



# BENCHERS' BULLETIN

Keeping BC lawyers informed

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## Breaking down barriers; everyone has a part to play

by Kenneth M. Walker, QC

WHEN I GRADUATED law school and was called to the bar in the mid-70s, a quiet revolution was underway in the legal profession. Women were entering law school in unprecedented numbers. Within a decade or so, law school classes would be filled with an equal number of men and women.

But although more women were entering law school and graduating, they weren't continuing into careers in law at the same rate as men. Among those women who did proceed to a career in law, many didn't stay. And those who did stay often watched men pass them by for partnerships and powerful committee positions.

Today slightly more than one-third of practising lawyers in BC are women. That's terrific news when you consider the progress we've made since I was called to the bar. But progress hasn't been as fast as I had hoped when I was starting out in my career.

The numbers are similar in the judiciary. In both the BC Supreme Court and the Provincial Court, there's approximately one female judge for every two male judges. The BC Court of Appeal is an encouraging exception: men and women are evenly represented at 11 justices apiece.

The numbers tell a similar story for the representation of Aboriginal people, visible minorities, the LGBTQ community and others in the profession. Again, we've made progress, but there's still work to do.

Everyone in the profession can help break down the remaining barriers standing in the way of equal access to the profession for all members of society.

I'm proud of the work being done by the Law Society's Equity and Diversity Advisory Committee. By facilitating the Justicia project, they're helping make it easier for every law practice in the province to promote gender equity. And the committee is spearheading the profession's response to the challenge laid down by the Truth and Reconciliation Commission – to ensure equal access to justice and to the legal profession for Aboriginal people. But the committee, and the hard-working volunteers participating in initiatives like the Justicia project, can't do it alone.

As you'll read in this month's feature story, we continue to identify barriers and develop tools to help promote equality. It's up to every one of us to learn what we can do to help, and to take advantage of the tools that are available. ❖

### 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 for improvements to the *Bulletin* are always welcome — contact the editor at [communications@lsbc.org](mailto: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 \$70 per year (\$30 for the newsletters only; \$40 for the *Member's Manual* amendments only) by contacting the subscriptions assistant at [communications@lsbc.org](mailto:communications@lsbc.org).

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#### PHOTOGRAPHY

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## TWU v. Law Society of BC concludes

THE TRINITY WESTERN University petition against the Law Society was heard before Chief Justice Christopher E. Hinkson in BC Supreme Court, beginning on August 24 and ending the afternoon of August 26. TWU and four of its interveners – the Attorney General of Canada, the Association for Reformed Political Action of Canada, the

Roman Catholic Archdiocese and the Justice Centre for Constitutional Freedoms – were heard first, followed by the Law Society and one of its interveners, West Coast Women's Legal Education and Action Fund. The Chief Justice reserved his decision.

For more information, read the [media release](#) on the Law Society website. ❖





## 2015 Law Society scholarship

Yun Li-Reilly is the 2015 recipient of the \$12,000 Law Society Scholarship for Graduate Legal Studies.

Li-Reilly has a background in psychology and neuroscience and graduated from UBC with the Governor General's Medal for the top graduating student from a bachelor degree program. She clerked at the BC Court of Appeal and joined Farris, Vaughan, Wills & Murphy LLP after her call to the bar in 2012. Li-Reilly assists clients on a broad range of litigation matters, including matters relating to estate, corporate/commercial, civil, matrimonial and trademark disputes. She has represented parties before the Supreme Court of Canada, BC Supreme Court, Provincial Court and various administrative tribunals.

Li-Reilly is currently on leave from Farris as she pursues an LL.M. at Harvard Law School. Her research project involves an analysis of the interplay between freedom of expression and Internet privacy.

*See the feature story sidebar on page 11 for information on the 2015 Aboriginal scholarship recipient.*

## Unauthorized practice of law

*UNDER THE LEGAL Profession Act, only trained, qualified lawyers (or articulated 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.*

Between May 16 and August 26, 2015, the Law Society obtained undertakings from six individuals and businesses not to engage in the practice of law.

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

- On June 11, 2015, **R. Charles Bryfogle**, of Kamloops, was found in contempt of

two court orders prohibiting him from prosecuting actions on behalf of others and from instituting proceedings without obtaining leave of the court and for failing to inform the Law Society of his involvement in the legal matters of others. The court suspended Bryfogle's sentence for three years and placed him under a recognizance for one year, during which time he must complete 100 hours of community service in a field not related to law. Further, during that year, he may not enter any courthouse or file any documents without permission of his probation officer and leave of the court. The court expanded the injunction to require Bryfogle to inform the Law Society of any legal matter to which he is a party and awarded the Law Society its special costs. Bryfogle had previously been found in contempt in 2012.

- On August 5, 2015, the court found **Balwinder S. Brar**, and his immigration consultant company **Canada Wide Immigration Services Inc.**, in contempt of a 2005 injunction that prohibited him

from engaging in the practice of law, including from providing divorce services. In 2015, the Law Society learned that Brar continued to provide divorce services as well as corporate law services and brought an application seeking a finding of contempt. Brar did not oppose the application. The court fined Brar \$2,000 and ordered him to pay a further \$2,000 in costs to the Law Society. In addition, Brar consented to expand the previous injunction to prohibit him from holding himself out as a lawyer, counsel or in any other manner that connotes he is entitled or qualified to engage in the practice of law. Brar is also permanently prohibited from offering any legal services for a fee, and from commencing, prosecuting or defending any proceeding in any court on behalf of others, regardless of whether he does so for a fee.

To read the court orders, see the [database of unauthorized practitioners](#) on the Law Society's website (Complaints and Discipline > Unauthorized Practice of Law). ❖



# Building strength through diversity

by Timothy E. McGee, QC

THIS ISSUE OF the *Benchers' Bulletin* is focused on equity and diversity within the legal profession. Why is this important? Ultimately, people look to their justice system, not only to offer solutions to legal matters and challenging issues, but to reflect the broader values of the community. As a key participant in the justice system, the Law Society has made it a priority to help the legal profession better reflect the diversity of the public it serves.

For example, in the Law Society's three-year strategic plan for 2015-2017, an important objective is to continue work on initiatives for the advancement of women and minorities in the legal profession.

The Benchers have approved several programs to help us achieve this goal. One is the Aboriginal Lawyers Mentorship Program, which has been designed to help retain and advance Aboriginal lawyers in BC — a segment of the population that is currently under-represented. The program matches senior counsel with junior Aboriginal lawyers for a mentoring relationship.

Another is the Justicia project, which aims to retain and advance women lawyers in practice throughout the province. We are working with a number of BC law firms to ensure the success of this program.

Promoting equity and diversity is

fundamental to a modern and progressive society. Within the Law Society this is increasingly reflected in the people who work here, and I believe that has made us a stronger organization.

Obviously we are not alone as an organization in seeking to promote equity and diversity as part of our mandate to serve the public interest in the administration of justice. But the Law Society does have an important role to play, and this issue of the *Benchers' Bulletin* shines a spotlight on some of our efforts. As always, we welcome your comments at [communications@lsbc.org](mailto:communications@lsbc.org). ❖



## GOLD MEDAL PRESENTATIONS

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

In 2015, gold medals were presented to Kayla Strong of UBC (top left photo, with then-Dean Mary Anne Bobinski), Louise Hamill of TRU (top right photo, with Chancellor Hon. Wally Oppal, QC) and Franco Silletta of UVic (bottom photo, with Dean Jeremy Webber and Law Society Second Vice-President Herman Van Ommen, QC).





*Photo credit: Government Communications*

## CELEBRATING MAGNA CARTA

A celebration of the 800th anniversary of the sealing of Magna Carta was held on July 28, 2015 at Government House.

Speaking at the event were, pictured left to right: Alex Shorten, Canadian Bar Association, BC Branch (then) President; Hon. Suzanne Anton, QC, Attorney General and Minister of Justice; Dr. Claire Breay, Head of Ancient, Medieval and Early Modern Manuscripts, British Library; Hon. Judith Guichon, OBC, Lieutenant Governor; Hon. Thomas Cromwell, Justice of the Supreme Court of Canada; Hon. Robert Bauman, Chief Justice of BC; Kenneth Walker, QC, Law Society President.

## Lawyer survey regarding designated paralegals program

THE LAW SOCIETY is evaluating the designated paralegal program and will deploy a survey this fall to seek input on lawyers' experience with the program. The results will help to shape the program going forward.

Recognizing that the appearances of designated paralegals before a court would be subject to the court granting a right of audience, a Family Law Pilot Project was created in association with the courts through which designated paralegals were entitled to appear on limited scope family law matters in Supreme and Provincial

Courts. That pilot program ended in Supreme Court on December 31, 2014 and will end in Provincial Court on October 1, 2015. However, the balance of the designated paralegal program continues, and it is important to get lawyer input as to what is working with the program and what can be improved.

