

## KERRI MARGARET FARION

Vancouver, BC

Called to the Bar: December 4, 2006

Suspended: August 4, 2015

Discipline hearing: May 13, 2016

Panel: Craig Ferris, QC, Chair, June Preston and Sandra Weafer

Decision issued: June 21, 2016 ([2016 LSBC 25](#))

Counsel: Carolyn Gulabsingh for the Law Society; Kerri Margaret Farion on her own behalf

### FACTS

In the course of investigating a complaint against Kerri Margaret Farion, the Law Society requested an interview with her. An appointment was scheduled, and on the morning of the agreed-upon date, Farion emailed the Law Society saying she could not make the appointment due to a medical appointment and requested to reschedule.

The Law Society replied immediately with proposed alternative dates and asking for evidence of the medical appointment. Farion did not respond. In total, Farion failed to respond to three letters, one email message and one voicemail message from the Law Society.

### DETERMINATION

Farion accepted responsibility for her failure to respond to the Law Society's requests to provide a date for the interview and to provide proof of her attendance at the specialist appointment. However, her position was that the Law Society should have further investigated the complaint before interviewing her. In addition, she objected to providing any proof of her attendance at the specialist appointment because she says it is a breach of her privacy rights.

The panel viewed Farion's failure to respond as deliberate. She testified that she "got her back up" and did not view an interview as necessary and did not wish to submit any proof of her attendance at a medical appointment to the Law Society. The failure to respond goes directly to the Law Society's ability to regulate its members in the public interest. At the time of this decision, the original complaint that led to the request for an interview had been outstanding and unresolved some 15 months, and much of this delay can be attributed to Farion's failure to respond.

The panel determined that Farion had committed professional misconduct.

### DISCIPLINARY ACTION

The panel ordered that Farion pay:

1. a fine of \$2,500; and
2. costs of \$2,494.60.

## TRACEY LYNN JACKSON

Vancouver, BC

Called to the Bar: May 19, 1995

Discipline hearing: July 27 and 28 and September 15, 2015, and April 20, 2016

Panel: Herman Van Ommen, QC, Chair, Woody Hayes and Gavin Hume, QC

Decisions issued: December 11, 2015 ([2015 LSBC 57](#)) and June 27, 2016 ([2016 LSBC 27](#))

Counsel: Kieron Grady for the Law Society; Geoffrey Cowper, QC, J. Kenneth McEwan, QC and Rebecca J. Robb for Tracey Lynn Jackson

### FACTS

Tracey Lynn Jackson was retained to represent a client with regard to a dispute over certain chattels that were in a storage locker. She appeared on behalf of her client before a master of the court, who ordered the client to retain certain of the chattels.

Jackson and opposing counsel did not agree as to whether the master had ordered that the client must produce the key. Opposing counsel made application for further orders regarding the storage locker and key.

Jackson was on vacation, and an associate at her firm attended the hearing of opposing counsel's application. The associate came away from the hearing uncertain whether the judge had made an order regarding the key.

Opposing counsel advised she would appear before a master on September 17, 2012 to settle the terms of the order. Jackson instructed the associate to prepare an interpleader application allowing the key to be delivered to the court, and have it set down on September 14.

Jackson revised her affidavit to add a paragraph that stated, "I have no knowledge that any orders have been made with respect to storage locker and key fob."

The interpleader order was obtained on September 14, 2012, directing delivery of the keys to the court and extinguishing any liability Jackson's firm might have had with respect to the keys.

On September 17, 2012 the master issued his order including a term requiring production of the key.

On November 16, 2012 the opposing counsel's firm applied to set aside the interpleader order and sought special costs against Jackson personally. In response, Jackson filed a further affidavit repeating the statement, "I have no knowledge that any orders have been made with respect to the storage locker and key fob."

On November 29, 2012, a judge set aside the order extinguishing liability of Jackson's firm and, in adjourning the application for special

costs, spoke critically about Jackson's actions. Jackson voluntarily settled the claim for special costs by paying \$15,703.16.

