consequences of any paid claim will flow through the lawyer's professional liability insurance. Lawyers who fail to provide any supervision jeopardize their insurance coverage.

Lawyers must also ensure that students and all other employees understand

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the importance of solicitor and client confidentiality and privilege. Communications made by or on behalf of the client to an articulated student for the purposes of obtaining or giving legal advice will attract solicitor and client privilege (see *Descôteaux v. Mierzwinski*, [1982] 1 S.C.R. 860 at 873).

Privilege extends to communications "made to the solicitor in person or to a clerk or subordinate of the solicitor who acts in his place and under his direction" (see, *Wheeler v. Le Marchant* (1881), 17 Ch.D. 675). Supervision and direction of the articulated student by the lawyer is also critical to the preservation of solicitor and client privilege

The Delivery of Legal Services Task Force continues to work on changes to the *Professional Conduct Handbook* regarding expanded roles for paralegals and, until they are finalized, lawyers should not be using paralegals to perform the expanded functions now available to students.

For more information on the new rules, please contact a Practice Advisor. ❖



## Law and the Media Workshop

Approximately 50 journalists attended a media workshop at the Law Society building on June 22. Additional journalists outside of the Vancouver area joined via teleconference. *Socially sound, legally smart: the legal implications for journalism of an on-line age* marked the first event where the Law Society used live tweeting — the tweets can be found on Twitter's website under the hashtag #bcmedialaw.

The Law Society puts these workshops on each year in partnership with the Jack Webster Foundation to contribute to the Benchers' strategic objective of effective education of the public; the workshops help journalists have a better understanding of the justice system and legal issues so they can produce knowledgeable and accurate reporting for their audiences. One journalist who traveled from Kamloops to attend the workshop described the discussion as "valuable."

This year's workshop explored the legal implications of social media and other "new" media technology for journalism. The panellists were Mr. Justice Geoffrey Gaul of the BC Supreme Court, Kim Bolan, a *Vancouver Sun* journalist and blogger, Theresa Lalonde, a social media trainer and CBC Radio and TV reporter and media lawyers Robert Anderson, QC and Dan Burnett.

More information about these annual workshops can be found on the Law Society website (click on Newsroom).

## Law Foundation Graduate Fellowships 2012/2013

THE LAW FOUNDATION is awarding up to five graduate fellowships of \$13,750 each (subject to change).

**Field of study:** Full-time graduate studies in law or a law-related area. Note that the pursuit of a Juris Doctor (JD), as a first law degree, does not constitute graduate studies for the purposes of the Law Foundation Graduate Fellowships.

**Where tenable:** Recognized universities in Canada, the U.S. or abroad. 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, as the Law Foundation makes separate grants to the graduate fellowship programs at

those universities.

For an application form or for more information, visit the Law Foundation's website at [www.lawfoundationbc.org](http://www.lawfoundationbc.org) or contact them at 1340 – 605 Robson Street,

Vancouver, BC V6B 5J3, tel. 604.688.2337, email [lfbc@tlfbc.org](mailto:lfbc@tlfbc.org). To be considered, applications and supporting material must be received at the Law Foundation offices by January 6, 2012. ❖

### LAW FOUNDATION GRADUATE SCHOLARSHIPS AT UNIVERSITY OF VICTORIA

THIS PAST YEAR, 11 UVic law students received Law Foundation Graduate Scholarships. This important program provides financial assistance to the law school's LL.M. and Ph.D. students. All recipients are engaged in interdisciplinary research that examines legal issues within a range of social, political, historical and economic contexts.

The 11 graduate scholarships were awarded to: Roger Batchelor, Geoffrey Conrad, Alvaro Cordova, Aimée Craft, Gene Fraser, Jeanette Gevikoglu, Carwyn Jones, Connie Nisbet, Soudeh Nouri, Jing Qian and Daleen Thomas.

Details about the recipients' research projects are available on the UVic Law website at [law.uvic.ca](http://law.uvic.ca) (News & events). ❖



PRACTICE TIPS, by Dave Bilinsky, Practice Management Advisor

## From chaos to order: the document management solution

♪ *It's just like looking for a needle in a haystack*

*Searching for a moonbeam in the blue*  
*Still I've got to find you...* ♪

Lyrics and music by Con Conrad and Herbert Magidson, recorded by Fred Astaire

ONE OF THE hottest topics today in practice management is taking a firm "paperless." There is much discussion about e-document formats (Adobe Acrobat PDF/A — the archival format — in particular), the media on which the electronic documents are to be stored (locally? backed up onto a remote device? on the cloud?), scanners, remote access and the like. Some firms choose to use only electronic storage for their closed files, eliminating the expensive cost of storing paper files for years, while others prefer to have all open and closed files in electronic form. Still other firms are concerned about cultural issues around going paperless and the change management process that would entail.

But lost in this discussion is a much more basic issue — one that is fundamental to taking a law firm paperless yet is often overlooked. In the paper world, there are file folders and filing cabinets, both of which help keep the documents organized. The file folder has its brads (places to attach correspondence, pleadings, etc. in date order) and the filing cabinet keeps the file folders organized.

When a law firm goes paperless, however, there typically isn't the appreciation for the electronic equivalent of the file folder and filing cabinet. Records — which could be pleadings, correspondence, emails, etc. — are usually found in numerous different places on the network. Emails may be stored in Outlook folders, while documents, such as pleadings, research memos and correspondence, may be in saved in various Windows folders. Worse yet, Outlook stores sent emails in "Sent Items" while incoming emails are typically filed in other folders.

Unfortunately, each software applica-

tion an office uses stores its data in different folders scattered across the network. As the number of electronic files grows, the ability to gather all these disparate bits of information together into a "client file" gets harder and harder. With paper files, the firm would typically print out all this information and store it in the file folder. In that situation, the way in which each application and user names and stores the records on the network and hard drives is largely irrelevant. But as the firm moves to a paperless office, the disorganized nature of electronic record-keeping starts to become a problem. It is now harder to reproduce "the file" and the collection of folders that would otherwise be found in the steel filing cabinet.

Some firms use indexing and desktop search engines, such as Windows Search or X1 or Copernic, to find documents on the network, but this is not a workable equivalent to a good document management application. Other firms claim that their "standardized file-naming and storage convention" is good enough. Unfortunately, this convention only works as long as everyone, at all times, complies. Once someone decides "just this time" to not follow the convention, the system starts to break down. (The second law of thermodynamics basically says that any system, over time, goes from an organized to a disorganized state without the continual addition of energy to keep it organized — otherwise known as *entropy*.)

So what should a firm do? The solution is document management software. This software is the equivalent of the steel filing cabinet, organizing all "records" — be they documents, emails, pleadings, etc. — into the electronic equivalent of the paper folder. Document management software keeps each folder distinct from the others, offering the organizational ability of the filing cabinet.

With document management software, a document must be "profiled" before it can be saved on the network.



Profiling entails keying in some information about the document: nature, author, form (pleading, email, etc.), client, matter and more. This "metadata" allows the document management software to know how to categorize the document properly. Emails, pleadings, correspondence, memos, etc. are all organized by client, matter, lawyer and date created.

Document management software also allows searching (including Boolean searches) by keyword, type of document, client name and other criteria. It offers version control, tracking and audit (who created what version) and other activities around document creation, modification and the like. Best of all, it offers the ability to draw together in one place on the network all the disparate records that would otherwise be affixed to the brad of a paper file. Remote access is enabled, and most programs allow "briefcasing" or mirroring the documents on a laptop with synchronization once you reconnect to the network.

Entropy is avoided since the user must profile the document *before* it can be saved. This is how the document management software achieves its goal: it imposes order on chaos.

By making a document management system the foundation of your paperless office, you can achieve the degree of rigour, organization and systemization that will allow you to develop your business even as people change and clients come and go. Otherwise, finding a document on the network is like looking for a needle in a haystack. ♦

## History of new model code starts and ends with conflicts of interest

### *BC addresses contentious part of Federation's proposal*

*The Law Society, in conjunction with the Federation of Law Societies, will soon roll out the conflicts portion of its new model code of conduct for lawyers. The profession was encouraged to review and provide feedback to this section of the code and the Benchers expect to approve it later this year. The following explains the changes and is adapted from a speech given by Joost Blom, QC, Chair of the Ethics Committee and Law Society Benchers.*

THE NEW MODEL code of conduct has been developed by a series of committees coordinated by the Federation of Law Societies and is intended to be adopted by all Canadian Law Societies, with minor changes, for the purpose of increasing the ease with which lawyers can move and practise in other provinces.

The conflicts provision of the model code is really what started off the entire model code history, because it was the difference between the conflict rules relating to current clients in different provinces that led the Federation to consider the creation of unified standards. The non-conflicts provisions of the model code, amended in some respects, have already been adopted in BC.

