

days prior to a student's proposed start date. In his rush to submit an application, he brushed over the specifics of several criminal and other charges and offences, forgot to submit the application fee and failed to include information regarding his former places of residence, employment and education.

The Law Society wrote Selamaj to request the missing details and documentation. Around this time, Selamaj was dealing with a serious health issue; however, he continued to work at the law firm. While he was under enormous stress about his health, he responded to the Law Society's inquiries with a letter that lacked full accuracy and candour. It included misleading information, deflections of culpability, and misplaced criticisms of police conduct.

Selamaj was denied enrolment for temporary articles.

Selamaj applied for enrolment as an articled student in April 2014. His application included 14 pages of revised descriptions of the context and nature of his charges. The details of his descriptions were supported by 180 pages of official documentation. It featured candid and mindful expressions of accountability for his criminal charges, and no defensive explanations or deflections.

DECISION

The discrepancies between Selamaj's two applications and the lack of accuracy and candour in his temporary articles application and letter raised serious questions about his character, separate and apart from his criminal behaviour as a younger man.

At the hearing, Selamaj explained how his circumstances as a young refugee finding his way in a new land and culture contributed to a series of irresponsible decisions and unlawful acts. He assumed full responsibility for those decisions and acts, and the panel accepted that the criminal charges and the behaviour leading to them did not reflect his current character.

Selamaj demonstrated a highly evolved respect for the rule of law, despite his reckless and criminal behaviour as a younger man. He had numerous positive character references from prominent members of BC's legal community who knew about his past.

The panel found that Selamaj was a person of good character and repute and was fit to become a barrister and a solicitor of the Supreme Court. His application for enrolment as an articled student was granted without conditions.

The panel determined that it was appropriate for Selamaj to bear the costs of the credential processes precipitated by his previous lack of candour and forthrightness. The panel ordered that Selamaj pay \$6,000 in costs.

LYLE DANIEL PERRY

Hearing (application for enrolment): October 23, 2015

Panel: Gregory Petrisor, Chair, Adam Eneas and Shona Moore, QC

Decision issued: April 2, 2015 ([2015 LSBC 13](#))

Counsel: Gerald Cuttler for the Law Society; Henry Wood, QC for Lyle Daniel Perry

BACKGROUND

Lyle Daniel Perry was raised and educated in South Africa. In August 2010, he was admitted and enrolled as an attorney in the High Court of Australia. After a brief period in a solicitor's practice in South Africa, Perry and his wife immigrated to Canada in 2011.

Upon his arrival in British Columbia, Perry posted an advertisement on Craigslist stating that he could provide legal services at a rate below that of a qualified BC lawyer. In the ad, he described himself as a "lawyer from overseas." In his view, disclosing that he was not fully qualified to practise in BC meant it was up to potential clients to decide for themselves whether to select him to do the work or not. Perry also responded to other advertisements posted online, and through those contacts, performed legal work for two paying clients.

A Law Society investigation ensued, and Perry signed an undertaking in December 2011 that he would not carry out any of the functions of a lawyer for or in the expectation of, a fee, gain or reward. He would also not give legal advice whether for a fee or gratuity. He further specifically undertook not to represent himself as a lawyer or articled student, as a lawyer of another jurisdiction or as a practitioner of foreign law holding a permit. Subsequent to that, Perry turned down legal work from several contacts.

In 2014, Perry filed an application for enrolment in the Law Society Admission Program.

DECISION

The hearing panel was charged with the duty of assessing Perry's character, repute and fitness to be enrolled as an articled student.

The majority of the panel (Aneas, Moore) accepted Perry's evidence that he was not aware that the *Legal Profession Act* prohibited unauthorized lawyers from practising law and that his actions were an honest mistake. They concluded that Perry satisfactorily ceased his unauthorized practice of law when he returned the signed undertaking to the Law Society in December 2011. Further, the majority believed that Perry had learned from the process and gained a full appreciation of the Law Society rules.

The majority found Perry to be of good character and fit to be admitted into the Law Society Admission Program, subject to the condition that, before an articling agreement is entered into, any prospective principal must be informed of this panel's decision and be given a copy of its findings.