The survey will be available to lawyers who indicated on their annual practice declarations that they supervise designated paralegals. ❖

## Update on discussions with the Notaries Society

AT THEIR JULY meeting, the Benchers received further reports from the two working groups assigned to consider aspects of a possible regulatory merger between the Law Society and the Society of Notaries Public of BC. The working groups are examining educational and experiential requirements and issues of governance. The Benchers will continue their consideration of the possible merger at their September meeting. ❖

## In Brief

### DEADLINE EXTENDED ON MAGNA CARTA ESSAY CONTEST

The deadline for the secondary school essay contest has been extended to **December 31, 2015**, to ensure all students have adequate time to submit their entry.

The contest was launched in March 2015 to honour the 800th anniversary of Magna Carta and to support our strategic goal of raising public awareness of the importance of the rule of law and the proper administration of justice. The essay topic is *Magna Carta and its relevance to Canada in the 21st Century*. The winner will receive \$1,000 and be invited to an awards presentation in Vancouver; the runner-up will receive \$500.

For contest details, including eligibility criteria and submission guidelines, visit [www.lawsociety.bc.ca](http://www.lawsociety.bc.ca) and click on the highlight [Secondary school essay contest on the Magna Carta](#).

### QC NOMINATIONS

The Attorney General is now accepting nominations for Queen's Counsel. The nomination process will end on October 30, 2015.

More information, including the on-line application form and a consent form, is available on the Ministry of Justice website at [www.ag.gov.bc.ca/queens-counsel](http://www.ag.gov.bc.ca/queens-counsel).

Appointments are announced at the end of the year.

### JUDICIAL APPOINTMENTS

Justice **Gail M. Dickson** of the Supreme Court of BC was appointed a judge of the Court of Appeal of BC.

Justice **Lauri Ann Fenlon** of the Supreme Court of BC was appointed a judge of the Court of Appeal of BC to replace Justice **S.S. Stromberg-Stein** (Vancouver), who elected to become a supernumerary judge.

Justice **Gregory J. Fitch** of the Supreme Court of BC was appointed a judge of the Court of Appeal of BC.

Master and Registrar of Bankruptcies **Barbara M. Young** (Central Okanagan) was appointed a judge of the Supreme Court of BC to fill a new position created by Bill C-31.

**Valliammai (Valli) Chettiar** was appointed a judge of the Provincial Court in Surrey.

**Kathryn Ferriss** was appointed a judge of the Provincial Court in Surrey.

**Christine Lowe** was appointed a judge of the Provincial Court in Victoria.

**Jay Solomon** was appointed a judge of the Provincial Court in Abbotsford.

**Danny Sudeyko** was appointed a judge of the Provincial Court and will be assigned sitting duties out of the Office of the Chief Judge.



FROM THE LAW FOUNDATION OF BC

## Grantee profile: Courthouse Libraries BC

COURTHOUSE LIBRARIES BC (CLBC) is funded by the Law Foundation as the keystone of its mandate to "establish, operate and maintain law libraries in British Columbia." CLBC is also funded by the Law Society and receives support from the Ministry of Justice. Funding helps law libraries around the province maintain and keep current the wide array of databases and print materials that are necessary to the competent practice of law, and that BC's small firms — representing more than half of all lawyers in BC — are especially reliant upon. Continuing funding also supports CLBC's work to make legal information materials available and accessible to the general public.

CLBC continues to administer and maintain a print collection in thirty

courthouses throughout BC that can be used by lawyers and the public. At the same time, reliance on print resources is declining with the rise of new, more efficient digital tools to convey legal information. CLBC is committed to being a leader in this "digital shift" and continues to take on less traditional roles and projects.

CLBC offers training and guidance for the profession dealing with the proliferation of tools and ever-changing methods for finding legal information and managing knowledge online and in print. Lawyers earn CPD credits through free webinars, online video courses or group study kits at [www.courthouselibrary.ca/training.aspx](http://www.courthouselibrary.ca/training.aspx).

CLBC has also brought to life

collaborative new platforms for sharing and publishing legal information. The Lawyers Reading Room ([www.courthouselibrary.ca/ReadingRoom.aspx](http://www.courthouselibrary.ca/ReadingRoom.aspx)), available to BC lawyers and articulated students at their desktop, gives free access to thousands of legal texts and journals and specialized research tools.

For the public, the Clicklaw website ([www.clicklaw.bc.ca](http://www.clicklaw.bc.ca)), operated by CLBC, provides a window into the world of public legal education, information and assistance resources from dozens of BC organizations and agencies. Clicklaw Wikibooks ([wiki.clicklaw.bc.ca](http://wiki.clicklaw.bc.ca)) is a digital publishing platform used by legal organizations and lawyers, including People's Law School, the Canadian Bar Association,

BC Branch and several others, to publish “wikibooks” that can be read online or downloaded in a number of formats, and distributed to public libraries. These sites serve tens of thousands of people every month.

Information service remains a fundamental part of CLBC’s day-to-day work. In

2014, the libraries answered over 42,000 questions from the public and the legal community, provided access to licensed legal databases and other word processing support to over 26,000 members of the public, and trained over 2,100 lawyers, students, paralegals, advocates and librarians on various topics.

CLBC works hard to provide the best services to the BC legal community that it can with existing resources. It does this through innovation, collaboration and the expertise of its staff in the domain of legal information. CLBC is currently working on a strategic plan that will guide its future work. ❖

## Law Firm Regulation Task Force to seek input from lawyers

THROUGHOUT 2015, THE Law Firm Regulation Task Force has been working to develop a framework for an innovative regulatory environment where law firms work together with the Law Society to manage issues proactively as they emerge, rather than waiting until they become disciplinary matters. The task force anticipates that it will be ready to consult with lawyers in the fall to gather their feedback on the proposed framework.

In contrast to the current complaint-driven discipline process, the task force anticipates that the implementation of policies and procedures to identify problems at the firm level could resolve issues before they lead to Law Society complaints. Early detection and management of issues will lead to more positive results for clients, lawyers and firms.

Law firm regulation is not meant to relieve the Law Society of its obligation to investigate complaints. Rather it arose from the recognition that some aspects of regulation transcend the responsibility of any individual lawyer. Firms conduct activities, such as accounting and advertising, that are part of the provision of legal services.

The task force is currently developing a “white paper” framework for law firm regulation, and plans to present it to lawyers throughout the province for input this fall. The proposal contemplates a framework for regulation of the activities of law firms that is not reliant on detailed rules and regulations. Rather, it anticipates that firms will be required to create systems for the management of firm activities, such as advertising, conflicts, limitation periods, accounting and supervision of employees.

The details of these systems will be left to be developed by firms and may be reviewed by the Law Society should concerns arise regarding compliance with the general requirements.

Among the issues the task force has been considering is how regulation of firms might apply to sole proprietors and small firms without increasing their administrative obligations. For example, the task force has been studying whether a sole practitioner should be considered to be a “law firm” and, if so, how to avoid the duplication of licensing a sole practitioner as

both a lawyer and as a firm.

The task force is also examining how to establish responsibilities for communication, both within law firms and between firms and the Law Society. One question under consideration is whether each regulated firm should have a designated contact person and, if so, the nature of that person’s responsibility.

The task force is currently considering appropriate channels for lawyer feedback, which may include a request for written submissions and conversations with lawyers throughout the province. ❖

### WHAT’S HAPPENING IN OTHER JURISDICTIONS

The task force has assessed best practices in other jurisdictions to determine how regulators around the globe are responding to changes in the profession.

**Nova Scotia** is seen as leading the way on entity-based regulation in Canada. The Nova Scotia Barristers’ Society has announced plans to shift its focus from regulating individual lawyers to regulating law firms and other organizations that employ lawyers. The society is considering moving away from a rules-based enforcement framework and instead holding organizations accountable to 10 broad principles.

In **Ontario**, the Law Society of Upper Canada is considering entity regulation in conjunction with the possible introduction of alternatives to traditional law-firm business structures. While the Law Society of BC is following that discussion with interest, law firm regulation in BC is not, at this time, being examined with that outcome in mind.

In **England**, the Solicitors Regulation Authority has adopted what it calls an “outcomes-based” approach. It examines a number of risk indicators and takes a “hands-off” approach to firms that are not identified as high risk.

In **Australia**, the Law Society of New South Wales has issued a set of expected outcomes and asks firms to assess their own performance against those broad principles.



## Striving toward equity and diversity

LAST SPRING ABOUT 200 people, including representatives from Vancouver law firms, Benchers and Law Society staff, met to learn about different kinds of bias and how they can affect the legal profession. It came as a surprise to most that subtle biases colour decisions we make every day, from whom we socialize with to which committees we volunteer for and when we decide to pursue an advancement opportunity. On a broader level, these same subtle biases can shape which applicants a firm decides to hire and who deserves to be promoted.

