The Law Society of British Columbia

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Keeping BC lawyers informed

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A year to remember

by Kenneth M. Walker, QC

IN THIS, MY final column as president, I must say I'm proud of the work the Law Society has done in recent years, particularly the steps we've taken to address access to justice. Expanding the scope of services offered by articled students and paralegals is just one example.

But looking back on this year, one event stands out as a watershed moment. The report of the Truth and Reconciliation Commission of Canada, and the Law Society's response to its call to action, will shape the work we do as lawyers in this province for years to come.

The commission was more than just another fact-finding mission tasked with producing a report. It brought to life a history of systemic injustice in a way that touched the hearts of all Canadians.

Among the commission's 94 calls to action, only two were directly addressed to the legal profession, but the report in its entirety leaves no doubt that lawyers, judges and the entire justice system were complicit in the horrors it describes.

The Law Society has long recognized the need to reach out to Indigenous communities. Ongoing initiatives, such as our annual Aboriginal scholarship and our Aboriginal Lawyers Mentorship Program, have played an important part in ensuring Indigenous culture is recognized by and included in the profession.

However, as the report made clear, much more needs to be done.

Simply reading the commission's report is an essential first step in that education, and the Benchers unanimously approved a resolution urging all members of the Law Society to do so. Inviting Indigenous groups to share their experiences and their concerns is another important measure that the Benchers vowed to put in motion right away.

Developing meaningful and lasting relationships with Aboriginal organizations and leaders in Indigenous law will require longer term consultation and planning. The Benchers resolved at the October meeting to begin the process of determining how best to facilitate those interactions.

Ensuring that cultural competency figures prominently in the education of future lawyers will be critical. At the October meeting, the Benchers heard representatives from the University of British Columbia and Thompson Rivers University describe how cultural competency figures prominently in law school coursework. They also told us how the Law Society's admissions program might address practical applications that aren't necessarily taught at university. I expect the Benchers will continue to work closely with the province's law schools to determine how the Law Society can further develop the cultural component of its Professional Legal Training Course.

One immediate step the Benchers resolved to take is to ensure cultural competency is included in our Continuing Professional Development program. I hope this will encourage current members of our profession to develop an appropriate cultural competence regarding the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations.

If I've singled out the Truth and Reconciliation Commission's report, it's not because I've forgotten all the other important issues the Benchers and the Law Society have considered over the past year. Indeed, the report only serves as a reminder of all the important work the Law Society continues to do.

The commission's calls to action touch on the work our Equity and Diversity Advisory Committee has been doing for years and continues to do, and on the Law Society's role in ensuring the profession is open to all members of society.

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.

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.

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PHOTOGRAPHY

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The calls to action also touch on the ongoing work of our Lawyer Education Advisory Committee, and on the Law Society's critical function as gateway to the profession in British Columbia.

And perhaps most importantly, a number of calls to action highlight the importance of access to justice. The Law Society's Access to Legal Services Advisory Committee has been monitoring developments in this area for several years, and I look forward to recommendations that will come from our newly formed Legal Aid Task Force.

I can't sign off on my final President's View column without thanking Tim McGee, QC and the rest of the Law Society senior management team and staff for their dedication and for the support they've given me throughout the past year. And to my fellow Benchers, I say thank you for your support throughout this year. I am proud to have served as president, and I pass the gavel to incoming president David Crossin, QC, knowing he will continue the good work we've started this year.❖

Appointed Benchers

THE LAW SOCIETY is pleased to welcome three new Benchers in 2016 — John Sherwood (Woody) Hayes, John Mark Rushton and Carolynn Marie Ryan — appointed by the provincial cabinet this month. Satwinder Bains and Claude Richmond were reappointed for further two-year terms. The Law Society expects one further appointment early in the New Year.

Woody Hayes is a founding partner of Hayes Stewart Little & Co., chartered professional accountants, with offices in Victoria, Duncan and Nanaimo. He served as president of the Institute of Chartered Accountants in 1999/2000 and continues to act as a spokesperson for BC's CPAs. Over the years Woody has served as a chair/board member for Malaspina University College (now Vancouver Island University) (1988-1994). He served as an initial board member for the Vancouver Island Health Authority (2002-2007). He also served as a member of the Canadian Accounting Standards Oversight Committee (2003-2008). He has been recognized by the Institute of Chartered Accountants with a Fellowship in 1991 and a Lifetime Achievement Award in 2011. He is a recipient of both the Queen's Golden Jubilee Medal in 2002 and the Diamond Jubilee Medal in 2012.

Woody lives in Duncan with his wife Marlene; his two adult children live nearby in Victoria. In his spare time the family skis in the winter and races their sailboat in the spring and summer.

Mark Rushton is a former editor and publisher with more than 25 years in the community newspaper industry. He still writes a weekly column for the *Abbotsford News*. Within his community in Abbotsford, Mark was a director of the Abbotsford International Air Show for 16 years and has fundraised for Ducks Unlimited (Abbotsford) and the Canadian Cancer Society. He was a member of the Citizens' Advisory Board of Matsqui Institution and a sponsor of the United Native Club for Aboriginal inmates; a member of the MSA Museum Society board; Central Fraser Valley Fair board and Abbotsford AgriFair. He has completed training in publishing, journalism and accounting.

Carolynn Ryan has held various roles since joining WorkSafeBC in 1993, including the Director of Divisional Human Resource Operations and Director of Labour Relations. In her community, Carolynn was a member of the Certified Human Resources Professional (CHRP) Requirement Review Panel for the BC Human Resource Management Association and crisis line counsellor for the Vancouver Crisis Centre. She is a member of the Certified Human Resource Professionals and the BC Human Resource Management Association, and was a member of Toastmasters International for several years, including the role of chapter president. Carolynn holds her Masters of Industrial Relations from Queen's University, her Bachelor of Arts in Psychology from the University of BC and her Human Resource Management Certificate from the BC Institute of Technology.❖

In brief

JUDICIAL APPOINTMENTS

Robert Brown was appointed a judge of the Provincial Court in Rossland.

Deanne Gaffar was appointed a judge of the Provincial Court in Surrey.

Judith Doulis was appointed a judge of the Provincial Court in Prince George.

Alexander Wolf was appointed a judge of the Provincial Court and will initially be assigned sitting duties out of the Office of the Chief Judge.❖

Facing the challenge of accessing justice

by Timothy E. McGee, QC

THE SUBJECT OF this issue's feature story is the newly formed committee called Access to Justice BC. This committee is chaired by the Chief Justice of BC, the Honourable Robert Bauman, and includes the incoming president of the Law Society for 2016, David Crossin, QC, together with leaders from more than a dozen organizations that play central roles in the BC justice system. Access to Justice BC will, among other things, seek to help better coordinate the efforts of these organizations and raise awareness of this most important issue.

For its part, the Law Society has an ongoing commitment to improving access to justice and to affordable legal services for all British Columbians. These goals are prominent in the Law Society's current three-year strategic plan. Specific initiatives now underway include implementing the recommendations of the 2014 Report of the Legal Services Regulatory Framework Task Force calling for an enhanced role for non-lawyer legal services providers in areas of unmet need as well as supporting programs designed to promote the retention and advancement of women in the profession. Just recently, the Benchers approved the formation of a Legal Aid Task Force to strengthen engagement with other stakeholders, organizations and the profession in this area.