The discussion and review of the conflicts portion of the code have been extensive. In particular, the current client rule has been the cause of much debate — including between the related Federation committees and the Canadian Bar Association task force — a debate that continues. After a Federation committee's first draft of the conflicts rules met with criticism, a second committee successfully obtained Federation approval on all but the proposed current client rules. Both committees were represented in BC by Anne Stewart, QC, a member of the Ethics Committee. Ultimately, the current client rule was referred to the Federation's Standing Committee on the Model Code, chaired by BC Law Society president, Gavin Hume, QC, which intends to report its recommendations this fall.

In the meantime, the Ethics Commit-

tee completed its own thorough review of the proposed conflicts provisions, including the current client rule and, with the approval of the Benchers, invited the profession to comment on the draft.

Many of the proposed new rules are uncontroversial and more or less track the existing *Professional Conduct Handbook* rules.

The Federation's draft provides rules about acting for both borrower and lender, creating exceptions for certain borrower

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and lender cases. As these have no equivalent in the current rules, the Ethics Committee recommended they not be adopted.

Considering the current client rule, the view adopted by the Federation is that the rule has to start from the principle of loyalty — even if the matters are unrelated, a lawyer cannot act against a client whose immediate legal interests are directly adverse to the new client, unless both clients consent. The current *Professional Conduct Handbook* rule is even stricter, saying one cannot act against the interests of a current client, even with consent, if the matters are related or there is confidential information that is relevant.

The Federation code and the proposed BC code do not include those additional restrictions because they are not needed if the clients give informed consent. This is supported by *R. v. Neil*, [2002] 3 S.C.R. 631, 2002 SCC 70, in which Mr. Justice Binnie said there's a bright-line rule that one cannot act against a current client, even if the two mandates are unrelated, unless both clients consent after receiving full disclosure.

The alternative view, which is favoured by the CBA task force, is that the test is one of harm and actual conflict. In other words, a lawyer cannot take on a new client if there is a substantial risk of material and adverse effect on representation. Therefore, there are some cases in which one can act against a current client without consent, if the lawyer reasonably believes that there is in fact no risk of material and adverse effect on representation.

Hence, the nub of the issue: Is the rule an absolute where one *must* get consent, or in some cases is consent not necessary?

As mentioned, the Federation proposed the loyalty-based rule and the absolute requirement for consent. However, the draft code sent to the profession in BC goes a step further. Believing that this is really a matter of the retainer between lawyer and client, the Ethics Committee has proposed some specific provisions where consent is not needed. One is where:

- the matters would have to be unrelated,
- there must be no confidential information arising from the representation of one client that might affect the other,
- the client is a large client, such as government, financial institution, publicly traded or similarly substantial entity, or an entity with in-house counsel that has commonly consented to lawyers acting for and against them in

unrelated matters, and

- the lawyer reasonably believes that he or she is able to represent that client without materially adversely affecting the representation of the other.

The proposed BC code also deals with another situation: a lawyer may, without consent, represent a client whose interests are directly adverse to those of another current client, where the client has agreed in advance. This allows the lawyer, at the

time the retainer agreement is made, to have a client agree to the fact that, in certain circumstances and without the client's consent, the lawyer may act against the client's direct and immediate legal interests.

Ultimately, the effect of the two sub-rules added to the Federation's proposal is a very significant qualification of the absolute loyalty rule where it is not reasonable to expect that consent must be sought, or where consent has been obtained in

advance. These qualifications address at least some of the concerns of the CBA task force.

Taking into account the feedback the Law Society receives from the profession as well as the recommendations still to come from the Federation, the Benchers expect to approve this last portion of the model code by year end.

If you have any questions about the draft model code, please feel free to contact a Law Society Practice Advisor. ❖

## Discipline Alerts

*In the last issue of the Benchers' Bulletin, the Law Society introduced lawyers to its new Discipline Alert program, which is designed to inform lawyers about conduct that can lead to discipline. Since then we have received support for the initiative from lawyers and the media.*

*The most effective way to receive the Discipline Alert is to subscribe to the RSS feed. The Law Society also provides RSS feeds for News Releases, Highlights and Fraud Alerts.*

### LAWYERS MUST DISCLOSE COMMISSIONS IN INVESTOR IMMIGRANT MATTERS

Immigrants to Canada under the "Investor Category" are required to make substantial interest-free loans to the government. Those loans are usually financed and/or facilitated through Canadian financial institutions. The financial institutions will pay significant commissions to the lawyers who act for the investor immigrants.

The Law Society has become aware that some lawyers do not fully disclose to their clients receipt of these commissions or their amounts, contrary to the ethical obligations set out in the *Professional Conduct Handbook*.

Chapter 9, Rule 7 of the *Handbook* states that a lawyer must fully disclose to the client any fee that is being charged or accepted. Rule 8 states that a lawyer must not take any commission without making full disclosure to the client and obtaining the client's consent.

It is important for lawyers who act for immigrant investors to fully comply with these provisions. It is not sufficient to merely inform the client in the retainer agreement that the financial institution will pay a commission. The client must

be advised of details of the commission, and such disclosure should be in writing. The client can then consider the ramifications and provide informed consent.

The Ethics Committee recently considered what lawyers should do if the amount of commission is not known at the time the client signs the initial retainer agreement. The Committee gave the opinion that, "Rule 8 requires the lawyer to give a bona fide estimate of the amount of the commission to the client before the precise amount is known, and to advise the client about the precise amount when the lawyer knows the amount."

Lawyers practising in this area should also consider the provisions of Chapter 7 of the *Professional Conduct Handbook* regarding conflicts of interest between lawyer and client.

The Law Society will investigate any complaints made about the receipt of such commissions, and disciplinary action may follow if full disclosure has not been made and consent obtained.

### LAWYERS MUST REPORT CRIMINAL CHARGES TO THE LAW SOCIETY

A lawyer who is charged with a criminal offence under either a federal or provincial

statute must notify the Law Society of the charge (Rule 3-90). This requirement also applies to articulated students, practitioners of foreign law and applicants for admission.

The notification must be made in writing and contain all of the following information as soon as practicable after each of the following events:

- laying of the charge;
- disposition of the charge;
- sentencing in respect of the charge;
- commencement of an appeal of the verdict or sentence; and
- disposition of the appeal.

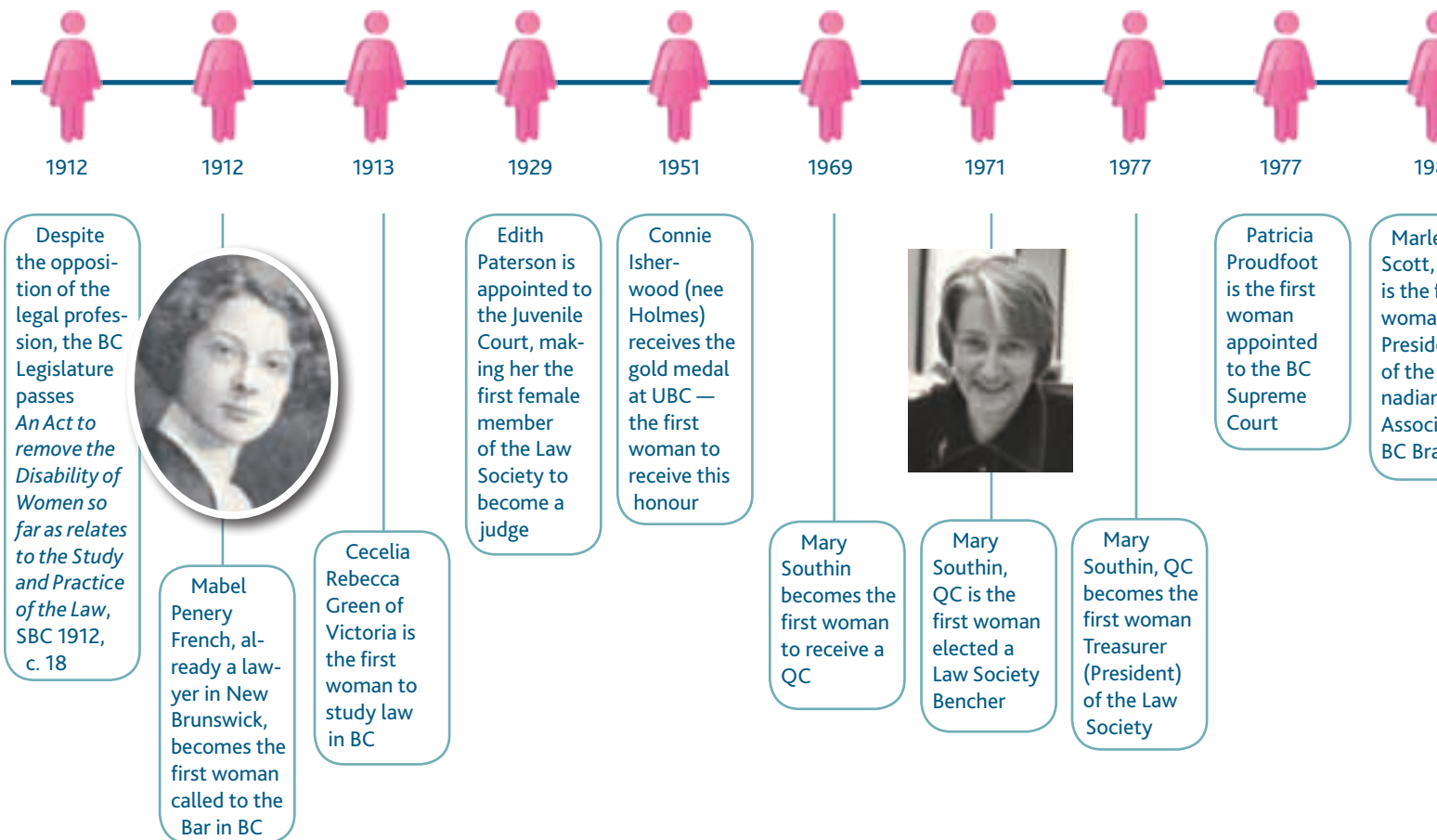
The lawyer must also provide a copy of any statement of the particulars of the charge, immediately upon receipt of it.

