with respect to the same investigation by the IIO in a conflict. That lawyer would be bound by the joint retainer rules to share information received from one police officer client with another police officer client. However, the lawyer would be prevented from doing so by Section 15.1 of the MOU, which requires that officers not indirectly communicate with each other concerning their involvement in the incident. The committee has concluded that, as a general rule, a lawyer should not jointly advise or represent two or more police officers under investigation for, or witnesses to, a serious incident that arose in the course of their duties.

The Law Society of Upper Canada has reached a similar conclusion, although the basis of that conclusion is a regulation made under the Ontario *Police Services Act*, rather than an MOU. In Information for Lawyers — Acting for Police Officers in Ontario Special Investigations Unit ("SIU") Investigations, the Law Society of Upper Canada advises:

> As the [Law Society] rule requires that a lawyer cannot treat information as confidential as between joint clients and the regulation requires that the police officers not indirectly communicate with each other concerning their involvement in the incident, it is difficult to see how segregated police officers can properly be jointly represented.

Lawyers should also review the Supreme Court of Canada decision in *Wood* v. *Schaeffer* 2013 SCC 71, where the Court concluded that the Ontario *Police Services Act* and regulations prohibit subject and witness officers from consulting with counsel until the officers have completed their police notes and filed them with the chief of police.

Lawyers who, in spite of this Ethics Committee opinion, feel they have a good reason for jointly representing two or more police officers in these circumstances, should contact the committee for an opinion on the propriety of doing so.❖

DISCIPLINE ADVISORY

You are facing a Law Society investigation. What do you need to know?

Simple answer: You must cooperate.

THE LAW SOCIETY considers all complaints about lawyer conduct or competency, receiving over 1,100 each year. So it wouldn't be surprising if, at some point in your career, you receive a letter from us asking for a response to a complaint.

As a lawyer, you have a duty to cooperate with Law Society investigations, including complaint and forensic investigations. Refusal to cooperate may lead to a citation and a disciplinary hearing, independent of the original complaint.

Law Society Rule 3-5(6) sets out the positive obligation for a lawyer to cooperate fully with a Law Society investigation. Rule 3-5(6.1) lists many of the Law Society's investigative powers, including the power to require a lawyer to:

- produce files, documents and other records for examination or copying;
- attend an interview and answer questions;
- cause an employee or agent of the lawyer to answer questions and provide information.

Lawyers have an obligation to cooperate even if the information sought by the Law Society is privileged or confidential (Rule 3-5(10)). Lawyers also have an obligation to cooperate regardless of whether they are the subject of the complaint in question.

The *Code of Professional Conduct for British Columbia* also emphasizes the ethical duty of a lawyer to cooperate. Rule 7.1-1 provides that a lawyer must:

The public must have confidence in the Law Society's ability to investigate and regulate its members.

- reply promptly and completely to any communication from the Law Society;
- provide documents as required to the Law Society;
- not improperly obstruct or delay Law Society investigations, audits and inquiries;
- cooperate with Law Society investigations, audits and inquiries involving the lawyer or a member of the lawyer's firm;
- comply with orders made under the *Legal Profession Act* or Law Society Rules; and
- otherwise comply with the Law Society's regulation of the lawyer's practice.

We recognize that lawyers may be very concerned to learn they are the subject of a complaint investigation. If it happens to you, it is important to deal with the situation promptly. Consider talking with a senior lawyer who is experienced in Law Society matters, and if it is a serious allegation, you may wish to retain counsel to represent you.

The public must have confidence in the Law Society's ability to investigate and regulate its members. As a result, the Law Society relies on prompt and complete replies from lawyers during investigations to uphold its paramount duty of protecting the public interest and the administration of justice.❖

Practice watch

by Barbara Buchanan, Practice Advisor

IMPROPER TO GIVE ANONYMOUS ADVICE FOR A FEE

AS A LAWYER, you may be approached by companies asking you to give legal advice to clients anonymously over the internet. Although the *BC Code* doesn't include a specific rule that says lawyers must identify themselves to clients, it is the Ethics Committee's view that it is implicit in all of the Law Society's rules of conduct that they must do so. Clients cannot know whether a lawyer is conflict-free and otherwise suitable unless they know the lawyer's identity. The committee further opined that it is improper for a lawyer to give anonymous advice for a fee.

