The Law Society of British Columbia

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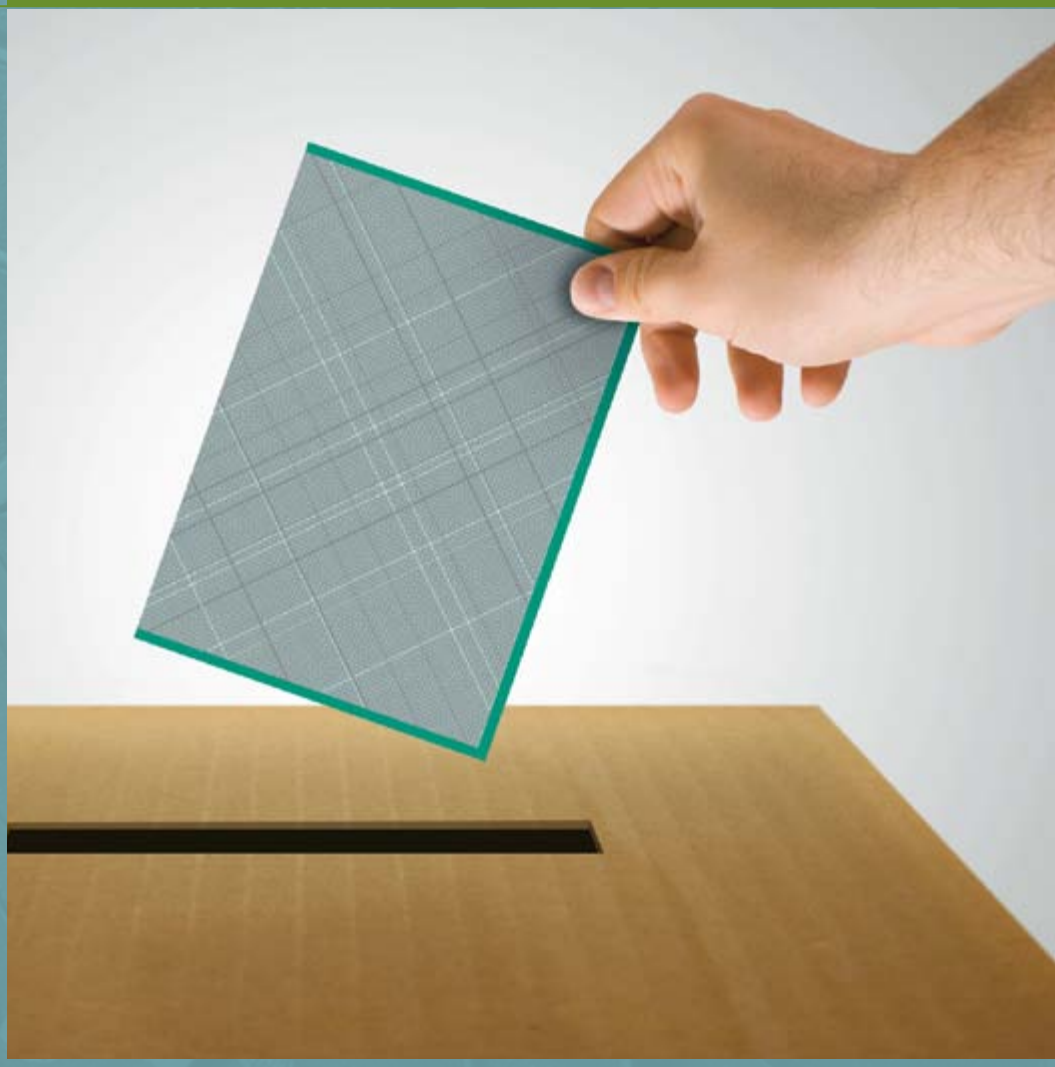
BENCHERS' BULLETIN

Keeping BC lawyers informed



FEATURE

Responsibility for change must be shared by all

by Art Vertlieb, QC

AS A PROFESSION, we can always be proud of our long tradition of advocating for change on behalf of our clients, our communities and society in general.

It's time now to reflect and ensure we are continuing to honour that tradition.

Each and every workday, the Benchers of the Law Society receive a summary of media reports from around the world that remind us that the legal profession, the practice of law and the regulation of lawyers are changing, and changing rapidly.

In law, some reluctance to change is good, in that it assists the predictability of the law and legal principles over time.

However, lawyers cannot sit back and ignore the changes that are coming or are even now upon us. These changes are being driven by technology, the inability of many to find affordable legal services and other factors.

I am encouraged that the Canadian Bar Association has two initiatives under way: the Envisioning Equal Justice Initiative, which is intended to set out a strategic framework to reach equal justice, and the Legal Futures Initiative, a comprehensive examination of the future of the legal profession in Canada.

I am further encouraged that our courts are actively working to increase awareness and dialogue around the implications of local, national and global change on the justice system.

It is critical that we all become engaged in some form or another with understanding and addressing what is happening here and elsewhere that will impact us. Before we criticize judges, the courts and the government, we must look clearly at ourselves and be certain we are doing all we can to address the need for change.

On the heels of allowing law students and designated paralegals to offer certain legal services, the Law Society continues to take progressive steps to effect change.

The Legal Service Providers Task Force is in the midst of consultations with lawyers, notaries, paralegals and other legal stakeholders. The intent is to gather opinions and ideas that will be considered by the task force as it develops its final recommendations on the regulation of legal services in BC.

In July, the task force tabled with the Benchers its interim report. The focus of the work has been to assess what model of legal service regulation will best protect the public, particularly by improving access to legal services and advancing the public interest in the administration of justice.

If you wish to weigh in on the discussion, I urge you to review the work of the task force to date and make your submission through the online form on the Law Society website or attend one of the consultation sessions that will be held in Vancouver, Victoria and Prince George.

This is an important initiative, and the results of this work could have far-reaching implications for the profession, the public and the future of legal services in BC.

On another note, the feature article of this issue of *Benchers' Bulletin* highlights our upcoming Bencher election, and I want to emphasize the opportunity this affords us to improve the diversity around the Bencher table.

Much of the work of the Benchers involves policy development that impacts the public and lawyers. In order to ensure our work is well considered, it is imperative that as many perspectives as possible are represented.

This is better achieved with Benchers who reflect the demographics of British Columbia.

This year, there will be at least seven new Benchers due to our term limit for sitting Benchers. This represents an excellent chance for renewal. Therefore, I am encouraging Aboriginal lawyers, solicitors, visible minority lawyers, women lawyers and young lawyers who meet the qualifications for Bencher and want to contribute to the governance of the profession to stand for election.

For those who are not running, please reflect on the need for diversity as one of the criteria in placing your vote.❖

BENCHERS' BULLETIN

The *Benchers' Bulletin* and related newsletters are published by the Law Society of British Columbia to update BC lawyers, articled 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 — contact the editor at communications@lsbc.org.

Electronic subscriptions to the *Benchers' Bulletin*, *Insurance Issues* and *Member's Manual* amendments are provided at no cost. Print subscriptions may be ordered for $50 per year ($20 for the newsletters only; $30 for the *Member's Manual* amendments only) by contacting the subscriptions assistant at communications@lsbc.org.

Current and archived issues of the *Bulletin* are published online at lawsociety.bc.ca (see Publications and Resources).

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The Law Society awards scholarships

Investing in the future of the legal profession

At the July Bencher meeting, Law Society President, Art Vertlieb, QC, awarded scholarships to **Robert Clifford** and **Kathryn Thomson** *(pictured above with Attorney General Suzanne Anton, QC)*.

Robert Clifford, who is pursuing his LLM at the University of Victoria, was presented with the Aboriginal Scholarship of $12,000. His studies focus on the potential to integrate a better understanding of Coast Salish traditions and knowledge into current legal practices in Coastal regions of BC, particularly in the remediation processes of oil spills.

As a member of the Tsawout First Nation on Vancouver Island, Clifford felt compelled to conduct a comprehensive examination of a large gasoline and diesel spill that occurred outside an important Tsawout fishing location back in 2011. His studies will offer insights into how the roundtable processes of stakeholders could benefit from a more central engagement with Coast Salish legal traditions. Clifford hopes to continue to study these issues after applying for acceptance into the University of Victoria's doctoral program.

The Aboriginal scholarship was implemented in 2012 as an equity initiative in response to the growing need to retain aboriginal lawyers. A report published by the Law Society in June 2012 entitled *Towards a More Diverse Legal Profession: Better practices, better workplaces, better results*, indicated Aboriginals are currently under-represented in the legal profession.

Kathryn Thomson, who is pursuing her doctorate in law at the University of Victoria, was presented with the $12,000 Law Society Scholarship for Graduate Legal Studies.

Thomson was called to the bar in 1987 and later earned her Master of Law degree from the University of Ottawa. Her doctoral studies focus on the impact and implications of introducing technology and electronic systems into court and dispute resolution processes. She hopes to develop models and principles to be used in introducing technology that will help self-represented litigants, as well as others who are challenged to participate in the justice system.

Thomson's studies aim to address unmet and under-met legal needs in British Columbia. The Law Society recognizes the potential of Thomson's doctoral work to help facilitate new ways of providing the public with better access to justice, one of the Law Society's principal goals defined in the 2012 Strategic Plan.

Congratulations to both of these well-deserving scholarship recipients.❖

Good character – when it comes to admissions to the bar, are standards possible?

by Timothy E. McGee

WHEN IT COMES to deciding who is admitted to the bar, each Canadian law society currently manages its own admissions, including setting standards for what constitutes "good character." There is no nationally agreed-upon statement of what an applicant must demonstrate to meet admission requirements, despite the fact that Canadian lawyers now enjoy an unprecedented amount of mobility to practise throughout the country.

However, this is expected to change in the near future, as the Federation of Law Societies' National Admission Standards Project continues its work to develop comprehensive admission standards for implementation in each Canadian jurisdiction.

Having a common good character standard will ensure the requirements are clearly articulated for those contemplating an application. The standard must also be defensible and help ensure the assessment process is consistent and fair.

After a thorough review of existing statutes, literature, case law and world-wide regulatory practices, the project's Good Character Working Group has developed its preliminary views, which are contained in its July 2013 National Suitability to Practise Standard Consultation Report.

The Law Society's Credentials Committee will be assessing the report and providing comments.

Having a common good character standard will ensure the requirements are clearly articulated for those contemplating an application. The standard must also be defensible and help ensure the assessment process is consistent and fair.

I encourage all BC lawyers to express your views. Detailed feedback is invited on any or all aspects of the working group's report, in particular related to:

- the working group's consideration of the purpose of the good character assessment;
- the proposed use of the concept of "suitability to practise;"
- the four elements that should form part of the national standard; and
- the proposed guidelines for applying the standard.

Written comments can be sent to the Law Society at memberinfo@lsbc.org and will be accepted until October 30, 2013.

This issue has been highlighted recently in several Ontario-based media reports on a matter before the Law Society of Upper Canada. An applicant for admission to the bar was a former teacher and a convicted sex offender. When his application was first considered, a panel denied him admission. However, on appeal, he was given the right to practise law in that province. Needless to say, the decision has generated considerable comment.

Consistency in admission standards is not only fair and practical; it is expected by the public we serve. We should all applaud the Federation's work on this difficult and very sensitive initiative.❖

New electronic format for the Benchers' Bulletin to improve ease of reading

BEGINNING WITH THIS issue of the *Benchers' Bulletin*, electronic subscribers will notice a change.

