

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.

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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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.

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.

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.

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.

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.

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.

DIEP 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