

of their application.

The hearing panel majority suggested that the determination of character would come later when the decision of the criminal proceedings was released and when the applicant applies to be admitted to the bar. The postponement of the test for character is not permitted by the law and the *Legal Profession Act* does not leave room for improvement during articles. The determination of the applicant's character must occur at the time of the hearing.

The review board examined the facts to determine if the applicant had met the burden upon him to demonstrate he was a person of good character and repute. The applicant was not entirely candid in his testimony during the divorce proceedings. His apology for the physical altercation, if it did occur, was not consistent with his subsequent conduct in commencing a small claims action within a month or two. His abusive and profane text messages to his wife and his threat to report the wife's uncle to the authorities might be considered conduct unbecoming a lawyer. He suggested to his counsel that his true feelings regarding his relationship with his wife be kept confidential until after the criminal proceedings. He was prepared to deceive his wife about the degree of interest he had in repairing the relationship in order to persuade her to soften her approach to the criminal charges he was facing. The evidence showed that the finding made by the hearing panel that the applicant was of good character was not reasonable.

The review board rejected an application by Applicant 8 to admit additional evidence as the decision pertained to February 2015 and there was no probative value in evidence dating from and after July 2015.

The review board determined that the applicant had not met the burden upon him to demonstrate he was of good character. The review board reversed the decision of the majority hearing panel and rejected the application of Applicant 8 for enrolment as an articulated student.

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## APPLICANT 9

Hearing (application for enrolment): December 15-16, 2015 and February 2, 2016

Panel: Jamie Maclaren, chair, Dr. Gail Bellward and Sandra Weafer

Decision issued: April 25, 2016 (2016 LSBC 14)

Counsel: Gerald Cuttler for the Law Society; Henry C. Wood, QC for Applicant 9

## BACKGROUND

On October 29, 2014, Applicant 9 applied for enrolment as an articulated

student in the Law Society admission program. On May 6, 2015, the Credentials Committee ordered a hearing to determine whether the applicant meets the standard for enrolment as an articulated student under section 19(1) of the *Legal Profession Act*.

The hearing panel inquired into a number of circumstances.

On or about September 22, 2006, the applicant's driver's licence was suspended for 30 days following two marijuana-related incidents. In one he was found by police to be smoking marijuana in his vehicle; in the other he was issued a 24-hour driving prohibition for operating his vehicle while under the influence of marijuana.

In summer 2009, while working as a pizza delivery person in Kamloops, the applicant was friendly with the owners' 15-year-old daughter. Her mother discovered indecent messages and photographs exchanged between her daughter and the applicant, and contacted police. The applicant pleaded guilty to the summary conviction offence of Internet luring on August 23, 2011. He was sentenced to a one-year conditional sentence with a probation order. His sentence included an automatic order that he comply with the *Sex Offender Information Registration Act* for a period of 10 years.

In November 2014 the applicant attended a social evening organized by the UBC Law Students' Society at which he flung the contents of his alcoholic beverage at a classmate's back. As a result, he was banned from future Law Students' Society social events.

The following month, the applicant was subjected to a roadside alcohol test for which he registered a "fail" status. His vehicle was impounded, and he received a 90-day driving prohibition.

## DECISION

After considering all of the evidence and submissions, the hearing panel found that the applicant failed to establish, on a balance of probabilities, that he is fit to be enrolled as an articulated student.