The only exception to this reporting obligation is if a lawyer is issued or served with a ticket as defined in the *Contraventions Act* (Canada) or the *Offence Act* (BC).

It is important that the Law Society is advised of criminal charges because lawyers hold positions of trust, confidence and responsibility. A lawyer in good standing is an officer of all courts in British Columbia, under section 14(2) of the *Legal Profession Act*. This status imposes a duty on lawyers to uphold the laws and to maintain the authority and dignity of the courts. If a lawyer is facing a criminal charge, in some circumstances, the Law Society may need to take steps to protect the public interest. ❖

For more information, contact a Practice Advisor.





## We've come a long way, baby ... or have we?

### An update on women lawyers and the legal profession

WHEN ELLEN SCHLESINGER looks at the Law Society of BC's business case for retaining women in law, she sees herself. Literally.

"I look at the statistic in the report that says "of all the women called to the bar in 2003, only 66% retained practising status in 2008," and that's me. I was called in 2003, and I'm no longer practising law."

Schlesinger articulated at a national law firm. She recalls the moment she realized she didn't have to make it work.

"I remember I was having dinner with a friend from law school and he said, 'you look terrible,' because I was really exhausted and I told him, 'I feel terrible.' The articling experience for me, personally, was really challenging — not so much in the type of work, even though the hours were demanding, but just in terms of my personality. I didn't fit with it. I felt like the

competitive atmosphere, the focus on billing and some of the internal politics that can be present in firms was just dispiriting."

"It would be subtle things like having people at the firm ask me whether I had plans to get pregnant, because if I did it might affect my advancement at the firm. I was young when I was articling. I was in my early 20s, so the thought of having kids was a long-term plan."

Schlesinger said the small things added up.

"You feel like personal decisions you make might have a toll on your career, so you feel like you're not sure who's really in control of your life: is it you who makes the decisions or is it the structure that's already in place in the law firm? I think it all comes together. If you're in a situation where you feel like you're not being respected for your

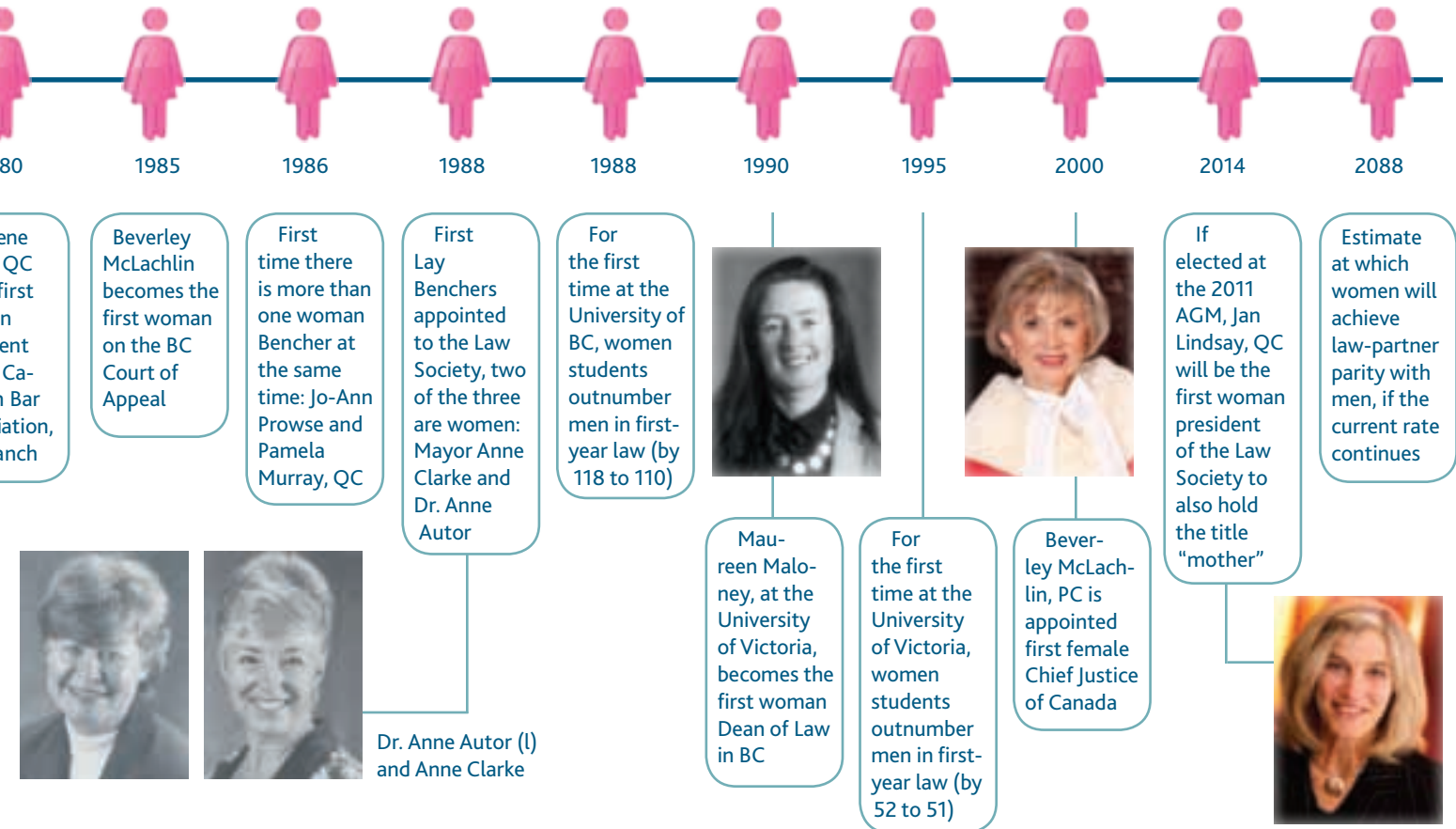
gender or being included, all these factors add up and especially in women."

It's common knowledge in the legal world that the numbers add up, too. Law societies across Canada and other parts of the globe all have data illustrating the same trend: women leave the practice of law in greater numbers than men.

That's why the Law Society of BC launched *The Business Case for Retaining and Advancing Women Lawyers in Private Practice* in 2009. It explains the economic benefits for law firms of retaining and advancing women, and provides both reference materials and best practices for firms to use to create solutions that work for them.

Law Society President Gavin Hume, QC was on the task force that put together the business case.

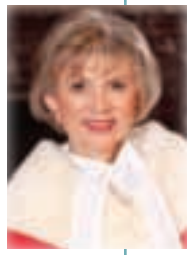
# women in the law



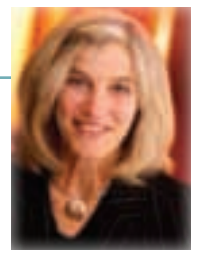
Dr. Anne Autor (l) and Anne Clarke



Mau-reen Maloney, at the University of Victoria, becomes the first woman Dean of Law in BC



Beverley McLachlin, PC is appointed first female Chief Justice of Canada



If elected at the 2011 AGM, Jan Lindsay, QC will be the first woman president of the Law Society to also hold the title "mother"

"We know law firms are a business. When you pare back the layers, at their core they have to make money. So we knew it wasn't enough to argue the social or ethical reasons firms should play their part in making the practice of law an environment in which women want to remain. We had to show firms what's in it for them, and that's what the business case articulates."

