

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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