An unsuccessful applicant for enrolment may reapply for enrolment two years after the decision denying the application or after an earlier date set by the panel. The panel did not consider it necessary for the applicant to wait two years before reapplying for enrolment, and therefore reduced the applicant's minimum time period for re-application to 12 months from the date of the panel's decision. ❖

## Discipline digest

BELOW ARE SUMMARIES with respect to:

- Thomas Paul Harding
- Jason Bawa Mann
- Robert Collingwood Strother
- Kevin Alexander McLean
- Krista Margret Jessacher
- James Leslie Straith
- Gavin Clark Crickmore
- Melissa Ann Daniels

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

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### THOMAS PAUL HARDING

Surrey, BC

Called to the bar: August 31, 1990

Review date: May 14, 2015

Review board: David Mossop, QC, chair, Don Amos, Lynal Doerksen, Richard Lindsay, QC, Lois Serwa, Tony Wilson and Donald Silversides, QC

Decision issued: October 20, 2015 ([2015 LSBC 45](#))

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

#### BACKGROUND

In June 2012, Thomas Paul Harding agreed to assist his mother-in-law with a possible claim arising from a motor vehicle accident. Her vehicle had been towed to a towing facility where, the day after the accident, Harding arrived intending to take photos of the damage to the vehicle. Harding got into a dispute with an employee over his right to photograph the vehicle. He moved his car to block access to the storage area, called the police and said he needed “someone there to talk to these idiots because otherwise you’ll have to send a police officer probably to arrest me because I’m going to go get a crowbar and smash up the place.”

A discipline hearing was held to determine whether Harding violated the prohibition against dishonourable or questionable conduct that reflects badly on the integrity either of the lawyer or of the profession and, if so, whether the conduct was a marked departure from acceptable standards. The hearing panel determined that Harding’s actions — in making the crowbar comment, taking photographs and blocking the entrance to the storage area — were not a marked departure from the conduct expected of Law Society members and dismissed the citation ([2014 LSBC 29](#); [Fall 2014 Discipline digest](#)).

#### DECISION ON REVIEW

The Discipline Committee sought a review of the hearing panel decision as the “marked departure” test has been reframed in light of the 2012 case of *Doré v. Barreau du Québec* in which the Supreme Court of Canada held that a lawyer is required to behave with “transcendent civility” (at para. 68).

The review board found that the hearing panel erred by reasoning that, since the “crowbar” comment was not a threat, it was therefore not professional misconduct. Harding had stepped outside of his professional obligations and escalated the situation by raising the possibility of violence, with the intent of causing the police to attend. The review board majority determined that Harding committed professional misconduct and reversed the finding of the hearing panel.

One member of the review board (Silversides) disagreed with the majority. Silversides gave deference to the hearing panel’s finding that Harding did not intend to lead the RCMP dispatcher to believe he would become violent.

*Harding has appealed the decision of the review board to the Court of Appeal.*

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### JASON BAWA MANN

Vancouver, BC

Called to the bar: April 28, 2004

Discipline hearing: October 8, 2015

Panel: Sharon Matthews, QC, chair, Laura Nashman and John Waddell, QC

Decision issued: November 6, 2015 ([2015 LSBC 48](#))

Counsel: Carolyn Gulabsingh for the Law Society; Henry Wood, QC for Jason Bawa Mann

#### FACTS

In October 2011, Jason Bawa Mann received \$4,000 in cash as a retainer from a client. Mann provided the client with a receipt but did not keep a duplicate receipt for his records. Mann has no recollection of what he did with the cash retainer. He explained that it was not uncommon for him to have large amounts of cash in his possession at that time.

The client trust ledger did not reflect any deposit for the cash retainer. In December 2013, Mann emailed the client in response to her request for a statement of account, and he confirmed he held \$4,000 in trust on her behalf. In fact, he only held \$52.85 in trust at the time.

Mann’s practice was the subject of a Law Society compliance audit

in September 2013. The auditor asked him about the trust balance of \$52.85 he held on his client's behalf. Mann responded that there was unbilled work on the client's file, but he did not realize that the cash retainer was not reflected in the trust balance. In April 2014, the client complained to the Law Society about the quality of service and expressed concern about her trust funds.