I hope you find this issue of the *Benchers' Bulletin* informative. But I also hope you will find the stories and efforts relating to tackling the access issue here in British Columbia inspiring. There is no silver bullet solution, but I believe the desire to collaborate more effectively is growing stronger among all those who can make a difference, and this bodes well for everyone. As always, we welcome your comments at communications@lsbc.org. ❖

Court issues *TWU* v. *Law Society of BC* decision

BC SUPREME COURT Chief Justice Christopher Hinkson has issued his decision in *Trinity Western University (TWU)* v. *Law Society of BC*. TWU had sought a judicial review of the Law Society's October 2014 decision not to approve its proposed law school for the purpose of the Law Society's admission program.

In ruling in favour of TWU, Chief Justice Hinkson concluded that the Law Society inappropriately fettered its discretion and, as a result, the Chief Justice quashed the October decision and restored the April 2014 decision.

The judgment and related background material can be found on the Law Society's TWU web page. ❖

FROM THE LAW FOUNDATION OF BC

The Rural Education and Access to Lawyers initiative

THE RURAL EDUCATION and Access to Lawyers (REAL) initiative works to attract young lawyers to small communities and rural areas of British Columbia. Started in 2009 with funds from the Law Foundation, REAL is currently supported by the Foundation, the Law Society and the Canadian Bar Association, BC Branch.

REAL works to accomplish its goals by providing:

- coordination and funding for second-year summer student placements in high-needs rural and small communities throughout the province;
- support for the promotion of these regions to law students and new lawyers;
- support to students interested in practising in rural and small communities; and
- assistance to law firms and practitioners with recruitment of law students and new lawyers in rural and smaller communities.

As of July 2015, there were 30 practising lawyers, at least six articled students and nine summer students in small and rural communities because of REAL.

The REAL initiative has been successful in changing the conversation about practising in rural markets and demonstrates an increased interest among law students seeking long-term careers serving rural and small markets, working alongside many justice system stakeholders, such as funders, law schools and local bar associations, all of which support the program.

For more information about the REAL initiative and the high-needs communities it serves, visit the REAL website or Facebook page. ❖

Bencher election results

THE 2016-2017 BENCHER election results are in: six Benchers were elected for the first time and 16 were re-elected (three by acclamation). There will be at least 12 women Benchers, the highest number ever.

Members had previously elected the following Benchers as president, first vice-president and second vice-president, respectively, for 2016:

- David Crossin, QC (president and Bencher for Vancouver);
- Herman Van Ommen, QC (first vice-president and Bencher for Vancouver);
- Miriam Kresivo, QC (second vice-president and Bencher for Vancouver).

Crossin, Van Ommen and Kresivo continue as Benchers for their district by virtue of their executive office.

President Kenneth Walker, QC congratulates the elected and re-elected Benchers, and thanks all those who stood for election. Walker also thanks the elected Benchers who will not be returning, acknowledging the years of dedicated service of Joseph Arvay, QC, David Mossop, QC, Cameron Ward, Edmund Caissie and Jeevyn Dhaliwal. Mossop and the outgoing president will become Life Benchers in 2016.❖

Here are the Benchers who were elected on November 16, 2015 for the 2016-2017 term:

District No. 1 Vancouver
Jeff Campbell
Craig A.B. Ferris
Brook Greenberg
Lisa Hamilton
Jamie Maclaren
Sharon Matthews, QC
Steven McKoen
Maria Morellato, QC
Elizabeth Rowbotham
Tony Wilson

District No. 2 Victoria
Pinder K. Cheema, QC
Dean P.J. Lawton

District No. 3 Nanaimo
Nancy Merrill

District No. 4 Westminster
Martin Finch, QC
Christopher A. McPherson
Phil Riddell

District No. 5 Kootenay
Lynal E. Doerksen

District No. 6 Okanagan
Thomas P. Fellhauer

District No. 7 Cariboo
Lee Ongman
Gregory Petrisor

District No. 8 Prince Rupert
Sarah Westwood

District No. 9 Kamloops
Michelle D. Stanford

For full electon results, see About Us > Governance > Benchers > Bencher Elections.

NEW BENCHERS IN 2016

Jeff Campbell

Brook Greenberg

Lisa Hamilton

Steven McKoen

Christopher A. McPherson

Michelle D. Stanford

David Crossin, QC, 2016 president

WHEN WE MEET at his Gastown office, it's clear that David Crossin, QC, is not enamored with the prospect of talking about himself. "Already I don't like this," he says with a laugh, glancing distrustfully at the voice recorder placed before him. However, as the interview proceeds, he slowly warms and shares his thoughts on topics ranging from access to justice to the role of the Law Society.

Crossin didn't always want to be a lawyer. After graduating from Burnaby North High School he went to Simon Fraser University, initially thinking he might one day be a writer. However, he soon found his talents didn't lie in that direction, and it was upon entering UBC law school that he discovered what might be his true calling.

While articling under the mentorship of Thomas Braidwood, Crossin discovered a passion for litigation. "I came out of law school thinking I might be a solicitor," he explains, "but I happened to article with Tom Braidwood, who was a very highly regarded litigator, one of the best. He took me under his wing, and I never did any solicitor work. I enjoyed it, and that was that."

Crossin stayed on at Braidwood, Nuttall, MacKenzie, Brewer & Greyell following his articles, leaving in 1986 to join Len Doust and Ken Smith at Doust and Smith. In 1988, that firm merged with what is now McCarthy Tétrault. Crossin continued to practise there until he started his own practice in 1993. In 2007, he rejoined several former colleagues from his Braidwood days at Sugden, McFee & Roos LLP, where he continues to practise today.

Throughout his career, Crossin has had his share of complex, high-profile cases. Crossin represented Glen Clark, when the former premier was accused of libel for his comments about a fast-ferry critic. Perhaps Crossin's most well-known client was Ripudaman Singh Malik, whom Crossin, along with Bill Smart, successfully defended against charges of conspiracy to commit murder regarding terrorist bombings targeting Air India.

Crossin's former clients also include several lawyers, but he says that was more by happenstance than by plan. Early in his career, he and a small group of Vancouver lawyers, including Chris Hinkson, Rick Sugden and Len Doust, represented lawyers before Law Society discipline hearings; mostly on a pro bono basis. "As a result of that, the same lawyers tended to get the calls," Crossin explains, "so it was just self-generating."

Crossin has also devoted considerable time to legal aid, both through pro bono work early in his career and by serving on the board of the Legal Services Society for several years, including two as chair. Crossin deflects praise for his commitment to legal aid, saying only, "I happen to think that legal aid is an important underpinning of our justice system, so I tried to play a small part." He's quick to direct credit toward those he believes deserve it; recalling his work with Legal Services, he refers to the "hundreds of unsung heroes in this province who quietly commit a good part of their lives to the welfare of other people."

Crossin deflects praise for his commitment to legal aid, saying only, "I happen to think that legal aid is an important underpinning of our justice system, so I tried to play a small part."

As our interview draws to a close, Crossin hints at a vision of a more prominent role for the Law Society. "It's an incredibly talented organization and a group of people with tremendous heart and soul," he says. "I think their voice should be heard in a lot of areas of our justice system."

Crossin lives in North Vancouver with his partner, also a lawyer, and has three grown children, all of whom live in Vancouver. He has a Harley-Davidson and says he likes to get away for road trips "in theory," admitting, with a laugh, that it's not always as easy as he would like to find the time.❖

British Columbia Access to Justice Committee Q&A

Friday, November 13, 2015

The Honourable Chief Justice Robert J. Bauman, Court of Appeal for British Columbia
David Crossin, QC, incoming president, Law Society of British Columbia

INTRODUCTION

IN JULY 2014, 14 representatives from multiple agencies within the BC justice system attended a colloquium in Toronto devoted to access to justice. Impressed by the novel ideas discussed there, they returned determined to bring a new approach to improving access to justice in the province.