Giving anonymous advice may also violate Code rule 3.6-7, the fee-sharing rule, and Law Society Rule 3-63(3), which requires a lawyer to deliver a bill or receipt to the client. Other issues that may arise include the ability to properly screen for conflicts and to comply with the client identification and verification rules.

USE OF CHECKLISTS RECOMMENDED

Don't miss an important step. Whether you are recently called or a senior lawyer, checklists help keep you organized, preventing errors and complaints. You can keep track of what work you've completed and what is outstanding. Sometimes, the checklist will flag potential issues that may not have occurred to you. Some checklists provided by the Law Society on its website include:

- Client identification and verification procedure
- Ethical considerations when a lawyer leaves a firm
- Independent legal advice
- Model conflicts of interest
- New firm (Trust Assurance)
- Cloud computing
- Practice Checklists Manual

Practice Checklists Manual – new updates

Check out the 2014 updates to the Law Society's *Practice Checklists Manual* (in the Practice Support and Resources section of the website). The manual consists of 41 checklists to assist in managing your files and in carrying out your professional obligations. They are available in PDF but also in Word format, so that you can revise them to suit your personal needs and circumstances. The following checklists have recently been updated to incorporate new developments:

- Family – Family Practice Interview, Family Law Agreement Procedure, Separation Agreement Drafting, Marriage Agreement Drafting, Family Law Proceeding, and Child, Family and Community Service Act Procedure
- Wills and Estates – Will Procedure, Testator Interview, Will Drafting, Probate and Administration, Probate and Administration 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

Watch for updates to the rest of the manual later in 2014. If you have suggestions for improving the manual's content, please send them to Barbara Buchanan at bbuchanan@lsbc.org. The manual has been developed by the Law Society with the assistance of the Continuing Legal Education Society of BC.

CLIENT CONFIDENTIALITY CONSIDERATIONS FOR LAWYERS OBTAINING LOANS

Some financial institutions ask borrowers to sign a general security agreement (GSA) as a matter of course for operating lines

SCAM ATTEMPTS AGAINST BC LAWYERS ABOUND

Scamsters continue to pretend to be BC lawyers' legitimate new clients, either using the phony debt collection scam or other ruses. Whatever their stratagem, the scamster's end goal is usually to coerce a lawyer to deposit a fraudulent financial instrument (often a bank draft or certified cheque) into a trust account, and then to trick the lawyer into electronically transferring funds to the scamster before the lawyer finds out the instrument is no good. The scams range from the obvious to the very sophisticated and everywhere in between.

Scam attempts against BC lawyers in 2014 include schemes around mergers and acquisitions, personal injury settlements between employer and employee, collecting on franchise agreements, copyright infringement claims, bogus real estate purchasers, CRA tax claims, commercial loans, personal loan agreement claims, unpaid invoices, collaborative divorce agreement claims and fake lawyers.

Protect yourself. Get familiar with the common characteristics of these scams and the risk management tips on our website (go to Fraud: Alerts and Risk Management). Review the bad cheque scam names and documents web page as part of your firm's intake process. Appoint someone in your firm to ensure that lawyers and relevant staff are kept up to date with new information from the Law Society.

The Law Society (Margrett George and Surindar Nijjar from the Lawyers Insurance Fund, and Barbara Buchanan, Practice Advisor), and the Continuing Legal Education Society of BC, have presented a free webinar for lawyers regarding these scams: *The bad cheque scam – don't get caught*. Videos from the webinar are available on CLE's website.

