

At the time of the hearing on facts and determination, Welder did not recognize the conflict of interest issue, insisting that, having reviewed the rules and considering the matter, he had formed the opinion that he was free to represent the lender in the foreclosure proceeding against his former clients.

However, at the hearing on disciplinary action, Welder seemed to recognize the error of his conduct and was able to identify the action he should have taken in the circumstances. By identifying the appropriate conduct, Welder demonstrated that he is likely to handle a similar situation appropriately in the future. The panel was not ready to close the door on remediation and rehabilitation quite yet.

## DISCIPLINARY ACTION

Having considered the evidence and the law before it, the panel concluded that Welder's conduct fell just short of warranting a finding that he was ungovernable.

In the panel's view, a one-year suspension was easily supported by the length and the content of Welder's conduct record and was consistent with the principle of progressive discipline. When combined with remedial courses and practice reviews focused on specified topics, a one-year suspension also served the important functions of rehabilitation and ensuring public confidence in the disciplinary process and in the profession.

The panel ordered that Welder:

1. be suspended from practice for one year and until he has:
  - a) completed approved continuing professional development with a minimum credit of 12 units, and
  - b) completed a remedial course on professional ethics, including conflicts;
2. undergo two consecutive semi-annual practice reviews that successfully demonstrate satisfactory trust accounting procedures, satisfactory file management, appropriate conflict checks and decisions, and an understanding of substantive legal issues at the level of a competent practitioner; and
3. pay \$13,692 in costs.

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## STANLEY CHANG WOON FOO

Vancouver, BC

Called to the bar: November 10, 1995 (BC); June 24, 1994 (Ontario), June 2010 (New York State)

Discipline hearing: January 31, 2014

Panel: Thomas Fellhauer, Chair, Gavin Hume, QC and Lance Ollenberger  
Decisions issued: July 4, 2013 ([2013 LSBC 26](#)) and April 30, 2014 ([2014 LSBC 21](#))

Counsel: Carolyn Gulabsingh for the Law Society; Richard Gibbs, QC for Stanley Chang Woon Foo

## FACTS

In September 2011, while at a courthouse attending to client matters,

Stanley Chang Woon Foo made discourteous or threatening remarks to a social worker employed by the Ministry of Children and Family Development. Specifically, his words were that he "should shoot" her because she "takes away too many kids."

## DETERMINATION

Foo's lawyer submitted that these comments were the result of Foo's awkward social skills and were really a "joke gone bad."

The panel determined that Foo's conduct was more than just a mere failure to exercise ordinary care and was a marked departure from what the Law Society expects of lawyers. Further, by making these comments outside a courtroom during recess, the conduct related to Foo's professional practice.

The panel found that Foo had committed professional misconduct.

## DISCIPLINARY ACTION

While no one was harmed by Foo's words, his behaviour did undermine the public's confidence in the integrity of the legal profession.

The panel considered a number of aggravating factors.

Foo made his comments outside of a courtroom in an area where other persons were present, including other social workers. Comments like these, in such an emotional and volatile environment, are completely inappropriate for an officer of the court.

The panel was very concerned about Foo's professional conduct record and history of failing to control his behaviour. He has three previous conduct reviews, two of which involved inappropriate or discourteous behaviour towards a social worker and an unrepresented opposing party.

The panel acknowledged that Foo appeared to be sincere in his commitment to taking steps to change; however, he had given assurances a number of times before, but failed to carry through with his commitments.

According to one of the reference letters provided to the panel, Foo takes on difficult legal aid files, and there are few lawyers who take on these kinds of files. Therefore, a longer suspension would have a negative impact in terms of access to justice. The panel considered this to be important.

However, under the principles of progressive discipline, it appeared that previous orders and recommendations in the nature of a mentorship program, psychological counselling and treatment, and a fine were not effective. The panel hopes that a shorter suspension will give Foo an opportunity to critically examine his behaviour and commit to change.

The panel ordered that Foo:

1. be suspended for two weeks; and
2. pay \$8,840 in costs.

*On June 1, 2014, a stay of suspension was granted pending a review sought by Foo. ❖*

## Credentials hearing

Law Society Rule 2-69.1 provides for the publication of summaries of credentials hearing panel decisions on applications for enrolment in articles, call and admission and reinstatement.

For the full text of hearing panel decisions, visit the [Hearing decisions](#) section of the Law Society website.

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### MARC ANDRE ECKARDT

Called to the bar: 1996 (California)

Hearing (application for enrolment): December 9, 2013

Panel: Phil Riddell, Chair, Ralston Alexander, QC and Laura Nashman

Oral reasons: December 9, 2013

Decision issued: February 18, 2014 ([2014 LSBC 07](#))

Counsel: Henry Wood, QC for the Law Society; Michael D. Shirreff for Marc Andre Eckardt

#### BACKGROUND

In Marc Andre Eckardt's application for enrolment in the Professional Legal Training Course (PLTC), he advised that he had been charged with an offence in Washington State and had entered a guilty plea to two misdemeanour assault charges. Subsequent inquiries revealed allegations of possible substance abuse that had not been acknowledged in his initial application.

Eckardt practised law in the US and was married with three children. When his marriage ended with a bitter divorce and he was laid off from his job as in-house counsel, he relocated to Vancouver.

Eckardt became involved in a dysfunctional relationship. He moved in with a woman and her daughter during the period of time when he was unemployed. The woman treated him badly and would attack him physically. Eckardt was required to defend himself and on occasion he would slap her in response to her attacks.