The upshot is Access to Justice BC, a committee formed last spring and chaired by the Honourable Chief Justice Robert J. Bauman, Court of Appeal for British Columbia. Not only is the committee chaired by the province's top adjudicator, but its membership includes David Crossin, QC, incoming president of the Law Society of BC, as well as leaders from the Provincial and Supreme Courts, from government and academia, and from such institutions as the Canadian Bar Association, the Law Foundation of BC and the Legal Services Society. In all, the committee has a total of 26 members representing all sectors of the province's justice system, as well as sectors not typically considered part of the justice system.

The aim of the committee is not to produce yet another report and recommendations, but rather to coordinate the many components of the justice sector to facilitate innovation and action. For an explanation of how this committee expects to make a difference, *Benchers' Bulletin* sat down recently with Chief Justice Bauman and David Crossin, QC, who in addition to representing the Law Society serves on the committee's executive.

A lot of organizations have committees looking at how to improve access to justice. Why do we need a new committee, and how will this committee differ from others?

David Crossin: That's exactly the point: a

lot of institutions and stakeholders in our justice system have committees dedicated to improving our justice system. This committee is a gathering place where all these committees can share aspirations and ideas. It's a place where all of these people of goodwill who are attempting to move forward can coordinate their efforts.

Chief Justice Bauman: The coordination of those efforts will lead to efficiencies and a much fuller response to the problem. A coordinated, multidisciplinary response that speaks to a common vision is going to be much more effective.

The aim of the committee is not to produce yet another report and recommendations, but rather to coordinate the many components of the justice sector to facilitate innovation and action.

But beyond coordination and leadership, we want to encourage innovation. We've spent untold hours in our various efforts to improve access to justice, and the issue still seems to be intractable. The problem is complex, and complex problems require extraordinary new answers. We have to inspire innovation, and we have to fundamentally look at culture change.

Can you expand on what you mean by culture change, and how culture might stand in the way of access to justice?

Chief Justice Bauman: I have immense respect for our profession, but we are a profession rooted in the past, and the answers to some of these modern-day problems take more imaginative thinking than perhaps we've brought to bear previously. We have a healthy skepticism about change for change's sake, but I think we have to quicken our pace a bit and be open to new ideas that perhaps challenge some of our basic notions of what a justice system looks like in 2015 and beyond.

David Crossin: One of the areas Access to Justice BC has identified that can be improved is family law. This is one area, and I'm as guilty as anyone, where participants in the justice system have spent the better part of their lives suggesting to users of the justice system what they need. Maybe we need to start listening to the users as to what they need. And that's a big ask from a culture point of view. Take, for example, family violence: is a courtroom necessarily the answer, or is a model more geared to reconciliation and healing and education required? But to a lawyer, that's counterintuitive if someone has committed a crime. Those are the sorts of thing we have to think about, and it does require culture change.

Chief Justice Bauman: David put his finger on it: one of the central focuses of our approach is to put the user at the centre of our efforts. We call it a triple-aim approach, always with user experience at the centre. Our goals are to improve the user experience with the system, to improve outcomes for citizens generally in British Columbia and to do so in a sustainable fashion. It's an approach that we borrowed from other sectors, but we think it offers promise and represents a significantly new approach to improving the system.

David Crossin: The people on the committee represent multiple sectors of our justice system: health, courts, legal services, lawyers. And we are all charged with going back to our institutions and attempting to initiate efforts through the coordination of the access committee. For instance, the Law Society of British Columbia is committed to putting a plan in place to address the recommendations and the call to action of the Truth and Reconciliation report. We think it's one of the most fundamental challenges in our lifetime, but clearly in order to be effective, the society will have to coordinate with other institutions and with the Indigenous community. This committee is perfectly situated to facilitate that because it will be able to say, this is what everyone else is doing, this is what the institutions should be doing, and here's how we can focus our efforts. That's how we'll actually get something done. Instead of each institution working in its own silo, now they have a meeting place to share their ideas.

If each institution has its own mandate, budget and timelines, will communication and collaboration be enough to break down institutional barriers, or will the committee be considering broader structural changes?

Chief Justice Bauman: We all agree at this point in our deliberations that we have to respect the independence of the various institutions of law, but that doesn't mean we can't have a coordinated response to the problems, or a response that's informed by other people's ideas of what each institution should be doing. I think there are going to be some fundamental changes in attitudes, but I'm not sure that the entire structure has to fundamentally change.

David Crossin: Communication and collaboration are a good start, and I think it goes a long way because it hasn't happened before. There's a responsibility on the committee to come up with ideas that are going to be innovative and operational. And there's going to be a responsibility on committee members to go back to their institutions with some enthusiasm and to get buy-in. And in my experience, if you get buy-in then the structure of the institution tends to shift to try to accommodate new ideas.

David put his finger on it: one of the central focuses of our approach is to put the user at the centre of our efforts. We call it a triple-aim approach, always with user experience at the centre. Our goals are to improve the user experience with the system, to improve outcomes for citizens generally in British Columbia and to do so in a sustainable fashion.

– Chief Justice Bauman

Chief Justice Bauman: And let's not jump to the conclusion that independence of the institutions is a bad thing. They're independent for very good reasons, but that doesn't mean there can't be a coordinated response.

Does the committee have a timeline? Is there a point at which you say you're done?

Chief Justice Bauman: (laughing) We're going to have it all fixed by this time next

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FROM THE OFFICE OF THE REGISTRAR OF LOBBYISTS FOR BRITISH COLUMBIA

Lawyers and lobbying: What you need to know

IN POPULAR CULTURE, the word "lobbyist" often invokes an image of a covert backroom meeting between a senior public official and a professional lobbyist representing big corporate interests. In reality, lobbying is a legitimate way for organizations, including non-profits and civil society groups, and individuals to inform and influence government decisions.

In BC, lobbyists must register their actual and prospective lobbying of provincial public office holders, as described in the *Lobbyists Registration Act* (LRA), in a public registry. This online Lobbyists Registry, which is hosted by the Office of the Registrar of Lobbyists for British Columbia (ORL), helps ensure transparency and accountability in the lobbying of public office holders.

WHERE DO LOBBYISTS WORK?

Lobbyists populate many different professions. They can be communications and public relations specialists, administrators of community organizations, presidents of trade associations — and they may also be lawyers. About 11 per cent of all consultant lobbyists currently listed in the Lobbyists Registry are lawyers, although the actual number of lawyers who lobby could be higher.

WHO DO LOBBYISTS TARGET?

Lobbying targets are public officials, including MLAs and their staff, officers or employees of the government, people appointed by cabinet or ministers to any office or body, officers or employees of any government corporation, or officers or employees of a provincial entity.

DO I NEED TO REGISTER AS A LOBBYIST?

There is a common misconception that only "professional" lobbyists need to register with the ORL. But under the LRA, *anyone* who seeks to influence specific outcomes for payment, on behalf of a client, or arranges a meeting between a provincial public office holder and an individual, is subject to the LRA and must register their activities with the ORL.

Payment is a key consideration, whether it involves money, a contract you may be awarded, a promise to pay in the future, or any other item or service that has value.

Let's say, for instance, that you are attempting to arrange a meeting with an MLA to discuss your client's new business operation. The goal is to influence the awarding of a government contract to your client. If you are being paid for your efforts, you are lobbying. If, on the other hand, you meet with a municipal employee as an unpaid volunteer and try to get an increase to an operating grant for a charity, you are not lobbying.

There is a common misconception that only "professional" lobbyists need to register with the ORL. But under the LRA, anyone *who seeks to influence specific outcomes for payment, on behalf of a client, or arranges a meeting between a provincial public office holder and an individual, is subject to the LRA and must register their activities with the ORL.*

Outcome is another important determining factor. If, for example, you are meeting with a public office holder on behalf of your client to introduce or repeal legislation, you are lobbying. If you hope to end a government program on behalf of a client, you are lobbying. Even if you arrange a meeting with a public office holder to introduce your client and the intention of the meeting does not including lobbying, you still meet the definition of lobbying in the LRA.