Biases, explicit and implicit, may help explain why many demographic groups continue to be under-represented in the legal profession. Despite considerable progress since the early days of the profession, barriers remain that deny equal access to women, Aboriginal people, visible

minorities and others.

Until recently, there was no way of quantifying the extent to which those barriers deny equal access to the profession. Starting in 2013, however, the Law Society added demographic questions to the annual practice declaration. While it is too early to use that data to track progress, the numbers establish a baseline against which future progress can be measured. As illustrated in the chart on page 9, clearly there is work to do.

The Law Society is actively working to overcome barriers of all kinds, drawing on the work of its Equity and Diversity Advisory Committee. Over the past year, the committee has been particularly active with programs aimed at addressing representation of women and the Aboriginal population in the legal profession.

### WOMEN LAWYERS: THE JUSTICIA PROJECT

The Justicia project is a voluntary program facilitated by the Law Society that promotes the retention and advancement of women lawyers in private practice. It has been active in BC since 2012 and is proceeding in two phases.

Phase one is directed at national firms with offices in BC, as well as large regional firms. All 17 firms that were approached to participate in phase one have appointed diversity officers, and they have been meeting regularly with the Law Society. The Justicia round table has been working to produce a set of model policies that can be adapted to fit the needs of any law firm. One set of policies was approved by the Benchers at the December 2014 Benchers meeting and is now available on the Law Society website (see the sidebar “Equity and diversity resources” on page 10).

Phase two of the Justicia project launches this fall and involves encouraging smaller firms to participate. Nicole Byres, QC, a partner at Miller Thomson LLP in Vancouver, is among the lawyers representing the 17 national firms at the Justicia round table. Having worked in private practice in Kamloops and Trail before joining Miller Thomson, she is familiar with the challenges faced by law firms, big and small.

Byres notes that, once it has completed its model policy documents, the challenge facing the Justicia project is to “make this a living, breathing tool,” and not just another set of documents to be compiled in a binder, never to be looked at again. For smaller firms, Byres suggests that might mean breaking the policies into smaller components: “We need to present those firms with a menu of options and let them pick the pieces that are relevant to them.”

Byres describes distinct challenges facing big and small firms. At larger firms, entrenched practices are hard to sway: “If you’re a partner in a firm of four lawyers, you have more say in the running of the firm,” she says. At a bigger firm, where a woman might be just one among hundreds of partners, “there are systemic issues with a world built to a model that you might not fit into.”

Smaller, regional firms face their own challenges. If one lawyer goes on parental leave in a firm of four, for example, it's not easy for the other three to cover the workload. Byres explains, however, that in smaller firms women have more leverage. "Most of these women know that there's more work than lawyers in the smaller communities. The smaller firms are going to adapt more quickly, or else women are going to leave and start their own firms."

As it rolls out phase two, the *Justicia* project plans to gather input from lawyers at smaller firms throughout the province.

### ABORIGINAL LAWYERS

The executive summary of the Truth and Reconciliation Commission of Canada's final report, published in June this year, brought into sharp focus a painful chapter in Canadian history. In its recommendations, the commission identifies a role for law societies and law schools in Canada's quest for reconciliation between its Aboriginal and non-Aboriginal populations.

As recommended by the commission, the Law Society is committed to enhancing cultural competency within the legal profession, and is considering steps to ensure that lawyers have a greater understanding of Canada's history and the relationship between the Crown and Canada's First Nations, Métis and Inuit people.

To that end, the Law Society is helping plan the annual conference for the Federation of Law Societies, scheduled to take place in Winnipeg from September 30 to October 3. The theme will be the Truth and Reconciliation Commission's recommendations, and what law societies can do to implement them. The goal is to identify steps that can be taken to increase access to justice for Aboriginal people and improve confidence in the administration of justice.

The Law Society of BC has also contacted the province's law schools in an effort to identify ways it can work with the schools to implement the report's recommendations. While discussions are at an early stage, all three schools have expressed an interest in working together to address issues identified in the report.

The Law Society is currently reviewing a report it published in 2000 that touched on many of the issues raised by the Truth and Reconciliation Commission. Although

the Law Society was not tracking specific numbers at the time, that report's authors estimated that between 1 and 1.5 per cent of lawyers in BC were Aboriginal. That representation has increased significantly since then: today 2.3 per cent of the province's lawyers are Aboriginal. There's still work to do, though, if the profession is to reflect the 5.2 per cent share of the province's population that is Aboriginal.

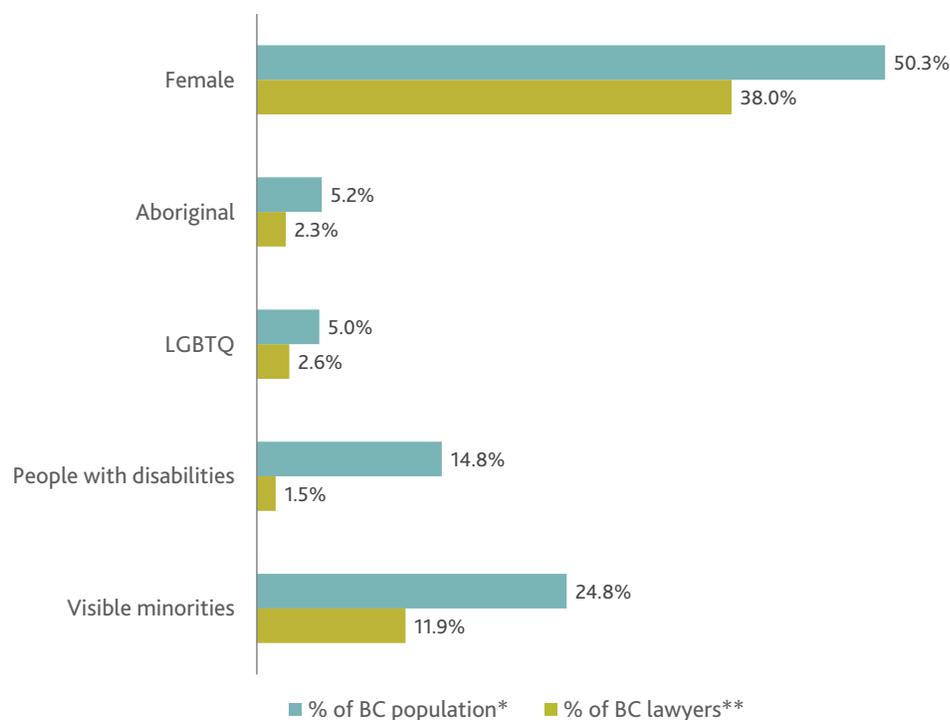
The 2000 report, entitled *Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers*, recommended, among other things, that the Law Society work with the province's law schools to expand Aboriginal material and course components, and that the Society's Professional Legal Training Course build anti-discrimination components into its course materials and assessments.

The Law Society subsequently made changes to its PLTC program, including establishing an Aboriginal advisory panel to review curriculum and course material, and incorporating Aboriginal legal issues. Other revisions to PLTC include cultural awareness training for instructors and an increased focus on the role of the Equity Ombudsperson in PLTC training.

The Law Society has also taken several steps since publication of the 2000 report, including establishing the Aboriginal Lawyers Mentorship Program. The goal of that program is to enhance the retention and advancement of Aboriginal lawyers. In 2015, 22 junior Aboriginal lawyers have been matched with experienced lawyers.

*continued on page 11*

### DIVERSITY: BC POPULATION TO BC LAWYERS



\* Female data, Statistics Canada estimate, 2014; Aboriginal and visible minority data, Statistics Canada 2011 national household survey; Disabilities statistics, Statistics Canada survey, 2012; LGBTQ statistics, 2012 national poll conducted by Forum Research and the National Post

\*\* Including practising, non-practising and retired, from the 2014 annual practice declarations

## Equity and diversity resources

Everyone working in the legal profession can play a part in overcoming barriers to equity and diversity in the profession. Here are some tools that can help. (More information about all of these and how you can take part can be found on the Law Society website: on the home page under “for Lawyers,” click on “[equity and diversity](#).”)

### Model policies for gender equity

These templates can be downloaded and modified by firms seeking to establish policies aimed at facilitating the retention and advancement of women in private practice. They include model policies in these areas:

- collecting demographic data;
- establishing a policy for flexible work arrangements;
- establishing pregnancy and parental leave policies for associates and partners;
- adopting a respectful workplace.

A second set of model policy templates is currently being finalized and will be added soon:

- adopting initiatives to foster women’s business development;
- promoting leadership skills for women;
- developing paths to partnership initiatives.

### Justicia project

Launched in 2012 and facilitated in BC by the Law Society, Justicia is a voluntary program that helps law firms identify and implement best practices to retain and advance women lawyers in private practice.