Previously, when you clicked on a link in the Bulletin email to read a particular story, you were directed to a Law Society web page. This made it hard to read the Bulletin "cover to cover," or even to make your way back to the table of contents to read other stories.

We have opted to exclusively use a bookmarked PDF version of the Bulletin for all electronic distribution.

It allows easy scrolling through the issue and the ability to click on a bookmark to quickly get to something of interest.

The new format is also in line with industry trends in electronic publications.

If you have any comments on the new format, please send them to communications@lsbc.org. Ideas for continued improvements are always welcome.❖

LAW SOCIETY FALL CALENDAR

October 1	**Annual General Meeting** – see the Notice to the Profession
November 7	**Bench & Bar Dinner** – download the flyer and registration form
November 15	**Bencher election** – see the feature story on page 10

The new Leadership Council at its first meeting: seated, L-R: Robyn Crisanti, Manager, Communications and Public Affairs, Alan Treleaven, Director of Education and Practice, Jeanette McPhee, Chief Financial Officer and Director of Trust Regulation, Deborah Armour, Chief Legal Officer and Kensi Gounden, Manager, Standards and Professional Development; standing: Adam Whitcombe, Chief Information and Planning Officer, Susan Forbes, QC, Director of Lawyers Insurance Fund, Timothy E. McGee, Chief Executive Officer and Executive Director, Jeffrey Hoskins, QC, Tribunal and Legislative Counsel and Lesley Small, Manager, Member Services and Credentials.

Law Society renews its management structure

IN MAY 2013, the Law Society made important changes to our management structure, after extensive consultations with the entire Management Team. The changes, to be rolled out over the next several months, will permit greater involvement in operational decision-making, create opportunities for individual development, contribute to succession planning and increase our ability to be innovative.

Among the changes will be the creation, each year, of a small number of working groups composed of managers and staff. The working groups will help guide and implement our top operational priorities, which can vary from year to year. It is expected that, over time, all staff will have a chance to participate, gaining valuable new skills and experience while, at the same time, helping us achieve our organizational goals.

A key part of the new structure is the creation of a **Leadership Council**, which will incorporate and replace the existing Management Board. The Leadership Council is composed of the chief executive officer's direct reports (now known as the Executive Team) plus three managers appointed by the CEO for one-year terms. The council will set operational priorities, monitor and support progress towards those goals, and review and establish operational policies generally. The Leadership Council will work in conjunction with the Management Team and the working groups to ensure the objectives are met and to continue to strengthen the Law Society as a great place to work.

The **Management Team** (formerly the Management Group), which comprises all managers, will meet monthly and plan overall implementation of the operational priorities. It will review and share information from working groups, and report periodically to the Leadership Council on matters such as implementation of operational priorities and human resources issues.

Approximately three **working groups** will be set up annually to implement operational priorities for the year. The chairs will be selected based on expertise, and team members will be drawn from interested managers and staff. Each working group will establish its own work plan, including its meeting schedule and the division of responsibilities and contributions necessary to complete its assignment.❖

Task force invites consultation on regulation of all legal service providers

A JOINT TASK force of the Law Society has been exploring whether a single model regulator of legal services is desirable and, if it is desirable, which legal service providers should be regulated, and whether it is the Law Society that should take on that regulatory function.

In considering if it is in the public interest that the Law Society regulate all legal service providers, the task force has been particularly focused on how a regulator may facilitate improved access to legal services through innovative policy reform. The task force has been studying how legal services in British Columbia are currently regulated, and has compared this approach with systems in other jurisdictions. The task force has also been considering which model of legal service regulation will best protect the public and advance the public interest in the administration of justice.

The task force is now welcoming any comments that will help inform its recommendations to the Law Society.

An interim report of the task force was provided to the Benchers in July 2013. We encourage lawyers and all other interested parties to review the report and then provide your comments online no later than October 14, 2013. Comments can be made anonymously and will be kept confidential.

In addition, open consultation meetings are being held in September in Victoria, Vancouver and Prince George. Details are available on the Law Society website.

The task force would also like to meet with interested groups before the end of September. If your organization would like to arrange a meeting, please contact Doug Munro, staff lawyer, policy & legal services, 604.605.5313.

The members of the task force are past Law Society president Bruce LeRose, QC (Chair); current Benchers Ken Walker, QC (Vice-Chair) and Satwinder Bains; Godfrey Archbold, president of the Land Title Survey Authority; John Eastwood, president of the Society of Notaries Public of BC; Carmen Marolla, vice-president of the BC Paralegal Association; and Kerry Simmons, past president of the Canadian Bar Association, BC Branch.

Inquires can be directed to Doug Munro, 604.605.5313.

The task force's interim report as well as a link to the online form can be found on the Law Society website under Highlights.❖

GOLD MEDAL PRESENTATIONS

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

In 2013, gold medals were presented to **Catherine George** of UVic (left, with Life Bencher Trudi Brown, QC and Dean Donna Greschner) and **Victor Schappert** of UBC (right, with Dean Mary Anne Bobinski and President Art Vertlieb, QC).

In Brief

QC NOMINATIONS

The Attorney General is now accepting nominations for Queen's Counsel.

More information, including the nomination package and the online nomination form, is available on the Ministry of Justice website at www.ag.gov.bc.ca/queens-counsel. Deadline for nominations is 4:30 pm on October 11.

JUDICIAL APPOINTMENTS

Chief Justice **Robert Bauman** of the Supreme Court of BC, was appointed Chief Justice of British Columbia, replacing Chief Justice Lance Finch, who retired.

Judge **Sheri Ann Donegan** of the Provincial Court of BC in Surrey, was appointed a judge of the Supreme Court of BC (Kamloops), replacing Justice Robert Powers, who resigned.

Margot Fleming, a lawyer with Somers & Company, was appointed a judge of the Supreme Court of BC, replacing Justice Neill Brown who transferred to Chilliwack, replacing Justice William Grist, who elected to become a supernumerary judge.

Wendy Harris, a lawyer with Harris & Company, was appointed a judge of the Supreme Court of BC, replacing Justice Lynn Smith, who resigned.

Ronald Skolrood, a lawyer with Lawson Lundell LLP, was appointed a judge of the Supreme Court of BC, replacing Justice **Peter Willcock**. Justice Willcock was appointed a judge of the Court of Appeal of BC, replacing Justice Risa Levine, who elected to become a supernumerary judge.

Lisa Warren, a lawyer with the Health Employers Association of BC, was appointed a judge of the Supreme Court of BC, replacing Justice **Sunni Stromberg-Stein**. Justice Stromberg-Stein was appointed a judge of the Court of Appeal of BC, replacing Justice Pamela Kirkpatrick, who elected to become a supernumerary judge.❖

Chief Justice Bauman encourages Benchers to advocate "fearlessly" for justice

IN AN ADDRESS to the Benchers on June 15, 2013, Chief Justice of British Columbia and Chief Justice of the Court of Appeal for the Yukon, Robert Bauman, described his perspective on the role of the Law Society in responding to the challenges facing the profession and judicial institutions, and also touched on recent changes to the *Legal Profession Act*, access to justice initiatives and the importance of an independent bar.

Chief Justice Bauman noted the 2012 changes to the *Legal Profession Act* initiated by the Law Society, and commended the Benchers for taking the initiative to implement a modernized regulatory structure for the Law Society. He commented that the changes will better serve and protect the public interest, saying, "I respectfully agree with the direction of these amendments, and I believe, as you do, that they were critically necessary to ensure public confidence in our self-regulating profession."

Chief Justice Bauman also praised the Benchers for ensuring that access to justice continues to be a crucial priority on the Law Society's agenda, citing Art Vertlieb, QC's focus on access to justice during his term as president. "Access to justice issues have been front and centre with the Law Society for some time. Many initiatives have been undertaken, from unbundling of legal services, to expanding the role for articled students and piloting court appearances for supervised paralegals," Chief Justice Bauman said.

"What is at stake is, of course, the right of citizens to enjoy the benefits and protections afforded by the rule of law. The independence of the legal system is the institutional underpinning of that right."

– Chief Justice Robert Bauman

He spoke at length on the importance of an independent bar and an independent judiciary as fundamental to the preservation of a free society. "What is at stake is, of course, the right of citizens to enjoy the benefits and protections afforded by the rule of law. The independence of the legal system is the institutional underpinning of that right."

In his words, to ensure that government treats citizens equally and so citizens can know the prospective consequences of their actions, the government governs by legislating and administering laws. But,

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Enhancements made to Lawyer Lookup

THE LAW SOCIETY'S lawyer search tool, Lawyer Lookup, is the most popular feature of the Society's website, accounting for over 30 per cent of all activity.

Now, two enhancements have been added to Lawyer Lookup to make capturing lawyer contact information easier.

First, users now have the ability with one click to add lawyer contact information to their Outlook Contacts.

Alternatively, users can choose to display the QR (quick response) code for the lawyer, capturing contact information quickly and easily using their smartphones.

If you have any questions about these changes, or any suggestions for improvements to the Law Society's website, please contact communications@lsbc.org.❖

Keep up to date on Law Society news, by scanning our website QR code into your smartphone.

Aboriginal Lawyers Mentorship Program now recruiting mentees

THE ABORIGINAL LAWYERS Mentorship Program is intended to enhance the retention and advancement of lawyers with Aboriginal ancestry, who are currently underrepresented in the legal profession in British Columbia.

Having already secured a number of mentors for the program, we are now actively recruiting mentees.

The program, the first of its kind in North America, was launched in June of this year and is a collaboration with the Aboriginal Lawyers' Forum of the Canadian Bar Association, BC Branch and the Indigenous Bar Association. The program pairs experienced lawyers with junior Aboriginal lawyers who have up to three years of call.

Mentees must be of self-identified Aboriginal ancestry and be members of the Law Society or actively enrolled in the Law Society's Admission Program.

Although the mentorship program is focused on pairing experienced lawyers with Aboriginal lawyers who are junior, returning to practice after a period of non-practising status, or changing practice areas, all Aboriginal lawyers, regardless of experience, are welcome to apply to be mentored.

The deadline for the initial wave of mentee applications was September 15, 2013, however applications will be accepted at any time. To apply or for more information, please complete and submit the application form, available on the Law Society website at Lawyers > Aboriginal Lawyers Mentorship Program.

For further information, please contact, Andrea Hilland, staff lawyer, policy & legal services, 604.443.5727.❖

Your fees at work: Law Society appointments

THE LAW SOCIETY regularly highlights how annual practice fees are spent so that lawyers are aware of services to which they are entitled as well as programs that benefit from Law Society funding.

In this issue, we feature Law Society appointments.

The Law Society of British Columbia appoints lawyers, judges and members of the public to boards, councils and committees of outside bodies.

Most of the organizations that are supported by Law Society appointments operate in the legal arena. They include the BC Law Institute, Continuing Legal Education Society of BC, Law Foundation of BC, Legal Services Society and several others.

Committees include the Federal Judicial Advisory Committee for British Columbia and the Committee on Relations with the Judiciary, among others.

The Law Society also facilitates the appointment of board members to the Vancouver Airport Authority, Vancouver Foundation, Hamber Foundation and the Vancouver Building Board of Appeal.