WHY IS IT IMPORTANT THAT I REGISTER AS SOON AS POSSIBLE?

There are compelling reasons why lawyers who lobby should register their activities in a timely fashion. Here are a few of those reasons:

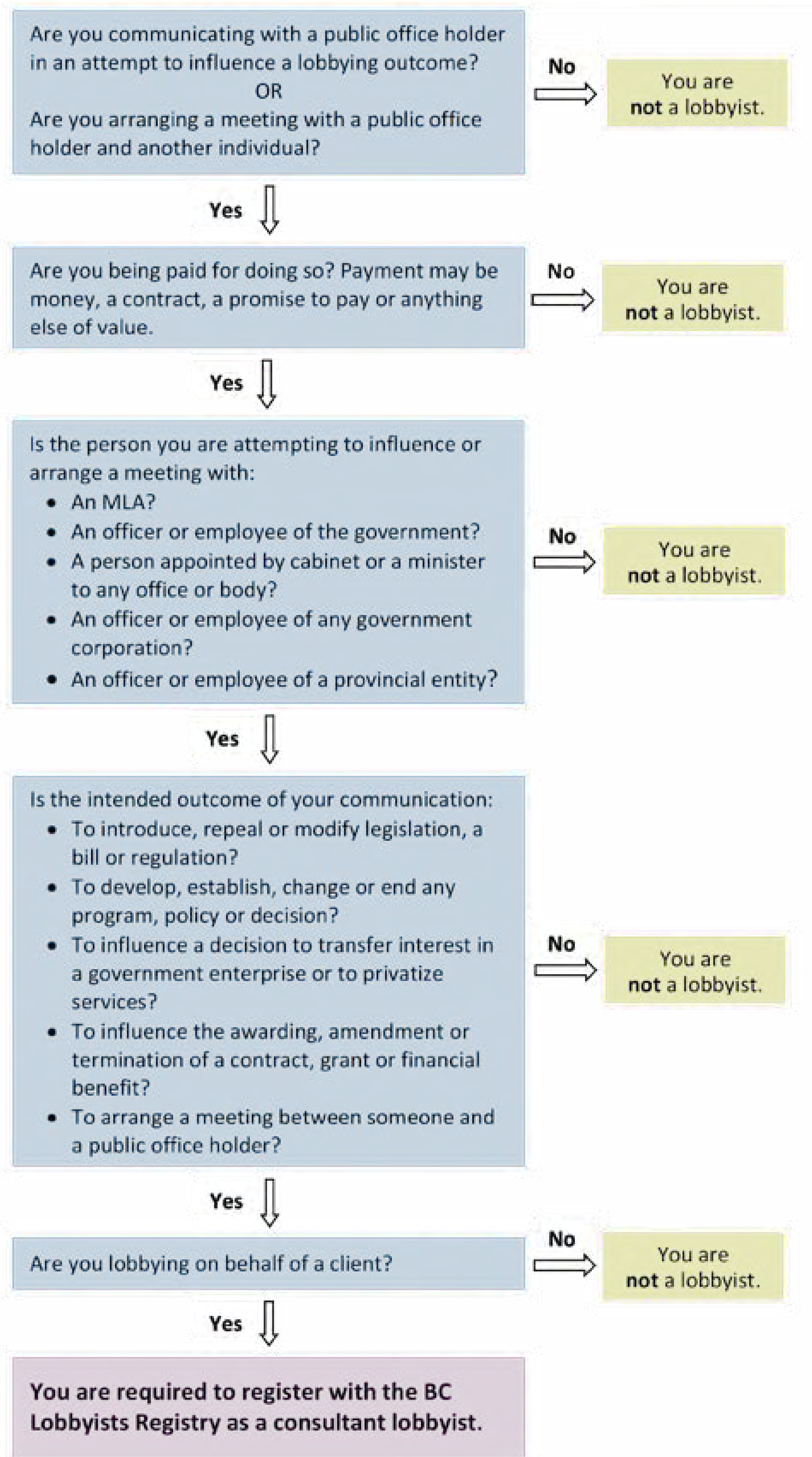
WHEN DO I NEED TO REGISTER?

Many consultant lobbyists are confused about when an undertaking to lobby officially begins.

Here is an example: It's February 2, and you just met with a new client who wants to contract your services. You discuss the details, including the intention to set up or attend meetings with public office holders on behalf of your client. You draft a contract with an effective date of February 14. You and your client sign the agreement on February 10. You know a business analysis still needs to be conducted before any work can begin, and you are unsure whether the business relationship with the client will pan out. In this scenario, the registration must be submitted to the Lobbyists Registry by February 12. Otherwise you risk contravening the LRA and may face an investigation and subsequent penalty.

If the intention to lobby is implied in an agreement with your client — even if you are unsure of the outcome — you must register the "undertaking to lobby" within 10 days of your agreement.

This is not the date when the agreement is signed. It's also not the effective date of the agreement. Rather, it's when you reach a "meeting of the minds" between you and your client that your activities may include any activities that meet the definition of "lobby" in the LRA.



1. It's the law.

Under the LRA, lobbyists who meet the criteria must, within 10 days of reaching an agreement to lobby on behalf of a client, submit a return to the online public registry maintained by the ORL. If you are uncertain about whether your actions constitute lobbying or if you have questions about the registration process, contact the ORL for assistance.

2. It supports transparency.

The purpose of the LRA is to promote greater transparency and accountability in the lobbying of public office holders. Just as individuals, groups or companies have a legitimate right to communicate with elected or appointed government officials, citizens also have the right to know who is seeking to influence government decisions.

3. It can help preserve your professional reputation.

The ORL regularly conducts environmental scans of provincial media and other sources of information. When we discover unregistered lobbying activity, we conduct a compliance review that may lead to an investigation and potential fines. Being meticulous about the disclosure and reporting requirements of the LRA will help you avoid the possibility of damage to your reputation and, by extension, your client's.

4. It can open doors.

In an era where transparency in government activities is highly valued by the citizens of BC, public office holders and the general public have an interest in knowing who is engaged in lobbying activities. There are other advantages to being registered in the Lobbyists Registry. Your targets can easily check the online registry to see if you have registered, view your undertakings and familiarize themselves with your clients' projects. Prospective clients may also use the registry to search for a consultant lobbyist to represent them.

5. It's a positive step toward compliance with the LRA.

The ORL undertakes compliance reviews, initiates investigations and prescribes penalties. When lobbyists are found to be in contravention of the LRA, investigations are tabled in the provincial legislature,

posted on the ORL website, and published in the newsletter, *Influencing B.C.* Registering your lobbying activities is an important step toward maintaining compliance with the LRA and avoiding potential penalties and publication.

FOR MORE INFORMATION

Visit the ORL website (www.lobbyistsregistrar.bc.ca) for more information about the following resources:

- **"A Guide to Investigations"** outlines the steps the ORL takes when conducting investigations. It was published to provide lobbyists with information about what to expect if they appear to be non-compliant with the LRA — and what is expected of them.
- **"Quick Tips for Consultant Lobbyists"** offers ways to easily navigate the Lobbyists Registry to complete a registration.
- **The Future of Lobbying**, a one-day conference to be hosted January 22, 2016 in Vancouver, will offer lobbyists tips and educational panel discussions.

The Registrar of Lobbyists for British Columbia is appointed as an independent officer of the Legislative Assembly. The Information and Privacy Commissioner for British Columbia, Elizabeth Denham, also serves as the Registrar of Lobbyists.