### Maternity Leave Benefit Loan Program

The Maternity Leave Benefit Loan Program is intended to help self-employed women lawyers remain in practice. It

provides \$2,000 a month for four months to help with overhead costs during a maternity leave, and is available to women lawyers who don’t have access to other maternity and parental financial benefits outside of government programs.

### Aboriginal Lawyers Mentorship Program

This program pairs experienced lawyers with Aboriginal lawyers of up to three years of call. The goal is to enhance the retention and advancement of Aboriginal lawyers.

### Aboriginal Scholarship

The Law Society offers a \$12,000 scholarship for Aboriginal graduate students in a field of law. The award aims to enhance the retention of Aboriginal lawyers by helping develop Indigenous leaders and role models in the legal academic community.

## The third cycle of the Aboriginal Lawyers Mentorship Program begins in September

THE NEXT CYCLE of the Aboriginal Lawyers Mentorship Program is set to begin in September 2015. This year, the program has been updated to provide mentees with the opportunity to meet with different mentors throughout the year. Mentees will be paired with mentors on a four-month rotation and will meet three mentors over the course of the year. This approach will optimize the broad pool of mentors and will provide mentees with a variety of perspectives. Networking events will continue to provide mentees with informal mentorship throughout the year.

This program is intended to enhance the retention and advancement of lawyers with Aboriginal ancestry, who are currently under-represented in the legal profession in British Columbia.

To be eligible for the program, mentees should possess the following characteristics:

- self-identified Aboriginal ancestry; and
- membership in the Law Society of British Columbia, active enrolment in the Law Society Admission Program or active enrolment in a law faculty in British Columbia.

Mentors should possess the following attributes:

- membership in good standing in the Law Society of British Columbia, with no record of current or past citations;
- more than three years of call, in any jurisdiction in Canada;

- established professional experience;
- effective communication skills; and
- advanced understanding of issues related to the retention of Aboriginal lawyers in British Columbia.

It is not necessary that mentors have Aboriginal ancestry.

To participate in the Aboriginal Lawyers Mentorship Program, please fill out and submit an application by September 25, 2015; application forms can be downloaded from the Law Society website (on the home page under “for Lawyers,” click on “[equity and diversity](#).”)

For more information, please contact Andrea Hilland at 604.443.5727 or [ahilland@lsbc.org](mailto:ahilland@lsbc.org).

*Feature – Equity and diversity ... from page 9*

Another initiative the Law Society has implemented is the establishment of the Aboriginal Scholarship. The annual scholarship of \$12,000 is intended to help an Aboriginal student pursue graduate studies in law. Darcy Lindberg, winner of the 2015 scholarship, plans on studying the role of

ceremony in Indigenous law, particularly among the Plains Cree (see sidebar below).

The Law Society has made progress in overcoming barriers, but we still have work to do to ensure that all members of society have an equal opportunity to enter the legal profession. All lawyers are encouraged to consider how they can help and to access the tools available to them.

It might mean reviewing old policies and implementing new ones, or even considering implementing policies where there are none. It might mean volunteering to participate in the Justicia project or to mentor a recently called Aboriginal lawyer. Or it could be something as simple as stopping to think about the subtle biases that guide your everyday decisions.❖

## DARCY LINDBERG, WINNER OF THE 2015 ABORIGINAL SCHOLARSHIP



Even while he was completing his law degree at the University of Victoria, Darcy Lindberg thought he would likely be back some day. Invigorated by the support he found at UVic for his interest in Indigenous law, he hoped to return one day to pursue his studies further.

Now with two years' experience as a practising lawyer, Lindberg is returning this fall to UVic to pursue a master's degree, with the help of the Law Society. Lindberg is the winner of the 2015 Aboriginal Scholarship, providing him with \$12,000 to help him pursue his graduate studies in law.

Lindberg plans to study traditional Indigenous laws and the use of ceremony, particularly among Plains Cree, where he traces his heritage on his mother's side. "I'm interested in how ceremony is related to legal proceedings in these communities," he said. "A lot of communities have different legal traditions, and it's just coming to light how they interact with common law and civil law."

"I found a lot of support and energy in the areas I wanted to study. A lot of keen minds are involved at UVic, and profs were very supportive of things related to Indigenous legal traditions."

Since completing his JD in 2012, Lindberg garnered experience both as a sole practitioner and working with a big firm. After articling in Whitehorse with Davis LLP (now DLA Piper), he set out on his own, spending eight months establishing a sole practice that combined mediation, consulting and legal services, and offered a flexible fee structure. When a position became available at the Whitehorse office of DLA Piper, he returned to Whitehorse. He took some vacation time at the end of this summer before returning to Victoria to start his master's program.

While he appreciates the experience in a broad range of areas offered by a big firm, Lindberg hopes one day to work in a more specialized practice, focusing on community projects and social justice. Teaching is also an option he would like to keep open.

Despite advances made in representation of Indigenous lawyers in the profession, Lindberg notes that barriers still exist. "For some people growing up on a reserve, it's hard to see the end of the road; it's hard to see finishing high school, going to university, then law school," he explained. "A lot of communities only have schools that go up to grade nine, and residents have to travel quite a distance to finish high school."

Lindberg notes that, even in the enlightened halls of academia, invisible barriers still exist. "Our education system doesn't prepare people who don't go out of their way to learn about Indigenous cultures and the history of Canada. I've been surprised in conversations with people who are bright and intelligent but don't have that knowledge. For students it can be tiring."

## Practice advice



### LAWYER-LAWYER AND LAWYER-STAFF DISPUTES – MEDIATION OPTION

HAVE YOU LOST your temper and told another lawyer to do something that might be more appropriately included in a late night adult comedy sketch? Is personal animosity between you and another lawyer negatively affecting a client's file? Or your sleep, perhaps?

Practice advisors frequently receive calls from lawyers engaged in disputes with other lawyers. Many relate to a lawyer leaving a firm when emotions have escalated from a slow simmer to a roiling boil (see "[Ethical considerations when a lawyer moves on](#)" in Practice Watch, *Benchers' Bulletin*, Summer 2014 for guidance on a lawyer leaving a firm). Other disputes are often between two lawyers on opposite sides of a litigation file where one lawyer is name-calling, swearing, yelling and being generally uncooperative.

Practice advisors give confidential practice and ethics advice to lawyers, including advice about improving professional communication, but they do not

mediate disputes between lawyers, their staff or firms. If appropriate, advisors may refer callers to the Canadian Bar Association, BC Branch's Dispute Resolution Service. The service is generally free and is even available to BC lawyers who are not members of the CBA. Lawyer mediators volunteer their time and will speak with you about the problem. If both parties agree, the dispute can be submitted for mediation. A fee-for-service mediation may be recommended if the matter is complex. Of particular interest, not only will the mediators deal with disputes between lawyers, the service also extends to lawyer-staff disputes, such as an issue with a bookkeeper, legal assistant or paralegal. The service does not extend to issues that are required to be reported to the Law Society.

For more information concerning the CBABC's Dispute Resolution Service, call 604.646.7864 or go to their website under Advocacy (see [cbabc.org/drs](http://cbabc.org/drs)). For help with communication generally, see the free *Communication Toolkit* under [Practice Support and Resources](#) on our website or consult a practice advisor.

### CLIENT IDENTIFICATION AND VERIFICATION – 2015 UPDATES AND SCAMS

The Law Society's client identification and verification rules ([Rules 3-98 to 3-109](#)) and the rules regarding cash transactions ([Rules 3-59 and 3-70](#)) play an important role in anti-money laundering and in uncovering some scams. The [Client Identification and Verification Procedure Checklist](#) (part of the *Practice Checklists Manual*) and the [Frequently Asked Questions](#), both located under Practice Support and Resources on our website, were updated in July 2015. You can report potential new scams by sending an email to [fraud@lsbc.org](mailto:fraud@lsbc.org). Reporting allows us to notify the profession, as appropriate, and update the [fraud information](#) on the website.

### 2015 UPDATES – FAMILY LAW AND WILLS AND ESTATES CHECKLISTS

Don't miss an important step. Use checklists. Whether you're a senior lawyer or a new lawyer, checklists can help keep you organized, preventing errors and complaints. You can keep track of what steps should be taken, what you've completed and what is left to do. Further, checklists sometimes flag potential issues that may not have even occurred to you.

The following family law and will and estates checklists, part of the *Practice Checklists Manual* (in the Practice Support and Resources section of the website), have recently been updated and include a summary of some new developments in the introductory page to each checklist:

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

Watch for more updates to the manual later in 2015. ❖

# Are you or any of your employees US citizens?

IF YOU OR any of your partners or employees are US citizens, and you or such partners or employees have a financial interest in or signature authority over trust accounts, you should be aware of the US government's Report of Foreign Bank and Financial Accounts (FBAR) requirements.