Subsequent to the receipt of the cash retainer and throughout the Law Society investigation, Mann acknowledged that he had received the cash retainer and advised the Society, and the client's trust ledger included the cash retainer. Mann provided a copy of his client trust ledger to the Society in July 2014, and it was then that he discovered that the cash retainer was never deposited. He did not report the trust shortage to the Executive Director, as required under the accounting rules, until approximately three weeks later. In August 2014, he deposited \$4,000 into trust to eliminate the shortage, and he returned the full balance of \$4,052.85 to his client the following month.

### ADMISSION AND DISCIPLINARY ACTION

Mann admitted he committed professional misconduct in his failure to deposit his client's cash retainer into trust, to properly record the trust transaction, to keep a copy of the receipt of the cash retainer, to immediately repay the trust shortage once discovered, and to immediately report the trust shortage to the Executive Director of the Law Society.

The panel accepted his admission and ordered him to pay:

1. a fine of \$4,000
2. \$4,672.50 in costs

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## ROBERT COLLINGWOOD STROTHER

Vancouver, BC

Called to the bar: May 12, 1981

Ceased membership for non-payment of fees: January 1, 2008

Discipline hearing: May 26-30 and August 21, 2014 and August 19, 2015

Panel: Gavin Hume, QC, chair, Gregory Petrisor and Alan Ross

Decisions issued: February 26 ([2015 LSBC 07](#)) and December 11, 2015 ([2015 LSBC 56](#))

Counsel: Henry Wood, QC and Lars Kushner for the Law Society; Peter Gall, QC, Robert Grant, QC and Joanne Thackeray (facts and determination) and Peter Gall, QC (disciplinary action) for Robert Collingwood Strother

The citation was issued on September 8, 2009; however, a number of preliminary applications had to be resolved prior to the panel hearing the facts of the case.

Strother took issue with a portion of the Law Society's proposed evidence and applied for an order limiting the evidence to be relied

upon by the Law Society in the proceeding. On January 4, 2012, the panel issued its decision ([2012 LSBC 01](#)), saying it did not find reason to limit the scope of the evidence to be tendered by the Law Society on the basis of the doctrine of abuse of process.

Strother then requested a ruling from the panel relating to allegation 1 of the two allegations in the citation. The panel was asked to rule on the applicability of Chapter 7, Rule 1(a) of the *Professional Conduct Handbook* to Strother's conduct during the period in question. If the panel found that the scope of Chapter 7, Rule 1(a) did not contemplate the conduct alleged in the citation, then allegation 1 of the citation would be dismissed.

In its decision issued May 3, 2012 ([2012 LSBC 14](#)), the panel found that:

- (a) Chapter 7, Rule 1(a) did not create an absolute prohibition against both acting for and taking a financial interest in a client; and
- (b) Chapter 7, Rule 1(a) did not act to protect other clients of the lawyer, only the one in which the lawyer took a financial interest.

As a result, the panel dismissed allegation 1 of the citation.

The Law Society then applied to amend the remaining citation, arguing that since allegation 1 had been struck, it was necessary to import certain details that had been included in allegation 1 into the remaining allegation to provide transactional context and to allow allegation 2 to be a meaningful stand-alone allegation. In its decision issued September 11, 2012 ([2012 LSBC 28](#)), the panel granted the Law Society's application to amend the citation.

### FACTS

Although Robert Collingwood Strother ceased to be a member of the Law Society as of January 1, 2008, section 38(4)(b)(v) of the *Legal Profession Act* gives a hearing panel the jurisdiction to make a finding of professional misconduct against a former member if the conduct of the former member, if he or she had been a member, constituted professional misconduct.

Strother was counsel in the 1990s for a corporation that devised and marketed film-industry tax shelter investments. In 1997 the federal government closed the tax shelter through an amendment to the *Income Tax Act*. Relying on Strother's advice, the client wound down its business except to administer its ongoing obligations.