Lawyers are encouraged to read the *Lobbyists Registration Act* regarding their particular circumstances and situations where the Act may or may not apply.

Feature – Access to Justice ... from page 8

year. But in all seriousness, you're absolutely right; timelines are important. We're looking at a three-year horizon to make some meaningful impact.

Funding alone, of course, will not solve the problem, but nevertheless it's an important part of access to justice. Will this committee be looking at finding new sources or improving current sources of funding?

Chief Justice Bauman: We may identify areas where needs could be met by more funding, but we're not a funding applicant. We're not forwarding funding initiatives or requests to government.

David Crossin: The institutions will have their own initiatives in terms of funding, but I think more and more there's a recognition that innovation is equally important.

You've said that the committee is committed to action-oriented goals. What does that mean?

David Crossin: It means we facilitate a meeting of minds where ideas can coalesce around specific issues that we can actually go out and do something about. Not write a report about it, but do something about. Each participant's marching orders are to take those ideas back to their institutions and say, this is how we believe we can collaborate on this particular issue to achieve this result and this is what we have to do in our institution to participate in that effort. And Access to Justice BC will guide and lead that effort.

What will success look like? If we're sitting in these chairs three years from now, how will we know whether the committee has succeeded?

Chief Justice Bauman: Performance measurement is a very difficult area, particularly in the justice system. But remember our three aims: we're going to be asking, has the outcome for individuals users of the system improved as a result of our efforts? Has the outcome for British Columbians generally improved as a result of our efforts? And most importantly, is that initiative sustainable in the future? ❖

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
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- client relationships and lawyer-lawyer relationships
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All communications with Law Society Practice Advisors are strictly confidential, except in cases of trust fund shortages.

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Lawyers Assistance Program (LAP) – Confidential peer support, counselling, referrals and interventions for lawyers, their families, support staff and articled 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.
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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.

INADEQUATE QUALITY OF SERVICE

A lawyer provided services to or on behalf of clients in connection with transactions purportedly relating to the sale of historic foreign bonds, even though circumstances raised a suspicion that the transactions may be fraudulent or illegal. He should have made inquiries or conducted due diligence to determine that the transactions were legitimate or declined to provide the services. The lawyer also failed to advise the clients that the transactions may be fraudulent or illegal and, as a result, they should cease their involvement, contrary to Chapter 3, Rule 3 of the *Professional Conduct Handbook* then in force. A conduct review subcommittee discussed with the lawyer his failure to fulfill his duty to obtain sufficient knowledge of facts and law before advising his clients (Ch. 1, Canon 3(1) of the Handbook); his duty to serve his clients in a conscientious, diligent manner (Ch. 3, Rule 3); his duty to assist in maintaining the honour and integrity of the legal profession (Ch. 1, Canon 5(1)); his duty not to engage in dishonourable or questionable conduct (Ch. 2, Rule 1); and his duty not to become involved in suspicious activities without first being satisfied on an objective basis that the activities were legitimate. The lawyer admitted that his conduct was inappropriate. He should have refused the retainer and advised his clients against participating in the scheme. The lawyer has taken steps to avoid being involved in this type of conduct in the future and is confident he will not repeat the error. The subcommittee was satisfied that the lawyer will not repeat the same mistake. (CR 2015-22)

A lawyer failed to provide his clients with adequate notice of his holiday plans and failed to make provisions that would allow his clients to complete their real estate transaction as close as possible to the completion date, contrary to rule 3.2-1 of the *Code of Professional Conduct for British Columbia*. The lawyer acknowledged that he failed to provide adequate notice, including notice that his holidays started the day after a scheduled completion date. A conduct review subcommittee noted that lawyers have a duty to communicate effectively with their clients and should ensure that matters are attended to within a reasonable time frame. If a lawyer can reasonably foresee undue delay or a disruption of legal advice or services, the lawyer has a duty to inform the client in advance, so the client can make an informed choice about his or her options. Given the serious consequences if a client breaches a contract for purchase or sale of property, the lawyer should have formulated a contingency plan allowing the clients to complete the transaction as close to the completion date as possible once his holidays began. The lawyer agreed that it was important to communicate more effectively with his clients and, further, to advise his clients of his vacation plans. He acknowledged his misconduct and will take steps to improve communications with his clients and to ensure their interests are properly represented in his absence. (CR 2015-23)

THREATENING BEHAVIOUR

Shortly after moving into a strata residence, a lawyer exercised poor judgment in his interactions with his neighbours involving a private strata dispute. He acted in a threatening and retaliatory manner, contrary to Chapter 2, Rule 1 of the *Professional Conduct Handbook* then in force and rule 2.2 of the *Code for Professional Conduct for British Columbia*. A conduct review subcommittee found that the lawyer's response to conflict was immature, disruptive and completely inconsiderate of the neighbours' rights to enjoy their homes. The lawyer obtained counselling and is now aware that his behaviour was hurtful. He has learned coping mechanisms to deal with the stress of living in a strata complex. His wife is now solely responsible for strata issues while he concentrates on his law practice. The subcommittee expressed concern to the lawyer that he learn to recognize the warning signs of stress and the importance of reaching out for assistance. The subcommittee also explained the concept of progressive discipline, and that the lawyer should be aware that, if he fails to improve his conduct, a citation may be issued in respect of any further misconduct. (CR 2015-16)

TRUST AND GENERAL ACCOUNTING

A lawyer wrote a cheque on his trust account to pay an office

expense, contrary to Law Society Rule 3-56(1). His explanation was that the chequebooks for his general account and trust account were very similar and it was a simple mistake. He discovered the resulting trust shortage when preparing his monthly reconciliation. The lawyer took several months before reporting the shortage to the Executive Director and eliminating the trust shortage, instead of doing so immediately as required by Rules 3-66(1) and (2). The lawyer readily conceded that he should have notified the Executive Director immediately, and that he did not review the relevant rules until he was able to repay the trust account. He has put in place some simple safeguards to easily identify the chequebooks. A conduct review subcommittee told the lawyer that any future similar issues with his trust account would be handled with greater severity. (CR 2015-17)

DUTY TO THE COURT

During a trial management conference in a family matter, a lawyer did not candidly respond to the judge's questions about an affidavit and a missing exhibit involving her client's financial disclosure. The lawyer acknowledged that, in failing to be forthright with the court, her conduct was contrary to rule 2.1-2 of the *Code of Professional Conduct for British Columbia*. A conduct review subcommittee advised the lawyer that her conduct was inappropriate, as her duty of candour to the court is part of her overriding obligation to act with honesty and integrity in all aspects of both her professional and personal life. The lawyer stated that, if faced with a similar situation, she would be aware of her professional obligation and in all likelihood would ask the court for some time to gather her thoughts to ensure that she was not being less than forthright. The lawyer expressed remorse for her actions and acknowledged her misconduct. (CR 2015-18)

LAND TITLE ACT ELECTRONIC FILINGS

A lawyer failed to comply strictly with the *Land Title Act*, Law Society Rule 3-56(3.2)(b) and rule 6.1-5 of the *Code of Professional Conduct for British Columbia* regarding the use of his personal digital signature in electronic filings. During a compliance audit of the lawyer's practice, it was discovered that he had permitted his assistant to routinely affix his digital signature to documents that were submitted to the Land Title and Survey Authority. The lawyer promptly admitted his misconduct to Law Society staff during the compliance audit and has taken steps to amend his practice. A conduct review subcommittee accepted the lawyer's explanation that he was issued the password some years prior to actually using it. When electronic filing subsequently became compulsory, he did not recall the terms and conditions upon which the password was issued, until it was brought to his attention by Law Society staff. The subcommittee reminded the lawyer of his obligations to understand fully and abide by any terms and conditions that are imposed upon or accepted by him in any area of his practice. (CR 2015-19)