An FBAR must be filed by any US citizen or green card holder or other US resident ("US persons") with a financial interest in or signature authority over non-US financial accounts where the funds in the accounts together total USD\$10,000 or more. This includes a lawyer's trust account. BC lawyers who are US persons, or law firms whose signing authorities for trust accounts include US persons, should be aware of the requirements and ensure that any FBAR in respect of their trust account is filled out correctly. Most importantly, it is necessary to ensure that no confidential information about clients is disclosed. Generally, a lawyer must not disclose having been retained by a person about a particular matter and should therefore ensure such information is not included in an FBAR (BC Code s. 3.3).

## 1. US persons with a financial interest in the trust account

The FBAR regulations provide that the owner of record or holder of legal title of an account is deemed to have a financial interest in that account. As such, a BC lawyer who is a US person who holds legal title on a trust account is required to follow filing requirements for an individual with a financial interest. If the trust account is in the name of a partnership, a US person who is a partner has a financial interest in that account if he or she directly or indirectly controls either 50 per cent or more of the profits or 50 per cent or more of the capital in the partnership. If the trust account is in the name of a law corporation, a US person has a financial interest in that account if he or she owns 50 per cent or more of the total value of the shares or 50 per cent or more of the voting

power of all the shares in the corporation.

If an individual has a financial interest in 25 or more non-US accounts, he or she is required to fill out Part I of the FBAR form (Form 114), which relates to personal information, and should maintain records of the information normally included in Part II of Form 114, which relates to account information. If an individual has a financial interest in fewer than 25 non-US accounts, Part II should be completed. Note that "account information" does not include the names of beneficiaries to the trust, i.e. does not include a lawyer's client names.

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*An FBAR must be filed by any US citizen or green card holder or other US resident ("US persons") with a financial interest in or signature authority over non-US financial accounts where the funds in the accounts together total USD\$10,000 or more. This includes a lawyer's trust account.*

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## 2. US persons who have signature authority over a trust account

US persons with signature authority over a trust account have different filing requirements. Any person who has authority (alone or in conjunction with another individual) to control funds or other assets in a financial account by direct communication (whether in writing or otherwise) with the person maintaining the account has signature authority over that account.

A US person with signature authority but no financial interest in 25 or more non-US accounts is required to fill out

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*continued on page 14*

## Services for lawyers

### Law Society Practice Advisors

Dave Bilinsky  
Barbara Buchanan  
Lenore Rowntree  
Warren Wilson, QC

Practice Advisors assist BC lawyers seeking help with:

- Law Society Rules
- Code of Professional Conduct
- practice management
- practice and ethics advice
- client identification and verification
- client relationships and lawyer/lawyer relationships
- enquiries to the Ethics Committee
- scams and fraud alerts

tel: 604.669.2533 or 1.800.903.5300.

*All communications with Law Society Practice Advisors are strictly confidential, except in cases of trust fund shortages.*

### Optum Health Services (Canada) Ltd. –

Confidential counselling and referral services by professional counsellors on a wide range of personal, family and work-related concerns. Services are funded by, but completely independent of, the Law Society and provided at no cost to individual BC lawyers and articulated students and their immediate families.  
tel: 604.431.8200 or 1.800.663.9099.

### Lawyers Assistance Program (LAP) –

Confidential peer support, counselling, referrals and interventions for lawyers, their families, support staff and articulated students suffering from alcohol or chemical dependencies, stress, depression or other personal problems. Based on the concept of "lawyers helping lawyers," LAP's services are funded by, but completely independent of, the Law Society and provided at no additional cost to lawyers.  
tel: 604.685.2171 or 1.888.685.2171.

**Equity Ombudsperson** – Confidential assistance with the resolution of harassment and discrimination concerns of lawyers, articulated students, articling applicants and staff in law firms or other legal workplaces. Contact Equity Ombudsperson Anne Bhanu Chopra at tel: 604.687.2344 or email to [achopra1@novuscom.net](mailto:achopra1@novuscom.net).

## DISCIPLINE ADVISORY

## Reporting a mortgage discharge failure to the Law Society is mandatory

LAWYERS ARE REMINDED of their obligation to report to the Law Society the failure of a mortgagee to provide a registrable discharge of mortgage within 60 days of the closing of any real property transaction (Law Society Rule 3-96(b)(i)).

Rule 3-96(b)(ii) also requires lawyers to report to the Law Society the failure of another lawyer or notary to provide satisfactory evidence of the filing of a registrable discharge of mortgage within the 60-day period.

In the rule, "mortgage" includes a registered mortgage, debenture or trust deed containing a fixed charge on land or an interest in land (Rule 3-95).

To report a mortgage discharge failure, go to [www.lawsociety.bc.ca/apps/thirtythirty\\_2/mortgage\\_report.cfm](http://www.lawsociety.bc.ca/apps/thirtythirty_2/mortgage_report.cfm).

### What does the Law Society do with mortgage discharge failure reports?

As a result of the Martin Wirick case, the Benchers implemented the 60-day reporting requirement to reduce the possibility for fraud. The Law Society's investigative analyst uses the information to determine whether there are situations that require



Law Society intervention or investigation.

Failure to report as required under Rule 3-96 can lead to disciplinary action.

For more information on reporting under Rule 3-96, contact Liza Szabo, Investigative Analyst at [lszabo@lsbc.org](mailto:lszabo@lsbc.org). ❖

*US citizens ... from page 13*

Part I of the FBAR form (Form 114), which relates to personal information, and items 34-43 of Part IV, which relates to account owner information. The individual must also maintain records relating to account information. Again, "account information" does not include the names of your clients, beneficiaries to the trust. If the US person has signature authority but no financial interest in fewer than 25 accounts, then all of Parts I and IV must be completed unless that person is an employee of the account owner,

in which case only Part I and items 34-43 of Part IV need to be filled out. It is important to note, however, that in all cases, if the US person is an employee of the account owner, owner information only needs to be filled out once on the form, even if there are multiple accounts.

In none of the situations described above is client information to be included on the form. BC lawyers who are US persons or who have partners or employees who are US persons must maintain client confidentiality when filing an FBAR. In order to ensure that no confidential client information is disclosed, lawyers should be aware

of any US person with a financial interest in or signature authority over their trust accounts. If desired, a lawyer can file an FBAR on a US person employee's behalf, as long as that employee fills out an authorization form (Form 114a) and the lawyer fills out the third-party preparer section of the FBAR form.

Lawyers are encouraged to seek advice from a US tax lawyer concerning any questions regarding FBARs and the correctness and applicability of this information to their circumstances. The Law Society accepts no responsibility for any errors or omissions, and expressly disclaims such responsibility. ❖

## 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.

### COMMUNICATING DIRECTLY WITH REPRESENTED OPPOSING PARTY

During a break in court proceedings, a lawyer spoke directly to an opposing party in a family law dispute, in the absence of the opposing party's counsel. According to the lawyer, she had ongoing concerns with the opposing party's daughter's influence in the proceedings. A conduct review subcommittee advised the lawyer that her conduct breached rule 7.2-6 of the *Code of Professional Conduct for British Columbia*. The subcommittee discussed the problems that could have arisen if the exchange became an issue in the proceedings, and the potential prejudice to her own client if she had to give evidence of that exchange. The lawyer recognized that her actions were inappropriate and unhelpful. She advised she would seek advice from a practice advisor or senior colleague if she had similar concerns about an opposing party's independence in the future. (CR 2015-12)

### LAND TITLE ACT, ELECTRONIC FILINGS

A lawyer provided her password to her assistant to allow her assistant to affix her digital signature when discharging one or two mortgages, in contravention of her agreement with Juricert (the certification authority) and s. 168.3 of the *Land Title Act*. The lawyer voluntarily admitted during a compliance audit of her practice that she had done so. A conduct review subcommittee

found, and the lawyer acknowledged, that her conduct was inappropriate. She stated it happened once only, partially due to her absence from the office for medical reasons and her concern that the discharges had to be filed within 60 days. The subcommittee noted that the lawyer appeared to be professionally isolated and made some recommendations to address those concerns. The lawyer has also taken steps to avoid similar misconduct in the future. (CR 2015-13)

### CLEARING AGED TRUST BALANCES

During a compliance audit, it was discovered that a lawyer transferred several small unclaimed trust balances to his firm's general account, contrary to then Law Society Rule 3-56(1) (now Rule 3-64(1)).

A conduct review subcommittee advised the lawyer that, even though the amounts of money were small and it was difficult, time-consuming, and expensive to deal with those funds properly, it was his obligation as a lawyer to do so.

The lawyer acknowledged the impropriety of his conduct and assisted in the investigation. He did not seek to make excuses but noted that, at the time of the improper transfers and invoices, he was experiencing considerable stress due to his wife's illness.