## DETERMINATION

The hearing panel found that Jackson knew her affidavit sworn on September 13, 2012 was misleading, and that sending her firm's associate into court on an application without notice based on such deficient material constituted professional misconduct. The panel also found that statements Jackson made in her affidavit sworn November 28, 2012 were misleading and also constituted professional misconduct.

## DISCIPLINARY ACTION

While Jackson breached the important duty of counsel to be candid and truthful in representations to the court, that conduct was inconsistent with the usual manner of her practice. She had no previous conduct record, and character letters made clear that she was well respected in and out of the profession. Jackson acknowledged her mistakes and has taken steps to ensure that they are not repeated. While misleading the court would lead to a suspension in most cases, the somewhat unique facts of this case led the panel to conclude that a reprimand and significant fine were appropriate.

The panel ordered that Jackson be reprimanded and pay:

1. a fine of \$15,000; and
2. costs of \$6,000.

*Jackson has appealed the decision of the hearing panel to the Court of Appeal.*

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## LAWYER 15

Metro Vancouver

Called to the Bar: 2011

Discipline hearing: September 21 and 22 and December 11, 2015, and April 30, 2016

Panel: Pinder K. Cheema, QC, Chair, Bruce LeRose, QC and Lance Ollenberger

Decision issued: July 19, 2016 ([2016 LSBC 28](#))

Counsel: Carolyn Gulabsingh for the Law Society; Joven Narwal for Lawyer 15

## FACTS

Lawyer 15 was a co-owner and director of a company that owned an apartment building in Alberta. In February 2011 a tenant in the building called the building manager to say that the tenant had contacted Alberta Health Services and arranged an inspection of his apartment due to concerns about mould. Another investor in the building notified Lawyer 15 of the conversation.

The health inspection took place on February 22, 2011. Shortly after the inspection, Lawyer 15 phoned the tenant to inform him that he would be evicted. Shortly after that phone conversation, Lawyer 15 emailed another of the building owners telling her to serve a notice of eviction immediately.

On March 28, 2011, Lawyer 15 spoke with a peace officer who was investigating the tenant's complaint under the *Residential Tenancies Act*. The peace officer asked whether Lawyer 15 had known of the complaint before the company filed an eviction notice. Lawyer 15 told him he had not been aware of any complaint prior to the eviction notice and that the reason for eviction was the tenant's aggressive behaviour.

On February 28, 2012, Lawyer 15 testified in court that he had only become aware the tenant had requested a health inspection after February 22, the date of the eviction notice.

## DETERMINATION

The hearing panel determined that there was insufficient evidence to prove that, when Lawyer 15 represented to the peace officer that he was unaware that the tenant had complained to Alberta Health Services prior to the company issuing an eviction notice, he knew or ought to have known this was not true.

The panel also determined that there was insufficient evidence to suggest Lawyer 15 gave false testimony when he testified in court that he was unaware that the tenant had complained to Alberta Health Services before the company issued the eviction notice.

The hearing panel dismissed the citation.

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## SHIRLEY CHU

Richmond, BC

Called to the Bar: August 5, 1987

Discipline hearing: June 21, 2016

Panel: Elizabeth Rowbotham, Chair, Jasmin Ahmad and Robert Smith

Decision issued: September 2, 2016 ([2016 LSBC 30](#))

Counsel: Carolyn Gulabsingh for the Law Society; Henry Wood, QC for Shirley Chu

## FACTS

In the course of investigating a complaint against Shirley Chu, the Law Society sent a letter to her on November 9, 2015 and requested a written response.

Chu did not respond, and the Law Society sent a follow-up letter on December 2, 2015 asking that she provide all requested material by December 16. The Law Society also reminded Chu of her obligation to reply promptly and completely and advised that her failure to

respond may be referred to the Discipline Committee.

Chu emailed a legal assistant at the Law Society on December 10, 2015 stating she would respond to the request the following week. She did not do so.