Among other things, it outlines three good business reasons to keep women in private practice:

1. competing for clients who are increasingly demanding diversity in the legal teams they hire;
2. attracting the best and brightest, including women, with equal opportunity workplaces; and
3. avoiding the enormous costs of turnover and attrition, which is estimated

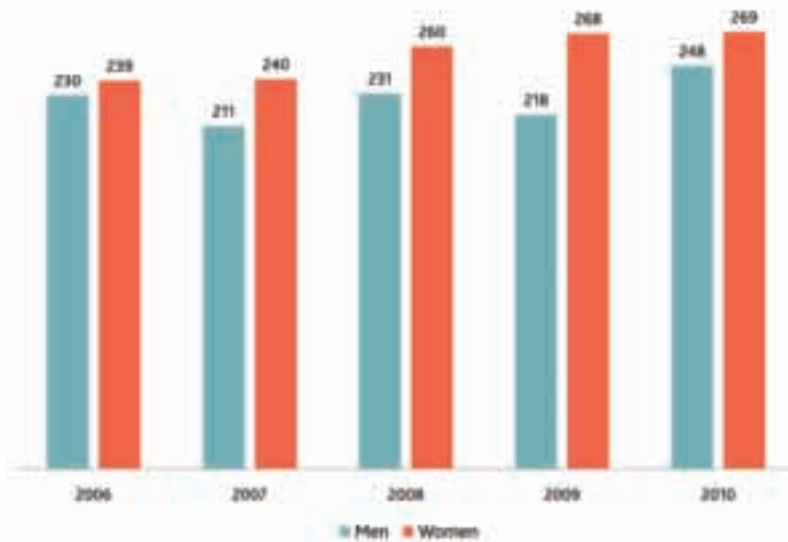


Former lawyer Ellen Schlesinger is working on her Masters thesis on why women leave law.

Practising status of lawyers in 2008 who were called in 2003



New BC lawyers by gender



Women lawyers ... from page 13

at more than \$300,000 for every lawyer who leaves.

Nevertheless, even if every firm in BC recognized the value of the business case, it alone would unlikely be enough to stop the exodus of women from law.

"We know that this is a complex problem," said Susanna Tam, a staff lawyer in the Law Society's Policy department, whose primary focus is equity and diversity. For a period of time, she, too, left the practice of law.

"Women leave law for all sorts of reasons, as do men, so there is no one-size-fits-all solution. But we do hear, again and again, about certain common factors, including lack of mentorship and the need

for greater flexibility and control over work-life balance."

Tam is working with the Law Society's Equity and Diversity Advisory Committee to bring solutions to BC to help address those common factors.

"We are in the midst of a feasibility study to bring Justicia here."

The Justicia Project is already underway in Ontario. The Law Society of Upper Canada launched it in 2008 and now has almost 60 participating firms. Among other things, under Justicia, signatory firms commit to:

1. developing processes to compile and maintain their own gender data; and
2. implementing policies and programs designed to retain and advance women, such as: parental leave, flexible

work arrangements and networking and mentoring.

Six firms in BC have already expressed interest in being a part of any future roll-out of Justicia here.

"I'm extremely pleased with the reaction I've had from firms," said Tam. "I was contacting them as part of the feasibility process to gauge interest for the program in BC and many said, 'where do I sign?' Ontario spent three years building the program in partnership with the firms, so we need a bit more leg work here before we launch, but it was gratifying to see how much enthusiasm there is among firms."

At the same time, Tam is also working to get a change of status survey in place to collect more qualitative data about the factors that cause women to move from, for example, full to part-time or non-practising status.

"We need to know what makes them leave so we can figure out what's most likely to make them stay," said Tam.

Ellen Schlesinger is clear about what didn't work for her, but she wants to know what's making other women leave. Schlesinger now works as a counsellor. She has just received ethical approval for her Masters thesis at the Adler School of Professional Psychology in Vancouver. For her study she will interview women lawyers who have left the profession and explore their feelings at the time they made their decision, as well as the characteristics of their current careers.<sup>1</sup>

"The two ways my study will be really important are that recent research in 2007 found that women lawyers internalize their dissatisfaction with their work and it comes out as depression. So when I interview my participants, I'm going to be asking them what they were feeling at the time they left the practice of law. So firstly, my study will be useful for mental health practitioners in informing them of some of the issues facing women lawyers in counselling. Secondly, by examining the characteristics of the participants' current careers, career counsellors will be able to use that information to see what other occupations women lawyers

<sup>1</sup> More information about Schlesinger's study and how to participate in it can be found at [www.ellenschlesinger.com](http://www.ellenschlesinger.com).



might find attractive.”

Schlesinger hopes to have the thesis completed by next spring and plans to publish it.

“I’d like the results to be accessible to the law community as well. My study will involve qualitative interviews with people, really opening up and having them tell their stories, and I will be looking for emerging themes. If my study finds women left because of A, B and C, then the legal community will know that if they address

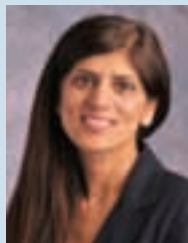
those factors there’s a greater chance of keeping women in the profession.”

Retaining women lawyers remains an important component of the Law Society’s strategic plan, and President Hume wants to see the Society do everything it can to achieve its goal.

“Women consistently take the Law Society’s gold medal for academic achievement at the University of British Columbia and the University of Victoria. In fact for the last six years, women have swept it,”

said Hume. “We know they bring extreme value to law. We also know the public is best served by a legal profession that is representative of them. It is therefore vital to the health of the profession that we do a better job of retaining women lawyers. However, as a regulator, we cannot effect change on our own. Creating an environment in which women feel welcome is everyone’s responsibility, and we are more than pleased to do everything we can to contribute to keeping women in law.” ❖

## Sexual harassment, not yet a relic



Anne Chopra

DECADES AGO, WHEN the conversation about sexual harassment began, people started to recognize that patting a female colleague on the bottom or hanging posters of scantily clad women in the workplace was both wrong and harassment. Awareness campaigns largely eradicated those types of specific behaviours, and yet sexual harassment manages to survive.

“The greatest number of calls I get continue to be on the grounds of sexual harassment,” said Anne Chopra, the Equity Ombudsperson for the Law Society of BC. “Generally speaking, the overt, blatant comment or act is not so common, anymore. Yet, there are still those who make inappropriate comments, make sexual advances or tell inappropriate jokes.”

So what does sexual harassment mean today?

“Sexual harassment is a form of discrimination based on sex,” said Chopra. “It is a serious abuse of power. Harassment can be a demand for a sexual favour in exchange for a benefit, or an unwelcome action or comment of a sexual nature. It is important to note that intention behind the act or comment is not required for it to be discriminatory; rather it is the impact of the behaviour. Further, the victim does not have to object or communicate that the comment or behaviour is unwelcome.”

While men can be victims of sexual harassment, the vast majority of complaints

Chopra receives are from women. “Over the last 11 years, I have only received two calls regarding sexual harassment where the victim was a male.”

Chopra has also received complaints from women who are early on in their legal careers. “Women articling students are telling me about inappropriate proximity to them, such as hovering over them while editing or standing too close while giving instructions. I’m also hearing about inappropriate questions at articling interviews, such as, ‘You’re in your 30s, are you planning on having children soon?’ or ‘I see you took feminist courses, so are you a lesbian?’”

Harassment can have significant consequences for the firm. Chopra highlights the following:

- the firm’s reputation is blemished among the profession and may then have difficulty attracting qualified female lawyers to the firm;
- job satisfaction is reduced for targets or witnesses of sexual harassment;
- the loss of job satisfaction can lead to a reduction in billable hours;
- interest or requests for promotion within the firm can diminish; and
- turnover increases for staff and associates, thus increasing training and recruitment costs for new employees.

Chopra says the impact on the individual who is subjected to sexual harassment can vary, but can include the following:

- reduced concentration at work;
- increased stress;

- physical problems, such as headaches or high blood pressure;
- symptoms of depression, such as sleeplessness, distraction or a lack of interest in work;
- marital or family problems; or
- substance abuse, such as self-medication with prescriptions, drugs or alcohol.