These appointments represent an excellent opportunity for civic-minded lawyers to gain valuable experience. All lawyers are welcome and encouraged to apply.

The appointments are made by the Society's Benchers, Executive Committee or president, under authority conferred by the *Legal Profession Act*, (S.B.C 1998, c. 9.), the Law Society Rules (adopted by the Benchers under the authority of the Act), Bencher resolutions, and the governing statutes, constitutions and by-laws of those outside bodies. The appointments carry various statutory and common law responsibilities, powers and duties.

For more information on the Law Society's appointments process, including a list of the outside bodies to which the Law Society makes appointments and directions for applying online, visit the Law Society's website at About Us > Volunteers and Appointments and follow the links under "Appointments."❖

Unauthorized practice of law

UNDER THE LEGAL Profession Act, only trained, qualified lawyers (or articled students or paralegals under a lawyer's supervision) may provide legal services and advice to the public, as others 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 complaints about an unqualified or untrained person purporting to provide legal services, the Society will investigate and take appropriate action if there is a potential for harm to the public.

From June 1 to August 15, 2013, the Law Society obtained undertakings and covenants from eight individuals and businesses not to engage in the practice of law.

The Law Society has obtained orders prohibiting the following individuals and businesses from engaging in the unauthorized practice of law:

- **Roald Thomas** and **Ignition Strategies Inc.**, of Burnaby, offered to provide legal advice, give referrals to a foreign lawyer and draft and file court documents for a fee. Mr. Justice Grauer granted an injunction prohibiting Thomas and Ignition Strategies from engaging in the practice of law. (June 26, 2013)
- Madam Justice Maisonville ordered **Gail MacDonald**, of Mission, permanently prohibited and enjoined from drafting, revising or settling a document with respect to, or giving legal advice in relation to, any probate or letters of administration or the estate of a deceased person for or in the expectation of a fee gain or reward, direct or indirect, unless otherwise authorized by the *Notaries Act*. The Law Society sought the injunction after learning that MacDonald had assisted in the probate of an estate and had drafted wills that included trusts and life estates, all for a fee. (July 8, 2013)
- **Syed R. Khan**, of Vancouver and Surrey, and his company **FFSG.CA Vancouver Consulting Services Inc.**, doing business as "**www.ffsg.ca**," "**www.icanhelpimmigration.com**" and **ICan Help Immigration Services** consented to an order prohibiting them from engaging in the practice of law for a fee. The Law Society alleged that Khan and FFSG.CA Vancouver Consulting Services Inc. represented a party and attempted settlement negotiations with ICBC for a fee. Khan and FFSG.CA Vancouver Consulting Services Inc. are prohibited from appearing as counsel or advocate, drawing documents for use in a proceeding, negotiating a settlement, and giving legal advice to others for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed. The Law Society also obtained its costs fixed at $500. (July 25, 2013)
- **Matthew Riddell**, of Toronto, Ontario, consented to an order prohibiting him from falsely representing himself as being a lawyer, counsel, manager of a legal department or any other way that connotes that he is qualified or entitled to engage in the practice of law. The Law Society alleged that Riddell led others to believe he was a lawyer while representing his employer in several BC small claims actions. (July 26, 2013)❖

THE LAW FOUNDATION OF BRITISH COLUMBIA

NEWS FROM THE LAW FOUNDATION

Legal Advocate Training Initiative

THE LEGAL ADVOCATE Training Initiative was launched in October 2007, when the Law Foundation's board of governors agreed to support professional development for its approximately 75 poverty law advocates. The Foundation funds poverty law advocates as part of its mandate to support legal aid in BC. The advocates work in over 30 communities, helping low-income clients with legal problems related to welfare, housing, debt, employment, senior concerns, immigration, family and other poverty law issues.

The training initiative was developed in response to concerns that there was insufficient professional development and educational opportunities for those working in poverty law. The training initiative is composed of a two-week curriculum of legal information and skills training. Sessions deal with topics such as welfare, housing, debt and employment issues (including federal Employment Insurance), as well as skills training in writing, interviewing and preparing for hearings.

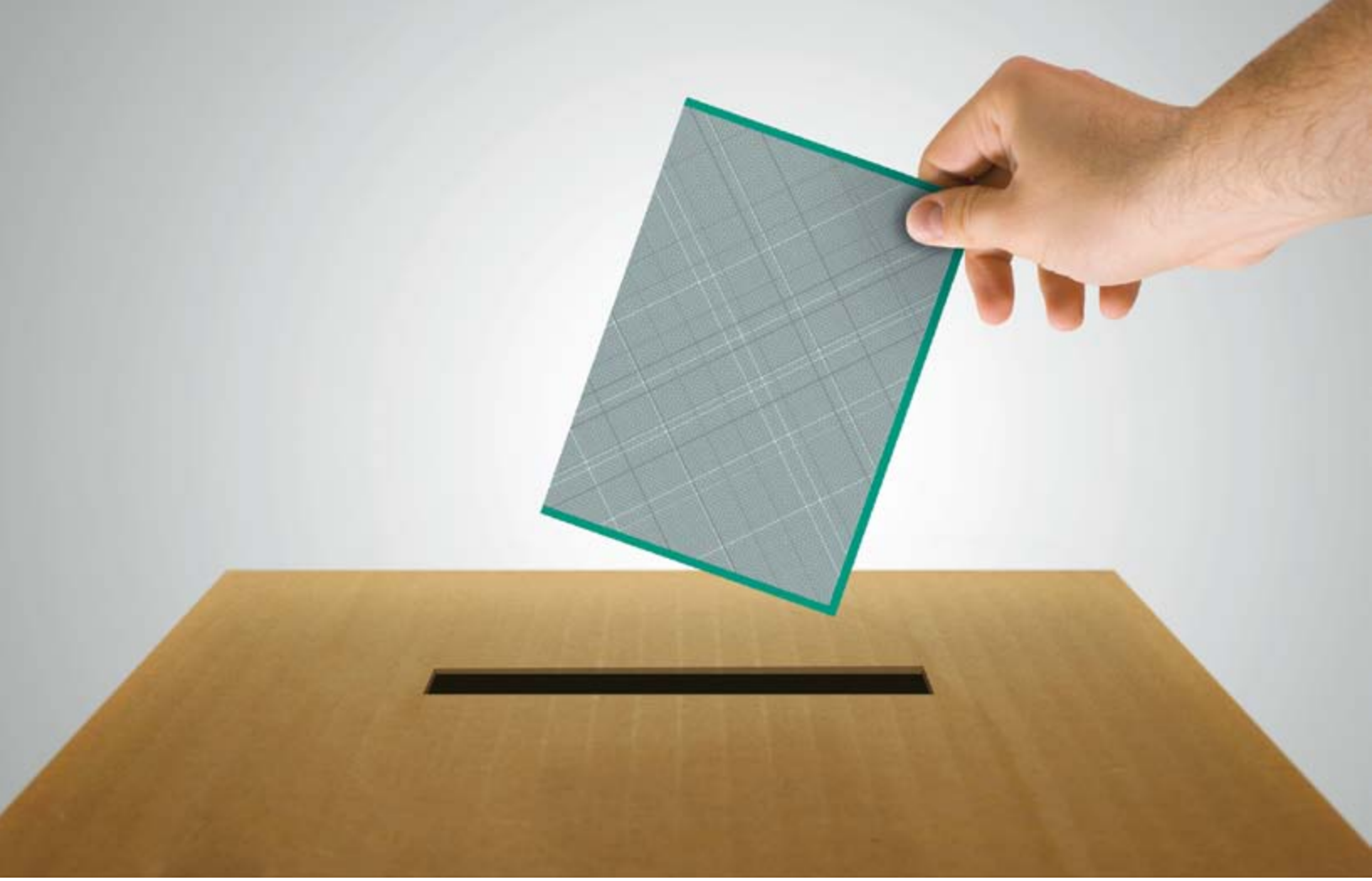
By the end of September 2013, all current junior advocates will have completed the Legal Advocacy Training Course, and all senior advocates will have completed reviews designed to ensure they have knowledge and skills equivalent to those provided through the training. New advocates will be trained as numbers warrant.

In addition to the training initiative, each fall the Law Foundation co-sponsors with the Legal Services Society a provincial training conference for poverty law advocates.

The combination of intensive initial training and ongoing professional support is part of the Foundation's plan to ensure that poverty law advocates in the province are well trained to provide good service to those who need it and to increase access to justice for low income people in BC.❖

GRADUATE FELLOWSHIPS

The Law Foundation Graduate Fellowships will be on a slightly different schedule this year. For more information, consult the Foundation's website at www.lawfoundationbc.org/project-funding in early December.



2013 Bencher election: A call for candidates

LEGAL GOVERNANCE THEN AND NOW

THIRTY YEARS AGO, the Law Society of British Columbia was a different place than it is today.

In 1983, all the 25 Benchers were lawyers, and there was only one woman Bencher at any time during that year.[1] However, the Law Society was also celebrating its first century of service, having been created in 1884, and as treasurer (now known as president) George Cumming, QC noted in his Treasurer's Report, the profession had changed a great deal since then.

In the intervening 30 years, the Law Society has continuously evolved, including at the Bencher table. Today, there are six Appointed Benchers who play an important role in ensuring the public interest is represented. And eight of the elected Benchers are women along with one of the Appointed Benchers.

With an election scheduled for November 15 of this year, Law Society president Art Vertlieb, QC said the Law Society's governing board will continue to evolve, along with the rest of the legal community. He believes better decisions invariably result from greater diversity amongst the decision makers, and an increase in diversity will strengthen the Law Society's already strong governing board.

"The more diverse opinions you have, the better the opportunity to reach the right decision," said Vertlieb. "It's the same as having 12 people sit on a jury. You get people from all walks of life, and you're more likely to have a decision that's right."

DIVERSITY IN LEGAL GOVERNANCE

While the elected Benchers are by no means homogenous, the majority are senior members of the bar who are male and practise litigation.

The Law Society is encouraging lawyers with diverse backgrounds and experiences to consider running in the 2013 election. Under-represented groups include Aboriginal lawyers, visible minority lawyers, women lawyers, young lawyers and solicitors.

Bill McIntosh, the Law Society's manager of executive support, leads the group that is organizing the 2013 election. He points out seven elected Benchers are retiring in 2013, having served the maximum allowable four terms. Four of those retirements are in the district of Vancouver, one in Westminster and two in Victoria.

McIntosh says seven Bencher retirements in a single year is higher than average, and that it presents a significant opportunity to diversify the Bencher table.

"As a result of this election we will have at least seven new faces," said McIntosh. "Anybody who has been thinking about running but waiting for the right opportunity, now is it."

[1] M. Anne Rowles (January – April) and Jo-Ann E. Prowse (April – December).

ROLES AND RESPONSIBILITIES OF BENCHERS

Law Society Benchers perform a wide range of duties, fitting into three broad categories.

First, they are responsible for setting and overseeing the implementation of the overall strategic direction of the Law Society. Next, they set the rules and standards for the governance of the profession, admission to the bar, discipline, trust accounting and financial responsibility. Finally, Benchers act as adjudicators in discipline and credentials hearings.

Specific duties include some or all of the following:

- attending nine monthly Bencher meetings and the annual retreat;
- participating on at least two Law Society committees or task forces;
- adjudicating discipline and credentials hearings;
- interviewing articled students;
- acting as an advisor to BC lawyers;
- attending call ceremonies and special events.