The audit identified 31 improper transfers and, after undertaking a review of all files, the lawyer identified and self-reported 18 additional matters. He promptly rectified all 49 errors by returning the funds to the proper parties.

The lawyer has implemented new procedures at his office that will assist him in returning small trust balances to the proper parties with fewer administrative difficulties. He now requires clients to provide the details of their bank accounts so that the funds can be transferred to their accounts directly. Many of the trust balances resulted from clients failing to cash the cheques he sent to them returning small amounts left in trust. (CR 2015-14)

### DISHONOURABLE CONDUCT

During telephone conversations with staff at a health care centre, a lawyer misrepresented to them that he was his client and made inappropriate and offensive comments. A conduct review subcommittee advised the lawyer that his conduct was not of the standard expected of lawyers and was contrary to rules 2.2-1,

*continued on page 23*

## 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.

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### PATRICK MICHAEL FITZMAURICE

Hearing (application for enrolment): July 15, 2014

Panel: Philip Riddell, Chair, Jasmin Ahmad and Satwinder Bains

Decision issued: November 7, 2014 (2014 LSBC 54)

Counsel: Henry Wood, QC for the Law Society; Morgan Camley for Patrick Michael Fitzmaurice

#### BACKGROUND

In Patrick Michael Fitzmaurice's Application for Temporary Articles Enrolment, he disclosed an extensive history of charges under the *Criminal Code* and charges under the *Motor Vehicle Act*:

- six criminal charges between 1996 and 2006, including possession of a restricted weapon, possession for the purpose of trafficking, and mischief under \$5,000; and
- 40 motor vehicle charges between 1996 and 2013, including 18 for speeding.

As a result of moving several times during his childhood and adolescence, Fitzmaurice developed a sense of alienation and isolation and was subjected to bullying. In defence, he developed a reputation for fighting back, which allowed him to make friends. Unfortunately, the peer group that provided that sense of belonging entertained themselves by stealing bicycles and breaking into cars.

In 1995, when he was 17 years old, Fitzmaurice enrolled in an adult program to complete high school and began pursuing a career as a pilot. By the age of 23, he was taking steps to lead a positive and productive life.

In 2001, Fitzmaurice was involved in a motor vehicle accident that resulted in, among other things, facial injuries requiring five to six surgeries. The difficult recovery process caused a period of depression and symptoms of post-traumatic stress disorder (PTSD). He successfully received treatment from a psychiatrist.

Fitzmaurice again took steps to pursue a career in aviation. In

2002, shortly after completing his flight instructor's training, Fitzmaurice was involved in a second motor vehicle accident in which he suffered significant injuries to his arms and tendons. Those injuries took three years of surgery to resolve and ended the possibility of a career in aviation.

Fitzmaurice again received psychiatric treatment for severe symptoms of PTSD and depression.

At the end of 2002, during his recovery from the second accident, Fitzmaurice moved to Toronto. He began to consider pursuing a career in criminal law, based primarily on the positive influence of his uncle who was a criminal defence lawyer.

In 2006, Fitzmaurice returned to Vancouver and enrolled in Langara College. In 2009, he entered UBC in an undergraduate program and then law school in 2011.

While in law school, Fitzmaurice actively participated in the Law Students' Legal Advice Program and Pro Bono Students Canada, to help others in need.

#### DECISION

There was no doubt that Fitzmaurice's extensive history of criminal and motor vehicle charges was reflective of conduct that was far less than exemplary. However, the evidence revealed a marked decrease in the incidents of criminal conduct, and eventually the complete absence of any criminal conduct in the past 10 years. He had not received any speeding tickets since starting law school.

Fitzmaurice is no longer under psychiatric care and has made positive strides, not only in his own life, but also for the benefit of others.

Fitzmaurice was candid and forthcoming in the application process, in giving his evidence before the panel and in the full disclosure of that past to the references who provided letters in support of his application.

While Fitzmaurice attributed his criminal behaviour to his unstable childhood and to the trauma of the two motor vehicle accidents, he did not use either to excuse his past or to diminish responsibility for his conduct. Rather, he is hopeful that his experiences, perspective and insight will enable him to relate to, and therefore better advocate for, many of the clients who will use him as their criminal lawyer.

In the panel's view, all of these factors were clear indicators of his rehabilitation. Together, they highlighted that Fitzmaurice

consciously and deliberately changed the path that he was on prior to 2002 and was actively taking steps to make a positive and meaningful contribution to society and to the legal profession.

The panel concluded that Fitzmaurice met the burden of proving that he is of good character and repute and fit to become a barrister and a solicitor of the Supreme Court and that he should be enrolled as an articulated student.

The Law Society consented to the non-disclosure sought by Fitzmaurice that certain personal and privileged information from the hearing not be disclosed to the public.

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## APPLICANT 8

Hearing (application for enrolment): February 2-5, 2015

Panel: Herman Van Ommen, QC, Chair, John Waddell, QC and Clayton Shultz

Decision issued: June 1, 2015 (2015 LSBC 23)

Counsel: Gerald Cuttler for the Law Society; Michael Tammen, QC for Applicant 8

## BACKGROUND

Applicant 8 was born in India, received a bachelor of law at Punjabi University and obtained a licence to practise in India. He practised law in India from 1999 to 2001 and immigrated to Canada in 2004.

Applicant 8 applied to the National Committee on Accreditation, wrote four qualifying exams and received a Certificate of Qualification in 2013.

Seeking an articling position, he travelled to Saskatchewan, where Merchant Law Group hired him as a law clerk, with the future possibility of an articling position. Applicant 8 worked as a law clerk from October 2013 through January 2014 and Merchant Law Group is still prepared to provide him with articles if his application to the Law Society is accepted.

The hearing panel considered that Applicant 8's wife had laid criminal charges against him for alleged assault and the circumstances surrounding those charges.

In June 2013 the couple had an argument, and Applicant 8 sent a number of profane text messages to his wife. While their accounts differ, a physical altercation occurred on either August 15 or 16. Applicant 8 and his wife separated on August 21.

Shortly after the alleged assault, Applicant 8 said in an email to his lawyer that he would misrepresent his true feelings and let his

wife believe he had unconditionally surrendered to all her wishes if it meant getting her to drop the charges.

The criminal proceedings were resolved on November 18, 2013, when Applicant 8 entered into a recognizance that required him to admit that there were reasonable grounds to fear that he would cause personal injury to his spouse.

Protracted litigation concerning access to their child and other matters followed the couple's separation, apart from the criminal proceedings. On March 25, 2014, the Provincial Court issued an order prohibiting Applicant 8 from filing any further Provincial Court applications.

## DECISION

The panel found that, while Applicant 8's treatment of his wife offers evidence of serious character flaws, his employment record depicts him as an exemplary candidate to be enrolled as an articulated student.

Despite his behaviour in relation to his wife, the panel concluded that Applicant 8 does not have such a defect in character that it should prevent him from starting on the road toward becoming a lawyer.

The panel granted Applicant 8's application to become enrolled as an articulated student with the following conditions:

- a copy of the panel's reasons must be provided to his principal and employer and counsellor,
- the principal must inform the Law Society in writing of any inappropriate behaviour involving Applicant 8,
- the principal must provide quarterly reports to the Law Society on Applicant 8's progress,
- Applicant 8 must see a psychologist trained in matrimonial counselling, and
- Applicant 8 must consent to the counsellor preparing a report to the Law Society describing the counselling program and Applicant 8's involvement in and completion of the program.

In dissenting reasons, Clayton Shulz wrote that the facts and submissions do not inspire confidence that Applicant 8's character defects will not resurface when he faces the pressures, conflicts and disagreements that lawyers must routinely cope with in an objective and balanced fashion.

*The Credentials Committee has applied for a review of the panel's decision.*

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*continued on page 23*

## Discipline digest

BELOW ARE SUMMARIES with respect to:

- Malcolm Hassan Zoraik
- Charles Louis Albas
- Philip Richard Derksen
- Jennifer Eileen McCormick
- Kevin Alexander McLean
- Diep Thanh Hoang Nguyen
- Douglas Warren Welder
- Laura Elizabeth Holland

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

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### MALCOLM HASSAN ZORAİK

Victoria, BC

Called to the bar: November 16, 2001

Non-practising member: June 2010

Summarily disbarred: May 30, 2013

Court of Appeal: February 2, 2015 (Chiasson, Lowry, Kirkpatrick, MacKenzie and Goepel, JJA)

Written reasons: March 27, 2015 ([2015 BCCA 137](#))

Counsel: Jaia Rai for the Law Society; J. Penner for the Attorney General; Russell Tretiak, QC and E.T. Chapman for Malcolm Hassan Zoraik

#### BACKGROUND

On June 14, 2010 Malcolm Hassan Zoraik was convicted of public mischief and of fabricating evidence. The Provincial Court judge 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."