The chair of the hearing panel (Petrisor) did not agree with the majority decision. He felt that Perry's refusal of legal work after being notified by the Law Society was done strictly to protect himself and without a full appreciation of the reason why he was sanctioned for unauthorized

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Discipline digest

BELOW ARE SUMMARIES with respect to:

- Kevin Alexander McLean
- Peter Krogh Jensen
- Cameron John Pham
- Wesley Mussio
- John Robert Sandrelli
- William Terrance Faminoff

For the full text of discipline decisions, visit the [Hearings reports](#) section of the Law Society website.

KEVIN ALEXANDER MCLEAN

Vancouver, BC

Called to the bar: August 27, 2010

Discipline hearing: December 4, 2014

Panel: Sharon Matthews, QC, Chair, Carol J. Gibson and B. William Sundhu

Decision issued: February 5, 2015 (2015 LSBC 06)

Counsel: Kieron Grady for the Law Society; no one appearing on behalf of Kevin Alexander McLean

FACTS

Two citations were issued against Kevin Alexander McLean arising from two separate Law Society investigations.

The first citation alleged that McLean failed to respond promptly or substantively to communications from the Law Society. The allegation arose from a litigation matter in which opposing counsel complained to the Law Society that McLean failed to respond to correspondence, failed to attend a case planning conference and an examination for discovery, and failed to comply with a court order.

On April 11, 2014, the Law Society wrote to McLean, advising him of the complaint and requesting a response and relevant information. As of the date of the hearing, McLean had not responded to the specific allegations, notwithstanding three requests to do so.

The second citation arose out of an investigation following a compliance audit of McLean's law practice. McLean was not maintaining his accounting records as required by the Law Society rules and his records revealed numerous accounting deficiencies.

On June 3, 2014, the Discipline Committee served McLean with an order requiring production of his law practice records and his cooperation in providing explanations and access to records, including passwords and encryption keys.

Several communications were exchanged with McLean as the Law Society attempted to collect the records and information covered by the

order. Society investigators also attended at McLean's office to collect information and interview him. A significant amount of file material and information was collected, but not all of the requirements of the order were met.

McLean asserted that his Blackberry device was inoperative and his other mobile phone was only used for personal purposes. However, these assertions were contradicted by his office autoreply email, which advised that he could be reached by text, BBM or PIN to his mobile.

At the time of the hearing, McLean had not provided access to his home office computer or his working login and password for two online accounts. He had also not provided his cellphone or other mobile devices for imaging.

The first citation was originally scheduled to be heard on September 29, 2014 but was adjourned as a result of non-attendance by McLean, on terms including that the next hearing be pre-emptory on him. The Chambers Bencher subsequently ordered that both citations be heard together on December 4, 2014. McLean did not attend and the panel decided to proceed in his absence.

DETERMINATION

The panel found that McLean committed professional misconduct by failing to respond completely and substantively to requests made by the Law Society in its investigation into a complaint. McLean did not acknowledge his misconduct or take any steps to remediate it. His continued failure to do so was an aggravating factor.

The panel found that McLean committed professional misconduct by failing to comply fully with a Discipline Committee order and failing to provide access to his online accounts, email transmissions, mobile devices and devices for imaging. His failure hindered the investigation that was prompted by concerns raised during a compliance audit. Despite being repeatedly advised that he must provide the requested information and hardware, McLean had refused to comply.

The panel determined that McLean was available on December 4, 2014, was aware that the hearing of these citations was set to proceed on that date, did not attend and provided no reason for his non-attendance.

DISCIPLINARY ACTION

McLean was given notice of the hearing and an opportunity to attend and make submissions and evidence of his personal circumstances. However, the panel was left to determine the appropriate disciplinary measure without his participation.

McLean's professional conduct record shows a history of failing to respond to communications.

For professional misconduct in the first citation, for failing to respond to the Law Society, the panel ordered that McLean pay:

1. a \$2,500 fine; and
2. \$2,420 in costs.

For professional misconduct in the second citation, for failing to comply with a Discipline Committee order regarding an investigation of his accounting records, the panel ordered that McLean pay:

1. a \$4,000 fine; and
2. \$1,210 in costs.