The number of hours Benchers need to commit to their Law Society duties varies depending on individual roles and responsibilities, and for some Benchers the time commitment can be substantial.

"Initially you have to spend a great deal of time to learn about the Law Society, the policies and the issues," said Rita Andreone, QC, a Bencher who is retiring in 2013.

"You would think that, as you got longer in the tooth, you would spend less time because you would have learned and need less time to get up to speed on the issues. That's often true, but as you become more experienced there are also more opportunities for Benchers to take on greater roles and responsibilities, including chairing committees and task forces," said Andreone.

As an estimate, Benchers should expect to spend at least 30 days a year on Law Society affairs, although Andreone said for many Benchers that is a minimum.

SERVING AS BENCHER

Lawyers who run in Bencher elections do so for any number of reasons. For Andreone, the motivation was simple.

"I felt disconnected."

As a practising lawyer working in what she describes as the ivory towers of downtown Vancouver "Big Law," Andreone said she felt disconnected from her profession and her peers. Serving as a Bencher, however, helped reconnect her with the profession outside the immediate confines of her law office.

"And I firmly believe I am a far better lawyer today having spent years as a volunteer at the Law Society," said Andreone.

"Not only because I have been forced to focus on what sort of standards we are all expected to meet, but also hearing so many different perspectives and debating so many different issues. You become much more self aware. It's mentoring by osmosis."

THE APPOINTED BENCHERS

Andreone said her experience with the Law Society was enriched by the fact it is not just lawyers who sit around the Bencher table.

Since 1988, the provincial government has appointed people who are not lawyers to serve two-year terms that run parallel to the terms of their elected colleagues. They can also be reappointed.

Today's Appointed Benchers come from a wide variety of backgrounds, including business, finance, academia, government and media.

"We bring a public, non-legal perspective," said Haydn Acheson, an Appointed Bencher. "To be sitting there and not be a member of the bar, you do have a difference perspective on issues."

Acheson, a retired airline captain and current president and general manager of Coast Mountain Bus Company, points to business, public service and media as areas where the appointed Benchers bring expertise the board might otherwise not have.

"Our diverse backgrounds as appointed Benchers differ significantly from the lawyer Benchers. Many times issues will come forward at the Bencher meetings where the appointed Benchers offer a different viewpoint."

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Election information

An election will be held November 15, 2013 for Benchers of the Law Society of British Columbia. Elected Benchers will serve a two-year term beginning January 1, 2014 and ending December 31, 2015.

To be eligible as a candidate for Bencher, a lawyer must be a member of the Law Society in good standing at the time of nomination and have been in good standing for at least seven years.

Candidates who are practising lawyers must maintain their chief place of practice or employment in the district in which they seek nomination. Retired or non-practising members must reside in the district in which they seek to be a candidate.

Benchers are elected in nine districts across BC. In 2013, Benchers will be elected in all districts except Kamloops. In Kamloops, Ken Walker, QC will retain his position as Bencher for two years, becoming president for a one-year term commencing January 1, 2015.

Nominations of candidates for election must be received by the Law Society by 5 pm on October 15, 2013. Nomination forms must be signed by two members in good standing in the relevant district. Nomination forms are available for download on the Law Society website, or by contacting Amy Wong at 604.443.5779 or awong@lsbc.org.

The election voting package will be mailed by November 1. All members in good standing are entitled to vote.

PRACTICE TIPS, by Dave Bilinsky, Practice Management Advisor

The end is nigh ...

> ♫ *And everyone pointing at the sky*
> *Screaming, the end is nigh…* ♫
>
> Music, lyrics and recorded by Bell X-1

APRIL 8, 2014 seems a long way away. It isn't. Why is this day particularly noteworthy? On that day, Microsoft will end technical support and security patches for the 12-year-old XP operating system.

According to *SC Magazine* (a publication for IT security professionals), that means computers running XP will be vulnerable to "an infinite number of zero-day vulnerabilities" and will be completely open to zero-day attacks. (A zero-day attack, according to Wikipedia, is where "the developers have had zero days to address and patch the vulnerability.") Most importantly, Microsoft *will not* be issuing any patches for vulnerabilities found in XP after April 8, 2014.

What does this mean for you? Any computers in your office still running XP on or after April 8, 2014 "will become a hacker's heaven," according to www.fixmypcfree.com. That website claims that hackers are building a stockpile of XP's vulnerabilities, which they will release when Microsoft stops issuing patches and updates ...

What does this mean for you? Any computers in your office still running XP on or after April 8, 2014 "will become a hacker's heaven," according to www.fixmypcfree.com. That website claims that hackers are building a stockpile of XP's vulnerabilities, which they will release when Microsoft stops issuing patches and updates:

> By holding onto the exploits, these researchers ensure that Microsoft will not immediately patch them. And since dozens, hundreds, or even thousands of these exploits may be out there, the sheer number of exploits revealed on April 8, 2014 could be catastrophic.

How many computers are still running XP? *SC Magazine* states:

> According to a study conducted in April by VMware, 64 percent of enterprise-size companies still haven't migrated off XP. The same goes for 52 percent of midsize firms ...

This means that there are a huge number of machines that will be vulnerable to being "a hacker's heaven."

How much is this going to cost you? That all depends on a number of factors, including the age of your computers, which can be broken down into three categories.

One: PCs that were shipped with Windows 7 or 8 but downgraded to XP. These machines should already be compatible with Windows 7 or 8 operating systems, and you will need to upgrade the OS and then check for any application/device driver compatibility issues. You will need to consider what to do in the event that a key application will not run properly under Windows 7 or 8. This may mean an upgrade of the software to a current version (with consequential upgrade fees, learning, support and training issues).

Two: PCs that were purchased prior to the release of Windows 7. These may or may not be compatible with Windows 7 (or 8). Assuming that they are compatible with Windows 7, they would also have the same issues with regard to applications and device drivers at the first category.

Three: If the PC is not compatible with Windows 7 (or 8, if that is the operating system you decide to standardize on), then you will be facing the cost of upgrading the PC along with possibly upgrading the applications that you are running to obtain versions that are compatible with the upgraded operating system.

You can run a check on existing PCs to see if they are compatible with Windows 7 by going to windows.microsoft.com/is-is/windows/downloads/upgrade-advisor and downloading the free software that checks compatibility.

Ignoring current data protection and cyber security requirements and standards (such as ISO/IEC 27002:2005, the code of practice for information security management) may place a client's data at risk, not to mention the lawyer's own business operations.

Can you just do nothing and keep using the XP machines? *SC Magazine* states:

> The challenge here is that you'll never know, with any confidence, if the trusted computing base of the system can

actually be trusted because attackers will be armed with public knowledge of zero-day exploits in Windows XP that could enable them to compromise the system and possibly run the code of their choice.

According to Amrish Goyal, Director, Windows Business Group Microsoft Corporation (India) Pvt. Ltd.:

> Approx 50-60% installed PC base in the enterprises are still running Windows XP. This is an alarming situation as non-migration puts businesses at risk of security breaches and could potentially create a big dent to the company's brand image. It takes money to save money! Migration to newer and better technologies eventually gives high return on investment and saves a lot of money in the long run.

Further, lawyers are required to maintain confidentiality of their client's information. Ignoring current data protection and cyber security requirements and standards (such as ISO/IEC 27002:2005, the code of practice for information security management) may place a client's data at risk, not to mention the lawyer's own business operations.

There is a great deal to be done in advance of April 8, 2014. This includes checking for compatibilities in hardware and software, purchasing and installing new hardware and software, if required (with consequential down-time), checking the compatibilities of peripherals with the new software and operating system, obtaining device drivers or replacing the peripherals and, not the least of all, training staff on the new systems and software.

To begin the migration to either Windows 7 or 8, go to www.microsoft.com/en-us/windows/endofsupport.aspx.

Oh, one other thing. Support for Microsoft Office 2003 also ends on April 8, 2014. The end is nigh …❖

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**, **Lenore Rowntree** or **Warren Wilson**, QC to discuss ethical issues, interpretation of the *Code of Professional Conduct for British Columbia* 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 Lenore at: tel: 604.697.5811 or 1.800.903.5300 email: lrowntree@lsbc.org.
Contact Warren at: tel. 604.697.5857 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 articled students and their immediate families.
tel: 604.431.8200 or 1.800.663.9099.

◆

Lawyers Assistance Program (LAP) – Confidential peer support, counselling, referrals and interventions for lawyers, their families, support staff and articled students suffering from alcohol or chemical dependencies, stress, depression or other personal problems. Based on the concept of "lawyers helping lawyers," LAP's services are funded by, but completely independent of, the Law Society and provided at no 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, articled students, articling applicants and staff in law firms or other legal workplaces.
Contact Equity Ombudsperson, **Anne Bhanu Chopra**: tel: 604.687.2344 email: achopra1@novuscom.net.

Chief Justice Bauman … from page 7

with important and also limited exceptions, government does not determine the interpretation and application of the laws. The task of interpreting and applying the law is given to the judicial branch of government.

He described how, in order to ensure that the courts are not an instrument through which government imposes its preferred interpretations and applications, the courts must have professional expertise in the law and must be in a position to make their decisions impartially, independent of government and without the influence of other interests.

Chief Justice Bauman went on to say that an efficient and effective judicial system depends on the bar in fundamental ways. Not only are judges appointed from the bar, but the courts rely on the professional expertise of the bar and on counsel's understanding of their responsibilities to the court as officers of the court. For counsel to be able to carry out their responsibilities to the court, they must themselves be independent of outside influence.

In concluding, Chief Justice Bauman stressed that the Law Society needs to defend the principles that underlie and protect the rule of law. In his view, this requires the Law Society and its leaders to advocate fearlessly for justice, regardless of whether that involves speaking out against initiatives or inaction by government or the courts, or defending the judiciary and the rule of law against actions or inaction that would undermine either.

Chief Justice Bauman assured the Benchers that, despite media reporting to the contrary, the executive and judicial branches are cooperating and talking, referencing the memorandum of understanding signed by the Attorney General and the three courts on April 3, 2013, which is the most comprehensive memorandum to date covering the definition of their responsibilities.

The Law Society would like to once again thank Chief Justice Bauman for his thoughts and comments.❖

Practice Watch

Closed files; checklists; lawyer caught in scam; contacting complainants of domestic violence; second opinions; be on time for court; standard form undertakings; contingent fee agreements; articled students not permitted to swear affidavits

by Barbara Buchanan, Practice Advisor

ONLINE PRACTICE RESOURCES – CLOSED FILES, CHECKLISTS

Closed files – what to do with them, how long to keep them

You've been acting for a client and the matter is now finished. It's time to close the file. But what documents should you return to the client? What should you keep? Where and how should you store the documents? When can you destroy the file?

See the recently updated practice resource, *Closed Files – Retention and Disposition* (June 2013) on the Law Society website (go to Practice Support and Resources > Client Files) for help with these and other questions.