In early 1998 Strother was approached by the company's former chief financial officer, who had an idea for a similar venture and who asked Strother to seek an advance tax ruling from Revenue Canada. On January 30, 1998, Strother entered into an agreement with the former CFO under which he would seek an advance tax ruling and take steps to incorporate a new company. That agreement gave Strother a financial interest in the venture.

On October 6, 1998, Strother obtained an advance tax ruling favourable to the new corporation, and by December 31, 1998, the new company had closed transactions worth \$260 million.

Strother continued to consult with the original company on tax matters as late as December 8, 1998. The principals of the original company did not hear about the new company's transactions until early 1999, at which time they severed their relationship with the firm at which Strother was a partner.

In February and March 1999, while he was still a partner with that firm, Strother received two advances from companies related to the new company, totalling \$785,000.

Strother resigned from the law firm effective March 31, 1999, and joined the new corporation as a 50 per cent shareholder.

## DETERMINATION

The hearing panel found that Strother had a duty of loyalty to his original client and that his failure to provide material disclosure to that client of his financial interest in a potential competitor deprived the client of any opportunity to consider whether it wanted to continue to retain and rely on Strother despite that financial interest. The panel found that Strother breached his duty to that client in favour of his own financial interest.

The panel concluded that:

- Strother's failure to provide material disclosure to the original client of his interest in a potential competitor constituted professional misconduct;
- Strother's failure to advise the original client that his previous negative legal opinion concerning an amendment to the *Income Tax Act* should be reconsidered constituted professional misconduct; and
- Strother's failure to advise the original client of the favourable tax ruling constituted professional misconduct.

## DISCIPLINARY ACTION

The panel found that Strother's submissions clearly identified that the disciplinary action sought by the Law Society of a suspension of five to six months is on the high side of penalties imposed in Canada where a lawyer is suspended for acting in a conflict situation. However, the panel concluded that, given the actions outlined in its finding of facts and determination, the appropriate discipline is a lengthy suspension.

The panel ordered that Strother:

1. be suspended for five months; and
2. pay costs of \$54,792.38.

*Strother has applied for a review of the hearing panel's decision.*

## KEVIN ALEXANDER MCLEAN

Vancouver, BC

Called to the bar: August 27, 2010

Not in good standing: January 1, 2015

Ceased membership: April 10, 2015

Disbarred: June 29, 2015

Discipline hearing: May 26 and December 7, 2015

Panel: Pinder K. Cheema, QC, chair, Dennis Day and Brian Wallace, QC (facts and determination); Pinder K. Cheema, QC, chair (disciplinary action and costs)

Decisions issued: August 24, 2015 ([2015 LSBC 39](#)) and February 12, 2016 ([2016 LSBC 06](#))

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

## FACTS

A citation was issued against Kevin Alexander McLean on October 7, 2014 concerning 10 allegations arising from three matters:

- McLean's representation of two tenants in a dispute with a landlord regarding a bill of costs;
- a defamation action commenced by McLean against the landlord; and
- McLean's conduct in relation to the Law Society.

When the panel convened on May 26, 2015 numerous attempts had been made to deliver to McLean the citation, a Notice of Hearing and a Notice to Admit. McLean had not responded to any of the Law Society's correspondence nor had he filed any material. He had been advised that the hearing may proceed in his absence. The panel determined that McLean had been served in accordance with the Law Society Rules. Section 42(2) of the *Legal Profession Act* permits a panel to proceed if it is satisfied that the respondent has been duly served.

At the time of the hearing McLean was a former member of the Law Society.

Pursuant to then Rule 4-20.1(7), McLean was deemed, for the purposes of the hearing, to have admitted the truth of the facts described in the Notice to Admit. However, the Law Society still had to prove to the satisfaction of the panel that the alleged conduct amounted to professional misconduct.

## DETERMINATION

The hearing panel found that McLean committed professional misconduct with respect to the 10 allegations, except for portions of two of them.

### The bill of costs

1) In the course of representing the two clients, McLean:

- sent correspondence to the clients' landlord on five occasions