Sexual harassment can make women feel unwelcome in the legal profession and ultimately be a contributing factor to them deciding to change firms or careers. Anyone wanting to confidentially discuss concerns they have or talk about positive strategies for law firm culture is encouraged to contact the Equity Ombudsperson. ❖

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You can reach Anne Bhanu Chopra on her confidential, dedicated telephone line at 604.687.2344 or by email to [achopra1@novuscom.net](mailto:achopra1@novuscom.net). The Equity Ombudsperson is independent of the Law Society, reports only anonymous statistical data, confidentially assists anyone who works in a firm in resolving concerns over possible discrimination and assists law firms in preventing discrimination and promoting a healthy work environment.

Readers may also refer to the series of articles on sexual harassment written by lawyer Patricia Janzen and published in the March, May and October 2008 issues of the *Benchers’ Bulletin*.

PRACTICE WATCH, by Barbara Buchanan, Practice Advisor

## Mirror wills, separation agreements and bad cheque scams



### MIRROR WILLS: WHEN ONE SPOUSE ASKS FOR A NEW WILL

LAWYERS FREQUENTLY ACT jointly for couples to draft mirror wills. The spouses have a shared understanding as to what is contained in each other's will. If the couple later divorces or enters into a written separation agreement to divide their assets, is it ethical for the lawyer who drew the mirror wills to act for one of the parties in drawing a new will?

The Ethics Committee considered this question and was of the view that a lawyer should not act to draft a new will for one of the parties unless the lawyer had knowledge that the will of the other party was no longer valid.

### SEPARATION AGREEMENT – UNDIVIDED LOYALTY

Sometimes a married couple will approach a lawyer to draft their separation agreement. They say that they want a simple agreement that will reflect their wishes. A lawyer should decline to act for both parties in such circumstances. As a general

principle, a lawyer has a duty to give undivided loyalty to every client. The lawyer would not be able to protect the interests of each party when acting jointly.

### BAD CHEQUE SCAMS – NEW TWISTS AND CONFIDENTIALITY OBLIGATIONS

Fraudsters posing as clients continue to ask lawyers to pay money out of trust based on a bad cheque, often under the guise of collecting on a phony debt. Some of the different fraud scenarios and names that fraudsters have used in BC include:

- *Commercial loan agreement* – David Lawson, James Gillard, Mark Rudic, Yu Shengli, Dr. Richard Abramovic, Izzabin Bin Aris, Aris Izaddin, Ma Li Ni, Larry Mason, Edward Williams, Fred Williams, George Graham.
- *Personal injury settlement between employer and employee* – Terry Sullivan, Patrick Cluster, Graham Jackie Lunn
- *Commercial invoices* – Mark Branson, Alice Wood, Bessant James, Shi Quen,

Qui Xiandong, Jerry Steven

- *Matrimonial, including collaborative divorce agreement* – Donna Chipman, Kathy Scotia, Mima Oshiro, Masako Kazue, Rika Takahashi, Tanako Masato, Julie Burany, Brenda Blumenkrantz, Alice Goldbery, Zaria Hoshiko, Hikari Yamato
- *Real estate* – Jyoung Chung Tu, Young Chung Tu, Shiukmoda Joji

### Commercial loan agreement scam

In a new twist to the commercial loan agreement collection scam, "David Lawson" professes to want to start a lawsuit right away and only reluctantly agrees to the lawyer writing a demand letter to the "debtor," Samuel P. Duboa. He feigns interest in his legal rights and in calculating the accrued interest on the principal. Lawson provides convincing documentation, including a \$380,000 loan agreement between himself as lender and Duboa, a copy of a \$380,000 purported bank draft payable to Duboa, email correspondence with Duboa, a scan of an Ontario driver's licence in the name of David Lawson, and a purported attestation to his identity by a Hong Kong notary or lawyer.

In the email correspondence, Duboa tells Lawson that he is also owed money by debtors, which is frustrating his ability to pay Lawson. When one of Duboa's debtors is ready to pay, Duboa says that he will instruct the debtor to make the cheque payable to the law firm in trust, rather than to Duboa. The law firm receives a cheque from a real company with the name of the payee altered and sometimes other alterations. The company's cheque may clear before either the law firm, the bank or the company find out about any alterations. When advised the cheque has cleared, Lawson asks the lawyer to wire the funds to a bank account in the name of a third party in Hong Kong, where Lawson professes to be temporarily on business.

Below is an example of typical correspondence that David Lawson has



Figure 1: Image of financial instrument provided by David Lawson.

sent to BC lawyers:

From: David Lawson [davidlawson56@gmail.com]

Sent: Wednesday, July 06, 2011

11:14AM

To: xxxx xxx

Subject: Per Discussion

Dear xxxx xxx,

Thanks for your time yesterday. I am contacting you in regards to a breach of business loan agreement with Mr. Samuel Dubois in Vancouver. I provided a loan to him so that he can meet up with his management and operational obligation during the rough economic climate. I provided him with an emergency loan of \$380,000 with a term of 12 months and fixed interest rate of 12.25%. The repayment period has since elapsed but he has been unable to finalize the repayment of the loan and has only paid \$147,000 till date. Let me know if this falls under the scope of your practice so that I can provide you with more information on this matter.

Best regards,

David Lawson

Email: davidlawson56@gmail.com

Tel. 6176761433

In addition to supplying a copy of the supposed loan agreement, David Lawson provides a copy of a financial instrument as evidence of his loan to Dubois (Figure 1).

Lawyers have received an attestation verifying David Lawson's identity via fax number 85230141823, which is purported to be signed by either Hong Kong lawyer or notary Xie Lianzhong of Yip, Tse & Tang, Solicitors and Notaries. The Law Society of

Hong Kong and the Hong Kong Society of Notaries have confirmed there is no such lawyer or notary. The "attestation" has included the following information:

I attest that:

1. I am a lawyer in Hong Kong with a place of business at Room 2202, 22F, Kowloon Building, 555 Nathan Road, Yaumatei, Kowloon. Tel: 85295311758 or 85268889999.
2. I met with DAVID LAWSON on the 10th day of August, 2011 and examined his/her original Ontario Driver's Licence issued by the Government of Ontario on 23rd March, 2006 and bearing document number L38707485670506.
3. To the best of my knowledge and belief, the document is valid and unexpired and the information on it is current, correct and complete; and
4. This is a true copy of the document, the original of which I examined.

Signed by me on the 10th day of August, 2011 at Kowloon, Hong Kong.

Name of agent (please print): Xie Lianzhong

David Lawson has sent lawyers a scan of his purported driver's licence (Figure 2):

Below is a sample of wire transfer instructions to a lawyer from David Lawson:

Please wire \$125,000

from the funds to the account information below:

Bank Name – Bank of China, Hong Kong Ltd.

Bank Address – No 833 Chung Sha-wan Rd. Kowloon

Swift Code – BKCHHKHH

Account Number – 01274010166899

Beneficiary Name – Taylor Gary

Beneficiary Address – Pik Wah Bldg, 7A Pitt Street, Yaumatei, Kowloon, Hong Kong.

Please confirm receipt of wire information and send me a copy of the transfer confirmation slip today so I can forward same to my supplier. Please also confirm if you have contacted Samuel regarding the balance.

Thanks, Dave

The emails below illustrate some more obvious scam attempts on BC lawyers:

#### Personal injury settlement between employer and employee

From: Sullivan L Terry [mailto:sll-vantery@gmail.com]

To: xxxx xxx

Sent: July 5, 2011 1:02pm

Subject: Dear Counsel

Dear Counsel,

I am seeking legal representation from your law firm regarding a breach of settlement agreement with my former employer due to the injury I sustained while working for them. I need proper legal advice and assistance to know the best way to handle this issue. If this is your area of practice, please contact

continued on page 18



Figure 2: Scan of David Lawson's purported driver's licence.



## Services for lawyers

### Practice and ethics advisors

**Practice management advice** – Contact David J. (Dave) Bilinsky 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, Jack Olsen or Warren Wilson, QC to discuss ethical issues, interpretation of the *Professional Conduct Handbook* or matters for referral to the Ethics Committee. Call Barbara about client identification and verification, scams, client relationships and lawyer/lawyer relationships. Contact Barbara at: tel: 604.697.5816 or 1.800.903.5300 email: bbuchanan@lsbc.org. Contact Jack at: tel: 604.443.5711 or 1.800.903.5300 email: jolsen@lsbc.org. Contact Warren at: tel: 604.697.5837 or 1.800.903.5300 email: wwilson@lsbc.org.

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



**PPC Canada EAP Services** – 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 articulated 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 articulated 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 additional cost to lawyers. tel: 604.685.2171 or 1.888.685.2171.