There is no universal agreement on how long to retain files. A file retention policy should take into consideration the statutory, ethical, and regulatory requirements, the area of law, the client's potential needs and your needs (e.g. to respond to an insurance claim or complaint). Suggested minimum retention guidelines are set out in Appendix B to *Closed Files – Retention and Disposition*. Some lawyers may consider the suggested minimum retention periods too long, others, too short. Factors such as the complexity of a matter may call for a longer retention period than Appendix B suggests, so lawyers need to apply their judgment on any given file. A file retention policy should account for both the applicable limitation periods as well as an appropriate period to allow for discoverability.

Practice Checklist Manual

Check out the free *Practice Checklist Manual* on the Law Society website (go to Practice Support and Resources). The manual consists of 41 checklists for practice in core subject areas and for client identification and verification. A number of checklists have recently been updated:

- Criminal – Criminal Procedure, Judicial Interim Release Procedure, Sentencing Procedure, Impaired/Over 80 Trial Examination of Witnesses
- Family – Family Practice Interview, Family Law Agreement Procedure, Separation Agreement Drafting, Marriage Agreement Drafting, Family Law Proceeding, Child, Family and Community Service Act Procedure
- Litigation – Foreclosure Procedure, General Litigation Procedure, Personal Injury Plaintiff's Interview or Examination for Discovery, Collections Procedure, Collections – Examination in Aid of Execution, Builders Lien Procedure
- Real Estate – Residential Conveyance Procedure, Mortgage Procedure, Mortgage Drafting
- Wills and estates – Will Procedure, Will-maker Interview, Will Drafting, Probate and Administration Interview, Probate and Administration Procedure

The remaining checklists will be updated later this fall. If you have suggestions for improving the Manual, developed by the Law Society with the assistance of the Continuing Legal Education Society of BC, send them to Barbara Buchanan at bbuchanan@lsbc.org.

Model Conflicts of Interest Checklist

In addition to reading the conflict rules (section 3.4 of the *Code of Professional Conduct for British Columbia*), see the Model conflicts of interest checklist in the Practice Support and Resources section of our website. The checklist is designed to help you evaluate your procedures for detecting conflicts of interest and raise questions that could help you avoid problems.

LAWYER CAUGHT IN BAD CHEQUE SCAM

A law firm recently lost $131,000 paying out on a bad cheque scam. Not only was the ruse fairly typical – a phony debt collection using a third-party cheque – but the name used by the new overseas "client" was listed on the Law Society's bad cheque scam names and documents web page.

Protect yourself. Take steps to manage the risk, including reviewing the names and documents page as part of your firm's intake process. The list is regularly updated; in July and the first half of August alone, ten new names were added: Xu Gang of Henan Billions Chemical Co. Ltd., Shaoxiang Huang, John Hughs, Matthew Leong, Jonathan Maxwell, Hanako Simmons, Ben William, Allen Cheng, Itsuki Hiroyuk of Kodansha Ltd. and Timothy London.

Remember to report any new potential scams and fraudsters to Barbara Buchanan, practice advisor at bbuchanan@lsbc.org. Reporting allows the Law Society to notify the profession, as appropriate, and update the list of names and documents.

Author's note: This fraud alert includes names used by fraudsters in BC. Real people with the same names may be the victims of a fraudster or of coincidence, but are not suspected of wrongdoing.

CONTACTING COMPLAINANTS OF DOMESTIC VIOLENCE

The Law Society has been advised that some defence counsel may be communicating with complainants in circumstances that may constitute professional misconduct. This includes:

- not explaining that the lawyer is acting exclusively in the interest of the accused;
- allowing the accused to be present in a discussion with the complainant when a no-contact order was in place.

See *BC Code* rules 3.2-6, 5.1-1, commentary [6] and 7.2-9 for the professional

responsibility rules that apply when contacting a complainant or potential complainant of domestic violence. Note in particular rule 3.2-6, commentary [2] and [4]:

> [2] A lawyer for an accused or potential accused must never influence a complainant or potential complainant not to communicate or cooperate with the Crown. However, this rule does not prevent a lawyer for an accused or potential accused from communicating with a complainant or potential complainant to obtain factual information, arrange for restitution or an apology from an accused, or defend or settle any civil matters between the accused and the complainant. When a proposed resolution involves valuable consideration being exchanged in return for influencing the Crown or regulatory authority not to proceed with a charge or to seek a reduced sentence or penalty, the lawyer for the accused must obtain the consent of the Crown or regulatory authority prior to discussing such proposal with the complainant or potential complainant. Similarly, lawyers advising a complainant or potential complainant with respect to any such negotiations can do so only with the consent of the Crown or regulatory authority.
>
> [4] When the complainant or potential complainant is unrepresented, the lawyer should have regard to the rules respecting unrepresented persons and make it clear that the lawyer is acting exclusively in the interests of the accused. If the complainant or potential complainant is vulnerable, the lawyer should take care not to take unfair or improper advantage of the circumstances. When communicating with an unrepresented complainant or potential complainant, it is prudent to have a witness present.

SECOND OPINIONS AND CONFIDENTIALITY

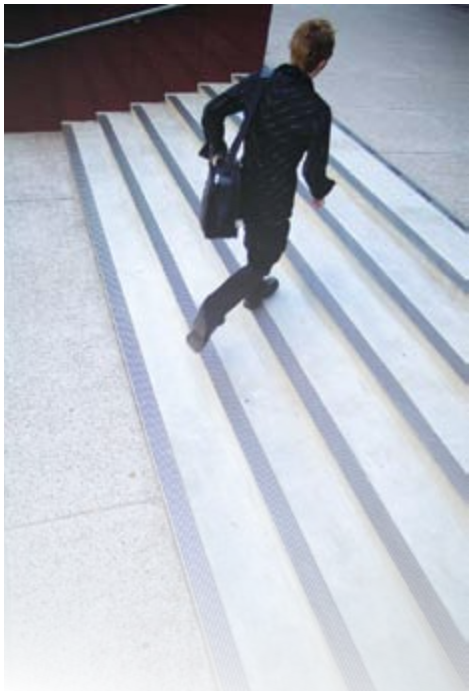
Let's consider a possible scenario. "Nick" is injured in a motor vehicle accident and his lawyer has recommended that he accept a settlement offer. Nick has doubts about his lawyer's advice and has come to you for a second opinion. Assuming you don't have a conflict, you may give a second opinion to a person who is represented by a lawyer without getting the lawyer's consent (*BC Code* rule 7.2-7).

But can you let the lawyer know that Nick has contacted you? You have a duty of confidentiality to Nick, so unless he authorizes it, you must not contact Nick's lawyer, and you are not permitted to let the lawyer know that Nick has contacted you (*BC Code* rule 3.3-1(a) and commentary [5]).

If Nick tells you that he has informed his lawyer that he is getting a second opinion from you, can you discuss Nick's file with his lawyer? You need Nick's authority to discuss the file with his lawyer. Some information may only be obtained through consultation with his lawyer. You should explain to Nick that you need sufficient information in order to competently advise him. You have an obligation to be competent and render competent services (*BC Code* rule 7.2-7, commentary [3]).

BE ON TIME FOR COURT

We have heard that some lawyers are routinely arriving late for court. Be aware that such conduct could generate a complaint to the Law Society. Lawyers, as officers of the court, must demonstrate courtesy and respect to a tribunal when acting as an advocate. This includes being punctual (*BC Code* rule 5.1-5).



CBA STANDARD FORM UNDERTAKINGS

Lawyers are reminded of their obligation to comply with the Canadian Bar Association, BC Branch (Real Property Section) standard undertakings required in paragraphs 13 (Buyer Financing) and 14 (Clearing Title) of the Contract of Purchase and Sale used in many clients' residential real estate transactions. In particular, some vendors' lawyers are not undertaking to provide purchasers' lawyers with the required documents to evidence payment of existing charges within five business days of completion. See the December 2008 Practice Watch regarding the need to use these undertakings and the limited circumstances under which they can be varied. For more detailed information regarding the use of undertakings in real estate, see the *British Columbia Real Estate Practice Manual*, published by the Continuing Legal Education Society of BC.

CONTINGENT FEE AGREEMENTS – CAUTIONS

In an examination of a fee agreement by a registrar pursuant to s. 68(5) of the *Legal Profession Act*, an agreement must be confirmed unless the registrar considers it unfair or unreasonable under the circumstances existing at the time the agreement was entered into. In a recent decision, Registrar Sainty found that a contingent fee agreement (CFA) was unfair and cancelled the agreement (*Klein Lyons* v. *Aduna*, 2013 BCSC 1250 (CanLII)). The client, who suffered injuries in a car accident, initially met with a case manager at the firm. In that meeting the client signed the agreement without discussing it with a lawyer. Registrar Sainty made some important points to consider when entering into a fee agreement with a client:

> [35] In my opinion, the CFA was flawed from the moment [the client] signed it as he signed it without the benefit of speaking to a lawyer at the law firm. In not having a lawyer review the CFA with [the client], it may be said that the solicitors took unfair advantage of [the client], although I do not find that any advantage so taken was taken deliberately or was designed to defeat the client's objectives. Further, I am of the view that the fact that no lawyer met with [the client] to review

the CFA, explain its terms to him and provide him with some advice as to how the law firm's fees would be calculated, produced a serious flaw in the formation of the CFA and a mistake was made at the time it was signed. As such, the CFA must fail.

[40] While it was not required that the solicitors advise [the client] that he ought to get independent legal advice before entering into the CFA, they ought to have advised him "fully and fairly concerning the terms of that contract" (per *Roberts & Muir (Re), supra*), something they did not do. As the solicitors were entering into a bargain with the client (to pay them a fee based on a percentage of the recovery), they had a duty to ensure that the terms of the CFA were explained to [the client] by a lawyer. It was not sufficient that there was a lawyer on "stand-by" to be called into the room to discuss the CFA with [the client] if he had questions about it.

[41] While I have found that [the client] did not lack capacity to contract with the law firm, he was still under some duress, taking medication and in not insignificant pain when he met with [the lawyer]. It was even more pressing then that the solicitors ensure that [the client] fully grasped the consequences of the retainer agreement and took no unfair advantage given his distress, particularly since the consideration of the fairness of such an agreement, if reviewed by a registrar, is undertaken given the circumstances existing at the time the retainer agreement is made.

[42] In my view, this is of even more import when the contract between a lawyer and his client is for a fee based on a contingency, a percentage of the recovery. In *Anderson* v. *Elliott* (1998), 60 BCLR (3d) 131 (SC), Sigurdson J. explained the nature of contingent fee agreements, at para. 67:

> Under a contingent fee agreement, the lawyer and the client enter a type of joint venture where they will either share in the fruits of the action or suffer the defeat together. Normally I would expect that it is not a joint venture of equals, in that the law firm, generally, has a more thorough understanding of the law, the legal process and the potential outcomes of litigation of than the client.

To help satisfy a registrar's concerns about whether a fee agreement is fair and reasonable, be cautioned:

- a lawyer should meet with the client to review the fee agreement, explain its terms fully and fairly and provide advice as to how the law firm's fees will be calculated; and
- in some cases, it may be appropriate for the client to receive independent legal advice, e.g. if the client is distressed, or affected by medication and pain.

Contingent fee agreements must be in writing and the form and content must meet the professional responsibility requirements in the above provisions. For more information, refer to:

- sections 64 to 79 of the *Legal Profession Act*
- Law Society Rules 8-1 to 8-4
- sections 3.6 and 3.7 of the *BC Code*.