Report potential new scams to bbuchanan@lsbc.org. Reporting allows us to notify the profession, as appropriate, and update the list of names and documents on our website.

of credit. If your financial institution asks you to grant a GSA, consider whether it is necessary and appropriate in the circumstances. Read the GSA carefully and make sure that you understand it. Typically, such agreements include the generic wording that is used for all businesses — trucking companies, hardware stores, furniture stores, etc. All of a borrower's assets, such as client lists, work in progress and accounts receivables, generally fall into the hands of a receiver. Assuming the GSA provides for a receiver to be appointed, take possession of the client files and data and run the business, there would typically be no requirement that the receiver be a lawyer. Even if the receiver is a lawyer, there may still be concerns, particularly around conflicts and confidentiality.

Consider whether signing a GSA would compromise your obligation to maintain client confidentiality and solicitor-client privilege under section 3.3 of the *BC Code* in the event of your default. If the GSA only charges specific assets that don't contain client information (e.g., furnishings), client confidentiality should not be compromised.

A lawyer at all times must hold all information concerning the business and affairs of a client in strict confidence with limited exceptions (rules 3.3-1 and 3.3-2.1). Further, a lawyer must not use or disclose a client's information to the disadvantage of the client, or for the benefit of the lawyer or a third person without the client's consent (rule 3.3-2).

The Ethics Committee has opined that it is not improper for a lawyer to make a general assignment of practice receivables or to permit the assignee to exercise rights under the assignment, provided the rules governing client confidentiality are not compromised.

LAWYERS SHARING SPACE

Thinking of sharing space with another lawyer? When lawyers who are not partners or associates in the conventional sense intend to share space, immediate concerns are potential conflicts of interest between the clients of the space-sharing lawyers and the duty of confidentiality owed to clients. Before entering into such an arrangement, lawyers should decide whether or not they will act for clients adverse in interest, since it may make a difference to the physical office requirements and staffing.

What about sharing space with a non-lawyer? The Ethics Committee is of the view that the standard for sharing space with non-lawyers is even higher than it is for sharing with lawyers.

The Law Society's article Lawyers Sharing Space (in the Practice Support and Resources section of the website) addresses *BC Code* rules 3.4-42 and 3.4-43, which specifically relate to lawyers sharing space. The article covers conflicts, confidentiality and marketing, and also includes some practical considerations that affect space-sharing relationships (e.g., avoiding being in an apparent partnership) and specific considerations about sharing space with non-lawyers.

Space sharing with other lawyers can be beneficial if it is done properly. If in doubt as to the proposed nature of your set-up or the activities that you can carry out within the parameters of the Law Society Rules or the *BC Code*, consider calling a Practice Advisor.

RETAINER AGREEMENTS – EXPRESSING AN ANNUAL RATE OF INTEREST ON OUTSTANDING ACCOUNTS

In a recent decision, the court allowed interest at five percent per annum simple interest on a law firm's outstanding accounts, since the retainer agreement expressed a claim for interest solely as a monthly percentage (*Harper Grey LLP* v. *Calimbas*, 2014 BCSC 961). The retainer agreement stated in part: "Accordingly, if our accounts are not paid within 30 days of the date of the billing date, we will charge interest at the rate of 1.4% per month, compounded monthly, until the outstanding account is paid." The court noted the requirements of sections 3 and 4 of the *Interest Act,* R.S.C., 1985, c. I-15 in coming to the decision:

> 3. Whenever any interest is payable by the agreement of parties or by law, and no rate is fixed by the agreement or by law, the rate of interest shall be five per cent per annum.
>
> 4. Except as to mortgages on real property or hypothecs on immovables, whenever any interest is, by the terms of any written or printed contract, whether under seal or not, made payable at a rate or percentage per day, week, month, or at any rate or percentage for any period less than a year, no interest exceeding the rate or percentage of five per cent per annum shall be chargeable, payable or recoverable on any part of the principal money unless the contract contains an express statement of the yearly rate or percentage of interest to which the other rate or percentage is equivalent.

In this case, the retainer agreement had expressly set out the interest rate, but it was expressed for a period of less than a year so only 5 per cent simple interest per annum was allowed.