After he found employment, he increased the frequency of his visits to Seattle to see his children. The woman he lived with was jealous of the time he spent with his children.

During a weekend visit to see his children in Seattle in November 2010, she insisted on accompanying him, despite his request to the contrary. The woman became inebriated in their hotel room and physically attacked Eckardt in front of all of the children. While trying to assist her mother in the dispute, the daughter was apparently struck by Eckardt. Everyone, including the daughter, agreed that no one hit her intentionally.

Eckardt's son required counselling as a result of his exposure to the violence in the hotel room. His counsellor reported the events to the police and, after an investigation, Eckardt was charged with two counts of domestic assault.

At the same time as the criminal proceedings were progressing, Eckardt's wife was initiating child protection applications in the matrimonial action. Eckardt was allowed access to his children on the condition that he enrol in an alcohol assessment program. This assessment was driven by the hotel incident even though he was not drinking that day.

The assessor advised Eckardt that there was no concern; however, the resulting report identified a need for a treatment program and made a finding that Eckardt was in denial about his alcohol issues. Eckardt was unable to refute the allegation and complied with the requirements of the child access orders.

Eckardt accepted a plea bargain for a guilty decision to spare his children from the requirement to testify in the trial and to ensure a probationary outcome rather than risk a mandatory six-month term of incarceration.

#### CONCLUSION

The Law Society was concerned about the fitness of this applicant based upon the substance abuse allegation. Eckardt had replied "no" in response to two questions on the application relating to substance abuse.

After a sworn testimony from Eckardt and his fiancée, the panel was satisfied that Eckardt answered the first question correctly about having no issues with dependency or abuse of alcohol.

Eckardt also answered "no" to a second question on the application about being counselled or receiving treatment for a substance abuse disorder. Since he was only participating in alcohol counselling programs to ensure compliance with court orders to continue to see his children, he did not feel that his answer to the question was inappropriate. On that basis, the panel was satisfied that he did not intend to mislead the Law Society.

Eckardt's character was also a concern due to the criminal convictions and his answers to other questions on the PLTC application for enrolment.

Eckardt swore that the decision to plead guilty was entirely motivated to bring the events to an end with a manageable consequence and with the ultimate goal of sparing his young children from an appearance in court to testify against their father.

Eckardt also answered "no" to questions on the application about whether any civil action or a civil judgment was outstanding and whether he had ever failed to obey a court order. The panel found it probable that the judgment for outstanding unpaid child maintenance arrears that existed at the time the PLTC application was submitted required a positive answer. It was also probable that the fact of unpaid amounts of court-ordered child support suggested that the negative answer to the question about failing to obey a court order

was similarly inaccurate.

Eckardt explained that he did not think of the obligation to pay child maintenance in terms of it being embodied in a court order but acknowledged that he should have done so. During the period of his unemployment, he was often unable to pay child support and, accordingly, was in breach of a court order. As a result of a recently

developed accommodation with his ex-wife, enforcement of the arrears of maintenance had been stayed.

The panel was satisfied that Eckardt was a person of good character and repute and was fit to become a barrister and a solicitor of the Supreme Court. The panel granted Eckardt's application to be enrolled in the Law Society admission program. ❖

## 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.

### DISHONOURABLE OR QUESTIONABLE CONDUCT

A lawyer made misleading and inaccurate statements to an opposing party and the court regarding both her client's claim and the effect of a previously executed release. The lawyer did not intend to mislead, but rather did not fully understand the terms of the release. She has sought assistance from a Benchers and the Law Society's Practice Standards department. She has taken a professional ethics course and other steps to improve her understanding of releases. (CR 2014-03)

During an impaired driving investigation, a lawyer panicked and lied to the police about his alcohol consumption. He did not subsequently set the record straight with the police or apologize to them

for his untruthful response. The lawyer has sought counselling. (CR 2014-06)

A lawyer acted on client matters without the required disclosure and approval of her partners; she was not candid with her partners when questioned about the client matters, and she failed to report two default judgments to the Lawyers Insurance Fund, as required by her insurance policy and Chapter 4, Rule 5 of the *Professional Conduct Handbook*, then in force (now rule 7.8-2 of the *BC Code*). (CR 2014-07)

### QUALITY OF SERVICE

For a period of eight months, a lawyer failed to respond to emails from her client regarding her legal fees, contrary to Chapter 3, Rule 3 of the *Professional Conduct Handbook*, then in force (now rule 3.2-1 of the *BC Code*). The lawyer also withdrew fees from trust in payment of those fees before doing all of the legal services contemplated by the retainer, contrary to Law Society Rules 3-56(1)(b) and 3-57. The lawyer intends to apologize to the client and refund the balance of the retainer. A conduct review subcommittee recommended amending the ambiguous retainer and fee agreement documents to set out clearly what would happen to the fixed fee upon termination. (CR 2014-04)

### TRUST ACCOUNTING

On three occasions a lawyer took money from trust to pay his fees before preparing and delivering a bill to his clients, contrary to Law Society Rule 3-57(2). He also failed to report that he had not satisfied two monetary judgments against him, contrary to Rule 3-44. The lawyer had little practice management and accounting experience or assistance. He has now installed a proper accounting package and hired a bookkeeper and has his accounting reviewed on a regular basis by a professional accounting firm. (CR 2014-05) ❖

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