Code rule 3.6-2, commentary [2] is worthy of special note. In a contingency fee arrangement, a lawyer cannot withdraw for reasons other than those set out in Code rule 3.7-7 (Obligatory withdrawal), "unless the written contingency contract specifically states that the lawyer has a right to do so and sets out the circumstances under which this may occur." I suggest you review your contingent fee agreement precedents regarding the circumstances in which you may withdraw. Consider, for example, what could happen if you have difficulty obtaining adequate instructions, if that is not listed as a trigger for withdrawal.

ARTICLED STUDENTS NOT PERMITTED TO SWEAR AFFIDAVITS

The *Evidence Act*, RSBC 1996, c 124, does not currently permit articled students to be commissioners for taking affidavits in British Columbia. Section 60(d) of the Act permits a "practising lawyer" as defined in section 1(1) of the *Legal Profession Act* to act as a commissioner.

FURTHER INFORMATION

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

Bencher election ... from page 11

CHALLENGES AHEAD

The Benchers will need all of their collective experiences, skills and abilities to effectively manage the issues that confront the profession in the twenty-first century.

By many accounts, the legal services industry in BC, the rest of the country and in countries around the world is undergoing a seismic shift. With the affordability of legal services slipping out of reach for many people, new business models are emerging that fundamentally change the way legal services are delivered.

In the United Kingdom, for example, the emergence of alternative business structures has resulted in non-lawyers taking partial ownership of law firms and legal advice being offered in grocery stores. In the United States, online legal service providers are growing and threatening to eat away at the profits of traditional "brick and mortar" law firms.

"It's clear the legal monopoly that has existed for years is over," said Art Vertlieb, QC. "The fact is there are people who are giving legal advice in many different sectors."

Vertlieb says the Law Society recognizes it may need to regulate the delivery of legal services generally, not just the delivery of legal services by lawyers. The Law Society's Legal Service Providers Task Force is currently examining that issue along with other legal services providers like paralegals and notaries public.

"The Benchers will also have to find a meaningful way for people to afford legal advice when they desperately need it," said Vertlieb. "Improving access to justice will be a fundamentally important issue for the Benchers in the years ahead."❖

Conduct reviews

THE PUBLICATION OF conduct review summaries 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, including:

- 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.

BREACH OF TRUST ACCOUNTING RULES

The co-managing partner of a firm permitted a non-lawyer to sign 256 trust cheques, contrary to Rule 3-56(2). The lawyer's reliance on his bookkeeper, to the extent that he did not properly review the trust accounting rules, led to this breach. (CR #2013-35)

BREACH OF TRUST CONDITION

A lawyer disbursed holdback funds before complying with all trust conditions on a real estate transaction, after she received no response to communications to the vendor's lawyer with respect to their release. A conduct review subcommittee advised the lawyer that her conduct was contrary to Chapter 11, Rules 7 and 7.1 of the *Professional Conduct Handbook* (now rule 5.1-6 of the *Code of Professional Conduct for British Columbia*), which specify in part that trust conditions must be scrupulously honoured once accepted and should be written or confirmed in writing. Practice advisors are available to assist lawyers with questions about whether the steps they are taking are appropriate. (CR #2013-28)

BREACH OF UNDERTAKING

A lawyer released funds to a third-party lawyer on a real estate transaction without imposing an undertaking to provide a discharge of a credit union's security, and so lost control of his ability to fulfill his own undertakings to the complainant to arrange for the discharge of the security. The lawyer also failed to comply with an undertaking to discharge a private company mortgage. The lawyer did not take steps to amend the undertakings or attempt to find a solution, and instead ignored the problem. The lawyer blamed the complainant for placing him on undertakings that could not be met. The undertakings were of a routine nature, commonly seen in real estate transactions. A conduct review subcommittee pointed out that, even if the undertakings were improper, the responsibility still rested with the lawyer to accept only undertakings he knew he could satisfy. The subcommittee advised the lawyer that his conduct was inappropriate because he entered into undertakings that he knew or ought to have known were not in his control to complete. The subcommittee reviewed with the lawyer Chapter 11, Rules 7 and 7.1 of the *Professional Conduct Handbook* (now rule 5.1-6 of the *Code of Professional Conduct for British Columbia*) and the BC Court of Appeal decision in *Law Society of British Columbia* v. *Heringa*, 2004 BCCA 97 on the solemnity of undertakings and their importance in maintaining public credibility and trust in lawyers. (CR #2013-27)

A lawyer breached an undertaking by discharging a mortgage when he did not have sufficient funds in his trust account to pay out the mortgage. A conduct review subcommittee reminded the lawyer that undertakings were the cornerstone of the legal profession and are essential to the smooth and efficient completion of financial transactions. The lawyer should have reviewed each file before he affixed his digital signature and authorized the registration of a discharge. He had an obligation to ensure that his office procedures and training and supervision of staff were sufficient to ensure compliance with all undertakings. The lawyer has since hired a consultant to review and improve his office systems. (CR #2013-30)

A lawyer was put on an undertaking not to release documentation and other items to his client prior to certain conditions being met. The lawyer's assistant released the documents and items to the client. The lawyer attempted to rectify the breach once he became aware of it, but improperly tried to impose a new undertaking on opposing counsel that had the effect of modifying the terms of the undertaking which he was already obliged to perform. In addition, he attempted to impose as a condition of settlement a term that the opposing party drop criminal charges that had been brought against his client, contrary to Chapter 4, Rules 3 and 4 of the *Professional Conduct Handbook* (now rule 3.2-6 of the *Code of Professional Conduct for British Columbia*). (CR #2013-31)

DUTY OF CONFIDENTIALITY

A lawyer failed to protect his client's confidential information, contrary to Chapter 5, Rules 1-4 of the *Professional Conduct Handbook* (now rule 3.3-1 of the *Code of Professional Conduct for British Columbia*), by dumping a box of documents containing highly sensitive and private client information in a recycling bin located at a private commercial loading area. The lawyer has since conducted a review of his firm's procedures and has upgraded its practices. Paper records are now scanned and shredded. (CR #2013-34)

ELECTRONIC FILING

A lawyer failed to comply with his professional obligations under Part 10.1 of the *Land Title Act* for electronic filings, by affixing his electronic signature to a Form Declaration when he did not then have in his possession a Form F signed on behalf of the strata corporation. The lawyer had pre-signed the form as a matter of convenience. A conduct review subcommittee discussed the lawyer's obligation to maintain the integrity of the Land Title Office electronic registration system and the dangers of pre-signing documents generally. The lawyer met with Practice Standards Counsel to review best practices for office procedures. (CR #2013-29)

DISHONOURABLE OR QUESTIONABLE CONDUCT

A lawyer sought a penalty against an opposing party for failing to deliver a cheque by a statutory deadline, when the delay was partly due to the

continued on page 23

Discipline Digest

BELOW ARE SUMMARIES with respect to:

- Jacqueline Levesque
- Malcolm Hassan Zoraik
- John Edward Roberts
- Glenn John Niemela
- Amandeep Chandi Singh
- Robert Mitchell Culos
- Grant Qing-Nan Meng

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

JACQUELINE LEVESQUE

Prince George, BC
Called to bar: May 20, 1994
Ceased membership: January 22, 2010
Admission accepted: May 12, 2011
Counsel: Susan Coristine for the Law Society; Jacqueline Levesque on her own behalf

FACTS

Jacqueline Levesque's practice involved assisting survivors of Aboriginal residential schools in making claims against the government of Canada. Under a settlement agreement, the government paid counsel 15% of the claimant's award as counsel fees. With the client's written agreement, counsel could charge an additional contingency fee to a maximum of 15%. The settlement agreement provides for an adjudication to ensure that any additional contingency fee paid was fair and reasonable.

Contingency fees

Levesque improperly charged a client an additional contingency fee when there was no written contingency fee agreement with the client. In another case, Levesque took funds from trust in payment of fees under a contingency fee agreement when she knew that the fees were being disputed and that an adjudicator would be conducting a fee review.

Unprofessional comments

Levesque sent a letter to the chief adjudicator, in which she complained about the adjudicator's decision in the fee review case. The deputy chief adjudicator upheld the fee review decision and concluded that Levesque's submission was "inconsistent with the proper tone of professional communication from a lawyer and unnecessarily rude and provocative."

Client loans

Levesque submitted falsified documents to one lending institution and issued an improper invoice to another to secure $10,000 loans from each on behalf of a client. She then borrowed that money back from her client, without advising the client to get independent legal advice. Levesque ultimately repaid the loan, fees and interest to the lending firms.

Breach of undertaking

When Levesque took over a client matter, she requested a transfer of the client file from the previous lawyer. The lawyer sent the file to Levesque based on several undertakings, including the undertaking to pay the other lawyer's disbursements within seven days. Levesque took the position that she was not required to pay these disbursements and would not comply with the undertaking, but kept the file. She did not return the file until after the other lawyer contacted the Law Society.

ADMISSIONS AND DISCIPLINARY ACTION

Levesque admitted that her conduct relating to the contingency fee matters, the unprofessional comments, the client loans and the breach of undertaking was contrary to Law Society rules and amounted to professional misconduct.

Under Rule 4-21, the Discipline Committee accepted Levesque's admission and her undertakings:

1. not to apply for reinstatement to the Law Society of BC for a period of five years;
2. not to apply for membership in any other law society during this period without first advising the Law Society of BC;
3. not to permit her name to appear on the letterhead of, or otherwise work in any capacity for, any lawyer or law firm in BC during this period without obtaining the prior written consent of the Law Society; and
4. provide the Law Society with a medical report prepared by a qualified medical examiner in the event she applies for reinstatement.

MALCOLM HASSAN ZORAIK

Victoria, BC
Called to the bar: November 16, 2001
Non-practising member: June 2010 to May 2013
Summary proceeding under Rule 4-40 (Conviction): January 25, 2013
Benchers: Leon Getz, QC, Chair, David Crossin, QC, Lynal Doerksen, Miriam Kresivo, QC, Benjimen Meisner, Nancy Merrill, Gregory Petrisor, David Renwick, QC and Tony Wilson
Report issued: May 30, 2013 (2013 LSBC 13)
Counsel: Jaia Rai for the Law Society; Russell Tretiak, QC for Malcolm Hassan Zoraik

FACTS

In April 2009, Malcolm Hassan Zoraik acted as counsel for the plaintiff in an action for damages arising from an automobile accident. The case was heard by a judge and jury. After deliberating for 20 minutes, the jury delivered a verdict of no liability on the part of the defendant. Zoraik immediately applied to the judge to decline to enter judgment because of the brevity of the jury's deliberations.

On May 6, 2009, before that application was heard, an envelope containing a letter was found on a counter in a small, publicly accessible alcove used for searching court files, located beside the court registry. The letter purported to be from the husband of an unidentified juror in a civil action and alleged that his wife had been offered money for her vote in the

court. The case described in the letter matched that on which Zoraik had acted as plaintiff's counsel.

The allegation was untrue, but the letter triggered an investigation. Zoraik was subsequently convicted of creating and depositing the letter in the courthouse in a way that contravened the *Criminal Code*. The Provincial Court judge in his case said, "... Zoraik manufactured a letter which he knew was likely to become evidence before a court, and indeed sought to have a court rely upon that manufactured evidence."

On June 14, 2010 Zoraik was convicted of public mischief and of fabricating evidence. Zoraik appealed his convictions, but in June 2012 the BC Court of Appeal dismissed his appeal.