PETER KROGH JENSEN

Vancouver, BC

Called to the bar: 1981

Discipline hearings: September 9 to 12, October 23 and December 4, 2013 and January 23, 2015

Panel: Kenneth Walker, QC, Chair, John Hogg, QC and Thelma Siglos

Decisions issued: March 14, 2014 ([2014 LSBC 14](#)) and March 25, 2015 ([2015 LSBC 10](#))

Counsel: Mark Skwarok and Cody Mann, articulated student (disciplinary action only) for the Law Society; Penny Green (facts and determination) and Ritchie Clark, QC (disciplinary action) for Peter Krogh Jensen

FACTS

In September 2008, a husband and wife agreed to purchase shares in a company and paid US\$200,000 to Peter Krogh Jensen in trust for deposit to the credit of the corporate seller of the shares. In January and February 2009 the seller instructed Jensen to transfer most of the funds to another company. The shares were never issued or transferred to the intended purchasers.

Jensen was known to act for the seller of the shares. However, he failed to caution the couple that he was not representing their interests at the time of the share purchase or deposit of the funds. While the wife knew that Jensen was not her lawyer, she believed that the money deposited into the trust account would be protected.

DETERMINATION

Jensen was duty-bound to have made the caution to the unrepresented couple. Had the purchase agreement proceeded, Jensen would have included his normal language confirming that, as a lawyer, he was not representing the couple in the transaction. But the agreement was never drafted. The caution never occurred, the money was transferred from the trust account on the instructions of Jensen's client and the couple complained to the Law Society.

Jensen has consistently believed he made no error and what occurred did not amount to professional misconduct. However, the panel found that, in this situation, the public would expect the caution to be given to permit the unrepresented individual an opportunity to consider independent legal advice. Jensen's failure to caution the couple that he was not protecting their interests in the share transaction was a marked departure

from the conduct expected of a competent solicitor and is therefore professional misconduct.

DISCIPLINARY ACTION

The panel found that, had the caution been given, there was the potential that the couple could have taken a step back, realizing that Jensen was not going to protect their interests if this money was deposited into his trust account. Jensen's misconduct, therefore, had a negative impact on the victims.

Jensen is a senior, experienced lawyer with no prior discipline history. He did not financially gain, and there was no personal or commercial advantage involved in this transaction. Jensen was motivated to "help" the couple as lawyers sometimes do for friends, but this requires more caution, not less.

The panel issued a reprimand and ordered that Jensen pay:

1. a fine of \$2,000; and
2. \$30,000 in costs.

CAMERON JOHN PHAM

Vancouver, BC

Called to the bar: April 30, 2003

Discipline hearing: February 4, 2015

Panel: David Mossop, QC, Chair, Jasmin Z. Ahmad and Graeme Roberts

Oral decision: February 4, 2015

Decision issued: April 2, 2015 ([2015 LSBC 14](#))

Counsel: Alison Kirby for the Law Society; Moses Kajoba for Cameron John Pham

FACTS

Cameron John Pham was cited with two allegations of issuing accounts to clients and withdrawing funds from trust to pay those accounts to "clean up the trust account." Similar allegations were also made in respect of five different clients for billing disbursements not actually incurred or that exceeded the actual amount of the disbursement. These were done either by adding an administrative "mark-up" or by basing the amount billed on an estimate. Pham faced a fourth allegation of improperly recording retainer funds on the wrong client ledger and preparing a fictitious letter and invoice in support of the withdrawal of funds from trust.

Excessive fees

In 2011, Pham was retained by two separate clients on two separate residential property matters. In both cases, funds had been held in trust and some funds were held back. Cheques were issued to the clients, and Pham wrote to the clients stating that, if the cheques were not cashed, he would be at liberty to bill time against the funds. Pham later sent statements equal to the amounts held in trust and withdrew those funds as payment for fees. The fees were based on the amounts held in trust and not on the time spent on the files.

Improper billing of disbursements

In 2012, Pham issued accounts to clients that improperly billed for disbursements. He either charged them for items that were not actually incurred, or charged more than the costs incurred.

Creation of fictitious documents

In the course of acting for clients in the negotiation of a subdivision application, Pham recorded the receipt and disbursement of trust funds received from the client on a trust ledger identifying two other individuals as clients. He then issued a bill containing a fictitious description of services for the purpose of avoiding payment of trust administration fees as required by the Law Society Rules.