BREACH OF UNDERTAKING/TRUST CONDITION

A lawyer breached a trust condition imposed by an unrepresented opposing party, by accepting funds in payment of a certificate of costs registered as a judgment against the unrepresented party's company's mortgages, but failing to advise his client's trustee in bankruptcy that payment had been made and failing to discharge the judgment, contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia.* A conduct review subcommittee advised the lawyer that trust conditions are equivalent to undertakings and should be clear, unambiguous, explicit and communicated in writing. A lawyer should not impose or accept trust conditions that are unreasonable, and when a lawyer does accept property subject to a trust condition, the lawyer must fully comply with such conditions even if they subsequently appear unreasonable. The lawyer acknowledged his errors and admitted that his conduct fell short of the standard required of him. He will give greater care and attention to his correspondence and to trust conditions and undertakings in particular. He will only offer and accept trust conditions that are clear and unambiguous and will subsequently comply with the agreed conditions under all circumstances. The lawyer will also make every effort to properly remove himself from litigation files that become irrevocably antagonistic and will regularly refresh his knowledge and understanding of the rules governing his conduct as a lawyer. (CR 2015-20)

INCIVILITY

Following an examination for discovery, a lawyer made several uncivil comments toward an unrepresented opposing party, including using profanities in an elevated and condescending tone, contrary to rules 2.2-1, 7.2-1 and 7.2-4 of the *Code of Professional Conduct for British Columbia*. A conduct review subcommittee felt that the lawyer's conduct was inexcusable. The lawyer acknowledged his misconduct and said that the behaviour was out of character and he has learned his lesson. His manner before the subcommittee was sincere, especially when describing how humiliating it was to read the transcript and the demeaning way he spoke to the opposing party. The subcommittee found it troubling, however, that he had not taken any steps to gain more insight into the cause for his behaviour in order to prevent its recurrence. With regard to public confidence and the harm done to the opposing party, the subcommittee hoped that the opportunity the opposing party had to attend the conduct review to explain his experience and the subcommittee's report demonstrated to him that the Law Society views this conduct seriously. The subcommittee further hoped that, in some measure, this process betters the woeful lack of a sincere and timely apology from the lawyer. (CR 2015-21) ❖

Discipline digest

BELOW ARE SUMMARIES with respect to:

- Leonides Tungohan
- Thomas Paul Harding
- Stanley Chang Woon Foo
- David Massao Saito
- Richard Craig Nielsen
- Ronald Wayne Perrick
- Krista Margret Jessacher
- David Jacob Siebenga

For the full text of discipline decisions, visit the Hearing decisions section of the Law Society website.

LEONIDES TUNGOHAN

Vancouver, BC

Called to the bar: May 1, 2008

Discipline hearing: April 15 and 16 and September 15 to 17, 2014, and April 17, 2015

Panel: Miriam Kresivo, QC, Chair, Bruce LeRose, QC and Lois Serwa

Decisions issued: January 14 (2015 LSBC 02) and June 5, 2015 (2015 LSBC 26)

Preliminary question: April 15, 2014 (2014 LSBC 41)

Bencher: Tony Wilson

Review on jurisdiction (written submissions): March 10, 2015

Review board: Lynal Doerksen, Chair, James Dorsey, QC, Martin Finch, QC, Sharon Matthews, QC, Laura Nashman, Karen Nordlinger, QC and Lance Ollenberger

Review board decision issued: July 9, 2015 (2015 LSBC 33)

Counsel: Alison Kirby for the Law Society; Leonides Tungohan on his own behalf

FACTS

Between October 2009 and March 2010, Leonides Tungohan received trust funds from a client in a real estate litigation matter, but failed to handle the funds in accordance with Part 3, Division 7 of the Law Society Rules.

Tungohan failed to notify the Law Society of the circumstances of a monetary judgment granted against him in April 2011 and his proposal for satisfying the judgment, contrary to Rule 3-44.

Between December 2009 and May 2011, Tungohan withdrew funds from his pooled trust account purportedly in payment of his fees without first preparing and delivering a bill to his clients, contrary to Rules 3-56 and 3-57(2).

Between December 2009 and December 2010, he failed to maintain books, accounts and records in accordance with Part 3, Division 7 of the Rules.

Also, between December 1 and December 31, 2009, Tungohan made payments from his trust funds when his trust accounting records were not current, contrary to Rule 3-56(1.2).

DETERMINATION

The panel found that Tungohan's failure to report an unsatisfied monetary judgment, his numerous breaches relating to the withdrawal of trust funds and his failure to maintain appropriate books, accounts and records of client funds are marked departures from the conduct expected of lawyers and constitute professional misconduct.

DISCIPLINARY ACTION

The panel was concerned that Tungohan's misconduct related to the handling of trust funds and failure to maintain books, accounts and records appropriately. Throughout the hearing, he did not appear to understand his obligations under the trust accounting rules, which are key to the protection of the public.

The panel ordered that Tungohan:

1. pay a fine of $3,000;
2. provide quarterly reports from an accountant to the Law Society; and
3. pay costs of $29,200.

PRELIMINARY QUESTION

Prior to the commencement of the hearing, Tungohan made an application for a determination of a preliminary question. The application was heard by a Chambers Bencher at a pre-hearing conference on April 15, 2014.

Tungohan argued that certain allegations in the citation had already been ruled upon and that for a formal hearing panel to rule on them again would amount to an abuse of process and a violation of procedural fairness. He submitted that a judgment had already been made by the Practice Standards Committee. The Chambers Bencher disagreed, noting that the committee is not an adjudicative body and does not have the ability to make a finding of professional misconduct.

That application was denied and the hearing proceeded.

DECISION OF REVIEW BOARD ON JURISDICTION

Tungohan sought a review of the decision of the Chambers Bencher in the pre-hearing conference. The issue at hand was whether a review by a review board at that stage of the proceeding was permissible under the Act and Rules governing the Law Society.

Under the administrative scheme established in the Act and the subordinate procedure for panel proceedings established by the Rules, a decision by a single Bencher in a pre-hearing conference on a preliminary question is not an "adverse determination" from which flows panel imposition of mandatory and discretionary consequences for the lawyer named in a citation.

Consequently, the decision is not one Tungohan can apply to review, and his Notice of Review was quashed.

Sharon Matthews, QC gave a separate decision concurring with the majority of the review board but disagreeing with the analysis. Matthews believed that, on disciplinary matters, only decisions of panels hearing a citation are reviewable under s. 47 of the *Legal Profession Act*. Other panel decisions, determinations or orders are covered by the appeal rights found in s. 48, which provides for appeals to the Court of Appeal.

THOMAS PAUL HARDING

Surrey, BC

Called to the bar: August 31, 1990

Discipline hearing: July 16 and 17, 2014 and February 20, 2015

Panel: Sharon Matthews, QC, Chair, Ralston S. Alexander, QC and John Lane

Decisions issued: November 3, 2014 (2014 LSBC 52) and June 5, 2015 (2015 LSBC 25)

Counsel: Robin McFee, QC for the Law Society; Gerald Cuttler for Thomas Paul Harding

FACTS

In late 2006 or early 2007, Thomas Paul Harding was retained by a client in a matter related to a motor vehicle accident. At that time, the case was scheduled to proceed to trial within a month or two but was adjourned due to the client's change of counsel shortly before that trial setting. With the exception of one update meeting with the client, Harding took no further steps on the matter for over four years. The single meeting with the client yielded notes of one-half of a page, but no plan and no action to move the case forward.