Rather than issuing a citation alleging that Zoraik had engaged in offensive conduct, the Discipline Committee made the highly unusual choice to refer the matter to Benchers, under Rule 4-40 (Conviction), to decide whether to summarily suspend or disbar Zoraik. Although Rule 4-40 in one form or another had been part of the discipline regime for at least 25 years, neither counsel was able to point to any other instance of its use.

DETERMINATION

Zoraik asked the Benchers to refer the matter back to the Discipline Committee for a citation to be issued and a normal hearing that would allow for a range of dispositions not provided by the Rule 4-40 process. Under Rule 4-40, Benchers are permitted to select one of only two possible disciplinary responses – suspension or disbarment – rather than choose from the full range available to a panel following a hearing on a citation. Zoraik contended that this precluded the Benchers from considering mitigating circumstances and "palliative conditions" and that "to summarily strip" him of his licence to practise law violated his *Charter* rights.

The Benchers were not persuaded that Zoraik had been exposed to any real prejudice as a result of the Discipline Committee's decision to refer the matter to the Benchers under Rule 4-40, or of the Benchers exercising their jurisdiction.

Counsel found only a handful of cases in Canada involving lawyers who attempted to pervert the administration of justice in ways even remotely comparable to what Zoraik did. The Benchers found the fact that there were so few cases was eloquent testimony to the widespread recognition among lawyers of the critical role that they play in the administration of justice and the importance of public confidence in the legal system and profession.

Zoraik brought forward several factors as having a mitigating or "palliative" significance, including that:

- he had practised for a mere seven years when he committed the offences;
- aside from the convictions, he had an unblemished professional conduct record;
- his misconduct was an isolated act;
- he and his family have suffered sustained humiliation and economic devastation; and
- the criminal penalty imposed upon him had achieved all that is required in terms of specific and general deterrence.

What was conspicuously absent from the list, however, was anything that explained or justified the misconduct itself, and the Benchers could think of none. The Benchers noted that there was no acknowledgment of wrongdoing or remorse by Zoraik.

DISCIPLINARY ACTION

The Benchers ordered that Zoraik be disbarred.

Zoraik has appealed the decision of the Benchers to the Court of Appeal.

JOHN EDWARD ROBERTS

Langley, BC
Called to the bar: November 10, 1995
Discipline hearings: September 21, 2012 and May 8, 2013
Panel: David Mossop, QC, Chair, Shona Moore, QC and Thelma Siglos
Oral reasons: May 8, 2013
Reports issued: December 17, 2012 (2012 LSBC 31) and May 31, 2013 (2013 LSBC 14)
Counsel: Jaia Rai for the Law Society; Albert Roos, QC on behalf of John Edward Roberts

FACTS

John Edward Roberts acted for the plaintiff in an action for damages for breach of contract and negligent misrepresentation. On June 1, 2010, the defendant filed an appearance and gave notice requesting that the dispute be referred to arbitration.

On June 8, a notice of motion was filed on behalf of the defendant seeking an order referring the dispute for arbitration and a stay of proceedings. The next day, the stay application was served on Roberts, who subsequently informed the defendant's lawyer that his client opposed the relief set out in the stay application.

On July 7, Roberts notified the defendant's lawyer that the week of November 1 was the first available week for the hearing according to the court registry. On July 8, the defendant's lawyer wrote a letter proposing that the stay application proceeding be transferred to the New Westminster registry as there was a greater likelihood of an early hearing date.

Roberts saw this letter on July 9 when he was briefly in his office. He instructed his assistant to file for default judgment and to let the defendant's lawyer know that an application for default would be made. The assistant also advised the defendant's lawyer that Roberts would be away from the office until the next week.

Roberts' assistant filed an application for default judgment on July 9. By letter of the same date, the defendant's lawyer notified Roberts that no application for default judgment could be made against her client without 14 days' notice and leave of the court. The defendant's lawyer, therefore, did not file a statement of defence. She proceeded on the assumption that the parties would prepare materials for the stay application and the plaintiff's application for leave to apply for default judgment.

On July 16, the defendant's lawyer delivered to Roberts a notice of hearing that the stay application was scheduled for the week of July 26. She asked Roberts to confirm his availability and further requested his application materials so that a joint chambers record could be prepared and filed.

On July 19, Roberts emailed his assistant and instructed her to advise the defendant's lawyer that he was out of the country until July 28 and would

be available for a hearing on July 29.

On July 19, default judgment was entered against the defendant.

On July 22, the defendant's lawyer notified Roberts' assistant that the stay application hearing would be scheduled for August 3 or 4 since a judge was not available on July 29. She also inquired whether Roberts intended to pursue the motion for default judgment as indicated on July 9.

After not receiving a response or Robert's outline in connection with the stay application, the defendant's lawyer wrote to Roberts' assistant stating that she assumed Roberts had abandoned his intention to seek default judgment.

On July 29, Roberts returned to his office and reviewed the letters from the defendant's lawyer. Roberts wrote to her enclosing a copy of the entered default judgment and requested her available dates for a hearing to assess damages.

DETERMINATION

For most of the time between July 7 and August 3, 2010, Roberts was away from his office due to volunteer commitments.

The panel concluded that Roberts did not engage in sharp practice. The panel further concluded that Roberts did not engage in professional misconduct when he failed to withdraw the application for default judgment after receiving a letter from counsel for the defendants.

However, the panel did find that Roberts committed professional misconduct when he proceeded by default and obtained default judgment against the defendant when he knew the defendant was represented by another lawyer, without providing reasonable notice of his intention to do so. This was contrary to Law Society rules and his duties as an officer of the court. He also failed to reply reasonably promptly and substantively to communications from another lawyer, in circumstances that required a response.

The panel found that Roberts was not motivated by any intention to gain an advantage for his client or to deceive opposing counsel. Nor did he personally benefit from his misconduct. Rather, the misconduct occurred over a four-week period during which Roberts was absent from his office and failed to ensure adequate coverage for his practice.

Roberts had no prior disciplinary record and has practised without further incident since the events of July 2010. The panel was satisfied that his misconduct arose from a unique series of events rather than from lack of knowledge about the standard of practice expected of him or his ability to maintain the orderly supervision of his practice.

DISCIPLINARY ACTION

The panel ordered that Roberts pay:

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

GLENN JOHN NIEMELA

Vancouver, BC
Called to the bar: August 26, 1988

Discipline hearing: February 26, 2013
Panel: Thomas Fellhauer, Chair, Richard Lindsay, QC and Laura Nashman
Oral decision: February 26, 2013 (facts and determination)
Report issued: June 13, 2013 (2013 LSBC 15)
Counsel: Alison Kirby for the Law Society; Henry Wood, QC for Glenn John Niemela

FACTS

In January 2010, Glenn John Niemela was retained by a client in connection with a claim of builders' lien filed against title to a property. Niemela commenced an action in the Supreme Court of BC between his client and the defendants. He also filed a certificate of pending litigation against title to the property.

On August 16, 2010, opposing counsel made an offer to settle the lien action. Niemela accepted the offer on behalf of his client on the condition that the defendants provide a release to his client.

On August 18, 2010, opposing counsel wrote to Niemela, confirming the terms of the settlement and enclosing settlement documents.

Over the next several months, Niemela did not respond promptly to some or all of the letters from opposing counsel that required a response. On May 24, 2011, opposing counsel made a complaint to the Law Society.

On July 25, 2011, Niemela wrote to opposing counsel inquiring whether he wished to settle the lien action on the terms set out in their August 2010 correspondence. He then sent opposing counsel a draft release to be executed by the defendants.

On August 24, 2011, opposing counsel replied to Niemela's letter and enclosed a signed release and a trust cheque in the amount of $6,173.34.

Opposing counsel contacted the Law Society again on September 9, 2011 when there was no further response from Niemela.

Niemela and opposing counsel exchanged letters and documents in December 2011 and the original release was eventually forwarded to opposing counsel on January 6, 2012.

In a letter dated December 28, 2011, Niemela apologized to opposing counsel for the delay in concluding the file.

ADMISSION AND DISCIPLINARY ACTION

Niemela admitted that, in the course of representing his client in a builders' lien action, he failed to respond promptly to the letters from opposing counsel. He admitted that his conduct in doing so constituted professional misconduct.

The panel considered Niemela's past professional conduct record, which includes practice restrictions and supervision, a conduct review, and previous findings of professional misconduct for failure to respond to opposing counsel and to the Law Society. The panel was concerned that Niemela:

- had not responded to the previous disciplinary action and could not adequately explain why he failed to respond to opposing counsel;
- did not pay enough attention to the more routine aspects of his practice;
- did not appear to appreciate the impact that his actions (or his failure to act) had on other persons;
- failed to respond even though opposing counsel was very courteous

and tried to make Niemela's remaining tasks as easy to complete as possible; and

- did not appear to delegate tasks to his staff or put systems in place that would prevent such failures.

The panel noted that the Law Society's efforts to assist Niemela and attempt to alter his behaviour over the past 11 years had not been successful. Further, two psychological reports indicated that Niemela was resistant to change and unaware of the effect of his behaviour on others.

However, the panel did consider that, while Niemela's professional misconduct caused great frustration and additional costs for the opposing counsel, his client and the Law Society, the delays did not result in any permanent harm to any person.

While a suspension was warranted, the panel saw a possibility that a large fine together with an extended period of practice supervision — and the certainty that a suspension would result if Niemela delayed in complying — would be more likely to motivate him to alter his behaviour in the future.

Although practice supervision was attempted before and did not adequately change Niemela's behaviour, the panel believed that a focus on Niemela's specific recurring problems by a practice supervisor may result in a positive outcome and a more lasting result.

The panel accepted Niemela's admission and ordered that he:

1. pay a $15,000 fine;
2. pay $6,424 in costs;
3. enter into an arrangement to practise under the supervision of a lawyer; and
4. if he does not comply with the order to enter into practice supervision by October 1, 2013, be suspended until he does so.

The panel was quite concerned that it may be wrong in its decision not to suspend Niemela in the first instance and that he may repeat his behaviour in his practice and not change his behaviour in a meaningful way. If that occurs, he will have failed to recognize the remedial intent of the order. If Niemela is cited again for similar misconduct, a future hearing panel should consider a lengthy suspension.

AMANDEEP CHANDI SINGH

Surrey, BC
Called to the bar: May 21, 1999
Discipline hearing: April 25, 2013
Panel: Lee Ongman, Chair, Glenys Blackadder and Jennifer M. Reid
Oral reasons (facts and determination): April 25, 2013
Report issued: July 05, 2013 (2013 LSBC 17)
Counsel: Alison Kirby for the Law Society; Henry Wood, QC for Amandeep Chandi Singh

FACTS

The Law Society issued a citation against Amandeep Chandi Singh, containing five allegations relating to breaches of the accounting rules and three allegations relating to his conduct in borrowing money from a client of the firm.

Breach of accounting rules

In May 2009, Singh withdrew $500 in cash from his firm's trust account, contrary to Law Society rules. He has no recollection of making this withdrawal.

Singh authorized the withdrawal of funds from a pooled trust account by setting up an electronic transfer capacity in circumstances contrary to Law Society rules.