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.❖

Credentials hearings

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.

ANTHONY JAMES LAGEMAAT

Hearing (application for enrolment): March 6 and 7, 2014
Panel: Elizabeth Rowbotham, Chair, Lance Ollenberger and Donald Silversides, QC
Decision issued: July 22, 2014 (2014 LSBC 31)
Counsel: Gerald Cuttler for the Law Society; Dennis Murray, QC for Anthony James Lagemaat

BACKGROUND

In 2010, a hearing was held to consider the application for temporary articles by Anthony James Lagemaat. In the decision of the hearing panel (application for enrolment as a temporary articled student 2010 LSBC 23 and 2010 LSBC 25; Credentials hearing, Winter 2010 *Benchers' Bulletin* – all published as Applicant 3), Lagemaat did not meet the burden of proving good character and repute and fitness to become a barrister and solicitor, and his application for enrolment was rejected.

DECISION

In January 2013, Lagemaat applied to be enrolled in the admission program as an articled student, and the Credentials Committee ordered that a hearing be held with respect to the application.

The hearing panel took into consideration the findings of the 2010 panel that rejected Lagemaat's application for temporary articles on the basis that he was not sufficiently forthright, truthful and frank and that he had not satisfied the panel that he was sufficiently rehabilitated.

The panel also considered current evidence about Lagemaat's character, reputation and fitness.

The panel reviewed counselling reports and a psychological assessment from Lagemaat's counsellor and was satisfied that he had successfully dealt with his psychological issues.

Lagemaat consistently maintained that the allegations of sexual assault and confinement in 2000 were false. In February 2014, a Law Society investigator interviewed two women who had previously been in relationships with Lagemaat. Based on their information, the panel concluded that Lagemaat did not have a tendency toward violence against women.

The panel also determined that it was unlikely that Lagemaat would ever engage in illegal activity similar to those of the 2000 and 2004 marijuana cultivation incidents.

Lagemaat was genuinely remorseful for the consequences his landlord suffered as a result of the 2004 marijuana cultivation incident. In 2012, he apologized to her and undertook to compensate her, regardless of the outcome of the hearing. While he could have taken these steps much earlier, the panel was heartened by his reconciliation with the landlord and by her support of his enrolment application.

Lagemaat's continuing volunteer work was consistent and appeared to be founded on a dedication to help those less fortunate, rather than on a motivation to simply create a pretense of good works. The panel was impressed by the empathy he appeared to have with those he was serving and his genuine concern for them.

The panel gave a great deal of weight to letters of reference from lawyers in the law firm where Lagemaat works as a full-time employee conducting legal research and providing opinions on matters of criminal law.

Lagemaat acknowledged his mistakes, expressed remorse and did not seek to blame others. Nor did he pretend that he would not face further struggles in his life. The panel concluded that he was likely to deal with future problems and stresses in an honest and forthright manner.

The panel was satisfied that Lagemaat had been fully rehabilitated and was currently of good character and repute and fit to become a barrister and a solicitor of the Supreme Court. The panel did not find it necessary or appropriate to impose any conditions on his enrolment as an articled student.

The panel granted Lagemaat's application for enrolment as an articled student and ordered that he pay $2,000 in costs.

GLEN CAMERON TEDHAM

Hearing (application for enrolment): June 12, 2014
Panel: Nancy Merrill, Chair, Gavin Hume, QC and Laura Nashman
Decision issued: August 7, 2014 (2014 LSBC 34)
Counsel: Henry Wood, QC for the Law Society; Michael Tammen, QC for Glen Cameron Tedham

When Glen Cameron Tedham applied for enrolment, the Credentials Committee raised issues about his history.

In 1994, Tedham was charged with shoplifting in California at age 23. He was convicted of misdemeanour trespassing, was fined and placed on probation for 12 months. Tedham candidly admitted that he knew that this action was wrong and unacceptable.

In 2005, Tedham was charged and convicted under the *Customs Act* for failing to declare alcohol that had been purchased in the United