Zoraik appealed his convictions, but in June 2012 the BC Court of Appeal dismissed his appeal.

The Discipline Committee referred the matter to the Benchers under Rule 4-40 (Conviction), to decide whether to summarily suspend or disbar Zoraik.

Before the Benchers, Zoraik asserted that, by proceeding summarily against him, the Benchers violated his *Charter* rights. He submitted that the Benchers should decline jurisdiction and refer the matter back to the Discipline Committee. He did not, however,

seek a *Charter* remedy. On that basis, the Benchers declined to consider any *Charter* argument.

The Benchers noted the lack of any explanation to justify the misconduct and a lack of acknowledgment of wrongdoing or remorse by Zoraik. The Benchers ordered that Zoraik be disbarred. ([2013 LSBC 13](#); [Discipline summary: Fall 2013](#)).

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

#### COURT OF APPEAL DECISION

The Court of Appeal found that, although the *Charter* issue was central to Zoraik's submissions, it was not addressed by the Benchers, nor did the Benchers consider whether they could refer the matter back to the Discipline Committee. The court found it incumbent on the Benchers to consider these issues.

The court allowed the appeal and remitted the matter back to the Benchers.

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### CHARLES LOUIS ALBAS

Penticton, BC

Called to the bar: May 14, 1976

Discipline hearing: April 16, 2015

Panel: Herman Van Ommen, QC, Chair, Shona Moore, QC and Glenys Blackadder

Decision issued: May 13, 2015 ([2015 LSBC 21](#))

Counsel: Kieron Grady for the Law Society; Charles L. Albas on his own behalf

#### FACTS

In February 2009, Charles Albas prepared or caused to be prepared a will for a client naming himself as a beneficiary, contrary to the rules of the *Professional Conduct Handbook* then in effect. In 2013, Albas then prepared or caused to be prepared a will for the client naming Albas' wife as a beneficiary. That was contrary to the *Code of Professional Conduct for British Columbia* because he had an interest in the subject matter of his retainer.

While his client apparently wished for Albas to be a beneficiary in the will, his obligation as a lawyer was to ensure that his client obtained independent legal advice so as to proceed with that gift. He did not ensure this step.

## ADMISSION AND DISCIPLINARY ACTION

Albas made a conditional admission of the discipline violations set out in an amended citation and as more fully set out in the Agreed Statement of Facts. There was no evidence that he exerted pressure on his client or that the proposed gift was anything other than the true wish of the client. The panel determined, and Albas admitted, that his conduct constituted professional misconduct.

The panel ordered that Albas:

1. pay a fine of \$7,000; and
2. pay \$1,736.25 in costs.

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## PHILIP RICHARD DERKSEN

Abbotsford, BC

Called to the bar: May 20, 1988

Discipline hearing: February 20, 2015

Panel: Elizabeth Rowbotham, Chair, Donald Silversides, QC and Paula Cayley

Oral reasons: February 20, 2015

Decision issued: June 3, 2015 ([2015 LSBC 24](#))

Counsel: Kieron Grady for the Law Society; Philip Richard Derksen on his own behalf

### FACTS

Between April 2011 and December 2012, Philip Richard Derksen failed to comply with Law Society accounting rules governing client trust funds. This included failing to deposit cash retainer funds into a trust account, failing to record receipt of a cheque for payment of fees, and failing to deliver bills to a client in the appropriate timeframe.

Between August 2011 and December 2012, Derksen failed to comply with Law Society accounting rules on another client's matter, which involved a cash retainer. Specifically, he failed to deposit the funds into a trust account in the required timeframe, he failed to record receipt of those funds, and he was long delayed in delivering a bill to the client in respect of the funds.

He also failed to notify the Law Society of two requirements to pay issued by the Canada Revenue Agency in November of 2011 and July 2012.

In addition, Derksen breached Law Society Rules when, between November 2011 and June 2011, he directed the Legal Services Society to deposit funds owed to his firm into a trust account when those funds did not meet the defined requirements of trust

funds. He then failed to notify LSS of that fact and failed to inform them in a timely manner that the funds should be deposited instead into his firm's general account.

## ADMISSION AND DISCIPLINARY ACTION

Derksen admitted to professional misconduct, and the hearing panel accepted his admission. The panel also considered Derksen's discipline history, which includes breaches of accounting rules, a fine and a suspension.

After considering the facts of this case and his professional conduct record, the panel ordered that Derksen:

1. be suspended for 45 days; and
2. pay \$1,000 in costs.

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## JENNIFER EILEEN MCCORMICK

Ladysmith, BC

Called to the bar: February 16, 1990

Discipline hearing: November 3-4, 2014

Panel: A. Cameron Ward, Chair, John M. Hogg, QC and June Preston

Oral reasons: November 4, 2014

Decision issued: June 23, 2015 ([2015 LSBC 28](#))

Counsel: Susan M. Coristine for the Law Society; William MacLeod for Jennifer Eileen McCormick

### FACTS

In 2001, Jennifer Eileen McCormick was retained by the RCMP to prosecute an officer in a sexual harassment case. The proceedings were ultimately dismissed, but 10 years later, one of the complainants in the case contacted McCormick to inform her that the CBC wanted to interview McCormick about the matter. Wanting to lend credibility to the complainants, McCormick agreed to the interview.

In the course of the interview, McCormick disclosed information regarding the 2001 case and was critical of the RCMP's handling of the proceedings. In doing so, she committed professional misconduct by breaching her duty of loyalty to her client, disclosing confidential information without the client's consent and making public statements regarding the affairs of a client.

## DETERMINATION

McCormick admitted to misconduct in this matter. The panel agreed that, by making unauthorized public statements concerning

the affairs of her client in the CBC interview, McCormick breached her duties to the client. The panel found this conduct to be a marked departure from the standard of conduct expected from lawyers, amounting to professional misconduct.

Lawyers have a duty of confidentiality and must act in the best interests of their client. In this case, McCormick went beyond what is permissible and certainly did not act in the best interests of her client. While her intentions were to champion the interests of the complainants in this case, her professional obligations of loyalty, confidentiality and caution belong to her client.

## DISCIPLINARY ACTION

The panel ordered that McCormick:

1. be suspended for 45 days; and
2. pay \$5,000 in costs.

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## KEVIN ALEXANDER MCLEAN

Vancouver, BC

Called to the bar: August 27, 2010

Discipline hearings: December 17, 2014, January 13 and May 14, 2015

Panel: Miriam Kresivo, QC, Chair, William M. Everett, QC and Dan Goodleaf

Decisions issued: March 20 ([2015 LSBC 09](#)) and June 29, 2015 ([2015 LSBC 30](#))

Counsel: Alison Kirby for the Law Society; no one appearing on behalf of Kevin McLean

## FACTS

A citation with several allegations was issued against Kevin Alexander McLean arising from his failure to cooperate with the Law Society on investigations into his conduct.

The panel found that McLean failed to:

- provide full and substantive responses, promptly or at all, to communications from the Law Society in respect of three separate complaints investigations;
- comply with a Practice Order placing interim conditions and limitations on his practice and requiring him to enter into and comply with a Practice Supervision Agreement (PSA), by failing:
  - to comply with the terms of the PSA relating to weekly meetings with his practice supervisor;
  - following the termination of the PSA, to immediately cease practising law until such time as he had entered into

and agreed to a new employment or practice supervision agreement; and

- to operate his trust account with a secondary signatory approved by the Law Society;
- complete the Small Firm Practice Course, in breach of the Rules, an undertaking given to the Law Society, and an order made by the Law Society.

## DETERMINATION

The panel found that McLean had committed professional misconduct in respect to each of the allegations contained in the citation, with the exception of a portion of an allegation relating to daily meetings with his practice supervisor. That allegation was dismissed.

## DISCIPLINARY ACTION

McLean had only been called to the bar five years earlier, but in that short time, his professional conduct record consisted of numerous citations. He had been suspended for failing to provide information requested in a compliance audit, and faced a conduct review while an articulated student.

The Law Society sought a finding of ungovernability.

The panel found McLean's conduct record to be extensive and serious and that he demonstrated a persistent and wanton disregard for the Law Society's regulatory process. Not only did McLean not cooperate with the Law Society in the investigation, he did not appear at hearings into his conduct. The panel considered that there was no possibility of remediation or rehabilitation in this case.

The panel took the extraordinary step of determining McLean to be ungovernable and felt that disbarment was the only action that would effectively protect the public and ensure confidence in the profession.

The panel ordered that McLean:

1. be disbarred; and
2. pay \$6,785 in costs.