Between June 2009 and June 2010, there were insufficient funds in the trust account to meet the firm's obligations with respect to funds held in trust for its clients. Singh did not report online transfers and the resulting trust shortages to the Law Society until June 2010.

In April 2010, Singh deposited a $1,000 cash retainer from a client into the firm's general account rather than the pooled trust account, contrary to Law Society rules.

Eighty-nine online transfers from the trust account to the general account were made between June 2009 and June 2010, but were not recorded in the firm's books within seven days, as required by the Law Society rules. Further, monthly trust reconciliations for March, April and May 2010 were not prepared within 30 days of the effective date of the reconciliation, also contrary to the rules.

Client loan

In December 2009, Singh's firm was going to be "short" money in its general account and the bank would no longer permit the line of credit to exceed its maximum. Singh made a private lending arrangement with one of the firm's clients to borrow $20,000 on a short-term basis.

Singh did not know that the loan funds were provided by a cheque written to the client's joint account with his wife. Singh did not advise the client and his wife that he was not protecting their interests and he did not recommend that they obtain independent legal advice.

The loan was deposited to the firm's general account and used to pay general operating expenses.

When the loan was repayable in February 2010, the firm did not have enough funds to repay it. The client agreed to a one-month extension; however, on March 28, 2010 there were still insufficient funds.

On April 13, 2010, Singh provided the client's wife with three post-dated cheques payable from the firm's general account. The second cheque was returned due to insufficient funds.

On April 26, 2010, Singh's law partner deposited $35,000 to the firm's general account, and then transferred the funds to the trust account as part of his repayment of trust funds that Singh had wrongfully withdrawn from the trust account. Singh understood from discussions with his partner that $5,000 of these funds were to be used to replace the "bounced" cheque for the partial loan repayment.

On April 30, 2010, Singh withdrew $5,000 from the trust account and provided a bank draft to the client's wife. The $15,000 balance of the loan was repaid by Singh's partner in May 2010.

ADMISSION AND DISCIPLINARY ACTION

Singh admitted to the five allegations relating to breaches of the accounting rules, including a failure to immediately rectify and report trust shortages. He admitted to the three allegations relating to his conduct in

borrowing $20,000 from a client of the firm, failing to advise the client that he was not representing his interests, and improperly withdrawing funds from the trust account rather than the general account to repay part of the loan. He made a global admission that his conduct in these allegations amounted to professional misconduct.

Serious professional misconduct involving breach of trust accounting rules, shortage of trust funds, and borrowing funds from a client would normally include a significant period of suspension from the practice of law. Singh's irresponsible attention to matters of financial accountability showed a complete disregard for the rules and standards expected from members of the Law Society.

Borrowing funds from a client allowed Singh to gain an immediate advantage. However, while the delay in repayment of the loan caused inconvenience to the client and his wife, the panel noted that there was ultimately no financial loss.

The offending conduct occurred frequently over many months and was not an isolated incident.

Singh's professional conduct record shows two previous conduct reviews and a referral to the Practice Standards Committee.

Singh is an alcoholic and, when his marriage broke down in 2008, his alcohol consumption increased. Between January 2008 and August 2010, Singh was hospitalized many times for health problems related to his consumption of alcohol, and he also attended residential treatment programs on several occasions.

Singh began a treatment plan in August 2010 and has abstained from alcohol. He attends frequent AA meetings and reports to the Practice Standards Committee on a regular basis. The panel believed that there was a strong likelihood of rehabilitation.

Singh has also implemented new office procedures to ensure compliance with trust accounting rules in future.

The panel accepted Singh's admissions and ordered that he:

1. pay a $10,000 fine;
2. pay $8,000 in costs;
3. not be a signatory to a trust account for five years; and
4. enter into and comply with a medical monitoring agreement for a period of three years.

ROBERT MITCHELL CULOS

Vernon, BC
Called to the bar: January 8, 1988
Discipline hearing: May 7, 2013
Panel: Kenneth Walker, QC, Chair, John Lane and Karen Nordlinger, QC
Oral reasons: May 7, 2013
Report issued: July 8, 2013 (2013 LSBC 19)
Counsel: Alison Kirby for the Law Society; Shane Dugas for Robert Mitchell Culos

FACTS

In 2008, Culos was retained to administer the estate of a client's deceased mother. During this estate file, Culos transferred estate property to his client.

By 2010, Culos was owed accounts by his client personally and as administrator of the estate.

In 2010, a funeral service company retained Culos to collect a funeral service bill relating to his client's file. Culos accepted this retainer, and acted in a conflict of interest by collecting this account for the funeral company against his client. He also collected his own accounts at this time. Culos used information from his initial client file during the collection of these accounts.

In a second estate matter, in 2009, a third party introduced Culos to an elderly person (Client A) who retained Culos to prepare a power of attorney, an enhanced representation agreement and a will. The third party was the beneficiary in the will and was named in the other documents.

In 2010 the third party became a client (Client B) when he retained Culos to act in the matter of the estate of the daughter of Client A. Client A was the sole beneficiary of this estate. Culos obtained Letters of Administration in favour of Client B in September 2010.

In November 2010 the estate of Client A's daughter received $145,000 from a pension plan. This sum was placed into the estate trust account of Culos.

Within days of receiving the $145,000, Client A retained Culos to create a trust of $100,000 in favour of named charities. Culos transferred the $100,000 from the estate trust account to a new charity trust account. Culos did not disclose the receipt of the $145,000 to Client B (the administrator), nor did he disclose the transfer of funds to the new charity trust account. Culos acted against the interest of Client B in favour of Client A when he created this new trust.

Immediately after the creation of the charity trust, Culos knew that he had erred. He sought advice from senior practitioners and Law Society practice advisors, but the conflict had already been created.

Culos believed that it was important to act quickly based on the advice he was receiving from Client A about Client B. Culos believed that Client A was taken advantage of by Client B.

Both Client A and Client B were affected adversely by the actions of Culos. The $100,000 trust has become the subject of litigation that affects both parties. The trust monies remain protected until court order or until the parties reach an agreement.

Culos sought an order to restrict public access to the Law Society hearing, including the exhibits filed at the hearing.

The panel ordered that the hearing remain open to the public. Client B was free to stay for the hearing of both complaints. Counsel were asked to be mindful of solicitor-client privilege and the privacy interests arising from that privilege.

Both counsel agreed that Client B should not have access to solicitor-client privileged material irrelevant to him. The panel ordered that Client B be permitted to have a copy of material relating to his relationship to Culos and ordered that the exhibits be sealed and not available to the public.

ADMISSIONS AND DISCIPLINARY ACTION

Culos admitted professional misconduct in these two separate client matters. In the first matter, he acted against the interest of his client

when he accepted a retainer to collect an outstanding debt for a funeral home. In the second, he acted against the interest of Client B when he accepted a retainer to divert funds to a trust in favour of Client A.

Lawyers have a duty of undivided loyalty to each client and are trained to be aware of conflicts of interest. Culos failed to recognize or consider the conflict until it was too late.

The panel considered Culos' professional conduct record, which included a conduct review and a referral to Practice Standards. The panel also noted that he was a contributor to numerous worthwhile community organizations and boards.

The panel accepted Culos' admissions and ordered that he:

1. pay a $15,000 fine;
2. pay $6,748 in costs; and
3. obtain the services of a practice supervisor to assist with conflict decisions for one year.

GRANT QING-NAN MENG

Vancouver, BC
Called to the bar: August 27, 1993
Ceased membership: September 1, 2013
Admission accepted by Discipline Committee: July 11, 2013
Counsel: Alison Kirby for the Law Society, Henry Wood, QC for Grant Qing-Nan Meng

FACTS

In 2009, Grant Qing-Nan Meng was advised by his external accountant to clear aging trust balances over two years old. Without consulting his client files, Meng assumed that the residual trust balances represented legal fees not billed. He subsequently closed accounts and transferred the money to his general account.

Meng failed to confirm whether he had previously billed the clients, had performed additional services for which he was entitled to bill his clients or if the amounts remaining in trust were for any specific purpose. He also failed to maintain a bring-forward system for his files, or ensure that all outstanding undertakings had been paid and trust balances had been cleared prior to closing the files and sending them to storage.

In September 2010, the Law Society conducted a compliance audit of Meng's practice. On March 14, 2011, the Law Society ordered an investigation of Meng's books, records and accounts for the period of January 1, 2009 to March 31, 2011.

ADMISSIONS AND DISCIPLINARY ACTION

While denying any dishonest intent, Meng admitted to nine allegations of failing to comply with his professional obligations relating to trust accounting and the handling of trust funds. Five of these cases involved a sufficient degree of carelessness and/or recklessness as to amount to misappropriation. Meng admitted that his conduct constituted professional misconduct.

Meng admitted that he withdrew unused funds from client trust accounts, supposedly in payment of fees and disbursements for additional legal services. However, Meng did not deliver statements of account to his clients prior to withdrawing the funds, and his client files did not contain evidence that additional legal services were rendered.

Meng did not maintain adequate records that would have permitted him to reconcile his trust account with his client ledgers. He stated that he has since changed his accounting practices and taken steps to verify payments out of trust.

Under Rule 4-21, the Discipline Committee accepted Meng's admissions and his undertakings:

1. to retire and to cease membership in the Law Society;
2. never to apply for reinstatement to the Law Society of BC;
3. not to apply for membership in any other law society without first advising the Law Society of BC; and
4. not to permit his name to appear on the letterhead of, or otherwise work in any capacity for, any lawyer or law firm in BC, without obtaining the prior written consent of the Law Society.❖

Conduct reviews ... from page 17

lawyer's failure to respond to communications from his former firm, contrary to Chapter 11, Rule 6 of the *Professional Conduct Handbook* (now rule 7.2-5 of the *Code of Professional Conduct for British Columbia*). The lawyer also communicated directly with a party represented by counsel, contrary to Chapter 4, Rule 1.1 of the Handbook (now rule 7.2-6 of the Code), failed to communicate with an opposing party with courtesy, contrary to Chapter 1, Rule 3(4) of the Handbook (now rule 5.1-5 of the Code), used a Law Society hearing report in other proceedings without the consent of the Executive Director, contrary to section 87 of the *Legal Profession Act* and sought to rely upon improper affidavit material, contrary to Chapter 3, Rule 3 of the Handbook (now rule 3.2-1 of the Code). Finally, he failed to respond promptly or at all to emails from his former firm about client matters, contrary to Chapter 11, Rule 6 of the Handbook (now rule 7.2-5 of the Code), failed to consult with his former firm when he sent letters to clients regarding his departure, contrary to Chapter 3, Rules 6 to 9 of the Handbook (now rule 3.7-1, commentary [4 to 7] of the Code), and failed to handle his departure from his firm in a professional manner and with courtesy and good faith, contrary to Chapter 1, Rule 4(1) of the Handbook (no comparable rule in the Code). The lawyer had only been practising for two years. He was referred to Practice Standards Counsel and now seeks mentorship and guidance from senior lawyers. (CR #2013-32)

DUTY TO PRACTISE HONOURABLY AND WITH INTEGRITY

A lawyer prepared, delivered and collected a disbursement account to his law firm's client without that firm's knowledge or consent and subsequently deleted the account from his firm's computer system, contrary to rule 2.2-1 of the *Code of Professional Conduct for British Columbia*, which requires lawyers to practise law and discharge all responsibilities honourably and with integrity. (CR #2013-33)❖

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