When Harding took the step of filing a notice of intention to proceed after 49 months, the defendant brought an application to strike the claim for want of prosecution. Harding filed evidence on the application that the delay was his fault, and not as a result of the instructions of his client, who had always instructed him to press forward with the matter.

Harding also did not recommend to the client that she obtain independent legal advice with regard to the application.

Harding did not report the want of prosecution application to the Lawyers Insurance Fund. He explained that he did not do so as he did not think there was a reasonable chance that the application would succeed. The application was, in fact, dismissed by the judge.

Harding was also counsel for two plaintiff clients in two separate motor vehicle accidents that occurred in June 1999 and January 2003. In October 2006, the defendants in both actions (the "joint defendants") brought applications for orders that various non-parties produce documents and information about the plaintiff clients. In March 2007, Harding filed Notices of Motion seeking dismissal of the joint defendants' applications, as well as findings of contempt of court for breaching the "implied undertaking" of confidentiality for releasing documents obtained through discovery.

In late October 2006, counsel for the joint defendants sent letters to Harding advising that, if the contempt application was dismissed, they would be seeking special costs from his clients and/or from him. The contempt application was dismissed in March 2007, with the court ordering written submissions to address the issue of costs. In May 2007 Harding arranged for a lawyer to provide independent legal advice and representation to his clients. He did not report the potential claim against him for special costs to the Lawyers Insurance Fund.

While the special costs issue was still outstanding, one of the clients entered into a settlement agreement. Harding did not advise the client that one of the terms of the agreement was that the joint defendants not seek costs against him as her solicitor in the contempt application, and he did not advise her to seek independent legal advice.

In March 2010, the court awarded special costs against the other client, but declined to order special costs against Harding.

DETERMINATION

The panel concluded that Harding failed to serve his client in the first motor vehicle matter in a conscientious, diligent and efficient manner in circumstances that amount to professional misconduct.

Further, failing to recommend that his client obtain independent legal advice was not consistent with his obligation to put his client's interests first and amounts to professional misconduct.

In the second matter, the panel found that, while the claim for special costs did create circumstances where Harding had a financial interest in the outcome, there was no conflict of interest and his conduct did not amount to professional misconduct.

Finally, Harding's failure to make reports to the Lawyers Insurance Fund in all three matters was not found by the panel to be professional misconduct.

DISCIPLINARY ACTION

In the panel's view, the gravity of the two allegations against Harding on which professional misconduct was determined is an important factor in setting disciplinary action. Failure to represent a client conscientiously, diligently and efficiently is a serious breach of a lawyer's professional duties and responsibility. So, too, is failure to refer a client for independent legal advice when required to do so.

The panel also considered Harding's past record, which consists of two previous findings of professional misconduct and two conduct reviews.

The need for deterrence and the need to ensure that the public understands that the Law Society takes such conduct seriously mandate a significant fine for this case. The panel ordered that Harding pay:

1. a fine of $6,000; and
2. court reporting costs of $441.

STANLEY CHANG WOON FOO

Vancouver, BC

Called to the bar: November 10, 1995 (BC); June 24, 1994 (Ontario); June 2010 (New York State)

Review: December 8, 2014

Benchers: Nancy Merrill, Chair, Satwinder Bains, Lynal Doerksen, Martin Finch, QC, Dean Lawton, A. Cameron Ward and Tony Wilson

Decision issued: July 9, 2015 (2015 LSBC 34)

Counsel: Carolyn Gulabsingh for the Law Society; Richard Gibbs, QC for Stanley Chang Woon Foo

BACKGROUND

In September 2011, while at a courthouse attending to client matters, Stanley Chang Woon Foo made discourteous or threatening remarks to a social worker from the Ministry of Children and Family Development. Specifically, his words were that he "should shoot" her because she "takes away too many kids."

A hearing panel found that Foo's conduct was more than just a mere failure to exercise ordinary care and that he had committed professional misconduct. The panel ordered that Foo be suspended for two weeks and pay costs (facts and determination 2013 LSBC 26; disciplinary action 2014 LSBC 21; Discipline digest, Summer 2014 *Benchers' Bulletin*).

Foo made an application for a review of that decision. Since Foo had admitted to the conduct, the issues in dispute were whether the facts constituted professional misconduct and whether the hearing panel was correct in the disciplinary action it imposed.

DECISION

Foo's counsel submitted that the comments in the courthouse were nothing more than "playful banter" and, although awkward, were an attempt to be "funny." The Law Society argued that the comments were a "marked departure" from the conduct expected of its members and, as such, were professional misconduct.

The Benchers on the review agreed with the Law Society's position and upheld the decision of the hearing panel. While lawyers certainly have the freedom to express themselves as protected by *Charter* rights, and should also be permitted a sense of humour, their actions, words and conduct must follow that required and expected of a lawyer. Such conduct in a courthouse before the start of a sensitive trial is not befitting the professional expectations placed on lawyers and the finding that it was professional misconduct on Foo's part was upheld.

The Benchers dismissed Foo's application and affirmed his two-week suspension plus costs as ordered by the hearing panel. The Benchers also ordered Foo to pay the costs of the review.

DAVID MASSAO SAITO

North Vancouver, BC

Called to the bar: June 12, 1987

Non-practising membership: August 27, 2013

Ceased membership: January 1, 2015

Agreed statement of facts: August 17, 2015

Counsel: Carolyn Gulabsingh for the Law Society; Henry Wood, QC for David Massao Saito

FACTS

Between 2007 and 2012, while he was an officer and employee

lawyer of a firm, David Massao Saito:

- submitted medical and other expense claims and received payment from the firm for reimbursement, when he ought to have known he was not entitled to reimbursement of the full amount;
- caused the firm to pay for disbursements incurred on files relating to the estates of his family members when the firm was not obligated to pay the disbursements; and
- deposited personal funds into the firm's pooled trust account and maintained those funds in the pooled trust account, contrary to the Law Society Rules.

ADMISSION

Saito admitted that his conduct constituted professional misconduct and gave an undertaking. His admission was made to the Discipline Committee under Law Society Rule 4-29. This rule provides for a process whereby a respondent can admit misconduct and the citation is resolved without a hearing.

The Discipline Committee accepted Saito's admission and his undertaking for a period of five years, commencing on September 25, 2015:

1. not to apply for reinstatement to the Law Society;
2. not to apply for membership in any other law society (or like governing body regulating the practice of law) without first advising the Law Society in writing; and
3. not to permit his name to appear on the letterhead of, or otherwise work in any capacity whatsoever for, any lawyer or law firm in BC, without obtaining the prior written consent of the Discipline Committee.

RICHARD CRAIG NIELSEN

Vancouver, BC

Called to the bar: September 5, 2001

Discipline hearing: April 16, 2015

Panel: W. Martin Finch, QC, Chair, Ralston S. Alexander, QC and Jory C. Faibish

Decision issued: September 3, 2015 (2015 LSBC 41)

Counsel: Carolyn Gulabsingh for the Law Society; Richard Craig Nielsen on his own behalf

FACTS

In December 2009, Richard Craig Nielsen was appointed by the Legal Services Society to serve as counsel for a mother in a family matter. Nielsen was only on retainer by the client for a few days before the client terminated the retainer. In the course of representing his client, Nielsen had been interviewed by a detective of the Vancouver Police Department and expressed concern about the client's actions to a sergeant at the police department.

The question for the panel was whether Nielsen disclosed confidential information about his client in his conversations with the police and, if so, whether that disclosure was contrary to the *Professional Conduct Handbook* then in force.