ADMISSION AND DISCIPLINARY ACTION

Pham admitted, and the hearing panel accepted, that he committed professional misconduct in all of these matters.

The panel concluded that, while Pham benefitted financially from his conduct on the trust fund matters, his actions were primarily for administrative convenience and not for any purposely deceptive reasons. However, the panel was very concerned with Pham's mishandling of the disbursement charges. Anyone who engages the services of a lawyer should feel confident that any such charges accurately reflect the costs incurred, and are not benefitting the lawyer. Pham's conduct undermines the ability of the public to have trust in lawyers' billing practices and the legal profession in general.

The panel took into consideration Pham's cooperation and admission of misconduct. This indicated that he learned from the proceedings and is not likely to repeat such conduct in the future.

The panel ordered that Pham:

1. be suspended from the practice of law for two months; and
2. pay \$1,800 in costs.

WESLEY MUSSIO

Vancouver, BC

Called to the bar: November 15, 1991

Discipline hearing: March 5, 2015

Panel: Lynal Doerksen, Chair, Robert Smith and David Layton

Decision issued: April 7, 2015 ([2015 LSBC 15](#))

Counsel: Alison Kirby for the Law Society; Henry Wood, QC for Wesley Mussio

FACTS

In 2003, Wesley Mussio began practising with a law firm through his own law corporation under a 50-50 fee split arrangement. In December 2005, a client retained the firm to represent her as the plaintiff in a personal injury claim resulting from a motor vehicle accident. The firm's fees would be 30 per cent of the amount recovered. Mussio had conduct of the file

and signed the contingency fee agreement on the firm's behalf.

On January 29, 2010 an agreement was reached to settle the client's case for \$292,000 plus costs and disbursements of \$40,000, for a total of \$332,000. In March 2010, Mussio informed counsel for the structured settlement company that the amount of the structured settlement should be \$192,500 and that \$139,500 would be used to cover the law firm's legal fees and disbursements. Three days later, Mussio approved the structured settlement.

It was the firm's practice throughout Mussio's time there that settlement funds are paid to the firm in trust. Mussio's own law corporation did not have a trust account. Yet the release provided that the cash component of the settlement would be paid to Mussio's law corporation in trust.

In expectation of receiving a cheque payable to the firm, a paralegal provided a billing checklist to the accounting department, setting legal fees at \$88,000. The accounting department issued an account to the client for fees in this amount plus disbursements and taxes. However, this account was never executed by Mussio and was later reversed.

The lawyer for the driver defendant and ICBC sent a letter to Mussio enclosing an ICBC cheque for \$139,500 payable to Mussio's law corporation in trust, a consent dismissal order and the release. On seeing that the cheque was made out to Mussio's law corporation and not the law firm, the paralegal informed opposing counsel's office that the cheque was made out to the wrong firm. The office responded that was done in accordance with the terms of the release.

The paralegal drew Mussio's attention to this fact, but he did not advise opposing counsel about the error or the fact that his law corporation did not have a trust account. Instead, he signed and returned the consent dismissal order and forwarded the release to his client for signature.

Mussio then instructed the paralegal to direct the accounting department to cancel the account issued to his client and to replace it with a new account for fees totalling \$44,000 plus disbursements and taxes. Accounting complied and forwarded a new account to Mussio for execution and delivery. The fees on this new account were equivalent to one-half of the overall entitlement under the contingency fee agreement.

Mussio also prepared a separate account on behalf of his law corporation for fees of \$44,000 plus taxes. He then deposited the ICBC cheque for \$139,500 to his law corporation's general account. He did so even though he had not yet returned the executed release to opposing counsel, and so remained subject to an undertaking not to release the funds to the client.

Mussio was later paid according to the fee split set out in the revised first quarter billing summary. This resulted in an overpayment of \$22,000 for the fees billed to the client.

In June 2010, Mussio issued a cheque from his law corporation's general account to pay the firm's account in this matter.

In January 2012, Mussio left to set up his own firm. In October, a provincial social worker contacted his former firm to ask about the cash component of the settlement received by the client. This led to a review of the billing and accounting records in this file. After a series of email communications