**Equity Ombudsperson** – Confidential assistance with the resolution of harassment and discrimination concerns of lawyers, articulated 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 ... from page 17*

*me to provide you with further information.*

*Regards,  
Terry Sullivan*

### **Collection of damages for infliction of disease**

*From: Ms. Melissa Andersen [msmelissaandersen@gmail.com*

*Sent: Monday, July 25, 2011 10:46AM*

*To: xxxx xxx*

*Subject: collection of damages*

*I would like to make a request for your assistance in a matter that had been settled out of court, as I am presently away from Canada.*

*Essentially, it is important to mention that I am HIV+ patient as a result of an unfaithfulness on the part of my ex-husband, Mr. Bill Langerak. Recalling my former relationship with Mr. Bill Langerak, I could confirm to you that I was pregnant to him in June 2009.*

*Unfortunately, Mr. Langerak did not disclose his HIV+ status to me....*

*[Andersen includes several paragraphs about her HIV status and difficulties with her ex-husband.]*

*The latest development is that my ex-husband has just informed me that he has made adequate arrangement with his paying bank in the States to make first payment to the value of US\$250,000 out of the agreed \$380,500 in damages to me.*

*In a nutshell, I would be glad if you could kindly notify me of your interest to represent me on this matter. I would also be interested to know your professional fee towards the requested service.*

*Yours truly,  
Ms. Melissa Andersen  
Tokyo, Japan.  
Phone: +81-03-3342-651  
Email: melissa@jp.popstarmail.org*

In all of these scams, the “client” needs the lawyer to deposit and pay out on a certified cheque or other negotiable instrument before discovering it’s fake. Waiting for the cheque to clear may help mitigate but not eliminate the risk — for instance, a cheque that purports to be drawn on an actual bank account may well clear initially, with

the financial institution later finding that the instrument was bad. Protect yourself and trust your instincts. Protection from these scams could be as simple as requiring the debtor to pay the client directly by cheque or wire transfer so that the funds do not go through your trust account.

Visit the Law Society’s website at [lawsociety.bc.ca](http://lawsociety.bc.ca) to find out more about how to identify and avoid being caught by scams (see Lawyers / Fraud Alerts / Bad Cheque and Other Negotiable Instrument Scams), or contact a Practice Advisor for confidential advice ([bbuchanan@lsbc.org](mailto:bbuchanan@lsbc.org)).

### **Can you disclose information about a fraudster if you’ve been duped?**

In the above scenario, although “David Lawson” purported to be a client, he was not truly seeking the lawyer’s advice or assistance. Rather, he assumed an identity to perpetrate a fraud and dupe the lawyer into assisting him, exposing the lawyer to financial loss.

If a lawyer is satisfied that:

- a purported client has assumed a false identity to perpetrate a fraud,
- the client has perpetrated the fraud, and
- the lawyer has been duped into assisting with the fraud,

the lawyer may disclose that information without a court order.

### **Positive development in the fight against debt collection scams**

On August 15, 2011, the US Attorney’s office for the Middle District of Pennsylvania issued a press release announcing that a Nigerian man, Emmanuel Ekhaton, was extradited to the U.S. on August 11 and faces several charges with respect to his involvement in a debt collection scam targeting law firms in Canada and the U.S. An October 3, 2011 trial date has been scheduled. Also charged was Yvette Mathurin, purportedly a resident of Ontario, Canada. Others are believed to be involved, including people from Nigeria and Korea.

### **FURTHER INFORMATION**

Contact Practice Advisor Barbara Buchanan at 604.697.5816 or [bbuchanan@lsbc.org](mailto:bbuchanan@lsbc.org) for confidential advice or more information regarding any items in Practice Watch. ❖

## 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 Hearing reports section of the Law Society website.

### MARIUS SCHUETZ (otherwise known as MARIUS ALEXANDER)

Chilliwack, BC

Called to the bar: May 19, 1995

Ceased membership: January 1, 2007

Hearing (application for reinstatement): February 21, 2011

Panel: David Mossop, QC, Chair, Patricia Bond and Stacy Kuiack

Reports issued: May 24 (2011 LSBC 14), July 5 (2011 LSBC 17) and August 2, 2011 (2011 LSBC 21)

Counsel: Henry Wood, QC for the Law Society and Ian Aikenhead, QC for Marius Schuetz

Marius Schuetz applied for reinstatement after voluntarily leaving the practice of law in 2006, in part to deal with his alcohol problem. Schuetz presented an independent medical evaluation to the panel that stated there was no evidence to suggest that he was still using alcohol.

If the only issues before the panel were alcoholism and rehabilitation, the matter would be considered straightforward. The problem was that, prior to leaving practice, Schuetz had had a number of conduct issues with the Law Society:

- failing to make full disclosure to the Court regarding *ex parte* applications;
- communicating with a person represented by a lawyer without that lawyer's consent; and
- mixing the practice of the law with his business dealings with clients.

Additionally, an interim audit of Schuetz's trust accounts in 2006 has shown that his financial records were in disarray.

The panel noted that, to Schuetz's credit, he acknowledged that he may have acted improperly in intermingling his business dealings with his law practice and also admitted his mistakes in violating the trust rules. He consented to not operating a trust account if he was readmitted.

Schuetz's lawyer submitted that the past conduct issues were connected to the alcoholism. The panel found no specific medical evidence connecting Schuetz's conduct issues to alcoholism. Some of the conduct issues predated his more serious drinking problems. The panel found it significant that his problems with the Law Society started within a few years of being called to the Bar. However, the panel recognized that alcoholism is a disease and can diminish the capacity to practise law.

The panel was satisfied that Schuetz had dealt with his alcohol problem and ordered that he be reinstated as a member of the Law Society on medical conditions. After considering written submissions from Schuetz

and the Law Society, the panel ordered a number of conditions, including that he:

- provide a written commitment to abstain from all potentially addictive mood-altering drugs unless prescribed by a physician;
- enrol in a formal medical monitoring process;
- continue to use one designated physician as his primary care physician;
- consult with his personal physician on a regular basis and ensure that there are follow-up investigations of potentially abnormal liver enzyme levels;
- attend regular support group meetings, maintain contact with a sponsor and complete the 12-step Alcoholics Anonymous program;
- demonstrate complete compliance with the terms of his signed monitoring or relapse prevention agreement for four consecutive weeks.

The panel had concerns about the problems that Schuetz had had in the past with the Law Society and imposed as additional conditions for the protection of the public interest that he:

- not have a trust account or otherwise deal with clients' money;
- restrict his practice to legal consultant and advisor;
- not advise any client on an *ex parte* order or garnishing before judgment;
- not mix his business activity with his practice of law, even if the client obtains independent advice;
- re-take the Professional Legal Training Course or take double Continuing Professional Development hours for the next three years; and
- enter into a mentoring agreement.

Schuetz subsequently made an application under Rule 2-69 for a variation of those conditions. The president referred that application to the original panel for decision.

There were two main concerns for this application. The first was that it was impractical for him to practise without dealing with clients' money (though his counsel suggested this in a letter). The second was that Schuetz did not want to restrict his practice to that of a legal consultant. The panel decided that there was good cause to vary. These changes include that Schuetz:

- not have a trust account, unless authorized by the Practice Standards Committee; and
- 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 until the condition of completing the CPD hours is concluded in three years; the Practice Standards Committee may extend this three-year time limit.

The panel stated that Schuetz had made great strides in dealing with his alcoholism and deserved a second chance. However, he should consider himself on "probation." The monitoring or relapse prevention agreement may be extended beyond 12 months.

The panel also ordered that Schuetz pay \$2,500 in costs. ❖

## Discipline digest

PLEASE FIND SUMMARIES with respect to:

- Edward Earle Bowes
- Leonard Thomas Denovan Hill
- Elizabeth Darlene Bryson
- David William Blinkhorn – addendum

For the full text of discipline decisions, visit the Hearings reports section of the Law Society website.

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### EDWARD EARLE BOWES

Vancouver, BC

Called to the bar: May 14, 1976

Discipline hearing: March 23, 2011

Panel: David Renwick, QC, Chair, David Crossin, QC and Gregory Petrisor

Report issued: June 6, 2011 (2011 LSBC 15)

Counsel: Lindsay MacDonald, QC for the Law Society and Henry Wood, QC for Edward Earle Bowes

#### FACTS

Edward Earle Bowes acted on a part-time basis as in-house corporate counsel for a group of companies. A dispute between the majority shareholder and the minority shareholder in those companies led to an oppression proceeding commenced by the minority shareholder in the Supreme Court of BC against the corporations and the majority shareholder.

Bowes entered an initial appearance to the action on behalf of “all corporate respondents” in the oppression action. The minority shareholder’s counsel served a notice of motion seeking a declaration that Bowes be disqualified and cease to be solicitor of record for the corporate respondents.