*McLean has applied for a review of the decision.*

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## DIET THANH HOANG NGUYEN

Vancouver, BC

Called to the bar: May 15, 1992

Discipline hearing: April 7, 2015

Panel: Dean Lawton, Chair, Richard Lindsay, QC and Patrick Kelly

Decision issued: July 6, 2015 ([2015 LSBC 32](#))

Counsel: Carolyn Gulabsingh for the Law Society; Diep Thanh Hoang Nguyen on her own behalf

## FACTS

In September 2009 Diep Thanh Hoang Nguyen agreed to act for a client regarding a claim arising from a motor vehicle accident. They entered into a contingency fee agreement allowing Nguyen to charge a fee of 30 per cent of any amounts recovered.

Nguyen wrote a personal cheque dated May 18, 2012 for \$30,000 and made out to a third party. In the memo section of the cheque Nguyen noted that the cheque was for the “care & assistance” of her client.

Nguyen initially told a Law Society auditor that the \$30,000 cheque was payment for in-house care for her client, that it was made to an agent and that her client was aware of the payment. She also told the auditor that she understood that, if she did not pay \$30,000 to the Hong Kong agent, she would lose the file because it would be “shopped around” to another lawyer.

On September 1, 2012, after the case was settled, Nguyen issued a bill to her client, which included a \$30,000 disbursement with the notation, “Diep Nguyen credit line cheque Hong Kong agent.”

At no time did Nguyen hire a Hong Kong agent to assist with her client’s claim. Rather, the disbursement was a deception to avoid paying income tax on \$30,000.

## DETERMINATION

Nguyen admitted that she lied to the Law Society auditor about the disbursement, that she did not pay \$30,000 to a Hong Kong agent or anyone else, that she represented \$30,000 of her fees as a disbursement so that she could avoid paying income tax, and that she intended to use the money she saved on paying income tax to pay down personal debt.

Nguyen subsequently admitted that the \$30,000 personal cheque was a fake and that she wrote it and put it in the file to create a paper trail in case she was audited by the Canada Revenue Agency. This cheque was never distributed to anyone and never cashed. Instead, Nguyen wrote a \$30,000 trust cheque to herself and deposited it into her personal account.

Nguyen admitted that her conduct constituted professional misconduct.

## DISCIPLINARY ACTION

The panel was concerned that Nguyen exploited the relationship

with her client, not only through dishonesty in channeling a fake disbursement through her trust account, but also by using her client as a device to advance that dishonesty. Further, Nguyen lied to Law Society auditors several times. This behaviour was an aggravating factor in considering the seriousness of her professional misconduct.

Although the panel recognized Nguyen had no prior disciplinary record, it concluded that her professional misconduct warrants both a suspension and a fine.

The panel ordered that Nguyen:

1. be suspended for 60 days;
2. pay a fine of \$10,000; and
3. pay \$2,925 in costs.

*Nguyen has applied for a review of the panel’s decision.*

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## DOUGLAS WARREN WELDER

Kelowna, BC

Called to the bar: May 12, 1981

Discipline hearings: July 7, 2014 and March 25, 2015

Panel: Lynal Doerksen, Chair, Graeme Roberts and Sandra Weaver

Decision issued: November 28, 2014 ([2014 LSBC 58](#)) and July 13, 2015 ([2015 LSBC 35](#))

Counsel: Jaia Rai for the Law Society; Douglas Warren Welder on his own behalf

## FACTS

In 2006, Doug Welder was acting for a corporation that was being investigated by the BC Securities Commission (BCSC). In November of that year, the BCSC issued a cease trading order prohibiting further investment in the corporation. The evidence established that Welder knew of the order, even to the extent of opening a file a few days later for one of the principals of the corporation and identifying the matter as “BCSC Cease Trade Order.”

In the following weeks, Welder received monies from seven different individuals, families or corporations. He deposited these monies into his trust account and either transferred them to the corporation or another person or company in violation of the cease trade order, or failed to return the monies to the investors and failed to account to the investors. The total amount of money involved was over \$1.5 million. Welder did not advise these investors that he was not protecting their interests, as required by the *Professional Conduct Handbook* in effect at the time.

## DETERMINATION

The panel found that Welder's conduct was a marked departure from the conduct expected of a lawyer and constitutes professional misconduct. Welder knew about the cease trade order and should have known that transferring funds was in violation of the order. Welder himself conceded in his written submissions that his actions, or lack of actions, had "serious repercussions to those that deposited funds into my trust account." In addition, Welder did not advise the investors that he was not protecting their interests.

This conduct, absent Welder's significant past conduct record, would be of grave concern to the Law Society. However, given the severity of this matter coupled with his extensive conduct record, the panel found Welder to be ungovernable.

## DISCIPLINARY ACTION

Welder's professional conduct record included six conduct reviews, six citations and a practice standards referral over the period of 1991 to date. Combined with the seriousness of the actions in this case, Welder's governability was in question.

While the matter being heard by the panel was a significant conduct issue, the panel felt Welder's record had exceeded the limit of trust that could be placed in his ability to practise in the public interest; it was no longer safe or prudent to allow him to continue practising law.

The panel ordered that Welder:

1. be disbarred; and
2. pay \$19,194 in costs.

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## LAURA ELIZABETH HOLLAND

Coquitlam, BC

Called to the bar: May 19, 1995

Discipline hearing: May 5, 2015

Panel: Lee Ongman, Chair, Sandra Weafer and June Preston

Decision issued: July 20, 2015 ([2015 LSBC 36](#))

Counsel: Carolyn Gulabsingh for the Law Society; David Donohoe for Laura Elizabeth Holland

## FACTS

Laura Elizabeth Holland's firm represented a client in a real estate

conveyance, but not in his concurrent matrimonial dispute. Holland was the lawyer who supervised residential conveyancing at the firm.

The client wanted to sell a residence, but the client's wife had registered a certificate of pending litigation (CPL) against the title of the house. The lawyers in the matrimonial action agreed that, in order for the sale to proceed, the CPL would be released on the condition that the proceeds from the sale of the property be held in trust pending resolution of the family law litigation.

The wife's lawyer sent an executed cancellation of charge to release the CPL to a paralegal at Holland's firm, on the undertaking that the net sale proceeds be paid in trust to the wife's lawyer. After the sale was complete and funds were received in trust by Holland's firm, the firm sent the sale proceeds to the husband. The firm trust cheque was signed by two lawyers at the firm, but not including Holland.

Five months later, the wife's lawyer wrote to the paralegal to enquire into the funds; the paralegal had left the firm, and the letter was forwarded to Holland. Until that time, Holland had been unaware of the undertaking and that it had been breached.

Holland immediately reported the breach to the Law Society and contacted the husband to seek return of the proceeds. The husband returned sufficient funds to satisfy the wife's claims.

## ADMISSION AND DISCIPLINARY ACTION

Holland admitted, and the panel agreed, that she professionally misconducted herself on two counts: the breach of an undertaking and the failure to adequately supervise staff.

Holland took steps to rectify the situation as soon as she learned of it and was proactive and cooperative at all stages of the Law Society investigation. The panel found that there was no need for specific deterrence in this case, but there remained the need for general deterrence in order to ensure the continued confidence of the profession, of clients and of the public.

The panel ordered that Holland pay:

1. a fine of \$4,000; and
2. \$1,236.25 in costs. ❖

*Credentials hearings ... from page 17*

## APPLICANT 6

Court of Appeal: March 30, 2015 (Chiasson, Tysoe and Goepel, JJA)

Court decision: July 2, 2015 ([2015 BCCA 303](#))

Counsel: K.M. Stephens and J.D. Hughes for the Law Society;  
Applicant 6 on his own behalf

## BACKGROUND

In 1999, Applicant 6 left his law practice and his life in Canada to pursue a new life in France. Unfortunately, he left before all his affairs were in order, and this resulted in financial loss and inconvenience for former clients, the Law Society and his bank. Applicant 6 returned to Canada in 2010 and applied to be reinstated as a member of the Law Society in January 2012.

A credentials hearing panel granted the application for reinstatement with conditions ([2013 LSBC 34](#); [Spring 2014 Credentials hearing summary](#)). The Credentials Committee applied for a review of the decision.

A Bencher review panel set aside the decision of the hearing panel and rejected the application for reinstatement ([2014 LSBC 37](#); [Winter 2014 Credentials hearing summary](#)).

In a separate decision, the review panel ordered that the applicant pay \$11,000 in costs ([2014 LSBC 62](#)).

Applicant 6 appealed the decision of the review panel to the Court of Appeal.

## COURT OF APPEAL DECISION

The Court of Appeal found that the Benchers' conclusion was not unreasonable and dismissed the appeal.❖

*Conduct reviews ... from page 15*

2.1(3)(e), 7.2-1 and 7.2-4 of the *Code of Professional Conduct for British Columbia*. The lawyer acknowledged that he became very frustrated and that his approach during the telephone calls was not appropriate. He sent two letters of apology to the employees and sincerely expressed remorse for the way he acted. (CR 2015-15) ❖

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