A Law Society staff lawyer left Chu a voicemail message on December 17, 2015 asking her to return the call. Chu contacted the legal assistant the following day, who advised her to contact the staff lawyer on the next business day regarding the extension request.

The staff lawyer left voicemail messages on December 22 and 24, 2015 asking Chu to return her calls. She did not do so.

The Law Society sent Chu a letter dated December 24, 2015, which asked her to respond fully by January 7, 2016 and stated that, if she did not do so, the matter would be referred to the Discipline Committee. Chu did not provide a written response by the deadline, and a citation was authorized and issued on January 14 and 19, 2016.

On April 19, 2016, Chu provided a substantive response to the Law Society as originally requested.

## DETERMINATION

Chu testified that her initial failure to respond to the Law Society's

request was due to her immediate professional commitments to her clients. For the seven months prior to the request for a written response sent on November 9, 2015, Chu cooperated fully with the investigation and maintained open communication. After that date, substantive communication from Chu effectively ceased. The panel found that the circumstances of the failure to respond were not sufficient to rebut the prima facie evidence of misconduct. Chu admitted her conduct constituted professional misconduct.

The panel concluded that her failure to respond was a marked departure from the conduct the Law Society expects of lawyers and determined Chu committed professional misconduct.

## DISCIPLINARY ACTION

The panel considered the context in which the failure took place and the subsequent delivery of her full response. It also considered her professional conduct record and her forthrightness at the hearing.

The panel ordered that Chu pay:

1. a fine of \$2,000; and
2. costs of \$1,276.79.❖

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### *Conduct reviews ... from page 17*

were identified during a compliance audit; the accounting problems were rectified by the time of a later audit, but that audit revealed the Juricert issues. No client suffered financial harm as a result of the accounting issues. A conduct review subcommittee reviewed with the lawyer her obligations under the rules relating to trust accounts and the provisions of the *Land Title Act* and the Law Society Rules relating to the personal use of a lawyer's electronic signature. The subcommittee confirmed that payment of the trust administration fee and practice debts were not optional, but rather mandatory. The subcommittee commended the lawyer for taking steps to address personal issues but, given the historical and chronic nature of the problem, it recommended that she instruct an accountant to do a spot audit or compliance check on an annual basis to make sure trust accounts were reconciled and in compliance with trust accounting rules. The lawyer agreed to hire an accountant to do a yearly spot check and to check the work done by the bookkeeper. She will also review the Law Society's *Trust Accounting Handbook* with her bookkeeper annually. (CR 2016-21)

## BREACH OF NO-CASH RULE

A lawyer accepted an aggregate amount of cash of \$7,500 or more on one client matter in breach of Law Society Rule 3-59, and did not issue all receipts required under Rule 3-70. While acting for a judgment

debtor, the lawyer collected and forwarded cash payments to the judgment creditor pursuant to the terms of a Letter of Agreement that he prepared. He breached the "no-cash" rule by accepting an aggregate of \$40,996 in cash from his client, the debtor, mostly through regular payments of \$5,000. In addition, he failed to issue cash receipts for all but one of the cash payments. The lawyer acknowledged his conduct at the outset, indicating that he was aware of the "no-cash" rule. He believed he was simply a conduit between his client and the judgment creditor and that he was paying out the monies as a disbursement between the two parties, falling under the exception in Rule 3-59(4). When the purpose of the rule was explained by a conduct review subcommittee, the lawyer acknowledged that the "light came on" and indicated he now understood that his characterization of the monies was incorrect. In future, he will seek directions from the Law Society if he is unclear whether monies received fall within the Rule 3-59(4) exception. The subcommittee recommended that the lawyer use e-transfer or accept funds by charge card and also recommended that the lawyer's general bookkeeper review the Law Society's *Trust Accounting Handbook* specific to a law practice. The lawyer acknowledged that he did not have a written policy or procedure regarding cash receipts, and his past practice was deficient due to a failure to appreciate the requirements of Rule 3-70. He has since taken steps to educate himself on the requirements and changed his practice. (CR 2016-22)❖

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