Although Bowes denied that he was in a conflict of interest, he agreed to withdraw. He provided the undertaking that “neither I nor anyone in my firm will act on behalf of any of the parties in this proceeding.” However, Bowes continued to provide legal services and advice related to the litigation to the corporate defendants and the majority shareholder, including preparing affidavits and engaging in discussions regarding settlement proposals.

#### ADMISSION AND DISCIPLINARY ACTION

In Bowes’ mind at the time, there was a difference between simply acting for the majority shareholder and the corporations, and acting “in the proceeding” as counsel. The panel found that such a misunderstanding was troubling, given that, clearly, the motion that was filed and the undertaking were intended to avoid Bowes acting in a conflict of interest situation. By continuing to act, even if not as counsel of record, and even if “behind the scenes” in essence, Bowes illustrated a profound lack of appreciation of the basis upon which the undertaking was sought, and of the gravity of adhering to his undertaking.

Of further concern to the panel was the fact that the breach of undertaking

was an ongoing breach that occurred over a period of time, rather than a single isolated error in judgment.

Upon reflection, Bowes admitted that he breached his undertaking and that his actions constituted professional misconduct.

The panel accepted Bowes’ admission and ordered that he pay:

1. a \$3,000 fine; and
2. \$1,500 in costs.

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### LEONARD THOMAS DENOVAN HILL

Delta, BC

Called to the bar: July 13, 1982

Hearing dates: January 20 and June 2, 2011

Reports issued: March 3 (2011 LSBC 08) and June 29, 2011 (2011 LSBC 16)

Oral reasons: June 2, 2011

Panel: Bruce LeRose, QC, Chair, Leon Getz, QC and Benjimen Meisner  
Counsel: Maureen Boyd for the Law Society and Leonard Thomas Denovan Hill appearing on his own behalf

#### FACTS

In March 2009, Leonard Thomas Denovan Hill commenced a builder’s lien claim on behalf of a client.

Opposing counsel advised Hill in July 2009 that a cheque would be delivered to him on undertakings.

On October 19, 2009, Hill received a trust cheque for \$11,500 and a cover letter that explained that it was being sent on his undertaking not to release any part of those funds from trust until he had filed the discharges of the claim of lien, the certificate of pending litigation and the consent dismissal order, and forwarded copies to opposing counsel.

On October 22, Hill deposited the cheque into his trust account. The next day he withdrew \$840 to pay his account and paid the balance of \$10,660 to his client, without complying with any of the conditions in the letter of undertaking.

On January 15, 2010, opposing counsel enquired on three occasions whether Hill still held the funds in trust. On January 18, Hill responded that the funds had been disbursed and the related documents *were all ready to be filed*.

Opposing counsel reported the matter to the Law Society.

#### DETERMINATION

Hill admitted that the cheque and the undertaking letter were received in his office and that he disbursed the funds on October 23, 2009 when none of the terms of the undertaking imposed upon him had been fulfilled. His agreement to these facts seemed to make the conclusion inescapable that he committed a breach of his undertaking, however, he denied this.

Hill said that when he disbursed the funds he was unaware of the



undertaking letter as it had been misplaced. His contention was that he could not be found to have committed a breach of an undertaking of which he was unaware.

In the panel's view, Hill's contention that he was unaware of the existence of the undertaking or that its terms were unfulfilled, seemed implausible. He had been advised by opposing counsel in advance that a cheque would be delivered to him on undertakings. In giving evidence before the panel, Hill agreed that it is quite common in builder's lien practice for documents or funds to be exchanged on undertakings, and he testified that he had an active practice in this field. Yet, he paid the funds out within a day of receiving them, and did so without making any enquiries as to the terms upon which they had been delivered to him.

The panel concluded that Hill's conduct constituted professional misconduct. It was irrelevant to that question whether Hill committed his admitted breach of undertaking intentionally or, as he claimed, unintentionally because he was unaware of it.

## DISCIPLINARY ACTION

The panel considered two aggravating factors. First, Hill was somewhat evasive in responding to enquiries from the other lawyer about the status of matters. Second, Hill had committed another breach of undertaking in 2007 and was fined \$2,500 for professional misconduct.

The panel determined there was a need for a sharper reminder to Hill about the importance of meticulous compliance with undertakings. Reliance on undertakings is fundamental to the practice of law and it follows that serious and diligent efforts to meet all undertakings are an essential ingredient in maintaining credibility and the public's trust in lawyers.

The panel ordered that Hill:

1. be suspended from the practice of law for one month; and
2. pay \$4,000 in costs.

## ELIZABETH DARLENE BRYSON

Vancouver, BC

Called to the bar: August 31, 1990

Discipline hearing: June 23, 2011

Panel: Joost Blom, QC, Chair, Satwinder Bains and Gregory Petrisor

Report issued: July 25, 2011 (2011 LSBC 19)

Counsel: Carolyn Gulabsingh and Jaia Rai for the Law Society and Alistair Wade for Elizabeth Darlene Bryson

## FACTS

In January 2011, the Law Society sent a letter to Elizabeth Darlene Bryson requesting a response to specific questions concerning its investigation of a complaint from one of her clients. Further requests were forwarded to Bryson via email, mail and phone, which included a deadline of March 8 to reply, otherwise disciplinary action would be considered for failure to respond to the Law Society's correspondence.

On March 17 Bryson contacted the Law Society and advised that she was working on a reply. On June 22, the day before the present discipline hearing, Bryson provided her written response to the questions initially asked by the Law Society.

## ADMISSION AND DISCIPLINARY ACTION

Bryson admitted that she failed to provide a substantive response promptly to communications from the Law Society and did not dispute the Law Society's submission that her conduct constituted professional misconduct.

The panel considered a number of factors. Bryson did not have a disciplinary record, and her misconduct did not appear to have given her any benefit. She acknowledged her misconduct. During her practice as a lawyer, she had contributed significantly to the legal profession and the public as a volunteer.

The panel also took into account that Bryson eventually provided a response to the request for information originally made by the Law Society. As this was done at the last possible moment, it was impossible to determine prior to the hearing if her response was satisfactory. The panel advised Bryson that she may be required to provide the Law Society with a more substantive response if deemed necessary.

The panel accepted Bryson's admission and ordered that she:

1. pay a \$1,000 fine;
2. provide a substantive response within 30 days of a request from the Law Society for further information arising from her June 22 response; and
3. pay \$1,500 in costs.

## DAVID WILLIAM BLINKHORN – ADDENDUM

The following is an addendum to the discipline digest summary in the Summer 2010 *Benchers' Bulletin* and the addendum in the Fall 2010 *Benchers' Bulletin*.

## BACKGROUND

David William Blinkhorn admitted, and the panel found, that he had committed professional misconduct. The panel further found that he breached the Law Society Rules in failing to keep proper trust accounting records.

The panel ordered that Blinkhorn be disbarred and pay \$37,000 in costs.

## TRUST PROTECTION COVERAGE

The BC legal profession provides financial protection to members of the public whose money has been stolen by a lawyer. If a claim is made against a lawyer relating to the theft of money or other property, Trust Protection Coverage is available under Part B of the lawyer's insurance policy to reimburse the claimant, on the lawyer's behalf, for the amount of the loss.

Based on the circumstances described in paragraph [3](12) of *Law Society of BC v. Blinkhorn*, 2009 LSBC 24, a Trust Protection Coverage claim was made against David William Blinkhorn and the amount of \$16,561 paid. This is in addition to the claims previously reported in the Summer and

*continued on page 23*

## Conduct reviews

THE LAW SOCIETY recently decided to publish summaries of conduct reviews on an anonymous basis. This publication is intended to assist lawyers by providing information about ethical and conduct standards.

A conduct review is a confidential meeting between a lawyer against whom a complaint has been made and a Conduct Review Subcommittee, which may also be attended by the complainant at the discretion of the subcommittee. The Discipline Committee may order a conduct review pursuant to Rule 4-4, rather than issue a citation to hold a hearing regarding the lawyer's conduct, if it considers that a conduct review is a more effective disposition and is in the public interest. The committee takes into account a number of factors, which include:

- the lawyer's professional conduct record;
- the need for specific or general deterrence;
- the lawyer's acknowledgement of misconduct and any steps taken to remedy any loss or damage caused by his or her conduct; and
- the likelihood that a conduct review will provide an effective rehabilitation or remedial result.

### CR #2011-08

This conduct review addressed the lawyer's conduct in a real estate transaction, in which he gave an undertaking to use his best efforts to obtain a priority agreement and estoppel certificate from a tenant of the property. He also failed to respond to letters and telephone calls from the other lawyer regarding his fulfilment of the undertaking. The subcommittee observed that an undertaking to use "best efforts" should not be given because it is inherently uncertain. It also discussed with the lawyer his pattern of poor communications, which resulted in small problems becoming big problems. It reminded the lawyer that Chapter 11, Rule 6 of the *Professional Conduct Handbook* requires a lawyer to respond promptly to communications from another lawyer. The lawyer had changed his practice setting and reduced the number of his files, which he believed would help him avoid future problems.