DETERMINATION

The hearing panel found that Nielsen was entitled to use his professional judgment in determining the best method to achieve the goals of his client. Nielsen had determined that an important step in the criminal investigation was the interview scheduled between the VPD and his client. He felt, properly in the view of the panel, that in order for the interview to produce the best possible result, some preparation of the investigating police officer was appropriate. Consequently, the comments made were within the implied consent provided by Nielsen's client to do all that was necessary to advance her cause.

The hearing panel determined that Nielsen had not committed any act of professional misconduct. The Law Society had the burden of demonstrating, on the balance of probabilities, that Nielsen had professionally misconducted himself, but the Society did not meet the standard required.

DECISION

The panel dismissed the citation with costs payable to Nielsen.

RONALD WAYNE PERRICK

North Vancouver, BC

Called to the bar: May 17, 1971

Discipline hearing: June 16 to 18, 2014 and April 28 and July 6, 2015

Panel: David Mossop, QC, Chair, John M. Hogg, QC and Linda Michaluk

Decisions issued: September 3, 2014 (2014 LSBC 39) and September 8, 2015 (2015 LSBC 42)

Counsel: Kieron Grady for the Law Society; Ronald W. Perrick on his own behalf

FACTS

In 2002 and in 2004, Ronald Wayne Perrick represented a client in matters arising from two motor vehicle accidents.

Perrick failed to keep the client reasonably informed by failing to provide her with copies of material correspondence sent to him about the accidents or inform her of the contents of that correspondence. He failed to disclose to the client the service of a Demand for Discovery of Documents dated December 14, 2004 and her obligations pursuant to that demand. Also, Perrick did not disclose that a mediation had been scheduled for September 19, 2008 until after the date was cancelled.

Perrick did not promptly disclose to his client that opposing counsel was seeking to have the claims dismissed and adequately explain to her the chances of that occurring. He also failed to provide the client with copies of application materials from opposing counsel in February 2009 and July 2009 seeking to dismiss her claims.

Further, he failed to promptly file statements of claim in respect of both accidents as required by the Supreme Court Rules. Nor did he take substantive steps, promptly or at all, to advance his client's claims to settlement or trial.

Finally, Perrick failed between 2004 and 2009 to reply with reasonable promptness to some or all of the letters from opposing counsel that required a response, contrary to the *Professional Conduct Handbook*, then in force.

ADMISSION AND DISCIPLINARY ACTION

Perrick admitted to professional misconduct for failing to serve his client in a conscientious, diligent and efficient manner and for failing to reply reasonably promptly to correspondence from opposing counsel.

The panel found that Perrick showed, not only a marked departure from the quality of service expected, but also a fundamental failure to provide any meaningful service to his client. It was significant that a master reduced Perrick's fee from $3,866.96 to $500 and that the client was required to launch a negligence suit against him.

The hearing panel took into consideration a prior record of professional misconduct and noted, in particular, the serious findings of improper use of powers of attorney and the backdating of assignment of shares (see Discipline digest, Fall 2014 *Benchers' Bulletin*). Perrick has applied for a review of that decision.

The hearing panel accepted Perrick's admission of misconduct and ordered that he:

1. be suspended for 30 days; and
2. pay costs of $19,315.81.

Perrick has applied for a review of the panel's decision.

KRISTA MARGRET JESSACHER

Kelowna, BC (formerly of Vancouver, BC)

Called to the bar: May 21, 1999

Discipline hearing: September 2, 2015

Panel: Philip Riddell, Ralston S. Alexander, QC, and Glenys Blackadder

Oral reasons: September 2, 2015

Decision issued: September 28, 2015 (2015 LSBC 43)

Counsel: Kieron Grady for the Law Society; no one on behalf of Krista Margret Jessacher

FACTS

In July 2010, as a non-practising member of the Law Society, Krista Margret Jessacher signed an undertaking with the Law Society not to practise law. In December 2014 the Law Society received a complaint about Jessacher's conduct in relation to a family law matter.

The Law Society wrote to Jessacher in February 2015 seeking her response to the complaint, and interviewed her in March. During the course of the interview, Jessacher refused to answer several questions and was directed to supply copies of certain documents. In a subsequent letter, Jessacher was given until April 8 to respond to the unanswered questions and provide the documents.

On April 9 Jessacher sent the Law Society her affidavit sworn April 2, 2015, which had been filed in the family matter involving the complainant. In the affidavit, in reference to the interview, she stated that she would not answer questions that would not benefit the client and that she would not participate any further in the investigation process, asserting that the Law Society had all the information needed to resolve the complaint.

The Law Society sent a second letter requesting the same information and extending the deadline to respond to May 8, 2015. Jessacher replied with another letter, but did not respond to the specific requests of the Law Society.

In June, the Law Society issued a citation against Jessacher for failing to provide a full and substantive response concerning the investigation, contrary to both the Law Society Rules and the *Code of Professional Conduct for British Columbia*.

DETERMINATION

As of the date of the hearing, Jessacher had not provided a substantive response to the Law Society's requests. She also failed to appear before the hearing panel. The panel found that Jessacher demonstrated a persistent failure to respond to the Law Society, and did not provide any explanation for her failure to respond.

The panel determined that Jessacher's failure to respond shows a marked departure from the conduct expected of a lawyer and constitutes professional misconduct.

DISCIPLINARY ACTION

When considering the range of fines for failure to respond, the panel noted that Jessacher's failure to respond frustrated the ability of the Law Society to investigate allegations that she is engaged in the unauthorized practice of law and is in breach of her undertaking to the Society, her continued refusal to respond, the need for general and specific deterrence and the requirement to ensure public confidence.

The panel ordered that Jessacher pay:

1. a fine of $5,000; and
2. $1,335.68 in costs.

DAVID JACOB SIEBENGA

Surrey, BC
Called to the bar: June 12, 1987
Discipline hearing: July 23, 2015
Panel: David Mossop, QC, Chair, David Layton and Carol J. Gibson
Oral decision (facts and determination): July 23, 2015
Decision issued: September 30, 2015 (2015 LSBC 44)
Counsel: Kieron Grady for the Law Society; Robyn Jarvis for David Jacob Siebenga

FACTS

Between March and June 2012, David Jacob Siebenga acted for a client in two court actions. The first was a debt action in which Siebenga filed affidavits attesting that his client had no legal or beneficial interest in a piece of property. In the second action, Siebenga filed an amended notice of civil claim asserting that his client had an equitable interest in the same piece of property. The court held that this was an abuse of the court process and awarded special costs against Siebenga in the amount of $6,000.

The court ruled that, in the face of the affidavit, which Siebenga acknowledges he took on instructions from his client, Siebenga ought not to have filed the notice of civil claim. The sworn affidavit evidence of his client, and the allegations in the notice of claim, are in stark contrast. He filed this notice of claim just six weeks after the affidavit was sworn. The claim being advanced was untenable, the filing of the claim was an abuse of process, and in filing such a claim, Siebenga was in breach of his duty to the court. The client may have had views of his entitlement to the property, but those were views that were not capable of being legitimately asserted. Siebenga ought not to have taken his client's instructions to commence the action.

ADMISSION AND DISCIPLINARY ACTION

Siebenga recognized that the position he asserted on behalf of his client in the second action was untenable given the position he asserted on behalf of his client in the first action and that doing so constituted an abuse of court process. The Law Society accepted Siebenga's assertion that he did not intend to abuse the court process.

Siebenga admitted, and the panel agreed, that his conduct amounted to professional misconduct.

Given the seriousness of the misconduct, Siebenga's previous conduct record and the need for specific and general deterrence, the panel found that a 30-day suspension was the appropriate disciplinary action.

The panel ordered that Siebenga:

1. be suspended for 30 days; and
2. pay costs of $6,172.50.❖

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