### CR #2011-09

The conduct review was ordered to discuss with the lawyer his obligations to fulfill undertakings, to comply with the electronic registration requirements of the *Land Title Act*, to properly supervise his staff and to comply with the accounting rules set out in Division 7 of Part 3 of the Law Society Rules. This conduct was the result of an unorganized conveyancing practice that lacked proper systems and supervision. The lawyer's practice was thoroughly investigated by an audit team and by practice reviewers, which appeared to have caused him to take the necessary steps to ensure that he meets the standards set out in the Rules for accounting records and handling of funds. The subcommittee reminded the lawyer that he is personally responsible to oversee the accounting function and to ensure that his trust reports are accurate. Further, he was advised that he could not lawfully affix his electronic signature to an electronic version of a document that is different from the original, regardless of whether the amendments to the original were authorized by opposing counsel.

### CR #2011-10

The conduct review addressed the lawyer's acknowledged misconduct in transferring several small balances from his trust account to his general account on inactive files. He first prepared a bill on each file with a general description of services, which included file review, attempts to locate the client and photocopying. He did not deliver the bills because he was unable to locate the clients. The subcommittee drew to his attention Rule 3-57(3) and s. 69 of the *Legal Profession Act*. It emphasized to the lawyer that his actions could be viewed as theft of the client's funds and the small amount of money did not detract from the significance of his actions. Further, the bills did not include a reasonably descriptive statement and some were inaccurate because they included disbursements that had not been incurred.

### CR #2011-11

The conduct review arose from the lawyer's conduct in attending a meeting between a separated mother and father to discuss various issues related to their child, when he knew that the father was represented by counsel. The lawyer had been counsel for the mother, but withdrew because he became romantically involved with her. Another lawyer in the same firm then assumed conduct of her matter. The lawyer attended this meeting two months after his withdrawal, without advising or obtaining the consent of the father's counsel to attend. His conduct was in breach of Chapter 4, Rule 1.1 of the *Professional Conduct Handbook*, as he was living with the mother and her child and consequently had an interest in the outcome of the matter. The subcommittee pointed out to the lawyer both the perception and the reality of the conflict that arose as result of his inappropriate action.

### CR #2011-12

The subject of the conduct review was the lawyer's conduct in representing two people in an immigration matter on short notice. He was not adequately prepared for the hearing, partly because his application for an adjournment was denied and partly because he was not up-to-date in that area of law. He was cross-examined at the hearing and gave evidence that conflicted with statements in his affidavits, which resulted in the court making unfavourable comments about his veracity. The lawyer recognized that he should not have taken on a matter in an unfamiliar area of law without ensuring adequate time to prepare and that he ought to have taken scrupulous care both to prepare his affidavit and to prepare to testify. He has restricted his practice and will not act in immigration matters.

### CR #2011-13

The purpose of the conduct review was to address the lawyer's conduct in lending to an acquaintance \$5,000 in cash and \$10,000 by bank draft for a short period, on the promise by the acquaintance of a very high rate of interest. This interest rate violated s. 347 of the *Criminal Code*. When the funds and interest were not repaid, the lawyer commenced an action on his own behalf. The subcommittee emphasized that it was unseemly for a lawyer to engage in a cash transaction and to commence an action to

recover a criminal rate of interest. At the time of the conduct review, the lawyer had withdrawn that action and retained counsel to commence an action for the principal only. He now appreciates that he may have been duped and will never recover any of his money.

## CR #2011-14

The conduct review concerned the lawyer's conduct in sending a letter to opposing counsel threatening to commence contempt proceedings against the opposing party if that party did not agree to certain terms. The lawyer made this statement in the context of a very acrimonious family law matter and acknowledged that her emotions affected the tone and content of the letter. The subcommittee discussed Chapter 4, Rule 2(a) of the *Professional Conduct Handbook*, which prohibits a lawyer from threatening to initiate or proceed with a criminal or quasi-criminal charge for the collateral purpose of securing a civil advantage. Her conduct was also contrary to the canons in Chapter 1, which state that ill feelings between clients or lawyers should never be allowed to influence lawyers in their conduct or demeanour toward each other or the parties. The lawyer acknowledged that her conduct was unprofessional and inappropriate. She had taken steps to ensure this conduct does not occur again, including instituting a "cooling off" period after drafting correspondence to avoid making an emotionally charged response.

## CR #2011-15

The conduct review was ordered in respect of several complaints made about a lawyer over a two-year period, which indicated poor judgment reflected in expressions of anger, defensiveness and excessive litigiousness. The complaints also revealed a pattern of delay and neglect, particularly in entry of orders or other procedural steps, as well as in responding to communications from clients or opposing counsel. The subcommittee discussed with the lawyer the common themes of the complaints, as well as her professional conduct record. It expressed a concern that the lawyer may be ungovernable and may be unable to change ingrained patterns of behaviour. The subcommittee recommended steps to address her apparent isolation as a sole practitioner and her inability to deal appropriately to the pressures of practice and personal stresses. These steps included practising with other lawyers and obtaining counselling.

## CR #2011-16

The conduct review arose from the lawyer's delay in taking action on behalf of his clients, as well as his failure to follow their instructions and to respond to their communications. He was retained to recover a deposit for a property purchase that did not complete, but took no substantive action to move the file to resolution. He received instructions to take a certain step, but did not do so. The subcommittee reminded the lawyer of his obligation under Chapter 3 of the *Professional Conduct Handbook* to provide conscientious, diligent and efficient services and to perform the work in a prompt manner. The situation was aggravated by the lawyer sending an inappropriate email to the client. The subcommittee cautioned him that the nature of email may provoke an inappropriate immediate reaction, when a considered response is required.

## CR #2011-17

The lawyer signed several trust cheques while he was insolvent, without obtaining a second signatory, in breach of Rule 3-45(4)(b). The lawyer

explained that he had interpreted the rules such that he did not believe he was "operating a trust account" by signing trust cheques. The subcommittee pointed out his interpretation was groundless and reminded him that signing a trust cheque gives rise to legal consequences, including the deemed undertaking in Chapter 11, Rule 8 of the *Professional Conduct Handbook* that the cheque will be paid and is capable of being certified. The lawyer acknowledged his error.

## CR #2011-18

The conduct review was ordered to address with the lawyer the importance of complying with the "no-cash" rule as well as his obligations when acting for more than one client in real estate transactions. The lawyer received cash of \$7,500 or more on two occasions in 2007. Although one instance fell within the exception for legal fees in Rule 3-56.1(3.1), it should have been reported on his trust report, but was not. The subcommittee reminded him to read the questions on his trust report carefully and to take care to fully and accurately answer them.

The lawyer also acted in a real estate transaction for the purchaser, with whom he had a personal relationship and to whom he loaned money to complete the purchase, thus giving rise to a conflict. He also acted for the mortgagee bank, but did not disclose to all clients the relevant details of the transaction. The subcommittee was concerned that he did not appreciate that his failure to disclose material information to the bank was potentially misleading to the bank and preferred the interests of one client over the other. He was advised to ensure that all clients are fully informed of all the relevant details when he acts for more than one client. The subcommittee also warned the lawyer to be very clear, both to himself and other persons, for whom he is acting and for whom he is not.

## CR #2011-19

The conduct review was ordered following an audit of the lawyer's practice, which revealed breaches of a number of the accounting rules in Division 7 of Part 3 of the Law Society Rules. The subcommittee addressed a concern about the lawyer receiving funds in trust that he disbursed to third parties when little substantive legal work was performed, because of the potential to be involved in facilitating a fraud. The lawyer's firm had hired a disbarred lawyer to work as an assistant, unaware that Chapter 13 of the *Professional Conduct Handbook* prohibits a lawyer from hiring a disbarred lawyer without obtaining the written consent of the Law Society. The subcommittee also addressed the conflict of interest that may arise when a lawyer receives shares in a company in payment of legal fees. The lawyer acknowledged the issues in his practice and advised that he had taken steps to rectify the record-keeping and accounting issues and had taken securities courses. ❖

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### *Discipline digest ... from page 21*

Fall 2010 digests. Blinkhorn is obliged to reimburse the Law Society in full for the amounts paid under Trust Protection Coverage.

For more information on Trust Protection Coverage, including what losses are eligible for payment, see Lawyers > Insurance on the Law Society's website at [lawsociety.bc.ca](http://lawsociety.bc.ca). ❖



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